

## **Title XI: Planning and Development**

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MIDLAND CODE

***Editor's note(s)***—*Ord. No. 9920, § 1(Exh. A), adopted May 28, 2019, repealed the former Ch. 1, §§ 11-1-1—11-1-20, and enacted a new Ch. 1 as set out herein. The former Ch. 11 pertained to zoning and derived from Ord. No. 3975, adopted Jan. 8, 1963; Ord. No. 4015, adopted May 28, 1963; Ord. No. 4279, adopted Oct. 11, 1966; Ord. No. 4897, adopted Oct. 8, 1974; Ord. No. 5287, adopted Feb. 14, 1978; Ord. No. 5456, adopted April 24, 1979; Ord. No. 5549, adopted Jan. 22, 1980; Ord. No. 5585, adopted May 13, 1980; Ord. No. 5627, adopted Aug. 12, 1980; Ord. No. 5922, adopted Jan. 26, 1982; Ord. No. 5923, adopted Jan. 26, 1982; Ord. No. 6143, adopted Jan. 25, 1983; Ord. No. 6228, adopted June 14, 1983; Ord. No. 6252, adopted July 26, 1983; Ord. No. 6317, adopted Nov. 22, 1983; Ord. No. 6363, adopted Feb. 14, 1984; Ord. No. 6453, adopted Sep. 25, 1984; Ord. No. 6454, adopted Sep. 25, 1984; Ord. No. 6455, adopted Sep. 25, 1984; Ord. No. 6791, adopted Sep. 22, 1987; Ord. No. 6917, adopted April 11, 1989; Ord. No. 7016, adopted July 10, 1990; Ord. No. 7049, adopted Sep. 25, 1990; Ord. No. 7291, adopted Dec. 14, 1993; Ord. No. 7371, adopted Sep. 27, 1994; Ord. No. 7376, adopted Oct. 11, 1994; Ord. No. 7381, adopted Nov. 8, 1994; Ord. No. 7385, adopted Nov. 8, 1994; Ord. No. 7408, adopted Jan. 10, 1995; Ord. No. 7411, adopted Jan. 10, 1995; Ord. No. 7581, § 1, 12-17-1996; Ord. No. 7484, § 4, adopted Nov. 14, 1995; Ord. No. 7588, § 1, adopted Jan. 28, 1997; Ord. No. 7593, § 1, adopted March 11, 1997; Ord. No. 7594, §§ 1—3, adopted March 11, 1997; Ord. No. 7621, § 1, adopted June 10, 1997; Ord. No. 7627, § 1, adopted July 8, 1997; Ord. No. 7721, § 1, adopted March 24, 1998; Ord. No. 7833, §§ 1—6, adopted April 13, 1999; Ord. No. 7839, § 1, adopted April 27, 1999; Ord. No. 7848, §§ 1—3, adopted April 13, 1999; Ord. No. 7867, § 5, adopted Aug. 24, 1999; Ord. No. 7876, §§ 1, 2, 4—6, adopted Sep. 28, 1999; Ord. No. 7921, §§ 1—3, adopted Feb. 22, 2000; Ord. No. 8029, §§ 2—4, adopted July 10, 2001; Ord. No. 8111, § 1, adopted July 23, 2002; Ord. No. 8262, § 1, adopted Sep. 28, 2004; Ord. No. 8375, § 1, adopted Jan. 24, 2006; Ord. No. 8383, §§ 1—11, adopted Feb. 14, 2006; Ord. No. 8414, §§ 1—14, adopted May 23, 2006; Ord. No. 8416, §§ 1—4, adopted June 13, 2006; Ord. No. 8447, § 3, adopted Sep. 26, 2006; Ord. No. 8448, § 2, adopted Nov. 14, 2006; Ord. No. 8450, §§ 1—6, adopted Oct. 10, 2006; Ord. No. 8496, §§ 1, 2, adopted Feb. 3, 2007; Ord. No. 8497, § 1, adopted Feb. 13, 2007; Ord. No. 8530, § 1, adopted May 22, 2007; Ord. No. 8594, §§ 1—4, adopted Dec. 11, 2007; Ord. No. 8686, § 1, adopted Nov. 25, 2008; Ord. No. 9452, § 1, adopted June 23, 2015 ; and Ord. No. 9688, § 1, adopted Aug. 22, 2017.*

## **ARTICLE I GENERAL PROVISIONS**

### **§ 11-1-1.01. Title.**

This ordinance and all subsequent amendments thereto shall be known as, and may be cited and referred to as the "Zoning Ordinance."

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-1.02. Authority.**

This Zoning Ordinance is adopted pursuant to the authority granted by the U.S. Constitution, the Texas Constitution, and the laws of the State of Texas, specifically including Chapter 211 (municipal zoning authority) of the Texas Local Government Code, as may be amended.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-1.03. Purpose.**

A. Implementation of the Comprehensive Plan. The zoning regulations and districts established in this Zoning Ordinance have been made in accordance with the Comprehensive Plan for the purpose of promoting the health, safety, and general welfare of the City. The zoning regulations and districts have been designed to achieve the following purposes:

1. Lessen congestion in the streets;
2. Secure safety from fire, panic and other dangers;
3. Promote health and the general welfare;
4. Provide adequate light and air;
5. Prevent the overcrowding of land;
6. Avoid undue concentration of population; and
7. Facilitate the adequate provision of transportation, water, wastewater, schools, parks, and other public requirements.

B. Zoning Ordinance Considerations. The zoning regulations and districts have been made with reasonable consideration for, among other things, the character of the districts, a district's peculiar suitability for the particular uses specified, conserving the value of buildings and encouraging the most appropriate use of land throughout the City consistent with the Comprehensive Plan.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-1.04. Official zoning district map.**

A. Official Zoning District Map.

1. The official Zoning District Map shall be labeled the "Official Zoning District Map of the City of Midland, Texas" and shall be maintained as a physical hard-copy file and an electronic file.
2. The "Official Adoption Date" and the "Last Amended Date" shall be shown on the official Zoning District Map.

**B. Management, Physical Locations, and Maintenance of the Official Zoning District Map.**

1. Three identical copies of the Zoning District Map shall be adopted and shall bear the signature of the Mayor and the attestation of the City Secretary. The three official copies of the Zoning District Map shall be filed and maintained as follows:
  - a. One copy shall be filed with the City Secretary and retained as an original record and shall not be changed in any manner.
  - b. One copy shall be filed with the Building Official and shall be maintained with all changes and subsequent amendments for observation in issuing building permits and enforcing the Zoning Ordinance.
  - c. One copy shall be filed in the office of the Planning Division Manager and shall be maintained by posting thereon all changes and amendments. In the case of a conflict between these maps, this map in the office of the Planning Division Manager and its amendments shall govern.
2. The Planning Division Manager shall maintain an electronic file of the official Zoning District Map, as it was originally adopted.

**C. Incorporating Updates to the Official Zoning District Map.**

1. The Planning Division Manager shall be responsible for updates to the official Zoning District Map.
2. The Planning Division Manager's copy of the official Zoning District Map shall be used for reference and shall be maintained by incorporating all subsequent amendments enacted by official action of the City Council.
3. The Planning Division Manager shall use all reasonable means to protect the official Zoning District Map from damage, and to ensure the accurate restoration of the map file if damage or destruction of the original file occurs.

**D. Changes or Amendments Reflected on the Map.**

1. Any changes or amendments made to the zoning district boundaries shall be incorporated into the Zoning District Map files (i.e., physical and electronic) promptly after the amendment has been approved by the City Council.
2. The Planning Division Manager shall maintain a descriptive log of amendments to the map.
3. The Planning Division Manager shall use all reasonable means to ensure that no changes are made to the official Zoning District Map without authorization by official action of the City Council.

**E. Replacement of a Damaged, Destroyed, or Lost Official Zoning District Map.**

1. In the event that the official Zoning District Map file becomes damaged, destroyed, lost or difficult to interpret for any reason, the City Council may adopt a new official Zoning District Map by ordinance following a public hearing.
2. The new official Zoning District Map shall replace and supersede any prior official Zoning District Map.

3. As a true replacement map, the new official Zoning District Map shall not amend or otherwise change district boundaries or classifications from the prior official Zoning District Map.

F. Informational Zoning Maps with Updates.

1. Informational zoning maps that are intended to represent the official Zoning District Map, with updated changes in zoning districts and boundaries as they are made, may be made from time to time and placed on physical display and on the City's website.
2. The Planning Division Manager shall be responsible for all informational zoning maps and the frequency of updates.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-1.05. Applicability/Interpretation/Rules of construction.**

A. Applicability.This Zoning Ordinance applies to all land, buildings, structures or appurtenances located within the City that are hereafter:

1. Occupied,
2. Used,
3. Erected,
4. Altered,
5. Removed,
6. Placed,
7. Demolished, or
8. Converted.

B. Interpretation.

1. Restrictiveness:

Where the regulations in this Zoning Ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other provision of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations that are more restrictive and impose higher standards shall govern.

2. Abrogation of private agreement:

These Zoning Ordinance regulations do not abrogate any easement, covenant or other private agreement.

3. Cumulative effect:

These Zoning Ordinance regulations are cumulative and may impose additional limitations upon all other laws and ordinances previously passed or that may be passed in the future on any subject matter set forth in these regulations.

4. Error correction:

In the event that any property or zoning district set forth on the Zoning District Map as provided in Section 11-1-1.04 Official Zoning District Map of the Zoning Ordinance is misnamed, designated incorrectly, the boundaries are incorrect or the property is omitted, in part or in whole, the Zoning District Map may be amended or supplemented.

a. Applicants:

The property owner of said tract, the City Council, or the Planning and Zoning Commission may submit an application to the Planning Division Manager to initiate the error correction process.

b. Process:

The error correction shall be processed as a zoning map amendment according to 11-1-9.02 Zoning Text and Map Amendments.

C. Rules of Construction. The language set forth in these regulations shall be interpreted in accordance with the following rules of construction.

1. Number:

The singular number includes the plural, and the plural the singular.

2. Tense:

The present tense includes the past and future tenses, and the future the present.

3. Mandatory and permissive language:

The words 'shall' and 'must' are mandatory while the word 'may' is permissive.

4. Gender terms:

The masculine gender includes the feminine.

5. Parentheses:

Any word appearing in parentheses directly after a word herein defined shall be construed in the same sense as that word.

6. Conflicts:

If there is an expressed conflict:

a. The text of the Zoning Ordinance controls over the charts or any other graphic display in the Zoning Ordinance; and

b. The use regulations control over the district regulations in the Zoning Ordinance.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-1.06. Zoning violations.**

Any person, firm, corporation, or other entity who violates, disobeys, or otherwise fails to comply with or who resists the enforcement of any of the provisions of the Zoning Ordinance shall be fined not more than \$2,000.00 for each violation. Each day that a violation exists shall constitute a separate and distinct

offense.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

## ARTICLE II ZONING DEFINITIONS

### **§ 11-1-2.01. Standard zoning definitions.**

- A. Words and terms not expressly defined in this article are to be construed according to the normally accepted meaning of such words or terms or, where no definition appears, according to their customary usage in the practice of municipal planning and engineering.
1. *Abandonment:* To cease or discontinue a use or activity, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.
  2. *Abutting:* Adjacent, adjoining and contiguous to. It may also mean having a lot line in common with a right-of-way or easement, or with a physical improvement such as a street, waterline, park, or open space.
  3. *Access:* A means of approaching or entering a property, or the ability to traverse a property (such as in the use of the phrase "pedestrian access easement").
  4. *Accessory Building:* A subordinate building incidental to the main structure.
  5. *Accessory Dwelling Unit:* Living quarters either attached or detached from the principal residence and used as an accessory use without renting or leasing as a residence by either guests or persons employed to provide domestic services to the occupants of the principal residence.
  6. *Accessory Use:* A use that is clearly and customarily incidental and secondary to the principal use of land or building(s), and that is located upon the same lot, and that does not change the character thereof.
  7. *Adult Day-Care Services:* A facility that provides services under an adult day care program on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility. Adult day services centers (also referred to as adult day care centers) must be licensed by the Texas Department of Human Services or its successor.
  8. *Agricultural Use:* Land where the production, keeping, or maintenance for sale, lease, or personal use of plants and animals useful to man, including, forages and sod crops, grains and seed crops, dairy animals, poultry and livestock, including, but not limited to, ostriches, emus, buffalos, beef cattle, sheep, goats, mules, horses, and ponies.
  9. *Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing:* This industry comprises establishments primarily engaged in (1) manufacturing air-conditioning (except motor vehicle) and warm air furnace equipment or (2) manufacturing commercial and industrial refrigeration and freezer equipment. Uses include air-conditioning and warm air heating combination units manufacturing, humidifying equipment (except portable) manufacturing, air-conditioning compressors (except motor vehicle) manufacturing, refrigerated counter and display cases manufacturing, air-conditioning condensers and condensing units manufacturing, refrigerated drinking fountains manufacturing, dehumidifiers (except portable electric) manufacturing, snow making machinery manufacturing, heat pumps manufacturing, soda fountain cooling and dispensing

equipment manufacturing.

10. *Aircraft Engine and Engine Parts Manufacturing:* This industry comprises establishments primarily engaged in one or more of the following:
  - a. Manufacturing aircraft engines and engine parts;
  - b. Developing and making prototypes of aircraft engines and engine parts;
  - c. Aircraft propulsion system conversion (i.e., major modifications to systems); and
  - d. Aircraft propulsion systems overhaul and rebuilding (i.e., periodic restoration of aircraft propulsion system to original design specifications).
11. *Aircraft Parts and Auxiliary Equipment Manufacturing:* This industry comprises establishments primarily engaged in (1) manufacturing aircraft parts or auxiliary equipment (except engines and aircraft fluid power subassemblies) or (2) developing and making prototypes of aircraft parts and auxiliary equipment. Auxiliary equipment includes such items as crop dusting apparatus, armament racks, in-flight refueling equipment, and external fuel tanks.
12. *Alley:* A public Right-of-Way, not intended to provide the primary means of access to abutting lots, that is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.
13. *All-Weather Surfaced Driveway:* A gravel, asphalt, or concrete driveway.
14. *Ambulance Service:* A privately-owned facility for the dispatch, storage, and maintenance of emergency medical care vehicles.
15. *Amusement, Commercial (indoors):* An amusement enterprise wholly enclosed in a building that is treated acoustically so that noise generated by the enterprise is not perceptible at the bounding property line and including, but not limited to, a climbing wall center or billiard parlor.
16. *Amusement, Commercial (outdoors):* An amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open including, but not limited to, a golf driving range, archery range and miniature golf course.
17. *Antenna Support Structures:* The following are antenna support structures.
  - a. Monopole antenna structure: A self-supporting pole type structure with no guy wire support, tapering from base to top and so designed to support fixtures which hold one or more antennas and related equipment for wireless telecommunication transmission.
  - b. Lattice antenna structure: A steel lattice, self-supporting structure with no guy wire support, so designed to support fixtures which hold one or more antennas and related equipment for wireless communication transmission.
  - c. Guyed lattice antenna structure: A steel lattice, guy wire supported structure, so designed to support fixtures which hold one or more antennas and related equipment for wireless communication transmission.

18. *Antique Shop:* An establishment offering for sale, within a building, articles such as glass, china, furniture or similar furnishing and decorations that have value and significance as a result of age, design and sentiment.
19. *Apartment:* A room or suite of rooms in a multi-family residence arranged, designed, or occupied as a place of residence by a single-family, individual, or group of individuals.
20. *Appliance Rental:* Generally a store where household appliances are sold, rented, or leased.
21. *Applicant:* The person or entity responsible for the submission of an application. The applicant must be the actual owner of the property for which an application is submitted, or shall be a duly authorized representative of the property owner. Also see developer.
22. *Application:* The package of materials, including, but not limited to, an application form, plat, completed checklist, tax certificate, construction plans, special drawings or studies, and other informational materials, that is required by the City to initiate City review and approval of a development project.
23. *Application Form:* The written form (as provided by and as may be amended by the Planning Division Manager) that is filled out and executed by the applicant and submitted to the City along with other required materials as a part of an application.
24. *Approval:*
  - a. Approval constitutes a determination by the official, board, commission or City Council responsible for such determination that the application is in compliance with the minimum provisions of this Zoning Ordinance.
  - b. Such approval does not constitute approval of the engineering or surveying contained in the plans, as the design engineer or surveyor that sealed the plans is responsible for the adequacy of such plans.
25. *Armed Services Recruiting Center:* An office space occupied by a U.S. Army, Navy, Air Force, Marine, Coast Guard, or Merchant Marine recruiting center where phone calls are made, letters are written and mailed, and possible recruits are interviewed and enlisted in one of the service branches.
26. *Art Gallery or Museum:* An institution for the collection, display, or distribution of objects of art, and that is sponsored by a public or quasi-public agency, and is open to the general public.
27. *Art Supply Store:* An establishment within a building offering for sale articles such as painting supplies, picture framing, brushes, artist easels, canvas, or similar supplies for various art forms.
28. *Arterial Street:*
  - a. A street (also referred to as a thoroughfare) designated within the Comprehensive Plan.
  - b. A principal traffic way more or less continuous across the City or areas adjacent thereto, intended primarily to provide for the movement of through traffic, and that shall act as a principal connecting street with highways as indicated in the Comprehensive Plan.
29. *Articulation:* The visual variation to both the height and depth dimensions of a building through the use of materials, colors, fenestration and details.

30. *Artisan's Workshop*: An establishment used for the preparation, display, and sale of individually crafted artwork, jewelry, furniture, sculpture, pottery, leather-craft, hand-woven articles, and related items.
31. *Assisted Living/Nursing Home*: A facility operated by a business or non-profit organization where ill or elderly people are provided with lodging and meals, with or without nursing care.
32. *Automobile Body Shop*: A facility that provides collision repair services, including body frame straightening, replacement of damaged parts, and painting.

See Outside Storage.
33. *Automobile or Other Motorized Vehicle Sales and Service*: A business providing sales, display and service of new and used motorized vehicles, including motorcycles, RVs, and boats—not including semi-truck or heavy truck sales.
34. *Automobile Parts Store*: Stores selling new automobile parts, tires, and accessories.

See Outside Storage.
35. *Automobile Rental*: Storing or renting of automobiles and light trucks.
36. *Automobile Service Garage (Major)*: A facility for the general repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers, or providing collision services, including body, frame, or fender repair, and overall painting, where all work is conducted inside the building.

See Outside Storage.
37. *Automobile Service Garage (Minor)*: A facility for routine automobile services or minor repairs, such as tire services, quick-lubes, batteries, with all work being conducted inside the building and within the same day.

See Outside Storage.
38. *Bail Bond Services*: A bail bond service or bondsman is any person or corporation that will act as a surety and pledge money or property as bail for the appearance of a criminal defendant in court.
39. *Bakery Shop*: A shop that sells baked goods, such as pastry items and donuts.
40. *Bank or Financial Institution*: A freestanding building, with or without a drive-up window, for the custody, loan, or exchange of money; for the extension of credit; and for facilitating the transmission of funds.
41. *Bar*: An establishment, not a restaurant, the principal activity of which is the sale and consumption on the premises of liquor, wine, beer, or any other alcoholic beverages, whether served with or without food and other refreshment.
42. *Barber or Beauty Shop*: A fixed establishment or place where one or more persons engage in the practice of barbering or cosmetology.
43. *Bed and Breakfast Inn*: An owner or operator occupied residence with bedrooms providing overnight or otherwise temporary lodging for the general public for 96 hours or fewer. Typically, breakfast is the only meal served to guests.

44. Bike (Bicycle) Sales and Service:A facility where bicycles are assembled and sold, or repaired and serviced.
45. Block:A tract or parcel of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad right-of-way, highway, stream, or corporate boundary lines.
46. Board of Adjustment:The City's Board of Adjustment, which is established in Article VII Board of Adjustment.
47. Boarding or Rooming House:A building other than a motel or hotel where, for compensation and by prearrangement for definite periods, meals or lodging are provided for three or more persons, but not to exceed eight persons.
48. Book Store:A retail establishment that, as its primary business, engages in the sale, rental, or other charge-for-use of books, magazines, newspapers, greeting cards, postcards, videotapes, computer software, or any other printed or electronically conveyed information or media.
49. Bottling Works:An establishment that engages in the business of placing liquids (soft drinks, milk, juices, etc.) in bottles made of glass or plastic.
50. Bowling Alley:An establishment that devotes more than 50 percent of its gross Floor Area to bowling lanes, equipment, and playing area. A bowling alley is wholly enclosed in a building that is treated acoustically so that noise generated by the enterprise is not perceptible at the bounding property line.
51. Brewery, Large:An industrial use that brews ales, beers, meads, and/or similar beverages on site. Large breweries are classified as a use that manufactures more than 6 million gallons of beverage annually (all beverages combined).
52. Brewery, Local:An industrial use that brews ales, beers, meads, and/or similar beverages on site. Regular breweries area classified as a use that manufactures less than 15,000 gallons of beverages annually (all beverages combined).
53. Brewery, Regular:An industrial use that brews ales, beers, meads, and/or similar beverages on site. Local breweries area classified as a use that manufactures between 15,000 and 6 million gallons of beverages annually (all beverages combined).
54. Building:Any structure built for support, shelter or enclosure of persons, animals, personal property, records or other movable property and when separated in a manner sufficient to prevent fire, each portion of such building shall be deemed a separate building.
55. Building Height:The vertical distance from Grade Plan to the average height of the highest roof surface.
56. Building Official:The Building Official of the City or his or her designee.
57. Building or Other Independent Support Structure:Buildings or other structures such as water towers, church steeples, utility poles and other creative locations.
58. Building Permit:A permit issued by the City before a building or structure is started, improved, enlarged or altered as proof that such action is in compliance with the City code.
59. Building Setback Line:The line within a property defining the minimum horizontal distance between a building or other structure and the adjacent street right-of-way/property line.

60. Cabinet Shop:A wood shop that does layouts, cutting, fitting and assembly of residential and commercial cabinets.
61. Car Wash, Full Service:A facility where a customer can have a motorcycle, automobile and light load vehicle washed in exchange for financial consideration.
62. Car Wash, Self Service:A facility, typically coin operated, used by the customer to wash motorcycles, automobiles and light load vehicles.
63. Carnival, Circus or Tent Service (Temporary):Outdoor or indoor commercial amusement provided on a temporary basis.
64. Carpentry Shop:A shop involving woodworking and the assembly of wood products.
65. Caterer or Wedding Service:A service providing meals or refreshment preparation for public or private entertainment for a fee.
66. Cement or Hydrated Lime Plant:A plant that manufactures cement or hydrated lime for use in the construction industry, for the making of concrete, mortar or plaster.
67. Cemetery or Mausoleum:Property used for the interring of the dead.
68. Ceramic and Pottery Manufacturer:Manufacturing site for ceramic and pottery goods, including dust, odor, and fume control.
69. Certificate of Occupancy and Compliance:An official certificate issued by the City through the Building Official (in conjunction with a Building Permit) that indicates conformance with the City's rules and regulations and that authorizes legal use of the premises.
70. Child-Care Facility:Per Section 42.002 of the State of Texas Human Resource Code, as may be amended, "child-care facility" means a facility licensed, certified, or registered by the Department of Family and Protective Services (or its successor) to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.
71. Child-Care: Day-Care Center:Per Section 42.002 of the State of Texas Human Resource Code, as may be amended, "day-care center" means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.
72. Child-Care: Family Home:Per Section 42.002 of the State of Texas Human Resource Code, as may be amended, "family home" means a home that provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker, does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.
73. Child-Care: Agency Foster Home:Per Section 42.002 of the State of Texas Human Resource Code, as may be amended, "agency foster home" means a facility that provides care for not

more than six children for 24 hours a day, is used only by a licensed child-placing agency or continuum-of-care residential operation, and meets department standards.

74. *Child-Care: Group Day-Care Home:* Per Section 42.002 of the State of Texas Human Resource Code, as may be amended, "group day-care home" means a child-care facility that provides care at the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.
75. *Cigar Lounge:* A business that sells a variety of cigars. It may also sell other tobacco accessories such as lighters, cigar boxes and containers, as well as cigar cutters and punches. In addition, this business may contain a lounge where persons can go to smoke cigars.
76. *City:* The City of Midland, Texas, together with all its governing and operating bodies.
77. *City Attorney:* See the Municipal Code, Title 1.
78. *City Council:* See the Municipal Code, Title 1.
79. *City Manager:* See the Municipal Code, Title 1.
80. *City Secretary:* The person(s) so designated by the City to provide clerical and official services for the City Council. This term shall also include any designee of the City Secretary.
81. *Civic/Convention Center:* A building or complex of buildings used for cultural, recreational, athletic, convention, or entertainment purposes.
82. *Clothing or Similar Light Manufacturing:* A business that buys bolts of cloth or fabric, cuts from patterns and sews into finished shirts, pants, dresses, and other pieces of clothing.
83. *Collector Street:* A street that is continuous through several residential districts and is intended as a connecting street between residential districts and Arterial Streets, highways or business districts, and that may serve both through-traffic and local access functions.
84. *College or University:* An academic institution of higher learning, accredited or recognized by the State, and offering a program or series of programs of academic study.
85. *Commission:* The Planning and Zoning Commission of the City.
86. *Community Center:* A building dedicated to social or recreational activities, serving the City or neighborhood and owned and operated by the City, or by a non-profit organization dedicated to promoting the health, safety, and general welfare of the City.
87. *Community Group Home:* A community-based residential home with not more than six persons with disabilities and two supervisors residing in the home, and that otherwise meets the requirements of the Community Homes for Disabled Persons Location Act (Chapter 123 of the Human Resources Code), as may be amended.
88. *Comprehensive Plan:*
  - a. The plan, including all revisions thereto, adopted by the City Council as the official policy regarding the guidance and coordination of the development of land in the City.
  - b. The plan indicates the general location recommended for various land uses, transportation routes, public and private buildings, streets, utilities, parks other public and private

developments and improvements and population projections.

- c. The plan may consist of, but is not limited to, the following plan elements: Future Land Use Plan, Mobility, Housing, Livability, and Infrastructure.
- 89. *Computer and Peripheral Equipment Manufacturing*: This industry comprises establishments primarily engaged in manufacturing or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers, and computer peripheral equipment, such as storage devices, printers, monitors, input/output devices and terminals.
- 90. *Concrete Block and Brick Manufacturing*: This industry comprises establishments primarily engaged in manufacturing concrete block and brick.
- 91. *Concrete or Asphalt Batching Plant, Permanent*: A permanent manufacturing facility for the production of concrete or asphalt.
- 92. *Concrete or Asphalt Batching Plant, Temporary*: A temporary manufacturing facility for the on-site production of concrete or asphalt during construction of a project, and to be removed when the project is completed.
- 93. *Concrete Pipe Manufacturing*: This industry comprises establishments primarily engaged in manufacturing concrete pipe and other concrete products, excluding concrete block and brick.
- 94. *Consignment Store*: A store that receives merchandise on consignment from individuals and places for resale.
- 95. *Construction Machinery Manufacturing*: This industry comprises establishments primarily engaged in manufacturing construction machinery, surface mining machinery, and logging equipment such as backhoes manufacturing, pile-driving equipment manufacturing, bulldozers manufacturing, portable crushing, pulverizing, and screening machinery manufacturing, construction and surface mining-type rock drill bits manufacturing, powered post hole diggers manufacturing, construction-type tractors and attachments manufacturing, road graders manufacturing, off-highway trucks manufacturing, surface mining machinery manufacturing.
- 96. *Construction Plans*: A set of drawings, including paving, water, wastewater, drainage, or other required plans, submitted to the City for review in conjunction with a subdivision or a development.
- 97. *Contractor's Shop or Storage Yard*: A building, part of a building, or land area for the construction or outdoor or indoor storage of materials, tools, products, and vehicle fleets.
- 98. *Copy Shop or Printing Shop*: An establishment that reproduces, in printed form, individual orders from a business, profession, service, industry or government organization.
- 99. *Council*: See City Council.
- 100. *Country Club*: An area containing a golf course and club house that may include as adjunct facilities a dining room, private club, swimming pool, cabanas, tennis courts and similar service and recreational facilities for the members.
- 101. *County*: Midland County or Martin County.
- 102. *Courtyard*: An open unoccupied space other than a yard, on the same lot with a building that is bounded on three or more sides by the building.

103. *Credit Access Business*: A Credit Access Business has the meaning given that term in Section 5-11-2 of the Midland Municipal Code, as may be amended.
104. *Crosswalk Way*: A public right-of-way, four feet or more in width between property lines that provides pedestrian circulation.
105. *Cul-de-sac*: A short, residential street having only one vehicular access point to another street, and terminating by a vehicular turnaround.
106. *Dance Hall*: An establishment offering to the general public facilities for dancing and entertainment for a fee.
107. *Dance, Music, or Drama Studio*: Studio for performing arts education or similar activities.
108. *Design Transfer Manufacturing and Wholesale Shops*: An establishment whose business involves the placing and/or transferring of photographs, logos, or other designs onto articles of clothing, backpacks or other articles. This use applies to the manufacture of articles for wholesale purposes, only, and may include embroidery of names, logos or other text. This use generally includes catalog sales. Retail sales with display areas are permitted as a secondary use. This use typically involves the preparation of custom artwork, and is for the mass production of articles. Although silk screening is typically employed for this use, heat transfer, Direct-To-Garment (DTG) and/or similar equipment are also acceptable.
109. *Developer*:
  - a. A person or entity, limited to the property owner or duly authorized representative thereof, who proposes to undertake or undertakes the division, development, or improvement of land and other activities covered by this Zoning Ordinance.
  - b. The word Developer is intended to include the terms subdivider, property owner, and, when submitting platting documents, applicant.
110. *Development*: Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, paving, drainage, utilities, storage, and agricultural activities.
111. *Discount or Department Store*: Retail store generally advertising reduced prices and dealing in a large variety of products including, but not limited to, clothing. May include appliances, electronics, and limited packaged food products.
112. *Distillery*: An industrial use that manufactures liquor and sells distilled spirits for consumption off the premises.
113. *Distribution Center*: Building or facility used for the storage and distribution of wholesale items/products.
114. *Donation or Recycling Collection Point*: An incidental use that serves as a neighborhood drop-off point for and temporary storage of donations and recoverable resources. No processing of such items occurs on-site and the site functions solely as an area of collecting materials. This facility is generally located in a shopping center parking lot or in a public/quasi-public area such as in a church and school.
115. *Drapery or Furniture Coverings Shop*: An establishment for the production, display and sale of draperies and soft coverings for furniture.

116. *Drive-Through*:A building or facility where customers can be served without leaving a vehicle.
117. *Dwelling Unit*:A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
118. *Dwelling, Multi-Family*:Any building, or portion thereof, that is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments, or that is occupied as a home or place of residence by three or more families living in independent and separate housekeeping units.
119. *Dwelling, Single-Family (attached—duplex)*:A building designed for occupancy for two families living independently of each other. A two family attached unit (also known as a duplex) has a lot line dividing the building and separating the building's two dwellings units onto two separate lots.
120. *Dwelling, Single-Family (attached—townhouse)*:A dwelling that is joined to another dwelling at one or more sides by a party wall or abutting separate wall, and that is designed for occupancy by one family and is located on a separate lot delineated by front, side and rear lot lines.
121. *Dwelling, Single-Family (detached)*:A dwelling designed and constructed for occupancy by one family and located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract and occupied by one family.
122. *Easement*A grant by a property owner of the use of land by the public, a corporation, entity, or persons for specific purposes.
123. *Easement, Common Access*:An easement created for the purpose of providing vehicular or pedestrian access to a property.
124. *Educational Services Office*:A business involved in providing educational training or tutoring in an office environment.
125. *Effective Date*:The date this Zoning Ordinance, or a subsequent amendment thereto, shall become effective.
126. *Electrical Energy Generating Plant*:A facility or structure where electrical (high voltage) energy is generated.
127. *Electrical Equipment Manufacturing*:This industry comprises establishments primarily engaged in manufacturing power, distribution, and specialty transformers, electric motors, generators, and motor generator sets, switchgear and switchboard apparatus, relays, and industrial controls.
128. *Electrical Power Substations*:A part of the electrical distribution system with the primary function to transform electrical voltage, and includes transformer stations and switching stations.
129. *Engine, Turbine, and Power Transmission Equipment Manufacturing*:This industry comprises establishments primarily engaged in manufacturing turbines, power transmission equipment, and internal combustion engines (except automotive gasoline and aircraft).
130. *Engineer*:Per Section 1001.002 of the State of Texas Occupations Code, as may be amended, "Engineer" means a person licensed to engage in the practice of engineering in the State of

Texas.

131. *Engineering Plans:* See Construction Plans.
132. *Engineering Services Director:* The person so designated by the City to provide oversight for and have responsibility of the City's Engineering Department. This term shall also include any designee of the Engineering Services Director.
133. *Equestrian Center:* An improved area, lighted and generally fenced, of at least 30 feet in width or length within which equestrian activities involving horse riding or driving occurs. Also includes boarding stables.
134. *Equipment Rental (Heavy):* An establishment that rents large equipment and machinery such as compressors, backhoes, front-end loaders, roller compactors, generators, tree coppers, trailers, bulldozers, trenching machines, sky lifts, tractors, and dump trucks. This equipment can be self-propelled or because of its size must be hauled or towed. The equipment is generally stored outside. This use may involve the starting and running of machinery.
135. *Equipment Repair Shop:* Business providing basic repair services for mechanical equipment.
136. *ETJ:* See Extraterritorial Jurisdiction (ETJ).
137. *Exterminating Company:* A business providing services for the extermination of rodents and insects.
138. *Extraterritorial Jurisdiction (ETJ):* The unincorporated area, not a part of any other municipality, that is contiguous to the corporate limits of the City, the outer limits of which are measured from the extremities of the corporate limits of the City outward up to the distance stipulated in Chapter 42 of the Texas Local Government Code, as may be amended, according to the population of the City, and in which area the City may apply its Subdivision Regulations and other ordinances and regulations specifically provided by State law to be applied within the Extraterritorial Jurisdiction (ETJ).
139. *Family:* A person living alone, or one of the following groups of people living as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:
  - a. Any number of people related by blood, marriage, adoption, guardianship, or other duly authorized custodial relationship;
  - b. Four unrelated people; or
  - c. Two unrelated people and any children (including adopted children) related to either of them.
140. *Farmer's Market:* An occasional or periodic market held in an open area or in a structure where groups of individual sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages (but not to include second-hand goods) dispensed from booths located on-site.
141. *Fee Schedule:* A separate document listing fees for various City Applications, prepared by the City Manager or designee and approved by City Council and which may be amended periodically.

142. *Feed Store*: An establishment engaged in retail sale of supplies directly related to the day-to-day activities of agricultural production.
143. *Firearms Sales Establishment*: An establishment having at least 25 percent of its gross floor area used for the sale of firearms, ammunition and ammunition components, and hunting or shooting equipment.
144. *Floodplain*: An area of land subject to inundation by a 100-year frequency flood as determined using standard engineering practices and generally as shown on the Flood Insurance Rate Map (FIRM) of the City.
145. *Floor Area*: The floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.
146. *Florist*: Retail business whose principal activity is the selling of plants that are not grown on the site and whose business is conducted within an enclosed building.
147. *Food Processing Plant*: A building or plant that uses special processes, treatments or blending of foods to achieve a specified result. Not a distribution center.
148. *For-Profit Plasma Donation Centers*: A for-profit business that withdraws blood plasma from individuals.
149. *Front Façade*: A façade directly visible from any public street or main circulation drive and the façade used as the primary entrance to the building.
150. *Frontage*: All the property abutting on one side of the street, or between two intersecting streets, measured along the street line.
151. *Funeral Home or Mortuary*: A place for the storage of human bodies prior to their burial or cremation, or a building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.
152. *Furniture Repair and Upholstering Shop*: A business that repairs and replaces upholstery to household and office furnishings; does not include motor vehicle upholstery or repair.
153. *Garage, Private (attached)*: A garage that has one or more walls common with the principal building on a lot or that is attached to the principal building by an enclosed porch, or passage way, the roof of which is part of an extension of the roof of the principal building and for the purpose of the height and area regulations of this Zoning Ordinance such a garage is to be considered a part of the principal building.
154. *Garage, Private (detached)*: A garage existing separate and apart from the main building, but situated on the same lot, tract or parcel of land with the main building.
155. *Garage, Storage*: A building or portion thereof, other than a private garage, used exclusively for parking or storage of self-propelled vehicles, but with no other services provided, except facilities for washing.
156. *Gas or Oil Well Operation*: Places primarily devoted to subsurface mining of gas or oil.

Typical uses are gas and oil drilling operations. Regulations for Gas or Oil Well Operation can be found in Chapter 6-1 of the Midland Municipal Code.

157. *Gasoline Filling or Service Station*: Any lot or parcel of land or portion thereof used partly or entirely for storing or dispensing flammable liquids, combustible liquids, liquefied flammable gas, or flammable gas into the fuel tanks of motor vehicles, including any associated convenience store or service station.
158. *Gasoline Self-Service Pumps Only*: Any lot or parcel of land or portion thereof used partly or entirely for storing or dispensing flammable liquids, combustible liquids, liquefied flammable gas, or flammable gas into the fuel tanks of motor vehicles. This use addresses the presence of self-service pumps only and does not include any related buildings, such as an associated convenience store or service station.
159. *Golf Course*: A private or public tract of land laid out with at least nine holes for playing a game of golf and improved with tees, greens, fairways, and hazards. A golf course includes a clubhouse and shelters as accessory uses.
160. *Grade Plan*: A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet (1,829 mm) from the building, between the building and a point six feet (1,829 mm) from the building.
161. *Grocery Store*: A retail establishment primarily selling prepackaged and perishable food as well as other convenience and household goods.
162. *Gun Club, Skeet or Target Range (Indoor)*: The use of a structure for archery or the discharging of firearms indoors for the purpose of target practice or competition.
163. *Gun Club, Skeet or Target Range (Outdoor)*: The use of land for archery or the discharging of firearms outdoors for the purpose of target practice or competition.
164. *Gym or Health/Fitness Center*: A facility where members or nonmembers use equipment or space for the purpose of physical exercise.
165. *Gymnastic Studio*: A building or portion of a building used as a place of work for a gymnast or for instructional classes in gymnastics.
166. *Handcraft Shop*: A shop where handcrafted art objects are made and displayed for sale.
167. *Height (Building)*: See Building Height.
168. *Heliport or Helistop*: An area designed to be used for the landing or takeoff of helicopters including operations facilities, such as maintenance, loading and unloading, storage, fueling, or terminal facilities.
169. *Hobby Shop*: A retail shop that sells materials and supplies to persons for the making of arts and crafts, including models.
170. *Home-Based Business*: An occupation carried on in the home by a member of the occupying family without structural alterations in the building or any of its rooms, without the installation or use of machinery or additional equipment, other than that customarily incident to normal household operations, without the employment of additional persons not members of the

household, without the use of a sign to advertise the occupation, without involving the conduct of a business or offering any commodity for sale on the premises, which does not cause a generation of excessive traffic in the street and which does not involve visits to the premises from the public or any members thereof in the capacity of "clients," "patients," or "customers," or similar capacities as a daily routine matter, and which does not create obnoxious noise or other conditions obnoxious to abutting residential property. A home occupation must be an incidental use to one of the principal uses permitted in the district and shall never be permitted as a principal use but only as a secondary use when otherwise in compliance with the above standards. A home occupation shall not include a barbershop, beauty shop, carpenter's shop, electrician's shop, plumber's shop, radio or TV shop, auto repairing, auto painting, furniture repairing, or sign painting, or other similar uses.

171. *Homeowners' or Property Owners' Association:* A formal nonprofit organization operating under recorded land agreements through which:
  - a. Each owner of property in a specific area is automatically a member; and
  - b. Each lot or property interest is automatically subject to a charge for a proportionate share of the expense for the organization's activities, such as the maintenance of common property; and
  - c. The charge if unpaid, becomes a lien against the nonpaying member's property.
172. *Hospital, Acute Care:* An institution where sick or injured patients are given medical or surgical treatment intended to restore them to health and an active life, and that is licensed by the State of Texas.
173. *Hospital, Chronic Care:* An institution where those persons suffering from illness, injury, deformity, deficiency or age are given care and treatment on a prolonged or permanent basis, and that is licensed by the State of Texas.
174. *Hotel:* An establishment offering lodging to the transient public for compensation. A Hotel is distinguished from Motel, Motor Hotel, or Tourist Court (Definition #207) in that access to the majority of the guest rooms is through a common entrance and lobby. A Hotel is a nonresidential use.
175. *HUD-Code Manufactured Home:* See Manufactured Home—HUD Code under the definition of Manufactured Housing (Definition #201).
176. *Improvement:* Any man-made fixed item that becomes part of or placed upon real property. See also Public Improvement.
177. *Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing:* This industry comprises establishments primarily engaged in manufacturing industrial trucks, tractors, trailers, and stackers (i.e., truck-type) such as forklifts, pallet loaders and unloaders.
178. *Industrialized (Commercial) Building:* Per Section 1202.003 of the State of Texas Occupations Code, as may be amended.
  - a. An industrialized building is a commercial structure that is:
    - i. Constructed in one or more modules or constructed using one or more modular components built at a location other than the commercial site; and

- ii. Designed to be used as a commercial building when the module or the modular component is transported to the commercial site and erected or installed.
  - b. An industrialized building includes the structure's plumbing, heating, air conditioning, and electrical systems.
  - c. An industrialized building includes a permanent commercial structure and a commercial structure designed to be transported from one commercial site to another commercial site but does not include:
    - i. A commercial structure that exceeds three stories or 49 feet in height; or
    - ii. A commercial building or structure that is:
      - 1. Installed in a manner other than on a permanent foundation; and
      - 2. Either:
      - 3. Not open to the public; or
      - 4. Less than 1,500 square feet in total area and used other than as a school or a place of religious worship.
179. *Industrialized Housing*: Per Section 1202.002 of the State of Texas Occupations Code, as may be amended:
- a. Industrialized housing is a residential structure that is:
    - i. Designed for the occupancy of one or more families;
    - ii. Constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent site; and
    - iii. Designed to be used as a permanent residential structure when the module or the modular component is transported to the permanent site and erected or installed on a permanent foundation system.
  - b. Industrialized housing includes the structure's plumbing, heating, air conditioning, and electrical systems.
  - c. Industrialized housing does not include:
    - i. A residential structure that exceeds three stories or 49 feet in height;
    - ii. Housing constructed of a sectional or panelized system that does not use a modular component; or
    - iii. A ready-built home constructed in a manner in which the entire living area is contained in a single unit or section at a temporary location for the purpose of selling and moving the home to another location.
- See Additional Development Standards subsection 11-1-4.04.A.3 for Industrialized Housing regulations.
180. *Infrastructure*: All streets, alleys, sidewalks, storm drainage, water, and wastewater facilities, utilities, lighting, transportation, and other facilities as required by the City.

181. Institution for the Care of Alcoholic, Psychiatric, or Narcotic Patients: An institution offering resident treatment to alcoholic, psychiatric or narcotic patients.
182. Jewelry Manufacturing or Assembly: A facility for manufacturing or assembling jewelry.
183. Kennel: Kennels as described by Section 6-2-7(E) of the City Code.
184. Kindergarten: A school or class of young children four to six years old that develops basic skills and social behavior by games, handicraft and other means.
185. Laboratory, Scientific or Research: An establishment that engages in research, testing or evaluation of materials or products, but not necessarily medical related.
186. Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing: This industry comprises establishments primarily engaged in laminating plastics profile shapes such as plate, sheet and rod. The lamination process generally involves bonding or impregnating profiles with plastics resins and compressing them under heat.
187. Landfill: A tract of land used for the burial of farm, residential, institutional, industrial, or commercial waste that is not hazardous, medical, or radioactive.
188. Laundry, Commercial: An industrial facility where fabrics are cleaned with substantially non-aqueous organic solvents on a commercial or wholesale basis.
189. Laundry, Dry Cleaning Drop-Off/Pick-Up: Fabrics, clothes, and linens cleaning shop or drop-off/pick-up station not exceeding 6,000 square feet of Floor Area.
190. Laundry, Self-Service: A laundromat facility not exceeding 2,500 square feet in Floor Area where patrons wash, dry, or dry clean clothing or other fabrics in machines operated by the patron.
191. Leather Product and Saddle Manufacturing: A facility that uses animal hides to produce products for sale, including saddles.
192. Library: A room or building for exhibiting, or an institution in charge of, a collection of books, or artistic, historical, or scientific objects.
193. Light Assembly and Manufacturing Processes:
  - a. The fabrication, assembly, manufacturing, and packaging of finished products or parts, predominantly from previously prepared materials, but excluding basic industrial processing.
  - b. Light fabrication, assembly, manufacturing, and packaging processes do not emit detectable dust, odor, smoke, gas or fumes beyond the bounding property lines of the lot or tract upon which the use is located and do not generate noise or vibration at the property boundary that is generally perceptible in frequency or pressure above the ambient level of noise in the adjacent areas.
194. Local Street: A Local Street is a street used primarily for access to the abutting properties.
195. Locksmith/Security System Company: Establishments primarily engaged in providing, installing, repairing, or monitoring locks and electronic security systems.
196. Lounge or Nightclub: An establishment, other than a restaurant, where liquor, wine, beer and/or

other alcoholic beverage is served, dispensed or sold, whether served with or without food or other refreshment, and where facilities are offered for dancing, or dancing is permitted or invited, by the general public, or where live entertainment is provided.

197. *Manufactured Home (HUD Code)*: See Manufactured Home—HUD Code under the definition of Manufactured Housing (Definition #201).
198. *Manufactured Home Mini-Park*: A single contiguous tract of land under one ownership, uninterrupted by streets, alleys or any other public space, and providing spaces for rent or lease as manufactured or mobile home sites on a short-term or long-term basis, said spaces being situated and configured similar to individual lots.
199. *Manufactured Home Park*: Any single contiguous tract of land under one ownership, uninterrupted by streets, alleys or any other public space, other than a Manufactured Home Mini-Park, where accommodations are provided for non-transient manufactured or mobile home use.
200. *Manufactured Home Sales*: The offering for sale, storage, or display of Manufactured Housing units on a parcel of land, but excluding the use of such facilities as dwellings either on a temporary or permanent basis.
201. *Manufactured Housing*: Per Section 1201.003 of the State of Texas Occupations Code, as may be amended:
  - a. Manufactured Home—HUD Code.
    - i. Means a structure:
      1. Constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;
      2. Built on a permanent chassis;
      3. Designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;
      4. Transportable in one or more sections; and
      5. In the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;
    - ii. Includes the plumbing, heating, air conditioning, and electrical systems of the home; and
    - iii. Does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).
  - b. Mobile Home.
    - i. Means a structure:
      1. Constructed before June 15, 1976;
      2. Built on a permanent chassis;
      3. Designed for use as a dwelling with or without a permanent foundation when

- the structure is connected to the required utilities;
4. Transportable in one or more sections; and
  5. In the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and
- ii. Includes the plumbing, heating, air conditioning, and electrical systems of the home.
202. *Manufacturing or Industrial Operations:* An establishment engaged in manufacturing, assembly, fabrication, packaging or other industrial processing of products primarily from extracted/raw materials or the bulk storage and handling of such products and materials, or an industrial establishment having potential to produce noise, dust, glare, odors or vibration beyond its property line.
203. *Medical Clinic:* A group of offices for one or more physicians, surgeons, chiropractors or dentists, engaged in treating the sick or injured, but not including rooms for the abiding of patients.
204. *Mixed Use Development:* The development of a tract of land or building or structure with two or more different uses, such as, but not limited to, residential, office, retail, public, entertainment, and recreational.
205. *Mobile Food Vendor Park:* An area designed to accommodate two or more mobile food vendors offering food and/or beverages for sale to the public, functioning as a single business and as the primary use of the property.
206. *Model Home:* A single-family dwelling in a developing subdivision located on a legal lot of record that is limited to temporary use as a sales office for the subdivision and to provide an example of the dwellings which have been built or which are proposed to be built in the same subdivision.
207. *Motel, Motor Hotel, or Tourist Court:*
- a. An establishment offering to the transient public the use of guest rooms or sleeping accommodations for compensation.
  - b. Such an establishment consists of a group of attached or detached guest rooms or sleeping accommodations the majority of which have private and direct access from parking areas not through common entrance and lobby.
  - c. The establishment furnishes customary Hotel (Definition #174) services and many contain a restaurant, club, lounge, banquet hall or meeting rooms.
  - d. A motel is a nonresidential use.
208. *Motor Freight Company:* A company using trucks or other heavy load vehicles to transport goods, equipment and similar products. Includes companies that move residential or commercial belongings.
209. *Motor Vehicle Electrical and Electronic Equipment Manufacturing:* This industry comprises establishments primarily engaged in manufacturing and rebuilding electrical and electronic equipment for motor vehicles and internal combustion engines. This would include alternators and generators, ignition wiring harness, coils and ignition, instrument control panels,

distributors' spark plugs, electrical ignition cable sets, windshield washer pumps, and generators.

210. *Motor Vehicle Parts Manufacturing:* An industry engaged in manufacturing motor vehicle engines and gasoline motor vehicle engine parts such as carburetors, pistons, piston rings and valves. Also includes the manufacture of motor vehicle steering mechanisms and suspension, brake systems, transmissions and power train parts, air conditioning systems and compressors, as well as vehicle stampings such as fenders, tops, trim and molding.
211. *Movie Theatre:* A specialized theater for showing movies or motion pictures.
212. *Newspaper Printing:* A commercial printing operation involving a process that is considered printing, imprinting, reproducing, or duplicating images and using printing methods including, but not limited to, offset printing, lithography, web offset, flexographic, and screen process printing.
213. *Nonconforming Lot:* A lot that does not meet the current requirements of this Zoning Ordinance, but that was in conformance with the standards in place at the time of its inception.
214. *Nonconforming Structure:* A structure that does not meet the current requirements of this Zoning Ordinance, but that was in conformance with the standards in place at the time of its inception.
215. *Nonconforming Use:* A use of land that does not meet the current requirements of this Zoning Ordinance, but that was in conformance with the standards in place at the time of its inception.
216. *Nonconformities:* The term Nonconformities is a general term used to refer to Nonconforming Uses, Nonconforming Structures and Nonconforming Lots.
217. *Nonresidential Use:* Any use other than a residential use.
218. *Nonresidential Zoning Districts:* The term "Nonresidential Zoning Districts" means a zoning district as listed a nonresidential zoning district within Table 1: Zoning Districts.
219. *Nursery, Major:* An establishment for the cultivation and propagation, display, storage, and sale (retail and wholesale) of large plants, shrubs, trees, and other materials used in indoor or outdoor plantings, and the contracting for installation or maintenance of landscape material as an accessory use. Outdoor display and storage is included.
220. *Nursery, Minor:* A retail business for the display and sale of trees, shrubs, flowers, ornamental plants, seeds, garden and lawn supplies, and other materials used in indoor and outdoor planting, without outside storage or display.
221. *Office, Professional, Medical, or Business:* A room or group of rooms used for conducting the affairs of a business, profession, service industry, or government.
222. *Open Space:* An area or portion of land, either landscaped or essentially unimproved and which is used to meet recreational or spatial needs, or to protect water, air, or plant areas.
223. *Palm Reader/Card Reader:* An individual who works out of a small shop and customers are invited to sit with the reader and supposedly reveal future events by "reading" the customer's palm or through the reading and interpretation of Tarot Cards.
224. *Park, Playground, or Community Center, Public:* An open recreational facility or park owned

and operated by a public agency such as the City, the school district, or private association, and available to the general public.

225. *Parking Area*: An open area or place, other than a street or alley, used for temporary parking of more than four self-propelled vehicles and available for public use, whether free, for compensation or as an accommodation for clients or customers.
226. *Parking Space*: Space or garage space reserved exclusively for the parking of a vehicle.
227. *Parking Structure*:
  - a. A structure devoted to the parking or storage of automobiles.
  - b. May include, in the case of a Parking Structure only, a facility for servicing of automobiles, provided such facility is primarily an internal function for use only by automobiles occupying the structure and creates no special problems of ingress or egress.
228. *Parkway*: Within the Right-of-Way, the area between the property line and the nearest curb or edge of the roadway (if no curb exists.) See Figure 1: Example of a Parkway for visual depiction of a parkway.

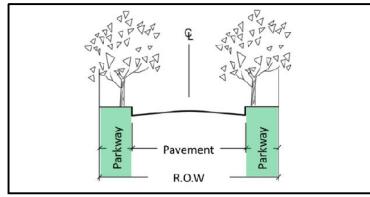


Figure 1: Example of a Parkway

229. *Pawn Shop*: An establishment that lends or advances money or other things for profit on the pledge and possession of personal property, or other valuable things, other than securities or written or printed evidences of indebtedness, or, that deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price.
230. *Penal and Correctional Institutions*: Publicly or privately operated facility for the detention, confinement, treatment or rehabilitation of persons arrested or convicted for the violation of civil or criminal law. Such facilities include an adult detention center, juvenile delinquency center, jail, prison, and halfway house.
231. *Permanent Cosmetics or Makeup*: A permanent, non-dwelling building or portion of a building where colored pigment is inserted into the skin for cosmetic purposes in accordance with all applicable laws, ordinances, rules, and regulations.
232. *Personal Service Shop*: Establishments primarily engaged in providing services generally involving the care of the person or apparel including, but not limited to, barber and beauty shops, dressmaking, shoe shining, dry-cleaning and laundry pick-up stations, tailor or seamstress, and health clubs.
233. *Pet Store (Retail Sales Only)*: A retail sales establishment primarily involved in the sale of pet supplies or the sale or adoption of domestic animals, such as dogs, cats, fish, birds, and

reptiles, excluding exotic animals and farm animals such as horses, goats, sheep, and poultry.

234. Petroleum Storage and Collection Facilities: An outdoor area where storage of petroleum is allowed (tank farm).
235. Pharmaceutical and Medicine Manufacturing: This industry comprises establishments primarily engaged in one or more of the following: (1) manufacturing biological and medicinal products; (2) processing (i.e., grading, grinding, and milling) botanical drugs and herbs; (3) isolating active medicinal principals from botanical drugs and herbs; and (4) manufacturing pharmaceutical products intended for internal and external consumption in such forms as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.
236. Pharmacy: A shop or a store wherein prescription medicines may be obtained during all operating hours wherein primarily medicine and medical supplies are offered for sale.
237. Photographer's or Artist's Studio/Film Processing: Work space for one or more photographers, artists or artisans, including the accessory sale of art produced on the premises.
238. Planning and Zoning Commission: The Planning and Zoning Commission of the City.
239. Planning Division Manager: The person(s) so designated by the City to provide oversight for and have responsibility of the City's planning and development related duties. This term shall also include any designee of the Planning Division Manager. Also, this term shall be inclusive of any future variations of the term, such as "Planning Director" or "Zoning Administrator."
240. Plastic Products Manufacturing: The making of goods by processing plastics materials or raw rubber, with dust and fume control.
241. Plat: A map or chart of the subdivision, lot or tract of land that is filed in the County plat records.
242. Play Field or Stadium, Public: An athletic field or stadium owned and operated by a public agency for the general public including a baseball field, football field or stadium.
243. Plumbing/Electrical/Air Conditioning Store (Retail Sales Only): Establishments primarily engaged in retail sales of plumbing, heating, and air-conditioning equipment, without warehouse facilities, includes storage for ordinary repair but no materials for contracting work.
244. Police or Fire Station: Protection centers operated by a governmental agency, including administrative offices, storage of equipment, temporary detention facilities, and the open or enclosed parking of safety vehicles; excluding, however, correctional institutions.
245. Polystyrene Foam Product Manufacturing: This industry comprises establishments primarily engaged in manufacturing polystyrene foam products.
246. Principal Use: The primary or predominant use of any lot or building.
247. Printing/Duplication or Mailing Center:
  - a. An establishment in which the principal business consists of duplicating and printing services using photocopy, blueprint, or offset printing equipment, including publishing, binding, and engraving; or
  - b. A commercial business that conducts the retail sale of stationery products, provides

packaging and mail services (both U.S. Postal and private service), and provides mailboxes for lease.

248. *Private Utility:* A non-public utility requiring special facilities in residential areas or on public property such as electricity, natural gas, or telecommunications not customarily provided by the municipality or public utilities. All radiating equipment must comply with current Federal Communications Commission (FCC) or its successor, Environmental Protection Agency (EPA) or its successor, Occupational Health and Safety Administration (OSHA) or its successor, and all other applicable State and Federal regulatory agency requirements and guidelines for human safety.
249. *Progress Towards Completion:* Progress towards completion of the project shall include any one of the following:
  - a. An Application for a final plat or plan for development is submitted;
  - b. A good-faith attempt is made to file with the City an Application for a permit necessary to begin or continue towards completion of the project;
  - c. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
  - d. Fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
  - e. Utility connection fees for the project have been paid to a regulatory agency.
250. *Public Improvement:* Any Improvement, facility or service together with its associated public site, Right-of-Way or easement necessary to provide transportation, storm drainage, public or private utilities, parks or recreational, energy or similar essential public services and facilities, for which the City or other government authority ultimately assumes the responsibility for maintenance, operation or ownership.
251. *Public Use or Building:*
  - a. Any use or building held, used, or controlled exclusively for public purposes by any department or branch of government, federal, state, county, or municipal, without reference to the ownership of the building or of the realty upon which it is situated.
  - b. A building belonging to or used by the public for the transaction of public or quasi-public business.
252. *Radio or TV Station:* Establishments primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms. Excluded are facilities classified as major utility services or broadcasting or communication towers.
253. *Record Drawings:* A group of drawings or plans that depicts the final configuration of the installed or constructed improvements of a development, improvements that have been verified by the contractor as their installation or construction occurs during development. The Record

Drawings shall reflect the Construction Plans (or working drawings) used, corrected, or clarified in the field.

254. *Refreshment Kiosk:* A structure that meets building code standards to be freestanding and is used to sell to and serve to drive through and walk-up customers prepackaged, foods and beverages from a drive through window for off-premises consumption and that provides no indoor or outdoor seating.
255. *Religious Use:* A place of worship and religious training of recognized religions, including the on-site housing of ministers, rabbis, priests, nuns, Islamic religious leaders, and similar staff personnel.
256. *Residential Street:* A street that is intended primarily to serve traffic within a neighborhood or limited residential district and that is used primarily for access to abutting properties.
257. *Residential Use:* Residential use means use of a structure as a residence.
258. *Residential Zoning Districts:* Residential district means a single-family, duplex, townhouse, multiple-family or mobile home zoning district as defined in the zoning ordinance, see Table 1: Zoning Districts for a list of districts.
259. *Restaurant or Cafeteria, with Drive-Through Window or Curb Service:* An establishment, with drive-through window or curb service, where food and/or drink are prepared and consumed primarily on the premises.
260. *Restaurant or Cafeteria, without Drive-Through Window or Curb Service:* An establishment, without drive-through window or curb service, where food and/or drink are prepared and consumed primarily on the premises.
261. *Retail Stores and Shops:* An establishment engaged in the selling of goods and merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.
262. *Retail Tobacco Store:* A retail store that sells mainly tobacco products. This business may also sell tobacco accessories such as lighters, matches, cigarette holders and devices used to preserve tobacco, cigars or cigarettes, which are incidental to the sale of tobacco products.
263. *Retaining Wall:* A non-building, structural wall supporting soil loads and live and dead surcharge loads to the soil, such as additional soil, structures and vehicles.
264. *Retirement Housing:* Any age restricted housing development that may be in any housing form, including detached and attached dwelling units, apartments, and residences, offering private and semiprivate rooms and designed to provide meals and nursing care.
265. *Right-of-Way:*
  - a. A parcel of land occupied or intended to be occupied by a street or alley or other transportation infrastructure.
  - b. A Right-of-Way may be used for other facilities and utilities, such as sidewalks, railroad crossings, electrical communication, oil or gas, water or sanitary or storm sewer facilities, or for any other use.
  - c. The use of Right-of-Way shall also include parkways and medians outside of pavement.

266. Rodeo Grounds:A public gathering place for rodeo activities in which there are performances of riders with horses and generally involving cattle. The area may involve various cattle pens, barns or shelters. Parking generally would involve double drive-through spaces for participants with trucks pulling horse trailers and standard parking for spectators.
267. School, Career:Career schools including programs such as dental assisting, pharmacy technician, nurse aide, veterinary assistant, etc.
268. School, Private:Includes private school facilities providing pre-K through 12 education (Pre-kindergarten, Kindergarten, elementary, middle school, high schools).
269. School, Public:Includes public school facilities providing pre-K through 12 education (Pre-kindergarten, Kindergarten, elementary, middle school, high schools).
270. Scientific Research and Development Center or Laboratory:A facility that includes laboratories and experimental equipment for medical testing, scientific testing, prototype design and development, and product testing. Any facility that is determined by Health, Fire, or Building officials to be a hazard or nuisance to adjacent property or the community at large due to the possible emission of excessive smoke, noise, gas, fumes, dust, odor, or vibration, or the danger of fire, explosion, or radiation is not included in this category.
271. Seamstress or Tailor Shop:Establishments primarily engaged in manufacturing or modifying clothing.
272. Setback Line:A line within a lot, parallel to and measured from a corresponding lot line, establishing the minimum required yard and governing the placement of structures and uses on the lot.
273. Shoe Repair Shop:An establishment with the principal business of repairing shoes.
274. Site Plan:A Site Plan is a detailed, scaled drawing of all surface improvements, structures, and utilities proposed for development and is associated with the zoning ordinance.
275. Small Engine Repair Shop:A shop for the repair of lawnmowers, chainsaws, lawn equipment, and other small engine equipment and machinery.
276. Small Wind Energy Systems:A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics that will be used to reduce on-site consumption of utility power.
277. Smelter, Refinery, or Chemical Plant:A building or facility for refining or processing oil or a chemical plant for producing chemical products or processing of those products.
278. Soap and Cleaning Compound Manufacturing:This industry comprises establishments primarily engaged in manufacturing and packaging soap and other cleaning compounds, surface active agents, and textile and leather finishing agents used to reduce tension or speed the drying process.
279. Spa, Day Spa or Health Spa:A business that provides therapeutic and personal grooming services, including haircuts and styling, waxing, facial treatments, body therapies (massage and massage therapy), and nail treatments by providers licensed by the State of Texas.
280. Special Zoning Districts:The term "Special Zoning Districts" means a zoning district as listed a special zoning district within Table 1: Zoning Districts.

281. *Specific Use Designation:*

- a. A zoning procedure to allow a specific use on a property.
- b. See 11-1-9.07 Specific Use Designation (SUDs).
- c. See 11-1-4.03 Use Chart for which zoning districts allow a Specific Use Designation.

282. *Stable:* A stable and related facilities, including an open pasture, where horses are quartered for owners.

283. *Storage:*

- a. Outside Display. The temporary outside display of finished goods. Finished goods are specifically intended for immediate retail sales and are not intended nor used as an area for the continuous keeping or storage (i.e., Outside Storage) of such finished goods. Examples of outside display include the display of grills, deer feeders, patio furniture, lawn mowers, flowers, pumpkins, Christmas trees, and clothing. For information regarding Outside Display regulations, see the Use Chart<sup>1</sup> and Section 11-1-4.04.A.15.
- b. Outside Storage. The continuous keeping or storage of any finished or unfinished goods, materials, merchandise, or equipment outside of a building for more than 24 hours. For information regarding Outside Storage regulations, see the Use Chart and Section 11-1-4.04.A.16.

284. *Storage Units, Mini:*

- a. A building(s) containing separate, individual self-storage units for rent or lease.
- b. The conduct of sales, business, or any activity other than storage does not occur within any individual storage unit.

285. *Storefront:* Storefronts are defined as the part of the building that fills the structural bay on the front façade at ground level.

286. *Story:* That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

287. *Street:* A public Right-of-Way that provides vehicular traffic access to adjacent lands or for the movement of through traffic.

288. *Structural Alterations:* Any change in any supporting member of a building, such as a bearing wall, column, partition, beam, or girder, or a change in the pitch or height of the roof.

289. *Structure:* Anything constructed or erected that requires location on the ground, or attached to something having a location on the ground, including, but not limited to, advertising signs, billboards and poster panels, but exclusive of customary fences or boundary of retaining walls, sidewalks and curbs.

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1. Editor's Note-Said Use Chart is included as an attachment to this chapter.

290. *Studio Residence:* A dwelling unit or sleeping unit in which a significant portion of the space includes a nonresidential use that is operated by the tenant.

291. *Subdivider:*

- a. Any person or any agent thereof, dividing or proposing to divide land so as to constitute a subdivision.
- b. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land to be subdivided.

292. *Subdivision:*

- a. The division of a tract or parcel of land into two or more parts or lots for the purpose, whether immediate or future, of sale or building development or transfer of ownership with the exception of transfer to heirs of an estate, and shall include re-subdivision.
- b. Any other subdivision or re-subdivision of land contemplated by the provisions of Chapter 212, Local Government Code.

293. *Subdivision Regulations:* The adopted subdivision regulations of the City. (See Chapter 11-2 of the Midland Municipal Code, as may be amended.)

294. *SUD:* See Specific Use Designation definition and Section 11-1-9.07 Specific Use Designation (SUDs).

295. *Surveyor:* A licensed State Land Surveyor or a Registered Public Surveyor, as authorized by the State to practice the profession of surveying.

296. *Tattoo Studio:* A permanent, non-dwelling building or portion of a building where scarring or inserting a pigment of a design or artistic image under the skin using needles, scalpels, or other related equipment is performed in accordance with all applicable laws, ordinances, rules, and regulations.

297. *Taxidermist:* An establishment whose principal business is the practice of preparing, stuffing, and mounting the skins of dead animals for exhibition in a lifelike state.

298. *Telephone Exchange (No Offices or Storage Facilities):* A building used exclusively for the transmission and exchange of telephone messages, but the term shall not include wireless service towers.

299. *Temporary Building for New Construction:*

- a. A structure or shelter used in connection with the construction of a development or building project for housing on the site of temporary administration and supervisory functions and for sheltering employees and equipment.
- b. Buildings are permitted for a specific period of time in accordance with a permit issued by the City.
- c. See the 11-1-4.03 Use Chart<sup>2</sup> and Section 11-1-4.04.A.19 within the Additional Development Standards for details.

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2. Editor's Note-Said Use Chart is included as an attachment to this chapter.

- d. The term "Temporary Field or Construction Office" may also be used.
300. *Textile Manufacturing, with dust and odor control:* Establishments primarily engaged in finishing of textiles, fabrics, and apparel, with dust and odor controls.
301. *Thoroughfare:* See Arterial Street.
302. *Tinsmith/Sheet Metal Shop:* A shop where flat sheets of metal are shaped into three-dimensional objects and soldered, brazed or welded.
303. *Trailer:* A portable dwelling unit designed to move on wheels from location to location by automobile or truck.
304. *Transit Center:* Any premises, including train or bus stations, for the loading and unloading of passengers and the temporary parking of transit vehicles between routes or during stopovers and excluding overnight parking and storage of transit vehicles.
305. *Transportation Plan:* The plan that guides the development of adequate circulation within the City, and connects the City street system to regional traffic carriers. Also referred to as the Thoroughfare Plan.
306. *Truck Sales, Heavy Trucks:* The display, storage, sale, leasing, or rental of new or used panel trucks, vans, trailers, recreational vehicles, or buses in operable condition.
307. *Unmanned Equipment Building:* An accessory building housing electronic and communication equipment as an associated and permitted part of a wireless communication system.
308. *Urethane and Other Foam Product (except Polystyrene) Manufacturing:* This industry comprises establishments primarily engaged in manufacturing plastics foam products.
309. *Utility Distribution/Transmission Line:* Facilities, including subsidiary stations that serve to distribute, transmit, transform, or reduce the pressure of gas, water, or electric current, including, but not limited to, electrical transmission lines, gas transmission lines, and metering stations.
310. *Utility Easement:* See Easement (Definition # 122).
311. *Vacation Travel Trailer:* A vacation travel trailer is a vehicular portable structure designed for a temporary or short-term occupancy for travel, recreational or vacation uses. Such vehicles shall include travel trailers, converted buses, tent trailers, recreational vehicles, motor homes or similar devices used for temporary portable housing.
312. *Vacation Travel Trailer Park:* A Vacation Travel Trailer Park is any tract of land under single ownership and where accommodation is provided for transient trailer use for a maximum of seven days. See Section 11-1-4.04.A.2 Manufactured Home Mini-Park, Manufactured Home Park, and Vacation Travel Trailer Park Standards for more information.
313. *Veterinarian Clinic:* An establishment where animals and pets are admitted for examination and medical treatment.
314. *Warehouse:* Facilities characterized by extensive warehousing, frequent heavy trucking activity, Outside Storage of material, or nuisances such as dust, noise, and odors, but not involved in manufacturing or production.

315. *Wedding Chapel, Reception Facility, Special Events Center*:A building, facility, room, or portion thereof, which is rented, leased or otherwise made available to any person or group for a private event function, that is not open to the general public, whether or not a fee is charged.
316. *Weight Loss Center*:An establishment that holds meetings for its membership, counsels, or sells products to encourage the personal weight loss of individuals.
317. *Wholesale Center*:An establishment or place of business primarily engaged in selling or distributing merchandise to the general public, to retailers, to industrial, commercial, institutional, or professional business users, and to other wholesalers.
318. *Wildlife Rehabilitation Center*:A property or building where wildlife animals are kept for the purpose of undergoing rehabilitation.
319. *Winery*:An establishment where wine is made.
320. *Wireless Communication Systems*:Antenna support structures for mobile and land based telecommunication facilities, whip antennas, panel antennas, microwave dishes and receive-only satellite dishes, cell enhancers and related equipment for wireless transmission from a sender to one or more receivers, such as for mobile cellular telephones, mobile radio systems facilities, commercial mobile radio service and radio or television (commercial only) broadcasting towers and transmitting stations. This definition is inclusive of the placement of the above-referenced equipment on a monopole tower, a steel lattice tower, guyed steel lattice tower and any communication tower which does or does not utilize guy wire support in addition to existing buildings or other independent support structures. This system shall also allow as one of its components an unmanned equipment shelter.
321. *Wood Window and Door Manufacturing*:This industry comprises establishments primarily engaged in manufacturing window and door units, sash, window and door frames, and doors from wood or wood clad with metal or plastics.
322. *Woodworking and Planing Mill*:
- a. Establishments with dust and noise control and primarily engaged in one or more of the following:
    - i. Manufacturing dimension lumber from purchased lumber;
    - ii. Manufacturing dimension stock (i.e., shapes) or cut stock;
    - iii. Re-sawing the output of sawmills; and
    - iv. Planning purchased lumber.
  - b. These establishments generally use woodworking machinery, such as jointers, planers, lathes, and routers to shape wood.
323. *Wrecking or Auto Salvage Yard*:A yard or building where automobiles or machinery are stored, dismantled and offered for sale as whole units, as salvaged parts or as processed metal.
324. *Yard*:
- a. An open space other than a court, on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

b. In measuring to determine the width of a side yard, the depth of a front yard or the depth of a rear yard, the least horizontal distance between the lot line and the main building shall be used.

325. *Yard, Front:* A yard across the full width of a lot extending from the front line of the main building to the front property line of the lot.

326. *Yard, Rear:* A yard extending across the full width of the lot and measured between the rear property line of the lot and rear line of the main building, except that area included in the side yard as defined below.

327. *Yard, Side:* A yard between the building and the side property line of the lot and extending from the front yard to the required minimum rear yard.

328. *Zoning District Map:*

a. The official map upon which the boundaries of the various zoning districts are drawn, and which is an integral part of the Zoning Ordinance, which may also be cited as the Zoning Map.

b. See Section 11-1-1.04 Official Zoning District Map.

329. *Zoning Ordinance:* The adopted Zoning Ordinance of the City, as may be amended in the future, and may be referred as "the Zoning Ordinance."

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

## **ARTICLE III ZONING DISTRICTS**

### **§ 11-1-3.01. Zoning district authorization.**

The City is divided into zones, or districts, and the boundaries of zoning districts are delineated on the Official Zoning District Map of the City.

#### **A. Zoning Districts.**

The location and boundaries of the various districts as defined herein shall be established and amended by ordinance and shall be shown and delineated on the Official Zoning District Map of the City.

#### **B. Effect of Zoning District Change.**

The reclassification of property to a new zoning district shall be an amendment of the Official Zoning District Map and shall be so recorded.

#### **C. Interpretation of District Boundaries.**

The district boundary lines shown on the Official Zoning District Map are along streets, alleys, or property lines. When uncertainty exists as to the boundaries of the districts on the Official Zoning District Map or when boundaries do not follow along streets, alleys, or property lines, the following rules apply:

##### **1. Metes and Bounds Survey.**

Boundaries shall follow metes and bounds surveys as approved by the City as part of the zoning or rezoning process.

##### **2. Center Lines.**

Boundaries approximately following the center lines of streets or highways shall be construed to follow such center lines.

##### **3. Platted Lot Lines.**

Boundaries approximately following platted lot lines shall be construed as following such lot lines.

##### **4. City Limit Lines.**

Boundaries approximately following city limits shall be construed as following such city limits.

##### **5. Railroad Lines.**

Boundaries following railroad lines shall be construed to be the middle of the railroad easement or Right-of-Way.

##### **6. Shore Lines.**

a. Boundaries following shore lines shall be construed to follow such shore lines, and in the event of change in the shore lines, shall be construed as moving with the actual shoreline, or as otherwise set forth by State law.

- b. Boundaries approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-3.02. Zoning districts established.**

#### A. Purpose.

The purpose of this section is to create zoning districts, to specify the nature and components of the permitted development and uses within them, and to establish regulations regarding the physical character and intensity of development in order to protect the public health, safety and welfare.

#### B. Zoning Districts Established.

All land within the corporate limits shall be classified into one of the following zoning districts.

**Table 1: Zoning Districts**

#### **Residential Zoning Districts**

Section 11-1-3.04	AE, Agricultural Estate District
Section 11-1-3.05	CE, Country Estate District
Section 11-1-3.06	SF-1, Single-Family Dwelling District
Section 11-1-3.07	SF-2, Single-Family Dwelling District
Section 11-1-3.08	SF-3, Single-Family Dwelling District
Section 11-1-3.09	MH, Manufactured Housing District
Section 11-1-3.10	TH, Townhouse (Attached) Dwelling District
Section 11-1-3.11	2F, Two-Family Dwelling (Duplex) District
Section 11-1-3.12	MF-16, Multiple-Family Dwelling District
Section 11-1-3.13	MF-22, Multiple-Family Dwelling District

#### **Nonresidential Zoning Districts**

Section 11-1-3.14	O-1, Office District
Section 11-1-3.15	O-2, Office District
Section 11-1-3.16	LR, Local Retail District
Section 11-1-3.17	RR, Regional Retail District
Section 11-1-3.18	CB, Central Business District
Section 11-1-3.19	C, Commercial District
Section 11-1-3.20	BP, I-20 Business Park District
Section 11-1-3.21	TP, Technology Park District
Section 11-1-3.22	LI, Light Industrial District
Section 11-1-3.23	HI, Heavy Industrial District

**Table 1: Zoning Districts****Special Zoning Districts**

Section 11-1-3.24

PD, Planned Development District

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-3.03. Equivalency table for zoning districts.**

The following table identifies zoning districts adopted in previous ordinances and the zoning district regulations that now apply in this Zoning Ordinance to those districts.

**Table 2: Zoning Districts Equivalency Table**

<b>Previous Zoning Designation</b>	<b>Current Zoning District</b>
<b>Residential Zoning Districts</b>	
AE, Agriculture-Estate District	AE, Agricultural Estate District
CE, Country Estate District	CE, Country Estate District
1F-1, One-Family Dwelling District	SF-1, Single-Family Dwelling District
1F-2, One-Family Dwelling District	SF-2, Single-Family Dwelling District
1F-3, One-Family Dwelling District	SF-3, Single-Family Dwelling District
MH, Mobile Home Dwelling District	MH, Manufactured Housing District
TH, Townhouse Dwelling District	TH, Townhouse (Attached) Dwelling District
2F, Two-Family Dwelling District	2F, Two-Family Dwelling (Duplex) District
MF-1, Multiple-Family Dwelling District	MF-16, Multiple-Family Dwelling District
MF-2 Multiple-Family Dwelling District	MF-22, Multiple-Family Dwelling District
<b>Nonresidential Zoning Districts</b>	
O-1, Office District	O-1, Office District
O-2, Office District	O-2, Office District
NS, Neighborhood Service District	LR, Local Retail District
LR-1, Local Retail District	LR, Local Retail District
LR-2, Local Retail District	RR, Regional Retail District
LR-3, Local Retail District	RR, Regional Retail District
C-1, Central Area District	CB, Central Business District
C-2, Commercial District	C, Commercial District
C-3, Commercial District	C, Commercial District
BP, I-20 Business Park District	BP, I-20 Business Park District
IP, Industrial Park District	TP, Technology Park District

**Table 2: Zoning Districts Equivalency Table**

<b>Previous Zoning Designation</b>	<b>Current Zoning District</b>
IP-1, Industrial Park District	TP, Technology Park District
IP-2, Industrial Park District	TP, Technology Park District
IP-3, Industrial Park District	TP, Technology Park District
LI, Light Industry	LI, Light Industrial District
HI, Heavy Industry	HI, Heavy Industrial District
<b>Special Zoning Districts</b>	
FD, Future Development District	
P, Parking District	
	PD, Planned Development District

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

#### **§ 11-1-3.04. AE, Agricultural Estate District.**

##### A. Purpose Statement.

This district is intended to provide for development of single-family detached dwelling units within a rural setting on lots of not less than two acres (or 87,120 square feet) and to provide a location for agricultural uses.

##### B. Permitted Uses and Use Regulations.

See the Use Chart<sup>3</sup> and all applicable regulations in Article IV.

##### C. Dimensional Regulations.

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

##### D. Development Standards.

1. See the following sections for development regulations.

- a. See 11-1-4.09 Accessory Buildings and Uses.
- b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

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3. Editor's Note-Said Use Chart is included as an attachment to this chapter.

g. See 11-1-6.06 Building Design Standards for Multiple-Family Use.

h. See 11-1-6.07 Multiple-Family Density Bonus.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

### **§ 11-1-3.05. CE, Country Estate District.**

#### A. Purpose Statement.

This district is intended to provide for development of single-family detached dwelling units within a semi-rural setting on lots of not less than 43,560 square feet.

#### B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

#### C. Dimensional Regulations.

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

#### D. Development Standards.

1. See the following sections for development regulations.

a. See 11-1-4.09 Accessory Buildings and Uses.

b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.

c. See 11-1-6.02 Off-Street Parking and Loading Requirements.

d. See 11-1-6.03 Lighting Standards.

e. See 11-1-6.04 Building Façade Material Standards.

f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

2. Driveways.

a. Residential lots shall, at a minimum, have all-weather surfaced driveway.

i. Driveways shall be designed and maintained to prevent all-weather surface materials from being deposited on public streets and Right-of-Ways by storm water runoff.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

### **§ 11-1-3.06. SF-1, Single-Family Dwelling District.**

#### A. Purpose Statement.

This district is intended to provide for development of single-family detached dwelling units within a suburban neighborhood setting on lots of not less than 9,000 square feet.

#### B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.
2. Driveways.
  - a. Residential lots shall have concrete driveways.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.07. SF-2, Single-Family Dwelling District.**

A. Purpose Statement.

This district is intended to provide for development of single-family detached dwelling units within a suburban neighborhood setting on lots of not less than 7,000 square feet.

B. Permitted Uses and Use Regulations.

See the Use Chart<sup>4</sup> and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.

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4. Editor's Note-Said Use Chart is included as an attachment to this chapter.

f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

2. Driveways.

a. Residential lots shall have concrete driveways.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.08. SF-3, Single-Family Dwelling District.**

A. Purpose Statement.

This district is intended to provide for development of single-family detached dwelling units within a suburban neighborhood setting on lots of not less than 5,500 square feet.

B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.

a. See 11-1-4.09 Accessory Buildings and Uses.

b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.

c. See 11-1-6.02 Off-Street Parking and Loading Requirements.

d. See 11-1-6.03 Lighting Standards.

e. See 11-1-6.04 Building Façade Material Standards.

f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

2. Driveways.

a. Residential lots shall have concrete driveways.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.09. MH, Manufactured Housing District.**

A. Purpose Statement.

The MH, Manufactured Housing District is a detached single-family residential district to provide for the development of Manufactured Housing.

B. Permitted Uses and Use Regulations.

See the Use Chart<sup>5</sup> and all applicable regulations in Article IV.

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5. Editor's Note-Said Use Chart is included as an attachment to this chapter.

C. Dimensional Regulations.

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.
2. Areas requirements for park site.
  - a. Minimum Area for a Manufactured Home Mini-Park: 15,000 square feet and shall have a minimum width (measured parallel to a street) of 150 feet and a minimum depth of 100 feet.
  - b. Minimum Area for a Manufactured Home Park: Eight acres
  - c. Minimum Area for a Vacation Travel Trailer Park: Two acres
3. See Additional Development Standards (Section: 11-1-4.04.A.2) for additional requirements specifically for Manufactured Home Mini-Park, Manufactured Home Mini-Park, Vacation Travel Trailer Park developments.
4. Regulations for individual manufactured or mobile homes on individual lots (i.e., non-park developments).
  - a. Both the mobile home or manufactured home and the lot on which it is located must be under a common ownership.
  - b. All mobile homes or manufactured homes must comply with the minimum standards established in Appendix E of the International Residential Code of One and Two Family Dwellings.
  - c. Mobile homes or manufactured homes must be installed on a concrete foundation or footing and be equipped with tie-downs per the manufacturer's standards.
  - d. If the trailer is not installed on a continuous foundation, the space between the bottom of the trailer and the lot surface must be covered by a continuous skirt with vents.
  - e. No storage is permitted under the trailer except transportation wheels.
  - f. No structure may be built as an addition to the trailer other than a standard self-standing patio area.

- g. An accessory building constructed in compliance with regulations established under the SF-1, Single-Family Dwelling District may be built.
- h. A detached garage for the storage of vehicles may be constructed. The garage may not be occupied or converted to another use unless in compliance with the accessory building requirements.
- i. Prior to removal of a mobile home or manufactured home the owner must comply with all the provisions of the City Code for house moving, see requirements with Chapter 9-3 of the City's Code.

5. **Parking Required.**

Two paved off-street parking spaces shall be provided.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.10. TH, Townhouse (Attached) Dwelling District.**

A. **Purpose Statement.**

This district is intended to provide for development of townhouses (Dwelling, Single-Family (attached—townhouse)) in structures built to accommodate three to 12 units per structure.

B. **Permitted Uses and Use Regulations.**

See the Use Chart and all applicable regulations in Article IV.

C. **Dimensional Regulations.**

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. **Development Standards.**

1. See the following sections for development regulations.

- a. See 11-1-4.09 Accessory Buildings and Uses.
- b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

2. **Lot Provisions for Dwelling Units.**

- a. Each dwelling unit shall be located on a single lot that fronts a dedicated street or other approved public access easement and is served individually by water, wastewater, electric, and gas utility services.
- b. There shall be no more than one dwelling unit on any lot.

3. Structure Separation.
  - a. Contiguous attached structures shall not exceed 310 feet in length.
  - b. The minimum separation between noncontiguous, adjacent structures shall be 20 feet.
4. Mechanical Equipment, Refuse Containers, and Waste Storage.
  - a. Mechanical equipment, refuse containers, and waste storage areas shall be constructed, located and screened to prevent interference with the peace, comfort, and repose of the occupants of any adjoining building or residence.
5. Garages.
  - a. All homes shall have a two-car enclosed garage.
  - b. Access to the garage shall be by means of a driveway connecting with an adjacent public street, alley, public access easement, private street, or private access easement.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

#### **§ 11-1-3.11. 2F, Two-Family Dwelling (Duplex) District.**

##### A. Purpose Statement.

This district is intended to provide for development of quality duplex residential development. This district is envisioned to include small areas or entire neighborhoods consisting entirely of duplexes. Additionally, this district serves to provide for a transition between lower density residential areas and more intense residential areas or nonresidential areas.

##### B. Permitted Uses and Use Regulations.

See the Use Chart<sup>6</sup> and all applicable regulations in Article IV.

##### C. Dimensional Regulations.

See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

##### D. Development Standards.

###### 1. See the following sections for development regulations.

- a. See 11-1-4.09 Accessory Buildings and Uses.
- b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

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6. Editor's Note-Said Use Chart is included as an attachment to this chapter.

2. Driveways.

- a. Each dwelling unit shall have a two-car enclosed garage.
- b. Residential lots shall have concrete driveways.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.12. MF-16, Multiple-Family Dwelling District.**

A. Purpose Statement.

This district is intended to provide for development of attached residential units, such as multi-family developments, at a maximum residential density of 16 dwelling units per acre. (The dwelling units per acre (DU/A) calculation is exclusive of all streets, alleys and sidewalks, but inclusive of open space, recreational, and service areas.) This district is for moderate densities.

B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

C. Dimensional Regulations.

1. See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.
2. The maximum residential density shall be 16 dwelling units per acre.

D. Development Standards.

1. See the following sections for development regulations.

- a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.
  - g. See 11-1-6.06 Building Design Standards for Multiple-Family Use.
  - h. See 11-1-6.07 Multiple-Family Density Bonus.

2. Front Yard Regulations.

- a. No structure shall be located in the front yard.
  - b. No off-street parking shall be allowed in any front yard area. However, drives of ingress and egress from the public street to a parking area shall be allowed to cross the front yard from front to rear.

3. Garages.

A minimum of 25 percent of the total number of units in the complex shall have a one-car enclosed garage, 240 square feet minimum, attached or detached, per dwelling unit.

4. Mechanical Equipment, Refuse Containers, and Waste Storage.

a. Mechanical equipment, refuse containers and waste storage areas shall be constructed, located and screened to prevent interference with the peace, comfort, and repose of the occupants of any adjoining building or residence.

5. Storage Area.

Every apartment unit shall have an enclosed storage area of not less than 30 square feet of Floor Area, eight feet high, exclusive of interior closet space.

6. Private Recreation Areas.

a. Recreation Area Required.

i. All apartment complexes shall have at least one recreation area, in a location free of traffic hazards, easily accessible to all complex residents, and centrally located where topography permits.

b. Recreation Space Requirement.

i. Not less than eight percent of the gross complex area shall be devoted to recreational facilities, generally in a central location. In large complexes (two acres or larger) these may be decentralized.

ii. Recreation areas include space for community buildings and community uses, such as adult recreation and child play areas, and swimming pools, but do not include vehicle parking, commercial, maintenance and utilities areas.

c. Playground Space.

i. When playground space is provided, it shall be so designated and shall be protected from traffic, streets, and parking areas.

ii. Such space shall be maintained in a sanitary condition and free of dangerous conditions and hazards.

E. Site Plan Required for Rezoning to the MF-16, Multiple-Family Dwelling District.

A Site Plan, as outlined in 11-1-9.05 Site Plans, shall be required for all Zoning Map Amendment (Rezoning) Applications seeking the MF-16, Multiple-Family Dwelling District designation. The Site Plan shall be included as part of the ordinance approving the Zoning Map Amendment (Rezoning). (Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.13. MF-22, Multiple-Family Dwelling District.**

A. Purpose Statement.

This district is intended to provide for development of attached residential units, such as multi-family developments, at a maximum residential density of 22 dwelling units per acre. (The dwelling units per acre (DU/A) calculation is exclusive of all streets, alleys and sidewalks, but inclusive of open space, recreational, and service areas.) This district is for urban densities.

B. Permitted Uses and Use Regulations.

See the Use Chart<sup>7</sup> and all applicable regulations in Article IV.

C. Dimensional Regulations.

1. See the Residential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.
2. The maximum residential density shall be 22 dwelling units per acre.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.
  - g. See 11-1-6.06 Building Design Standards for Multiple-Family Use.
  - h. See 11-1-6.07 Multiple-Family Density Bonus.
2. Front Yard Regulations.
  - a. No structure shall be located in the front yard.
  - b. No off-street parking shall be allowed in any front yard area. However, drives of ingress and egress from the public street to a parking area shall be allowed to cross the front yard from front to rear.
3. Garages.

A minimum of 25 percent of the total number of units in the complex shall have a one-car enclosed garage, 240 square feet minimum, attached or detached, per dwelling unit.
4. Mechanical Equipment, Refuse Containers, and Waste Storage.
  - a. Mechanical equipment, refuse containers and waste storage areas shall be constructed, located and screened to prevent interference with the peace, comfort, and repose of the occupants of any adjoining building or residence.
5. Storage Area.

Every apartment unit shall have an enclosed storage area of not less than 30 square feet of Floor Area, eight feet high, exclusive of interior closet space.

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7. Editor's Note-Said Use Chart is included as an attachment to this chapter.

6. Private Recreation Areas.

a. Recreation Area Required.

i. All apartment complexes shall have at least one recreation area, in a location free of traffic hazards, easily accessible to all complex residents, and centrally located where topography permits.

b. Recreation Space Requirement.

i. Not less than eight percent of the gross complex area shall be devoted to recreational facilities, generally in a central location. In large complexes (two acres or larger) these may be decentralized.

ii. Recreation areas include space for community buildings and community uses, such as adult recreation and child play areas, and swimming pools, but do not include vehicle parking, commercial, maintenance and utilities areas.

c. Playground Space.

i. When playground space is provided, it shall be so designated and shall be protected from traffic, streets, and parking areas.

ii. Such space shall be maintained in a sanitary condition and free of dangerous conditions and hazards.

E. Site Plan Required for Rezoning to the MF-22, Multiple-Family Dwelling District.

A Site Plan, as outlined in 11-1-9.05 Site Plans, shall be required for all Zoning Map Amendment (Rezoning) Applications seeking the MF-22, Multiple-Family Dwelling District designation. The Site Plan shall be included as part of the ordinance approving the Zoning Map Amendment (Rezoning). (Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.14. O-1, Office District.**

A. Purpose Statement.

This district is intended to provide for low intensity office and professional uses.

B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.

a. See 11-1-4.09 Accessory Buildings and Uses.

b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.

- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

#### **§ 11-1-3.15. O-2, Office District.**

##### A. Purpose Statement.

This district is intended to provide for moderate or high intensity office and professional uses.

##### B. Permitted Uses and Use Regulations.

See the Use Chart<sup>8</sup> and all applicable regulations in Article IV.

##### C. Dimensional Regulations.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

##### D. Development Standards.

1. See the following sections for development regulations.

- a. See 11-1-4.09 Accessory Buildings and Uses.
- b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

#### **§ 11-1-3.16. LR, Local Retail District.**

##### A. Purpose Statement.

This district is intended to provide for locations for various types of local retail trade and businesses primarily serving the surrounding neighborhoods.

##### B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

##### C. Dimensional Regulations.

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8. Editor's Note-Said Use Chart is included as an attachment to this chapter.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.17. RR, Regional Retail District.**

A. Purpose Statement.

This district is intended to provide for locations for various types of regional retail trade, business, and low-impact service uses.

B. Permitted Uses and Use Regulations.

See the Use Chart<sup>9</sup> and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.18. CB, Central Business District.**

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9. Editor's Note-Said Use Chart is included as an attachment to this chapter.

**A. Purpose Statement.**

This district is intended to provide for the development of downtown Midland as the regional business center for professional offices. This district is also designed to promote a vibrant downtown by providing for residential, restaurant, retail, hotel, and other unique development opportunities that encourage downtown development and redevelopment efforts.

**B. Permitted Uses and Use Regulations.**

See the Use Chart and all applicable regulations in Article IV.

**C. Dimensional Regulations.**

1. See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.
2. The maximum residential density (i.e., dwelling units per acre) shall be unlimited within the CB, Central Business District.

**D. Development Standards.**

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.
  - g. See 11-1-6.06 Building Design Standards for Multiple-Family Use.
  - h. See 11-1-6.07 Multiple-Family Density Bonus.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.19. C, Commercial District.****A. Purpose Statement.**

This district is intended to provide for locations for moderately intense commercial, storage, and warehousing uses.

**B. Permitted Uses and Use Regulations.**

See the Use Chart<sup>10</sup> and all applicable regulations in Article IV.

**C. Dimensional Regulations.**

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations

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10. Editor's Note-Said Use Chart is included as an attachment to this chapter.

in Article V.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.20. BP, I-20 Business Park District.**

A. Purpose Statement.

This district is designed to encourage development along the Interstate Highway 20 (I-20) corridor, which is recognized for its important economic development potential.

B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.
  - a. See 11-1-4.09 Accessory Buildings and Uses.
  - b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
  - c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
  - d. See 11-1-6.03 Lighting Standards.
  - e. See 11-1-6.04 Building Façade Material Standards.
  - f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.21. TP, Technology Park District.**

A. Purpose Statement.

This district is intended to provide for locations for research and laboratory facilities, higher quality

manufacturing and industrial uses in an organized industrial park setting.

B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.

- a. See 11-1-4.09 Accessory Buildings and Uses.
- b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.22. LI, Light Industrial District.**

A. Purpose Statement.

The LI, Light Industrial District is primarily for warehousing, wholesaling, and distribution activities. It is the intent that this district includes light manufacturing or the assembly of small products such as electronics, pharmaceuticals, medical supplies and other small equipment.

Truck traffic and loading operations are expected to be characteristics of this district. This district should have efficient accessibility to major transportation routes via major thoroughfares or other means of transportation. Facilities in this district may require limited amounts of outside storage. It is the intent of this district to reserve large tracts exclusively for light industrial activities.

B. Permitted Uses and Use Regulations.

See the Use Chart<sup>11</sup> and all applicable regulations in Article IV.

C. Dimensional Regulations.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

D. Development Standards.

1. See the following sections for development regulations.

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11. Editor's Note-Said Use Chart is included as an attachment to this chapter.

- a. See 11-1-4.09 Accessory Buildings and Uses.
- b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

### **§ 11-1-3.23. HI, Heavy Industrial District.**

#### A. Purpose Statement.

The HI, Heavy Industrial District is intended for large-scale basic or primary industrial uses that involve extensive processing, manufacturing or assembly of large products or equipment.

Because of the nature of the products or character of activities, uses within this district will likely produce greater than average negative visual qualities and external effects involving noise, fumes, noxious odors, glare or other atmospheric influence beyond the boundaries of the property on which the use is located. Therefore, these uses are surrounded with similar industrial uses. It is the intent to reserve large tracts exclusively for industrial activities defined herein.

#### B. Permitted Uses and Use Regulations.

See the Use Chart and all applicable regulations in Article IV.

#### C. Dimensional Regulations.

See the Nonresidential Zoning District Dimensional Regulations Chart and all applicable regulations in Article V.

#### D. Development Standards.

##### 1. See the following sections for development regulations.

- a. See 11-1-4.09 Accessory Buildings and Uses.
- b. See 11-1-6.01 Screening Requirements for Residential and Nonresidential Properties.
- c. See 11-1-6.02 Off-Street Parking and Loading Requirements.
- d. See 11-1-6.03 Lighting Standards.
- e. See 11-1-6.04 Building Façade Material Standards.
- f. See 11-1-6.05 Building Design Standards for Nonresidential Buildings.
- g. See 11-1-6.06 Building Design Standards for Multiple-Family Use.
- h. See 11-1-6.07 Multiple-Family Density Bonus.

(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

**§ 11-1-3.24. PD, Planned Development District.****A. Purpose Statement.**

The purpose of this district is to encourage higher quality development in the City by allowing flexibility in the planning and development of projects. A PD, Planned Development District may be used to permit new or innovative concepts in land utilization or diversification that could not be achieved under conventional zoning approaches. Any combination of residential, commercial, light industrial, public or recreational uses as approved by the City Council may be permitted.

**B. General Description and Purpose.**

1. The PD, Planned Development District shall be used for the following purpose(s):
  - a. Master planning;
  - b. To carry out specific goals of the Comprehensive Plan, City or public/private partnered projects;
  - c. Development of mixed use, transit-oriented, or traditional neighborhoods with a variety of uses and housing types; and
  - d. To preserve natural features, open space, and other topographical features of the land.
2. The PD, Planned Development District shall not be used for the following purpose(s):
  - a. To secure agreement between an Applicant and nearby property owners to receive zoning approval; and
  - b. To assign responsibility to the City of private deed restrictions or covenants.

**C. Base Zoning District.**

1. A PD, Planned Development District shall contain at least one base zoning district to regulate all uses and development regulations not modified by the PD, Planned Development District ordinance.
2. If the standards of the base zoning district are amended, then the most recently amended standards shall apply to a PD, Planned Development District unless the standards have been individually listed within the PD, Planned Development District adoption ordinance as being different from the base zoning district.

**D. Permitted Uses and Use Regulations.**

1. See the Use Chart<sup>12</sup> and all applicable regulations within Article IV.
2. See Section 11-1-9.06 PD, Planned Development District Application and Review.

**E. Dimensional Regulations.**

1. See the Zoning Dimensional Regulations in Article V.
2. See Section 11-1-9.06 PD, Planned Development District Application and Review.

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12. Editor's Note-Said Use Chart is included as an attachment to this chapter.

F. Development Standards.

1. See the Zoning Development Regulations in Article VI for all applicable regulations.
2. See Section 11-1-9.06 PD, Planned Development District Application and Review.

G. Minimum Size.

A minimum of three acres is required for all PD, Planned Development Districts.  
(Ordinance 9920 adopted 1(Exh. A) adopted 5/28/2019)

## **ARTICLE IV LAND USE REGULATIONS**

### **§ 11-1-4.01. Uses Permitted by District.**

Land and buildings in each of the zoning districts may be used for any of the specified uses in Section 11-1-4.03 Use Chart. No land shall be used, and no building or structure shall be erected, altered, or converted for any use other than those specified as a permitted use in the district in which the property is located.

<b>Legend for Use Chart</b>	
P	Use is permitted in district indicated
	Use is prohibited in district indicated
S	Use is permitted in district upon approval of a Specific Use Designation (11-1-9.07) and 11-1-4.04 Additional Development Standards may apply
#	Use is permitted if the use complies with 11-1-4.04 Additional Development Standards as indicated by the corresponding numeric end note
§	Reference to 11-1-6.02 Off-Street Parking and Loading Requirements

### **§ 11-1-4.02. Classification of New and Unlisted Uses.**

#### A. Existence of New and Unlisted Uses.

Any use not listed in the Use Chart is prohibited.

#### B. Planning Division Manager Interpretation of a New and Unlisted Use.

If the Planning Division Manager is unable to classify the use under one of the existing listed uses, then the Planning Division Manager shall initiate a Zoning Text Amendment pursuant to procedures set forth in 11-1-9.02 Zoning Text and Map Amendments.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-4.03. Use Chart.<sup>13</sup>**

The use of land or buildings shall be in accordance with those listed in the following Use Chart. No land or building shall hereafter be used, and no building or structure shall be erected, altered, or converted other than for those uses permitted in the zoning district in which the property is located, as shown in the Use Chart.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-4.04. Additional development standards.**

#### A. The following additional development standards shall apply:

##### 1. Accessory Dwelling Unit Standards.

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13. Editor's Note-Said Use Chart is included as an attachment to this chapter.

See 11-1-4.09 Accessory Buildings and Uses for standards.

2. Manufactured Home Mini-Park, Manufactured Home Park, and Vacation Travel Trailer Park Standards.

- a. Location.

It shall be unlawful for any person to locate a Mobile Home, Manufactured Home—HUD Code, or Vacation Travel Trailer within a Manufactured Home Mini-Park, Manufactured Home Park, or Vacation Travel Trailer Park within the City except as provided within this section. An existing Mobile Home may remain at its current location; however, no Mobile Home may be moved into another location within the city.

- b. License Required.

It shall be unlawful for any person to establish or operate a Manufactured Home Mini-Park, Manufactured Home Park, or Vacation Travel Trailer Park totally or partially within the corporate limits of the City, without first applying for and obtaining a license in accordance this section.

- c. Application for License.

- i. Application for the license required by 11-1-4.04.A.2.b above shall be in writing and shall be filed with the building inspector. The application shall set forth the name and address of the applicant and a proper description of the location of a Manufactured Home Mini-Park, Manufactured Home Park, and Vacation Travel Trailer Park. The applicant shall comply with all the requirements in this section as to size, location of the space to be allocated each unit, and sanitary facilities, with specifications and plans complying with this section and with all building, zoning, health, sanitary and police regulations.

- ii. A site plan shall be attached to the application, at a minimum scale of one inch equals 200 feet for sites of 30 acres or more, and at a minimum scale of one inch equals 100 feet for sites under 30 acres. The site plan shall include the following:

- (a) The area and dimensions of the tract of land with identification of location and boundaries;
    - (b) The number, location and size of all manufactured home spaces;
    - (c) The location, width and specifications of driveways, roadways and walkways;
    - (d) The location and specifications of water and sewer lines and riser pipes;
    - (e) The location and details of lighting, electrical and gas systems;
    - (f) The location and specifications of all existing buildings or building to be constructed within the park;
    - (g) Existing and proposed topography of the Manufactured Home Park or Vacation Travel Trailer Park;
    - (h) The location of fire mains, including the size, the hydrants and any other equipment which may be required by the fire code; and

- (i) Such other information as municipal reviewing officials may reasonably require.

- d. Application Fee.

A fee in accordance with the Fee Schedule shall accompany the application, payable to the City, which shall be an application fee and inspection fee for the examination of the application, and shall not be returned, whether a license is granted or not.

- e. License Fee.

Upon the approval of an application provided for in Sections 11-1-4.04.A.2.d and 11-1-4.04.A.2.e, an annual license shall be issued upon payment of a fee in accordance with the Fee Schedule). This license fee shall be for a period of one year and shall be payable in advance on January 1 of each succeeding year after the date of first license. The fee for the first license shall be prorated according to the quarter of the calendar year in which the license is issued. This nontransferable license may be obtained from the city inspection office. The license shall be conspicuously posted in the office located on the premises of the Manufactured Home Park or Vacation Travel Trailer Park at all times.

- f. Types of License.

There shall be two types of licenses, defined as follows:

- i. Type I.

- (a) Type I shall be for Manufactured Home Mini-Parks or Manufactured Home Parks which are to accommodate only those manufactured homes in which water closet, bath and lavatory facilities are contained, and any park holding a Type I license on which any other type of trailer is placed shall be in violation of this section and subject to having the license revoked.

- ii. Type II.

- (a) Type II shall be for Vacation Travel Trailer Parks and shall allow the accommodation of either modern trailers in which water closet, bath or lavatory accommodations are contained or those trailers which do not have these facilities, but must meet the requirements within this section.

- g. Cancellation of License.

Upon any violation of the provisions of this section, the building inspector shall notify the owner of the Manufactured Home Mini-Park, Manufactured Home Park, or Vacation Travel Trailer Park that his license is cancelled, which cancellation shall become effective ten days from the date of notice and shall be in addition to any other penalty provided in the Zoning Ordinance or City Code. In case of such cancellation, the licensee shall have the right to appeal to the City Council within ten days. Such appeal shall be by written petition addressed to the City Council. A new license may be issued if the circumstances leading to revocation have been remedied and a new license fee paid.

- h. Manufactured Home Mini-Park, Manufactured Home Park, or Vacation Travel Trailer Park Development Regulations.

All Manufactured Home Parks and Vacation Travel Trailer Parks constructed in whole or

in part after April 22, 1971, and all Manufactured Home Mini-Parks, shall conform to the following requirements, and all existing such parks (as of April 22, 1971) shall become nonconforming uses and subject to all applicable regulations of the City pertaining thereto, respectively, to wit:

i. Manufactured Home Parks.

(a) Where allowed:

See Section 11-1-4.03 Use Chart<sup>14</sup>.

(b) Density:

The maximum allowed density shall be seven manufactured homes per acre.

(c) Size:

Initial development of any Manufactured Home Park shall not be less than eight acres fully improved with utility serviced spaces and shall be defined on all site plans.

(d) Tenant storage:

Manufactured Home Parks shall provide storage facilities of 120 cubic feet minimum on each manufactured home space.

(e) Recreation area:

A landscaped recreation area or areas totaling not less than eight percent of the total Manufactured Home Park site shall be provided. Such recreation area shall be provided in a central location where possible and may be divided so as not to exceed one such recreation area per five acres of gross Manufactured Home Park area. Regardless of location, each recreation area's smallest dimension shall be not less than 50 feet. Community buildings and community use facilities, adult recreation and child play areas and swimming pools may be included in these recreation areas. This area shall be protected from traffic hazards.

(f) Parking requirements:

Two spaces conforming to all requirements of Chapter 11-1 of the Midland City Code shall be provided for each manufactured home space. Such parking spaces shall not be over 300 feet from the manufactured homes they serve.

ii. Vacation Travel Trailer Parks.

(a) Where allowed:

See Section 11-1-4.03 Use Chart.

(b) Density:

The maximum allowed density shall be 12 travel trailers per acre.

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14. Editor's Note-Said Use Chart is included as an attachment to this chapter.

## (c) Size:

Initial development of any Vacation Travel Trailer Park shall be not less than two acres.

## (d) Sanitation facilities: Vacation Travel Trailer Parks shall provide water closets, baths or showers and other sanitation facilities which shall conform to the following requirements:

- (i) The sanitation facilities for males and females shall be either in separate buildings, or shall be separated if in the same buildings, and ventilated at all times with screened openings. These service buildings shall be maintained in clean, sightly condition. Service buildings shall be located not closer than five feet nor farther than 200 feet from vacation travel trailer space.
- (ii) An adequate supply of hot water shall be provided at all times in any required service buildings, and for all bathing, washing, cleansing and laundry facilities.
- (iii) Toilet facilities—Males: Toilet facilities for males shall consist of not less than one flush water closet for every 15 vacation travel trailers, one urinal for every 15 vacation travel trailers, and one shower with individual dressing accommodations for every ten vacation travel trailers.
- (iv) Toilet facilities—Females: Toilet facilities for females shall consist of not less than one flush water closet for every ten vacation travel trailers, and one shower with individual dressing accommodations for every ten vacation travel trailers.

## iii. Manufactured Home Parks and Vacation Travel Trailer Parks.

## (a) Setbacks and space requirements.

**Table 3: MHP and VTTP Setbacks and Space Requirements**

<b>Requirements</b>	<b>Manufactured Home Parks</b>	<b>Vacation Travel Trailer Parks</b>
Spacing:		
Between structures	20 ft.	10 ft.
End-to-end parking	10 ft.	6 ft.
Setbacks:		
From permanent structures (excluding individual storage structures, patio roofs and carports)	10 ft.	10 ft.
From patio roof or carport of one structure to adjacent structures	3 ft.	3 ft.
Rear and side park property lines	10 ft.	5 ft.

**Table 3: MHP and VTTP Setbacks and Space Requirements**

<b>Requirements</b>	<b>Manufactured Home Parks</b>	<b>Vacation Travel Trailer Parks</b>
Front park property lines	25 ft.	15 ft.
From interior streets	15 ft.	10 ft.
From cul-de-sac streets	25 ft.	10 ft.
Space Width:	40 ft.	25 ft.

- (b) Area requirements for manufactured homes: Each manufactured home space shall provide a minimum area of 3,500 square feet; however, no manufactured home space shall have dimensions less than 40 feet on the narrow dimension nor 80 feet on the long dimension.
- (c) Patio roofs and carports: Manufactured home and vacation travel trailer spaces may have open, unenclosed patio roofs and carports of metal, fiberglass or other noncombustible materials.
- (d) Utilities:
  - (i) Water supply: An adequate supply of potable water for domestic and fire protection purposes shall be supplied that is determined by the fire marshal to be sufficient to meet the requirements of the park. Manufactured home and vacation travel trailer spaces shall be provided with water hookups at least four inches above the ground and hose connections for lawn maintenance.
  - (ii) Sewage disposal: Waste from showers, bathtubs, water closets, and lavatories in manufactured homes, vacation travel trailers and service or other buildings within the park shall be discharged into a public sewer service system in compliance with applicable ordinances. In the event public services are not available, such waste shall be discharged into a private disposal system approved by the City of Midland Health Department.
  - (iii) Natural gas: Manufactured home and vacation travel trailer space shall be provided with a natural gas hookup at least four inches above the ground.
  - (iv) Electric service: Underground service shall be provided throughout Manufactured Home Parks and Vacation Travel Trailer Parks, and service to individual manufactured homes and vacation travel trailers shall meet the requirements as set forth in the City Code. All electric meters shall be permanently installed in a location accessible from an interior street, alley or all-weather walkway.
  - (v) All utilities supplied to manufactured homes or vacation travel trailers shall comply with all applicable plumbing, gas and electric codes and regulations of the City.
- (e) Lighting:

- (i) Entrances and exits to Manufactured Home Parks and Vacation Travel Trailer Parks shall be lighted with one or more luminaries (or fixtures) totaling at least 7,700 lumens.
  - (ii) The interior area of Manufactured Home Parks or Vacation Travel Trailer Parks shall be lighted to 0.5 candle average maintained. All luminaries shall be mounted 15 feet to 25 feet above ground level.
  - (f) Walks: All interior walks of Manufactured Home Parks and Vacation Travel Trailer Parks shall be all-weather and not less than four feet in width. Walks provided adjacent to interior streets shall be three feet concrete gutter-walks. Walks provided adjacent to public streets shall comply with the City Code.
  - (g) Interior streets:
    - (i) Interior asphalt streets shall be provided to serve each manufactured home and vacation travel trailer space. All spaces shall abut upon a paved interior streets, which shall connect with a public street. In Manufactured Home Parks and Vacation Travel Trailer Parks the interior streets shall not be less than 36 feet in width. All streets shall have standard curb and gutter except where three-foot gutter-walks or drives are stipulated. No cul-de-sac street shall be over 250 feet from the center of the turnaround to the nearest curb-line of the public or interior street it abuts. At the end of each cul-de-sac a ten-foot-wide open, unobstructed firefighting easement shall be provided. This easement shall not be more than 200 feet in length and shall abut and open onto a private or public street other than a cul-de-sac. Gates may be installed in such opening, provided breakaway locks are used.
  - (h) Ingress and egress: All Manufactured Home Parks and Vacation Travel Trailer Parks shall have a double drive entrance separated by a 30-foot median, and at least one secondary entrance street shall be provided along the abutting public dedicated street at a minimum interval of 300 feet along the perimeter of the park. Such streets shall have standard curb and gutter and shall not be less than 36 feet wide. All curb cuts on public streets must comply with the provisions of the City Code.
  - (i) Driveway or access-way: A driveway or access-way shall be reserved from the street to the manufactured home or vacation travel trailer.
  - (j) Vacation Travel Trailer Parks shall provide one automobile parking space for each vacation travel trailer space, and one additional guest parking space shall be provided in a common area for each four vacation travel trailer spaces in the park. Such parking spaces shall not be over 200 feet from the travel trailers they serve and shall conform to all requirements of 11-1-6.02 Off-Street Parking and Loading Requirements.
- iv. Manufactured Home Mini-Parks.
- (a) Any tract developed as a Manufactured Home Mini-Park shall have a minimum area and dimensions as required by 11-1-3.09.D.2.a. The size of any such park shall not be reduced below these minimum dimensions until all manufactured

homes have been removed therefrom or, if located in the MH, Manufactured Housing District, until the minimum area regulations for manufactured homes as fixed dwellings on individual lots have been met and certificates of occupancy for such use obtained.

- (b) Each manufactured home space shall have frontage of not less than 25 feet on a public street and access from a public alley by which it abuts for a distance of not less than ten feet and be served with public water, sewer, gas and electric service, all in the same manner as if each were an individual separate lot.
- (c) Sidewalks, where required by City Code, and curbs and gutters shall be constructed on the adjacent side of each street abutting a Manufactured Home Mini-Park, and two parking spaces, paved with concrete or asphalt, shall be provided on each manufactured home space to conform to all requirements of 11-1-6.02 Off-Street Parking and Loading Requirements. These requirements shall be completed by the property owner before any manufactured home space is rented or leased and any manufactured home placed thereon.
- (d) Each manufactured home space shall have a minimum width of 35 feet and a minimum average depth of 100 feet and shall have a minimum area of 4,000 square feet.
- (e) The minimum yard regulations that shall apply in relation to the boundaries of a Manufactured Home Mini-Park and the maximum height limits shall be those of the zoning district in which the park is located.
- (f) The minimum distance between manufactured homes at any point shall be 12 feet. Accessory structures shall observe the following setback regulations:
  - (i) Attached accessory structures shall observe the same minimum separations from manufactured homes and attached accessory structures on adjacent spaces as required for manufactured homes.
  - (ii) Detached accessory structures shall be located not less than six feet from any portion of an adjacent space where the approved site plan would permit the placement of a manufactured home or attached accessory structure. Further, detached accessory structures shall be located not less than six feet from any manufactured home space line, except as follows: No setback shall be required if the accessory structure is constructed with a solid masonry wall achieving a four-hour fire rating adjacent to such space line. A setback of not less than three feet shall be observed if the accessory structure is constructed with a one-hour firewall facing such space line.
- (g) The coverage of a space by a manufactured home and any attached accessory structure shall not exceed 40 percent; provided that a vehicle parking space shall not be considered in determining the space coverage.
- (h) No structure shall be built as an addition to a manufactured home except a self-standing patio cover or carport without enclosed sides and no storage shall be permitted under the manufactured home except transportation wheels.

- (i) Connections to utilities by manufactured home occupant. Connection to utilities shall be made in conformance with the applicable standards of the City of Midland as set forth in the ordinances of the City of Midland and shall be subject to approval by the building official. Connection must be made to the public water supply and sewer system. Occupancy of a manufactured home shall not be permitted prior to the same having passed all city inspections regarding utility hookups and placement and a Certificate of Occupancy and Compliance having been issued.
- (j) Each manufactured home placed in such a park shall conform to all zoning regulations applicable to manufactured homes, and to the standards set forth in the Texas Manufactured Housing Standards Act, as amended, and the rules and regulations promulgated pursuant thereto by the Texas Department of Licensing and Regulation (or its successor), if applicable, including, but not limited to, construction, foundation blocking, tie-downs and utility connections. According to Chapter 1201 of the Occupations Code (the Texas Manufactured Housing Standards Act), rules thereunder are rules of "the Texas Department of Housing and Community Affairs operating through its manufactured housing division."

- i. Sanitation Facilities.

Vacation Travel Trailer Parks shall provide water closets, baths or showers and other sanitation facilities which shall conform to the following requirements:

- i. The sanitation facilities for males and females shall be either in separate buildings, or shall be separated if in the same building, and ventilated at all times with screened openings. These service buildings shall be maintained in clean, sightly condition and kept free of any condition that could menace the health of any occupant. Service buildings shall be located not closer than five feet nor farther than 200 feet from vacation travel trailer space.
- ii. An adequate supply of hot water shall be provided at all times in any required service buildings, and for all bathing, washing, cleansing and laundry facilities.
- iii. Toilet facilities.
  - (a) Males: Toilet facilities for males shall consist of not less than one flush water closet for every 15 vacation travel trailers, one urinal for every 15 vacation travel trailers, and one shower with individual dressing accommodations for every ten vacation travel trailers.
  - (b) Females: Toilet facilities for females shall consist of not less than one flush water closet for every ten vacation travel trailers, and one shower with individual dressing accommodations for every ten vacation travel trailers.
- j. General regulations pertaining to Manufactured Home Parks and Vacation Travel Trailer Parks.
  - i. Removal of trash and garbage. Manufactured Home Parks and Vacation Travel Trailer Parks shall provide a sufficient number of refuse containers to handle the refuse generated by their occupants. Such refuse containers shall be located in

designated areas where pickup will be made by the City.

- ii. Fire protection.
    - (a) Manufactured homes.
      - (i) Each manufactured home shall contain a working five-pound CO-2 fire extinguisher at all times.
      - (ii) Fire hydrants shall be installed so that no manufactured home space will be over 500 feet from a hydrant.
      - (iii) There shall not be any storage under the manufactured home.
      - (iv) Fences around manufactured homes shall not be over 36 inches high across the front of the space.
    - (b) Vacation travel trailers.
      - (i) Each vacation travel trailer shall contain a five-pound CO-2 fire extinguisher at all times.
      - (ii) Fire hydrants shall be installed so that no vacation travel trailer space will be over 500 feet from a hydrant.
      - (iii) There shall not be any storage under the vacation travel trailer.
  - iii. Supervision. A responsible attendant or supervisor, owner or operator shall be in charge at all times to keep the Manufactured Home Park and Vacation Travel Trailer Park, its facilities and equipment in a clean, orderly and sanitary condition and he shall be answerable, with the licensee, for any violation of the provisions of this section.
- k. General regulations pertaining to Manufactured Home Mini-Parks.
- i. Manufactured home location permits.
    - (a) Permit required: No manufactured home may be located or emplaced within a Manufactured Home Mini-Park unless a location permit for such manufactured home has been issued by the city inspection division, and it shall be unlawful for any person to locate or emplace a manufactured home or cause or permit the same to be located or emplaced unless the requisite location permit has been issued for such manufactured home.
    - (b) Application for location permit: The application for a location permit shall contain the following information:
      - (i) The name of the company or person emplacing the manufactured home.
      - (ii) The name of the registered owner of the manufactured home.
      - (iii) The legal description, address and owner of the location to which the applicant is intending to move the manufactured home.
      - (iv) A description of the manufactured home, including manufacturer's serial

number, length, width, make and year model.

- (v) The location from which the manufactured home is being moved.
- (c) Issuance of location permit: Upon receipt of an application for a location permit from a manufactured home owner or his agent, and upon determination that the requirements of this section and all other applicable regulations are satisfied, the building official shall issue a location permit to the applicant or his agent.
- (d) Location permit fee: Following approval of the application, and for the purpose of defraying the administrative costs of processing such application, a fee shall be paid for the issuance of the location permit according to the Fee Schedule.
- (e) Unlawful to permit emplacement: It shall be unlawful for the owner or person in charge of premises to permit a manufactured home to be located or emplaced on such premises unless the requisite location permit has been issued for such manufactured home as provided in subsection 11-1-4.04.A.2.k.i(a) above.

ii. Manufactured Home Mini-Park license.

- (a) No location permit shall be issued for emplacement of a manufactured home in each park until a license has been obtained by the park owner. Application for said license shall be in writing and shall be filed with the building official. Such application shall set forth the name and address of the property owner and the address and legal description of the proposed Manufactured Home Mini-Park. The initial license application shall be accompanied by a site plan as required herein. A revised site plan shall be submitted and approved prior to any change in the required elements of the site plan as specified herein. A fee, according to the Fee Schedule, shall accompany the application and any filing of a revised site plan, payable to the City, which shall be an application fee and inspection fee for the examination of the site plan, and shall not be returned whether a license is granted or not.
  - (b) Upon the approval of an application an annual license shall be issued. This license shall be for a period of one year and shall be renewed on January 1 of each succeeding year after the date of the first license. This nontransferable license may be obtained from the city inspection office.
  - (c) Cancellation of license. Upon any violation of the provisions of this section, the building official shall notify the owner of the Manufactured Home Mini-Park that his license is cancelled, which cancellation shall become effective ten days from the date of notice and shall be in addition to any other penalty provided in the Zoning Ordinance or City Code. In case of such cancellation, the licensee shall have the right to appeal to the City Council within ten days. Such appeal shall be by written petition addressed to the City Council. A new license may be issued if the circumstances leading to revocation have been remedied and a new license fee paid.
- iii. Site plan requirements. Before any manufactured home may be emplaced in or upon any Manufactured Home Mini-Park or portion thereof, a site plan containing the following listed information must be submitted, reviewed by the building official and approved in accordance with the provisions of this section:

- (a) Name and address of property owner.
  - (b) Location and legal description of the proposed Manufactured Home Mini-Park.
  - (c) The area, dimensions and boundaries of the tract of land proposed for such park.
  - (d) The number, location and size of all proposed manufactured home spaces.
  - (e) The location, width and types of all private driveways and walkways, if any.
  - (f) The location and details of any fences around the boundaries of the park.
  - (g) The location and types of all permanent buildings within the proposed Manufactured Home Park.
  - (h) The location and types of gas, electrical, water and sewer lines.
  - (i) The setbacks to be observed by manufactured homes, attached accessory structures and detached accessory structures as required to conform to 11-1-4.04.A.2.h.iv Manufactured Home Mini-Parks.
  - (j) All public sidewalks, curbs and gutters and paved parking spaces as required herein.
- l. More than one family per unit prohibited.

It shall be unlawful for more than one family to use one unit as a living or sleeping quarters in any Manufactured Home Park, Manufactured Home Mini-Park, or Vacation Travel Trailer Park.

- m. Temporary Special permits.

Upon satisfactory proof that the applicant qualifies for one of the exceptions set out hereinafter in 11-1-4.04.A.2.m.iii below, temporary special permits may be issued by the Planning and Zoning Commission for manufactured homes as provided herein. Such permit for a manufactured home may be issued for any specified location (unless otherwise restricted herein) within the City, subject to the following rules and regulations:

- i. Only one manufactured home may be covered by the application for special permit (which must be filed with the director of planning and development on a form prescribed by him, not less than 20 days before such application is considered by the Planning and Zoning Commission).
- ii. The application shall be processed as provided for applications for manufactured home or Vacation Travel Trailer Park licenses in all the preceding subsections of this section and subject to the same requirements regarding utilities, sewer connections, drainage and removal of trash and garbage for manufactured homes, but the application fee shall be determined by a fee spreadsheet and no annual license shall be required. The use and occupancy of any manufactured home shall be subject to all other ordinances, rules and regulations of the City applicable to single-family residences.
- iii. Special permits may be issued as follows:

- (a) Special hardship permits. Upon satisfactory proof of medical or other conditions constituting a genuine hardship, a special hardship permit may be issued to the owner of a manufactured home for location on a lot or tract owned by him or a member of his family and which shall only be occupied by such owner and his family or other member or members of his family and shall never be rented out or used for any commercial purposes whatsoever. However, medical or other conditions constituting a genuine hardship shall not be a financial hardship or the inability to merely accommodate the effective use of the property. No such permit may be issued for a parcel of property for a period of more than two years, provided however, that the Planning and Zoning Commission may, upon subsequent application, approve renewals of such permits for successive periods of not more than two years each for as long as the hardship exists. Each renewal of any such permit shall require a separate determination of hardship and any request for renewal may be disapproved. In considering whether to approve any permit renewal request, the Planning and Zoning Commission shall consider the following:
  - (i) Whether the original need has continued to the same or a greater degree or, if the degree of need has lessened, whether it constitutes a genuine hardship;
  - (ii) Whether the hardship justifies any adverse effect on the value, development, or enjoyment of the use of property in the vicinity which may exist or be anticipated; and
  - (iii) Any alternatives for relieving the hardship which the Planning and Zoning Commission considers appropriate.
- (b) Special Permit for caretaker's, manager's, or guard's residence. Upon satisfactory proof of conditions constituting a genuine need, a special permit may be issued for a manufactured home to be located where not otherwise permitted by the zoning ordinance, on a lot or tract owned by the applicant and to be used as caretaker's, manager's or guard's residence. Provided, however, that such manufactured home shall not contain in excess of 1,000 square feet of gross floor area and shall be located not less than 30 feet from any other structure or from any lot line of an adjacent lot or parcel of land and shall never be rented out or used for any commercial purpose whatsoever. Provided further that no such permit may be issued for a parcel of property for a period of more than two years and no renewal of such a permit shall be approved which would extend the total period to more than two years. Provided, however, that the preceding two-year limitation shall not apply to such permits issued prior to April 12, 1977, other than as to renewals thereof subsequent to said date.
- iv. The Planning and Zoning Commission may impose any reasonable conditions, restrictions, or limitations on such permits as it deems to be in the public interest after full hearing on said application.

The applicants for such permits shall submit accurate site plans, dimensioned to show minimum distances from property lines and other structures on the property and containing any other information pertinent to the positioning and use of the manufactured home on the property, for review and approval as a part of their

applications. Any manufactured home permitted shall observe all area regulations applicable to single-family residences unless the Planning and Zoning Commission specifically approves an exception to such requirements in its approval of the temporary special permit.

- v. No such special permit shall be issued until after a hearing before the Planning and Zoning Commission following written notice of the time, place and purpose thereof to the applicant and to the owners of all other property within 200 feet of the lot or tract of land for which the permit is sought. Said notice shall be given by first class U.S. mail (deposited in the city post office not less than 15 days prior to the hearing) addressed to the parties entitled to receive the same as the ownership appears on the last approved city tax roll.
  - vi. No application requesting a temporary special permit on any property which has been the subject of a previous request for a temporary special permit that was denied by the Planning and Zoning Commission shall be considered by the Planning and Zoning Commission before the expiration of six months from the date of such previous denial.
  - vii. Revocation of a special permit may occur for any violation of the special permit terms. If a violation is identified by the City, then the City shall send notice to the permit holder of the violation and hold a hearing within 30 days, but not earlier than 20 days from the date the notice is sent by the City. At the hearing, the Planning and Zoning Commission shall consider evidence of the violation and allow the permit holder to respond to the evidence. The Planning and Zoning Commission shall render a decision whether to revoke the permit after the hearing.
- n. Parking restrictions.
- i. No person shall park, place or locate any trailer, trailer house, manufactured home, motor home, vacation travel trailer, or other unit which is designed or used as living or sleeping quarters, within any block, on any street (public or private), alley, or public park within the City for a period longer than four hours, in any 24-hour period, except that a vacation travel trailer as defined herein may be parked and occupied by a non-Midland resident on the street abutting the property of the Midland resident that he is visiting, for a period not exceeding 48 hours per 30-day period, and except that a Midland resident may place or park but not occupy his vacation travel trailer on the street adjacent to his residence while engaged in active loading or unloading for a period not exceeding 48 hours in a five-day period. In no event shall the vacation travel trailer be parked on a public street where the vacation travel trailer is closer than 40 feet to the near curb-line, traveled portion or extension thereof of an intersecting public street or highway.
  - ii. No person shall park or locate any manufactured home upon any private lot, tract or parcel of land owned by any person, for a period longer than four hours in any 24-hour period.
  - iii. No person shall park, place or locate any vacation travel trailer or other such unit as defined herein on any private lot, tract, or parcel of land within a residence area of the City except in compliance with Title X, "Traffic Regulations," Chapter 10-13, "Parking Prohibited," Section 5, "Parking in residence districts," of the Midland City Code.

- iv. No person shall occupy or use as living or sleeping quarters any vacation travel trailer or other such unit as defined herein, on any private lot, tract or parcel of land within the City, except in a Vacation Travel Trailer Park as provided herein or as specified in Title X, "Traffic Regulations," Chapter 10-13, "Parking Prohibited," Section 10-13-5, "Parking in residence districts," of the Midland City Code.

3. Industrialized Housing Standards.

- a. Industrialized Housing shall be permitted where Dwelling, Single-Family (detached) uses are allowed in the Use Chart<sup>15</sup>.
- b. Industrialized Housing Requirements. Industrialized Housing shall meet the following requirements:
  - i. Industrialized Housing shall meet or exceed all building code requirements that apply to other dwelling units concerning on-site construction.
  - ii. Industrialized Housing shall conform to all applicable zoning standards for the respective zoning district.
  - iii. Industrialized Housing shall be placed on an approved platted lot.
  - iv. Single-family and duplex Industrialized Housing shall:
    - (a) Have a value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet of the lot on which the Industrialized Housing is proposed to be located, as determined by the most recent county certified tax appraisal roll;
    - (b) Have exterior siding, roofing, roofing pitch, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the Industrialized Housing is proposed to be located;
    - (c) Comply with municipal aesthetic standards, building setbacks, side and rear yard offsets, subdivision control, architectural landscaping, square footage, and other site requirements applicable to single-family dwellings; and
    - (d) Be securely affixed to an approved permanent foundation.
  - v. For purposes of subsection 11-1-4.04.A.3.b.iv above, "value" means the combined taxable value of the industrialized housing and the lot after installation of the housing.

4. Agricultural Use Standards for Select Zoning Districts.

Commercial farm, ranch, stable, garden, orchard or plant nursery, on a tract of five acres or more (unless permitted on a smaller tract by approval of a Specific Use Designation) area permitted provided no retail sales are conducted from the premises.

5. Amusement, Commercial (outdoors) Standards.

- a. Allowed by Specific Use Designation, according to the permitted Use Chart<sup>16</sup>.

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15. Editor's Note-Said Use Chart is included as an attachment to this chapter.

- b. All exterior light sources shall be of a down-light type, indirect, diffused, or shielded type luminaries and so installed as to reduce glare effect and consequent interference with use of adjacent properties and boundary streets.
  - c. No intermittent or flashing lights shall be permitted.
  - d. Luminaries shall be mounted at a height not to exceed 30 feet as measured vertically from the horizontal surface of the nearest parking pavement.
  - e. No exterior auditory devices shall be permitted.
6. Automobile or Other Motorized Vehicle Sales and Service Standards.
- a. Allowed by Specific Use Designation, according to the permitted Use Chart.
  - b. All exterior light sources shall be of a down-light type, indirect, diffused, or shielded type luminaries and so installed as to reduce glare effect and consequent interference with use of adjacent properties and boundary streets.
  - c. No intermittent or flashing lights shall be permitted.
  - d. Luminaries shall be mounted at a height not to exceed 30 feet as measured vertically from the horizontal surface of the nearest parking pavement.
  - e. All building façades shall be constructed with the same masonry materials that meet the masonry regulations for the zoning district in which the property is located.
  - f. No exterior auditory devices shall be permitted.
7. Concrete/Asphalt Batching Plan, Temporary.
- a. Temporary Building Permit issued by the Building Official.
8. Credit Access Business Standards.
- All Credit Access Business operations shall conform to all applicable laws, ordinances, rules, and regulations.
9. Gasoline Filling or Service Station Standards.
- a. Allowed by Specific Use Designation, according to the permitted Use Chart<sup>17</sup>.
  - b. Gasoline pumps, pump islands, canopies, or car washes, where adjacent to property zoned as single-family residential uses shall maintain a minimum setback of at least 125 feet.
  - c. The hours of any car wash operation may be limited when located adjacent to property zoned for single-family residential uses.
  - d. No exterior illumination (either direct or indirect) shall cross a residential property line nor be a nuisance to traffic.
  - e. No outside/outdoor vending machines, such as soda, video rental, or newspaper vending machines, are permitted.

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16. Editor's Note-Said Use Chart is included as an attachment to this chapter.

17. Editor's Note-Said Use Chart is included as an attachment to this chapter.

10. Gas or Oil Well Operation Standards.

- a. Gas or Oil Well Operations shall conform to all applicable laws, ordinances, rules, and regulations.

11. Heliport or Helistop Standards.

- a. Allowed by Specific Use Designation, according to the permitted Use Chart.
- b. No heliport or helistop shall be located within 1,000 feet of any church, school, library, public park or within 1,000 feet of any dwelling unless:
  - i. Noise attenuation methods are implemented to achieve noise levels no greater than if the heliport or helistop were located 1,000 feet from any such property in an unprotected state;
  - ii. The Federal Aviation Administration has approved approach and departure paths for the proposed heliport or helistop which require all departures to be made at an angle of more than 90 degrees from any boundary or any such property which is less than 1,000 feet from the proposed heliport or helistop; and
  - iii. No substantial adverse impact exists on residence or businesses within the 1,000 foot requirement.

12. Home-Based Business Standards.

A Home-Based Business shall meet the following requirements:

- a. No persons other than members of the family residing on the premises shall be engaged in such business;
- b. The use of the dwelling unit for the home-based business shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 500 square feet or 10 percent of the square footage of the dwelling area or Accessory Building, whichever is greater, shall be used in the conduct of the home-based business;
- c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home-based business;
- d. No sign advertising a home-based business shall be placed on property where a home-based business is conducted;
- e. Any sales in connection with such home-based business shall be clearly secondary to occupancy. Merchandise shall not be offered or displayed for sale on the premises. Sales incidental to a service shall be allowed; and orders previously made by telephone or at a sales party may be filled on the premises;
- f. No traffic shall be generated by a home-based business in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of a home-based business shall be met off the street and other than in a required front yard;
- g. No equipment, process or work shall be used or conducted in such home-based business that creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the

normal senses off the lot. In the case of electrical interference, no equipment, process or work shall be used or conducted which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises;

- h. The operation of beauty culture schools, beauty parlors, barber shops, vehicle repair, lawn mower or other small or large engine repair, and any boarding house/rooming house shall not be permitted as a home-based business or as an accessory use; and
- i. No Outside Storage or Outside Display of any type shall be permitted with any home-based business.

### 13. Mixed Use Development Standards.

#### a. Purpose Statement:

- i. Mixed Use Development is intended to encourage compatible developments of integrated nonresidential and residential activities where appropriate and acceptable among land uses through the Section 11-1-1.404 Additional Development Standards permit process.
- ii. Mixed Use Development is intended for use within the LR, Local Retail, RR, Regional Retail, and CB, Central Business Districts. All other regulations not specified in this section will follow the regulations set forth within the respective zoning district.

#### b. General Description and Purpose.

Mixed Use Developments shall be used for the following purposes:

- i. Master Planning;
- ii. Development of mixed use;
- iii. To preserve natural features, open space, and other features of the land.

#### c. Base Zoning District.

A Mixed Use Development shall contain the following residential zoning density equivalencies:

**Table 4: Base Zoning and Density Equivalencies**

Zone	Zoning Density Equivalencies
LR, Local Retail District	MF-16, Multiple-Family Dwelling District
RR, Regional Retail District	MF-22, Multiple-Family Dwelling District
CB, Central Business District	No Density Restrictions

#### d. Font Yard Setback.

Where a five-to ten-foot sidewalk is present along an Arterial or Collector Street for a proposed Mixed Use Development, the proposed building may have a zero foot front yard

setback measured from the property line.

e. Design Elements.

- i. In order to promote a more walkable and urban form, parking lots or parking structures are recommended to be located in the interior of the property with buildings located along the edges of the property.
- ii. Litter receptacles shall be encouraged along Mixed Use Development street frontages. Receptacles shall be low maintenance and resistant to vandalism.
- iii. Retail and other approved nonresidential uses shall be located on the first floor of a Mixed Use Development.

f. Density Bonus.

- i. The following density bonus options are available to all Mixed Use Developments. Density bonuses are cumulative and a combination of up to two density bonuses may be applied to the Zoning Density Equivalencies of the base zoning district (see table above).
- ii. Density Bonus Options:
  - (a) Affordable Units. A density bonus of up to six dwelling units per acre may be granted if 50 percent of the additional units created by the bonus are dedicated for affordable housing. Affordable housing shall be for families earning less than 80 percent of median income, as reported for the City in the most recent census data, and calculated so that the monthly rent, including utilities, does not exceed 30 percent of a family's monthly income.
  - (b) Parking Structures. A density bonus of up to the maximum density of the zoning district may be granted if a parking structure is built. The parking structure shall be designed to accommodate 100 percent of the required residential parking. Nonresidential parking does not have to be accommodated by the parking structure, but must meet the parking standards of the zoning district.
  - (c) Public Art, Open Space, and Public Amenities. A density bonus of up to six dwelling units per acre may be granted if public art, a plaza, or other public open space, or public amenities are provided on-site.

14. Mobile Food Vendor Park Standards.

A Mobile Food Vendor Park shall meet the following requirements:

- a. A Mobile Food Vendor Park is allowed by Specific Use Designation, according to the permitted Use Chart.
- b. A Mobile Food Vendor Park shall be considered a primary use on a property and therefore is subject to all development standards applicable to the zoning of the property, including off-street parking requirements.
- c. All Mobile Food Vendor Parks shall be on legally platted lots.

- d. All Mobile Food Vendor Parks shall require a Certificate of Occupancy.
  - e. All Mobile Food Vendor Parks shall comply with all applicable regulations of the Midland Health Department, adopted building codes, International Fire Code, these standards, and all other applicable federal, state, and local laws.
  - f. All Mobile Food Vendors shall be removed from the Mobile Food Vendor Park upon closing of the park. If a commissary is provided on-site and the Mobile Food Vendor is approved to operate within the site's commissary, then the Mobile Food Vendor will not have to be removed from the site each day.
  - g. On-site Manager: There must be a designated manager of the site that is responsible for the orderly organization of Mobile Food Vendors, the cleanliness of the site, and the site's compliance with all rules and regulations during business hours.
  - h. Restrooms: Permanent restroom facilities shall be provided according to the adopted International Building Code.
  - i. Mobile Food Vendor Parks may be standalone establishments or may be located on a property with other permanent uses (i.e. retail establishments). These properties shall accommodate all required development standards for all primary uses.
  - j. Mobile Food Vendors shall not be parked on unimproved surfaces and at a minimum be parked on compacted gravel base.
  - k. One on-premise sign is permitted at the entrance(s) identifying the Mobile Food Vendor Park subject to the sign regulations for the applicable zoning district. Each Mobile Food Vendor may have attached signage.
  - l. Mobile Food Vendor Parks adjacent to single-family zoned or used property (not including a mixed-use structure), shall provide appropriate screening.
  - m. No Temporary Land Use Permits that allow for Mobile Food Vendors shall be permitted within Mobile Food Vendor Parks.
  - n. All Mobile Food Vendor Parks not located in the CB, Central Business District, shall provide off-street parking. Off-street parking may be provided by way of shared or joint off-site parking arrangements within 1,000 feet of the park.
  - o. Mobile Food Vendor Park owners are encouraged to provide for an aesthetically-pleasing environment which includes shade and seating elements in addition to pervious groundcover.
  - p. All Mobile Food Vendor Parks shall comply with the noise regulations in City Code Sections 6-6-13, 14, 15, and 16.
  - q. Vehicular drive-through service of food and/or beverages shall not be permitted.
15. Outside Display Standards.
- a. Outside Display areas shall not be placed or located more than 30 feet from the main building and shall not exceed 50 percent of the linear frontage of the building.
  - b. Outside Display areas shall be permitted year round.

- c. Outside Display areas shall not occupy any of the parking spaces that are required by this Zoning Ordinance for the primary use(s) of the property, except on a temporary basis only, which is a maximum of 45 days per display and a maximum of two displays per calendar year.
  - d. Outside Display areas shall not pose a safety or visibility hazard, nor impede public vehicular or pedestrian circulation, either on-site or off-site, in any way.
  - e. Outside Display areas shall not extend into public Right-of-Way or onto adjacent property.
  - f. Outside Display items shall be displayed in a neat, orderly manner, and the display area shall be maintained in a clean, litter-free manner.
  - g. Outside Display is permitted only as an Accessory Use and is not a permitted Principal Use.
16. Outside Storage Standards.
- a. See Section 11-1-9.07.F.8 Outside Storage Uses and Standards.
17. Refreshment Kiosk Standards.
- a. The applicant shall obtain approval from the Midland Health and Senior Services Department to operate a refreshment kiosk and shall remain in compliance with guidelines, rules and regulations established by the Midland Health and Senior Services Department.
  - b. The applicant shall submit to the Planning Division Manager a letter of authorization from the owner of the property upon which the refreshment kiosk is proposed to be located.
  - c. The Refreshment Kiosk shall be located on a paved surface.
  - d. The applicant shall submit a site plan drawing to the Planning Division Manager for approval. The site plan shall be drawn to scale and shall show the following minimum details:
    - i. Location of the Refreshment Kiosk in its relationship to existing structures, site circulation, traffic flows or patterns and off-street parking spaces and drive aisles;
    - ii. Dimensions of all parking spaces and drive aisles;
    - iii. Setbacks and property lines on public and private streets;
    - iv. Size and dimensions of the Refreshment Kiosk; and
    - v. Location of proposed utilities to serve the Refreshment Kiosk.
  - e. No Refreshment Kiosk shall block, impede or otherwise hinder the traffic flow within the lot where the Refreshment Kiosk is proposed to be located, including any approaches or exit lanes leading to and/or away from the Refreshment Kiosk. No Refreshment Kiosk shall be allowed to cause undue or unsafe congestion on or near the ingress or egress points located on the lot or adjacent lots, nor shall any fire lane be blocked by the structure or patrons of the Refreshment Kiosk.
  - f. Two parking spaces shall be provided on the property on which the Refreshment Kiosk is located for employee use.

- g. Business signs, limited to flat wall signs, are permitted on the structure. All signage shall conform to all applicable laws, ordinances, rules, and regulations.
  - h. The design and operation of the refreshment kiosk shall comply with all applicable laws, ordinances, rules, and regulations.
  - i. The area of the Refreshment Kiosk shall not exceed 200 square feet.
  - j. A structure used for a Refreshment Kiosk shall not be required to be a permanent structure, and may be a movable structure having skids or wheels. A movable structure shall be anchored to the ground adequately in a manner determined to be sufficient by the manufacturer of the building and in accordance with the Midland City Building Code.
18. School (School, Private and School, Public) Standards.
- a. A public or private school shall be subject to the following conditions:
    - i. The school building or buildings shall conform to the current building code requirements for an educational use.
    - ii. The school shall be accredited by the state to provide academic instruction for any of grades, Pre-kindergarten through 12.
19. Temporary Building for New Construction Standards.
- a. Temporary buildings and temporary building material storage areas to be used for construction purposes may be permitted for two years in accordance with a permit issued by the Building Official. Two six month extensions may be approved by the Building Official. The temporary buildings must meet all setbacks and must be set back at least 25 feet from a residential lot or building.
  - b. Upon completion or abandonment of construction or expiration of permit, the temporary field offices and buildings shall be immediately removed.
20. Wireless Communication Systems Standards.
- a. Purpose.
    - i. The regulation of Wireless Communication Systems is intended to provide for the appropriate location and development of wireless communication towers and antennas to serve the residents and businesses, minimize the visual impacts of towers through careful design, siting and screening, prevent potential damage to adjacent properties through engineering and careful siting of structures, and maximize use of any new or existing towers to reduce the number of towers needed. The intent of this section is to:
      - (a) Discourage the location of towers in residential areas and minimize the total number of towers throughout the City.
      - (b) Encourage the shared use of new and existing towers, and the use of existing alternate structures.
      - (c) Require users to locate and engineer towers and design sites in ways that minimize the adverse visual impact and ensure the public safety.

- b. Compliance with Telecommunications Act.
  - i. The regulations herein have been developed under the following general guidelines as provided in the federal Telecommunications Act of 1996:
    - (a) Cities have local authority over "placement, construction, and modification" of cellular telephone facilities and other personal wireless telecommunication service facilities.
    - (b) Regulations "shall not unreasonably discriminate among providers of functionally equivalent services."
    - (c) Regulations "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."
    - (d) "Denial shall be in writing and supported by substantial evidence."
    - (e) Cities may not "regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental or radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission regulations concerning such emissions."
- c. Design Standards.
  - i. The Use Chart<sup>18</sup> shall govern the use of Wireless Communication Systems. Prior to filling a request for a building permit and/or a Specific Use Designation, whichever is applicable, the following requirements must be met:
    - (a) The setback of an antenna support structure from a residential zoning district, except by a Specific Use Designation, measured from the base of the antenna support structure to the nearest residential zoning district boundary shall be equal to the height of the antenna support structure plus the setback of the zoning in which it is located.
    - (b) The unmanned equipment buildings shall not exceed 750 square feet of gross floor area per building and shall not exceed 12 feet in overall height.
    - (c) The overall height of antenna support structures including the antenna shall not exceed 150 feet. Buildings or other independent support structures as defined in this Section shall be exempt from the maximum height requirement; however, they shall comply with all other requirements as set forth.
    - (d) The fall radius of the antenna support structure must be from finished grade to the height of the antenna plus an additional ten feet.
    - (e) A building permit from the Building Official of the City of Midland shall be required for the installation of any antenna support structures, antennas attached to buildings or other independent support structures and unmanned equipment buildings developed for Wireless Communication Systems. An application for a building permit shall be accompanied by the following in duplicate:
      - (i) A complete set of construction documents showing the proposed method

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18. Editor's Note-Said Use Chart is included as an attachment to this chapter.

of installation.

- (ii) A copy of the manufacture's recommended installation instructions, if any.
  - (iii) A diagram to scale showing the location of the antenna, property and setback lines, easements, power lines, all structures and the distances from all residential zoning districts.
  - (iv) Certification by a structural or civil engineer registered with the State of Texas that the proposed installation complies with the requirements of the City of Midland Building Code.
  - (v) Certification stating that all antennas and antenna support structures shall comply with the height and illumination restrictions established by the FAA (Federal Aviation Administration), its successor, or other applicable federal or state agencies.
- ii. The shared use of existing antenna support structures and approved antenna support structure sites shall be preferred to the construction of new facilities. The antenna support structures must be constructed to support a minimum of two antenna arrays from two separate Wireless Communication Systems providers or users. Annually, the Building Official shall publish a list of known Wireless Communication Systems providers by advertisement in a newspaper of general circulation. The Building Official may add known Wireless Communication Systems providers to this list. This Wireless Communication Systems providers list shall remain valid for one calendar year. Prior to certification of any application, all applicants for antenna support structures shall comply with the following procedures:
- (a) All Wireless Communication Systems applicants shall provide notice by mail to all providers on the Wireless Communication Systems providers list with the following information: specifications of the proposed antenna support structure; its general location; its proposed height; and a phone number to locate the owner of the antenna support structure. A copy of the notice shall be mailed to the Building Official's office. The notices shall invite potential Wireless Communication Systems providers to apply for space on the proposed antenna support structure.
  - (b) The applicant shall submit a report inventorying existing antenna support structures and antenna sites within a one-mile distance from the proposed site outlining opportunities for shared use as an alternative to the proposed one. In the case of co-location, the pro rata reimbursement to the initial applicant from the future provider shall not exceed 55 percent of the original cost for construction of the antenna support structure.
- iii. Stealth Design.
- (a) Stealth means any telecommunications tower or telecommunications facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screening the same color scheme, antennas integrated into architectural elements, and towers designed to look other than like a tower, such as light poles, power poles, and trees. The term stealth does

not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole tower designs.

- (b) The installation of Wireless Communication Systems utilizing a stealth tower to camouflage an antenna support structure, such as a clock tower, flagpole or tree is recommended in all zone districts, and is required in residential zones. In addition, stealth design may include utilizing church steeples, bell towers, and other internal structures.
- (c) Concealed Wireless Communication Facilities (WCF).

Concealed WCF are permitted in all zoning districts and are not regulated by these provisions of the Zoning Ordinance. Other Concealed WCF are permitted in all zoning districts, subject to the following standards:

- (i) Public/quasi-public spaces—Concealed WCF are permitted on residentially zoned property that are designated or used for public or quasi-public spaces such as, but not limited to, schools, churches, or golf courses, subject to obtaining a proper permit(s) pursuant to the provisions contained in the Zoning Ordinance.

iv. Additional Design Standard Requirements.

- (a) Tower illumination—Towers shall not be illuminated except as required by the Federal Aviation Administration (FAA) or other applicable federal or state agencies.
- (b) Radiation Standards—Wireless Communication Systems shall comply with current Federal Communications Commission (FCC) standards for non-ionizing electromagnetic radiation (NIER). The applicant shall submit verification that the proposed site plan ensures compliance with these standards.
- (c) Fencing for Wireless Communication Systems—A fence shall be required around the antenna support structure and other equipment, unless the antenna is mounted on a building or other independent support structure. The fence shall not be less than eight feet in height measured from finished grade. Access to the antenna support structure shall be through a locked gate.
- (d) Landscaping for Wireless Communication Systems Requiring a Specific Use Designation—Landscaping shall be required to screen as much of the antenna support structure as possible, the fence surrounding the antenna support structure, and any other ground level features, such as a building). A combination of existing/native vegetation, natural topography, manmade features such as berms, walls, decorative fences and any other features can be used instead of landscaping if those features achieve the same degree of screening as the required landscaping. Landscaping shall be exempt for Wireless Communication Systems in the permitted use zones.
- (e) Setbacks for Wireless Communication Systems—Antenna support structures and unmanned equipment buildings shall meet the minimum building setback requirements per Section 11-1-4.04.A.20.c.i.(a).

- (f) Abandonment—In the event the use of any Wireless Communication Systems, which would include the antenna support structure, has been discontinued for a period of 180 consecutive days, the antenna support structure shall be deemed abandoned. Determination of the date of abandonment shall be made by the Building Official, who shall have the right to request documentation and/or affidavits from the antenna support structure owner/operator regarding the issue of usage. Upon determination of abandonment, the owner/operator of the antenna support structure shall remove the antenna support structure within 90 days of receipt of notice from the Building Official notifying the owner/operator of such abandonment. If such antenna support structure is not removed within said 90 days, the Building Official may cause such antenna support structure to be removed at the owner's expense. If there are two or more users of an antenna support structure, then this provision shall not become effective until all users cease using the antenna support structure.
- d. Wireless Communication Systems shall be a use permitted by right in all zoning districts if the land or structure is owned by the City of Midland.
- i. All antenna support structures or buildings or other independent support structures where antennas are proposed to be attached shall require a building permit. Antenna support structures located in residential zoning districts shall be monopole design. The height of a monopole antenna support structure, including the antenna, shall not exceed 150 feet. Wireless Communication Systems shall not be allowed in city parks which contain five acres or less.
  - ii. Antenna support structures shall be spaced from all residential zoning districts a minimum of 200 feet, measured from the base of the antenna support structure to the nearest residential zoning districts, except for antenna support structures located on land owned by the City of Midland within residential zoning districts. This spacing requirement does not apply to antennas attached to the buildings or independent support structures.
  - iii. The antenna array may be attached to buildings or independent support structures if:
    - (a) The pole replaced or modified is a functioning utility pole or light standard within a utility easement or public right-of-way, recreation facility light pole, or antenna support structure; and
    - (b) The replaced or modified antenna support structure, including antenna array, does not exceed the height of the original utility, light standard, or recreation facility pole by more than 12 feet, or the height of the original telecommunication tower and antenna array; and
    - (c) The pole replaced with an antenna support structure does not obstruct a public sidewalk, public alley, or other right-of-way, and pole appearance and function, except for the antenna, are not significantly altered; and
    - (d) The existing support structure is engineered to support the proposed antenna.
- e. Radio and Television Antennas.
- i. Radio and Television Antennas, limited to those used by the federal licensed amateur

radio operators, unlicensed citizens band radio operators, and private citizens receiving television signals, including satellite dish antennas, shall be considered as permitted accessory uses in all zoning districts and shall be permitted in accordance with the regulations for detached accessory structures. Antenna support structures within nonresidential districts shall comply with the height and setback requirements for the particular district.

- ii. The height of an antenna support structure shall be the total maximum to which it is capable of being raised and shall be measured from the finished grade adjacent to the antenna or antenna support structure if ground mounted or from the peak of the roof if roof mounted.
- iii. A building permit from the Building Official of the City of Midland shall be required for the installation of any roof-mounted antenna or antenna support structure over 12 feet above the peak of the roof and any ground-mounted antenna or antenna support structure over 25 feet in height. A building permit shall be issued only when there is full compliance with this Section and the applicable provisions of the City of Midland Building Code. Applications for a building permit shall be accompanied by the following in duplicate:
  - (a) A complete set of construction documents showing the proposed method of installation.
  - (b) A copy of the manufacturer's recommended installation instructions, if any.
  - (c) A diagram to scale showing the locations of the antenna property and setback lines, easements, power lines and all structures.
  - (d) Certification by a structural or civil engineer registered by the State of Texas that the proposed installation complies with the structural requirements of the City of Midland Building Code, as may be amended.
- iv. All antennas and antenna support structures shall comply with the height and illumination restrictions established by the FAA (Federal Aviation Administration), its successor or any other federal or state agencies.

21. Wrecking or Auto Salvage Yard Standards.

Wrecking or Auto Salvage Yards shall be completely enclosed by an opaque wall, screen, or fence at least eight feet high around those portions of such tract in which the Wrecking or Auto Salvage Yard operations are conducted. Such establishments shall also be in conformance with the standards and requirements of applicable state and federal laws and regulations.

22. PD, Planned Development District Standards.

Permitted uses shall be determined through Section 11-1-3.24 PD, Planned Development District and Section 11-1-9.06 PD, Planned Development District Application and Review.  
(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-4.05. Temporary Uses of Land.**

A. Standards.

The following types of uses shall be allowed on a temporary basis by resolution approved by the City Council when it determines that the proposed temporary use will not be detrimental to the use of land in the established zoning district, according to the uses allowed by such district. The maximum time limit of such temporary use shall be one year, and the Council may impose any conditions it deems necessary to ensure that the conditions of construction or operation associated with the temporary use will not be inconsistent with the intent of the use of land according to the established zoning district. Land used as a roping arena as approved by the City Council shall have a maximum time limit of three years and any renewal process shall be subject to the same public hearing process and procedures described herein as for all other allowable temporary uses of land. Such temporary uses shall not be considered as established uses of land when approved as provided herein. Therefore, the procedures applicable to re-zoning of properties shall not apply, except that a single public hearing shall be held by the City Council, with prior notice to owners of property within 200 feet of the proposed location, a minimum of ten days before such hearing, prior to approval of such temporary use, if the period of use will extend in excess of one calendar day (except in the case of a mobile food vendor, as provided within this section) or the use is located within any residential zoning district or is located within 1,000 feet of any residential zoning district. All buildings or other structures which are erected or located on the property in connection with the temporary use shall be removed not later than two days after the same time period for which the use is approved as set forth in the resolution, or sooner if specified in the conditions of approval.

1. Carnival, fair, circus or amusement facility or function.
2. Asphalt or concrete batching plant.
3. Seasonal fruit, vegetable, plant or Christmas tree sales.
4. Religious or cultural observance or performance.
5. Mobile food vendors at fixed location.
  - a. A mobile food vendor shall be considered to have a fixed location any time it operates four or more consecutive days at one location.
  - b. Mobile food vendors at a fixed location shall be connected to an individual electric meter, shall not be connected to water or sewer lines, and shall only be located on a paved surface or other similar type surface in zoning districts that allow restaurants. The mobile food vendor structure shall either be anchored to the ground or mounted on wheels and shall be wired in metal conduit. Mobile food vendors shall not sell alcoholic beverages.
  - c. The following shall be submitted with all applications for Mobile Food Vendors at Fixed Locations:
    - i. Health Department certificate.
    - ii. If no restroom is provided by the mobile food vendor: a letter from a business whose entrance is within 500 feet from the proposed location granting restroom access for the mobile food vendors' employees; hours of operation shall not exceed said businesses' hours of operation.
    - iii. A site plan for all proposed locations showing: a minimum of three paved parking spaces in addition to the parking spaces required for the business upon whose property the mobile food vendor is located, building setbacks in accordance with the zoning district, proposed signage, and distances from the mobile food vendor to all

driveways on the property.

- iv. A letter of permission from the owner of the property on which the mobile food vendor proposes to locate.
- 6. Roping arenas.
- 7. Freight containers.
- 8. Any temporary activity involving outdoor music after 10:00 p.m. or that includes the sale of alcoholic beverages.
- 9. Outside sale of dogs.

The following shall be submitted with all applications for temporary land use permits for the outside sale of dogs.

- a. A letter from the property owner stating that the applicant is allowed to sell dogs between the times of 9:00 a.m. and 6:00 p.m. on the said date(s) on the said property;
- b. Veterinary records showing that each dog to be sold has its rabies vaccination;
- c. Proof that each dog to be sold has had its Distemper/Parvo vaccination, and its Bordetella vaccination;
- d. Each dog to be sold will be required to have a current City license. See Section 6-2-7, of the City Code of Midland, Texas, for license requirements;
- e. Each dog to be sold must be spayed or neutered;
- f. Each dog to be sold will require prior inspection by the Director of Animal Services or his designee. The inspection will verify the general health of the dog, and compliance with requirements {of} Sections 11-1-4.05.A.9.d and 11-1-4.05.A.9.e above.
- g. The applicant must display the temporary land use permit in a location that can be seen by customers;
- h. The applicant must provide a City of Midland Animal Services Information Packet with each dog that is sold. The packets will be issued to applicant at the time the permit is issued;
- i. The applicant must provide adequate water and shelter for the dog during all times that said dog is on the premises of the sale;
- j. The temporary land use permit for the outside sale of dogs shall be subject to the prescribed fees set forth in the adopted Fee Schedule. This fee does not apply to or affect any other temporary land use permit but only applies to a permit for the outside sale of dogs.
- k. The issuance of any temporary land use permit for the outside sale of dogs by the City of Midland does not constitute any assumption of liability by the City of Midland regarding the dog(s) to be sold or any occurrences taking place on the premises of the sale. The City of Midland assumes no liability and makes no representations that the dog(s) to be sold are fit for any particular purpose.

10. Any temporary activity determined to be of a similar nature by the City Council.

B. Administrative Approval of a Temporary Land Use Permit.

1. Notwithstanding any provision to the contrary contained in Subsection A, if the City Council has previously approved a resolution authorizing a certain use of land on a temporary basis, the City Manager may approve or disapprove an application for a new temporary land use permit that authorizes the same or similar use of land on a temporary basis; provided, however:

- a. That the term of a temporary land use permit approved under this Subsection shall not exceed 30 days, except that the term of a temporary land use permit for a carnival, fair, circus or amusement facility or function, or a use similar thereto approved under this Subsection shall not exceed 14 days;
- b. That the City Manager may impose any conditions that he or she deems necessary to ensure that the conditions of construction or operation associated with the temporary use will not be inconsistent with the intent of the use of land according to the established zoning district; and
- c. That all buildings or other structures which are erected or located on property in connection with the temporary use shall be removed not later than two days after the same time period for which the use is approved as set forth in the permit, or sooner if specified in the conditions of approval

2. To the extent the City Manager is authorized to take action on an application for a temporary land use permit under this Subsection, the following procedures shall apply:

- a. Within 30 days of the City's receipt of the application, the City Manager shall approve the application, disapprove the application, or refer the application to the City Council for action consistent with Subsection A.
- b. Prior to the City Manager taking action on an application for a temporary land use permit, owners of property located within 200 feet of the proposed location of the temporary use shall be given notice of the proposed temporary use, the proposed location of the temporary use, and the proposed date or dates of the temporary use. Such notice (1) shall inform an owner that the owner may submit comments to the City Manager regarding whether the proposed use should be authorized and (2) shall specify a date by which such comments must be received by the City Manager, which shall be at least 10 days after the date on which notice was given. The notice requirement of this Subsection shall not apply if the City Manager refers the application to the City Council for action consistent with Subsection A.
- c. An applicant for a temporary land use permit who is contesting the City Manager's disapproval or conditional approval of the applicant's application, or the interpretation or application of any rule, standard, regulation, determination or requirement related thereto, directly or by delegation of authority, shall have the right to appeal by submitting to the City Manager a written request for a hearing setting forth fully the grounds for the appeal within 14 days of the action that the applicant wishes to contest. If an applicant requests a hearing under this Subsection, the City Manager shall refer the application and request for a hearing to the City Council for action consistent with Subsection A. If an applicant does not submit a written request for a hearing within 14 days of the City Manager's action under this Subsection, the City Manager's action shall be final and conclusive.

3. Temporary uses authorized under this Subsection shall not be considered as established uses of land.

C. Miscellaneous.

1. A review fee as set forth in the adopted Fee Schedule shall accompany each request for approval of a temporary use as described above.
2. For purposes of this subsection the term "one day" shall have the following meaning: A time period which begins no earlier than 8:00 a.m. and ends no later than 10:00 p.m. on the same day.  
(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-4.06. Building Location and Arrangement Standards.**

A. Location and Arrangement of Residential Buildings on Lots for Single-Family or Duplex Uses.

1. Only one main building for single-family or duplex use with a permitted Accessory Building may be located upon a lot.
2. Every dwelling shall face or front upon a public street or approved access easement, other than an alley, which means of access shall have a minimum width of 30 feet.

B. Location and Arrangement of Buildings on Lots for Multi-Family, Retail, Commercial, or Industrial Uses.

1. Where a lot is used for multi-family, retail, commercial, or industrial purposes, more than one main building may be located upon the lot, but only when such additional main buildings conform to all the open space, parking and density requirements applicable to the uses and districts.
  - a. All main buildings shall face upon a public street or approved access easement other than an alley.
2. No parking area, storage area, or required open space for one building shall be computed as being the open space yard or area requirements for any other building or other use.
3. On lots zoned and used for multi-family use, the minimum separation distance between any two buildings shall be 30 feet.

C. Drive-Through Facility Standards.

Drive-throughs are not permitted in the O-1, Office District or O-2, Office District.  
(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-4.07. Health and Safety Standards.**

A. Uses with Flammable, Toxic, and Hazardous Materials.

1. The storage, manufacture, utilization, or dispensing of substances that may constitute or may cause danger to public health, safety, or welfare shall be conducted only within the limits and conditions specified in the latest edition of both the International Fire Code and International Building Code.
2. The emission of toxic or explosive vapors, dusts, or aerosols into the atmosphere shall not

exceed, at the facility property line, 50 percent of the limit of such as is given in "Threshold Limit Values" as adopted at the most recent International Fire Code and International Building Code.

3. No form of flammable, toxic, or other hazardous material shall be released into or upon any utility line, pit, dump, open ground, stream, or drainage way.
4. The container size, location, design, and construction of any storage tank, building, or facility for any flammable, toxic, or other hazardous material shall be approved by the fire marshal and the City Manager as a part of the Building Permit application and shall be based upon the requirements of the International Fire Code and International Building Code.

B. Pollution Prevention.

1. No operation or activity shall discharge or cause to be released into public waters any liquid or solid waste unless in conformance with the latest provisions of the Texas Commission on Environmental Quality (TCEQ) or its successor, the Texas Department of Health or its successor, and the Texas Railroad Commission or its successor.
2. No operation or activity shall discharge or cause to be released into the atmosphere any smoke or particulate matter which exceeds the limits permitted by the latest requirements of Texas Commission on Environmental Quality (TCEQ) or its successor.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-4.08. Nonconformities.**

A. Intent of Provisions.

1. Existence of Nonconformities.
  - a. A nonconformity describes a use, structure, or lot that does not conform to the current standards of the Zoning Ordinance, but that was in conformance with the standards in place at the time of its inception, and have been rendered nonconforming due to a change in the applicable standards and regulations.
  - b. The City Council has determined that it is in the best interest of the City for Nonconformities to be brought into conformance with the Zoning Ordinance at the earliest reasonable time. The purpose of this Section 11-1-4.08 Nonconformities is to establish provisions for the allowance and potential alteration of uses, structures and lots that do not conform to currently applicable zoning standards or regulations.
  - c. Nonconformities occur in three general categories, or combination thereof.
    - i. Nonconforming Uses.

A nonconforming use can occur when an existing use is no longer allowed in a zoning district.
    - ii. Nonconforming Structures. A nonconforming structure can have a lesser setback, yard, or height lot area or dimension requirement than required by the Zoning Ordinance.
    - iii. Nonconforming Lots. A nonconforming lot can be nonconforming as to lot area or dimension requirements.

- d. It is the declared intent of this section that Nonconforming Uses and Nonconforming Structures eventually be eliminated and be required to comply with the regulations of the Zoning Ordinance, having due regard for the property rights of the person affected, the public welfare, and the character of the surrounding area.
2. Incompatible Uses.

Nonconformities are hereby declared incompatible with the permitted uses in the districts involved.
- B. Establishment of Legal or Illegal Nonconformities.
  1. Legal Nonconformities.
    - a. Those uses, structures, or lots which in whole or part do not conform to current zoning standards, but were legally established prior to the effective date of this Zoning Ordinance, at which time they were in conformance with applicable standards shall be considered "Legal Nonconformities."
    - b. Such uses, structures, or lots may be maintained or potentially altered subject to the provisions of this Section 11-1-4.08 Nonconformities.
  2. Illegal Nonconformities.
    - a. Those uses, structures, or lots, other than residential accessory buildings, which in whole or part are not in conformance with current zoning standards and were not in conformance with applicable standards at the time of their inception shall be considered "Illegal Nonconformities."
    - b. Such uses, structures, or lots and shall be subject to the penalties established in 11-1-1.06 Zoning Violations.
- C. Single-Family Residential Uses.

Previously conforming single-family residential uses on platted lots approved prior to the Zoning Ordinance effective date, which may now be nonconforming due to stricter standards, shall be deemed in conformance with this Zoning Ordinance.
- D. Existing Platted Lots are Conforming Lots.

Any existing vacant lot platted prior to the Zoning Ordinance effective date that was legally conforming shall be deemed a conforming lot.
- E. Changing Uses.
  1. Nonconforming Use to Conforming Use.

Any nonconforming use may be changed to a conforming use, and once a change is made, the use shall not be changed back to a nonconforming use.
  2. Nonconforming Use to another Nonconforming Use.

A nonconforming use shall not be changed to another nonconforming use.
  3. Conforming Use in a Nonconforming Structure.

Where a conforming use is located in a Nonconforming Structure, the use may be changed to another conforming use by the process outlined in 11-1-4.08.F Expansion of Nonconforming Uses and Structures.

F. Expansion of Nonconforming Uses and Structures.

An expansion of a Nonconforming Use or Nonconforming Structure is allowed in accordance with the following.

1. Prohibited Expansion or Reoccupation.

A Nonconforming Use or Nonconforming Structure shall not be expanded, reoccupied with another Nonconforming Use, or increased as of the effective date of this Zoning Ordinance, except as provided in 11-1-4.08.F Expansion of Nonconforming Uses and Structures.

2. Nonconforming Use Expansion in Existing Building.

A Nonconforming Use may be enlarged, increased, or extended within an existing building provided:

a. No structural alteration may be made on or in the existing building except those required by law to preserve the building in a structurally sound condition.

b. Work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of the current replacement value of the building.

c. The number of dwelling units or rooms in a nonconforming residential use shall not be increased so as to exceed the number of dwelling units or rooms existing at the time the use became a nonconforming use.

3. Nonconforming Use Prohibited from Expansion beyond Existing Building.

A Nonconforming Use located within any building shall not be extended to occupy any land outside the building.

4. Residential Lot Exemption.

The minimum residential lot areas for the various zoning districts shall be in accordance with their respective districts except that a lot having less area than required by the Zoning Ordinance that was an official Lot of Record prior to the effective date may be used for a single-family dwelling.

5. Expansion of Nonconforming Structures with Conforming Uses.

Buildings or structures that do not conform to the area regulations or development standards in the Zoning Ordinance but where the uses are deemed conforming shall not increase the gross floor area greater than 10 percent from the date when the building became nonconforming.

6. Reuse of Nonconforming Structure by Conforming Uses Allowed.

a. Nonconforming Structures that have been abandoned and do not meet the current area regulations or development standards shall be allowed to be re-occupied by a conforming use.

- b. If re-occupied by a conforming use, then the new conforming use shall meet the applicable parking (Section 11-1-6.02), and fire lane requirements for health, safety, and welfare reasons.

G. Restoration of Nonconforming Structures.

1. Total or Partial Destruction.

If a Nonconforming Structure is destroyed by fire, the elements, or other natural catastrophic event, it may be rebuilt, but the existing square footage or function of the Nonconforming Structure cannot be expanded. The construction must comply with all current building codes, and zoning regulations in effect at the time the structure received its building permit. The construction must commence within 12 months of the date of destruction. The failure of the owner to start such reconstruction within 12 months shall forfeit the owner's right to restore or reconstruct the structure except in conformance with the Zoning Ordinance. If the regulations cannot be determined or if the regulations are disputed for the time the structure received its building permit, then the Board of Adjustment shall hold a hearing and shall take evidence, such as previously adopted ordinances, photographs, and tax records, to determine the standards that apply.

2. If the owner of a Nonconforming Structure has a Nonconforming Use and fails to begin reconstruction of the destroyed structure within 12 months of the date of destruction, then the Nonconforming Structure and Nonconforming Use shall be deemed to be discontinued or abandoned.

H. Movement of Nonconforming Structure. A Nonconforming Structure may be relocated within the same platted lot, and shall comply with all setback and screening requirements.

I. Completion of Structures. Nothing in the Zoning Ordinance shall require any change in the plans, construction, or designated use of the following:

1. Approved Building Permit.

A building or structure for which a Building Permit has been issued or a Site Plan approved prior to the effective date, provided that the permit or Site Plan shall expire in accordance with the time periods set forth in this Zoning Ordinance.

2. Building in the Approval Process.

A building or structure for which a complete Application for a Building Permit was accepted by the Planning Division Manager on or before the effective date, provided however, that such Building Permit shall comply with all applicable ordinances in effect on the date such application was filed.

J. Abandonment of Nonconforming Uses.

1. Once a Nonconforming Use has been abandoned, the Nonconforming Use shall not be allowed to be reintroduced within the applicable zoning district. This prohibition of the reoccupation or reintroduction of an abandoned Nonconforming Use shall be enforced by the denial of building permit or certificate of occupancy applications.
2. A Nonconforming Use shall be considered abandoned and surrendered, forfeited, and lost when evidence presented to the Planning Division Manager indicates that a structure designed or

arranged for a Nonconforming Use has ceased to be used in a bona fide manner as a Nonconforming Use for a period of six consecutive calendar months. For purposes of calculating the six-month period, a use is abandoned upon the occurrence of the first of any of the following events:

- a. On the date when the use of land is physically vacated;
- b. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
- c. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
- d. On the date a final reading of water or power meters is made by the applicable utility provider(s).
3. A Nonconforming Use, when abandoned, shall not be resumed and any further use shall be in conformity with the provisions of this Zoning Ordinance.
4. Any Nonconforming Use that does not involve a permanent type of structure or operation and that is moved from the premises shall be considered to have been abandoned.
5. Abandonment of a Nonconforming Use requires intent.
6. Any Nonconforming Use that does not involve a permanent type of structure or operation and that is moved from the premises shall be considered to have been abandoned.
7. Unless the nonconforming use status is reinstated pursuant to 11-1-4.08.K Loss of and Reinstatement of Nonconforming Use Status, an abandoned use shall not be instituted on that parcel or other parcel in any district which does not permit the abandoned use.

K. Loss of and Reinstatement of Nonconforming Use Status.

1. Loss of Nonconforming Use Status.

If the Planning Division Manager determines that a Nonconforming Use has met the definition of abandonment and has lost its nonconforming use status, the use shall not be instituted on that parcel or other parcel in any district that does not permit the discontinued use.

2. Application for Nonconforming Use Status Reinstatement.

- a. The owner or operator of the abandoned Nonconforming Use may submit a written application to the Board of Adjustment to have the nonconforming rights reinstated.
- b. Written application for reinstatement of nonconforming rights must be made within 30 days after the denial of building permit or certificate of occupancy application for the Nonconforming Use.

3. Board of Adjustment Hearing.

- a. The Board of Adjustment shall hold a hearing on the requested reinstatement of a Nonconforming Use status within 30 calendar days of the request or the next scheduled Board of Adjustment, whichever is greater.
- b. The applicant and the Planning Division Manager shall submit any evidence or findings to

the Board of Adjustment for consideration in the case.

- c. The Board of Adjustment shall use the above abandonment criteria in deliberating the case.
4. Board of Adjustment Decision.

The Board of Adjustment may reinstate the Nonconforming Use status and thus allow the building permit or certificate of occupancy application to be processed only if the Board of Adjustment finds that the use was not discontinued for six months or more. The failure of the owner or operator to remove on-premise signs shall not be considered (on its own) evidence of a continuing use.

L. Nonconforming Use Created by Acquisition of Right-of-Way.

1. Lawful Conforming Structure.

Where a lot, tract, or parcel is occupied by a lawful structure, and where the acquisition of Right-of-Way by eminent domain proceedings, dedication, or purchase by the City, the county, the state, or a federal agency creates a Nonconforming Structure, lot, or setback, the structure shall be deemed a lawful conforming structure, to the extent the nonconformity results from the acquisition of the Right-of-Way. In the event the structure is partially or totally destroyed by natural causes, the structure may be rebuilt.

2. Cases in which the Owner Receives Compensation for Fencing or Landscaping.

In the event the owner of an interest in real property receives compensation for fencing or landscaping in the form of curative measures or damages to the remainder in a Right-of-Way acquisition, the owner shall relocate required fencing or landscaping originally located on the acquired property to the remainder of the tract as closely as practicable to the required setback.

3. Cases in which the Owner Receives Compensation for Demolition.

A Certificate of Occupancy and Compliance shall not be issued for any structure for which compensation has been paid for the demolition of the structure or for other curative measures until such time that the structure meets all applicable ordinances or the curative measures for which the compensation was paid have been completed. For purposes of this section, "curative measures" are those actions, corrections, repairs or improvements identified in an appraisal or similar valuation analysis prepared in the context of considering damages to the remainder suffered as a result of the acquisition of a portion of property.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-4.09. Accessory Buildings and Uses.**

A. Residential Accessory Buildings and Uses.

1. The following regulations apply to Accessory Buildings servicing lots zoned for residential uses.

**Table 5: Residential Accessory Building Requirements**

<b>Standard</b>	<b>Lots up to 7,500 SF</b>	<b>Lots 7,500 SF up to 21,999 SF</b>	<b>Lots 22,000 SF up to 5-acres</b>	<b>Lots 5-acres or greater</b>
Maximum Square Footage of All Accessory Buildings (Combined Area)	10% of the property	10% of the property	10% of the property	15% of the property
Maximum Height of Accessory Buildings	15'	15'	Equal to or less than main building	40**
Maximum Number of Accessory Buildings	2	2	3	4**
Maximum Allowed Building Area Coverage	Main and accessory buildings shall not exceed the allowable coverage percentage of the zoning district in which they are located.			
Minimum Front Setback	25'*	25'*	25'*	25'***
Minimum Side and Rear Setback	5'	5'	5'	5'
Minimum Setbacks for Corner Lots	10'*	15'*	15'*	15'***
Prohibited Locations	Accessory buildings in Easements are prohibited			
Barns and other Types of Livestock Housing	Accessory Buildings containing livestock (e.g. chickens, hogs, horses, etc.) shall be located at least 200 feet from any existing dwelling or water well.			
<p>* No Accessory Building shall be placed so as to protrude in front of the main building.</p> <p>** On lots 5-acres or greater, a single accessory structure, may be placed on the property for the sole purpose of storing equipment, materials, or agricultural products necessary to the maintenance of the property. This building may have a maximum height of 40'.</p> <p>*** No Accessory Building shall be placed so as to protrude in front of the main building, on lots 5-acres or greater, if no main building exists on the property, the accessory structure must be placed in the rear 50 percent of the property.</p>				

2. Accessory Buildings and uses incidental to other permitted uses are permitted within residential zoning districts and include private garages, carports, tool house, lath or greenhouse as hobby (no business), home workshop, children's playhouse, private stables (no rental), barns, or coops (no rental), private swimming pool and garden shelter.

#### B. Accessory Buildings and Use Limitations.

1. See table for maximum number of Accessory Buildings.
2. An Accessory Building necessary to store equipment for several dwelling units or provide a service function for several dwelling units shall not be occupied as a place of abode within the following zoning districts.
  - a. AE, Agricultural Estate District.
  - b. CE, Country Estate District.
  - c. SF-1, Single-Family Dwelling District.
  - d. SF-2, Single-Family Dwelling District.

- e. SF-3, Single-Family Dwelling District.
  - f. MH, Manufactured Housing District.
  3. Any Accessory Building that is not a part of the principal building shall be separated from the principal building by a minimum of 10 feet.
  4. The exterior façade of all Accessory Buildings shall be constructed to meet the requirements of Section 11-1-6.04 Building Façade Material Standards.
  5. In the nonresidential districts, an Accessory Building shall not exceed the height of the principal building and shall not exceed 50 percent of the floor area of the principal building, and shall be used for purposes accessory and incidental to the main use.
- C. Accessory Dwelling Units and Use Limitations.
1. The following regulations apply to Accessory Dwelling Units or as a use attached to the principal residence.
    - a. Accessory Dwelling Units shall not be leased or rented.
    - b. The living area of an Accessory Dwelling Unit shall not exceed 1,000 square feet or 30 percent of the area of the principal residence, whichever is less.
    - c. Only one Accessory Dwelling Unit shall be allowed on any individual tract of land.
    - d. A mobile home, travel trailer, or recreational vehicle shall not be used as a detached Accessory Dwelling Unit.
    - e. The total number of people, who live on the property, including the principal residence and the Accessory Dwelling Unit, shall not exceed that of a "Family" as defined in the Zoning Ordinance.

D. Architectural Elements for Residential Accessory Buildings.

1. A detached Accessory Building having an area equal to or greater than 400 square feet shall meet the building material requirements of Section 11-1-6.04 Building Façade Material Standards. An Accessory Building located on lots greater than 5 acres shall not be subject to these requirements.
2. The color and material of the roof of the Accessory Building having an area equal to or greater than 400 square feet must closely resemble the color and materials of the roof of the main structure unless the Accessory Building is prefabricated or prefinished.
3. Utility, mechanical, and HVAC facilities shall be screened from public view.
4. Accessory Dwelling Units are required to meet the development, zoning, and building requirements including building, electrical, fire, mechanical, and plumbing requirements.
5. The principal residence and the Accessory Dwelling Units cannot exceed the maximum lot coverage or encroach in the setbacks for the property as regulated in the applicable zoning district.
6. Accessory Dwelling Units shall be consistent with the provisions of the applicable zoning district and the goals and policies of the Comprehensive Plan.

7. Accessory Dwelling Units must be designed to preserve or compliment the architectural design, style, and appearance of the principal residence.
8. Building setbacks for Accessory Dwelling Units shall comply with all required building setbacks for the applicable zoning district.
9. No Accessory Dwelling Unit may be sold or leased separately from the principal residence.
10. Required Accessory Dwelling Unit materials are to be submitted with residential construction:
  - a. A site plan, drawn to scale, showing the principal dwelling, accessory structures and the proposed Accessory Dwelling Unit.
  - b. A floor plan, drawn to scale, of the principal dwelling and the proposed Accessory Dwelling Unit.
  - c. Elevations of the principal dwelling and proposed Accessory Dwelling Unit showing the existing and proposed architectural design and exterior building color, material, and finish.

E. Small Wind Energy Systems.

1. Accessory Use.

Small Wind Energy Systems are allowed as an accessory use in all Residential Zoning Districts.

2. Building Permit Required.

No Small Wind Energy Systems shall be installed without first obtaining a Building Permit issued by the Building Official.

3. General Standards.

- a. Small Wind Energy Systems (equipment or tower) shall not be located in a required setback.
- b. The minimum distance between the ground and any part of a rotor blade must be at least 20 feet.
- c. Small Wind Energy Systems may not be illuminated, nor may they bear any signs or advertising.
- d. Small Wind Energy Systems must have automatic braking, governing, or feathering system to prevent uncontrolled rotation, over-speeding, and excessive pressure on the support structure, rotor blades, and turbine components.
- e. Installation shall meet the requirements of the Electrical Code.
- f. Maximum voltage turbine output to a single-family or two-family dwelling is 600 volts per electrical code.
- g. Noise produced by Small Wind Energy Systems may not exceed 55 dBA measured at the property line.
- h. Small Wind Energy Systems must not cause any interference with normal radio and television reception in the surrounding area, with any public safety agency or organization (including, but not limited to, police, fire, and ambulance) radio transmissions, or with any

microwave communications link. The owner shall conduct a study at the owner's cost to determine whether there is any such interference. If any such interference occurs, the owner shall immediately eliminate the interference at the owner's cost, or the owner shall immediately shut down the system or parts of the system causing the interference.

- i. A finish (paint/surface) must be provided for the small wind energy system that reduces the visibility of the facility, including the rotors. In most circumstances this condition may be satisfied by painting the support structure and rotors with flat light haze gray paint. If the support structure is unpainted it must be of a single color throughout its height. The owner must maintain the finish, painted or unpainted, so that no discoloration is allowed to occur.
  - j. The diameter of the area swept by the rotors may not exceed 12 feet.
  - k. Guy wires or other accessories cannot cross or encroach on any Right-of-Way or over above ground electrical utility lines.
4. Freestanding Systems—Additional Standards.

Small Wind Energy Systems may be mounted on a tower detached from other structures on the lot.

- a. Setback.

The minimum setback from any property line, overhead utility line, or public right-of-way shall be a distance equal to the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point. In addition to the system's structures, guy wires associated with towers shall meet applicable setbacks for the zoning district.

- b. Height.

Freestanding systems measured from the top blade may not exceed 47 feet in height.

- c. Security.

Support structures for freestanding systems must be unclimbable from the ground to a height of at least 15 feet.

- d. Number.

A maximum of one freestanding small wind generator system may be allowed on a building site.

5. Roof-Mounted Systems—Additional Standards.

Small Wind Energy Systems may be mounted on the roof of a structure as an appurtenance.

- a. Height.

Roof-mounted systems measured from the top blade may not be more than five feet over the maximum allowed height for the structure.

- b. Number.

A maximum of one roof-mounted small wind generator system may be allowed on a

building site.

c. Engineering Report.

Before any roof-mounted system is mounted the property owner must submit a report prepared by a licensed professional engineer attesting to the fact that the structure to which the system will be mounted is or will be sufficiently strong to support the system and to withstand the wind, vibratory, and other loads to which it would be subjected as a result of mounting the system on it. This report is subject to approval by the Building Official prior to the mounting of the system.

F. Single-Family or Duplex Residential Flags and Flagpoles.

1. Scope.

The regulations set out in this section apply to flags and detached flagpoles for single-family and duplex homes in all residential zoning districts.

2. Setbacks.

The minimum setback from any property line, overhead utility line, or public right-of-way shall be a distance equal to the vertical distance from the ground to the top of the pole.

3. Size.

a. The height of a flag pole shall not exceed 25 feet measured from the natural grade.

b. The size of the flag shall in no event exceed 24 square feet in area.

4. Number.

a. No more than one flagpole shall be allowed per building site or lot.

b. No more than two flags may be mounted vertically and displayed on the flagpole located on a building site or lot. Furcated poles with multiple mounting structures shall not be allowed.

c. Small flags (not to exceed 24 square feet) mounted in stanchions on the face/eaves of buildings and flags that are displayed flush to the face of the building are not limited in number.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

## **ARTICLE V ZONING DIMENSIONAL REGULATIONS**

### **§ 11-1-5.01. Purpose.**

- A. Establish Common Area Regulations and Standards.

The purpose of this Section 5 Zoning Dimensional Regulations is to establish common area regulations and standards for each zoning district.

- B. One Location for Information.

This Subsection provides one location within this Zoning Ordinance where the common area regulations and standards can be found.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-5.02. Establishment of area regulations and standards.**

- A. Residential and Nonresidential Area Regulations and Standards.

The area regulations and standards for each zoning district are established within the following two charts.

1. Section 11-1-5.04 Residential Zoning District Dimensional Regulations Chart, and
2. Section 11-1-5.05 Nonresidential Zoning District Dimensional Regulations Chart.

- B. PD, Planned Development District.

Due the nature of a PD, Planned Development District with varying area regulations and because all PD, Planned Development Districts have an established base zoning district upon which area regulations are varied, PD, Planned Development Districts are not shown within the following charts.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-5.03. Additional area regulations and standards.**

Additional area regulations and standards may apply to specific zoning districts and may be found within the other sections of this Zoning Ordinance.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-5.04. Residential Zoning District Dimensional Regulations Chart.**

	Residential Zoning Districts									
Regulation	AE, A	CE, C	SF-1, Si	SF-2, Si	SF-3, Si	MH, M	TH, To	2F, T	MF-16	MF-22
Lot Dimensions										
Minimum Lot Area <sup>(1)</sup>	2 Acres (87,120 SF)	43,560 SF	9,000 SF	7,000 SF	5,500 SF	5,000 SF	2,500 SF	7,000 SF per duplex or 3,500 SF per Dwelling Unit	2 Acres (87,120 SF)	2 Acres (87,120 SF)
Minimum Lot Width: Interior Lot	150'	100'	80'	65'	50'	50'	25'	70' per duplex or 35' per Dwelling Unit	150'	150'
Corner Lot	150'	100'	85'	70'	55'	55'	30'	75' per duplex or 37.5' per Dwelling Unit	150'	150'
Minimum Lot Depth	150'	120'	100'	100'	100'	100'	100'	100'	100'	100'
Yard Setback Dimensions										
Minimum Front Yard Setback <sup>(2)</sup>	40'	35'	25'	20'	20'	20'	20'	20'	20'	20'
Minimum Front Yard Setback—if lot is served by a paved alley and no front entry is provided or allowed (i.e., no driveway may be in the front yard and access must be from the alley.)	40'	35'	10'	10'	10'	20'	5'	10'	20'	20'
Minimum Side Yard Setback: Interior Lot	15'	10'	5'	5'	5'	5'	0' between attached units/10' minimum on end units	0' between attached units/5' minimum on end units	15'	15'
Corner Lot—Exterior (Street) Yard	15'	10'	10'	10'	10'	10'	10'	10'	20'	20'

	Residential Zoning Districts									
Regulation	AE, A	CE, C	SF-1, Si	SF-2, Si	SF-3, Si	MH, M	TH, To	2F, T	MF-16	MF-22
Minimum Rear Yard Setback: Where an alley adjoins the rear lot line <sup>(3)</sup>	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure with no alley access 5' = any structure (garage, carport) with alley access 10' = 2 story structure 20' = 3 story structure	0' = 1 story structure 20' = portions of structure that (a) exceeds one-story and (b) is adjacent to any SF or 2F zoning district 50' = any structures over 1 story with windows or doors facing SF or 2F zoning district	0' = 1 story structure. 20' = portions of structure that (a) exceeds one-story and (b) is adjacent to any SF or 2F zoning district 50' = any structures over 1 story with windows or doors facing SF or 2F zoning district.
Where no alley adjoins the rear lot line	10' = -1 story structure 20' = 2 story structure	10' = -1 story structure 20' = 2 story structure	10' = -1 story structure 20' = 2 story structure	10' = -1 story structure 20' = 2 story structure	10' = -1 story structure 20' = 2 story structure	10' = -1 story structure 20' = 2 story structure	10' = -1 story structure 20' = 2 story structure	10' = -1 story structure 20' = 2 story structure	10' = 1 story structure 40' = portions of structure that (a) exceeds one-story and (b) is adjacent to any SF or 2F zoning district 50' = any structures over 1 story with windows or doors facing SF or 2F zoning district	10' = 1 story structure. 40' = portions of structure that (a) exceeds one-story and (b) is adjacent to any SF or 2F zoning district 50' = any structures over 1 story with windows or doors facing SF or 2F zoning district
Floor Area										

	Residential Zoning Districts									
Regulation	AE, A	CE, C	SF-1, Si	SF-2, Si	SF-3, Si	MH, M	TH, To	2F, T	MF-16	MF-22
Minimum Floor Area	None	None	None	None	None	None	None	None	500 SF per 1 Bedroom unit. 750 SF per 2 Bedroom unit. 150 SF per each add'l room.	500 SF per 1 Bedroom unit. 750 SF per 2 Bedroom unit. 150 SF per each add'l room.
Structure Height										
Maximum Height (feet/stories)	42'	42'	42'	42'	42'	28'	42'	28'	42'/3 Stories	56'/4 Stories
Building Area Coverage										
Maximum Lot Area allowed to be Covered by Buildings (percentage includes all buildings)	50%	50%	50%	60%	65%	None	85%	65%	60%	60%

**Notes:**

<sup>(1)</sup> SF = Square Feet.

<sup>(2)</sup> Where a lot abuts the turnaround at the end of a Cul-de-sac street, the setback required in any of the Residential Zoning Districts may be reduced by not more than ten feet if the lesser setback to be observed is shown on a Plat approved by the Planning and Zoning Commission and recorded with the County Clerk, and if such building line is part of a plan for the orderly development of a subdivision either with a uniform or staggered building line; provided, however, that such building line shall be not less than 65 feet from the center or radius point of such turnaround.

<sup>(3)</sup> Where an alley adjoins the rear lot line, a one-story structure may be built to the rear property line except that in no case shall a vehicle entrance to a garage, carport or similar facility that faces a rear alley be less than five feet from the rear lot line and no encroachment or overhang beyond the lot line shall be permitted.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-5.05. Nonresidential Zoning District Dimensional Regulations Chart.**

	Nonresidential Zoning Districts									
Regulation	O-1, Of	O-2, Of	LR, Lo	RR, Re	CB, Ce	C, Com	BP,	TP, T	LI, Li	HI, H
Lot Dimensions										
Minimum Lot Area <sup>(1)</sup>	8,000 SF	6,000 SF	8,000 SF	8,000 SF	6,000 SF	6,000 SF	40,000 SF	6,000 SF	None	None
Minimum Lot Width:	60'	60'	60'	60'	60'	60'	100'	60'	None	None
Minimum Lot Depth	100'	100'	100'	100'	100'	100'	120'	100	None	None
Yard Setback Dimensions <sup>(2)</sup>										
Minimum Front Yard Setback <sup>(2)</sup>	15'	20'	15'	15'	None	None	35'	15'	15'	15'
Maximum Front Yard Setback	None	None	None	None	None	None	None	None	None	None
Minimum Side Yard Setback: <sup>(2)</sup> Interior Lot	5'	5'	0' = When not adjacent to residential district 5' = When adjacent to residential district	0' = When not adjacent to residential district 5' = When adjacent to residential district	None	0' = Nonresidential 5' = Residential	10'	10% of lot width, but setback shall be no less than 10' or greater than 25'	5'	5'
Minimum Rear Yard Setback: <sup>(2)</sup> Where an alley adjoins the rear lot line	0' 5' = any structure (garage, carport) with alley access	0' 5' = any structure (garage, carport) with alley access	0' 5' = any structure (garage, carport) with alley access	0' 5' = any structure (garage, carport) with alley access	0' 5' = any structure (garage, carport) with alley access	0' 5' = any structure (garage, carport) with alley access	20'	10'	0' 5' = any structure (garage, carport) with alley access	0' 5' = any structure (garage, carport) with alley access
Where no alley adjoins the rear lot line	10'	10'	10'	10'	None	10'	20'	10'	10'	10'
Floor Area										
Maximum Floor Area Ratio	None	1.2:1	None	None	None	2:1	1:1	None	None	None
Structure Height										

<b>Regulation</b>	<b>Nonresidential Zoning Districts</b>									
	<b>O-1, Of</b>	<b>O-2, Of</b>	<b>LR, Lo</b>	<b>RR, Re</b>	<b>CB, Ce</b>	<b>C, Com</b>	<b>BP,</b>	<b>TP, T</b>	<b>LI , Li</b>	<b>HI, H</b>
Maximum Height (feet/stories)	35'/2.5 Stories	98'/7 Stories	35'/2.5 Stories	56'/4 Stories	None	None	70'/5 Stories	70'/5 Stories	None	None
Building Area Coverage										
Maximum Building Area Coverage (all buildings)	60%	60%	60%	60%	None	None	75%	None	50%	50%

**Notes:**

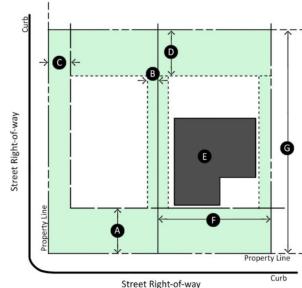
<sup>(1)</sup> SF = Square Feet.

<sup>(2)</sup> One foot of additional front, side, or rear yard depth shall be required for each three feet, or portion thereof, by which any building exceeds 50 feet in height. (Note: Additional residential adjacent standard (i.e., setbacks) may apply, please see Section 11-6-604.D.5 Residential Adjacency Standards for Businesses, with the CB, Central Business District being exempt.)

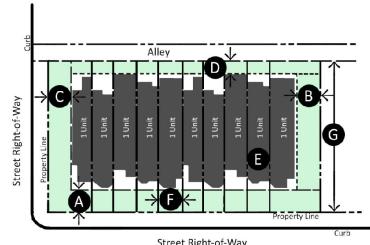
<sup>(3)</sup> Where fuel sales are permitted, fuel pump island canopies shall observe a minimum ten foot front yard (Yard, Front).

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

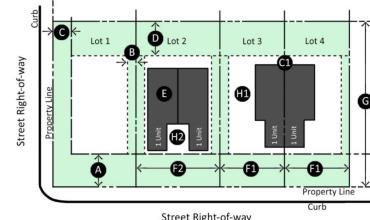
### § 11-1-5.06. Diagrams of Area Regulations.



Example of Typical Lot Dimensions	
A	Front Yard
B	Side Yard - Interior
C	Side Yard - Street
D	Rear Yard
E	Building Size
F	Lot Width
G	Lot Depth



Example of Townhome Lot Dimensions	
A	Front Yard
B	Side Yard - Interior
C	Side Yard - Street
D	Rear Yard
E	Building Size
F	Lot Width
G	Lot Depth



Example of Duplex Lot Dimensions	
A	Front Yard
B	Side Yard - Interior
C	Side Yard - Street
D	Rear Yard
E	Building Size
F	Lot Width
G	Lot Depth
H1	One Dwelling
H2	Two Dwellings
I1	One Dwelling
I2	Two Dwellings

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

## **ARTICLE VI ZONING DEVELOPMENT REGULATIONS**

### **§ 11-1-6.01. Screening requirements for residential and nonresidential properties.**

- A. Screening Required Between Nonresidential and Residential.
  1. A masonry screening wall separating a nonresidential zoning district from a residential zoning district shall be required pursuant to this section except when deemed physically impractical by the City Council.
  2. A required masonry screening wall shall be at least eight feet in height, but not more than ten feet, unless specifically permitted or required by this Section or unless approved by a PD, Planned Development District, Site Plan, or Specific Use Designation.
- B. Responsibility for Constructing the Screening Wall.
  1. When new construction abuts the boundary of an existing development, then the Developer of the new construction, regardless of whether the new construction is residential or nonresidential, shall erect the screening wall adjacent to the common property line with the existing development. The screening wall shall extend along the entire shared portion of the common property line.
  2. The design and construction material of the screening wall shall be as specified in this Section.
- C. Screening Walls for Loading Docks.
  1. Nonresidential uses with loading docks or delivery entrances that front a Collector Street or Arterial Street shall be screened by a minimum eight-foot tall masonry screening wall to obscure views of loading docks and loading spaces.
  2. Loading docks and delivery entrances within the LI, Light Industrial District and HI, Heavy Industrial District are exempt from the above requirement of Section 11-1-6.01.C.1.
  3. The following standards apply if service or loading dock areas are adjacent to residential uses.
    - a. Service/loading areas shall be screened from view at a height of eight feet at the residential property line.
    - b. This eight-foot wall must screen the entire loading dock or space.
    - c. Screening materials shall utilize similar masonry materials to the building's façades.
    - d. Service/loading areas shall be located at the side or rear of buildings.
- D. Screening Wall Materials.
  1. Any screening wall required by this Section shall be constructed of the following materials:
    - a. Brick, stone, or split-face concrete masonry unit; or
    - b. Pre-cast concrete wall or poured-in-place concrete wall with a similar appearance as brick, stone or split-face concrete masonry unit.
  2. All construction materials shall be earth-tone masonry colors including white.

- a. Where a masonry screening wall is constructed of split-face concrete masonry units or pre-cast concrete or poured-in-place concrete with a similar appearance as brick, the decorative or split-face side of the wall shall face the adjacent residential properties or street.
- b. An unfinished haydite block wall or a wall with non-earth-tone colors shall be prohibited.
- c. Smooth-faced concrete masonry units shall not be permitted as a construction material for a screening fence.

E. Screening Wall Design.

1. If masonry is used on the main building, then all masonry walls shall be constructed with the same masonry materials as the main building.
2. The screening wall shall be designed and constructed to prevent any drainage or erosion problems.
3. A minimum five-foot wide screening fence maintenance easement shall be provided on all lots abutting the required screening along the full length of the required screening fence, unless separated by an alley.

F. Mechanical Equipment Screening Requirements for Nonresidential Properties.

1. General.

- a. In all nonresidential development, all mechanical equipment whether ground-mounted, roof-mounted or otherwise attached to the building shall be screened from view.
- b. Mechanical equipment areas shall be constructed, located and screened to prevent interference with the peace, comfort, and repose of the occupants of any adjoining building or residence.
- c. The location, construction, and screening of all mechanical equipment shall be shown on the Site Plan or design drawings.

2. Ground-Mounted Mechanical Equipment.

Ground-mounted mechanical equipment, with the exception of an electricity delivery provider's distribution equipment, shall be placed behind a screening wall or living screen (e.g., landscaping materials) equal to or greater than one foot above the height of the unit.

3. Roof-Mounted Mechanical Equipment.

- a. Roof-mounted mechanical equipment shall be screened from view with a parapet wall, mansard roof or alternative architectural element.
- b. The height of the screening element shall be equal to or greater than the height of the mechanical unit(s) provided that the element shall not extend more than six feet above the roof.
- c. When the height of a mechanical unit exceeds the maximum permitted height of the screening feature, an additional roof setback for the unit shall be required at a ratio of two horizontal feet for each additional one foot of vertical height above the maximum six feet.

- d. Screening for mechanical equipment shall apply to new building construction only.
- G. Screening of Outdoor Waste Storage for Nonresidential, Single-Family Attached, and Multiple-Family Residential Properties.

1. General.

- a. Waste storage areas housing refuse containers, dumpsters, and similar facilities shall be constructed, located, and screened to prevent interference with the peace, comfort, and repose of the occupants of any associated or neighboring building or residence.
- b. The location, construction, and screening of all waste storage areas shall be shown on the Site Plan.

2. Screening Required.

Refuse containers, trash dumpsters/containers, trash compactors, box compactors, and other similar containers shall be screened on three sides with a masonry screening wall that shall be constructed to a minimum height of one foot above the container height, but shall not exceed eight feet in height.

- a. The container shall be screened by the masonry wall capable of screening the area.
- b. The screening wall shall be similar to or extensions of the development's architectural design.

3. Incidental Use Requirement and Location Standards.

Refuse containers, trash dumpsters/containers, trash compactors, box compactors, and other similar containers that are used for waste disposal purposes shall:

- a. Only be allowed as an incidental use; and
- b. Only be allowed when located behind the building line established by the structure and not within any required landscaped area.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-6.02. Off-street parking and loading requirements.**

A. Applicability.

1. No building or structure or part thereof shall be erected, altered, or converted for any permitted use unless vehicle parking is provided according to the following standards, or unless subject to an exception.
2. With the exception of the CB, Central Business District, vehicle parking shall be provided on the lot or tract, on an immediately contiguous lot or tract, or within 150 feet of such building or structure.
3. An established use lawfully existing at the effective date of this Zoning Ordinance need not provide any additionally vehicle parking to meet the requirements of the Zoning Ordinance; however, no existing vehicle parking in connection with a legal use may be reduced below the minimum number of spaces as hereinafter required.

B. General Requirements.

1. Parking Areas and Driveways.

Unless otherwise noted, parking areas and driveways shall be curbed, paved and maintained to the City specifications.

2. Parking Space Dimension (Standard).

In all zoning districts, all parking spaces shall not be less than nine feet by 20 feet.

C. Parking Space Schedule: Single-Family and Duplex Uses.

1. The minimum off-street parking spaces for single-family and duplex uses shall be two spaces for each dwelling unit, in addition to any garage parking spaces.

D. Parking Space Schedule: Multi-Family Uses.

1. Off-street parking shall be provided behind the front building line in the side or rear yard of the lot or tract of land upon which an Apartment building is constructed.

2. Off-street parking shall be provided to meet the requirements of the residents and their guests in each Apartment project according to the following standards:

- a. One space for each studio unit (i.e., an apartment containing only one main room),
- b. One and one-half spaces for each one-bedroom unit,
- c. Two spaces for each unit with two bedrooms,
- d. Two and one-half spaces for each unit with three or more bedrooms, plus one additional space for each four units in development.

E. Parking Space Schedule: Nonresidential Uses Applicable to All Districts.

Off-street parking spaces shall be provided according to the following. In cases where a use is not listed below, see Section 11-1-6.02.G Parking Requirements for New or Unlisted Use.

**Table 6: Parking Space Schedule: Nonresidential Uses Applicable to All District**

Use	Parking Standard
1. Bank, Savings and Loan, or Similar Financial Establishment	One space for each 400 square feet of floor area.
2. Bed and Breakfast Facility	Two spaces per room for rent, plus the requirements for a normal residential use.
3. Bowling Alley	Five spaces for each lane.
4. Child-Care, Kinder-gartens, Day Schools, and Similar Establishments	One space per eight pupils plus one space per employee.
5. Church or Other Place of Worship	One space per four seats within the main sanctuary.
6. Clinic or Doctor's Office	One space for each 300 square feet of Floor Area, minimum of five.

**Table 6: Parking Space Schedule: Nonresidential Uses Applicable to All District**

<b>Use</b>	<b>Parking Standard</b>
7. Commercial Outdoor Amusement	Two spaces per three seats on amusement rides, or ten spaces per ride, sports court, batting cage facility, or attraction with no specific or defined seating.
8. Commercial Use (not listed above)	One space for each two employees per maximum shift or one space per each 1,000 square feet of floor area, whichever is greater.
9. Convalescent Home or Nursing Home or Assisted Living Facility	One space for each six rooms or beds.
10. Gasoline Service Station	Minimum of six spaces, areas adjacent to pumps where vehicles park to refuel shall not be considered a parking space.
11. Golf Course	Minimum of 30 spaces.
12. High School, College or University	One space for each classroom, laboratory or instruction area, plus one space for each four students accommodated in the institution.
13. Hospitals	One space for every three beds.
14. Hotel or Motel	One space for each room or unit, plus one space for each two seats in the largest meeting room.
15. Industrial Use (not listed above)	One space for each two employees per maximum shift or one space per each 1,000 square feet of floor area, whichever is greater.
16. Institutions of a Philanthropic Nature	Ten spaces plus one space for each employee.
17. Library or Museum	Ten spaces plus one for each 300 square feet of Floor Area.
18. Manufacturing, Processing or Repairing	One space for each two employees or one space for each 1,000 square feet of floor area, whichever is greater.
19. Model Home	Four spaces per Model Home.
20. Offices, General	One space for each 400 square feet of Floor Area, minimum of five spaces.
21. Places of public assembly not listed	One space for each 400 square feet of Floor Area, minimum of five spaces.
22. Recreational, Private or Commercial Area or Building (Other than Listed)	One space for each 400 square feet of Floor Area, minimum of five spaces.
23. Restaurant or Cafeteria	One space for every four seats under maximum seating arrangements, minimum of five spaces, plus one space for every 100 square feet of kitchen area.

**Table 6: Parking Space Schedule: Nonresidential Uses Applicable to All District**

<b>Use</b>	<b>Parking Standard</b>
24. Retail or Personal Service	One space for each 300 square feet of floor area, minimum of five spaces.
25. RV Park	Two spaces for each recreational vehicle space.
26. Schools, Elementary, Junior High	One space for each classroom, plus ten spaces.
27. Storage or Warehousing	One space for each two employees or one space for each 1,000 square feet of floor area, whichever is greater.
28. Theaters, Meeting Rooms, and Places of Public Assembly	One space for every four seats.

F. Off-Street Parking Regulations.

1. In computing the parking requirements for any building or development, the total parking requirements shall be the sum of the specific parking space requirements for each class of use included in the building or development.
2. Floor Area of a structure devoted to off-street parking of vehicles shall be excluded in computing the off-street parking requirements of any use.

G. Parking Requirements for New or Unlisted Use.

Where questions arise concerning the minimum off-street parking requirements for any use not specifically listed, the requirements may be determined by the Planning Division Manager as those of a similar use.

H. Circulation and Parking Requirements for all Nonresidential Developments.

1. Applicability.

The regulations provided in this section shall apply to all nonresidential development.

2. Parking Aisles.

Parking aisles shall generally be designed perpendicular to the front of the primary building in the development.

3. Wheel Stops or Bollards.

If curbs are not provided, then parking spaces that face and are adjacent to a building or required landscaped area shall utilize wheel stops or bollards within 12 inches from the end of the space.

I. Handicap Parking Space(s).

Handicap parking space(s) shall be provided according to all state and federal laws and regulations, as may be amended.

J. Parking Space Design Details.

Each standard off-street surface parking space size shall be in accordance with the design standards as shown on the following illustrations for space size and design.

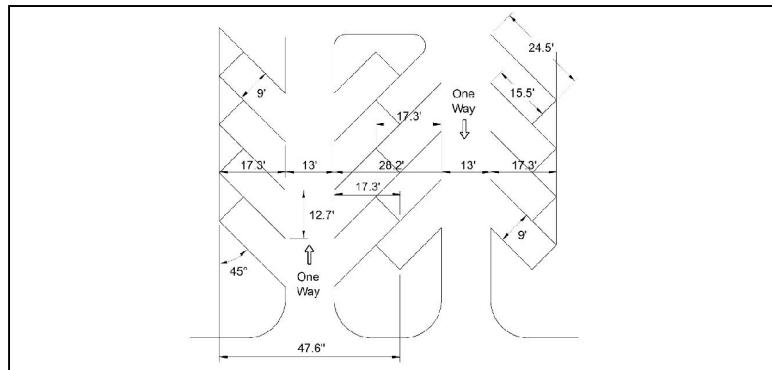


Figure 2: 45 Degree Layout with One-Way Traffic

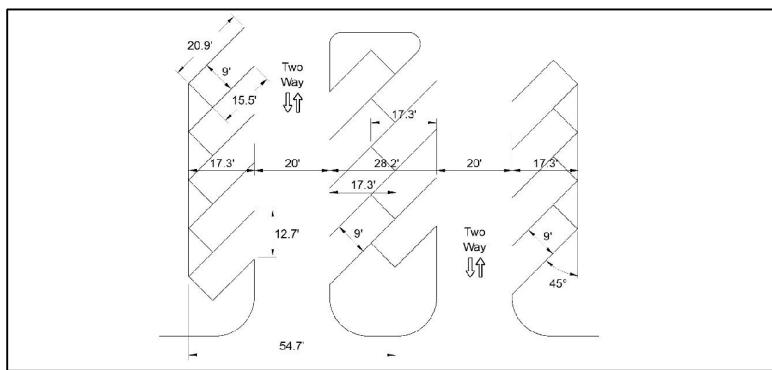


Figure 3: 45 Degree Layout with Two-Way Traffic

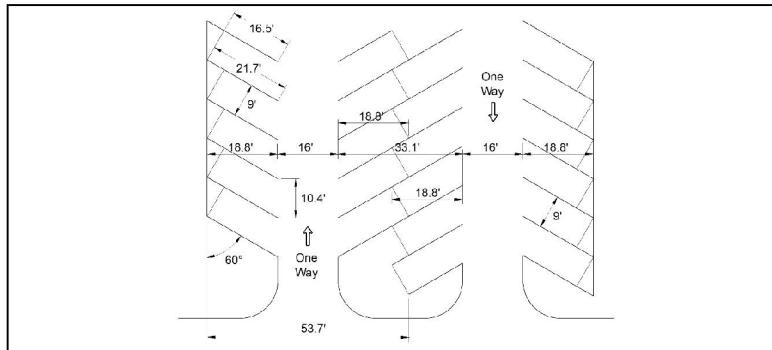


Figure 4: 60 Degree Layout with One-Way Traffic

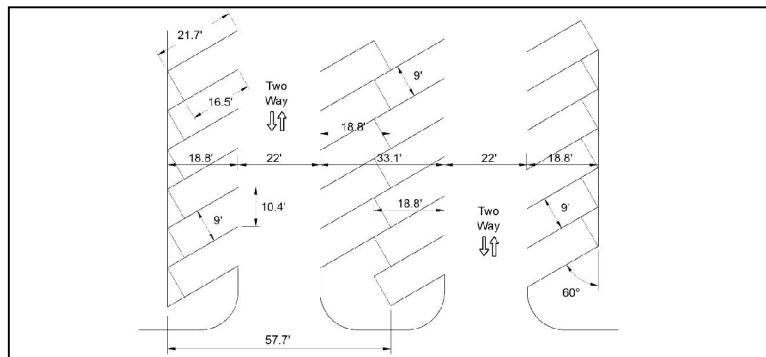


Figure 5: 60 Degree Layout with Two-Way Traffic

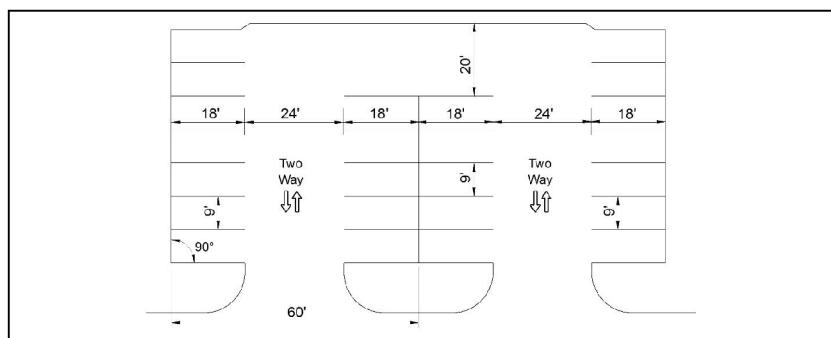


Figure 6: 90 Degree Layout

#### K. Off-Street Loading Space: All Districts.

All nonresidential uses having 50,000 square feet or more of gross floor area shall provide adequate off-street facilities for loading and unloading of merchandise and goods within or adjacent to the building, in such a manner as not to obstruct freedom of traffic movement of the public streets, alleys, or sidewalks.

1. All drives and approaches shall provide adequate space and clearances to allow for the maneuvering of trucks off-street.
2. Each site shall provide a designated maneuvering area for trucks.
3. No maneuvering shall take place in the right-of-way, all maneuvering shall be on-site.

#### L. Vehicle Stacking Requirements.

##### 1. Stacking Space Definition.

Stacking spaces provide the ability for vehicles to queue on-site prior to receiving a service.

##### 2. Stacking Space Size and Location.

A stacking space shall be a minimum of nine feet in width and 25 feet in length and shall not be located within or interfere with any other circulation driveway, parking space, fire lane, or maneuvering area.

3. Additional Stacking Space Location Criteria.

Stacking spaces shall be provided behind the vehicle bay door, service window, or service island, whichever is applicable.

4. Number of Required Stacking Spaces (All Districts).

In all zoning districts, at the time any building or structure is erected or altered, stacking spaces shall be provided in the number and manner set forth in the following list of property uses.

**Table 7: Number of Required Stacking Spaces (All Districts)**

Use	Number of Required Stacking Spaces
a. Automated Teller Machine (ATM)	
b. Automobile Oil Change and Similar Establishments	
c. Car Wash, Full Service	
d. Car Wash, Self Service (Automated)	
e. Car Wash, Self Service (Drying Areas and Vacuum Islands)	
f. Car Wash, Self Service (Open Bay)	
g. Child-care, Kindergartens, day schools, and similar child training and care establishments	
h. Dry Cleaning, Pharmacy, or Other Retail Establishments with a Drive-Through	
i. Financial Institution	
j. Restaurant with Drive-Through	
k. Schools, Public or Private	

5. Single Stacking Space Required after the Final Window, Food Pick-Up Window, or Stopping Point.

A single stacking space shall be provided after the final window, order board, or stopping point to allow vehicles to pull clear of the transaction area prior to entering an intersecting on-site driveway or maneuvering aisle.

6. Visibility Triangle Requirement for Drive-Through Lanes.

Buildings and other structures shall have a 10 foot visibility triangle at the end point of drive-through lane to provide adequate visibility to allow vehicles to safely exit the drive-through lane prior to merging into intersecting driveways or maneuvering aisles.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-6.03. Lighting standards.**

**A. Purpose.**

The purpose of this subsection is to:

1. Reduce the problems created by improperly designed and installed outdoor lighting;
2. Reduce problems of glare on operators of motor vehicles, pedestrians and land uses;
3. Minimize light trespass;
4. Reduce the energy and financial costs of outdoor lighting by establishing regulations, which limit the area that certain kinds of outdoor lighting fixtures can illuminate; and
5. Preserve the night sky as a natural resource.

**B. General Requirements.**

The following standards shall apply to all exterior lighting except public street lighting and other lighting (see the City's engineering standards for lighting requirements in a public right-of-way) that is specifically exempted by this subsection.

**1. Shielded Light Source Required.**

- a. All luminaires located on nonresidential use properties shall be designed so that the light source (bulb or lamp) is completely shielded from direct view of at a point three feet above grade on the lot line abutting a residentially used or zoned property.
- b. In all other instances, the light source must be completely shielded from direct view of at a point six feet above grade on the lot line.
- c. See Figure 7: Shielded/Cutoff Light Source Required for examples.

**2. Light Emitting Diode (LED) Lighting Required.**

All exterior lighting governed by this section 11-1-6.03 Lighting Standards shall be composed of LED luminaires and no other form or type of luminaire, such as a metal halide lamp, is permitted.

**3. Light Trespass (foot-candle) Limitation.**

All luminaires located on private property shall be designed or positioned so that the maximum illumination at the property line next to a residentially used or zoned property shall not exceed one-quarter ( $\frac{1}{4}$ ) foot-candle and shall not exceed one-half ( $\frac{1}{2}$ ) foot-candle adjacent to a street right-of-way.

**4. Canopy Lighting.**

Lighting recessed for canopies covering fueling stations at automobile service stations and drive-through facilities shall not illuminate abutting properties and the luminaires shall be designed so that the light source and lenses (bulb or lamp) are completely shielded from direct view at a point five feet above the grade on the lot line.

**5. Outdoor Advertising Lighting.**

Outdoor advertising lighting shall conform to all applicable laws, ordinances, rules, and regulations.

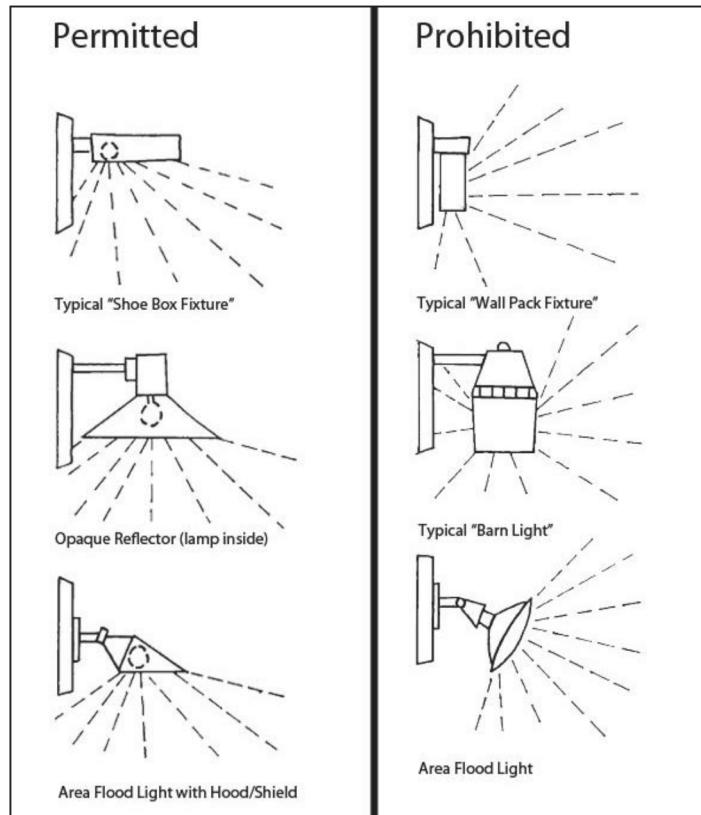


Figure 7: Shielded / Cutoff Light Source Required

## 6. Wall or Roof Lighting.

- a. Wall or roof lighting may be used to illuminate the pedestrian walkways, entrance areas and yard areas within 30 feet of the building.
- b. No wall or roof lighting shall be used to illuminate areas for motor vehicle parking or access unless the Building Official finds the following:
  - i. That the proposed lighting is not in conflict with the stated purpose;
  - ii. That the proposed lighting will not unreasonably harm or restrict public health, safety and welfare or create a nuisance; and
  - iii. The proposed lighting will not result in an impairment of vision creating a hazard for vehicular or pedestrian traffic.

## 7. Open Area Used for Motor Vehicle Parking, Storage or Access.

- a. Any open area used for motor vehicle parking, storage or access may be illuminated with freestanding luminaires.
- b. Freestanding luminaires are permitted to be a maximum of 30 feet in height.
- c. When a luminary is located within 100 feet of a residentially used or zoned property, the maximum permitted luminaires height shall be 20 feet.

- d. All luminaires must have a total cutoff angle equal to or less than 90 degrees.
  - e. The use of exterior lighting with a cutoff angle greater than 90 degrees shall be permitted only when the Building Official finds the following:
    - i. That the proposed lighting is not in conflict with the stated purpose;
    - ii. That the proposed lighting will not unreasonably harm or restrict public health, safety and welfare or create a nuisance; and
    - iii. The proposed lighting will not result in an impairment of vision creating a hazard for vehicular or pedestrian traffic.
8. Signs.

Signs shall conform to all applicable laws, ordinances, rules, and regulations.
  9. Flags, Statues, and Other Similar Objects.

Outdoor light fixtures used to illuminate flags, statues, or any other objects mounted on a pole, pedestal, or platform shall use a very narrow cone of light for the purpose of confining the light to the object of interest and minimize spill-light and glare.
  10. Buildings.

Building façades and architectural features of buildings may be floodlighted when the following conditions are met:
- C. Illumination Levels.
1. Engineering Society of North America Lighting Handbook.

The illumination levels contained in the Illuminating Engineering Society of North America Lighting Handbook, as amended from time to time, shall be used as a guide for providing adequate and safe illumination levels.
  2. Private or Public Development Project.

The Building Official may require conformance with the illumination levels contained in the Lighting Handbook, Illuminating Engineering Society of North America as part of the review and approval of a private or public development project.
- D. Method of Measurement.
1. Light Measuring Meter.
    - a. The light measuring meter shall have a color and cosine-corrected sensor with multiple scales and shall read within an accuracy of plus or minus five percent.
    - b. It shall be tested, calibrated, and certified by an independent commercial photometric laboratory or the manufacturer within one year of its use.
  2. Measurements/Readings.
    - a. Illumination levels shall be measured in foot-candles with a meter sensor in a horizontal position at an approximate height of three feet above grade.

- b. Maximum illumination readings are to be taken directly beneath the luminaires.

E. Exterior Lighting Plan.

1. Submission.

a. Applicability.

A lighting plan shall be required anytime exterior lighting is proposed, or modified, that is associated with a use of greater intensity than a one or two family dwelling.

b. Submission Official.

The lighting plan shall be submitted to the Building Official.

c. Submission Criteria.

The submission shall contain but shall not necessarily be limited to the following:

i. Plans indicating the location of the exterior lighting on the premises, and the type of illuminating devices, fixtures, lamps, supports, reflectors, and other devices;

ii. Description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections where required) and height of the luminaires; and

iii. Photometric plan and data sheets, such as that furnished by manufacturers, or similar to that furnished by manufacturers, showing the angle of cut off or light emissions.

d. Once the plan is approved by the Building Official, the exterior lighting of the property shall conform to the approved lighting plan.

e. A lighting plan required by Section 11-1-6.03.E Exterior Lighting Plan shall expire at the same time that the approved Site Plan for which it was submitted expires.

2. Lamp or Fixture Substitution.

Should any outdoor light fixture or the type of light source therein be changed after the issuance of the Building Permit or Certificate of Occupancy and Compliance, a change request with adequate information, as required in Section 11-1-6.03.E.1 above herein, to ensure compliance with the Zoning Ordinance must be submitted to the Building Official for review and approval prior to the substitution.

F. Prohibited.

1. Prohibited Lighting Fixtures.

a. "Cobra head" type lighting fixtures having dished or "drop" lenses or refractors shall be prohibited.

b. See Figure 7: Shielded/Cutoff Light Source Required for examples.

2. Lights Prohibited from Flickering or Flashing.

Flickering or flashing lights shall be prohibited.

**G. Exemptions.**

The following are exempt from the standards contained in the Zoning Ordinance.

**1. Decorative Seasonal Lighting.**

Decorative seasonal lights used for temporary purposes.

**2. Residential Dwellings.****a. Lighting for residential dwellings, provided that:**

- i. The lamps have a power rating of less than or equal to 75 watts,
- ii. A cutoff component is incorporated in the design of the luminaires, and
- iii. The lighting level at the property line shall not exceed the maximum level specified within the Zoning Ordinance.

- b. The maximum lighting level at the property line may be exceeded in cases where the lamp is turned on and off by a motion sensor and the lamp is not on for a continuous period exceeding ten minutes.

**3. Luminous Tube Lighting.**

Luminous tube lighting is exempt from the Zoning Ordinance.

**4. Specific Signs.**

Signs of the type constructed of translucent materials and wholly illuminated from within are exempt from the shielding requirement.

**5. Temporary Emergency Lighting.**

Temporary emergency lighting used by police, fire fighters, or other emergency services, as well as all vehicular luminaires.

**6. Hazard Warnings.**

Hazard warning luminaires, which are required by federal and state regulatory agencies.

**7. Residential Party Lights.**

- a. Residential party lights for social gatherings. Such temporary outdoor lighting includes, but is not limited to, strings of lights and lanterns.

- b. The party lights shall be removed within a two weeks after a social gathering.

**8. Specific Recreation.**

- a. Because of their unique requirement for nighttime visibility and their limited hours of operations, ball diamonds, playing fields and tennis courts are exempted from the general standards of this section.

- b. Lighting for these outdoor recreational uses shall be shielded to minimize light and glare from spilling over onto a residentially used or zoned property.

- c. The maximum permitted illumination at the residential property line shall not exceed two foot-candles.

9. Public Street or Sidewalk Projects.

The City Council may vary from the requirements of this section as part of the approval of public street or sidewalk projects.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-6.04. Building façade material standards.**

A. Masonry Construction.

1. Class 1: Masonry Construction.

Class 1: Masonry Construction shall include the following exterior construction materials:

- a. Fired brick,
- b. Natural and manufactured stone,
- c. Granite, and
- d. Marble.

2. Class 2: Masonry Construction.

Class 2: Masonry Construction shall include the following exterior construction materials:

- a. All Class 1: Masonry Construction,
- b. Architectural concrete block,
- c. 3-step stucco process, and
- d. Tilt wall concrete panels.

3. Class 3: Masonry Construction.

Class 3: Masonry Construction shall include the following exterior construction materials:

- a. All Class 1: Masonry Construction,
- b. All Class 2: Masonry Construction,
- c. EIFS, and
- d. Sealed and painted concrete block.

B. Exterior Material Requirements for all Single-Family Units.

1. Applicability.

This section applies to all single-family (attached and detached) units.

2. Residential Material Standards.

- a. The exterior façades of a main building or structure shall be constructed of 85 percent Class 1: Masonry Construction unless otherwise specified in this Zoning Ordinance.
  - i. Individual exterior walls shall contain no less than 50 percent Class 1: Masonry Construction.
- b. Fiber Cement Siding.
  - i. Fiber cement siding shall be considered a Class 1: Masonry Construction material for single-family (attached and detached) units.
  - ii. Fiber cement siding may also be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers of rear entry garages, columns, chimneys not part of an exterior wall, or other architectural features.

**C. Exterior Material Requirements for all Multi-family Units.**

1. Applicability.

This section applies to all multi-family units.

2. Residential Material Standards.

The exterior façades of a main building or structure shall be constructed of 85 percent Class 1: Masonry Construction on the first and second floors and 50 percent on all other floors.

**D. Exterior Material Requirements for Nonresidential Districts and Uses.**

1. Applicability.

This section applies to all nonresidential buildings.

2. Nonresidential Material Standards.

a. The exterior façades of a main building or structure shall comply with the following tables.

**Table 8: Office and Retail Zoning Districts**

Section Ref.	Applicable Zoning District	Exterior Material Requirements per District
Section 11-1-3.14	O-1, Office District	Exterior façades of a main building or structure shall consist of 100 percent Class 2: Masonry Construction.
Section 11-1-3.15	O-2, Office District	
Section 11-1-3.16	LR, Local Retail District	
Section 11-1-3.17	RR, Regional Retail District	
Section 11-1-3.18	CB, Central Business District	

**Table 9: Commercial Zoning Districts**

<b>Section Ref.</b>	<b>Applicable Zoning District</b>	<b>Exterior Material Requirements per District</b>
Section 11-1-3.19	C, Commercial District	Exterior façades of a main building or structure adjacent to a public street shall consist of 75 percent Class 2: Masonry Construction. All exterior façades of a main building or structure shall consist of at least 100 percent Class 3: Masonry Construction.

**Table 10: Business and Technology Park Zoning Districts**

<b>Section Ref.</b>	<b>Applicable Zoning District</b>	<b>Exterior Material Requirements per District</b>
Section 11-1-3.20	BP, I-20 Business Park District	Exterior façades of a main building or structure adjacent to a public street shall consist of 100 percent Class 2: Masonry Construction.
Section 11-1-3.21	TP, Technology Park District	All exterior façades of a main building or structure shall consist of at least 60 percent Class 3: Masonry Construction.

**Table 11: Industrial Park Zoning Districts**

<b>Section Ref.</b>	<b>Applicable Zoning District</b>	<b>Exterior Material Requirements per District</b>
Section 11-1-3.22	LI, Light Industrial District	Exterior façades of a main building or structure adjacent to a public street shall consist of 100 percent Class 2: Masonry Construction or architectural metal panels (i.e. metal composite materials and composite metal cladding).
Section 11-1-3.23	HI, Heavy Industrial District	All exterior façades of a main building or structure shall consist of at least 15 percent Class 3: Masonry Construction or architectural metal panels (i.e. metal composite materials and composite metal cladding).

- b. If a nonresidential use is within a residential district, then all exterior façades of a main

building or structure shall consist of 100 percent Class 2: Masonry Construction.

3. Maximum Material Coverage.

No single building material shall cover more than 90 percent of the front of any building, with the exception of on-site utility or service structures.

4. Windows.

- a. Clear glass shall be used for commercial storefront display windows and doors.
- b. Windows shall be individually defined with detail elements such as frames, sills, and lintels, and placed to visually define the building stories.

5. Residential Adjacency Standards for Businesses.

a. Purpose and Intent.

In order to preserve and protect the integrity of single-family residential neighborhoods and in an effort to protect the quiet enjoyment of single-family residential properties and to maintain property values, the City has determined that it is necessary and appropriate to adopt specialized regulations for non-single-family residential uses and buildings that are constructed within 400 feet of properties used for single-family residences.

b. Applicability.

- i. The following Residential Adjacency Standards for Businesses shall apply to all non-single-family residential buildings or uses that lie within 400 feet of properties used for single-family residences.
- ii. For purposes of the Section, the 400 foot distance shall be measured from the non-single-family residential building or use to the property line of the single-family residence.
- iii. All buildings within the CB, Central Business District are exempt from Residential Adjacency Standards for Businesses.

c. Masonry Requirements for Building Façades:

- i. All façades of a building shall be finished on all four sides with the same materials (meeting the masonry requirements, see Section 11-1-6.04 Building Façade Material Standards), detailing, and features.
- ii. The use of cement, standard (i.e., smooth-faced) concrete block, concrete tilt wall, stucco and other masonry materials of similar characteristics is not permitted.
- iii. Exception for Façades not Visible from Public Streets:
  - (a) The rear wall of the building may be constructed of standard concrete block, concrete tilt wall, stucco and other masonry materials of similar characteristics provided that it is of the same color as the other façades.
  - (b) This exception does not apply to buildings on pad sites (i.e., "out" buildings).

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-6.05. Building design standards for nonresidential buildings.**

A. Purpose and Intent.

This section of the Zoning Ordinance is intended to ensure that all nonresidential buildings shall be compatible with the architectural character and design in terms of style, mass, height, roof design, and other exterior elements.

B. Applicability.

All nonresidential buildings shall comply with this Section 11-1-6.05, except buildings within the LI, Light Industrial District or the HI, Heavy Industrial District.

C. Nonresidential Building Orientation.

Any building (excluding parking garages) within view of a public Right-of-Way shall either face such Right-of-Way or shall have a façade facing such Right-of-Way in keeping with the character of the Front Façade.

D. Nonresidential Design Elements Requirements.

- Following is a list of design elements that, based upon the size of a building (see Section 11-1-6.05.D.2 below), shall be incorporated into a building's design:

**Table 12: Menu of Nonresidential Design Elements**

1	Canopies, awnings, or porticos
2	Overhangs
3	Recesses or projections
4	Arcades
5	Peaked roof forms
6	Arches
7	Outdoor patios
8	Display windows
9	Architectural details; such as, tile work or moldings, integrated into the building façade
10	Integrated planters or wing walls that incorporate landscape and sitting areas
11	Offsets, reveals or projecting ribs used to express architectural or structural bays

- A building's floor area shall determine the minimum number of required design elements implemented in its construction as set forth in the table below:

**Table 13: Required Minimum Number of Design Elements**

<b>Building Square Footage</b>	<b>Minimum Number of Design Elements</b>
0—50,000 s.f.	3
50,001—100,000 s.f.	5
Over 100,001 s.f.	7

**E. Nonresidential Front Façade Entry Requirements.**

1. A Front Façade shall be articulated and designed to present a distinctive entry presence, emphasizing the building's entry point along the façade.
2. Each building shall provide a sheltered entry.

**F. Nonresidential Building Articulation.**

Façade depth and height articulation shall be required on the front façade of a building, per the following:

1. Depth articulation of at least three feet shall be required for every 50 feet of building façade length. Depth articulation applies only below the roofline.
2. Height articulation for flat roofs of at least five feet shall be required for every 50 feet of building façade length. Pitched roofs do not require height articulation.

**G. Tripartite Building Design/Composition.**

1. Buildings shall incorporate a tripartite building composition (base, middle and top).
2. The tripartite shall be proportioned to the other elements of the tripartite and the overall structure.



Figure 8: Tripartite Building Design/Composition

#### H. Roof Design Standards.

1. All structures shall be constructed with a pitched roof, flat roof with a parapet, true mansard roof, or any combination thereof.
2. All flat roof surfaces shall be screened from ground level views so that such roof surfaces are not visible.
3. Roofs of stairwells and elevator machine rooms and other similar spaces shall be exempt from roofing design standards so long as they are not visible from ground level. For the purpose of this paragraph, visible shall be defined as "capable of being seen at a height of six feet while standing at the highest grade on the property line."

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

#### **§ 11-1-6.06. Building design standards for multiple-family use.**

##### A. Multiple-Family Design Standards for the MF-16 and MF-22 Districts.

###### 1. Applicability.

This subsection shall apply to the multiple-family (MF) uses within the MF-16, Multiple-Family Dwelling District and the MF-22, Multiple-Family Dwelling District.

###### 2. Building Orientation and Construction.

###### a. Building Orientation Adjacent to a Single-Family Zoning District.

- i. Unless set back 100 feet or more from the property line adjoining a single-family zoning district, a MF building shall be designed so that the smallest façade faces the single-family property. The purpose of this regulation is to limit to the greatest extent possible the number of windows and balconies that face towards or look onto the single-family properties.

- ii. If a MF development is bounded by single-family developments on multiple property lines, then the longest lines shall take priority over the smaller property lines.
  - b. Parking.
    - i. Parking is only allowed between the building and a public street when located at or beyond the required landscape buffer and screened with a headlight screen of earthen berms or a row of shrubs.
    - ii. Parking areas located between the building and a public street are also subject to tree planting requirements specified in Section 11-1-6.06.A.4.b Other Parking and Circulation Requirements below.
    - iii. Buildings with enclosed garages, when adjacent to a public street, must face the garage doors internally to the development. Garage doors may not face a public street.
  - c. Detached Garages.

No detached garages may be located between residential buildings and a public street.
  - d. Pedestrian Connections.

Gated or un-gated pedestrian sidewalk connections will be provided around the perimeter of the property to adjacent schools, parks, and nonresidential developments.
3. Exterior Material Requirements and Design Elements.
- a. Exterior Materials.
    - i. See Section 11-1-6.04.C Exterior Material Requirements for all Multi-family Units for requirements.
  - b. Design Elements.
    - i. Flat roofs are prohibited.
    - ii. All residential windows shall be operable, with the exception of decorative windows, transoms, and side lights.
    - iii. All stairs (except entry stairs and stoops to individual units and shared hallways) and elevated walkways shall be screened with architectural features to avoid a direct view of a stairwell from public streets and open space.
    - iv. All multiple-family buildings must use three or more of the following architectural features.
      - (a) Awnings/Canopies.
      - (b) Balconies (a minimum of 25 square feet in size).
      - (c) Dormers.
      - (d) Offsets within each building (minimum 20 feet to receive credit).
      - (e) Patio (a minimum of 25 square feet in size).

- (f) Porches (a minimum of 25 square feet in size).
  - (g) Stoops (a minimum of two feet tall by four feet wide).
  - (h) Varied roof height in building (minimum 10 foot difference)
- v. Mailrooms or mail kiosks shall be 100 percent masonry and constructed of the same materials as the main structure.
- c. Façade Articulation.
    - In order to ensure the aesthetic value and visual appeal of multiple-family land uses and structures, façade articulation shall be required.
      - i. Façade articulation of at least three feet in depth or offset shall be required for every 30 feet in horizontal surface length.
      - ii. Façade offsets shall be shown, along with calculations verifying that the building elevations meet the above requirement, on a building façade (elevation) plan, and shall be submitted for review along with the site plan.
- 4. Parking and Circulation Standards.
    - a. Garages, When Provided.
      - i. Garages shall be 100 percent masonry and be constructed of the same materials as the main structure.
      - ii. The garage may be part of the dwelling structure.
      - iii. Garages shall be set back a minimum of eight feet from the circulation aisle.
    - b. Other Parking and Circulation Requirements.
      - i. Sub-grade parking under all or a portion of the building will not count against building height if half or more of sub-grade parking is below the average finish grade of the first floor.
      - ii. Dead-end drive aisles shall have a maximum of ten parking spaces.
      - iii. Mail kiosk shall have a minimum of five of the required parking spaces for the development within 50 feet, unless a drive-through facility is provided.
      - iv. Enclosed garage parking spaces shall be a minimum of 10 by 20 feet.
      - v. Drive aisles within the apartment complex must be configured to decrease speed and shall have a maximum of 500 feet in a straight length without an offset of a minimum of 30 feet, unless other traffic calming measures are approved by the Zoning Administrator and Fire Chief.
      - vi. Access to a public street in a single-family neighborhood will be limited access and will not function as a primary access point for the complex.
      - vii. Access to single-family alleys is prohibited.
      - viii. Direct access to a median opening is required when the property is located on a

divided thoroughfare. This shall be one of two access points required.

5. MF Structure Separation.

- a. Multiple-Family structures on the same parcel shall have the following minimum distance between structures.
  - i. From main structure to main structure with walls that have openings for doors or windows on façades facing each other.

**Table 14: MF Structure Separation**

Site Layout	Distance between Structures
Face to Face	50 feet
Face to End	30 feet
Corner to Face or End	30 feet
End to End	30 feet

- ii. From main structure to main structure with walls that do not have openings, the minimum distance between structures is 20 feet for one-and two-story buildings and 30 feet for three-story buildings.
  - iii. From main structure to accessory buildings or pools, the minimum distance between structures is 20 feet.
  - iv. From main structure to free standing garage building, the minimum distance between structures is 30 feet
- b. A multiple-family structure on a parcel of land shall not be closer than a distance of 50 feet to any nonresidential building, excluding garages, on an adjacent property.

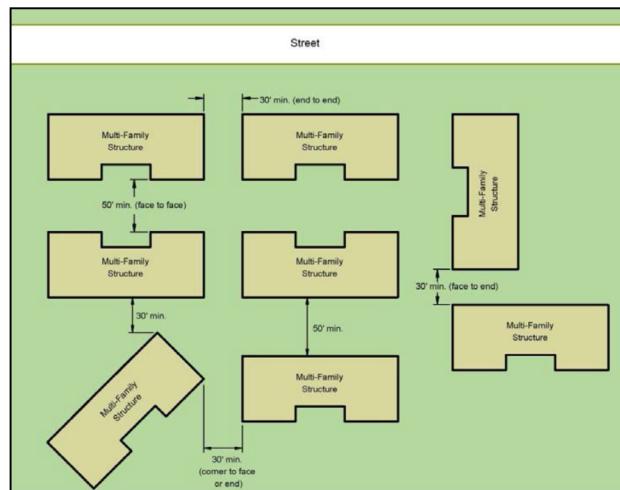


Figure 9. MF Structure Separation

B. Multiple-Family Design Standards for the CB, Central Business District.

1. Applicability.

This subsection shall apply to the multiple-family (MF) uses within the CB, Central Business District.

2. Design Elements.

The following design elements shall be incorporated into multiple-family uses within the CB, Central Business District, except MF uses may occupy or reoccupy an existing building without complying with the following design elements.

a. Windows on the First Floor.

At least 25 percent of the first floor façade along a street shall consist of windows.

b. Building Design.

At least 75 percent of the MF building's façade shall be located along the minimum front setback.

c. Parking Located in the Center of a Lot with Buildings along the Edge of the Property.

In order to promote a more walkable and urban form, parking lots or parking structures shall be located in the interior of the property with MF buildings located along the edges of the property.

d. Direct Access to the Street Required.

MF units adjacent to a street shall have direct access via a door to the street.

e. Balconies along the Street Required.

i. Balconies shall be required for every exterior MF unit adjacent to the street.

ii. Balconies may extend five feet into the minimum setback.

f. Parallel or Angled Parking along the Street Allowed.

Parallel or Angled parking is allowed along the street frontage.

g. Street Furnishing along the Street Required.

i. Areas along street sidewalks or adjacent to buildings shall incorporate features to promote a walkable environment, such as seats and benches.



Figure 10. Example of Street Furnishings

- ii. Benches shall be provided along sidewalks or adjacent to buildings at a rate of one bench per 100 linear feet of sidewalk.
  - iii. Litter receptacles or planters shall be provided along sidewalks or adjacent to buildings at a rate of one bench per 100 linear feet of sidewalk. Street furnishings shall be low maintenance and resistant to vandalism.
  - iv. Street furnishings shall maintain an unencumbered walkway for pedestrians.
  - v. Street furnishings may be grouped together at common locations, such as a plaza or outdoor sitting/eating area.
- h. Off-Site Parking Allowed.

Parking may be located off-site to allow an entire block to be built as one unified complex.  
(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### § 11-1-6.07. Multiple-Family Density Bonus.

#### A. Applicability.

1. The following density bonus options are available to all multiple-family uses.
2. These density bonuses are subject to the City Council's approval through a modified Site Plans Related to Building Permit Applications process. The process is modified from Section 11-1-9.05.C.2.b in that the City Council shall be the approval authority instead of the Planning Division Manager and Building Official.
3. An applicant can petition the City Council for all of the density bonus options listed below.
4. The City Council may either grant a full bonus or a partial bonus depending upon the degree that the proposed project meets the requirement of this section.
5. Density bonuses are cumulative and multiple density bonuses may be applied to the base density of the base zoning district.

#### B. Density Bonus Options.

##### 1. Affordable Units.

A density bonus of up to six dwelling units per acre may be granted if 50 percent of the additional units created by the bonus are dedicated for affordable housing. Affordable housing shall be for families earning less than 80 percent of median income, as reported for the City in the most recent census data, and calculated so that the monthly rent, including utilities, does not

exceed 30 percent of a family's monthly income.

2. Parking Structures.

A density bonus of up to 30 dwelling units per acre may be granted if a parking structure is built. The parking structure shall be designed to accommodate 100 percent of the required residential parking. If the development is part of a mixed use development, nonresidential parking does not have to be accommodated by the parking structure.

3. Retail Space Provided on First Floor.

A density bonus of up to six dwelling units per acre may be granted if the first floor of the multiple-family development is designed to accommodate retail uses. If granted by the City Council, then nonresidential uses shall be allowed per the uses of the LR, Local Retail District.

4. Stoops.

A density bonus of up to three dwelling units per acre may be granted if units with direct access to the street are designed with stoops at least six feet above street level.

5. Public Art, Open Space, and Public Amenities.

A density bonus of up to six dwelling units per acre may be granted if public art, a plaza, or other public open space, or public amenities are provided on-site or off-site (e.g., within the right-of-way). Due to the varied nature of each project and the proposed level of public art, public open space, or public amenities, these element should have a substantial influence on the public realm.

C. Alteration of Dimensional Regulations to Allow Buildings with Density Bonuses.

The City Council may, upon application of the developer, vary any of the dimensional regulations (maximum height, maximum coverage, etc.) found in either Section 11-1-5.04 or 11-1-5.05 to permit a development to meet any approved density bonus.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

## **ARTICLE VII BOARD OF ADJUSTMENT**

### **§ 11-1-7.01. Organization.**

#### **A. Creation.**

There is hereby created a Board of Adjustment consisting of five members, each to be appointed by the City Council for a term of two years beginning and ending on September 30 of the appropriate years.

#### **B. Membership.**

1. The terms of all current board members are extended to the September 30 following their currently scheduled dates of termination. The terms of three of the board members shall expire in odd-numbered years, while the terms of the other two board members shall expire in even-numbered years.
2. The City Council may also appoint up to four alternate members to serve concurrent terms as the regular members and serve on the board when requested to do so by the chairman of the board so that all cases to be heard by the Board of Adjustment shall always be heard by a minimum of four members. Two alternate members shall serve terms expiring in odd-numbered years and two expiring in even-numbered years. The Council may appoint members and alternates for terms of lesser duration than two years when necessary to comply with the terms of this subsection.
3. Vacancies in positions of both board members and alternate board members shall be filled by appointment of the Council for the remaining portion of the unexpired term. Board members and alternate board members may be removed for cause by the City Council upon written charges and after public hearing.
4. If a board member is absent from more than 25 percent of the duly called meetings in any period of 12 consecutive months or absent from more than two duly called meetings in any period of 12 consecutive months, whichever is greater, for any reason other than a medical reason which prevents the member's attendance, it shall be presumed that cause exists for removal of the board member by the City Council.
5. Similarly, if an alternate board member is absent from more than 25 percent of the duly called meetings at which his attendance is requested in any period of 12 consecutive months or absent from more than two duly called meetings at which his presence is requested in any period of 12 consecutive months, whichever is greater, for any reason other than a medical reason which prevents the member's attendance, it shall be presumed that cause exists for the City Council to remove the alternate board member.
6. The term "duly called meetings" includes all meetings of the board and all meetings of subcommittees of the board on which the board member serves.

#### **C. Rules.**

The board may adopt rules to govern its proceedings; provided, however, that such rules are not inconsistent with this section.

#### **D. Meetings.**

1. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.
2. All meetings of the board shall be open to the public.
3. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-7.02. Procedure for special exceptions, appeals and granting of variances.**

#### **A. Appeals.**

1. Appeals to the Board of Adjustment may be taken by a person aggrieved or by an officer, department or board of the City affected by any decision of an administrative officer. Such appeal shall be taken within 15 days' time after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the secretary of the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith have made available to the secretary of the board all the papers constituting the record upon which the action appealed from was taken.
2. Such notice of appeal properly filed as herein provided shall stay all proceedings in furtherance of the action appealed from, 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 on application and after notice to the officer from whom the appeal is taken and for due cause shown.
3. Upon notice of appeal being given to the secretary of the Board of Adjustment, before such appeal shall be construed as having been perfected, the applicant must deposit a fee per the Fee Schedule, and, when an appeal involves the issue of development of a specific tract of land, the applicant must concurrently file eight copies of a site plan drawn to scale showing existing and proposed development of the property in question.

#### **B. Variances and Special Exceptions.**

1. Application for variances from and special exceptions to the terms of this section shall be made in writing on forms provided in the office of the secretary of the Board of Adjustment by the prospective occupant and/or owner of the property.
2. The applicant must deposit a fee per the Fee Schedule, and, when an application involves the issue of development of a specific tract of land, the applicant must concurrently file eight copies of a site plan drawn to scale showing existing and proposed development of the property in question.

#### **C. Notice.**

1. The zoning Board of Adjustment shall hold a public hearing on all appeals and requests for special exceptions and variances, and written notice of all such public hearings shall be sent by

the secretary of the board on forms prepared by the Development Services Department to the applicant and all other persons deemed by the board to be affected thereby, and all owners of real property lying within 200 feet of the property on which the special exception, variance or appeal is proposed, such notice to be given not less than ten days before the date set for hearing to all such owners who have rendered their said property for city taxes as the ownership appears on the last approved city tax roll.

2. Such notice may be served by depositing the same, properly addressed and postage paid, in the City post office.
3. Notice shall also be given by publishing the same in a newspaper of general circulation in the City at least ten days prior to the date set for hearing, which notice shall state the time and place of such hearing; provided, however, all provisions contained herein with respect to the mailing and publishing of notices of hearing shall be deemed sufficient upon substantial compliance with this Section.
4. Burden of proof.

The burden of proof shall be on the applicant to establish the facts necessary, which the zoning Board of Adjustment must find before granting any special exception, variance or appeal as herein contained.

5. Limitation on reapplications.

When the Board of Adjustment has denied a proposal, no new applications of similar nature shall be accepted by the board or scheduled for 12 months after the date of board denial. Applications which have been withdrawn at or before the board meeting may be resubmitted at any time for hearing before the board.

6. Acceptance of applications.

The secretary to the board shall not accept an application for a special exception or a variance unless the same is specifically authorized by the Zoning Ordinance. If an appeal is made from a determination by the secretary that no variance or special exception of the nature requested is authorized by this the Zoning Ordinance, said appeal shall be to the City Council, without requirement for a public hearing, and the zoning Board of Adjustment shall not act on the item under question until a clarification or ruling has been obtained from the City Council.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-7.03. Jurisdiction.**

The Board of Adjustment shall have the following powers:

A. Appeals from Administrative Decisions.

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by any administrative official of the City in the enforcement of V.T.C.A., Local Government Code, Chapter 211, or the Zoning Ordinance.
2. The Board of Adjustment shall not have jurisdiction to consider an appeal or any matter that concerns or effects in any way the following:
  - a. The height of any residences, detached accessory structures or attached accessory

structures;

- b. The building materials of any structures;
  - c. The size and percentage of coverage of any lots;
  - d. The height, setback, materials or openness of any fences;
  - e. The determination of what constitutes the front, side or rear yard of a lot or lots; or
  - f. The requirement of on-site or off-site parking.
3. The Board of Adjustment shall continue to have jurisdiction to consider minor architecture projections.
  4. Any appeals of administrative decisions that concern or effect the above-listed matters may be appealed to the Midland City Council for consideration. Any such appeals must require the filing of a written application of appeal and the payment of a fee in accordance with the Fee Schedule.

B. Special Exceptions.

1. To hear and decide special exceptions to the terms of the Zoning Ordinance upon which such board is authorized and required to pass as follows:
  - a. Where a nonconforming building or a building occupied by a nonconforming use is in being, a permit for a special exception may be issued for any of the following:
    - i. The addition of off-street parking.
    - ii. The addition of off-street loading.
    - iii. The reconstruction, extension or enlargement of such building on the lot or tract upon which such nonconforming use was located as of the time it became nonconforming, provided that, where same has been destroyed by fire or the elements, such destruction does not exceed 50 percent of its reasonable value.
  - b. Require the discontinuance of nonconforming uses of land or structures under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of the Zoning Ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard to the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of the property. The board shall, from time to time, on its own motion or upon cause presented by interested property owners or on request of the City Council or Planning and Zoning Commission, inquire into the existence, continuation or maintenance of any nonconforming use within the City.
  - c. Allow as a special exception a sign in a residential zoning district to exceed the maximum size permitted by applicable ordinances subject to the following conditions:
    - i. Such exception shall only be made where the sign is to be located along the frontage of an arterial street. Arterial streets include only freeways, expressways, section-line

arterials and other streets of equal importance to section-line arterials. Main collector streets which serve and bisect residential sections shall not be construed as arterial streets.

- ii. The sign shall not exceed the maximum size permitted for a sign in the O-1 Office District, but the board may set lesser limits if it deems appropriate.
  - iii. The sign shall be set back from property lines a sufficient distance to prevent an adverse effect on adjacent property.
  - iv. The sign shall be designed to be generally consistent with the residential character of the zoning district in which it is located.
  - v. The sign shall conform to all regulations of the Zoning Ordinance except maximum size regulations, and only one such exception shall be granted for each arterial street frontage.
  - d. Permit such modifications of the height or yard regulations as may be necessary to secure equity in the development of a parcel of land where it has been demonstrated that, due to the existence of nonconforming structures, a substantial proportion of the other properties in the same area and zoning district are legally enjoying the conditions which the applicant is requesting.
  - e. Permit the placement of air conditioners and other similar equipment or machinery within minimum side yard areas, where circumstances would render such placement unobjectionable and where the equipment (if adjacent to a street or other public area) is adequately screened from sight.
  - f. Architectural or other projections of a minor extent beyond a height limit or into required front, side or rear yard areas, provided such projections do not constitute general encroachments of living, storage, equipment or other principal use areas beyond prescribed limits, and provided the board determines that the exception will not be contrary to the intent of the Zoning Ordinance restrictions.
2. The board shall deny a request for a special exception unless it shall find the following conditions have been met:
    - a. The board shall determine that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located.
    - b. The board finds that it is clearly and specifically authorized by the terms of the Zoning Ordinance to grant such a special exception and that it will be in harmony with the general purposes and intent of the Zoning Ordinance.

### C. Variances.

1. To authorize upon request in specific cases of unnecessary hardship such variance of the height, yard, area, coverage and floor area ratio regulations and required number of parking and loading spaces prescribed by the Zoning Ordinance as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the vicinity and the same zoning district by being of such restricted area, shape or slope that it cannot be reasonably

developed or used without such modification. In exercising its power to grant a variance in accordance with the Zoning Ordinance, the Board of Adjustment shall make findings and show in its minutes such facts and/or special conditions by which each of the following conditions has been satisfied:

- a. There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding condition or location that do not apply generally to other property in the same area and the same zoning district and that said circumstances or conditions are such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of the reasonable use of such land or building; and
  - b. That granting of the variance on the specific property will not adversely affect the land use pattern as outlined by the land use plan and will not adversely affect any other feature of the comprehensive plan for the area; and
  - c. That the variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity; and
  - d. That the variance to be granted is the minimum variance that will relieve the proven hardship.
2. In exercising such authority, the board shall be mindful that a variance shall not be granted where:
    - a. The variance will operate to relieve the applicant of conditions or circumstances:
      - i. Which are not inherent in the property itself, but rather are the result of the use or development of the property; or
      - ii. Which are caused by the division of land after the effective date hereof, which division of land caused the property to be unusable for any reasonable development under the existing regulations; or
      - iii. Which were otherwise self-imposed by the present or a previous owner; or
    - b. The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner; or
    - c. The variance would modify any requirement or condition placed upon a specific use permit which is in addition to the general requirements and provisions of the Zoning Ordinance or would modify any provision of a planned district; or
    - d. The variance would not only affect a specific parcel of property but would be of such general nature as to constitute, in effect, a change in zoning of said parcel or a larger area, or would merit consideration of an amendment to the Zoning Ordinance.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

#### **§ 11-1-7.04. Actions of the board.**

##### **A. Action.**

In exercising its powers the board may, in conformity with the provisions of V.T.C.A., Local Government Code Ch. 211, reverse or affirm, wholly or partly, or may modify the order, requirement,

decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions and safeguards to be complied with by the applicant. In exercising its powers, the board shall not consider, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination made by an administrative officer of the City, when such decisions involve matters listed in Subsection 11-1-7.03.A (Appeals from Administrative Decisions).

B. Vote.

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

C. Court of Record.

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 City 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 ground 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.

D. Effect.

Any special exceptions, variances or appeals authorized or granted by the Board of Adjustment either under the provisions of the Zoning Ordinance or under the authority granted to the Board of Adjustment under the statutes of the State of Texas, as may be amended, shall authorize the issuance of a building permit, or a certificate of occupancy, as the case may be, for a period of 180 days from the date of the favorable action on the part of the Board of Adjustment, unless said Board of Adjustment in its minutes shall, at the same time, grant a longer period. Provided, however, no building permit shall be issued pursuant to the granting of a special exception, variance or appeal by the Board of Adjustment until the expiration often days after the filing of the decision granting such special exception, variance or appeal in the office of the board. In the event any person entitled to do so should, within said ten days, appeal the decision of the Board of Adjustment to the courts, no permit shall be issued by the building official pursuant to such special exception, variance or appeal until the action of the courts supporting the decision of the board becomes final, and the issuance of a building permit or certificate of occupancy, as the case may be, is authorized for a period of 180 days from the date the action of the courts became final. If the building permit and/or certificate of occupancy shall not have been requested and issued within said 180-day period, or such extended period as the board may specifically grant, then the special exception, variance or favorable appeal shall be deemed waived and all rights thereunder terminated. Such terminating and waiver shall be without prejudice to a subsequent appeal to said board in accordance with the rules and regulations herein contained.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-7.05. Administrative staff.**

The Planning Division Manager shall serve as secretary to the board and the City Attorney shall serve as legal advisor.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

## **ARTICLE VIII**

### **ZONING APPLICATION SUBMITTAL AND PROCESSING PROCEDURES**

#### **§ 11-1-8.01. General application processing.**

##### **A. Universal Application Contents.**

###### **1. Application Forms.**

The City is hereby authorized to prepare Application Forms that include information requirements, checklists, architectural or engineering drawing sizes, the Applicant's contact information, and any other information necessary to show compliance with City codes.

###### **2. Basic Information for All Applications.**

All Applications shall contain the following information and shall be signed stating that the Applicant believes the information contained therein is true to the best of his or her knowledge:

- a. Identification of property owner and authorized agent;
- b. Description of the property and the nature of the development that is the subject of the application;
- c. Identification of all zoning classifications for the property;
- d. Identification of all pending legislative applications for the property;
- e. Identification of decisions on all quasi-judicial or administrative Applications for the property that remain in effect;
- f. Identification of all accompanying Applications;
- g. Identification of all pending or accompanying requests for relief;
- h. Demonstration of compliance with prior approved permits; and
- i. Application signed by the owner of an interest in the land subject to the Application, or the owner's designated agent.
- j. Any other information required in an Application Form.

###### **3. All Application Forms are available from the Planning Division Manager.**

##### **B. Universal Application Fees.**

1. Every Application shall be accompanied by the prescribed fees set forth in the adopted Fee Schedule.
2. The prescribed fee shall not be refundable, except when the City Council waives the Application fee for resubmission of an Application that was denied.

##### **C. Payment of all Indebtedness Attributable to the Subject Property.**

1. No Application shall be accepted or reviewed for completeness from a person who owes delinquent taxes, assessments, any fees, or is otherwise indebted to the City until the taxes,

assessments, debts, or obligations shall have been first fully discharged by payment, or until an arrangement has been made for the payment of such debts or obligations.

2. It shall be the Applicant's responsibility to provide evidence or proof that all taxes, fees, etc. have been paid, or that other arrangements have been made for payment of taxes, fees, etc. When applicable, proof of tax-exempt status shall be provided.

D. Action by Planning Division Manager.

1. Circulate and Compile Comments.

After the determination of completeness has been established, the Planning Division Manager shall circulate the Application to all other administrative officials and departments whose review is required for a decision on the Application and shall compile the comments and recommendations of the officials.

2. Decision Rendered, If Applicable.

For Applications where the Planning Division Manager decides the approval or disapproval of an Application, he or she shall render a decision in the time prescribed for the applicable Application.

3. Forward Application and Provide Notification.

- a. In cases where the Planning Division Manager does not decide an Application, the Planning Division Manager shall forward the Application for review to the appropriate board/commission or City Council, and shall prepare a report to such board or commission, or the City Council, including the compilation of any comments and recommendations by other administrative officials.
- b. If applicable, the Planning Division Manager also shall prepare required notices and schedule the Application for decision within the time (if any) and in the manner required by this Zoning Ordinance.

E. Decision by the City.

Unless otherwise prescribed by State law, City Code, or City Charter, an Application shall be decided by majority vote of a quorum of the members of the board, commission, or the City Council.

F. Conditions.

The City may attach such conditions to the approval of an Application as are reasonably necessary to ensure compliance with applicable requirements of this Zoning Ordinance.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-8.02. Pre-application meeting.**

A. Purpose.

1. The Pre-Application Meeting is intended to allow for the exchange of non-binding information between the Applicant and City Staff to ensure that the Applicant is aware of pertinent City development regulations and processes.
2. The Pre-Application Meeting provides an opportunity for the Applicant and City Staff to discuss

major development considerations such as utilities, roadways, drainage concerns, Comprehensive Plan elements, specific neighborhood characteristics, and historic information.

3. This exchange of information is intended to promote an efficient and orderly review process.
- B. Pre-Application Conference before the Submission of Plans and Applications.
1. Prior to formal submittal of any required plan or Application, the Applicant is encouraged to consult with the Planning Division Manager, the Building Official, and any other pertinent City Staff in order for the Applicant to become familiar with the City's development regulations and the development process.
  2. At the Pre-Application Meeting, the Applicant may be represented by his/her land planner, engineer, surveyor, or other qualified professional.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-8.03. Complete applications.**

A. Applicability.

The following procedures shall apply to any zoning related plan or Application that is required by the City and is submitted in accordance with this Zoning Ordinance.

B. Determination of Completeness for Zoning Related Applications.

Every required Application shall be subject to a determination of completeness by the Planning Division Manager for processing the Application.

1. Acceptance Standards.

The Application shall only be accepted by the Planning Division Manager for processing when it is accompanied by all documents required by, and prepared in accordance with, the requirements of this Zoning Ordinance. A typographical error shall not, by itself, constitute an incomplete Application.

2. Acceptance shall not Constitute Compliance.

A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this Zoning Ordinance.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

## **ARTICLE IX** **ZONING DEVELOPMENT REVIEW PROCEDURES**

### **§ 11-1-9.01. Zoning upon annexation.**

#### A. Timing.

Proceedings to establish the initial zoning of land being considered for annexation into the City shall occur jointly with annexation procedures, but shall occur as a separate and distinct action by the City Council.

#### B. Annexation Precedes Zoning.

City Council shall adopt the annexation ordinance prior to adoption of an ordinance for zoning.  
(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

### **§ 11-1-9.02. Zoning text and map amendments.**

#### A. Two Types of Zoning Amendments.

##### 1. Zoning Map Amendment (Rezoning).

A Zoning Map Amendment (Rezoning) is a change or modification to the boundaries of any zoning district within the City's Official Zoning District Map.

##### 2. Zoning Text Amendment.

A Zoning Text Amendment is the change of the text within this Zoning Ordinance and does not include change or modification to the boundaries of any zoning districts.

#### B. Approval Authority and Report Requirement for Zoning Amendments.

##### 1. Zoning Amendments Require City Council Approval.

The City Council may, from time to time, amend, supplement or change by ordinance the boundaries of the districts (i.e., Zoning Map Amendment (Rezoning)) or the regulations herein established (i.e., Zoning Text Amendment) as provided by the Statutes of the State of Texas, as may be amended.

##### 2. Zoning Amendments Require a Planning and Zoning Commission Report.

Before taking action on any proposed amendment, the City Council shall submit the amendment to the Planning and Zoning Commission for its report, with the exception of procedural and administrative amendments that do not affect development standards within Article III, Article IV, Article V, or Article VI.

##### 3. Zoning Amendments that do not Require a Planning and Zoning Commission Report.

No Planning and Zoning Commission report is required for procedural or administrative amendments to this Zoning Ordinance. However, the City Council may submit these amendments to the Planning and Zoning Commission for a report if the City Council desires.

#### C. Planning and Zoning Commission Report and Public Hearings.

1. Pursuant to Local Government Code § 211.007(b), the Planning and Zoning Commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the City Council. The City Council may not hold a public hearing until it receives the final report of the Planning and Zoning Commission unless the City Council by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the Planning and Zoning Commission. In either case, the City Council may not take action on the matter until it receives the final report of the Planning and Zoning Commission.
2. In cases where it is required to provide a report (see Sections 11-1-9.02.B.2 and 11-1-9.02.B.3 for report details), the Planning and Zoning Commission shall hold a public hearing on an Application for a zoning amendment or change (i.e., a Zoning Map Amendment (Rezoning) or Zoning Text Amendment) prior to making its report to the City Council.
3. In the case of a Zoning Map Amendment (Rezoning):
  - a. Written notice of all public hearings before the Planning and Zoning Commission on a proposed amendment or change shall be sent to all owners of real property within 200 feet of the property on which the change is requested.
  - b. Notice shall be given before the tenth day before the date set for hearing by posting such notice, properly addressed and postage paid, to each taxpayer as the ownership appears on the last approved City tax roll or County tax roll for the area affected.

D. City Council Public Hearing Required.

1. A public hearing shall be held by the City Council before adopting any proposed amendment.
2. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in the official newspaper or a newspaper of general circulation in the City.
3. The City Council shall not hold its public hearings or take action on any Zoning Map Amendment (Rezoning) or Zoning Text Amendment until it has received the report from the Planning and Zoning Commission.

E. Three-Fourths City Council Vote Required for Protested Amendments.

If any of the following conditions exist, then amendments shall not become effective except by a three-fourths vote of the governing body.

1. A protest against such proposed amendment has been filed at least three calendar days before the date of the public hearings with the City Secretary by one of the following types of protesters:
  - a. Interior Protesters:
    - i. The property owners, duly signed and acknowledged, of 20 percent or more of the lots or land area included within a proposed amendment boundary.
  - b. Exterior Protesters:
    - i. The property owners, duly signed and acknowledged, of 20 percent or more of the lots or land area within a 200-foot radius of the exterior boundary of the area included in a proposed amendment.

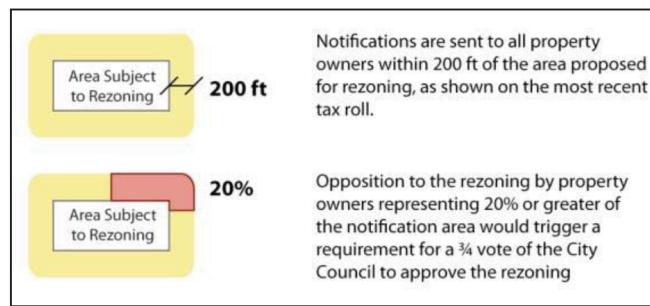


Figure 11: Calculation for Exterior Protestors

**F. Consistency between Zoning Map Amendments and the Comprehensive Plan.**

Consistency between a zoning map amendment and the comprehensive plan shall be required, or the comprehensive plan shall be amended until consistency is achieved.

**G. Limitation on Reapplication.**

1. Except as otherwise provided in this subsection, the Planning and Zoning Commission shall not consider an Application requesting a Zoning Map Amendment (Rezoning) for any property if any part of such property was the subject of a previous Application for a Zoning Map Amendment (Rezoning) that was denied by the Planning and Zoning Commission or the City Council unless one year has elapsed from the date of the final action of the Planning and Zoning Commission or the City Council on the previous Application, whichever is later.
2. The Planning and Zoning Commission may consider an Application requesting a Zoning Map Amendment (Rezoning) for property that was the subject of a previous Application for a Zoning Map Amendment (Rezoning) that was denied less than one year prior by the Planning and Zoning Commission or the City Council if:
  - a. One hundred eighty days have elapsed from the date of the final action of the Planning and Zoning Commission or the City Council on the previous Application, whichever is later; and
  - b. The Planning and Zoning Commission, by a vote of not less than 75 percent of the entire membership of the Planning and Zoning Commission, determines that the Application may be worthy of consideration before the expiration of the one-year period based on a finding that:
    - i. The Application requesting a Zoning Map Amendment (Rezoning) is more restrictive and offers more assurance of compatibility with the area zoning pattern than the Application that was previously denied and, in the case of a request for a PD, Planned Development District, the Application is not a request for the same or a substantially similar PD, Planned Development District requested in the previous Application on all or a part of the same property; or
    - ii. Since the date of the final action on the previous Application, the character of the property or the surrounding area has so changed that the public health, safety, morals, or general welfare warrants or justifies earlier consideration of the Application.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019; Ordinance 10037, sec. 1, adopted 1/14/2020)

**§ 11-1-9.03. Zoning required for platting.**

The City shall not approve any Plat of any subdivision within the City Limits until the area covered by the proposed Plat has been zoned by the City Council, as described in Section 11-1-9.01 Zoning Upon Annexation.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-9.04. Creation of building site.****A. Conditions Required for Building Site, Tract, or Lot Creation.**

No permit for the construction of a building or buildings upon any tract or plot shall be issued until a building site, building tract, or building lot has been created by compliance with one of the following conditions.

**1. Approved Plat of Record.**

The lot or tract is part of a Plat of record, properly approved by the City, and filed with the County.

**2. Approved Site Plan.**

The Plat or tract is all or part of a Site Plan officially approved by the City, and compliance has been made with provisions and improvements approved on such Site Plan for all utility and drainage easements, dedication of streets, alleys and other public improvements required to meet the standards established for the platting of land.

**B. Building Permit Issuance Requires a Plat of Record.**

A Plat of record shall be created prior to the issuance of a Building Permit.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-9.05. Site Plans.****A. Purpose.**

1. Through Site Plan review, zoning standards and other applicable municipal standards or ordinances that may apply to specific site development can be uniformly implemented by the City for townhome, multi-family, and nonresidential development.

2. The purpose of the Site Plan process is to:

- a. Ensure compliance with adopted City development regulations and other applicable regulations that apply to the property for which the City has enforcement responsibility;
- b. Promote safe, efficient and harmonious use of land through application of City-adopted design standards and guidelines;
- c. Promote the vision established by the Comprehensive Plan;
- d. Ensure adequate public facilities to serve development;
- e. Coordinate and document the design of public and private improvements to be constructed;

- f. Prevent or mitigate adverse development impacts, including overcrowding and congestion;
- g. Aid evaluation and coordination of land subdivision, including the granting of easements, Right-of-Way, development agreements and provision of surety;
- h. Identify and address environmental concerns (floodplain, drainage, trees, topography, etc.); and
- i. Promote the public health, safety and welfare.

B. Applicability.

1. Processing and Timing: Two Different Types of Site Plans Exist.

a. Site Plans Related to Rezoning Applications.

A site plan is required for an Application for:

- i. MF-16, Multiple-Family Dwelling District;
- ii. MF-22, Multiple-Family Dwelling District;
- iii. Specific Use Designation (SUDs);
- iv. PD, Planned Development District.

b. Site Plans Related to Building Permit Applications.

No Building Permit shall be issued for any townhome, Manufactured Home Parks, multi-family, PD, Planned Development District, and nonresidential development unless a Site Plan is first approved by the City.

2. Effect.

No Certificate of Occupancy and Compliance shall be issued unless all construction and development conform to the Site Plan as approved by the City.

C. Approval and Process.

1. Site Plans Related to Rezoning Applications.

The approval of a Site Plan related to a rezoning Application requires the following:

- a. Review by the Planning Division Manager and Building Official,
- b. A recommended action by Planning and Zoning Commission for the Council's consideration, and
- c. Approval by the City Council.

2. Site Plans Related to Building Permit Applications.

The approval of a Site Plan related to a Building Permit or construction/development Application for townhome, multi-family, and nonresidential development requires the following:

- a. Review by the Planning Division Manager and Building Official, and
- b. Approval by the Planning Division Manager and Building Official.

D. Site Plan Exempted Development.

The following types of development are exempted from the requirements of this Section 11-1-9.05 Site Plans:

1. Agricultural buildings; and
2. A Temporary Building for New Construction as permitted by 11-1-4.03 Use Chart.

E. Submission of Site Plan Applications.

1. Coordinating Official.

Applications for approval of plans required by this Section 11-1-9.05 Site Plans must be submitted to the:

- a. The Planning Division Manager for Site Plans Related to Rezoning Applications or,
  - b. The Building Official for Site Plans Related to Building Permit Applications.
2. Calendar of Official Processing Dates.

A calendar of official processing dates for items requiring City review, Planning and Zoning Commission recommendation, and City Council approval pursuant to this Section 11-1-9.05 Site Plans shall be created by the City each calendar year.

3. Other Regulations for Applications.

Applications are also governed by Article VIII Zoning Application Submittal and Processing Procedures.

F. Fees and Forms.

1. Schedule of Fees.

The fees relating to the Site Plan approval process shall be established by the Fee Schedule.

2. Forms and Standards.

The Planning Division Manager shall establish forms and standards with regard to the content, format and number of copies of information constituting an Application for a Site Plan.

G. Site Plan.

1. Site Plan Application Procedure and Requirements.

- a. Site Plan Pre-Application Meeting.

- i. Before preparing a Site Plan, the Applicant may meet with the Planning Division Manager or Building Official to allow the Applicant to learn the general procedures for approval and to review the concept of the proposed development, if desired by Applicant.

- ii. No Application for a permit may be submitted to or accepted for filing during the meeting.

- b. Site Plan General Application.

The property owner or authorized agent shall file an Application for the approval of a Site Plan. This Application shall include the information listed on the Site Plan Application Form, which shall be created and maintained by the Planning Division Manager.

- c. Site Plan Additional Information.

The following plans may be required with a Site Plan Application and approval is necessary prior to final authorization for development:

- i. Final Plat or Replat,
- ii. Engineering plans or Construction Plans,
- iii. Traffic Impact Analysis, if applicable,
- iv. Façade Plan, if required,
- v. Landscape plans, if required,
- vi. Flood Study, if required, and
- vii. Other approvals as required by ordinance or resolution.

- d. Site Plan Standards of Approval.

- i. Site Plan Approval.

- (a) The City Council and Planning Division Manager shall use the review and approval process outlined in Section 11-1-9.05.C.1 (rezoning applications) and may approve, conditionally approve, table or deny a Site Plan based upon the criteria listed below.
    - (b) The Planning Division Manager and Building Official shall use the review and approval process outlined in Section 11-1-9.05.C.2 (building permit applications) and shall approve, conditionally approve, or deny a Site Plan based upon the criteria listed below.

- ii. Approval Criteria.

- (a) Compliance with the Zoning Ordinance regulations and other applicable regulations and previously approved, valid plans for the property.
    - (b) The City shall not take action on a Site Plan for property where City taxes are delinquent.

- e. Site Plan Effect.

- i. Approval of a Site Plan in association with a rezoning application is the City's authorization to apply for or for the issuance of Building Permits, depending on the specific case.

- ii. During the time the Site Plan remains valid, the City shall not apply any additional requirements concerning building placement, streets, drives, parking, landscaping or screening.
  - iii. Except where authorized by ordinance, a Site Plan may not be used to approve a variance to development regulations.
  - iv. Where an approved plan conflicts with an adopted regulation and no zoning variance or zoning special exception is expressly approved, the regulation shall apply.
- f. Site Plan Lapse.
- i. Two-Year Effective Period.
    - (a) The approval of a Site Plan shall be effective for a period of two years from the date of filing of the Application.
  - ii. Expired Site Plans.
    - (a) Upon expiration of a Site Plan, the Applicant shall be required to submit a new Site Plan subject to the then existing regulations (see Section 11-1-9.05.G.1 Site Plan Application Procedure and Requirements).
    - (b) Site Plan approval shall expire upon completion of the improvements shown on the plan. Permits must remain valid during the construction process.
    - (c) Subsequent additional development, site modifications and redevelopment shall be considered a new project subject to the then existing ordinances, laws and regulations of the City.

H. Revocation of Site Plan Approval.

The City Council may revoke approval of a Site Plan if it determines that the conditions of the approval have not been met or if the plan contains, or is based upon, incorrect information or if it is determined that it was obtained using fraud or deceit.

I. Compliance with other City Regulations Required.

Compliance with the following design standards and specifications, as may be amended, is required in addition to the design standards and specification set forth in this Zoning Ordinance:

1. Subdivision Regulations;
2. Fire Code;
3. Engineering Standards;
4. Building Code; and
5. Any additional design standards and specifications approved by the City Council.  
(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-9.06. PD, Planned Development District application and review.**

A. Applicability.

After a public hearing following proper notice as prescribed by law to all parties affected, and after recommendation from the Planning and Zoning Commission, the following types of PD, Planned Development Districts may be approved by the City Council:

1. Civic center and community center.
2. Housing development.
3. Industrial district on tracts of ten acres or more.
4. Medical center and hospital.
5. Office center.
6. Recreation center.
7. Shopping center.
8. Transition district as an extension of an existing district whereby the provision of off-street parking, screening walls, open space and planting would create a protective transition between a lesser intensive use and a more intensive use.

B. Site Plan.

1. In establishing a PD, Planned Development District the City Council shall require a site plan of the development, which shall be part of the ordinance creating the PD, Planned Development District.
2. The required site plan and ordinance shall set forth the requirements for ingress and egress to the property, public or private streets or drives, sidewalks, utilities, drainage, parking space, height of building, maximum lot coverage, yards and open spaces, screening walls or fences and other development and protective requirements considered necessary to create a reasonable transition to and protection of the adjacent property.

C. Effect and Imposed Conditions.

1. Every PD, Planned Development District approved under the provisions of this section shall be considered a map and text amendment, and shall be processed in accordance with the notice and public hearing requirements.
2. In approving the PD, Planned Development District the City Council may impose conditions on the standard of development, which shall be complied with before a certificate of occupancy is issued for the use of land or any structure which is part of the PD, Planned Development District. Any conditions 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.

D. Minimum Size.

A minimum of three acres is required for all PD, Planned Development Districts.  
(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

**§ 11-1-9.07. Specific use designation (SUDs).**

A. General.

The uses listed under the various districts within the Use Chart<sup>19</sup> as Specific Use Designation (SUDs) are so classified because they may have adverse effects or more intensely dominate the area in which they are located than do other uses permitted in the district. The rezoning process allows the City to review specific uses at a specific location and determine the appropriateness on a case-by-case basis.

B. Specific Use Designation Application Process.

1. Procedures for Processing a Specific Use Designation (SUD) An application for a Specific Use Designation is a Zoning Map Amendment (Rezoning), since the zoning map shall be updated to indicate the location of the SUD, and shall be processed as a Zoning Map Amendment (Rezoning).

2. Compatibility Conditions.

- a. The Planning and Zoning Commission and City Council may require conditions and safeguards as necessary to protect adjoining property.
- b. A use allowed by a Specific Use Designation shall be in conformance with the Comprehensive Plan and contain such requirements and safeguards as are necessary to protect adjoining property.

3. Required Information.

Each application shall be accompanied by a Site Plan (see Section 11-1905 Site Plans) and other information required by this Zoning Ordinance, including the items below

- a. A detailed description of the intended use of the property.
- b. The availability and location of off-street parking.
- c. The projected amount of additional traffic generated in and around the property, the types of vehicles anticipated that will be visiting the property, the likely changes in traffic patterns, and the possible impact such changes in traffic will have on properties within 500 feet of the subject property.
- d. The proposed number of occupants or users of the property and the proposed hours of occupancy.
- e. If the proposed use will require deliveries of goods to the property, and the use is proposed to be located in any zoning district from the AE, Agricultural Estate District through MF-22, Multiple-Family Dwelling District, provide the proposed location of loading/unloading areas.
- f. Whether the proposed use requires any type of state or federal license or permit to operate, what type of license or permit is required, and whether the license or permit has been received.
- g. The number and locations of properties within one-half mile of the applicant's property that have the same or similar use(s) as that proposed by the applicant.
- h. The Planning and Zoning Commission or City Council may reasonably require additional information, operating data and expert evaluation concerning the location and function and

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19. Editor's Note-Said Use Chart is included as an attachment to this chapter.

characteristics of any building or use proposed.

C. Specific Use Designation Regulations.

1. In recommending that a Specific Use Designation for the premises under consideration to be granted, the Planning and Zoning Commission shall determine that such uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall consider the following factors:
  - a. Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;
  - b. Adequate means of ingress and egress to public streets or approved access easements and appropriate paving widths of streets, alleys and sidewalks to accommodate traffic generated by the proposed use;
  - c. Adequate provisions for drainage;
  - d. Adequate off-street parking and loading;
  - e. Safety from fire hazard and measures for fire control;
  - f. Protection against negative effects of noise, glare and lighting on the character of the neighborhood, protective screening and open space;
  - g. Heights of structures; and
  - h. Compatibility of buildings and such other measures as will secure and protect the public health, safety, and general welfare.
2. In granting a Specific Use Designation, the City Council may impose reasonable conditions, including time limits that shall be complied with by the owner, grantee, or any tenant of any portion of the property.

D. Specific Use Designations "Without Term"—Timing and Renewals.

1. A Specific Use Designation without term shall be effective until repealed by the City Council.

E. Specific Use Designations "With Term"—Timing and Renewals.

1. A Specific Use Designation with term shall be effective for two years from the date of approval by the City Council, subject to extension in accordance with Section 11-1-9.07.E.2 (below) of this Code or early termination in accordance with Section 11-1-9.07.E.3 of this Code.
2. A Specific Use Designation with term may be renewed for additional two-year terms in accordance with the following procedure:
  - a. The then current owner of the property subject to the Specific Use Designation with term shall submit to the City Manager an application for a renewal of the Specific Use Designation with term not later than 60 days prior to the expiration of the then current term, which application shall contain such information as may be required by the City Manager. As part of the application for renewal, the property owner shall certify under oath that the use of the property has been at all times during the term of the Specific Use Designation with term in compliance with the provisions of the Specific Use Designation with term.

- b. Upon a finding of the City Manager that the use of the property has been and remains in compliance with the provisions of the Specific Use Designation with term originally approved, the term of the Specific Use Designation with term shall be extended for an additional two-year term from the date of termination of the prior term.
  - c. Upon a finding of the City Manager that the use of the property has not been or is not in compliance with the provisions of the Specific Use Designation with term, the City Manager shall send written notice to the owner of the property at the last known address as determined by the property rolls of the appraisal district within ten working days of the City Manager's finding that the Specific Use Designation with term will not be extended beyond the then current term. Said notification shall contain a summary of the findings by the City Manager citing what provisions of the Specific Use Designation with term or the City Code have been violated. The owner of the property shall have ten calendar days from receipt of the City Manager's notice to file a written appeal with the City Council with a summary of the property owner's basis for appeal. Unless requested by the property owner, the appeal shall be heard at the next regular City Council meeting which occurs on or after the tenth calendar day following the receipt of the notice of appeal.
  - d. The appeal to the City Council shall be conducted in accordance with the procedures adopted by the City Council. The decision of the City Council shall be final.
3. A Specific Use Designation with term shall terminate prior to the expiration of the then current term upon a finding by the City Manager that the property for which the Specific Use Designation with term was approved has not been used for the purpose for which the Specific Use Designation with term was approved for a period of more than 120 consecutive days. The City Manager shall within 10 calendar days of said finding send written notice of termination pursuant to this Section to the owner of the property at the last known address of the owner as shown by the property rolls of the appraisal district.

F. Specific Use Designation "With Term"—Uses and Baseline Standards

Specific Use Designations with term may be approved for the following types of uses and subject to, but not limited to, the specified restrictions, in the following districts.

1. Alcoholic Beverages in other than a Bar, Lounge or Nightclub as follows:
  - a. Sale of all alcoholic beverages, for on-premises consumption, in a restaurant in the O-1, Office District, O-2, Office District, LR, Local Retail District or RR, Regional Retail District (See Section 11-1-4.03 Use Chart.) Such restaurant shall observe the following restrictions:
    - i. Not less than 60 percent of the monetary sales for a tax-year for such establishment shall be for food or nonalcoholic beverages.
    - ii. The sale of all alcoholic beverages for on-premises consumption shall be a secondary use only, ancillary to the primary use of the premises for a restaurant. Any sale of alcoholic beverages on the premises after they have ceased to be used primarily for a restaurant, or at any time when restaurant kitchen facilities are not in operation and staffed as specified below, shall constitute a violation of this Specific Use Designation with term;
    - iii. No outside entrance to a separate bar shall be permitted and no signs or other

identification of a bar or lounge or the sale of alcoholic beverages in any way may be located anywhere on the premises, outside the building, unless such sign or other identification is approved as part of the Specific Use Designation with term; and

- iv. The restaurant and the restaurant kitchen facilities shall be in compliance with the following definitions:

- (a) Restaurant: Restaurant is defined for purposes of this Section as a place where the primary business is the preparation and sale, on the premises, of food to be provided from a full service menu of items which shall be available at all times when the facility is in operation and which all food items for sale (which shall include appetizers, entree, desserts and beverages), provides kitchen facilities separate and apart from the area of the premises devoted to public dining and may or may not provide live entertainment to, or permit dancing by patrons of the premises.
  - (b) Restaurant Kitchen Facilities: A restaurant kitchen facility is a separate area located in, or on, the premises of a restaurant and meets the following conditions or standards: (1) meets all requirements of other applicable codes; (2) contains a stove or oven in working order; (3) provides refrigerated storage for food to be prepared and sold on premises; (4) is staffed by a full-time cook or chef who must be on duty for the preparation of food during the hours that the restaurant is in operation; (5) maintains a food inventory and condiments for use by the cook or chef in the preparation of food for sale; and (6) pots, pans and utensils necessary for use by the cook or chef in preparation of menu items for sale.
- b. Sale of all alcoholic beverages for on-premises consumption in a theater, place of commercial amusement, sports stadium or course or any similar facility, in any zoning district where the primary use is permitted; provided, however, that the type of facility shall be specifically stated or defined in each Specific Use Designation with term.
  - c. Sale of beer and wine only, for off-premises consumption, in the O-2 district in connection with food and beverage sales stores.

2. Alcoholic Beverages Sales for On-Premises Consumption as follows:
  - a. Sale of all alcoholic beverages, for on-premises consumption in a Bar, Lounge or Nightclub in the LR, Local Retail District, RR, Regional Retail District, CB, Central Business District, C, Commercial District, BP, I-20 Business Park District or in the O-2, Office District. (See Section 11-1-4.03 Use Chart.)
3. Assisted Living/Nursing Home Uses.
  - a. See Section 11-1-4.03 Use Chart to determine if a Specific Use Designation is required a given district.
4. Bar, Lounge or Nightclub Uses.
  - a. See Section 11-1-4.03 Use Chart to determine if a Specific Use Designation is required a given district.
5. Barber or Beauty Shop Uses.

- a. See Section 11-1-4.03 Use Chart to determine if a Specific Use Designation is required a given district.
6. Child-Care: Day-Care Center Uses.
  - a. See Section 11-1-4.03 Use Chart to determine if a Specific Use Designation is required a given district.
7. Community Group Home Uses.
  - a. See Section 11-1-4.03 Use Chart to determine if a Specific Use Designation is required a given district.
8. Outside Storage Uses and Standards.
  - a. Allowed by Specific Use Designation, according to the permitted Use Chart<sup>20</sup>.
  - b. Outside Storage is limited to a maximum of 20 percent of the total lot area, shall not be located in the front yard and must be screened.
  - c. Outside Storage screening shall be required only for those areas surrounding Outside Storage.

A six-foot screening fence or wall shall be provided and maintained either surrounding the Outside Storage or at the property line or street adjacent to the area to be screened by one or a combination of the following methods:

    - i. Solid masonry consisting of rock, stone, or other material that is visually and qualitatively equivalent;
    - ii. Wrought iron in conjunction with solid landscape screening;
    - iii. Wood or wood vinyl in conjunction with solid landscape screening; and,
    - iv. An equivalent alternative screening method approved by the Planning Division Manager.
  - d. Outside Storage of materials, commodities, or equipment shall be screened with a minimum six-foot screening fence or wall, and shall not be visible from the street or from adjacent property.
  - e. No Outside Storage may be visible from public right-of-way.
9. Penal and Correctional Institutions Uses.
  - a. See Section 11-1-4.03 Use Chart to determine if a Specific Use Designation is required a given district.
10. Wildlife Rehabilitation Center Uses.
  - a. See Section 11-1-4.03 Use Chart to determine if a Specific Use Designation is required a given district.
  - b. A Wildlife Rehabilitation Center shall be on tracts of land of not less than two acres.

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20. Editor's Note-Said Use Chart is included as an attachment to this chapter.

- c. A Specific Use Designation with term for a Wildlife Rehabilitation Center shall contain the following conditions in addition to such other conditions that may be adopted by the City Council:
  - i. Animals located on the property for the purpose of undergoing rehabilitation are at all times to be kept within an enclosed building, except to the extent set forth in the Specific Use Designation ordinance;
  - ii. The Specific Use Designation with term must include a site plan showing the location on the property of the area(s) where wildlife rehabilitation activities are proposed to occur along with such other elements that the City Council determines to be appropriate and necessary; and
  - iii. No mammals may be kept on the premises for purposes of rehabilitation.

G. Specific Use Designation Expiration and Extension.

1. Specific Use Designation Expiration.
  - a. An SUD shall automatically expire if a Building Permit is not issued and construction begun within six months of the granting of the SUD.
2. Specific Use Designation Extension.
  - a. The City Council may authorize an extension beyond the six months upon recommendation by the City Manager.

H. Amendments Required for Changes.

No building, premise, or land used under an SUD may be enlarged, modified, structurally altered, or otherwise significantly changed, unless an amendment to the approved SUD is granted for such enlargement, modifications, structural alteration, or change.

(Ordinance 9920, sec. 1,(Exh. A) adopted 5/28/2019)

ZONING ORDINANCE

**Chapter 11-1a**

**CENTENNIAL ENTERTAINMENT OVERLAY DISTRICT**

<b>§ 11-1a-1.</b>	<b>Purpose.</b>	<b>§ 11-1a-6.</b>	<b>Permitted uses.</b>
<b>§ 11-1a-2.</b>	<b>Application.</b>	<b>§ 11-1a-7.</b>	<b>Use of the public right-of-way by restaurants.</b>
<b>§ 11-1a-3.</b>	<b>Description of district.</b>		
<b>§ 11-1a-4.</b>	<b>Definitions.</b>	<b>§ 11-1a-8.</b>	<b>Extended hours of alcoholic beverage sales.</b>
<b>§ 11-1a-5.</b>	<b>Compliance with the zoning ordinance required.</b>	<b>§ 11-1a-9.</b>	<b>Offense and penalty.</b>

**§ 11-1a-1. Purpose.**

The purpose of the centennial entertainment overlay district is to provide for destination-oriented venues to promote a vibrant and active core in the city's central business district, leveraging Centennial Park as an engaging public space, and providing residents and employees opportunities to socialize and be entertained. The centennial entertainment overlay district is anticipated to encourage economic development through infill and redevelopment of underutilized properties and adaptive reuse of existing buildings. The balance of land uses for working, living, shopping and entertainment creates an environment conducive to increasing the quality of life for residents and employees and furthering the city's unique identity.

(Ordinance 10453 adopted 11/14/2023)

**§ 11-1a-2. Application.**

This chapter applies only to property located within the centennial entertainment overlay district.  
(Ordinance 10453 adopted 11/14/2023)

**§ 11-1a-3. Description of district.**

Centennial entertainment overlay district means the portion of the city located within the following-described area and shown in Figure 11-1a-3.1:

An approximately 49.50-acre tract located in the city of Midland, Texas, and being a portion of Original Town Addition to the city of Midland, Texas, and all of Original Town Addition, sections 3, 7, 8, 14 and 15 to the city of Midland, Texas, and being more fully described as follows:

Beginning at a point at the southeast corner of the intersection of W. Missouri Ave. and Big Spring St.,

Thence northerly along the easterly line of Big Spring St. about 1,510 ft. to a point at the northeast corner of the intersection of Big Spring St. and Ohio St.,

Thence easterly along the south side line of Ohio St. about 380 ft. to northeast corner of the intersection of Ohio Ave. and Colorado St.,

Thence northerly along the easterly line of Colorado St. about 380 ft. to the southeast corner of the intersection of Colorado St. and Tennessee Ave.,

Thence easterly along the south line of Tennessee Ave. about 380 ft. to the southeast corner of the intersection of Tennessee Ave. and Loraine St.,

Thence southerly along the east line of Loraine St. about 380 ft. to the southeast corner of the intersection of Loraine St. and Ohio Ave.,

Thence easterly along the south line of Ohio Ave. about 380 ft. to the southwest corner of the intersection of Ohio Ave. and Main St.,

Thence southerly along the east line of N. Main St. about 380 ft. to the northeast corner of the intersection of Main St. and Illinois Ave.,

Thence easterly along the south line of Illinois Ave. a distance of about 340 ft. to a point at the southwest corner of the intersection of Illinois Ave. and Baird St.,

Thence southerly along the west line of Baird St. about 760 ft. to a point in the south line of W. Wall St.,

Thence westerly along the south line of W. Wall St. about 300 ft. to a point at the southeast corner of the intersection of W. Wall St. and S. Main St.,

Thence southerly along the east line of S. Main St. about 380 ft. to a point at the southeast corner of the intersection of S. Main St. and W. Missouri Ave.,

Thence westerly along the south line of W. Missouri Ave. about 1,140 ft. to the place of beginning and containing about 49.50 acres.

**Figure 11-1a-3.1**



(Ordinance 10453 adopted 11/14/2023)

#### **§ 11-1a-4. Definitions.**

- (a) Except as otherwise provided in this section, the words and terms used in this chapter and in the application of this chapter shall have the same meanings given those words and terms in chapter 11-1 of this title, as amended.
- (b) As used in this chapter and in the application of this chapter:

Extended hours area. Has the same meaning given that term in section 105.06 of the Texas Alcoholic Beverage Code, as amended.

Restaurant or cafeteria, with drive-through window or curb service. A business, with drive-through window or curb service, that:

- (1) Operates its own permanent food service facility with commercial cooking equipment on its premises; and
- (2) Prepares and offers to sell multiple entrees for consumption on or off the premises.

To the extent that a provision of this chapter applies to both a restaurant or cafeteria, with drive-through window or curb service and a restaurant or cafeteria, without drive-through window or curb service, such business may be referred to as a restaurant.

Restaurant or cafeteria, without drive-through window or curb service. A business, without drive-through window or curb service, that:

- (1) Operates its own permanent food service facility with commercial cooking equipment on its premises; and
- (2) Prepares and offers to sell multiple entrees for consumption on or off the premises.

To the extent that a provision of this chapter applies to both a restaurant or cafeteria, with drive-through window or curb service and a restaurant or cafeteria, without drive-through window or curb service, such business may be referred to as a restaurant.

Restaurant patio. An outdoor space connected to a restaurant where food is served from the restaurant to customers and eaten on the premises. A restaurant patio may be unenclosed or enclosed and, if authorized in writing by the city, may occupy a portion of the public right-of-way adjacent to the restaurant.

(Ordinance 10453 adopted 11/14/2023)

#### **§ 11-1a-5. Compliance with the zoning ordinance required.**

Except as expressly provided in this chapter, property shall be developed and used in accordance with the regulations of chapter 11-1 of this title that are applicable to the zoning district in which the property is located as shown on the zoning map.

(Ordinance 10453 adopted 11/14/2023)

#### **§ 11-1a-6. Permitted uses.**

- (a) Property may be used for uses that are permitted in the property's zoning district in accordance with chapter 11-1 of this title; provided, however, that in the event of a conflict between a use's definition contained in section 11-1a-4 and the same use's definition contained in chapter 11-1 of this title, the definition contained in section 11-1a-4 shall control.
- (b) In addition to the uses that are permitted by subsection (a) hereof, property may be used for:
  - (1) Alcoholic beverages sales for on-premises consumption;
  - (2) Bar;
  - (3) Brewery, local;
  - (4) Brewery, regular;
  - (5) Distillery;
  - (6) Lounge or nightclub;
  - (7) Restaurant or cafeteria, with drive-through window or curb service, as defined in section 11-1a-4;
  - (8) Restaurant or cafeteria, without drive-through window or curb service, as defined in section 11-1a-4; and
  - (9) Winery.

(Ordinance 10453 adopted 11/14/2023)

#### **§ 11-1a-7. Use of the public right-of-way by restaurants.**

- (a) A restaurant patio shall not be located in any portion of the public right-of-way unless the owner or operator of the restaurant to which the Restaurant patio is connected obtains written authorization from the city to so use the public right-of-way. To the extent that a Restaurant patio is located in the public right-of-way, written authorization from the city to so use the public right-of-way may include

authorization to use such portion of the public right-of-way for alcoholic beverages sales for on-premises consumption. In the event of a conflict between this subsection and any other ordinance, this subsection shall control.

- (b) A restaurant patio shall not occupy the public right-of-way in a manner that causes less than four (4) feet of clear sidewalk space to be available for pedestrians to use.

(Ordinance 10453 adopted 11/14/2023)

**§ 11-1a-8. Extended hours of alcoholic beverage sales.**

The centennial entertainment overlay district is an extended hours area. Alcoholic beverages may be sold within the centennial entertainment overlay district in accordance with this section during the extended hours of sale provided in section 105.03 and 105.05 of the Texas Alcoholic Beverage Code, as amended. (Ordinance 10453 adopted 11/14/2023)

**§ 11-1a-9. Offense and penalty.**

Any person, firm, corporation, or other entity who violates, disobeys, or otherwise fails to comply with or who resists the enforcement of any of the provisions of this chapter shall be guilty of a misdemeanor and shall be fined not more than \$2,000.00 for each violation. Each day that a violation exists shall constitute a separate and distinct offense.

(Ordinance 10453 adopted 11/14/2023)

CENTENNIAL ENTERTAINMENT OVERLAY

**Chapter 11-2**

**PLATS AND SUBDIVISIONS**

<b>§ 11-2-1.</b>	<b>General provisions.</b>	<b>§ 11-2-5.</b>	<b>Requirements for public improvements, reservation and design.</b>
<b>§ 11-2-2.</b>	<b>Definitions.</b>	<b>§ 11-2-6.</b>	<b>Participation policies and pro rata fees.</b>
<b>§ 11-2-3.</b>	<b>Platting procedures.</b>		
<b>§ 11-2-4.</b>	<b>Assurance for completion and maintenance of improvements.</b>	<b>§ 11-2-7.</b>	<b>Replatting.</b>

**§ 11-2-1. General provisions.**

- (A) Title. This Chapter 11-2 of the Midland City Code shall be officially known, cited and referred to as the Subdivision Regulations of the City of Midland (hereinafter "these regulations").
- (B) Policy.
1. The subdivision or platting of land and the subsequent development of the land are subject to the control of the City pursuant to the comprehensive plan for the orderly, planned, efficient, and economical development of the City.
  2. Land to be subdivided or platted shall be of a character that can be used safely for building purposes without danger to health or peril from fire, flooding, or other menace, and land shall not be developed until adequate public facilities and improvements exist or are committed and proper provision has been made for adequate drainage, water, sewerage, and street access.
  3. Proposed public improvements shall conform to and be properly related to the proposals shown in the comprehensive plan and the capital improvements programs of the City. These regulations shall supplement and facilitate the enforcement of the provisions and standards contained in building and housing codes, the zoning code, the comprehensive plan and the capital improvements programs of the City.
- (C) Purposes. These regulations shall serve to guide the future growth and development of the City of Midland in accordance with the comprehensive plan, and to protect and provide for the public health, safety, and general welfare of the City. Its goal is to maintain the quality of life for all citizens of the City of Midland and to enhance the beauty and stability of our community by encouraging the wise use and management of all our natural resources. In the furtherance of this goal, we shall work together in a spirit of cooperation to provide a quality infrastructure and other facilities to serve the public, and to ensure the best possible and most land efficient design and layout of future developments.
- (D) Authority. In addition to its other responsibilities, the City planning and zoning commission of the City of Midland (hereinafter "commission") is vested with the authority to review, approve and disapprove and, except in the case of final plats, conditionally approve applications for the platting or subdivision of land, including preliminary plats, final plats, amended plats, and vacations of plats, except as specified otherwise by Sections 11-2-3(D)11 and 11-2-3(I)2 herein.
- (E) Jurisdiction.
1. These regulations apply to all subdivisions of land located within the corporate limits of the City and within the City's extraterritorial jurisdiction, as provided by law, except as expressly stated herein.
  2. The following types of land division do not require approval by the City of Midland; however, the exclusion of such activities from these regulations does not waive any jurisdiction the City now exercises or may exercise over such matters.
    - (a) The division of land into two or more parts for agricultural use, where all parts are five acres or larger and do not involve a new street or other portion of the tract intended for public use.
    - (b) The division of land into two or more parts for other than agricultural use provided:

- (i) All parts are five acres or larger;
- (ii) Development of the parcels does not require the dedication of any public improvements; and
- (iii) Each parcel after the subdivision has adequate access from existing streets.

"Adequate access," for purposes of this Section 11-2-1(E)2, shall mean the parcels, at the time of the subdivision, can be accessed over paved public streets which have sufficient structural and width capacity to carry the estimated levels of motor vehicle traffic to and from the parcels being divided, together with the estimated levels of traffic to and from other parcels in the area which will be accessed over the same streets, based on the most intensive use allowed in the zoning districts in which the parcels are located, and as required for platted property by Sections 11-2-5(A)3(C) and 11-2-5(C).

- (c) The division of property through inheritance, the probate of an estate, or by a court of law.
  - (d) The division of property resulting from an acquisition by a governmental entity of a portion of an undivided tract for a public purpose.
3. No plat will be approved for any tract of land within city boundaries which has not been permanently zoned in accordance with the zoning code.
  4. A written request may be directed to the commission for information concerning whether a plat is required under these regulations, in accordance with V.T.C.A., Local Government Code § 212.0115, as amended.
  5. Except as provided above, no land may be subdivided or platted through the use of any legal description other than with reference to a plat approved by the commission in accordance with these regulations.
  6. Except as provided above, and for separate parcels of land established prior to the effective date of this Chapter 11-2 of this Code, no land shall be sold or transferred until the property owner has obtained approval of a final plat from the director, the commission or the City Council (hereinafter "Council") as required by these regulations.
  7. The City shall withhold all public improvements and utilities, including the maintenance of streets and the provision of sewage facilities and water service, from all tracts, lots or additions, the subdivision of which requires approval by the City and for which such approval has not been obtained as specified herein.
  8. The building official shall not issue building or repair permits for any structure on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed by this Chapter, except as provided otherwise in the site requirements of the building code, Section 4-1-4 of the Midland City Code.
  9. The Health and Senior Services Administrator shall not issue a septic permit for a new or expanded septic system within the City limits or within the City's extraterritorial jurisdiction for property for which a plat has not been approved and recorded in the manner prescribed by this Chapter. The Health and Senior Services Administrator shall obtain written confirmation from the City Manager that this section has been complied with before issuing a septic permit. A septic permit that is issued without the provisions of this section having been complied with

shall be void at inception.

- (F) Applicable law. All applications for plat approval, including final plats, pending on the effective date of these regulations and which have not lapsed shall be reviewed under regulations in effect immediately preceding the date of adoption of these regulations.
- (G) Units of measure. All units of measurement contained herein are expressed in SI (or metric system) units, followed by the U.S. customary (or English) system units in parentheses. The measurements generally will not be equivalent because of rounding of SI units. All subdivision plats, whether sketch, preliminary, or final stage plats, shall show all units of measure either in SI units or in U.S. customary system units until January 1, 2000. Where measurements are in other than SI units, wherever practical, it is encouraged that SI units of measure follow in parentheses. Effective January 1, 2000, only SI units of measure shall be used. Unless required otherwise by other applicable regulations, until January 1, 2000, the developer may elect as primary units of measurement for his subdivision plat and for all subdivision improvements either SI or U.S. customary units, regardless of which measurement unit contained herein or in other applicable codes or public improvements standards is the more restrictive, but must conform to the minimum requirements specified in one of the systems of measurement exclusively for each subdivision. A developer shall not mix measurement systems with respect to compliance with minimum requirements. Where required for federal or state government participation in public improvements, the City may require that the SI system of measurement be used for all units of measurement. Where an extension of an existing right-of-way or easement would be a lesser width than the existing, the plat shall dedicate a suitable transition from the greater to the lesser width.
- (H) Interpretation, conflict, and separability.
1. Interpretation. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.
  2. Conflict with other laws. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provision of law except as provided in these regulations. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations, or other provision of law, the provision which is more restrictive or imposes higher standards shall control.
  3. Separability. If any part or provision of these regulations or the application of these regulations to any person or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered and it shall not affect or impair the validity of the remainder of these regulations or the application of them to other persons or circumstances. The Council hereby declares that it would have enacted the remainder of these regulations even without any such part, provision, or application which is judged to be invalid.
- (I) Saving provision. These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision regulations, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the City, under any section or provision existing at the time of adoption of these regulations, or as vacating or annulling any rights obtained by any person, firm, or corporation by lawful action of the City, except as shall be expressly provided for in these

regulations.

- (J) Superseding regulations. Upon the adoption of these regulations according to law, all subdivision regulations of the City of Midland previously in effect are hereby superseded, except as provided in Section 11-2-1(F).
- (K) Amendments. For the purpose of protecting the public health, safety and general welfare, the commission or Council may from time to time propose amendments to these regulations, which shall then be approved or disapproved by the Council at a public meeting after a public hearing. Notice of the public hearing on any proposed amendments to these regulations shall be published at least once in the official newspaper of the City not later than seven days prior to the date of the public hearing, and shall set forth the time, date and place of the public hearing.
- (L) Variances.
1. General. Where the commission or Council finds that unreasonable hardships or difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to these regulations so that substantial justice may be done and the public interest secured. A variance shall not be approved which would have the effect of nullifying the intent and purpose of these regulations.
  2. Criteria for variances other than from development exactions. The granting of any variance shall take into account the nature of the proposed use of the land involved and existing uses of land in the proposed subdivision, existing and proposed streets, drainage systems, and utilities, and the probable effect of such variance upon the public health, safety, convenience and welfare in the vicinity. The commission or Council shall not approve variances unless it shall make findings based upon the evidence presented to it in each specific case that:
    - (a) The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property.
    - (b) Because of the particular physical surroundings, shape or topographical nature of the land, the conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are neither applicable generally to other property nor are created by the owner. Because of these unique circumstances, strict application of these regulations would result in a particular hardship to the owner, as distinguished from mere inconvenience, conflict with the owner's preference, or interference with ability to maximize profits.
    - (c) The variance will not in any manner vary the provisions of Chapter 11-1 of the Midland City Code, as amended, or comprehensive plan, except that those documents may be amended in the manner prescribed by law.
    - (d) The variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this Chapter.
  3. Criteria for variances from development exactions. Where the commission or Council finds that the imposition of any development exaction pursuant to these regulations exceeds reasonable benefit to the development or is so excessive as to constitute confiscation of the tract to be platted, it may approve variances to such requirements, so as to prevent such excess. In considering such request, the commission or Council also shall take into account the detriment

to the public health, safety and welfare that would result from imposing the requirements.

4. **Planned developments.** It is the intent of this Chapter that the subdivision of a planned development be processed in conjunction with zoning approval. If the preliminary plat for the subdivision is consistent with the site plan for the planned development zoning district approved by the Council, any variation in the standards or requirements otherwise made applicable to the plat by this Chapter, which is necessitated by said plan, may be approved without regard to the standards and procedures for variances required by this Section, provided that the commission or Council may impose such conditions as to assure that the purposes of this Chapter are met and require such covenants and restrictions as will assure conformity to and achievement of the plan.
  5. **Conditions.** In approving a variance from these regulations, the commission or Council may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements varied and the purposes described in Section 11-2-1(C).
  6. **Procedures.** An application for a variance shall be submitted in writing by the property owner at the time when the preliminary plat, or final plat where no preliminary plat is required, is filed for the consideration of the commission. The petition shall state fully the grounds for the variance and all of the facts relied upon by the applicant. The commission shall decide the variance request, subject to appeal to the Council pursuant to Section 11-2-1(L), or to approval of the plat by the Council, where required.
- (M) **Appeals.** Any subdivider contesting any disapproval, conditional approval and/or interpretation or application of any rule, standard, regulation, determination or requirement set forth in this Chapter directly or by delegation of authority shall have the right, after filing a written request with the commission, to have a hearing thereon before the commission within 21 days after the date of filing of such request. The subdivider may appeal an adverse decision of the commission to the Council by giving written notice to the director within 15 days after the final hearing before the commission.

(N) **Enforcement, violations and penalties.**

1. **Violations and penalties.** Any person who violates any of these regulations for lands within the corporate boundaries of the City shall be subject to a fine of not more than \$2,000.00 per day, pursuant to Chapter 1-3, of the Midland City Code.
2. **Civil enforcement.** Appropriate civil actions and proceedings may be maintained in law or in equity to prevent unlawful construction, to recover damages, to impose additional penalties, or to restrain, correct, or abate a violation of these regulations, whether such violation occurs with respect to land within the corporate boundaries of the City or within the City's extraterritorial jurisdiction. These remedies shall be in addition to the penalties described above.

(Ordinance 7333, sec. 1, adopted 6/14/1994; Ordinance 8619, sec. 1, adopted 2/26/2008; Ordinance 9022, sec. 1, adopted 6/12/2012; Ordinance 9327, sec. 1, adopted 9/23/14)

## § 11-2-2. Definitions.

(A) **Usage.**

1. For the purpose of this Chapter, certain numbers, abbreviations, terms, and words shall be used, interpreted and defined as set forth in this Section.
2. Unless the context clearly indicates to the contrary, words used in the present tense include the

future tense and words used in the plural include the singular.

3. Unless the context clearly indicates otherwise, the phrases "these regulations" and "this Chapter" shall mean Chapter 11-2 of the Midland City Code, the phrase "this Code" shall mean the Midland City Code, as amended, the phrase "building code" shall mean Chapter 4-1 of the Midland City Code, as amended, and the phrase "zoning code" shall mean Chapter 11-1 of the Midland City Code, as amended.
4. Unless the context clearly indicates otherwise, citation of specific section numbers in this Chapter are to sections of the Midland City Code, as amended.

(B) Words and terms defined.

1. Abandonment.Release of the interest in easements or right-of-way by all parties with rights to said easement or right-of-way.
2. Alley.A public or private way primarily designed to serve as a secondary means of access to the side or rear of those properties whose principal frontage is on some other street or on some other space intended in place of direct street frontage. "Alley" means public alley unless otherwise specified.
3. Amended plat.A revised plat correcting errors or making minor changes to the original recorded final plat.
4. Amenity.An improvement providing an aesthetic, recreational or other benefit.
5. Approach road.An off-site access road required by these regulations as a minimum condition of development approval.
6. Base flood elevation.The maximum water elevation of a flood having a one percent chance of being equaled or exceeded in any given year. The base flood shall be determined by using a fully developed watershed and the City's storm drainage design manual criteria for a 100-year storm.
7. Block.A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways, or boundary lines of municipalities.
8. Bond.Any form of a surety bond executed by a surety company authorized to do business in the State of Texas in an amount and form satisfactory to the City.
9. Capital improvements program.An adopted schedule of future capital improvement projects together with cost estimates.
10. City.The City of Midland, Texas.
11. City engineer.The city official with responsibility to review and release plans for construction projects, or his designee.
12. Commission.The city planning and zoning commission for the City of Midland.
13. Comprehensive plan.A plan for development of the City prepared and adopted by the Council, and including any part of such plan separately adopted and any amendment to such plan, or parts thereof.

14. *Contiguous.* Lots are contiguous when at least one boundary line of one lot touches a boundary line or lines of another lot.
15. *Council.* The City Council of the City of Midland, Texas.
16. *County.* Midland, Martin or Ector County, depending on whether a proposed subdivision or addition, or part thereof, is located in such county.
17. *Dedication plat.* A plat prepared for the purpose of dedicating land or easements for rights-of-way for public use.
18. *Detention basin.* A manmade or natural water collector facility designed to collect surface and subsurface water in order to impede its flow and to release the same gradually at a rate not greater than that prior to the development of the property, into natural or manmade outlets.
19. *Developer or subdivider.* Any person, business, corporation, association or other legal entity who (1) having legal title to or sufficient proprietary or other interest in the land comprising the subdivision causes it, directly or indirectly, to be divided into a subdivision, or who (2) directly or indirectly sells, leases, or develops, or offers to sell, lease, or develop, or advertises to sell, lease, or develop, any interest, lot, parcel, site, unit, or plat in a subdivision or addition, or who (3) engages directly or through an agent in the business of selling, leasing, developing, or offering for sale, lease, or development a subdivision or addition or any interest, lot, parcel, site, unit or plat in a subdivision or addition, and who (4) is directly or indirectly controlled by, or under direct or indirect common control with, any of the foregoing. The term "developer" includes the term "subdivider" and the term "property owner."
20. *Development.* Any manmade change to improved or unimproved real estate, including but not limited to the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, paving, drainage or utilities; mining, excavation, landfill or land disturbance; and any use or extension of the use of land.
21. *Development contract or agreement for public works construction (development agreement).* A contract entered into by the developer and the City by which the developer promises to complete the required public improvements within the subdivision within a specified time period following final plat approval.
22. *Development exaction.* Any dedication of land or easements for, construction of, or contribution toward construction of a public improvement required as a condition of plat approval by the City under these regulations.
23. *Director.* The director of engineering and development of the City of Midland.
24. *Divided street.* A street having an island, median or other barrier separating moving lanes.
25. *Drainage.* The removal of surface water or groundwater from land by drains, grading or other means.
26. *Drainage system.* The system through which water flows from the land, including all watercourses, water bodies and wetlands.
27. *Drainageway.* All land areas needed to allow passage of the base flood, including sufficient access above the base flood elevation along each side of and parallel to the natural or excavated channel.

28. *Driveway.* An area improved for ingress or egress of vehicles, and allowing access from a street to a building or other structure or facility.
29. *Easement.* The right of a person, government agency, or public utility company to use public or private land owned by another for specific purpose.
30. *Extraterritorial jurisdiction (ETJ).* The unincorporated area that is contiguous to the corporate boundaries of the City as defined in V.T.C.A., Local Government Code ch. 42, as amended, except as set forth in such agreements that may be entered between the City and any other governmental entity whose ETJ would overlap the City's ETJ.
31. *Filing of application for final plat.* Submission by the property owner of a plat which has received all preliminary approvals prescribed by these regulations, conforms to all conditions imposed pursuant to such preliminary approvals and which meets submittal requirements for a final plat as prescribed by this Chapter.
32. *Final plat.* The map of a subdivision or addition to be recorded after approval by the commission and any accompanying material and additional requirements as described in this Chapter.
33. *Fire lane.* A dedicated, privately maintained drive, constructed to city standards, providing an unobstructed means of access for fire department apparatus.
34. *Floodplain.* Any land area susceptible to being inundated by water from the base flood.
35. *Floodway.* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood as defined in Section 11-3-1 without cumulatively increasing the base flood elevation more than a designated height.
36. *Frontage.* That side of a lot abutting a public or private street.
37. *Global Positioning System (GPS).* A system which utilizes satellites to determine relative location of a point on the earth's surface with highly accurate reference coordinates.
38. *Grade.* The degree of rise or descent of a sloping surface, such as a street, parkway or berm, usually expressed in percentage terms.
39. *Island.* In street design, a raised area, usually curbed, placed to guide traffic and separate lanes, or used for landscaping, signing, or lighting.
40. *Lake area.* Any natural or manmade stormwater lake area or playa in the City or within the jurisdiction of this Chapter, the perimeter of which may be or has been established and shown on maps maintained by the City engineer, and is substantially the estimated high-water level for the lake.
41. *Loop street.* A street whose only connections to another street are at two points on that street; usually a collector or local street.
42. *Lot or parcel.* A tract, plot or portion of a subdivision, addition or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or possession or for building or development.
43. *Lot area.* The total horizontal area within the lot lines of a lot.

44. *Lot line.* The line dividing one lot from another lot or from a street, alley, right-of-way, public place or common use area.
45. *Lot of record.* A parcel of land which is designated as a separate and distinct lot or tract on a duly approved subdivision plat, which has been recorded in the office of the county clerk of the appropriate county.
46. *Main.* In any system of continuous piping, the principal artery of the system to which branches may be connected.
47. *Median.* That portion of a divided roadway separating lanes of traffic proceeding in opposite directions.
48. *Minor plat.* A proposed plat with no more than four contiguous lots, with said lot or lots fronting on an existing street, and not requiring the creation of any new street or any public improvements.
49. *Mutual access easement.* An officially approved, privately maintained drive, open to unrestricted and irrevocable access to two or more lots.
50. *Open space.* Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.
51. *Oversize main.* A water or wastewater main required to interconnect property being developed with the City's water or wastewater system, which is a larger size than a 20 centimeter (8 inches) water main or a 25 centimeter (10 inches) wastewater main.
52. *Park.* An area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, state or county agency, or other public body for recreational or conservational uses.
53. *Parkway.* The area of a street within the dedicated right-of-way located between the boundary of the right-of-way and the street pavement, normally reserved for the placement of utilities, sidewalks and landscaping.
54. *Performance bond and/or surety bond.* A financial guarantee to ensure that all improvements, facilities or work required by this Chapter will be completed in compliance with the ordinance, regulations and approved plans and specifications of a development.
55. *Perimeter street.* Any existing or planned street which abuts the subdivision or addition to be platted.
56. *Plat.* The plan or map for the subdivision or addition to be filed for record in the county where such subdivision or addition is located.
57. *Platting.* The act of preparing for approval and processing, pursuant to this Chapter, the plan or map for the subdivision or addition to be filed for record in the county where such subdivision or addition is located.
58. *Pre-application conference.* An initial meeting between developers and city representatives which affords developers the opportunity to present their proposals informally.
59. *Preliminary plat.* The preliminary drawing or drawings, described in these regulations, indicating the proposed manner or layout of the subdivision or addition to be submitted to the

director for approval as specified herein.

60. *Private street.* A vehicle accessway which provides access to one or more lots, in place of a public street, but not dedicated to the public use.
61. *Property owner.* Any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in the land comprising the subdivision or addition, or any representative or agent thereof, who has express written authority to act on behalf of such owner. The term includes developer.
62. *Property owners' association.* A private, nonprofit corporation of owners and/or residents of a fixed area formed for the purpose of owning, operating and maintaining various common properties or facilities.
63. *Pro rata.* A charge against a developer requesting to connect to existing water or sanitary sewer lines, said charge serving as reimbursement to the original installer of the line.
64. *Public improvement.* Any drainageway, roadway, parkway, sidewalk, utility, pedestrian way, off-street parking area, lot improvement, open space, or other facility for which the City or other governmental entity will ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established or that affects the health, safety or welfare of the general public.
65. *Public improvement plans.* The plans showing the specific location and design of public improvements to be installed in the proposed subdivision or addition in accordance with the requirements of the commission as a condition of the approval of the plat. These plans, as determined by the City engineer, may include, but are not limited to, grading plan, dimensional control plan, paving plan/profile, drainage area map, drainage plan/profile, water and sewer plan/profile, lift station plan, special details, hydrologic studies and other plans.
66. *Remainder.* The residual land left after platting of a portion of a tract or the residual of a lot, a portion of which has been replatted. The residual of such partially replatted lot shall be considered an unplatted tract.
67. *Registered surveyor.* A registered professional land surveyor as authorized by state statutes to certify land surveys in the State of Texas.
68. *Replatting.* Any change in a map of an approved or recorded plat, except as permitted as an amended plat, that affects any street layout on the map or area reserved or dedicated thereon for public use or any lot line, or that affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions or additions. Replatting includes the combination of lots into a single lot for purposes of development.
69. *Reserve strip.* A strip along a plat boundary, reserved with the purpose of preventing access to an element of the subdivision, usually a street, alley, easement, or other public facility.
70. *Retaining wall.* A structure erected between lands of different elevation to protect structures and/or prevent the washing down or erosion of earth from the upper slope level.
71. *Retention basin.* A pond, pool, or basin used for permanent storage of water runoff.
72. *Right-of-way.* A parcel of land occupied or intended to be occupied by a street or alley, and, where appropriate, other facilities and utilities including sidewalks, railroad crossings,

electrical, communication, oil or gas, water or sanitary or storm sewer facilities, or for any other special use. The use of right-of-way shall also include parkways and medians outside of pavement. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels.

73. *Security.* The bond, letter of credit or cash escrow provided by the applicant to secure its promises in the improvement agreement.
74. *Sewer.* Any pipe conduit used to collect and carry away sewage or stormwater runoff from the generating source to treatment plants, receiving streams, or retention basins, either constructed or natural.
75. *Sight triangle.* A triangular-shaped portion of land established at intersecting streets, highways, alleys and driveways in which nothing may be erected, placed, planted or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection, as required by the City Code.
76. *Site plan.* A plan of a specific parcel of land, prepared to scale, showing accurately all buildings, existing or proposed, in relation to the platted parcel of land, and containing proposed floor area and coverage area for each structure and all impervious surface areas, to be used in determining compliance with the requirements of this ordinance, along with other essential site elements such as parking facilities necessary to comply with the minimum requirements of the proposed use, locations of all buildings and structures, means of access, and areas to be landscaped, together with any other requirements of the zoning code or other valid ordinances of the City.
77. *Sketch plat.* A sketch preparatory to the preliminary plat or final plat, to enable the property owner to save time and expense in obtaining city staff review and comment as to the form of the plat and the objectives of these regulations.
78. *Street.* A public right-of-way used, or intended to be used, for passage or travel by motor vehicles and classified as follows:
  - (a) *Arterial street,* including such terms as "freeway" or "expressway," is a street of considerable continuity which is intended to function primarily as a main traffic artery for travel of high volumes of vehicles through and among large areas of the City, at speeds consistent with safety and efficiency of such travel and with minimum delay, including any street so designated on the major thoroughfare plan.
  - (b) *Collector street* is a street which carries traffic from minor streets to arterial streets, including the principal entrance streets of a residential development.
  - (c) *Local street* is a street used primarily for access to the abutting properties. A cul-de-sac or dead-end street is a local street with only one outlet.
  - (d) *Marginal access street* is a minor street which is parallel and adjacent to an arterial street and which provides access to abutting properties and protection from through traffic.
  - (e) *Commercial or industrial street* is a street intended primarily to serve traffic within an area of commercial or industrial development or proposed development.

79. *Street hierarchy.* The conceptual arrangement of streets based upon function. A hierarchical approach to street design classifies streets according to function from heavy-traffic roads down to streets whose function is residential access.
80. *Subdivision.* The division of any tract or parcel of land into two or more lots for the purpose, whether immediate or future, of offer, sale, or lease or for the purpose of development or transfer of ownership. Subdivision includes the division or development of residentially and nonresidentially zoned land, whether by deed, metes and bounds description, devise, intestacy, lease, map, plat or other recorded instrument. Subdivision also includes resubdivision. Subdivision also refers to the land to be so divided, as the context may indicate, and includes the term "addition."
81. *Substandard street.* An existing street or highway that is not constructed to the ultimate standards for the type of roadway as designated in the major thoroughfare plan or does not meet other minimum specifications in the major thoroughfare plan or the City's minimum standards and specifications, or, if a state highway, does not meet the minimum standard specifications of the Texas Department of Transportation.
82. *Survey control monument, official city (city survey control monument).* A permanent monument, established by or accepted by the City engineer as an official city survey monument, and marking a point on the City of Midland Control Network (CMCN). A record of all such monuments is maintained in the office of the City engineer.
83. *Temporary improvement.* Improvements built and maintained by an owner during construction of the development of the subdivision or addition and prior to release of the performance bond or improvements security and required for the shortterm use of the property.

(Ordinance 7333, sec. 1, adopted 6/14/1994)

### § 11-2-3. Platting procedures.

#### (A) General.

1. *General application requirements for all plats.* The following requirements shall be met in the submittal of an application for plat review or approval, whether sketch plat, preliminary plat, final plat, replat, amending plat or plat vacation, except as specified herein:
  - (a) Title block in the lower righthand corner of each plat which indicates:
    - (1) The proposed subdivision name.
    - (2) The owner's name, address and phone number.
    - (3) The name and address of the individual or firm preparing the plat.
    - (4) The name of a contact person with address and phone number, except for final plats.
  - (b) A locator map.
  - (c) North direction clearly indicated to the top or right of the drawing, theta angle for the permanent survey monument on the plat boundary nearest the City survey control monument (not required on sketch plat), graphic scale, and last revision date.
  - (d) Names of adjacent subdivisions or additions or the names of record owners of adjoining parcels of unplatte land.

2. Fees, application forms and procedures. The Council shall establish a schedule of fees as it determines appropriate to recoup costs related to the administration of this Chapter. The director shall establish procedures, forms and standards with regard to the content, format and number of copies of information constituting an application for a sketch plat, preliminary plat, replat, vacation of plat or final plat.
- (B) Official submission date. For the purpose of this Chapter, the date on which an application for approval of a final plat that contains all required elements mandated by V.T.C.A., Local Government Code § 212.004(b), and the elements required by Section 11-2-3(A) and (H) is first filed shall constitute the official submission date for the plat, after which the statutory period required for approval or disapproval of the plat shall commence to run.
- (C) Sketch plat.
1. Purpose. The purpose of the sketch plat is to allow the City staff to review and comment on a general plan for the development of property, including the layout of streets, lots, open space, sites for public facilities and utilities.
  2. Application procedure and requirements.
    - (a) Pre-application conference. Before preparing the sketch plat, the applicant may schedule an appointment and meet with the director or his designee to discuss the procedures for approval of the plat and the requirements or recommendations as to general layout of streets and/or reservations of land, street improvements, drainage, sewerage, fire protection, and similar matters, as well as the availability of existing services.
    - (b) General application requirements. At least 12 days prior to submitting a preliminary plat, the owner shall file an application and a sketch plat with the planning division. The sketch plat shall be drawn to a scale no smaller than 1:2,500 (1" = 200') and shall contain the following information in addition to those items described in Section 11-2-3(A):
      - (1) The location, width, and names of all existing or platted streets or other public ways within or adjacent to the tract, existing permanent buildings, railroad rights-of-way, and topography with existing drainage channels, and other important features. The location map should include an area not less than 1.5 kilometers (1.0 mile) beyond the plat boundary or such greater area as necessary to show the relationship of the proposed subdivision to existing community facilities which serve or influence it. The subdivision name and location, main traffic arteries, elementary and secondary schools and parks and playgrounds should be included.
      - (2) Tract lines and record owners of all unplatted land immediately adjoining the proposed subdivision within a distance of 100 meters (330 feet) thereof.
      - (3) The layout, names and widths of proposed collector streets and intersections, and a general configuration and widths of proposed streets, alleys and easements. Off-site rights-of-way and easements within 100 meters (330 feet) of the plat boundary shall be included if expected to have an effect on the proposed plat.
      - (4) A general arrangement of land uses, including but not limited to park and school sites; municipal facilities; private open space; floodplains, drainageways, and drainage basins within 100 meters (330 feet) of the plat boundary; phasing plan; and proposed nonresidential and residential uses and densities.

- (5) The location of any proposed screening walls and/or other forms of screening.
- (6) The layout and number of one-family and two-family lots, typical lot width and depth, net area of each apartment or business area, playgrounds, park areas and public areas.
- (7) Existing contours of the tract in intervals of 0.60 meter (2 feet) or less, referred to National Geodetic Vertical Datum of 1929. Contour information may be shown as supplied by the City engineer, if available, or shall be furnished by a registered surveyor.
- (8) Existing sewers, water mains, culverts, or other underground structures within the tract and immediately adjacent thereto, with pipe sizes and locations indicated.

(D) Preliminary plat.

1. Purpose. The purpose of the preliminary plat is to allow the commission to evaluate the proposed plat for conformity with this Chapter and other applicable provisions of this Code and with the comprehensive plan and to evaluate related public improvement plans.
2. Applicability. A preliminary plat shall be required for all subdivisions of property and the recording of single lots within the City, except as provided by Sections 11-2-1(E) and 11-2-3(I).
3. Pre-application conference. Before preparing the preliminary plat, the applicant may request that the director schedule a conference with those departments affected by the proposed plat, to discuss the results of the staff's sketch plat review. The director will schedule the conference to follow the 12-day period allowed for review of the sketch plat and will invite representatives of the departments of utilities, community services and others, as applicable, to meet with the applicant.
4. General application requirement. On forms approved by the City, the applicant shall file for approval of a preliminary plat. The plat shall include a drawing of the boundary description which has been prepared by a registered surveyor and shall bear his seal, signature and date on each sheet and a statement that the boundary description shown thereon accurately describes the survey of the tract boundary conducted by said surveyor. The payment of all applicable fees shall be required at the time of submission. The proposed preliminary plat shall conform to the following standards and shall contain the following information in addition to the requirements specified in Section 11-2-3(A):
  - (a) Application form provided by the office of the director.
  - (b) The plat shall be clearly and legibly drawn to a scale of 1:2,500 (1" = 200') or such larger scale as may be required by the director or commission.
  - (c) Proposed use of lots and restrictive covenants, if any common area is proposed.
  - (d) Contours with intervals of 0.30 meter (1 foot) referred to National Geodetic Vertical Datum of 1929, as required for a sketch plat. Contours, including benchmark references, shall be determined from the benchmark elevation given by the City engineer, if available. The location and elevation of the reference benchmark shall be specified on the plat.
  - (e) Location of existing utilities, drainage channels, power poles and such other significant

items which may affect general development of the property.

- (f) All parcels and easements to be dedicated to public use, including off-site dedications within 100 meters (330 feet) of the plat boundary.
  - (g) Layout, names and widths of streets with curve data, alleys and easements.
  - (h) Layout, numbers and approximate dimensions of lots and blocks.
  - (i) Tract lines and record owners of all unplatted land immediately adjoining the proposed subdivision within a distance of 100 meters (330 feet) thereof.
  - (j) Existing improvements located within or near the boundary of the tract(s) to be subdivided.
  - (k) Boundaries and existing features required on final plats shall be shown and described by a registered surveyor based on a survey on the ground and certified by him.
  - (l) A drainage plan in the form and containing the elements specified by the City of Midland storm drainage design manual.
  - (m) Proposed water, sanitary sewer and storm sewer pipelines with culverts, bridges, and other appurtenances or structures shown.
  - (n) Stormwater retention or detention basins as required.
  - (o) Phases of development and schedule of phasing.
5. Public improvements installed prior to final plat. If the developer intends to install public improvements in the subdivision prior to approval of the final plat, the preliminary plat shall contain the engineering plat data required for final plats by Section 11-2-3(H)3(b) except items (1) and (8) thereof.
6. Filing.
- (a) The developer, at least 12 days prior to the date of any regular meeting of the commission at which consideration is desired, shall file the preliminary plat and application for approval with the commission. The preliminary plat shall be considered officially filed only when it has been received in the office of the director in full compliance with the provisions of this subsection (D). The following notice shall be stamped on the face of each preliminary plat: "Preliminary Plat—for review purposes only."
  - (b) Filing fee. A filing fee shall accompany each preliminary plat when submitted. Said fee shall be for the purpose of defraying, in whole or in part, the cost of review of said plat, and no refund shall be made.
7. Review by director. The director, following determination that the application is complete, shall transmit copies of the plat to the director of utilities and the Texas Department of Transportation when the land to be subdivided abuts a state or state-maintained highway. The director shall review the plat for conformance with the requirements of this Chapter and shall make recommendations to the commission for approval, conditional approval or disapproval of the preliminary plat. The director also shall report the applicable comments and recommendations of other agencies to the commission.

8. Standards for approval. No preliminary plat shall be approved by the commission or by the Council unless the following standards have been met:
  - (a) A preliminary drainage plan has been approved by the City engineer. The city engineer may approve a preliminary drainage plan which does not include information in sufficient detail to determine whether public street, alley and drainage improvement plans which will be submitted later will conform to all usual standards, but the lack of such detailed information shall result in approval of the preliminary plat being conditioned as described in paragraph 13 below, whether such condition is or is not explicit in the commission or Council's action.
  - (b) The plat conforms to applicable zoning and other regulations.
  - (c) The plat meets all other requirements of these regulations, subject to approval of variances.
9. Plats requiring zoning district changes. A preliminary plat which is dependent, for conformance with this Chapter or the comprehensive plan, upon changes in existing zoning districts may be considered by the commission concurrently with its consideration of such zoning district changes. If the commission makes a recommendation to the Council that the needed zoning district changes be approved, it may then consider and approve the preliminary plat, conditioned upon later zoning approval by the Council. Following conditional approval by the commission, if the preliminary plat is one that requires Council approval, it shall be forwarded for Council consideration along with the needed zoning district changes. If the commission recommends that the needed zoning district changes be disapproved, the commission shall disapprove the preliminary plat, citing as its basis the lack of conformity of the proposed plat to the existing zoning districts and this Chapter, and the plat shall not be further considered unless the Council subsequently approves the needed zoning district changes. In the event of such subsequent zoning approval within a period of 90 days following the commission's disapproval of the proposed plat, the developer shall be entitled to file the preliminary plat for reconsideration by the commission, and no additional plat review fee shall be charged for the resubmission.
10. Action by the commission. Upon receipt of the preliminary plat and other information from the director together with his recommendations, the commission shall render a decision within 30 days from the date the plat was properly filed with the director. The commission may approve, disapprove or conditionally approve the preliminary plat. If approval by the Council is required pursuant to Section 11-2-3(D)11, approval by the commission shall be considered a recommendation to the Council and shall be subject to the Council's concurrence, modification or disapproval.
11. Approval by the Council.
  - (a) Approval by the Council shall be required prior to consideration of a final plat by the commission for any preliminary plat which:
    - (1) Is ten hectares (25 acres) or more in area and involves any request for a variance from the regulations of this Chapter;
    - (2) Includes any new street or continuation of an existing street which connects two arterial streets;
    - (3) Involves a request for a variance from any of the subdivision design standards

affecting any arterial street;

- (4) Does not provide an alley abutting or connected by pedestrian access easement to each lot zoned for four dwelling units or less;
  - (5) Includes any proposed private street or alley or other area of common ownership;
  - (6) Is ten hectares (25 acres) or more in area and is located in any survey section (approximately one square mile) which does not contain a publicly owned site or sites intended for both a public school and park, or public site reservation therefor;
  - (7) Involves any other matter cited in this Chapter as requiring Council approval;
  - (8) Involves any matter of such policy significance that the commission determines that said plat should be considered by the Council;
  - (9) Includes any potentially significant problem, in its form as approved by the commission, that the City Manager determines, upon the recommendation of any department head of the City, should be considered by the Council;
  - (10) Is a replat of a subdivision or part of a subdivision that attempts to amend or remove a common area or green space that is in the preceding plat; or
  - (11) Was approved by operation of law due to the commission's failure to approve, approve with conditions, or disapprove said plat within the applicable period of time prescribed by Chapter 212 of the Local Government Code, as amended, or due to the commission's failure to otherwise comply with a requirement of Chapter 212 of the Local Government Code, as amended.
- (b) The preliminary plat, together with the recommendation of the commission, shall be submitted, by the director, to the Council for its consideration where required, promptly after approval or conditional approval by the commission or following the filing of a revised preliminary plat, conforming to all conditions of approval by the commission.
  - (c) The Council shall act on the preliminary plat and recommendation of the commission within the applicable period of time prescribed by Chapter 212 of the Local Government Code, as amended, unless such time is extended by agreement with the property owner.
  - (d) The Council shall review the recommendation of the commission and determine whether to approve, conditionally approve, or disapprove the preliminary plat.
12. Recording action taken. When the preliminary plat has been approved, conditionally approved, or disapproved, the director or his designee shall notify the property owner in writing. All objections made to the preliminary plat, or conditions imposed, shall be furnished to the property owner in writing. When a preliminary plat has been approved, the director shall stamp a copy of said plat as approved and affix his signature and date of approval thereto, together with a statement of the conditions of approval, if any, and retain the plat for the City's records.
  13. Effect of approval.
    - (a) Approval of a preliminary plat shall be considered to be approval of the general arrangement of lots, streets and alleys and the widths of streets and alleys but is conditional and shall not be considered to be final acceptance of the subdivision or approval that all dimensions, notations and other matters of detail appropriate to a final plat are sufficient.

Approval shall also be subject to approval of public improvement plans by the City engineer, and matters such as the locations, alignments, and widths of streets, alleys and easements are subject to the possible need for changes if public improvement plans as submitted by the developer do not conform to the usual standards for such facilities. If any plat is disapproved by the commission or Council, such disapproval shall be deemed a refusal by the City of the offered dedications shown thereon.

- (b) Approval of a preliminary plat by the commission, and completion of a development agreement, if applicable, constitutes authorization for the City engineer to release public improvement plans subject to his final approval and for the property owner to commence grading of the site and construction of such public improvements as he desires. Approval of a preliminary plat also authorizes the property owner, upon fulfillment of all requirements and conditions of approval, to submit an application for final plat approval. Upon release of the public improvement plans, the City engineer shall issue a certificate indicating the said plans have been released and construction of the improvement is thereafter authorized. Additional certificates may be issued by the City engineer authorizing the construction of private utilities on a phased schedule. The certificate shall read as follows: "The preliminary plat for (insert name of the subdivision or addition) as approved by the City of Midland (Planning Commission) (Council) [insert whichever body is applicable] on (insert date of approval) is authorized for the construction of public improvements as approved by the City engineer. A final plat shall be approved by the planning commission upon the completion of all public improvements or the provision of a subdivision improvement agreement and a public improvements guarantee as required and submission of a final plat in compliance with Section 11-2-3(G) and (H) of the Midland City Code, as amended."
14. Lapse of preliminary plat approval. The applicant shall submit a final plat to the City for the entire area for which a preliminary plat has been approved, or, if the subdivision is to be developed in phases, the first of a series of final plats, each covering a portion of the approved preliminary plat, within six months of the date of approval or conditional approval of the preliminary plat. Each time the applicant submits a final plat of one phase of the development, conforming to the approved preliminary plat, and said final plat is approved, the approval of the preliminary plat shall be extended for a period of one year from the date of approval of said final plat. If the property owner fails to submit an initial or additional final plat application within such period, the preliminary plat shall lapse, and all further proceedings concerning the subdivision shall terminate. The applicant shall be required to submit a new sketch plat or preliminary plat, as required by this Chapter, subject to all zoning and subdivision standards then in effect.
- (E) Amendments to preliminary plat.
1. At any time following the approval of a preliminary plat, and before the lapse of such approval, a property owner may request approval of an amendment.
  2. The commission shall approve, conditionally approve or disapprove any proposed amendment and may make any modifications in the terms and conditions of preliminary plat approval reasonably related to the proposed amendment.
  3. If the applicant is unwilling to accept the proposed amendment under the terms and conditions required by the commission, the applicant may withdraw the proposed amendment.
- (F) Extension and reinstatement procedure.

1. Sixty days prior to the lapse of approval for a preliminary plat, the property owner may petition the commission to extend or reinstate the approval. Such petition shall be considered at a public meeting of the commission.
2. In determining whether to grant such request, the commission shall take into account the reasons for lapse, the ability of the property owner to comply with any conditions attached to the original approval, the extent to which the property owner agrees to abide by newly adopted subdivision regulations, and any changed conditions in the surrounding area which would make an extension undesirable. The commission shall extend its approval of the plat, or deny the request. In the event the commission denies extension of the preliminary plat, the property owner must submit a new application for approval.
3. The commission may specify a shorter time for lapse of the extended plat than is applicable to original approvals, but shall not extend the period that a preliminary plat approval is valid to more than two years from the date of original approval.
4. At any time following the lapse of approval of a preliminary plat, a developer may request, and the commission may approve, at its discretion, a reinstatement of such preliminary plat for the purpose of considering and approving a final plat for all or a portion of the area covered by the preliminary plat. The commission shall reinstate a preliminary plat only when it determines that it would be in the public interest to do so to avoid unnecessary review of a new sketch plat, if applicable, and preliminary plat, and when the pattern of development proposed by the plat would not be to the detriment of any nearby area or the general development of the City. The commission may establish such conditions on reinstatement as are necessary to ensure that the reinstated plat conforms to the City's comprehensive plan, Chapter 11-1 of the Midland City Code, as amended, and provisions of this Chapter, including plans or policies referenced herein, which may have been amended since the original approval of the lapsed preliminary plat.

(G) Public improvements.

1. Timing of public improvements. Except as provided otherwise herein, all street, alley, water, sanitary or storm sewer, and other public improvements, as well as lot improvements on the individual lots of the subdivision or addition as required in these regulations, for subdivisions within the City or within 1.5 kilometers (0.93 miles) thereof, shall be installed as required by the public improvement plans, prepared in accordance with Section 11-2-4, offered for dedication and accepted by the City prior to final plat approval. The required improvements shall be those specified and approved by the City in the public improvement plans. As used in this Section, "lot improvements" refers to grading and installation of improvements required for proper drainage and prevention of soil erosion.
2. Request for deferral of improvements. The developer may request that subdivision improvements be installed, offered for dedication and accepted by the City following final plat approval. If the City agrees, the developer shall be required to execute a subdivision development agreement and provide security as required by Section 11-2-4. The developer shall include a schedule of phasing and construction for the development agreement.

(H) Final plat.

1. Purpose. The purpose of a final plat is to record the subdivision of property, including but not limited to the accurate description of blocks, rights-of-way, easements, building lines and street names and other property restrictions.

2. Applicability. A final plat shall be required for all subdivisions of property and the recording of single lots within the City, except as otherwise provided in Section 11-2-1(E). A final plat shall require approval by the commission.
3. General application requirements. The final plat shall contain all of the information required for plats, as specified in Section 11-2-3(A). In addition, the application shall be accompanied by the following:
  - (a) If a final plat approval is required by the county, such plat shall be signed by an authorized county official prior to filing of the application with the City.
  - (b) Copies of the proposed final plat, clearly and legibly drawn on one or more sheets of mylar or other comparable material with a minimum dimension of 40 centimeters (16 inches) to a scale of 1:1,200 (1" = 100') or such larger scale as required by the director or commission. The plat shall have a minimum letter size of 0.20 centimeter (0.08 inch). The density of inking shall be sufficient to insure legible reproduction of the entire plat. The plat shall contain the following:
    - (1) Language stating: "Notice: Selling a portion of this addition by metes and bounds may be a violation of City ordinance and state law and subject to fines and withholding of utilities and building permits."
    - (2) The boundary lines with accurate distances and courses and the exact location and width of all existing or recorded streets, blocks, lots, alleys, easements or other rights-of-way, watercourses, and other important features within or adjacent to the boundaries of the tract and within 60 meters (200 feet) thereof. Lines or indications outside the plat boundary shall be dashed lines. The boundary of the tract or tracts the plat is proposed to subdivide shall be shown with distinctly heavier lines than other lines on the plat (solid if tract boundaries, dashed within continuous rights-of-way).
    - (3) If the subdivision is within 1.5 kilometer (1 mile) of an existing city survey control monument, at least two corner points on the subdivision boundary shall be tied by grid bearing and grid distance to a city survey control monument and shown on the plat. Two additional corner points on the opposite side of any subdivision greater than 16 hectares (40 acres) in area shall be tied to a city survey control monument. These boundary corner points shall be described by theta angle and combination sea level and mapping grid factor, relative to the U.S. Coast and Geodetic Survey NAD 83 Plane Coordinate System. If the subdivision is not within one mile of an existing city survey control monument, the subdivision boundary ties shall be to the nearest established street intersection and to a permanent survey monument (PSM) accepted by the City engineer as a known point for survey reference. The location and description of each PSM required by Section 11-2-5(A) shall be shown on the final plat. Those PSMs which are not required to be in place prior to filing of the final plat with the director for consideration shall be depicted as proposed monuments.
    - (4) The location and elevation of each benchmark required by Section 11-2-5(A) and the vertical datum used to establish the elevation of each benchmark.
    - (5) Course and distance of all street centerlines, including curve data comprised of the central angle, tangent length, arc length, chord length, and chord bearing or azimuth. This data may be shown adjacent to each curve or compiled in a curve table on the

plat.

- (6) The exact layout of all plat features, including (i) street names; (ii) length of all arcs, radii, internal angles, points of curvature, length, and bearings of the tangents; (iii) locations and dimensions of all easements for rights-of-way provided for public services or utilities, including guying easements, and any limitations of the easements; and (iv) all lot and block numbers and lines with accurate dimensions in meters (feet), and hundredths of meters (feet). The courses, either in bearing or azimuth form, of all lot lines shall be shown either adjacent to the lot line or in a line table on the plat. Curve data shall be presented for all curves including returns at block corners and length, arc length, chord length, and chord bearing or azimuth. This data may be shown adjacent to each curve or compiled in a curve table on the plat.

Cul-de-sac turnarounds shall have curve data shown on the plat. The radius point of such turnarounds must be shown on the plat and course and distance shown to the right-of-way lines.

Where a street or other public right-of-way lies along a boundary of the plat and the property on the opposite side of said right-of-way is located within a platted subdivision, the plat survey shall certify the total width of the right-of-way, including any additional dedication being made by the plat, and the property corners along the opposite side of the right-of-way and the minimum dimensions across said right-of-way shall be shown on the plat.

- (7) The accurate outline of all property being offered for dedication for public use with the purpose indicated thereon, including off-site dedications within 100 meters (330 feet) of the plat boundary, and of all property that may be reserved by deed covenant for the common use of the property owners in the subdivision or addition.
- (8) Special restrictions including, but not limited to, drainage, fire lanes, screening, standard notes for floodway, if applicable, and other standard notes for plats, including boundaries and notes required for special flood hazard areas, as specified by Section 11-2-5(D)6, where applicable.
- (9) Certification by a registered surveyor to the effect that the plat represents a survey made by him or under his supervision and that all the monuments shown thereon have been placed under his direction, and that their location, size, and material description are correctly shown, and that the survey correctly shows the locations of all visible easements and rights-of-way and all rights-of-way, easements and other matters of record affecting the property being platted.
- (10) Plat boundary survey closure and subdivision area calculation.
- (11) The volume and page or filing references of recorded instruments in the county records of each existing public dedication and public and private easement which encumbers the area of the plat.
- (c) Additional documents necessary for dedication or conveyance of easements or rights-of-way, as required by the City. The City may, in some instances, require the conveyance of fee simple title for certain rights-of-way. Except as otherwise provided in this Chapter, the developer shall be responsible for securing and submitting, in proper form, with the plat,

all dedication instruments needed in conjunction with the plat, but located outside the plat boundary.

- (d) Formal irrevocable offers of dedication to the public of all streets, local government uses, utilities, and easements either in the form specified herein on the plat or, if separate, in a form approved by the City attorney.
- (e) A copy of an owner's policy of title insurance, a commitment for issuance of a title policy, or a title opinion prepared by a member in good standing of the Texas Bar Association. Said title policy, title commitment, or title opinion must have been issued and dated not earlier than 90 days prior to the date the final plat is considered by the City and identify all record owners and lienholders of the property covered by the final plat as of the date of issuance.
- (f) The development agreement and security, if required, in a form satisfactory to the City attorney, and in an amount established by the commission upon recommendation of the City engineer, as provided in Section 11-2-4, and shall include a provision that the property owner shall comply with all the terms of the final plat approval as determined by the commission.
- (g) A plat application fee in an amount as set by the Council.
- (h) The final plat shall also be supplied in digital form either as a DOS Auto Cad ".dxf" or ".dwg" file or as a DOS ASCII text file. A ".dxf" or ".dwg" file shall contain the plat boundary and all lots within the subdivision. If an ASCII text file is supplied, it shall contain the point numbers and coordinates for all lots, radius points, and boundary points for the subdivision, together with a point drawing which shall supply the location of all points and their respective numbers. Alternatively, the developer may choose not to submit a digital file and shall instead pay a fee which will be established in the schedule of platting fees for conversion of the plans to digital form by the City.
- (i) Construction record drawings prepared by the property owner's engineer, if public improvements have been completed, as required by Section 11-2-4(C)2.
- (j) A written application for final approval and authorization for the City secretary to file the plat with the county clerk for recording. The application shall also authorize the filing of the associated documents which are approved by the commission and shall authorize the City to reproduce from the plat, at the expense of the applicant, two film positives, ten direct prints for city record files, and one direct print for each utility company franchised to provide service within the City, after final approval.
- (k) Tax certificates showing that no taxes are delinquent against the land being platted.
- (l) Restrictive covenants which require approval by the planning and zoning commission.
- (m) Certificates to be placed on plat as applicable:
  - (1) Owner's certificate (to be placed on plat), which must be acknowledged by the owner(s) of the property in the same manner as deeds as required by V.T.C.A., Property Code § 12.001, as amended. Acknowledgments may be modified to reflect the type of individual or entity who has an ownership interest in the property and the capacity in which a person is signing, e.g., partner, officer of corporation, etc. A separate acknowledgment should be made for each person signing. A separate

acknowledgment need not be done for the same person signing in various capacities (i.e., both individually and as a corporate officer) if the signature block and acknowledgment indicate all capacities in which the person is signing.

#### OWNER'S CERTIFICATE

STATE OF TEXAS  
COUNTY OF MIDLAND

WHEREAS, \_\_\_\_\_ is/are the record owner(s) of a tract of land situated in the \_\_\_\_\_ Survey, County of Midland, and more particularly described (as follows:) (hereon.) [use whichever applies]

BEGINNING ... (if applicable)

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ do(es) hereby adopt this plat designating the hereinabove described property as \_\_\_\_\_, an addition to the City of Midland, Texas, and, hereby dedicate to the public use forever the streets, alleys and easements (and parks) (and parkways) (and drainage basins) [include all that apply] shown thereon.

WITNESS our hands at (City, State), this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_. (Include a separate statement for each location or date of signature.)

(Print or Type Name Here)

\*If applicable.

#### ACKNOWLEDGMENT

STATE OF TEXAS COUNTY OF

This plat was acknowledged before me on (DATE) by (NAME OF OWNERS SIGNING ABOVE).

(Notary Seal)

Notary Public, State of Texas

(2) Surveyor's certificate.

#### SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, \_\_\_\_\_, a Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

(Print or Type Name Here)

Registration Numbe \_\_\_\_\_ r

(3) Certificate of approval by the City planning and zoning commission (to be placed on plat).

#### CERTIFICATE OF APPROVAL

For approval by the commission:

This is to certify that the above and foregoing plat of \_\_\_\_\_ Addition was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Signed:

(Print or Type Name Here), Chairman

Attest:

(Print or Type Name Here), Secretary

For approval by the Director:

This is to certify that the above and foregoing plat of \_\_\_\_\_ Addition was approved by proper action of the Director of Engineering and Development of the City of Midland, Texas on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Signed:

(Print or Type Name Here), Director, Engineering & Development

- (4) Utility company's certificate (to be placed on plat).

This plat has been checked for accessibility of utilities.

Signed:

(Name of each Utility Company)

Note: Provide one signature line for each utility, not operated by the City of Midland, and franchised to operate within the City.

4. Filing. A complete application for approval of a final plat shall be filed, together with all required documents, not less than ten days prior to the date of any regular meeting at which consideration is desired. The final plat shall be considered filed for approval on the date that an application that meets all the requirements of this Section and those elements mandated by V.T.C.A., Local Government Code § 212.004(b), is submitted.
5. Standards for approval. No final plat shall be approved by the director, the commission or the Council unless the following standards have been met:
  - (a) The plat substantially conforms to the approved preliminary plat, and all conditions of approval thereof, if a preliminary plat was required.
  - (b) Where the final plat includes only a portion of the area of the approved preliminary plat, and a phasing plan for final plats has not previously been approved by the commission or Council, the partial plat is determined to provide adequate street and alley circulation and otherwise to represent a logical and well-planned phasing of the development and that adequate provision for public improvements has been made.
  - (c) Required public improvements have been constructed and accepted, or a development agreement setting forth a schedule of phasing and construction and providing for security for the subsequent completion of improvements has been accepted by the City.
  - (d) The plat conforms to applicable zoning and other city regulations, and provisions of state law.
  - (e) Provision has been made for adequate public facilities under the terms of this Chapter.

- (f) The plat meets all other requirements of this Chapter, subject to approval of variances.
- (g) All escrow and pro rata fees have been paid.

6. Approval procedure.

- (a) Review by director. The director, following determination that the application is complete, shall transmit copies of the final plat to the director of utilities and to the Texas Department of Transportation when the land to be subdivided abuts a state or state-maintained highway. The director shall forward all legal documents to the City attorney for approval as to form. The director shall review the plat for conformance with the requirements of this Chapter and shall make recommendations to the commission for approval or disapproval of the final plat. The director shall notify the property owner of any recommended changes or suggestions so that the final tracing or other required material may be corrected and resubmitted for final approval.
- (b) Time requirement. The commission shall act on the final plat within 30 days after the filing of the plat or corrected plat, as may be the case, unless such time is extended by agreement with the subdivider or his agent. If approved, the chairman and secretary of the commission shall affix their signatures to the plat denoting final approval. If not approved within 30 days from the date of filing, the commission shall disapprove and reject the plat with the right to reconsider same when the objections are cured.
- (c) Recording. Upon approval of the final plat, the commission shall immediately forward the plat to the City secretary, who shall record one copy of the plat and requisite documents in the office of the county clerk.

7. Effect of approval. Approval of a final plat shall certify compliance with the regulations of the City pertaining to the subdivision of land. An approved and signed final plat may be used to reference lots and interests in property thereon defined for the purpose of conveyance and development as allowed by these regulations.

(I) Alternative approval procedures.

1. Short form procedure.

- (a) Applicability. The procedure provided herein may be followed for approval of a subdivision when the land proposed to be subdivided or resubdivided meets the following conditions and requirements:
  - (1) Adequate existing streets, easements and public areas. The land abuts upon a street of adequate width and is so situated that no additional street, alley, easement nor other public property is required in order to meet the requirements of this Chapter.
  - (2) Satisfactory survey, plat and proximity to monument. The perimeter of the tract being subdivided has been surveyed and marked on the ground and a plat thereof prepared by a registered surveyor and filed with the director showing that the nearest corner of each lot or parcel of such proposed subdivision is within 60 meters (200 feet) of a known corner which is adequately marked by concrete monument or iron stakes, as determined by the City engineer.
  - (3) Satisfactory drainage. The topography of the tract and the surrounding land is such that no drainage improvements are required, or, where drainage facilities are

required, arrangements have been made for the construction of such facilities as approved by the director.

- (4) Utilities. The utilities, as required in this Chapter, are in place to serve each parcel or lot of such subdivision or resubdivision, or arrangements to provide such facilities have been made.
- (5) Zoning. The proposed map of any part of the subdivision is not inconsistent with existing zoning.
- (b) Procedure. Not sooner than 12 days following submission of a sketch plat, the final plat may be submitted for consideration without prior approval of a preliminary plat. All requirements and procedures for final plat approval shall be as specified in Section 11-2-3(H), except that final plats which are to be considered pursuant to this procedure shall be filed with the director not less than 14 days prior to the commission meeting at which consideration is requested, with a written request for short form consideration.

2. Administrative approval.

- (a) Applicability. If a proposed minor plat contains no more than four lots and requires no public improvements nor the creation of any public streets, nor the extension of any public facilities, the director may approve the final plat without consideration by the commission. The director may not approve a variance to these regulations, nor disapprove the proposed plat.
  - (b) Procedure. Submittal requirements and approval standards shall be the same as for other final plats. The director shall approve the minor plat within 30 days from the date the application is filed. If the director determines not to approve the plat, he shall transmit the plat to the commission for its consideration within sufficient time to enable the commission to act on the plat within 30 days from the date the application is filed. The time for approval of the plat may be extended by agreement with the property owner.
3. Survey monumentation. For plats approved by short form procedure or through administrative approval, at least two corner points of the plat boundary shall be tied to a city survey monument by grid course and grid distance shown on the plat if it:
- (a) Contains any parcel or combination of parcels which is zoned as a nonresidential district and which is 0.5 hectare (1.2 acres) or more in area or contains a total area of all parcels of 1.0 hectare (2.5 acres) or more; and
  - (b) Lies within 1.5 kilometers (1.0 mile) of a city survey monument.

If not, it shall show a tie to any established point approved by the City engineer.

4. Benchmarks shall be shown as required for other final plats.

(Ordinance 7333, sec. 1, adopted 6/14/1994; Ordinance 10381 adopted 2/28/2023)

**§ 11-2-4. Assurance for completion and maintenance of improvements.**

(A) Required improvements and required subdivision development agreement.

1. Public improvement plans review.

- (a) General application requirements. Public improvement plans shall be prepared by or under the supervision of a professional engineer registered in the State of Texas as required by state law governing such professions. Plans submitted for review by the City shall be dated and bear the responsible engineer's name, serial number and the designation of "engineer," "professional engineer," or "P.E." and an appropriate stamp or statement near the engineer's identification, stating that the documents are for preliminary review and are not intended for construction. These plans shall conform in all details to the City's standards as to the design, grade, location, size and quality of materials and construction. Final plans acceptable to the City shall bear the seal and signature of the engineer and the date signed on all sheets of the plans.
- (b) Public improvement plan review and inspection procedure.
  - (1) Copies of the public improvement plans, and the required number of copies of the plat, shall be submitted to the engineering and development department for approval prior to submittal of a final plat.
  - (2) Plans and profiles submitted by the developer's engineer shall be prepared on standard 60-centimeter by 90-centimeter (24-inch by 36-inch) sheets. Plans and profiles shall be shown at scales of 1:500 or 600 (1" to 50') horizontal and 1:20, 24, or 25 (1" to 2') vertical, or at a scale which is approved by the engineering division. The plans shall contain all necessary information for construction of the project, including screening walls if proposed, and other special features. Each sheet of the plans shall contain a title block including space for the notation of revisions. This space is to be completed with each revision to the plan sheet and shall clearly note the nature of the revision and the date the revision was made.
  - (3) Two copies each of plans and specifications shall initially be submitted for preliminary review and comment by the City engineer, who shall return his comments within a period of seven days. Upon receipt of those comments, revisions shall be made as required and not less than six copies with revisions (nine copies if a development agreement is to be prepared) shall be submitted not later than 11 days prior to a Council meeting at which a development agreement is to be considered, if applicable, or not later than seven days prior to desired final approval if a development agreement is neither desired nor required. Upon the City engineer's approval, and following completion of a development agreement, if applicable, he will release the plans for construction, subject to approval of the preliminary plat by the commission and payment of all inspection fees, stamping all copies with his approval, retaining four copies (seven copies if a development agreement has been completed) for city records and use, and returning all other copies to the developer's engineer for the purpose of construction site use. The developer's engineer shall then return a set of plans to become the permanent property of the engineering division of the City. Upon release of approved plans, one set of plans, bearing the original stamp of approval by the City engineer, shall remain available to the contractors on the project site, and only plans bearing the original stamp of approval shall be used to verify the approved manner of construction.
  - (4) Upon approval of the preliminary plat and improvement plans by the engineering division, the developer may enter into a contract for the construction of the improvements as so planned; provided, however, that the construction and installation of the improvements shall be inspected by inspectors of the City to ensure

that the installation is made in accordance with the plans and the City's standard specifications which, in every instance, shall be a part of said installation contract.

- (5) When the project is ready for construction, line and grade stakes will be set by the developer's engineer and will be inspected by the engineering division. These stakes will not be set until after the developer's surveyor has properly staked on the ground all points of curves, including radius points for alley returns and street intersections, all points of tangency, and all block corners. Lot corners shall be staked by the owner's surveyor and inspected by the engineering division prior to authorization by the City engineer for a building permit to be issued as provided in Section 11-2-4(D).
- (c) This procedure shall also apply to approval of a final plat, if a preliminary plat is not required.

2. Development agreement and guarantee of completion of public improvements.

- (a) Public improvements required. Except when waived or deferred by the Council, subdivision development improvements conforming to adopted city standards shall be provided by the developer for any subdivision, or portion thereof, within the City and within its extraterritorial jurisdiction. Said improvements shall be completed prior to the approval of a final plat by the City or shall be completed according to a development agreement and ensured by a security as specified herein.
- (b) Development agreement. In the event the property owner elects to delay installation of all or some of the required public improvements to a time after approval of the final plat and the City agrees, the property owner shall enter into a development agreement incorporating approved development plans and by which he covenants to complete all required public facility improvements and lot improvements, including, but not limited to, soil preservation, removal of debris and waste, and all other lot improvements required by the City engineer, no later than 12 months following the date upon which the final plat is approved. Where the final plat is only a portion of the approved preliminary plat, the agreement shall contain a general schedule of phasing and construction for the entire plat. To the extent that the City waives any portion of the security required by this Chapter, the agreement also shall contain provisions requiring construction of all public facility and lot improvements upon demand by the City. The development agreement shall contain such other terms and conditions as are agreed to by the property owner and the City in addition to the following required terms:
  - (1) Agreement to maintain the public improvements until such improvements are accepted by the City.
  - (2) Agreement to cooperate with city inspectors and to abide by all rules and regulations relating to city inspection.
  - (3) Designation of the extent of the City's participation in construction costs and the sources of reimbursement from fees to be collected from other developments.
  - (4) When required by applicable Texas statute, an agreement to abide by the competitive bidding requirements and procedures set forth under Texas law.
  - (5) A plan for the phasing of final plats of portions of the area of the preliminary plat, if the entire area will not be included in a single final plat, each phase thereof being

subject to a determination by the Council that it will provide adequate street and alley circulation and otherwise represents a logical and well-planned phasing of the development.

- (c) Security. Whenever the City permits a property owner to enter into a development agreement, the owner shall provide sufficient security to ensure completion of the required public improvements. The security shall be in the form of either:
- (1) A cash escrow; or
  - (2) A letter of credit drawn upon a state or national bank. Said letter of credit shall (a) be irrevocable, (b) be of a term sufficient to cover the completion period plus 30 days, and (c) require only that the City present the issuer with a sight draft and a certificate signed by an authorized representative of the City certifying to the City's right to draw funds under the letter of credit; or
  - (3) A performance bond or surety bond for the same time period in a form approved by the City attorney securing performance of the provisions of the development agreement by the developer.

Said security for completion of all improvements shall be issued in the amount of 100 percent of the funds estimated by the City engineer to be necessary to pay for all required public improvements, including all promises and conditions contained in the development agreement.

In addition to all other security for completion of those public improvements required in the development agreement, the owner shall provide a performance bond and payment bond from the contractor, with the City as a co-obligee. Such performance and payment bonds shall be equal to the total amount set forth in the contractor's contract.

The issuer and form of any surety bond and letter of credit shall be subject to the approval of the City attorney. The performance and payment bonds must be executed by a corporate surety in conformance with V.T.C.A., Government Code ch. 2253, as amended.

- (d) Waiver of development agreement or security. The Council may waive the requirement of a development agreement or all or a portion of the security requirements of this Chapter if it finds that the public health, safety and general welfare will not be harmed by such waiver, taking into consideration the extent of public facility and lot improvements required to be installed, the likelihood that such improvements will be installed by the subdivider within the period specified in subsection (a), the impacts that may result if such improvements are not timely installed, and the hardship to the subdivider if development agreement and/or security requirements are imposed. A waiver of development agreement or security requirements shall be conditioned on execution of covenants by the subdivider, stating that the public facility and lot improvements will be constructed on demand by the City.
- (e) (Reserved)
- (f) Release of security. As portions of the public improvements are completed in accordance with the development agreement, city regulations, and the approved public improvement plans, the developer may make application to the director to reduce the amount of the original letter of credit, bond or cash escrow. If said director is satisfied that such portion of the improvements has been completed in accordance with city standards, he may cause

the amount of the letter of credit, bond or cash escrow to be reduced by such amount that he deems appropriate, so that the remaining amount of the letter of credit or bond or cash escrow adequately insures the completion of the remaining public improvements. Final release of the security shall be subject to a retainage of 20 percent of the total until a certificate of satisfactory completion has been issued by the City engineer as specified by Section 11-2-4(C)2 hereof.

- (g) Governmental units. Governmental units to which these contract and security provisions apply may file, in lieu of the security, a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this Section and affirming that current funds have been appropriated for the purpose of paying for the construction of the required public improvements.
3. Failure to complete improvements. For plats for which no development agreement has been executed and no security has been posted, if the public improvements are not completed within the period specified by the City, the preliminary plat approval shall be deemed to have lapsed and further proceedings on the plat shall terminate, and the obligation to construct improvements required by this Chapter shall immediately mature. In those cases where a development agreement has been executed and security has been posted and required public improvements have not been installed within the terms of the agreement, the City may:
- (a) Declare the agreement to be in default and require that all the public improvements be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default.
  - (b) Obtain funds under the security and complete the public improvements itself or through a third party.
  - (c) Assign its right to receive funds under the security to any third party, including a subsequent owner of the subdivision or addition, in whole or in part, in exchange for that subsequent owner's promise to complete the public improvements on the tract.
  - (d) Approve an extension of the period of the security.
  - (e) Exercise any other rights available under the law.
4. Temporary improvements. The property owner shall build and pay for all costs of temporary improvements required by the commission and shall maintain those temporary improvements for the period specified by the commission. Prior to construction of any temporary facility or improvement, the owner shall file with the City a separate development agreement and security in an appropriate amount for temporary facilities, which agreement and security shall ensure that the temporary facilities will be properly constructed, maintained, and removed.
5. Acceptance of dedication offers. Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by established procedures for such acceptance and shall be documented in the official files maintained by the City secretary or city engineer. Approval of a plat, whether preliminary or final, shall not be deemed to constitute acceptance of any proposed dedication and does not impose on the City any duty regarding the maintenance or improvement of any dedicated improvement, unless the City makes an actual appropriation of the dedicated improvement by entry, use, or improvement or written acceptance by the City engineer.

(B) Construction procedures.

1. Construction of all public works projects shall be in accordance with the most recent version of City of Midland standard construction specifications and shall be in accordance with development plans approved under Section 11-2-4(A).
2. Preconstruction conference. The city engineer may require that all contractors participating in the construction shall meet for a preconstruction conference to discuss the project prior to beginning work. If a conference is to be required, the City engineer shall notify the developer at or prior to the time that the public improvement plans are approved.
3. Conditions prior to authorization. Prior to authorizing construction, the City engineer shall be satisfied that the following conditions have been met:
  - (a) The preliminary plat shall have been approved by the commission or Council as required.
  - (b) All required contract documents shall be completed and filed with the City engineer.
  - (c) All necessary off-site easements or dedications required for public facilities not shown on the final plat must be conveyed solely to the City, in a form approved by the City attorney and with proper signatures affixed. The original of the documents, and filing fees as determined by the City secretary, shall be delivered to the engineering division prior to approval and release of the engineering plans.
  - (d) All contractors participating in the construction shall be presented with a set of approved plans bearing the stamp of release of the engineering division, for use on the job site.
  - (e) A complete list of the contractors, their representatives on the site, and telephone numbers where a responsible party may be reached at all times must be submitted to the City engineer.
  - (f) All applicable fees must be paid to the City.

(C) Inspection of public improvements.

1. General procedure. Construction inspection shall be supervised by the City engineer. Construction shall be in accordance with the approved plans and the City of Midland standard specifications. Any change in design required during construction should be made by the engineer whose seal and signature are shown on the plans. Another engineer may make revisions to the original engineering plans if so authorized by the owner of the plans and if those revisions are noted on the plans or documents. All revisions shall be approved by the City engineer. If the City engineer finds upon inspection that any of the required public improvements have not been constructed in accordance with the City's construction standards and specifications, the developer shall be responsible for completing and/or correcting the public improvements in accordance with said standards and specifications.
2. Certificate of satisfactory completion. The City will not accept dedication of required public improvements until the applicant's engineer or surveyor has certified to the City engineer, through submission of detailed construction record drawings on a survey plat of the property, showing the location, dimensions, materials, and other information required by the commission or city engineer. The construction record documents shall also include a complete set of drawings of the paving, drainage, water, sanitary sewer, or other public improvements, showing that the layout of the line and grade of all public improvements is in accordance with

construction plans for the plat. Each construction record sheet shall show all changes made in the plans during construction and on each sheet there will be a stamp bearing the signature of the engineer and date. The engineer shall provide to the City the construction record information in the form of one reproducible drawing of each of the utility plan sheets and one digital Auto Cad ".dxf" or ".dwg" file of the master layout sheet of water, sewer, paving and drainage facilities. Alternatively, the developer may choose not to submit a digital file and shall instead pay a fee which will be established in the schedule of platting fees for conversion of the plans to digital form by the City.

Further, the City will not accept dedication of required public improvements until an escrow deposit, letter of credit, or performance bond, conforming to the same requirements as Section 11-2-4(A)2(d), and providing security of the warranty, in the amount of the total cost of the improvements, that the improvements are free from defects for the period of the required warranty, whether by the contractor or the developer, has been presented to the City.

When such requirements have been met, the City engineer, on behalf of the City, shall thereafter accept the public improvements for dedication in accordance with the established procedure. Acceptance of the development shall mean that the developer has transferred all rights to all the public improvements to the City for use and maintenance. The city engineer may, at his discretion, accept dedication of a portion of the required public improvements, provided adequate surety has been given for the completion of all of the required public improvements. Upon acceptance of the required public improvements, the City engineer shall submit a certificate to the developer stating that all required public improvements have been satisfactorily completed.

3. Maintenance of facilities. The developer shall maintain all required public improvements until acceptance of the public improvements by the City.

(D) Issuance of building permits and certificates of occupancy.

1. No building permit shall be issued for a lot or building site unless the site has been created in compliance with Section 4-1-4, "Site requirements," subsection (C), "Creation of a building site," of the building code, and all public improvements as required for any applicable subdivision plat have been completed, as attested to by the City engineer through the issuance of a certificate of completion, except as permitted below.
  - (a) The city engineer may authorize the building official to issue permits for nonresidential and multifamily (apartment) development provided that a final plat has been approved by the City and construction plans have been released by the City engineer. Building construction will not be allowed to surpass the construction of fire protection improvements.
  - (b) The city engineer may authorize the building official to issue residential building permits for a portion of a subdivision, provided that all public improvements, including lot monumentation, have been completed and accepted for that portion of the development, including but not limited to those required for fire and emergency protection, and a development agreement has been approved by the City for completion of all remaining public improvements and there remains adequate security to complete all public improvements.
2. No certificate of occupancy shall be issued for a building or the use of property unless all subdivision improvements necessary to serve the property have been completed and accepted.

(Ordinance 7333, sec. 1, adopted 6/14/1994; Ordinance 7702, sec. 1, adopted 1/27/1998)

**§ 11-2-5. Requirements for public improvements, reservation and design.**

**(A) General requirements.**

1. **Plats straddling municipal boundaries.** Whenever access to the subdivision is required across land in another municipality, the commission may request assurance from that municipality's attorney that access is legally established, and from its engineer that the access road is adequately improved, or that a bond or other security has been duly executed and is sufficient in amount to assure the construction of the access road. In general, lot lines should be laid out so as not to cross municipal, county or school district boundary lines.
2. **Character of the land.** Land that the commission finds to be unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements, or other features which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas shall not be subdivided or platted unless adequate methods are formulated by the owner and approved by the commission, upon recommendation of the City engineer, to solve the problems created by the unsuitable land conditions.
3. **Adequate public facilities policy.** The land proposed for subdivision must be served adequately by essential public facilities and services. Land shall not be approved for platting unless and until adequate public facilities exist or provision has been made for water facilities, wastewater facilities, drainage facilities and transportation facilities in the manner required by Section 11-2-4, which are necessary to serve the development proposed, whether or not such facilities are to be located within the property being platted or off-site. This policy may be defined further and supplemented by other ordinances adopted by the City.
  - (a) **Conformance to plans and regulations.** Proposed public improvements shall conform to and be properly related to the City's water distribution master plan, sewer master plan, major thoroughfare plan, master drainage plan, storm drainage design manual, the capital improvements plan and to all requirements of these subdivision regulations.
  - (b) **Utilities.**
    - (1) **Accessible public water supply and wastewater facilities.** Water and wastewater mains shall be installed to serve all lots within the proposed subdivision and shall be extended to the property to be platted in accordance with the water and wastewater extension provisions of Section 11-2-5(E) and (F), provided that water and wastewater mains are reasonably accessible.
    - (2) **Nonaccessible public water supply.** In a proposed subdivision, pending accessibility of public water supply, the subdivider shall be required to construct wells and/or a private water supply system in accordance with specifications of the City health department. Alternatively, the plat may be denied pending connection to a public water main system. Where connection to a public water main system is not to be made immediately, final plat approval shall be conditioned on approval of plans for future installation of a water distribution system to serve each lot, and a development agreement shall be executed in the manner provided in Section 11-2-4. Those parts of such system which lie in the parts of streets and alleys intended for vehicular traffic shall be installed when such streets and alleys are to be constructed

to finish grade and in accordance with city specifications (including paving, curbs and gutters), or at any earlier time selected by the developer. All plans and construction shall be subject to the approval of the engineering and development and utilities departments.

- (3) **Nonaccessible wastewater system.** In a proposed subdivision where public wastewater facilities are not currently accessible, but are expected to be extended to the property in the future, the subdivider shall be required to install sewer lines and a disposal system in accordance with specifications of the City health department pending access to wastewater facilities. Alternatively, the plat may be denied pending connection to such wastewater facilities system. Where connection to a public wastewater facilities system is not to be made immediately, final plat approval shall be conditioned on approval of plans for future installation of a wastewater collecting system to service each lot, and a development agreement shall be executed in the manner provided in Section 11-2-4. Those parts of such system which will be in the portion of streets and alleys intended for vehicular traffic shall be installed. All plans and construction shall be subject to the approval of the engineering and development and utilities departments. In circumstances where the City health department has determined that there is sufficient area for each platted lot to permit installation of an individual disposal device in accordance with specifications of the department, and it is not anticipated that sanitary sewers will be accessible in the foreseeable future, the City may permit the subdivider to install such individual disposal systems for each lot in the subdivision in lieu of future provision for connection to public wastewater facilities.
  - (4) All subdivisions within any area of special flood hazard as defined in this Title, including manufactured home subdivisions and any containing or intended to contain a manufactured home park, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
  - (c) **Streets.** Proposed streets shall provide a safe, convenient and functional system for vehicular and pedestrian circulation and shall be properly related to the City's major thoroughfare plan and the comprehensive plan and any amendments thereto, and shall be appropriate for the particular traffic characteristics of each proposed subdivision or development. Additional standards and requirements are defined in Section 11-2-5(C).
  - (d) **Drainage.** Drainage improvements shall accommodate potential runoff from the entire upstream drainage area and shall be designed to prevent overloading the capacity of the downstream drainage system. The City may require the phasing of development, the use of control methods such as retention or detention, and/or the construction of off-site drainage improvements in order to mitigate the impacts of the proposed development. Additional standards and requirements are defined in Section 11-2-5(D).
  - (e) **Other facilities.** Adequate sites and convenient access for schools, parks, playgrounds, and other community services indicated in the City's comprehensive plan shall be related to the character and uses of the surrounding properties in accordance with the intent, policies and provisions of this Chapter.
4. **Subdivision name.** The proposed name of the subdivision shall not duplicate, or too closely approximate phonetically, the name of any other subdivision in the area covered by these

regulations, and subdivisions of less than 100 acres in area shall, except where the commission deems such would not be in the public interest, be named as subsequent sections (subdivision name, section \_\_\_\_\_) of any named subdivisions in the immediate vicinity and in same neighborhood. The commission shall have final authority to approve the name of the subdivision after considering the recommendation of the director.

5. **Subdivision monumentation.** All subdivision monumentation, described as follows, shall be considered to be subdivision development improvements, and shall be inspected and subject to acceptance and release of security, together with other subdivision development improvements, according to the provisions of Section 11-2-4(A) and (C).

- (a) **Permanent survey monuments.** Permanent survey monuments (PSMs) shall be a minimum of 1.0 centimeter (0.5 inch) diameter iron rods or 1.8 centimeter (0.75 inch) diameter iron pipes not less than 60 centimeters (24 inches) in length, stamped with the surveyor's registration number, set flush and driven to refusal. In unstable soils, the City engineer may require concrete monuments to be set. Concrete monuments shall be not less than ten centimeters (4 inches) in diameter and 60 centimeters (24 inches) in length. They shall be set flush at, or three inches below, the ground surface and bear a cap with the surveyor's registration number. Concrete monuments shall contain ferrous wire or rods, or a magnet, detectable by a metal locator instrument.

PSMs shall be set at all exterior subdivision boundary points prior to the final plat being filed with the director for consideration. PSMs shall be set according to the standards set forth hereinabove and specifications as determined by the City engineer. They shall be under the jurisdiction of the City engineer.

- (b) **Benchmarks.** Benchmarks shall be set for each residential subdivision which contains any parcel or combination of parcels which is zoned as a nonresidential district and which is 0.5 hectare (1.2 acres) or more in area, or contains a total area of all parcels of 1.0 hectare (2.5 acres) or more. One benchmark shall be required per 4.0 hectares (10.0 acres), or portion thereof, of area subdivided. The elevation of this benchmark shall be based on mean sea level as established by the U.S. Coast and Geodetic Survey. Said elevation shall be shown and referenced on the final plat by an identification code which shall be obtained from the City engineer and stamped on the benchmark. The benchmark design criteria shall be in accordance with specifications prepared by the office of the City engineer.
- (c) **Lot and block corners.** All lot and block corners and points of curvature shall be marked with a minimum of 1.8 centimeters (0.75 inch) diameter galvanized iron pipe or 1.0 centimeter (0.5 inch) iron rods, not less than 45 centimeters (18 inches) in length, driven flush with the ground, and bearing the identifying mark of the subdividing surveyor. In soils of less than 45 centimeters (18 inches) in depth, shorter monuments driven to bedrock may be used.

(B) **Lot design and improvements.**

1. **Lot arrangement.** The lot arrangement shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits to build on all lots in compliance with the zoning code, building code and other applicable ordinances, laws and regulations, and that they are not unduly encumbered by easements or other hindrances to reasonable development. Driveway access shall be available to buildings on the lots from an approved street, alley or mutual access easement.

2. Lot dimensions. Lot dimensions shall comply with the minimum standards of the zoning code. In general, side lot lines shall be at right angles to street lines (or radial to curving street lines) unless a variation from this rule will result in a better street or lot plan. Dimensions of corner lots shall be large enough to allow for erection of buildings. Depth and width of properties reserved or laid out for business, commercial, or industrial purposes shall be adequate to provide for the off-street parking, loading facilities and landscaping required for the type of use and development contemplated, as established in the zoning code.

In general, the depth of a residential lot should not exceed twice the width of the lot, unless topographic or environmental characteristics create a condition best addressed by an excessive lot depth.

3. Double frontage residential lots. Double frontage and reversed frontage lots shall be avoided except where approved in a PD Planned District, pursuant to Chapter 11-1 of this Title, or where a site plan has been approved in conformance with paragraph 8 below, and where conditions of landscaping, screening, preservation of view and the like have been established to avoid the undesirable public views and lack of maintenance of rights-of-way which typically result to the rear of double frontage lots. Where the site plan approval process of paragraph 8 is used, the same requirements shall apply as for nonresidential lots. The plat shall contain the reference required by paragraph 8 and conformance with said site plan shall be a requirement for development of the lots included in said site plan. Except where the commission or Council determines otherwise, any screening wall which is required, and any sidewalk required by Section 4-1-4 of the building code which is separated from individual lots by a screening wall or common area, shall be considered to be a required subdivision improvement, subject to the requirements of Section 11-2-4.
4. Lot access. All platted lots must have direct access to an improved public street or a dedicated and improved mutual access easement or common area. Where the means of access is provided by other than a public street, covenants or other documents providing assurance of perpetual maintenance of said means of access, satisfactory to the commission or Council, shall be submitted, approved, and filed with the plat.
- (a) Residential lots must have minimum frontage on a dedicated street as required by the zoning code, except where varied through approval of a planned district. Where subdivisions or additions are platted so that the front yards of single-family or two-family residential lots are adjacent to a dedicated roadway, and the roadway is designated as greater than a collector on the major thoroughfare plan, no one-or two-family lot shall have direct access to the thoroughfare by means of a driveway, unless the lot has no frontage on any other street, alley or mutual access easement.
- (b) The following restriction, which shall run with the land, shall be used to prevent rear driveway access to any streets and side driveway access to an arterial street or freeway from one-or two-family lots: "There is hereby imposed a restriction, which shall run with the land, that lots (backing/siding) [insert correct term] on \_\_\_\_\_ Street shall not have direct driveway access to said street."
- (c) Frontages of corner lots adjacent to arterial streets and highways. The frontages of any corner lot which abuts an arterial street or highway shall not be less than the following unless the plat, or a separate easement or agreement, makes provision for driveway access through an adjoining lot or, for lots zoned as one- or two-family dwelling district only, the plat has been so arranged to allow for rear driveway access to said lot off an

alley or other approved access easement.

- (1) The frontage of any lot along the street intersecting the arterial street shall be not less than 20 meters (70 feet); and
- (2) The minimum frontages of a lot zoned as other than a one-or two-family dwelling district shall be sufficient to allow at least one driveway curb cut, not less than ten meters (35 feet) in length and conforming to the requirements of Section 9-4-5, for access to said lot.
- (d) Design.Provisions for and improvement of all points of access shall conform to the City's policies on driveway access and design.

5. Blocks.

- (a) Block length.Maximum block length for single-family residential development shall be 400 meters (1,300 feet), measured along the center of the block, when the minimum lot width required by the zoning district is 18 meters (60 feet) or less. If the required lot width is more than 18 meters (60 feet) but less than 30 meters (100 feet), the block length shall not exceed 550 meters (1,800 feet). Where the minimum lot width is not less than 30 meters (100 feet), the block length shall be reasonable but shall not exceed 825 meters (2,700 feet).
- (b) Arrangement.A block shall be so designed as to provide two tiers of lots served by an alley, except as permitted otherwise according to paragraph 3, above. Provided, however, that no alleys shall be required in the AE, Agriculture Estate District, or the CE, Country Estate District, zoning classification.
- (c) Other requirements.Block length and width shall be such as to accommodate the size of lot required in the area by zoning ordinance and to provide for convenient access, circulation control and safety of street traffic. The commission may require shorter block lengths than the maximum lengths specified hereinabove where the allowed minimum lot width or density, terrain or other factor indicates that shorter blocks are appropriate.

6. Setbacks at ends of certain culs-de-sac.Where a lot faces a cul-de-sac turnaround and sides toward another street, a front yard setback of not less than 12.5 meters (45 feet) from the projection of the cul-de-sac's centerline, and extending from the turnaround to said side street, shall be shown on the plat.

7. Nonresidential plats.

- (a) Design principles.In addition to these regulations, which are appropriate to all platting, the applicant shall demonstrate to the satisfaction of the commission or Council that the street, parcel, and block pattern proposed is specifically adapted to the uses anticipated and takes into account other uses in the vicinity. The following principles shall be observed:
  - (1) Proposed nonresidential parcels shall be suitable in area and dimensions to the types of nonresidential development anticipated.
  - (2) Street rights-of-way and pavement shall be adequate to accommodate the type and volume of traffic anticipated to be generated thereupon, but in no case shall be less than the design standards embodied in the major thoroughfare plan.

- (3) Streets, other than arterial streets, carrying nonresidential traffic, especially truck traffic, shall not normally be extended to the boundaries of adjacent existing or future residential areas.

(b) Frontage and access standards.

- (1) Frontage.In addition to the requirements of paragraph 4 above, all nonresidential lots established following the effective date of this Chapter and abutting an arterial or more important thoroughfare shall have a minimum of 60 linear meters (200 linear feet) of frontage. All nonresidential lots abutting a collector or less important thoroughfare shall have a minimum of 45 meters (150 feet) of frontage. Exception shall be made for a lot which has frontage on another street as well, but no access shall be allowed to or from the street having less frontage than specified. Further exception may be made where easements are established to provide access to any lot having less frontage than specified herein jointly with another lot.
- (2) Median openings.Median openings shall be located in accordance with the major thoroughfare plan and other applicable ordinances. If direct access to a median opening is not available, lots shall have indirect access through a mutual access easement between adjacent properties. Such mutual access shall be indicated on the plat whenever possible.

8. Site plan approval.

- (a) Required for certain nonresidential development.Development of a lot with other than a residential use in any zoning district except the C-3, Commercial, LI, Light Industrial, HI, Heavy Industrial, or IP-1, Industrial Park Districts shall be subject to site plan review and approval in accordance with Chapter 11-10, of the Midland City Code. No lot shall be developed with any nonresidential use and no building permit shall be issued for development of said lot until a site plan for its development has been approved. The development of any lot subject to site plan approval shall conform to the approved site plan, which may only be amended according to the procedures specified in Section 11-10-2(H)(3).
- (b) Reference on plat.All subdivision plats submitted for final approval after October 1, 2006 shall include on the face of the plat the following note: "Approval of a site plan by the City of Midland may be required before these lot(s) may be developed and before a building permit may be obtained."

9. Soil preservation and final grading.Topsoil shall not be removed from the area of the plat, except according to a plan approved by the City engineer, which plan shall be consistent with an objective of conserving topsoil to support vegetation growth. Unless determined by the City engineer to be impractical, at least ten centimeters (4 inches) of topsoil shall be provided as cover on all lots, parkway areas, median areas, parks, drainage basins, and all other common areas and public sites.

10. Minimum lot elevations.Minimum lot elevations shall be established as follows:

- (a) Lots abutting a natural or excavated channel shall have a minimum finished grade elevation at or above the 100-year design elevation or base flood elevation as shown on the FIRM maps, or as directed by the City engineer.

- (b) Where lots are located in or adjacent to a floodplain, the finished grade of the lot shall be constructed at or above the base flood elevation. The lot shall be graded so that there will be positive drainage away from the slab.
11. Debris and waste. No cut trees, timber, debris, large rocks or stones, junk, rubbish or other waste materials of any kind shall be buried in any land, or left or deposited on any lot or street, at the time of final acceptance by the City engineer, and removal of those items and materials shall be required prior to such acceptance. No items and materials as herein described shall be left or deposited in any area of the subdivision at the time of expiration of any improvement agreement or acceptance of dedication of public improvements, whichever is sooner; however, dirt or topsoil may be stockpiled on a property at a location approved by the City engineer.
- (C) Streets and alleys.
1. Adequacy of streets and alleys. All streets and alleys shall be designed and platted in conformance with the major thoroughfare plan, comprehensive plan and other pertinent ordinances and policies of the City of Midland. Access to the subdivision and to all lots therein must be suitably improved or secured in accordance with these regulations prior to final plat approval. The developer shall be responsible for the dedication and improvement of all such streets and thoroughfares, subject to participation by other property owners utilizing the facilities and subject to participation by the City, where funds are available, in accordance with these regulations. In circumstances where such participation is not feasible, the regulations herein stated shall be considered minimum requirements of plat approval.
  2. Street dedications and reservations.
    - (a) Dedication of right-of-way. The property owner shall provide all right-of-way required for existing or future streets, including perimeter streets, as shown on the major thoroughfare plan and other applicable development plans approved by the commission or Council. Standard right-of-way widths for city streets are as specifically set forth on the major thoroughfare plan. In the case of perimeter streets, the total required right-of-way for such streets shall be provided except that one-half the width of a perimeter arterial street with a total required width of 25 meters (80 feet) or more generally shall be dedicated; however, in some instances more than half shall be required depending on the actual or proposed alignment of the street. Dedication of additional right-of-way beyond those widths specified in the major thoroughfare plan may be required at approaches to intersections, where right turn lanes are needed or, in other special circumstances, as designated by the City engineer.
    - (b) Special collector street rights-of-way. Where a type E secondary collector street, as described in Section 11-2-5(C)3, intersects an arterial street and is anticipated to continue across the arterial street, dedication of right-of-way of 20 meters (70 feet) in width shall be required for a distance of 60 meters (200 feet) from the point of intersection of the collector and arterial streets.
    - (c) Perimeter streets. Where the proposed subdivision abuts an existing half street, the property owner shall dedicate the right-of-way for the other half of the street. Where the proposed subdivision abuts a new street designated on the major thoroughfare plan, the property owner shall dedicate the full right-of-way designated in the chart found in Section 11-2-5(C)3(b), except as provided otherwise in Section 11-2-5(C)2(a).
    - (d) Slope easements. The dedication of easements, in addition to dedicated rights-of-way,

shall be required whenever, due to topography, additional width is necessary to provide adequate earth slopes. Such slopes shall not be in excess of three feet horizontal to one foot vertical.

3. Design and improvement standards.

- (a) General. In order to provide for streets of suitable location, width, and improvement to accommodate prospective traffic and afford satisfactory access to police, firefighting, sanitation, and street maintenance equipment, and to coordinate streets so as to comprise a convenient system and avoid undue hardships to adjoining properties, an adequate street and thoroughfare system within and abutting the subdivision and providing access thereto shall be designed and improved in accordance with the standards set forth in these regulations, together with those contained in the major thoroughfare plan, the comprehensive plan and the City of Midland standard specifications, as adopted or amended from time to time by the Council. In the event of a conflict between the standards and regulations set forth in this Chapter and those contained in such documents, the more specific and/or restrictive provisions shall be applied. Paving and other improvements are subject to the participation policies stated in Section 11-2-6.
- (b) Street improvements and paving standards. After wastewater and water utilities have been installed by the property owner, all streets and thoroughfares shall be improved and paved to the width as stated in the table appearing at the end of this subsection (b). The width of pavement designated below is that between curbs back-to-back. Streets (including sidewalks) which are intended for future extension across power lines, railroads, or similar rights-of-way shall be constructed in the full right-of-way as required by the major thoroughfare plan for half the distance across such right-of-way for each side. The minimum right-of-way, the number of lanes and paving widths for the various types of streets shall be as follows:

Classification	Type	R.O.W	Lanes/Paving
Expressway or freeway	AA	60m (200'+)	Variable
Primary arterial	A	36m (120')	7—28m (93') [4]
Secondary arterial	A	36m (120')	5—20m (68') [4]
Primary arterial	B	30m (100')	7—26m (86') [4]
Secondary arterial	B	30m (100')	5—20m (68') [4]
Secondary arterial	C	25m (80')	5—20m (66') [4]
Primary collector	D-1	25m (80') [1]	5—20m (66') [4]
Primary collector; local (NS-, LR-, C-, O-, LI, HI, IP-) [2]	D-2	20m (70')	4—15m (51')
Secondary collector; local (school and MF-) [2]	E	18m (60') [3]	4—12m (41') [3]
Local (park, TH, 2F) [2]	F	18m (60')	2—11m (37')
Local (IF-, MH) [2]	G	15m (50')	2—9m (30')
Local (AE, CE) [2]	H	15m (50')	2—9m (30')

Classification	Type	R.O.W	Lanes/Paving
Marginal access	I	12m (40')	2—9m (30')

Notes:

- [1] Where left turn lane is required.
- [2] Least restrictive or most intensive zoning district abutting a particular section of street. Requirement for a street which abuts a planned district shall be based on the zoning district to which the planned district zoning most closely conforms. Outside city limits, rights-of-way and paving requirements for collector and local streets serving nonresidential subdivisions shall conform to type D-2 of this table.
- [3] Right-of-way of 20 meters (70 feet) and improvement of four lanes to a width of 15 meters (51 feet) shall be required where the type E secondary collector intersects an arterial street, for a distance of 60 meters (200 feet) from the intersection of the streets, in circumstances where the collector street is to be extended across the arterial street.
- [4] Includes a left turn lane.
  - (c) Specifications. All street pavement, drainage improvements and structures, turnarounds, and sidewalks where applicable shall conform to all construction standards and specifications contained or referenced in these regulations and shall be incorporated into the development and construction plans required for plat approval. Specific design standards are incorporated in the major thoroughfare plan and the City of Midland standard specifications. Concrete paving of the invert is required for a minimum width of 2.5 meters (8 feet) on all inverted crown streets.
  - (d) Obligations of subdividers and city participation. The obligation of a subdivider to improve the right-of-way for all streets and thoroughfares serving a development is subject to the following policies:
    - (1) When the proposed subdivision abuts or will abut one or both sides of a substandard street, or where a street does not exist but is identified as a proposed street on the major thoroughfare plan, or is required to serve the subdivision according to the standards specified in this Chapter, the subdivider will be required to improve the substandard street or proposed street to meet the standards set forth in Section 11-2-5(C)3(b). Where the width of available right-of-way, including right-of-way that the developer is responsible to dedicate as specified in Section 11-2-5(C)2, is not sufficient for the full pavement width required, the developer shall be responsible for whatever lesser pavement width that the City determines practical within the limitation of the right-of-way.
    - (2) The City may participate in the cost of improvements in accordance with the policies set forth in Section 11-2-6 of these regulations.
  - (e) Median openings. Median openings, median pavers and left turn lanes, including channelizing buttons, constructed to serve dedicated streets in a development, or to serve private drives, shall be installed and paved to city standards by the owner.
  - (f) Acceleration and deceleration lanes. Acceleration, deceleration, and right turn lanes shall be installed by the owner along arterial streets, including freeway frontage roads, as

follows:

- (1) At all approaches to other arterial streets and at major driveways to all tracts which are subject to site plan review as provided herein, except when determined unnecessary by the director; and
- (2) At all other street intersections when required by the director.

Such lanes shall be constructed to the same standards as the adjoining street. The width of such additional lanes shall be not less than three meters (10 feet), and shall be greater when required.

- (g) Gradient. Streets and alleys shall be designed with a minimum gradient of 0.2 percent and a maximum gradient of 10.0 percent unless otherwise approved by the City engineer.
- (h) Reserve strips. The creation of reserve strips shall not be permitted in such a manner as to deny access from adjacent property to any street, alley, public easement or other public facility.
- (i) Grading and improvement plan. Streets shall be graded and improved in conformance with the City of Midland standard specifications and shall be approved as to design and specifications by the City engineer, in accordance with the construction plans required to be submitted prior to final plat approval.
- (j) Topography and arrangement. Streets shall be related appropriately to the topography. All streets shall be arranged so as to obtain building sites at, or above, the grades of the streets. Grades of streets shall conform as closely as possible to the original topography. A combination of steep grades and curves shall be avoided.
- (k) Intersections. The intersection of more than two streets at one point shall be avoided except where it is otherwise impractical to secure an adequate street system. Streets shall intersect one another at, or as near to, right angles as possible. A corner cut-back shall be provided at each corner of all street intersections. The minimum length of the cut-back along each street right-of-way line shall be dependent on the radius of the curb or edge of the street pavement at that corner, according to the approved street improvement plans. The cut-back along each street shall begin no closer to the intersection than the point of curvature of the curb or edge radius, so that the full parkway width is maintained. The cut-back shall not be less than three meters (10 feet) along each right-of-way line of any street. Plats shall be subject to change after approval of the preliminary plat to conform to this provision and to approved street improvement plans. Street jogs with centerline offsets of less than 40 meters (130 feet), or 80 meters (270 feet) between collector streets, shall be avoided. Centerline distances between offset streets shall be shown on preliminary plats. Concrete valley gutters are required when intersection grades are less than 1.0 percent.
- (l) Alignment. Horizontal curves shall be designed for a travel speed not less than the following, without the need for super-elevation:
  - (1) Local streets: 50 kilometers (30 miles) per hour.
  - (2) Collector streets: 55 kilometers (35 miles) per hour.

## (3) Arterial streets: 75 kilometers (45 miles) per hour.

A tangent at least 30 meters (100 feet) long shall be introduced between reverse curves. When connecting street lines deflect from each other at any one point by more than ten degrees, they shall be connected by a curve with a radius adequate to insure a sight distance of not less than 30 meters (100 feet) for minor streets, and of such greater distance as the commission shall determine for arterial and collector streets.

- (m) Marginal access streets. Where a subdivision abuts or contains an arterial street, the commission may require marginal access streets or other such treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (n) Abutting railroad or limited access highway. Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the commission may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land, as for park purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.
- (o) Continuity. The arrangement of streets in new subdivisions shall make provision for the continuation of the existing streets in adjoining areas, including a reasonable number of collector streets aligned across arterial streets. Where adjoining areas are not subdivided, the street arrangement shall provide for the proper projection of principal streets which shall be carried to the boundaries of the tract proposed to be subdivided. In general, the street system shall provide for the normal circulation of traffic with adequate spacing and continuity of streets to perform their functions, but collector and minor streets shall not be so long as to encourage through traffic. Streets serving all one-and two-family zoned areas of a neighborhood shall connect to the neighborhood collector street system for access to schools, parks and other community facilities.
- (p) Street names. The names of proposed streets shall conform to the names of existing streets of which they are or may become extensions, but shall not otherwise duplicate or conflict with the recognized names of any other streets located in the area subject to these regulations and shall be consistent with the standards of street addressing. Street names shall not be dependent upon such typical endings as "street," "drive," "lane" and "court" to be distinguished from other street names. The base name of a street, not including such endings, shall not exceed 20 characters, including spaces between words in a multiple-word name. All street names shall be subject to approval by the commission and/or Council.
- (q) Cul-de-sac streets.
  - (1) Turnarounds shall have a minimum right-of-way radius of 15 meters (50 feet) for single-family use and 18 meters (60 feet) for apartment, commercial or other uses.
  - (2) Maximum length of a cul-de-sac street shall be:
    - a. Two hundred meters (650 feet) for single-family development.
    - b. One hundred twenty-five meters (400 feet) for townhouse, two-family, multifamily and commercial developments.

- (3) Shall not terminate at, or near, alleys at rear lot lines.
- (4) Temporary turnarounds, conforming to the minimum radii requirements of (1) above, are to be used at the end of a dead-end section of a street more than 60 meters (200 feet) long which will be extended in the future. (The following note shall be provided on the final plat when a temporary turnaround is used: "Cross-hatched area is temporary easement for turnaround until street is extended by an accepted street dedication.")

(r) Partial or half streets.

- (1) Partial or half streets, except arterial streets along property lines, shall not be permitted except where the commission determines, due to the established or proposed pattern of streets within an area, that a street located within the interior of a subdivision would not provide suitable access and circulation within the general area, and that a street should be located on a property line for maximum public benefit.
- (2) Whenever a partial or half street has already been provided adjacent to a tract to be subdivided, the remaining half or width necessary to meet the minimum requirements for full right-of-way shall be platted within such subdivision.
- (3) The general development plan of an entire subdivision may show a half street along adjoining property which has not been subdivided, if warranted, but no lot abutting upon such half street shall be included in the final plat until the complete street dedication is provided.

(s) Alleys.

- (1) Where required. Alleys shall be provided in all use districts, except for the AE, Agriculture Estate District, and the CE, Country Estate District, and except that the commission, or the Council where its approval is required, may waive this requirement where other definite provision is made for service access.
- (2) Width. The right-of-way of an alley shall be six meters (20 feet) wide where it serves residential lots only and nine meters (30 feet) wide for other lots or where the commission determines that the service access needs of the development require a greater width.
- (3) Other requirements. Dead-end alleys shall not be permitted. Where two alleys intersect, a cutoff of not less than six meters (20 feet) measured in both directions from the intersection point of the alley lines shall be provided. Alley alignment shall be consistent with economical design of utilities to be placed within such alley.
- (4) Intersections with arterial streets. Where an alley intersects an arterial street, said alley shall end at another crossing alley, or shall turn not less than 75 degrees prior to its intersection with another street, or, if continuous from arterial street to local or collector street, shall not continue across said local or collector street in a direct alignment.
- (5) Access to alleys. Automobile and truck access to any alley, and any connecting alleys within the same block, from garages, carports or other parking places on adjoining lots or tracts platted pursuant to an application for final plat filed with the City after June 30, 1994, shall be prohibited if either of the following conditions

exists:

- a. If the connected alley system exceeds 300 meters (1,000 feet) in length; or
- b. If the connected alley system intersects an arterial street and:
  - (1) Exceeds 150 meters (480 feet) adjacent to a 1F-1 or lower density residential zoning district; or
  - (2) Exceeds 100 meters (330 feet) adjacent to any other district or adjacent to an area outside the City.

The following statement shall be placed on applicable plats filed for approval after said date: "Lots abutting on the alleys as indicated hereon (by cross-hatching) shall not have direct automobile or truck access to said alleys."

- (6) Alleys shall be improved according to the City of Midland standard specifications. For any residential lot final platted after June 30, 1994, or any commercial lot, an alley shall not provide access to vehicle garages, carports, or parking areas or business loading areas unless it has been constructed with a paved surface, conforming to said standard specifications, to an appropriate point of access to the street system as determined by the City engineer. Alley systems which will convey drainage that exceeds the local alley drainage area within the block will be required to have concrete curbs and gutters. The City engineer may also require a concrete valley gutter in these drainage alley inverts.

(t) Street name and traffic control signs.

- (1) Sign requirement. Traffic control signs shall be installed at all intersecting public streets, as needed, and street name signs shall be installed at all intersecting public streets and private streets which have been named on an approved subdivision plat or as approved by the Council. Intersections created by streets within a subdivision that intersect perimeter streets shall also be considered intersections within a subdivision.
- (2) Cost participation. The developer shall share in the initial cost of sign installations to the extent of the required deposit per intersection within a subdivision.

The cost per intersection shall be determined annually by the department of engineering and development and shall be based on prevailing costs of materials and labor for the complete sign, support, and installation.

- (3) Engineering and installation. In order to remain uniform and consistent with materials and workmanship throughout the City, the department of engineering and development shall prepare, locate and install all signs for public streets within the City. The signs will be installed by the City when street construction has met final approval.
- (4) Financial arrangements. The developer shall deposit with the City:
  - a. A fixed sum of money based on the number of intersections within the subdivision development.

- b. If the developer deposits cash funds with the City at the time of completion of a development agreement or filing of a public improvement guarantee, the cost of signs will be at the rate prevailing at that time. If the developer elects to wait until the time when signs are to be installed, the cost of signs will be at the rate prevailing at the time the developer deposits the money with the City.
  - (u) Streetlights. Installation of streetlights shall be in accordance with design and specification standards of the City. The developer shall be responsible for the installation and cost of such street lighting.
4. Subdivision access. All platted lots must have safe and adequate street access for daily use and emergency purposes.
    - (a) External access. Except for lots which are provided access from an approved cul-de-sac, all subdivisions must have two means of access or approach. Where development phasing or constraints of the land prevent the provision of a second, separate means of access, the City may accept a temporary street connection, a median divided street or entry to satisfy this requirement.
    - (b) Approach roads. All subdivisions must be connected to the City's improved thoroughfare and street system by one or more approach roads. The developer shall be responsible for the dedication and improvement of approach roads to a standard not less than that specified by Section 11-2-5(C)3 for a local street in an area zoned as an AE District. Structural standards for construction shall be those required for the future classification specified for the road according to the major thoroughfare plan, collector street plans, or the capital improvements program. The road shall be constructed in a manner conducive to widening and installation of curbs and gutters in the future. Interim street drainage shall be accommodated by roadside ditch systems. Requirements for dedication of right-of-way and improvement of approach roads may be increased, depending on the density or intensity of the proposed subdivision. The subdivider's share of the costs and the City's participation in the costs of improvements shall be subject to the policies set forth in Section 11-2-6. In instances where several subdivisions are pending, which will take access from or abut the approach road, the requirements for cost-sharing and City participation may be jointly considered by the Council in order to equitably apportion the costs of improvements.

(D) Drainage, storm sewers and lake areas.

1. General requirements. All drainage design shall conform to the City's storm drainage design manual.
2. Design of facilities.
  - (a) Standards. Design of storm sewer systems shall be in accordance with the storm drainage design manual. Materials and construction shall conform to the City of Midland standard specifications. Plans shall be submitted with the plat.
  - (b) Accommodation of upstream drainage areas. A culvert or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The owner's engineer shall initially determine the necessary size of the facility, based on the criteria of the City of Midland storm drainage design manual, assuming conditions of maximum potential

watershed development anticipated by the comprehensive plan or permitted by the zoning code, whichever is greater, and subject to approval by the City engineer.

- (c) Effect on downstream drainage areas. The owner's engineer, subject to approval by the City engineer, shall study the effect of each addition's storm runoff on the existing drainage facilities immediately downstream of the addition. Where it is determined that existing capacity is not available immediately downstream, the owner's engineer shall design a drainage system, detention facility, or parallel system to mitigate the deficiency. The commission may withhold approval of the plat until public improvement plans for such mitigation have been approved. If oversize improvements are required, the City may participate in the cost as prescribed by this Code.
- (d) Ponding facilities. Lakes, detention ponds, and retention ponds may be constructed in all areas provided they conform to the City's adopted drainage plans and are approved by the City engineer. Areas to be dedicated as public land for stormwater drainage and impoundment shall be designated on plats or referenced in the dedication deed as "stormwater drainage and impoundment" and shall be designated by a special tract number or letter. Plans for improvements to such areas shall conform to the City of Midland standard specifications and shall be subject to approval by the City engineer along with other elements of the public improvement plans. Common areas which will serve drainage purposes shall be subject to dedication of drainage easements as determined by the City engineer and conforming to the requirements of paragraph 5 below.
- (e) Alternate facilities. Other innovative drainage concepts will be considered if approved by the City engineer.

### 3. Draws and floodplains.

- (a) General requirements. The following requirements shall be satisfied by any subdivision which abuts or includes any drainageway or floodplain, whether a major draw or a minor drainageway as described below:
  - (1) Public ownership or easement. Draws or drainageways may be required to be dedicated to the City. In the event the City decides not to require public ownership, the property containing the draw or drainageway shall be subject to the dedication of a drainage and maintenance easement that substantially conforms to the alignment of such watercourse. Said easement shall be of sufficient width to contain floodwaters and allow for maintenance and construction equipment and shall conform to the requirements of paragraph 5, below.
  - (2) Access easements. The property owner must provide sufficient access on each side of and parallel to draws or drainageways for maintenance purposes. The access shall be at or above the base flood elevation and accessible to vehicles and equipment. Access must also be provided at a maximum 400-meter (1,300-foot) spacing along streets or alleys. Access easements located and sized as determined by the City engineer shall be dedicated according to the requirements of paragraph 5, below. The minimum width of the access easement shall be six meters (20 feet).
- (b) Regulatory floodplains and major draws. Development of all regulatory floodplains shall conform to Chapter 11-3, "Flood Hazard Areas." Areas within the jurisdiction of the City subject to flood conditions as established by the City engineer will not be considered for

subdivision purposes until adequate drainage has been provided, as determined by the director. Development along the Midland, Jal, Monahans and Scharbauer Draws shall conform to the following requirements:

- (1) Fully developed watershed. Base flood elevation (BFE) and floodplain used for design and planning shall be evaluated upon total stormwater discharge quantities that will, through future urbanization, be generated from a fully developed watershed, consistent with any watershed drainage plan adopted by the City.
  - (2) Floodplain reclamation. Reclamation of a portion of the floodplain may be permitted only if it can be demonstrated that there will be no rise in the BFE or increase in peak stream flow or stream velocity.
  - (3) Alteration or channelization. Any alteration or channelization shall conform to the City's comprehensive drainage plan or be approved by the City engineer and shall provide for safety and public welfare and for adequate width for maximum potential volume of flow under a fully developed watershed condition. The floodway shall be left in a natural state, with landscaped banks, where possible, to control erosion velocities, prevent excessive downstream discharges, and preserve the natural characteristics of the stream.
  - (4) Buffer zones. Parallel roadways, greenbelts, etc., shall be required along the draw corridor to assure access and to create a buffer zone between the floodplain and development.
- (c) Minor drainageways. All other draws, natural or manmade drainways, etc., as determined by the City engineer which are not considered major draws as defined in subparagraph (b) above, but which are necessary to allow drainage from one tract of land to another, shall be classified as minor drainageways.
- (1) Location of drainage facilities, nonresidential development. Site drainage facilities are required to be placed underground in nonresidential zoning districts, when an outfall is reasonably available.
  - (2) Location of drainage facilities, residential development. Drainage facilities may be placed underground or in an open channel in residential zoning districts. If placed in an open channel, the City engineer may require a pilot channel or channel lining as outlined in the City of Midland storm drainage design manual. Subject to the approval of the City engineer, the drainage plan for a subdivision may provide for stormwater runoff to be carried above ground in streets or alleys. The amount of stormwater to be carried above ground in streets or alleys shall be limited as specified in the storm drainage design manual. Where approved as part of a subdivision drainage plan, stormwater runoff to be carried in collector or local streets may be discharged across an arterial street, but shall not be carried along an arterial street except underground or in an open channel separate from the street pavement.
  - (3) Where topography or other conditions make the inclusion of drainage facilities within street rights-of-way impractical, perpetual unobstructed easements shall be provided for drainage facilities. Said easements shall be of sufficient width to accommodate the drainage facilities, and shall be located across property outside the street lines and with satisfactory access to the street. Easements shall be indicated on

the plat and shall conform to the requirements of paragraph 5, below. Drainage easements shall extend from the street to a natural watercourse or other drainage facilities, as required in the City of Midland storm drainage design manual.

- (4) When a proposed drainage system will carry water across private land outside the subdivision, appropriate drainage easements must be secured by the developer.
4. Lake areas. In order to promote the general health, safety and welfare, the City may require dedication of lake areas for stormwater drainage and impoundment areas necessary for flood control and preservation of natural drainage in accordance with the following policies:
  - (a) If the subdivider proposes to include any lake areas within lots or parcels within the subdivision for private use, he shall submit a reclamation plan for approval according to Section 11-4-14 hereof prior to said area being included.
  - (b) All land which is not either to be reclaimed and included within lots or parcels for private use or to be included within common areas pursuant to the approved reclamation plan shall be dedicated to the public for stormwater drainage and impoundment. All areas to be held in common are subject to the requirements of Section 11-2-5(K).
  - (c) No lot or tract adjacent to or within a lake area or on a bordering street may be final platted until such lake area, or the portion thereof adjacent to said lot or tract, required for drainage has been final platted and dedicated as described herein, along with dedication of stormwater storage and drainage easements as shall be required by the City engineer.
  - (d) The dedication of the lake areas for stormwater drainage and impoundment areas shall not prohibit the use of such area for public uses, so long as the impoundment and drainage capacity are not diminished by such use or, in the event such capacity is diminished, adequate alternative drainage or impoundment areas of similar capacity are provided.
5. Dedication of drainage easements.
  - (a) General requirements. The developer shall provide drainage easements, whether required within or outside the boundaries of the subdivision, as determined by the City engineer to be necessary to accommodate the stormwater runoff from the subdivision. In addition, when a subdivision is or will be traversed by, or is bounded by, a watercourse, drainageway, channel, or draw, or is encumbered by a lake area, there shall be provided a stormwater drainage easement conforming substantially to the alignment of such watercourse or the area of such lake, and of such width or extent as will be adequate for such purpose.
  - (b) Condition concerning easements. In areas where public ownership of drainways or ponding areas is not required, drainage easements to preserve such areas for drainage purposes and to permit access and maintenance, and improvements as appropriate, shall be provided. Easements, whether separate or included, shall be provided for adequate accessibility at or above the base flood elevation by vehicles and equipment. Access easements shall have a minimum width of six meters (20 feet) and their common boundaries with private properties shall be marked with permanent monuments, the type and locations to be determined by the City engineer. Property owners shall be responsible for maintaining all areas of their properties which are subject to drainage easements. Some drainageways or ponding areas, including those which occupy common areas, may require a separate maintenance entity. A maintenance entity's bylaws and covenants filed

of record, if applicable, shall provide for ongoing maintenance and shall authorize a lien against individual lots in favor of the City to secure the payment to the City for any expenses incurred by the City in the event of default of maintenance responsibilities by the entity.

The maintenance entity shall be responsible for all property within the easements or common areas. The City shall have the right, but not the obligation, to maintain and construct drainage facilities if, in the City's sole opinion, the property owners or maintenance entity is not properly maintaining the drainageway or ponding area.

6. **Special flood hazard areas.** The following additional conditions shall apply to any subdivision (including any manufactured home subdivision or any containing or intended to contain a manufactured home park) developed wholly or partially within any area of a special flood hazard as defined in this Title:
  - (a) Shall be consistent with Sections 11-3-2 and 11-3-6.
  - (b) Shall meet the development permit requirements of Sections 11-3-4, 11-3-5(C), and 11-3-12.
  - (c) Base flood elevation data shall be generated for any subdivision which is greater than 50 lots or two hectares (5 acres), whichever is less, if not otherwise available on a flood hazard boundary map (FHB) by the Federal Emergency Management Agency or otherwise provided pursuant to Section 11-3-5(B)8.
  - (d) The boundaries of the 100-year floodplain and floodway, as applicable, shall be clearly shown on the plat.
  - (e) The following note shall be placed on the plat: "The boundaries of the 100-year floodplain (and floodway) [include if applicable] as shown hereon are as designated by \_\_\_\_\_ [insert reference], dated \_\_\_\_\_ [insert date of document], and are subject to change. Current information regarding flood hazard areas, including the minimum slab or floor elevation required for construction on any lot located wholly or partly within the 100-year floodplain, may be obtained from the City of Midland. Before any development (including fill, channel modification, etc.) proceeds on any land encumbered by the 100-year floodplain, or within any drainageway or basin, a development permit application must be filed at the City of Midland."
7. **Grading.** Site, street and development grading shall conform to the specifications in the City of Midland storm drainage design manual.

**(E) Water facilities.**

1. **Adequate water facilities.** Except as provided in Section 11-2-5(A), water systems serving any subdivision within the City or within its extraterritorial jurisdiction shall be served by an approved water supply and distribution system. Water facilities shall be installed to adequately serve each lot and shall be sized to conform to the City's water distribution master plan and other requirements of the City. Water service to each lot included on the final plat shall be from a looped water main. In addition, the water supply to the subdivision as a whole shall be based on a plan for an area-wide looped system of trunk lines which will supply water flow from two directions or sources. The required public improvements for the subdivision shall include all lines within or adjacent to the subdivision which are needed to conform to the City's

plans for the area-wide trunk system. When so determined by the City, the public improvements shall also include off-site line extensions to complete that part of the trunk system necessary to supply water flow to the subdivision from two directions or sources. The City may require owners to provide adequate engineering data to support water demand projections before final plans will be approved. No building permit shall be issued and no development shall be approved unless adequate assurances are provided that the development shall be connected with the approved water supply and distribution system. No building permit shall be issued until satisfactory evidence of such connection has been provided, as determined by the City engineer.

2. Design and construction requirements. The developer shall construct all water facilities needed to serve the development. Design of water systems shall be in accordance with the City of Midland standard specifications. No water system will be constructed unless all plans have been reviewed and approved by the City to assure compliance with these requirements. All design and construction will be done under the inspection of the City and in accordance with established city policies and practices.
3. Extension policy. The developer shall provide for the extension of all water mains and appurtenances, including major distribution facilities, necessary to connect the development with the approved water supply and distribution system. Authority to extend water mains to serve newly subdivided or platted land shall be granted by the City only upon a determination by the director of utilities that all facilities necessary to adequately serve the development are in place or will be in place prior to the issuance of occupancy permits for structures developed on such land. The developer shall pay all pro rata fees due prior to final plat approval.
4. Fire protection. Water service must be sufficient to meet fire flow requirements of the proposed development for domestic and industrial purposes, except where a suitable alternative means of fire protection is approved by the City. Fire hydrant spacing shall be based upon distance along hose-laying routes, measured along rights-of-way accessible to fire trucks, and shall be a maximum of 90 meters (300 feet) for nonresidential zoned and multiple-family residential zoned and 200 meters (650 feet) for other residential zoned areas. Where a water line is installed along a cul-de-sac street, fire hydrants shall be placed so that no lot shall be a greater distance from a fire hydrant than one-half the maximum specified hydrant spacing.

(F) Wastewater facilities.

1. Adequate wastewater facilities. Except as provided in Section 11-2-5(A), all subdivisions within the City or within its extraterritorial jurisdiction shall be served by an approved wastewater collection and disposal system. Wastewater collection and disposal systems shall be installed to adequately serve each lot and shall be designed accordingly. All additions to the City's wastewater system shall conform to the City's master sewer plan and other requirements of the City. The City may require adequate engineering data to support projected sewer flows before final plan approval. The proposed wastewater discharge of a proposed development shall not exceed the capacity of the wastewater system based upon required studies. No development shall be approved unless adequate assurances have been provided that such development will be connected with the approved wastewater collection and disposal system. No building permits shall be issued until satisfactory evidence of such connection has been provided, as determined by the City engineer.
2. Design and construction requirements. The developer shall construct all wastewater collection and disposal facilities needed to serve the development. Design of wastewater facilities shall

be in accordance with the City of Midland standard specifications. No wastewater system shall be constructed unless all plans have been reviewed and approved by the City to assure compliance with these requirements. All design and construction will be done under the inspection of the City and in accordance with established city policies and practices.

3. Extension policy. The developer shall provide for the extension of all wastewater mains and appurtenances, including major collection and disposal facilities, necessary to connect the development with the approved wastewater collection and disposal system. Authority to extend wastewater mains to serve newly subdivided or platted land shall be granted by the City only upon a determination by the director of utilities that all facilities necessary to adequately serve the development are in place or will be in place prior to the issuance of occupancy permits for structures developed on such land. The developer shall pay all pro rata fees due for wastewater mains prior to final plat approval for the property.
4. On-site treatment. On-site wastewater treatment systems will not be permitted, except for the pretreatment of industrial waste. In such instances, plans must be submitted to the director of utilities for approval prior to construction of the facilities.

(G) Water and wastewater main extensions.

1. Responsibility for installation and extension. The developer shall construct all water and wastewater facilities needed to serve the development and, pursuant to a development agreement with the City, shall construct or finance all water and wastewater mains and appurtenances, including major distribution and collection facilities, necessary to connect the development with the City's water supply and distribution system and the City's wastewater system. Mains to be extended shall be of a size sufficient to serve the development and all other properties to be served by the facility, as determined from an analysis of the City's water distribution master plans, sanitary sewer master plan and capital improvement program, as may be amended from time to time. All costs of installation shall be initially borne by the developer, subject to city participation in oversize costs pursuant to Section 11-2-6 and subject to reimbursement from other developments. Requests for city extension of water and wastewater mains shall be as provided for in Section 11-2-5(G)7.
2. Condition of main extension. Authority to extend water and wastewater mains to serve the subdivision shall be granted by the City only upon a determination by the director that all water or wastewater facilities necessary to adequately serve the development are in place or will be in place prior to issuance of the occupancy permits for structures developed on such land.
3. Minimum standards. Water and wastewater mains shall be installed and extended in accordance with the following standards:
  - (a) Location of facilities. The location of all water and wastewater mains necessary to serve newly subdivided or platted land shall be in accordance with the City's water distribution master plan, sanitary sewer master plan and capital improvement program, as may be amended from time to time, and in accordance with this Chapter.
  - (b) Construction standards. All water and wastewater facilities required by these regulations shall be constructed in accordance with the requirements and specifications of the City.
  - (c) Size of mains. Water and wastewater mains shall be sized and designed in accordance with the City's water distribution master plan and sanitary sewer master plan.

- (d) Items included. Mains to be constructed shall include all valves, manholes, piping, fire hydrants and other appurtenances, including any lift stations or pumping facilities necessary to connect the property with the City's water or wastewater system, as determined by the director.
- (e) Extensions within property to be developed. All water and wastewater mains shall be extended through and/or across the frontage of the property to be developed in streets, alleys, or in easements to the tract or addition in order to provide service to adjacent property where applicable.
- (f) Acquisition of easements. The developer must obtain all off-site easements which are necessary for extending water and wastewater mains to and through the property being developed. However, the City may acquire such easements, or portions thereof, if the Council determines such acquisition is in the public interest. A metes and bounds description and a drawing of each easement must be submitted to the engineering division in order for the proper legal document to be prepared. The document will be sent to the developer for acquisition of the required signatures. The executed document will be returned to the engineering division for filing with the county clerk.
4. Agreement required. Prior to extension of any water main or wastewater main for which there is city participation in the project costs, or prior to construction of any main or appurtenances thereto which is identified in the capital improvements program for water or wastewater facilities, the developer shall execute a development agreement with the City in accordance with Section 11-2-4. In addition to matters contained therein, the following additional requirements apply:
- (a) Construction plans approved by the director demonstrating compliance with all city standards and regulations.
  - (b) Appropriate provisions for providing security in a form approved by the City attorney.
  - (c) Offers to deliver to the City clear and unencumbered title to all proposed water or wastewater facilities prior to the time of acceptance by the City.
  - (d) Off-site easements necessary for the extension of water and wastewater mains.
  - (e) Designation of the proposed extent of the City's participation in construction costs and the sources of reimbursement from fees to be collected from other developments.
  - (f) Agreement to cooperate with city inspectors and to abide by all rules and regulations relating to city inspection.
  - (g) Agreement to maintain the facilities until such facilities are accepted by the City and a warranty that the facilities will be free from defect for a period of one year following the acceptance by the City of the dedication of the facility. This warranty obligation may be met by securing a warranty of the facility from the general contractor which is transferred to the City at the time of acceptance of the facility.
  - (h) When required by applicable Texas statute, an agreement to abide by the competitive bidding requirements and procedures set forth under Texas law.
5. Construction management procedures. Requirements for management of construction and inspection of facilities constructed shall be as provided in Section 11-2-4. The following

additional requirements apply:

- (a) Preconstruction conference. The city engineer may require that all contractors participating in the construction shall meet for a preconstruction conference to discuss the project prior to beginning work. If a conference is to be required, the City engineer shall notify the developer at or prior to the time that the public improvement plans are approved.
- (b) Conditions prior to authorization. Prior to authorizing construction, the City engineer shall be satisfied that the following conditions have been met:
  - (1) All required contract documents shall be completed and filed with the City engineer.
  - (2) All necessary off-site easements or dedications required for city-maintained water or wastewater facilities, not shown on the final plat, must be conveyed solely to the City, with proper signatures affixed.
  - (3) All contractors participating in the construction shall be presented with a set of approved plans bearing the stamp of approval of the engineering and development department. These plans shall remain available to the contractors on the job site.
  - (4) A complete list of the contractors, their representatives on the site and telephone numbers where a responsible party may be reached at all times must be submitted to the City engineer.
6. City participation and reimbursement. Standards and procedures for City participation in the costs of oversized water and wastewater mains and provisions for reimbursement to developers from pro rata fees shall be as provided in Section 11-2-6.
7. Extension of mains by City. The City may extend a water or wastewater main to serve a subdivision, in lieu of installation by the developer, subject to the following standards and procedures:
  - (a) Request by developer. The developer shall petition the City to extend a water or wastewater main to serve the development in lieu of constructing the facilities or to accelerate installation prior to the City's proposed construction schedule.
  - (b) Condition of extension. The City may agree to extend the water or wastewater main upon condition that the subdivider shall deposit cash in an amount equal to 100 percent of the projected costs of the extension, together with easements required by Section 11-2-5(G)3.
  - (c) Participation by City. The City shall participate in the costs of oversized mains according to the standards and procedures established in Section 11-2-6. Upon determination of the amount and timing of the City's participation thereunder, the portion of the cash deposit equal thereto shall be refunded to the developer.
  - (d) Reimbursement from other developments. The developer shall be entitled to reimbursement from the proceeds of pro rata fees established for the main or mains serving other developments pursuant to Section 11-2-6. The developer shall also be entitled to reimbursement from any lot or acreage fees which the City may hereafter impose on other developments to be served by the main or mains installed.
8. Extensions to serve lots in partly developed areas.

- (a) The City may extend a water or wastewater main to serve lots in partly developed areas, upon receiving in advance the total costs of such extension from owners of existing developed residential lots to be served by such main. Upon petition of such property owners, the City may establish pro rata fees for such line in the manner provided in Section 11-2-6, which fees shall be reimbursed to the owners who have made advance payments, upon connection of other property owners to the main.
- (b) Upon the request of the owner of a single-family residential lot, the City may extend, lay or construct all necessary water and/or wastewater mains, including necessary appurtenances, a maximum distance of 15 meters (50 feet), excluding street intersections. Only one such 15-meter (50-foot) extension on any one main extension will be made for any applicant during any 12-month period.
- (c) Property owners in partly developed areas may finance the construction of a water or wastewater main to serve their property, subject to city approval under the rules and regulations generally applicable to construction of such facilities by developers.

(H) Utilities, general.

1. Easements.

- (a) The property owner shall be required to furnish all easements and rights-of-way required to serve the development. Where reasonable, all public and franchised utilities should be located within street or alley rights-of-way. Notwithstanding the above, developers may offer easements outside of street and alley rights-of-way. All utility facilities existing and proposed throughout the property shall be shown on the preliminary plat and accompanying public improvement plans.
  - (b) Easements shall be provided for both municipal and franchised utilities. Municipal easements for water, sanitary sewer and storm sewer shall be a minimum of 4.5 meters (15 feet) in width, except that easements that are located along common side lines between lots and are for the purpose of connecting facilities located in streets and alleys shall be not less than 3.5 meters (12 feet) in width. The full width of any easement located along the common line between lots shall be provided on one side of the lot line. All municipal easements shall be wider when a need is determined by the City engineer depending on the depth and the size of the utility. Franchised utility easements must be sized by the utility company. Proper coordination shall be established among the City, the property owner and the applicable utility companies for the establishment of utility easements on adjoining properties. Easements shall be indicated on the plat.
  - (c) When topographical or other conditions are such as to make impractical the inclusion of utilities within an alley, and an easement is provided instead at the rear of residential lots, perpetual unobstructed easements conforming to subparagraph (b) above shall be provided along selected side lot lines for satisfactory access to the street and the rear lot easements.
  - (d) In areas adjoining proposed subdivision. When the City engineer finds that easements in areas adjoining proposed subdivisions are necessary to serve such subdivision with utilities, the subdivider shall obtain such easements or shall make arrangements with the City to obtain them.
2. Damage. The contractor and owner shall be responsible for all damage to existing public improvements caused during construction of new public improvements.

(I) Public uses.

1. Reservation of land. Sketch plats, preliminary plats and final plats shall reserve land which has not been dedicated for such use pursuant to these regulations or other provisions of the City Code for future public use, as designated in the comprehensive plan and associated plans for future public facilities and utilities. These uses include, but are not limited to: parks, recreation and open space areas, schools, libraries, police and fire stations, pump stations, water storage tanks, and lift stations. Land reserved shall be of a suitable size, dimension, topography, and character for the designated purpose.
2. Procedure for reserving land. All sketch plats, preliminary plats and final plats shall provide for the necessary reservation of land for future public use, as required by the commission or Council. Boundaries of land reserved for public use may be adjusted subject to the approval of the commission or Council. The City, or other responsible public entity, shall initiate acquisition of any area reserved for public use on the final plat within 18 months of the date of approval of the final plat, unless the period is extended by mutual agreement of the City and the developer. The reservation shall be made void if the City, or other responsible public entity, fails to initiate acquisition of the area reserved within this period. In such event, the reserved area may be developed upon approval of a replat in accordance with Section 11-2-7, or development may proceed if the final plat has included the platting of the land reserved for public acquisition on a contingent basis.

(J) Provision of amenities. Where amenities are owned and maintained by property owners in common or through an association of property owners, or where amenities are to be dedicated to the City and are to be maintained publicly or privately through agreement with the City, the City may require any or all of the following:

1. Plans and illustrations of the proposed amenities;
2. Cost estimates of construction, maintenance and operating expenses;
3. Association documents, deed restrictions, contracts and agreements pertaining to maintenance of the amenities, if appropriate; and
4. Provision of surety as required for maintenance and other expenses related to the amenities, if appropriate.

(K) Common areas. Where any area is retained under private ownership and is to be established for the common use or enjoyment or to serve a common need of a subdivision and the owners of lots therein, said area shall be established as a common area on the plat, and designated by a special common area number or letter. The plat shall be accompanied by the covenants or ownership agreements, providing for the perpetual ownership and maintenance of such area, which shall be submitted to and approved by the City attorney's office and the commission, and filed of record with the plat. All improvements to a common area which are required as a condition of plat approval and all sidewalks required by Section 4-1-4 of the building code along streets abutting any common area shall be considered to be required subdivision improvements, subject to the requirements of Section 11-2-4 herein.

## (L) The following design policies, standards and specifications as they may be adopted, amended or revised from time to time are incorporated by reference into this ordinance and shall be considered as provisions of this ordinance as if fully set forth herein; provided, however, no such policies, standards, or specifications, nor any amendment or revisions thereto, shall have any effect until

approved by resolution of the Council and the text of same be on file with the City secretary for five calendar days following the date of said approval:

City of Midland standard specifications.

Major thoroughfare plan.

Comprehensive plan.

Policy on driveway access and design.

Capital improvements program.

Storm drainage design manual.

Water distribution master plan.

Sanitary sewer master plan.

(Ordinance 7333, sec. 1, adopted 6/14/1994; Ordinance 8388, secs. 1—3 adopted 3/21/2006; Ordinance 8447, sec. 4, adopted 9/26/2006; Ordinance 8790, sec. 1, adopted 4/13/2010; Ordinance 9307, sec. 1, adopted 8/26/14)

#### **§ 11-2-6. Participation policies and pro rata fees.**

##### **(A) Participation policies.**

1. Developer's responsibility.
  - (a) The developer shall be responsible for the entire cost of designing and installing all public improvements which primarily serve the subdivision. Facilities required by these regulations, unless listed in Section 11-2-6(B), shall be considered as primarily serving the subdivision unless otherwise determined by the City.
  - (b) The developer shall also be responsible for his share of the costs of oversized or off-site public improvements needed to assure adequacy of public facilities and services for the subdivision, subject to participation, escrow and reimbursement policies contained in this Section 11-2-6.
  - (c) The developer shall be responsible for extending all streets, water, wastewater and drainage facilities to his property, as required by the commission or Council to ensure adequacy of public facilities.
  - (d) Should the subdivision abut an existing water or wastewater line installed by someone other than the City, the developer shall pay to the City a pro rata charge to be refunded to the original installer of the line, as prescribed in Section 11-2-6(E) of these regulations.
  - (e) Should a lift station, either temporary or permanent, be necessary to provide sanitary sewer service to the subdivision, the developer shall construct the station and all appurtenances at his own expense. If and when the lift station is no longer needed, the installation will, unless other provisions are made, remain the property of the City of Midland for reuse or disposal. A pro rata charge for such lift stations and appurtenances may be established as prescribed in Section 11-2-6(E).
2. City's share of improvement costs. The City may participate with the developer in the costs of public improvements which are not for the primary benefit of the development and which have

been oversized to serve developments other than that for which the plat has been submitted for approval, in an amount not to exceed a maximum of 30 percent of the total construction costs of the public facilities set forth in the development agreement between the City and the developer, and pursuant to the procedures herein set forth. The agreement shall be consistent with the requirements of V.T.C.A., Local Government Code ch. 252, and V.T.C.A., Local Government Code §§ 212.071—212.074, inclusive, as amended. In the event that the City, in its sole discretion, determines to participate to an extent greater than 30 percent of total construction costs of the public facilities set forth in the development agreement, in order to preserve the public health and safety, or to prevent confiscation of property, the developer shall be responsible for compliance with all competitive bidding procedures required by the City and V.T.C.A., Local Government Code ch. 252.

3. In no event may the City be required to participate in the costs of public facilities if the Council determines in its sole discretion that there are no funds available for such purposes.
- (B) Facilities eligible for city participation. The developer shall be responsible for the entire initial cost of installing public facilities, including oversizing. As funds become available, the City may participate at a maximum in the costs of installing public improvements according to the following schedule:
1. Streets and thoroughfares. The city's participation in the costs of improvements for perimeter and approach roads shall be computed following determination of the developer's responsibilities and those of abutting property owners. Internal subdivision streets, except arterial streets, are not eligible for city cost participation. The city's maximum share of improvement costs for perimeter and approach roads and for arterial streets is set forth in the following table, which designates the developer's and the City's share for various categories of streets. The costs of improvements which are eligible for city participation include those for construction, utility adjustments, excavation, subgrade preparation, pavement, crossovers, turn lanes, curbs and gutters. All other costs are the responsibility of the developer, except as provided otherwise herein. The city's participation in the costs of streets and thoroughfares applies only within the City limits. If an area zoned as a less restrictive or more intensive district than 1F, MH, TH, or 2F will be abutted by streets that the developer will improve on more than one side, the developer's share for the abutting section of street shall be determined by said zoning district, according to the table. If an area zoned as one of the less restrictive or more intensive districts will be abutted by only one street that the developer will improve, the developer's share for the zoning area shall be applicable to a length of the abutting roadway equal to the square root of the zoning area, regardless of the actual street frontage of the zoning area. The developer's share for the most restrictively or least intensively zoned area shall be applicable to the remainder of street frontage within or abutting the area of the plat after his share for all less restrictively or more intensively zoned areas has been applied.

<b>CITY PARTICIPATION TABLE—STREETS 11-2-6(B)1</b>				
<b>Street Class</b>	<b>R.O.W. Pavement</b>	<b>Adjacent Zoning</b>	<b>Developer's Share***</b>	<b>City's Share</b>
Arterial	Various	C-, LI, HI, IP- or major concentration of LR-, O-, or MF-	$\frac{1}{2}$ cost of street, based on maximum 28-meter (93-foot) width including C & G, arterial construction standards	Remainder
Arterial	Various	NS, or neighborhood scale* concentration of LR-, O-, or MF-	$\frac{1}{2}$ cost of street, based on maximum 20-meter (68-foot) width including C & G, arterial construction standards	Remainder
Arterial	Various	1F-, MH, TH, 2F	$\frac{1}{3}$ cost of street, based on maximum 20-meter (68-foot) width including C & G, arterial construction standards	Remainder
Arterial	Various	AE or other with minimum residential lot area of 2,500 square meters (27,000 square feet) or greater	$\frac{1}{3}$ cost of street, based on maximum 15-meter (51-foot) width, no C & G, arterial construction standards	Remainder
Collector or local	Various	AE or other with minimum residential lot area of 2,500 square meters (27,000 square feet) or greater	Full street to a maximum of 8-meter (26-foot) width, no C & G	Remainder
Collector or local	Various	All other	Full street	None
Collector**	Various	All other	Full street to a maximum of 10-meter (34-foot) width, including C & G one side	Remainder

\*Neighborhood scale commercial: 3.0 hectares (7.5 acres) or less. Neighborhood scale office: Limited to less than 10,000 square meters (100,000 square feet) of floor area.

\*\*Applicable to an existing street only, where the subdivision neither creates the street nor extends its length.

\*\*\*For each side of the road which the subdivision abuts.

2. Water and wastewater. If the request for city participation is approved by the Council, following dedication and acceptance of the facility or appurtenances in which it has agreed to participate, the City shall refund the costs of oversizing such facility in accordance with the following procedures and standards:
  - (a) Oversizing standards. The City shall pay the difference in the cost of materials between a "standard" size main (a 20-centimeter (8-inch) water main or a 25-centimeter (10-inch) wastewater main) and a larger size main required by the City, as determined under subparagraph (b) hereof, up to the maximum amount agreed to by the City.
  - (b) Oversize cost determination. The extent of the City's participation in the cost of oversized mains shall be determined in the following manner: Estimates of the actual costs of materials, which are provided by the developer's professional engineer along with an estimate of the City participation, according to the policies stated herein, shall be submitted to the director for his review and approval. The approved estimates shall be set forth in the development agreement between the developer and the City, including an estimate of the City's portion. However, the City's participation shall be based on actual bid between the "standard" size main and the oversize main. The developer's engineer shall include the "standard" size main in the base bid with the oversize as an alternate and shall provide for separate unit price bids for labor and materials. All bids received by the developer shall be provided to the City engineer for review and approval. The City has the right to reject any and all bids in which it is participating. In no event shall the City's participation exceed the City's portion of the construction costs set forth in the development agreement, or as may be subsequently amended.
  - (c) Participation in costs of construction other than materials. The Council may, in its sole discretion, agree to participate in costs related to water and wastewater main extensions other than the costs determined under subparagraph (b), above, upon a determination by the Council that:
    - (1) The size of the water or wastewater line required by the City to be constructed by the developer is necessary for the public health, safety and welfare; and
    - (2) The difference in the cost of constructing the oversize line excluding materials costs is so significant over the cost of the standard line as to create an undue and inequitable burden on the developer relative to the benefit the developer's subdivision will receive from use of the oversized line.
3. Drainage facilities. The developer is required to provide all drainage facilities and appurtenances necessary to conduct stormwater runoff through or along the boundary of his subdivision and all drainage facilities and appurtenances, whether within or outside the boundaries of his subdivision, that are required to conduct stormwater runoff from the subdivision. This includes underground and/or open channel facilities, and detention or retention basins, as well as any required off-site drainage facilities for stormwater runoff from

the subdivision. A subdivision which contains a major drainageway and/or draw, or has substantial off-site drainage, is required to provide adequate rights-of-way and channelization for drainage. The City may elect, provided funds are available, to participate in the cost of a major drainage structure (e.g., bridge, culvert, or multi-box culvert) along the perimeter of the subdivision, but the developer shall be responsible for not less than one-third the cost of the structure if it provides access to the subdivision or conveys drainage through or from the subdivision. However, if a major drainage structure is required only to provide access and/or drainage for the subdivision, there will be no city participation in the cost.

(C) Procedures for city participation.

1. Participation requests. A request for city participation for those facilities identified in Section 11-2-6(B) shall be initiated through the submission of an application for participation by a developer. Such application shall be submitted in the form specified by the City prior to commencement of construction. The request for participation shall be accompanied by proposed construction drawings showing the reimbursable items, a copy of the contractor's bid for construction, final payments with quantities, oversized calculations for all reimbursable items and a project location map.
2. City determination of oversized costs. The city engineer initially shall determine an amount for city participation in the costs of public improvements, based on public improvement plans approved by him, in accordance with the criteria in Section 11-2-6(A) and (B). The Council shall approve any requests for participation. The terms of the City's participation shall be incorporated within the development agreement.
3. Reimbursement. Reimbursement of the City's share of participation in the costs of public improvements shall be made as funds become available, unless otherwise specified in the development agreement.

(D) Escrow policies and procedures.

1. Deposit with City. Whenever the City agrees to accept escrow deposits in lieu of construction by the owner of the property under these regulations, the property owner or developer shall deposit an amount in escrow with the City equal to his share of the costs of design and construction. Such amount shall be paid prior to the time of final plat approval.
2. Determination of escrow amount. The amount of the escrow shall be determined by an estimate of the City engineer based on comparable bids awarded by the City and current market value of the construction. Such determination shall be made as of the time the escrow is due hereunder.
3. Termination of escrow. Escrows placed with the City under this Section which have been held for a period of ten years from the date of such payment, in the event that the City has not authorized the preparation of plans and specifications for construction of such facilities for which the escrow was made, shall, upon written request, be returned to the property owner, with accrued interest. Such return does not remove any obligations of the owner for construction of the required facilities if a building permit has not been issued on the subject lot or if a new building permit is applied for.
4. Interest limitation. If money is refunded within six months of deposit, only the principal will be refunded. Monies returned after this date will be refunded with interest accrued, calculated at one percent less than the rate of actual earnings.

(E) Pro rata fees.1. Water and wastewater line reimbursements.

- (a) Nature of fee. A charge known as a "pro rata fee" shall be imposed on each lot or tract abutting an existing water or wastewater main for which such fee has been established pursuant to this Section, as a condition of connection to such main, for the purpose of reimbursing the developer who previously installed or paid for the main.
- (b) Amount of fee. The pro rata fee shall be established for each side of the main to which connections are made. The fee for each side shall be equivalent to one-half the cost of the constructed main less the oversize participation, if any, together with all appurtenances, for that length of the main abutting the property being charged. For mains where connections can be made on one side only, the fee shall be equivalent to the cost of the constructed main less the oversize participation, if any, together with all appurtenances, for that length of the main abutting the property being charged.

2. Procedure for establishing pro rata fees.

- (a) Request for pro rata fees. Prior to final acceptance of the improvements, the developer who installs a water or wastewater main shall request the establishment of a pro rata fee for such facility.
- (b) Submittal requirements. The request to establish a pro rata fee shall be in a form specified by the City. The request shall include a copy of the actual contract for construction of the water and/or wastewater mains with unit prices. The request must identify the constructed cost of the main, including any fire hydrants, valves, fittings, manholes and other appurtenances which were determined to be necessary for construction of the main.
- (c) Verification of costs by engineer. The director shall verify the developer's calculations of main costs. In the event of disagreement, the director shall establish the cost per unit length for the pro rata fee.
- (d) Reimbursement amount. The maximum amount for which a developer may be reimbursed from the proceeds of pro rata fees shall not exceed the costs determined by the director under subparagraph (c) hereof, less the amount of any city participation in costs pursuant to Section 11-2-6(C) hereof.

3. Payment of pro rata fees.

- (a) Obligation to pay fee. Any property owner whose property lies adjacent to a street, alley or easement containing an existing water or wastewater main for which a pro rata fee has been established pursuant to these regulations shall pay the applicable fee prior to final plat approval of the property.
- (b) Calculation of fee. The amount of the pro rata fee shall be calculated by multiplying the unit cost determined in paragraph 2 of Section 11-2-6(E) by the length of that portion of the property boundary of a lot which abuts a street, alley or easement containing a water or wastewater main for which pro rata fees have been established. The number of linear feet shall be determined by the following formulas:
  - (1) For residential lots: When the main installation is designed to serve property on only one side of the street or alley, the frontage rates established according to paragraph 2

above shall be doubled. The frontage rates shall apply to property fronting on streets in areas platted into the usual rectangular lots or tracts of land, with a depth not to exceed 45 meters (150 feet). Where lots or tracts have greater depth than 45 meters (150 feet) from the front street line and are occupied, or are to be occupied, exclusively as dwelling places then the additional depth shall not be assessed. If the property is later subdivided, requiring the extension of mains to serve same, then the terms of this Chapter shall govern. Where lots or tracts are irregular in size or shape, then the pro rata charged shall be based upon equivalent rectangular lots or tracts using one front meter (foot) for each 150 square meters (feet) of area, or the pro rata charges provided herein on the average frontage of such tracts, whichever is least.

- (2) For commercial lots: On lots or tracts of land which extend through from one street to another, with frontage on both streets, and where the distance between the street lines is 80 meters (260 feet), or more, then the pro rata charges herein provided for shall be paid on both frontages when a connection is secured to the lot or tract.

Where lots or tracts are irregular in size or shape, then the pro rata charged shall be based upon equivalent rectangular lots or tracts using one front meter (foot) for each 150 square meters (feet) of area, or the pro rata charges provided herein on the average frontage of such tracts, whichever is least.

Where lots or tracts have a depth greater than 45 meters (150 feet) from the front street line, then the pro rata herein provided shall be paid on the frontage on all streets which the property may abut minus 45 meters (150 feet) frontage for each corner of the property abutting a street intersection. Should said property be resubdivided whereby further extensions are required to service same, the terms of this Chapter shall apply.

4. Pro rata fee account. A pro rata fee account is hereby established. The City shall deposit all pro rata fees collected pursuant to Section 11-2-6(E)3 into such account. Expenditures from such account shall be earmarked solely for reimbursement of developers for the reasonable costs of installing water mains or wastewater mains for which pro rata fees have been established pursuant to Section 11-2-6(E)2.
5. Reimbursement for water and wastewater main extensions.
  - (a) Reimbursement time limit. For a period of seven years after dedication to and acceptance by the City of the completed facility, the developer shall be entitled to reimbursement from the proceeds of the pro rata fees established pursuant to Section 11-2-6(E)2 up to the total cost of the extensions established by resolution pursuant to Section 11-2-6(E)3(a). Payment shall be from the pro rata fee account. Upon request of the developer, the City shall make reimbursements for main extensions semiannually on May 1 and November 1 of each calendar year. Following expiration of such period, the City shall cease to collect pro rata fees for the main.
  - (b) Unclaimed funds. If the City is unable to reimburse the developer who installed the main following reasonable attempts to locate such developer, the City shall transfer all fees which remain unclaimed seven years following the date of acceptance of the water or wastewater main to the water and sewer fund for disposition in accordance with general provisions.
6. City collection fee. The City shall collect from the property owner paying pro rata fees an

additional two percent of the amount collected plus \$100.00 as a collection fee. The City shall establish a collection fee account into which all such monies shall be deposited for purposes of administering this Section. Any interest earned on the pro rata fee account shall also be deposited in the collection fee account.

7. **Method of enforcing pro rata payment.** Nothing herein shall be deemed in any way to be an exclusive method of enforcing the payment of pro rata fees against the property owner, and shall not be deemed in any manner to be a waiver of the City's right to validly assess the property owner for the costs of installing a standard size water or wastewater main and to affix and enforce liens against said property, all of which may be done as provided by ordinance in the manner prescribed by law.
8. **Application of pro rata fees to existing mains predating Chapter.** Pro rata fees imposed on property abutting a water or wastewater main installed by a developer prior to June 26, 1990, pursuant to former Section 3-1-13 of the City Code, which fees are for the sole purpose of reimbursing such developer for the costs of installing a standard size main, shall be collected at the following rates:
  - (a) Six dollars per front foot of the lot or tract of land to which water connections may be made.
  - (b) Five dollars per front foot of the lot or tract of land to which wastewater connections may be made.

Computation of fees for such facilities shall be as provided under this Section. Following June 26, 1990, the City shall neither impose nor collect fees for city-installed facilities pursuant to former Sections 3-1-9 through 3-1-18 of the City Code, nor shall the City continue to collect pro rata fees for developer-installed facilities following the expiration of the period for refund pursuant to former Section 3-1-14. The rights of persons entitled to refunds under previous ordinances where the water or wastewater installations have actually been made shall remain unaffected by this Chapter.

- (F) **Payment of fees, charges and assessments.** As a condition of plat approval, the property owner shall pay all fees, charges and assessments required to assure adequacy of public facilities to the subdivision, as may be imposed under this Chapter or other regulations of the City.

(Ordinance 7333, sec. 1, adopted 6/14/1994)

## § 11-2-7. Replatting.

### (A) Replatting of land.

1. **Replat required.** Unless otherwise expressly provided for herein, a property owner who proposes to replat any portion of an already approved final plat, other than to amend or vacate the plat, must first obtain approval for the replat under the same standards and by the same procedures prescribed for the platting of land by these regulations.
2. **Replatting without vacating preceding plat.** A replat of a final plat or portion of a final plat may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:
  - (a) Is signed and acknowledged by only the owners of the property being replatted.
  - (b) Is approved by the commission after a public hearing on the matter at which parties in

interest and citizens have an opportunity to be heard.

- (c) Does not attempt to amend or remove any covenants or restrictions previously incorporated in the final plat.

3. Additional requirements for certain replats.

- (a) In addition to compliance with subparagraph (b) below, a replat without vacation of the preceding plat must conform to the requirements of this Section if:
- (1) During the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot.
  - (2) Any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

Compliance with this paragraph is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

- (b) Notice of the hearing required under subparagraph 2(b) shall be given prior to the 15th day before the date of the hearing by publication in an official newspaper or a newspaper of general circulation in the county and by written notice, with a copy of subparagraph (c) below attached, forwarded by the director to the owners, as indicated on the most recently approved ad valorem tax roll of the City, of property in the original subdivision within 200 feet of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the City.
- (c) If the owners of 20 percent or more of the land area within which notice is required to be given under subparagraph (b) file with the commission a written protest of the replatting before or at the hearing, approval of the replat will require the affirmative vote of three-fourths of all members of the commission. The area of streets and alleys shall be included in computing the percentage of land area.

(B) Amending plats.

1. The commission may, upon petition of the property owner or developer, approve an amending plat which is signed by the applicants only unless otherwise required to the contrary, and which is for one or more of the purposes set forth in this Section, and such approval and issuance shall not require notice, hearing, or approval of other lot owners. This subsection shall apply only if the sole purpose of the amending plat is:
  - (a) To correct an error in any course or distance shown on the prior plat;
  - (b) To add any course or distance that was omitted on the prior plat;
  - (c) To correct an error in the description of the real property shown on the prior plat;
  - (d) To indicate monuments set after death, disability, or retirement from practice of the surveyor charged with responsibilities for setting monuments;

- (e) To show the proper location or character of any monument which has been changed in location or character or which originally was shown at the wrong location or incorrectly as to its character on the prior plat;
- (f) To correct any other type of scrivener or clerical error or omission as previously approved by the commission or Council; such errors and omissions may include, but are not limited to, lot numbers, acreage, street names, and identification of adjacent recorded plats;
- (g) To correct an error in courses and distances of lot lines between two adjacent lots where both lot owners join in the application for plat amendment and neither lot is abolished, provided that such amendment does not attempt to remove recorded covenants or restrictions and does not have a material adverse effect on the property rights of the other owners in the plat;
- (h) To relocate a lot line in order to cure an inadvertent encroachment of a building or improvement on a lot line or on an easement; or
- (i) To relocate one or more lot lines between one or more adjacent lots where the owner or owners of all such lots join in the application for the plat amendment, provided that such amendment does not:
  - (1) Attempt to remove recorded covenants or restrictions; or
  - (2) Increase the number of lots.

2. Procedures. Amending plats shall be processed using procedures set forth in Section 11-2-3.

(C) Plat vacation.

- 1. By property owner. The property owner of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold upon the approval of the commission. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat.
- 2. By all lot owners. If lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat.
- 3. Criteria. The commission shall approve the petition for vacation on such terms and conditions as are reasonable to protect public health, safety and welfare. As a condition of vacation of the plat, the commission may direct the petitioners to prepare a revised final plat in accordance with these regulations.
- 4. Effect of action. On the execution and recording of the vacating instrument, the vacated plat shall have no effect. Regardless of the commission's action on the petition, the property owner or developer will have no right to a refund of any monies, fees or charges paid to the City nor to the return of any property or consideration dedicated or delivered to the City except as may have previously been agreed to by the commission.
- 5. Government-initiated plat vacation.
  - (a) General conditions. The commission, on its motion, may vacate the plat, or a portion of the plat, of an approved subdivision when one of the following occurs:

- (1) The plat has been of record for more than two years, the property owner has not installed all public improvements according to approved public improvement plans for the subdivision and the City is unable to obtain funds with which to complete construction of public improvements, except that the vacation shall apply only to lots owned by the property owner or its successor.
  - (2) The plat has been of record for more than five years and the commission determines that the further sale of lots within the subdivision presents a threat to public health, safety and welfare, except that the vacation shall apply only to lots owned by the property owner or its successors.
- (b) Procedure. Upon any motion of the commission to vacate the plat of any previously approved subdivision, in whole or in part, the commission shall publish notice in a newspaper of general circulation in the county and provide personal notice to all property owners within the subdivision and shall also provide notice to the Council. The notice shall state the time and place for a public hearing on the motion to vacate the subdivision plat. The commission shall approve the vacation only if the criteria in paragraph 3 herein are satisfied.
- (c) Record of notice. If the commission approves a plat vacation in whole, it shall record a copy of the approval in the county clerk's office. If the commission approves a plat vacation in part, it shall cause a revised final plat to be recorded which shows that portion of the original plat that has been vacated and that portion that has not been vacated.

(Ordinance 7333, sec. 1, adopted 6/14/1994)



FLOOD DAMAGE PREVENTION CODE

**Chapter 11-3**

**FLOOD DAMAGE PREVENTION CODE**

<b>§ 11-3-1.</b>	<b>Definitions.</b>	<b>§ 11-3-10.</b>	<b>Basis for establishing the areas of special flood hazard.</b>
<b>§ 11-3-2.</b>	<b>Purpose.</b>	<b>§ 11-3-11.</b>	<b>Warning and disclaimer of liability.</b>
<b>§ 11-3-3.</b>	<b>Abrogation and greater restrictions.</b>	<b>§ 11-3-12.</b>	<b>Provisions for flood hazard reduction.</b>
<b>§ 11-3-4.</b>	<b>Establishment of floodplain development permit.</b>	<b>§ 11-3-13.</b>	<b>Variance and appeal procedures.</b>
<b>§ 11-3-5.</b>	<b>Administration.</b>	<b>§ 11-3-14.</b>	<b>Prerequisites for granting variances.</b>
<b>§ 11-3-6.</b>	<b>Methods of reducing flood losses.</b>	<b>§ 11-3-15.</b>	<b>Penalty.</b>
<b>§ 11-3-7.</b>	<b>Interpretation generally.</b>		
<b>§ 11-3-8.</b>	<b>Compliance.</b>		
<b>§ 11-3-9.</b>	<b>Lands to which this Chapter applies.</b>		

***Editor's note(s)***—*Ord. No. 10295, § 2, adopted March 22, 2022, amended former Ch. 3, §§ 11-3-1—11-3-15, in its entirety to read as herein set out. Former Ch. 3 pertained to similar subject matter and derived from Ord. No. 10282, § 2, adopted Jan. 25, 2022.*

### § 11-3-1. Definitions.

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

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

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

**Appurtenant structure:** A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

**Area of future conditions flood hazard:** The land area that would be inundated by the one-percent-annual chance (100 year) flood based on future conditions hydrology.

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

**Area of special flood hazard:** The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate-making has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AE, AH, AO, A1-30, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

**Base flood:** The flood having a one percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation (BFE):** The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one percent chance of equaling or exceeding that level in any given year; also called the "base flood."

**Basement:** Any area of the building having its floor subgrade (below ground level) on all sides.

**Breakaway wall:** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

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

**Development:** Any manmade change to improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**Elevated building:** For insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**Existing construction:** For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the Flood Insurance Rate Map (FIRM). "Existing construction"

may also be referred to as "existing structures."

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

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

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

- (A) The overflow of inland or tidal waters; or
- (B) The unusual and rapid accumulation or runoff of surface water from any source.

Flood elevation study: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

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

Flood Insurance Study (FIS): See *flood elevation study*.

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

Floodplain or floodprone area: Any land area susceptible to being inundated by water from any source; see "flooding."

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

Floodplain management regulations: Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: See "regulatory floodway."

Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried

out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

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

Historic structure: Any structure that is:

- (A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (C) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior; or
  - (2) Directly by the Secretary of the Interior in states without approved programs.

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

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

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

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

Manufactured home park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level: For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

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

commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

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

Recreational vehicle: A vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

Riverine: Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area: See "area of special flood hazard."

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

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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

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

- (A) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (B) Any alteration of a "historic structure," provided that the alterations will not preclude the structure's continued designation as a "historic structure."

**Variance:** A grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

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

**Water surface elevation:** The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

### **§ 11-3-2. Purpose.**

It is the purpose of this Chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (F) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
- (G) Ensure that potential buyers are notified that property is in a flood area.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

### **§ 11-3-3. Abrogation and greater restrictions.**

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

### **§ 11-3-4. Establishment of floodplain development permit.**

A floodplain development permit shall be required to ensure conformance with the provisions of this Chapter.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

### **§ 11-3-5. Administration.**

- (A) **Designation of the Floodplain Administrator.** The City Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Chapter and other appropriate sections of 44 CFR (the National Flood Insurance Program Regulations) pertaining to floodplain

management. The term "Floodplain Administrator" also includes the City Engineer's designee or designees to whom any of the herein-described duties and responsibilities are delegated.

(B) Duties and responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter.
2. Review permit applications to ensure that the proposed building site or project, including the placement of manufactured homes, will be reasonably safe from flooding.
3. Review, approve or deny all applications for floodplain development permits required by adoption of this Chapter.
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334) from which prior approval is required.
5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
6. Notify, in riverine situations, adjacent communities and the State coordinating agencies, which are the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
7. Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
8. When Base Flood Elevation data has not been provided in accordance with Section 11-3-10 of this Code, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and floodway data available from a Federal, State, or other source, for administration of the provisions of Sections 11-2-5(A), 11-2-5(D), and 11-3-12 of this Code. The Floodplain Administrator shall determine or require determination of a Base Flood Elevation acceptable for rating flood insurance for every proposed structure in Zone A on the community's FIRM, and maintain a record of such determinations for use on nearby properties, as applicable.
9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 0.1 foot at any point within the community. All proposed development must be in compliance with other City-adopted standards, which may impose stricter conditions.
10. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM which increases the water surface elevation of the base flood by

more than one foot provided that the community first completes all of the provisions required by Section 65.12.

(C) Permit procedures.

1. Application for a floodplain development permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
  - (a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new or substantially improved structures.
  - (b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed.
  - (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 11-3-12(B)2 of this Code.
  - (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
  - (e) Maintain a record of all such information in accordance with Section 11-3-5(B)1 of this Code.
2. Approval or denial of a floodplain development permit by the Floodplain Administrator shall be based on all of the provisions of this Chapter and the following relevant factors:
  - (a) The danger to life and property due to flooding or erosion damage.
  - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - (c) The danger that materials may be swept onto other lands to the injury of others.
  - (d) The compatibility of the proposed use with existing and anticipated development.
  - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - (f) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems.
  - (g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
  - (h) The necessity to the facility of a waterfront location, where applicable.
  - (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - (j) The relationship of the proposed use to the Comprehensive Plan for that area.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-6. Methods of reducing flood losses.**

In order to accomplish its purpose, this Chapter uses the following methods:

- (A) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities.
- (B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.
- (D) Control filling, grading, dredging and other development which may increase flood damage.
- (E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-7. Interpretation generally.**

In the interpretation and application of this Chapter, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body; and
- (C) Deemed neither to limit nor repeal any other powers granted under State statutes.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-8. Compliance.**

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Chapter and other applicable regulations.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-9. Lands to which this Chapter applies.**

This Chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Midland, Texas.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-10. Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled "Flood Insurance Study for Midland County, Texas, and Incorporated Areas," dated September 16, 2005, with accompanying Flood Insurance Rate Maps (FIRM) dated September 16, 2005, and any revisions thereto, are hereby adopted by reference and declared to be a part of this Chapter.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-11. Warning and disclaimer of liability.**

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of Midland, Texas, or any official or employee thereof, for any flood damages that result from reliance on this Code or any administrative decision lawfully made thereunder.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-12. Provisions for flood hazard reduction.**

(A) General standards. In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
3. All new construction or substantial improvements shall be constructed with material resistant to flood damage.
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other mechanical service facilities at least one foot above the base flood elevation.
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into flood waters.
7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(B) Specific standards. In all areas of special flood hazards where Base Flood Elevation data has been provided as set forth in Section 11-2-5(D), 11-3-5(B)8, 11-3-10, or 11-3-12(C)3, the following provisions are required. Where no Base Flood Elevation data has been provided, the Floodplain Administrator shall establish or require the builder to establish a Base Flood Elevation for the site, using methods that will be acceptable for rating of flood insurance, and the following provisions are required:

1. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above Base Flood Elevation. The Floodplain Administrator can approve a reduction of up to one foot in the lowest floor elevation, as specified in Section 11-3-12(B)7. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection, as specified in Section 11-3-5(C)1(a), is satisfied, prior to the foundation inspection approval by the building official.

2. Nonresidential construction New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to at least one foot above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below an elevation of one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The Floodplain Administrator can approve a reduction of up to one foot in the lowest floor elevation and floodproofing elevation, as specified in Section 11-3-12(B)7. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection prior to final approval of the utilities inspection of the utilities department. A record of such certification, which shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Floodplain Administrator.
3. Enclosures New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, such as crawlspaces and garages with floors below the BFE, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
  - (a) A minimum of two openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - (b) The bottom of all openings shall be no higher than one foot above grade.
  - (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
4. Manufactured homes.
  - (a) Require that all manufactured homes to be placed within Zone A of a community's FHBW or FIRM shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated with the bottom of the steel frame one foot above an estimated BFE determined as described in 11-3-5(B)8 and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
  - (b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the bottom of the steel frame of the manufactured home is elevated to at least one foot above the Base Flood Elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The Floodplain

Administrator can approve a reduction of up to one foot in the lowest steel frame elevation, as specified in Section 11-3-12(B)7.

- (c) Require that manufactured homes being placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4)(b) of this section be elevated so that the bottom of the steel frame of the manufactured home is at least one foot above the Base Flood Elevation.
5. Recreational vehicles. Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 11-3-5(C)1, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
6. Electrical and mechanical service facilities. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other mechanical service facilities must be designed and located at least one foot above the base flood elevation to prevent water from entering or accumulating in the components during flooding.
7. The Floodplain Administrator is authorized to approve a reduction of up to one foot in the lowest floor elevation, steel frame elevation for manufactured homes or floodproofing elevation required by the sections above. This approval shall not be granted for reasons of cost savings alone, but must be justified by other factors which, in the opinion of the Floodplain Administrator, offset the reduction in flood protection for the structure. Any request for a lowest floor elevation, steel frame elevation or floodproofing elevation below the Base Flood Elevation shall be considered as a variance as described in Section 11-3-13.

(C) Standards for subdivision proposals.

1. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with Sections 11-3-2 and 11-3-6 of this code.
2. All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet floodplain development permit requirements of Sections 11-3-5(C) and 11-3-12 of this code.
3. Base flood elevation data shall be generated by hydrologic and hydraulic analyses performed by a registered professional engineer for subdivision proposals and other proposed developments, including the placement of manufactured home parks and subdivisions, if not otherwise provided pursuant to Sections 11-3-10 and 11-3-5(B)8 of this code.

For all new subdivision proposals and other proposed developments, including proposals for manufactured home parks and subdivisions, that are equal to or greater than six lots or two acres, whichever is the lesser, the registered professional engineer shall determine the regulatory floodway based on a one foot rise in BFE using standard engineering methods and practices, if not otherwise provided pursuant to Sections 11-3-10 and 11-3-5(B)9 of this Code.

4. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

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

(D) Standards for areas of shallow flooding (AO/AH Zones). Located within areas of special flood hazard established in Section 11-3-10 are areas designated as areas of shallow flooding. These areas have special flood hazards associated with flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated to at least one foot above the Base Flood Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
2. All new construction and substantial improvements of non-residential structures shall:
  - (a) Have the lowest floor (including basement) elevated to at least one foot above the Base Flood Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or
  - (b) Together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below at least one foot above the Base Flood Elevation in an AH Zone, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 11-3-5(C) are satisfied.
4. Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(E) Floodways. Located within areas of special flood hazard established in Section 11-3-10 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development, within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. If Section 11-3-12(E)1 above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 11-3-12.
3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-13. Variance and appeal procedures.**

- (A) The City Council shall hear and render judgment on requests for variances from the requirements of this Chapter.
- (B) The City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.
- (C) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (D) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter.
- (E) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 11-3-5(C)2 of this Code have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (F) Upon consideration of the factors noted above and the intent of this Chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Chapter.
- (G) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (H) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (I) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in this Section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-14. Prerequisites for granting variances.**

- (A) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (B) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (C) Any applicant to whom a variance is granted shall be given written notice that the structure will be

permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ordinance 10295, sec. 2, adopted 3/22/2022)

**§ 11-3-15. Penalty.**

A violation of a provision of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor punishable by a fine in an amount not to exceed \$2,000.00. Each day on which the violation shall exist shall constitute a separate and distinct offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ordinance 10295, sec. 2, adopted 3/22/2022)



## LAKE AREAS

### Chapter 11-4

#### LAKE AREAS

<b>§ 11-4-1.</b>	<b>Definitions.</b>	<b>§ 11-4-9.</b>	<b>City engineer may abate; expenses to create lien, etc.</b>
<b>§ 11-4-2.</b>	<b>Water holding capacity maintained.</b>	<b>§ 11-4-10.</b>	<b>Filing of expense statement.</b>
<b>§ 11-4-3.</b>	<b>Dumping.</b>	<b>§ 11-4-11.</b>	<b>Duty to comply with notice; penalty.</b>
<b>§ 11-4-4.</b>	<b>Transporting dirt, etc., to area.</b>		<b>Prosecution to abate nuisances, etc.</b>
<b>§ 11-4-5.</b>	<b>Use of fill.</b>	<b>§ 11-4-12.</b>	<b>Building permits.</b>
<b>§ 11-4-6.</b>	<b>Existence of fill declared nuisance.</b>	<b>§ 11-4-13.</b>	
<b>§ 11-4-7.</b>	<b>Duty to remove dirt, etc.</b>	<b>§ 11-4-14.</b>	<b>Fills generally.</b>
<b>§ 11-4-8.</b>	<b>Notice to owners, etc.; order to abate.</b>		

*Editor's note(s)*—This Chapter was renumbered by Ord. No. 6663, enacted May 27, 1986.

**§ 11-4-1. Definitions.**

For the purpose of this Chapter:

Lake area: Any natural or manmade stormwater lake area in the City, the perimeter of which may be or has been established by the City engineer, and is substantially the estimated high-water level for the lake, as indicated on a map showing lake areas maintained in the office of the City engineer.

Water holding capacity: The volume of stormwater which any natural or manmade stormwater lake area is capable of holding before any filling, excavating or redesign.

(Ordinance 6663 adopted 5/27/1986; Ordinance 7336 adopted 6/28/1994)

**§ 11-4-2. Water holding capacity maintained.**

The water holding capacity of any lake area shall not be decreased by reason of a cut-and-fill redesign of the lake area or by the addition of water which is not natural runoff water, except as provided in Section 11-4-14 of this Code.

(Ordinance 6663 adopted 5/27/1986)

**§ 11-4-3. Dumping.**

The dumping or other placing of any dirt, debris, or other solid materials in any lake area shall constitute a nuisance, and any person who shall dump, place or permit to be placed any such material therein shall be guilty of a misdemeanor; provided, however, that this Section shall not apply to persons making fills in accordance with Section 11-4-14 of this Code, nor shall it apply to the construction of or to any person engaged in the construction of any public work, the extension of any public utilities or the paving of any roadway in any public park in any lake area, when the project is planned and the work or contract is approved by or is done under the supervision of the City engineer and the project or work is not designed or calculated to decrease the water-holding capacity of the lake area involved.

(Ordinance 6663 adopted 5/27/1986)

**§ 11-4-4. Transporting dirt, etc., to area.**

It shall be unlawful for any person to transport or to direct the transportation of any dirt, debris or other materials over any of the streets or alleys in the City for the purpose of dumping or otherwise placing any such materials in any lake area; provided, however, that this Section shall not apply to persons making fills in accordance with Section 11-4-14 of this Code, nor shall it apply to the construction of or to any person engaged in the construction of any public work, the extension of public utilities or the paving of roadways in any public park in a lake area, when the project is planned and the work or contract is approved by or is done under the supervision of the City engineer and the project or work is not designed or calculated to decrease the water-holding capacity of the lake area involved.

(Ordinance 6663 adopted 5/27/1986)

**§ 11-4-5. Use of fill.**

It shall be unlawful for any person to spread, or use for filling purposes or cover over, or otherwise use or permit to be used, upon any land within a lake area, any dirt, debris or other solid materials which have been transported or moved in any manner to a lake area from outside the lake area, and whoever violates any part of this provision shall be guilty of maintaining a nuisance; provided, however, that this Section shall not apply to persons making fills in accordance with Section 11-4-14 of this Code, nor shall it apply when a cut-and-fill plan has been duly approved by the City engineer which allows the use of

solid materials from outside the lake area to be exchanged for solid materials that have been removed from the lake area and when such cut-and-fill plan is not designed or calculated to decrease the water-holding capacity of the lake area involved. Any appeal of a decision of the City engineer shall be made to the City Council.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-6. Existence of fill declared nuisance.**

It shall be unlawful and constitute a nuisance for any person or persons jointly or severally owning, or having possession or control or any other interest in, any land located in any lake area in the City to permit, allow or suffer any dirt, debris or other solid materials or objects hauled, carried or otherwise transported from outside any such lake area, onto land within a lake area, to remain upon the land of any such person within a lake area, and any such person who violates any part of this provision shall be guilty of maintaining a nuisance. However, this Section shall not apply when fills are being made in accordance with Section 11-4-14 of this Code.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-7. Duty to remove dirt, etc.**

It shall be the duty of every person having ownership, control, possession or the right to possession of any lake area in which dirt, debris or objects or other solid material has been dumped or otherwise placed in such manner as to constitute a nuisance to proceed at once to remove or abate same as soon as its presence comes to his knowledge.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-8. Notice to owners, etc.; order to abate.**

Whenever a nuisance defined in Section 11-4-6 shall exist within the City, the City engineer shall cause notice in writing to be given to the owner and the proprietor or occupant, if any, of the premises whereon such nuisance exists. Such notice shall be made by letter addressed to such owner, proprietor or occupant, at his post office address, with return receipt requested, or by publication as many as two times within ten consecutive days, if personal service may not be had as aforesaid, or if the owner's address be not known. Such notice shall contain an order to such owner, proprietor or occupant of such premises to remove or cause the removal of such nuisance within ten days.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-9. City engineer may abate; expenses to create lien, etc.**

If a nuisance defined in Section 11-4-6 is not abated within the time set by the notice of the preceding Section, the City engineer shall cause such nuisance to be abated or removed and shall defray the expenses thereof out of any money in the City treasury available for such purpose. All expenses so incurred shall be charged against the owner and shall be a lien on the land and premises whereupon such nuisance exists to the extent and in the manner authorized by Vernon's Ann. Civ. St. art. 4436.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-10. Filing of expense statement.**

Upon the abatement or removal of a nuisance defined in Section 11-4-6 by city forces, a statement of expenses incurred by the City in such action shall be signed and acknowledged by the Mayor and filed with the county clerk. A copy of such statement shall be filed with the City attorney, who shall be authorized to timely file suit to foreclose the lien for such expenses as provided by V.T.C.A., Health and Safety Code

ch. 342.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-11. Duty to comply with notice; penalty.**

It shall be the duty of any owner, proprietor or occupant to comply with the provisions of the notice authorized by Section 11-4-8. Any owner, proprietor or occupant who, within ten days after written notice thereof, shall neglect, or fail or refuse to abate the nuisance defined in Section 11-4-6 shall be guilty of a misdemeanor.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-12. Prosecution to abate nuisances, etc.**

The city attorney, upon written request of the City manager, is authorized to prosecute any and all suits when deemed necessary or expedient, against any person to restrain and prevent the dumping or other placing of dirt, debris or other objects or other solid materials in any lake area, and to cause or compel the removal of such dirt, debris, objects or other material which may have been dumped or placed in violation of this Chapter.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-13. Building permits.**

Except as provided in the following Section, the building official is hereby prohibited from issuing building permits for structures within any lake area.

(Ordinance 6663 adopted 5/27/1986)

#### **§ 11-4-14. Fills generally.**

- (A) Prior to any filling within a lake area, a reclamation plan showing how such areas are to be reclaimed and demonstrating that the proposed use does not adversely affect flood control and drainage within the area shall be submitted to the City engineer. The reclamation plan shall be in accordance with the specifications set forth in the City of Midland storm drainage design manual and this Chapter and shall be accompanied by all required state or federal permits. The reclamation plan shall show all proposed cuts and fills and all areas which are to be included as common areas. Land may be reclaimed from a lake area only if an engineering study, approved by the City engineer, shows that it is feasible, and the total reclaimed area shall not exceed 30 percent of the total land in the lake area which is within the ownership where proposed. Land may also be reclaimed for public, non-drainage use, according to the same conditions. Land reclaimed for use for a public right-of-way shall not be subject to the 30 percent limitation.
- (B) The city engineer shall approve, modify or disapprove the proposed reclamation plan.
- (C) Disapproval or modification of the proposed reclamation plan by the City engineer may be appealed to the Council.
- (D) Development of all lake areas shall conform to the following requirements:
  - (1) All borrow slopes shall be at a seven horizontal to one vertical (7:1) slope.
  - (2) All fill area slopes shall be a 4:1 or less slope. All fill shall be compacted to a minimum of 95 percent of modified maximum density.

- (3) The lake area shall not have the water-holding capacity decreased by reason of cut-and-fill, redesign or creation of a constant-level lake, except as specifically authorized by this Code.
- (E) All fills in lake areas below the estimated high-water line which are authorized under Section 11-2-5(D)4 of this Code shall be made by dirt excavated from below the estimated high-water line, unless otherwise authorized pursuant to Section 11-4-5, and shall conform to the requirements of Section 11-2-5(D)4. The fills shall produce a ground surface above the estimated high-water level for all areas intended to be improved for building construction. Building permits may be issued when the ground surface has in fact been raised to an elevation above the estimated high-water level, as certified by the City engineer.
- (F) Where studies and a proper cut-and-fill plan show it is in the interest of the public and provides improved flood control, and upon the recommendation of the director of engineering and development, the City Council may allow the water-holding capacity of a lake area to be decreased or the lake area to be completely filled under the following conditions:
  - (1) Alternative drainage impoundment areas shall be constructed of the same capacity as the water-holding capacity which was filled and lost in the lake area. The cut-and-fill plan shall indicate how natural runoff will be conveyed to the alternate impoundment area. No filling of a lake area may commence until the cut-and-fill plan has been approved by the City engineer.
  - (2) The preliminary plat or replat of such lake area showing the perimeter of the lake area to conform to such fills has been approved by the planning commission. The owner shall also plat or replat the alternative drainage impoundment areas showing the perimeter of such areas. After obtaining approval of such cut-and-fill plan from the City Council, final plat or replat approval shall be obtained before any such cut-and-fill operation is actually begun.
  - (3) The alternative drainage impoundment area shall be developed in accordance with subsection (D) of this Section.
  - (4) The fills may be made by dirt from outside the lake area, but shall be compacted to 95 percent of maximum modified proctor density.
  - (5) All fills shall produce a ground surface above the estimated high-water level.
  - (6) Building permits may be issued only after the above conditions have been met, and such cut-and-fill operation is completed and certified by the City engineer.

(Ordinance 6663 adopted 5/27/1986; Ordinance 7336 adopted 6/28/1994)



PROCEDURE FOR SECURING PERMISSION TO MAKE

**Chapter 11-5**

**PROCEDURE FOR SECURING PERMISSION TO MAKE EXCAVATIONS AND  
FILLS**

**§ 11-5-1. Approval.**

*Editor's note(s)—This Chapter was renumbered by Ord. No. 6663, enacted May 27, 1986.*

**§ 11-5-1. Approval.**

The approval of the public works department for the City shall be secured before any excavations, removal of earth, reshaping or cut-and-fills are made. A drainage plan shall be submitted to and received by the public works department prior to approval of such excavations, removal of earth, reshaping or cut-and-fills, if the director of public works determines a drainage plan is necessary. The purpose of this requirement is to avoid possible unsafe, unsanitary and unmaintainable and unsightly excavations or "holes" which might also create drainage problems. Excepted from this requirement are those excavations and fills made in the course of construction, such as foundations, basements or subfloors, which are authorized by a building permit.

It shall be unlawful for any person as owner, proprietor, lessee or occupant of any lot or tract of land to engage in or authorize a cut-and-fill, excavation, removal of earth or reshaping in or upon such property, without first securing the approval of the public works department in the manner set forth above.

(Ordinance 6205 adopted 5/10/1983; Ordinance 6663 adopted 5/27/1986)

PROCEDURE FOR SECURING PERMISSION TO MAKE

**Chapter 11-6**

**WATER AND WASTEWATER MAIN LINE EXTENSIONS**

<b>§ 11-6-1.</b>	<b>General provisions.</b>	<b>§ 11-6-4.</b>	<b>Extension of mains by City.</b>
<b>§ 11-6-2.</b>	<b>Water and wastewater main extensions by developers.</b>	<b>§ 11-6-5.</b>	<b>Administration.</b>
<b>§ 11-6-3.</b>	<b>City participation.</b>	<b>§ 11-6-6.</b>	<b>Water and wastewater line reimbursements to developers.</b>

**§ 11-6-1. General provisions.****(A) Definitions.**

City: The City of Midland, Texas.

Developer: The person, business, corporation or association responsible for the development of the subdivision or lot, and includes the property owner or subdivider.

Development: Any manmade change to improved or unimproved real estate, including, but not limited to, construction of buildings or other structures, which results in demand for water or wastewater facilities and which requires connection to the City's water or wastewater system.

Director: The director of engineering and transportation for the City of Midland.

Lot: A tract, plot or portion of a subdivision, addition or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or possession, or for development.

Oversize main: A water or wastewater main required to interconnect property being developed with the City's water or wastewater system, which exceeds the size of an eight-inch water main or a ten-inch wastewater main.

Pro rata: A charge made against a lot abutting a water or wastewater main that is proportional to the front footage of the lot and that is imposed to reimburse a developer for installing or paying for the main.

Property owner: The record title holder of the premises served with water or wastewater from a connection to the City's water or wastewater system.

Subdivider: Has the meaning given that term in the City's subdivision regulations.

Subdivision: Has the meaning given that term in the City's subdivision regulations.

**(B) Method of enforcing pro rata payment.** Nothing herein shall be deemed in any way to be an exclusive method of enforcing the payment of pro rata fees against the property owner, and shall not be deemed in any manner to be a waiver of the City's right to validly assess the property owner for the costs of installing a standard size water or wastewater main and to affix and enforce liens against said property, all of which may be done as provided by ordinance in the manner prescribed by law.

**(C) Application of pro rata fees to existing mains predating Chapter.** Pro rata fees imposed on property abutting a water or wastewater main installed by a developer prior to the effective date of this Chapter, pursuant to former Section 3-1-13 of the City Code, which fees are for the sole purpose of reimbursing such developer for the costs of installing a standard size main, shall be collected at the following rates:

1. Six dollars per front foot of the lot or tract of land to which water connection may be made.
2. Five dollars per front foot of the lot or tract of land to which wastewater connections may be made.

Computation of fees for such facilities shall be as provided under Section 11-6-6 of this Chapter. Following the effective date of this Chapter, the City shall neither impose nor collect fees for city-installed facilities pursuant to former Sections 3-1-9 through 3-1-18 of the City Code, nor shall the City continue to collect pro rata fees for developer-installed facilities following the expiration of the period for refund pursuant to former Section 3-1-14. The rights of persons entitled to refunds under previous ordinances where the water or wastewater installations have actually been made shall remain unaffected by this Chapter.

(D) Repealer. The following provisions of the Midland City Code are hereby repealed: Sections 3-1-9 through 3-1-18, inclusive.

(Ordinance 7015 adopted 6/26/1990)

## § 11-6-2. Water and wastewater main extensions by developers.

### (A) Basic policy.

1. Connection to water and wastewater systems. All subdivisions and each lot to be developed within the City and its extraterritorial jurisdiction shall be served by an approved water supply and distribution system and by an approved sewage collection and disposal system. No development within the City limits shall be approved unless adequate assurances are provided that such development will be connected with the City's water supply and distribution system and with the City's wastewater system. No building permits shall be issued until satisfactory evidence of such connection has been provided. This subsection shall not apply to platted property where no service connections are required, as determined in subsections 11-2-5(C)2 and (C)3 of the City's subdivision regulations.
2. Responsibility for installation and extensions. The developer shall construct all water and wastewater facilities needed to serve the development and, pursuant to a development agreement with the City, shall construct or finance all water and wastewater mains and appurtenances, including major distribution and collection facilities, necessary to connect the development with the City's water supply and distribution system and with the City's wastewater system. Mains to be extended shall be of a size sufficient to serve the development and all other properties to be served by the facility, as determined from an analysis of the City's water distribution plans, wastewater master plans and capital improvements plans, as may be amended from time to time. All costs of installation shall be borne initially by the developer, subject to city participation in oversize costs pursuant to subsection 11-6-3(A) and subject to reimbursement from other developments. Requests for city extension of water and wastewater mains shall be as provided for in subsection 11-6-3(B).
3. Condition of main extension. Authority to extend water and wastewater mains to serve newly subdivided or platted land shall be granted by the City only upon a determination by the director that all water or wastewater facilities necessary to adequately serve the development are in place or will be in place prior to the issuance of occupancy permits for structures developed on such land.
4. Minimum standards. Mains shall be installed and extended in accordance with the following standards:
  - (a) Location of facilities. The location of all water and wastewater mains necessary to serve newly subdivided or platted land shall be in accordance with the City's water distribution plans, wastewater master plans and capital improvements plans, as may be amended from time to time, and in accordance with Chapter 11-2 of the Midland City Code.
  - (b) Construction standards. All water and wastewater facilities required by these regulations shall be constructed in accordance with the requirements and specifications of the City.
  - (c) Size of mains. Water and wastewater mains shall be sized and designed in accordance with the City's water distribution plans and wastewater master plans.
  - (d) Items included. Mains to be constructed shall include all valves, manholes, piping, fire

hydrants and other appurtenances, including any lift stations or pumping facilities necessary to connect the property with the City's water or wastewater system, as determined by the director.

- (e) Extensions within property to be developed. All water and wastewater mains shall be extended through and/or across the frontage of the property to be developed in streets, alleys or in easements to the tract or addition in order to provide service to adjacent property where applicable.
  - (f) Acquisition of easements. The developer must obtain all off-site easements which are necessary for extending water and wastewater mains to and through the property being developed. However, the City may acquire such easements, or portions thereof, if the City Council determines such acquisition is in the public interest. A metes and bounds description and a drawing of each easement must be submitted to the engineering division in order for the proper legal document to be prepared. The document will be sent to the developer for acquisition of the required signatures. The executed document will be returned to the engineering division for filing with the county clerk.
- (B) Water distribution plans, wastewater master plans and capital improvements plans. The water distribution plans, wastewater master plans and capital improvements plans are those plans adopted by the City Council for the orderly extension and development of the City's water distribution and wastewater collection systems. Such plans may be adopted, amended, changed or supplemented by the City Council only after a public hearing is held by the City Council on the adoption, amendment, change or supplement to such plans. Notice of such hearing shall be given by publication in a newspaper having general circulation in the City, stating the time and place of such hearings, which time shall not be less than 15 days after the date of publication, exclusive of the date of publication and hearing.
- (C) Development agreements.
- 1. Agreement required. Prior to extension of any water main or wastewater main for which there is city participation in the project costs, or prior to construction of any main or appurtenances thereto which is identified in the capital improvements plan for water or wastewater facilities, the developer shall execute an agreement with the City in a form approved by the City attorney containing the following:
    - (a) Construction plans approved by the director demonstrating compliance with all city standards and regulations.
    - (b) Appropriate provisions for providing security in a form approved by the City attorney.
    - (c) Offers to deliver to the City clear and unencumbered title to all proposed water or wastewater facilities prior to the time of acceptance by the City.
    - (d) Off-site easements necessary for the extension of water and wastewater mains.
    - (e) Designation of the extent of the City's participation in construction costs and the sources of reimbursement from fees to be collected from other developments.
    - (f) Agreement to cooperate with city inspectors and to abide by all rules and regulations relating to city inspection.
    - (g) Agreement to maintain the facilities until such facilities are accepted by the City and a

warranty that the facilities will be free from defect for a period of one year following the acceptance by the City of the dedication of the facility. This warranty obligation may be met by securing a warranty of the facility from the general contractor which is transferred to the City at the time of acceptance of the facility.

- (h) When required by applicable Texas statute, an agreement to abide by the competitive bidding requirements and procedures set forth under Texas law.
2. Procedure for submission of plans.
  - (a) Upon approval by the City, a developer of a subdivision shall design and prepare construction plans of water and wastewater main lines. These plans shall conform in all details to the City's standards as to the design, grade, location, size and quality of materials and construction. Such construction plans shall be approved by the director prior to the submission of a final plat by the developer to the City. The developer shall submit such construction plans to the director at least 15 days prior to the date approval is needed by the developer.
  - (b) Plans and profiles submitted by the developer's engineer shall be prepared on standard 24-inch by 36-inch sheets of tracing paper. Plans and profiles shall be shown at scales of one inch to 50 feet horizontal and one inch to two feet vertical, or at a scale which may be approved by the engineering division. The engineer submitting the plans and profiles must be a registered professional civil or sanitary engineer in the State of Texas, and he must affix his seal and signature to the tracings of all plans and profiles.
  - (c) The completed reproducible tracings for water and wastewater plans and profiles shall be submitted to the engineering division for approval, accompanied by two copies of the plans and profiles of the storm sewers and street grades as approved by the engineering division and one copy of the proposed plat of the subdivision. Upon final approval, these reproducible tracings will be returned to the developer's engineer for the purpose of making such prints as he may require, after which the reproducible tracings shall be returned to become permanent property of the engineering division of the City.
  - (d) Upon approval of the plans by the engineering division, the developer may enter into a contract with any individual or may himself construct the system as so planned; provided, however, that the construction and installation of the water and wastewater facilities, or either of them, shall be inspected by inspectors of the City to see that the installation is made in accordance with the plans and the City's standard specifications, which, in every instance, shall be a part of said installation contract.
  - (e) When the project is ready for construction, line and grade stakes will be set by the developer's engineer and inspected by the engineering division; but these stakes will not be set until after the developer's engineer has properly staked on the ground all points of curves, all points of tangency and all block corners. All lot corners within the subdivision will be properly staked on the ground as required for construction. All lot corners within the subdivision shall be staked by the developer's engineer and inspected by the engineering division prior to the construction of any water distribution lines, installations of water meters and issuance of any building permits in the subdivision.
3. Security. The developer shall provide a surety bond, letter of credit or cash escrow as security for the promises contained in the development agreement and as required by subsection 11-2-4(A)2.c of the City Code. Such security provided by the developer shall be in an amount

equal to 100 percent of the developer's portion of the estimated cost of completion of the required facilities. In addition to all other security for completion of the water and wastewater facilities, the owner shall require a performance and payment bond from the contractor insuring completion of the project. Such performance and payment bonds shall be equal to the total amount set forth in the contractor's contract. Such bonds shall be provided to the City and name the City as an additional obligee. The insurer of the surety bond or letter of credit shall be acceptable to the City attorney. A required performance bond must be executed by a corporate surety in conformance with V.T.C.A., Government Code ch. 2253.

(D) Construction management.

1. Procedures.

- (a) Preconstruction conference. The city engineer may require that all contractors participating in the construction shall meet for a preconstruction conference to discuss the project prior to beginning work.
- (b) Conditions prior to authorization. Prior to authorizing construction, the City engineer shall be satisfied that the following conditions have been met:
  - (1) All required contract documents shall be completed and filed with the City engineer.
  - (2) All necessary off-site easements or dedications required for city-maintained water or wastewater facilities not shown on the final plat must be conveyed solely to the City, with proper signatures affixed.
  - (3) All contractors participating in the construction shall be presented with a set of approved plans bearing the stamp of approval of the engineering division. These plans shall remain available to the contractors on the job site.
  - (4) A complete list of the contractors, their representatives on the site and telephone numbers where a responsible party may be reached at all times must be submitted to the City engineer.
  - (5) Three prints of the utility plan sheet, scale one inch equals 50 feet, and five prints of the same, reduced to one inch equals 100 feet, shall be submitted to the City engineer, in addition to previous submittal of construction plans. As-built plans shall also be submitted to the City engineer after construction is completed and prior to acceptance of the construction by the City.

2. Inspection of facilities. Construction inspection shall be supervised by the City engineer. Construction shall be in accordance with the approved plans, standard specifications and standard details of the City. Any changes in design required during construction shall be made by a professional engineer whose seal and signature are shown on the amended plans and shall be approved by the City engineer. If the City engineer finds upon inspection that any of the required water and wastewater facilities have not been constructed in accordance with the City's construction standards and specifications, the applicant shall be responsible for completing the waste or wastewater facilities in accordance with said standards and specifications.
3. Maintenance of facilities. The developer shall be required to maintain all required water or wastewater facilities until acceptance of the facilities by the City.

(Ordinance 7015 adopted 6/26/1990)

**§ 11-6-3. City participation.****(A) Participation and reimbursement by the City in the cost of oversize water and wastewater mains.**

1. **City participation policy.** The City may participate with the developer in the reasonable construction costs of oversizing water or wastewater mains and appurtenances thereto in an amount not to exceed a maximum of 30 percent of the total construction costs of the public facilities set forth in the development agreement between the City and the developer. The developer initially shall be responsible for the entire cost of the oversize main. In the event that the City, in its sole discretion, determines to participate to an extent greater than 30 percent of total construction costs of the public facilities set forth in the development agreement between the City and the developer, in order to preserve the public health and safety, or to prevent confiscation of property, the developer shall be responsible for compliance with all competitive bidding procedures required by the City and V.T.C.A., Local Government Code ch. 252.
2. **No funds available.** In no event may the City be required to participate in the costs of oversize mains pursuant to this Section if there are no funds available for such purposes. In the event that the City Council determines in its sole discretion that no funds are available for participation, the City may approve the development to be served by the mains only if the developer executes an agreement for construction of the necessary water or wastewater facilities pursuant to subsection 11-6-2(B).
3. **Participation and reimbursement requests.** A request for city participation authorized by subsections 1 and 2 hereof shall be initiated through the submission of an application for participation by the developer. Such application shall be submitted on the form provided by the City prior to commencement of construction. The request for reimbursement shall be accompanied by as-built drawings showing the reimbursable items, a copy of the contractor's bid for construction, final payments with quantities, oversize calculations for all reimbursable items and a project location map.
4. **Oversize costs.** If the request for city participation is approved by the City, following dedication and acceptance of a facility or appurtenances in which it has agreed to participate, the City shall refund the costs of oversizing such facility in accordance with the following procedures and standards:
  - (a) **Oversizing standards.** The City shall pay only the difference in cost between an eight-inch water main or a ten-inch wastewater main and the main required by the City, as determined under subsection b hereof, up to the maximum amount agreed to by the City.
  - (b) **Oversize cost determination.** The extent of the City's participation in the costs of oversized mains shall be determined in the following manner. Estimates of the actual construction costs, which are prepared by the developer's professional engineer, shall be submitted to the director for his review and approval. The approved estimates shall be set forth in the development agreement between the developer and the City, along with an estimate of the City's portion. However, the City's participation shall be based on actual construction costs, which shall be determined based on invoices or contracts for such construction. In no event shall the City's participation exceed the City's portion of the estimated construction costs set forth in the developer's agreement, or as may be subsequently amended.
5. **Reimbursement from other developments.** The developer who has installed a water or

wastewater main or mains shall be entitled to reimbursement from the proceeds of pro rata fees established for the main or mains serving other developments pursuant to Section 11-6-6 herein. The developer shall also be entitled to reimbursement from any lot or acreage fees which the City may hereafter impose on other developments to be served by the main or mains installed.

(Ordinance 7015 adopted 6/26/1990)

**§ 11-6-4. Extension of mains by City.**

- (A) Extension of mains by City. The City may extend a water or wastewater main to serve a development, in lieu of installation by the developer, subject to the following standards and procedures:
1. Request by developer. The developer shall petition the City to extend a water or wastewater main to serve the development in lieu of constructing the facilities or to accelerate installation prior to the City's proposed construction schedule.
  2. Condition of extension. The City may agree to extend the water or wastewater main upon condition that the developer shall deposit cash in an amount equal to 100 percent of the projected costs of the extension, together with easements required by subsection 11-6-2(A)4.
  3. Participation by City. The City shall participate in the costs of oversized mains according to the standards and procedures established in subsection 11-6-3(A). Upon determination of the amount and timing of the City's participation thereunder, the portion of the cash deposit equal thereto shall be refunded to the developer.
  4. Reimbursement from other developments. The developer shall be entitled to reimbursement from the proceeds of pro rata fees established for the main or mains serving other developments pursuant to Section 11-6-6 herein. The developer shall also be entitled to reimbursement from any lot or acreage fees which the City may hereafter impose on other developments to be served by the main or mains installed.
- (B) Extensions to serve lots in partly developed areas.
1. The City may extend a water or wastewater main to serve lots in partly developed areas, upon receiving in advance the total costs of such extension from owners of existing developed residential lots to be served by such main. Upon petition of such property owners, the City may establish pro rata fees for such line in the manner provided in Section 11-6-6 herein, which fees shall be reimbursed to the owners who have made advance payments upon connection of other property owners to the main.
  2. Upon the request of the owner of a single-family residential lot, the City may extend, lay or construct all necessary water and/or wastewater mains, including necessary appurtenances, a maximum distance of 50 feet, excluding street intersections. Only one such 50-foot extension on any one main extension will be made for any applicant during any 12-month period.
  3. Property owners in partly developed areas may finance the construction of a water or wastewater main to serve their property, subject to city approval under the rules and regulations generally applicable to construction of such facilities by developers.

(Ordinance 7015 adopted 6/26/1990; Ordinance 7035 adopted 9/11/1990)

**§ 11-6-5. Administration.**

(A) Variances.

1. General. Where the City finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to these subdivision regulations so that substantial justice may be done and the public interest secured; provided that the variance shall not have the effect of nullifying the intent and purpose of these regulations; and further provided the City shall not approve variances unless it shall make findings based upon the evidence presented to it in each specific case that:
  - (a) The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property; and
  - (b) The obligations placed on the property owner for construction or installation of water or wastewater mains exceeds all reasonable benefit to the property being developed or is so excessive as to constitute confiscation of the property.
2. Conditions. In approving variances, the City may require such conditions as will, in its judgment, secure substantially the purposes of adequately providing for water and wastewater services to the community.
3. Procedures. A petition for a variance shall be submitted in writing by the developer at the time that construction plans are submitted to the City for approval. The petition shall state fully the grounds for the application and all of the facts relied upon by the developer.

(B) Enforcement. In the event that water or wastewater facilities are not installed in accordance with the development agreement, the City may:

1. Declare the agreement to be in default and require that all the facilities be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default.
2. Prevent the facilities from being connected to the City's water and wastewater systems.
3. Obtain funds under the security and complete the water or wastewater facilities itself or through a third party.
4. Assign its right to receive funds under the security to any third party, including a subsequent owner of the property, in whole or in part, in exchange for that subsequent owner's promise to complete necessary water or wastewater facilities.
5. Exercise any other rights available under the law.

(Ordinance 7015 adopted 6/26/1990)

**§ 11-6-6. Water and wastewater line reimbursements to developers.**(A) Pro rata fees to be established.

1. Nature of fee. A charge known as a "pro rata fee" shall be imposed on each lot or tract abutting an existing water or wastewater main for which such fee has been established pursuant to this Section, as a condition of connection to such main, for the purpose of reimbursing the developer who previously installed or paid for the main.
2. Amount of fee. The pro rata fee shall be established for each side of the main to which

connections are made. The fee for each side shall be equivalent to one-half the average cost of a standard size main, together with all appurtenances, for that length of the main abutting the property being charged. For mains that can be connected to from one side only, the fee shall be equivalent to the average cost of a standard size main, together with all appurtenances, for that length of the main abutting the property being charged.

(B) Procedure for establishing pro rata fees.

1. Request for pro rata fees. Prior to final acceptance of the improvements, the developer who installs a water or wastewater main shall request the establishment of a pro rata fee for such facility.
2. Submittal requirements. The request to establish a pro rata fee shall be on a form provided by the City. The request shall include a copy of the actual contract for construction of the water and/or wastewater mains with unit prices. The request must identify the cost of the main, including any fire hydrants, valves, fittings, manholes and other appurtenances which were determined to be necessary for construction of the main.
3. Verification of costs by engineer. The director shall verify the developer's calculations of main costs. In the event of disagreement, the director shall establish the cost per foot for the pro rata fee.
4. Reimbursement amount. The maximum amount for which a developer may be reimbursed from the proceeds of pro rata fees shall not exceed the costs determined by the director under subsection 3 hereof, less the amount of any city participation in costs pursuant to Section 11-6-3 hereof.

(C) Payment of pro rata fees.

1. Obligation to pay fee. Any property owner whose property lies adjacent to a street, alley or easement containing an existing water or wastewater main for which a pro rata fee has been established pursuant to these regulations shall pay the applicable fee prior to final plat approval of the property.
2. Calculation of fee. The amount of the pro rata fee shall be calculated by multiplying the unit cost determined in subsection (B) of this Section by the number of linear feet of that portion of the property boundary of a lot which abuts a street, alley or easement containing a water or wastewater main for which pro rata fees have been established.

The number of linear feet shall be determined by the following formulas:

- (a) For residential lots: When the main installation is designed to serve property on only one side of the street or alley, the front foot rates established according to subsection (B) above shall be doubled. The front rates shall apply to property fronting on streets in areas platted into the usual rectangular lots or tracts of land, with a depth of not to exceed 150 feet. Where lots or tracts have greater depth than 150 feet from the front street line and are occupied, or are to be occupied, exclusively as dwelling places then the additional depth shall not be assessed. If the property is later subdivided, requiring the extension of mains to serve same, then the terms of this Chapter shall govern. Where lots or tracts are irregular in size or shape, then the pro rata charged shall be based upon equivalent rectangular lots or tracts using one front foot for each 150 square feet of area, or the pro rata charges provided herein on the average frontage of such tracts, whichever is least.

- (b) For commercial lots: On lots or tracts of land which extend through from one street to another, with frontage on both streets, and where the distance between the street lines is 260 feet or more, then the pro rata charges herein provided for shall be paid on both frontages when a connection is secured to the lot or tract.

Where lots or tracts are irregular in size or shape, then the pro rata charged shall be based upon equivalent rectangular lots or tracts using one front foot for each 150 square feet of area, or the pro rata charges provided herein on the average frontage of such tracts, whichever is least.

Where lots or tracts have a depth greater than 150 feet from the front street line, then the pro rata herein provided shall be paid on the frontage on all streets which the property may abut minus 150 feet frontage for each corner of the property abutting a street intersection. Should said property be resubdivided whereby further extensions are required to service same, the terms of this Chapter shall apply.

- (D) Pro rata fee account. A pro rata account is hereby established. The City shall deposit all pro rata fees collected pursuant to subsection (C) of this Section into such account. Expenditures from such account shall be earmarked solely for reimbursement of developers for the reasonable costs of installing water mains or wastewater mains for which pro rata fees have been established pursuant to subsection (B) of this Section.

- (E) Reimbursement for water and wastewater main extensions.

1. Reimbursement time limit. For a period of seven years after dedication to and acceptance by the City of the completed facility, the developer shall be entitled to reimbursement from the proceeds of the pro rata fees established pursuant to subsection (B) of this Section up to the total cost of the extensions established by resolution pursuant to subsection (C)1 of this Section. Payment shall be from the pro rata fee account. Upon request of the developer, the City shall make reimbursements for main extensions semiannually on May 1 and November 1 of each calendar year. Following expiration of such period, the City shall cease to collect pro rata fees for the main.
2. Unclaimed funds. If the City is unable to reimburse the developer who installed the main, following reasonable attempts to locate such developer, the City shall transfer all fees which remain unclaimed seven years following the date of acceptance of the water or wastewater main to the water and sewer fund for disposition in accordance with general provisions.

- (F) City collection fee. The City shall collect from the property owner paying pro rata fees an additional two percent of the amount collected plus \$100.00 as a collection fee. The City shall establish a collection fee account into which all such monies shall be deposited for purposes of administering this Section. Any interest earned on the pro rata fee account shall also be deposited in the collection fee account.

(Ordinance 7015 adopted 6/26/1990)

City of Midland, TX

**WATER AND WASTEWATER MAIN LINE**

**Chapter 11-7**

**OUTDOOR SIGN REGULATIONS**

<b>§ 11-7-1.</b>	<b>Definitions.</b>	<b>§ 11-7-6.</b>	<b>Nonconforming signs.</b>
<b>§ 11-7-2.</b>	<b>General provisions.</b>	<b>§ 11-7-7.</b>	<b>Political advertising.</b>
<b>§ 11-7-3.</b>	<b>Master sign plan.</b>	<b>§ 11-7-8.</b>	<b>Temporary/portable signs, special regulations.</b>
<b>§ 11-7-4.</b>	<b>Sign standards.</b>		
<b>§ 11-7-5.</b>	<b>Billboards.</b>		

**§ 11-7-1. Definitions.**

- A. Except where the context clearly indicates to the contrary, the following words and phrases shall have the indicated meaning when used in this Chapter:
1. *Apartment or mobile home park identification sign*:A permanent on-premise sign for the identification of an apartment building, housing complex, or mobile home park.
  2. *Apartment or mobile home park information sign*:A sign providing direction for access or parking of vehicles or direction to the office or the manager of the project, and may include public safety signs such as fire lane and parking regulations.
  3. *Banner*:A temporary sign composed of lightweight, flexible material on which letters, symbols or pictures are painted or printed.
  4. *Billboard*:An off-premise sign directing attention to a business, activity, commodity, service, entertainment or communication, none of which are conducted, sold, or offered on the premises where the billboard is located.
  5. *Building frontage*:The length of a building wall.
  6. *Canopy*:A permanent roof-like shelter extending from part or all of a building or independent of a building, including any rigid material or cloth or fabric supported by a structural frame.
  7. *Canopy sign*:A sign affixed to or supported by a canopy.
  8. *Construction sign*:A temporary on-premise sign identifying any or all of the property owners, engineers, architects, mortgagees or other participants in the construction or improvement of the premises.
  9. *Development sign*:A temporary on-premise sign identifying and promoting one or more developments, projects or buildings proposed or currently under construction.
  10. *Directional sign*:A sign which contains only information designed to direct pedestrian or vehicular traffic to the location of a facility on the property on which the sign is located. Such signs may include, but be not limited to, arrows, words or logos. No goods or services for sale may be listed on a directional sign.
  11. *Flag*:A sign made of cloth, bunting or similar material, often attached to a pole, with specific colors, patterns, or symbolic devices, used as a national, state or local symbol, or to indicate membership in an organization.
  12. *Freestanding sign*:A sign which is attached to or a part of a completely self-supporting structure such as a frame or one or more poles which is not attached to any building or any other structure and is anchored firmly to or below the ground surface.
  13. *Gasoline price sign*:A sign with changeable copy letters and numbers or an electronic display without movement affixed to a gasoline pump canopy or its supports or a freestanding sign with the intent to display the current price of motor fuels.
  14. *General business sign*:An on-premise sign which identifies a business or which advertises or promotes a commodity or service offered on the premises where such sign is located.
  15. *Government sign*:A sign indicating public works projects, public services or other programs or

activities conducted by any governmental agency.

16. *Ground sign:* Any sign which is attached to either the ground or to a footing set flush with the ground with a maximum height not to exceed 48 inches above adjacent grade.
17. *Institutional identification sign:* A sign for the identification of a school, university, church, hospital or other similar use.
18. *Institutional information sign:* A sign erected on the premises of the institution to provide information as to the program and services of the institution or to provide direction for access, parking of vehicles or guidance to various elements or units or to provide public safety information.
19. *Logo:* An identifying symbol used for advertising purposes, which may or may not be a registered trademark or service mark of the entity identified.
20. *Menu board:* A sign displaying the menu for drive-up window service.
21. *Monument sign:* A sign with a display surface that is an integral part of the support structure, which in turn is affixed or permanently fixed in the ground, as contrasted to any other freestanding sign that has separate support or supports attached to the display surface. Any ground sign exceeding 48 inches in height or any pole sign with less than nine feet of ground clearance shall be considered a monument sign.
22. *Nameplate sign:* An on-premise sign showing only the name and/or address of the occupant.
23. *Office identification sign:* An on-premise sign which identifies an office building or any or all of the owners, occupants or tenants of an office building and the services related thereto.
24. *Off-premise sign:* A signs which advertises or directs attention to a business, product, service, or activity which is not available on the premises where the sign is located.
25. *On-premise sign:* A sign which advertises or directs attention to a business, product, service or activity which is available on the premises where the sign is located.
26. *Pennant:* A display made of lightweight material which tapers to a point, with or without logo or an advertising message printed or painted on it.
27. *Political sign:* A temporary sign announcing or supporting political candidates or issues in connection with any national, state or local election.
28. *Portable sign:* A sign not permanently affixed or anchored to the ground or to a building or other structure and which is designed to permit removal and reuse, and which includes but is not limited to signs mounted on a trailer, wheeled carrier, motorized and nonmotorized vehicle, or other portable structure. The term "portable sign" shall specifically include an outdoor advertising display located in or on a vehicle, except where:
  - a. Such a sign merely identifies the vehicle as belonging to such business by displaying the name, address and/or telephone number of such business and/or identifies the type of product or service offered by such business; and
  - b. The primary use of such vehicle is for the daily transportation of products or the delivery of services in connection with such business; and

- c. Such vehicle is currently licensed and inspected in the State of Texas and is in operable condition; however, if such vehicle remains parked for longer than 72 hours in the same parking space, it shall be deemed a portable sign.
- 29. *Projecting sign:* A sign which is attached or affixed to a building, wall or structure other than a pole and which extends more than 15 inches from such wall or structure.
- 30. *Reader board:* An on-premise sign announcing events or identifying products and services offered, including cinema signs, which is oriented to a street, the message of which is periodically or continuously changed through manual or electronic means. "Reader board sign" does not include time-temperature devices.
- 31. *Real estate sign:* A temporary sign pertaining to the sale or lease of the premises, or a portion of the premises, on which the sign is located.
- 32. *Retail shopping and/or office center:* A group of four or more retail and office establishments which is planned and developed as a business center with common access and parking.
- 33. *Roof sign:* A sign erected upon or above the roof of a building.
- 34. *Setback:* The distance measured from a property line to the closest point of the sign or its supporting structure.
- 35. *Sign:* Means any structure, object, device, display or advertising artwork, situated outdoors or in a window, visible from a public or private street or alley, which is used entirely or in part to advertise, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, logos, fixtures, colors, illumination or projected images.
- 36. *Sign area:* The entire area within a single continuous perimeter enclosing the actual message or display area of a sign, and shall include the border and trim, but excluding supports. Only one side of a double-faced sign is measured in calculating sign area.
- 37. *Sign face:* Means that portion of the sign that is or can be used to identify, display, advertise, or communicate information, or for a visual representation which attracts or intends to attract the attention of the public for any purpose.
- 38. *Sign height:* The vertical distance between the highest point of the sign or its supporting structure and the adjacent grade directly below the sign.
- 39. *Sign structure:* Means any structure which is designed specifically for the purpose of supporting a sign, has supported, or is capable of supporting a sign. This definition shall include any decorative covers, braces, wires, supports, or components attached to or placed around the sign structure.
- 40. *Sponsor panel:* A portion of a sign displaying the name of a product, service or company offering goods or services on-site or having a promotional relationship for events occurring on the premises.
- 41. *Streamers:* A display made of light, flexible materials, consisting of long, narrow, wavy strips with or without a logo or advertising message printed or painted on them.
- 42. *Street frontage:* The length of the property line of the premises immediately adjacent to a public or private street.

43. *Subdivision identification sign:* An identification sign at the main entrance or entrances to a residential subdivision or planned development project, provided that such sign shall not exceed 200 square feet in area, may be indirectly illuminated and shall make no reference to the sale or lease of the lots or houses located within said identified subdivision.
44. *Time-temperature sign:* An electronic or mechanical device which shows time and/or temperature but contains no business identification or advertising.
45. *Visibility clearance areas:* Visibility clearance areas are triangular-shaped areas as defined in Section 10-1-10 of the Midland City Code and which are located at the intersection of street and alley rights-of-way and the intersection of streets and driveways.
46. *V-type sign:* A sign structure composed of two signs with the faces oriented in opposite directions and in the general shape of the letter "V," provided, however, that only one face can be viewed from any one direction from any public street, and with a maximum angle between the faces of 60 degrees.
47. *Wall sign:* A sign which is painted on or attached directly to a fence or a building surface, including window areas (translucent areas which are visible from a street or alley), that extends not more than 15 inches from the face of the fence or wall.

(Ordinance 7484, sec. 1, adopted 11/14/1995)

## § 11-7-2. General provisions.

- (A) *Permit required.* A sign permit issued by the City building official shall be required prior to the erection, repair, alteration or relocation of a sign except for routine maintenance or repair. Acceptance of the permit shall require compliance by the applicant with all applicable regulations of Title IV of the Midland City Code, as amended, as well as the regulations set forth in this Chapter.
- (B) *Licensed electrician required.* Any sign requiring a permit and incorporating any electrical lighting or wiring shall be installed, repaired, maintained, and removed by someone who is licensed and bonded for electrical sign work in the City of Midland in accordance with Chapter 4-2 of the Midland City Code, as amended.
- (C) *Visibility clearance area restrictions.* No sign shall be located, installed, or otherwise maintained within any visibility clearance area.
- (D) *Similarity to traffic control signs.* No sign shall be designed and/or located so as to interfere with or confuse the control of traffic on public rights-of-way.
- (E) *No beacons, etc.* No sign shall use a rotating beacon, beam or flashing illumination resembling an emergency signal.
- (F) *Minimum ground clearance.* All signs except ground signs and monument signs must maintain a minimum clearance from adjacent grade of nine feet.
- (G) *Artificially increasing height.* No freestanding pole, ground, or monument signs shall be placed on a berm or other structure so as to artificially increase the height above the maximum allowed.
- (H) *Projection into right-of-way.* No sign shall be erected so as to project into the public right-of-way of any street or alley. It shall be a defense to a violation of this Section 11-7-2(H) if:
  - (1) The sign is located in a C-1 Central Area District; and

- (2) The sign does not extend outward from any building face to the public right-of-way for a distance of more than ten feet or less than 18 inches of the street curb, whichever is more restrictive; and
  - (3) The sign has a minimum clearance of nine feet above the sidewalk grade or ground level.
- (I) Illumination restrictions. Light from any source intended to illuminate a sign shall be shaded, shielded, or directed in such a way so that the light intensity or brightness shall not adversely affect the vision of pedestrian or vehicle operators on public or private streets, driveways, or parking areas, or operators of aircraft in the approach path to any airport runway, and shall not adversely affect any of the surrounding premises. Illumination from any sign shall not interfere with the effectiveness of any official traffic sign, signal or device.
- (J) Runway protection zones. No sign shall:
- (1) Be located within a runway protection zone; or
  - (2) Be constructed to a height that violates any maximum height restrictions established by the United States Department of Transportation and/or the Federal Aviation Administration.
- (Ordinance 7484, sec. 1, adopted 11/14/1995)

### § 11-7-3. Master sign plan.

- (A) Purpose. The purpose of a master sign plan is to allow a property owner or developer, subject to approval of the City, the option of designating an area that will allow flexibility in sign location due to peculiarities in the location or configuration of parcels of real property, such as parcels with no street frontage, or multiple parcels organized into combined uses, or to allow creative sign management in exchange for a cumulative reduction in sign area, sign height or the total number of signs.
- (B) Minimum requirements. To qualify for a master sign plan, an area must:
- (1) Include one lot or parcel or two or more contiguous lots or parcels that are not included in any other master sign plan.
  - (2) The owners, or the authorized representatives of the owners, of all lots within the proposed master sign plan area must sign the application for a master sign plan.
- (C) Required submittals. In order to obtain a master sign plan, the owner(s) of the property located within the proposed master sign plan area must sign and submit an application to the City's department of engineering and development, planning division, on a form provided by the planning division, which application must be accompanied by the following:
- (1) A site plan showing the proposed boundaries of the master sign plan area.
  - (2) A site plan showing the location of all existing or proposed freestanding signs.
  - (3) A table showing the type, square footage and heights of each sign indicated on the site plan.
  - (4) The application fee established by the City for the processing of such applications.

Upon completion of the application, the planning division shall forward the master sign plan to the planning and zoning commission for final consideration.

- (D) When effective. A master sign plan shall not become effective until all owners of the property within the master sign plan area have signed an agreement which indicate the property owners' agreement that:
- (1) The master sign plan can be amended only by the written consent of all parties or their successors, and the City.
  - (2) The agreement is binding on all successors in interest to the property within the master sign plan area.
  - (3) Each party waives any right to apply for or install any sign inconsistent with the provisions of the master sign plan, even though such sign might otherwise be allowed under this Chapter.
- (E) Single premises. Once approved, the area described in the master sign plan will be deemed to be a single premises for the purpose of determining whether a sign is an on-premise sign. A sign which advertises a use on a lot within the master sign plan area which is not a use which occurs on that lot shall be termed a master sign plan ("MSP") sign. The use advertised on an MSP sign shall be defined as an MSP use.
- (F) City review of signs. All freestanding signs included within a master sign plan area shall be individually subject to review and approval of placement, size and height, as approved by the City of Midland.

(Ordinance 7484, sec. 1, adopted 11/14/1995)

#### **§ 11-7-4. Sign standards.**

- (A) Required identification sign. Every residence and/or business location shall be adequately identified by a nameplate sign indicating a street address, e.g., street numbers and/or street name, in accordance with Chapter 9-2 of this Code. A nameplate sign shall not exceed two square feet in area. House number and nameplate signs which comply with this subsection (A) or with Section 9-2-5 of this Code shall be exempt from the permitting requirement of Section 11-7-2.
- (B) Institutional identification and institutional information signs. No more than one freestanding identification sign or institutional information sign may be installed on each street frontage. The maximum sign area of all institutional identification or institutional information signs located on a premises shall collectively not exceed 150 square feet.
- (C) Apartment and mobile home park identification signs. No more than one freestanding or wall-type apartment identification sign or mobile home park identification sign shall be placed or installed on each street frontage of the premises. The maximum sign area of each apartment identification sign or mobile home park identification sign shall be 64 square feet.
- (D) Directional signs. In addition to such other signs that may be allowed by this Chapter, a maximum of one directional sign is allowed for each street access to a premises. No directional sign may exceed a sign area of 24 square feet or a height of 48 inches above adjacent grade; except that a directional sign with a property line setback of ten feet or more may exceed 48 inches in height.
- (E) Monument signs. All monument signs must be installed or constructed with a minimum ten-foot setback from the front property line. For purposes of this subsection (E), each street frontage on a lot

shall be considered a front property line for determining setback requirements.

- (F) Banners. In addition to such other signs as may be allowed by this Chapter, banners may be displayed on premises for a period not to exceed 60 consecutive calendar days if:
- (1) The banner is attached to the face of the building used by the business or organization to which the banner relates; and
  - (2) The banner advertises a temporary special sales or organizational event or grand opening.
- (G) Pennants and streamers. In addition to such other signs as may be allowed by this Chapter, pennants and streamers may be displayed on premises for a period not to exceed 60 consecutive calendar days, but only if the pennants or streamers are used to advertise a temporary special sales event or grand opening.
- (H) V-type signs. Only the largest face of a V-type sign shall be measured in determining the total sign area of the sign. A two-face sign that is in a "V" shape, both faces of which (1) can be seen from the same public street, or (2) are at an angle of greater than 60 degrees to each other, shall be considered two separate signs for all purposes under this Chapter.
- (I) Wall, canopy, and roof signs. The sign area of one or any combination of two or more wall, canopy, or roof signs which are painted or otherwise affixed to any wall of a building collectively shall not exceed the greater of 75 square feet or 15 percent of the area of the wall to which such signs are painted or affixed.
- (J) General business signs and shopping center/office center signs. Not more than one freestanding general business or shopping/office center sign shall be constructed or installed on each street frontage with less than 150 feet of street frontage. Not more than two freestanding general business or shopping/office center signs shall be constructed or installed on each street frontage with a street length of 150 feet, which signs must be no closer than 75 feet from each other. Except as permitted by Section 11-7-4(P) and (Q), no general business or shopping center/office center sign shall exceed a height of 30 feet. The total sign area of all general business signs or shopping center/office center signs collectively shall not exceed the total sign area allowed pursuant to Section 11-7-4(K), (L), (M), (N), (O), and (P).
- (K) Individual business signs.
- (1) When no more than one nonresidential user is located on a single lot or tract, said user may install not more than one freestanding sign with a sign area not to exceed the number of square feet equal to two times the linear feet of street frontage of the lot or tract on which the business is located, but in no case shall the total sign area exceed 300 square feet.
  - (2) When more than one but not more than three nonresidential users are located on a single lot or tract, each user may install not more than one freestanding business sign with a sign area not to exceed the number of square feet equal to two times the linear feet of street frontage of the lot or tract on which the businesses are located, but in no case shall the total sign area exceed 400 square feet collectively on such a lot.
- (L) Office signs.
- (1) When no more than one office user is located on a single lot, said user may install not more than one freestanding sign with a sign area not to exceed the number of square feet equal to 1½ times the linear feet of street frontage of the lot or tract, but in no case shall the total sign area exceed

300 square feet.

- (2) When more than one but not more than three office users occupy a single lot or tract, each office user may install not more than one freestanding sign with a sign area not to exceed the number of square feet equal to 1½ times the linear feet of street frontage of the lot or tract on which the businesses are located, but in no case shall the total sign area for all the offices or uses collectively exceed 400 square feet.
- (M) Shopping center development. In a shopping center development (four or more businesses), the property owner and/or user of the property may install no more than one freestanding sign on each street frontage with each sign area not to exceed the number of square feet equal to two times the linear feet of the street frontage on which the sign is located, but in no case shall the total sign area of all freestanding shopping center signs located on any site collectively exceed 400 square feet. In addition to the other signs otherwise permitted by this Chapter, the property owner of a shopping center may install not more than one freestanding sign with a maximum sign area of 250 square feet, which sign only identifies an on-premises movie theater and advertises current and future movie attractions to said theater.
- (N) Shopping mall sign. A shopping mall is allowed one freestanding sign on each street frontage, with the sign area of each sign not to exceed the number of square feet equal to two times the linear feet of the street frontage on which the sign is located, but in no case shall the sign area of all freestanding shopping mall signs collectively exceed 400 square feet. In addition to the other signs otherwise permitted by this Chapter, the property owner of a shopping mall may install not more than one freestanding sign with a maximum sign area of 250 square feet, which sign only identifies an on-premises movie theater and advertises current and future movie attractions to said theater.
- (O) Office center signs. The property owner of an office center may install not more than one freestanding sign per street frontage with the sign area of each sign not to exceed the number of square feet equal to 1½ times the linear feet of the street frontage on which the sign is located, but in no case shall the sign area of all freestanding office center signs collectively exceed 400 square feet.
- (P) Loop 250 frontage. A property owner may install not more than one on-premise freestanding sign that exceeds the 30-foot maximum height on any lot located in an LR-1 Local Retail District, or less restrictive zoning district, which lot has street frontage on Loop 250, subject to the following regulations:
  - (1) The height of such sign shall in no case exceed 37 feet.
  - (2) Measuring from the edge of the sign face or sign base closest to the nearest zoning district boundary, the setback of the sign from any property located in an MF-2 Multifamily District or more restrictive zoning district must be not less than 75 feet.
  - (3) All signs must be placed and comply with state and federal regulations, even if more restrictive than the foregoing regulations.
  - (4) Any sign taller than 33 feet shall have structural plans signed by a registered professional engineer.
  - (5) No signs described in this subsection (P) shall be placed in any airport runway protection zone.
- (Q) Interstate Highway 20 frontage. A property owner may install not more than one on-premise freestanding sign that exceeds the 30-foot maximum height on any lot located in a LR-1 Local Retail District, or less restrictive zoning district, which lot has street frontage on Interstate Highway

20, subject to the following regulations:

- (1) The height of such sign shall in no case exceed 55 feet.
  - (2) The maximum sign area shall be 600 square feet.
  - (3) Measuring from the edge of the sign face or sign base closest to the street, the minimum setback of the sign from any street right-of-way shall be ten feet.
  - (4) Measuring from the edge of the sign face or sign base closest to the nearest zoning district boundary, the setback of the sign from any property located in an MF-2 Multifamily District or more restrictive zoning district shall not be less than 75 feet.
  - (5) All signs must be placed and comply with state and federal regulations, even if more restrictive than the foregoing regulations.
  - (6) Any sign taller than 33 feet must have structural plans signed by a registered professional engineer.
  - (7) No signs described in this subsection (Q) shall be placed in any airport runway protection zone.
- (R) Motor vehicle and heavy equipment dealerships. Car and truck dealerships, boat dealerships, recreational vehicle dealerships, mobile home dealerships, or construction equipment dealerships located on an individual lot or combined lots or parcels may install one freestanding sign for each 100 linear feet of street frontage. The sign area for each sign installed pursuant to this subsection (R) shall not exceed 300 square feet, but in no case shall the sign area of all such freestanding signs installed by a single dealership collectively total more than 750 square feet.
- (S) Planned districts. In addition to the sign regulations set forth in this Chapter, additional sign regulations for a particular parcel or development located in a planned district may be set forth in the applicable planned district ordinance.
- (T) Construction signs. Construction signs shall be allowed in all zoning districts without complying with the permitting requirement of Section 11-7-2; provided, however, construction signs must be removed not later than 30 days after issuance of a certificate of occupancy. The sign area for any construction sign allowed shall not exceed 100 square feet.
- (U) Development/project signs. Development/project signs shall be allowed in all zoning districts without complying with the permitting requirement of Section 11-7-2; provided, however, all development/project signs must be removed upon the completion of 90 percent of the project. The sign area of each development or project sign shall not exceed 240 square feet.
- (V) Real estate signs. Real estate signs shall be allowed in all zoning districts without complying with the permitting requirement of Section 11-7-2. The sign area of a real estate sign may not exceed ten square feet if the sign is located in a residential district or 40 square feet if the sign is located in a nonresidential district.
- (W) Certain signs not counted against total sign area. The following signs shall be allowed in nonresidential zoning districts only and shall require a permit but shall not be used in computing total allowable sign area:
- (1) Time and temperature signs without advertising matter.
  - (2) Freestanding menu boards for drive-through service, provided that the sign structures shall

observe the same setbacks required for buildings or other structures in the district in which they are located, the sign area does not exceed 32 square feet, and the sign does not exceed six feet in height.

- (X) Sign locations by zoning district. Except as otherwise permitted by this Chapter, the following types of signs may be located only in the zoning districts indicated below as defined by Chapter 11-1 of the City Code:

Type Sign	Zone Permitted
Nameplate	Permitted in all districts
Institutional identification and information sign	Permitted in all districts where institutions are allowed
Apartment or mobile park identification sign	Permitted in any districts where apartments or mobile home parks are allowed
Apartment or mobile home information sign	Permitted in any districts where apartments or mobile home parks are allowed
Billboard sign	C-2, C-3, LI and HI; allowed by specific use permit in LR-2, LR-3, C-1 and BP
General business sign	P, O-1, O-2, NS, LR-1, LR-2, LR-3, C-1, C-2, C-3, IP, IP-1, IP-2, IP-3 LI, HI, BP by ordinance in PD
Office identification sign	P, O-1, O-2, NS, LR-1, LR-2, LR-3, C-1, C-2, C-3, IP, IP-1, IP-2, IP-3 LI, HI, BP by ordinance in PD
Shopping center sign	LR-1, LR-2, LR-3, C-1, C-2, C-3, IP, IP-1, IP-2, IP-3, LI, HI, BP by ordinance in PD
Office center sign	P, O-1, O-2, NS, LR-1, LR-2, LR-3, C-1, C-2, C-3, IP, IP-1, IP-2, IP-3 LI, HI, BP by ordinance in PD
Directional signs	P, O-1, O-2, NS, LR-1, LR-2, LR-3, C-1, C-2, C-3, IP, IP-1, IP-2, IP-3, LI, HI, BP by ordinance in PD
Portable signs	P, O-1, O-2, NS, LR-1, LR-2, LR-3, C-1, C-2, C-3, IP, IP-1, IP-2, IP-3, LI, HI and BP
Construction signs	Permitted in all districts
Development signs	Permitted in all districts
Real estate signs	Permitted in all districts
Banners, pennants, streamers	MF-1, MF-2, P, O-1, O-2, NS, LR-1, LR-2, LR-3, C-1, C-2, C-3, IP, IP-1, IP-2, IP-3 LI, HI, BP
Political signs	Permitted in all districts

(Ordinance 7484, sec. 1, adopted 11/14/1995; Ordinance 7876, sec. 3, adopted 9/28/99)

#### **§ 11-7-5. Billboards.**

Freestanding billboards may be located in accordance with Chapter 11-1 of the Midland City Code, and

must comply with the following restrictions:

- (A) Height. No billboard other than billboards located on property fronting on Interstate Highway 20 may exceed 30 feet in height. Billboards located on property fronting on Interstate Highway 20 may not exceed 42.5 feet in height.
- (B) Setback and side yard requirements. A billboard must be installed in such a manner as to comply with the same yards and setbacks required for buildings or other structures in the zoning district in which it is located.
- (C) Limits of sign faces. A billboard may not consist of more than two panels.
- (D) Maximum sign area. The sign area of the sign faces of a billboard collectively shall not exceed a total of 672 square feet.
- (E) Minimum separation. No billboard sign may be installed within 500 feet of an existing billboard sign or property zoned with a specific use permit for location of a billboard located on the same side of the street.

(Ordinance 7484, sec. 1, adopted 11/14/1995)

#### **§ 11-7-6. Nonconforming signs.**

- (A) Nonconforming signs defined. Nonconforming signs are those which do not comply with the intent and regulations of this Chapter. Any sign which existed at the time of adoption of this Chapter that was legally erected prior to enactment of this Chapter but fails to conform to the provisions specified herein shall be regarded as a nonconforming sign, which may remain in place so long as it is kept in good repair and maintained in a safe condition.
- (B) Loss of legal nonconforming status. A nonconforming sign shall immediately lose its nonconforming designation and must be brought into compliance with these regulations, or be removed, if:
  - (1) The sign is replaced; but not including the replacement of the face(s) to accommodate a new business, express a different message, or upgrade conditions and appearance of the sign.
  - (2) The sign is relocated.
  - (3) The sign is part of an establishment that discontinues its operation for a period of six months.
  - (4) The sign is damaged or structurally altered to an extent greater than 50 percent of the current estimated replacement value.

(Ordinance 7484, sec. 1, adopted 11/14/1995)

#### **§ 11-7-7. Political advertising.**

Political signs may be erected and maintained as follows:

- (A) Cardboard signs. Cardboard signs with a sign area not exceeding 30 inches by 30 inches and a height not more than 30 inches above the adjacent grade may be located on any private property within the City.
- (B) Other political signs. Political signs with a sign area not exceeding four feet by eight feet in size may be located on any private property within the City provided that:
  - (1) The bottom of said sign is not less than five feet above the adjacent grade; and

- (2) The sign is not closer than 20 feet to any street curbline if located on a corner lot; and
  - (3) The sign is not closer than ten feet to any street curbline on any other lot.
- (C) Oversize political signs. Any political signs larger than those referred to in subsections (A) and (B) above must be located in a C-2 Central Area District or less restrictive zoning district in accordance with the applicable regulations pertaining thereto or at locations for which a specific use permit with term for an outdoor advertising display has been obtained.
- (D) Time limit for display. All political signs relating to a election matter which is the subject of an election may be erected not earlier than 120 days preceding the election to which the sign pertains and must be removed not later than 14 days following the day of such election.
- (Ordinance 7484, sec. 1, adopted 11/14/1995)

#### **§ 11-7-8. Temporary/portable signs, special regulations.**

- (A) Applicability of Section. The following regulations shall be applicable to all temporary signs, as defined herein, except as follows:
  - (1) Political signs or displays erected in accordance with Section 11-7-7.
  - (2) Nonilluminated real estate signs, as specified in Section 11-7-4(V).
  - (3) Development signs as specified in Section 11-7-4(U).
- (B) License required. It shall be unlawful for any person to engage in the business of leasing or renting temporary signs for the placement of such signs on property not owned by such person without first having obtained a temporary sign company license in accordance with and subject to the following regulations:
  - (1) Upon application and payment made to the City building official of an annual license fee of \$50.00 per temporary sign, a temporary sign company license will be issued for a term not to exceed one year.
  - (2) In addition to any other penalty provided by this Code, the City building official may deny applications and revoke licenses issued under the provisions of this Section after notice and hearing for any of the following causes:
    - (a) Any violation of this Chapter by the licensee.
    - (b) Any violation of this Chapter by anyone renting or leasing signs from a licensee. Licensees shall be deemed to be held strictly responsible for the compliance with the terms of this Chapter by such person leasing or renting signs from such licensee.
  - (3) Notice of the hearing for denial of an application or revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee or applicant at his last known address at least five days prior to the date set for the hearing.
  - (4) Any person aggrieved by the action of the City building official in the denial of an application for a license or in his decision with reference to the revocation of a license shall have the right to appeal to the City Council. Such appeal shall be taken by filing with the City Council, not later than 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The City

Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in paragraph (3) above for notice of hearing on denial or revocation. The decision and order of the City Council on such appeal shall be final and conclusive.

(C) Permits required. It shall be unlawful for any person to place or locate any temporary sign on any property within the City, or to suffer or allow the placement or location of any temporary sign on premises within the City owned or controlled by such person, unless a permit for such temporary sign and such location has first been obtained from the City building official in accordance with the following regulations:

- (1) Temporary sign permits may be issued for the location or placement of temporary signs on stated tracts of land within the City for periods of time not to exceed 60 days. An individual permit fee of \$15.00 shall be charged, except that temporary sign company licensees shall not be charged permit fees.
- (2) No permit shall be issued for the placement or location of any temporary sign for any tract of land within the City stated in a previously issued permit until a period of 60 days has elapsed since the term of duration of the previous permit has expired.
- (3) It shall be unlawful for any person to suffer or allow any temporary sign to remain on premises owned or controlled by such person for a period of time in excess of that stated in the permit obtained in compliance with the terms of this Section, and it shall further be unlawful for any person to place or locate, or suffer to be placed or located on premises owned or controlled by such person, any temporary sign within the waiting period provided for in subsection (C)(2), above.

(D) Standards.

- (1) The sign area of temporary signs shall not exceed 35 square feet.
- (2) Temporary signs shall be secured to the ground at a minimum of four separate points by metal pins penetrating the ground by a distance of not less than three inches.
- (3) All temporary signs owned by holders of a temporary sign company license shall have permanently affixed thereto the name and address of the owner of such signs and an identifying individual number assigned by the owner for such sign.
- (4) Temporary signs may be lighted with a white light or lights only, and such light or lights shall not be of a flashing, intermittent, moving or similarly lighted type.
- (5) Notwithstanding any provisions to the contrary contained within this Code, all electrical connections to temporary signs shall be three-prong (grounded) type using grounded, all-weatherproof outlets. Electrical cords must be all-weatherproof type and may not exceed ten feet in length. In addition, such cords must be so positioned as to not be subject to vehicular traffic.

(Ordinance 7484, sec. 1, adopted 11/14/1995)



REVISED OUTDOOR SIGN REGULATIONS

**Chapter 11-7a**

**REVISED OUTDOOR SIGN REGULATIONS**

<b>§ 11-7a-1.</b>	<b>Purpose and application.</b>	<b>§ 11-7a-9.</b>	<b>Non-conforming signs.</b>
<b>§ 11-7a-2.</b>	<b>Definitions.</b>	<b>§ 11-7a-10.</b>	<b>Political advertising.</b>
<b>§ 11-7a-3.</b>	<b>Prohibited signs.</b>	<b>§ 11-7a-11.</b>	<b>Temporary signs.</b>
<b>§ 11-7a-4.</b>	<b>Permit, bond, and license requirements.</b>	<b>§ 11-7a-12.</b>	<b>Special event signs.</b>
<b>§ 11-7a-5.</b>	<b>Exemptions.</b>	<b>§ 11-7a-13.</b>	<b>Impoundment and seizure.</b>
<b>§ 11-7a-6.</b>	<b>Master sign plan.</b>	<b>§ 11-7a-14.</b>	<b>Violations and penalties.</b>
<b>§ 11-7a-7.</b>	<b>Sign standards.</b>	<b>§ 11-7a-15.</b>	<b>Appeal procedures.</b>
<b>§ 11-7a-8.</b>	<b>Billboards and electronic billboards (CEVM).</b>	<b>§ 11-7a-16.</b>	<b>Enforcement authority.</b>

***Editor's note(s)***—*Ord. No. 8648, § 1, adopted June 24, 2008, amended former Ch. 7a, §§ 11-71-1—11-7a-16, in its entirety to read as herein set out. Former Ch. 7a pertained to similar subject matter and derived from Ord. No. 8035, § 1, 8-28-2001; Ord. No. 8262, § 2, 9-28-2004.*

### **§ 11-7a-1. Purpose and application.**

The purpose of this Chapter is to establish reasonable regulations for all exterior signs and sign structures within the incorporated limits of the City and billboard and electronic billboard signs within the City's Extra Territorial Jurisdiction (ETJ), in order to:

- (A) Balance the right of individuals to identify businesses and convey messages with the right of the public to be protected against the unrestricted proliferation of signs;
- (B) Protect the public, health, safety and welfare;
- (C) Reduce traffic hazards; and
- (D) Provide for an aesthetically pleasing community.

Any sign which was not lawfully existing at the time of adoption of this Chapter shall not become or be made legal solely by adoption of this Chapter. By the passage of this Chapter, no presently illegal sign shall be deemed to have been legalized.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

### **§ 11-7a-2. Definitions.**

Except where the context clearly indicates to the contrary, the following words and phrase shall have the indicated meaning when used in this Chapter:

**A-frame sign**: A temporary sign which has two sides, the frame or support structure of which is hinged or connected at the top of the sign in such a manner that the sign is easily moved and erected.

**Animation**: The presentation of pictorials or graphics in a progression of frames which give the illusion of motion, including moving objects, moving patterns or bands of light, or expanding or contracting shapes.

**Apartment or mobile home park identification sign**: A permanent on-premises sign for the identification of an apartment building, housing complex, or mobile home park.

**Banner**: A temporary sign composed of lightweight, flexible material on which letters, symbols or pictures are painted or printed.

**Billboard**: An off-premises sign on which the message or copy can be changed periodically through manual means.

**Billboard, electronic**: An off-premises sign on which the message or copy can be electronically changed by remote or automatic means.

**Building identification sign**: A building identification sign identifies the name of the building, but displays no goods or services for sale or other advertising.

**Brightness**: The maximum luminous intensity of a sign, which shall not exceed 5,000 nits (candelas per square meter) during daylight hours or 500 nits between dusk and dawn, as measured from the sign's face.

**Building frontage**: The length of a building wall which faces a street.

**Canopy**: A permanent roof-like shelter extending from part or all of a building or independent of a building,

including any rigid material or cloth or fabric supported by a structural frame.

Canopy sign: A sign that is permanently affixed to a canopy by paint, glue, sewing, or any other type of non-structural type of attachment.

Changeable electronic variable message (CEVM): An off-premises sign on which the message or copy can be electronically changed by remote or automatic means.

Construction sign: An on-premises sign, which may be erected for a limited time as defined under Section 11-7a-5(B), identifying any or all of the property owners, engineers, architects, mortgagees or other participants in the construction or improvement of the premises, but which displays no goods or services for sale or other advertising.

Development sign: An on-premises sign, which may be erected for a limited time as defined under Section 11-7a-7(G), identifying and promoting one or more developments, projects or buildings proposed or currently under construction, but which displays no goods or services for sale or other advertising.

Dilapidated or deteriorated condition: Any sign where:

- (a) The message or wording can no longer be clearly read; or
- (b) The structural support or frame members are visibly bent, broken, dented, or torn; or
- (c) The sign face is visibly cracked or, in the case of wood and similar products, splintered in such a way as to constitute an unsightly or harmful condition; or
- (d) The sign or its elements are twisted or leaning or at angles other than those at which it was originally erected (such as may result from being blown or the failure of a structural support); or
- (e) The sign or its elements are not in compliance with the requirements of the current electrical code and/or the building code of the City.

Directional sign: A sign which contains only information designed to direct pedestrian or vehicular traffic to the location of a facility on the property on which the sign is located. Such signs may include, but are not limited to, arrows, words or logos. No goods or services for sale may be listed on a directional sign.

Directory sign: A directory sign lists tenants in the building and may list the name of the building, but displays no goods or services for sale or other advertising.

Dissolve/fade: A mode of message transition on an electronic sign accomplished by varying the light intensity or pattern, where the first message gradually reduces intensity or appears to dissipate to the point of not being legible and the subsequent message gradually appears or increases intensity to the point of legibility.

Double-faced sign: Any two adjacent signs on a single structure or separate structures with both faces oriented in the same direction and not more than ten feet apart at the nearest point between the two faces. May be referred to as a side-by-side or stacked sign.

Electronic message center (EMC): An on-premises sign on which the message or copy can be electronically changed by remote or automatic means.

Foot-candle: A unit of illuminance on a surface that is everywhere one foot from a uniform point source of light of one candle and equal to one lumen per square foot.

Flag: A sign made of cloth, bunting or similar material, often attached to a pole, with specific colors, patterns, or symbolic devices, used as a national, state or local symbol, or to indicate membership in an

organization. The term "flag" shall also include any such display placed for decorative purposes only, with no commercial logo or advertising message.

Flashing: A sign containing an intermittent or blinking light source, or which gives the illusion of intermittent or blinking light by means of animation, or an externally-mounted intermittent light source.

Frame: A complete, static display screen on the entire face of an electronic sign.

Frame effect: A visual effect accomplished by varying the light intensity or pattern on the display surface of an electronic sign to attract the attention of viewers.

Freestanding sign: A sign which is attached to or a part of a completely self-supporting structure such as a frame or one or more poles which is not attached to any building or any other structure and which is permanently affixed to the ground.

Gasoline price sign: An on-premises sign with changeable copy letters and numbers or an electronic display without movement affixed to a gasoline pump canopy or its supports or a freestanding sign with the intent to display the current price of motor fuels.

General business sign: An on-premise sign which identifies a business or which advertises or promotes a commodity or service offered on the premises where such sign is located.

Glare: An effect created when an illumination source shines with sufficient brightness to cause discomfort, distract attention, or lead to the reduction or loss of visibility or visual function of the public.

Government sign: A sign indicating public works projects, public services or other programs or activities conducted by any governmental agency.

Ground sign: A permanent sign which is affixed to the ground with a maximum height not to exceed 48 inches above natural grade.

Incidental sign: A sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as "no parking", "entrance", "loading only", "telephone", an address, and other such directives or guidance, or to provide public safety information, but which displays no goods or services for sale or other advertising.

Institutional identification sign: A permanent, on-premises sign for the identification of a public or private school, university, church, or hospital or other similar use.

Logo: An identifying symbol used for advertising purposes, which may or may not be a registered trademark or service mark of the entity identified.

Lumens: The luminous flux emitted per unit solid angle from a uniform point source whose luminous intensity is one candela.

Menu board: A sign displaying the menu for drive-up window service.

Monument sign: A permanent sign with a display surface that is an integral part of the support structure. Any ground sign exceeding four feet in height or any pole sign with less than nine feet of ground clearance or with a sign structure that is greater than two feet in width shall be considered a monument sign.

Nameplate sign: An on-premises sign showing only the name and/or address of the occupant.

Nits: A photometric unit defined as cd/m<sup>2</sup> (candelas per square meter).

Non-commercial message sign: A sign conveying a civic, political, religious, seasonal or personal message, or a regulatory message or warning, but which displays no goods or services for sale or other advertising.

Office identification sign: An on-premise sign which identifies an office building or any or all of the

owners, occupants or tenants of an office building and the services related thereto, but which displays no goods or services for sale or other advertising.

Off-premises sign: A sign which advertises or directs attention to a business, product, service, or activity which is not usually available on the premises where the sign is located.

On-premises sign: A sign which advertises or directs attention to a business, product, service or activity which is usually available on the premises where the sign is located.

Pennant: A temporary sign made of lightweight material which tapers to a point, hung individually or in a series, with or without a logo or an advertising message printed or painted on it.

Pole sign: A permanent sign with a display surface that is attached to a self-supporting structure which has at least nine feet of ground clearance and which the structure does not exceed two feet in width. Any pole sign with a sign structure that exceeds two feet in width shall conform with the regulations for a monument sign.

Political sign: A temporary sign announcing or supporting political candidates or issues in connection with any national, state or local election.

Portable sign: A temporary sign which is designed to permit removal and reuse, and which includes but is not limited to A-frame and other such signs, and signs mounted on a trailer, wheeled carrier, vehicle, or other portable structure.

Projecting sign: A sign which is attached or affixed to a building, wall or structure other than a pole, and which extends more than 15 inches from such wall or structure.

Reader board: An on-premises sign consisting of alphanumeric characters that can be changed periodically through manual means.

Real estate sign: A temporary sign pertaining to the sale or lease of the premises, or a portion of the premises, on which the sign is located.

Roof sign: A sign that is painted on or erected upon or above the roof of a building.

Setback: The distance measured from a property line to the closest point of the sign or its supporting structure.

Searchlight: An apparatus on a swivel base that projects a strong, far-reaching beam of light.

Scroll/travel: A mode of message transition on an electronic sign where the message appears to move vertically or horizontally across the display surface.

Shopping and/or office center: A group of four or more retail and office establishments which is planned and developed as a business center with common access and parking.

Sign: Any structure, object, device, display or advertising artwork, situated outdoors or in a window, visible from a public or private street or alley, which is used entirely or in part to advertise, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, logos, fixtures, colors, illumination or projected images.

Sign area: The entire area within a single continuous perimeter enclosing the actual message or display area of a sign, and shall include the border and trim, but excluding the sign structure, provided that no goods or services for sale or other advertising is displayed on the structure.

Sign face: That portion of the sign that is or can be used to identify, display, advertise, or communicate information, or for a visual representation which attracts or intends to attract the attention of the public for any purpose.

Sign height: The vertical distance between the highest point of the sign or its supporting structure and the natural grade directly below the sign.

Sign structure: Any structure which is designed specifically for the purpose of supporting a sign, has supported or is capable of supporting a sign. This definition shall include any decorative covers, braces, wires, supports, or components attached to or placed around the sign structure. Where any goods or services for sale or other advertisement is displayed on the structure, then said structure shall be counted as part of the sign area.

Snipe or bandit sign: A sign which is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, stakes, fences, or other like objects, the advertising matter of which is not applicable to the present use of the premises on which the sign is located.

Spectacular sign: Any sign that physically rotates, oscillates, contains any moving parts, or contains flashing lights, including lights flashing in sequence.

Sponsor panel: A portion of a sign displaying the name of a product, service or company offering goods or services on-site or having a promotional relationship for events occurring on the premises.

Streamers: A temporary display made of lightweight, flexible materials, consisting of long, narrow, wavy strips hung individually or in a series, with or without a logo or advertising message printed or painted on them.

Street frontage: The length of the property line of a lot or tract immediately adjacent to a public or private street, measured in feet.

Subdivision identification sign: An identification sign at the main entrance or entrances to a residential subdivision or planned development project.

Temporary sign: A sign not permanently affixed to the ground or to a building or other structure.

Transition: A visual effect used on an electronic sign to change from one message to another.

Video display: An electronic sign that displays motion or pictorial imagery, including a display from a "live" source. Video display signs include images or messages with these characteristics projected onto buildings or other objects.

Visibility clearance areas: Visibility clearance areas are triangular-shaped areas as defined in Section 10-1-10 of the Midland City Code and which are located at the intersection of streets, streets and alley rights-of-way, and the intersection of streets and driveways.

V-type sign: A sign structure composed of two signs with the faces oriented in opposite directions and in the general shape of the letter "V", provided, however, that only one face can be viewed from any one direction from any public street, and with a maximum angle between the faces of 60 degrees.

Wall decoration: A mural or display designed and intended as a decorative or ornamental feature which is painted or placed directly onto a wall or fence and which contains no copy, advertising symbols, lettering, trademarks or other references to products, services, goods or anything sold on-or off-premises.

Wall sign: A permanent sign which is painted on or attached directly to a fence or a building surface, including window areas (translucent areas which are visible from a street or alley), that extends not more than 15 inches from the face of the fence or wall.

Window sign: A temporary sign placed on, affixed to, painted on or located within the frame of a transparent opening in the wall of a building.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

**§ 11-7a-3. Prohibited signs.**

All signs not expressly permitted under this Chapter or exempt from regulation are prohibited in the City. Such signs include, but are not limited to:

- (A) Portable signs, inflatable signs, banners, streamers, pennants, and other such temporary signs, except as allowed under Sections 11-7a-11 and 11-7a-12
- (B) Signs which contain or have attached thereto banners, posters, pennants, ribbons, streamers, balloons, strings or lights, spinners or other similar devices, except as allowed Sections 11-7a-11 and 11-7a-12
- (C) Snipe or bandit signs or any advertisement placed on trees, rocks or other natural features.
- (D) Off-premises signs in the City limits, except billboards which shall be regulated in conformance with Section 11-7a-8
- (E) Billboards in the City of Midland's Extra Territorial Jurisdiction (ETJ).
- (F) Signs which advertise an activity, business, or service no longer conducted on the premises upon which the sign is located. After a period of three months following cessation of the business, activity, or service on the premises, the sign face shall be obscured.
- (G) Signs which are located on any public sidewalk, street, alley, or other public property, except as outlined in Section 11-7a-7(H)6.
- (H) Projecting signs or any portion of signs which project or extend more than 15 inches over any public right-of-way, any public sidewalk, street, alley, or other public property except as outlined in Section 11-7a-7(H)6.
- (I) Roof signs or any advertisement painted, erected or affixed on the roof of a building.
- (J) Signs which are located within a runway protection zone constructed to a height that violates any maximum height restrictions established by the United States Department of Transportation and/or the Federal Aviation Administration.
- (K) Signs which make use of any word, phrase, symbol, character, or illumination, in such manner as to interfere with, mislead, or otherwise constitute a hazard to pedestrian or vehicular traffic.
- (L) Signs which resemble official traffic control signs, signals, or devices, which bear words, "STOP," "Go Slow," "Caution," "Danger," "Warning," or similar words.
- (M) Signs which contain reflectors or glaring, strobe, or rotating light, beacon, beam or flashing illumination resembling an emergency signal.
- (N) Searchlights or any type of beacon used to attract attention to a property. This shall not prohibit the use of a searchlight by authorized personnel for emergency purposes.
- (O) Spectacular signs and signs which emit audible sound, odor, or visible matter.
- (P) Any sign or advertising device attached to any motor vehicle or any trailer or other structure parked on a public right-of-way, on public property, or on private property so as to be visible from a public right-of-way, the basic purpose of which sign or advertising device is to provide advertisement of a product or to direct people to a business or activity located on the same property or other property or premises, except as allowed under Section 11-7a-5(J).

- (Q) Video display signs, except for the use on private property where such sign is not visible from any public street.
- (R) Any stereopticon or motion picture machine used in conjunction with or attached to any sign in such manner as to permit the images projected there from to be visible from any public street or sidewalk.  
(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-4. Permit, bond, and license requirements.**

- (A) Permit required:A sign permit issued by the City building official shall be required prior to the erection, installation, repair, alteration or relocation of a sign except for routine maintenance and according to Section 11-7a-5(A). Acceptance of the permit shall require compliance by the applicant with all applicable regulations of Title IV of the Midland City Code, as amended, as well as the regulations set forth in this Chapter.
- (B) Sign contractors bond required:In addition to the sign permit requirements, a surety bond in the sum of \$5,000.00 shall be filed with the building official and made conditional for the erection and/or painting of signs in accordance with the ordinances of the City and the laws of the State. Such bond shall provide for the indemnification of the City and for any and all damages or liabilities that may occur to or against the City by reason of the erection/painting, maintenance, demolition, repair, removal, defects in or collapse of any Sign erected by or under the direction of any such person. Such bond shall further provide for the indemnification of any person who shall, while upon public property of the City, incur damages for which the person erecting such signs is legally liable by reason of the erection/painting, maintenance, demolition, repair, removal, defects in or collapse of any such sign. On December 31 of each year all sign bonds, except continuous bonds, shall expire. A certificate of continuation for continuous bonds shall be provided on or before December 31 of each year.
- (C) Licensed electrician required:Any sign requiring a permit and incorporating any electrical lighting or wiring shall be installed, repaired, maintained, and removed by someone who is licensed and bonded for electrical sign work in the City of Midland in accordance with Chapter 4-2 of the Midland City Code, as amended. A separate electrical permit shall be required for each such sign.  
(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-5. Exemptions.**

The following signs are exempt from the permit requirements outlined in Section 11-7a-4; however, such signs shall be located on private property and shall comply with all other Chapter requirements.

- (A) Copy change and sign face replacement, when no increase in sign area or height is made, for signs otherwise allowed under this Chapter; not to include however, changes proposed on a non-conforming sign or modifying any sign to an electronic message center.
- (B) Construction sign when placed upon the construction site following the issuance of a building permit. Only one such sign shall be allowed per street frontage and each sign shall not exceed 64 square feet in area. Such sign must be removed not later than 30 days after a certificate of occupancy is issued by the building official.
- (C) Contractor signs identifying the contractor or subcontractor performing work on the premises where the sign is displayed. Such signs may not exceed a total of six square feet in area and must be removed from the premises when the work is completed.

- (D) Directory signs and office identification signs, up to one of each such sign per building façade, provided that no one sign shall exceed 64 square feet in area.
- (E) Flags of the United States, State of Texas, or any other political subdivision, any flag or banner of a bona fide religion, fraternal or charitable organization, and flags of corporations, subdivisions, or community associations or organizations.
- (F) Incidental signs, provided that such signs shall not exceed four square feet and shall comply with all other requirements of this Section.
- (G) Nameplate signs for residential locations, not to exceed two square feet in area.
- (H) Non-commercial message signs, provided that such signs shall not exceed a total of 64 square feet in area per lot and no single sign shall exceed 32 square feet in area per face and shall not exceed five feet in height to the top from the surrounding finished grade.
- (I) On-site directional signs and street identification signs not exceeding four square feet which denote the entrance, exit, and direction of traffic flow, provided that such directional signs do not contain advertising and are not used as such.
- (J) Political advertising signs, but only if such signs conform to Section 11-7a-10.
- (K) Professional name plates and occupational signs, when attached to the building face and which denote only the name and occupation of an occupant in a commercial building or public institutional building and not exceeding four square feet per sign area.
- (L) Signs painted on or attached to any vehicle or trailer or other portable structure, provided that:
  - 1. Such a sign merely identifies the vehicle or trailer or other portable structure as belonging to such business by displaying the name, address, and/or contact information of such business, and/or generally identifies the type of product or service offered by such business, but which includes no specific advertisement of goods or services for sale; and
  - 2. The primary use of such vehicle or trailer or other portable structure is for the transportation of products or the delivery of services in connection with such business; and
  - 3. Such vehicle or trailer or, if applicable, other portable structure, is currently licensed and inspected in the State of Texas and is in operable condition; and
  - 4. Such vehicle or trailer or other portable structure does not remain parked for longer than 72 consecutive hours on the same property. Any such vehicle or trailer or other portable structure parked for longer than 72 consecutive hours on the same property shall be considered a temporary sign subject to Section 11-7a-11.
- (M) Real estate signs which advertise the sale, rental or lease of the premises on which such signs are located provided that the dimension does not exceed:
  - 1. Ten square feet in area if located in a residential district; or
  - 2. 32 square feet if located in a nonresidential district.
- (N) Signs on fences or other structures within public parks or signs that are positioned internally within public or private play fields, provided that no one sign shall exceed 32 square feet in area.
- (O) Signs prepared by or for the local, state or federal government, including sites or buildings of

historical significance.

- (P) Temporary signs advertising garage sales as defined in Section 6-1-22 of the City Code, provided that such signs shall be removed within one day following the sale and shall not be placed on public property or utility poles.
- (Q) Traffic or street signs, legal notices, public utilities, railroad crossing signs, danger, and such emergency, temporary or non-advertising signs as approved by the City of Midland, may be located in the public right-of-way.
- (R) Window signs of a temporary nature only.

(S) Wall decorations and works of art that do not include a commercial message.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-6. Master sign plan.**

- (A) Purpose. The purpose of a master sign plan is to allow a property owner or developer, subject to approval of the City, the option of designating an area that will allow flexibility in sign location due to peculiarities in the location or configuration of parcels of real property, such as parcels with no street frontage, or multiple parcels organized into combined uses, or to allow creative sign management in exchange for a cumulative reduction in sign area, sign height or the total number of signs.
- (B) Minimum requirements. To qualify for a master sign plan, an area must:
  1. Include one lot or parcel or two or more contiguous lots or parcels that are not included in any other master sign plan.
  2. The owners, or the authorized representatives of the owners, of all lots within the proposed master sign plan area must sign the application for a master sign plan.
- (C) Required submittals. In order to obtain a master sign plan, the owner(s) of the property located within the proposed master sign plan area must sign and submit an application to the City's department of engineering and development, planning division, on a form provided by the planning division, which application must be accompanied by the following:
  1. A site plan showing the proposed boundaries of the master sign plan area.
  2. A site plan showing the location of all existing or proposed freestanding signs.
  3. A table showing the type, square footage and heights of each sign indicated on the site plan.
  4. The application fee established by the City for the processing of such applications.

Upon completion of the application, the planning division shall forward the master sign plan to the planning and zoning commission for final consideration.

- (D) When effective. A master sign plan shall not become effective until all owners of the property within the master sign plan area have signed an agreement which indicate the property owners' agreement that:
  1. The master sign plan can be amended only by the written consent of all parties or their successors, and the City.

2. The agreement is binding on all successors in interest to the property within the master sign plan area.
  3. Each party waives any right to apply for or install any sign inconsistent with the provisions of the master sign plan, even though such sign might otherwise be allowed under this Chapter.
- (E) Single premises. Once approved, the area described in the master sign plan will be deemed to be a single premises for the purpose of determining whether a sign is an on-premises sign. A sign which advertises a use on a lot within the master sign plan area which is not a use which occurs on that lot shall be termed a master sign plan ("MSP") sign. The use advertised on an MSP sign shall be defined as an MSP use.
- (F) City review of signs. All freestanding signs included within a master sign plan area shall be individually subject to review and approval of placement, size and height, as approved by the City of Midland.
- (Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

### **§ 11-7a-7. Sign standards.**

In addition to all permit requirements and other regulations contained in this Chapter, the following regulations shall be applicable to all permanent signs.

- (A) Illumination.
1. Light from any exterior source intended to illuminate a sign:
    - a. Shall be shaded, shielded, or directed in such a way so that the light intensity or brightness shall not adversely affect the vision of pedestrian or vehicle operators on public or private streets, driveways, or parking areas, or operators of aircraft in the approach path to any airport runway; and
    - b. Shall not contain flashing lights.
  2. Illumination from any sign:
    - a. Shall not interfere with the effectiveness of any official traffic sign, signal or device.
    - b. Shall not contain flashing lights.
    - c. Shall not exceed 0.3 foot candles between dusk and dawn, as measured from the sign's face at ground level at the following distances:
      - i. Signs greater than zero square feet and not greater than 100 square feet shall be measured at 100 feet from the source.
      - ii. Signs greater than 100 square feet and not greater than 300 square feet shall be measured at 150 feet from the source.
      - iii. Signs greater than 300 square feet shall be measured at 200 feet from the source.
  3. The display face of an illuminated billboard shall face away at a 45-degree angle from any AE, CE, 1F-1, 1F-2, 1F-3, MH, TH, 2F, MF-1, or MF-2 zoning districts.
  4. Electronic message displays and electronic billboards must have an electronic control to produce the required illumination change required in subparagraph 2.

(B) Maintenance and removal.

1. All signs must be maintained in a safe, readable condition. Signs which are determined by the building official to be in a dilapidated, deteriorated, or otherwise unsafe condition, shall not be allowed to remain on any premises.
2. For any sign so designated as dilapidated, deteriorated, or otherwise unsafe, written notice shall be given to remove the sign or bring the sign into compliance with this ordinance, as follows:
  - a. Any written notice to alter or to remove a sign shall be given by the building official by certified mail, return receipt requested, or written notice served personally upon the owner, lessee, or person responsible for the sign, or the owner's agent; and
  - b. If such order is not complied with within 15 working days after the written notice is sent, the building official may initiate proceedings to revoke the permit and remove the sign at the expense of the owner, lessee, or person responsible for such sign.

(C) Foundation requirements. All monument signs and freestanding pole signs that exceed 30 feet in height shall have the foundation plan prepared by a professional engineer.

(D) Calculating sign area.

1. Back-to-back signs. Only one side of a back-to-back sign is measured in calculating sign area.
2. V-type signs.
  - a. Only the largest face of a V-type sign shall be measured in determining the total sign area of the sign.
  - b. If a two-face sign is erected in a "V" shape, both faces of which can be seen from the same public street, or are at an angle of greater than 60 degrees to each other, then such sign is not a V-type sign, and shall be considered two separate signs for all purposes under this Chapter.
3. Canopy signs: The area of canopy sign shall count towards the total area of wall signs allowed on a property.
4. Use of advertising on a sign structure. Any portion of a sign structure that is used for advertising shall be calculated as part of the allowed freestanding sign area.

(E) Setback requirements.

1. Ground and pole signs. Except as regulated elsewhere in this Chapter, there shall be no minimum setback from property lines for a ground or pole sign, provided that no portion of a sign face shall overhang into the public right-of-way.
2. Maximum width of a pole sign. A sign that is attached to a structure that exceeds two feet in width shall be considered a monument sign.
3. Monument signs. All monument signs must be installed or constructed with a minimum ten-foot setback from the property line.
4. In all cases, a sign must observe the visibility clearance area restrictions as defined in Section 10-1-10.

(F) Use of an electronic message center (EMC) sign.1. Operational limitations.

- a. The display of a static message or image and the use of scroll/travel to display a message or image shall be permitted.
- b. The use of any other type of transition, such as dissolve/fade, and the use of frame effects, such as animation whereby text or graphics appear to move or change in size, shall be prohibited except in accordance with the following:
  - i. Each message or image must be displayed for a minimum of three seconds; and
  - ii. The change of message or image must be accomplished within two seconds or less and must occur simultaneously on the entire sign face.

2. Size limitations. In all cases, the use of an electronic message center (EMC) shall count toward the total area of signs allowed on a property.

- a. In the AE-MF-2 Districts a sign permit may be issued for property occupied by a conforming, non-residential use in accordance with the following:
  - i. An EMC shall not exceed 24 square feet in area.
  - ii. The EMC may be a single-face or back-to-back sign. The use of a double-faced EMC (side-by-side or stacked) is prohibited.
  - iii. The maximum height of a freestanding EMC shall be 15 feet.
  - iv. For an EMC mounted on a pole, a clearance of not less than seven feet from the bottom of the EMC shall be required.
- b. In the O-1, Office and less restrictive zoning districts:
  - i. The area of an EMC shall be limited to 15% of the total area of signs permitted for the property or 42 square feet, whichever is less.
  - ii. The maximum height of a freestanding EMC shall be 20 feet.
  - iii. For an EMC mounted on a pole, a clearance of not less than nine feet from the bottom of the sign shall be required.
- c. For a property which (a) has street frontage on Loop 250, FM 1788, or Highway 191 west of Loop 250, and (b) is located in an LR-1, Local Retail District or less restrictive zoning district, the following shall apply:
  - i. The area of an EMC shall be limited to 20% of the total signs allowed for the property or 75 square feet, whichever is less.
  - ii. The maximum height of a freestanding EMC shall be 30 feet.
  - iii. For an EMC mounted on a pole, a clearance of not less than nine feet from the bottom of the sign shall be required.
- d. For a property which (a) has street frontage on Interstate Highway 20 and (b) is located in an LR-1, Local Retail District or less restrictive zoning district, the following shall apply:

- i. The area of an EMC shall be limited to 20% of the total signs allowed for the property or 75 square feet, whichever is less.
- ii. The maximum height of a freestanding EMC shall be 40 feet.
- iii. For an EMC mounted on a pole, a clearance of not less than nine feet from the bottom of the sign shall be required.

(G) Development sign. Development signs shall be allowed in all zoning districts provided that:

1. Only one such sign shall be allowed per street frontage and each sign shall not exceed 128 square feet; and
2. Such signs may be placed no earlier than 90 days prior to construction; and
3. All such signs must be removed within 30 days upon the receipt of a certificate of occupancy for the project or upon the completion of 90 percent of the project; and
4. The use of an electronic message center as a development sign shall be prohibited.

(H) General business sign.

1. In the AE - MF-2 Districts, a sign permit may be issued for property occupied by a conforming, non-residential use in accordance with the following:
  - a. For a residential subdivision, two freestanding identification signs shall be allowed at each main entrance to the subdivision, provided that the sign area of any one sign shall not exceed 64 square feet and the total sign area shall not exceed 100 square feet. Such signs may be externally illuminated in accordance with paragraph (A) above, and shall make no reference to the sale or lease of the lots or houses located within said subdivision.
  - b. For an apartment or mobile home park:
    - i. One building identification freestanding sign, up to 64 square feet in area, shall be allowed per street frontage.
    - ii. One building identification wall sign, up to 50 square feet in area, shall be permitted for each building façade.
  - c. For institutional uses and all other non-residential uses:
    - i. One electronic message center shall be allowed per property.
    - ii. One freestanding business sign shall be allowed per street frontage, not to exceed 120 square feet for any one sign.
    - iii. The use of an EMC as any portion of a freestanding sign shall be in compliance with paragraph (F) above.
    - iv. The maximum height for a freestanding sign shall be 15 feet. No sign may be placed on a berm or other structure so as to artificially increase the height.
    - v. Wall signs shall not exceed 50 square feet or 15 percent of the area of the wall to which such signs are painted or affixed, whichever is less, except that the use of an EMC as wall sign shall comply with paragraph (F) above.

- vi. No illuminated wall sign shall be permitted on the rear or side of the building that is adjacent to a residential use.
2. In the O-1 and O-2 Districts, except for buildings over five stories, see paragraph 7 below:
- a. One electronic message center shall be allowed per property.
  - b. One freestanding sign shall be allowed per street frontage. The use of an EMC as any portion of a freestanding sign shall be in compliance with paragraph (F) above.
  - c. The maximum height for a freestanding sign shall be:
    - i. 20 feet on an arterial street; or
    - ii. 15 feet on a nonarterial street. No sign may be placed on a berm or other structure so as to artificially increase the height.
  - d. Wall signs shall not exceed 50 square feet or 15 percent of the area of the wall to which such signs are painted or affixed, whichever is greater, except that the use of an EMC as wall sign shall comply with paragraph (F) above.
  - e. No illuminated wall sign shall be permitted on a side of a building where said sign would be adjacent to a residential use.
  - f. No wall sign shall be permitted on the rear of the building where said sign would be adjacent to a residential use.
  - g. On property with a single street frontage of less than 150 feet in length, the combined area of freestanding and wall signs shall not exceed one and one-half times the length of street frontage of said property, up to a maximum of 180 square feet, provided that no one sign shall exceed 120 square feet in area. In all cases, a minimum of 60 square feet cumulative sign area shall be allowed.
  - h. On property with a single street frontage of 150 feet or more in length, the combined area of freestanding and wall signs shall not exceed 240 square feet, and no one sign shall exceed 120 square feet in area;
    - i. On property with multiple street frontages, the length of each street frontage shall be used to calculate total sign area according to subparagraphs g or h above, provided that the cumulative area of all signs shall not exceed 300 square feet, and that no one sign shall exceed 120 square feet in area.
3. In the NS District and less restrictive districts, except for buildings in the C-1 District, see paragraph 6 below, and for buildings over four stories, see paragraph 7 below:
- a. One electronic message center shall be allowed per property.
  - b. One freestanding sign shall be allowed per street frontage. The use of an EMC as any portion of a freestanding sign shall be in compliance with paragraph (F) above.
  - c. The maximum height for a freestanding sign shall be:
    - i. 30 feet on an arterial street; or
    - ii. 15 feet on a nonarterial street.

No sign may be placed on a berm or other structure so as to artificially increase the height.

- d. Wall signs shall not exceed 50 square feet or 15 percent of the area of the wall to which such signs are painted or affixed, whichever is greater, except that the use of an EMC as wall sign shall comply with paragraph (F) above.
  - e. No wall sign shall be permitted on the rear of the building where said sign would be adjacent to a residential use.
  - f. Gasoline price signs shall not be counted toward the total sign area for the property, provided that no more than one such sign, up to 20 square feet in area, shall be allowed per street frontage.
  - g. Freestanding menu boards for drive-through service that do not exceed 32 square feet in area and six feet in height shall not be counted against the allowable total.
  - h. On property with a single street frontage of less than 150 feet in length, the combined area of freestanding and wall signs shall not exceed one and one-half times the length of street frontage of said property, up to a maximum of 240 square feet, provided that no one sign shall exceed 180 square feet in area. In all cases, a minimum of 60 square feet cumulative sign area shall be allowed.
  - i. On property with a single street frontage of 150 feet or more in length, the combined area of freestanding and wall signs shall not exceed 300 square feet and no one sign shall exceed 180 square feet in area.
  - j. On property with multiple street frontages, the length of each street frontage shall be used to calculate total sign area according to subparagraphs h and i above, provided that the cumulative area of all signs shall not exceed 360 square feet, and that no one sign shall exceed 180 square feet in area.
4. Shopping center/office center developments.
    - a. Only freestanding signs shall be calculated against the total sign area allowed on the property, provided that all wall signs are in compliance with subparagraphs 3d and 3e above;
    - b. The use of any electronic message center sign shall be allowed in compliance with paragraph (F) above;
    - c. One freestanding sign, the area of which may be two times the length of the street frontage up to a maximum of 180 square feet, may be installed on each street frontage, provided that the total sign area of all freestanding signs on said property shall be 400 square feet.
    - d. In addition to the other signs otherwise permitted by this Chapter, one sign with a maximum area of 250 square feet, which only identifies an on-premises movie theater and advertises current and future movie attractions at said theater, may be installed at a shopping center.
  5. Motor vehicle and heavy equipment dealerships. Car, truck, motorcycle, boat, recreational vehicle, mobile home, or construction equipment dealerships located on an individual lot or combined lots or parcels:

- a. Only freestanding signs shall be calculated against the total sign area allowed on the property, provided that all wall signs are in compliance with subparagraphs 3d and 3e above;
  - b. The use of any electronic message center sign shall be allowed in compliance with paragraph (F) above;
  - c. One freestanding sign shall be allowed for each 150 feet of street frontage, provided that the area of any one sign shall not exceed 200 square feet, and the total area of all freestanding signs on the property shall not exceed 500 square feet.
6. C-1, Central Area District:
- a. Signs located on any public sidewalk, street, alley, or other public property shall be allowed only with approval of a permit from the Director of Transportation. The area of such a sign shall be calculated as a freestanding sign.
  - b. Signs which project or extend more than 15 inches over any public sidewalk, street, alley, or other public property shall be allowed provided that such signs (a) shall not extend into the public right-of-way for a distance of more than ten feet or less than 18 inches from the back of the street curb, whichever is more restrictive, and (b) shall have a minimum clearance of nine feet above the sidewalk grade or ground level. The area of such projecting signs shall be calculated as a wall sign.
7. Multi-story buildings. The following shall apply to all buildings over four stories in the C-1 District and to buildings over five stories in the O-1 or less restrictive zoning districts.
- a. One building identification wall sign, up to 200 square feet in area, shall be allowed per building façade.
  - b. One building identification freestanding sign, up to 100 square feet in area, shall be permitted per property, provided such sign is an on-premises sign located on private property.
  - c. In addition to subparagraph a above, wall signs shall be limited to two per building façade, not to exceed 50 square feet or 15 percent of the area of the wall to which such signs are painted or affixed, whichever is greater, except that the use of an EMC as a wall sign shall comply with paragraph (F) above. The total area for all wall signs shall not exceed 400 square feet per building.
8. Loop 250, FM 1788, and portions of Highway 191 frontage. A property which (a) has street frontage on Loop 250, FM 1788, or Highway 191 west of Loop 250, and (b) is located in an LR-1, Local Retail District or less restrictive zoning district, may have one on-premises freestanding sign which exceeds the 30-foot height specified in subparagraph 3 above subject to the following regulations:
- a. The height of such sign, which must be located adjacent to the Loop 250 frontage, shall not exceed 37 feet.
  - b. No portion of the sign or support shall be less than 75 feet from the boundary of a property zoned MF-2, Multi-Family Dwelling District or more restrictive.
  - c. All signs must be placed and comply with state and federal regulations, even if more

restrictive than the foregoing regulations.

- d. No sign described in this subsection shall be placed in any airport runway protection zone.
9. Interstate Highway 20 frontage. A property which (a) has street frontage on Interstate Highway 20 and (b) is located in an LR-1, Local Retail District or less restrictive zoning district, may have one on-premises freestanding sign which exceeds the 30-foot height specified in subparagraph 3 above, subject to the following regulations:
- a. The height of such sign, which must be located adjacent to the Interstate Highway 20 frontage, shall not exceed 50 feet.
  - b. The maximum sign area shall be 400 square feet.
  - c. No portion of the sign or support shall be less than 15-feet from any adjacent right-of-way.
  - d. No portion of the sign or support shall be less than 100-feet from the boundary of a residential zoning district.
  - e. All signs must be placed in compliance with state and federal regulations, even if more restrictive than the foregoing regulations.
  - f. No signs described in this subsection shall be placed in any airport runway protection zone.
- (I) Planned districts. Any property located within a planned district, or governed by a specific use permit, may be subject to additional regulations beyond those in this Section. Said regulations may be either more or less restrictive than those set out herein.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-8. Billboards and electronic billboards (CEVM).**

- (A) Prohibition. Billboards and electronic billboards are hereafter prohibited in the City's extra territorial jurisdiction (ETJ) but may be located within the City limits in accordance with Chapter 11-1 of the City Code and in compliance with the following restrictions. All such signs must be placed in conformity with state and federal regulations, even if such are more restrictive than the following regulations.

(B) Special control areas.

1. New billboards and electronic billboards are prohibited within the following special control areas:

a. <i>Midland Protection Zone</i>	<p>The area located within the following boundaries:</p> <ul style="list-style-type: none"> <li>• Western Boundary: 500 feet west of the centerline of Loop 250, except where the western corporate limits of the City of Midland lie to the east of this location, in which case the western corporate limits of the City of Midland shall be the Western Boundary.</li> <li>• Northwestern and Northern Boundaries: 500 feet northwest and 500 north of the centerline of Loop 250.</li> </ul>

	<ul style="list-style-type: none"> <li>• Eastern Boundary: The eastern corporate limits of the City of Midland.</li> </ul>
	<ul style="list-style-type: none"> <li>• Southern Boundary: Interstate Highway 20, except where the southern corporate limits of the City of Midland lie to the north of Interstate Highway 20, in which case the southern corporate limits of the City of Midland shall be the Southern Boundary. However, the Midland Protection Zone does not include property fronting on Interstate Highway 20 or within 500 feet of the centerline of Interstate Highway 20.</li> </ul>
b. <i>Big Spring Street</i> (Business State Highway 349-C and State Highway 349)	The area located within 300 feet of either side of the centerline of Business State Highway 349-C and State Highway 349 (commonly known as Big Spring Street), from Loop 250 north to the corporate limits of the City of Midland.
c. <i>Andrews Highway</i> (State Highway 191)	The area located within 300 feet of either side of the centerline of State Highway 191 (commonly known as Andrews Highway) from Loop 250 west to the corporate limits of the City of Midland.

2. The following rules shall apply to replacement of billboards and electronic billboards in special control areas:
- a. An existing billboard may be replaced one time.
  - b. An electronic billboard may be used to replace an existing billboard or electronic billboard one time, provided that the person seeking to replace the existing billboard or electronic billboard removes two other billboards, electronic billboards, or combination thereof which are located within Special Control Areas.

(C) Annexation. In addition, any land which is in the City's ETJ as of the effective date of this ordinance and henceforth and is subsequently annexed by the City shall remain subject to the billboard prohibition under this ordinance regardless of any zoning classification established for said land. Any billboard which was legally in existence on any property prior to annexation of said property into the City limits or prior to the expansion of the City's ETJ shall become non-conforming and shall be subject to Section 11-7a-9.

(D) Compliance.

1. Permits required.
  - a. A sign permit and a specific use permit with term shall be required prior to constructing any new billboard or modifying any legally conforming billboard, all of which shall be in compliance with the requirements set forth herein. The requirement of a specific use permit with term shall apply notwithstanding zoning district regulations or any other provisions in this Code.
  - b. A new sign permit and a new specific use permit with term for a billboard must identify the proposed location by latitude and longitude coordinates.
  - c. An application for a specific use permit with term under this Subsection shall be subject to the rules and procedures set out in Section 11-1-9.07 of this Code. The Council shall not

vote on granting or denying the specific use permit with term at the Council meeting when the public hearing is held. At the conclusion of the public hearing, the Council shall allow 30 days for written input from the public, the owner of the property identified in the application, and the specific use permit with term applicant. All written material shall be submitted to the City Manager. A majority vote of the Council is required to pass an ordinance granting a specific use permit with term under this Subsection.

- d. In no case shall a billboard be allowed in an area in which billboards are prohibited by current zoning district regulations.
  - e. Billboards advertising on-premises goods or services shall be considered on-premises signs and shall comply with on-premises sign regulations.
2. Minimum separation. No proposed billboard location may be approved which is:
    - a. Within 1,500 feet of either an existing billboard or property zoned with a specific use permit with term or a specific use permit without term for location of a billboard; or
    - b. Within 1,500 feet of either an existing electronic billboard or property zoned with a specific use permit with term or a specific use permit without term for location of an electronic billboard; or
    - c. Within 150 feet of an on-premises sign on the same property or abutting property.
  3. Maximum height. The maximum height of a billboard shall be 30 feet, except for a billboard located on property fronting on Interstate Highway 20, which shall have a maximum height 42.5 feet.
  4. Maximum sign area. The total area of each sign face of a billboard shall not exceed the following:
    - a. 672 square feet for a billboard located on property fronting Interstate Highway 20.
    - b. 400 square feet for a billboard located on property fronting US Route 80.
    - c. 300 square feet for a billboard located on property fronting a street other than Interstate Highway 20 or US 80.
  5. Limits of sign faces. A billboard shall be limited to a single face viewed from any one direction. The use of a double-faced billboard (side-by-side or stacked) is prohibited.
  6. Lighting. Exterior lighting shall be shielded to prevent glare. No external lighting shall be used to illuminate a nonconforming sign.
  7. Setback and side yard requirements.
    - a. A billboard must comply with the same side yard and setbacks required for buildings in the zoning district in which it is located;
    - b. No portion of the billboard or its support shall be closer than 150 feet from the boundary of a property used for residential purposes or zoned MF-2, Multiple-Family Dwelling District or more restrictive.
- (E) Non-conforming billboards. Any legally existing billboard which does not comply with these restrictions shall become a non-conforming sign and shall be regulated in conformance with Section

11-7a-9. A non-conforming billboard may not be enlarged beyond its present size or modified to an electronic billboard without forfeiting its non-conforming status.

(F) Electronic billboards.

1. Permits required:

- a. A sign permit and a specific use permit with term shall be required prior to constructing any new electronic billboard or modifying any legally conforming electronic billboard, all of which shall be in compliance with the requirements set forth herein. The requirement of a specific use permit with term shall apply notwithstanding zoning district regulations or any other provisions in this Code.
- b. A new sign permit and a new specific use permit with term for an electronic billboard must identify the proposed location by latitude and longitude coordinates.
- c. An application for a specific use permit with term under this Subsection shall be subject to the rules and procedures set out in Section 11-1-9.07 of this Code. The Council shall not vote on granting or denying the specific use permit with term at the Council meeting when the public hearing is held. At the conclusion of the public hearing, the Council shall allow 30 days for written input from the public, the owner of the property identified in the application, and the specific use permit with term applicant. All written material shall be submitted to the City Manager. A majority vote of the Council is required to pass an ordinance granting a specific use permit with term under this Subsection.
- d. In no case shall an electronic billboard be allowed in an area in which billboards are prohibited by current zoning district regulations.
- e. Electronic billboards advertising on-premises goods or services shall be considered on-premises signs and shall comply with on-premises sign regulations.

2. Minimum separation. No proposed electronic billboard location may be approved which is:

- a. Within 1,500 feet of either an existing billboard or property zoned with a specific use permit with term or a specific use permit without term for location of a billboard; or
  - b. Within 1,500 feet of either an existing electronic billboard or property zoned with a specific use permit with term or a specific use permit without term for location of an electronic billboard; or
  - c. Within 150 feet of an on-premises sign on the same property or abutting property.
3. Maximum height. The maximum height of an electronic billboard shall be 30 feet, except for an electronic billboard located on property fronting on Interstate Highway 20, which shall have a maximum height 42.5 feet.
4. Maximum sign area. The total area of each sign face of an electronic billboard shall not exceed the following:
- a. 672 square feet for an electronic billboard located on property fronting Interstate Highway 20.
  - b. 400 square feet for an electronic billboard located on property fronting US Route 80.

- c. 300 square feet for an electronic billboard located on property fronting a street other than Interstate Highway 20 or US 80.
5. Limits of sign faces. An electronic billboard shall be limited to a single face viewed from any one direction.
6. Setback and side yard requirements.
  - a. An electronic billboard must comply with the same side yard and setbacks required for buildings in the zoning district in which it is located.
  - b. No portion of an electronic billboard or its support shall be closer than 200 feet from the boundary of a property used for residential purposes or zoned MF-2, Multiple-Family Dwelling District or more restrictive.
7. Lighting. No external lighting shall be used to illuminate an electronic billboard.
8. Prohibitions: An electronic billboard:
  - a. Shall not contain, display, or be illuminated by flashing, intermittent, or moving lights;
  - b. Shall not contain or display animated, moving video, or scrolling advertising;
  - c. Shall not consist of a static image projected upon a stationary object; and
  - d. Shall not be a portable sign.
9. Operation requirements:
  - a. An electronic billboard shall display static messages only in compliance with the following:
    - i. The dwell or hold time of each message, defined as the interval between each message change, shall be at least eight seconds.
    - ii. Each message change must be accomplished within two seconds or less and must occur simultaneously on the entire sign face.
  - b. An electronic billboard shall not be configured to resemble or simulate a warning or danger signal or any official lights or signs used to control traffic.
  - c. An electronic billboard shall not display light of such intensity to cause glare, impair vision, or otherwise result in a nuisance to the public. An electronic billboard shall:
    - i. Comply with Section 11-7a-7(A)2; and
    - ii. Be equipped with both a dimmer control or other such electronic control and a photocell or other such automatic control, which will produce the required illumination change according to natural ambient conditions.
  - d. An electronic billboard shall contain a default mechanism that will freeze the sign in one position if a malfunction occurs.
10. Emergency notification:
  - a. The City of Midland, through appropriate personnel, may protect public health, safety, and

welfare by requiring emergency information to be displayed on electronic billboards.

- b. Upon notification, the operator of an electronic billboard shall display emergency information such as Amber Alert notices or other public safety alerts.
- c. Emergency information messages are to remain in rotation according to the protocols of the designated issuing agency.

(G) Takings determination.

1. Any aggrieved person who believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.
2. The applicant seeking a takings determination from the City Council shall file his or her appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of \$250.00 dollars shall accompany each filing.
3. The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other state law and shall include evidence substantiating the purported diminution in value of the applicant's real property.
4. If the City Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City staff that formed the basis of the takings determination appeal. If the City Council denies the appeal, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within 30 days of the date that the City Council issued its final decision. If after a favorable determination the City Council fails to take action as specified above, the applicant may appeal inaction of the City Council to the county or district court of the county in which the affected real property is located after the expiration of 120 days from the date the application is heard by the City Council.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

**§ 11-7a-9. Non-conforming signs.**

- (A) Non-conforming signs defined. A non-conforming sign is any sign which was lawfully erected prior to the effective date of this ordinance governing signs in the City of Midland and in the City's extra territorial jurisdiction, but which is no longer in compliance with such regulations due to either a change in such regulations or a change in the City's boundaries.
- (B) Operational limitations of non-conforming electronic message center signs. Any non-conforming electronic message center sign shall be allowed to remain as a legal non-conforming sign if structural changes or removal are required in order to bring said sign into compliance; however, operation of the electronic portion of said sign must be brought into compliance as defined in Section 11-7a-7(F).
- (C) Loss of legal non-conforming status. A non-conforming sign shall immediately lose its non-conforming designation and must be brought into compliance with these regulations, or be removed, if:

1. The sign structure is replaced; this shall not prevent the replacement of the face(s) to accommodate a new business, express a different message, or upgrade conditions, except that no such sign may be modified or otherwise converted to an electronic message center; or
2. The sign is relocated; or
3. The sign is part of an establishment that discontinues its operation for a period of six months or longer; or
4. The sign is damaged or structurally altered to an extent greater than 60 percent of the current estimated replacement value.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-10. Political advertising.**

Political signs may be erected and maintained as follows:

- (A) Stake signs. Signs with an area not exceeding 30 inches by 30 inches and installed on a stake at a height not more than 36 inches above the adjacent grade may be located on any private property within the City.
- (B) Other political signs. Political signs with a sign area not exceeding four feet by eight feet in size may be located on any private property within the City provided that:
  1. The bottom of said sign is not less than five feet above the adjacent grade; and
  2. The sign is not closer than 20 feet from the back of the curb if located on a corner lot; and
  3. The sign is not closer than ten feet from the back of the curb on any other lot.
- (C) Oversize political signs. Any political sign larger than that referred to in subsection (B) above must be located in a C-2, Commercial District or less restrictive zoning district and must not exceed 64 square feet.
- (D) Time limit for display. Political signs may be erected not earlier than 120 days preceding the election to which the sign pertains and must be removed not later than 14 days following the day of such election.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-11. Temporary signs.**

- (A) Applicability of section. The following regulations shall be applicable to all temporary signs, as defined herein, except as follows:
  1. Political signs or displays erected in accordance with Section 11-7a-10.
  2. Non-illuminated real estate signs, as specified in Section 11-7a-5(M).
  3. Portable signs owned and leased by portable sign company licensees as defined in Section 11-7a-11(C) in accordance with the following:
    - a. Such signs will continue to be permitted pursuant to Ordinance 7484 until January 1, 2005.
    - b. Until January 1, 2005, any permit issued to a portable sign company licensee shall not

apply as part of the regulations governing other temporary signs contained in Section 11-7a-11(B) below.

- c. After January 1, 2005, all portable sign permits will be issued pursuant to Section 11-7a-11(B), below.
- (B) Permits required. It shall be unlawful for any person to place or locate any temporary sign on any property within the City, or allow the placement or location of any temporary sign on premises within the City owned or controlled by such person, unless a permit for such temporary sign and such location has first been obtained from the City building official in accordance with all regulations, including the following:
  1. One temporary sign permit is required for the placement of a temporary sign on a lot or tract within the City for a promotional period not to exceed:
    - a. One 60-day period; or
    - b. Two 30-day periods; or
    - c. Four 15-day periods, each calendar year per legal business; provided that under options b and c, no permit shall be issued for the placement or location of any temporary sign for any tract of land within the City stated in a previously issued permit until a period of 30 days has elapsed since the term of duration of the previous permit has expired.
  2. In the case of a special promotion for a grand opening celebration, one additional seven-day period shall be allowed provided the promotion commences within the first three months of the date of issuance of a certificate of occupancy and the grand opening is limited to the address noted on the certificate of occupancy.
  3. A temporary sign may be one of the following: a portable sign; or a banner; or pennants; or streamers; or balloons; or any legal on-premises sign allowed by this Chapter.
  4. A legal business shall include apartment complexes and any commercial, industrial, or institutional use for which the building official has issued a certificate of occupancy.
  5. When more than one legal business exists on the same lot or tract, one such business may place one permitted temporary sign on said lot or tract, provided a period of 30 days has elapsed since a previously permitted temporary sign was removed.
  6. A temporary sign which exceeds 30 square feet in area shall not be permitted for any location within 150 feet of a legally existing temporary sign.
  7. An annual permit fee of \$50.00 shall be charged to each business upon application for a temporary sign permit, except that portable sign company licensees shall not be charged permit fees for portable signs.
  8. A separate temporary sign permit is required for each promotional period used; however, after the annual fee of \$50.00 is paid, no additional fee is required for a one year term.
  9. If a temporary sign is installed prior to issuance of a permit, an investigation fee of \$75.00 will be assessed in addition to the permit fee.
  10. A temporary sign remaining on display for a period of time in excess of that stated in the permit shall be considered in violation of this Chapter and shall be subject to Sections 11-7a-13 and

11-7a-14.

(C) License required for portable sign businesses.

It shall be unlawful for any person to engage in the business of leasing or renting portable signs for the placement of such signs on property not owned by such person without first having obtained a portable sign company license and showing proof of a sign contractors bond as outlined in Section 11-7a-4, all in accordance with and subject to the following regulations:

1. Upon application and payment made to the City building official of an annual license fee of \$50.00 per temporary sign, a temporary sign company license may be renewed annually for a term not to exceed one year.
2. In addition to any other penalty provided by this Code, the City building official may deny applications and revoke licenses issued under the provisions of this Section after notice and hearing for any of the following causes:
  - (a) Any violation of this Chapter by the licensee.
  - (b) Any violation of this Chapter by anyone renting or leasing signs from a licensee. Licensees shall be deemed to be held strictly responsible for the compliance with the terms of this Chapter by such person leasing or renting signs from such licensee.
3. Notice of the hearing for denial of an application or revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee or applicant at his last known address at least five days prior to the date set for the hearing.
4. Any person aggrieved by the action of the City building official in the denial of an application for a license or in his decision with reference to the revocation of a license shall have the right to appeal as set forth in Section 11-7a-15(C).

(D) Temporary sign standards. In addition to all other applicable regulations, temporary signs must conform to the following restrictions:

1. A temporary sign may be used for on-premise advertising only.
2. The use of an electronic message center as a temporary sign shall be prohibited.
3. The use of an inflatable sign as a temporary sign shall be prohibited except with a temporary permit issued for a grand opening celebration as noted in paragraph (B2) above.
4. The sign area of a temporary sign shall not exceed 35 square feet.
5. A temporary sign shall be contained on the property of the legal business and shall not extend into the City right-of-way or be located in any visibility clearance area. In no event shall such sign be erected or placed less than ten feet from the back of the curb.
6. Banners must be attached to the face of the building used by the business or organization to which the banner relates.
7. Ground signs shall be secured with a minimum of four separate points by metal pins and/or sandbags where necessary. Such metal pins must penetrate the ground by a distance of not less than ten inches.

8. Any temporary sign which exceeds 30 square feet in area shall have permanently affixed thereto the name and phone number of the owner of such sign.
9. Temporary signs may be lighted with white light or lights only, and such light or lights shall not be of a flashing, intermittent, moving or similarly lighted type. Exterior lighting shall be shielded to prevent glare.
10. Notwithstanding any provisions to the contrary contained within this Code, all electrical connections to temporary signs shall be three-prong (grounded) type using grounded, all-weatherproof outlets. Electrical cords must be all-weatherproof type and may not exceed ten feet in length unless they are then run in conduit. In addition, such cords must be so positioned as to not impact vehicular traffic.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-12. Special event signs.**

- (A) Upon request, and subject to approval, the building official may authorize a permit for the display of any temporary sign, or any legal sign allowed by this section, to give notice of or direct the public to a special event of civic interest including, but not limited to:
  1. Parades, organized community holiday festivities, and special events organized by charitable and/or non-profit organizations.
  2. In acting upon such request, the building official shall consider, among other things, the limitations on size, proposed location(s), materials, and construction of such special event signs.
- (B) If authorized, such signs shall be erected for a period of time no more than 60 days preceding the date of the event and shall be removed within three days after the event.
- (C) Such signs may be located or placed on or over private property only with the permission of the owner of the property and may be located or placed on or over public property, including streets, only if authorized by the building official.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-13. Impoundment and seizure.**

- (A) The owner or occupant of any property upon which there is located a sign in violation of this Chapter shall be given written notice by the building official or duly authorized representative stating the nature of the violation and ordering that the violation be corrected or removed from said property within 72 hours. Such notice shall be mailed or delivered to the licensee or applicant at his or her last known address at least five days prior to the date set for the hearing.
- (B) If the owner, lessor, lessee, or the representative of the lessor of the sign fails to correct or remove such sign within 72 hours of written notification from the building official or duly authorized representative, the sign may be removed by the building official or duly authorized representative. Such sign shall be transported to a location to be designated by the building official for storage at the expense of the sign owner or the person installing, leasing, using, or maintaining it.
- (C) The custodian of the storage area shall maintain records of where such signs were located when they were so impounded and the date on which they were so impounded and shall hold the same in the storage area for a period of not more than 30 days.
- (D) Any sign so held may be redeemed by the owner thereof upon the payment of a fee to the City

consisting of a total of \$50.00 for hauling the same to storage plus \$10.00 per day storage fee for each day the sign is stored. Such fee shall be in addition to and not in lieu of any fine imposed upon such owner for violation of this chapter.

- (E) Any sign not redeemed within 30 days shall be considered abandoned property and shall become the property of the City. Any such signs shall either be destroyed or transferred to surplus and sold or disposed of in the same manner as surplus property of the City. In calculating the length of the storage period and the storage fee, the first working day after the date of the impoundment shall be considered day number one; thereafter, all days including weekends and holidays shall be counted.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-14. Violations and penalties.**

Any person found in violation of this Chapter shall be subject to the penalties and procedures found in Chapter 1-3, Section 1 of this Code.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-15. Appeal procedures.**

- (A) Any person who receives notification of a sign found in violation of this Chapter may appeal the action or decision by requesting in writing within a 72-hour period after the service of notice is given, a hearing to determine whether he or she is in violation of this Chapter. If a person does request the hearing, it will be held before the Building Official within five business days of the date the request for appeal is received, at a time to be determined by the Building Official.
- (B) If the Building Official, after considering the evidence, decides that the sign in question is in fact in violation of this Chapter then the sign shall be removed or brought into compliance within 72 hours from the time the Building Official's decision is rendered. Any further appeal of the building official's decision may be made to the Midland City Council. This process shall in no way negate the right of the City to immediately remove any sign creating real and immediate danger to life or property.
- (C) Any person aggrieved by the action of the City Building Official in the denial of an application for a permit or in his decision with reference to the issuance of a sign permit shall have the right to appeal to the Midland City Council. Such appeal shall be taken by filing with the City Manager's Office, not later than 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Midland City Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be mailed to the appellant. The decision and order of the Midland City Council on such appeal shall be final and conclusive.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)

#### **§ 11-7a-16. Enforcement authority.**

- (A) The Building Official is hereby authorized and directed to administer and enforce all terms and conditions of this Chapter. The Building Official is further authorized to render interpretations of this Chapter, which are consistent with its spirit and purpose.
- (B) The provisions of Chapter 1, Standard Building Code, 1997 Edition, shall apply to this Chapter regarding the Building Official's administration of this Code, including but not limited to right of entry, stop work orders, revocation of permits, issuance of permits, inspections, submittal of drawings and specifications, and appeals.

(Ordinance 8648, sec. 1, adopted 6/24/2008; Ordinance 9382, sec. 1, adopted 1/13/15)



FREIGHT AND PORTABLE STORAGE CONTAINERS

**Chapter 11-8**

**FREIGHT AND PORTABLE STORAGE CONTAINERS**

<b>§ 11-8-1.</b>	<b>Definitions.</b>	<b>§ 11-8-7.</b>	<b>Violation.</b>
<b>§ 11-8-2.</b>	<b>Use as an accessory structure.</b>	<b>§ 11-8-8.</b>	<b>Appeal to Midland City Council.</b>
<b>§ 11-8-3.</b>	<b>Exceptions.</b>		
<b>§ 11-8-4.</b>	<b>Limitations.</b>	<b>§ 11-8-9.</b>	<b>Fee schedule.</b>
<b>§ 11-8-5.</b>	<b>Requirements.</b>	<b>§ 11-8-10.</b>	<b>Appeal of fees to city manager.</b>
<b>§ 11-8-6.</b>	<b>Temporary or seasonal use.</b>		

***Editor's note(s)***—*Ord. No. 8447, § 2, adopted Sept 26, 2006, repealed former Ch. 8, §§ 11-8-1, 11-8-2, in its entirety. Former Ch. 8 pertained to the Interstate Highway 20 Corridor Overlay District and derived from Ord. No. 7875, § 1, 9-28-99; Ord. No. 8308, § 1, 4-26-05. Ord. No. 8448, § 1, adopted Nov. 14, 2006, created a new Ch. 8 as herein set out.*

### **§ 11-8-1. Definitions.**

1. A *freight container* is a standardized, reusable vessel that was:
  - a. Originally, specifically designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities; and/or
  - b. Designed for or capable of being mounted or moved on a rail car; and/or
  - c. Designed for or capable of being mounted on a chassis or moved by truck trailer or loaded on a ship.
  - d. The length of a freight container shall not exceed 40 feet.
2. A *portable storage container* is a standardized, reusable vessel that was:
  - a. Originally, specifically designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities; and/or
  - b. Designed for or capable of being mounted or moved on a truck.
  - c. The length of a portable storage container shall not exceed 16 feet.

(Ordinance 8448, sec. 1, adopted 11/14/06)

### **§ 11-8-2. Use as an accessory structure.**

When used for any purpose other than those listed above, a freight container or portable storage container shall be considered an accessory structure and shall adhere to all applicable regulations included in this Code.

(Ordinance 8448, sec. 1, adopted 11/14/06)

### **§ 11-8-3. Exceptions.**

The following are exempt from the requirements of this section:

1. The use of a freight container or portable storage container as an accessory structure directly in conjunction with commercial and industrial uses in the C-3, Commercial, LI, Light Industrial, HI Heavy Industrial Districts, or IP-1, Industrial Park Districts.
2. The use of a freight container or portable storage container as an accessory structure directly in conjunction with a permitted construction project in any zoning district (if not otherwise exempt), provided said container is removed within ten days of the issuance of the certificate of occupancy or when 90 percent of the units of a residential subdivision project is complete.

(Ordinance 8448, sec. 1, adopted 11/14/06; Ordinance 8565, sec. 1, adopted 9/25/07)

### **§ 11-8-4. Limitations.**

- A. The use of a freight container or portable storage container as an accessory structure shall be allowed only within the LR-2, Local Retail District, or less restrictive zones.

- B. The total number of freight containers, portable storage containers, or a combination thereof, permitted on a lot, shall be based on the following schedule, provided that all the requirements listed in Section 11-8-5 are met.
- C. For the purpose of this section, a "container unit" shall be calculated as follows:
1. A freight container shall equal one container unit.
  2. A portable storage container shall equal one-half a container unit.

<b>Size of Primary Building (in square feet)</b>	<b>Containers Units allowed</b>
less than 10,000 sf	0
from 10,000 to 20,000 sf	1
from 20,001 to 40,000 sf	2
from 40,001 to 60,000 sf	3
from 60,001 to 80,000 sf	4
from 80,001 to 100,000 sf	5
from 100,001 to 140,000 sf	6
any size over 140,000 sf	8

(Ordinance 8448, sec. 1, adopted 11/14/06)

#### **§ 11-8-5. Requirements.**

- A. 1. A building permit shall be obtained prior to the placement of any freight container or portable storage container on a lot and each container must meet all building and development regulations, with the exception that building separation requirements shall only apply to separation between containers and other structures, not between individual containers
2. Freight containers and portable storage containers may be located either at the rear of the main structure or at the side, but in no case shall the setback be less than that required in the base zoning district.
3. A solid fence with a minimum height of seven feet shall be used to screen said containers from public streets and from all adjacent properties with zoning designations other than C-3, LI, and HI. Details on the proposed screening fence shall be submitted for the review and approval of the Planning Division Manager.
4. Freight containers and portable storage containers shall not be stacked.
5. Other than small, incidental labeling, said containers shall not be used for the placement of business signs, logos, or other markings.
6. Freight containers and portable storage containers shall not occupy any required off-street parking spaces for the property.
7. Freight containers and portable storage containers shall be painted to match the building or

painted tan or beige. If the container is not visible from adjacent properties as determined by the Planning Division Manager, painting shall not be required.

(Ordinance 8448, sec. 1, adopted 11/14/06)

#### **§ 11-8-6. Temporary or seasonal use.**

- A. A request for the placement of (a) freight container(s) or (a) portable storage container(s) on a lot in excess of the maximum number allowed or for use in a zoning district not otherwise permitted, for temporary or seasonal use only, shall require approval by the City Building Official in accordance with the following:
  1. In the LR-1, Local Retail District, and less restrictive zoning districts, a temporary permit for either a freight container or a portable storage container may be requested for:
    - (a) One, 90-day period; or
    - (b) Two, 45-day periods, each calendar year per lot; provided that all regulations regarding the placement of the container(s) are met.
  2. In the AE, Agriculture Estate District, through NS, Neighborhood Service District, a temporary permit, for a portable storage container only, may be requested for one, 30-day period each calendar year per lot.
  3. A separate temporary permit with all applicable fees is required for each promotional period used.

(Ordinance 8448, sec. 1, adopted 11/14/06)

#### **§ 11-8-7. Violation.**

If any freight container or portable storage container is installed prior to the issuance of a permit or is not removed within five (5) calendar days of the expiration of a validly issued permit, the owner of the property where the container is located shall be deemed guilty of a misdemeanor offense, and, upon conviction, shall be punished by a penalty or fine not to exceed \$500.00. Each day that a provision of this chapter is violated shall constitute a separate offense.

(Ordinance 8448, sec. 1, adopted 11/14/06)

#### **§ 11-8-8. Appeal to Midland City Council.**

Any property owner that wishes to appeal a decision by the Planning Division Manager that denies a request to place additional freight containers or portable storage containers in excess of the number allowed in Section 11-8-4, shall have the right to file a request for review by the Midland City Council. Such an request shall follow the same procedures as a temporary land use request under 11-1-4.05.

(Ordinance 8448, sec. 1, adopted 11/14/06)

#### **§ 11-8-9. Fee schedule.**

- A. The permit fee for placement of containers under 11-8-4 are as follows:

For the first freight container or portable storage container per property: \$125.00

For each additional freight container or portable storage container on the same property: \$25.00

- B. The permit fee for placement of containers under 11-8-6(1) are as follows:

1. 90-day temporary permit:

Per freight container or portable storage container: \$150.00

Per additional container: \$25.00

2. 45-day temporary permit:

Per freight container or portable storage container: \$125.00

Per additional container: \$25.00

C. The permit fee for placement of portable storage containers under 11-8-6(2) are as follows:

30-day temporary permit, per portable storage container: \$75.00

(Ordinance 8448, sec. 1, adopted 11/14/06)

**§ 11-8-10. Appeal of fees to city manager.**

Any person wishing to appeal the payment of freight container or storage container permit fees may do so. Any person may appeal to the City Manager, or his designee, prior to paying the fee or after paying the fee. If a person wishes to appeal after payment of the fee, the person shall appeal to the City Manager, or his designee, in writing within ten calendar days of paying the fee. The City Manager, or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for people to challenge the accuracy and legal validity of their fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy are a refund of any excess fee paid, as well as other factors such as ensuring that a person may continue the operation of his or her business. Any person may appeal to the City Manager, or his designee, if the person believes that he or she cannot afford the fees. The person may seek an exemption from all or part of the fee.

The City Manager, or his designee, shall make his decision in writing within ten days of receiving the appeal. A person shall incur no financial hardship by exercising his or her right to appeal.

(Ordinance 8448, sec. 1, adopted 11/14/06)



Landscape Regulations

**Chapter 11-9**

**Landscape Regulations**

<b>§ 11-9-1.</b>	<b>Purpose.</b>	<b>§ 11-9-6.</b>	<b>Tree preservation.</b>
<b>§ 11-9-2.</b>	<b>Applicability.</b>	<b>§ 11-9-7.</b>	<b>Compliance.</b>
<b>§ 11-9-3.</b>	<b>Landscape design standards.</b>	<b>§ 11-9-8.</b>	<b>Exceptions and alternate proposals.</b>
<b>§ 11-9-4.</b>	<b>Landscape point system.</b>	<b>§ 11-9-9.</b>	<b>Definitions.</b>
<b>§ 11-9-5.</b>	<b>Landscape and irrigation plan submittal standards.</b>	<b>§ 11-9-10.</b>	<b>Penalty clause.</b>

***Editor's note(s)***—*Ord. No. 8889, § 1, passed May 10, 2011, amended former Ch. 11-9, §§ 11-9-1—11-9-8, in its entirety to read as herein set out. Former Ch. 11-9 derived from Ord. No. 8267, § 1, adopted Oct. 26, 2004.*

### **§ 11-9-1. Purpose.**

The purpose of the landscape regulations is to:

- A. Promote water conservation;
- B. Promote energy conservation;
- C. Encourage planting and preservation of trees and vegetation;
- D. Decrease runoff; and
- E. Enhance the aesthetic quality of Midland.

(Ordinance 8889, sec. 1, adopted 5/10/2011)

### **§ 11-9-2. Applicability.**

The provisions of these regulations shall apply to all land within the corporate limits of the City of Midland in any zoning district when new or expanded non-residential uses are proposed.

Sections 11-9-3 through 11-9-10 shall apply: when a building permit is required for new construction or the expansion of an existing structure, or when a parking lot permit for a new or expanded parking area is required.

(Ordinance 8889, sec. 1, adopted 5/10/2011)

### **§ 11-9-3. Landscape design standards.**

A landscape plan shall be submitted at the time a building or paving permit is requested from the Code Administration Division. Landscaping elements shall include but are not limited to plant material and shade trees. The use of water efficient landscaping is strongly encouraged and may also satisfy several of the required components of the landscape point system (11-9-4).

A. Plant material. A minimum of all of the adjacent right-of-way to the edge of street pavement or back of curb, as well as an additional ten percent of the total lot area shall be landscaped with plant material that includes but is not limited to turf grass, planted groundcover, and/or permeable groundcover with shrubs. Permeable groundcovers shall be resistant to wash-out, wind, and weed growth. The total lot area used to calculate the required ten percent shall not include the area of any existing or proposed structures. Plant material landscaping shall be located within the front and side yard setbacks.

B. Required trees.

1. Street front trees. Shade trees shall be provided at the equivalent of one tree per 30 linear feet of street frontage, or fraction thereof. Such trees shall be located where they are visible from a public street, public sidewalk, or paved parking area adjacent to a public street. Trees may be placed in the public right-of-way if adequate space is available and if they do not interfere with existing or future utility services. Approval of trees in the right-of-way is required from the Transportation Division Manager.
2. Parking lot trees. Shade trees shall be required in parking areas at a minimum rate of one tree

per 15 uncovered parking spaces as indicated below. The first 150 spaces shall include tree planting at a ratio of one tree for each 15 uncovered parking spaces. When 151 or more spaces are provided, the tree ratio shall be reduced to one shade tree per 20 parking spaces. Trees shall be planted throughout the parking area so that they become an integral part of the parking design.

Number of Spaces	Number of Required Trees
15 or fewer	1
16 to 30	2
31 to 45, etc.	3, etc.
150	10
200	13 (10 for the first 150 spaces plus 3 for additional 50)

- 3. All shade trees shall be a minimum of three-inch caliper as measured 12 inches above grade. Evergreen tree height shall be a minimum of six feet above grade.
- 4. All existing trees of three-inch caliper or greater or evergreen trees of six feet or more in height will be counted towards satisfying the requirements of this chapter, as long as such trees do not endanger safety, health and public welfare and are listed in Appendix A - Recommended Plant Material [on file with the city].
- 5. No tree or shrub shall be placed in such a manner as to create a hazard to vehicular or pedestrian traffic.

C. Undesirable trees species. The following trees, existing or proposed, shall not be credited towards tree requirements under this section.

- 1. Fruitless Mulberry - Moras alba
- 2. Siberian Elm - Ulmus pumila
- 3. Salt Cedar - Tamarix sp.

D. Irrigation systems.

- 1. Irrigation systems shall comply with state law requirements.
  - 2. All sprinkler systems shall be designed in such a manner as to minimize water runoff and to eliminate over spray into adjoining streets, driveways and parking areas. Refer to 11-9-4 Landscape Point System indicating additional points when drip irrigation is installed.
  - 3. Drip systems shall be required in confined spaces of four feet or less between paved surfaces.
- (Ordinance 8889, sec. 1, adopted 5/10/2011)

**§ 11-9-4. Landscape point system.**

All submitted landscape plans as required under Section 11-9-5 shall achieve a score of at least 20 points awarded for the following items:

A. Points awarded for:

1. Approved rainwater harvesting system10 Points
2. Permeable weed barrier installed2 Points
3. Drip irrigation system in all areas 15 feet or less in width10 Points
4. Tree quantity exceeds required quantity (per tree)2 Points
5. Drought tolerant sod is primary variety of turf grass5 Points
6. Landscape area is curbed or shaped to hold water2 Points
7. Landscape area exceeds requirement by an additional 10 percent of setback area2 Points
8. 50 percent of all plant material is water efficient as listed in Exhibit A2 Points
9. Polymer injection system or other water saving technology2 Points

B. Points deducted for:

1. More than 20 percent of the required areas to be landscaped with plant material, is proposed to be turf grass.5 Points
2. Existing tree material larger than 12-inch caliper is removed5 Points
3. Fescue and/or St. Augustine grass is primary type of turf grass10 Points
4. Slope within ten feet of street or parking area exceeds 20 percent5 Points
5. Undesirable tree species are used5 Points (Ordinance 8889, sec. 1, adopted 5/10/2011)

**§ 11-9-5. Landscape and irrigation plan submittal standards.**

At a minimum, landscape and irrigation construction plans shall include the following details and all additional information necessary to illustrate compliance with the regulations of this chapter and the illustration of those elements preferred within Section 11-9-4, Landscape point system.

A. Project description.

1. Project name and location.
2. Designer name and phone number.

B. Site elements.

1. North arrow.
2. Scale.
3. Structure locations.
4. Parking locations.
5. Property lines.
6. Setback lines.

7. Existing plant material and tree locations.
8. Proposed plant material and tree location.

C. Landscape legend.

1. Plant material/tree name.
2. Plant material/tree symbol.
3. Plant material/tree caliper.
4. Plant material/tree quantity.

D. Landscape ordinance compliance schedule.

1. Total lot area.
2. Total area of building footprint.
3. Total area required to be landscaped with plant material.
4. Total area that will be landscaped with plant material.
5. Total length of street frontage.
6. Total number of trees required per street frontage.
7. Total number of trees provided per street frontage.
8. Total number of parking spaces.
9. Total number of trees required per parking spaces.
10. Total number of trees provided per parking spaces.

E. Point system compliance schedule.

1. List of individual items and associated points.
2. Total point score.

F. Estimated monthly water usage.

(Ordinance 8889, sec. 1, adopted 5/10/2011)

**§ 11-9-6. Tree preservation.**

No living trees shall be removed from any public right-of-way in any zoning district without authorization of the Planning Division Manager and Transportation Division Manager.

(Ordinance 8889, sec. 1, adopted 5/10/2011)

**§ 11-9-7. Compliance.**

All landscaping shall be maintained and plant material shall be kept in a healthy and growing condition.

All requirements of this Chapter shall be completed prior to the receipt of a certificate of occupancy or within 60 days following receipt of a temporary certificate of occupancy or prior to an approved final

inspection of a parking lot permit from the Building Official.  
(Ordinance 8889, sec. 1, adopted 5/10/2011)

### **§ 11-9-8. Exceptions and alternate proposals.**

#### A. Plant material.

1. In cases when an alternate material is proposed or in cases where the desired location for plant materials for the required ten percent of lot area, is not within the front or side yard setback, the Planning Division Manager may approve alternate landscape locations.
2. In cases where the right-of-way and the required ten percent of lot area cannot be landscaped with plant material due to existing improvements, a public safety risk, or a practical hardship, the Building Official may issue a building permit.

#### B. Required trees.

1. In cases where the desired location for required street front trees will not allow them to be visible from the street, the Planning Division Manager may approve alternate locations. In no case shall an alternate proposal result in a net reduction of the tree requirement as measured in total tree caliper inches. Upon this approval, the Building Official may issue a building or paving permit.
2. In cases where street front trees and/or parking lot trees cannot be placed, due to existing improvements, a public safety risk, or a practical hardship, tree requirements may be satisfied by contributing to the City of Midland Parks and Recreation Endowment Fund, an amount equal to the cost of installation plus the current market rate per caliper inch necessary to meet the minimum requirements of Section 11-9-3(B) of this Chapter.

#### C. C-1, Central Area District.

1. In cases where street front trees and/or parking lot trees cannot be placed due to existing improvements, a public safety risk, or a practical hardship, and the property is located within the C-1, Central Area District, tree requirements may be satisfied by contributing to the City of Midland Parks and Recreation Endowment Fund an amount equal to the cost of installation plus the current market rate per caliper inch necessary to meet the minimum requirements of Section 11 -9-3(B) of this Chapter or by installing approved civic art and/or a similar streetscape enhancement component, if approved by the Planning and Zoning Commission or the City Council.

(Ordinance 8889, sec. 1, adopted 5/10/2011)

### **§ 11-9-9. Definitions.**

#### A. Certain words used in this Chapter are defined for the purposes hereof as follows:

1. Civic art: Sculpture, painting, murals or similar professionally designed elements in a size appropriate to the scale of the site which it is being located. Art should be of suitable material to resist normal wear and tear, and to be a permanent (15 year +) fixture to the site, and shall be placed in an approved location which is readily viewable by the passing general public. Art shall be of a manner which is not generally considered profane or offensive to the public, and must pass approval by the City prior to acquisition and placement.
2. Non-residential use: Any use other than single-family, town home, or two-family residential.

3. **Permeable ground cover:**Natural or man-made material that is placed a minimum of four inches in depth and is intended to reduce or eliminate regular watering, control weed growth, and inhibit water runoff while maintaining a pleasant aesthetic appearance. Mulches, plant material, and turf grass are not considered permeable ground cover. acceptable examples include: crushed or decomposed granite, gravel, cobblestone, ornamental glass, and lava rock.
4. **Practical hardship:**A hardship based on a site condition such as size, shape, area, and/or topography. A practical hardship cannot be self imposed, must be distinguished from a mere inconvenience, and may not compromise the spirit of this chapter.
5. **Rainwater harvesting:**A designed system of collecting rainfall from roofs or other structures, or gray water from buildings, and storing that water on site in engineered cisterns or similar containers so that it can be utilized for the irrigation of surrounding landscape materials.
6. **Shade tree:**A tree of suitable species that will develop a large elevated canopy of leaves and will provide a shade canopy sufficient enough to aid in the reduction of the overall heat index of the surrounding area. Trees typically classified as "Ornamentals" such as Bradford Pear, Crepe Myrtle, and Purple Leaf Plum, as well as all Pine species, do not qualify as a shade tree.
7. **Turf grass:**Cultivated grass typically used for lawns which require regular watering and mowing to maintain desired height, color, and aesthetic appearance.

(Ordinance 8889, sec. 1, adopted 5/10/2011)

#### **§ 11-9-10. Penalty clause.**

The penalty for violation of these regulations shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not to exceed \$2,000.00. A person shall not be in violation of this chapter if he fails to pay the fees.

(Ordinance 8889, sec. 1, adopted 5/10/2011)



**SITE PLAN REVIEW STANDARDS**

**Chapter 11-10**

**SITE PLAN REVIEW STANDARDS**

**§ 11-10-1. General considerations.**

**§ 11-10-2. Development standards.**

***Editor's note(s)***—*Ord. No. 8413, § 1, adopted May 23, 2006, created Ch. 10 of Title 11. Subsequently § 1 of Ord. No. 8447, adopted Sept. 26, 2006, amended and restated Ch. 10 of title 11 in its entirety as herein set out.*

### **§ 11-10-1. General considerations.**

- A. **Description**. This Chapter adds site development review and building material and design standards to the development criteria included in the base zoning district (Section 11-1-4). Development plans will be considered through an administrative process, which will allow review to occur in an expedient manner.
- B. **Purpose**. The purpose of development standards is to promote excellent site design in recognition that the quality of development impacts our residents and leaves a positive, lasting impression on visitors. These standards are intended to ensure that non-residential construction will be designed to create an appealing view from the street, provide a variety of architectural styles and building types, promote pedestrian access, and improve compatibility.
- C. **Compliance**. The following regulations shall apply to new construction, exterior alteration(s), and addition(s) to an existing facility for non-residential development or developments that have both residential and non-residential components (mixed-use) in all zoning districts except as noted below.
- D. **Exceptions**. The following are exempt from the requirements of this section:
  - 1. Commercial and industrial uses located in the C-3, Commercial District, LI, Light Industrial District, HI, Heavy Industrial District, or IP-1, Industrial Park District.
  - 2. Addition to an existing building if the addition is less than 20 percent of the existing building area.
  - 3. Alteration to an existing building if the alteration is less than 20 percent of any individual building elevation.

(Ordinance 8447, sec. 1, adopted 9/26/2006; Ordinance 8564, sec. 1, adopted 9/25/2007)

### **§ 11-10-2. Development standards.**

- A. **Site plan requirement**. Except as noted above, no development shall be lawful or permitted to proceed without final site plan approval by the Planning Division Manager. A request for site plan review shall contain the following, together with any other information reasonably necessary for the review process:
  - 1. A complete application, which shall include the name, address and telephone number of the applicant and the name, location and legal description of the project.
  - 2. Six copies of a fully dimensioned site plan, drawn to an appropriate engineering scale on paper no larger than 24-inches by 36-inches, which should include:
    - (a) A location map, a north arrow, scale, and date of drawing.
    - (b) The location and size of existing and proposed buildings and structures, including outside display areas, if permitted.
    - (c) Elevation drawings of all buildings and structures with dimensions and proposed building materials.
    - (d) Streets, easements, driveways and curb cuts, existing and proposed on the site and those

within 200 feet.

- (e) The location and size of existing utilities within or adjacent to the project site.
- (f) All off-street parking, with related driveways, loading spaces and walkways indicating the size, angle of stalls, and width of aisles, and a schedule of the number of parking spaces provided and the number required.
- (g) Solid waste collection plan indicating the location of dumpsters and screening.
- (h) Size and location of all proposed signage.
- (i) Location, height, and materials of any fence, retaining wall, or other type of screening.
- (j) Exterior lighting plan for the building and parking lot (may be by notation only).
- (k) A detailed landscaping plan in accordance with Chapter 11-9 Landscaping Regulations.
- (l) Sufficient information to show how the physical improvements associated with the proposed development interrelate with existing or proposed development on record for adjacent properties.
- (m) Provision for the adequate disposition of stormwater in accordance with the location, size, and type of ditches, gutters, and catch basins.
- (n) Other information deemed necessary by City of Midland staff due to the particular location and condition of the particular site.

B. Building construction standards.

1. Building Elements.

- (a) To avoid blank walls, wall planes shall have an offset or enhancement at a spacing of no greater than 50 feet, including awnings, canopies, alcoves, recessed entries, ornamental cornices, pillar posts, paint, reveals, or other similar elements.
- (b) Any separate buildings or detached accessory structures over 200 square feet in area shall be designed as an integral part of the primary building by use of complementary and/or consistent details such as colors, building materials, architectural elements and signage.
- (c) A detached accessory structure under 200 square feet in area shall adhere to subparagraph (b) or meet all of the following requirements:
  - i. The maximum height shall be nine feet;
  - ii. No signage or label shall be allowed; and
  - iii. The structure must be screened from the public right-of-way by a solid fence with a minimum height of six feet; details on the proposed screening fence shall be submitted for the review and approval of the Planning Division Manager.

2. Exterior materials and color. The use of metal arch buildings (Quonset hut or similar style) is hereby prohibited. All other buildings constructed of pre-engineered metal (R-Panel or similar style), non-decorative exposed concrete block, or wood-siding shall comply with the following:

- (a) In the AE through MF-2 Districts, O-1,0-2, NS, LR-1, LR-2, and C-1 Districts, and in the IP-2 and IP-3 Districts located at the Midland International Airport;
  - i. At least 75 percent of the primary and secondary elevations, excluding doors and windows, of all buildings to which these standards apply shall be finished in one or more of the materials listed in subparagraph c;
  - ii. The elevation opposite the primary elevation shall be exempt from the building material restrictions, except when said elevation is adjacent to a public street.
- (b) In the LR-3, C-2, and BP Districts, and in the IP-2 and IP-3 Districts, except those located at the Midland International Airport:
  - i. At least 75 percent of the primary elevation and at least 30 percent of the secondary elevations, excluding doors and windows, of all buildings to which these standards apply shall be finished in one or more of the materials listed in subparagraph c;
  - ii. The elevation opposite the primary elevation shall be exempt from the building materials restrictions, except when said elevation is adjacent to a public street.
- (c) Allowed materials:
  - i. Architectural metal panels (i.e. metal composite materials and composite metal cladding);
  - ii. Brick, natural stone, cast stone, rock, marble, granite, glass block or glass curtain walls, tile;
  - iii. Stucco or plaster;
  - iv. Synthetic stucco, i.e. Exterior Insulation Finish System (EIFS) or equivalent product;
  - v. Cellulose fiber-reinforced cement building board products, i.e. Hardi-Board or equivalent product; or
  - vi. Split-face concrete block, integrally-colored concrete block, poured-in-place concrete, and pre-cast concrete. Concrete products shall have an integral color or a color coating or be textured;
  - vii. The use of metal for roofing.
- (d) Use of color: The use of a single color and use of dark or neon colors, except for accent, should be avoided.
- (e) Compatibility: The site shall be developed in a manner that will not interfere with the property rights of others nor diminish the enjoyment of property in the general neighborhood. Building materials, colors, and design details should be compatible with the character and scale of an area or should contribute to the establishment of a positive character and scale for the area.

C. Site planning and design.

1. Pedestrian scale:

- (a) Open space should be concentrated at areas of significant activity, rather than dispersed

into small areas of low impact or on the periphery of the site.

- (b) Special lighting, distinctive paving materials, landscaping benches and other street furniture should be used to enhance the pedestrian scale.

2. Screening and buffering:

- (a) When a commercial structure is adjacent to property that is either zoned for or developed with residential uses, compatibility must be enhanced through the use of additional setbacks and/or buffering. A buffer may consist of solid fencing, landscaping, or berms.
- (b) A screening fence shall have a minimum height of six feet and shall consist of either brick, masonry, wood, or a combination thereof.
- (c) Exterior trash enclosures, storage areas, service yards, and mechanical equipment, both rooftop and ground, must be completely screened using the same materials, color and/or style as the primary building. The use of wooden or vinyl fences or chain link fences with slats for rooftop equipment screening is prohibited.
- (d) Multi-story buildings must be stepped back to preserve the scale of the adjacent low rise structures.
- (e) All buildings should be oriented so that utilitarian areas, such as loading docks and service bays, are located away from highly visible portions of the site or are appropriately screened.

D. Parking Lots and Access.

- 1. The site plan shall be designed to provide safe separation of pedestrian and vehicular traffic.
- 2. Adequate access and circulation shall be prohibited for public safety equipment and personnel (fire, police, etc.) and service vehicles and personnel (sanitation, postal delivery, etc.).
- 3. Drive-thru access shall be located and designed with adequate stacking space to avoid conflicts between pedestrians, parked vehicles, and circulating traffic.

E. Access to public streets.

- 1. All streets, driveways, parking areas, walkways and other public and private ways shall be designed to function properly without interfering with the orderly and safe operation of the public street system.
- 2. Whenever possible, access to parking and loading areas will be provided from arterial or collector streets.
- 3. Each proposed driveway connection to a street shall be referenced by centerline-to-centerline dimensions to all existing streets and to all alleys and driveways within the block which intersect the same street within 200 feet.
- 4. Joint vehicle access to multiple parcels shall be used to the greatest extent reasonable. Where staff or the Commission determines that a mutual access easement across multiple lots is appropriate for adequate internal and external circulation and access to public streets, an approved access easement or easements shall be established and filed for record prior to the granting of driveway access to the public street system.

F. Outdoor lighting.

1. Exterior lighting shall be for safety purposes only and shall not be used to attract attention to a business, except as otherwise permitted under the City's sign regulations.
2. Exterior lighting shall be aimed and shielded to prevent glare.
3. Lots abutting residential dwellings shall use low-level lighting and a maximum pole height of 12 feet to minimize light visibility on adjoining properties.
4. Lighting fixtures serving open-air parking lots shall be full cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA) in order to direct light downward.
5. Incandescent, fluorescent, color-corrected high-pressure sodium, or metal halide lighting is recommended. The use of solar-powered lighting is encouraged where feasible. Exterior lighting installations should include timers, dimmers, sensors, or photocell controllers that turn the light off during daylight hours or hours when lighting is not needed.

G. Particular standards for approval.

1. Setbacks and yards. Setbacks and appropriate yards shall conform to those specified in the zoning code for the applicable district.
2. Utilities. Utilities should be placed underground, except where overhead utilities are the prevalent condition of the area.
3. Site water runoff control. Control of stormwater and irrigation water runoff shall be an objective of site landscaping plans. Site landscaping plans and associated site grading shall be designed to avoid the release of irrigation water into streets and alleys.

H. Approval procedure and appeals.

1. Applications for administrative site plan approval shall be reviewed by City staff. Review will be conducted within 14 regular working days of a complete application submittal, or within such further time as agreed to by the applicant and staff. Failure of staff to act within 14 working days shall constitute site plan approval.
2. If the site plan is not approved as submitted, the applicant may appeal the decision to the Planning and Zoning Commission for consideration at a public hearing. The appeal process may require an application for planned district zoning.
3. Any proposed amendment to an approved site plan must be submitted as a new application for site plan approval.

(Ordinance 8413, sec. 1, adopted 5/23/2006; Ordinance 8447, sec. 1, adopted 9/26/2006; Ordinance 8473, sec. 1, adopted 12/19/2006; Ordinance 8644, sec. 1, adopted 6/10/2008; Ordinance 8731, sec. 1, adopted 6/23/2009)

**SITE PLAN REVIEW STANDARDS**

**Chapter 11-11**

**AIRPORT HEIGHT HAZARD AND COMPATIBLE LAND USE ZONING**

<b>§ 11-11-1.</b>	<b>Citation.</b>	<b>§ 11-11-11.</b>	<b>Permits and variances.</b>
<b>§ 11-11-2.</b>	<b>Purpose.</b>	<b>§ 11-11-12.</b>	<b>Board of adjustment.</b>
<b>§ 11-11-3.</b>	<b>Authority.</b>	<b>§ 11-11-13.</b>	<b>Appeals.</b>
<b>§ 11-11-4.</b>	<b>Definitions.</b>	<b>§ 11-11-14.</b>	<b>Judicial review.</b>
<b>§ 11-11-5.</b>	<b>Administrative agency.</b>	<b>§ 11-11-15.</b>	<b>Enforcement and remedies.</b>
<b>§ 11-11-6.</b>	<b>Height hazard zones.</b>	<b>§ 11-11-16.</b>	<b>Penalties.</b>
<b>§ 11-11-7.</b>	<b>Height limitations in height hazard zones.</b>	<b>§ 11-11-17.</b>	<b>Conflicting regulations.</b>
<b>§ 11-11-8.</b>	<b>Airport overlay zones.</b>	<b>§ 11-11-18.</b>	<b>Severability.</b>
<b>§ 11-11-9.</b>	<b>Land use restrictions.</b>	<b>§ 11-11-19.</b>	<b>Adherence with state laws.</b>
<b>§ 11-11-10.</b>	<b>Nonconforming uses, structures and trees.</b>	<b>§ 11-11-20.</b>	<b>Effective date.</b>

***Editor's note(s)***—*Ord. No. 9302, § 2, adopted Aug. 12, 2014, repealed former Ch. 11, §§ 11-11-1—11-11-20, in its entirety and enacted new provisions as herein set out. Former Ch. 11 pertained to the same subject matter and derived from Ord. No. 8598, § 1, adopted Dec. 11, 2007.*

#### **§ 11-11-1. Citation.**

This Chapter shall be known and may be cited as the Airport Height Hazard and Land Use Zoning Regulations for Midland International Airport and Midland Airpark of the City of Midland Municipal Code.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-2. Purpose.**

To ensure compliance with federal law and regulations governing public safety and compatible land uses around commercial airports and around authorized launch sites for reusable launch vehicles; to regulate and restrict the height of structures and objects of natural growth; and otherwise to regulate the use of property in the vicinity of the Midland International Airport or Midland Airpark by creating appropriate zones and establishing the boundaries thereof; to protect public safety by restricting incompatible land uses in the vicinity of Midland International Airport or Midland Airpark by creating appropriate zones and establishing the boundaries thereof; to provide for restrictions on use and development of property within such zones and the enforcement of such restrictions; to define certain terms used herein; to refer to the Midland International Airport Hazard Zoning Map, Midland International Airport Compatible Land Use Zoning AOZ-1, AOZ-2 and AOZ-3 Map, the Midland Airpark Hazard Zoning Map, and the Midland Airpark Compatible Land Use Zoning Map, all dated June 2014, and the Midland International Airport Compatible Land Use Zoning AOZ-4 Map dated April 2023, which are collectively incorporated by reference and made a part of this Chapter as if fully set forth herein; to provide for a board of adjustment; and to impose penalties.

(Ordinance 9302, sec. 2, adopted 8/12/14; Ordinance 10459 adopted 12/12/2023)

#### **§ 11-11-3. Authority.**

This Chapter is adopted pursuant to the authority conferred by the Airport Zoning Act, as codified in Texas Local Government Code, §§ 241.001 et seq. The City of Midland operates the Midland International Airport and Midland Airpark for public use such that the Airport and Airpark each fulfills an essential community purpose.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-4. Definitions.**

As used in this Chapter, unless the context otherwise requires, capitalized terms shall have the following meaning:

- A. ***Administrative Agency***:The appropriate person or office of a political subdivision which is responsible for the administration and enforcement of the regulations prescribed herein. The Administrative Agency is set forth in Section 11-11-5 of this Chapter.
- B. ***Aircraft***:Any device that is used or intended to be used for flight in the air, so long as such device is permitted to operate at an airport certificated by the Federal Aviation Administration under 14 Code of Federal Regulations Part 139 or at a site licensed by the Federal Aviation Administration to operate as a launch site under 14 Code of Federal Regulations Part 420.
- C. ***Airport***:The Midland International Airport, Midland, Texas or Midland Airpark, Midland, Texas;

including the ultimate development of such facilities, and all lands, buildings and other improvements owned, controlled, leased, or operated and maintained by the City of Midland appurtenant thereto.

- D. *Airport elevation:* The established elevation of the highest point on the runway, either existing or planned, at the airport measured in feet above mean sea level (MSL). The Airport Elevation of the Midland International Airport is 2,872 feet above MSL and the Airport Elevation of the Midland Airpark is 2,804 feet above MSL.
- E. *Airport hazard:* Any structure or object of natural growth that obstructs the air space required for the taking off, landing, and flight of Aircraft or that interferes with visual, radar, radio, or other systems for tracking, acquiring data relating to, monitoring, or controlling aircraft.
- F. *Airport Zoning Commission:* The City of Midland Planning and Zoning Commission.
- G. *Approach surface:* A surface longitudinally centered on the extended runway centerline, extending outward and upward from each end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 11-11-7 of this Chapter. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.
- H. *Approach, conical, horizontal, and transitional zones:* The zones set forth in Section 11-11-6 of this Chapter.
- I. *Board of Adjustment:* A board so designated by this Chapter as provided in the Texas Airport Zoning Act, codified at Texas Local Government Code §241.032. Provisions for the Board of Adjustment are set forth in Section 11-11-12 of this Chapter.
- J. *Compatible land use:* Any use of land adjacent to or in the immediate vicinity of the airport that does not endanger the health, safety, or welfare of the owners, occupants, or users of the land because of levels of noise or vibrations or the risk of personal injury or property damage created by the operations of the airport, including the taking off and landing of aircraft.
- K. *Conical Surface:* A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 feet horizontally for each one foot vertically for a horizontal distance of 4,000 feet.
- L. *Controlled compatible land use area:* An area of land located outside the airport boundaries and within a rectangle bounded by lines located no farther than 1½ statute miles from the centerline of an instrument or primary runway and lines located no farther than five statute miles from each end of the paved surface of an instrument or primary runway.
- M. *DNL (yearly day-night average sound level):* The 24-hour average sound level, in decibels, for the period from midnight to midnight obtained after the addition of ten decibels for the periods between midnight and 7:00 a.m. and between 10:00 p.m. and midnight (local time) as averaged over a span of one year. A mathematical definition of DNL may be found in Title 14 Code of Federal Regulations, Section 150.201.
- N. *Hazard to air navigation:* An obstruction or use of land determined to have a substantial adverse effect on the safe and efficient utilization of navigable airspace.
- O. *Height:* For the purpose of determining the height limits in all zones set forth in this Chapter and shown on the hazard zoning map, the datum shall be height above mean sea level (MSL) elevation as measured in feet.

- P. *Horizontal surface*: A horizontal plane one 150 feet above the established airport elevation.
- Q. *Instrument runway*: An existing or planned runway of at least 3,200 feet in length for which there is an existing or planned instrument landing procedure published by the Federal Aviation Administration or a defense agency of the federal government.
- R. *Noise level reduction (NLR)*: The amount of reduction in noise for any given point as achieved through the incorporation of noise attenuation measures incorporated into the design and construction of buildings. These reductions may be incorporated during initial construction or as additional construction for existing buildings.
- S. *Nonconforming use, structure, or tree*: Any structure, tree, or use of land which is inconsistent with the provisions of this Chapter and which is existing as of the effective date of this Chapter. This definition is for purposes of this Chapter only. The definition of nonconforming use found at Section 11-1-4.08 of this Code does not apply to areas zoned under the authority of the Texas Zoning Airport Zoning Act, which are outside the territorial jurisdiction of the City of Midland.
- T. *Nonprecision instrument runway*: Runway(s) having an instrument approach procedure utilizing air navigation facilities with only horizontal guidance or area type navigation equipment, for which nonprecision instrument approach procedures have been planned or approved.
- U. *Obstruction*: Any structure, tree, or other object, including a mobile object, which exceeds a limiting height set forth in Section 11-11-7 of this Chapter or is an airport hazard.
- V. *Other than utility runway*: A runway designed for and intended to be used by propeller driven aircraft of more than 12,500 pounds maximum gross weight and jet powered aircraft.
- W. *Person*: An individual, firm, partnership, corporation, company, association, joint stock association, or body politic and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.
- X. *Precision instrument runway*: Runway(s) having an existing or planned instrument approach procedure utilizing an instrument landing system (ILS) or other air navigation facilities or equipment which provides both horizontal and vertical guidance. This also includes a runway for which a precision instrument approach procedure has been approved or planned.
- Y. *Primary runway*: An existing or paved runway of at least 3,200 feet in length as shown on the official airport layout plan for the airport and on which a majority of the approaches to and departures from the airport occur.
- Z. *Primary surface*: A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each ultimate end of that runway. The width of the primary surface of a runway will be that width prescribed in the Federal Aviation Regulations (FAR) at Title 14, Code of Federal Regulations Part 77, for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the nearest point on the existing or ultimate runway centerline.
- The width of a primary surface for other than utility runway is 1,000 feet for precision instrument runways and 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile.
- AA. *Runway*: A defined area on the Airport prepared for the landing and taking off of aircraft along its length.

BB. Structure: An object, including a mobile object, constructed or installed by one or more persons including, but not limited to, buildings, towers, cranes, smokestacks, poles, earth formations, overhead transmission lines, and traverse ways. Traverse ways are considered to be the heights set forth in Title 14 Code of Federal Regulations, Part 77.23.

CC. Transitional surfaces: Surfaces extending perpendicular to the runway centerline and the extended runway centerline outward from the edges of the primary surface and the approach surfaces at a slope of seven feet horizontally for each one foot vertically to where they intersect the horizontal surface. transitional surfaces for those portions of the precision approach surface which extend through and beyond the limits of the conical surface extend at a slope of seven feet horizontally for each one foot vertically for a distance of 5,000 feet measured horizontally from either edge of the approach surface and perpendicular to the extended runway centerline.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-5. Administrative agency.**

It shall be the duty of the Office of Code Administration Division to administer and enforce the regulations prescribed herein. The Code Administration Division is hereby designated as the Administrative Agency of this Chapter.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-6. Height hazard zones.**

In order to carry out the provisions of this Chapter, there are hereby created and established certain geographic zones which include all of the land lying beneath the approach surfaces, conical surface, horizontal surface, and transitional surfaces as they apply to the airport. These surfaces are shown on the Midland International Airport Hazard Zoning Map and the Midland Airpark Hazard Zoning Map, each consisting of one (1) sheet, dated June 2014, which is hereby attached to this Chapter and made a part hereof. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

##### **A. Approach zones:**

- (1) Midland international airport. Runway 16R/34L and Runway 10/28 (Precision Instrument Runways) Approach zones are hereby established beneath the approach surfaces at each end of Runway 16R/34L and Runway 10/28 at Midland International Airport for precision instrument landings and takeoffs. The approach surface shall have an inner edge width of 1,000 feet, which coincides with the width of the primary surface, at a distance of 200 feet beyond each runway end, widening thereafter uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet beyond each end of the primary surface. The centerline of the approach surface is the continuation of the centerline of the runway.

Runway 16L/34R (Nonprecision Instrument Runways visibility minimums as low as  $\frac{3}{4}$  mile). Approach zones are hereby established beneath the approach surfaces at each end of Runway 16L/34R at Midland International Airport for nonprecision instrument landings and takeoffs. The approach surface shall have an inner edge width of 1,000 feet, which coincides with the width of the primary surface, at a distance of 200 feet beyond each runway end, widening thereafter uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet beyond each end of the primary surface. The centerline of the approach surface is the continuation of the centerline of the runway.

Runway 4/22 (Nonprecision Instrument Runways visibility minimums greater than  $\frac{3}{4}$  mile). Approach zones are hereby established beneath the Approach Surfaces at each end of Runway 4/22 at Midland International Airport for nonprecision instrument landings and takeoffs. The approach surface shall have an inner edge width of 500 feet, which coincides with the width of the primary surface, at a distance of 200 feet beyond each runway end, widening thereafter uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet beyond each end of the primary surface. The centerline of the approach surface is the continuation of the centerline of the runway.

(2) Midland airpark. Runway 7/25 and Runway 16/34 (Nonprecision Instrument Runways visibility minimums greater than  $\frac{3}{4}$  mile). Approach zones are hereby established beneath the Approach Surfaces at each end of Runway 7/25 and Runway 16/34 at Midland Airpark for nonprecision instrument landings and takeoffs. The approach surface shall have an inner edge width of 500 feet, which coincides with the width of the primary surface, at a distance of 200 feet beyond each runway end, widening thereafter uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet beyond each end of the primary surface. The centerline of the approach surface is the continuation of the centerline of the runway.

- B. Conical zone: A conical zone is hereby established beneath the conical surface at the airport which extends outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet.
- C. Horizontal zone: A horizontal zone is hereby established beneath the horizontal surface at the airport which is a plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 10,000 feet radii from the center of each end of the primary surface and connecting the adjacent arcs by lines tangent to those arcs.
- D. Transitional zones: Transitional Zones are hereby established beneath the transitional surfaces at the airport. Transitional surfaces, symmetrically located on either side of the runway, have variable widths as shown on the Midland International and Midland Airpark Airport Hazard Zoning Maps. Transitional surfaces extend outward perpendicular to the runway centerline and the extended runway centerline from the periphery of the primary surface and the approach surfaces at a slope of 7:1 to where they intersect the horizontal surface. Where the precision instrument runway approach surface projects through and beyond the conical surface, there are hereby established transitional zones beginning at the sides of and at the same elevation as the approach surface and extending for a horizontal distance of 5,000 feet as measured perpendicular to the extended runway centerline.

(Ordinance 9302, sec. 2, adopted 8/12/14)

### **§ 11-11-7. Height limitations in height hazard zones.**

Except as otherwise provided in Section 11-11-11 of this Chapter, no structure shall be erected, altered, or replaced and no tree shall be allowed to grow in any height hazard zone as defined in Section 11-11-6 to a height in excess of the applicable height limitations set forth in this Section 11-11-7. The applicable height limitations for each height hazard zone are as follows:

A. Approach zones:

- (1) Midland international airport.Runway 16R/34L and Runway 10/28 (Precision Instrument Runways): Slope one foot in height for each 50 feet in horizontal distance beginning at the end of and at the same elevation as the primary surface and extending to a point 10,000 feet from the end of the primary surface, and then rising one foot in height for each 40 feet in horizontal distance for an additional 40,000 feet from the end of the primary surface.

Runway 16L/34R and Runway 4/22 (Nonprecision Instrument Runways): Slope one foot in height for each 34 feet in horizontal distance beginning at the end of and at the same elevation as the primary surface and extending to a point 10,000 feet from the end of the primary surface.

- (2) Midland Airpark.Runway 7/25 and Runway 16/34 (Nonprecision Instrument Runways): Slope one foot in height for each 34 feet in horizontal distance beginning at the end of and at the same elevation as the primary surface and extending to a point 10,000 feet from the end of the primary surface.

B. Conical zone:Slopes one foot in height for each 20 feet in horizontal distance beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

C. Horizontal zone:Established at 150 feet above the airport elevation.

D. Transitional zones:Slope one foot in height for each seven feet in horizontal distance beginning at the sides of and at the same elevations as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation. There are also established height limits sloping one foot in height for each seven feet in horizontal distance beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping one foot in height for each seven feet in horizontal distance beginning at the sides of and at the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet perpendicular to the extended runway centerline.

E. Excepted height limitation:Nothing contained in this Chapter shall be construed as prohibiting the growth, construction or maintenance of any structure or tree to a height of up to 50 feet above the natural surface of the land at its location.

(Ordinance 9302, sec. 2, adopted 8/12/14)

**§ 11-11-8. Airport overlay zones.**

- A. Creation of airport overlay zones (AOZs):In order to carry out the provisions of this chapter, there are hereby created and established certain airport overlay zones for the purposes of regulating and promoting uses of land within each zone that do not endanger the health, safety, and general welfare of the owners, occupants, or users of the land because of noise or vibrations or the risk of personal injury or property damage created by the operations of the airport, including the taking off and landing of aircraft. Within the controlled compatible land use areas around Midland International Airport and the Midland Airpark, four AOZs are defined in this section 11-11-8. These zones are shown on the Midland Airpark Compatible Land Use Zoning Map and the Midland International Airport Compatible Land Use Zoning AOZ-1, AOZ-2 and AOZ-3 Map, each dated June 2014, and the Midland International Airport Compatible Land Use Zoning AOZ-4 Map dated April 2023. All four zones are used at Midland International Airport, while only three zones are used at the Midland Airpark. The AOZs are hereby defined and established as follows:

- (1) Airport Overlay Zone 1 (AOZ-1): That portion of the controlled compatible land use area between the 65 and 70 DNL contour lines.
  - (2) Airport Overlay Zone 2 (AOZ-2): That portion of the controlled compatible land use area between the 70 and 75 DNL contour lines.
  - (3) Airport Overlay Zone 3 (AOZ-3): That portion of the controlled compatible land use area between the 75 and 80 DNL contour lines.
  - (4) Airport Overlay Zone 4 (AOZ-4): That portion of the controlled compatible land use area designated as launch site safety corridors.
- B. Permitted uses: All uses are permitted within each applicable AOZ that are permitted by other existing zoning ordinances except as prohibited or regulated by the zoning regulations in this Chapter. Where there is a conflict between the AOZ restrictions and other zoning ordinances or where there are no other existing zoning ordinances, the provisions of the AOZ shall prevail. Where there is a conflict between the restrictions in overlapping AOZs, the more restrictive provisions prevail.
- C. Prohibited uses: Table 1 attached to this Chapter enumerates land uses that are prohibited or restricted within each AOZ.

**Editor's note(s)**—Table 1 is not set out herein but is available at the Office of the City Secretary.  
(Ordinance 9302, sec. 2, adopted 8/12/14; Ordinance 10459 adopted 12/12/2023)

#### **§ 11-11-9. Land use restrictions.**

Except as provided in Section 11-11-10 of this Chapter, no use may be made of land or water within the controlled compatible land use area established by this Chapter in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create potential bird strike hazards or wildlife attractants, or otherwise in any way endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the airport.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-10. Nonconforming uses, structures and trees.**

- A. Nonconforming uses: Nothing contained in this Chapter shall be construed as requiring changes in or interference with the continuance of any nonconforming use of land.
- B. Nonconforming structures: Nothing contained in this Chapter shall be construed as to require the removal, lowering, or other change to any existing nonconforming structure or to require the lowering of any phases or elements of a multiphase structure that received a determination of no hazard by the Federal Aviation Administration under 14 Code of Federal Regulations Part 77 before this Chapter was adopted, regardless of whether actual construction on the multiphase Structure has commenced.

A nonconforming structure that received a determination of no hazard by the Federal Aviation Administration under 14 C.F.R. Part 77 before this Chapter was adopted shall be considered in violation of this ordinance immediately upon expiration or revocation of the determination of no hazard by the Federal Aviation Administration unless the property owner of a nonconforming use

applies for and receives a new determination of no hazard from the Federal Aviation Administration prior to the expiration of any previous determination.

Temporary structures that received a determination of no hazard by the Federal Aviation Administration under 14 Code of Federal Regulations Part 77 before this Chapter was adopted will continue to be determined as not in violation of this ordinance as long as a determination of no hazard by the Federal Aviation Administration remains in effect.

- C. Nonconforming trees. Nothing in this Chapter shall be construed as to require the removal, lowering, or other change to any nonconforming tree. However, any nonconforming tree which grows to a greater height than it was as of the effective date of this Chapter is subject to the provisions of this Chapter as described in Section 11-11-7 herein above.

(Ordinance 9302, sec. 2, adopted 8/12/14)

### **§ 11-11-11. Permits and variances.**

A. Permits.

- (1) Any person who desires to replace, rebuild, substantially change, or repair a nonconforming structure or replace or replant a nonconforming tree must apply for and receive a permit, and the permit shall be granted, provided such permit is otherwise consistent with this Chapter. However, no permit shall be granted which would allow the establishment of an airport hazard or allow a nonconforming structure or tree to exceed its original height or become a greater hazard to air navigation than it was at the time of the adoption of this Chapter, or which would allow the establishment of a nonconforming use. Applications for permits shall be submitted to and issued by the Administrative Agency.
- (2) Any person who desires to erect a new structure or rebuild, replace, or enlarge an existing structure or establish a new use or substantially change an existing use in AOZ-4 must apply for and receive a permit. A permit shall be granted unless the new structure or the new use would be a height hazard or a prohibited land use as set forth in Sections 11-11-8, 11-11-9, and Table 1 of this Chapter or would otherwise violate this Chapter. Applications for permits shall be submitted to and issued by the Administrative Agency.

B. Variances.

- (1) A person who desires to use property in a manner inconsistent with this Chapter may apply to the Board of Adjustment for a variance.
- (2) If the applicant for variance seeks to erect or alter a structure or allow the growth of a tree which would exceed the Height limits contained in this Chapter, the application must be accompanied by a determination from the Federal Aviation Administration under 14 Code of Federal Regulations Part 77 that the proposed Structure or tree would not constitute a hazard to air navigation.
- (3) The board of adjustment shall not issue a variance unless it shall first make findings and show in its minutes such facts and/or special conditions by which each of the following conditions listed below has been satisfied.
  - (a) A literal application or enforcement of the regulations will result in unnecessary hardship; and
  - (b) The granting of relief would:

- (1) Result in substantial justice being done;
- (2) Not be contrary to the public interest; and
- (3) Be in accordance with the spirit of the regulation and this Chapter.

In making its findings under (b)(2) and (b)(3) above, the Board shall consider whether the granting of relief would jeopardize public health and safety or otherwise result in the creation of an unacceptable safety risk as defined in 14 Code of Federal Regulations Parts 420 and 431; and shall consider whether the granting of relief would impair the ability of the City of Midland to accommodate aircraft which use, or are projected to use, the airport or airpark.

The Board shall allow a variance from the regulations in this Chapter if the Board finds that all of the conditions above have been satisfied. If the Board finds that not all such conditions have been satisfied, its findings must state which conditions have not been satisfied.

- (4) The Board of Adjustment shall consult with the Director of Airports before making its findings and shall set forth in its minutes the objections or concurrence of the Director of Airports to each such finding.

C. Requirements and reasonable conditions.

- (1) Any permit granted may, at the discretion of the Administrative Agency, impose a requirement to install and maintain, at the expense of the permit applicant, any markers or lights as may be necessary to indicate to flyers the presence of an airport hazard.
- (2) A permit for a new structure in AOZ-4 will not be granted until the design and construction of the proposed structure has been approved by the City Engineer of the City of Midland, after consultation with the Director of Airports.
- (3) Any variance granted may, at the discretion of the Board of Adjustment, include any reasonable conditions as may be necessary to accomplish the purpose of this Chapter.

D. Exceptions. No permit shall be required for any activity on property owned or leased by the City of Midland or its tenants, or the federal government.

(Ordinance 9302, sec. 2, adopted 8/12/14)

**§ 11-11-12. Board of adjustment.**

A. Pursuant to Texas Local Government Code § 241.032, the City of Midland Board of Adjustment is hereby designated as the Board of Adjustment for the purposes of this Chapter and shall have and exercise the following powers:

- (1) To hear and, after consultation with the Director of Airports of the City of Midland, decide appeals from any order, requirement, decision, or determination made by the Administrative Agency in the administration or enforcement of this Chapter;
- (2) To hear and, after consultation with the Director of Airports of the City of Midland, decide special exceptions to the terms of this Chapter when the board is required to do so; and
- (3) To hear and, after consultation with the Director of Airports of the City of Midland, decide specific variances regarding the administration or enforcement of this Chapter.

B. The Board of Adjustment organization and operation shall be in accordance with Title XI Planning and Development, Chapter 11-1 Zoning, Section 11-1-7 of the City of Midland Municipal Code. If Section 11-1-12 conflicts with the provisions of this Chapter, this Chapter shall govern with respect to matters related to airport zoning regulations imposed pursuant to Texas Local Government Code §§ 241.001 et seq.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-13. Appeals.**

- A. A decision of the Administrative Agency made in its administration of this Chapter may be appealed to the Board of Adjustment by any person who is aggrieved by the decision or by any taxpayer who is affected by the decision or by the governing body of a political subdivision that believes the decision is the result of an improper application of this Chapter.
- B. All appeals hereunder must be taken in the time period and by the procedures set forth in Section 11-1-7 of this Code.
- C. An appeal shall stay all proceedings in furtherance of the action appealed unless the Administrative Agency certifies in writing to the Board of Adjustment that by reason of the facts stated in the certificate, a stay would, in the opinion of the Administrative Agency, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment on notice to the Administrative Agency and on due cause shown.
- D. In accordance with Section 11-1-7 of this Code, the Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, and/or by attorney.
- E. The Board of Adjustment, after consultation with the Director of Airports of the City of Midland, whose objections or concurrence shall be set forth in writing, may reverse or affirm, in whole or in part, or modify the Administrative Agency's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for this purpose the board of adjustment has the same authority as the Administrative Agency.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-14. Judicial review.**

Any person aggrieved or any taxpayer who is affected by a decision of the Board of Adjustment, or a governing body of a political subdivision may present to a court of record a petition stating that the decision of the Board of Adjustment is illegal and specifying the grounds of the illegality as provided by and in accordance with the provisions of Texas Local Government Code, § 241.041.

(Ordinance 9302, sec. 2, adopted 8/12/14)

#### **§ 11-11-15. Enforcement and remedies.**

The governing body of the City of Midland, Texas may institute in a court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this Chapter or of any order or ruling made in connection with their administration or enforcement including, but not limited to, an action for injunctive relief.

(Ordinance 9302, sec. 2, adopted 8/12/14)

**§ 11-11-16. Penalties.**

Each violation of this Chapter or of any order or ruling promulgated hereunder shall constitute a misdemeanor and upon conviction shall be punishable by a fine of not more than \$2,000.00 and each day a violation continues to exist shall constitute a separate offense.

(Ordinance 9302, sec. 2, adopted 8/12/14)

**§ 11-11-17. Conflicting regulations.**

Where there exists a conflict between any of the regulations or limitations prescribed herein and any other regulation applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall control.

(Ordinance 9302, sec. 2, adopted 8/12/14)

**§ 11-11-18. Severability.**

If any of the provisions of this Chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provision or application and to this end, the provisions of this Chapter are declared to be severable.

(Ordinance 9302, sec. 2, adopted 8/12/14)

**§ 11-11-19. Adherence with state laws.**

Any actions brought forth by any Person or land owner as a result of the administration, enforcement, or the contesting of this Chapter will be in accordance with the provisions of Texas Local Government Code,

§ 241.001 et seq and other applicable state laws.

(Ordinance 9302, sec. 2, adopted 8/12/14)

**§ 11-11-20. Effective date.**

Whereas, the immediate operation of the provisions of this Chapter is necessary for the preservation of the public health, safety, and general welfare, an emergency is hereby declared to exist and this Chapter shall be in full force and effect from and after their adoption by the City of Midland.

(Ordinance 9302, sec. 2, adopted 8/12/14)



STORMWATER MANAGEMENT CODE

**Chapter 11-12**

**STORMWATER MANAGEMENT CODE**

	<b>ARTICLE I IN GENERAL</b>	<b>§ 11-12-6.</b>	<b>Citizen participation. Enforcement, remedies and penalties.</b>
<b>§ 11-12-1.</b>	<b>General Provisions.</b>		
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	<b>ARTICLE II ILLICIT CONNECTIONS AND DISCHARGES</b>	<b>§ 11-12-8.</b>	<b>Construction activity. Industrial activity.</b>
<b>§ 11-12-3.</b>	<b>Prohibition of illicit connections and illicit discharges.</b>	<b>§ 11-12-9.</b>	<b>Stormwater requirements for new developments and redevelopments.</b>
	<b>ARTICLE III ENFORCEMENT</b>	<b>§ 11-12-10.</b>	
<b>§ 11-12-4.</b>	<b>Entry and inspections.</b>		
<b>§ 11-12-5.</b>	<b>Spill or discharge reporting and cleanup.</b>	<b>§ 11-12-11.</b>	<b>Appeals to the city manager.</b>
			<b>ARTICLE IV SPECIFIC PROGRAM REQUIREMENTS</b>
			<b>Construction activity. Industrial activity. Stormwater requirements for new developments and redevelopments.</b>
			<b>ARTICLE V APPEALS</b>
			<b>Appeals to the city manager.</b>

## **ARTICLE I IN GENERAL**

### **§ 11-12-1. General Provisions.**

- (A) Intent and purposes. This Chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) of the City of Midland, Texas, in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) Small MS4 General Permit process. The purpose of this Chapter is to set forth the minimum requirements for Stormwater management to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the municipal stormwater drainage system to the maximum extent practicable, as required by federal law. The objectives of this Chapter are:
1. To prevent the discharge of contaminated stormwater runoff into the municipal separate storm sewer system (MS4) and natural waters within the City of Midland;
  2. To prohibit illicit connections to the MS4;
  3. To control the discharge of spills and prohibit dumping or disposal of materials other than stormwater into the small MS4;
  4. To enforce compliance with the City of Midland's ordinances, permits, contracts, or orders;
  5. To require installation, implementation, and maintenance of control measures;
  6. To receive and collect information, such as Stormwater plans, inspection reports, and other information deemed necessary to assess compliance with said permit, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;
  7. To establish legal authority to implement inspection and enforcement procedures to ensure compliance with this Chapter;
  8. To respond to non-compliance with best management practices (BMPs) consistent with the City of Midland's ordinances or other regulatory mechanism(s);
  9. To assess penalties, including monetary, civil, or criminal penalties; and
  10. To enter into interagency or interlocal agreements, as necessary.
- (B) Compatibility with other permit and ordinance requirements. This Chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.
- (C) Administration. The Assistant City Manager to whom the Director of Engineering Services reports shall administer, implement, and enforce the provisions of this Chapter, and shall hereafter be referred to as the Stormwater Administrator throughout this Chapter. Any powers granted or duties imposed upon the Stormwater Administrator of the City of Midland may be delegated in writing by the Stormwater Administrator of the City of Midland to persons or entities acting in the beneficial interest of City of Midland.

(D) Ultimate responsibility. The standards set forth herein and promulgated pursuant to this Chapter are minimum standards. This Chapter does not intend nor imply that compliance by any person will ensure prevention of contamination, pollution, and unauthorized discharge of pollutants.

(E) Interlocal agreements. The City of Midland has the authority to enter into interagency or interlocal agreements, as necessary in accordance with TPDES Small MS4 General Permit, Part III Section A.3.(a)(2)i, as may be amended.

(Ordinance 9513, sec. 1, adopted 12/15/15)

## **§ 11-12-2. Definitions.**

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

Agricultural stormwater runoff: Any stormwater runoff from orchards, cultivated crops, pastures, range lands, and other nonpoint source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR § 122.23, or discharges from concentrated aquatic animal production facilities as defined in 40 CFR § 122.24.

Adverse impact: A detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

Appeal: A request for a review of the Stormwater Administrator's interpretation or application, directly or by delegation of authority, of a provision, rule, standard, regulation, determination or requirement set forth in this Chapter.

Applicant: Property owner or agent of a property owner who filed an application for a stormwater authorization under a TPDES general permit or an individual TPDES permit.

Authorized enforcement agency: Employees or designees of the Stormwater Administrator of the City of Midland, Texas, or the Texas Commission on Environmental Quality (TCEQ) have authority to enforce this Chapter and/or the TPDES regulations.

Best Management Practices (BMPs): Activities or structural improvements that help reduce the quantity and improve the quality of Stormwater Runoff by preventing or reducing the amount of pollution discharged from a site. BMPs may include a list of recommended activities, maintenance procedures, prohibitions of practices, structural controls, local ordinances, and other management practices.

Building: Any structure, either temporary or permanent, with walls and a roof, designed to shelter a Person, animal, or property, and occupying more than 100 square feet of area.

CFR: The Code of Federal Regulations (CFR) contains all of the rules published in the Federal Register by the executive branch agencies of the Federal Government (e.g., EPA).

Clean Water Act (CWA): The Clean Water Act, as defined in 33 USC § 1251 et seq., as may be amended, establishes the basic structure for regulating Discharges of Pollutants into waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted by Congress in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded by Congress in 1972. The "Clean Water Act" became the Act's common name with amendments in 1972.

Construction activity: Soil disturbance, including clearing, grading, and excavating, and not including routine maintenance.

Construction site: Any construction site required by the Clean Water Act to operate in accordance with the conditions and authorization of a NPDES/TPDES permit to discharge stormwater associated with

construction activity.

Construction site notice (CSN): A notice posted at a construction site in a location that is safely and readily visible to the general public and to representatives of agencies having jurisdictional authority that certifies the construction site operates under and complies with the TPDES General Permit for Construction Stormwater and states the on-site location of the SWP3. A copy of the CSN must be submitted to the MS4 operator prior to commencing construction activities.

Contaminated: Containing a harmful quantity of any substance.

Contamination: The presence of or entry into a public water supply system, the municipal stormwater drainage system, waters of the state, or waters of the United States of any substance which may be harmful to the public health and/or the quality of the water.

Conveyance: Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

Discharge: Any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the municipal stormwater drainage system or into waters of the United States. This includes, but is not limited to, household hazardous waste, used motor vehicle fluids, and collected quantities of grass clippings, leaf litter, and animal wastes.

Drainage and stormwater easement: An easement from the owner of a private stormwater facility to the local government, guaranteeing long-term maintenance of stormwater management practices, and allowing access by the local government for inspection and corrective actions if needed.

Environmental Protection Agency (EPA): The United States Environmental Protection Agency, or any duly authorized official of said agency.

Facility: Any facility, industrial facility or construction site, required by the Clean Water Act to have a permit to Discharge Stormwater associated with industrial or construction activity.

General Permit for Construction Stormwater: The permit, issued by TCEQ under the TPDES permitting program, that authorizes stormwater and certain non-stormwater discharges associated with construction activities to surface water in the state. The TPDES General Permit for Construction Stormwater contains requirements applicable to all construction activities that are eligible for coverage under said permit. For the purposes of this Chapter, the TPDES General Permit for Construction Stormwater is TPDES General Permit Number TXR150000 Relating to Stormwater Discharges Associated With Construction Activities, issued by TCEQ on February 19, 2013, and effective March 5, 2013, as amended or renewed thereafter.

Harmful quantity: The amount of any substance that will cause Pollution of waters of the state, the municipal stormwater drainage system, or that will present or may present imminent and substantial danger to the environment or to the health or welfare of persons.

Hazardous materials: Any item or agent (biological, chemical, physical) that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

Hyperchlorinated water: Water resulting from hyperchlorination of waterlines or vessels, with a chlorine concentration greater than 10 milligrams per liter (mg/L).

Illicit connection: Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer system.

Illicit discharge: Any discharge to a municipal separate storm sewer system that is not entirely composed of Stormwater, except Discharges pursuant to a TPDES stormwater general permit or a separate authorization and discharges resulting from emergency firefighting activities.

Industrial facility: Any facility required by the Clean Water Act to have a permit to discharge stormwater associated with industrial activity subject to NPDES/TPDES Industrial Permits as defined in 40 CFR § 122.26(b)(14).

Land disturbance activity: Any activity which changes the volume or discharge rate of stormwater runoff from the land surface. This includes grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

Mean high water mark (MHW): The average of the higher high water height of each tidal day observed over the National Tidal Datum Epoch. For stations with shorter series, comparison of simultaneous observations with a control tide station is made in order to derive the equivalent datum of the National Tidal Datum Epoch.

MS4: Municipal separate storm sewer system; see also *municipal stormwater drainage system*.

Multi sector general permit: The permit, issued by TCEQ under the TPDES permitting program, that authorizes point source Discharges of Stormwater and certain Non-Stormwater associated with industrial activities to surface water in the state, including direct discharges to MS4s. The TPDES multi sector general permit contains effluent limitations and requirements applicable to all industrial activities that are eligible for coverage under said permit. For the purposes of this Chapter, the TPDES Multi Sector General Permit is TPDES General Permit Number TXR050000, issued by TCEQ on July 22, 2011, and effective August 14, 2011, as amended or renewed thereafter.

Municipal stormwater drainage system: The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying Stormwater, and which is not used for collecting or conveying sewage. Also designated as municipal separate storm sewer system (*MS4*).

National Oceanic and Atmospheric Administration (NOAA): The United States National Oceanic and Atmospheric Administration, or any duly authorized official or entity of said agency.

National Pollutant Discharge Elimination System (NPDES): Permit program which controls water Pollution by regulating point sources that Discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches.

National Tidal Datum Epoch (NTDE): The specific 19-year period adopted by the NOAA's National Ocean Service as the official time segment over which tide observations are taken and reduced to obtain mean values (e.g., mean lower low water, etc.) for tidal datum's. It is necessary for standardization because of periodic and apparent secular trends in sea level. The present NTDE is 1983 through 2001 and is actively considered for revision every 20—25 years.

Non-stormwater discharge: Any discharge to the storm drain system that is not composed entirely of stormwater.

Notice of intent (NOI): A written submission to the TCEQ requesting coverage under the TPDES General Permit for Construction Stormwater, and certifying that the construction activities will comply with the site SWP3. A copy of the NOI must be submitted to the MS4 operator prior to commencing construction activities.

Person: Any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.

Playa lake: Any of several naturally occurring, broad, shallow, roughly circular depressions of varying sizes and depths that serve as natural detention basins for stormwater flows within the City.

Pollutant: In accordance with the Texas Water Code § 26.001(13), as may be amended, a pollutant includes the following: dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state.

Pollution: The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water of the state or water of the United States, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal stormwater drainage system, the water of the state, or the waters of the United States.

Routine maintenance: Work that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site, such as the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Small MS4: For the purposes of this Chapter, a municipal separate storm sewer system, or portion thereof, owned and operated by the city that is located within an urbanized area as determined by the U.S. Census Bureau 2000 or 2010 decennial census, and subject to the TPDES Small MS4 General Permit conditions and authorization.

Small MS4 general permit: The permit, issued by TCEQ, that authorizes Stormwater and certain non-stormwater discharges from small MS4s to Surface Water in the State under the TPDES permitting program. The TPDES Small MS4 General Permit contains requirements applicable to all small MS4s that are eligible for coverage under said permit. For the purposes of this Chapter, the TPDES Small MS4 General Permit is TCEQ General Permit Number TXR040000 Relating to Discharges from Small Municipal Separate Storm Sewer Systems, issued by TCEQ and effective December 13, 2013, as amended or renewed thereafter.

Stormwater and stormwater runoff: Rainfall runoff, snow-melt runoff, and surface runoff and drainage.

Stormwater control practices: Structural or nonstructural measures to minimize stormwater runoff to surface water in the state.

Stormwater management: The use of structural or non-structural control practices/BMPs designed to reduce stormwater pollutant runoff, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality.

Stormwater pollution prevention plan (SWP3): A document that describes the best management practices and activities to be implemented by the permit holder to identify sources of pollution or contamination at a site and actions to eliminate or reduce pollutant discharges.

Surface water in the State: Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the State (from the Mean High Water Mark (MHWM) out 10.36 miles into the Gulf of Mexico), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or subject to the jurisdiction of the State; except that waters in treatment systems which are authorized by State or federal law, regulation, or permit, and which are created for the purpose of waste

treatment are not considered to be water in the State.

TCEQ: Texas Commission on Environmental Quality or successor. Municipal separate storm sewer system interest delegated to the TCEQ upon authority of the EPA.

Texas Pollutant Discharge Elimination System (TPDES) Stormwater Discharge Permit: A permit issued by the TCEQ, under the authority of Texas Water Code § 26.027 or 26.040, as may be amended, that authorizes the Discharge of Pollutants into or adjacent water in the state. The TPDES program is administered under the authority delegated pursuant to 33 U.S.C. § 1342(b), as may be amended.

Unauthorized discharge: Any direct or indirect non-stormwater discharge to the municipal stormwater drainage system except as exempted in Section 11-12-3(A)2 of this Chapter.

USC or U.S.C.: The United States Code (USC) is the codification by subject matter of the general and permanent laws of the United States. The USC does not include regulations issued by the executive branch agencies of the federal government (e.g., EPA).

Violation: The commission of any act that is prohibited by this Chapter or the failure to perform any act that is required by this Chapter is a violation.

(Ordinance 9513, sec. 1, adopted 12/15/15)

## **ARTICLE II ILLICIT CONNECTIONS AND DISCHARGES**

### **§ 11-12-3. Prohibition of illicit connections and illicit discharges.**

The City of Midland has the authority to prohibit illicit discharges and illicit connections in accordance with TPDES Small MS4 General Permit, Part III Section A.3.(a)(2)a, as may be amended. This Chapter prohibits unauthorized discharges into the storm drain system. No person shall release discharges into the municipal separate storm sewer system containing any pollutants that cause or contribute to a violation of water quality standards, other than stormwater or authorized non-stormwater discharges.

The City of Midland has the authority to respond to and control spills, leaks, and other accidental discharges of materials into the MS4.

#### **(A) General prohibition.**

1. No person may dispose of, or release, or introduce or cause to be introduced into the MS4 a Discharge that is not composed entirely of Stormwater.
2. Allowable non-stormwater discharges. It is an affirmative defense to prosecution or any enforcement action for violation of this Chapter, upon presentation of evidence by the discharger, that the Discharge was composed entirely of one or more of the following categories of discharges:
  - a. Water line flushing (excluding discharges of hyperchlorinated water, unless first dechlorinated and discharges are not expected to have an adverse impact on aquatic life);
  - b. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources, unless prohibited by elsewhere in the City Code;
  - c. Discharges from potable water sources;
  - d. Uncontaminated pumped ground water;
  - e. Individual residential vehicle washing or commercial mobile vehicle washing on private property;
  - f. Street wash water after all/visible debris and sediments have been removed and does not contain soap or other chemicals either added for cleaning or washed off the surface being cleaned;
  - g. Discharges or flows from emergency firefighting activities (firefighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
  - h. Agricultural stormwater runoff as defined in this Chapter;
  - i. Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1);
  - j. Non-stormwater discharges specifically listed in the TPDES Multi-Sector General Permit or the TPDES General Permit for Construction Stormwater; and
  - k. Other similar occasional incidental non-stormwater discharges, unless the TCEQ develops

permits or regulations addressing these discharges.

3. The burden of proof that a discharge was composed entirely of one or more of the categories in Section 11-12-3(A)2 and that it was not a source of a Pollutant or Pollutants to the MS4, or to playa lakes, or to the surface water in the State or the waters of the U.S. is upon the person or entity responsible for the discharge.
4. No person may dispose of, release, introduce or cause to be introduced into the MS4 any harmful quantity of any substance.

(B) Specific prohibits and requirements.

1. The specific prohibitions and requirements in this Section are not a complete list of all the discharges prohibited by the general prohibition.
2. No person may dispose of, release, introduce or cause to be introduced into the MS4 any discharge that causes or contributes to a violation of a water quality standard, or any state-issued Discharge permit for Discharges from its MS4.
3. No person may dispose of, release, discharge, or otherwise introduce, cause, suffer, allow, or permit to be introduced any of the following substances into the MS4:
  - a. Oil, cutting oil, petroleum products, and other motor vehicle fluids, such as gasoline, antifreeze, oil, transmission fluid, hydraulic fluid, brake fluid, or power steering fluid;
  - b. Industrial waste;
  - c. Hazardous waste, including household hazardous waste;
  - d. Any liquids, solids or gases or any other substances which are a fire or other hazard to the system, which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fires, explosions, or be injurious in any other way to the facilities or operation of the stormwater system;
  - e. Domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  - f. Free or emulsified fats, waxes, greases or oils;
  - g. Garbage, rubbish, collected yard waste, refuse, or other floatable material;
  - h. Waste water from the testing of fire protection systems;
  - i. Wastewater from washout of concrete and wastewater from water well drilling operations, unless managed by an appropriate control;
  - j. Wastewater from washout and cleanout of stucco, paint, from release oils, and other construction materials;
  - k. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
  - l. Soaps and solvents used in vehicle and equipment washing;
  - m. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate BMPs; or
  - n. Swimming pool, spa or fountain water unless proof of dechlorination or removal of

chemicals is provided by the discharger, or filter backwash from, or waste from the construction, maintenance or repair of, a swimming pool, spa, or fountain.

4. No person may dispose of, release, introduce or cause to be introduced into the MS4, waters of the state or of the U.S., or playa lakes, any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, landfilling, or other Construction Activities (including any placement, movement, removal, or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.
5. No person may connect a line conveying sanitary sewage, domestic, industrial or a combination of both to the MS4, or allow such a connection to continue.

(Ordinance 9513, sec. 1, adopted 12/15/15)

## **ARTICLE III ENFORCEMENT**

### **§ 11-12-4. Entry and inspections.**

- (A) The Stormwater Administrator or designated representative has the authority to enter and inspect private property, including facilities, equipment, practices, or operations related to stormwater discharges to the Small MS4 in accordance with the TPDES Small MS4 General Permit, Part III Section A.3.(a)(2)f, as may be amended.
- (B) Admittance to the site to be inspected shall be requested at a reasonable time during normal working hours unless it is determined by the Stormwater Administrator that imminent and substantial danger exists.
- (C) In the event the property owner or operator refuses entry after an inspection request has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(Ordinance 9513, sec. 1, adopted 12/15/15)

### **§ 11-12-5. Spill or discharge reporting and cleanup.**

- (A) Reporting requirements.
  - 1. Hazardous spills and discharges. A discharger of a reportable quantity of a hazardous or extremely hazardous substance into the MS4, surface water in the state, or the waters of the U.S., must telephone 911 and notify the Fire Department and the Stormwater Administrator immediately after becoming aware of the discharge.
  - 2. Non-hazardous spills and discharges. In the event of a release of non-hazardous materials, the discharger shall notify the Stormwater Administrator no later than the following business day.
- (B) Response to spills and discharges.
  - 1. Spills or leaks of polluting substances discharged to or having the potential to be indirectly transported to the MS4 shall be contained, controlled, collected and removed promptly. All affected areas shall be restored to their preexisting condition. Any costs of the containment, control, collection, removal or restoration incurred by the City of Midland shall be reimbursed to the City by the Person or Persons associated with the spill or leak.
  - 2. Notification shall not relieve the responsible person(s) of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the City, to natural resources, or to any other Person or property, nor shall such notification relieve the responsible Person of any fine, penalty, or other liability which may be imposed pursuant to this Chapter or to state or federal law.
  - 3. Any person responsible for any Release as described in Section 11-12-5(A) shall comply with all state, federal, and local laws requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.

(Ordinance 9513, sec. 1, adopted 12/15/15)

**§ 11-12-6. Citizen participation.**

All citizens are encourage to report to the City of Midland any spills, releases, illicit connections, discharges from construction activity, other instances of a person or persons discharging pollutants into the MS4 or surface water in the state, and any other violation of this Chapter of which they become aware. Such citizen reports may be made by telephone, in writing or in person.

The Stormwater Administrator will designate an individual or office to receive all such citizen reports and will establish a phone number and publish the number to facilitate citizen reports.

(Ordinance 9513, sec. 1, adopted 12/15/15)

**§ 11-12-7. Enforcement, remedies and penalties.**

(A) Civil enforcement and remedies. The governing body of the City of Midland, Texas may institute in a court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this Chapter or of any order or ruling made in connection with the City's administration or enforcement including, but not limited to, an action for injunctive relief.

(B) Penalties. Each violation of this Chapter or of any order or ruling promulgated hereunder shall constitute a misdemeanor and upon conviction shall be punishable by a fine of not more than \$2,000.00, and each day a violation continues to exist shall constitute a separate offense.

(Ordinance 9513, sec. 1, adopted 12/15/15)

## **ARTICLE IV SPECIFIC PROGRAM REQUIREMENTS**

### **§ 11-12-8. Construction activity.**

- (A) This Chapter regulates construction activity for which TCEQ requires TPDES General Permit for Construction Stormwater coverage for small sites of at least one acre but less than five acres and large sites of five or more acres.
  - (B) When required by TCEQ, operators of construction activities shall obtain TPDES permit coverage for the discharge of stormwater and eligible non-stormwater discharges from the construction activity. Operators shall comply with the requirements, effluent limitations, certifications, notice, inspections, and all other applicable conditions of said permit.
  - (C) All plans for construction activity that are required by a city ordinance to be submitted for review shall include an erosion control plan drawing.
  - (D) All operators of a construction activity shall submit to the City of Midland a signed copy of its notice of intent (NOI) and/or construction site notice (CSN), as applicable under the TPDES General Permit for Construction Stormwater. The NOI and/or CSN shall be submitted at least seven days prior to commencing construction activities and shall be posted at the construction site in accordance with TPDES General Permit for Construction Stormwater requirements.
  - (E) Qualified personnel (provided by the operator of the construction activity) shall inspect all areas of the construction site that might discharge soil, wastes and other pollutants. All erosion and sediment control measures and other management practices shall be observed in order to ensure they are operating correctly and are effective. The operator of the construction activity shall maintain, repair, or replace controls and management practices, as appropriate. At a minimum, controls and management practices shall be cleaned and repaired or replaced as needed when capacity is reduced by 50 percent.
  - (F) The City of Midland may inspect a construction activity for compliance with its SWP3 and the TPDES General Permit for Construction Stormwater. Notice of deficiencies will be provided in writing, and the Stormwater Administrator will give a reasonable amount of time, not to exceed ten days, to implement the necessary corrective actions.
  - (G) The City of Midland may deny approval of any building permit, subdivision plat, site development plan, inspection, or any other approval necessary to commence or continue construction or to assume occupancy on the grounds that the controls and management practices described in the erosion control plan drawing reviewed by the City of Midland or observed on a site inspection by the City of Midland are determined by the Stormwater Administrator to not be sufficient to minimize the discharge of soil, waste, and other pollutants associated with construction activity to the extent practicable.
- (Ordinance 9513, sec. 1, adopted 12/15/15)

### **§ 11-12-9. Industrial activity.**

- (A) All operators of an industrial activity shall obtain a NPDES or TPDES multi-sector general permit, except where alternative TPDES permit coverage is obtained for the discharge of stormwater and eligible non-stormwater discharge from the industrial activity. All operators shall comply with the requirements, effluent limitations, certifications, notices, inspections, Discharges monitoring, and all other applicable conditions of the permit.

- (B) The City of Midland may require submission of an industrial facility's SWP3 to the City of Midland upon determination by the Stormwater Administrator that an industrial activity may be introducing pollutants to the MS4 or surface water in the state. The City of Midland may review a submitted SWP3 and require that changes be made to the SWP3 and that the SWP3 resubmitted if, in the professional judgement of the Stormwater Administrator or authorized representative, the SWP3 does not comply with the requirements of the NPDES or TPDES multi-sector general permit. Notice of the deficiencies in the SWP3 will be provided in writing, and the Stormwater Administrator will give the operator a reasonable amount of time, not to exceed 21 days, to make the necessary changes and resubmit to SWP3.
- (C) The City of Midland has the authority to inspect an industrial facility and take enforcement actions as provided in Sections 11-12-4 and 11-12-7 of this Chapter.
- (Ordinance 9513, sec. 1, adopted 12/15/15)

**§ 11-12-10. Stormwater requirements for new developments and redevelopments.**

- (A) The requirements of this Section shall apply to all developments and redevelopments within the corporate limits that are equal to or greater than one acre, unless one of the following exceptions applies to the development or redevelopment:
1. Redevelopment or expansion results in no net increase in impervious area;
  2. Development and redevelopment decreases predevelopment runoff volumes as defined in Storm Drainage Design Manual; or
  3. Any new development or redevelopment project has or will have permit coverage under the Texas Pollutant Discharge Elimination System Industrial Stormwater Permit issued by the Texas Commission on Environmental Quality (TCEQ).
- (B) The purpose of this Section is to establish a set of water quality and quantity policies for the regulation of stormwater runoff to minimize increases in stormwater runoff rates and volumes, soil erosion, and nonpoint source pollution.
- (C) Developers shall follow the standards for stormwater runoff control established in the City of Midland Storm Drainage Design Manual, Midland Master Drainage Plan, applicable procedures in the building regulations and planning and development ordinances.
- (D) The City of Midland may enforce the provisions of this Section through either the subdivision process or the building permit process, as applicable to the type of project proposed.
- (E) Maintenance of structural stormwater controls (structural BMPs).Developments that include a structural stormwater control practice, such as a detention basin or other constructed feature intended to provide stormwater runoff quality or quantity improvements, are required to provide for maintenance of the structural practice and for City access for inspection and corrective actions.
1. A drainage and stormwater easement shall be provided by the property owner for facility inspections and maintenance. The easement shall be dedicated to the City of Midland by plat or by separate instrument. This easement shall be in a form approved by the City of Midland, and will be accepted and recorded by the City of Midland in the official records of the county in which the property is located.
  2. All structural stormwater controls shall be maintained by the property owner or, if applicable, the homeowner's association unless the city agrees to assume maintenance. Any agreement for

city maintenance will be made a part of the drainage and stormwater easement.

3. Authorized representatives of the Stormwater Administrator may conduct inspections of the structural stormwater control.
4. Deficiencies in maintenance and operation of a structural stormwater control shall be remedied by the property owner or, if applicable, the homeowner's association.

(Ordinance 9513, sec. 1, adopted 12/15/15)

## **ARTICLE V APPEALS**

### **§ 11-12-11. Appeals to the city manager.**

- (A) Any person contesting the Stormwater Administrator's interpretation or application, directly or by delegation of authority, of any provision, rule, standard, regulation, determination or requirement set forth in this Chapter shall have the right to Appeal by submitting to the City Manager within 14 days of the action that the person wishes to contest a written request for a hearing setting forth fully the grounds for the appeal, including the factual basis for the appeal and all relevant supporting documents, and the relief sought.
- (B) If a person requests a hearing under this Section, a hearing shall be held before the City Manager within 21 days of the date that the request is received, at a time to be determined by the City Manager, and notice of the hearing shall be given to the appellant.
- (C) The City Manager may affirm, reverse, or modify the decision of the Stormwater Administrator. The City Manager shall issue a written decision and order within 48 hours following the hearing. The decision and order of the City Manager shall be final and conclusive.

(Ordinance 9513, sec. 1, adopted 12/15/15)

**STORMWATER MANAGEMENT CODE**

**Chapter 11-13**

**MUNICIPAL DRAINAGE UTILITY**

**ARTICLE I  
CREATION OF UTILITY**

- § 11-13-1.** Definitions.
- § 11-13-2.** Establishment of drainage utility; service area; exemptions; dedication of assets.
- § 11-13-3.** No effect on land owner obligations under City ordinances; no waiver of immunity.
- § 11-13-4.** Other laws.
- § 11-13-5.** through § 11-13-10. (Reserved)

**ARTICLE II  
ADMINISTRATION OF DRAINAGE UTILITY**

- § 11-13-11.** Drainage utility fund.
- § 11-13-12.** Administration.
- § 11-13-13.** Drainage charge.
- § 11-13-14.** Billing; payments; penalties.
- § 11-13-15.** Requests for adjustment; appeals.
- § 11-13-16.** Offense; criminal penalty.

## **ARTICLE I CREATION OF UTILITY**

### **§ 11-13-1. Definitions.**

Terms defined herein are specific to this Chapter and shall not be construed as conflicting with similar terms in other parts of the Municipal Code. Terms not otherwise defined herein shall be given the definitions contained in the Texas Local Government Code, Chapter 552, Subchapter C.

- (A) *The Act* means the Texas Local Government Code, Chapter 552, Subchapter C, as may be amended.
- (B) *Benefitted Property* means an improved lot or parcel to which drainage utility service is made available under this Chapter.
- (C) *City Manager* means the City of Midland's City Manager or a designee thereof.
- (D) *Commercial property* means any benefitted property other than Residential Property and includes, but is not limited to, commercial, industrial, institutional, government, multi-family, mobile home park, and religious organization land uses.
- (E) *Cost of service* means the costs for Drainage System service to a Benefitted Property, which shall be the total of:
  - (1) Prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;
  - (2) Prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;
  - (3) Prorated cost of architectural, engineering, legal and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;
  - (4) Prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;
  - (5) Prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the benefitted property;
  - (6) Prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the City; and
  - (7) Administrative costs of operating and maintaining a drainage utility system.
- (F) *Development Services Director* means the Director of the City of Midland's Development Services Department or a designee thereof.
- (G) *Drainage* means the system of public works owned or controlled in whole or in part by the City and including, but not limited to, bridges, catch basins, channels, conduits, creeks, culverts, curbs and gutters, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, streets, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to

draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses. See also Drainage System.

- (H) *Drainage charge* means:
- (1) The levy imposed to recover the cost of service to the City in providing drainage for any benefitted property; and
  - (2) An amount made in contribution to funding of future drainage system construction by the City.
- (I) *Drainage system* means the system of public works owned or controlled in whole or in part by the City and dedicated to the service of Drainage, including any future additions, extensions, and improvements thereto and replacement thereof.
- (J) *Drainage utility* means a drainage service that is regularly provided by the City through City property dedicated to that service to the users of benefitted property within the service area and that is based on:
- (1) An established schedule of charges;
  - (2) The use of the police power to implement the service; and
  - (3) Nondiscriminatory, reasonable, and equitable terms as declared under the Act.
- (K) *Engineering Services Director* means the Director of the City of Midland's Engineering Services Department or a designee thereof.
- (L) *Equivalent residential unit ("ERU")* means the unit of measure used to calculate the drainage charge for residential and commercial property, and it is based on the average impervious area for single-family residential property within the City determined as an arithmetic mean of the total impervious area of all single family residential property, or of a statistically significant sample of all single family residential property, as represented by the area of the footprint of each building on a Residential Property within the City limits in U.S. square feet either reported by MCAD or as measured on the City's GIS Database. The ERU for the City is 2,002 square feet.
- (M) *Facilities* means the property, either real, personal, or mixed, that is used in providing drainage, and included in the drainage system.
- (N) *Finance Director* means the Director of the City of Midland's Finance Department or a designee thereof.
- (O) *GIS database* means the geographic information systems database that is assembled, managed and disseminated by the City.
- (P) *Impervious area* means a surface which has become compacted or covered with a layer of material so that it is highly resistant to infiltration by water and includes, but is not limited to, caliche and gravel surfaces subject to motorized vehicular traffic, walkways, buildings, parking lots, pavement, and ingress/egress driveways. Impervious area does not include sidewalks located in the public right-of-way. For purposes of this definition, a walkway is a pedestrian path in the interior of an improved lot or parcel that is not located in the public right-of-way.
- (Q) *Improved lot or parcel* means a lot or parcel that has a structure, as that term is defined in Section 11-1-2 of the Municipal Code, or other improvement on it that creates an impervious area.

- (R) *MCAD* means the Midland County Appraisal District database of lot sizes and building square footages.
- (S) *Parcel* means one or more lots or portions of lots that are contiguous and under single ownership.
- (T) *Residential property* means any benefitted property containing not more than one single-family home, duplex, triplex, quadplex, condominium, or manufactured home.
- (U) *Service Area* means the municipal boundaries of the City and includes all real property within the city limits of the City as now existing and all which may be annexed hereafter.
- (V) *User* means an owner or occupant of a benefitted property or a person or entity who is responsible for paying for water, sewer, or garbage collection services provided by the City at a benefitted property.
- (W) *Wholly sufficient and privately owned drainage system* means drainage from an Improved Lot or Parcel which does not discharge into any natural or manmade waterway or drainage infrastructure including public streets, storm drains, culverts, drainage easements, or storm water ponds that are part of the drainage system.

(Ordinance 9752, sec. 1, adopted 4/10/2018)

### **§ 11-13-2. Establishment of drainage utility; service area; exemptions; dedication of assets.**

- (A) The provisions of Texas Local Government Code, chapter 552, subchapter C are hereby adopted to create a drainage utility for the city. Accordingly, drainage of the city is hereby declared to be a public utility.
- (B) The service area for the drainage utility shall include all real property within the city limits as now existing and all which may be annexed hereafter.
- (C) Pursuant to Texas Local Government Code sections 552.053 and 580.003, the following property and entities shall be exempt from the provisions of this chapter:
  - (1) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;
  - (2) Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the city for maintenance;
  - (3) A subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the city;
  - (4) Property owned by a religious organization that is exempt from taxation pursuant to Texas Tax Code section 11.20;
  - (5) The state;
  - (6) A county;
  - (7) A municipality;
  - (8) School districts and open-enrollment charter schools;
  - (9) A state agency; and
  - (10) A public or private institution of higher education.

- (D) The city incorporates into the drainage utility all existing property, facilities, materials, and supplies constituting the city's drainage system on the effective date of this article. All future acquisitions by the city of real or personal property used in the city's drainage system shall be maintained as part of the drainage utility.

(Ordinance 9752, sec. 1, adopted 4/10/2018; Ordinance 10473 adopted 1/9/2024)

**§ 11-13-3. No effect on land owner obligations under City ordinances; no waiver of immunity.**

- (A) The establishment of the drainage utility by the City does not relieve private land owners, developers, other individuals and entities from responsibility for providing drainage improvements in connection with land development pursuant to the other ordinances of the City or laws of the State of Texas that relate to stormwater runoff, drainage management, or drainage improvements.
- (B) The establishment of the drainage utility does not imply or warrant that a benefitted property will be free from flooding, stormwater pollution, or stream erosion. The City makes no representation that all drainage problems will be remedied. This ordinance does not create additional duties on the part of the City or create new liability or remedies for any flooding, stream erosion, deterioration of water quality, or other damages. Nothing in this ordinance shall be deemed to waive the City's immunity under law or reduce the need or necessity for flood insurance.

(Ordinance 9752, sec. 1, adopted 4/10/2018)

**§ 11-13-4. Other laws.**

This Chapter is intended to be read in harmony with Chapter 3-1, "Water Department", Title XI, Chapter 3, "Flood Damage Prevention Code", Chapter 11-4, "Lake Areas", Chapter 11-12, "Stormwater Management Code", and all other provisions of the Municipal Code. To the extent this Chapter conflicts with any of the aforementioned Chapters or any other Chapter in Municipal Code, the provisions shall be harmonized when possible; however, this Chapter shall control and supersede any other provision regarding the drainage utility.

(Ordinance 9752, sec. 1, adopted 4/10/2018)

**§ 11-13-5. through § 11-13-10. (Reserved)**

## **ARTICLE II ADMINISTRATION OF DRAINAGE UTILITY**

### **§ 11-13-11. Drainage utility fund.**

A separate fund known as the drainage utility fund is hereby created for the purpose of segregating, identifying, and controlling all revenues and expenses attributable to the drainage utility. All drainage charges shall be deposited as collected and received into this fund and shall be used exclusively for cost of service. Such revenues may be used for the operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration, debt issuance cost and debt service, and other reasonable and customary expenses associated with the operation of a utility system. It shall not be necessary that the expenditures from the drainage utility fund for any authorized purpose specifically relate to or benefit any particular benefitted property from which the revenues were collected.

(Ordinance 9753, sec. 1, adopted 4/10/2018)

### **§ 11-13-12. Administration.**

The Engineering Services Director shall be responsible for the administration of the drainage utility, including, but not limited to, enacting any procedures necessary for the administration of the drainage charge, consideration of requests for adjustment of drainage charges, development and implementation of maintenance and facilities improvement programs, state and federal regulatory compliance, and establishing drainage criteria and standards for the drainage system. The Engineering Services Director shall keep an accurate record of all benefitted properties and facilities of the drainage utility.

(Ordinance 9753, sec. 1, adopted 4/10/2018)

### **§ 11-13-13. Drainage charge.**

- (A) A drainage charge is hereby imposed upon each benefitted property within the Service Area. The first drainage charge shall be billed after October 1, 2018. Like drainage charges shall be billed on a monthly basis thereafter for the duration of the drainage utility.
- (B) For purposes of imposing the drainage charge, a benefitted property is classified as either a residential property or a commercial property.
- (C) A residential property shall be assigned an ERU value for the purpose of establishing the monthly drainage charge as follows:
  - (1) A tier 1 residential property has an impervious area, as represented by the area of the footprint of each building on the residential property, less than or equal to 1,399 square feet and is assigned a value of 0.60 ERU.
  - (2) A tier 2 residential property has an impervious area, as represented by the area of the footprint of each building on the residential property, greater than 1,399 square feet and not greater than 2,424 square feet and is assigned a value of 1.00 ERU.
  - (3) A tier 3 residential property has an impervious area, as represented by the area of the footprint of each building on the residential property, greater than 2,424 square feet and is assigned a value of 1.70 ERU.
- (D) A commercial property shall be assigned an ERU value for the purpose of establishing the monthly drainage charge as follows:

- (1) A tier 1 commercial property has an impervious area less than or equal to 8,339 square feet and is assigned a value of 2.90 ERU.
  - (2) A tier 2 commercial property has an impervious area greater than 8,399 square feet and not greater than 18,702 square feet and is assigned a value of 6.50 ERU.
  - (3) A tier 3 commercial property has an impervious area greater than 18,702 square feet and not greater than 47,853 square feet and is assigned a value of 15.00 ERU.
  - (4) A tier 4 commercial property has an impervious area greater than 47,853 square feet and not greater than 92,740 square feet and is assigned a value of 34.20 ERU.
  - (5) A tier 5 commercial property has an impervious area greater than 92,740 square feet and not greater than 261,475 square feet and is assigned a value of 77.00 ERU.
  - (6) A tier 6 commercial property has an impervious area greater than 261,475 square feet and is assigned a value of 110.00 ERU.
- (E) A monthly billing rate of \$2.00 is hereby established.
- (F) The monthly drainage charge for a benefitted property shall be calculated by multiplying the benefitted property's ERU value by the monthly billing rate.
- (G) The engineering services director shall be responsible for determining the impervious area of each benefitted property based on reliable data including, but not limited to, MCAD data, GIS database data, aerial photography, information received by the city through the building permit process, or other reliable means for determining impervious area. The engineering services director may request additional information from the property owner, tenant, manager or developer to make the determination. The engineering services director may revise the amount of a drainage charge based on a change to the impervious area.
- (H) No drainage charge credit shall be given for the installation of drainage facilities required by the municipal code or state law.

(Ordinance 9753, sec. 1, adopted 4/10/2018; Ordinance 10473 adopted 1/9/2024)

#### **§ 11-13-14. Billing; payments; penalties.**

- (A) A bill or statement for the City's other public utility charges under Chapter 3-1 of the Midland Municipal Code associated with a benefitted property shall include the drainage charge which shall be identified separately on the bill or statement as a "Drainage Charge." Each drainage charge on such bill or statement shall be for the previous month's service.
- (B) Each public utility account in the service area shall be presumed to serve one or more users of a benefitted property, and the drainage charge therefor shall be assessed to the person responsible for payment of the utility account.
- (C) The drainage charge identified in a bill or statement is due and shall be paid as prescribed for water, sewer, and garbage collection charges in Chapter 3-1 of the Midland Municipal Code.
- (D) Except as otherwise provided in this Chapter, Drainage Charges are subject to the billing procedures, termination procedures, penalties, disconnection, reconnection, hearings, and other rules of Chapter 3-1 of the Municipal Code.
- (E) A drainage charge due hereunder which is not paid when due will subject users of the benefitted

property to discontinuance of all utility services provided by the city and may be recovered in an action at law or in equity by the city including fixture of a lien against the property, as allowed by law.

(Ordinance 9753, sec. 1, adopted 4/10/2018)

**§ 11-13-15. Requests for adjustment; appeals.**

- (A) Requests for adjustment of a drainage charge must be submitted to the engineering services director. A user may request an adjustment if:
  - (1) The user reasonably believes that the drainage charge schedule, as applied to the user's benefitted property, does not fairly reflect the cost of service to the user's benefitted property or is otherwise not in accordance with applicable state law;
  - (2) The user disputes the ERU value assigned to the user's benefitted property used to calculate the drainage charge; or
  - (3) The user's drainage charge has been assessed in error.
- (B) The following rules and procedures shall apply to all requests for adjustment of a drainage charge:
  - (1) The user shall have the burden of proof.
  - (2) A user who requests an adjustment of a drainage charge shall make the request in writing and shall set forth in detail the grounds upon which relief is sought.
  - (3) A request for an adjustment will be reviewed by the engineering services director within 30 days from the date of receipt of the request.
  - (4) A User requesting an adjustment may be required to provide, at the user's expense, supplemental information to the Engineering Services Director, including, but not limited to, survey data certified by a Texas registered professional land surveyor (R.P.L.S.), or other documentation of impervious area. Failure to provide requested information may result in the denial of the adjustment request.
  - (5) The Engineering Services Director will provide to the user a written notice of the Engineering Services Director's decision concerning the request for adjustment within ten business days following the Engineering Services Director's review of the request for adjustment or within ten business days following the Engineering Services Director's receipt of any additional information submitted in accordance with this Section, whichever is later.
- (C) If the Engineering Services Director approves a request for an adjustment, the adjustment to the drainage charge will be made. Such an adjustment shall be prospective, but the Engineering Services Director may make the adjustment retroactive for no greater time period than three monthly billings prior to the receipt of the request.
- (D) If the Engineering Services Director denies a request for an adjustment, or if the user otherwise disagrees with the Engineering Services Director's decision, the user may submit to the City Manager, within ten days following the date of the User's receipt of the notice of the Engineering Services Director's decision, a written notice of appeal. A written notice of appeal must contain a succinct and clear statement of the user's argument and requested remedy. Following the City Manager's receipt of a user's notice of appeal, the City Manager shall convene a panel consisting of the City Manager, the Finance Director, and the Development Services Director to review the appeal. The panel will, within

15 business days following the City Manager's receipt of the notice of appeal, review the appeal. If a member of the panel is unavailable to review the appeal during the review period, the unavailable member may designate an individual to temporarily take his or her place on the panel for the purpose of reviewing the appeal. The panel will provide to the user a written notice of the panel's decision concerning within ten business days following the panel's review of the appeal.

- (E) If the panel affirms the decision of the Engineering Services Director, or if the User otherwise disagrees with the panel's decision, the user may submit to the City Secretary, within five business days following the date of the user's receipt of the notice of the panel's decision, a written notice of appeal to the city council. A written notice of appeal to the city council must contain a succinct and clear statement of the user's argument and requested remedy. Within 60 days following the date of the City Secretary's receipt of the notice of appeal to the City Council, the City Council shall hold a hearing to consider the appeal. The City Council's decision shall be final.
- (F) A user who submits a request for adjustment shall continue to pay the drainage charge in the amount that appears on the user's public utility bill or statement unless the Engineering Services Director, the panel, or the City Council, as provided herein, decides that the drainage charge should be adjusted, in which case the user shall pay the drainage charge as adjusted. If the drainage charge as adjusted is less than the drainage charge paid during the pendency of the request for adjustment and appeals, the City will refund to the user, or apply as a credit to the user's public utility account, the difference between the drainage charge paid during the pendency of the request for adjustment and appeals and the drainage charge as adjusted.
- (G) A user who has received a written notice of the Engineering Services Director's decision concerning a request for adjustment of the drainage charge for a benefitted property, regardless of whether the user appealed the Engineering Services Director's decision, is not entitled to a receive a review of a subsequent request for adjustment of the drainage charge for the same benefitted property unless the user submits with the subsequent request an affidavit sworn to and signed by the user that contains a statement of facts indicating that a material change occurred after the date on which the previous request for adjustment was submitted. For purposes of this subsection, a material change is:
  - (1) A reduction of the benefitted property's impervious area in an amount sufficient to reduce the benefitted property's assigned ERU value;
  - (2) A change to the status of the benefitted property or the user such that the benefitted property or the user is exempt from the provisions of this Chapter; or
  - (3) An increase in the drainage charge for the benefitted property if the user reasonably believes that the drainage charge schedule, as applied to the benefitted property, does not fairly reflect the cost of service to the benefitted property or is otherwise not in accordance with applicable state law.

If the user properly submits a subsequent request for adjustment and an affidavit as described in this Subsection, the procedures of this Section concerning the review of a request for adjustment and appeals shall govern the subsequent request for adjustment.

(Ordinance 9753, sec. 1, adopted 4/10/2018)

#### **§ 11-13-16. Offense; criminal penalty.**

- (A) A user shall not use the drainage system for benefitted property owned or occupied by the user unless the user or another user has paid in full each monthly drainage charge for the benefitted property.

- (B) It is an exception to the application of this Section that the benefitted property or the user is exempted under this Chapter.
- (C) Evidence of a culpable mental state is not required to prove a criminal offense under this Section. It is hereby declared that, for all offenses under this Section, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (D) A person who violates this Section shall be guilty of a misdemeanor and fined in a sum not to exceed \$500.00. A person commits a separate and distinct offense for each day during which a violation of this Section is committed, permitted, or continued.
- (E) The criminal penalty in this Section shall be in addition to any other remedies that the City may have under City ordinance or state law.

(Ordinance 9753, sec. 1, adopted 4/10/2018)



## IMPACT FEES

### **Chapter 11-14**

#### **IMPACT FEES**

<b>§ 11-14-1.</b>	<b>Purpose.</b>	<b>§ 11-14-8.</b>	<b>Credits against impact fees.</b>
<b>§ 11-14-2.</b>	<b>Definitions.</b>	<b>§ 11-14-9.</b>	<b>Collection of impact fees.</b>
<b>§ 11-14-3.</b>	<b>Study adopted.</b>	<b>§ 11-14-10.</b>	<b>Refund for affordable housing.</b>
<b>§ 11-14-4.</b>	<b>Applicability.</b>	<b>§ 11-14-11.</b>	<b>Deposit; interest; expenditure of funds.</b>
<b>§ 11-14-5.</b>	<b>Impact fees adopted.</b>	<b>§ 11-14-12.</b>	<b>Appeal procedure; remedies.</b>
<b>§ 11-14-6.</b>	<b>Assessment of impact fees as a condition of development.</b>	<b>§ 11-14-13.</b>	<b>Other relief; variance; waiver.</b>
<b>§ 11-14-7.</b>	<b>Assessment of impact fees.</b>		

**§ 11-14-1. Purpose.**

This Chapter is intended to assure the provision of adequate public facilities to serve new development in the City by requiring each such development to pay its share of the costs of such improvements necessitated by and attributable to such new development.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

**§ 11-14-2. Definitions.**

Terms defined herein are specific to this Chapter and shall not be construed as conflicting with similar terms in other parts of the Municipal Code.

- (A) *Assessment* means the determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this Chapter.
- (B) *Capital improvement* means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of the City:
  - 1. Water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and
  - 2. Roadway facilities.
- (C) *Capital improvements plan* means a plan approved by the City Council that identifies capital improvements or facility expansions for which impact fees may be assessed.
- (D) *City* means the City of Midland, Texas.
- (E) *City Council* means the City Council of the City of Midland, Texas.
- (F) *City Manager* means the City Manager of the City of Midland, Texas, or his or her designee.
- (G) *Director* means the Director of the Development Services Department of the City of Midland, Texas, or his or her designee.
- (H) *Effective date* means October 1, 2019.
- (I) *Facility expansion* means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.
- (J) *Impact fee* means a charge or assessment imposed as set forth in this Chapter against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term does not include:
  - 1. Dedication of land for public parks or payment in lieu of the dedication to serve park needs;
  - 2. Dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;

3. Lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or
  4. Other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.
- (K) *Land use assumptions* means a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a ten-year period and approved by the City Council.
- (L) *New development* means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.
- (M) *Owner* means an owner of real property that is subject to this Chapter, or an agent, employee, or representative thereof who is authorized to act of the real property owner's behalf, or a person who has paid an impact fee under this Chapter.
- (N) *Roadway facilities* means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the City, together with all necessary appurtenances. The term includes the City's share of costs for roadways and associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.
- (O) *Service area* means:
1. For purposes of water and wastewater, the area within the corporate boundaries of the City; and
  2. For purposes of roadways, an area within the corporate boundaries of the City that does not exceed six miles within which roadway impact fees for capital improvements will be collected for new development, and within which fees so collected will be expended for those capital improvements identified in the capital improvements plan to be located therein. The roadway service areas are more fully described in the study.
- (P) *Service unit* means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the City during the previous ten years. The service units for purposes of roadways, water, and wastewater are more fully described in the study.
- (Q) *Site-related facility* means an improvement or facility which is for the primary use or benefit of a new development or which is for the primary purpose of safe and adequate provision of roadway, water, or wastewater facilities to serve the new development, and which is not included in the capital improvements plan and for which the owner is solely responsible under subdivision or other applicable regulations or which is located at least partially on the plat which is being considered for impact fee assessment. This term includes that portion of an off-site water or wastewater main, equivalent to a standard size water or wastewater main, which is necessary to connect any new development with the City's water or wastewater system, the cost of which has not been included in the City's impact fee capital improvements plan.
- (R) *Study* means, collectively, the roadway impact fee study and the water and wastewater impact fee study that are on file in the office of the City's Development Services Department.

- (S) *System-related facility* means a capital improvement or facility expansion which is designated in the capital improvements plan and which is not a site-related facility. This term may include a capital improvement which is located off-site or within or on the perimeter of the development site.
- (T) *Wastewater facility* means a wastewater interceptor or main, lift station or other facility or improvement used for providing wastewater collection and treatment included within the City's collection system for wastewater. This term includes land, easements or structures associated with such facilities. This term excludes a site-related facility.
- (U) *Water facility* means a water interceptor or main, pump station, storage tank or other facility or improvement used for providing water supply, treatment and distribution service included within the City's water storage or distribution system. This term includes, but is not limited to, land, easements or structures associated with such facilities. This term excludes site-related facilities.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

### **§ 11-14-3. Study adopted.**

The study is hereby approved and adopted for all purposes consistent with this Chapter.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

### **§ 11-14-4. Applicability.**

The provisions of this Chapter apply to all new development within the corporate boundaries of the City.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

### **§ 11-14-5. Impact fees adopted.**

- (A) A pre-credit water impact fee of \$3,312.24 per service unit shall be assessed and charged against new development in the service area as set forth below.

For final plats approved before the effective date and for final plats recorded on or after the effective date:

Water Meter Size	Service Unit Equivalents	Maximum Assessed Impact Fee	Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))
1"	1.0	\$3,312.24	\$1,656.12
2"	4.0	\$13,248.97	\$6,624.48
3"	9.0	\$29,810.18	\$14,905.09
4"	20.0	\$66,244.85	\$33,122.42
6"	40.0	\$132,489.70	\$66,244.85

- (B) A pre-credit wastewater impact fee of \$1,676.82 per service unit shall be assessed and charged against new development in the service area as set forth below.

For final plats approved before the effective date and for final plats recorded on or after the effective date:

<b>Water Meter Size</b>	<b>Service Unit Equivalents</b>	<b>Maximum Assessed Impact Fee</b>	<b>Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))</b>
1"	1.0	\$1,676.82	\$838.41
2"	4.0	\$6,707.27	\$3,353.63
3"	9.0	\$15,091.35	\$7,545.67
4"	20.0	\$33,536.33	\$16,768.16
6"	40.0	\$67,072.66	\$33,536.33

(C) A pre-credit roadway impact fee of:

1. \$2,034.00 per service unit in Service Area A;
2. \$1,562.00 per service unit in Service Area B;
3. \$1,410.00 per service unit in Service Area C;
4. \$2,052.00 per service unit in Service Area D; and
5. \$0.00 per service unit in Service Area E;

shall be assessed and charged against new development in such service areas as set forth below. For final plats approved before the effective date and for final plats recorded on or after the effective date:

Land Use Category	ITE Land Use Code	Development Unit	Maximum Assessed Impact Fee				Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))			
			Service Area A	Service Area B	Service Area C	Service Area D	Service Area A	Service Area B	Service Area C	Service Area D
<b>PORT AND TERMINAL</b>										
Truck Terminal	030	1,000 SF GFA	\$22,821.48	\$17,525.64	\$15,820.20	\$23,023.44	\$11,410.74	\$8,762.82	\$7,910.10	\$11,511.72
Park-and-Ride	090	Parking Spaces	\$5,247.72	\$4,029.96	\$3,637.80	\$5,294.16	\$2,623.86	\$2,014.98	\$1,818.90	\$2,647.08
<b>INDUSTRIAL</b>										
General Light Industrial	110	1,000 SF GFA	\$7,688.52	\$5,904.36	\$5,329.80	\$7,756.56	\$3,844.26	\$2,952.18	\$2,664.90	\$3,878.28
Industrial Park	130	1,000 SF GFA	\$4,881.60	\$3,748.80	\$3,384.00	\$4,924.80	\$2,440.80	\$1,874.40	\$1,692.00	\$2,462.40
Manufacturing	140	1,000 SF GFA	\$8,176.68	\$6,279.24	\$5,668.20	\$8,249.04	\$4,088.34	\$3,139.62	\$2,834.10	\$4,124.52
Warehousing	150	1,000 SF GFA	\$2,318.76	\$1,780.68	\$1,607.40	\$2,339.28	\$1,159.38	\$890.34	\$803.70	\$1,169.64
Mini-Warehouse	151	1,000 SF GFA	\$2,074.68	\$1,593.24	\$1,438.20	\$2,093.04	\$1,037.34	\$796.62	\$719.10	\$1,046.52
Data Center	160	1,000 SF GFA	\$1,098.36	\$843.48	\$761.40	\$1,108.08	\$549.18	\$421.74	\$380.70	\$554.04
<b>RESIDENTIAL</b>										
Single-Family Detached Housing	210	Dwelling Unit	\$6,040.98	\$4,639.14	\$4,187.70	\$6,094.44	\$3,020.49	\$2,319.57	\$2,093.85	\$3,047.22
Multifamily Housing (Low-Rise)	220	Dwelling Unit	\$3,417.12	\$2,624.16	\$2,368.80	\$3,447.36	\$1,708.56	\$1,312.08	\$1,184.40	\$1,723.68
Multifamily Housing (Mid-Rise)	221	Dwelling Unit	\$2,684.88	\$2,061.84	\$1,861.20	\$2,708.64	\$1,342.44	\$1,030.92	\$930.60	\$1,354.32
Multifamily Housing (High-Rise)	222	Dwelling Unit	\$2,196.72	\$1,686.96	\$1,522.80	\$2,216.16	\$1,098.36	\$843.48	\$761.40	\$1,108.08
Mobile Home Park/	240	Dwelling Unit	\$2,806.92	\$2,155.56	\$1,945.80	\$2,831.76	\$1,403.46	\$1,077.78	\$972.90	\$1,415.88
Manufactured Home										
Senior Adult Housing-Detached	251	Dwelling Unit	\$1,830.60	\$1,405.80	\$1,269.00	\$1,846.80	\$915.30	\$702.90	\$634.50	\$923.40
Senior Adult Housing-Attached	252	Dwelling Unit	\$1,586.52	\$1,218.36	\$1,099.80	\$1,600.56	\$793.26	\$609.18	\$549.90	\$800.28
Assisted Living	254	Beds	\$1,586.52	\$1,218.36	\$1,099.80	\$1,600.56	\$793.26	\$609.18	\$549.90	\$800.28
<b>LODGING</b>										
Hotel	310	Room	\$3,661.20	\$2,811.60	\$2,538.00	\$3,693.60	\$1,830.60	\$1,405.80	\$1,269.00	\$1,846.80

<b>Land Use Category</b>	<b>ITE Land Use Code</b>	<b>Development Unit</b>	<b>Maximum Assessed Impact Fee</b>				<b>Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))</b>			
			<b>Service Area A</b>	<b>Service Area B</b>	<b>Service Area C</b>	<b>Service Area D</b>	<b>Service Area A</b>	<b>Service Area B</b>	<b>Service Area C</b>	<b>Service Area D</b>
Motel/Other Lodging Facilities	320	Room	\$2,318.76	\$1,780.68	\$1,607.40	\$2,339.28	\$1,159.38	\$890.34	\$803.70	\$1,169.64
<b>RECREATIONAL</b>										
Golf Driving Range	432	Tee	\$7,627.50	\$5,857.50	\$5,287.50	\$7,695.00	\$3,813.75	\$2,928.75	\$2,643.75	\$3,847.50
Golf Course	430	Acre	\$1,708.56	\$1,312.08	\$1,184.40	\$1,723.68	\$854.28	\$656.04	\$592.20	\$861.84
Bowling Alley	437	1,000 SF GFA	\$7,078.32	\$5,435.76	\$4,906.80	\$7,140.96	\$3,539.16	\$2,717.88	\$2,453.40	\$3,570.48
Recreational Community Center	495	1,000 SF GFA	\$14,095.62	\$10,824.66	\$9,771.30	\$14,220.36	\$7,047.81	\$5,412.33	\$4,885.65	\$7,110.18
Ice Skating Rink	465	1,000 SF GFA	\$8,115.66	\$6,232.38	\$5,625.90	\$8,187.48	\$4,057.83	\$3,116.19	\$2,812.95	\$4,093.74
Miniature Golf Course	431	Hole	\$2,013.66	\$1,546.38	\$1,395.90	\$2,031.48	\$1,006.83	\$773.19	\$697.95	\$1,015.74
Multiplex Movie Theater	445	Screens	\$83,780.46	\$64,338.78	\$58,077.90	\$84,521.88	\$41,890.23	\$32,169.39	\$29,038.95	\$42,260.94
Racquet/Tennis Club	491	Court	\$23,309.64	\$17,900.52	\$16,158.60	\$23,515.92	\$11,654.82	\$8,950.26	\$8,079.30	\$11,757.96
Health/Fitness Club	492	1,000 SF GFA	\$21,051.90	\$16,166.70	\$14,593.50	\$21,238.20	\$10,525.95	\$8,083.35	\$7,296.75	\$10,619.10
<b>INSTITUTIONAL</b>										
Church	560	1,000 SF GFA	\$2,989.98	\$2,296.14	\$2,072.70	\$3,016.44	\$1,494.99	\$1,148.07	\$1,036.35	\$1,508.22
Day Care Center	565	1,000 SF GFA	\$20,156.94	\$15,479.42	\$13,973.10	\$20,335.32	\$10,078.47	\$7,739.71	\$6,986.55	\$10,167.66
Primary/Middle School (1-8)	522	Students	\$1,037.34	\$796.62	\$719.10	\$1,046.52	\$518.67	\$398.31	\$359.55	\$523.26
High School	530	Students	\$854.28	\$656.04	\$592.20	\$861.84	\$427.14	\$328.02	\$296.10	\$430.92
Junior/Community College	540	Students	\$671.22	\$515.46	\$465.30	\$677.16	\$335.61	\$257.73	\$232.65	\$338.58
University/College	550	Students	\$915.30	\$702.90	\$634.50	\$923.40	\$457.65	\$351.45	\$317.25	\$461.70
<b>MEDICAL</b>										
Clinic	630	1,000 SF GFA	\$18,753.48	\$14,401.64	\$13,000.20	\$18,919.44	\$9,376.74	\$7,200.82	\$6,500.10	\$9,459.72
Hospital	610	1,000 SF GFA	\$5,552.82	\$4,264.26	\$3,849.30	\$5,601.96	\$2,776.41	\$2,132.13	\$1,924.65	\$2,800.98
Nursing Home	620	Beds	\$1,261.08	\$968.44	\$874.20	\$1,272.24	\$630.54	\$484.22	\$437.10	\$636.12
Animal Hospital/ Veterinary Clinic	640	1,000 SF GFA	\$14,115.96	\$10,840.28	\$9,785.40	\$14,240.88	\$7,057.98	\$5,420.14	\$4,892.70	\$7,120.44

<b>Land Use Category</b>	<b>ITE Land Use Code</b>	<b>Development Unit</b>	<b>Maximum Assessed Impact Fee</b>								<b>Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))</b>			
			<b>Service Area A</b>	<b>Service Area B</b>	<b>Service Area C</b>	<b>Service Area D</b>	<b>Service Area A</b>	<b>Service Area B</b>	<b>Service Area C</b>	<b>Service Area D</b>				
<b>OFFICE</b>														
Corporate Head-quarters Building	714	1,000 SF GFA	\$3,661.20	\$2,811.60	\$2,538.00	\$3,693.60	\$1,830.60	\$1,405.80	\$1,269.00	\$1,846.80				
General Office Building	710	1,000 SF GFA	\$7,017.30	\$5,388.90	\$4,864.50	\$7,079.40	\$3,508.65	\$2,694.45	\$2,432.25	\$3,539.70				
Medical-Dental Office Building	720	1,000 SF GFA	\$21,112.92	\$16,213.56	\$14,635.80	\$21,299.76	\$10,556.46	\$8,106.78	\$7,317.90	\$10,649.88				
Single Tenant Office Building	715	1,000 SF GFA	\$10,434.42	\$8,013.06	\$7,233.30	\$10,526.76	\$5,217.21	\$4,006.53	\$3,616.65	\$5,263.38				
Office Park	750	1,000 SF GFA	\$6,529.14	\$5,014.02	\$4,526.10	\$6,586.92	\$3,264.57	\$2,507.01	\$2,263.05	\$3,293.46				
<b>COMMERCIAL</b>														
Automobile Related														
Automobile Care Center	942	1,000 SF GFA	\$8,481.78	\$6,513.54	\$5,879.70	\$8,556.84	\$4,240.89	\$3,256.77	\$2,939.85	\$4,278.42				
Automobile Parts Sales	843	1,000 SF GFA	\$12,692.16	\$9,746.88	\$8,798.40	\$12,804.48	\$6,346.08	\$4,873.44	\$4,399.20	\$6,402.24				
Gasoline/Service Station	944	Vehicle Fueling Position	\$9,925.92	\$7,622.56	\$6,880.80	\$10,013.76	\$4,962.96	\$3,811.28	\$3,440.40	\$5,006.88				
Gasoline/Service Station w/ Conv Market and Car Wash	945	Vehicle Fueling Position	\$7,525.80	\$5,779.40	\$5,217.00	\$7,592.40	\$3,762.90	\$2,889.70	\$2,608.50	\$3,796.20				
New Car Sales	841	1,000 SF GFA	\$8,807.22	\$6,763.46	\$6,105.30	\$8,885.16	\$4,403.61	\$3,381.73	\$3,052.65	\$4,442.58				
Quick Lubrication Vehicle Shop	941	Servicing Positions	\$13,200.66	\$10,137.38	\$9,150.90	\$13,317.48	\$6,600.33	\$5,068.69	\$4,575.45	\$6,658.74				
Self-Service Car Wash	947	Stall	\$4,047.66	\$3,108.38	\$2,805.90	\$4,083.48	\$2,023.83	\$1,554.19	\$1,402.95	\$2,041.74				
Tire Store	848	1,000 SF GFA	\$13,017.60	\$9,996.80	\$9,024.00	\$13,132.80	\$6,508.80	\$4,998.40	\$4,512.00	\$6,566.40				
<b>Dining</b>														
Drinking Place	925	1,000 SF GFA	\$42,510.60	\$32,645.80	\$29,469.00	\$42,886.80	\$21,255.30	\$16,322.90	\$14,734.50	\$21,443.40				
Fast Food Rest-aурant with Drive-Thru Window	934	1,000 SF GFA	\$61,162.38	\$46,969.34	\$42,398.70	\$61,703.64	\$30,581.19	\$23,484.67	\$21,199.35	\$30,851.82				
Fast Food Rest-aурant without Drive-Thru Window	933	1,000 SF GFA	\$53,026.38	\$40,721.34	\$36,758.70	\$53,495.64	\$26,513.19	\$20,360.67	\$18,379.35	\$26,747.82				
High Turnover (Sit-Down) Restaurant	932	1,000 SF GFA	\$31,954.14	\$24,539.02	\$22,151.10	\$32,236.92	\$15,977.07	\$12,269.51	\$11,075.55	\$16,118.46				

<b>Land Use Category</b>	<b>ITE Land Use Code</b>	<b>Development Unit</b>	<b>Maximum Assessed Impact Fee</b>								<b>Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))</b>			
			<b>Service Area A</b>	<b>Service Area B</b>	<b>Service Area C</b>	<b>Service Area D</b>	<b>Service Area A</b>	<b>Service Area B</b>	<b>Service Area C</b>	<b>Service Area D</b>				
Quality Restaurant	931	1,000 SF GFA	\$25,058.88	\$19,243.84	\$17,371.20	\$25,280.64	\$12,529.44	\$9,621.92	\$8,685.60	\$12,640.32				
Coffee/Donut Shop with Drive-Thru Window	937	1,000 SF GFA	\$48,693.96	\$37,394.28	\$33,755.40	\$49,124.88	\$24,346.98	\$18,697.14	\$16,877.70	\$24,562.44				
<b>Other Retail</b>														
Free-Standing Store	815	1,000 SF GFA	\$20,624.76	\$15,838.68	\$14,297.40	\$20,807.28	\$10,312.38	\$7,919.34	\$7,148.70	\$10,403.64				
Nursery (Garden Center)	817	1,000 SF GFA	\$29,655.72	\$22,773.96	\$20,557.80	\$29,918.16	\$14,827.86	\$11,386.98	\$10,278.90	\$14,959.08				
Home Improvement Superstore	862	1,000 SF GFA	\$7,383.42	\$5,670.06	\$5,118.30	\$7,448.76	\$3,691.71	\$2,835.03	\$2,559.15	\$3,724.38				
Pharmacy/Drug-store w/o Drive-Thru Window	880	1,000 SF GFA	\$24,408.00	\$18,744.00	\$16,920.00	\$24,624.00	\$12,204.00	\$9,372.00	\$8,460.00	\$12,312.00				
Pharmacy/Drug-store w/ Drive-Thru Window	881	1,000 SF GFA	\$32,035.50	\$24,601.50	\$22,207.50	\$32,319.00	\$16,017.75	\$12,300.75	\$11,103.75	\$16,159.50				
Shopping Center	820	1,000 SF GLA	\$15,316.02	\$11,761.86	\$10,617.30	\$15,451.56	\$7,658.01	\$5,880.93	\$5,308.65	\$7,725.78				
Supermarket	850	1,000 SF GFA	\$36,062.82	\$27,694.26	\$24,999.30	\$36,381.96	\$18,031.41	\$13,847.13	\$12,499.65	\$18,190.98				
Toy/Children's Superstore	864	1,000 SF GFA	\$21,357.00	\$16,401.00	\$14,805.00	\$21,546.00	\$10,678.50	\$8,200.50	\$7,402.50	\$10,773.00				
Department Store	875	1,000 SF GFA	\$8,359.74	\$6,419.82	\$5,795.10	\$8,433.72	\$4,179.87	\$3,209.91	\$2,897.55	\$4,216.86				
<b>SERVICES</b>														
Walk-In Bank	911	1,000 SF GFA	\$33,011.82	\$25,351.26	\$22,884.30	\$33,303.96	\$16,505.91	\$12,675.63	\$11,442.15	\$16,651.98				
Drive-In Bank	912	Drive-in Lanes	\$80,058.24	\$61,480.32	\$55,497.60	\$80,766.72	\$40,029.12	\$30,740.16	\$27,748.80	\$40,383.36				
Hair Salon	918	1,000 SF GLA	\$4,617.18	\$3,545.74	\$3,200.70	\$4,658.04	\$2,308.59	\$1,772.87	\$1,600.35	\$2,329.02				

(Ordinance 9960, sec. 2, adopted 8/13/2019)

**§ 11-14-6. Assessment of impact fees as a condition of development.**

No final plat for new development shall be released for recordation and no building permit shall be issued without the assessment of applicable impact fees pursuant to this Chapter. Except as otherwise provided in this Chapter, no building permit shall be issued until the owner has paid the applicable impact fees.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

**§ 11-14-7. Assessment of impact fees.**

- (A) Assessment of the impact fees for any new development shall be based on the applicable impact fees per service unit in effect at the time of assessment. No specific act by the City is required to assess impact fees.
- (B) For a new development which has received final plat approval before the effective date, assessment of impact fees shall occur on the effective date.
- (C) For a new development which has received final plat approval on or after the effective date, assessment of impact fees shall occur at the time of recordation of the final plat.
- (D) After assessment of the impact fees attributable to a new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract unless the number of service units to be developed on the tract increases. In the event of the increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

**§ 11-14-8. Credits against impact fees.**

- (A) General credit. The City shall apply against assessed impact fees a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan. The maximum impact fees after application of this credit are identified in Section 11-14-5.
- (B) Housing credit. If a new development is a single-family home, a townhouse, or a duplex, the City shall apply against the impact fees for such new development a credit equal to 25 percent of the impact fees after the application of the credit described in (A) above. This subsection shall expire and be of no further force or effect on the fifth anniversary of the effective date.
- (C) Roadway credit. Any construction of, contributions to, or dedications of roadway facilities that are system-related facilities and that are agreed to or required by the City as a condition of development approval shall be credited against assessed roadway impact fees. To the extent that a credit under this subsection exceeds the roadway impact fees for service units attributable to an owner's new development, the credit shall be applied against the roadway impact fees for service units attributable to each other new development of the owner that is located on a tract of land that was contained in the same preliminary plat of the new development for which the credit was granted.
- (D) Water credit. Any construction of, contributions to, or dedications of water facilities that are system-related facilities and that are agreed to or required by the City as a condition of development approval shall be credited against assessed water impact fees. To the extent that a credit under this subsection exceeds the water impact fees for service units attributable to an owner's new development, the credit shall be applied against the water impact fees for service units attributable to

each other new development of the owner that is located on a tract of land that was contained in the same preliminary plat of the new development for which the credit was granted.

- (E) Wastewater credit. Any construction of, contributions to, or dedications of wastewater facilities that are system-related facilities and that are agreed to or required by the City as a condition of development approval shall be credited against assessed wastewater impact fees. To the extent that a credit under this subsection exceeds the wastewater impact fees for service units attributable to an owner's new development, the credit shall be applied against the wastewater impact fees for service units attributable to each other new development of the owner that is located on a tract of land that was contained in the same preliminary plat of the new development for which the credit was granted.
- (F) Credit by agreement. The City and the owner of a new development may agree in writing that the owner may construct or finance system-related facilities and that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development. The City Manager is authorized to negotiate and execute such an agreement.
- (G) No credit for rights-of-way or easements. Rights-of-way and easements are not included in the study, and no credit shall be granted for the dedication of rights-of-way or easements. Rights-of-way and easements are dedicated as required by the ordinances of the City, necessitated by and attributable to a new development, and do not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

#### **§ 11-14-9. Collection of impact fees.**

- (A) Impact fees shall be collected at the time of issuance of a building permit.
- (B) For a new development that received final plat approval before the effective date:
  - 1. Impact fees may not be collected on any service unit for which a valid building permit is issued within one year after the effective date if the new development is not a single-family home, a townhouse, or a duplex; provided, however, that such a service unit shall be subject to the collection of impact fees upon the submission of a subsequent application for a building permit if the subsequent application is not submitted and approved within one year after the effective date.
  - 2. Impact fees may not be collected on any service unit for which a valid building permit is issued within two years after the effective date if the new development is a single-family home, a townhouse, or a duplex; provided, however, that such a service unit shall be subject to the collection of impact fees upon the submission of a subsequent application for a building permit if the subsequent application is not submitted and approved within two years after the effective date.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

#### **§ 11-14-10. Refund for affordable housing.**

To the extent that the City collects an impact fee for a service unit that qualifies as affordable housing under 42 U.S.C. Section 12745, as amended, the City may refund the impact fee for such service unit following completion of construction. An owner who seeks a refund under this Section shall provide to the Director sufficient proof that the service unit qualifies as affordable housing under 42 U.S.C. Section 12745, as amended, before the City may issue the refund.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

**§ 11-14-11. Deposit; interest; expenditure of funds.**

- (A) Deposit of funds. All funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.
- (B) Interest. Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under Chapter 395 of the Texas Local Government Code.
- (C) Expenditure of funds. Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by Chapter 395 of the Texas Local Government Code.

(Ordinance 9960, sec. 2, adopted 8/13/2019)

**§ 11-14-12. Appeal procedure; remedies.**

- (A) Decisions subject to appeal. An owner may, in accordance with this Section, appeal the following decisions:
  1. The applicability of an impact fee to the owner's new development;
  2. The amount of an impact fee due;
  3. The availability of, the application of, or the amount of a credit against an impact fee due;
  4. The amount of an impact fee due in proportion to the benefit of the services for which the impact fee was assessed that are received by the new development; or
  5. The amount of any refund due.
- (B) Notice of appeal. Within 30 days following the decision being appealed, the owner shall submit to the City Manager a written notice of appeal that states the basis for the appeal with particularity. To the extent the owner relies on any studies or other documents as evidence that the owner is entitled to relief, the owner shall submit such studies and documents with the notice of appeal. If the notice of appeal is accompanied by cash or a letter of credit issued by a financial institution that has an office for presentment located in in Midland, Texas, in an amount equal to the original determination of the impact fee due, the building permit associated with the matter being appealed may be issued while the appeal is pending.
- (C) Burden of proof. The burden of proof shall be on the owner to demonstrate that the owner is entitled to relief.
- (D) Resolution of appeal by the City Manager.
  1. Within ten days of receipt of the notice of appeal, the City Manager shall issue a written decision granting relief, granting partial relief, or denying relief and shall send the decision to the owner by certified mail, return receipt requested, or by e-mail if the owner's e-mail address is provided on the notice of appeal or the building permit application that gave rise to the matter being appealed. The City Manager's written decision shall ask the owner to respond in writing within ten days of the date of the written decision regarding whether the owner agrees or disagrees with

the City Manager's decision.

2. Upon issuing the written decision, the City Manager shall refer the appeal to the City Council for a hearing. The owner shall be provided written notice of the date, time, and location of the hearing.
3. If prior to the City Council hearing the owner agrees in writing with the City Manager's written decision:
  - (a) The appeal shall be considered resolved;
  - (b) The City Manager's referral of the notice of appeal to the City Council for a hearing shall be withdrawn;
  - (c) To the extent that the City Manager's decision grants relief or partial relief to the owner, the City Manager shall ensure that the owner receives such relief or partial relief; and
  - (d) To the extent that the City Manager's decision requires the owner to pay an impact fee, the owner shall promptly pay the impact fee. The owner's failure to pay the impact fee within five business days after agreeing with the City Manager's decision shall serve as authority for the City to present the letter of credit to the financial institution for performance with no other or further notice or contact with the owner.

**(E) Consideration of appeal by City Council.**

1. If the owner disagrees in writing with the City Manager's written decision or otherwise fails to agree in writing with the City Manager's written decision, the City Council shall hold a hearing to consider the appeal and shall act on the appeal within 60 days of the City Manager's receipt of the notice of appeal.
2. The City Council shall act on the appeal by granting relief, granting partial relief, or denying relief.
3. To the extent that the City Council grants relief or partial relief to the owner, the City Manager shall ensure that the owner receives such relief or partial relief.
4. To the extent that the City Council's action on the appeal requires the owner to pay an impact fee, the owner shall promptly pay the impact fee. The owner's failure to pay the impact fee within five business days after the date of the City Council's action on the appeal shall serve as authority for the City to present the letter of credit to the financial institution for performance with no other or further notice or contact with the owner.
5. The City Council's action on the appeal shall constitute the City's final decision on the matter appealed.

**(F) Costs.** An owner shall bear all costs of the owner's appeal under this Section.  
(Ordinance 9960, sec. 2, adopted 8/13/2019)

**§ 11-14-13. Other relief; variance; waiver.**

**(A) Failure to perform a duty.**

1. A person who has paid an impact fee or an owner of land on which an impact fee has been paid may submit to the City Manager a written request for the City Council to determine whether the

City has failed to perform a duty imposed under Chapter 395 of the Texas Local Government Code within the prescribed period. The written request must state the nature of the unperformed duty and request that it be performed within 60 days after the date of the request.

2. The City Council shall consider the request, and if the City Council finds that the duty is required under Chapter 395 of the Texas Local Government Code and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.

- (B) Variance or waiver. The City Council may grant a variance or waiver from any requirement of this Chapter, upon written request by an owner, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation or an unconstitutional taking of the property.

(Ordinance 9960, sec. 2, adopted 8/13/2019)