

## **Home Rule Charter**

**Chapter CHA**

**HOME RULE CHARTER**

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**Editor's note**—Printed herein is the charter of the City of Midland, Texas, as provided by the city as adopted at an election held on November 5, 1940, and as further amended. Set forth in the Charter Information Sheet is information pertaining to a court order issued December 12, 1984, and amendments to state law which affect provisions of the city charter as indicated. This is provided for information purposes only, and in no way amends or supplements the charter. Apart from minor nonsubstantive changes in style and formatting, the charter is reproduced as originally adopted. Capitalization, punctuation and grammar have been retained. Obviously misspelled words have been corrected without notation. Material enclosed in brackets has been added for clarification. Amendments to the charter are indicated by a history note following the amended provision. The absence of a history note indicates the material is unchanged from the original charter.

**ARTICLE I**  
**CORPORATE NAME.**

All the inhabitants of the City of Midland, in Midland County, Texas, as the boundaries and limits of said city are herein established, shall be a body politic, incorporated under and to be known by the name and style of the "City of Midland," with such powers, rights and duties as are herein provided.

## **ARTICLE II MUNICIPAL BOUNDARIES.**

### **Sec. 1. Boundaries.**

The boundaries of the City of Midland shall be the same as have been heretofore established and now exist which boundaries are more fully set out in an order for election recorded in the commissioners' court minutes, Volume 11, on Pages 573 and 574, of Midland County, Texas.

### **Sec. 2. Extension of Boundaries.**

The city council shall have power by ordinance to fix the boundary limits of the City of Midland; and to provide for the alteration and the extension of said boundary limits and the annexation of additional territory lying adjacent to the city, with or without the consent of the territory and inhabitants annexed. Upon the introduction of any such ordinance in the city council, it shall be published in the form in which it may be finally passed, in a daily newspaper published in the City of Midland, at least one time, and said ordinance shall not thereafter be finally acted upon until at least thirty days have elapsed after the first publication thereof; and, upon the final passage of any such ordinance, the boundary limits of the city shall thereafter be fixed in such ordinance; and when any additional territory has been so annexed, same shall be a part of the City of Midland, and the property situated therein shall bear its pro rata part of the taxes levied by the city, and the inhabitants thereof shall be entitled to all the rights and privileges of all the citizens, and shall be bound by the acts, ordinances, resolutions and regulations of the city.

### **Sec. 3. Platting of Property.**

Should any property situated within the city limits, as herein established or as may hereafter be established, or within five miles of such corporate limits of the City of Midland, as herein established or as may hereafter be established, be hereafter platted into blocks and lots, the owner or owners of said property shall comply with all of the provisions of Article 974a of the 1925 Revised Civil Statutes of Texas, as amended, being Acts of 1927, 40th Legislature, Page 342, Chapter 231; the provisions of which act and article are herewith especially and specifically adopted by the vote of the qualified voters of said City of Midland in compliance with Section 10 of said act.

## ARTICLE III CORPORATE POWER.

### **Sec. 1. General.**

- (a) The City of Midland, made a body politic and corporate by the adoption of this Charter, shall have perpetual succession; may use a common seal; may sue and be sued; may contract and be contracted with; implead and be impleaded in all courts and places and in all matters whatever; may take, hold and purchase such lands, within or without the city limits, as may be needed for corporate purposes of said city, and may sell or lease any real estate or personal property owned by it (other than such property which is to be used by any common carrier, public transportation service or public utility which is governed by the provisions of Section 18 of this Article entitled "Franchises"); perform and render all public service, and when deemed expedient may condemn property for corporate use, and may hold, manage and control the same; and shall be subject to all the duties and obligations now pertaining to or incumbent upon said city as a corporation, not in conflict with the provisions of this Charter; and shall enjoy all rights, immunities, powers, privileges and franchises now possessed by said city and herein conferred and granted; and, except as prohibited by the Constitution of the State of Texas or restricted by this Charter, the City of Midland shall have and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever. In addition to the powers herein otherwise granted, the city shall have all powers enumerated in Article 1175, Revised Statutes of Texas, 1925, as heretofore amended, as though such statute was set forth herein.

Provided that any lease entered into by the city under this section shall not exceed a term of 50 years and shall contain a provision for the right of adjustment of the rental no less often than every five years; except that the foregoing limitations of this sentence shall not apply to leases made to the United States of America, the State of Texas, or any political subdivisions, agency or instrumentality thereof. Provided further that the provisions of this section shall govern and take precedence over any other present articles, sections, and provisions of this Charter with which they may be deemed inconsistent or in conflict. (Res. 72-72 - 4/11/72)

- (b) The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated therein or implied thereby, or appropriate to the exercise of such powers, it is intended that the City of Midland shall have, and may exercise, all powers which under the Constitution and statutes of the State of Texas it would be competent for this Charter specifically to enumerate. All powers of the city, whether expressed or implied, shall be exercised in the manner prescribed by this Charter or, if not prescribed therein, then in the manner provided by ordinance or resolution of the council.

### **Sec. 2. Powers of Ordinances.**

The City of Midland shall have the power to enact and enforce all ordinances necessary to protect health, life and property, and to prevent and summarily abate and remove all nuisances, and preserve and enforce good government and order and security of the city and its inhabitants; and to enact and enforce ordinances on any and all subjects; provided that no ordinance shall be enacted inconsistent with the provisions of this Charter, or Constitution of the State of Texas; it being the intention to obtain by the adoption of this Charter, full power of local self government, and the City of Midland shall have and exercise all the powers of local self government granted to cities having more than five thousand inhabitants by what is known as the Home Rule Amendment to the Constitution of the State of Texas, and to the Home Rule Enabling Act passed by the Legislature of Texas, and now known as Chapter 13 of Title 22 of the Revised Civil Statutes of this state.

**Sec. 3. Style of Ordinances.**

The style of all ordinances of the City of Midland shall be: "Be it ordained by the city council of the City of Midland," but the same shall be omitted when the ordinances of the city are codified and published in book or pamphlet form by the City of Midland, or under the authority of its governing body.

**Sec. 4. Real Estate, etc., Owned by the City.**

All real estate owned in fee simple title, or held by lease, sufferance, easement or otherwise, all public buildings, fire stations, parks, airports, streets and alleys; and all property, whether real or personal, of whatever kind, character or description now owned or controlled by the City of Midland shall vest in, inure to, remain and be the property of said City of Midland under this Charter; and all causes of action, chases in action, rights or privileges of every kind and character and all property of whatsoever character or description which may have been held and is now held, controlled or used by said City of Midland for public uses or in trust for the public, shall vest in and remain an [and] inure to the City of Midland under this Charter, and all suits and pending actions to which the City of Midland heretofore was or now is a party, plaintiff or defendant, shall in no wise be affected or terminated by the adoption of this Charter, but shall continue unabated.

**Sec. 5. Acquisition of Property.**

The City of Midland shall have the power and authority to acquire by purchase, gift, devise, deed, condemnation or otherwise any character of property, within or without its municipal boundaries, including any charitable or trust funds.

**Sec. 6. Public Property Exempt from Execution.**

No public property or any other character of property owned or held by the City of Midland shall be subject to an execution of any kind or nature.

**Sec. 7. City Funds not Subject to Garnishment.**

No funds of the City of Midland shall be subject to garnishment, and the City of Midland shall never be required to answer in any garnishment proceedings. (1955)

**Sec. 8. Liability for Negligence.**

Before the City of Midland shall be liable for damages for accidental death, personal injuries of any kind or for injuries to or destruction of or damage to property of any kind, the claimants or survivors in a death claim or the persons injured or the owner of the property so injured, damaged or destroyed, or someone in his behalf, shall give the mayor and city council notice in writing of such injury, damage or destruction, duly verified within sixty days after the same has been sustained, stating in such written notice when, where and how the injury, damage or destruction occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the claimant will settle, the street and residence number of claimant at the time and date the claim was presented and the actual residence of such claimant for the six months immediately preceding the occurrence of such injuries, damage or destruction, and the names and addresses of the witnesses upon whom he relies to establish his claim; and a failure so to notify the mayor and city council within the time and manner provided therein shall exonerate, excuse and except the city from any liability whatsoever. (Election - 9/10/60)

**Sec. 9. City Not Required to Give Bond.**

It shall not be necessary in any suit or proceeding in which the City of Midland is a party for any bond, undertaking or other security to be demanded or executed by or on behalf of the city in any of the state courts, but all such actions, suits, appeals or proceedings shall be conducted in the same manner as if such bond had been given, and the City of Midland shall be liable as if the security or bond had been duly executed.

**Sec. 10. Right of Eminent Domain.**

The City of Midland shall have the right of eminent domain for public purposes whenever the governing authority shall deem it necessary; and to take any private property, within or without the city limits, for any of the following purposes, to-wit: city halls, police stations, jails, calaboozes, fire stations and fire alarm systems, police alarm systems, radio stations and systems, libraries, welfare buildings, hospitals, sanitariums, auditoriums, market houses, abattoirs, warehouses, streets, alleys, parks, airports, highways, boulevards, subways, playgrounds, dumping grounds, sewer systems, sewage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water supply sources, wells, water, electric light and power systems, cemeteries and crematories; and to acquire lands, within or without the city, for any other municipal purposes that may be deemed advisable. The power herein granted for the purpose of acquiring private property shall include the power of improvement and enlargement of waterworks, including water supply, riparian rights, standpipes, watersheds, dams, the construction of supply reservoirs, wells, parks, squares, and pleasure grounds, and for the purpose of strengthening or improving the channel of any stream, branch, draw or drain, or the straightening or widening or extension of any street, alley, avenue, boulevard or other public highway. In all cases where the city seeks to exercise the power of eminent domain, it shall be controlled as nearly as practicable by the laws governing the condemnation of property by railroad corporations in this state, the city taking the position of the railroad corporation in any such cases. The power of eminent domain hereby conferred shall include the right of the governing authority of the city, when so expressed, to take the fee in the land so condemned, and such power and authority shall include the right to condemn public property for such purposes.

**Sec. 11. Street Powers.**

The City of Midland shall have the power to lay out, establish, open, alter, widen, lower, extend, grade, abandon, discontinue, abolish, close, care for, sell, pave, supervise, maintain and improve streets, alleys, sidewalks, squares, parks, public places and bridges and regulate the use thereof and require the removal from streets, sidewalks, alleys and other public property or places all obstructions, telegraph, telephone or other poles, carrying electric wires or signs, and all fruit stands, show cases and encroachments of every nature or character upon any of said streets and sidewalks, and to vacate and close private ways.

**Sec. 12. Street Improvements.**

Articles 1086 to 1105, both inclusive, and Article 1105b of the 1925 Revised Civil Statutes of Texas, as amended, are hereby adopted, and the City of Midland shall have the power to improve any street or highway within its limits by filling, grading, raising, paving or repaving the same in a permanent manner or by the construction or reconstruction of sidewalks, curbs and gutters or by necessary appurtenances thereto, including sewers and drains. In the event there be any conflict between the method of improving streets, etc., as provided for by Article 1105b and the other articles of the statutes hereinafter referred to and in the adoption of the Charter herein adopted, the conflicting methods of procedure shall be deemed optional methods, and the city council of the City of Midland may legally pursue either of said methods in making such improvements.

**Sec. 13. Regulation of Vehicles.**

The city council shall have the power by ordinance or otherwise to license, operate and control the operation of all character of vehicles using public streets, including motorcycles, bicycles, automobiles, trucks, trailers, buses or like vehicles; and to prescribe the speed of the same, the qualification of the operators of the same, the routing of the same, and the lighting of same by night; and to provide for the giving of bond or other security or the operation of same.

**Sec. 14. Railroads.**

The city council shall have the power by ordinance or otherwise to direct and control, within the city limits, the speed of engines, locomotives and motor cars operating on railroad tracks, the construction of railroad tracks, turnouts and switches, and the regulation of the grade thereof and the use of streets.

**Sec. 15. Public Utilities.**

The city shall have power to build, construct, purchase, own, lease, maintain and operate, within or without the city limits, light and power systems, water systems, sewer systems or sanitary disposal equipment and appliances, natural gas systems, parks and swimming pools, fertilizer plants, abattoirs, and any other public service or utility; power to mortgage and encumber such system or systems in the manner provided in Articles 1111 to 1118, both inclusive, of the 1925 Revised Civil Statutes of Texas, as amended, and any other laws of the State of Texas, applicable thereto; and all the power which the city might exercise in connection with such public utilities and public services under Article 1175 of the 1925 Revised Civil Statutes of Texas, and any amendments thereto now or hereafter in effect as well as under any other general laws of the State of Texas pertinent or applicable thereto, including the power to demand and receive compensation for service furnished for private purposes, or otherwise, and with full and complete power and right of eminent domain proper and necessary efficiently to carry out said objects.

**Sec. 16. Regulation of Public Utilities.**

- (a) The city council shall have the power by ordinance to fix and regulate prices, fares, tolls and charges of water, gas, electric light, telephone, telegraph and public carriers, whether transporting passengers, freight or baggage, and generally to supervise and regulate the rates, tolls or charges of all public utilities and common carriers of every kind. The city council shall have power by ordinance to prescribe the character, quality and efficiency of service to be rendered, given and performed and furnished and the kind and design of material used in improvements by all public utilities engaged in the business of furnishing any commodity or service or in the operation of any public utility of any kind in the City of Midland, together with the power to regulate and require the extension of the lines or services of any such public utility within such city, or prohibit same.
- (b) Any company, corporation or person who may be engaged in furnishing to the inhabitants of the City of Midland any light or gas service shall, on or before the first day of March of each year, file with the mayor of the City of Midland a sworn written report, including all the information set forth in Article 1121 of the 1925 Revised Civil Statutes of Texas, as amended; it being the intention of this section to require said company, corporation or person to file such reports pertaining to their operations insofar as same pertain to their operations within the city limits of the City of Midland.

**Sec. 17. The Power to Buy and Sell Gas, etc.**

The city shall have power to purchase electricity, gas, oil, or any other article or service essential to a proper conduct of the affairs of the city and of its inhabitants on such terms as the city council may deem proper,

for sale and distribution to the inhabitants of the city and adjacent territory; provided that no contract of purchase binding the city for a longer period than two years shall be valid unless authorized by an election at which a majority of those voting shall favor the making of such contract. (1955)

**Sec. 18. Franchises.**

- (a) The right of control, easement, use and ownership and title to the streets, highways, public thoroughfares and property of the city, its avenues, parks, bridges and all other public places and property, are hereby declared to be inalienable except by ordinance duly passed by a majority of all members of the city council; and no grant of any franchise or lease, or right to use the same, either on, through, along, across, under or over the same, by any private corporation, association or individual, shall be granted by the city council for a longer period than twenty years unless submitted to the vote of the legally qualified voters of the city; provided, however, that when application is made for any grant or franchise, lease, right or privilege by any person or corporation, if applicant so requests, the council shall submit the same at an election called for said purpose, the expense of which shall be borne by the applicant, and, if a majority of the votes cast at said election shall be in favor of making the grant as applied for, said grant shall be made for a term of years as specified in the ordinance calling said election; provided, however, that no grant shall be made or authorized for a period longer than thirty years. (Election - 4/1/75, Res. 75-91 - 4/8/75)
- (b) The city council may of its own motion submit all such applications to an election at which the people shall vote upon the propositions therein submitted, the expense of such election to be paid by the applicant.
- (c) No franchise shall ever be granted until it has been approved by a majority vote of the city council after having been read in full at three regular meetings of the city council, nor shall any such franchise, grant or privilege ever be made unless it provides for adequate compensation or consideration therefor, to be paid to the city, and in addition to any other compensation grantee shall pay annually such fixed charge as may be prescribed in the franchise. Such franchise and any contract in pursuance thereof shall provide that, upon termination of the grant the franchise, as well as any other property of the grantee within said city, shall, upon payment of a fair valuation therefor (the mode to determine which shall be specified in the grant), become the property of the city; provided, that the grantee shall never be entitled to any payment of valuation because of any value derived from the franchise or the fact that it is or may be a going concern duly installed and operated.
- (d) Every such franchise or grant shall make adequate provision by way of forfeiture of the franchise, or otherwise, to secure efficiency of public service at reasonable rates and to maintain the property in good order throughout the life of the grant.
- (e) The city council may cause to be inspected or examined at all reasonable hours any books of account or papers of any such grantee, which accounts shall be kept and reports made in accordance with forms and methods prescribed by the city council, which so far as practical, shall be uniform for all such grantees. All such grantees shall furnish such invoices, reports, costs, books and papers as may be required by the city council in determining any rates or charges of such grantee for its services to the patron of such grantee.

**Sec. 19. Airports.**

The city council shall have power to establish, maintain and operate an airport or airports, within or without the city limits, and landing fields, radio beams, beacons and other apparatus, buildings, equipment and appurtenances necessary or convenient therefor, and to make suitable charges for their use.

**Sec. 20. Parks, Playgrounds, etc.**

The City of Midland shall have exclusive control of all city parks and playgrounds, whether within or without the city limits, and to control, regulate and remove all obstructions and prevent all encroachments thereupon; to provide for raising, grading, filling, terracing, landscape gardening, erecting buildings, swimming pools and wading pools, and other structures providing amusements therein, for establishing walks and paving driveways around, in and through said parks, playgrounds, and other public grounds, speedways or boulevards owned by it, and lying both outside and inside the municipal boundaries.

**Sec. 21. Underground Construction.**

The city council may require the placing of all wires or overhead construction of public utilities, or such part thereof as may be deemed best, from time to time, under the surface of the grounds, under such regulations as may be prescribed by the city council from time to time; and may provide for such construction or change thereof in any franchises hereafter granted.

**Sec. 22. Fires.**

The city council shall have power by ordinance or otherwise to provide means for protection against conflagrations and for the establishment, maintenance, support and regulation of a fire department and for the guarding against fires. It may prescribe fire limits, stipulate and provide for minimum requirements for construction of buildings within such fire limits, regulate or prohibit the erection, building, replacing or repairing of wooden buildings within such limits; may prescribe that the buildings within such fire limits be made or constructed of fireproof material; and may prohibit the repairing of wooden buildings within such limits when the same have been damaged to within fifty per cent of the value thereof; and may declare all dilapidated buildings to be nuisances and direct the same to be repaired, removed or abated in such manner as the city council may prescribe; and may further prescribe limits within which only fireproof roofing may be used; it may also by ordinance regulate, prescribe, govern or forbid the storage of lumber, building material of any kind or inflammable or explosive goods, wares and merchandise of any and every kind within certain limits and prescribe limits within which such materials may be stored, housed or carried.

**Sec. 23. Health.**

The city council shall have the power to provide for a health department and to establish all necessary rules and regulations protecting the health of the city and for the establishment of quarantine stations, pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases. Such general powers shall include, but not to the exclusion of other powers, the following powers:

- (a) The city council shall have the power by ordinance or otherwise to regulate, license and inspect persons, firms, corporations, common carriers or associations operating, managing or conducting any hotel or any other public sleeping or eating place, or any place or vehicle where food or drink, or containers therefor, of any kind is manufactured, prepared, stored, packed, served, sold or otherwise handled within the city limits of said city, or any manufacturer or vendor of candies or manufactured sweets; and shall have the power to prescribe health regulations with reference to any and all workers or employees hired or used in any of said places or vehicles, or about said places or vehicles, or who deliver products to and from said places and vehicles; and shall have the power to inspect, license and regulate the sanitary condition of said places and vehicles and to condemn all articles not wholesome or fit for human consumption.
- (b) The city council of the City of Midland shall have the power to license barbers and beauticians and

to prescribe health regulations with respect to their places of business, their persons and their workers and employees, and shall have the power to prescribe health regulations with respect to porters, hotel maids and domestic servants.

- (c) To define all nuisances and prohibit the same within the city and outside the city limits for a distance of 5,000 feet; to have power to police all parks or grounds, speedways, or boulevards owned by said city and lying both outside and inside said city; to prohibit the pollution of any stream, draw, drain or tributaries thereof, water deposit and reservoir, whether above or below the ground, which may constitute the source or storage of water supply, and to provide for policing the same, as well as to provide for the protection of any watersheds and the policing of same; to inspect, license and regulate dairies, slaughter pens and slaughterhouses inside or outside the limits of the city from which meat or milk is furnished to the inhabitants of the city; to require property owners to make connection to the sewer systems with their premises, and to provide for fixing a lien against the property of property owners who fail or refuse to make sanitary sewer connections, and to charge the cost against said owner and make it a personal liability.
- (d) To provide for the fixing of penalties for failure of any person, firm, corporation or association to comply with any such rules and regulations so prescribed by the city council under the provisions of this section; it being the Intention to vest in the city council not only the powers expressly enumerated in this section but all other powers reasonably necessary for the protection of the health of the City of Midland and its inhabitants.

#### **Sec. 24. Police Department.**

The City of Midland shall have power by ordinance to establish and maintain a police department and to prescribe the duties of the members of said department, and regulate their conduct and fix their salaries or fees of office or both. The head of the police department of said city shall be known and designated as "chief of police," and the other members thereof shall be known as "policemen," all of whom shall be appointed by the city council.

#### **Sec. 25. Power to Compromise and Settle Claims and Lawsuits.**

The city council of the City of Midland shall have the power and authority to compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the said city, including suits by said city to recover delinquent taxes. (1955)

#### **Sec. 26. Contracts.**

- (a) No contract shall ever be made which binds the city to pay for personal services to be rendered for any stated period of time; but all contracts for personal services shall be restricted to the doing of some particular act or thing, and upon its completion no further liability shall exist on the part of the city; with the exception of officers and heads of departments specifically mentioned herein.
- (b) Nor shall the city or anyone acting for It make any contract for goods, materials, services or supplies for the current use of any department of the municipality for more than one year, except as in this Charter provided, until included in the budget and an appropriation has been made therefor, and no contract or purchase shall exceed the amount appropriated. All contracts, except for professional services, shall be made upon specifications, and no contract shall be binding until it has been signed by the mayor, or other officer or agent designated and expressly authorized by the city council. Whenever the contracts charged to any appropriation equal the amount of the appropriation, the mayor or other authorized person shall sign no additional contract chargeable to such appropriation.

Any contract for current expenditures exceeding the budget or the appropriation therefor shall be void. (Election - 9/10/60)

- (c) After approval of specifications by the mayor and city council, or other officer expressly designated by them, advertisement shall be published in the official newspaper, to be named by the city council, at least once in each week for two consecutive weeks, inviting competitive bids for labor and materials embraced in the proposed contract. All bids submitted shall be sealed and delivered to the city officer designated by the council and specified in the advertisement. At the time announced in such notice, there shall be a public opening in a place designated in said public notice of all bids received, the person opening the bids to be named by city council, and no awards shall be made except to one of the bidders. The council, or other officer expressly designated by them, shall determine the most advantageous bid for the city and shall award the contract to such bidder, but the city shall always have the right to reject any and all bids, and, in the event all bids are rejected, may call for new bids which shall be advertised in like manner as the original bids. Pending advertisement of such proposed contracts, the specifications shall be on file in the office of the city officer designated by the council and specified in the advertisement, subject to the inspection of all persons desiring to bid. No contract shall ever be authorized except by approval of the city council, or other officer expressly designated by them; provided, however, that contracts in any one transaction or related series of transactions for less than \$10,000.00 or the maximum allowed under state statute, whichever is greater, may be awarded without advertisement and bid as herein required, if in the opinion of the city council, or other officer expressly designated by them, such advertisement and bid should be waived and provided that at least three bids, if available, are solicited.

Notwithstanding anything to the contrary herein otherwise contained, the council, or other officer expressly designated by them, may waive formal advertisement for bids when in its judgment there is only one source of supply and bids would be futile and the item can be obtained from the sole source at a price considered reasonable by the council, or other officer expressly designated by them; and, further, when no bids are received in response to formal advertisement for same, the council, or other officer expressly designated by them, may negotiate the transaction in question with any available source on any terms determined by the council to be reasonable and in the public interest.

Provided, further, that in case it is necessary to preserve or protect the public health or safety of the residents of the city, or in case of public calamity caused by fire, flood, storm or other natural disasters or acts of God, or in other emergency cases created by unforeseen damage to public property, the city council, or other officer expressly designated by them, may authorize contracts for the immediate repair, preservation or protection of public property and the lives and health of the citizens of the city without advertising for bids as otherwise required hereinabove and, to pay for same, the city council may issue such time warrants as are necessary, irrespective of the provisions of Article VIII of this Charter. (Res. 91-193 - 5/9/91)

## **Sec. 27. Zoning.**

The city council shall have full power and authority to zone the City of Midland and to pass all necessary ordinances, rules and regulations governing the same under and by virtue of the authority given to cities and legislative bodies thereof by Sections "A" to "H" of Article 1011 of the 1925 Revised Civil Statutes of Texas, as amended, being Acts of 1927, 40th Legislature, Page 424, Chapter 283, and all amendments thereto and amendments which may hereafter be made thereto. (1955)

## **Sec. 28. Other Enumerated Powers.**

In addition to the powers hereinabove specifically enumerated, the city council of the City of Midland

shall have the power to license any lawful business, occupation or calling that is susceptible to the control of the police power; to license, regulate, control, or prohibit the erection of signs or billboards within the corporate limits of said city; to provide for a public library and the maintenance thereof; to provide for the regulation and control of electricians, plumbers, and gas fitters and electrical and plumbing works, and to require efficiency in the same; to provide for the inspection of weights, measures and meters and fix a standard of such weights, measures and meters, and to require conformity to such standards, and to provide penalties for failure to use or conform to the same; and to provide for inspection fees; to provide for the issuance of permits for erecting all buildings, for the inspection of the construction of buildings in respect to proper wiring for electric lights and other electrical appliances, piping for gas, flues, chimneys, plumbing, and sewer connections; and to enforce proper regulations in regard thereto; to require the construction of fire escapes for all public buildings, and to determine the sufficiency and regulate the safety of all exits and fire escapes provided for public buildings of every kind and character; and to provide for the enforcement of all ordinances enacted by the city by a fine not to exceed two hundred dollars, provided that no ordinance shall prescribe a greater or less penalty than is prescribed for a like offense by the laws of this state. (Election - 4/1/75)

## **ARTICLE IV OFFICERS AND ELECTIONS.**

### **Sec. 1. Governing Body.**

The governing and lawmaking body of the City of Midland shall consist of five councilmen and a mayor, and said body shall be known as the "city council of the City of Midland."

### **Sec. 2. Elective Officers.**

The members of the city council of the City of Midland, which includes the five councilmen and a mayor, shall be the only elective officers of the city, and they shall be elected and hold office and be compensated as herein provided. Said councilmen and mayor shall be elected from the city at large. (1955)

### **Sec. 3. City Councilmen and Mayor, How to Get Name on Ballot.**

Any qualified voter who is a citizen of the United States and who meets the minimum age and residency requirements established by the State statute and who is not delinquent in any indebtedness to the city, shall have the right to file an application to have his name placed on the official ballot as a candidate for any elective office, and such application in writing, signed by such candidate and delivered to the city secretary or mayor not less than thirty days prior to the date of the election, shall entitle such applicant to a place on the official ballot. The city secretary shall deliver any applications he receives to the mayor prior to the filing deadline. The names of such candidates shall be printed on the official ballot in the order determined by a drawing and the applications of such candidates shall designate the places which they seek.

### **Sec. 4. Candidates, to Run for Places, Places Designated.**

Candidates for the office of councilmen shall file their applications for place number 1, place number 2, place number 3, place number 4, or place number 5, as the case may be, and shall be voted on and elected accordingly. Candidates for mayor shall designate in their applications that they are running for such office.

Promptly upon the adoption of this amendment, the mayor elect shall serve for a period of one (1) year. Thereafter, the mayor shall be voted upon and shall serve for a term as provided under Article 4, Section 9. (Election - 4/2/57)

### **Sec. 5. Candidates, How Elected.**

The candidate receiving the highest number of votes cast for the place which he seeks shall be elected to the respective office for which he was a candidate.

### **Sec. 6. Judge of Election.**

The city council shall be the judge of the election and qualifications of its own members and of the mayor, subject to review of the courts in case of contest. The city council shall, on the next regular meeting day of said council after each regular and special election, canvass the returns and declare the results of such election.

### **Sec. 7. Date of Election.**

The regular municipal elections of the City of Midland shall be held on the first Tuesday in April of each year, and the same shall be conducted and the results canvassed and announced by the election authorities

prescribed by the general election laws of the State of Texas, and said general election laws shall control in all municipal elections except as otherwise herein provided.

**Sec. 8. Officers.**

All officers of the city, whether elective or appointive, shall qualify by taking the oath prescribed by the constitution of this state and by executing such bond as may be required under the provisions of this Charter and the ordinances and resolutions of the city. (1955)

**Sec. 9. Term of Office.**

The mayor and each member of the city council shall serve for a term of three years beginning on the first Monday in June of the year in which they are elected and continuing until their successor is elected and qualified, and the mayor and each member of the city council shall not be elected to serve more than three consecutive three-year terms of office. This section shall not be applied retroactively and shall not affect the right of any individual who was elected to the office of mayor or member of the city council prior to August 1, 1996, to serve an additional three consecutive three-year terms of office. Any vacancy or vacancies occurring on such governing body shall not be filled by appointment but shall be filled by the qualified voters of the city. (Election - 5/4/96; Res. 96-124 - 5/8/96)

**Sec. 10. Vacancies.**

[Deleted by Res. 96-124 - 5/8/96]

**Sec. 11. Mayor pro tem.**

The mayor pro tem shall be selected from among the members of the council and shall perform all the duties of the mayor in his absence or disability.

**Sec. 12. Compensation of Mayor and Councilmen.**

- (a) The mayor shall receive a salary in an amount to be fixed by the city council, but which amount shall in no event be more than seventy-five dollars per month or less than twenty-five dollars per month.
- (b) Each councilman shall receive the sum of ten dollars for each meeting of the council attended by him, provided that no councilman shall receive a greater compensation than twenty-five dollars per month. (1955)

**Sec. 13. Duties of the Mayor.**

The mayor of the City of Midland shall preside over the meetings of the city council and perform such other duties consistent with the office as may be imposed upon him by this Charter and ordinances and resolutions passed in pursuance hereof. He may participate in the discussion of all matters coming before the council and shall be entitled to vote upon all matters considered by the council, but shall have no veto power. He shall sign all contracts and conveyances made or entered into by the city and all bonds issued under the provisions of this Charter, unless some other officer or agent of the city is designated and expressly authorized to do so by the city council, and shall be the chief executive officer of the city. He shall be recognized as the official head of the city by the courts for the purpose of serving civil process, by the governor for the purpose of enforcing military law, and for all ceremonial purposes. In times of danger or emergency, the mayor may with the consent of the city council take command of the police and govern the city by proclamation and maintain order and enforce all laws. (Election - 4/1/75)

**Sec. 14. Duties of the City Council.**

- (a) The city council shall have all powers necessary and incident to the proper discharge of the duties imposed upon it and is hereby invested with all power necessary to carry out the terms and provisions of this Charter; it being intended that the city council and mayor shall have and exercise all powers enumerated in this Charter or implied thereby and all powers that are or hereafter may be granted to municipalities by the constitution or laws of the State of Texas.
- (b) The city council shall have the power and duty to supervise and control all other departments of the city government and to appoint all city employees and officers other than the city council and mayor, having the power to appoint and remove all officers or employees in the service of the city whenever in its judgement the public interests demand or would be better served thereby.
- (c) The compensation of all appointive officers and employees shall be fixed by the city council, who may increase or diminish such compensation at will or abolish any appointive office entirely at any time. (1955)
- (d) The powers of the city council shall include, among others enumerated in this Charter, the following: The power to provide for any and all appointive officers and employees additional to those elsewhere in this Charter specifically provided for, including those of "City Manager" and "City Attorney" which the city council may deem expedient in connection with the proper discharge of the duties imposed upon said council; and for the employment at the pleasure of the city council of any such officer or employee and for the delegation to any such officer or employee of such duties and authorities as the city council may prescribe in connection with: 1) the administration of the city's business and affairs in accordance with the specific legislative and executive directions of the council; 2) the appointment, supervision and removal of all personnel in accordance with such personnel policy as the council may approve by resolution, and other than those appointed directly by the council; 3) the preparation and submission for council approval of the annual municipal budget; and, 4) the execution and enforcement of all laws and ordinances of the city, whether or not such delegated duties and authorities are elsewhere in this Charter expressly restricted to the city council or otherwise, and provided always that any such delegation shall be and remain revocable at the will of the city council without the necessity of a formal ordinance. (Election - 9/10/60; Resolution - 9/13/60)

**Sec. 15. Meetings of the City Council.**

The city council shall hold at least one regular meeting in each month at a time to be fixed by it for such regular meetings, and may hold as many additional meetings during the month as may be necessary for the transaction of the business of the city and its citizens.

**Sec. 16. Special Meetings.**

Special meetings of the city council may be had in the manner to be provided by the city council.

**Sec. 17. Rules of the City Council.**

The city council shall determine its own rules of procedure and may compel the attendance of its members.

**Sec. 18. Legislative Procedure.**

A majority of the city council shall constitute a quorum to do business, and the affirmative vote of a majority of those attending any meeting at which there is a quorum present shall be necessary, and

sufficient to adopt any ordinance or resolution. All meetings of the city council shall be public, except when otherwise directed by the council, and minutes of all proceedings shall be kept, to which any citizen may have access at all reasonable times and which shall constitute one of the archives of the city. The vote upon the passage of all ordinances and resolutions shall be taken by the "ayes" and "nays" and entered upon the minutes, and every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the person performing the duties of the city secretary.

**Sec. 19. Ordinances, Enactment of.**

Each proposed ordinance or resolution shall be introduced in writing or printed form and shall not contain more than one subject which shall be clearly expressed in the title, except ordinances or resolutions making appropriations or authorizing the contracting of indebtedness or issuance of bonds or other evidence of indebtedness. No ordinance, unless it be declared an emergency measure, shall be passed finally on the date it is introduced, but must be passed, read and voted upon at two regular meetings of the city council.

**Sec. 20. Emergency Measures Defined.**

An emergency measure is an ordinance or resolution for the immediate preservation of the public business, property, health or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth in such ordinance or resolution. Ordinances or resolutions appropriating money to defray current or other expenses of the city may be passed as emergency measures, but no ordinance or resolution making a grant, renewal or extension of a franchise or other special privilege or regulating the rate or rates to be charged for service furnished the public generally by any public utility shall ever be passed as an emergency measure.

**Sec. 21. Ordinances now in Effect.**

All ordinances of the City of Midland now in existence and not inconsistent with the provisions of this Charter shall remain in full force and effect until altered, amended or repealed by the city council.

**Sec. 22. Ordinances, Pleading of, and Admissibility as Evidence.**

It shall be sufficient in all judicial proceedings to plead any ordinance of the city by caption without embodying the entire ordinance in the pleadings, and all pleaded ordinances or codes of ordinances shall be admitted in evidence in any suit and shall have the same force and effect as the original ordinance. Certified copies of the ordinances may also be used in evidence in lieu of original ordinances.

**Sec. 23. Ordinances, Publication of.**

Every ordinance imposing any penalty, fine, imprisonment or forfeiture shall, after passage thereof, be published in one issue of the official paper; and proof of such publication shall be made by the printer or publisher of such paper, making affidavit before some officer authorized by law to administer oaths, and filed with the person performing the duties of the city secretary, and shall be prima facie evidence of such publication and promulgation of such ordinance so published shall take effect and be in force from and after five days after publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect and be in force from and after the passage thereof, unless otherwise provided.

**Sec. 24. Departments may be Consolidated, etc.**

The city council of the City of Midland may abolish or consolidate such offices and departments as it

may deem to the best interest of the city and may divide the administration of any such departments and discontinue any offices or departments at its discretion, except as to the offices of mayor and city council.

**Sec. 25. City Secretary.**

The city council shall appoint a city secretary. He shall be a qualified voter residing in the city for at least one year preceding his appointment. He shall receive for his services such compensation as the city council may fix. Unless excused by the city council for good cause, he shall attend all meetings of the city council and keep accurate minutes of its proceedings; he shall preserve and keep in order all books, papers, documents, records and files of the city council and of the executive department. He shall keep a record of all commissions and licenses issued and shall countersign the same. He shall have custody of the seal of the city, and shall affix same to such documents and obligations of the city only as he may be legally authorized so to do.

**Sec. 26. Corporation Court.**

- (a) There shall be established and maintained a court designated as a "corporation court" for the trial of misdemeanor offenses, with all such powers and duties as are now or may hereafter be permitted by the laws of the State of Texas to corporation or recorders' courts.
- (b) The judge of said court shall be a qualified voter of the city, shall be appointed by the city council, shall hold his office at the pleasure of the city council, and shall receive such salary or fees of office, or both, as may be fixed by ordinances of the city council.
- (c) The city secretary or his deputy shall be ex officio clerk of said court and shall receive such salary or fees of office or both as may be fixed by ordinance.
- (d) The clerk of said court and his deputies shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court thereto, and generally do and perform any and all acts usual and necessary by clerks of courts in issuing processes of said courts and conducting the business thereof. (1955)
- (e) In case of disability or absence of the judge of the corporation court, the city council shall appoint a person to act as judge of the corporation court and said person shall receive such salary or fee of office, or both, as may be fixed by ordinance of the city council. In case of the disability or absence of both of the above, the city council shall appoint some other person to act as judge of said court during such disability or absence and said person shall receive such salary or fee of office, or both, as may be fixed by ordinance of the city council. (Election - 4/2/57)

**Sec. 27. Nepotism.**

No person related, within the second degree by affinity or within the third degree by consanguinity, to the mayor or any member of the city council shall be appointed to any office, position or clerkship or other service of the city.

**Sec. 28. Official Bond for Appointive Officers.**

The city council of the City of Midland shall have the right to require official bond from all appointive officers or employees of the city in such amounts as said city council from time to time fix by ordinance or resolution and conditioned for the faithful discharge of the duties of his office and accounting for all moneys, credits and things of value coming into the hands of such officers or employees; and all such bonds shall be signed as surety by some surety company authorized to do business under the laws of this

state, and the premiums accruing thereon shall be paid by the City of Midland.

**Sec. 29. Audit and Examination of the City Books and Accounts.**

The city council shall cause a continuous audit to be made of the books of accounts of each and every department of the city. Such audit shall be made by a competent public accountant who shall be selected by the city council, and a contract entered into from year to year; and such contract shall provide that the books of the city shall be audited at least annually, and such auditor's report to the city council shall be accessible to the public or for publication. (1955)

**Sec. 30. Budget.**

The city council shall on the first day of January of each year or as soon thereafter as practicable prepare a budget to cover all proposed expenditures of the city for the succeeding year. Such budget shall be prepared in conformity with the provisions of V.T.C.A., Local Government Code Sections 102.001 to 102.011, inclusive, together with any amendments thereto hereafter enacted. No public money shall ever be spent or appropriated, except in case of public calamity, unless funds are currently in the possession of the city to cover said expenditures or appropriation. No expenditure shall ever be made by the city except upon checks or electronic fund transfers drawn upon the account for which a previous appropriation shall have been made, signed by the city treasurer, or in his absence, by the assistant city treasurer, who shall have been so designated by the city council, and countersigned by the city secretary or mayor. (Res. 91-193 - 5/9/91)

## ARTICLE V TAXES AND TAXATION.

### **Sec. 1. Taxation.**

All real, personal and mixed property held, owned or situated in the City of Midland, which is not exempt by the Constitution or general laws of the State of Texas, shall be liable for all taxes due by the owner thereof, including taxes on real estate, franchise, personal and mixed property, except that the homestead of any person within the City of Midland shall never be liable for any taxes other than the tax upon itself.

### **Sec. 2. Tax Levies.**

- (a) The city council shall have the power and it is hereby authorized and made its duty to levy annually for general purposes and for the purpose of paying interest and providing the sinking fund on the bonded indebtedness of the City of Midland now in existence or which may hereafter be created an ad valorem tax on all real, personal or mixed property within the territorial limits of said city and upon all franchises granted by the city to any individuals or corporations of not exceeding a total of two dollars on the one hundred dollars appraised valuation of said property. If for any cause the city council shall fail, neglect or refuse to pass a tax ordinance for any one year, levying taxes for that year, then and in that event the tax levying ordinance last passed, shall and will be considered in force and effect as the tax levying ordinance for the year for which the city council failed, neglected or refused to pass such ordinance, and the failure so as to pass such ordinance for any year shall in no wise invalidate the tax collections for that year.
- (b) The city council may determine and provide when taxes shall be due and payable by corporations or individual corporators and all persons owning property. It shall have the right to fix the time and terms of payment of taxes, prescribe penalties for the nonpayment thereof upon the expiration of the time fixed by the said council, may provide for split payments of city taxes, and may provide discounts for advance payments of taxes.
- (c) The city council or any other officer of the city shall never extend the time for the payment of taxes or remit, discount or compromise any tax legally due the city, nor waive the penalty that may be due thereon to any person, but the city council may by ordinance provide for the remission, discount, compromise or waiver of penalty to all persons legally owing any taxes when such remission, discount, compromise or waiver of penalty is for any particular and specified year or years and applies equally to all persons, firms or corporations owing taxes to the city for such year or years; provided, however, that this provision shall not prevent the compromise of any tax suit. (1955)

### **Sec. 3. Liens.**

The tax levied by the city is hereby declared to be a lien, charge or encumbrance upon the property upon which the tax is due, which lien, charge or encumbrance the city is entitled to enforce and foreclose in any court having jurisdiction over the same, and the lien, charge and encumbrance on the property in favor of the city for the amount of the taxes due on such property is such as to give the state courts jurisdiction to enforce and foreclose said lien on the property on which the tax is due, not only as against any resident of this state or person whose residence is unknown, but also as against the unknown heirs of any person who owns the property upon which the tax is due and also as against nonresidents. All taxes upon real estate shall especially be a lien and a charge upon the property upon which the taxes are due, which lien may be foreclosed in any court having jurisdiction.

Said lien shall exist from January 1 in each year until the taxes are paid. Such lien shall be prior to all other

claims, and no gift, sale, assignment or transfer of any kind, or judicial writ of any kind, can ever defeat such lien, but the tax assessor-collector may pursue such property, and whenever found may seize and sell enough thereof to satisfy such taxes.

In the event that personal property of the taxpayer is delivered into the actual or constructive possession of a receiver, trustee, or other person because of insolvency, bankruptcy, receivership or otherwise, between January 1 and the date that the taxes are actually levied, then and in that event the amount of the taxes due shall be the same as was levied for the prior year for the same property and shall be secured by a lien in that amount.

All persons or corporations owning or holding personal property or real estate in the city on the first day of January of each year shall be liable for all municipal taxes levied thereon for such year.

The personal property of all persons owing any taxes to the city is hereby made liable for all of said taxes, whether the same be due upon personal or real property, or upon both. (Election - 4/1/75)

#### **Sec. 4. Rendition.**

- (a) It shall be the duty of every person owning or holding property within the City of Midland to render under oath to the assessor of taxes or such other person as may be provided for by ordinance at his office in said city annually within the time prescribed by ordinance of said city a full and complete inventory of all property so owned or held by him, whether real, personal or mixed, and to take and subscribe to an oath to the correctness of such inventory, which oath may be administered by the assessor or such other officer as aforesaid, acting in person or by deputy.
- (b) The definitions of property and terms as defined by the general laws of the state under the head of taxation shall apply to the taxation of property in this city.

#### **Sec. 5. Unrendered Property.**

The city council shall provide by ordinance for the listing and valuation of all property, real, personal and mixed, situated, owned or held within the city limits of Midland and which has not been rendered by the owner thereof each year upon a date to be specified by the city council by ordinance, by the assessor or other officer designated for that purpose, which list of property so unrendered and assessed shall be placed upon the tax rolls of the City of Midland and submitted along with the rendered roll to the board of equalization and be subject to the same tax levy as the rendered property within said city.

#### **Sec. 6. Collection of Taxes.**

- (a) The city council shall have full power, by ordinance, to provide for the prompt collection of all taxes levied, assessed and due or becoming due to said city and prescribe where property shall be assessed or rendered for taxes and when the taxes thereon shall become due and payable, and to that end may and shall pass all ordinances and make all such provisions as may be necessary for levying, imposing, assessing and collecting said taxes, regulating the methods of making out tax lists and inventories, and fixing the duties and defining the powers of the assessor and collector of taxes or such other officer as may be designated therefor by the city council.
- (b) All taxes shall be payable at the office of the assessor and collector or such other officer as the city council may prescribe, and no demand for payment thereof shall be requisite or necessary to enforcement of the collection thereof, nor the collection of any taxes due before the passage of this article.

- (c) All property which the owner thereof may have failed or refused to inventory, assess or render for taxation for years prior to the passage of this act, shall be by the officer designated by the city council inventoried, assessed and rendered for taxes for the year or years for which the same was not so rendered, inventoried and assessed by the owner thereof, and such officer designated by the city council shall have the right and it shall be his duty at any time to revise, correct and reassess and properly describe any property incorrectly rendered or assessed or improperly described, without the necessity of giving notice to the owner thereof; provided, however, that the valuation as fixed by the board of equalization shall not be changed, and such inventory and assessment when revised and worked over shall be as valid and effective as if on such assessment sheets and tax rolls and as if regularly and duly rendered and assessed by the owner for the year for which rendered, assessed and inventoried, as above provided for, by the officer of the City of Midland designated by the city council, and said tax rolls and assessment sheets shall be prima facie evidence that said property was regularly and duly rendered, inventoried, assessed and properly described in all respects as if done duly and regularly by the owner in the first instance.

**Sec. 7. Payment of Taxes.**

All ad valorem taxes due or to become due upon real, personal or mixed property or upon franchises granted by the City of Midland to individuals or corporations and all license taxes, occupation taxes, permit fees, fines, forfeitures, penalties and other amounts of taxes accruing to the City of Midland shall be collectable and payable only in current money of the United States.

**Sec. 8. Delinquent Taxes.**

- (a) All ad valorem taxes due or to become due to the City of Midland that are not paid within the time specified by the city council in the ordinance providing the date of payment of said taxes shall be declared delinquent and shall be subject to the penalties prescribed by ordinance from time to time and may be collected by suits from delinquents, and foreclosure of the lien thereon may be had in any court having jurisdiction of the same, and any person who shall purchase or shall have purchased property encumbered by a lien for taxes or upon which taxes are due shall be deemed as to such taxes a delinquent taxpayer, and such purchaser (shall)<sup>2</sup>, take the property charged with the lien, and he cannot interpose any defense which the person or corporation owning the property at the time of the assessment of said taxes so delinquent might not have interposed had he or it continued to be the owner, except that no personal judgment shall be rendered for same against said purchaser.
- (b) All suits for delinquent taxes to the City of Midland shall be brought in the district court of Midland County, Texas, in accordance with the general laws of the State of Texas relative to the collection of delinquent state and county ad valorem taxes. (1955)

<sup>2</sup> The word in parenthesis has been added for the purpose of clarification.

**Sec. 9. Compilation of Delinquent Tax Rolls.**

Immediately after the end of the fiscal year of the City of Midland as prescribed by the city council, it shall be the duty of the assessor and collector of taxes, or such other person or officer as may be designated by the city council, to prepare a roll to be designated as the delinquent roll, containing the description of all property described in the assessment rolls of the fiscal year just preceding, together with the taxes due thereupon and which said taxes have not been paid, and said roll, when prepared, shall be certified to by the officer preparing same to be correct and shall be prima facie evidence of the statement made therein and that all of the prerequisites and requirements of the law as to levying taxes and assessing and rendering property therefor and as to all other matters have been complied with, and the city is entitled to one dollar

on each tract of land on said delinquent roll set forth, which shall be taxed against the delinquent taxpayer of the property and against said property, and the collector of taxes shall not issue any receipts to any delinquent taxpayer unless said one dollar has been paid. Said delinquent roll shall be finished and said statement furnished by the assessor and collector or other officer not later than thirty days after the end of each fiscal year. (Election - 9/10/60; Resolution - 9/13/60)

**Sec. 10. Board of Equalization.**

- (a) There shall be a board of equalization in said city which shall be composed of three qualified taxpaying and property-owning citizens of the City of Midland, appointed by the mayor and confirmed by the city council, whose powers and duties shall be the same as is given to the county commissioners court by the general laws of the State of Texas in regard to the equalization of property values for state and county taxation purposes.
- (b) Said board, constituted as herein provided, shall continue for a period of one year and shall be a standing committee to which all matters relative to valuation and renditions shall be referred; the members of said board shall receive such compensation as may be provided for by ordinance of the city council.
- (c) Said board shall meet at the city hall, or such other place as may be designated in its order of appointment by the city council within ten days after being notified by the assessor of taxes that the assessment rolls of the City of Midland are completed and ready for its inspection, and it shall complete its work as expeditiously as possible and in no event delay the completion thereof more than sixty days from its first meeting, and it shall file its final report with the mayor and city council not later than fifteen days after the completion of its work.
- (d) In case of dissatisfaction with the final decision of said board of equalization by any taxpayer, an appeal from such decision may be made by such taxpayer to the city council, provided such appeal is made within five days after the tax rolls have been certified by the board of equalization to the city council, by written petition specifically stating the part or parts of the valuation complained of. The city council shall dispose of all of such appeals within thirty days after the tax rolls of the city have been certified by the board of equalization. Any taxpayer being dissatisfied with the decision of the city council, upon appeal, shall have the right to contest any such decision in any court of competent jurisdiction, but as a condition precedent to the exercise of such right of review or appeal to the courts, any such taxpayer shall be required to give notice to the city council of his intention to file suit by filing with the city secretary an exact copy of his petition within thirty days after the final decision of the city council and any such taxpayer shall be required, as a further condition precedent, to pay said taxes assessed by the city and certified to by the board of equalization for the then current taxable year, and any subsequent years preceding final determination under protest, and, in the event of a final determination that the city council was in error in refusing the taxpayer relief, in such event the City of Midland shall be obligated to return to the taxpayer that part of the taxes which are held to be erroneously assessed and collected.

**Sec. 11. Occupation Tax.**

The city council shall have the power to levy and collect taxes upon all trades, professions, callings or other businesses carried on to the full extent permitted by the general laws of the State of Texas, to prescribe penalties for nonpayment thereof, and to regulate the operation of any business, trade or calling or profession.

**Sec. 12. Contract for Collection of Delinquent Taxes.**

The city council shall have the power to contract with any attorney-at-law for the collection of delinquent taxes owing the city. (1955)

**ARTICLE VI**  
**RECALL.**

**Sec. 1.**

- (a) The mayor or any other member of the city council may be removed from office in the following manner:

Any qualified voter of the city may make and file with the city secretary an affidavit containing the name of any member of the city council whose removal is sought and a statement of the grounds for removal. The secretary shall thereupon deliver to the voter making such affidavit copies of petition blanks for demanding such a removal, printed forms of which he shall keep on hand. Such blanks shall be issued by the secretary with his signature thereto attached, and they shall be dated and addressed to the city council, indicate the person to whom issued, and state the name of the member whose removal is sought. A copy of the petition shall be entered in a record book for that purpose to be kept in the office of the secretary. A recall petition to be effective must be returned and filed with the secretary within thirty days after the filing of the affidavit, must bear the signatures of qualified voters of the city equal in number to at least twenty per cent of those who were qualified voters on the date of the last regular municipal election, and at least one-half of the qualified voters constituting such twenty per cent signing the petition shall make affidavit, to be filed with the petition, to the effect that they voted for the person whose recall is sought at the election at which he was last chosen.

- (b) Signatures to a recall petition need not all be appended to one paper, but to each such petition paper there shall be attached an affidavit of the circulator thereof, stating that each signature thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Each signer of a recall petition shall sign his name in ink or indelible pencil and shall place after his name the date when his signature was made and his place of residence by street and number, or other description to identify the place. Recall petition papers provided by the city secretary shall be in form substantially as follows:

We, the undersigned qualified voters of the City of Midland, hereby demand that the question of removing \_\_\_\_\_ from the city council be submitted to a vote of the qualified voters.

Name	Address	Date
_____ _____ _____	_____ _____ _____	_____ _____ _____

State of Texas

Midland County

\_\_\_\_\_, being duly sworn, deposes and says that he is the circulator of the foregoing petition paper and that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
Notary Public \_\_\_\_\_

The affidavits of signers of a recall petition who voted for the person whose recall is sought at the election at which he was last chosen shall be in the following form:

State of Texas

County of Midland

\_\_\_\_\_, being duly sworn, deposes and says (or depose and say) that he (or they) signed the petition for the recall of and that he (or they) voted for the said \_\_\_\_\_ at the election when he was chosen for this present position.

Signed \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.  
Notary Public

- (c) All papers and affidavits comprising a recall petition shall be assembled and filed with the secretary as one instrument, with a statement attached thereto giving the names and addresses of three qualified voters, who, as a committee of petitioners, shall be officially regarded as filing the petition. Within ten days of the date of filing a recall petition, the secretary shall determine the sufficiency thereof and attach thereto a certificate showing the result of his examination. If he shall certify that the petition is insufficient, he shall set forth in the certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his finding.
- (d) A recall petition may be amended at any time within twenty days after the making of the certificate of insufficiency by the city secretary, by filing a supplementary petition upon additional paper issued, signed and filed as provided herein for an original petition. The secretary shall, within five days after such an amendment is filed, make examination of the amended petition and, if his certificate shall show the petition still to be insufficient, he shall file the petition in his office and notify the committee of the petitioners of his finding. The finding of the insufficiency of a recall petition shall not prejudice the filing of a new petition for the same purpose.
- (e) If a recall petition, or amended petition, shall be certified by the secretary to be sufficient, he shall at once submit it to the city council with his certificate to that effect and shall notify the member whose removal is sought of such action. If the member whose removal is sought does not resign within five days after such notice, the city council shall thereupon order and fix for holding a recall election. Any such election shall be held not less than forty nor more than sixty days after the petition has been submitted to the city council, and it may be held at the same time as any other general or special election within such period; but, if no such election is held within such period, the city council shall call a special recall election to be held within the time aforesaid.
- (f) The question of recalling any number of members of said city council may be submitted at the same election, but as to each member whose removal is sought a separate petition shall be filed and there shall be an entirely separate ballot. Candidates to succeed any member of the city council whose removal is sought shall be placed in nomination by petition signed, filed and verified as provided for nominating petitions for a regular municipal election; except that each petition paper shall specify that the candidate named therein is a candidate to succeed the particular member whose removal is sought.
- (g) The ballots used in a recall election shall submit the two following propositions in the order indicated:  
"For the recall of (name of mayor or councilman)";  
"Against the recall of (name of mayor or councilman)."

The voter, by striking out either of these propositions, may indicate his vote for the one not so stricken out. Under the propositions shall appear the word "candidates" and the direction, "Vote for one," and beneath this the names of candidates nominated as hereinbefore provided. The person whose recall is sought shall not have his name printed on the ballot as a candidate. Except that the space left for the names and dates shall be filled by the correct names and dates, the ballots used in a recall election shall be in form substantially as follows:

Recall Election

City of Midland

\_\_\_\_\_(month and day of month) \_\_\_\_\_ 20 \_\_\_\_

For the recall of

Against the recall of

Candidates

Vote for one

Except as provided for in this section, ballots used in recall election shall comply with the provisions of this Charter regarding ballots for a regular municipal election.

- (h) If a majority of the votes cast on the question of recalling the mayor or a city councilman be against recall, he shall continue in office for the remainder of his unexpired term, but subject to recall as before. If a majority of such votes be for the recall of the officer on the ballot, he shall, regardless of any defects in the recall petition, be deemed removed from office. When the mayor or councilman is removed from office by recall, the candidate to succeed such officer who receives the highest vote shall be declared elected to fill the unexpired term.
- (i) If a mayor or councilman in regard to whom sufficient recall is submitted to the city council shall resign within five days thereon, the place thus made vacant on the city council shall be filled by the appointment of some eligible person by a majority vote of the remaining members, as hereinbefore provided for filling vacancies arising from other causes.
- (j) No recall shall be filed against the mayor or councilman within three months after he takes office or, in the case of a mayor or councilman subjected to a recall election and not removed thereby, until at least six months after that election.

## **ARTICLE VII INITIATIVE AND REFERENDUM.**

### **Sec. 1. The Initiative.**

- (a) The voters shall have power at their option to propose ordinances and resolutions, exclusive of ordinances granting franchises and privileges, and to adopt the same at the polls, such power being known as the initiative. A petition meeting the requirements hereinafter provided and requesting the city council to pass an ordinance or resolution therein set forth shall be termed an initiative petition and shall be acted upon as hereinafter provided. The term "measure" as used in this Charter shall include the terms "ordinance" and "resolution."
- (b) Signatures to initiative petitions need not all be on one paper, but the circulator of each such paper shall make an affidavit that the signatures appended thereto were made in his presence and are genuine signatures of the persons whose names they purport to be. Such petition shall be signed in ink or indelible pencil and each signer shall place after his name the date when his signature was made and his place of residence by street and number, or other description sufficient to identify the place. All such petition papers pertaining to any one measure shall have written or printed thereon the names and addresses of at least five qualified voters who shall be officially regarded as filing the petition and who shall constitute a committee of the petitioners for the purposes hereinafter named. All petition papers relating to the same measure shall be assembled and filed in the office of the city secretary as one instrument.
- (c) An initiative petition to be sufficient shall be signed by qualified voters equal in number to at least ten per cent of those who were qualified voters at the date of the last preceding regular municipal election, and in no case by less than two hundred voters. Within ten days after the filing of a petition, the secretary shall ascertain whether it be signed as provided in this section and shall attach thereto a certificate showing the result of his examination. If, by the city secretary's certificate, of which notice in writing shall be given to two or more of the committee of the petitioners, the petition is shown to be insufficient, it may be amended within ten days of the date of such certificate by filing supplementary petition papers with additional signatures. Within ten days after such an amendment the secretary shall make examination of the amended petitions, and if his certificate shall show the same still to be insufficient, he shall file the petition in his office and notify each member of the committee of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.
- (d) If an initiative petition be found sufficient, the secretary shall so certify and shall submit the measure to the city council at its next meeting, and the council shall at once read and refer it to an appropriate committee, which may be a committee of the whole. Provisions shall be made for public hearings upon the proposed measure before the committee to which it is referred. Thereafter the committee shall report the measure to the city council with its recommendation thereon not later than sixty days after the date upon which such measure was submitted to the city council by the city secretary. Upon receiving the measure from the committee, the city council shall at once proceed to consider it and shall take final action thereon within thirty days from the date of such committee report.
- (e) If the city council shall fail to pass a proposed measure, or shall pass it in a form different from that set forth in the petition therefor, the committee of the petitioners may require that it may be submitted to a vote of the qualified voters either in its original form or with any change or addition presented in writing at a public hearing before the committee to which it was referred, or during its consideration by the city council. If the committee of the petitioners requires the submission of the measure to a vote of the qualified voters, they shall certify that fact to the secretary and file in his office a certified

copy of the measure in the form in which it is to be submitted within ten days after final action on such measure by the city council.

- (f) Upon receipt of the certificate and certified copy of the proposed measure, as provided in the foregoing section, the secretary shall certify the fact to the city council at its next regular meeting. If any municipal election is to be held not more than six months or less than thirty days after the receipt of the secretary's certificate by the city council, the proposed measure shall be submitted to a vote of the qualified voters at the first such election. When no municipal election is to be held within the time aforesaid, the city council may provide for submitting the measures to the voters at a special election to be held not less than thirty days after the date when provision is made therefor by the council. When no other provision is made as to the time of submitting a measure proposed by initiative petition to the electors, it shall be submitted at the first municipal election held after the expiration of the period of six months mentioned in this section. Any such measure approved by a majority of the qualified voters voting thereon shall be considered adopted and shall take effect at the time indicated therein.
- (g) When a measure proposed by initiative petition is passed by the city council, but not in its original form, and is required by the committee of the petitioners to be submitted to a vote of the qualified voters, the measure as passed by the city council shall not take effect until after such vote, and, if the measure so submitted be approved by a majority of the qualified voters voting thereon, the measure as passed by the city council shall be deemed repealed.

## **Sec. 2. The Referendum.**

- (a) The qualified voters shall have power at their option to approve or reject at the polls any ordinance or resolution passed by the city council or submitted by such council to a vote of the qualified voters, such power being known as the referendum. Measures submitted to the city council by initiative petition and passed by the council without change, or passed in an amended form and not required by the committee of petitioners to be submitted to a vote of the qualified voters, shall be subject to the referendum in the same manner as other measures.
- (b) No ordinance shall go into effect until thirty days after its passage by the city council unless it be declared an emergency measure on the ground of urgent public need for the preservation of peace, health, safety of property, the facts showing such urgency and need being specifically stated in the ordinance itself and the ordinance being passed by a vote of not less than four-fifths of the members of the city council. No ordinance granting any public utility franchise, or amending or repealing any measure adopted by the qualified voters at the polls, or adopted by the city council in compliance with an initiative petition, shall be regarded as an emergency measure.
- (c) If within thirty days after the final passage of a measure by the city council a petition signed by qualified voters of the city equal in number to at least ten per cent of those who were qualified voters at the date of the last preceding regular municipal election, and in no case by less than two hundred qualified voters, be filed with the city secretary requesting that such measures or any part thereof be either repealed or submitted to a vote of the qualified voters, it shall not, unless it be an emergency measure, become operative until the steps indicated therein have been taken.
- (d) The signatures to a referendum petition need not all be on one paper but the circulator of each separate paper shall make affidavit that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be. Such petitions shall be signed in ink or indelible pencil and each signer shall place after his name the date when his signature was made and his place of residence by street and number, or other description sufficient to identify the

place. All such papers pertaining to any one measure shall have written or printed thereon the names and addresses of at least five qualified voters who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purpose hereinafter named. All such papers relating to the same measure shall be assembled and filed in the office of the city secretary as one instrument. A referendum petition need not contain the text of the measure designated therein and of which repeal is sought as a whole, but when the repeal of part of a measure is sought such part shall be set forth in the petition.

- (e) Within ten days after the filing of a referendum petition the secretary shall ascertain whether it be signed as provided in section 1(c) of this article and shall attach to the petition a certificate showing the result of such examination and shall give notice thereof to the committee of the petitioners. If by the secretary's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of such certificate by filing supplementary petition papers with additional signatures. The secretary shall within ten days after such amendment make like examination of the amended petition and certify the result thereof.
- (f) If a referendum petition, or amended petition, be found sufficient, the secretary shall certify that fact to the city council at its next regular meeting, and, unless the measure or part thereof specified in the petition be an emergency measure, it shall not go into effect unless approved by the qualified voters as hereinafter provided. Upon receipt of the secretary's certificate of sufficiency, the city council shall proceed to reconsider the measure, and its final vote upon such reconsideration shall be upon the question, "Shall the measure (or part of the measure) as specified in the referendum petition be repealed?" If upon such reconsideration the measure, or part thereof, be not repealed, it shall be submitted to the qualified voters at the next municipal election held not less than thirty days after such final vote by the council. The city council by a four-fifths vote of its members may submit the measure to the qualified voters at a special election to be held no sooner than the time aforesaid. If when submitted to the qualified voters any such measure, or part thereof, be not approved by a majority of those voting thereon, it shall be deemed repealed.
- (g) Measures proposed by the initiative petition, or required by referendum petition or by the city council to be submitted to the qualified voters, shall be submitted by ballot title. There shall appear upon the official ballot a ballot title, which may be distinct from the legal title of any such proposed or referred measure and which shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such measure. The ballot title shall be prepared by the committee of the petitioners if for an initiative or referred measure and by a committee of the city council when submitted by such council. The ballots used when voting upon any such measure shall have below the ballot title thereof the two propositions in order herein indicated: "For the measure" and "Against the measure." The voter, by striking out either of these propositions, may indicate his vote for the one not so stricken out. Such ballot shall be in the form substantially as follows:

(Title of measure with general statement of substance thereof)

For the measure

Against the measure

- (h) Any number of measures may be voted on at the same election and may be submitted on the same ballot, but the ballot used for voting on measures shall be for that purpose only.
- (i) Measures passed as emergency measures shall be subject to referendum, but they shall not be suspended from going into operation while referendum proceedings are pending. If, when submitted

to a vote of the qualified voters, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder, and all rights and privileges conferred by it shall thereafter be null and void; but any such measure so repealed shall be deemed sufficient authority for any payment made or expense incurred in accordance therewith prior to the vote thereon.

- (j) If two or more measures adopted or approved at the same election conflict in respect to any of their provisions, they shall go into effect in respect of such of their provisions as are not in conflict, and the one receiving the highest affirmative vote shall prevail insofar as their provisions conflict. Except as otherwise provided in this Charter, measures adopted or approved by the qualified voters shall be subject to amendment or repeal by the city council as in the case of other measures.

## ARTICLE VIII BONDS, WARRANTS, ETC.

### **Sec. 1. Bonds.**

- (a) The city council shall have the power and authority by ordinance duly passed and it is hereby expressly authorized to issue bonds for the purpose of refunding bonds of the City of Midland previously issued, provided the bonds may be refunded at a lower rate of interest than the proposed bonds to be retired draw.
- (b) No bonds, warrants, revenue warrants, notes, or other evidence of indebtedness shall ever be issued for any purpose except for the purpose of refunding bonds of the city of previous issues, unless such action is approved by a majority of the qualified voters of the city at an election called for such purpose; and provided further that no debt of any nature shall ever be contracted by the city, and no bond, revenue warrant, note or other evidence of indebtedness maturing more than one year from the date of its issuance shall ever be contracted or issued, unless such action is approved by a majority of the qualified voters of the city at an election called for such purpose.
- (c) In all elections to determine the expenditure of money or the assumption of debt of any nature, qualified voters shall be deemed to be those who are otherwise qualified under the general laws of the State of Texas and those who have paid taxes on property in said city which has been personally rendered by them for taxation for the year in which the election is held.
- (d) No bonds shall be issued drawing more than six per cent interest per annum, and they shall be invalid if sold for less than par and accrued interest, and all bonds shall express upon their face the purpose for which they are issued, and shall be payable serially in not exceeding thirty years from the date of issuance, and may be payable on or before maturity.
- (e) Ordinances authorizing any bonds, warrants, revenue warrants, notes or other evidences of indebtedness to be issued shall provide for the creation of a sinking fund sufficient to pay the principal and interest of such bonds when and as the same become due and payable, and such sinking fund in excess of the amount necessary to pay the principal and interest of the bonds when and as the same become due and payable may each year be invested in bonds of the State of Texas, or bonds issued by the counties in the State of Texas, or in bonds of the United States, or such funds may be used for the purchase of bonds of the City of Midland which are not yet due, and shall be used and devoted to no other purpose whatsoever; and provided further that no such funds shall ever be invested in any security not supported by taxes and secured by the general tax obligation of the issuer.
- (f) Any officer or agent of the City of Midland who shall unlawfully or knowingly divert or use said fund or cause or permit to be diverted or used such fund for any other purpose except that for which the fund is created or herein expressly authorized to be invested shall be deemed guilty of a felony and subject to prosecution as provided under the general laws of the State of Texas.

### **Sec. 2. Warrants.**

No warrant bearing interest payable in other than the fiscal year in which such warrant is issued shall ever be authorized or by ordinance issued by the city council. This provision, however, shall not prevent the city council from issuing interest-bearing anticipation warrants, payable from the reasonably anticipated collections for the current year of such city where such warrants do not bear in excess of six per cent interest and the funds are needed and necessary in the opinion of the city council to meet the current expenses of the city for the current fiscal year.

## **ARTICLE IX GENERAL PROVISIONS.**

### **Sec. 1. Qualified Voter.**

A "qualified voter," except as herein elsewhere defined within the meaning of the terms of this Charter, is one who is qualified to vote at any general election of the State of Texas and who resides within the corporate limits of the City of Midland and has resided therein for six months prior to the election in which he offers to vote.

### **Sec. 2. Jurors.**

In any action or proceeding in which the City of Midland may be party at interest, no person shall be an incompetent judge, justice, witness or juror by reason of his being an inhabitant, freeholder or taxpayer of the City of Midland.

### **Sec. 3. Public Act.**

This Charter must be deemed a public act and judicial notice shall be taken thereof in all courts.

### **Sec. 4. Amendments.**

This Charter may be amended at any time in accordance with the provisions applicable thereto contained in Chapter 13 of Title 28 of the Revised Civil Statutes of 1925 of the State of Texas or any amendments thereto or any amendments that may be made hereafter thereto.

### **Sec. 5. Present Officers.**

- (a) The office of city marshal is hereby abolished and vacated, and the elective office of city secretary is hereby abolished and vacated, and such offices and salaries thereof shall wholly cease and expire upon the adoption of this Charter.
- (b) The present members of the city council and the mayor shall continue in office until the expiration of their respective terms of office and until their successors are qualified.
- (c) Promptly after the adoption of this Charter, it shall be the duty of the city council to appoint a city secretary, chief of police, and such other officers and department heads and employees as it may deem necessary, and to fix their compensation. It shall also be the duty of the city council to designate for each councilman a place number, the place number to be given to each councilman to be determined in the manner decided upon by the city council.

### **Sec. 6. Effect of any Provision Hereof Being Declared Invalid.**

If any provision of this Charter violates any statute or the Constitution of the State of Texas, or if any court holds such provision for naught for any reason, the remaining provisions shall not be affected thereby and shall continue in effect.

### **Sec. 7. Vote on Proposed Charter.**

- (a) This Charter shall be submitted to the qualified voters of the City of Midland for adoption or rejection on the 5th day of November, 1940, at which election, if a majority of the qualified voters voting in

such election shall vote in favor of the adoption of this Charter, it shall then immediately become the Charter and governing law of the City of Midland until amended or repealed.

- (b) It being impracticable to submit this Charter by sections, it is hereby prescribed that the form of ballot to be used in such election shall be as follows, to-wit:

FOR THE ADOPTION OF THE CHARTER

AGAINST THE ADOPTION OF THE CHARTER

- (c) The present city council of the City of Midland shall call an election in accordance with the provisions of the general laws of the state governing such elections, and the same shall be conducted and the returns made and results declared as provided by the laws of the State of Texas governing municipal elections, and in case a majority of the votes cast at such election shall be in favor of the adoption of such Charter, then an official order shall be entered upon the records of said city by the city council of Midland declaring the same adopted, and the city secretary shall record at length upon the records of the city, in a separate book to be kept in his office for such purpose, such Charter as adopted, and such secretary shall furnish to the mayor a copy of the Charter, which copy of the Charter shall be forwarded by the mayor as soon as practical to the secretary of state under the seal of the city, together with a certificate showing the approval by the qualified voters of such Charter.

Respectfully submitted,

Frank Stubbeman

Joseph H. Mims

F.W. Stonehocker

A. Wadley

Geo. W. Glass

J.R. Martin

James Fitzgerald, Jr.

Ed M. Whitaker

M. D. Self

Jno. B. Thomas

R.C. Crabb

Clarence Scharbauer

T. Paul Barron

J.W. House

**Title I: Administrative**

**Chapter 1-1**

**OFFICIAL CODE**

**§ 1-1-1. Title.**

This compilation and codification of the general ordinances of the City of Midland is hereby declared to be and shall hereafter constitute the official Municipal Code of the City of Midland. Any reference to the number of any section contained herein shall be understood to refer to the position of the same under its appropriate title heading, its chapter heading, and its section heading, and to the general penalty clause relating thereto, as well as to the section itself, when reference is made to this Code by title in any legal document.

(Code 1960)

**§ 1-1-2. Acceptance.**

This Municipal Code of the City of Midland, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in all administrative tribunals of this state as the ordinances of a general and permanent effect of the City.

(Code 1960)

**§ 1-1-3. Amendments.**

Any ordinance amending this Code shall set forth the title, chapter and section number of the section or sections to be amended, and this shall constitute a sufficient compliance with any statutory requirement pertaining to the amendment or revision by ordinance of any part of this Code. All such amendments or revisions by ordinance shall be immediately forwarded to the codifiers and the said ordinance material shall be prepared for insertion in its proper place in each copy of the Municipal Code. Each such replacement page shall be properly identified and shall be inserted in each copy of the Municipal Code within 30 days from the date of its final passage.

(Code 1960)

**§ 1-1-4. Construction of words.**

Whenever any word in any section of this Municipal Code importing the plural number is used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not have been used. When any subject matter, party or person is referred to in this Municipal Code by words importing the singular number only, or the masculine gender, several matters, parties or persons and females, as well as males, and bodies corporate shall be deemed to be included; provided, that these rules of construction shall not be applied to any section of the Municipal Code which contains any express provision excluding such construction or where the subject matter or content may be repugnant thereto.

(Code 1960)

**§ 1-1-5. Definitions.**

The following definitions shall be applicable to any section of this Code unless the content of any section makes such definition inapplicable thereto.

- (A) The word "person" shall be deemed to include any "person, firm, association or corporation" or any organization of any kind.
- (B) The words "written" and "in writing" may include printing.
- (C) The term "personal property" includes every description of money, goods, chattels, effects, evidence of rights in action and all written instruments by which any pecuniary obligation, right or title to

property is created, acknowledged, transferred, increased, defeated, discharged or diminished and every right or interest therein.

- (D) The word "streets" includes alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.
- (E) The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.
- (F) The word "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or any part of such building or land whether alone or with others.
- (G) Words prohibiting anything being done, except in accordance with a license or permit or authority from a board or officer, shall be construed as giving such board or officer power to license or permit or authorize such thing to be done.
- (H) The word "officer" shall include officers and boards in charge of departments and members of such boards. The word "City," "secretary," "treasurer" or other such titles shall mean the "City of Midland, Texas," "city secretary," "city treasurer" or other city officer as the use may be applicable.
- (I) The term "willfully" when applied to the intent with which an act is done or omitted implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire an advantage.
- (J) The terms "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concern.
- (K) The term "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

(Code 1960)

#### **§ 1-1-6. Interpretations.**

In the determination of the provisions of each section of the Municipal Code the following rules shall be observed:

- (A) Intent to defraud. Whenever an intent to defraud is required in order to constitute an offense, it shall be sufficient if an intent appears to defraud any person.
- (B) Liability of employers and agents. When the provisions of any section of the Municipal Code prohibit the commission of an act, not only the person actually doing the prohibited act or omitting the directed act, but also the employer and all other persons concerned with or in aiding or abetting the said person, shall be guilty of the offense described and liable to the penalty set forth.

(Code 1960)

#### **§ 1-1-7. Penalties.**

In all cases where the same offense is made punishable or is created by different clauses or sections of the official Municipal Code the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of the Municipal Code and there shall be no fine or penalty specifically declared for such breach, the provisions of the general penalty clause shall apply and a separate offense shall be deemed committed upon each day during or on which a breach or violation occurs or continues.

(Code 1960)

**§ 1-1-8. Liability of officers.**

No provision of the official Municipal Code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intention of the Council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

(Code 1960)



**Chapter 1-2**

**SAVING CLAUSE**

**§ 1-2-1. Repeal of general ordinances.**

All general ordinances of the City passed prior to the adoption of this Code are hereby repealed, except such as are referred to herein as being still in force or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following section), from which are excluded the following ordinances which are not hereby repealed; tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the City; and all special ordinances.

(Code 1960)

**§ 1-2-2. Public utility ordinances.**

No ordinance relating to railroads or railroad crossings with streets and other public ways, or relating to the conduct, duties, service or rates of public utilities, shall be repealed by virtue of the adoption of this Code or by virtue of the preceding section, excepting as this Code may contain provision for such matters, in which case this Code shall be considered as amending such ordinance or ordinances in respect of such provisions only.

(Code 1960)

**§ 1-2-3. Pending suits.**

No new ordinance shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture or punishment be mitigated by any provision of a new ordinance, such provision may be, by the consent of the party affected, applied to any judgment announced after the new ordinance takes effect.

This Section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

Nothing contained in this or the preceding Section shall be construed as abating any action now pending under or by virtue of any general ordinance of the City herein repealed; or as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the City under any ordinance or provision thereof in force at the time of adoption of this Code.

(Code 1960)

**§ 1-2-4. Severability.**

If any section, subsection, sentence, clause, or phrase of this Code is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Code. The Council of the City of Midland hereby declares that it would have approved this Code and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,

subsections, sentences, clauses or phrases be declared unconstitutional or invalid.  
(Ordinance 4203 adopted 12/14/1965)

**SAVING CLAUSE**

**Chapter 1-3**

**PENALTY**

**§ 1-3-1. General penalty; continuing violations.**

If in this Code or in any ordinance of the City an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or if in this Code or those ordinances the doing of any act is required or the failure to do any act is declared to be unlawful, then the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding \$500.00; providing, however, that any violation of an ordinance governing fire safety, zoning or public health and sanitation shall be punished by a maximum fine of \$2,000.00; provided, however, that if the minimum or maximum penalty provided by this Code for any such offense is less or greater than the maximum penalty provided for the same or similar offense under the laws of the state, then the minimum or maximum penalty for violation as provided by state statute shall be the minimum or maximum penalty under this Code. Each day any violation of this Code or of any ordinance continues shall constitute a separate offense.

Any person who shall aid, abet or assist in the violation of any provision of this Code or any other ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in the preceding paragraph.

In any prosecution for the violation of any provision of this Code, it shall not be necessary for the complaint to negative or for the state to prove any exception contained in this Code concerning any prohibited act unless the state is otherwise required to do so by law; provided, however, that any such exception made therein may be urged as a defense by the person charged by such complaint.

(Ordinance 6577 adopted 8/27/1985, eff. 9/1/1985; Ordinance 6790 adopted 9/22/1987; Ordinance 6791 adopted 9/22/1987)



CORPORATE SEAL

**Chapter 1-4**

**CORPORATE SEAL**

**§ 1-4-1. Description.**

The official corporate seal of the City of Midland shall be circular in form with inner and outer circles. The outer circle shall be a solid line design one inch in diameter; the inner circle shall be a solid line design 11/16 inch in diameter. It shall bear upon the upper portion of the space between the inner and outer circles the words "City of Midland"; and upon the lower portion of said space the word "Texas"; preceding and following the word "Texas" shall be a five-point star 1/16 inch across; all lettering of said words being in hand-lettered Roman style type 3/32 inch in height. In the center of the space within the inner circle shall be a five-point star three-eighths inch across, with each point of the star shaded in a solid design on the lefthand side from the tip of the point to the center of the star. The star shall be encircled by an olive branch on the righthand side and an ivy branch on the lefthand side, said branches being joined directly below the star.

The background shall consist of a half-furled United States flag on the left side of the seal and a half-furled State of Texas flag on the right side of the seal. Each flag shall be mounted on a staff 1 15/16 inches in length with the staffs crossing each other immediately behind the center of the seal. Each staff shall have a pointed peak with two tassels dangling therefrom.

(Ordinance 4216 adopted 2/8/1966)

**§ 1-4-2. Facsimile.**

The official corporate seal of the City of Midland, Texas, shall look and appear as follows:



(Ordinance 4216 adopted 2/8/1966)

City of Midland, TX

CORPORATE SEAL

**Chapter 1-5**

**CITY MANAGER**

**§ 1-5-1. Appointment.**

The governing body of the City shall appoint a city manager for the City who shall be the administrative head of the municipal government under the direction and supervision of the governing body.  
(Ordinance adopted 1/15/1947)

**§ 1-5-2. Residence of city manager.**

The city manager may or may not be a resident of the City when appointed, but during the term of his office shall reside in the City.  
(Ordinance adopted 1/15/1947)

**§ 1-5-3. Term of office.**

The city manager shall be appointed for an indefinite period and shall be subject to discharge at the will of the governing body of the City.  
(Ordinance adopted 1/15/1947)

**§ 1-5-4. Absence or disability.**

During the absence or disability of the city manager, the governing body shall designate some properly qualified person to perform the duties of said office.  
(Ordinance adopted 1/15/1947)

**§ 1-5-5. Powers and duties.**

The powers and duties of the city manager shall be:

- (A) To devote all of his working time and attention to the affairs of the City, and be responsible to the governing body for the efficient administration of its affairs.
- (B) To see that all provisions of this Code are enforced.
- (C) With the advice of the governing body of the City, to appoint and remove all heads of departments. He shall have the power to appoint and remove all subordinate employees.
- (D) To exercise supervision and control over all departments created by the governing body or that may hereafter be created by said governing body.
- (E) To attend all meetings of the governing body with the right to take part in discussion, but having no vote; and he shall be notified of all special meetings of said governing body.
- (F) To see that all terms and conditions imposed in favor of the City, or its inhabitants, in any public utility franchise are faithfully kept and performed and upon knowledge of any violation thereof to call the same to the attention of the governing body.
- (G) To act as budget officer and as such to prepare and submit to the governing body, prior to the beginning of each fiscal year, a budget of proposed expenditures for the ensuing year, showing in as much detail as practicable the estimated amounts required each month for the efficient operation of each department of the city government and the reasons for such estimated expenditures.
- (H) The city manager, in addition to the foregoing subsection (G), shall make and file copies of the budget as required by state law.

- (I) To make a full written report to the governing body as soon after the close of each month's accounts as possible, showing the operation and expenditures of each department for the preceding month, and a comparison of such monthly expenditures, by departments, with the monthly allowances made for such departments in the annual budget, and to keep the governing body fully advised at all times as to the financial condition and needs of the City.
- (J) To act as purchasing agent for the City and to purchase all merchandise, material and supplies needed by the City and may establish, if needed, a suitable storehouse where such supplies shall be kept and from which same shall be issued as needed; and to adopt such rules and regulations governing regulations and transactions of business between himself as such purchasing agent and the heads of departments, officers and employees of the City as the governing body may approve. Nothing herein shall be construed to prohibit the city manager from delegating the powers and duties set forth herein as purchasing agent.

It shall be the duty of the purchasing agent to give opportunity for competition on purchases and sales, except when the nature of the purchase or sale is such that competition is impossible or impracticable. All purchases or sales shall be in accordance with applicable provisions of the state laws, the Midland City Charter, and the procedures and policies promulgated by the City Council. All sealed bids received shall be opened in public and thereafter shall be subject to public inspection. The purchasing agent may reject all bids and readvertise for new bids. The purchasing agent may require successful bidders to furnish security conditioned upon the faithful performance of their contracts, or conditioned upon the payment of the wages and compensation of all laborers employed on work for which a contract is made by the contractor, subcontractor, agent or any other person, or conditioned for both. The purchasing agent shall not let any contract for periods exceeding one year for public improvements, labor or supplies.

In case of accident or other circumstances creating an emergency, the city manager may, with the consent of the governing body, award contracts and make purchases for the purpose of repairing damages caused by said accident or avoiding said public emergency; but immediately afterwards, he shall file, in his office or in the office he so designates, documentation showing such emergency and the necessity of such action together with an itemized account of all expenditures.

- (K) To recommend to the governing body the salaries to be paid each appointive officer and subordinate employee of the City; and it shall be the duty of the governing body to pass ordinances or resolutions from time to time fixing rates of compensation.
- (L) To recommend to the governing body, in writing, from time to time, for adoption, such measures as he may deem necessary or expedient.
- (M) To do and perform such other duties as may be prescribed by ordinance or resolution of the governing body of the City.

(Ordinance adopted 1/15/1947; Ordinance 6632 adopted 2/11/1986)

#### **§ 1-5-6. Compensation.**

The city manager shall receive such compensation as the governing body shall fix from time to time by ordinance or resolution.

(Ordinance adopted 1/15/1947)

#### **§ 1-5-7. Authority to grant reasonable accommodations.**

- (A) Definitions. As used in this Section:

- (1) "Applicant" means a person who submits a written request for an accommodation.
- (2) "City Manager" means the City Manager of the City of Midland or the City Manager's designee.
- (B) Request.An applicant who seeks an accommodation under the Fair Housing Act, the Americans with Disabilities Act, or any other federal or state law that requires the City to grant a reasonable accommodation shall submit a written request for the accommodation to the City Manager. The applicant may dictate the request by voice to the City Manager if the applicant is unable to create the written request or if it is apparent to the City Manager that assistance is needed to create the request, and a City employee shall transcribe the request into writing. Accommodations that may be requested include, but are not limited to, modifications or exceptions to City ordinances, rules, requirements, standards, policies and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to reside in a dwelling of his or her choice. A request for an accommodation shall contain the following information, as applicable:
  - (1) The name and address of the applicant. If the applicant is submitting the request on behalf of a person with a disability, the name and address of the person with the disability shall also be provided.
  - (2) An indication of whether the applicant is (a) a person with a disability, (b) submitting the request on behalf of a person with a disability, or (c) a developer or provider of housing for one or more persons with disabilities.
  - (3) The address of the property for which an accommodation is requested.
  - (4) A description of the disability or disabilities as issue, the requested accommodation, and the specific City ordinance, rule, requirement, standard, policy or practice for which the accommodation is sought. In the event that the specific individuals who are expected to reside at the property are not known to the applicant in advance of making the request, the applicant shall not be precluded from submitting the request; however, the applicant shall submit a description of the range of disabilities that prospective residents are expected to have to qualify for the housing.
  - (5) A description of whether the specific accommodation requested by the applicant is necessary for the person or persons with the disabilities to use and enjoy a dwelling, or is necessary to make the provision of housing for persons with disabilities financially or practically feasible.
  - (6) An indication of whether the applicant desires to receive communication regarding the request for an accommodation via e-mail and, if so, the applicant's e-mail address.
  - (7) Any other information that the City Manager concludes is necessary, to the extent permitted by applicable laws, in order to determine whether the requested accommodation would be a reasonable accommodation. In most cases, an individual's medical records and detailed information about the nature of an individual's disability are not necessary.
- (C) Consideration of a request; written decision.
  - (1) Within 30 days of the date of the City Manager's receipt of a request for an accommodation, the City Manager shall:
    - (a) Either:

- (i) Issue a written decision on the request; or
  - (ii) Refer the request to the City Council, and the City Council shall issue a written decision on the request; and
- (b) Send the City Manager's or City Council's written decision to the applicant by certified mail, return receipt requested. If the request for an accommodation contains both the applicant's e-mail address and an indication that the applicant desires to receive communication regarding the request via e-mail, the written decision shall also be sent to the applicant via e-mail.
- (2) If the City Manager determines that additional information is necessary in order to determine whether the requested accommodation would be a reasonable accommodation, the City Manager shall notify the applicant in writing of the additional information that the applicant must submit, and the running of the 30-day period shall be stayed until the applicant has responded to the request.
- (3) When considering a request for an accommodation, the City Manager or the City Council may consider all factors to determine whether the requested accommodation would be a reasonable accommodation, including, but not limited to the following factors, to the extent they are consistent with applicable laws:
- (a) Whether housing that is the subject of the request for an accommodation will be used by a person with a disability protected under the applicable laws.
  - (b) Whether the requested accommodation is necessary to make a dwelling available to a person with a disability protected under the applicable laws.
  - (c) Whether the requested accommodation would pose an undue financial or administrative burden on the City.
  - (d) Whether the requested accommodation would require a fundamental alteration in the nature of a City program or City ordinance, including, but not limited to, zoning and land use.
- (4) A written decision of the City Manager or the City Council shall contain a determination of whether the requested accommodation would be a reasonable accommodation and shall:
- (a) Grant the requested accommodation if it would be a reasonable accommodation;
  - (b) Grant the requested accommodation with alterations or conditions if the requested accommodation:
    - (i) Would not be a reasonable accommodation; and
    - (ii) Would be a reasonable accommodation if it were so altered or subject to conditions; or
  - (c) Deny the request for an accommodation.
- (5) A written decision of the City Manager shall constitute the final decision of the City unless the written decision is appealed in accordance with subsection (D). A written decision of the City Council shall constitute the final decision of the City.

(D) Appeal procedure.

- (1) An applicant or a person on whose behalf a request for an accommodation was filed may appeal the City Manager's written decision denying an accommodation or granting an accommodation with alterations or conditions in accordance with this subsection. For purposes of this subsection, an applicant or other person who appeals the City Manager's written decision is an "appellant."
  - (2) An appellant shall submit a written notice of appeal to the City Manager within 30 days from the date the written decision was mailed. The appellant may dictate the notice of appeal by voice to the City Manager if the appellant is unable to create the written notice of appeal or if it is apparent to the City Manager that assistance is needed to create the notice of appeal, and a City employee shall transcribe the notice of appeal into writing. The written notice of appeal shall clearly state the grounds for the appeal.
  - (3) Within 30 days of the date of the City Manager's receipt of the notice of appeal, the City Council shall consider and issue a written decision on the appeal, and the City Manager shall send the City Council's written decision on the appeal to the applicant by certified mail, return receipt requested. If the request for an accommodation contains both the applicant's e-mail address and an indication that the applicant desires to receive communication regarding the request via e-mail, the written decision shall also be sent to the applicant via e-mail.
  - (4) When considering an appeal of the written decision of the City Manager, the City Council may consider all factors to determine whether the requested accommodation would be a reasonable accommodation, including, but not limited to the following factors, to the extent they are consistent with applicable laws:
    - (a) The request for an accommodation.
    - (b) The City Manager's decision.
    - (c) The appellant's written statement of the grounds for appeal.
    - (d) Whether housing that is the subject of the request for an accommodation will be used by a person with a disability protected under the applicable laws.
    - (e) Whether the requested accommodation is necessary to make a dwelling available to a person with a disability protected under the applicable laws.
    - (f) Whether the requested accommodation would pose an undue financial or administrative burden on the City.
    - (g) Whether the requested accommodation would require a fundamental alteration in the nature of a City program or City ordinance, including, but not limited to, zoning and land use.
  - (5) A written decision of the City Council on an appeal shall affirm, reverse, or modify the written decision of the City Manager, and it shall constitute the final decision of the City. If the written decision of the City Manager is reversed or modified, the written decision on the appeal shall specify that the requested accommodation is granted or granted with alterations or conditions.
- (E) Effect of a reasonable accommodation. A reasonable accommodation granted in accordance with this Section shall control over a conflicting City ordinance, rule, requirement, standard, policy or

practice.

(F) Miscellaneous.

- (1) No fee shall be required for submission of a request for an accommodation or a notice of appeal under this Section.
- (2) An accommodation granted in accordance with this Section shall be considered personal to the applicant or the individual(s) for whom the applicant submitted the request for the accommodation and shall not run with the land. If property is sold or otherwise changes ownership, an accommodation granted to the previous owner of the property is not transferrable to the new owner; provided, however, that the accommodation shall be effective as long as the person or group of persons for whom the accommodation was sought resides on the property that is the subject of the accommodation.

(Ordinance 10047, sec. 1, adopted 1/28/2020)

City of Midland, TX

**CITY MANAGER**

**Chapter 1-6**

**CITY ATTORNEY**

**§ 1-6-1. Appointment.**

The office of city attorney shall be headed by the city attorney, who shall be appointed by the City Council for an indefinite term, and shall remain in office subject to the discretion of the City Council.  
(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-2. Qualifications.**

The city attorney shall be licensed to practice before the Supreme Court of Texas and be a member of the State Bar of Texas in good standing and shall have been a practicing attorney at law in the State of Texas for a period of not less than three years prior to his appointment.  
(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-3. Assistants.**

The city attorney shall appoint such assistants who shall be licensed to practice before the Supreme Court of Texas and members of the State Bar of Texas in good standing, and other employees as may be authorized by the City Council, subject to the approval thereof by the Council.  
(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-4. Budget.**

The city attorney shall prepare and submit to the Council prior to the beginning of each fiscal year a budget of proposed expenditures for the ensuing year, showing, in as much detail as practicable, the estimated amounts required for the efficient operation of that office and the reasons for such estimated expenditures, and shall make such purchases necessary for the conduct and operation of said office.  
(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-5. Attend board meetings.**

The attorney shall be the chief legal advisor and attorney for the City. He shall attend all meetings of the Council and all other advisory boards as designated by the Council and shall give such necessary written opinions as may be requested of him by the Council, any member thereof, the various departments of the City or the chairmen of the various advisory boards appointed by the City Council.  
(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-6. Legal counsel.**

The attorney, or one of his duly designated assistants, shall represent the City in the prosecution of all cases tried in the corporation court and shall file such suits on behalf of the City or defend the City in all such suits against it and shall have charge of all litigation of the City in state and federal courts.  
(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-7. Approval of ordinances.**

The attorney shall approve all ordinances prior to their passage and see that they conform to the laws of the state and shall perform such other legal duties as may be required of him by the Council, the Laws of Texas, and the provisions of this Code.  
(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-8. Contracts and instruments.**

The attorney shall prepare for execution all contracts and instruments to which the City is a party and shall approve as to form all bonds required to be submitted to the City.

(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-9. Attend Council meetings.**

The attorney shall attend all Council meetings in their entirety for the purpose of giving the Council any legal advice required by its members.

(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-10. Compensation.**

The attorney, his assistants, and employees of that office are to receive such compensation as may be fixed by the Council.

(Ordinance 3152 adopted 12/11/1957)

**§ 1-6-11. Absence or disability.**

In the event of the temporary absence, illness or inability of the attorney to discharge his duties as hereinabove set out, such duties may be discharged by an assistant to the city attorney designated by the Mayor.

(Ordinance 3152 adopted 12/11/1957)

City of Midland, TX

**CITY ATTORNEY**

**Chapter 1-7**

**MUNICIPAL COURT**

**§ 1-7-1. Municipal court.**

The city municipal court referred to in this Code shall be those municipal courts of record previously established or which may be established in the future pursuant to V.T.C.A., Government Code § 30.00601 et seq.

(Ordinance 6395 adopted 5/22/1984)

**§ 1-7-2. Jurisdiction.**

The city municipal court shall have exclusive original jurisdiction within the corporate limits of the City, in all criminal cases arising under the provisions of this Code or the ordinances of the City in which punishment is by fine only and where the maximum of such fine does not exceed \$1,000.00 in all cases arising under the ordinances of the City, that govern fire safety, zoning and public health and sanitation other than vegetation and litter violations; and where the maximum of such fine does not exceed \$200.00 in all other cases arising under the ordinances of the City. Said court shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the City is situated in all criminal cases arising under the criminal laws of this state, in which punishment is by fine only, and where the maximum of such fine may not exceed \$200.00, and arising within such corporate limits.

(Ordinance 6395 adopted 5/22/1984)

**§ 1-7-3. No terms of court.**

The municipal court shall hold no terms but may sit at any time.

(Ordinance 6395 adopted 5/22/1984)

**§ 1-7-4. Judge; appointment and qualifications.**

The city municipal court shall be presided over by a judge, who shall be known as the "judge of the municipal court." Such judge shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. He need not be a resident of the City at the time of his appointment, but he shall maintain his residence in the City during his tenure of office. He shall devote his entire time to the duties of his office and shall not engage in the private practice of law while in office. He shall be appointed by the City Council and shall be paid a salary as determined by the City Council. The salary shall not be based on or in any way contingent on the fines, fees, or costs collected by the municipal court.

If more than one municipal court is established or created pursuant to V.T.C.A., Local Government Code § 30.00601 et seq., a judge shall be appointed for each court by the City Council who shall have the same qualifications and hold office under the same conditions set forth in this Section. However, the City Council shall designate one judge to be the presiding judge.

(Ordinance 6395 adopted 5/22/1984)

**§ 1-7-5. Presiding judge.**

It shall be the duty and responsibility of the presiding judge, in addition to all other duties of his office, to administer and manage the operations of the municipal court. All personnel of the municipal court, as are provided by the City Council for the proper operation of the municipal court, shall perform their duties of office under the direction and control of the presiding judge and in his absence the most senior available judge. The presiding judge may appoint a court administrator to assist him in the management and supervision of the municipal court personnel.

The city personnel policies and rules shall be applicable to all municipal court personnel, except all

municipal court judges shall serve and hold office solely at the pleasure of the City Council.  
(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-6. Temporary or relief judges.**

The City Council may appoint one or more associate judges to sit for any municipal court judge while such judge or judges are temporarily unable to act for any reason or to assist them. Any such associate judge shall be a local attorney, and shall receive such payment as may be determined by the City Council.  
(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-7. Application of laws regarding municipal courts.**

The provisions of V.T.C.A., Local Government Code § 30.00601 et seq., and the general laws of the state regarding municipal courts, and regarding justice courts on matters where there is no law for municipal courts, and the valid Charter provisions and ordinances of the City, relating to the municipal court apply to the city municipal court, unless the laws, Charter provisions, and ordinances are in conflict or inconsistent with the provisions of V.T.C.A., Local Government Code § 30.00601 et seq., in which case its provisions shall control.

(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-8. Power and authority of municipal court.**

The municipal court shall possess all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction. It has the duty to require that proceedings shall be conducted with dignity and in an orderly and expeditious manner and to so control the proceedings that justice is done.

(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-9. Contempt.**

The city municipal court shall have the power to punish for contempt. The municipal court may punish by a fine of not more than \$100.00, or by confinement in the city jail for not more than three days, or both, any person guilty of contempt of the court.

(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-10. Recognizances and bail.**

A judge of the city municipal court shall have the power to take recognizances, admit to bail and to forfeit recognizances and bail bonds under such rules as govern such taking and forfeiture in the county court.  
(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-11. Witnesses.**

A judge of the city municipal court shall have the power to issue any process necessary to require the attendance of any person as a witness in any case pending before the court. Any person failing or refusing to obey such process or failing or refusing to testify shall be guilty of contempt of court.  
(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-12. Service of process.**

All process issuing out of the municipal court may be served and shall be served when directed by the

court, by a warrant officer or policeman of the City, under the same rules as are provided by law for service by sheriffs and constables of process issuing out of the justice court, so far as applicable.  
(Ordinance 6395 adopted 5/22/1984)

**§ 1-7-13. Complaint.**

Proceedings, other than uncontested parking tickets, in the city municipal court shall be commenced by complaint which shall begin: "In the name and by authority of the State of Texas"; and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance." Complaints before such court may be sworn to before any officer authorized to administer oaths, or before the judge, clerk of the court, city secretary, city attorney or his deputy or assistants, each of whom, for that purpose, shall have the power to administer oaths.  
(Ordinance 6395 adopted 5/22/1984)

**§ 1-7-14. Fines and special expenses.**

There shall be paid into the city treasury for the use and benefit of the City, all fines imposed by the municipal court; a special expense, not to exceed \$25.00, for the issuance and service of a warrant of arrest for an offense under V.T.C.A., Penal Code § 38.10, or under V.T.C.A., Transportation Code § 543.009; the special expenses described in Vernon's Ann. C.C.P. art. 17.04 dealing with the requisites of a personal bond and a special expense for the issuance and service of a warrant of arrest, after due notice, not to exceed \$25.00; and any other lawful fees or special expenses. Upon the conviction of a defendant in the city municipal court, a fee of \$1.00 shall be assessed against the defendant for each witness summonsed at his request.

(Ordinance 6395 adopted 5/22/1984; Ordinance 6698 adopted 9/23/1986)

**§ 1-7-15. Payment of fines; alternatives provided.**

When the defendant has been convicted of any offense over which the municipal court has jurisdiction, a judge may direct that he pay the fine forthwith, at some later date, or in installments at designated intervals and that in default of payments as therein stipulated he be imprisoned until the fine is satisfied in full. Unless such direction is noted in the court papers, and the defendant signs a written promise to pay in accordance therewith, the fine shall be payable forthwith. It is expressly provided, however, that if the defendant has duly posted an appearance bond, appeal bond, or cash escrow deposit the convicted party shall remain free pending the further disposition of his case.

Before the judge may allow a defendant to pay a fine within a limited time exceeding 15 days or by installments, he shall require a pauper's oath or affirmation from the defendant, who, after a conviction and assessment of a fine, represents to the court that he is financially unable to pay said fine. Upon filing of such oath or affirmation, the court may hold a separate hearing to determine said defendant's financial ability to pay, and, after making such determination, incorporate its findings into the judgment.  
(Ordinance 6395 adopted 5/22/1984)

**§ 1-7-16. Jury and witness fees.**

The provisions of state law, now or hereafter in effect, shall regulate the amount to be paid as jury fees and witness fees. The City Council shall, by resolution, set such fees in accordance with state law. A municipal court judge, other than an associate judge, and the court administrator, or the court clerk in the absence of the court administrator, shall pay such fees by check drawn on a bank account to be known as the jury fund account. Such jury fund bank account shall be funded as necessary in accordance with the court's budget, and such account shall be periodically audited at least once each fiscal year by the city finance director

and established with his assistance. Upon the conviction of a defendant in the city municipal court, a jury fee of \$2.00 shall be assessed against the defendant where a jury is actually summonsed at the defendant's request.

(Ordinance 6395 adopted 5/22/1984; Ordinance 6698 adopted 9/23/1986)

#### **§ 1-7-17. Deposit of all bonds and recognizances.**

All cash bail bonds, and cash appeal bonds, shall be deposited in a bank account to be known as the municipal court bond account. However, the court shall not be required to deposit and, in the option of the presiding judge, may retain on hand a total amount of such cash deposits of \$1,500.00. All such monies properly deposited in such account shall not be deemed public funds until such cash bonds have been properly forfeited by court order. Any such cash bonds not forfeited shall be returned upon court instructions to the defendant posting such bond from cash on hand or by check drawn on such bank account by a municipal court judge, other than an associate judge, and the court administrator, or the court clerk in the absence of the court administrator. All cash bonds properly forfeited shall periodically be withdrawn from such bank account by check of the court and properly deposited in an appropriate city account. The city finance director shall periodically audit at least once each fiscal year such municipal court bond account which shall be established with said finance director's assistance.

(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-18. Appeal.**

A defendant shall have the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in V.T.C.A., Local Government Code § 30.00601 et seq. The cost to the defendant for the preparation of a true transcript and/or statement of facts for the purposes of appeal shall be the sum of \$15.00 for the transmission of same and the further sum of \$4.00 for each page or portion thereof which is included in said transcript as a statement of facts. Provided, however, the defendant shall not be held liable for the added charge per page for any portion of the proceedings in the municipal court which are included in the sole instruction of the prosecuting attorney. If the disposition of the appeal by the appellate court is to either reverse or remand the cause for a new trial, or to reverse and dismiss the cause, the City shall refund all costs paid by defendant under this Section and the City shall bear the cost of the appeal.

(Ordinance 6395 adopted 5/22/1984)

#### **§ 1-7-19. Municipal court building security fee.**

- (A) In accordance with Article 102.017 of the Texas Code of Criminal Procedure, a defendant convicted in a trial for a misdemeanor offense in a municipal court is required to pay a \$3.00 security fee as a cost of court, in addition to all other fees imposed. In this ordinance a person is considered convicted if:
- (1) A sentence is imposed on the person;
  - (2) The person receives community supervision, including deferred adjudication; or
  - (3) The court defers final disposition of the person's case.
- (B) The clerks of the court shall collect the costs and pay them to the municipal treasurer for deposit in a fund to be known as the municipal court building security fund. The fund designated by this subsection may be used only to finance the following items when used for the purpose of providing security services for buildings housing a municipal court:
- (1) The purchase or repair of X-ray machines and conveying systems;

- (2) Handheld metal detectors;
  - (3) Walkthrough metal detectors;
  - (4) Identification cards and systems;
  - (5) Electronic locking and surveillance equipment;
  - (6) Bailiffs or contract security personnel during times when they are providing appropriate security services;
  - (7) Signage;
  - (8) Confiscated weapon inventory and tracking systems; or
  - (9) Locks, chains, or other security hardware.
- (C) The municipal court building security fund shall be administered by or under the direction of the governing body of the municipality.

(Ordinance 8200, sec. 1, adopted 12/16/2003)

**§ 1-7-20. Reimbursement fee for credit or debit card payments.**

The municipal court clerk may collect a reimbursement fee of two and one-half percent for processing each payment, by credit or debit card, of a fee, fine, court cost or other charge assessed by the municipal court.  
(Ordinance 10089, sec. 1, adopted 7/14/2020)



CITY COUNCIL

**Chapter 1-8**

**CITY COUNCIL**

**§ 1-8-1. Term of office.**

The Mayor and each City Council member shall take office and begin their term of office on the first Monday in June of the year in which he is elected.

(Ordinance 6819 adopted 1/12/1988)

City of Midland, TX

**CITY COUNCIL**

**Chapter 1-9**

**OFFICIAL NEWSPAPER**

**§ 1-9-1. Official newspaper.**

The official newspaper of the City shall be the Midland Reporter-Telegram.



EMERGENCY POWERS OF THE MAYOR

**Chapter 1-10**

**EMERGENCY POWERS OF THE MAYOR**

**§ 1-10-1. Delegated authority.**

The Mayor, chief executive officer of the City, shall have the authority to govern the City by proclamation should it be determined by the Mayor, chief of police and fire chief that an emergency or impending crisis exists and that loss of life or property will occur before an emergency session of the Council can be convened. The declaration of emergency shall be made publicly, and the Mayor shall call an emergency session of the Council as soon thereafter as is reasonably possible to review and either approve or rescind the action taken.

(Ordinance 4400 adopted 5/28/1968)

**§ 1-10-2. Curfew.**

The Mayor shall order by proclamation, if it is deemed necessary, a curfew whereby the public peace will be restored; setting the hours within which citizens should not be on the streets for their own protection; and/or limiting the curfew to a designated area by setting out the boundaries wherein the curfew will be enforced. The curfew will not be enforced against firemen, policemen, members of the militia, doctors, or others who demonstrate an emergency mission. The curfew shall be made effective so long as the emergency exists and until peace and order are restored.

(Ordinance 4400 adopted 5/28/1968)

**§ 1-10-3. Closing businesses.**

The Mayor shall order by proclamation, if it is deemed necessary, the closure of any or all businesses or restrict the sale of merchandise therefrom, should it be determined that the sales of the merchandise will perpetuate the disorderly or unlawful conduct.

(Ordinance 4400 adopted 5/28/1968)

**§ 1-10-4. Calling out the militia.**

The Mayor shall have the authority and the duty to call for military aid from the governor, in writing, should it be determined that law and order cannot be restored with facilities available to the local authorities who are charged with keeping the peace.

(Ordinance 4400 adopted 5/28/1968)

**§ 1-10-5. Special police force.**

The Mayor shall summon into service as a special police force as many citizens as he deems necessary to protect life and property, to enforce the laws of the City, and to maintain peace and good order, should it be determined that an emergency or impending crisis exists and that there will be a delay in arrival of the militia. The special police force shall serve as such under the direction of the Mayor and until the local authorities have been reinforced by the militia.

(Ordinance 4400 adopted 5/28/1968)

**§ 1-10-6. Preserve order.**

The above and foregoing listed duties shall in no way limit the authority of the Mayor to preserve peace and order, but shall be in addition to any statutory or constitutional delegated duty; and he shall take such other action as deemed necessary to protect lives and property and maintain law and order.

(Ordinance 4400 adopted 5/28/1968)

**§ 1-10-7. Penalty.**

Any person who shall violate any of the provisions of any proclamation directed toward restoring peace and order during an emergency declared publicly shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding \$500.00, and each and every violation shall constitute a separate and distinct offense.

(Ordinance 6790 adopted 9/22/1987)



(RESERVED)

**Chapter 1-11**

**(RESERVED)**

**Chapter 1-12**

**RECORDS MANAGEMENT POLICY**

**§ 1-12-1. Definition of records.**

All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the city or any of its officers or employees pursuant to law or in the transaction of public business, are declared to be the records of the city and shall be created, maintained, and disposed of in accordance with the provisions of this ordinance or procedures authorized by it and in no other manner.  
(Ordinance 10410 adopted 6/13/2023)

**§ 1-12-2. Records declared public property.**

All records, as defined in section 1-12-1 of this chapter, are declared to be the property of the city. No official or employee of the city has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

(Ordinance 10410 adopted 6/13/2023)

**§ 1-12-3. Policy.**

It is declared to be the policy of the city to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all records of the city through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Local Government Records Act and accepted records management practice. This policy shall apply to all employees, agents, independent contractors, and volunteers of the city.

(Ordinance 10410 adopted 6/13/2023)

**§ 1-12-4. Records management officer.**

The city's records manager will serve as records management officer for the city as provided by law and will develop policies and procedures to ensure that the maintenance, preservation, security, destruction, electronic storage, and other disposition of the records of the city are carried out in accordance with the requirements of the Local Government Records Act.

(Ordinance 10410 adopted 6/13/2023; Ordinance 10430 adopted 8/22/2023)

**§ 1-12-5. Records control schedules.**

Appropriate records control schedules issued by the Texas State Library and Archives Commission shall be adopted by the records management officer for use in city, as provided by law. The records management officer shall prepare amendments to the schedules as needed to reflect new records created or received by the city, or revisions to retention periods established in a records retention schedule issued by the Texas State Library and Archives Commission. Any destruction of records of the city will be in accordance with these schedules and the Local Government Records Act.

(Ordinance 10410 adopted 6/13/2023)



MIDLAND POLICE RESERVE UNIT

**Chapter 1-13**

**MIDLAND POLICE RESERVE UNIT**

**§ 1-13-1. Established.**

The reserve police unit for the City of Midland police department, which shall be a volunteer force of reserve policemen, hereafter referred to in this Chapter as the "reserve unit," is hereby established.  
(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-2. Control.**

The reserve unit shall function under the general direction and control of the chief of police subject to the supervision of the city manager and also subject to such rules, regulations and orders as may be promulgated from time to time by the chief of police in accordance with the authority vested in the chief of police by the City Charter, ordinances, or resolutions of the City of Midland.  
(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-3. Voluntary, limited in number.**

The reserve unit shall be an auxiliary police force composed of volunteers who shall serve without pay. The chief of police shall establish the size, composition and organization of the reserve unit which shall not exceed in number the lesser of (a) the total number of regular officers authorized by ordinance; or (b) the number of reserve officers for which worker's compensation fund contributions have been budgeted for the then current fiscal year.

(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-4. Training.**

Prior to performing any duties as a reserve police officer, each police reserve applicant shall have received training from the Midland police department or other approved academy in accordance with the requirements of the Texas Commission on Law Enforcement Officers Standards and Education or its successor and shall apply for certification by said commission as a reserve police officer. The names of reserve police applicants who have received certification from the Texas Commission on Law Enforcement Officer Standards and Education shall be submitted to the City Council for approval.

(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-5. Call to active service by chief of police.**

Members of the reserve unit shall serve at the discretion of the chief of police and may be called into active service any time that the chief of police considers it necessary to have additional police officers to preserve the peace and enforce the law.

(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-6. Supplementary capacity.**

The reserve police officers of the reserve unit shall act only in a supplementary capacity to the regular police force who shall in no case assume the full-time duties of the regular police officers.

(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-7. No compensation; medical expenses.**

No reserve police officer appointed pursuant to this Chapter shall be entitled to compensation for service. A police reserve officer who sustains an injury in the course of performing official duties may receive hospital and medical assistance in the same manner as provided for full-time police officers; provided,

however, that nothing in this Article shall be construed to authorize or permit a member of the reserve unit to become eligible for participation in any pension fund created pursuant to state statute to which regular officers may become a member by payroll deductions or otherwise.

(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-8. Status as peace officers.**

Reserve officers of the reserve unit shall serve as peace officers during the actual discharge of official duties subject at all times to the direction, control, and supervisory authority of the chief of police. A reserve officer shall be deemed to be actually discharging his official duties only while on active status pursuant to Section 1-13-5 of this Code.

(Ordinance 7154 adopted 2/11/1992)

**§ 1-13-9. Carrying of weapons.**

(A) No person appointed to the reserve unit may carry a weapon or otherwise act as a peace officer until:

1. The person has satisfactorily completed the reserve officer's basic training course in an academy certified by the Texas Commission on Law Enforcement Officer Standards and Education; and
2. The person has been approved by the City Council.

(B) After meeting the conditions in subsection (A) above, the reserve officer may carry a weapon only when:

1. Authorized by the chief of police; and
2. When discharging official duties as a duly constituted peace officer.

(Ordinance 7154 adopted 2/11/1992)



TERMINATION OF CAMPAIGN TREASURER

**Chapter 1-14**

**TERMINATION OF CAMPAIGN TREASURER APPOINTMENT**

**§ 1-14-1. Application.**

This chapter applies to the termination of the campaign treasurer appointment of an inactive candidate or political committee that is required to file a campaign treasurer appointment with the city secretary.  
(Ordinance 10558 adopted 8/27/2024)

**§ 1-14-2. Inactive candidate or political committee.**

For purposes of this chapter, a candidate or political committee is inactive if the candidate or political committee:

- (A) For a period exceeding one year has not filed a report with the city secretary under chapter 254, Election Code;
- (B) In the case of a candidate, has not been elected to an office for which a candidate is required to file a campaign treasurer appointment with the city secretary; and
- (C) Has not filed:
  - 1. A final report under section 254.065 or 254.125, Election Code; or
  - 2. A dissolution report under section 254.126 or 254.159, Election Code.

(Ordinance 10558 adopted 8/27/2024)

**§ 1-14-3. Termination process.**

- (A) Notice of consideration by the city council. The city secretary is hereby authorized to initiate the termination of the campaign treasurer appointment of an inactive candidate or political committee in accordance with this subsection. Not later than the 30th day before the date that the city council will consider the proposed termination of the campaign treasurer appointment of an inactive candidate or political committee, the city secretary shall give written notice to the affected candidate or political committee of:
  - 1. The proposed termination of the candidate's or political committee's campaign treasurer appointment;
  - 2. The date, time, and place of the meeting at which the city council will consider the proposed termination; and
  - 3. The effect of termination of the candidate's or political committee's campaign treasurer appointment.
- (B) Consideration by the city council; termination. The city council shall consider the proposed termination of the campaign treasurer appointment of an inactive candidate or political committee at a regularly scheduled open meeting. If the termination is approved by the affirmative vote of a majority of the city council members who are present for the vote, the termination shall take effect on the 30th day after the date of the meeting.
- (C) Notice of termination. Following the meeting at which the city council votes to terminate the campaign treasurer appointment of an inactive candidate or political committee, the city secretary shall promptly give written notice to the affected candidate or political committee that the appointment has been terminated. The notice shall state the effective date of the termination.

(Ordinance 10558 adopted 8/27/2024)

**Title II: Commissions and Boards**

**Chapter 2-1**

**PLANNING AND ZONING COMMISSION**

**§ 2-1-1. Creation; membership.**

- (A) City planning and zoning commission created. There is hereby created a city planning and zoning commission of the City.
- (B) Members. The city planning and zoning commission shall be composed of seven members appointed by a majority vote of the City Council.
- (C) Alternate members. A maximum of two alternate members may be appointed to the city planning and zoning commission by a majority vote of the City Council. In the absence of a member, an alternate member may serve as a member of the city planning and zoning commission. An alternate member is deemed to be a member for the purpose of establishing a quorum. An alternate member who serves in the absence of a member is deemed to be a member for the purpose transacting the city planning and zoning commission's business.

(Ordinance 7345 adopted 7/12/1994; Ordinance 9497, sec. 1, adopted 10/20/15)

**§ 2-1-2. Qualifications; terms; removal.**

- (A) Qualifications. The members and alternate members of the city planning and zoning commission shall be resident citizens of the City, shall own real property located within the incorporated limits of the City, and be qualified voters.
- (B) Terms. Members and alternate members shall be appointed for three-year terms beginning and ending on September 30. The City Council may from time to time appoint members and alternate members for terms of lesser duration than three years when necessary in order to comply with the terms of this Section.
- (C) Removal. A member or an alternate member may be removed from office by the City Council for any reason. If a member is absent for more than 25 percent of the 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, the member shall be disqualified and automatically removed from serving as a commission member. The term "duly called meeting" includes all meetings of the commission and all meetings of subcommittees of the commission on which the commission member serves.

(Ordinance 7345 adopted 7/12/1994; Ordinance 9497, sec. 1, adopted 10/20/15)

**§ 2-1-3. Organization.**

The members of the city planning and zoning commission shall organize and select their officers and shall hold meetings regularly, at least once in each month, and shall designate the time and place of such meetings. The city planning and zoning commission shall adopt its own rules of procedure and keep a record of its proceedings. Four members of the city planning and zoning commission shall constitute a quorum for the transaction of business.

(Ordinance 7345 adopted 7/12/1994; Ordinance 9497, sec. 1, adopted 10/20/15)

**§ 2-1-4. Powers and duties.**

- (A) The city planning and zoning commission shall procure information and make recommendations to the City Council, and shall cooperate with all boards and other agencies as to all facts bearing upon the needs of the City with regard to recreation grounds, the development and improvement of parks and boulevards, the improvement of drainage, the extension or opening of streets and avenues and other public ways or places and city plans and improvements generally, in relation to existing or

future planning and zoning.

- (B) The city planning and zoning commission shall recommend the boundaries of the original zoning districts and all subsequent changes therein, and appropriate regulations to be enforced therein in relation to the height, number of stories and size of buildings, and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residences, or other purposes in accordance with V.T.C.A., Local Government Code ch. 211, as amended, and Chapter 11-1 of this Code.
- (C) The city planning and zoning commission shall recommend to the City Council whether property should be acquired for boulevard purposes and also whether or not any change should be made in the width or length of any street or boulevard.
- (D) The city planning and zoning commission shall cooperate with and advise the City Council with respect to any plan for the location or change of public buildings, bridges, approaches or other structures erected by the City.
- (E) The city planning and zoning commission shall keep itself informed with reference to the progress of city planning in this and other counties and shall make studies and recommendations for the improvement of the plan of the City with a view to the present and future movement of traffic, the convenience, health, recreation, safety, general welfare and needs of the City dependent upon the city plan. The city planning and zoning commission shall consider and report to the City Council with reference to all facts bearing on the designs and their relations to the city plan of all new public ways, lands, buildings, bridges, improvements of drainage, extensions or opening of streets and avenues.
- (F) The city planning and zoning commission shall provide plans for all original landscape work to be done by the City on boulevards and streets which are not under the supervision of the park board.
- (G) The city planning and zoning commission shall pass upon and recommend to the City Council whether or not plats of land and proposed plats of land within the City and/or coming under the city's jurisdiction shall be accepted and shall formulate and furnish to the City Council regulations governing the platting of additions for the guidance of the public.
- (H) It is contemplated in this Chapter that the city planning and zoning commission shall act as an advisory board to the City Council relating to all nature of zoning, public improvements, civic improvements, city planning, opening, widening and changing of streets, routing of public utilities, and the controlling and regulating of traffic upon the public streets and ways of the City, and other matters relating to civic improvements as the said commission may deem beneficial and to the interest of the City.
- (I) In addition to the notices required by V.T.C.A., Local Government Code ch. 211, as amended, notice of public hearing before the city planning and zoning commission and the City Council in regard to proposed individual changes in zoning classification, as distinguished from comprehensive revisions, shall be given by posting a prominently displayed sign board on the premises involved. Such sign shall announce the proposed change, the public body holding the hearing, and the date, time and place thereof and any other information deemed pertinent by the city engineering and development department.
- (J) The city planning and zoning commission shall also function as the airport zoning commission as authorized by V.T.C.A., Local Government Code § 241.016. The city planning and zoning commission shall exercise all powers and duties delegated to the airport zoning commission by

federal, state, or local laws, including, but not limited to, recommending boundaries of zones to be established around the airport and the regulations for these zones.

(Ordinance 7345 adopted 7/12/1994; Ordinance 7472, sec. 1, adopted 9/26/1995; Ordinance 9497, sec. 1, adopted 10/20/15)



PARKS AND RECREATION COMMISSION

**Chapter 2-2**

**PARKS AND RECREATION COMMISSION**

**§ 2-2-1. Appointment of members.**

There is hereby created a city parks and recreation commission to be composed of nine members, appointed by a majority vote of the Council.

(Ordinance 3272 adopted 6/21/1958; Ordinance 5886 adopted 12/15/1981)

**§ 2-2-2. Qualifications; terms; vacancies.**

The members of the city parks and recreation commission shall be resident citizens, taxpayers and qualified voters, and shall be appointed to serve for terms of three years beginning and ending on September 30 of the appropriate years. The terms of three commission members shall expire in 1990 and each third year thereafter; the terms of three commission members shall expire in 1991 and each third year thereafter; and the terms of three commission members shall expire in 1992 and each third year thereafter. All members of the commission at the time of the enactment of this Code Section shall continue to serve on the commission, and their terms of office shall be extended to the September 30 following their currently scheduled dates of termination. The City Council may from time to time appoint members for terms of lesser duration in order to comply with the terms of this Section or to fill remainders of unexpired terms. A member may be removed from office by the City Council for any reason. If a commission member is absent for 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, the member shall be disqualified and automatically removed from serving as a commission member. The term "duly called meetings" includes all meetings of the commission and all meetings of the subcommittees of the commission on which the member serves.

(Ordinance 3272 adopted 6/21/1958; Ordinance 6933 adopted 5/23/1989)

**§ 2-2-3. Organization.**

The members of the parks and recreation commission shall organize and select their officers and shall hold meetings regularly at least once in each month and shall designate the time and place of such meetings. The parks and recreation commission shall adopt its own rules of procedure and keep a record of its proceedings. Five members of the commission shall constitute a quorum for the transaction of business.

(Ordinance 3272 adopted 6/21/1958)

**§ 2-2-4. Powers and duties.**

The parks and recreation commission shall have power and be required to:

- (A) Act in an advisory capacity in all matters pertaining to public parks and recreation.
- (B) Consider the annual budget of the parks and recreation department and make recommendations with respect thereto to the city manager and the Council.
- (C) Assist in the planning of parks and recreation programs, promote and stimulate public interest therein; and to that end, solicit to the fullest possible extent the cooperation of the school authorities and other public and private agencies.

(Ordinance 3272 adopted 6/21/1958)

**§ 2-2-5. Compensation and expenses.**

The members of the parks and recreation commission shall serve without compensation and, whenever it is deemed necessary by such commission to incur any expenses in performing the duties assigned to such

commission, an estimate of such proposed expenses shall be submitted to the Council, and no debts of any kind or character shall be made or incurred by the commission or anyone acting for such commission unless such expenditures have been specifically authorized by the Council prior to the time such obligations are incurred.

(Ordinance 3272 adopted 6/21/1958)



CITY-COUNTY EMERGENCY MANAGEMENT

**Chapter 2-3**

**CITY-COUNTY EMERGENCY MANAGEMENT COUNCIL**

**§ 2-3-1. Emergency management director.**

There exists the office of emergency management director of the City, which shall be held by the Mayor in accordance with state law.

- (A) An emergency management coordinator may be appointed by and serve at the pleasure of the director.
- (B) The director shall be responsible for conducting a program of comprehensive emergency management within the City and for carrying out the duties and responsibilities set forth in Section 2-3-4 of the Municipal Code of the City. He may delegate authority for execution of these duties to the coordinator, but ultimate responsibility for such execution shall remain with the director.

(Ordinance 6138 adopted 1/25/1983)

**§ 2-3-2. Powers and duties of emergency management director.**

The powers and duties of the director shall include an ongoing survey of actual or potential major hazards which threaten life and property within the City, and an ongoing program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur. As part of his responsibility in hazard mitigation, the director shall supervise the development of an emergency management plan for the City and shall recommend that plan for adoption by the City Council along with any and all mutual aid plans and agreements which are deemed essential for the implementation of such emergency management plan. The powers of the director shall include the authority to declare a state of disaster, but such action may be subject to confirmation by the City Council at its next meeting. The duties of the director shall also include the causing of a survey of the availability of existing personnel, equipment, supplies and services which could be used during a disaster, as provided for herein, as well as a continuing study of the need for amendments and improvements in the emergency management plan.

(Ordinance 6138 adopted 1/25/1983)

**§ 2-3-3. Emergency management council.**

The Mayor is hereby authorized to join with the county judge of the County of Midland and the mayors of the other cities in said county in the formation of an emergency management council for the County of Midland and shall have the authority to cooperate in the preparation of a joint emergency management plan and in the appointment of a joint emergency management coordinator, as well as all powers necessary to participate in a countywide program of emergency management insofar as said program may affect the City.

(Ordinance 6138 adopted 1/25/1983)

**§ 2-3-4. Responsibilities of emergency management director.**

The duties and responsibilities of the emergency management director shall include the following:

- (A) The direction and control of the actual disaster operations of the Midland emergency management organization as well as the training of emergency management personnel.
- (B) The determination of all questions of authority and responsibility that may arise within the emergency management organization of the City.
- (C) The maintenance of necessary liaison with other municipal, county, district, state, regional, federal, or other emergency management organizations.

- (D) The marshaling, after declaration of a disaster as provided for above, of all necessary personnel, equipment or supplies from any department of the City to aid in the carrying out of the provisions of the emergency management plan.
- (E) The issuance of all necessary proclamations as to the existence of a disaster and the immediate operational effectiveness of the city emergency management plan.
- (F) The issuance of reasonable rules, regulations or directives which are necessary for the protection of life and property in the City. Such rules and regulations shall be filed in the office of the city secretary and shall receive widespread publicity unless publicity would be of aid and comfort to the enemy.
- (G) The supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which said City is located and with other municipalities within the county, for the countywide coordination of emergency management efforts.
- (H) The supervision of, and final authorization for, the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the City.
- (I) The authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.
- (J) Survey of the availability of existing personnel, equipment, supplies and services which could be used during a disaster, as provided for herein.

(Ordinance 6138 adopted 1/25/1983; Ordinance 6673 adopted 7/8/1986)

#### **§ 2-3-5. City emergency management organization.**

The operational emergency management organization of the City shall consist of the officers and employees of the City so designated by the director in the emergency management plan, as well as all organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan. Such plan shall set forth the form of the organization, establish and designate divisions and functions, assign tasks, duties, and powers, and designate officers and employees to carry out the provisions of this Chapter. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the state division of emergency management of the state and of the federal government.

(Ordinance 6138 adopted 1/25/1983)

#### **§ 2-3-6. Unauthorized operation of siren.**

Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this Chapter and shall be subject to the penalties imposed by this Chapter.

(Ordinance 6138 adopted 1/25/1983)

#### **§ 2-3-7. Supersede prior inconsistent ordinances.**

At all times when the orders, rules, and regulations made and promulgated pursuant to this Chapter shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

(Ordinance 6138 adopted 1/25/1983)

**§ 2-3-8. No conflict with state or federal orders.**

This Chapter shall not be construed so as to conflict with any state or federal statute or with any military or naval order, rule or regulation.

(Ordinance 6138 adopted 1/25/1983)

**§ 2-3-9. Liability.**

This Chapter is an exercise by the City of its governmental functions for the protection of the public peace, health, and safety, and neither the City, the agents and representatives of said City, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this Chapter shall be liable for any damage sustained to persons as the result of said activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the City a license of privilege, or otherwise permits the City to inspect, designate and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack, shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license of privilege or other permission or for loss of, or damage to, the property of such person.

(Ordinance 6138 adopted 1/25/1983)

**§ 2-3-10. Expenditure of public funds.**

No person shall have the right to expend the public funds of the City in carrying out any emergency management activity authorized by this Chapter without prior approval by the City Council, nor shall any person have any right to bind the City by contract, agreement or otherwise without prior and specific approval of the City Council. During a declared disaster, the Mayor may expend and/or commit public funds of the City when deemed prudent and necessary for the protection of health, life, or property.

(Ordinance 6138 adopted 1/25/1983; Ordinance 6673 adopted 7/8/1986)

**§ 2-3-11. Penalty.**

It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this Chapter, or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this Chapter. It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or any other means of identification as a member of the emergency management organization of the City, unless authority to do so has been granted to such person by the proper officials. Convictions for violations of the provisions of this Chapter shall be punishable by a fine not exceeding \$500.00.

(Ordinance 6138 adopted 1/25/1983; Ordinance 6790 adopted 9/22/1987)

**§ 2-3-12. Oath.**

Each employee or any individual that is assigned a function or responsibility shall solemnly swear or affirm to support and defend the Constitution of the United States, laws of the state and the ordinances of the City.

(Ordinance 6138 adopted 1/25/1983)

**§ 2-3-13. Emergency management plan.**

A comprehensive emergency management plan shall be developed and maintained in a current state by the city manager. The plan shall set forth the form of the organization, establish and designate divisions and functions, assign responsibilities, tasks, duties, and powers, and designate officers and employees to carry out the provisions of this Section. As provided by state law, the plan shall follow the standards and criteria established by the state division of emergency management of the state. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the state division of emergency management. The emergency management plan shall be considered supplementary to this Section and have the effect of law during the time of a disaster.

(Ordinance 6673 adopted 7/8/1986)



AIRPORT PLANNING AND DEVELOPMENT BOARD

**Chapter 2-4**

**AIRPORT PLANNING AND DEVELOPMENT BOARD**

**§ 2-4-1. Membership, terms of office.**

There is hereby created an airport planning and development board which shall be composed of ten regular members, to be appointed by the City Council, and two ex officio members, to be the city manager and the city attorney. All members shall be residents of Midland County. Appointments of regular members shall be for three-year terms.

The terms of all board members shall commence and end on September 30 of the appropriate year. Four of the board members shall serve terms expiring in 1989 and each third year thereafter. Three of the board members shall serve terms expiring in 1990 and each third year thereafter. The remaining three board members shall serve terms ending in 1991 and each third year thereafter. The terms of all board members serving at the time of the adoption of this Code Section shall be extended until September 30 of the same year in which their terms were heretofore set to expire. The appointment of all regular members of the board, and any replacements, shall be made from time to time by a majority of the Councilmembers present and voting at the regular or special meeting of the City Council. The Council may appoint members for a duration of less than three years if necessary to comply with the terms of this Section.

(Ordinance 5782 adopted 7/14/1981; Ordinance 6964 adopted 9/26/1989)

**§ 2-4-2. Organization.**

The board shall select from among its regular members a chairman and vice-chairman and it shall adopt, subject to the approval of the City Council, such rules and regulations governing its proceedings as it may deem proper. Such rules and regulations shall not be inconsistent with the Charter and ordinances of the City. The aviation director of the City shall serve as secretary of the board, provide it with all information necessary for the performance of its duties and participate fully in all of its discussions. The board shall meet at such time and place as it shall direct.

(Ordinance 5782 adopted 7/14/1981)

**§ 2-4-3. Duties and responsibilities.**

- (A) Maintain close liaison with the state and federal agencies, through the City Council and staff, to promote and to secure the development of the Midland Industrial Park and Midland Regional Airport and Midland Airpark (hereinafter referred to as "Midland airports").
- (B) Assist present industries and businesses located at the Midland airports in growth and development.
- (C) Make personal contacts with proposed industries in an effort to secure the location of said industries at the Midland airports and recommend leases and sales of lands to any such proposed new industries (within the scope of existing zoning regulations, plats and price ranges, approved and adopted from time to time by the City Council) to the City Council.
- (D) Maintain close liaison with the Midland Chamber of Commerce and other interested organizations and individuals, such as industrial development corporations and teams, in promoting the industrial growth of said Midland airports.
- (E) The board should, from time to time, make such general studies of airport construction and operations as may be useful in keeping the airports of the City and other air navigation/aviation facilities established, owned or controlled by the City efficient and adequate for the needs of the City and of the air transportation industry.
- (F) The board may develop and make recommendations to the City Council in respect to the expansion and improvement of the city's air transportation facilities and any other particular matters specifically

referred to it by the City Council or aviation director.

- (G) The board shall, acting in an advisory capacity, work toward the general improvement of the airports and the advancement of the City as an air transportation center, including, but not limited to, the establishment of new airports, heliports and helistops within the jurisdiction of said City.

(Ordinance 5782 adopted 7/14/1981)

**§ 2-4-4. Payment of expenses.**

Any funds provided by the City Council for the board's expenses (not including expenses of the airports) shall be paid out only upon order of the board and vouchers or requisitions therefor shall be approved by the city's director of finance and by the chairman or vice-chairman of the board.

(Ordinance 5782 adopted 7/14/1981)

**§ 2-4-5. Disqualification for absenteeism.**

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, the member shall be disqualified and automatically removed from serving as a board member. 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.

(Ordinance 6906 adopted 2/14/1989)



ENERGY ADVISORY COMMISSION

**Chapter 2-5**

**ENERGY ADVISORY COMMISSION**

**§ 2-5-1. Membership, terms of office.**

There is hereby created an energy advisory commission which shall be composed of five regular members, to be appointed by the City Council, and two ex officio members, to wit, the city manager and the city attorney. All members shall be residents of the City of Midland. Appointments of regular members shall be for two-year terms.

Said commission shall become effective on May 1, 1974, and appointment of three of the regular members for the terms beginning May 1, 1974, shall expire in the odd-numbered years and the terms of the other two members shall expire in the even-numbered years.

(Ordinance 4843 adopted 1/22/1974)

**§ 2-5-2. Organization.**

The commission shall select from among its regular members a chairman and a vice-chairman and it shall adopt, subject to the approval of the City Council, such rules and regulations governing its proceedings as it may deem proper. Such rules and regulations shall not be inconsistent with the Charter and ordinances of the City. The commission shall meet at such time and place as it shall direct.

(Ordinance 4843 adopted 1/22/1974)

**§ 2-5-3. Duties and responsibilities.**

Upon request of the City Council, the commission shall advise the Council on any matter or thing related to the production, conservation, use and regulation of energy.

(Ordinance 4843 adopted 1/22/1974)

**§ 2-5-4. Payment of expenses.**

Funds provided by the City Council for the commission's expenses, if any, shall be paid out only upon order of the commission and vouchers or requisitions therefor shall be approved by the city's director of finance and by the chairman or vice-chairman of the commission.

(Ordinance 4843 adopted 1/22/1974)

City of Midland, TX

ENERGY ADVISORY COMMISSION

**Chapter 2-6**

**BUILDING AND FIRE CODES REVIEW COMMITTEE**

***Editor's note(s)***—*Ordinance 9848, § 1, adopted Nov. 20, 2018, amended former Ch. 6, §§ 2-6-1—2-6-5, in its entirety to read as herein set out. Former Ch. 6 pertained to the building code review committee and derived from Ord. No. 5186, adopted June 21, 1977.*

#### **§ 2-6-1. Membership, terms of office.**

There is hereby created a building and fire codes review committee which shall be composed of nine members to be appointed by the City Council. All members shall be residents of the City of Midland. Appointments to said committee shall be for terms of six years each.

(Ordinance 9848, sec. 1, adopted 11/20/2018)

#### **§ 2-6-2. Organization.**

The committee shall select from among its members a chairman and a vice-chairman and it shall adopt, subject to the approval of the City Council, such rules and regulations governing its proceedings as it may deem proper. Such rules and regulations shall not be inconsistent with either the Charter or ordinances of the City. The committee shall meet at such time and place as it shall direct.

(Ordinance 9848, sec. 1, adopted 11/20/2018)

#### **§ 2-6-3. Duties and representatives.**

Said committee shall:

- (A) Review the present building and fire codes of the City of Midland and advise the City Council of any additions or deletions thereto that the committee recommends;
- (B) Review new editions of the International Code Council Codes and make recommendations to the Council concerning their adoption;
- (C) Upon request of the City Council, the committee shall also advise the Council on any other matter related to the building or fire codes that is brought to the Council's attention from time to time;
- (D) Hear and decide appeals from orders, decisions or determinations made by the building official in accordance with International Building Code section 113.2; and
- (E) Hear and decide appeals from orders, decisions or determinations made by the fire code official in accordance with International Fire Code section 108.2.

(Ordinance 9848, sec. 1, adopted 11/20/2018)

#### **§ 2-6-4. Compensation and expenses.**

The members of the committee shall serve without compensation. If the committee deems it necessary to incur expenses in performing its assigned duties, then an estimate of such proposed expense shall be submitted to the City Council for approval. No debt of any kind or character shall be made or incurred by the committee, or anyone acting on behalf of the committee, unless such expenditure has been specifically authorized by the City Council prior to the time such obligation is incurred.

(Ordinance 9848, sec. 1, adopted 11/20/2018)

#### **§ 2-6-5. Committee representatives.**

- A. Said committee shall be composed as follows:
  - 1. An architect.

2. A second architect.
3. A fire protection contractor or specialist.
4. A general contractor.
5. An electrical contractor.
6. A homebuilder.
7. A plumbing and mechanical contractor.
8. A structural engineer.
9. A City Council liaison.

(Ordinance 9848, sec. 1, adopted 11/20/2018)

BUILDING AND FIRE CODES REVIEW COMMITTEE

**Chapter 2-7**

**(RESERVED)**

**Chapter 2-8**

**MIDLAND CRIME PREVENTION COMMISSION**

**§ 2-8-1. Creation.**

There is hereby created the Midland crime prevention commission to the City of Midland, Texas, to be composed of nine members appointed by a majority vote of the City Council, and advisory members, which advisory members shall be the chief of police of the Midland police department, the crime prevention officer or officers of the Midland police department, the Midland County sheriff, and the crime prevention officer or officers of the Midland County sheriff's office.

(Ordinance 6818 adopted 1/12/1988; Ordinance 7167 adopted 4/14/1992; Ordinance 8676, sec. 1, adopted 10/14/2008)

**§ 2-8-2. Terms of office; vacancies.**

The members of the commission shall be appointed to serve three-year terms beginning and ending on September 30 of the appropriate years. The terms of seven of the members shall expire in 1992 and each third year thereafter, the terms of seven of the members shall expire in 1993 and each third year thereafter, and the terms of the remaining seven members shall expire in 1994 and each third year thereafter. All vacancies shall be filled by majority vote of the City Council. Any vacancy which results in leaving a portion of an unexpired term shall be filled for the remainder of that unexpired term. All members of the commission serving at the time of the enactment of this Code Section shall continue to serve on the commission, and their terms of office shall be extended to the September 30 following their currently scheduled dates of termination. A member may be removed from office by the City Council for any reason. If a commission member is absent for more than 25 percent of the duly called meetings in any period of 12 consecutive months or absent for 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, that member shall be disqualified and automatically removed from serving as a commission member. The term "duly called meeting" includes all meetings of the commission and all meetings of the subcommittees of the commission on which the commission member serves.

(Ordinance 6818 adopted 1/12/1988; Ordinance 7167 adopted 4/14/1992)

**§ 2-8-3. Organization.**

The members of the Midland crime prevention commission shall, within a reasonable time after their appointment, meet, organize and select from among the members a chairman, vice-chairman and secretary-treasurer, and shall hold meetings at least four times a year and otherwise on the call of the chairman, and shall designate the time and place of such meetings. The commission shall adopt such rules and regulations governing its proceedings as it may deem proper. Such rules and regulations shall not be inconsistent with the Charter and ordinances of the City.

(Ordinance 6818 adopted 1/12/1988)

**§ 2-8-4. Duties and responsibilities.**

The commission shall recommend to the City Council programs to achieve the following objectives, the purpose of such objectives being to involve the entire community in crime prevention awareness: (1) to strengthen the rapport between citizens and police through knowledge, service and understanding; (2) to establish a permanent, enduring program that provides a vehicle for citizen input and involvement; (3) to disseminate information on crime prevention techniques; (4) to expand the base of currently existing crime prevention experts and to reach more citizens on a face-to-face local level with relevant crime prevention information; (5) to develop personal relationships and positive attitudes toward law enforcement agencies; (6) to effect a tangible reduction in crime throughout the community by focusing on prevention tactics that can be utilized by the general citizenry.

(Ordinance 6818 adopted 1/12/1988)

**§ 2-8-5. Sunset provision.**

The Midland Crime Prevention Commission shall be dissolved and cease to exist effective September 30, 2010, at 5:00 p.m.

(Ordinance 8801, sec. 1, adopted 5/25/2010)



(RESERVED)

**Chapter 2-9**

**(RESERVED)**

**Chapter 2-10**

**ANIMAL CONTROL ADVISORY COMMISSION**

**§ 2-10-1. Creation.**

There is hereby created an animal control advisory commission for the City. That commission shall assist the city's animal control department in complying with the regulations placed on that department by the State of Texas or any other appropriate governing body. The commission shall further advise the Council on any other animal control problem referred to the commission by the City Council.

(Ordinance 6936 adopted 6/27/1989)

**§ 2-10-2. Membership.**

The animal control advisory commission shall consist of seven persons appointed by a majority of the City Council. The commission shall be composed of at least one licensed veterinarian, one county or municipal official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(Ordinance 6936 adopted 6/27/1989; Ordinance 7526, sec. 1, adopted 5/14/1996; Ordinance 8049, sec. 1, adopted 10/9/01; Ordinance 10061, sec. 1, adopted 3/24/2020)

**§ 2-10-3. Terms.**

Members of the commission shall serve four-year terms beginning and ending on September 30 of the appropriate years. The City Council may from time to time appoint members for terms of lesser duration than four years when necessary to comply with the terms of this section or to fill the remainder of unexpired

terms. A member may be removed from office by the City Council for any reason.

(Ordinance 6936 adopted 6/27/1989; Ordinance 8049, sec. 2, adopted 10/9/01)

**§ 2-10-4. Organization.**

Pursuant to V.T.C.A., Health and Safety Code § 823.005(c), the commission shall meet at least three times annually. The commission shall organize itself, adopt its own rules, and elect a chairman. The commission may meet more frequently as is required by the City Council or as called by the chairman of the commission.

(Ordinance 6936 adopted 6/27/1989)

**Title III: Departments**

WATER DEPARTMENT

**Chapter 3-1**

**WATER DEPARTMENT**

***Editor's note(s)***—Ord. No. 9965, § 1, adopted Sep. 10, 2019, amended Ch. 1 in its entirety to read as herein set out. Former Ch. 1, §§ 3-1-1—3-1-27, pertained to the same subject matter, and derived from Ord. No. 4256, adopted June 28, 1966; Ord. No. 4937, adopted March 25, 1975; Ord. No. 5504, adopted Sep. 13, 1979; Ord. No. 5843, adopted Sep. 22, 1981; Ord. No. 6402, adopted May 22, 1984; Ord. No. 6581, adopted Sep. 10, 1985; Ord. No. 6712, adopted Nov. 25, 1986; Ord. No. 6742, adopted April 28, 1987; Ord. No. 6772, adopted Aug. 11, 1987; Ord. No. 6778, adopted Aug. 11, 1987; Ord. No. 7061, adopted Dec. 18, 1990; Ord. No. 7063, adopted Jan. 8, 1991; Ord. No. 7082, adopted March 26, 1991; Ord. No. 7284, adopted Nov. 9, 1993; Ord. No. 7362, §§ 1, 2, adopted Sep. 13, 1994; Ord. No. 7510, § 1, adopted Feb. 13, 1996; Ord. No. 8017, adopted May 8, 2001; Ord. No. 8059, § 2, adopted Oct. 23, 2001; Ord. No. 8103, §§ 1—3, adopted June 25, 2002; Ord. No. 8297, §§ 1, 2, adopted March 22, 2005; Ord. No. 8334, §§ 2—4, adopted Sep. 13, 2005; Ord. No. 8376, §§ 2, 3, adopted Jan. 24, 2006; Ord. No. 8436, § 7, adopted Aug. 22, 2006; Ord. No. 8474, §§ 2—4, adopted Dec. 19, 2006; Ord. No. 8942, § 1, adopted Sep. 27, 2011; Ord. No. 8991, § 1, adopted March 20, 2012; Ord. No. 9065, § 1, adopted Sep. 25, 2012; Ord. No. 9070, § 1, adopted Sep. 25, 2012; Ord. No. 9076, § 1, adopted Nov. 27, 2012; Ord. No. 9103, § 1, adopted Jan. 22, 2013; Ord. No. 9137, § 1, adopted April 23, 2013; Ord. No. 9144, § 1, adopted May 28, 2013; Ord. No. 9145, § 1, adopted May 28, 2013; Ord. No. 9071, § 1, adopted Sep. 25, 2012; Ord. No. 9407, § 1, adopted Feb. 10, 2015 ; Ord. No. 9214, § 1, adopted Dec. 17, 2013 ; Ord. No. 9222, § 1, adopted Jan. 28, 2014 ; Ord. No. 9071, § 1, adopted Sep. 10, 2015; and Ord. No. 9643, § 1, adopted Feb. 28, 2017.

### **§ 3-1-1. Application.**

#### **(A) Application for water, sewer and garbage services required.**

1. **Contents of application.** Before any water, sewer, or garbage collection services shall be supplied to any person or to any premises by the City, that person who is to be responsible for the payment of those services, or that person's duly authorized agent, shall make written application for those services on a form to be provided online by the manager of customer service. No application shall be accepted without a certified address by the City's planning division. The application shall contain such information regarding the applicant and the service(s) to be provided as established by the City's Finance Department. When completed and approved, the application shall constitute a contract on the part of the applicant to pay the City for the use and benefit of the Customer Service Department for all charges for those services provided by the City to that person or premises, and to abide by all regulations relating to those services as those regulations exist and may be amended. In making application for water, sewer, or garbage collection services, each applicant shall provide such information and documentation as may be required by Finance Department policy, including, but not limited to, documentation which establishes the identity of the applicant and/or establishes the authority of the applicant to make the application on behalf of the applicant or a third party.
2. The Customer Service Department shall collect a fee as specified in the City's fee schedule for each new account for water, sewer, or garbage collection services it establishes. The Customer Service Department shall also collect a fee as specified in the City's fee schedule for each transfer to a different address of an account for water, sewer, or garbage collection services.
3. If the applicant for water services is a landlord who shall in turn supply other persons or entities water services, the applicant shall provide with the application a list of all dwelling and commercial units that will be supplied water services via the applicant's account. The list of dwelling and commercial units supplied by the applicant must be by street mailing address, and not merely by post office box number.

4. Requests for water and sewer services for property outside the City limits shall be directed to the City's utilities director. The city attorney shall prepare a contract based on the Council's policy regarding water and sewer services outside the City limits for the Council's consideration.

(B) Deposit.

1. A deposit shall be billed on the first utility bill, the minimum amount of which shall be as follows:
  - a. Residential. The deposit on any property that is residential shall be as specified in the fee schedule. Provided, however, that such deposit may be waived upon a demonstration of good utility credit.
  - b. Commercial. An amount equal to two months' estimated average bill, including water, sewer and garbage.
  - c. Religious organizations that are exempt from taxation pursuant to Texas Tax Code Section 11.20, schools and governmental entities shall be exempt from the deposit requirement.

For purposes of this subsection, "good utility credit" may be demonstrated by presentation of a letter or other documentation from a municipal, gas or electric utility indicating that no payment due dates have been missed by the utility customer in the preceding 12-month period.

2. In the case of real estate firms and others having a large number of accounts, and in the case of required deposits in excess of \$1,000.00, the manager of customer service may accept a letter of credit from a bank in lieu of the cash deposit.
3. If a person making a deposit becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, then and in that event, the City shall have the prerogative to apply the deposit to any bill of that person which may be outstanding.
4. Internal Credit Rating. Each customer will start with an "A" rating (zero points). Upon certain credit events occurring, customers will receive points toward their credit rating. Customers will be asked for an additional deposit if their credit rating reaches a rating of "D."
  - a. Level Qualification. Customers will retain an internal credit rating based on the following point qualifications:
    - i. "A" Rating: 0-19 points accumulated.
    - ii. "B" Rating: 20-46 points accumulated.
    - iii. "C" Rating: 47-98 points accumulated.
    - iv. "D" Rating: Over 99 points accumulated.
  - b. Events and Points. Points are attributed to customers following the occurrence of the following events:
    - i. Final warning notice: 20 points.
    - ii. Disconnection of service: 50 points.
    - iii. Insufficient check: 25 points.

- iv. Late fees charged: 5 points.
  - v. Write off balance of account: 200 points.
  - vi. Sent to debt collector: 200 points.
  - vii. Tampering with water meter: 200 points.
- c. Duration of points. All accumulated points will remain on a customer's internal credit rating for 365 days from the date of the event. Events detailed in (v.)-(vii.) will remain on a customer's internal credit rating for four years.
- (C) Use of water without application or permit. It shall be unlawful for any person or persons to use water from the City without an application or permit, or to turn on the City water for use on his premises if the same has been, for any reason, disconnected or before the same has been turned on by the City without first having secured a permit from the Customer Service Department to turn on the water at such place.
- (D) No new service until application is made. Before any water or sewer service shall be installed to serve any premises from the City system the person to be responsible for the payment for the services shall make written application for said service, as provided in subsection (A) above. No permit for any connection with the City water and sewer system shall be issued until such application is accepted by the Customer Service Department.
- (E) Using or furnishing water without permission. It shall be unlawful for any person to take or use water from the City water system except under the terms and conditions specified in this Chapter. All owners and occupants of property are hereby prohibited from furnishing water to any person occupying other premises for any purpose whatsoever except with the written consent of the Customer Service Department.
- (F) Inspections; right of access to city employees; badges and credentials of employees.
- 1. No person other than authorized officers or employees of the Customer Service Department shall have any badge or credential of the Customer Service Department. It shall be the duty of each officer and employee of the Customer Service Department, upon resignation or dismissal or termination of duty or employment by any other manner, to surrender and deliver to the Supervisor of Customer Service at his office all badges and credentials, tools or other properties belonging to the Customer Service Department.
  - 2. Any such officer, inspector, foreman or authorized employee of the Customer Service Department shall, upon presentation of his badge or other credentials provided for in the next preceding paragraph, have free access at all reasonable hours to any premises supplied with city water and/or sewer services for the purpose of making an inspection thereof or for reading meters.
  - 3.
    - a. In case any such authorized employee shall be obstructed or prevented in making such examination, the Customer Service Department may cause the water and sewer service to be disconnected from that premises according to the procedures detailed in Section 3-1-25(A) of this Title and Chapter.
    - b. It shall be unlawful for any person to threaten with bodily harm or reprisal by any means any authorized officer or employee of the Customer Service Department making an inspection of any premises for city water service purposes or reading meters, and shall be

unlawful for any person to in any way prevent any authorized officer or employee of the Customer Service Department making an inspection of the premises for city water service purposes or reading meters. Any person violating the provisions of this subsection shall be guilty of a misdemeanor, and, upon conviction, fined not more than \$200.00.

- c. It shall be unlawful for any person to hinder or interfere with any Customer Service Department employee or agent who is delivering water termination notices pursuant to Section 3-1-25 of this Title and Chapter. It shall further be unlawful for any person, other than an occupant of the premises to which notice is delivered, to remove a water termination notice delivered by the Customer Service Department from any premises to which the Customer Service Department delivered that notice.

- (G) Disregard of amounts less than \$5.00 in final accounting. On final billings in connection with discontinuance of service, not including transfers, fractional parts of a dollar may be disregarded by the City, that is, if the final billing in an account after cash deposit is applied is less than \$5.00, the customer shall not be billed further, and the account shall be considered paid in full. If the balance of the deposit remaining after the final bill is deducted therefrom is less than \$5.00 no refund shall be made.

(H) Meter rechecking and testing.

1. Any customer of the City Water Department may request that his or her meter be reread once during any given six months to ascertain the accuracy of the previous reading on which that customer's bill was based. Should that customer request that the meter be reread a second time within any given six months to verify its accuracy, and that second recheck shall indicate that the previous reading or readings were accurate or reflected less water usage than was actually used, then the manager of customer service shall add a charge as specified in the fee schedule to that customer's bill for the second and each subsequent rereading of that customer's meter.
2. Any customer of the City Water Department may request that the customer's meter be tested for its accuracy once during any given six months. If that customer requests any subsequent testing of the meter during that same six months, and that testing indicates that the meter was registering accurately or was registering less water than was actually delivered to the customer, then the manager of customer service shall assess a charge as specified in the fee schedule to that customer for that and each subsequent meter test requested by that customer.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

## § 3-1-2. Rates.

(A) Customers inside of city limits.

1. Water rates. The monthly water rates or charges for services furnished by the city's waterworks system shall be at the rates set by the fee schedule ordinance, as amended.
  - a. All non-residential customers, which shall include apartments, that use water furnished by the city's waterworks system for outside landscape irrigation purposes shall have installed, by the city, a separate water meter with separate water lines used exclusively for irrigation purposes.
    - i. Said water meter must be installed by the city, at the customer's expense.
    - ii. The city shall own said water meter.

- iii. The customer, at the customer's expense, shall be responsible for the installation of any water lines, fittings and appurtenances thereto necessary to connect to customer's outside landscape irrigation system according to the city's standard specifications.
  - iv. The requirement that a customer install said separate water meter with said separate water lines shall apply when the submission of a landscape plan or an amended landscape plan is required in connection with a request for a building permit for new construction or the expansion of an existing structure, as set forth in chapter 11-9 of the city code.
  - v. The penalty for violation of this section shall be in accordance with the general penalty provisions contained in section 1-3-1 of the city code, which provides for a fine not exceeding \$500.00.
- b. For apartments, the minimum charge shall be at the rates set by the fee schedule ordinance, as amended.
- 2. Sewer rates. The monthly rates or charges for services of users of the city's sewer system shall be as follows:
    - a. Residential (winter average). December, January, and February will be the residential winter average months. The average of the lowest two months out of the three will become the monthly charge for the following year. The residential charges shall be at the rates set by the fee schedule ordinance, as amended.
    - b. Commercial. Commercial sewer rates shall be based on actual water consumption at the rates set by the fee schedule ordinance, as amended.

(B) Customers outside of city limits. All customers who obtain water or sewer service outside of the city limits shall pay rates set by the fee schedule ordinance, as amended.

(Ordinance 9965, sec. 1, adopted 9/10/2019; Ordinance 10088, sec. 1, adopted 6/23/2020; Ordinance 10116, sec. 1, adopted 10/20/2020; Ordinance 10572 adopted 10/22/2024)

### **§ 3-1-3. Payment of charges.**

The water and sewer rates or charges fixed and prescribed by this Chapter shall be paid to the Customer Service Department of the City, together with charges for collection of garbage. Rates and charges for water and sewer service and garbage collection shall be billed to the users or customers on the same statement, and users or customers shall be permitted to make payments. If a partial payment is made, the following priorities shall be followed: 1) Deposits, 2) Miscellaneous charges, 3) Garbage, 4) Drainage, 5) Sewer, and 6) Water. Should any customer pay for such services by check or other negotiable instrument and that check, or other negotiable instrument be dishonored or returned, the Customer Service Department shall add a charge of \$30.00 to that customer's bill due to the dishonoring of that check or other negotiable instrument. On the second non-sufficient check or e-check, the customer will not be able to use a check for a year. The City shall pro-rate base charge at a daily rate on the first and final bill.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

### **§ 3-1-4. Statements.**

All statements for water, sewer, and garbage collection charges shall be due approximately 25 days after the last date in the service period for which the charges are being made, but not on Saturday or Sunday, which date shall be printed on each statement. However, no payment shall be considered delinquent until

after the stated due date. If a payment becomes delinquent, an additional five percent late fee shall be charged to the customer. Five days after the due date, a past due notice will be sent out by one of the following methods: a door hanger, mail, email, text message or phone call showing the outstanding amount plus late fee. Ten days after the due date, a termination notice will be sent out, by any of the methods stated above, notifying the customer they will be shut off within five days. Final bills not paid within five days from the due date will be sent to the City's collection agency. The City shall offer \$1.00 off the monthly utility statement if the customer chooses to do electronic billing/paperless billing.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

#### **§ 3-1-5. Nonpayment of charges; reconnection.**

In the event any user or customer of the City's waterworks or sewer system or garbage collection system does not pay the amounts due upon proper billing by the date the same becomes delinquent, the manager of customer services is hereby authorized and directed to order the disconnection of the customer's water services pursuant to the procedures set forth in Section 3-1-25(A) of this Title and Chapter. After water service has been terminated pursuant to Section 3-1-25(A) of this Title and Chapter, such services may be resumed upon the payment of all past due amounts, up to and including the date of disconnection, plus a reconnection charge of \$30.00. Reconnections due to nonpayment shall be done only during regular business hours unless approved by the customer service manager.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

#### **§ 3-1-6. Free services prohibited; city must pay for services.**

The City departments will be charged the Tier 1 water rate. Sewer rates will be established based on consumption level.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

#### **§ 3-1-7. Unlawful use of water or use of sanitary sewer facilities.**

Whoever intentionally, by any means or device, prevents water from passing through any meter belonging to the City or used in connection with the supply of water to any consumer by the City to register the amount of water passing through the meter, or intentionally prevents a meter from duly registering the quantity of water supplied, or in any way interferes with the proper action or registration, or without the consent of the Customer Service Department intentionally diverts any water from any pipe or pipes of the City or otherwise intentionally uses, or causes to be used, without consent of the City, any water produced or distributed by the City, or any person who retains possession of or refuses to deliver any meter or other appliance loaned to him by the City for the purposes of furnishing water through the City system, shall for every such offense be fined as provided for a violation of this Code. The presence at any time on or about any such meter or pipe of any device or pipes resulting in the diversion of water or prevention of its free passage and registration by the meter or diverting from the meter as above defined or resulting in the prevention of water from reaching the meter or preventing the just registration of the meter or meters, or the taking of any water except through a meter as above set forth, shall constitute prima facie evidence of knowledge, on the part of the person owning or having custody and control of the room, building, place or premises where such device or pipe is, of the existence thereof and knowledge of such existence to the person who would be benefitted by the failure of the water to be properly metered; and such shall further constitute prima facie evidence of intention on the part of such person or persons to defraud, and shall bring such person prima facie within the scope, meaning and penalties of this Section and Chapter. It shall be unlawful for any person to use water from the City without an application or permit, or to turn on the City water for use on his premises after the same has been, for any reason, cut off, except only in case of repairs, or before the same has been turned on by the City without having first secured a permit from the Public

Works Department to turn on the water at such places. Whoever intentionally, by any means or device, connects to the City sanitary sewer or allows wastewater to enter the City sanitary sewer to avoid payment of sewer charges shall be fined as provided for a violation of this Code. The location of such a sewer tap unlawfully installed by a customer or his agent shall constitute *prima facie* evidence of knowledge on the part of the persons owning or having custody and control of the room, building, place or premises where such device is.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

**§ 3-1-8. Bill for illegally used water or illegal use of sanitary sewer facilities or disconnection of illegal facilities.**

- (A) Any person or persons illegally using water from the City, as defined in Section 3-1-7 of this Title and Chapter, shall be responsible for all water used from the date of last reading of the water meter on that person's place or premises. In the event the meter has been removed by that person or persons or has been circumvented, broken or damaged, then that person or persons shall be billed for an estimated amount of water used during the period of time when that meter was not registering the amount of water used plus the cost of repairing the meter. Water meter repair charges shall be determined by the water meter shop superintendent.
- (B) Water charge estimates shall be made by the supervisor of customer service and shall be based on an average month of the previous year.
- (C) Should the City personnel remove from any premises any illegal water connection as defined in Section 3-1-7 of this Title and Chapter, the manager of customer service shall add \$200.00 for the first violation and \$300.00 for the second violation to the bill of the customer or user, or shall charge to that user at the premises from which such illegal connections were removed.
- (D) Any person or persons illegally using sanitary sewer facilities shall be billed for all sewer charges which were evaded from the time the customer first connected to the sanitary sewer system. The sewer charge estimate shall be made by the sanitary sewer superintendent and shall be based on the established rates at the time the violation was discovered.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

**§ 3-1-9. Litter abatement and beautification fee and recycle fee.**

- (A) A litter abatement and beautification fee of \$1.00 and a \$0.50 recycle fee is hereby established and shall be charged to each utility account.
- (B) Each month all utility customers shall be assessed a litter abatement and beautification fee of \$1.00 and \$0.50 recycle fee which shall be reflected on their monthly utility bill.
- (C) Payment of the litter abatement and beautification fee and recycle fee is mandatory.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

**§ 3-1-10. Permitted uses of the litter abatement and beautification fee.**

- (A) All litter abatement and beautification fees collected shall be designated as such and used only for the purposes provided herein.
- (B) A litter abatement and beautification fee revenue and expense line item shall be created to identify revenues and expenses attributable to the Litter Abatement and Beautification Program.

- (C) All litter abatement and beautification fees shall be allocated to a litter abatement and beautification revenue line item in the sanitation fund.
- (D) Funds from sources other than the litter abatement and beautification fee that are available for the removal of litter and/or beautification of City right-of-way may be allocated to a separate miscellaneous litter abatement and beautification revenue and expense line item in the sanitation fund.
- (E) An expenditure from the litter abatement and beautification line item need not specifically relate to the property of a particular utility customer from whom the litter abatement and beautification fee was collected.
- (F) All funds raised through the litter abatement and beautification fee will be allocated towards the following public purposes:
  1. The removal of litter, including litter abatement, education and enforcement of the litter ordinances and Section 8-6-18 of the Midland City Code;
  2. The beautification of City Council approved sites located within City right-of-way; especially, but not exclusively, those areas that are visible from roadways entering the City of Midland;
  3. The acquisition and planting of trees and vegetation; and
  4. The installation of benches, seats, decorative fencing, ground cover and sidewalks in or near City right-of-way in an area where funds have been spent for beautification purposes.
- (G) As approved by the City Council, the City Manager will have the authority to disperse funds as necessary, including wages and benefits, from the litter abatement and beautification fee. This shall include the hiring or contracting of sufficient staff or services to carry out the purposes herein. The City Manager shall have the authority to contract with independent contractors to carry out the purposes of this chapter [Sections 3-1-9 through 3-1-11].

(Ordinance 9965, sec. 1, adopted 9/10/2019)

#### **§ 3-1-11. Billing of the litter abatement/beautification fee and recycle fee.**

- (A) The litter abatement/beautification fee and recycle fee shall be billed each month on the City of Midland combined billing statement for each utility customer. The director of solid waste is authorized to collect such charges in a manner consistent with the City Charter and state law.
- (B) Payment for the litter abatement/beautification fee and recycle fee is due when all other charges on the combined billing statement are due.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

#### **§ 3-1-12. through § 3-1-18. (Reserved)**

#### **§ 3-1-19. Sanitary sewer house laterals.**

- (A) The City may install house laterals from the City sewer mains to the nearest property or easement line, both inside and outside the City limits, and shall charge for the installation of any such house laterals a sum sufficient to cover the average cost thereof; such sum to be determined by the Department of Development Services and collected by the City, prior to the starting of work, and shall be at the following rates or bases:

House lateral service charges (sewer) except in business areas can be found in the City's Fee Ordinance.

No tap shall be made by the City of Midland on streets greater than two lanes in width or greater than ten feet in depth. These taps may be made by private utility contractors approved by the City and at the owner's expense. The above charges shall include the cost of tapping the City sewer main, the installation of wyes and placing the lateral main to the nearest property or easement line. For business areas, or where deep-cut connections are involved, or where extra manholes must be constructed, estimates of costs will be furnished upon request. Such estimated costs must be deposited with the City before work is started, the final cost to be adjusted upon completion of the work. Should the final cost of the work exceed the amount of the deposit, an installment showing the amount of the excess, and a copy of same constituting notice that the excess amount is due, shall be furnished the contractor or owner of the property to which service is being extended. Upon failure to receive payment of the excess amount due on such estimates, the director of utilities, at his option, may refuse or discontinue water and sewer service to the property until full payment has been made for the work performed.

In the event, upon completion of the work for which the deposit has been made, final cost is less than the amount of the estimate or deposit, a refund of the amount of the overpayment will be immediately made to the party or parties from whom the deposit was received.

Sewer outfall lines 12 inches and larger will not be tapped for house lateral service (sewer) or service connection. If it is necessary to connect house lateral service to an outfall it will be done only at an existing manhole or the customer will be charged for building a manhole in addition to the standard tapping fee. Costs as set out therein shall apply for connections to property inside and outside the City limits.

1. Replacement sanitary sewer house laterals. The City may replace an existing sanitary sewer house lateral for residential customers at a rate of \$300.00 per line. If an existing sanitary sewer tap should need to be abandoned, a charge of \$150.00 shall be assessed in addition to any other charges. For additional sanitary sewer house laterals for business areas or where deep-cut connections are involved or where extra manholes must be constructed, estimates of costs will be furnished upon request. Such estimated costs must be deposited with the City before work is started, the final cost to be adjusted upon completion of the work. Should the final cost of the work exceed the amount of the deposit, a statement showing the amount of the excess and a copy of same constituting notice that the excess amount is due shall be furnished the contractor or owner of the property to which service is being extended. Upon failure to receive payment of the excess amount due on such estimates, the director of utilities, at his option, may refuse or discontinue water and sewer service of the property until full payment has been made for the work performed.

In the event, upon completion of the work for which the deposit has been made, final cost is less than the amount of the estimate or deposit, a refund of the amount of the overpayment will be immediately made to the party or parties from whom the deposit was received.

Paving cut or boring and casing fees for additional sanitary sewer house laterals shall be charged as set forth in Section 3-1-19(B).

- (B) Paving cut or boring and casing fee. For the purpose of this Section, in addition to the above charges, there shall be a charge for each paving cut made where the sewer is in a paved alley. There shall be a charge for each paving cut made where the sewer is in a paved street. The amount can be found in the City of Midland Fee Ordinance. Where a state highway or county road must be crossed, the boring and casing fee charged will be the actual cost incurred by the City in making such paving cut. The

term "paving" is defined as any concrete pavement or compacted caliche base with asphaltic surfacing type of pavement or concrete driveway.

- (C) The builder will set a stake on the property line to designate the desired location for the termination of the service connection (house lateral). The City will lay all laterals 30 inches below ground level if the elevation of the sewer main permits. It will be the responsibility of the builder or his plumber to check visually the location and elevation of the house service before he installs any sewer plumbing to verify that the plumbing will drain properly into the service connection at the property line. The builder or his plumber will install the house lateral from the building to the property line on the correct slope and he will make the final connection. The plumber may use the wye at or near the property line to install his pneumatic test plug for the water test on the plumbing for the Inspection Department. The plumbing inspector will not give the "rough-in" inspection until the house lateral is connected to the service line and the water test has been completed.
- (D) The developer may at his own expense install the sewer service connection at the same time he is installing the sanitary sewer main. This service must be installed according to city specifications, using specified materials, and shall terminate on the property line or easement line with a cleanout wye which has been properly plugged. Inspection will be made by the same inspectors who inspect the installation of the sewer main. The developer will be responsible for these sewer services until the alley or public thoroughfare or street is accepted by the City. There will be no additional charge for the customer to connect to the sewer connection made by the developer, but a permit must be secured and the customer is responsible for locating the house lateral. The developer must transmit to the Utilities Department drawings showing the exact location of all service connections installed by him prior to the date of final inspection.
- (E) The property owner or occupant, as the case may be, that is, the City's customer for sewer service, shall be solely responsible for all maintenance of, and service costs incurred in connection with, said laterals between the house or other structure being served and the main, even though a portion of said lateral is on City-owned right-of-way on which, for the purposes hereof, an easement is hereby granted to all such abutting owners or occupants. Provided, however, that the City will repair or replace any such laterals damaged by its own employees or as a result of its own public work activities.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

### **§ 3-1-20. Water service connections.**

- (A) The City may install and maintain service connections in the streets and alleys, or easements, both inside and outside the City limits of the City, and shall charge for the installation and maintenance of all such service connections a sum sufficient to cover the average cost thereof; such sum is to be determined by the Utilities Department and collected by the City, prior to the starting of work, and shall be at the rates or bases as found in the City of Midland Fee Ordinance.

No tap shall be made by the City of Midland on streets greater than two lanes in width or greater than ten feet in depth. These taps shall be made by private utility contractors approved by the City at the owners' expense.

In the interest of public health and safety, which in this case involves ample water supply and pressures, no tap greater than one-inch, or the equivalent thereof, shall be made for residential purposes unless and until the application therefor has been submitted to and approved by the director of utilities.

An estimate of the cost for all service connections larger than two inches in diameter will be furnished by the Utilities Department, and a deposit of the estimated amount will be required before work is started on the installation of such connection, the final cost to be adjusted upon completion of the work. Should the final cost of the work exceed the amount of the deposit, a statement showing the amount of the excess will be immediately furnished to the party or parties having made the deposit, and a copy of the same, constituting notice that the excess amount is due, shall be furnished the contractor or owner of the property to which service is being extended. Upon failure to receive payment of the excess amount due on such estimates, the director of utilities, at his option, may refuse or discontinue water service to the property until full payment has been made for the work performed.

In the event, upon completion of the work for which deposit was made, final cost is less than the amount of the estimate or deposit, a refund of the amount of overpayment will be immediately made to the party or parties from whom the deposit was received.

The above flat rate charges, and the estimates of cost on all service connections larger than two inches in diameter, shall include all costs incident to making the installation of the water service connection required.

The Utilities Department shall make the necessary pavement cuts and repairs, the cost of same as specified in Section 3-1-20(B) to be added to the cost figures as above enumerated.

Costs set out herein shall apply for connections to property inside and outside the City limits of the City.

- (B) Paving cuts or boring fees. For the purpose of this Section, in addition to the above charges, there shall be a charge for each paving cut made in residential streets. For each paving cut made in an alley, there will be a charge. Charges are as stated in the City of Midland Fee Ordinance. Where a state highway or county road must be crossed, the boring and casing fee charged will be the actual costs incurred by the City in making such paving cut. The term "paving" is defined as any concrete pavement, or compacted caliche base with asphaltic surfacing type pavement or concrete driveway.

The charge to a customer for boring and/or encasing under a highway will be the actual cost. This charge will be made instead of the paving cut fee when the Texas State Highway Department will not permit a ditch to be cut across the highway.

- (C) The developer may install the water service connection ahead of paving if he is also installing the water main. This service must be installed according to the City specifications, using specified materials, and must be terminated with a curb stop in a standard water meter box. Inspection will be made by the same inspector who inspects the installation of the water main. The developer will remain responsible for these services until after the street has been paved. Service connections made by the developer must be located and exposed or otherwise clearly marked by the person desiring service. The cost of installing a meter at the time of service shall be as stated in the City of Midland Fee Ordinance.

The developer must transmit to the Utilities Department drawings showing the exact location of all service connections installed by him prior to the date of final inspection.

- (D) The cost of replacing a water service connection with a different size connection shall be the same as for a new connection.

If paving must be cut to install new service or to remove old service, paving replacement charges shall be the same as for a new meter.

- (E) Cost of relocating meters or fire hydrants shall be paid by the customer or property owner requesting the relocation. This cost shall cover the expense to the City for labor, material, and equipment.
- (F) Water and sewer service connections which were made at the City's expense, before the street or alley was paved, are assigned to the property on which they terminate. When these are used by the property owner, they must be paid for at the existing fee. If due to resizing lots or using property for other than residence building, the service connection must be abandoned or removed, the property owner must pay for these connections before he is issued a plumbing permit.
- (G) The Utilities Department will maintain, at its own expense, and at their original sizes, all services from the main to the meter so long as the consumer continues the use thereof. The customer shall maintain the copper piping on his side of the meter in proper condition so that the meter can be carefully "changed-out" as necessary without causing breaks or leaks in this pipe fitting. Whenever use of a service is abandoned by the consumer, this obligation to maintain the service shall cease.
- (H) Requests for fire line connection must be approved by both the director of utilities and the City fire chief. Such connections will be installed by the City with the customers being charged the actual cost of installation. Water meters will not be installed in fire lines and this line will be disconnected from the City mains if any water is used through this line except to extinguish fires. Industrial customers may install fire hydrants on their property, but each fire hydrant must have a separate gate valve ahead of each fire hydrant. Both the gate valve and fire hydrant must be a standard brand and model approved by the City. The City will maintain the valve, fire hydrant and fire line.
- (I) Fire hydrants will be installed on city rights-of-way or utility easements. Fire hydrants must be clearly visible in all directions from the streets. No bushes, shrubs or trees may be planted near the fire hydrant which would obscure the hydrant from view.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

#### **§ 3-1-21. Location and setting of water meters.**

Any applicant for consumer service of municipal water shall file with the office of the Building Official a plat of the property for which service is desired showing the property lines, curblines, sidewalk lines and driveway lines and show on said plat the desired location of the water meter. This location may, in the alternative, be shown on the plat filed with his application for a building permit for improvements on the premises. The applicant for service shall then set a stake in the ground on the premises in question at the point shown on the plat for location of the water meter. The applicant may show on the stake the grade he desires for the top level of the meter box.

The contractor shall at all times during construction cause the water meter to be accessible for the building inspector and have the meter box location conspicuously marked by stake or some other clearly visible marking device. No final approval shall be given unless, on his final inspection, he finds the water meter and its protective cover undamaged and the fitting connections at the water meter in place and undamaged. The distance from the cover box to the top of the face of the meter shall be not less than 14 inches and not more than 36 inches, the fill around the meter box tamped firm and the top of the meter box either level with the surrounding yard or not more than one inch above yard level. Water hydrants or temporary connections must be three feet from the water meter and hydrants shall not be permitted inside meter boxes. The meter lid must be kept on the meter at all times and the meter box must be kept accessible to the meter readers. Any repair to or payment of damages to or adjustment of the meter or cover box must be done prior to final approval by the plumbing inspector, except that if the plumber furnished the City with a written release from the applicant consumer and the plumber assumes liability for such corrections, repairs or payment of damages, then the final plumbing may be approved.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

**§ 3-1-22. Damage or removal of water meters.**

It shall be unlawful for any person to disturb, remove, relocate, tamper with or fill up or cover over same with dirt, paving material or any other substance, the water meter and/or its protective cover box after it has been set for service by the City, except that any duly licensed master plumber holding a permit for plumbing improvements on the premises served may adjust the level of the protective cover boxes to the grade level of the yard around the meter prior to final plumbing inspection. Upon completion of setting of the water meter and protective cover box, the applicant consumer, at whose instance and request the service has been supplied, shall be primarily liable to the City for any and all damage that may thereafter occur to said meter and protective cover box. In addition to any other remedy the City may have to collect damages thereto, it may add such sums to the regular bill for water consumption, and on failure to pay said amount when due, the City may discontinue the water service in the same manner as provided for in cases where the water bill has not been paid.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

**§ 3-1-23. Cross connections prohibited.**

- (A) It shall be unlawful to connect, or permit the connection of, any potable water supply distributing system to or with any water closet tank, flush valve, combination or other faucet, or any plumbing fixture or receptacle for waste or surplus water, which is connected directly or indirectly with any sewer, soil or waste of a plumbing system, except: (1) By discharging over and not less than three-fourths inch above the level at which the fixture would overflow on the floor unless the supply pipe thereto be provided with a complete airbreak of the full area of the supply pipe and located at least six inches above the highest water containing part of the fixture; (2) Provided that, in lieu of a full area inlet, there may be a combination of check and air inlet so disposed and arranged in location and size that the air inlet shall be sufficient to apply full relief for any leakage that might occur past a defectively sealed check, should the washer or other means of sealing be completely destroyed.
- (B) It shall be unlawful to install, or permit the installation of, any plumbing fixture, device or construction which will provide a cross connection between a distributing system of water for drinking and domestic purposes and a drainage system, soil or waste pipe so as to permit or make possible the backflow of sewage or waste into the water supply system.
- (C) Cross connection between piping and receiving water from the City water mains and piping and receiving water from any other source or storage, private wells or otherwise, is positively forbidden, and it is hereby declared to be unlawful for any person to make or to have made any such connection. The existence of a cross connection is declared to be a nuisance and an immediate threat to the health, welfare, and safety of the citizens of the City, and the removal of any cross connection is a matter of public emergency. Whenever it discovers the existence of any such cross connection, the City reserves the right to immediately disconnect the service connecting such piping with the City mains, following the procedure set forth in Section 3-1-25(B) of this Title and Chapter. After such termination of water services and compliance with Section 3-1-25(B) of this Title and Chapter, city water services may be reconnected to the customer, provided that the customer secure a plumbing permit and have the plumbing corrected so as to comply with this subsection. After the plumbing inspector has approved the plumbing and ascertained that there is no longer a cross connection, the City Water Department shall reset the meter upon payment by the customer of a reconnection service charge. Fee are as established in the City of Midland Fee Ordinance.
- (D) Anyone desiring to use water from some other source in addition to the City connection may do so

by using a storage tank and delivering the City water supply into the tank six inches above the overflow line and through a pipe having at least a six-inch air space between its discharge and the surface of the water in the tank. The water from the other source may then be piped into the tank and service lines taken from the tank in any manner desired, not otherwise prohibited by this Code.

- (E) If inflow from a city water main to a swimming pool or other storage of water is below overflow level, a cross connection is hereby determined to exist.  
(Ordinance 9965, sec. 1, adopted 9/10/2019)

#### **§ 3-1-24. Sewage quality control.**

- (A) Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this Section shall be as follows:

Approving authority: The City Manager, or his duly authorized representative, unless otherwise specified.

BOD (biochemical oxygen demand): The quantity of oxygen by weight, expressed in milligrams per liter, utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at a standard of 20 degrees Centigrade.

City: The City of Midland, Texas.

Domestic sewage: Wastewater excluding industrial wastewater discharged by a person into sanitary sewers and in which the average concentration of total suspended solids is not more than 250 milligrams per liter (mg/l) and BOD is not more than 250 milligrams per liter (mg/l).

Garbage: Solid waste and residue, from the preparation, cooking and dispensing of food, and from the handling, storage and sale of food products and produce.

Industrial wastes: Waterborne waste and gaseous waste resulting from any process of industry, manufacturing, trade or business from the development of any natural resource or any mixture of the waste with water or normal wastewater, or distinct from normal wastewater.

Milligrams per liter (mg/l): A weight to volume ratio; the milligrams per liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

Normal domestic sewage: Sewage from the City of Midland in which the average concentration of suspended materials and five-day BOD is established at 250 milligrams per liter.

pH: The logarithm (base 10) of the reciprocal of the hydrogen ion concentration expressed in moles per liter. pH shall be determined by one of the procedures outlined in "Standard Methods."

Person, establishment or owner: Any individual, firm, company, association, society, corporation, partnership, or group, their agents, servants, or employees.

Properly shredded garbage: The waste from the preparation, cooking and dispensing of food, exclusive of egg shells, bones, etc., that have been shredded to such degree that all particles will be carried freely under flow conditions normally prevailing in public sewer, with no particles greater than one-half inch in any dimension.

Public sewer: A sewer controlled by the City as a municipal corporation.

Sanitary sewer: A sewer that conveys domestic wastewater or industrial wastes or a combination of both, and into which stormwater, surface water, groundwater, and other unpolluted waste are not intentionally passed.

Sewage works: All facilities, devices, and structures used for receiving, processing, and treating wastewater from the City sanitary sewer system.

Sewer service charge: The charge made on all users of public sewer whose waste does not exceed in strength the concentration values established in this chapter.

Slug: Any discharge of water, sewage or industrial waste other than toxic material which in concentration of any given constituent or in quantity or flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

Standard methods: The examination and analytical procedures set forth in the latest edition at the time of analysis of "Standard Methods for Examination of Water and Sewage" as prepared, approved and published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

Storm sewer or storm drain: A sewer which carries storm or surface waters and drainage, but excludes sewage and polluted industrial waste.

Surcharge: The charge in addition to the sewage service charge which is made on those persons whose waste is greater in strength than the concentration values established as representative of normal charges.

Suspended solids: Solids that either float on the surface of or are in suspension in water, sewage, or other liquids, and which are removable by a laboratory filtration device.

Wastewater plant: Any city-owned facility, device and structure used for receiving and treating wastewater.

(B) Admission of industrial waste into public sewer.

1. Approval required. Review and acceptance of the approving authority shall be obtained prior to the discharge into the public sewers of any wastes and waters having:
  - (a) A five-day 20-degree Centigrade biochemical oxygen demand (BOD) greater than 250 milligrams per liter (mg/l).
  - (b) Suspended solids containing greater than 250 milligrams per liter (mg/l).
2. Pretreatment. Where required, as herein specified to modify or eliminate waste that is harmful to the structures, processes or operation of sewage works, or detrimental to the quality of the effluent, the person shall provide, at his expense, such preliminary treatment or processing facilities as may be determined by the approving authority necessary to render his waste acceptable for admission to the public sewers.
3. Grease, oil and sand interceptors. Grease, oil and sand traps or interceptors shall be provided for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwellings. All interceptors shall be of a type and capacity approved by the approving authority and shall be located as to be readily and easily accessible for easy cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes of temperature. They shall be of substantial construction, watertight and equipped with easily removable covers. Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times. Materials removed from these

facilities shall be either utilized by industry or disposed of at locations designated by the approving authority.

4. Submission of information. Plans, specifications and any other pertinent information relating to proposed preliminary treatment or processing facilities or flow equalization facilities shall be submitted for approval of the approving authority prior to the start of their construction, if the effluent from such facilities is to be discharged into the public sewer. All such plans shall be prepared by a registered professional engineer and shall bear his signature and seal.

(C) Prohibited discharges.

1. No person shall discharge or cause to be discharged any stormwater, groundwater, roof runoff, subsurface drainage, or any water from downspouts, yard drains, yard fountains and ponds or lawn spray into any sanitary sewer.
2. No person shall discharge or cause to be discharged into any public sewer any of the following described substances, materials, waters, or wastes:
  - (a) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Centigrade).
  - (b) Any water or waste which contains wax, grease or oil, plastic, or other substance that will solidify or become discernibly viscous at temperatures between 60 degrees to 90 degrees Fahrenheit.
  - (c) Flammable or explosive liquids, "solid or gas," such as gasoline, kerosene, benzene, naphtha, etc.
  - (d) Any garbage that has not been properly comminuted or shredded.
  - (e) Any noxious or malodorous substance which can form a gas, which singly or by interaction with other waste, is capable of causing objectionable odors or hazards to life and property, which form solids in concentrations exceeding limits established herein or creates any other condition deleterious to structures or treatment processes, or requires unusual facilities, attention, or expense to handle such materials.
3. Except in quantities or concentrations or with provisions as stipulated herein, it shall be unlawful for any person, corporation, or individual to discharge waters or wastes into the sanitary sewer containing:
  - (a) Free or emulsified oil and grease exceeding on analysis an average of 100 mg/l (834 pounds per million gallons) of either or both or combination of free or emulsified oil and grease, if, in the opinion of the approving authority, it appears probable that such waste:
    - (1) Can deposit grease or oil in the sewer lines in such manner as to clog the sewer;
    - (2) Can overload the discharger's skimming and grease handling equipment;
    - (3) Are not amenable to biological oxidation and will therefore pass to the receiving waters without being affected by normal sewage treatment process; or
    - (4) Can have deleterious effects on treatment process due to excessive quantities.
  - (b) Acids or alkalies which attack or corrode sewers or sewage disposal structures or have a

pH value lower than 6.0 or higher than 10.0.

- (c) Salts of the heavy metals, in solution or suspension, in concentrations exceeding the following, the analytical results to be expressed in terms of the element indicated:

Elements	mg/l
Arsenic	0.10
Barium	1.0
Boron	1.0
Cadmium	1.0
Chromium	5.0
Copper	5.0
Lead	1.0
Manganese	1.0
Mercury	0.005
Nickel	5.0
Selenium	0.02
Silver	1.0
Zinc	5.0

- (d) Heavy metals and toxic material in concentrations prohibited by state or federal regulations, including, but not limited to:

Antimony  
 Beryllium  
 Bismuth  
 Boron  
 Cobalt  
 Molybdenum  
 Uranylion  
 Rhenium  
 Strontium  
 Tellurium  
 Fungicides  
 Herbicides  
 Pesticides

- (e) Cyanides or cyanogen compounds capable of liberating hydrocyanic gas on acidification

in excess of two mg/l as CN in the waste from any outlet into the public sewers.

- (f) Chlorides in excess of 1,500 mg/l (12,510 pounds per million gallons).
- (g) Sulfates in excess of 1,000 mg/l (8,340 pounds per million gallons).
- (h) Dissolved solids greater than 2,500 mg/l.
- (i) Radioactive materials exceeding the existing standards of the Texas State Department of Health.
- (j) Any wastewaters containing phenols or other taste-producing substances in such concentrations as to produce odor or taste in the effluent of the wastewater plant.
- (k) Materials which exert or cause:
  - (1) Unusual concentrations of solids, slurries or viscous substances of such character as to be capable of causing obstruction of the flow in sewers, or other interference with the proper operation of the sewage works, such as ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, paper products, either whole or ground by garbage grinders, slops, chemical residues, paint residues, fiberglass and bulk solids;
  - (2) Excessive discoloration;
  - (3) Unusual biochemical oxygen demand or an immediate oxygen demand;
  - (4) High hydrogen sulfide content; or
  - (5) Unusual flow and concentration.
- (l) Toxic substances which are not amenable to treatment or reduction by the wastewater treatment process employed, or are amenable to treatment only to such degree that the wastewater treatment plant cannot meet the requirements of other agencies having jurisdiction over discharge without first pretreating to a concentration acceptable to the City.
- (m) Organic chemical substances in concentrations exceeding the following:

Benzene	1.0 mg/l
Phenol	0.10 mg/l
Toluene	1.0 mg/l
Isopropyl alcohol	10.0 mg/l
Acetone	10.0 mg/l
Methylene chloride	1.0 mg/l
Ethyl benzene	1.0 mg/l
Methyl alcohol	10.0 mg/l
Methyl ethyl ketone	10.0 mg/l

When wastewater containing any of the aforementioned materials is discharged into the sanitary sewer and such wastes are not properly pretreated or otherwise corrected, the approving authority may (a) reject the waste and terminate the service to sanitary sewer, (b) require control of the quantities and rates of discharge of such waste with flow regulating devices, or (c) require payment of surcharge for excessive cost of treatment provided such waste is amenable to treatment by existing sewage plant facilities.

4. If a person discharges a substance into the sanitary sewer in violation of subsection (C) of this Section, the approving authority may:
  - (a) Terminate the service of water or sanitary sewer to the premises from which the substance was discharged; or
  - (b) Require pretreatment or control of the quantities and rates of discharge of waste to bring the discharge within the limits established by this Section.
5. Action taken by the approving authority under paragraph 4. above does not prevent the use of other enforcement methods available to the City.
6. If national pretreatment standards more stringent than those prescribed in this Section are promulgated by the United States Environmental Protection Agency for certain categories of industries, the more stringent national pretreatment standards will apply to the affected industrial user.

**(D) Permits for discharge of industrial waste.**

1. No person, firm or establishment shall discharge, or allow to be discharged, industrial waste into the sanitary sewer without obtaining and maintaining a valid permit from the approving authority.
2. Application for a permit must be made to the approving authority upon a form provided for the purpose and must be accompanied by plans and specifications for pretreatment facilities if pretreatment is required. The approving authority may establish further regulations and procedures not in conflict with this Chapter or other laws, regarding the granting and enforcement of permits.
3. The approving authority shall issue a permit if:
  - (a) The approving authority determines that pretreatment facilities are adequate for efficient treatment of discharged waste and comply with the waste concentration level requirements of subsection (C) of this Section or with national pretreatment standards, whichever is applicable; or
  - (b) The applicant has submitted:
    - (1) An expected compliance date;
    - (2) An installation schedule of approved pretreatment devices;
    - (3) A self-monitoring program prepared in accordance with all applicable federal pretreatment standards promulgated by the United States Environmental Protection Agency; or
  - (c) The applicant is not discharging waste in violation of subsection (C) of this Section other

than excessive BOD or suspended solids.

4. Permits granted under this Section are not transferrable or assignable.

**(E) Denial or suspension of permit.**

1. The approving authority may deny a permit if he determines that an applicant is not qualified under subsection (D) of this Section and may suspend a permit if he determines that a permittee:
  - (a) Is not qualified under subsection (D) of this Section;
  - (b) Has violated a provision of this Section;
  - (c) Has failed to comply with applicable federal pretreatment standards and requirements; or
  - (d) Has failed to comply with the compliance schedule required under paragraph 3 of subsection (D) of this Section.
2. After suspension under subsection (E) of this Section, a permittee may file a request for reinstatement of the permit. When the approving authority determines that the permittee is again qualified, all violations have been corrected, precautions have been taken to prevent future violations, and all required fees have been paid, he shall reinstate the permit.
3. A permittee whose permit is suspended shall not discharge industrial waste into the sanitary sewer.
4. The approving authority may amend a permit with additional requirements to assure compliance with applicable laws and regulations.

**(F) Industrial waste surcharge.**

1. Persons, firms or owners discharging industrial waste into the sanitary sewer which exhibits none of the characteristics of waste prohibited in subsection (C), other than excessive BOD or suspended solids, but having a concentration during a 24-hour period average of BOD or suspended solids content in excess of "normal domestic sewage," shall be required to pretreat the industrial waste to meet the requirements of "normal domestic sewage"; however, such waste may be accepted in the sanitary sewer for treatment by the City if all the following requirements are met:
  - (a) The wastes will not cause damage to the collection system;
  - (b) The waste will not impair the treatment process; and
  - (c) The discharger of the waste enters into a contractual agreement with the City of Midland providing for a surcharge over and above the existing sewer rates. The basis for surcharge on industrial waste is to be computed on the following basis:

$$S = Vs \times 8.34 (0.20 [BOD - 250] + 0.30 [SS - 250])$$

$$S = Vs \times 8.34 (a [BOD - 250] + b [SS - 250])$$

Where:

S = Surcharge in dollars.

Vs = Sewage volume in million gallons.

8.34	=	Pounds per gallon of water.
0.20	=	Unit charge for BOD in dollars per pound.
BOD	=	BOD strength index in milligrams per liter by weight.
250	=	Normal BOD strength in milligrams per liter (mg/l).
0.30	=	Unit charge for suspended solids in dollars per pound.
SS	=	Suspended solids concentration in milligrams per liter (mg/l).
250	=	Normal SS concentration in milligrams per liter (mg/l).

2. The volume of flow used in computing the industrial surcharge shall be based upon the metered water consumption as shown in the records of meter readings maintained by the Midland Water Department. BOD and suspended solid values determined from samples collected from any establishment shall be determined by the approving authority or a registered professional engineer employed by the discharger. Such report shall contain a statement that the samples collected and values determined are based on a 24-hour composite representative of the establishment's flow. Each sampling point shall be installed and shall be so maintained by the discharger so that any authorized representative of the City may readily and safely obtain samples of the flow at all times. Plans and location of such sampling points shall be approved by the approving authority prior to construction. All flow rates and BOD and suspended solid values used in determination of the industrial sewer service charge shall be reevaluated on an annual basis. However, if there is a major change in operation to cause changes in value, the value may be increased or decreased on a study of changes or actual measurements.
3. The basis for determining the surcharge shall be reviewed biannually and shall be adjusted to reflect any increase or decrease in wastewater treatment costs based on the previous year's experience.

(G) Sampling fees for major contributing industries.

1. Each major contributing industry for which the City has reporting requirements under its National Pollutant Discharge Elimination System permit shall compensate the City for the cost of sampling and laboratory service required for monitoring discharges. The approving authority shall determine the number of samples and the frequency of sampling necessary to comply with the reporting requirements.
2. For the purposes of subsection (G) of this Section, major contributing industry means an industry that:
  - (a) Discharges 50,000 gallons or more wastewater per day;
  - (b) Discharges a toxic or prohibited substance listed in subsection (C) of this Section; or
  - (c) Discharges an amount of wastewater which represents five percent or more of the total influent of the City's wastewater treatment plant.

(H) Inspection chambers.

1. A person who discharges industrial waste into the sanitary sewer or wastewater facilities shall provide, at his own expense, an inspection manhole or chamber in an accessible location on the premises from which the waste is discharged.

2. An inspection manhole or chamber must be:
  - (a) Near the outlet of each sewer, drain, pipe, or channel which connects with the sanitary sewer or wastewater facility;
  - (b) Designed and constructed to prevent infiltration by ground and surface water; and
  - (c) Maintained so that a person may easily and safely measure the volume and obtain samples of the flow.
3. Before beginning construction of an inspection manhole or chamber, a person shall submit plans to the approving authority for review and approval to ensure compliance with subsection (H) of this Section. Plans must include the sewage metering device if one is to be installed.

(I) Measurement of waste volume.

1. If a person who discharges industrial waste into the sanitary sewer installs and maintains, in proper working condition, a sewage metering device of a type approved by the approving authority for measuring sewage flow, the actual sewage flow from the premises will be the basis for computing charges for service.
2. On premises of a person who discharges industrial waste into the sanitary sewer and where water is obtained exclusively from the public water supply and no sewage metering device is installed, the approving authority shall compute the sewage flow for purposes of determining service charges, based on the water consumption during the previous month.
3. On premises of a person who discharges industrial waste into the sanitary sewer and where all or part of the water is obtained from a source other than the public water supply and no metering device is installed, the owner shall provide and maintain a metering device of a type approved by the approving authority to measure sources of private water.
4. If an activity on premises of a person who discharges industrial waste into the sanitary sewer consumes water by evaporation, including it in a product, or discharge into a storm sewer, the owner may make application to the approving authority for reduction in the volume of waste estimated to be discharged from the premises. The application must contain supporting data, including, but not limited to, a flow diagram showing the route and destination of the water supply and waste and data from submeters installed on process piping.

(J) Sampling of waste.

1. The approving authority shall take samples of waste discharges from establishments as often as he determines is necessary to adequately monitor and control the discharges. If an owner desires additional samples, the approving authority shall require the owner to pay the cost of the additional service.
2. Samples may be taken manually or by use of mechanical equipment. The approving authority shall use standard methods laboratory procedures for determining concentrations of industrial waste.
3. The approving authority shall conduct inspection, surveillance and monitoring procedures to determine whether an industrial user is in compliance with applicable pretreatment standards and requirements. The inspection, surveillance and monitoring must be independent of information received from the self-monitoring reports program.

- (K) Right of entry of city employees. The approving authority, the City environmental health officer, and other duly authorized employees of the City acting as their duly authorized agents and bearing proper credentials and identification shall be permitted to gain access to such properties as may be necessary for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Section.
- (L) Billing. The industrial waste surcharge provided for in this chapter shall be included as a separate item on the regular bill for water and sewer and shall be paid monthly in accordance with the existing practices. Surcharges shall be paid at the same time that the sewer charges of the person becomes due.
- (M) Disconnection for failure to pay bills or unlawful discharges.
1. The approving authority may order disconnection of water and sanitary sewer services to an establishment if he determines that:
    - (a) The owner has not paid charges for water or sanitary sewer service when due;
    - (b) The owner has not paid an industrial surcharge when due;
    - (c) The establishment has discharged waste to the sanitary sewer in violation of subsection (C) of this Section; or
    - (d) Disconnection is necessary to protect the wastewater facilities or the health and safety of the citizens of the City.
  2. A disconnection order does not prevent the use of other enforcement or collection procedures available to the City.
- (N) Indemnity agreement required under certain circumstances. When, in the opinion of the director of public works or the director of utilities, the property is subject to flooding or the sanitary sewer is subject to being surcharged due to infiltration or stormwaters, or the premises are subject to being flooded by an overcharged sewer due to its elevation in relation to the main sewer line, then the owner or user of the premises shall be denied a connection to the sanitary sewer unless the owner or user agrees to install a check or backflow valve in his house sewer and agrees to indemnify fully the City and save it whole and harmless from and against any and all damages, costs, or expenses of every kind, character and nature, whether real or asserted, accruing upon or about the building due to surcharge of the sanitary sewer. Such agreement shall be executed by the owner of the property and filed in the deed records of the county, and shall be a covenant running with the land and shall be binding on the owner, his successors or assigns.
- (O) Penalty for violation. Any person, corporation or association, as that term is defined by V.T.C.A., Penal Code § 1.07(a), violating any of the provisions of this Section shall, upon conviction, be fined in any sum not exceeding \$1,000.00; and each and every day that the provisions of this Section are violated shall constitute a separate and distinct offense.

(Ordinance 9965, sec. 1, adopted 9/10/2019)

### **§ 3-1-25. Termination procedures.**

- (A) Nonemergency termination. Whenever the city is authorized to terminate a customer's water services without that customer's consent and under the provisions of this subsection or whenever the city otherwise terminates water services to a customer in a nonemergency situation other than by the customer's request, the city shall first provide notice to the customer in the form and manner

described below and afford the customer an opportunity to a hearing in the form and manner described below before the termination of such services. If, after the city has complied with the notice requirements as described below, and the customer does not request a hearing for review of the termination within the specified time, the city may terminate water services to the customer on the day specified in the notice to the customer or within five calendar days thereafter. Any time elapsing after the declared termination date, the elapsing of which is due to the pendency of a hearing or the extension of time granted pursuant to a hearing, shall not be considered when calculating the five days in which the city may terminate water after a declared termination date.

1. Notice: Past due notice shall be sent five days after the due date informing the customer of the outstanding balance and late fee. This notice can be transmitted by text, email, or mail. Ten days after the due date, the city shall send out a termination notice informing the customer that the customer has five days before the customer's water will be shut off. The notice may be sent by the methods set out above or by door hanger. Said notice shall include:
  - (a) The name of the customer whose service is proposed to be terminated.
  - (b) The address where service is proposed to be terminated.
  - (c) The reason for the proposed termination, including the amount of delinquency if nonpayment of charges is the reason for termination.
  - (d) The day on which the water service will be terminated unless the conditions bringing about the termination are sooner remedied.
  - (e) That the customer has the right to appear and be heard at a hearing to contest the proposed termination prior to the date of termination.
  - (f) The means by which the customer may request the hearing for review of the proposed termination.
  - (g) The deadline by which the customer must request the hearing, which must be requested no later than one day prior to the termination date.
2. After the deadline for requesting a hearing, as described in section 3-1-25(A)1(g), has passed, a customer may still request a hearing to review the decision to terminate the customer's water service within ten days of the deadline upon providing to the city manager or the city manager's designee an affidavit declaring that the customer, through no fault of the customer, did not receive notice of termination in time to act upon the same. When a hearing pursuant to this subsection is requested, the city manager or the city manager's designee shall, as soon as practicable, determine whether the appeal appears to be meritorious, and if the city manager or the city manager's designee finds it is meritorious, then the city manager or the city manager's designee shall order the continuation or restoration of services pending the appeal.
3. If the customer whose water service is proposed for termination is a landlord who supplies water services to tenant water users, the city shall attempt to give notice to the tenant water users pursuant to subsection (C) of this section.
4. Hearing: Should the customer request a hearing to review the decision to terminate the customer's water services, the hearing shall be presided over by the city manager or the city manager's designee, said designee not having been involved in the original decision to terminate services, hereafter in this context known as the hearing officer. The hearing shall be held no sooner than the next business day nor later than fifteen business days after being requested by

the customer. The hearing officer may, in the hearing officer's discretion, delay or advance the hearing time upon showing of good cause by the customer. At the hearing, the customer shall be given the opportunity to be heard in person to present the customer's case, to present testimony from other persons, and to admit documents. The customer may be represented by counsel, though the city shall in no case provide counsel. The customer shall be given the opportunity to confront and cross examine any witnesses appearing against the customer at the hearing. The customer may request that a representative of the city be present at the hearing and be subject to questioning. However, the rules of evidence for civil or criminal trials shall not apply. The city's reasons for terminating the customer's water service shall be stated at the hearing. Upon reaching a final determination, the hearing officer shall state the reasons for making that determination. Should the hearing officer find in favor of the customer, the customer's water service shall continue. Should the hearing officer find against the customer, the customer's water service shall be terminated. The hearing officer shall have the power to grant an extension of time for payment, offer a payment plan, or uphold the termination.

- (B) Emergency termination. Whenever the city is specifically authorized by this code to act pursuant to this subsection or whenever the city shall deem it necessary due to an emergency situation to terminate a customer's water service prior to giving notice and an opportunity for a hearing, the city shall give the customer whose water service has been terminated notice of that termination in accordance with the requirements described below and afford that customer an opportunity for a post-termination hearing to review the decision to terminate.

1. Notice. Whenever the city terminates a customer's water service pursuant to this subsection, the city shall post notice on the door of the premises to which water service was terminated, if possible, and shall, on that day, mail notice to the customer at the customer's usual billing address. The notice shall be in writing and shall clearly communicate the following information:
  - (a) The name of the customer.
  - (b) The address to which service has been terminated.
  - (c) The reason for the termination.
  - (d) That the customer has the right to appear and be heard at a hearing to review the termination.
  - (e) That the customer must request the hearing for review of the termination within twenty days of the termination.
  - (f) The means by which the customer may request the hearing for review of the termination. If the customer whose water service has been terminated is a landlord who supplies water services to tenant water users, the city shall attempt to give notice to the tenant water users pursuant to the procedure set forth in subsection (C) of this section.
2. Hearing. If the customer shall request a hearing to review the emergency termination of that customer's services, the request shall be made by the customer no later than twenty days after the emergency termination. Should the hearing officer find in favor of the customer, water service shall be reconnected, otherwise the customer's water service shall remain disconnected. The hearing shall in all other respects, nature, procedures, and resolutions be identical to that described in subsection (A)4 of this section.

(C) Notice to tenant users. If a customer to whom water service is proposed to be terminated or has been terminated, pursuant to the foregoing provisions of this section, is a landlord who supplies water to tenant users, and the city is aware or should be aware that the customer supplies water to tenant users, then the city shall provide notice to the tenant users of the proposed termination or past termination. The notice to the tenant user need not state the name of that tenant user nor the name of the water customer, but must communicate sufficient information to inform the tenant user that the tenant user's premises are covered by the proposed or actual termination. The tenant user shall have the same rights to appeal that the customer of the water services has under the foregoing provisions of this section and shall be so informed by the notice. The notice to the tenant users shall in all other respects comply with the requirements of subsection (A)1 of this section if water service is proposed to be terminated or with subsection (B)1 of this section if services have already been terminated. Notices to tenant users may be sent by United States mail addressed to the appropriate street address of the dwelling or commercial unit, or posted on the door of the dwelling or commercial unit, or hand delivered to the tenant or any other person residing at or employed at the tenant's premises. If the appropriate physical facilities are in place and the tenant otherwise meets the requirements of this chapter, the tenant user may establish water service in the tenant user's own name without being held responsible for any delinquencies owed by the landlord.

(Ordinance 9965, sec. 1, adopted 9/10/2019; Ordinance 10572 adopted 10/22/2024)

### **§ 3-1-26. (Reserved)**

### **§ 3-1-27. Septage waste hauler discharges and fees.**

#### **(A) Origin of septage.**

1. The water pollution control plant operated by the city may accept domestic septage in loads originating exclusively from the following:
  - (a) Those shown to have originated completely within the city or county, as shown on appropriate manifests; or
  - (b) Municipalities with which the city has a duly executed interlocal agreement to accept domestic septage.
2. No person, corporation or association shall discharge or cause to be discharged at the water pollution control plant domestic septage that originated from a location other than those described above.

#### **(B) Content of loads.**

1. Loads accepted by the water pollution control plan must consist completely and entirely of domestic septage. Loads containing any material other than domestic septage will not be accepted.
2. All septage loads are subject to analytical testing at the hauler's expense to verify that the load does not contain any material other than domestic septage.
3. No person, corporation or association shall discharge or cause to be discharged at the water pollution control plant a load containing any material other than domestic septage.

#### **(C) Septage hauler's discharge fee.**

1. In addition to any other applicable fees and charges, a septage hauler's discharge fee will be

applied to all vehicles each time they enter the water pollution control plant operated by the city to dispose of domestic septage.

2. The septage hauler's discharge fee shall be in accordance with the fee schedule ordinance, amended.
- (D) Compliance with sewage quality control requirements. All requirements set forth in section 3-1-24 of this code shall apply.
- (E) Penalty. Any person, corporation or association, as that term is defined by Texas Penal Code § 1.07(a), violating a provision of subsection (A), (B), or (D) above shall, upon conviction, be fined in any sum not exceeding \$1,000.00. Each and every day that a provision of subsection (A), (B), or (D) above is violated shall constitute a separate and distinct offense.
- (Ordinance 4256 adopted 6/28/1966; Ordinance 9965, sec. 1, adopted 9/10/2019; Ordinance 10572 adopted 10/22/2024)

City of Midland, TX

**WATER DEPARTMENT**

**Chapter 3-2**

**TAXATION**

**§ 3-2-1. Fiscal year.**

The fiscal year for accounting and budgeting purposes of the City of Midland shall begin on October 1 of each calendar year and shall terminate on September 30 of the next succeeding calendar year.  
(Ordinance 3902 adopted 5/8/1962)

**§ 3-2-2. Assessment date.**

The assessment date for tax purposes of the City of Midland shall begin on January 1 of each calendar year and all assessments of property, both personal and real, shall be made as of that date.  
(Ordinance 3902 adopted 5/8/1962)

**§ 3-2-3. Rendition.**

Each person, partnership, association or corporation owning or holding property within the limits of the City of Midland shall, between January 1 and April 30 of each calendar year, render under oath to the City tax assessor, or his authorized representative, a full and complete inventory of all property so owned or held by him, her or them within the limits of said City on January 1 of each calendar year.  
(Ordinance 3902 adopted 5/8/1962)

**§ 3-2-4. Collection of taxes.**

All property taxes levied by the governing body of the City of Midland shall become due on October 1 of the year for which the levy is made and are payable at the City tax office with the collection under the supervision of the City tax collector. No discounts will be allowed for early payment of these taxes.

Payments of these taxes may be made up to and including the following January 31 without penalty or interest. Taxes not paid by this date shall become delinquent on the following day, February 1, and the following penalty shall be payable in addition to the tax if paid during the month shown.

February	1%
March	2%
April	3%
May	4%
June	5%
July or thereafter	8%

In addition to the above penalty such delinquent taxes shall bear interest at the rate of six percent per annum from the delinquency date.  
(Ordinance 3902 adopted 5/8/1962)

**§ 3-2-5. Payment of taxes.**

Any tax as assessed above, the total of which is in excess of \$10.00, may be paid by the person, partnership, association or corporation against whom assessed in the following manner without penalty or interest thereon:

(A) One-half of the taxes imposed may be paid on or before November 30 of the year assessed.

- (B) The final one-half of the taxes imposed may be paid on or before the succeeding June 30, provided the first one-half was paid on or before November 30 as hereinbefore provided. In the event they are not paid in this manner, the unpaid taxes shall draw penalty and interest from February 1.

In the event such taxes are not paid in the manner stated, then and in that event such taxes shall become delinquent and be treated as provided in Section 3-2-4.

- (C) In the allowance of any amount as a credit or a refund, or in the collection of any amount as a deficiency or underpayment of any ad valorem tax on either real or personal property imposed by the City of Midland, Texas, a fractional part of a dollar may be disregarded by the City tax assessor and collector. Any such overpayment or underpayment may be treated as an income or expense item in the general fund of the City in order to make the tax credit balance with the amount due on either the current or delinquent tax rolls, as the case may be.

(Ordinance 3902 adopted 5/8/1962; Ordinance 4065 adopted 1/28/1964)

#### **§ 3-2-6. Adoption of state statutes.**

All statutes of the State of Texas relative to the assessment, levying and collection of taxes and the powers in regard thereto as made applicable to county tax assessors and collectors are hereby adopted, except as otherwise expressly provided in this Chapter and the City Charter and any amendments thereto.

(Ordinance 3902 adopted 5/8/1962)

#### **§ 3-2-7. Exemption.**

Under the authority of Section 1-b(b) of Article VIII of the Constitution of Texas, \$6,000.00 of the assessed value of residence homesteads, as now defined by law, of persons 65 years of age or older on January 1 of any calendar year shall be exempt from ad valorem taxation by the City of Midland for such year. Any person claiming such exemption for his or her property shall, prior to April 30 of the tax year for which such exemption is claimed, render such property as a homestead upon a form prepared by the City tax assessor-collector for such purpose and submit such proof of age and ownership of the property as he may reasonably require. This increased exemption shall become effective beginning with the current 1977 tax year.

(Ordinance 5189 adopted 7/26/1977)

**TAXATION**

**Chapter 3-3**

**HOTEL OCCUPANCY TAX**

***Editor's note(s)***—Ord. No. 7837, § 1, adopted April 13, 1999, repealed Chapter 3, Sections 3-3-1—3-3-8, in its entirety and replaced it with a new Chapter 3, sections 3-3-1—3-3-7. Former Chapter 3 pertained to similar material and derived from Ord. No. 6963, §§ 1—8, adopted Sept. 26, 1989.

### § 3-3-1. Definitions.

As used in this Chapter:

- (A) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast, or short-term rental. The term does not include:
  - (1) A hospital, sanitarium, or nursing home;
  - (2) A dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, as amended, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or
  - (3) An oilfield portable unit, as defined by Section 152.001, Government Code, as amended.
- (B) "Permanent resident" means a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.
- (C) "Short-term rental" means the rental of all or part of a residential property to a person who is not a permanent resident.
- (D) "Tourism" means the guidance or management of tourists.
- (E) "Tourist" means an individual who travels from the individual's residence to a different municipality, county, state, or country for pleasure, recreation, education, or culture.

(Ordinance 7837, sec. 1, adopted 4/13/99; Ordinance 10190, sec. 1, adopted 6/8/2021)

### § 3-3-2. Levy of tax; rate; exceptions.

- (A) There is hereby levied a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs two dollars or more each day, and is ordinarily used for sleeping, such tax to be equal to seven percent of the price paid for a room in a hotel, or the maximum rate allowed pursuant to section 351.003 of the Tax Code, as amended.
- (B) The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.
- (C) Exemptions.
  - (1) The tax does not apply to a person who is a permanent resident;
  - (2) Federal Government. The United States, or an officer or employee of a governmental entity of the United States when traveling on or otherwise engaged in the course of official duties for the governmental entity is exempt from paying this tax.
  - (3) A state officer or employee for whom a special provision or exception to the general rate of

reimbursement under the General Appropriations Act applies and who is provided with photo identification verifying the identity and exempt status of the person is not required to pay the tax.

(Ordinance 7837, sec. 1, adopted 4/13/99)

### **§ 3-3-3. Uses of revenues.**

The revenues derived from this occupancy tax shall only be used to promote tourism and the convention and hotel industry, and such uses as mandated by the Texas Tax Code, Section 351.001 et seq.

### **§ 3-3-4. Collection.**

A person owning, operating, managing, or controlling a hotel within the City of Midland, Texas, shall collect for the City of Midland, Texas the tax that is imposed hereof in Section 3-3-1.

- (A) Every person required to collect the tax imposed by this Chapter may deduct and withhold from the taxes otherwise due to the City of Midland, Texas, on the quarterly report, as reimbursement for the cost of collecting the tax, one percent of the amount of the tax due as shown on the report.
- (B) If the taxes due under this Chapter are not paid to the City of Midland within the time required or if the person required to file a report fails to file the report when due or files a false report, the person forfeits the claim to reimbursement that could have been taken for the quarterly period for which the taxes are due or the quarterly report is due or for which the quarterly report has been falsified.
- (C) Tax collection on termination of business.
  - (1) If a person who is liable for the payment of a tax under this chapter is the owner of a hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt by a person designated by the municipality to provide the receipt showing that the amount has been paid or a certificate showing that no tax is due.
  - (2) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.
  - (3) The purchaser of a hotel may request that the City of Midland's Director of Finance issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The Director of Finance shall issue the certificate or statement not later than the 60th day after the date that the person receives the request.
  - (4) If the Director of Finance fails to issue the certificate or statement within the period provided by section 3-3-4(C)(3), the purchaser is released from the obligation to withhold the purchase price or pay the amount due.
- (D) Civil action for collections. The Midland City Attorney or other attorney acting for the City of Midland may bring suit against a person who is required to collect the tax imposed by this chapter and pay the collections over to the City of Midland and who has failed to file a tax report or pay the tax when due to collect the tax not paid or to enjoin the person from operating a hotel in the municipality until the tax is paid or the report filed, as applicable, as provided by the court's order. In addition to the amount of any tax owed under this chapter, the person is liable to the City of Midland for the City of Midland's reasonable attorney's fees and a penalty equal to 15 percent of the total

amount of the tax owed, pursuant to section 351.004 of the Tax Code.  
(Ordinance 7837, sec. 1, adopted 4/13/99)

#### **§ 3-3-5. Reports.**

On or before the last day of the month following each quarterly period, every person required in Section 3-3-4 hereof to collect the tax imposed herein shall file a report with the Director of Finance of the City of Midland, showing the consideration paid for all room occupancies in the preceding quarter, the amount of tax collected on such occupancies, and any other information as the Director of Finance may reasonably require. Such person shall deliver to the Director of Finance the tax due on such occupancies at the time of filing such report.

(Ordinance 7837, sec. 1, adopted 4/13/99)

#### **§ 3-3-6. Rules and regulations.**

- (A) The Director of Finance and the City Auditor shall adopt such procedures, forms, rules and regulations as are reasonably necessary to effectively collect the tax levied herein, and shall upon request of any person owning, operating, managing or controlling any hotel or other facility as hereinabove defined, furnish a copy of such procedures, forms, rules and regulations for the guidance of such person and facilitate the collection of such tax as such collection is required herein. Such procedures, forms, rules and regulations shall be in writing and copies thereof placed on file with the Director of Finance.
- (B) The Director of Finance and the City Auditor shall have access to books and records of all persons who are required to collect such tax by Section Four hereinabove, during reasonable business hours as shall be necessary to enable the Director of Finance and the City Auditor to determine the correctness of any report filed as required by this ordinance, and to determine the correctness of the amount due under the provisions of this Chapter, or to determine whether or not a report should have been filed and the amount, if necessary, of taxes due.

(Ordinance 7837, sec. 1, adopted 4/13/99)

#### **§ 3-3-7. Penalties.**

- (A) If any person shall fail to collect the tax imposed herein, or shall fail to file a report as required herein, or shall fail to pay to the Director of Finance the tax, as imposed herein, when said report or payment is due, or shall file a false report, then such person shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$500.00, as provided in Section 1-3-1 of the City of Midland Code, which section is adopted by reference and made a part hereof. Each day any such violation shall continue shall constitute a separate offense.
- (B) In addition to the tax owed under this chapter, the person is liable to the City of Midland for the City's Attorney fees and a penalty equal to 15 percent of the total amount of the tax owed, pursuant to section 351.004 of the Tax Code, as amended.
- (C) The City of Midland Director of Finance is authorized to file a Tax Lien for any such delinquent taxes pursuant to the Tax Code section 32.01 et seq.
- (D) Delinquent taxes draw interest at the rate of 12 percent per annum, beginning 60 days from the date due.

(Ordinance 7837, sec. 1, adopted 4/13/99)

**Title IV: Building Regulations**

**BUILDING CODE**

**Chapter 4-1**

**BUILDING CODE**

***Editor's note(s)***—*Ord. No. 9921, § 1, adopted May 28, 2019, amended Ch. 1 in its entirety to read as herein set out. Former Ch. 1, §§ 4-1-1—4-1-9, pertained to the same subject matter, and derived from Ord. No. 8805, § 1, adopted July 13, 2010; Ord. No. 9225, § 1, adopted Feb. 11, 2014; and Ord. No. 9490, § 1, adopted Oct. 20, 2015.*

**§ 4-1-1. Purpose.**

The purpose of this Chapter is to provide minimum standards, provisions and requirements for safe construction, alteration, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings, or structures within the City. All such buildings and structures hereafter constructed, altered, repaired, equipped, used and occupied, removed or demolished within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein contained.

(Ordinance 9921, sec. 1, adopted 5/28/2019)

**§ 4-1-2. Code adopted.**

The specifications, rules and regulations entitled 2018 International Building Code together with appendices B, C, G and N as promulgated and published by the International Code Council, Inc, are hereby adopted as the Building Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

(Ordinance 9921, sec. 1, adopted 5/28/2019)

**§ 4-1-3. Changes and additions to adopted building code.**

Notwithstanding any provisions of this chapter or said adopted building code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

*101.1 Title.* Section 101.1 shall read in its entirety as follows:

These regulations shall be known as the Building Code of the City of Midland, hereinafter referred to as "this code."

*101.4.4 Property Maintenance.* Section 101.4.4 is deleted in its entirety.

*103.2 Appointment.* Section 103.2 shall read in its entirety as follows:

The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

*105.1.1 Annual Permit.* Section 105.1.1 is renamed *Fence Permit Required* and shall read in its entirety as follows:

A building permit shall be obtained prior to the erection or construction of any fence or wall to be located within the front yard or the side yard adjacent to a street (public or private) of any lot or tract, as such yard is required by Title XI, Chapter 1, Zoning, of the Midland City Code.

*105.1.2 Annual Permit Records.* Section 105.1.2 is deleted in its entirety.

*105.2 Work Exempt from Permit.* The following exemption is deleted in its entirety:

*Building* subsection 2.

*105.8 Contractor's Responsibilities.* Section 105.8 is added and shall read in its entirety as follows:

- (a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of buildings or structures, residential or commercial, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars (\$10,000.00) to be approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.
- (b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.
- (c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

*105.8.1 Construction Site Debris.* Section 105.8.1 is added and shall read in its entirety as follows:

It shall be the responsibility of each permit holder to make provisions for containment of building materials, construction debris, and all other trash and debris generated within the property boundaries. The particular method, which may include but is not limited to refuse containers, roll-offs, fenced areas or other types of wire enclosures, shall be specified by the applicant prior to obtaining a building permit. The applicant may specify City of Midland container service if available, provided it is a container assigned for use at the particular job site. Said container may only be used for materials for which it is suitable, as determined by the City Sanitation Division or as specified by Title 8, Chapter 6 of the Midland City Code. Blowing trash, paper, building material packaging, and other construction site related debris, allowed to collect or accumulate outside the property boundaries for which a permit has been issued, in other than an approved container, shall constitute a violation of this section of the City of Midland Code. Such violations shall be subject to enforcement provisions as provided for in the Building Code, including stop work order, revocation of permit and fine.

*109.2 Schedule of Permit Fees.* Section 109.2 shall read in its entirety as follows:

The fees for all work requiring a permit shall be indicated in the current adopted Fee Schedule.

*109.6 Refunds.* Section 109.6 shall read in its entirety as follows:

Refunds shall be in accordance with the current adopted Fee Schedule.

*903.3.1.2.3 Attics.* Section 903.3.1.2.3 shall read in its entirety as follows:

- (1) Attics that are used or intended for living purposes or storage shall be protected by an automatic sprinkler system.
- (2) Where fuel-fired equipment is installed in an unsprinkled attic, not fewer than one quick-response intermediate temperature sprinkler shall be installed above the equipment.
- (3) Attics of buildings two or more stories in height including attics of attached garages.
- (4) Group R-4, Condition 2 occupancy attics.

*1101.2 Design.* Section 1101.2 shall read in its entirety as follows:

Buildings and facilities shall be designed and constructed to be accessible in accordance with the Texas Accessibility Standards, pursuant to Article 9102, Texas Civil Statutes, as promulgated by the Texas Department of Licensing and Regulation.

*3308.1.2 Insurance Required.* Section 3308.1.2 is added and shall read in its entirety as follows:

The person or persons in Section 3308.1 desiring to use streets or public property for the storage or handling of equipment shall provide the City with an owner's, landlord's, and tenant's liability policy of insurance naming the City as the named insured, with limits of not less than five hundred thousand dollars (\$500,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, protecting the City from liability that is or may be imposed on it as owner of such street, sidewalk, or other public property under the laws of this State on account of or in any way arising out of any such use of such public streets, sidewalks or other public property, such insurance policy to remain in force and effect until such time as the use of such public property by such persons has ceased.

*3308.1.3 Street/Sidewalk Permit.* Section 3308.1.3 is added and shall read in its entirety as follows:

Building permits shall not include permission to occupy any part of the public street, sidewalks or alleys with building materials or equipment without first obtaining a permit for the use of public streets, sidewalks or alleys from the Building Official before operations have commenced. The fee for said permit shall be per the current adopted Fee Schedule. The permit for street, sidewalk or alley occupancy shall be only for the duration of construction or such lesser time as the Building Official may determine.

*3308.1.4 Waiver.* Section 3308.1.4 is added and shall read in its entirety as follows:

Up to one-third (1/3) of the width of the street right of way adjacent to the property on which the building being erected and for which a permit has been issued may be occupied in connection with the building construction provided that the free flow of traffic is not significantly impeded. If the street in front of the property adjoining such building is to be used for similarly limited storage, a due waiver of claim against the applicable governing authority for damages on account of such use, issued by the owner of such property, must be filed with the Building Official before such use shall be allowed.

*3308.1.5 Street Repair - Special Permit Requirements.* Section 3308.1.5 is added and shall read in its entirety as follows:

- (a) When any application is made pursuant to the provisions of Section 105 of this Code for a permit for the construction, enlargement or alteration of any building or structure, the owner, authorized agent or contractor applying for such permit shall, as a condition to the granting of such permit, pay to the City the fee specified in subsection (b) hereof to cover the unusual wear and tear to public streets, alleys and/or sidewalks growing out of the construction activities performed by said applicant or anyone in any way under his or its supervision and direction, including the use, movement, parking, loading and/or placement of cranes and other heavy construction equipment and vehicles or trailers laden with construction materials.
- (b) The fee specified in subsection (a) above shall be per the current adopted Fee Schedule.
- (c) In addition to the above, any damaged or deteriorated concrete, curb, gutter and paved sidewalk areas abutting the property of the construction site and associated with the project will be replaced or put in new condition by the applicant prior to issuance of final approval of the project by the Building Official.
- (d) All proceeds from the special fee set out in subsection (b) above shall be credited to the Street Improvement Fund.

(Ordinance 9921, sec. 1, adopted 5/28/2019; Ordinance 10596 adopted 2/25/2025)

**§ 4-1-4. Site requirements.**

The following site requirements shall be satisfied or committed prior to a building permit being issued for any new construction or substantial addition to the development or redevelopment of a new parcel of land.

**(A) Sidewalk construction and permits therefor required:**

1. **Sidewalks required.** Sidewalks shall be constructed within all street rights-of-way adjacent to all tracts or lots at the time of their initial development to the full length of the property line of the lot or tract involved. Sidewalks shall be constructed within all street rights-of-way adjacent to all lots or tracts, which were initially developed without sidewalks when subsequent development exceeds 25 percent of the existing floor area and also exceeds 1,000 square feet in floor area. On properties situated at the corner of intersections, sidewalks are required both on the front and side along the full length of the tract or lot involved on which development is being made and such sidewalks shall be connected to the street pavement, if existing, at all street intersections. Sidewalks will be located and constructed as specified in Section 9-4-1 of the City Code. No such sidewalks shall be constructed until a permit approved by the Director of Engineering Services of the City has been secured, as provided for in Title IX, "Public Ways and Property," Chapter 9-4, "Sidewalks, Driveways and Curbings," of the Midland City Code. If sidewalks, in good condition, exist adjacent to the developed property, newly constructed sidewalks must provide connections thereto.

The Building Official of the City shall not issue any final electrical or gas clearance or certificate of occupancy and completion until all sidewalks required to be constructed have been finally completed and approved by the Director of Engineering Services of the City, except pursuant to Section 4-1-9 of the Midland City Code.

2. **Exceptions.** The following exceptions shall not apply on a street classified as an arterial, freeway or interstate.
  - (a) Where the same side of a street, between two intersecting streets, is 75 percent or more developed and has no existing sidewalks, then no sidewalks shall be required in the remaining undeveloped portion of that side of the street. This exception shall also apply to cul-de-sacs which are 75 percent or more developed and have no existing sidewalks.
  - (b) Where the tract or lot being developed was platted pursuant to an application for final plat filed with the City on or before June 30, 1994:
    - (1) No sidewalks shall be required on any street frontage on which the adjacent tracts or lots adjoining on both sides have no existing sidewalks, or
    - (2) No sidewalks shall be required on any street frontage on which the adjacent tract or lot adjoining a corner lot has no existing sidewalk.
3. **Appeals process.** Any person wishing to appeal the requirement of the sidewalk construction on the basis that such construction would be infeasible, impractical, or would constitute a hazard to public safety, may appeal to the City Manager, or his designee, prior to constructing the sidewalk. The person may seek an exemption from all or part of the sidewalk construction. The City Manager, or his designee, shall make a decision within ten business days of receiving the appeal in writing. The City Manager, or his designee, shall ensure that a person has all rights under applicable law. A person shall incur no financial hardship by exercising his or her right to appeal.

(B) Parking and loading areas:

1. Barriers required along streets and alleys. Where an off-street parking, loading or vehicle storage area is to be paved or modifications to such area are to be made adjacent to a public street or alley, the paved area shall not project into the public right-of-way unless a curb, multiple wheel stops, or other effective barrier(s) shall be erected to prevent parked or stored vehicles from encroaching into said right-of-way, except in one and two family developments. However, if existing conditions would make such a restriction unreasonably difficult to satisfy, the City Manager may issue a permit for an encroachment into the right-of-way of a street when he determines that the following conditions will be met:
  - (a) The encroachment will not create a traffic hazard and adequate space for pedestrian traffic will be maintained.
  - (b) Barriers as specified above are provided to prevent encroachment beyond the line authorized by the permit.
  - (c) The permit conditions of Section 10-1-10(A)5(a)(1) are met.
2. Access to alleys. Where required or non-required parking spaces and loading spaces are permitted which depend upon an alley for access, the abutting property shall have a permanent opening of not more than 25 feet per separately owned parcel. All additional access shall be granted by joint alley use agreement authorized by the City Manager. Such agreement shall provide for a fee per the current adopted fee schedule and shall be revocable by the City Manager upon his determination that the access must be revoked or impaired to accommodate some other public purpose. Such agreement shall be effective for one year from the date of issuance and shall automatically renew from year to year upon payment of the prescribed fee, as said fee may be amended from time to time, unless said agreement is earlier revoked as provided for herein above.
3. Parking, loading areas, and traffic patterns. A building permit shall be required for any new parking area or change in the arrangement of an existing parking area. Where any structure is to be built or improved, the permit may be considered part of the building permit for the structure. In applying for such permit, the applicant shall provide a site plan showing the location and arrangement of the parking areas, to include parking areas, aisles, driveways and abutting street paving, with locations of nearby median openings and street intersections. A permit shall not be given by the Building Official for the construction of any building or parking area where said building or parking area is to be changed and such change will affect or change the traffic pattern entering and exiting the property where such building or parking area is located, unless and until the director of engineering services reviews such traffic patterns and makes appropriate recommendations as to the proper control of such traffic to provide safe entry to and exit from the abutting rights-of-way and to provide that the traffic capacity of the abutting rights-of-way is retained. The recommendations of the director of engineering services shall be in accordance with all City ordinances and City engineering specifications concerning traffic control and the use of the public rights-of-way, and such recommendations shall include the location, size and construction of entryways and exit ways along the rights-of-way abutting such property. All such recommendations of the director of engineering services shall be conditions of the permit issued by the Building Official.

**(C) Creation of a building site:**

1. No permit for the construction of a building or buildings upon any tract or parcel of land shall be issued until a building site, building tract or building lot has been created by complying with one of the following conditions:
  - (a) The lot or tract is represented as a separate lot or tract on a plat of record, properly approved by the Planning and Zoning Commission and filed in the Plat Records of Midland County, Texas.
  - (b) The site, plot or tract is all or part of a site plan officially approved by the Planning and Zoning Commission or City Council, which site plan provides all utility and drainage easements, alleys, street and other public improvements necessary to meet the normal requirements for platting including the designation of building areas and access provisions, and such easements, alleys and streets have been required and properly dedicated and the necessary public improvements provided.

(D) Refuse collection: Where dedicated alleys are not conveniently located for refuse service to a lot or tract, a building permit shall not be issued for such lot or tract until a plan for locations of refuse collection within the property and a guarantee of access to such locations has been submitted by the permit applicant or property owner and found satisfactory by the director of solid waste or his designated representative. Except upon specific permission of the director of solid waste, locations adjacent to public streets shall not be acceptable.

(E) Site plan review: In the event that Section 11-2-5(B) of this Code shall be applicable to the proposed development of a lot, no building permit shall be issued until approval of the site plan required by said Section 11-2-5(B)8 is obtained.

(Ordinance 9921, sec. 1, adopted 5/28/2019)

**§ 4-1-5. Exceptions.**

Notwithstanding the provisions of Section 4-1-4, if it is shown to the satisfaction of the City Council that any of the requirements of said Section 4-1-4, if complied with, would work a hardship on the developer and that the requirement would not be in the best interest and general welfare of the public, the said City Council may make exception to, or grant variances from such requirements. Provided further that the Planning and Zoning Commission, in its review of subdivision plats, shall have the authority to waive the requirements for sidewalk construction adjacent to one or both sides of cul-de-sac or short loop streets only, in areas zoned for one-family or two-family dwellings.

(Ordinance 9921, sec. 1, adopted 5/28/2019)

**§ 4-1-6. Minimum floor elevation.**

The finished first floor elevation of any residential building or structure hereafter constructed in the City shall be not less than 12 inches above the grade established by the City for the top of the street curb at its lowest point abutting the lot or tract on which such building or structure is constructed. However, if a driveway, walkway or any other facility for ingress or egress is constructed on a lot or tract, for which the standard curb must be removed or lowered, the finished first floor elevation must be at least 12 inches above the highest point of the top of the curb adjacent to the constructed driveway, walkway, ingress or egress. The condition that results in the highest floor elevation will govern the final first floor elevation.

(Ordinance 9921, sec. 1, adopted 5/28/2019)

**§ 4-1-7. Minimum mobile home anchoring standards, flood prone areas.**

The following requirements shall be applicable to mobile homes placed within any special flood hazard area, as is shown on the current FEMA Flood Hazard Boundary Map for Midland, Texas, a copy of which is on file in the office of the City Secretary, and these requirements shall be in addition to any other requirements found in the adopted International Building Code:

- (A) Over-the-top ties shall be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side.
- (B) Frame ties shall be provided at each corner of the mobile home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side.
- (C) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.

(Ordinance 9921, sec. 1, adopted 5/28/2019)

**§ 4-1-8. Early clearance procedure.**

- (A) Upon application from a contractor or appropriate party, the Building Official shall issue an early clearance permit for the connection of gas and electric utility service to a new residential structure and gas and electric utility connection and occupancy of a new commercial structure prior to the issuance of the certificate of occupancy and completion if the following conditions are met:
  - 1. All facilities necessary for the connection of and distribution of utility service must be completed in conformity with the applicable Codes.
  - 2. The applicant for such early clearance permit shall have on file with the Building Official a bond in the amount of \$10,000.00 for all structures in a form approved by the City Attorney and collectable in the event the contractor either allows a residential structure to be occupied prior to the issuance of a certificate of occupancy and completion or fails to obtain a certificate of occupancy and completion for a commercial structure in a timely manner. Such bond shall be combined with the general contractor's bond required by Section 105.8 of the Building Code as amended by Section 4-1-3 of this Title and Chapter with no increase in amounts.
- (B) In the event an applicant for an early clearance permit receives the same and shall subsequently violate its terms, or if one otherwise violates the requirements regarding obtaining a certificate of occupancy and completion, that applicant shall not be allowed any further building permits or early clearance permits until the permitted structure is brought into full Code compliance and issued a certificate of occupancy and completion.
- (C) An early clearance permit shall be issued for 180 days for commercial units and for 90 days for residential units. Commercial unit permits may be renewed by the City Manager once for 90 days upon showing of extenuating circumstances. On the expiration of the early clearance permit, the Building Official shall inspect the structure for its eligibility for issuance of a certificate of occupancy and completion. Should the building fail to qualify for a certificate of occupancy and completion, it must be vacated immediately.
- (D) For purposes of this Section, the term "occupy" or "occupied" shall mean any use by or possession of a structure affected by this Section, including the mere use for storage of furniture, by any person other than the builder. This term shall also include any use by the builder other than for construction and building purposes.

- (E) Manufactured home skirting deposit: For any location and installation of a manufactured home as a fixed dwelling, where compliance with the use regulations pertaining to such location in an "MH," Manufactured Home Dwelling District, is required, the owner of said manufactured home may make application to the Building Official for a certificate of completion of the installation prior to the installation of a continuous skirt with vents as required, provided the location and installation of said manufactured home according to all other applicable provisions of the Zoning Code and all construction codes has been completed, and provided further, the owner posts a deposit per the current adopted Fee Schedule. A forfeiture of the deposit shall occur in the event that a continuous skirt with vents has not been installed as required prior to the expiration of a period of 30 days from the date of issuance of a certificate of completion. If prior to the expiration of said 30-day period, the owner requests an inspection of the completed installation of a continuous skirt with vents and upon inspection the Building Official or his representative determines that the requirement for said skirt has been satisfied, the owner shall be entitled to a full refund of the deposit. However, in the event that the deposit is forfeited, the owner of the manufactured home is in no way released from the requirement of having continuous skirting installed. Any occupancy of a manufactured home which does not have the required continuous skirt with vents after the expiration of the 30-day period shall constitute a violation of this Code.

(Ordinance 9921, sec. 1, adopted 5/28/2019)

**§ 4-1-9. (Reserved)**

**Editor's note(s)**—Ord. No. 9979, § 1, adopted Sep. 24, 2019, repealed § 4-1-9, which pertained to street improvement fee and derived from Ord. No. 9921, § 1, adopted May 28, 2018.



ELECTRICAL CODE

**Chapter 4-2**

**ELECTRICAL CODE**

*Editor's note(s)—Ord. No. 9926, § 1, adopted May 28, 2019, amended Ch. 2 in its entirety to read as herein set out. Former Ch. 2, §§ 4-2-1—4-2-35, pertained to the same subject matter, and derived from Ord. No. 8630, § 1, adopted April 22, 2008; Ord. No. 8820, §§ 1—5, adopted July 27, 2010; and Ord. No. 9491, § 1, adopted Oct. 20, 2015.*

#### **§ 4-2-1. Electrical inspector.**

Electrical inspectors shall work under the direction of the Building Official.

- (A) Qualifications. Electrical inspectors shall have had adequate experience within the electrical field and each shall have at least four years' experience as a journeyman electrician or hold an electrical engineering degree or equivalent in experience, with said experience being limited to credit as follows: one year of academic study is equivalent to one year experience in the field; and each shall have adequate knowledge of current and approved methods and practices relating to electrical installations.
  - (B) Appointment. Electrical inspectors shall be appointed by the Building Official who may delegate any authority to them which he deems appropriate for enforcement of the Electrical Code. The electrical inspector shall be responsible in the performance of his duties to the Building Official and it shall be his duty to confer from time to time with the Fire Department and the electrical utility company, and otherwise obtain from proper sources all helpful information and advice, presenting same to the Building Official from time to time for his consideration in recommending amendments to the Code.
- (Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-2. Duties and powers generally.**

- (A) The electrical inspector shall inspect all installations, alterations and repairs of electrical work in consumer installations.
  - (B) When in the performance of his duties and as may be necessary for the performance of his duties, the electrical inspector shall have the right to enter any consumer's premises at all reasonable hours for the purpose of making tests or inspections of electrical wiring, appliances, or apparatus contained therein. When on duty, the electrical inspector shall have adequate identification with a photograph furnished by the City of Midland to indicate his position.
  - (C) The Code Administration Division shall keep, or cause to be kept, a record of all permits, licenses and inspections which are required under this Chapter. Records of all condemnations and disconnects of electrical installations resulting from condemnations shall be kept.
  - (D) The electrical inspector may issue a stop work order, when work has proceeded contrary to the adopted code. The procedure for issuance of the stop work order shall follow the currently adopted Building Code.
- (Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-3. Conflict of interest.**

An electrical inspector shall have no vested interest in any electrical contracting company, nor shall he do any electrical work for any private party or any company within the Midland City limits at any time while in the employment of the City of Midland.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-4. through § 4-2-5. (Reserved)**

**§ 4-2-6. Liability.**

An electrical inspector charged with enforcement of this Code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be civilly or criminally rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-7. Licenses and registration—electrical contractor; supervision of work.**

- (A) Registration required. Any person, company, firm, partnership or corporation desiring to engage in the business of electrical contracting within the corporate limits of the City of Midland, Texas shall register with the City of Midland Code Administration Division the correct name, address and telephone number under which he will be doing business, and provide a copy of their current Texas Master Electrician's License and Texas Electrical Contractor's License.
- (B) Supervision of work. In the actual work of installing, maintaining, altering or repairing any electrical conductors or equipment for which this Code or other ordinance requires a permit, there shall be present and in direct supervision a qualified electrician of the proper classification. An electrical contractor or master electrician shall be liable and responsible for layout and technical supervision of any work which requires a permit and a journeyman or higher classified electrician shall be in direct "on the job" supervision of ongoing work. It shall be unlawful to have more than four apprentices assisting a person duly registered and qualified under the provisions of this section. Homeowners performing work on their own premises under a homeowner permit are exempt from this provision.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-8. Master electrician.**

Master electricians shall be licensed in accordance with the Texas Electrical Safety and Licensing Act.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-9. Journeyman electrician and residential wireman.**

Journeyman electricians and residential wiremen shall be licensed in accordance with the Texas Electrical Safety and Licensing Act.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-10. Apprentices.**

Apprentices shall be licensed in accordance with the Texas Electrical Safety and Licensing Act.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-11. Maintenance electrician.**

Maintenance electricians shall be licensed in accordance with the Texas Electrical Safety and Licensing Act.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-12. Electrical sign contractor.**

- (A) Electrical sign contractors shall be licensed in accordance with the Texas Electrical Safety and Licensing Act.
- (B) Registration required. Any person, company, firm, partnership or corporation engaged in the electrical sign contracting business within the corporate limits of the City of Midland, Texas, shall be, or shall have continuously in his employment a qualified Texas master sign electrician and shall file with the Code Administration Division, the current name, address and license number of such Texas master sign electrician, which Texas master sign electrician have direct responsibility for the installation, maintenance and/or repair of any electrical sign wiring, device, material and/or equipment within the corporate limits of the City of Midland, Texas, and shall be responsible for carrying out the provisions of this Chapter in its entirety.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-13. Master sign electrician.**

Master sign electricians shall be licensed in accordance with the Texas Electrical Safety and Licensing Act.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-14. Journeyman sign electrician.**

Journeyman sign electricians shall be licensed in accordance with the Texas Electrical Safety and Licensing Act.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-15. Definitions.**

- (A) Definitions adopted. All definitions contained in the National Electrical Code and the Texas Electrical Safety and Licensing Act are adopted as the minimum standard for definitions of words used in this Chapter and words used within the purpose and scope of this Chapter.
- (B) Certain words defined. The following definitions shall apply when the defined words are used in this Chapter and words used within the purpose and scope of this Chapter:
1. *Approved* means conformity with the applicable standards of the National Electrical Code, the Board of Fire Underwriters, or approval of the Building Official of the City of Midland, Texas.
  2. *City Council* means the duly elected council members of the City of Midland, Texas, assembled in a business meeting or executive session.
  3. *Consumer* means one who uses electricity on a premises.
  4. *Corporate limits* and *City limits* mean the current boundary of the City of Midland, Texas, as defined by the City of Midland, Texas.
  5. *Current* and *currently* mean as of the time of the matter in question.
  6. *National Electrical Code* means the 2017 edition of the National Electrical Code as recommended by the National Fire Protection Association and approved by the American Standard Association and the National Board of Fire Underwriters.
  7. *Premises* means a lot, tract or piece of real estate, a house or building (public, private, commercial or residential) and its land, private or public streets, roadways, parks, alleys, etc.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-16. Application of Chapter.**

All of the provisions of this Chapter shall apply to all persons, companies, corporations, firms, associations and governmental agencies except as specifically exempted by written agreement or franchise with the City.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-17. National Electrical Code.**

In the installation and maintenance of electrical wiring systems and apparatus, the National Electrical Code shall be the minimum requirements permitted within the scope of this Chapter unless otherwise specifically covered herein.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-18. Certification authorities.**

All materials and apparatuses used in electrical installation shall conform with applicable standards of a nationally recognized certification agency and bear the certification agency's label or have the approval of the Building Official of the City of Midland.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-19. Unlawful installation.**

It shall be unlawful for any person to install or use any electrical apparatus, material, appliance or fixture in connection with wiring of any kind in the corporate limits of the City of Midland, Texas, unless such apparatus, material or fixture meets the requirements of a nationally recognized certification agency and bears the certification agency's label or unless the Building Official or Construction Board of Appeals issues a written approval.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-20. Interference; inspection tag; responsibility of contractor.**

It shall be unlawful for any person to interfere in any manner with any electrical wiring being installed on any premises or in any building during construction. In inspecting the electrical wiring of any building or premises, the electrical inspector shall leave a tag or notice attached to the service entrance switch. This notice shall state clearly if the wiring is approved or is to be kept open for further inspection. No person shall lath, sheetrock, insulate, seal or in any manner conceal any wiring until he has been informed that such wiring has been approved by the electrical inspector. The general contractor or owner shall be held responsible for any violation of this Section and shall be liable to the penalties provided herein.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-21. Clearance required to connect or disconnect services.**

It shall be unlawful for any person or any public service company serving the City to connect electricity to any premises of any nature, kind or description, without first obtaining a clearance from the electrical inspector. A single family residential primary structure and all accessory structures associated with the primary structure shall be served by a single electrical service.

Whenever service is discontinued for any building and/or premises (except a private residence, duplex, living quarters of apartments or mobile home park space, where service is carried over for a continuing occupancy, or nonpayment of bill) a clearance will be necessary before reconnecting. This shall mean that

any time premises are vacated the electrical inspector must satisfy himself that no Code violation exists. If the local electrical utility provider removes an electric meter from any building in the City for any reason and requires an inspection to be made before reinstalling said meter, then an inspection will be made, and a fee will be charged. There will be a charge per the current adopted fee schedule ordinance for a clearance for a residential structure and such clearance will be issued as often as required. A commercial structure will be cleared via the use of a certificate of occupancy, which must be signed by the owner/manager of a building or his agent. There is a charge per the current adopted fee schedule ordinance for the issuance of a certificate of occupancy.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-22. Wiring methods.**

All wiring methods approved by the National Electrical Code are hereby adopted with the following exceptions:

- (A) No conductor smaller than size number 12 wire shall be permitted in any type of electrical installation that exceeds 100 volts to ground except in control circuits.
- (B) No aluminum wire conductor smaller than size number one-zero (1/0) shall be used on premises wiring within the corporate limits of the City of Midland, except overhead exterior (aerial) circuits may use aluminum wire conductor that meet National Electrical Code sizing requirements.
- (C) Branch circuit. All residence branch circuit conductors shall be 20 ampere capacity and shall be protected by 20 ampere circuit breakers or 20 ampere fuses of the tamper-proof type. Larger branch circuit protectors shall be allowed only on special purpose circuits.
- (D) Future circuits. There shall be a minimum of two three-fourths inch conduit or electrical metallic tubing from lighting panels with 20 or more breaker switches and there shall be a minimum of one three-fourths inch conduit or electrical metallic tubing from lighting panels with less than 20 breaker switches.
- (E) Residential services. All meter locations shall conform to the latest electric utility provider guidelines and specifications which are hereby adopted, a copy of which is on file with the City Secretary, when such locations are in agreement with the National Electrical Code or the provisions of this Chapter. A single family residential structure and its accessory structures shall be served by a single service.
- (F) Weather-proof main disconnects shall be installed outside on all new residence and apartments and on service changes to residences and apartments.
- (G) Not more than six consuming outlets (plugs and lights) on one 20 ampere circuit shall be installed in commercial buildings within the City limits of Midland, except as designed by a State of Texas licensed electrical engineer. Circuits with lighting only shall be installed according to the National Electrical Code.
- (H) Not less than 24 inches of each conductor shall be left at the service head for connection to the service drops and the neutral conductor shall be permanently identified.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-23. In general.**

- (A) Buildings moved into the City. Wiring in any building moved into the City limits of Midland, Texas,

shall be installed in a manner prescribed for its classification as to use or occupancy and must meet all requirements of the National Electrical Code and the City of Midland Electrical Code.

- (B) (Reserved)
- (C) (Reserved)
- (D) Change of use of single family residence or duplex. Whenever the use of a single family residence or a duplex is changed from residential use to any type of commercial use, the building must meet all requirements of the National Electrical Code and the City of Midland Electrical Code.
- (E) Wiring to be completed before service is connected. Buildings, dwellings and premises shall be wholly and completely wired, equipped and approved for permanent electric service before connecting to or being supplied by a source or supply of electricity. Temporary connection to a permanent service installation may be made by proper application to the Code Administration Division.
- (F) Temporary lighting and power installation. Temporary lighting and power installations on premises which are used for the display of merchandise or for public or private gatherings shall have all wiring and equipment completed before connection is made to the temporary service equipment by the electricity supply agency. All such wiring shall meet clearance requirements and all other requirements of this Chapter.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-24. Permits required.**

No person, company, firm, partnership or corporation shall begin work on any electrical installation within the corporate limits of the City of Midland, Texas, without first securing a permit, provided, however, that no permit shall be required for minor work such as repairing flush switches, replacing fuses, changing lamp sockets and receptacles. Permits will be issued to such master electricians who qualify under the provisions of this Chapter or to his duly authorized representatives, and to homeowners who qualify as set forth herein. When a qualified person, company, firm, partnership, corporation or homeowner fails to obtain a permit before commencing work on such job, such person, company, firm, partnership, corporation or homeowner becomes liable for a double charge for the permit and/or other penalties as set forth in this Chapter.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-25. Issuance of permit.**

Homeowners and holders of a license shall make application for a permit to the Code Administration Division. Upon proper application for a permit and after payment of the required inspection fee, the Code Administration Division shall issue to the applicant a permit for the proposed installation.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-26. Homeowner's affidavit.**

Nothing herein shall be construed to prevent the issuance of a permit to owners of single unit dwellings, provided that said owners live in said single unit dwellings and further that they comply with the provisions as set out herein, and all other applicable provisions of this Chapter and sign the required affidavit when applying for the permit. A homeowner's affidavit shall indicate that he is the owner of such property, that he does live there and will perform all of the electrical construction himself; however, he may have assistance provided that he is physically present on the premises while such work is performed. A homeowner shall not install wiring in any portion of a duplex, triplex, apartment, commercial, retail, industrial or in any

rental property of any description.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-27. Completion of work stopped.**

Whenever a permit holder desires to complete any work which has been stopped for any reason he may do so provided that he has made the necessary correction and will comply with the provisions of this Chapter. No additional fee will be required for that portion of the work for which a fee has already been paid.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-28. Temporary permits.**

Permits may be granted for temporary services to any licensed master electrician for a pre-determined and limited time by application for a temporary permit and the payment of the proper inspection fee.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-29. Additional work.**

Additional work during construction and before final inspections may be added to the original permit as an add-on at the regular item price by obtaining and paying for an add-on permit.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-30. Inspections required.**

There shall be a rough-in inspection where required and a final inspection of each installation. Extra inspections will be required as necessary, based on the scope of the project. Inspections shall be made and approved before proceeding with work or an installation or concealing such work or installation.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-31. Re-inspections.**

When any electrical work covered by this Chapter is reported to the electrical inspector as ready for inspection, and upon such inspection, the electrical work does not meet all requirements of this Chapter, the permit electrician shall be notified by tag of the defects existing and he shall correct such defects promptly and request a re-inspection by the electrical inspector.

If for reason of faulty work, negligence or omission, changes or additions are required by the inspector or if an incorrect address is given which necessitates an additional trip by the inspector, a re-inspection fee per the current adopted fee schedule ordinance will be charged for each extra trip.

This rule shall not apply where periodical inspections are required during the progress of construction.  
(Ordinance 9926, sec. 1, adopted 5/28/2019)

#### **§ 4-2-32. Concealed wiring and apparatus.**

Where electric wiring or apparatus is to be hidden from view by the permanent placement of parts of a building or otherwise concealed, the permit holder shall notify the Inspector and have an inspection made, and such wiring or apparatus shall not be concealed by any person until it has been inspected and approved.

In the event that such wiring or apparatus has been concealed, the electrical inspector shall have the authority to require the removal of such concealing parts for inspection and require a re-inspection permit and fee.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-33. Schedule of permit fees.**

*New construction, additions, alterations and repairs.* No fee shall be paid pursuant to this Section for permits issued for electrical work in connection with the construction of new buildings or structures, or for additions, alterations or repairs where a building permit is required. The Building Code, Section 4-1-3 of the City Code, as amended, provides for the payment of a composite fee at the time of application for a building permit to cover the cost of all permits to be issued in connection with such construction. Fees shall be per the current adopted fee schedule ordinance.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-34. Penalty.**

Any person, company, firm, partnership or corporation who violates any of the terms or provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided for in Section 1-3-1 of the City Code.

(Ordinance 9926, sec. 1, adopted 5/28/2019)

**§ 4-2-35. Special clauses—Exemptions.**

All provisions of this Chapter shall apply to all person, companies, firms, partnerships or corporations and to all government agencies except as specifically exempted by written agreements or franchise with the City of Midland, Texas.

(Ordinance 9926, sec. 1, adopted 5/28/2019)



**PLUMBING CODE**

**Chapter 4-3**

**PLUMBING CODE**

***Editor's note(s)***—*Ord. No. 9922, § 1, adopted May 28, 2019, amended Ch. 3 in its entirety to read as herein set out. Former Ch. 3, §§ 4-3-1—4-3-4, pertained to the same subject matter, and derived from Ord. No. 8827, § 1, adopted Aug. 10, 2010; Ord. No. 9226, § 1, adopted Feb. 11, 2014; Ord. No. 9492, § 1, adopted Oct. 20, 2015.*

**§ 4-3-1. Purpose.**

The purpose of this Chapter is to provide minimum standards provisions and requirements for safe installation of plumbing and piping in the City. All such plumbing and piping hereafter installed, replaced, maintained or repaired within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein.

(Ordinance 9922, sec. 1, adopted 5/28/2019)

**§ 4-3-2. Code adopted.**

The specifications, rules and regulations entitled 2018 International Plumbing Code, together with appendices B, C, D, and E, as promulgated and published by the International Code Council, Inc., are hereby adopted as the Plumbing Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

(Ordinance 9922, sec. 1, adopted 5/28/2019)

**§ 4-3-3. Changes and additions to adopted plumbing code.**

Notwithstanding any revisions of this Chapter or said adopted Plumbing Code to the contrary, the latter is adopted with certain changes, additions and deletions of the following sections and provisions thereof, to wit:

*101.1 Title.* Section 101.1 shall read in its entirety as follows:

These regulations shall be known as the International Plumbing Code of the City of Midland hereinafter referred to as "this code."

*106.1.1 Annual Permit.* Section 106.1.1 is renamed *Irrigators and Home Owners* and shall read in its entirety as follows:

- (A) Notwithstanding any provisions of this Code to the contrary, any "licensed irrigator" or "licensed installer," as defined in Texas Water Code § 37.001, shall be allowed to make connections to private or public raw or potable water supply or water supply systems. However, any such person desiring to make such connection shall be subject to the same regulations, requirements and penalties imposed by this Code upon master plumbers doing like work, and any work shall conform to the specifications, rules and regulations contained herein. Any such connection shall be considered to be "plumbing" as defined in Section 202 herein.
- (B) Nothing in this Code shall prevent a homeowner from extending, replacing, altering or repairing a plumbing system within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

*106.1.2 Annual Permit Records.* Section 106.1.2 is deleted in its entirety.

*106.2 Exempt Work.* The following shall be added to the work that shall be exempt from the requirement for a permit:

3. Repair of routine under slab water leaks may be made without obtaining a permit or an inspection.

*106.4.1 License and Insurance Required.* Section 106.4.1 is added and shall read in its entirety as follows:

Before any person shall engage in the business of plumbing in the City, he shall first obtain the required State license and provide proof of insurance in the amount of three hundred thousand dollars (\$300,000.00) in accordance with Section 1301.552 of the Texas Occupations Code, as may be amended.

*106.6.2 Fee Schedule.* Section 106.6.2 shall read in its entirety as follows:

The fees for all plumbing work shall be as indicated in the current adopted Fee Schedule.

*106.6.3 Fee Refunds.* Section 106.6.3 shall read in its entirety as follows:

Fee refunds shall be in accordance with the current adopted Fee Schedule.

*108.4 Violation penalties.* Section 108.4 is deleted in its entirety.

*108.5 Stop Work Orders.* Section 108.5 shall read in its entirety as follows:

Upon notice from the code official, work on any plumbing system that is being done contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

*109.1 Application for Appeal.* Section 109.1 shall read in its entirety as follows:

Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

*109.2—109.7.* Sections 109.2—109.7 are deleted in their entirety.

*305.4.1 Sewer Depth.* Section 305.4.1 shall read in its entirety as follows:

Building sewers shall be a minimum of twelve inches (12") below grade.

*312.2 Drainage and Vent Water Test.* Section 312.2 shall read in its entirety as follows:

A water test shall be applied to the drainage system either in its entirety or in sections. If applied to the entire section, all openings in the piping shall be tightly closed, except the highest opening, and the system shall be filled with water to point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest openings of the section under test, and each section shall be filled with water, but no section shall be tested with less than a three foot (3') head of water. In testing successive sections, at least the upper three feet (3') of the next proceeding section shall be tested so that no joint or pipe in the building, except the uppermost three feet (3') of the system, shall have been submitted to a test of less than a three foot (3') head of water. The water shall be kept in the system, or in the portion under test, for at least fifteen (15) minutes before inspection starts. The system shall then be tight at all points.

*312.6 Gravity Sewer Tests.* Section 312.6 shall read in its entirety as follows:

Gravity sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer, filling the building sewer with water, testing with not less than three feet (3') head of water and maintaining such pressure for fifteen (15) minutes.

*TABLE 605.3 WATER SERVICE PIPE.* The following footnotes are added to TABLE 605.3:

*Footnote 1.* Copper or copper-alloy tubing shall be minimum Type "L" for underground water supply systems.

*Footnote 2.* Plastic water pipe used for water service shall terminate thirty-six inches (36") from the water meter. The water service pipe shall be connected to the water meter with not less than thirty six inches (36") of minimum Type "L" copper.

*TABLE 605.4 WATER DISTRIBUTION PIPE.* The following footnote is added to TABLE 605.4:

*Footnote 1.* Copper or copper-alloy tubing shall be minimum Type "L" when used under slabs.

*TABLE 608.1 APPLICATION OF BACKFLOW PREVENTERS.* The following footnote is added to TABLE 608.1:

*Footnote 1.* The potable water supply to lawn irrigation systems shall be protected against backflow by one of the following testable devices: pressure vacuum breaker, double check valve, reduced pressure principal backflow preventer (RPZ).

*608.1.1 Backflow Ordinance.* Section 608.1.1 is added and shall read in its entirety as follows:

All potable water supply systems shall conform to Chapter 8-9, of the Midland City Code (Ordinance No. 7605) for purposes of cross connection and backflow prevention.

*903.1 Roof Extension.* Section 903.1 shall read in its entirety as follows:

All open vent pipes that extend through a roof shall be terminated at least twelve inches (12") above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least seven feet (7') above the roof.

*1003.1.1 Sewer Sampling Outlet.* Section 1003.1.1 is added and shall read in its entirety as follows:

In any occupancy required to have a grease interceptor or separator, a sewer sampling outlet shall be provided at an accessible point downstream from the building and any additional traps, interceptors, or separators required for the pretreatment. A clean out, which meets the location requirements above, may serve as a sampling outlet.

*1003.10.1 Midland Health Department.* Section 1003.10.1 is added and shall read in its entirety as follows:

Interceptors shall be maintained in accordance with City of Midland Health Department regulations.

(Ordinance 9922, sec. 1, adopted 5/28/2019)

#### **§ 4-3-4. Appeals.**

Whenever the owner of a building or structure or its duly authorized agent, or the applicant for a plumbing permit is aggrieved by any order or decision of the Plumbing Inspector or the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Plumbing Code and the same rules and regulations shall apply as are fully set out in said Building Code.

(Ordinance 9922, sec. 1, adopted 5/28/2019)

**PLUMBING CODE**

**Chapter 4-4**

**GAS CODE**

***Editor's note(s)***—*Ord. No. 9923, § 1, adopted May 28, 2019, amended Ch. 4 in its entirety to read as herein set out. Former Ch. 4, §§ 4-4-1—4-4-6, pertained to the same subject matter, and derived from Ord. No. 8826, § 1, adopted Aug. 10, 2010; Ord. No. 9227, § 1, adopted Feb. 11, 2014 ; and Ord. No. 9493, § 1, adopted Oct. 20, 2015.*

**§ 4-4-1. Purpose.**

The purpose of this Chapter is to provide safe installation of consumer's gas piping and safe gas installation of consumer appliances. All such gas piping and gas appliances installed, replaced, maintained or repaired within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein.

(Ordinance 9923, sec. 1, adopted 5/28/2019)

**§ 4-4-2. Code adopted.**

The specifications, rules and regulations entitled 2018 International Fuel Gas Code together with appendices A, B, C and D as promulgated and published by the International Code Council, Inc., are hereby adopted as the Gas Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

(Ordinance 9923, sec. 1, adopted 5/28/2019)

**§ 4-4-3. Changes and additions to adopted Gas Code.**

Notwithstanding any revisions in this Chapter or said adopted Gas Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following Sections and provisions thereof shall hereafter read as follows, to wit:

*101.1 Title.* Section 101.1 shall read in its entirety as follows:

These regulations shall be known as the Gas Code of the City of Midland, hereinafter referred to as "this code."

*106.1.1 Annual permit.* Section 106.1.1 is renamed *Bond and License* and shall read in its entirety as follows:

- (a) The City shall accept proof of insurance in the amount of three hundred thousand dollars (\$300,000.00) in accordance with Section 1301.552 of the Texas Occupations Code, as may be amended.
- (b) The person desiring to do such work shall be a master plumber properly licensed by the Texas State Board of Plumbing Examiners, or in the case of liquefied petroleum gas piping installations, such person shall be licensed by the Railroad Commission of Texas.
- (c) Nothing in this Code shall prevent a homeowner from installing or repairing his own appliances or installing, extending, replacing, altering or repairing gas piping within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. A homeowner shall not be required to obtain a license; however, such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

*106.1.2 Annual permit records.* Section 106.1.2 is deleted in its entirety.

*106.6.2 Fee schedule.* Section 106.6.2 shall read in its entirety as follows:

The fees for all gas systems work shall be as indicated in the current adopted Fee Schedule.

*106.6.3 Fee refunds.* Section 106.6.3 shall read in its entirety as follows: Shall be in accordance with the current adopted Fee Schedule.

*108.4 Violation penalties.* Section 108.4 is deleted in its entirety.

*108.5 Stop work orders.* Section 108.5 shall read in its entirety as follows:

Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

*109.1 Application for appeal.* Section 109.1 shall read in its entirety as follows:

Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

*109.2—109.7.* Sections 109.2 through 109.7 are deleted in their entirety.

*309.2 Connections.* Section 309.2 shall read in its entirety as follows:

All electrical connections between gas appliances and the building wiring shall conform to the National Electrical Code and to Chapter 4-2, of the Midland City Code.

*406.4 Test pressure measurement.* Section 406.4 shall read in its entirety as follows:

Test pressure shall be measured with an ounce gauge, manometer or with a mercury gauge designed and calibrated to read, record or indicate a pressure loss due to leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made.

*406.4.1 Test pressure.* Section 406.4.1 shall read in its entirety as follows:

Low pressure (not in excess of 0.5 psi (3.5kPa) gas piping shall withstand a pressure of not less than 1 1/2 times the proposed maximum working pressure, but not less than 5.88 psi (40.5kPa), ninety (90) ounces, or twelve inches (12") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure. Higher pressure piping (2 psi gas) shall withstand a pressure of at least 10 psi (68.8kPa) or twenty inches (20") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure.

*406.4.2 Test duration.* Section 406.4.2 is deleted in its entirety.

(Ordinance 9923, sec. 1, adopted 5/28/2019)

#### **§ 4-4-4. Use of existing piping and appliances.**

Notwithstanding any provision in this Chapter to the contrary, consumer's piping or appliances installed prior to the adoption of this Chapter or piping or appliances installed to supply other than natural gas may be converted to natural gas, if the inspector finds, upon inspection and proper tests, that such piping or appliances will render reasonably satisfactory gas service to the consumer and will not in any way endanger life or property; otherwise, such piping shall be altered or replaced in whole or in part, to conform with the requirements of this Chapter.

(Ordinance 9923, sec. 1, adopted 5/28/2019)

**§ 4-4-5. Non-liability of city.**

This Chapter shall not be construed as imposing on the City any liability or responsibility for damages to any person injured by any defect thereof, nor shall the City or any official or employee thereof, be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or the certificate of approval issued by the inspector. By approving the Ordinance, the City is not waiving its right of sovereign immunity. The City is retaining its immunity. There is no waiver of sovereign immunity.  
(Ordinance 9923, sec. 1, adopted 5/28/2019)

**§ 4-4-6. Appeals.**

Whenever the owner of a building or structure or his duly authorized agent, or the applicant for any permit required by this Chapter, is aggrieved by any order or decision of the Gas Inspector or the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City) and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Gas Code and the same rules and regulations shall apply as are fully set out in the Building Code.  
(Ordinance 9923, sec. 1, adopted 5/28/2019)



**SWIMMING POOLS**

**Chapter 4-5**

**SWIMMING POOLS**

**§ 4-5-1. Construction.**

It shall be unlawful to hereafter construct, install or enlarge any swimming pool in the City except in compliance with the provisions of this Chapter, in addition to compliance with any applicable state or federal laws or public health regulations.

(Ordinance 3709 adopted 6/28/1960; Ordinance 4387 adopted 4/9/1968)

**§ 4-5-2. Definitions.**

As used in this Chapter the following terms shall have the meanings given herein:

Private residential spa pool: Any spa pool located on any private property of a single-family dwelling under the control of the homeowner, the use of which is limited to family members or guests of the homeowner.

Private residential swimming pool: Any swimming pool located on any private property of a single-family dwelling under the control of the homeowner, the use of which is limited to swimming or bathing by family members or guests of the homeowner.

Public swimming pool: Any swimming pool, other than a private residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, maintained, made available for use, or otherwise controlled by any person, organization or association, as defined herein, whether he be owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for such use. "Public swimming pool" includes a swimming pool on the premises of, or part of, a hotel, motel, trailer court, apartment house, private club, fitness club, recreational or sports facilities, condominiums, community clubs, subdivisions, housing area, association or similar establishment, including where admission for the use of the pool is included in the fee or consideration paid or given for the general use of the premises. Wherever the term "swimming pool" is used in this Chapter, it includes public swimming pools and private residential pools unless expressly specified to be applicable only to a private residential swimming pool.

Spa pool: Any spa pool, other than a private residential spa pool, intended to be used by persons for swimming or bathing, regardless of whether a fee is charged or not charged for use, and which is designed for recreational or therapeutic use, that is not drained, cleaned or refilled for each user, and which utilizes hydrojet circulation, hot water, or any combination thereof. Industry terminology for spa pool includes, but is not limited to, "therapeutic spa," "hot tubs," "sensory deprivation tank," etc. "Spa pool" includes a spa pools on the premises of or part of a hotel, motel, trailer court, apartment house, private club, fitness club, recreational or sports facilities, condominiums, community clubs, subdivisions, housing area, associations or similar establishments, but does not include spa pools operated under the direct supervision of licensed medical care providers and utilized solely for medical therapeutic purposes at licensed medical health care facilities, licensed hospitals, nursing homes and clinics. All requirements in this Chapter which are applicable to a swimming pool or public swimming pool are also applicable to spa pools unless expressly stated otherwise in this Chapter.

Swimming pool: Any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, or recreational bathing and having a depth of two feet or more at any point.

(Ordinance 3709 adopted 6/28/1960; Ordinance 7718, sec. 1, adopted 3/10/1998)

**§ 4-5-3. Building permit required.**

No swimming pool shall be erected, constructed or structurally altered within the city limits without a permit therefore from the building official. Application for such permit shall be submitted to the office of the building official accompanied by two detailed sets of plans and specifications for such swimming pool, additionally, the building official may require the submission of other necessary plans, specifications and data including capacity, rate of filtration, skimming devices, and facilities for draining. No building permit

shall be approved by the building official unless also approved by the health officer as to matters involving public health. Insofar as practicable, plans and specifications for all swimming pools shall comply with the current design standards of the Texas State Board of Health for public swimming pool construction; provided, however, that where such standards are at variance with any provisions of this Code such Codes will govern in all cases. The fee for obtaining a permit from the building official shall be based on the dollar valuation provided in Section 4-1-3(107.4) of this Code.

(Ordinance 3709 adopted 6/28/1960)

**§ 4-5-4. Permit requirements to lawfully operate public swimming pool.**

No public swimming pool shall be operated, owned, maintained, made available for use, or otherwise controlled by any person or organization without an operational permit therefore issued by the health officer of the City of Midland. Application for such permit shall be made to the health officer on such form as he/she may require. The applicant must show proof of attendance and successful completion for a swimming pool operator's training course. Permits shall be issued for a period not to exceed one year, with all permits to expire at midnight on April 30 of each year. Permits shall be renewed by the payment of permit fees in the amount of \$75.00 per annum. Failure to secure a permit by June 1 of each year shall result in a penalty of 25 percent of the applicable permit fee in addition to the amount otherwise due for a permit under this Section. Permits may be revoked and the public swimming pool immediately closed by the health officer at any time the swimming pool is not operated in a healthful and sanitary manner in accordance with such regulations as the health officer may establish, including but not limited to the specific requirements stated herein. All permit holders and all other persons or organizations operating, owning, making available for use, maintaining or otherwise controlling a public swimming pool shall comply with each of the following requirements:

- (A) All swimming pool water shall be treated and maintained so as to provide a satisfactory physical quality in accordance with the following standard: The water, at all times when the pool is in use, shall be sufficiently clear to permit a black disc six inches in diameter on a white field, when placed on the bottom of the pool at the deepest point, to be clearly visible from the deck of the pool at all distances up to ten yards measured from a line drawn across the pool through the disc.
- (B) The surface of the pool water shall be kept free of scum and foreign floating matter. The bottom and sides of the pool shall be maintained free of turbidity and shall be sufficiently clear so that the main drain grill is clearly visible from the sides of the pool.
- (C) Areas surrounding pools, including bathhouses, dressing rooms, toilets, shower stalls, and lounging areas, shall at all times be kept clean and in a state of proper repair.
- (D) Safety and first aid equipment shall be provided in accordance with such regulations as the health officer may prescribe.
- (E) No water in any pool shall ever be permitted to show an acid reaction to the standard pH test. Water in public pool shall show a pH reaction between 7.2 and 7.8.
- (F) No sample taken by a health inspector of public swimming pool water shall contain any presence of Pseudomonas or other pathogenic organisms. It shall be a violation of these requirements, if either (i) two or more consecutive samples of the pool water or (ii) if more than 15 percent of the water samples taken during any 30-day period of time, shall (a) contain more than 200 bacteria per milliliter, as determined by the standard agar plate count or (b) show positive test (confirmed test) for coliform organisms of more 1.0 coliform organisms per 50 milliliters in any of the five-milliliter portions of a sample. The director shall prescribe the type and frequency of collection and examination of samples

to assure water quality meets minimum requirements.

- (G) All public swimming pools shall have a recirculation system which shall be kept in operation to maintain the required sanitary quality of the water by recirculating all water in the swimming pool within a six-hour period of time, except for spa pools, which shall recirculate every 30 minutes.
- (H) When chlorine or chlorine compounds are used as the disinfectant, the water in the pool at all times (while in use) shall contain a free chlorine residual of not less than 1.0 part per million as measured by the DPD method in swimming pools; and not less than 2.0 part per million as measured by the DPD method in spa pools. If other halogens are used, residual of equivalent disinfecting strength shall be maintained in accordance with the standards approved by the American Public Health Association.
- (I) Each public swimming pool shall have a daily record of information regarding operation, including readings of disinfectant residual, pH and chemicals used in controlling the quality of the water, cleaning procedures utilized such as cleaning of filter, and quantity of chemicals used. This data shall be kept on file by the holder of the pool permit for the preceding six-month period of time for review by the health department upon request.
- (J) In the off season when the pool is not available for use, public swimming pools used on a seasonal basis shall be (1) covered with a safety cover, or (2) shall have the water maintained with a sufficient clarity at all times so that the main drain is readily visible or (3) kept drained and clean.

All public swimming pools, except those pools which are drained of water, shall meet all requirements of this Section at all times, even during the off season.

- (K) All public swimming pools shall be equipped with a chlorinator, hypochlorinator or disinfectant feeder or feeders in continual operation. The chlorinators shall be designed to prevent the backflow of water into the chlorine solution container.
- (L) All public swimming pools shall have drain covers that are in place and secure. All drain covers shall be anti-vortex covers, which are dome shaped with numerous openings on the perimeter to prevent entrapment.

All public pools shall have safety equipment consisting of ring buoys, shepherd's crooks and lifelines, of number and type approved by the health officer, which shall be provided within ten feet of the perimeter of the pool and readily accessible and visible to anyone in the area of the swimming pool.

- (M) Where no lifeguards are in constant attendance, a sign shall be conspicuously posted near the pool which states: "WARNING: NO LIFEGUARD ON DUTY." This sign shall be composed of clearly legible letters not less than four inches high. In addition, the sign shall also state "CHILDREN SHOULD NOT USE POOL WITHOUT AN ADULT IN ATTENDANCE."
- (N) Each public swimming pool shall have a telephone and standard 24-unit first aid kit. If the telephone and first aid kit cannot be practically located at poolside, they may be located in an immediately adjacent and readily accessible office or other nearby and readily accessible area, and a clearly legible and conspicuous sign shall be posted at poolside which states where the emergency phone and first aid kit are located. If the phone and first aid kit are located in an office or other enclosure, these items must be accessible at all times without the use of a key when the swimming pool is in use.
- (O) The maximum water temperature of public swimming pools and spa pools shall be 100 degrees F.
- (P) No person with sore or inflamed eyes, colds, nasal or ear discharges, boils or other acute or obvious skin or body infections or cuts shall enter the water of a swimming pool. All such persons shall be

excluded from the pool by the pool permit holder. No person in or at a swimming pool shall commit or be permitted to commit any act or omission prejudicial to the life or health of any person using the pool. All such persons described in this subsection (P) shall be excluded by the swimming pool permit holder, or other persons leasing, maintaining or otherwise in control of the swimming pool.

(Ordinance 3709 adopted 6/28/1960; Ordinance 7386 adopted 11/8/1994; Ordinance 7718, sec. 2, adopted 3/10/1998)

#### **§ 4-5-5. Gates and fences required.**

Every outdoor swimming pool shall be completely surrounded by a fence or wall not less than four feet in height, which shall be so constructed as not to have openings, holes or gaps larger than four inches in any dimension except for doors and gates; and if a picket fence is erected or maintained the horizontal dimension between pickets shall not exceed four inches. A dwelling house or accessory building may be used as part of such enclosure.

All gates or doors opening through such enclosure shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.

This requirement shall be applicable to new swimming pools hereafter constructed, other than indoor pools, and shall apply to such existing pools which have a minimum depth of 24 inches of water. No person in possession of land within the City, either as owner, purchaser, lessee, tenant or a licensee, upon which is situated a swimming pool having a minimum depth of 24 inches, shall fail to provide and maintain such fence or wall as herein provided.

The building inspector or the health department may make modifications in individual cases, upon a showing of good cause with respect to the height, nature or location of the fence, wall, gates or latches, or the necessity therefore; provided the protection as sought hereunder is not reduced thereby. The building inspector or the health department may permit other protective devices or structures to be used so long as the degree of protection afforded by the substitute devices or structures is not less than the protection afforded by the wall, fence, gate and latch described herein. The building inspector or the health department shall allow a reasonable period within which to comply with the requirements of this Section.  
(Ordinance 3709 adopted 6/28/1960)

#### **§ 4-5-6. Means of egress.**

The following minimum means of egress shall be provided:

- (A) Private residential swimming pool. All private residential pools shall provide a minimum of two means of egress in the form of steps or ladders. At least one such means of egress shall be located on a side of the pool at both the deep end and shallow end of the pool.

Exception: Above-ground pools which do not exceed 48 inches in depth or 24 feet in any dimension shall provide a minimum of one ladder or set of steps out of the pool. Treads of steps or ladders shall be constructed of nonslip material and shall be at least three inches wide for the full length. Steps and ladders shall have a handrail on both sides.

- (B) Public swimming pool. Public pools shall provide a minimum of two means of egress in the form of steps or ladders. One means shall be located at the deep end of the pool. If the pool width exceeds 30 feet, such steps or ladders shall be installed on each side of the deep end, in addition to the shallow end. Treads of steps or ladders shall be constructed of nonslip material and shall be at least three inches wide for the full length. Steps and ladders shall have a handrail on both sides.

(Ordinance 3709 adopted 6/28/1960; Ordinance 7023 adopted 7/24/1990)

**§ 4-5-7. Connection to sewers.**

All direct connections between a swimming pool, including existing pools, and the city water supply and/or sewer systems shall be prohibited. There shall be at least six inches of clearance between the filler spigot and the high-water mark of the pool. The mechanical arrangement of the water supply system and drainage system shall be constructed in a manner approved by the building inspector and health department; provided, however, that in every case drainage connections shall be so constructed as to allow the water to be drained or pumped to a city underground storm sewer or sanitary sewer. Where a sanitary sewer system or underground storm sewer system is involved there shall be no direct connection between the drains and the sewers; all pool drains to the sewer should be broken by a manhole or junction box at the termination of the sewer line or a point where any sewage which may back up from the sewer will overflow to waste instead of being permitted to reach the pool.

(Ordinance 3709 adopted 6/28/1960)

**§ 4-5-8. Electrical installations.**

- (A) All electrical installations provided for, installed and used in conjunction with private residential swimming pools, except existing pools, including overhead and underwater illumination systems, shall be in conformance with the city electrical code and/or the National Electrical Code as approved by the American Standards Association and the National Electrical Safety Code as approved by the American Standards Association.
- (B) No current-carrying electrical conductors shall cross private residential swimming pools, except existing pools, either overhead or underground.
- (C) All metal fences, enclosures, railings or other metal or electrical appurtenances of any kind near or adjacent to swimming pools, except existing pools, which might become electrically alive as a result of contact with broken overhead conductors or from any other cause shall be effectively grounded.

(Ordinance 3709 adopted 6/28/1960; Ordinance 4387 adopted 4/9/1968)

**§ 4-5-9. Unsanitary pools declared a public nuisance.**

Failure of any person responsible therefore to maintain any swimming pool in a safe and sanitary condition is hereby prohibited and declared to be a public nuisance within the City.

(Ordinance 7023 adopted 7/24/1990)

**§ 4-5-10. Penalty for violation.**

Any person who shall violate any of the provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding \$500.00, and each and every day's violation shall constitute a separate and distinct offense. In case the owner or occupant of any building under the provisions of this Chapter shall be a corporation and shall violate any of the provisions of this Chapter, the president, vice-president, secretary, treasurer of such corporation, or manager, agent or employee of such corporation, shall be also severally liable for the penalties herein provided for a violation of this Chapter.

(Ordinance 6790 adopted 9/22/1987)

**SWIMMING POOLS**

**Chapter 4-6**

**PRIVATE WATER WELLS**

**§ 4-6-1. (Reserved)**

**Editor's note(s)**—Ord. No. 8828, § 1, adopted Sept. 10, 2010, repealed former § 4-6-1 in its entirety which pertained to a permit fee for the drilling of new water wells; and derived from Ord. No. 3803, 6-13-1961; Ord. No. 6501, 1-8-1985, eff. 2-1-1985.

**§ 4-6-2. Application.**

The application for such permit shall include the name and address of the owner and operator of said well, the name and address of the drilling contractor, the legal description of the property on which the well is to be drilled together with a plat showing the exact location of the proposed well on said property; and shall include a statement showing the manner in which it is intended to dispose of the slush and other waste material created and involved in the drilling of any such well.

(Ordinance 3803 adopted 6/13/1961)

**§ 4-6-3. Slush pits required.**

It shall hereafter be unlawful for any person to drill a new water well or rework or deepen an existing well in the City without providing and using portable slush pits or tanks in which to contain and subsequently dispose of any slush or other waste, water, material or matter created by and involved in the drilling, reworking or deepening of such a well. It shall be unlawful to permit any such slush or other waste material or matter to run or drain into the city streets and alleys or on other public or private places or property without the express consent of the owner thereof and it shall further be unlawful to divert or drain or permit any slush or other waste material or matter to empty into the city sanitary sewer or underground storm sewer systems.

(Ordinance 3803 adopted 6/13/1961)

**§ 4-6-4. Drilling through septic tank drainfield.**

It shall be unlawful to drill or have drilled a new water well through a sub-irrigated septic tank drainfield.  
(Ordinance 3803 adopted 6/13/1961)

**§ 4-6-5. Casing required.**

It shall hereafter be unlawful for any person to drill or have drilled a water well in the City unless same is cased from a point at least one foot above the surface of the ground to a point at least 30 feet below the surface of the ground and the entire length of the casing cemented so that all of the void space between the outside of the casing and the sides of the drilled hole is filled with cement; provided that this provision regarding casing shall not apply to existing wells or the reworking or deepening thereof, and provided, further, that the preceding requirement of bringing or extending the casing one foot above the surface of the ground may be waived by the health officer and building inspector in favor of any alternate surface completion method that will effectively seal off the well from the flow or drainage of surface water back into the well, in which event the permit may be issued.

(Ordinance 3803 adopted 6/13/1961)

**§ 4-6-6. Open wells prohibited.****(A) Definitions.**

Abandoned well and deteriorated well: As used in this Section shall mean any well that has been abandoned or has become deteriorated as defined by Vernon's Ann. Civ. St. art. 7621e, § 14(c), as

enacted by House Bill No. 1347, 1987 Texas Session Law Service, Chapter 401, at 3829 (Vernon), and as that statute may later be codified or amended.

Open well: As used in this Section shall mean any well which is exposed to the surface such as would permit the entrance into that well or excavation of liquids or solid matters, including but not limited to persons and animals, or is not capped or covered as required by this Section. "Open well" as used in this Section shall not include any well or excavation which is in the process of being drilled and is being immediately supervised by a licensed driller, as defined in Vernon's Ann. Civ. St. art. 7621e, or the agent of such a licensed driller if that driller or agent of the driller is within 50 feet of the well or excavation. "Open well" as used in this Section shall not include any well which is in actual use and the surface opening of which is occluded by equipment or facilities necessary for its operation and such equipment or facilities are capable of sustaining a weight of not less than 400 pounds and are fastened permanently to the realty, not removable by human strength, and prevent the entrance into that well of any person or animal. The term "open well" shall not include any well which is plugged or capped pursuant to the terms of this Section.

Well: As used in this Section shall have the same meaning as given by the Texas Legislature in Vernon's Ann. Civ. St. art. 7621e, § 2(q), as enacted by House Bill No. 1347, 1987 Texas Session Law Service, Chapter 401, at 3829 (Vernon), and as that statute may later be codified or amended.

(B) Plugging abandoned wells. The owner and person in possession of a property within the limits of the City of Midland on which property there is an abandoned well or deteriorated well shall plug or cap that abandoned well or deteriorated well in accordance with the requirements of the statutes of the State of Texas and the administrative regulations issued pursuant thereto.

(C) Open wells; capping and covering.

1. Both the owner and person in possession of any property within the corporate limits of the City of Midland on which there exists an open well with casing shall cap that well permanently with a covering or cap capable of sustaining weight of not less than 400 pounds if that well has constituted an open well under the terms of this Section for 30 days or more. The cap on that well must be of the same constitution as the casing on that well and must be permanently affixed thereto. If the casing on that well is of metallic constitution, a similarly constituted and strong metallic piece must be welded to the casing around the complete circumference of the casing. If the casing on that well is of polyvinyl chloride constitution, a similar polyvinyl chloride piece must be permanently affixed, using a two-part solvent cement as recommended by the manufacturer of the polyvinyl chloride pipe, to the casing around the complete circumference of the casing such that the cap may not be removed without cutting completely through the polyvinyl chloride casing.
2. Both the owner and person in possession of any property within the corporate limits of the City of Midland on which there exists an open well without casing which well has constituted an open well under the terms of this Section for 30 days or more shall plug that well in the same manner as is required of abandoned wells or deteriorated wells pursuant to subsection (B) of this Section.
3. Both the owner and person in possession of any property within the corporate limits of the City of Midland on which there exists a well which has constituted an open well as defined herein for less than 30 days must plug that open well in the same manner as required by subsection (B) of this Section or cap that open well in the same manner as required by paragraph 1 of this subsection or must immediately upon that well becoming an open well as defined herein cover that open well with a covering capable of sustaining weight of not less than 400 pounds and in

such a manner as would effectively prevent the entrance into that well of any person or animal and would effectively eliminate any danger that well might pose to any person or animal. Furthermore, the covering on that well must be unremovable by human strength.

- (D) Criminal penalty. Any owner of property and any person in charge of property who shall knowingly violate or fail to comply with the provisions of this Section shall be, upon proof of such in an appropriate court of competent jurisdiction, deemed guilty of a misdemeanor and shall be fined not more than \$500.00. Each day on which an owner of property or person in possession of property shall violate and fail to comply with the provisions of this Section shall constitute a separate and distinct offense.
- (E) Civil abatement. Any open or abandoned well as defined by this Section is hereby declared to be a public nuisance and unlawful unless abated pursuant to this Section. Should it be brought to the attention of the City Council that a property owner or a person in control of property on which there exists an open or abandoned well has allegedly failed to comply with the requirements of this Section, the City Council may, should it determine that sufficient evidence exists to indicate the likelihood of a violation of this Section, upon majority vote, authorize the city attorney to file suit against the property owner and person in charge of property on which there exists an abandoned or open well in order to abate that abandoned or open well and bring such property into compliance with this Section.

(Ordinance 6817 adopted 1/12/1988)



(RESERVED)

**Chapter 4-7**

**(RESERVED)**

**Chapter 4-8**

**SUBSTANDARD BUILDINGS**

**§ 4-8-1. Abatement of substandard buildings.**

- (a) **Applicability.** This section applies to the abatement of a building that is in violation of the minimum standards, as those terms are defined in subsection (b), and shall not preclude the application of any other available remedy.

- (b) **Definitions.** As used in this section:

**Building official.** The building official of the city or an individual designated by the director of development services to determine whether a building complies with the minimum standards.

**Building.** A building, bulkhead or other method of shoreline protection, fence, shed, awning, or other structure, or part of a structure.

**Commencement of construction.**

- (1) The date when construction materials were placed on or observed on the property; or
- (2) The date when any construction activity began or was observed on the property.

**Minimum standards.** The minimum standards for the continued use and occupancy of a building and includes:

- (1) Those standards set out in title IV, chapters 1, 2, 3, 4, 5, 10, 11, and 12 of the municipal code of the city that are applicable to a building;
- (2) That a building shall not endanger or be likely to endanger persons or property;
- (3) That a building shall not be unfit for human habitation or a hazard to the public health, safety, and welfare;
- (4) That a building, regardless of its structural condition, that is unoccupied by its owners, lessees, or other invitees shall not be unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children;
- (5) That a building that is boarded up, fenced, or otherwise secured in any manner:
  - (A) Shall not constitute a danger to the public even though it is secured from entry; and
  - (B) Shall be secured by means that are adequate to prevent unauthorized entry or use of the building in the manner described by subsection (b)(4) above; and
- (6) That a building shall not remain under construction or in the process of being constructed, repaired, remodeled, or demolished, such that the areas under construction are not capable of being fit for human occupancy or human habitation for greater than the following terms:
  - (A) For a single-family dwelling, townhouse, duplex, or triplex, three years from the commencement of construction; or
  - (B) For a building that is not a single-family dwelling, townhouse, duplex, or triplex, five years from the commencement of construction.

**Substandard building.** A building that is in violation of the minimum standards.

- (c) **Public nuisance.** A substandard building that constitutes a hazard to the health, safety, or general welfare of its occupants, the citizens of the city, or the public is declared to be a public nuisance, and

the building shall be vacated, secured, repaired, removed, or demolished, or the occupants relocated, as hereinafter provided.

(d) Notice of a public hearing.

- (1) When the building official identifies a building that is a substandard building, the building official may initiate abatement proceedings by:
  - (A) Mailing by certified mail with return receipt requested, delivering by the United States Postal Service using signature confirmation service, or personally delivering to each owner of the building a notice of a public hearing in accordance with this subsection (d); and
  - (B) Making a diligent effort to discover each lienholder and mortgagee having an interest in the building or the property on which the building is located and mailing by certified mail with return receipt requested, delivering by the United States Postal Service using signature confirmation service, or personally delivering to each said lienholder and mortgagee a notice of a public hearing in accordance with this subsection (d).
- (2) A notice of a public hearing shall contain the following information:
  - (A) The name and address of the owner of the affected property if that information can be determined;
  - (B) An identification of the building and the property on which it is located, including a legal description of the affected property;
  - (C) A statement that the building official has identified the building to be a substandard building and a concise description of the condition that was identified as a violation of the minimum standards;
  - (D) A statement that the building be vacated, secured, repaired, removed, or demolished, or that the occupants be relocated, as determined by the building official, and a concise description of the recommended action;
  - (E) A statement that the owner, lienholders, or mortgagees will be required to submit at the public hearing proof of the scope of any work that may be required to comply with this section and the time it will take to reasonably perform the work; and
  - (F) The date, time, place, and description of the public hearing to be held by the city council.
- (3) The building official is authorized to file, or to cause to be filed, each notice of a public hearing in the official public records of real property in the county in which the property is located. The filing of the notice of a public hearing is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice, and constitutes notice of the public hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

(e) Building official's report; public hearing.

- (1) At a meeting of the city council at which a public hearing described in this subsection is to be held, the building official shall make a report to the city council detailing the condition or conditions of the building that violated the minimum standards and the building official's recommended action.

- (2) The city council shall hold a public hearing in accordance with a notice provided under subsection (d)(2) to determine:
  - (A) Whether a building is a substandard building; and
  - (B) If so, whether the building official's recommended action or other action should be ordered.
- (3) The owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this section and the time it will take to reasonably perform the work.

(f) City council's order.

- (1) After the public hearing, if the city council finds a building to be a substandard building, the city council shall issue an order requiring the owner, lienholder, or mortgagee of the building to within 30 days:
  - (A) Secure the building from unauthorized entry; or
  - (B) Repair, remove, or demolish the building, unless the owner, lienholder, or mortgagee establishes at the hearing that the work cannot reasonably be performed within 30 days.
- (2) The city council's order may also specify:
  - (A) A reasonable time, not to exceed 30 days, for the building to be vacated or for the occupants to be relocated by the owner; and
  - (B) An additional reasonable time, not to exceed 30 days, for the building to be vacated or for the occupants to be relocated by any of the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided for ordered action.
- (3) If the city council's order allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the order shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the city council.
- (4) The city council's order may not allow the owner, lienholder, or mortgagee more than 90 days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, lienholder, or mortgagee:
  - (A) Submits a detailed plan and time schedule for the work at the hearing; and
  - (B) Establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.
- (5) If the city council's order allows the owner, lienholder, or mortgagee more than 90 days to complete any part of the work required to repair, remove, or demolish the building, the order shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the building official to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the city council or the city council's designee to demonstrate compliance with the time schedules. If the owner, lienholder, or mortgagee owns property,

including structures or improvements on property, within the city's boundaries that exceeds \$100,000.00 in total value, the city council's order may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building under this section not later than the 30th day after the date of issuance of the order. In lieu of a bond, the city council's order may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the city not later than the 30th day after the date of issuance of the order.

- (6) An order issued under this subsection constitutes the final decision of the city.

(g) Mailing and filing of the order; publication.

- (1) After the public hearing, the city shall promptly mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building, as determined through the use of the city's best efforts.
- (2) Within 10 days after the date that the city council's order is issued, the city shall:
  - (A) File a copy of the order in the city secretary's office; and
  - (B) Publish in a newspaper of general circulation in the city a notice containing:
    - (i) The street address or legal description of the property;
    - (ii) The date of the hearing;
    - (iii) A brief statement indicating the results of the order; and
    - (iv) Instructions stating where a complete copy of the order may be obtained.

(h) Failure to comply with the order. If a substandard building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the time allotted by the city council's order, the city may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.

(i) City's expenses; lien.

- (1) If the city incurs expenses under subsection (h), the city may assess the expenses on, and the city has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the building was located.
- (2) If the city assesses expenses on the property on which the building was located, the city shall mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver to each owner, lienholder, and mortgagee to whom the city council's order was delivered a notice containing the following information:
  - (A) The name and address of the owner if that information can be determined with a reasonable effort;
  - (B) A legal description of the real property on which the building was located;
  - (C) A description of the action taken by the city for which the city incurred the expenses;

- (D) The amount of expenses incurred by the city;
  - (E) The balance due;
  - (F) A demand for payment of the balance due;
  - (G) The date on or before which payment is demanded; and
  - (H) If a bond was posted, or if a letter of credit or other financial guaranty was provided, a statement that the city will collect on the bond, letter of credit or other financial guaranty if the city does not receive the payment by the specified date.
- (3) A lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice must contain the following information:
- (A) The name and address of the owner if that information can be determined with a reasonable effort;
  - (B) A legal description of the real property on which the building was located;
  - (C) The amount of expenses incurred by the city; and
  - (D) The balance due.
- (4) A lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the expenses.
- (5) The city may use any method authorized by law to recover expenses incurred.
- (j) Miscellaneous provisions.
- (1) For purposes of this section, a requirement to make a diligent effort, to use best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee is satisfied by searching the records identified in section 214.001(q) of the Local Government Code, as may be amended.
  - (2) When the city mails a notice in accordance with this section to an owner, lienholder, or mortgagee and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the document is considered delivered.
  - (3) Notwithstanding anything in this section, all procedures, notices, and orders shall comply with chapter 214 of the Local Government Code, as may be amended.

(Ordinance 10498 adopted 3/19/2024)

#### **§ 4-8-2. Additional authority to secure substandard buildings.**

- (a) Applicability. This section applies to the securing of a building that is in violation of the minimum standards, as those terms are defined in section 4-8-1(b). This section shall not preclude the city's authority to secure a building as provided in section 4-8-1 or the application of any other available remedy.
- (b) Definitions. As used in this section, "building," "building official," "commencement of construction," "minimum standards," and "substandard building" shall have the meanings given those terms in section 4-8-1(b).

- (c) Authority to secure substandard building. The building official or the building official's designee may secure a building if the building official determines:
- (1) That the building violates the minimum standards and is a substandard building; and
  - (2) That the building is unoccupied or is occupied only by persons who do not have a right of possession to the building.
- (d) Notice requirements.
- (1) Before the 11th day after the date a building is secured in accordance with subsection (c), the building official shall give notice to the building's owner by:
    - (A) Personally serving the owner with written notice;
    - (B) Depositing the notice in the United States mail addressed to the owner at the owner's post office address;
    - (C) Publishing the notice at least twice within a 10-day period in a newspaper of general circulation in the county in which the building is located if personal service cannot be obtained and the owner's post office address is unknown; or
    - (D) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.
  - (2) The notice shall contain:
    - (A) An identification, which is not required to be a legal description, of the building and the property on which it is located;
    - (B) A description of the violation of the minimum standards that is present at the building;
    - (C) A statement that the city will secure or has secured, as the case may be, the building; and
    - (D) An explanation of the owner's entitlement to request a hearing about any matter relating to the city's securing of the building.
- (e) Hearing.
- (1) The city council shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the city's securing of the building if, within 30 days after the date the city secures the building, the owner files with the city a written request for the hearing. An owner who requests a hearing under this subsection shall file the written request for a hearing with the building official or the building official's designee. The city council shall conduct the hearing within 20 days after the date the request is filed.
  - (2) Following the hearing, the city council may take action to affirm, reverse, or modify an action taken by the building official under this section.
- (f) City's expenses; lien.
- (1) If the city incurs expenses under subsection (c), the city may assess the expenses on, and the city has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the building was located.

- (2) If the city assesses expenses on the property on which the building was located, the city shall mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver to each owner, lienholder, and mortgagee to whom the city council's order was delivered a notice containing the following information:
  - (A) The name and address of the owner if that information can be determined with a reasonable effort;
  - (B) A legal description of the real property on which the building was located;
  - (C) A description of the action taken by the city for which the city incurred the expenses;
  - (D) The amount of expenses incurred by the city;
  - (E) The balance due;
  - (F) A demand for payment of the balance due;
  - (G) The date on or before which payment is demanded; and
  - (H) If a bond was posted, or if a letter of credit or other financial guaranty was provided, a statement that the city will collect on the bond, letter of credit or other financial guaranty if the city does not receive the payment by the specified date.
- (3) A lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice must contain the following information:
  - (A) The name and address of the owner if that information can be determined with a reasonable effort;
  - (B) A legal description of the real property on which the building was located;
  - (C) The amount of expenses incurred by the city; and
  - (D) The balance due.
- (4) A lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the expenses.
- (5) The city may use any method authorized by law to recover expenses incurred.

(Ordinance 10498 adopted 3/19/2024)

#### **§ 4-8-3. Prohibiting entry into substandard buildings.**

- (a) **Applicability.** This section applies to the prohibition of entry into a building that is in violation of the minimum standards, as those terms are defined in section 4-8-1(b). This section shall not preclude the city's authority to secure a building as provided in section 4-8-1 or section 4-8-2 or the application of any other available remedy.
- (b) **Definitions.** As used in this section, "building", "building official," "commencement of construction," "minimum standards," and "substandard building" shall have the meanings given those terms in section 4-8-1(b).

- (c) Authority to prohibit entry into a substandard building. The building official may prohibit entry into and occupancy of a building by giving notice in accordance with subsection (d) if the building official determines:
- (1) That the building violates the minimum standards and is a substandard building; and
  - (2) That the building is unoccupied or is occupied only by persons who do not have a right of possession to the building.
- (d) Notice requirements.
- (1) If the building official prohibits entry into and occupancy of a building under this section, the building official shall give notice thereof by:
    - (A) Posting a written notice on or near each entrance of the building; and
    - (B) Giving written notice to the owner of the building by:
      - (i) Personally serving the owner with written notice;
      - (ii) Depositing the notice in the United States mail addressed to the owner at the owner's post office address; or
    - (C) Publishing the notice at least twice within a 10-day period in a newspaper of general circulation in the county in which the building is located if personal service cannot be obtained and the owner's post office address is unknown.
  - (2) The notice shall contain:
    - (A) An identification, which is not required to be a legal description, of the building and the property on which it is located;
    - (B) A description of the violation of the minimum standards that is present at the building;
    - (C) The following statement: "This structure is unsafe and its occupancy has been prohibited by the city"; and
    - (D) An explanation of the owner's entitlement to appeal the prohibition against entry and occupancy of the building.
- (e) Appeal.
- (1) The city council shall conduct an appeal hearing at which the owner may testify or present witnesses, written information, or other evidence regarding a prohibition under this section if, within 30 days after notice is given under subsection (d), the owner files with the city a written notice of appeal. An owner who desires to appeal a prohibition under this subsection shall file the written notice of appeal with the building official or the building official's designee. The city council shall conduct the hearing within 20 days after the date the request is filed.
  - (2) Following the hearing, the city council may take action to affirm or reverse the prohibition.
- (f) Offense; penalty; affirmative defenses.
- (1) If the building official prohibits entry into and occupancy of a building in accordance with this section, a person shall not enter into or occupy such building.

- (2) If the building official prohibits entry into and occupancy of a building in accordance with this section, a person shall not permit or authorize any other person to enter into or occupy such building.
- (3) Each violation of this section shall be punishable by a fine of not more than \$2,000.00.
- (4) It is an affirmative defense to prosecution under this section that:
  - (A) The building official reversed the prohibition before the trial of the violation;
  - (B) Following a hearing under subsection (e), but before the trial of the violation, the city council reversed the prohibition;
  - (C) The person was the owner of the building, or an employee, contractor, or other agent of the owner of the building, and entered into or occupied the building for the purpose of securing the building from unauthorized entry;
  - (D) The person was the owner of the building, or an employee, contractor, or other agent of the owner of the building, and entered into or occupied the building for the purpose of repairing, removing, or demolishing the building as required by an order of the city council issued under section 4-8-1 or as otherwise authorized by the building official; or
  - (E) The person was acting on behalf of the city to secure, remove, or demolish the building as authorized by this chapter.

(Ordinance 10498 adopted 3/19/2024)



MINIMUM HOUSING STANDARDS CODE

**Chapter 4-9**

**MINIMUM HOUSING STANDARDS CODE**

**§ 4-9-1. Title.**

This Chapter shall be known as the Midland Minimum Housing Standards Code.  
(Ordinance 4357 adopted 11/10/1967)

**§ 4-9-2. Definitions.**

In the interpretation and enforcement of this Chapter, all words other than the terms herein specifically defined shall have the meanings implied by their context in this Chapter or their ordinarily accepted meanings as generally used; words in the present tense shall include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural number includes the singular.

The following definitions shall apply in the interpretation and enforcement of this Chapter:

4-9-2.1 *Approved* shall mean approval by the building inspector of the City of Midland, unless otherwise provided, based upon accepted principles, or upon reports of investigation, tests, and standards set by national, state or local authorities, or technical or scientific organizations.

4-9-2.2 *Basement* shall mean that portion of a building between floor and ceiling, which is partly below and partly above grade, but so located that the vertical distance from grade to the floor below is less than the vertical distance from grade to ceiling.

4-9-2.3 *Board* shall mean housing standards board.

4-9-2.4 *Boardinghouse* shall mean a lodginghouse where meals are provided by the operator.

4-9-2.5 *Building inspector* shall mean the city's director of planning and development or whomever the director of planning and development may designate to supervise the enforcement of the minimum housing standards code.

4-9-2.6 *Cellar* shall mean that portion of a building between floor and ceiling which is partly below and partly above grade, but so located that the vertical distance from grade to the floor below is greater than the vertical distance from grade to ceiling.

4-9-2.7 *Council* shall mean the City Council of the City of Midland, Texas.

4-9-2.8 *Dwelling* shall mean a building or structure or part thereof which is wholly or partly used or intended to be used for living and sleeping by one or more human occupants. A dwelling may include one or more dwelling units.

4-9-2.9 *Dwelling premises* shall mean the land, dwelling units and auxiliary buildings thereon used or intended to be used in connection with a building.

4-9-2.10 *Dwelling unit* shall mean any room or group of rooms within a dwelling and forming a single and separate habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating, for a one-family unit.

4-9-2.11 *Family unit* shall mean any number of individuals living together as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, a lodginghouse, or both, or hotel.

4-9-2.12 *Electrical distribution main* shall mean that portion of electrical supply conductors and equipment extending along a public thoroughfare for delivery of electrical energy from the supply system to the service conductors of premises served.

4-9-2.13 *Floorspace* shall mean the horizontally projected floor area inside of and between exterior walls or partitions or any combination thereof, as measured within a habitable room.

4-9-2.14 *Garbage* shall mean rubbish, trash, kitchen and household waste, ashes, paper, food containers, small hedge trimmings and lawn trimmings.

4-9-2.15 *Habitable room* shall mean a room or enclosed floorspace used or intended to be used for living, sleeping, or eating purposes, and excluding bathrooms, toilet rooms or compartments, kitchens, laundries, pantries, foyers, or communicating corridors, closets, and storage spaces.

4-9-2.16 *Infestation* shall mean the presence, or evidence of the presence, of rodents, vermin or other pests within or around a dwelling or dwelling premises.

4-9-2.17 *Lodginghouse* shall mean any dwelling or part thereof which contains one or more lodging units, and which space is occupied or intended to be occupied by five or more persons who are not husband and wife, son or daughter, mother or father, sister or brother of the owner or operator.

4-9-2.18 *Lodging unit* shall mean any room or group of rooms which form a single and separate habitable unit within a lodging or boarding house and used or intended to be used for living and sleeping, but not for cooking.

4-9-2.19 *Multiple-family dwelling* shall mean any dwelling containing more than two dwelling units.

4-9-2.20 *Occupant* shall mean any person living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or lodging unit.

4-9-2.21 *Operator* shall mean any person who has charge, care or control of a multiple-family dwelling or lodging or boarding house, in which dwelling units or lodging units are let or offered for occupancy.

4-9-2.22 *Owner* shall mean any person who, alone, jointly, severally or jointly and severally with others:

- (a) Shall have legal or record title to any dwelling, lodging or boarding house, or dwelling, lodging or boarding house premises; or
- (b) Shall have charge, care or control of any dwelling or dwelling premises as agent of the owner, executor, administrator, trustee or guardian of the estate of the owner.

4-9-2.23 *Person* shall mean and include any individual, group of individuals, firm, corporation, association or partnership.

4-9-2.24 *Plumbing* shall mean and include all of the following supplied facilities, equipment and devices: gas pipes, water pipes, toilets, lavatories, sinks, laundry tubs, installed dishwashers, garbage disposal units, installed clothes washing machines, catchbasins, washbasins, bathtubs, showerbaths, waste, sewer pipes, and sewage system, septic tanks, drains, vents, traps, and any other fuel-burning or water-using fixtures and appliances together with all connections to water, waste and sewer or gas pipes.

4-9-2.25 *Proper or properly* shall mean as defined and specified herein, or when not so defined or specified, in accordance with the applicable ordinances of the City of Midland, Texas.

4-9-2.26 *Room heater* shall mean a self-contained above-the-floor device for direct heating of the space in and adjacent to that in which the device is located and not intended for duct connections.

4-9-2.27 *Supplied or supply* shall mean paid for, furnished by, or provided by the owner or operator.

4-9-2.28 *Ventilation system* shall mean a system capable of furnishing four complete changes of air every hour of operation.

(Ordinance 4357 adopted 11/10/1967; Ordinance 6669 adopted 6/24/1986)

### **§ 4-9-3. Administration.**

4-9-3.1 Applicability to all dwelling, lodging and boarding houses. Every portion of a building or its premises used or intended to be used for any dwelling purpose shall comply with the provisions of this Chapter, irrespective of when such building shall have been constructed, altered, or repaired, and irrespective of any permits or licenses which shall have been issued for the use of occupancy of the building and building premises, for the construction or repair of the building, or for the installation or repair of building equipment prior to the effective date hereof. This Chapter establishes minimum standards for the initial and continued occupancy of all dwelling, lodging and boarding houses, and does not replace or modify standards otherwise established for the construction, repair, or use of buildings or the installation of building equipment, except as they may be in conflict with the provisions of this Chapter as provided by subsection 4-9-15.4 of this Chapter.

4-9-3.2 Inspections. An inspection shall be made of every dwelling, dwelling unit, lodginghouse, boardinghouse, lodging unit and dwelling premises located within the corporate limits of the City of Midland and suspected of being in violation of this Chapter. Every inspector shall exhibit positive identification to the owner, operator or occupant thereof prior to conducting an inspection. Inspection shall be made only at reasonable hours and with either the consent of the owner, operator or occupant thereof, or in absence of consent, a warrant from a magistrate authorizing the inspection for suspected violations of this Chapter.

(Ordinance 4357 adopted 11/10/1967)

### **§ 4-9-4. Enforcement.**

4-9-4.1 Discovery of violations. It shall be the duty of every inspector conducting an inspection under the provisions of this Chapter to make a written notation of any violations of this Chapter he discovers and to report such violations to his superior.

4-9-4.2 Notice of violations. Whenever a violation of this Chapter has been discovered and reported by an inspector under subsection 4-9-4.1 of this Chapter, the person or persons responsible under the provisions of this Chapter for such violations shall be given written notification of the nature of the violation and the date on which a reinspection shall be made to determine if the violation has been eliminated. No reinspection shall be made until the person or persons responsible for a violation under the provisions of this Chapter have been given a reasonable time to eliminate the violation.

4-9-4.3 Extension of time. Any person or persons receiving written notification of a violation of this Chapter may request an extension of time to eliminate the violation prior to a reinspection and such requests for extensions of time shall be approved where reasonable.

(Ordinance 4357 adopted 11/10/1967)

### **§ 4-9-5. Designation of unfit buildings.**

4-9-5.1 Designation of unfit dwellings. Any dwelling or dwelling unit which shall be found by an inspector conducting an inspection under subsection 4-9-3.2 of this Chapter to violate subsections 4-9-8.1 through 4-9-8.5, 4-9-8.7, 4-9-8.8, 4-9-9.1, 4-9-9.3, 4-9-10.1 through 4-9-10.7, 4-9-11.1, 4-9-11.2, 4-9-11.4, 4-9-11.5, 4-9-11.6, 4-9-12.1 through 4-9-12.3, 4-9-12.5, 4-9-12.6, 4-9-12.9 or 4-9-12.10 of this Chapter shall be designated as unfit for human habitation.

4-9-5.2 Designation of unfit lodginghouses. Any lodginghouse, boardinghouse or lodging unit which shall be found by an inspector conducting an inspection under subsection 4-9-3.2 of this Chapter to violate any provisions of Section 4-9-14 of this Chapter shall be designated as unfit for human habitation.

4-9-5.3 Notice to vacate. Whenever any dwelling, dwelling unit, lodginghouse, boardinghouse, or lodging unit is found to be unfit for human habitation under subsection 4-9-5.1 or 4-9-5.2 of this Chapter, and whenever necessary action to effect compliance with this Chapter is not accomplished prior to a reinspection, the owner, occupants, and operator, if any, shall be notified by registered mail to vacate such dwelling, dwelling unit, lodginghouse, boardinghouse or lodging unit within 30 days of the date of mailing of the notice to vacate, unless compliance with the provisions of this Chapter is accomplished within the 30-day period.

4-9-5.4 Immediate vacation. Whenever a dwelling, dwelling unit, lodginghouse, boardinghouse or lodging unit is found by an inspector conducting an inspection under subsection 4-9-3.2 of this Chapter to violate subsections 4-9-12.1 through 4-9-12.3 or 4-9-12.6, and to present an immediate danger of injury to the occupants, the building inspector shall order the immediate evacuation of the structure and such structure shall remain vacated until the danger is eliminated.

4-9-5.5 Vacation procedure. The owner or operator of any dwelling, dwelling unit, lodginghouse, boardinghouse or lodging unit vacated under the provisions of this Chapter shall make such structure safe and secure from entry by unauthorized persons. A placard stating that the dwelling, dwelling unit, lodginghouse, boardinghouse or lodging unit has been found unfit for human habitation shall be placed on the outside entrance to the structure in a conspicuous place. No person shall occupy any dwelling, dwelling unit, lodginghouse, boardinghouse or lodging unit posted with a placard signifying the placarded building is unfit for human habitation. No person shall deface, destroy or remove any placard designating a dwelling, dwelling unit, lodginghouse, boardinghouse or lodging unit unfit for human habitation.

(Ordinance 4357 adopted 11/10/1967; Ordinance 6669 adopted 6/24/1986)

## § 4-9-6. Housing standards board.

4-9-6.1. Establishment of a housing standards board. There is hereby created and established a housing standards board composed of five members, each of whom shall be a resident of the City of Midland, which is authorized to hear and decide appeals from notices to vacate issued by the City of Midland under the provisions of this Chapter. The board shall have the power to reverse or affirm wholly or partly or to modify any such notice or order; and in specific cases to authorize such variance in the application of the terms of this Chapter, where owing to unusual conditions a literal enforcement of the provisions of the Chapter will result in unnecessary hardship, and so that the spirit of the Chapter shall be observed and substantial justice done.

4-9-6.2. Conditions for appeal. Any person upon whom a notice to vacate has been served may appeal to the board.

4-9-6.3. Application for appeal. Application for such an appeal may be made whenever it is alleged that the notice to vacate does not conform with the true intent of this Chapter, that the notice to vacate is contrary to law, that the provisions of this Chapter do not fully apply, or that in unusual conditions unnecessary hardship will result from the literal enforcement of Chapter provisions. Any eligible person desiring to make an appeal shall file in the office of the building inspector, within ten days after service of the notice to vacate, a written appeal including a brief statement of the reasons therefore, and a detailed statement of the facts supporting the appeal. An appeal to the board shall

stay all proceedings under the notice to vacate for which such appeal has been taken.

**4-9-6.4. Members of the board.**

- (a) Such members shall be appointed by the City Council of the City of Midland in staggered terms of one member appointed for one year, two members for two years, and two members for three years, and shall serve until their respective successors shall have been duly appointed and qualified. Members appointed by the City Council subsequent to the first appointment under this Chapter shall be appointed for a term of three years unless an appointment is made to fill out an unexpired term. Selection of membership shall be made as near as practicable from persons qualified in one or more of the fields of building construction, architecture, engineering, sanitation or health.

At least ten days prior to the expiration date of any term of the housing standards board, or within ten days of the death, resignation or removal of any member, his successor shall be named and appointed by the City Council of the City of Midland by means of the adopting of a resolution naming such member, providing, however, that should the City Council of the City of Midland fail to act within ten days, such member except for reason of death shall continue as a member of the housing standards board until an appointment is made by the City Council of the City of Midland.

Any member of the housing standards board shall be eligible for reappointment to said board. The members of the board shall elect one of themselves to serve as chairman of such board.

When any member of the housing standards board has been absent from the regular meeting of said board for more than three consecutive times, his office shall become vacant and the chairman or acting chairman of this board shall certify such record of absence and vacancy to the City Council and the City Council shall appoint a new member of said board to fill such vacancy. Any member of said board may be removed at any time by a majority vote of the City Council for inefficiency, neglect of duty or malfeasance in office.

- (b) The city health officer, or his representative, and the fire chief, or his representative, of the City of Midland shall serve as ex officio members of the housing standards board. Ex officio members shall possess no voting privileges and their only function shall be to render advice to the regular members of the board.

**4-9-6.5. Duties of the building inspector.** It shall be the duty of the building inspector to notify the chairman of the board on receipt of an application for appeal. It shall also be the duty of the building inspector, or his duly designated representative, to present the case for sustaining the notice to vacate to the board. The building inspector or his representative shall furnish the board with a copy of any notice of violation, order to vacate, and any facts pertinent to the appeal.

**4-9-6.6. Notice of meeting.** The board shall meet at least once a month and at other times upon the call of the chairman. Notice of the meeting to hear an appeal shall be given the appellant, the building inspector, and the members of the board, at least ten days before the holding of the meeting. In order for the board to hear an appeal, three members of the board must be present.

**4-9-6.7. Proceedings of the board.** All hearings of the housing standards board shall be "de novo." All hearings shall be public, and the appellant, his representatives, the building inspector, and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard. Written entry of appearance at such hearing shall fulfill the requirements for service of any notice. The chairman may administer oaths and compel the attendance of witnesses.

4-9-6.8. Vote of the board. A concurring vote of a majority of the members of the board present at the hearing shall be necessary to reverse or modify any notice or order issued under the provisions of this Chapter and to authorize a variance in the application of any of the provisions of this Chapter.

4-9-6.9. Decisions of the board. All decisions of the board shall be in writing. The board shall keep clear and detailed minutes of all its proceedings including its decisions and the reasons therefore and the vote of each member participating therein. Such record, immediately following the board's decision, shall be filed in the office of the building inspector and shall be a public record. Notice of the board's decision shall be promptly furnished to the appellant, his representative, any person who has filed a written entry of appearance, and to the building inspector.

(Ordinance 4357 adopted 11/10/1967; Ordinance 6669 adopted 6/24/1986)

#### § 4-9-7. Review.

4-9-7.1. Appeal to the City Council. Whenever an appellant or the building inspector is aggrieved by a decision of the housing standards board, either party may make a written appeal to the City Council by filing such appeal in the office of the city secretary within ten days after receipt of the decision of the board. The city secretary shall present the written appeal, together with the complete record of the proceedings, findings and decisions of the board, to the Council at the next regular meeting of that body.

4-9-7.2. Review by City Council. The City Council shall review every appeal from a decision of the housing standards board presented before it for the limited purpose of determining if there is substantial evidence to support the findings and decision of the board. Any person appealing to the Council shall have the right to make an oral argument to support his position. The written appeal with supporting briefs, if any, the oral argument of the appellant, if any, the record of proceedings of the board, and the written findings and decisions of the board shall be reviewed and considered by the Council.

4-9-7.3. Vote of the Council. Unless a majority of Councilmembers present considering an appeal from the board vote that the decision of the board is not supported by substantial evidence, the decision of the board shall stand approved.

4-9-7.4. Action by the Council. Whenever a majority of Councilmembers present considering an appeal from the board vote that the decision of the board is not supported by substantial evidence, the Council, as the finding warrants, either shall dismiss any notice to vacate approved by the board, or shall reinstate any notice to vacate dismissed by the board, or shall order a new hearing by the board.

4-9-7.5. Record of action. The finding and action of the Council shall be in the form of a resolution passed by a majority of the members of that body present and a copy of the resolution shall be attached to the record of proceedings, findings and decision of the board. Additional copies of the resolution shall be forwarded by the city secretary to the building inspector and all persons affected by the Council's action. The record of proceedings, findings and decisions of the board and the Council resolution shall be kept on file in the office of the building inspector and shall be available for public inspection.

4-9-7.6. Effect of appeal. An appeal to the City Council shall stay all proceedings under the notice to vacate from which such appeal has been taken until the Council renders a decision.

4-9-7.7. Review by courts. Whenever the action of the Council upon a review of a decision of the board adversely affects a party to the notice to vacate, such party may appeal to any court of competent

jurisdiction for a determination of constitutional issues, questions of law and for a determination as to whether there was substantial evidence to support the decisions of the board and the Council.  
(Ordinance 4357 adopted 11/10/1967; Ordinance 6669 adopted 6/24/1986)

#### **§ 4-9-8. Sanitary facilities, plumbing, drainage.**

Every dwelling and dwelling unit, as hereinafter specified, located within the corporate limits of the City shall comply with the following requirements:

4-9-8.1. Kitchen sink. Every dwelling unit shall be supplied with a kitchen sink located in the kitchen or adjacent kitchen pantry.

4-9-8.2. Flush toilet and lavatory basin. Every dwelling unit shall be supplied with a room or compartment which affords privacy to a person therein and which shall be equipped with an approved flush toilet and a lavatory basin.

4-9-8.3. Bathtub or showerbath. Every dwelling unit shall have supplied within such dwelling unit a room or compartment which affords privacy to a person therein and which shall be equipped with a bathtub or showerbath.

4-9-8.4. Water and sewer connections. Every kitchen sink, lavatory basin, flush toilet, and bathtub or showerbath required under the provisions of subsections 4-9-8.1, 4-9-8.2 and 4-9-8.3 of this Chapter shall be properly connected to an adequate supply of safe, potable water approved by the department of public health of the City of Midland, and to a sewer line of the City of Midland, if such sewer line lies within 150 feet of the dwelling premises. Every kitchen sink, lavatory basin, flush toilet and bathtub or showerbath shall be properly connected to an adequate supply of safe, potable water approved by the department of public health of the City of Midland. If a City of Midland sewer line does not lie within 150 feet of the dwelling premises, the kitchen sink, lavatory basin, flush toilet and bathtub or showerbath shall be connected through an approved sewer connection to an adequate septic tank, or other waste disposal system, approved by the department of public health of the City of Midland.

4-9-8.5. Hot and cold water. Every kitchen sink, lavatory basin, and bathtub or showerbath required under subsections 4-9-8.1, 4-9-8.2 and 4-9-8.3 of this Chapter shall be supplied with hot and cold water properly connected as required in subsection 4-9-8.4 of this Chapter.

4-9-8.6. Impervious flooring. The floor surface of every bathroom, toilet room or compartment shall be constructed of material impervious to water; or if constructed of material not impervious to water, it shall be covered with fitted linoleum or painted or varnished so as to make the floor surface reasonably impervious to water. All such floors shall be kept in a dry, clean and sanitary condition by the occupant.

4-9-8.7. Grading and drainage. The grading and drainage of dwelling premises shall be such that no water shall be allowed to seep into any basement or cellar, or to accumulate, or become stagnant therein or on the premises; and no roof, surface, or sanitary drainage shall create a structural, safety or health hazard by reason of construction, maintenance or manner of discharge.

4-9-8.8. Garbage disposal facilities. Every dwelling and dwelling unit shall have adequate garbage storage and disposal facilities or containers as required by Title VIII, Chapter 7 of the City Code of Midland, Texas.

(Ordinance 4357 adopted 11/10/1967)

**§ 4-9-9. Heating and refrigeration equipment.**

Every dwelling and dwelling unit, as hereinafter specified, located within the corporate limits of the City of Midland, Texas, shall comply with the following requirements:

4-9-9.1. Heating facilities. Every dwelling and dwelling unit shall be supplied heating facilities which bear the seal of approval of an approved, nationally recognized testing agency, and which heating facilities are used in the manner for which they were designed and approved. Such heating facilities shall be installed in compliance with the Code of the City of Midland and the provisions of this Chapter and shall be capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms or compartments within its walls to a temperature of at least 70 degrees F. at three feet above the floor level in the center of the room when the outside temperature is 20 degrees F. Doors, windows and other parts of the dwelling or dwelling unit shall be constructed and maintained so as to prevent abnormal heat losses.

4-9-9.2. Room heaters. In every dwelling or dwelling unit where room heaters utilizing gas as a fuel are used and operated, the room heaters shall be connected to the gas supply with either rigid pipe, approved flexible metal tubing and fittings or approved semi-rigid tubing and fittings. No room heater shall be placed so as to cause a fire hazard to walls, curtains, furniture, open doors and to the free movement of persons within the room where the room heater is located. A room heater of the freestanding type shall be placed as to provide at least six inches clearance between the heater and any combustible material. Room heaters utilizing liquid fuels are prohibited, and room heaters utilizing solid fuels are prohibited except in heaters specifically designed and approved for such use and in accordance with the requirements of the building code of the City.

4-9-9.3. Water heaters. Every dwelling and dwelling unit shall be supplied with approved, automatically controlled water heaters of not less than 20 gallons' capacity, installed in compliance with the current plumbing and gas codes of the City, capable of heating water so as to permit water at a temperature of not less than 120 degrees F. to be drawn at every kitchen sink, lavatory basin, bathtub or shower. Such water heater shall be properly connected to an adequate supply of safe, potable water approved by the department of public health.

(Ordinance 4357 adopted 11/10/1967; Ordinance 6669 adopted 6/24/1986)

**§ 4-9-10. Lighting, ventilation and electrical facilities.**

Every dwelling and dwelling unit, as hereinafter specified, located within the corporate limits of the City shall comply with the following requirements:

4-9-10.1 Window area. Every habitable room shall have at least one window which faces directly to the outdoors. The minimum aggregate glass area available for unobstructed light for every habitable room shall be no less than ten percent of the floor area; provided, however, that if said windows open on covered porches and terraces or are in rooms any portion of which is more than 18 feet from a window, then glass area shall be not less than 15 percent of the floor area of the room.

4-9-10.2 Daylight obstruction. Whenever walls or other portions of structures face a window of a habitable room in any dwelling or dwelling unit and such light-obstructing structures are located less than five feet from the window and extend to a level above that of the ceiling of the room, such window shall not be included as contributing to the minimum total window area as required in subsection 4-9-10.1.

4-9-10.3 Openable window area. Every habitable room shall have at least one window which can be easily opened, or shall have an approved ventilating system. The total openable window area shall be equal

to at least four percent of the floor area of such room provided said room has no exterior door or shall be equal to at least two percent of the floor area where said room has an exterior door. The foregoing ventilation requirement shall not apply where said room is supplied with some other approved ventilation system.

4-9-10.4 Bathroom light and ventilation. Every bathroom and toilet room shall comply with the light and ventilation requirements for habitable rooms contained in subsections 4-9-10.1, 4-9-10.2, and 4-9-10.3 above, except in no case shall the minimum glass area of such window be less than ten percent of the floorspace of such room. Provided that no window shall be required in any bathroom or toilet compartment equipped with an approved ventilation system and an approved artificial lighting system.

4-9-10.5 Screening of openings. Every opening which is used for ventilation purposes from a dwelling or dwelling unit directly to or from outdoor space, except where forced air facilities are located therein, shall be equipped with screening which shall be provided by the owner. All screening required under this subsection shall not be less than 16 meshes to the square inch and shall be installed and maintained in a manner affording complete protection against entry in the dwelling or dwelling unit of flies, mosquitoes and insects.

4-9-10.6 Basement ventilation. Every cellar and basement shall have at least two vents or windows opening directly to the outside air sufficient to prevent mildew or structural deterioration, and properly equipped with screening of not less than 16 meshes to the square inch which shall be installed and maintained in a manner affording complete protection against entry in the cellar or basement of flies, mosquitoes or insects.

4-9-10.7 Illumination. Every dwelling and dwelling unit within 300 feet of an electrical distribution main shall be supplied with electricity as follows:

- (a) Every habitable room shall be supplied with base plugs and light fixtures which shall be properly installed, connected to the source of electrical power, and maintained in compliance with the current electrical code of the City as determined necessary by the building inspector to be in a good and safe working condition.
- (b) Every stairway, or other means of exit, and corridors and passageways appurtenant thereto, shall be provided with an adequate system of lighting, either natural or artificial. Artificial lights for stairways, corridors and passageways shall have an intensity of not less than ten footcandles. In the absence of natural light, artificial light shall be kept burning at all times when the building served by such stairways or exits is being used or occupied.

(Ordinance 4357 adopted 11/10/1967; Ordinance 6669 adopted 6/24/1986)

#### **§ 4-9-11. Dwelling space and use and access.**

Every dwelling and dwelling unit, as hereinafter specified, located within the corporate limits of the City shall comply with the following requirements:

4-9-11.1 Floorspace per person. Every dwelling unit shall contain at least 150 square feet of floorspace, exclusive of hall and closet space, for the first occupant and at least 100 square feet of additional floorspace, exclusive of hall and closet space, for each occupant thereafter.

4-9-11.2 Sleeping space per person. In every dwelling unit of two or more rooms every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floorspace, exclusive of hall and closet space, and every room occupied for sleeping purposes by more than one person shall

contain at least 50 square feet of floorspace, exclusive of hall and closet space, for each occupant thereof.

**4-9-11.3 Provisions for calculation of floor area.** In every case the floorspace required in subsection 4-9-11.1 and 4-9-11.2 shall be calculated on the basis of total habitable room area. Children under 12 years of age shall be deemed to be one-half of one occupant for purposes of subsection 4-9-11.1 and 4-9-11.2. Subsections 4-9-11.1 and 4-9-11.2 shall not apply to mobile homes located in approved parks.

**4-9-11.4 Ceiling height.** Every habitable room of a dwelling or dwelling unit shall have a ceiling height of at least seven feet.

**4-9-11.5 Cellars and basement occupancy.** No cellar or basement shall be occupied as a habitable room unless it shall comply with the applicable provisions of the building code of the City of Midland, Texas, as to exits; and unless the floors and walls are impervious to any leakage of underground and surface runoff water and are properly protected against dampness; and the minimum window area of each habitable room therein is either located above the finished grade or provided with an approved light well and unless it shall comply with the provisions of subsections 4-9-10.1, 4-9-10.2 and 4-9-10.3, except that the provisions of subsection 4-9-10.2 shall not apply if an approved light well is supplied and the provisions of subsection 4-9-10.3 shall not apply if an approved ventilation system is supplied.

**4-9-11.6 Means of egress.** Every dwelling and dwelling unit shall be provided with two approved safe and unobstructed means of egress.

(Ordinance 4357 adopted 11/10/1967)

#### **§ 4-9-12. Safe and sanitary maintenance.**

Every dwelling and dwelling unit, as hereinafter specified, located within the corporate limits of the City of Midland, Texas, shall comply with the following requirements:

**4-9-12.1 Foundations.** Every foundation shall be so free of holes, cracks, buckling, crumbling and defects as to support adequately the dwelling structure.

**4-9-12.2 Floors, exterior walls and roofs.** Every floor, exterior wall and roof shall be so free of holes, cracks, and loose, rotten, warped or protruding boards as to protect the occupants of the dwelling or dwelling unit reasonably from weather elements and from danger of collapse.

**4-9-12.3 Interior walls and ceilings.** Every interior wall and ceiling shall be so free of holes, cracks, loose plaster, loose and baggy wallpaper, defective materials and structural deterioration as to reasonably serve their purpose and as to protect the occupants of the dwelling or dwelling unit from danger of collapse and of fire.

**4-9-12.4 Protection of exterior surfaces.** All exterior exposed surfaces shall be repaired, coated, treated or sealed so as to protect them from serious deterioration.

**4-9-12.5 Windows and doors.** Every window and exterior door shall be reasonably water and weather tight and shall be kept in sound working condition and good repair.

**4-9-12.6 Stairways and porches.** Every inside and outside stairway shall comply with the provisions pertaining to stairways contained in Chapter 4-1, of the building code of the City of Midland, Texas, and every porch and appurtenance thereto shall be maintained in a manner as to present no danger of collapse or injury to the occupants of a dwelling or dwelling unit or to the public.

4-9-12.7 Supplied facilities. Every supplied facility, piece of equipment or utility which is required under the provisions of this Chapter shall be so designed, constructed and installed according to law that it will function safely and effectively and shall be maintained in a safe and sanitary working condition.

4-9-12.8 Plumbing facilities. Every plumbing fixture and water supply, sewer line and waste disposal system shall be properly installed according to law and maintained in safe and sanitary conditions free from defects, leaks and obstructions.

4-9-12.9 Infestation. Every dwelling, dwelling unit and all dwelling premises shall be free of infestation by rodents or vermin.

4-9-12.10 Dwelling premises and accessory structures. All dwelling premises and accessory structures, including fences, shall be maintained in good repair and sanitary condition. All fences shall be constructed and maintained so as to support their own weight.

4-9-12.11 Vertical structural sections. All buildings, including dwellings or dwelling units, where, on a vertical structural section designed as a gravity member, there occurs a lateral displacement which causes the resultant pressure to fall beyond the middle third of the base of such gravity member, it shall cause said section to be considered unsafe and subject to correction or demolition.

4-9-12.12 Walls, vertical and horizontal structural members. All buildings, including dwellings or dwelling units, whose walls, vertical structural members, or horizontal structural members, other than gravity type walls, list, lean, or buckle from their designed position, or show other visual signs of deterioration to such a degree that, in the opinion of the housing standards inspector, an imminent hazard to the building, dwelling or dwelling unit or its/their occupants is present, shall cause said section to be considered unsafe and subject to correction or demolition.

4-9-12.13 Deteriorated supporting members. All buildings, dwellings, or dwelling units which, exclusive of the foundation, show 33 percent or more of damage or deterioration of the supporting member or members, or 50 percent of damage or deterioration of the nonsupporting enclosing or outside walls or covering, are hereby declared unfit for human occupation and in violation of this Chapter.

4-9-12.14 Insufficient structural strength. All buildings, dwellings or dwelling units which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose, substantially as defined by the building code of the City of Midland, Texas, as amended, are hereby declared unfit for human occupation and in violation of this Chapter.

4-9-12.15 Casualty damage. All buildings, dwellings or dwelling units which have been damaged by fire, explosion, wind, vandalism or elements of nature so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants thereof or the people of the City of Midland are hereby declared unfit for human occupation and in violation of this Chapter.

(Ordinance 4357 adopted 11/10/1967)

### **§ 4-9-13. Responsibilities of owners, operators and occupants.**

The following provisions shall pertain to the responsibilities of owners, operators and occupants of dwellings and dwelling units and their premises:

4-9-13.1 Maintenance of private spaces. In the absence of a written agreement between the occupant and owner or operator to the contrary, every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and dwelling premises thereof which

he occupies and controls.

4-9-13.2 Maintenance of public spaces. Every owner and operator of a multiple-family dwelling shall be responsible for maintaining in a clean and sanitary condition the common areas of the dwelling and the premises thereof.

4-9-13.3 Provision for disposal facilities. In the absence of a written agreement between the occupant and the owner or operator to the contrary, the occupant shall supply on the premises garbage disposal facilities and storage containers for each dwelling thereon as required by Chapter 8-7 of the City Code of Midland, Texas, and shall maintain such facilities in good repair and sanitary condition, and shall provide for the proper collection and removal of their contents.

4-9-13.4 Manner of waste disposal. Every occupant of a dwelling or dwelling unit shall dispose of his garbage in a clean, non-fire-hazardous, and sanitary manner by placing it in the facilities provided as required by subsections 4-9-8.8 and 4-9-13.3 of this Chapter.

4-9-13.5 Use of screens. Every occupant of a dwelling or dwelling unit shall be responsible for the use of all screens required by subsection 4-9-10.5 of this Chapter.

4-9-13.6 Extermination. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any rodents, vermin or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested; except that whenever such infestation is caused by the failure of the owner to carry out the provisions of this Chapter, extermination shall be the responsibility of the owner.

4-9-13.7 Maintenance of plumbing and equipment. Every occupant of a dwelling unit shall be responsible for the exercise of proper care and cleanliness in the use and operation of all plumbing fixtures, sanitary facilities, appliances, and equipment therein.

4-9-13.8 Discontinuance of utilities. No owner, operator, or occupant shall cause any service, facility, equipment, or utility, which is required to be supplied by the provisions of this Chapter, to be removed from or shut off from or discontinued from any occupied building or dwelling unit, except for such temporary interruption as may be necessary when actual repairs or alterations are being expeditiously made, or during other temporary emergencies when discontinuance of service is approved. This Section shall not prohibit the City or a utility provider from terminating service in cases in which it is otherwise authorized to do so.

4-9-13.9 Occupancy of vacant units. No person shall occupy as owner-occupant, or permit to be occupied by another, any vacant dwelling or dwelling unit unless or until it is in full compliance with all provisions of this Chapter.

4-9-13.10 Supplied heat. Every owner or operator of a dwelling who permits to be occupied any dwelling unit therein under an agreement, express or implied, to supply or furnish heat to the occupants thereof shall maintain the heat at the temperature specified in subsection 4-9-9.1 of this Chapter. The provisions of this subsection shall not apply when the failure to maintain the required air temperature level is because of a shortage of fuel, a negligent or malicious act of the occupant or repairs being expeditiously made to the heating equipment or any cause beyond the control of the owner or operator.

(Ordinance 4357 adopted 11/10/1967; Ordinance 6669 adopted 6/24/1986)

**§ 4-9-14. Lodging and boarding houses.**

Every boardinghouse, lodginghouse, and lodging unit, as hereinafter specified, located within the corporate limits of the City shall comply with the following requirements:

**4-9-14.1 Applicability of previous subsections.**

- (a) The provisions of subsections 4-9-10.1, 4-9-10.2, 4-9-10.3, 4-9-11.5, 4-9-12.9, 4-9-13.8, 4-9-13.9, and 4-9-13.10 of this Chapter shall be applicable to each lodging and boarding house and lodging unit. For purposes of this Section, wherever in the above enumerated subsections the term "dwelling" is used, it shall be construed to mean "lodging or boarding house"; and wherever the term "dwelling unit" is used, it shall be construed to mean "lodging unit."
- (b) The provisions of subsections 4-9-8.7, 4-9-9.2, 4-9-9.3, 4-9-10.4, 4-9-10.6, 4-9-10.7, 4-9-11.4, 4-9-12.1 through 4-9-12.8 and 4-9-12.10 of this Chapter shall be applicable to each lodging and boarding house. For purposes of this Section, wherever in the above enumerated subsections the term "dwelling" is used, it shall be construed to mean "lodging or boarding house."

**4-9-14.2 Application for occupancy record cards.**

- (a) Every owner or operator of a lodging or boarding house shall make application for an occupancy record card at the office of the building inspector of the City of Midland and on a form provided by said inspector before January 1, 1968. A fee of \$12.00 to cover reinspection expense must accompany each renewal application. The fee for initial applications for occupancy record cards after January 1, 1969, shall be prorated where such application is made between January 1 and December 31 of a calendar year.
- (b) Occupancy record cards shall designate the maximum number of persons who may occupy a lodging or boarding house and each lodging unit therein.
- (c) Occupancy record cards shall designate the room number assigned to each lodging unit.
- (d) The operator shall display the occupancy record card at all times in a conspicuous place near the main entrance of the lodging or boarding house. No person shall alter, tamper with or remove an occupancy record card from the lodging or boarding house without written permission of the building inspector. The building inspector shall keep a duplicate of the occupancy record card in his files.
- (e) All rooming and boarding houses within the corporate limits of the City of Midland, Texas, must have been issued an occupancy record card by January 1, 1969, and after January 1, 1969, no person shall own or operate a lodging or boarding house which has not been issued an occupancy record card by the City of Midland.

**4-9-14.3 Numbering of units.** The owner or operator of a lodging or boarding house containing six or more lodging units within said dwelling shall place or cause to be placed a number on the outside of the main door to each unit. The number on the outside of the door to the lodging unit shall correspond to the number for that unit designated on the occupancy record card for that particular lodginghouse or boardinghouse. No two lodging units shall bear the same number. The maximum number of persons who may occupy the lodging unit shall be posted in each such unit and shall not be changed without the written approval of the building inspector.

**4-9-14.4 Flush toilet and lavatory basin.** Every lodging and boarding house shall be supplied with at least one approved flush toilet and lavatory basin in good working condition for each eight persons, or

fraction thereof, residing within a lodging or boarding house. In counting such persons, members of the operator's family who share the use of such sanitary facilities shall be included; but the occupants of any lodging units that are otherwise provided with an approved flush toilet and lavatory basin shall be excluded. All such sanitary facilities shall be so located within the lodging or boarding house as to be directly accessible to all persons sharing such facilities without entering another lodging unit.

4-9-14.5 Bathtub and showerbath. Every lodging and boarding house shall be supplied with at least one bathtub or showerbath in good working condition for each eight persons, or fraction thereof, residing within a lodging or boarding house. In counting such persons, members of the operator's family who share the use of such sanitary facilities shall be included, but occupants of any lodging units who are otherwise provided with an approved bathtub or showerbath shall be excluded. All such sanitary facilities shall be so located within the lodging or boarding house as to be directly accessible to all persons sharing such facilities without entering another lodging unit.

4-9-14.6 Water and sewer connections. Every kitchen sink, lavatory basin, flush toilet, and bathtub or showerbath required under the provisions of subsections 4-9-14.4 and 4-9-14.5 of this Chapter shall be properly connected to an adequate supply of safe, potable water approved by the department of public health of the City of Midland and to a sewer line of the City of Midland, if such sewer line lies within 150 feet of the lodging or boarding house premises. If a City of Midland sewer line does not lie within 150 feet of the lodging or boarding house premises, the kitchen sink, lavatory basin, flush toilet, and bathtub or showerbath shall be connected through an approved sewer connection to an adequate septic tank, or other waste disposal system, approved by the department of public health of the City of Midland.

4-9-14.7 Hot and cold water. Every kitchen sink, lavatory basin and bathtub and showerbath required under subsections 4-9-14.4 and 4-9-14.5 of this Chapter shall be supplied with hot and cold water properly connected as required in subsection 4-9-14.6 of this Chapter.

4-9-14.8 Impervious flooring. The floor surface of every bathroom, toilet room or compartment shall be constructed of material impervious to water; or if constructed of material not impervious to water, it shall be covered with fitted linoleum or painted or varnished so as to make the floor surface reasonably impervious to water. All such floors shall be kept in a dry, clean and sanitary condition by the operator.

4-9-14.9 Rubbish and garbage storage and disposal. The operator shall be responsible for the supply, maintenance and cleanliness of storage containers as required by Chapter 8-7 of the City Code of Midland, Texas. The occupant shall be responsible for the removal of all rubbish and garbage from the lodging unit and the storage of such waste in a clean, non-fire-hazardous and sanitary manner by placing it in the required containers.

4-9-14.10 Heating facilities. Every lodgingshouse, boardinghouse and lodging unit shall be supplied heating facilities which bear the seal of approval of an approved, nationally recognized testing agency and which heating facilities are used in the manner for which they were designed and approved. Such heating facilities shall be installed in compliance with the Code of the City of Midland and the provisions of this Chapter and shall be capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms or compartments within its walls to a temperature of at least 70 degrees F. at three feet above the floor level in the center of the room when the outside temperature is 20 degrees F. Doors, windows and other parts of the lodgingshouse, boardinghouse or lodging unit shall be constructed and maintained so as to prevent abnormal heat losses.

4-9-14.11 Screening of vents. Every opening which is used for ventilation purposes from a lodgingshouse,

boardinghouse and lodging unit directly to or from outdoor space shall be equipped with screening, which shall be provided by the owner. All screening required under this subsection shall not be less than 16 meshes to the square inch and shall be installed and maintained in a manner affording complete protection against entry in the lodginghouse, boardinghouse or lodging unit of flies, mosquitoes and insects.

4-9-14.12 Clean and sanitary maintenance. The operator shall be responsible for the clean, non-fire-hazardous and sanitary maintenance of all walls, floors and ceilings in every lodging unit and every common area of the lodging or boarding house.

4-9-14.13 Extermination. The operator shall be responsible for the extermination of rodents, vermin or other pests within every portion of the lodging or boarding house and in any portion of the structure that is leased or occupied by him; provided, however, that whenever infestation also occurs in any other portion of the structure, or whenever infestation is caused by failure of the owner to carry out the provisions of this Chapter, extermination shall be the responsibility of the owner.

4-9-14.14 Maintenance of plumbing and equipment. The operator shall be responsible for the exercise of proper care and cleanliness in the use and operation of all plumbing fixtures, sanitary facilities, appliances and equipment. The owner of the above plumbing fixtures, sanitary facilities, appliances and equipment shall be responsible for the maintenance thereof in absence of a written agreement to the contrary.

4-9-14.15 Sleeping space per person. Every room in any lodging unit occupied for sleeping purposes by one person shall contain at least 70 square feet of floorspace, exclusive of hall and closet space, for each occupant thereof.

4-9-14.16 Cooking prohibited. No cooking shall be permitted in any lodging unit.

4-9-14.17 Means of egress. Each story of a lodging or a boarding house shall have two approved and unobstructed means of egress and there shall be unobstructed access from each lodging unit to the means of egress.

(Ordinance 4357 adopted 11/10/1967)

#### **§ 4-9-15. Penalties, conflict, severability, effective date.**

4-9-15.1 Penalties. Any person who shall violate any provision of this Chapter shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than \$500.00 for each offense or violation, and each day's failure to comply with any such provision shall constitute a separate violation.

4-9-15.2 Authority to act on nuisances. Nothing in this Chapter shall be deemed to abolish or impair any existing remedies of the City of Midland or its officers or agencies relating to the removal or abatement of nuisances, or to the removal or demolition of any buildings which are deemed to be dangerous, unsafe or unsanitary.

4-9-15.3 Applicability of City of Midland building code. Whenever the provisions of this Chapter require the construction, installation, alteration or repair of a dwelling, lodging or boarding house or of its facilities, utilities or equipment, the required work shall be done in full compliance with the applicable provisions of the building code of Midland except as provided in subsection 4-9-15.4 of this Chapter.

4-9-15.4 Conflict of provisions. In any case where a provision of this Chapter is found to be in conflict

with a provision of any zoning, building, fire, safety or health ordinance or any regulation adopted pursuant thereto, or any other ordinance or code or regulation of the City of Midland, the provision which establishes the higher standard for the promotion of the health and safety of the people shall prevail.

4-9-15.5 Conflict of permits and licenses. All departments, officials and employees of the City of Midland which have the duty or authority to issue permits or licenses in regard to the construction, installation, repair, use or occupancy of dwellings, dwelling premises or dwelling equipment or facilities shall conform to the provisions of this Chapter, except as provided in subsection 4-9-15.4 of this Chapter. Any permit or license issued in conflict with the provisions of this Chapter, except as provided in subsection 4-9-15.4, shall be null and void.

4-9-15.6 Shift of responsibilities. Nothing in this Chapter shall prevent an owner, operator or occupant from shifting the responsibility of the one to the other, provided that the primary and final responsibility in every case shall remain upon the person herein designated.

(Ordinance 4357 adopted 11/10/1967; Ordinance 6790 adopted 9/22/1987)



MECHANICAL CODE

**Chapter 4-10**

**MECHANICAL CODE**

***Editor's note(s)***—*Ord. No. 9924, § 1, adopted May 28, 2019, amended Ch. 10 in its entirety to read as herein set out. Former Ch. 10, §§ 4-10-1—4-10-5, pertained to the same subject matter, and derived from Ord. No. 8806, § 1, adopted July 13, 2010; Ord. No. 9228, § 1, adopted Feb. 11, 2014; and Ord. No. 9494, § 1, adopted Oct. 20, 2015.*

#### **§ 4-10-1. Purpose.**

The purpose of this Chapter is to provide minimum standards, revisions and requirements for safe installation of mechanical systems within the City. All such mechanical systems hereafter installed, replaced, maintained or repaired within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein.

(Ordinance 9924, sec. 1, adopted 5/28/2019)

#### **§ 4-10-2. Code adopted.**

The specifications, rules and regulations entitled 2018 International Mechanical Code together with appendix A, as promulgated and published by the International Code Council, Inc., are hereby adopted as the Mechanical Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

(Ordinance 9924, sec. 1, adopted 5/28/2019)

#### **§ 4-10-3. Changes and additions to adopted mechanical code.**

Notwithstanding any provisions of this Chapter or said adopted Mechanical Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto, to wit:

*101.1 Title.* Section 101.1 shall read in its entirety as follows:

These regulations shall be known as the Mechanical Code of the City of Midland, hereinafter referred to as "this code."

*106.1.1 Annual permit.* Section 106.1.1 is renamed *Homeowners permit* and shall read in its entirety as follows:

Nothing in this Code shall prevent a homeowner from extending, replacing, altering or repairing mechanical equipment within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. A homeowner shall not be required to obtain a bond or a license; however, such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

*106.1.2 Annual permit records.* Section 106.1.2 is deleted in its entirety.

*106.5.2 Fee schedule.* Section 106.5.2 shall read in its entirety as follows:

The fees for all gas systems work shall be as indicated in the current adopted Fee Schedule ordinance.

*106.5.3 Fee refunds.* Section 106.5.3 shall read in its entirety as follows:

Refunds—Refunds shall be in accordance with the current adopted Fee Schedule ordinance.

*108.4 Violation penalties.* Section 108.4 is deleted in its entirety.

*108.5 Stop work orders.* Section 108.5 shall read in its entirety as follows:

Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

*109.1 Application for appeal.* Section 109.1 shall read in its entirety as follows:

Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

*109.2—109.7.* Sections 109.2—109.7 are deleted in their entirety.

(Ordinance 9924, sec. 1, adopted 5/28/2019)

#### **§ 4-10-4. Appeals.**

Whenever the owner of a building or structure, or its duly authorized agent or the applicant for a mechanical permit is aggrieved by any order or decision of the Mechanical Inspector or the Mechanical Official made in connection with his administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code. Said Board of Appeals shall have the same power and authority over appeals from the Mechanical Code and the same rules and regulations shall apply as are full set out in said Building Code.  
(Ordinance 9924, sec. 1, adopted 5/28/2019)

#### **§ 4-10-5. Non-liability of City.**

This Chapter shall not be construed as imposing upon the City any liability or responsibility for damages to any person injured by any defect thereof, nor shall the City or any official or employee thereof, be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or the certificate of approval issued by the Inspector. By approving this ordinance, the City is not waiving its right of sovereign immunity. The City is retaining its immunity. There is no waiver of sovereign immunity.  
(Ordinance 9924, sec. 1, adopted 5/28/2019)



**RESIDENTIAL CODE**

**Chapter 4-11**

**RESIDENTIAL CODE**

***Editor's note(s)***—*Ord. No. 9925, § 1, adopted May 28, 2019, amended Ch. 11 in its entirety to read as herein set out. Former Ch. 11, §§ 4-11-1—4-11-4, pertained to the same subject matter, and derived from Ord. No. 8841, § 1, adopted Sep. 28, 2010; Ord. No. 9229, § 1, adopted Feb. 11, 2014; Ord. No. 9495, § 1, adopted Oct. 20, 2015.*

**§ 4-11-1. Purpose.**

The purpose of this Chapter is for regulating and controlling the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of one-and two-family dwellings and townhouses within the City. All such buildings and structures hereafter constructed, altered, repaired, located, relocated, or added to shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein contained.

(Ordinance 9925, sec. 1, adopted 5/28/2019)

**§ 4-11-2. Code adopted.**

The specifications, rules and regulations entitled 2018 International Residential Code together with appendices A, B, C, D, E, J, N, P and Q, as promulgated and published by the International Code Council, Inc., are hereby adopted as the Residential Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

(Ordinance 9925, sec. 1, adopted 5/28/2019)

**§ 4-11-3. Changes and additions to adopted Residential Code.**

Notwithstanding any provisions of this chapter or said adopted residential code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

*R101.1 Title.* Section R101.1 shall read in its entirety as follows:

These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the City of Midland, and shall be cited as such and will be referred to herein as "this code."

*R103.2 Appointment.* Section R103.2 shall read in its entirety as follows:

The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

*R105.2 Work Exempt from Permit.* The following deletions and addition are made to Section R105.2:

*Building* subsection 2 is deleted; and

*Building* subsection 11 is added and shall read as follows:

Tree forts or other play structures supported partially or entirely by a tree.

*R105.8 Contractor's Responsibilities.* Section R105.8 shall read in its entirety as follows:

- (a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of residential buildings or structures, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars (\$10,000.00) to be approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.
- (b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.
- (c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

*R108.2 Schedule of Permit Fees.* Section R108.2 shall read in its entirety as follows:

The fees for all work requiring a permit shall be as indicated in the current adopted Fee Schedule.

*R108.5 Refunds.* Section R108.5 shall read in its entirety as follows:

Refunds shall be in accordance with the current adopted Fee Schedule.

*R112.1 General.* Section R112.1 is renamed Application for Appeal and shall read in its entirety as follows:

A person shall have the right to appeal a decision of the code official to the board of appeals, per International Building Code section 113. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within twenty (20) days after the notice was served.

*R112.2 - R112.4.* Sections R112.2 through R112.4 are deleted in their entirety.

*TABLE R301.2(1) Climatic and Geographic Design Criteria.* TABLE R301.2(1) shall read in its entirety as follows:

Ground Snow Load	3.5 PSF
Basic Wind Speed	115 MPH
Topographic effects	No
Seismic Design Category	A
Weathering	Moderate
Frost Line Depth	12 inches
Termite	Moderate to Heavy
Decay	Slight to Moderate
Winter Design Temp	21 degrees F
Ice Barrier Underlayment Required	No

Flood Hazards	Adoption Date NFIP 09/27/91 Current FIRM 09/15/05
Air Freezing Index	1500 or less
Mean Annual Temp	65 degrees F
Elevation	2851
Latitude	32 degrees
Winter Heating	21 degrees F
Summer Cooling	103 degrees F
Altitude Correction Factor	0.901
Indoor Design Temperature	68 degrees F
Design Temperature Cooling	75 degrees F
Heating Temperature Difference	47 degrees F
Cooling Temperature Difference	28 degrees F
Wind Velocity Heating	15 mph
Wind Velocity Cooling	10 mph
Coincident Wet Bulb	67
Daily Range	High
Winter Humidity	57%
Summer Humidity	51%

*Section R313 Automatic Fire Sprinkler Systems.* Section R313 is deleted in its entirety.

*G2417.4 Test Pressure Measurement.* Section G2417.4 shall read in its entirety as follows:

Test pressure shall be measured with an ounce gauge, manometer or with a mercury gauge designed and calibrated to read, record or indicate a pressure loss due to leakage during the test period. The source of pressure shall be isolated before the pressure tests are made.

*G2417.4.1 Test Pressure.* Section G2417.4.1 shall read in its entirety as follows:

Low pressure (not in excess of 0.5 psi) gas piping shall withstand a pressure of not less than 1 1/2 times the proposed maximum working pressure, but not less than 5.88 psi, ninety (90) ounces, or twelve inches (12") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure. Higher pressure piping (2-psi gas) shall withstand a pressure of at least 10 psi or twenty inches (20") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure.

*G2420.1.4 Service Line Shutoff Valve.* Section G2420.1.4 is added and shall read in its entirety as follows:

An approved shutoff valve shall be installed above ground outside on the service line at the building entrance on all new gas line installations and on all replaced gas lines.

*P2503.4 Building Sewer Testing.* Section P2503.4 shall read in its entirety as follows:

Building sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer, filling the building sewer with water, testing with not less than three feet (3') head of water and maintaining such pressure for fifteen (15) minutes. The building sewer shall be watertight at all points.

*P2902.1.1 Backflow Ordinance.* Section P2902.1.1 is added and shall read in its entirety as follows:

All potable water supply systems shall conform to Title VIII, Chapter 9, of the Midland City Code (Ordinance No. 7605) for purposes of cross connection and backflow prevention.

*TABLE P2906.4 Water Service, Pipe.* The following footnotes are added to Table P2906.4:

*Footnote 1.* Copper or copper-alloy tubing shall be minimum Type "L" for underground water supply systems.

*Footnote 2.* Plastic water pipe used for water service shall terminate thirty-six inches (36") from the water meter. The water service pipe shall be connected to the water meter with not less than thirty-six inches (36") of minimum Type "L" copper.

*P2906.20 Underground Joints.* Section P2906.20 is added and shall read in its entirety as follows:

For purposes of repair only, joints in polybutylene (PB) plastic pipe or tubing underground or under a concrete floor slab shall be installed using heat fusion, in accordance with the manufacturer's installation instructions. Joints in copper pipe or tubing installed in a concrete floor slab or under a concrete floor slab on grade shall be installed using wrought-copper fittings and brazed joints.

*P3103.1.1 Roof Extension.* Section P3103.1.1 shall read in its entirety as follows:

Open vent pipes that extend through a roof that do not meet the conditions of Section P3103.1.2 or P3103.1.3 shall terminate not less than twelve inches (12") above the roof.

(Ordinance 9925, sec. 1, adopted 5/28/2019; Ordinance 10597 adopted 2/25/2025)

#### **§ 4-11-4. Appeals.**

Whenever the owner of a building or structure or its duly authorized agent, or the applicant for a building permit is aggrieved by any order or decision of the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Residential Code and the same rules and regulations shall apply as are fully set out in said Building Code.

(Ordinance 9925, sec. 1, adopted 5/28/2019)



**Chapter 4-12**

**ENERGY CODE**

***Editor's note(s)***—*Ord. No. 8819, § 1, adopted July 27, 2010, amended former Title, IV, Ch. 12, §§ 4-12-1, 4-12-2, in its entirety to read as herein set out. Former Ch. 12 pertained to similar subject matter and derived from Ord. No. 8373, § 1, adopted Jan. 10, 2006.*

**§ 4-12-1. Code adopted.**

The specifications, rules and regulations entitled 2015 International Energy Conservation Code, as promulgated published by the International Code Council, Inc., are hereby adopted as the Energy Code of the City as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

(Ordinance 8819, sec. 1, adopted 7/27/2010; Ordinance 9496, sec. 1, adopted 10/20/15)

**§ 4-12-2. Changes and additions to adopted energy code.**

Notwithstanding any revisions in this Chapter or said adopted Energy Code to the contrary, the latter is adopted with certain changes, additions and deletions of the following sections and provisions thereof, to wit:

*C101.1 Title.* Section C101.1 shall read in its entirety as follows:

This code shall be known as the International Energy Conservation Code of Midland, Texas, and shall be cited as such. It is referred to herein as "this code."

*C109 Board of Appeals.* Section C109 is renamed Means of Appeal.

*C109.1 General.* Section C109.1 is renamed Application for appeal and shall read in its entirety as follows:

A person shall have the right to appeal a decision of the Code Official to the Board of Appeal, per the International Building Code Section 113.

*R101.1 Title.* Section R101.1 shall read in its entirety as follows:

This code shall be known as the International Energy Conservation Code of Midland, Texas, and shall be cited as such. It is referred to herein as "this code."

*R101.2 Scope.* Section R101.2 shall read in its entirety as follows:

This code applies to residential buildings and the building sites and associated systems and equipment except one-and two-family dwellings and the building sites and associated systems and equipment. The 2015 International Residential Code Chapter 11 shall be the Energy Code for one-and two-family dwellings, sites, systems and equipment.

*R101 Board of Appeals.* Section R109 is renamed Means of Appeal.

*R109.1 General.* Section R109.1 is renamed Application for appeal and shall read in its entirety as follows:

A person shall have the right to appeal a decision of the Code Official to the Board of Appeal, per the International Building Code Section 113.

(Ordinance 8819, sec. 1, adopted 7/27/2010; Ordinance 8968, sec. 1, adopted 1/10/2012; Ordinance 9496, sec. 1, adopted 10/20/15)



**Chapter 4-13**

**CONSTRUCTION WORK HOURS**

**§ 4-13-1. Definitions.**

As used in this chapter:

After-hours construction activity means construction activity during hours other than the established construction hours.

After-hours construction permit means a permit issued by the building official that authorizes after-hours construction activity.

After-hours emergency construction activity means after-hours construction activity that must be immediately performed to prevent or mitigate harm to the health and safety of the public or a building's occupants that may reasonably arise, or that has arisen, from a sudden and unexpected event.

Building official means the city's building official or the building official's designee.

Construction activity means any construction, earth-disturbing activity, or stockpiling related to the erection, excavation, demolition, alteration, or repair of any building, or the clearing, grading, excavating, filling, or demolition of any construction site, or curb, gutter, or sidewalk construction.

Established construction hours means the hours of 7:00 a.m. to 7:00 p.m.

Hospital means an acute care hospital or a chronic care hospital, as such terms are defined in section 11-1-2.01 of the city code.

Occupied means being used by a person or being associated with an active city utility account.

Residential use has the meaning given that term in section 11-1-2.01 of the city code.

(Ordinance 10598 adopted 2/25/2025)

**§ 4-13-2. Prohibited activity.**

(A) Prohibited after-hours construction activity. A person shall not perform after-hours construction activity within 600 feet of an occupied residential use or a hospital.

(B) Exception. It is an exception to the application of subsection (A) that the person possessed an after-hours construction permit or was working at the direction of another who possessed an after-hours construction permit at the time the person performed the after-hours construction activity, and the person was acting in compliance with the conditions of the after-hours construction permit.

(Ordinance 10598 adopted 2/25/2025)

**§ 4-13-3. After-hours construction permit.**

(A) Application. A person may submit to the building official an application for an after-hours construction permit that satisfies the following requirements.

1. The application shall contain a written explanation of the reasons for the request, including facts establishing:
  - (a) That the after-hours construction activity is of urgent necessity;
  - (b) That the public interest will be served by the performance of the after-hours construction activity; or
  - (c) That the after-hours construction activity will not disturb the peace and quiet of nearby occupied residential uses or hospitals.

2. The application must be received by the building official at least five business days prior to the date of commencement of the after-hours construction activity.

(B) Decision. Within five business days of receiving an application for an after-hours construction permit, the building official shall make a determination on the application and notify the applicant thereof as provided in this subsection.

1. If, based on the information contained in the application, the building official finds that the after-hours construction activity is of urgent necessity, will serve the public interest, or will not disturb the peace and quiet of nearby occupied residential uses or hospitals, the building official shall issue an after-hours construction permit. The after-hours construction permit shall contain the following condition: "The permittee shall take reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location stated in this permit." The building official may make the after-hours construction permit subject to additional conditions determined by the building official to be reasonable. If the building official makes the after-hours construction permit subject to additional conditions, the building official shall specify the additional conditions in the after-hours construction permit.
2. If, based on the information contained in the application, the building official does not find that the after-hours construction activity is of urgent necessity, will serve the public interest, or will not disturb the peace and quiet of nearby occupied residential uses or hospitals, the building official shall issue a written decision denying the after-hours construction permit.

(C) Duties of after-hours construction permittee. A person to whom an after-hours construction permit is issued shall comply with the following requirements:

1. Complete a notice form, to be provided by the building official, and provide the completed notice form to the occupants of property located within 600 feet of the site of the after-hours construction activity prior to the commencement of the after-hours construction activity.
2. Conspicuously post a written notice of the after-hours construction activity on the site of the after-hours construction activity, and maintain the posting of the notice for the term of the after-hours construction permit. The notice shall identify:
  - (a) The name and telephone number of the property owner or the property owner's authorized agent; or
  - (b) The name and telephone number of the contractor or the contractor's authorized agent.
3. Comply with the conditions of the after-hours construction permit, including taking reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location stated in this permit.

(D) Revocation. At any time, the building official may revoke an after-hours construction permit if the building official determines that a permittee or a permittee's agents or employees are not acting in compliance with a condition of the permit, a provision of this chapter, or a provision of any other applicable ordinance or law.

(E) Effect on local noise regulations. It is an affirmative defense to prosecution of a noise-related offense, including a violation of section 6-6-13 of the city code, that the noise was directly caused by the person's performance of after-hours construction activity in accordance with an after-hours construction permit and that the person was taking reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location of the after-hours

construction activity.

(Ordinance 10598 adopted 2/25/2025)

**§ 4-13-4. Offense; affirmative defense.**

- (A) Offense. A person who violates a provision of this chapter 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 separate violation of a provision of this chapter.
- (B) Culpable mental state not required. Evidence of a culpable mental state is not required to prove a criminal offense under this chapter. It is hereby declared that, for all offenses under this chapter, the culpable mental state required by section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (C) Affirmative defense. It is an affirmative defense to prosecution of an offense under this chapter that the person was performing after-hours emergency construction activity.

(Ordinance 10598 adopted 2/25/2025)

**Title V: Business Regulations**

**CLOSING-OUT SALES**

**Chapter 5-1**

**CLOSING-OUT SALES**

**§ 5-1-1. Inventory to be filed; license required.**

It shall be unlawful for any person to advertise or conduct any sale of goods, wares or merchandise that is represented as a bankrupt, insolvent, assignee's, adjuster's, trustee's, executor's, administrator's, receiver's, wholesale jobber's, manufacturer's, closing-out, liquidation, closing stock, fire or water damage, or auction sale, or any other sale which is by representation or advertisement intended to lead the public to believe that the person conducting such sale is selling out or closing out the wares or merchandise of any business in the City, without first filing with the city secretary the inventory provided for in Section 5-1-2 of this Chapter and obtaining from him a license so to do, to be known as a "closing-out sale license."

(Ordinance adopted 3/23/1934)

**§ 5-1-2. Contents of inventory.**

The inventory required by Section 5-1-1 hereof shall contain a complete and accurate itemized list of the stock of goods, wares and merchandise to be sold at any sale for which a license is required, together with the wholesale price thereof, which inventory or list shall be signed by the person seeking the affidavit at the foot thereof, he or his agent swearing or affirming that the information therein given is full and complete, true and known by him or such agent to be so.

(Ordinance adopted 3/23/1934)

**§ 5-1-3. Limitations on issuance of license.**

Only one closing-out sale license shall be issued to any one person within a 12-month period and no such license shall be issued for more than 90 days.

(Ordinance adopted 3/23/1934)

**§ 5-1-4. License fees.**

The fees for closing-out sale licenses shall be and the same are hereby fixed as follows:

- (A) For a period not exceeding 30 days, \$100.00.
- (B) For a period not exceeding 60 days, \$125.00.
- (C) For a period not exceeding 90 days, \$150.00.

If the person or persons (including corporations) who owned and operated the business for which the license was obtained, or any combination of them, actually cease and desist such operation and do not open a similar business in the City for a period of 90 days following expiration of the license period, then, and in that event, the city secretary shall refund the license fee.

(Ordinance adopted 3/23/1934; Ordinance 5337 adopted 6/27/1978)

**§ 5-1-5. Limitations on sale merchandise.**

It shall be unlawful to sell, offer or expose for sale at any closing-out sale, or to list on such inventory, any goods, wares or merchandise which are not the regular stock of the store or other place, the business of which is to be closed out by such sale, or to make any replenishment or additions to such stock for the purpose of such sale or during the time thereof, or to fail, neglect or refuse to keep accurate records of the articles or things sold, from which records the city secretary may ascertain the kind, quantity or number sold.

(Ordinance adopted 3/23/1934)

**§ 5-1-6. Verification of inventory and goods sold.**

The city secretary may, in his discretion, verify the details of an inventory filed for the purpose of obtaining a closing-out sale license, or he may take a check and verify the items of merchandise sold during the sale. It shall be unlawful for any person to whom a closing-out sale license has been issued to fail or refuse to give the city secretary, or any person designated by him for that purpose, all the facts connected with the stock on hand or the proper information as to goods sold.

It shall be the duty of the city secretary in all cases where applications are made for licensees to conduct closing-out sales to see that such inventories contain full and complete itemized information as to such stock of goods and the city secretary shall refuse to issue a license unless such inventory contains the information required by this Chapter.

(Ordinance adopted 3/23/1934)

**§ 5-1-7. Certain jewelry must be tagged.**

Where diamonds, precious stones and semiprecious stones are sold at a closing-out sale auction a tag shall be attached to such diamond, precious stone or semiprecious stone, which shall not only contain a full, and complete and accurate description of the same, stating its size, grade and quality and the retail price for which it was offered for sale prior to the time of the beginning of the sale, but shall also contain a statement of the weight of such diamond, precious stone or semiprecious stone.

(Ordinance adopted 3/23/1934)

**§ 5-1-8. Misrepresentation by auctioneers.**

It shall be unlawful for any person acting as auctioneer in a sale described in Section 5-1-1 to make any statements which are false in any particular or which have a tendency to mislead any person present, or to make any misrepresentation whatsoever, or at all, as to the quantity, quality, character, present condition, value or cost or the general selling price, or whether new or secondhand, or partly so, of any property offered for disposal by auction sale.

(Ordinance adopted 3/23/1934)

**§ 5-1-9. Duty of auctioneer.**

It shall be the duty of the auctioneer at a closing-out sale auction to make some description of the person making a bid every time a bid is announced and also to point to, or to designate, the position on the premises of the bidder.

(Ordinance adopted 3/23/1934)

**§ 5-1-10. Cappers and boosters.**

It shall be unlawful for any person to act as a by-bidder or what is commonly known as a "capper" or booster at any such closing-out sale auction or place where any such auction shall take place, or to offer or make any false bid, or to offer any false bid to buy or to pretend to buy any such article sold or offered for sale at any such auction.

(Ordinance adopted 3/23/1934)

**§ 5-1-11. Invoice.**

It shall be the duty of the person whose merchandise is being sold at a closing-out sale auction to give each and every purchaser of any article, the selling price of which amounts to the sum of \$2.50 or more, an

invoice containing a full description of the article, and the selling price thereof, together with a statement giving each and every warranty under which the article was sold. A duplicate of such invoice shall be kept.  
(Ordinance adopted 3/23/1934)

**§ 5-1-12. Application of Chapter.**

The provisions of this Chapter shall not be applicable to trustees in bankruptcy, executors, administrators, receivers or public officers acting under judicial process.  
(Ordinance adopted 3/23/1934)

**CLOSING-OUT SALES**

**Chapter 5-2**

**JUNK AND SECONDHAND GOODS DEALERS**

**§ 5-2-1. Definitions.**

Unless it appears from the context that a different meaning is intended, the words defined in this Chapter shall have the meanings ascribed to them in this Section:

Junk: Means and includes scrap iron, tin, brass, copper, lead, zinc and all metallic substances, except precious metals, handled, purchased, received or offered for sale by dealers in junk, and shall mean and include secondhand plumbing and electric fixtures, wires, globes, brass pipe, lead pipe and pipe of other metals, melted metals of any kind, such parts of machinery or machines that may be identified as such, any fixtures pertaining to a residence, business house or other houses of any kind, automobile accessories, including horns, prestolite tanks, tires and all detached and detachable parts of any automobile, motorcycle, bicycle or motor vehicle of any kind, or of any vehicle of any kind, hydrants, faucets, lawn hose, lawn sprinklers, gas fixtures, fittings and appliances, garden tools, mechanical tools of every description, harness, rags, rubber, rope, bottles and utensils of every description. The enumeration of the articles above shall not be held to exclude other articles that may be reasonably included under the general definition of junk when given its usual trade meaning.

Junk dealer: Means and includes any person engaged in collecting, handling or selling any of the articles defined as junk, and all persons engaged in the buying and selling of secondhand goods, wares and merchandise.

Person: Any individual, firm, association, partnership, company, corporation, group or entity of any nature whatsoever.

Secondhand goods: Any article, material, item, fixture or other personal property of any type, kind or nature whatsoever, or any portion thereof, of which use has been made in any manner whatsoever, and shall also include all merchandise purchased by a secondhand goods dealer for resale if not purchased from an authorized representative of the manufacturer or an authorized wholesaler for same.

Secondhand goods dealer: Any person holding for sale or lease any secondhand goods in the regular course of business. The term shall specifically mean any pawnbroker, salvage or junk dealer, or any owner of real property on which property is conducted a flea market or used goods swapping market, and any person who shall organize any flea market or used goods swap market, etc. However, it shall specifically not be deemed to include any person in a retail business who does not purchase any secondhand goods for resale but acquires the same solely by means of trade-ins on new goods.

Exceptions: Neither the term "junk dealer" nor the term "secondhand goods dealer" shall include the following:

- (A) Any person in a retail business who does not purchase any secondhand goods or junk for resale but acquires the same solely by means of trade-in on new goods.
- (B) Any person who acquires drinking water or beverage containers of metal, glass or plastic for the purpose of recycling.

**§ 5-2-2. Records.**

- (A) Each junk dealer and secondhand goods dealer, or person who shall purchase any kind of junk or secondhand material, shall keep consecutively numbered receipts and record thereon consecutively each article received, permanently and legibly written in English. When purchasing articles for in excess of \$25.00, the dealer shall record in that receipt book and on the appropriate receipt the date of the transaction and an accurate description of the person selling the article, including the person's name, race, sex, age, and residence address, and the dealer shall further require presentation and recordation of the number of either the seller's military identification, driver's license, or approved

State of Texas identification card. On that same receipt the junk dealer or secondhand goods dealer shall record an accurate description of the item purchased. That description shall be with such specificity as would enable one to identify the particular item with reasonable certainty. That description shall specifically include, when available, any brand name, serial number, model, color, descriptive marking, or other readily discernible identifying characteristic of the item. In addition to the foregoing, before any junk dealer or secondhand goods dealer shall purchase articles of any description for in excess of \$25.00, the dealer shall secure from the person selling the same a sworn statement indicating that the seller has legal, marketable title to the articles which he is selling to the junk or secondhand goods dealer.

- (B) When disposing of a large item pursuant to Section 5-2-4(B) of this Title and Chapter, the junk or secondhand goods dealer shall record the sale on consecutively numbered receipts, indicating the description of the item, the sales price of the item, and an accurate description of the person purchasing that item, including the person's name, race, sex, age, residence address, and a number from either that person's military identification, driver's license, or approved state identification card.
- (C) The junk and secondhand goods dealer may keep separate receipt books for acquisition of items and disposition of items so long as each contains consecutively numbered receipts. Each junk dealer and secondhand goods dealer shall retain copies of the consecutively numbered receipt books herein required, which copies shall be available for surrender to the City of Midland police department upon request. Such copies for surrender to the police department shall be arranged in consecutive receipt number order.

(Ordinance 6847 adopted 5/24/1988; Ordinance 6880 adopted 10/25/1988)

### **§ 5-2-3. Accessibility of records to police.**

The book or record specified in Section 5-2-2 above shall be accessible at all times to the police of the City or any other peace officer, and all such police or peace officers shall have the right at all times to examine such record when searching or looking for lost or stolen articles, or in determining whether or not the provisions of this Chapter are being faithfully kept and observed.

All junk and secondhand goods dealers shall keep a copy of this Chapter posted in a conspicuous place at their places of business.

Any person dealing in junk or secondhand goods, or purchasing same, who fails or refuses to comply with the provisions of this Chapter, or any person who fails to permit any police or peace officer to, at any time, inspect the books, shall be deemed guilty of a misdemeanor.

(Ordinance 5014 adopted 11/25/1975)

### **§ 5-2-4. Restrictions on sale of purchases.**

- (A) No junk or secondhand goods dealer shall sell or remove from the dealer's place of business any junk or secondhand goods within five business days after the dealer has purchased or acquired the same. All articles received which the dealer shall sell shall be kept separate and apart from all other articles so that they may be fully identified for a full five business days after they have been received by the dealer. Should a junk dealer or secondhand goods dealer store such items at a place other than his usual and regular place of business and in plain sight, that dealer shall register such location and describe the location in particular with the Midland police department. This Section shall not apply to scrap iron, used tin, rags, and bones.
- (B) Any item which is functionally indivisible and occupies space in excess of 25 cubic feet may be sold

after two business days by the dealer acquiring that item if that dealer complies with the recordation requirements of Section 5-2-2(B) of this Title and Chapter.

(Ordinance 6847 adopted 5/24/1988)

#### **§ 5-2-5. Prohibited purchasing.**

No junk dealer or secondhand goods dealer shall receive or purchase any junk or secondhand goods from any intoxicated person, nor from any person under the age of 18 years, except upon the written consent of the parent or guardian of such minor, and in that event such writing shall be preserved by such junk or secondhand goods dealer for a period of not less than 12 months after the last entry, for public inspection, and when any such purchase is made from any minor with such consent, a notation of the same shall be made on the book or register herein required to be kept by such dealer.

#### **§ 5-2-6. Examination of articles by police.**

Every junk or secondhand goods dealer shall at all times allow the chief of police or other police officer the privilege of examining all articles he may have received, whether at his place of business or elsewhere, for the purpose of ascertaining whether or not the articles are lost or stolen property.

#### **§ 5-2-7. License required.**

No junk or secondhand goods dealer shall transact or engage in the business of a junk or secondhand goods dealer within the corporate limits of the City until he shall have secured an annual license therefor.

(Ordinance 5014 adopted 11/25/1975)

#### **§ 5-2-8. Application for license.**

An applicant for a junk or secondhand goods dealer's license required by the preceding Section shall make a request therefor, in writing, on a form approved by the City, addressed to the chief of police, which application shall contain the name, residence and street number, and date of birth of the applicant. In the case of a firm or corporation, the statement shall show the individual members of the firm, including addresses and dates of birth, and if a corporation, the names, addresses, and dates of birth of the officers thereof.

The application shall contain the following words: "The license hereby applied for shall be subject to all of the provisions and regulations of the Code of the City of Midland relating to junk and secondhand goods and dealers in the same."

(Ordinance 6847 adopted 5/24/1988)

#### **§ 5-2-9. Oath and certificate required.**

The application for a junk or secondhand dealer's license shall be signed and sworn to by the person applying therefor, before some officer authorized by law to administer oaths; or in the case of a partnership or corporation, by one member of the firm or officer or agent of the corporation, and shall be accompanied by a certificate signed by three responsible citizens of the City certifying that the applicant is a safe and proper person to engage in the business of a junk or secondhand goods dealer.

(Ordinance 5014 adopted 11/25/1975)

#### **§ 5-2-10. Granting and refusal of license.**

(A) The application provided for in this Chapter shall be filed with the chief of police. In determining

whether the city's junk or secondhand goods dealer's license should be granted or rejected, the chief of police shall consider any record of the applicant for criminal offenses which directly relate to the dealings and responsibilities of a junk and secondhand goods dealer. In determining whether a conviction for a felony, misdemeanor or for a violation of the Midland City Code directly relates to the duties of a junk and secondhand goods dealer, the chief of police shall consider:

1. The nature and seriousness of the crimes;
2. The relationship of the crime to the purposes for requiring a junk and secondhand goods dealer's license;
3. The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously has been involved;
4. The relationship of the crime to the ability, capacity, or fitness required to perform the duties of a junk and secondhand goods dealer;
5. The extent and nature of the applicant's past criminal activity;
6. The age of the applicant at the time of the commission of the crime;
7. The amount of time which has elapsed since the applicant's last criminal activity;
8. The conduct and work activity of the applicant prior to and following the criminal activity;
9. Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release;
10. Other evidence of the applicant's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the applicant resides; and any other person in contact with the convicted applicant; and
11. It shall be the responsibility of the applicant to the extent possible to secure and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required under this act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(B) The chief of police shall deny or grant the junk and secondhand goods dealer's license within seven calendar days of receiving the application.

(Ordinance 6751 adopted 4/28/1987)

#### **§ 5-2-11. License fee.**

An initial license fee of \$25.00 shall be paid to the city secretary by any applicant for a junk and secondhand goods dealer's license. Thereafter, should that license be renewed in a timely fashion, an annual fee of \$10.00 shall be paid to the city secretary on January 1 of each year which the licensee wishes the license to continue to remain in effect. Should a license lapse, the initial fee of \$25.00 must be paid before renewing the same.

**§ 5-2-12. Bond.**

No junk or secondhand goods dealer within the corporate limits of the City shall engage in business or shall be granted a license therefor unless that junk or secondhand goods dealer shall have executed a bond in the sum of \$1,000.00 with a surety company authorized to do business in the state also signing that bond. The bond shall be approved by the city attorney as to form. The bond shall be conditioned that such dealer will strictly and faithfully observe the provisions of this Chapter and of the applicable laws of the state and other provisions of this Code regulating such business of a junk or secondhand goods dealer that may be passed by the Council. That bond shall also be subject to being sued on by any person aggrieved, in a court of competent jurisdiction, if that person can establish that any article or thing found in the possession of that junk or secondhand goods dealer shall be identified as lost or stolen property belonging to the claimant. Prior to bringing such suit, the claimant must issue 15 days' demand to the junk or secondhand goods dealer to deliver that property to the claimant or to make payment in kind. In an action between an aggrieved individual and the junk or secondhand goods dealer, the City shall not be liable for court costs or any contribution of any kind. At any time the bond herein required shall be deemed insufficient by the city manager, written notice thereof shall be given the principal, and if a new bond is not furnished within five days after such notice, the license of the principal shall be cancelled.

**§ 5-2-13. License cancellation.**

Conviction for violating any of the provisions of this Chapter or for violating any of the laws of the State of Texas or of the United States of America relevant to the conducting of a junk or secondhand goods dealership shall be sufficient cause for the cancellation of the city junk and secondhand goods dealer license. In determining whether a junk or secondhand goods dealer license should be revoked, the chief of police shall consider the grounds for rejecting that license in relation to the factors enumerated in Section 5-2-10 of this Title and Chapter.

**§ 5-2-14. Procedures upon denial or revocation.**

- (A) Any person whose city junk and secondhand goods dealer license is revoked by the chief of police or who is denied a license by the chief of police may appeal that denial to the city manager within ten days of the order of denial or revocation. Upon denying or revoking a license, the chief of police shall inform in writing the person affected of the reasons for denial or revocation, the earliest and latest date and manner in which that person may appeal such denial or revocation, and the person's rights of review pursuant to Vernon's Ann. Civ. St. art. 6252-13d.
- (B) The appeal to the city manager shall be initiated by filing a written objection with the city manager. The written objection shall state what the action or decision of the chief of police should have been and why it should have been so. Upon receipt of the written objection, the city manager shall set the same down for a hearing to be held within the next 48 hours, excluding weekends and holidays, and advise all parties of the date, time and place of the hearing. The person filing the appeal shall state in his appeal a mailing address and telephone number where he will receive all notices.
- (C) At hearings before the city manager, all witnesses will be sworn. The city manager will hear the testimony of the chief of police or other witnesses the chief of police wishes to testify that the city manager deems relevant. Additionally, the city manager will hear the testimony of the persons aggrieved along with any witnesses the person aggrieved may call that the city manager deems relevant. The city manager will review all documents and exhibits submitted to him by the parties. The city manager will not be bound by formal rules of evidence and will control the evidence, reserving to himself the power to exclude testimony or exhibits he does not consider relevant.

Both the chief of police and the person filing the appeal will be allowed representation by an attorney and the cross examination of witnesses.

- (D) Within 48 hours of the close of the hearing, excluding weekends and holidays, the city manager will issue a written opinion affirming the chief of police's decision or granting the person filing the appeal a junk and secondhand goods dealer's license. The city manager, within 48 hours of the close of the hearing, shall reduce to writing his decision. The city manager will file the original of his decision with the Midland city secretary, and will send one copy to the person filing the appeal and will send one copy to the chief of police.

(Ordinance 6847 adopted 5/24/1988)

City of Midland, TX

**JUNK AND SECONDHAND GOODS DEALERS**

**Chapter 5-3**

**PEDDLERS**

***Editor's note(s)***—*Ord. No. 8252, §§ 1, 2, adopted Aug. 24, 2004, repealed the former Tit. V, Ch. 3., §§ 5-3-1—5-3-15, and enacted a new Tit. V, Ch. 3 as set out herein. The former pertained to similar subject matter and derived from ordinances that can be found in the code comparative table.*

### **§ 5-3-1. Legislative findings.**

The city council finds that individuals and organizations have been and are visiting private residential properties in the city for the purposes of peddling goods, wares, merchandise or services, and that some residents find such visits to be bothersome and intrusive. The city council further finds that a variety of misrepresentations and other frauds are at times employed in such activities. The council finds that one of the justifications for this ordinance is crime prevention. The council finds that a justification for this chapter is an attempt to prevent burglaries, violent crimes and other crimes. The city council further finds that public safety and convenience necessitates the exercise of the police power of the city through the enactment and enforcement of this chapter for the purpose of protecting the privacy of residents and preventing fraudulent practices by persons representing themselves as peddlers. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access to materials and ideas protected by the First Amendment or to deny access by the peddlers to their intended market. This chapter does not give unfettered discretion to a governmental official to grant or deny a license. This chapter imposes adequate standards for officials to apply when deciding whether to grant a license and imposes procedural safeguards to guarantee a prompt decision. This chapter is only concerned with the secondary effects of a peddler and this licensing requirement is content neutral. The council further finds that the chapter establishes clear guidelines limiting the discretion of the city official designated to issue the license to ensure that protected speech is not suppressed. This chapter expressly limits the time the city official has to act on the license application and the time limit expressed in this chapter is explicit and is reasonable. The council finds that this chapter provides for the availability of prompt judicial review in the event that a license is erroneously denied. The council further finds that the status quo may be preserved for revocations and suspensions until a judicial determination is rendered. The fee assessed in this chapter is reasonably related to the city's costs in supervising these licenses. The fee is not a tax imposed on the exercise of a constitutional right but only recoups the city's costs in providing a service. The fee is reasonable in light of the actual costs to the city in administering the licensing program. The council finds that this chapter is an appropriate balance between the affected speech and the governmental interests that this chapter serves. This chapter shall be construed to apply only to commercial activities and the solicitation of funds.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

### **§ 5-3-2. Peddler defined.**

**Peddler** means any person who goes upon the premises of any private residence in the city, not having been requested or invited by the occupant thereof, selling or taking orders for, or offering to sell or take orders for goods, wares or merchandise for present or future delivery, or for services to be performed immediately or in the future, whether or not such person has, carries or exposes a sample of such goods, wares or merchandise and whether or not the person is collecting advance payments on such sales.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

### **§ 5-3-3. License required; exemption.**

- (a) Except as otherwise provided by this chapter, it is unlawful for any person to act as a peddler within the city without having first obtained a license issued pursuant to this chapter. Each individual peddler shall obtain a license.
- (b) A peddler who does not offer for sale any goods or services with an asking price or requested donation

of more than \$20.00 is exempt from the licensing requirements of this chapter including the payment of fees. Such peddlers shall be subject to section 5-3-8 and section 5-3-9 of this chapter. For example, if a peddler has for sale candles, and the highest priced candle is \$15.00, the peddler is not required to obtain a license. This is true even if a customer purchases two candles for a total of \$30.00.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

#### **§ 5-3-4. Application for license.**

Applicants for a license under this chapter shall file with the chief of police an application in writing on a form to be furnished by the police department, and said applicant shall give the following information:

- (a) Name and physical description of the applicant.
- (b) Date of birth, driver's license or other identification number. The City of Midland is prohibited from disclosing the driver's license number to the public because of Section 552.130 of the Texas Government Code. If this law changes, the city council will reconsider this requirement.
- (c) Permanent home address.
- (d) Local address and telephone number.
- (e) The nature or character of the goods, wares, merchandise or services to be offered by the peddler.
- (f) If employed, the name, address and telephone number of the employer.
- (g) The length of time for which the right to peddle or solicit is desired.
- (h) The police department shall photograph the applicant as part of the application.
- (i) A statement as to whether or not the applicant has been convicted of any felony or misdemeanor involving moral turpitude. As to any such offense, the date and place of conviction, the nature of the offense, and the punishment or penalty imposed must be provided.
- (j) The applicant must sign the application.
- (k) A copy of the applicant's limited sales and use tax permit for the state.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

#### **§ 5-3-5. License fee.**

At the time the application is filed with the police department, the applicant shall pay a fee sufficient to cover the cost to the city of processing the application. The amount of the fee shall be set at \$4.00.  
(Ordinance 8252, sec. 2, adopted 8/24/2004)

#### **§ 5-3-6. Investigation and license issuance.**

- (a) The chief of police, or authorized representative, shall approve the issuance of a license to an applicant within six days after receipt of an application unless he or she finds one or more of the following to be true:
  - (1) The applicant has failed to pay the application license fee.
  - (2) An applicant has failed to provide information reasonably necessary for the issuance of the license or has falsely answered a question or request for information on the application form.

- (3) The applicant has given material misleading information in the application for a license.
- (4) The applicant has been convicted of a misdemeanor of moral turpitude, or any felony for which less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date. The fact that a conviction is being appealed shall have no effect.
- (5) The applicant has previously been convicted for violation of any provision of this chapter within the last year, or who has had any license issued pursuant to this chapter revoked within the last year.
- (6) If the application is disapproved, the police chief's disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his or her application is disapproved and that no license will be issued. Notice shall be mailed to the applicant at the address shown on the application form, or at the applicant's last-known address.
- (7) The chief of police, if he approves the application, shall deliver the required license and identification badge to the applicant. The chief of police or designated official shall sign the approved application. In the event the chief of police does not issue an application or deny an application within six days of receipt of the application, the applicant is entitled to a temporary permit upon written demand, which is valid until the second day after the chief of police finally makes his or her decision denying or granting the license. Thus, if the chief of police, or appropriate designee, fails to issue a decision within six days of receiving the application, the applicant is entitled to a temporary permit upon written demand.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

#### **§ 5-3-7. License expiration.**

All licenses issued under the provisions of this chapter shall expire six months from date of issuance. The license may be renewed only by making a new application.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

#### **§ 5-3-8. Hours of operation.**

It is unlawful for any peddler to enter upon any residential premises between eight p.m. and ten a.m. However, between November 1 and April 1 inclusive, it shall be unlawful for any peddler to enter upon any residential premises between seven-thirty p.m. and ten a.m.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

#### **§ 5-3-9. Peddling where "no peddlers" sign is posted.**

It is unlawful for any person described as a peddler in this chapter to perform or attempt to perform the acts described in such section by ringing the doorbell or knocking at the door or otherwise calling attention to the person's presence at any residence whereon a sign bearing the words "no peddlers", "no solicitors" or words of similar import is painted or affixed so as to be exposed to public view, and no such person described as a peddler shall perform or attempt to perform any of the acts described at a residence where a sign bearing the words "no peddlers", "no solicitors" or words of similar import, is painted or affixed so as to be exposed to public view.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

**§ 5-3-10. Other conditions and regulations.**

The following conditions and regulations shall also apply to the exercises of the privileges granted by licenses issued under the provisions of this chapter in addition to those set forth in other parts of this chapter or elsewhere in this code:

- (a) Every peddler issued a license and identification badge must be in possession of the license and identification badge at all times when engaged in the business so licensed within the city. While engaged in the business so licensed within the city, the peddler must produce and show the license and identification card on the demand of any person solicited or of any police officer. No person issued a license or an identification badge shall alter, remove or obliterate any entry made upon such license or badge, or deface such license or card in any way. Each license and badge shall be personal and not assignable or transferable, nor shall any license or badge be used by any person other than the licensee or the person for whom the identification badge is issued.
- (b) Every peddler who solicits orders for future delivery shall, if requested by the customer, provide a receipt plainly stating the quantity of each article or commodity ordered, the price to be paid therefor, the total amount ordered and the amount to be paid on or after delivery.
- (c) Every peddler shall, if requested by the customer, provide his/her name, business address and business telephone number and the name, business address and telephone number of the person, organization, or entity on whose behalf solicitation is being made.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

**§ 5-3-11. Revocation or suspension of license.**

- (a) A license issued under this chapter shall be suspended or revoked by the chief of police for any of the following causes:
  - (1) Fraud, material misrepresentation or false statement contained in the application for license;
  - (2) Fraud, misrepresentation or false statement made in the course of carrying on the business of a peddler;
  - (3) Any violation of this chapter if the violation is made knowingly or intentionally;
  - (4) The licensee has been convicted of a felony or misdemeanor involving moral turpitude for which less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date. The fact that a conviction is being appealed shall have no effect on the revocation of the license;
  - (5) A licensee or applicant gave false or materially misleading information in the material submitted to the chief of police during the application process.
- (b) This section shall be self-executing and the notice of the suspension or revocation shall be effective immediately upon receipt by the licensee. The chief of police shall give notice of the suspension or revocation of the license and the right to appeal per section 5-3-14 and sufficient notice shall be given if mailed or delivered to the licensee at licensee's last known local address as shown on the application. If there is no local address, notice shall be sent to the permanent home address as shown on the application. The notice is presumed to be received by licensee three days after the notice is mailed to the licensee, first class mail, certified mail, returned receipt requested. The chief of police, or his designee may deliver the revocation by personal service.

- (c) The chief of police shall suspend a license for a period not to exceed 30 days if he determines that a licensee has violated or is not in compliance with any portion of Chapter 5-3 of the Midland City code.
- (d) When the police chief revokes a license, the revocation shall continue for two months and the licensee shall not be issued a peddlers license for three months from the date revocation became effective. If, subsequent to revocation, the chief of police finds that the basis for the revocation has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

**§ 5-3-12. Distribution of handbills, religious materials, political materials, and petition are excluded from regulation.**

Nothing in this chapter shall prohibit persons from distributing handbills door-to-door within the city without a permit. Nothing in this chapter shall prohibit distributing religious materials or ideas, political materials or ideas, or circulating a petition door-to-door within the city without a permit. Nothing in this chapter shall prohibit a political candidate from going door-to-door within the city without a permit.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

**§ 5-3-13. Violations.**

- (a) Violations of any of the provisions of this chapter shall be treated as an infraction, conviction for which shall be punishable as set forth in chapter 1-3-1 of the Midland City Code. The maximum fine for a violation of this chapter shall be \$500.00.
- (b) In addition to any criminal enforcement, the city or any individual may pursue any available civil remedies deemed necessary.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

**§ 5-3-14. Appeal.**

If the police chief denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The notice shall be sent to the licensee's or applicant's last known local address as shown on the application. If there is not a local address, notice shall be sent to the permanent home address as shown on the application. The aggrieved party may appeal the decision of the police chief to a state district court in Midland County on a trial de novo basis. Filing an appeal in a district court stays the chief of police's decision in suspending or revoking a license until the district court makes a final decision. All decisions of the police chief become final within 30 days.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

**§ 5-3-15. City shall maintain the status quo.**

The chapter does not effect a peddler operating when the chapter becomes effective. The status quo must be similarly maintained for those peddlers. Until the chief of police's licensing decision becomes final, the city cannot regulate under the peddlers regulation a peddler operating on the effective date of the chapter and seeking a license. Until the chief of police's licensing decision becomes final, the city shall not regulate under this chapter a peddler operating on the effective date of the chapter and seeking a license. The city shall not shut down an existing peddler while the peddler's application for a license is pending if the peddler was operating when the City of Midland adopts this regulation.

(Ordinance 8252, sec. 2, adopted 8/24/2004)

**PEDDLERS**

**Chapter 5-4**

**ALCOHOLIC BEVERAGES**

**§ 5-4-1. License fee required.**

It shall be unlawful for any person to manufacture, distill, brew, transport, store, distribute or sell, either wholesale or retail, any alcoholic beverage (as defined in V.T.C.A., Alcoholic Beverage Code § 1.04) without having first paid the license fee provided and levied by this Chapter and having applied for and secured from the city secretary a receipt showing the payment of the license fee required by the terms and provisions of this Chapter.

(Ordinance 4567 adopted 6/23/1971)

**§ 5-4-2. License fees.**

To the extent authorized and at the times specified by the Texas Alcoholic Beverage Code, there is hereby levied and assessed a city fee of one-half of the state fee required by the Texas Alcoholic Beverage Code against every person that may be issued any permit by the state for the manufacture, distilling, brewing, transporting, storing, distributing, or sale of any alcoholic beverage within the City.

(Ordinance 4567 adopted 6/23/1971)

**§ 5-4-3. Receipt.**

The city tax assessor-collector shall provide suitable and proper blanks for issuing the receipts referred to in Section 5-4-1 and shall keep a duplicate copy of all license receipts issued as a part of the records of his office, and such license receipts shall be countersigned by the city secretary, who shall keep a record of the same in his office. All license receipts issued under the terms of this Chapter shall terminate at midnight on the day before the second anniversary date of their issuance, and no license receipt shall be issued covering a longer term than two years.

(Ordinance 4567 adopted 6/23/1971; Ordinance 8756, sec. 1, adopted 10/13/2009)

**§ 5-4-4. Prohibited places of business.**

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

(Ordinance 4567 adopted 6/23/1971)

**§ 5-4-5. Sale prohibited on public property.**

Notwithstanding any other provision of this Code to the contrary, it shall be unlawful for any person to sell any alcoholic beverages on the premises of any city-owned public airport, public park or playground, or any other public property, without the approval and permission of the City Council.

(Ordinance 4682 adopted 3/14/1972)

**§ 5-4-6. Consumption in certain places prohibited.**

- (A) It shall be unlawful for any person to consume any alcoholic beverage (as defined in V.T.C.A., Alcoholic Beverage Code § 1.04(1)) in or upon any motor vehicle when the said motor vehicle is upon a public highway, road, street, alley, or sidewalk within the City.
- (B) It shall be unlawful for any person to consume any alcoholic beverage (as defined in V.T.C.A., Alcoholic Beverage Code § 1.04(1)) in or upon any public highway, road, street, alley or sidewalk within the City.

- (C) The possession of an alcoholic beverage, not in the original unopened container, shall be *prima facie* evidence of consumption for purposes of subsection (A) and subsection (B) above. Provided, however, that this Section shall not apply to any alcoholic beverage that is locked in the trunk of a motor vehicle in such a manner as to be inaccessible from the interior or to any person riding in such vehicle.
- (D) Provided, however, that the provisions of subsection (B) above shall not apply to any public highway, road, street, alley or sidewalk within the City that has been temporarily closed to public use for vehicular or pedestrian traffic by order of the City Council for special events and for special civic occasions.

(Ordinance 6463 adopted 10/16/1984)

**ALCOHOLIC BEVERAGES**

**Chapter 5-5**

**MOBILE HOMES AND VACATION TRAVEL TRAILERS**

**§ 5-5-1. Definitions.**

The following definitions shall apply in the interpretation and enforcement of this Chapter:

- (A) **Mobile home.** Any structure, including expanding and doublewide units, designed for longterm occupancy; and designed and constructed or transported on a permanent or temporary chassis for delivery to a site; and which constitutes a complete, individual dwelling, either alone or, in the case of a doublewide unit, in two sections, when connected to the required utilities on a site. A mobile home shall be construed to remain a mobile home, subject to all regulations applying thereto, whether or not the wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. The term "mobile home as a fixed dwelling" is used in the zoning code to describe a mobile home (or modular home as that term is sometimes applied to a dwelling which conforms to this definition) that has been permanently installed on a foundation and is permitted in appropriate zoning district(s) specified herein. As used in this Chapter, the term "mobile home" shall not include any structure or unit that is less than eight feet in width or less than 40 feet in length.
- (B) **Vacation travel trailer.** A vacation travel trailer is a vehicular portable structure designed for a temporary or shortterm 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.
- (C) **Mobile home park.** Any single contiguous tract of land under one ownership, uninterrupted by streets, alleys or any other public space, other than a mobile home mini-park, where accommodations are provided for nontransient mobile home use.
- (D) **Vacation travel trailer park.** A vacation travel trailer park is any tract of land under single ownership and containing two acres or more where accommodation is provided for transient trailer use.
- (E) **Mobile home or vacation travel trailer space.** A plot of land within a mobile home or vacation travel trailer park or mobile home mini-park designated for the accommodation of a single mobile home or vacation travel trailer.
- (F) **Mobile home or vacation travel trailer stand.** Mobile home or vacation travel trailer stand is that area of a mobile home or vacation travel trailer space that is reserved for the placement of a mobile home or vacation travel trailer. Each vacation travel trailer stand shall consist of not less than two four-inch-thick solid reinforced concrete ribbons, not less than 30 inches wide each, for the placement of each vacation travel trailer. The concrete ribbons shall be a sufficient length to accommodate any vacation travel trailer placed thereon so that all wheels can rest on the concrete ribbons. Each mobile home or vacation travel trailer stand shall be provided with adequate "tiedowns" to secure the superstructures against uplift, sliding, rotation and overturning.
- (G) **Space width.** The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.
- (H) **Owner.** Any person who has control, direction, maintenance and supervision of a mobile home park, mobile home mini-park or vacation travel trailer park, not including one who has rented or leased a space or spaces in the park.
- (I) **Unit.** A "unit" is any house, car, trailer or any unit or vehicle intended for or capable of being moved from place to place, either by its own power or by power supplied by some vehicle attached or to be attached, which is maintained, placed, used, intended or designed to be used as living or sleeping

quarters for one or more persons, except pickup trucks with campers mounted thereon.

- (J) **Mobile 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 mobile home sites on a shortterm or longterm basis, said spaces being situated and configured similar to individual lots.
- (K) **Space lines.** The lines bounding a mobile home space as defined herein.
- (L) **Attached accessory structure.** Any structure located closer than a distance of six feet from a mobile home.
- (M) **Manufactured home.** A manufactured home is defined as a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, and 40 body feet or more in length, or when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 CFR § 3282.8(g). All the provisions of this Chapter shall apply to a manufactured home to the same extent that any provision applies to a mobile home.

(Ordinance 4541 adopted 4/13/1971; Ordinance 4855 adopted 4/15/1974; Ordinance 4908 adopted 12/17/1974; Ordinance 5910 adopted 1/26/1982; Ordinance 5920 adopted 1/26/1982; Ordinance 6175 adopted 3/29/1983; Ordinance 6304 adopted 10/11/1983; Ordinance 7592, sec. 1, adopted 3/11/1997; Ordinance 7628, sec. 1, adopted 7/8/1997)

### **§ 5-5-2. Location.**

It shall be unlawful for any person to locate a mobile home or vacation travel trailer within the City except as provided in Sections 5-5-3, 5-5-12, 5-5-14, 11-1-6(A)5, 11-1-6(B)6, 11-1-10(A)27 and 11-1-10(A)27a of this Code.

(Ordinance 5920 adopted 1/26/1982)

### **§ 5-5-3. License required.**

It shall be unlawful for any person to establish or operate a mobile 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 therefor in full conformity with the provisions of this Chapter.

### **§ 5-5-4. Application for license.**

Application for the license required by Section 5-5-3 of this Chapter shall be in writing and shall be filed with the building inspector. Such application shall set forth the name and address of the applicant, the names and addresses of the parties to be in charge and a proper description of the location of a mobile home park or vacation travel trailer park, which shall be within one of the zone districts established in Section 5-5-2. The applicant shall comply with all the requirements mentioned in this Chapter as to size, location of the space to be allowed each unit, and sanitary facilities, with specifications and plans which shall comply with this Chapter and which will comply with all building, zoning, health, sanitary and police regulations of the City of Midland.

To this application shall be attached ten copies of a site plan, 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 mobile 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 buildings constructed or to be constructed within the park;
- (G) Existing and proposed topography of the mobile 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 provided; and
- (I) Such other information as municipal reviewing officials may reasonably require.

A print of the site or plot plan shall be circulated to the following city departments or divisions by the planning official, and approval obtained from them prior to issuance of a permit or zone change request: water department, public works department, traffic engineering department, planning department, health department, fire department, police department and tax division of the finance department. This plot plan does not replace or supersede the subdivision plat of the property required by state law to be recorded in the county records in the county in which the property is located, after review and approval of the Midland planning commission.

#### **§ 5-5-5. Application fee.**

A fee of \$10.00 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.

#### **§ 5-5-6. License fee.**

Upon the approval of an application provided for in Sections 5-5-4 and 5-5-5 of this Code, an annual license shall be issued upon payment of a fee of \$25.00 plus \$1.00 for each space designated on the plan of a mobile home park or vacation travel trailer park. 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 mobile home park or vacation travel trailer park at all times.

#### **§ 5-5-7. Types of license.**

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

- (A) Type I. Type I shall be for mobile home parks which are to accommodate only those mobile 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 Chapter and subject to having the license revoked.

- (B) Type II. 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 Chapter.

**§ 5-5-8. Cancellation of license.**

Upon any violation of the provisions of this Chapter, the building inspector shall notify the owner of the mobile 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 this 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.

(Ordinance 4908 adopted 12/17/1974)

**§ 5-5-9. Development regulations, mobile home parks, mobile home mini-parks and travel trailer parks.**

All mobile home parks and vacation travel trailer parks constructed in whole or in part after April 22, 1971, and all mobile home mini-parks, shall conform to the following requirements, and all existing such parks (as of April 22, 1971, the effective date hereof) shall become nonconforming uses and subject to all applicable regulations of the City pertaining thereto, respectively, to wit:

(A) Mobile home parks.

1. Where allowed.
  - (a) A specific use permit shall be secured for mobile home parks in any district other than a C-3 Commercial District.
  - (b) Mobile home parks shall be allowed in the C-3 Commercial District subject to all rules and regulations set forth by this Chapter.
2. Density. The maximum allowed density shall be seven mobile homes per acre.
3. Initial development of any mobile home park shall not be less than eight acres fully improved with utility serviced spaces and shall be defined on all site plans.
4. Tenant storage. Mobile home parks shall provide storage facilities of 120 cubic feet minimum on each mobile home space.
5. Recreation area. A landscaped recreation area or areas totaling not less than eight percent of the total mobile 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 mobile 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.
6. Parking requirements. Two spaces conforming to all requirements of Chapter 11-1, of the Midland City Code shall be provided for each mobile home space. Such parking spaces shall not be over 300 feet from the mobile homes they serve.

(B) Vacation travel trailer parks.

1. Where allowed. A specific use permit shall be secured for vacation travel trailer parks in any district.
2. Density. The maximum allowed density shall be 12 travel trailers per acre.
3. Initial development of any vacation travel trailer park shall be not less than two acres.
4. Sanitation facilities. Vacation travel trailer parks shall provide water closets, baths or showers and other sanitation facilities which shall conform to the following requirements:
  - (a) 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 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.
  - (b) 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.
  - (c) Toilet facilities.
    - (1) 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.
    - (2) 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.

(C) Mobile home and vacation travel trailer parks.

1. Setbacks and space requirements.

	<b>Mobile Home Park</b>	<b>Vacation Travel Trailer Park</b>
Spacing:		
Between mobile 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 mobile structure to adjacent mobile structures	3 ft.	3 ft.
Rear and side park property lines	10 ft.	5 ft.
Front park property lines	25 ft.	15 ft.
From interior streets	15 ft.	10 ft.

	<b>Mobile Home Park</b>	<b>Vacation Travel Trailer Park</b>
From cul-de-sac streets	25 ft.	10 ft.
Space width	40 ft.	25 ft.

Space requirements: Each mobile home space shall provide a minimum area of 3,500 square feet, however, no mobile home space shall have dimensions less than 40 feet on the narrow dimension nor 80 feet on the long dimension.

2. **Patio roofs and carports.** Mobile home and vacation travel trailer spaces may have open, unenclosed patio roofs and carports of metal, fiberglass or other noncombustible materials.
3. **Utilities.**
  - (a) **Water supply.** An adequate supply of potable water for domestic and fire protection purposes shall be supplied to meet the requirements of the park. Mobile 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.
  - (b) **Sewage disposal.** Waste from showers, bathtubs, water closets, and lavatories in mobile 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-county health department.
  - (c) **Natural gas.** Mobile home and vacation travel trailer space shall be provided with a natural gas hookup at least four inches above the ground.
  - (d) **Electric service.** Underground service shall be provided throughout mobile home parks and vacation travel trailer parks and service to individual mobile 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.
  - (e) All utilities supplied to mobile homes or vacation travel trailers shall comply with all applicable plumbing, gas and electric codes and regulations of the City.
4. **Lighting.**
  - (a) Entrances and exits to mobile home parks and vacation travel trailer parks shall be lighted with one or more luminaries (or fixtures) totaling at least 7,700 lumens.
  - (b) The interior area of mobile 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.
5. **Walks.** All interior walks of mobile 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.
6. **Interior streets.** Interior asphalt streets shall be provided to service each mobile home and

vacation travel trailer space. All spaces shall abut upon such paved interior streets which shall connect with a public street. In mobile 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 curbline of the 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.

7. Ingress and egress. All mobile home parks and vacation travel trailer parks shall have a double drive entrance separated by a 30-foot median, and secondary entrance streets will be provided at a minimum interval of 300 feet along the perimeter of the park and abutting a public dedicated street. Such streets shall have standard curb and gutter and shall not be less than 36 feet wide. Entrance streets may be chained for control as long as a breakaway lock is used. All curb cuts on public streets must comply with the provisions of the City Code.
8. Driveway or accessway. A driveway or accessway shall be reserved from the street to the mobile home or vacation travel trailer stand.
9. 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 Chapter 11-1, of the Midland City Code.

(D) Mobile home mini-parks.

1. Any tract developed as a mobile home mini-park shall have a minimum area and dimensions as required by Chapter 11-1, of the Midland City Code. The size of any such park shall not be reduced below these minimum dimensions until all mobile homes have been removed therefrom or, if located in an MH Mobile Home District, until the minimum area regulations for mobile homes as fixed dwellings on individual lots have been met and certificates of occupancy for such use obtained.
2. Each mobile 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.

Sidewalks, where required by Chapter 9-4, of the Midland City Code, and curbs and gutters shall be constructed on the near side of each street abutting a mobile home mini-park, and two parking spaces, paved with concrete or asphalt, shall be provided on each mobile home space to conform to all requirements of Chapter 11-1, of the Midland City Code. These requirements shall be completed by the property owner before any mobile home space is rented or leased and any mobile home placed thereon.

3. Each mobile 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.
4. The minimum yard regulations which shall apply in relation to the boundaries of a mobile home mini-park and the maximum height limits shall be those of the zoning district in which the park

is located.

5. The minimum distance between mobile homes at any point shall be 12 feet. Accessory structures shall observe the following setback regulations:
  - (a) Attached accessory structures shall observe the same minimum separations from mobile homes and attached accessory structures on adjacent spaces as required for mobile homes.
  - (b) 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 mobile home or attached accessory structure. Further, detached accessory structures shall be located not less than six feet from any mobile home space line, except as follows:
    - (1) 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.
    - (2) 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.
6. The coverage of a space by a mobile 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.
7. No structure shall be built as an addition to a mobile home except a self-standing patio cover and/or carport without enclosed sides and no storage shall be permitted under the mobile home except transportation wheels.
8. Connections to utilities by mobile 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 mobile home shall not be permitted prior to the same having passed all city inspections regarding utility hookups and placement and a certificate of occupancy having been issued.
9. Each mobile home placed in such a park shall conform to all regulations of Chapter 4-1, of the Midland City Code applicable to mobile 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 Labor and Standards, if applicable, including but not limited to construction, foundation blocking, tiedowns and utility connections.

(Ordinance 5920 adopted 1/26/1982; Ordinance 5943 adopted 3/9/1982)

#### **§ 5-5-10. Sanitation facilities.**

Vacation travel trailer parks shall provide water closets, baths or showers and other sanitation facilities which shall conform to the following requirements:

- (A) 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.
- (B) 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.

(C) Toilet facilities.

1. 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.
2. 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.

(Ordinance 4908 adopted 12/17/1974)

**§ 5-5-11. General regulations pertaining to mobile home and vacation travel trailer parks.**

- (A) Removal of trash and garbage. Mobile 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.
- (B) Register of occupants. It shall be the duty of the licensee of any mobile home park or vacation travel trailer park to keep a register containing a record of all owners and occupants located within the park. This register shall be kept for a period of seven years and be readily available for inspection by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register. The register shall contain the following information:

1. Name and address of each occupant.
2. The make, model and year, license number and state registration of all automobiles, mobile homes and vacation travel trailers.
3. The date of arrival and departure of each mobile home and vacation travel trailer.

(C) Fire protection.

1. Mobile home parks.
  - (a) Each mobile home shall contain a five-pound CO-2 fire extinguisher at all times.
  - (b) Fire hydrants shall be installed so that no mobile home space will be over 500 feet from a hydrant.
  - (c) There shall not be any storage under the mobile home.
  - (d) Fences around mobile homes shall not be over 36 inches high across the front of the space.
2. Vacation travel trailers.
  - (a) Each vacation travel trailer shall contain a five-pound CO-2 fire extinguisher at all times.
  - (b) Fire hydrants shall be installed so that no vacation travel trailer space will be over 500 feet from a hydrant.
  - (c) There shall not be any storage under the vacation travel trailer.

(D) Supervision. A responsible attendant or supervisor, owner or operator shall be in charge at all times to keep the mobile home 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 Chapter of the City Code.

**§ 5-5-12. General regulations pertaining to mobile home mini-parks.**

(A) Mobile home location permits.

1. Permit required. No mobile home may be located or emplaced within this district unless a location permit for such mobile home has been issued by the city inspection division, and it shall be unlawful for any person to locate or emplace a mobile home or cause or permit the same to be located or emplaced unless the requisite location permit has been issued for such mobile home.
2. Application for location permit. The application for a location permit shall contain the following information:
  - (a) The name of the company or person emplacing the mobile home.
  - (b) The name of the registered owner of the mobile home.
  - (c) The legal description, address and owner of the location to which the applicant is intending to move the mobile home.
  - (d) A description of the mobile home, including manufacturer's serial number, length, width, make and year model.
  - (e) The location from which the mobile home is being moved.
3. Issuance of location permit. Upon receipt of an application for a location permit from a mobile home owner or his agent, and upon determination that the requirements of this Chapter and all other applicable regulations are satisfied, the building official shall issue a location permit to the applicant or his agent.
4. Location permit fee. Following approval of the application, and for the purpose of defraying the administrative costs of processing such application, a fee of \$10.00 shall be paid for the issuance of the location permit.
5. Unlawful to permit emplacement. It shall be unlawful for the owner or person in charge of premises to permit a mobile home to be located or emplaced on such premises unless the requisite location permit has been issued for such mobile home as provided in subsection (A)1 above.

(B) Mobile home mini-park license.

1. No location permit shall be issued for emplacement of a mobile home in each park until a license has been obtained by the owner of said park. 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 mobile 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 of \$10.00 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.

2. 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.
  3. Cancellation of license. Upon any violation of the provisions of this Chapter, the building official shall notify the owner of the mobile 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 this 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.
- (C) Site plan requirements. Before any mobile home may be emplaced in or upon any mobile 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 Chapter:
1. Name and address of property owner.
  2. Location and legal description of the proposed mobile home mini-park.
  3. The area, dimensions and boundaries of the tract of land proposed for such park.
  4. The number, location and size of all proposed mobile home spaces.
  5. The location, width and types of all private driveways and walkways, if any.
  6. The location and details of any fences around the boundaries of the park.
  7. The location and types of all permanent buildings within the proposed mobile home park.
  8. The location and types of gas, electrical, water and sewer lines.
  9. The setbacks to be observed by mobile homes, attached accessory structures and detached accessory structures as required to conform to Section 5-5-9(D) above.
  10. All public sidewalks, curbs and gutters and paved parking spaces as required herein.

#### **§ 5-5-13. 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 mobile home park, mobile home mini-park or vacation travel trailer park.

(Ordinance 5920 adopted 1/26/1982)

#### **§ 5-5-14. Special permits.**

Upon satisfactory proof that the applicant qualifies for one of the exceptions set out hereinafter in subsection (C), temporary special permits may be issued by resolution of the City Council for mobile homes as provided herein. Such permit for a mobile home may be issued for any specified location (unless otherwise restricted herein) within the City, subject to the following rules and regulations:

- (A) Only one mobile 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 15 days before such application is considered by the Council).
- (B) Said application shall be processed as provided for applications for mobile home or vacation travel trailer park licenses in the preceding sections of this Chapter and subject to the same requirements regarding utilities, sewer connections, drainage and removal of trash and garbage for mobile homes, but the application fee shall be \$50.00 and no annual license shall be required. The use and occupancy of any mobile home shall be subject to all other ordinances, rules and regulations of the City applicable to single-family residences.
- (C) Special permits may be issued as follows:
  - 1. Special hardship permits. Upon satisfactory proof of medical or other conditions constituting a genuine hardship, a special temporary permit may be issued to the owner of a mobile home for location on a lot or tract owned by him or a member of his immediate family and which shall only be occupied by such owner and his family or other member or members of his immediate 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 City Council may, upon subsequent application, approve renewals of such permits for successive periods of not more than two years each for as long as said 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 Council shall consider the following:
    - (a) 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;
    - (b) 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
    - (c) Any alternatives for relieving the hardship which the Council considers appropriate.
  - 2. 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 mobile 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 mobile 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.
- (D) The Council may impose any special conditions, restrictions, or limitations on such permits as it deems to be in the public interest after full hearing on said application and reserves, at all times, the right and power to revoke any such permit for violation of any of its terms after hearing at which the holder thereof has been given at least five days' notice.

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 mobile home on the property, for review and approval as a part of their applications. Any mobile home permitted shall observe all area regulations applicable to single-family residences unless the City Council specifically approves an exception to such requirements in its approval of the special temporary permit.

- (E) No such special permit shall ever be issued until after a hearing before the City Council 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 ten 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.
- (F) 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 City Council shall be considered by the Council before the expiration of six months from the date of such previous denial.  
(Ordinance 4908 adopted 12/17/1974; Ordinance 6229 adopted 6/14/1983; Ordinance 6672 adopted 7/8/1986; Ordinance 8375, sec. 2, adopted 1/24/06)

#### **§ 5-5-15. Parking restrictions.**

No person shall park, place or locate any trailer, trailer house, mobile 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 curbline, traveled portion or extension thereof of an intersecting public street or highway.

No person shall park or locate any mobile 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, except as provided for in Title V, "Business Regulations," Chapter 5-5, "Mobile Homes and Vacation Travel Trailers," Section 2, "Location," of the Midland City Code, or if unoccupied in a C-3 Commercial District Zone, or less restrictive zone.

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.

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 5, "Parking in residence districts," of the Midland City Code.  
(Ordinance 6570 adopted 7/23/1985; Ordinance 6672 adopted 7/8/1986)

**§ 5-5-16. Penalty.**

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$500.00. Each day such violation shall continue shall constitute a separate offense.

(Ordinance 6790 adopted 9/22/1987)

City of Midland, TX

**MOBILE HOMES AND VACATION TRAVEL**

**Chapter 5-6**

**TAXICABS**

***Editor's note(s)***—*Ord. No. 9577, §§ 1—9, adopted June 28, 2016, amended Chapter 6 in its entirety to read as herein set out. Former Chapter 6, §§ 5-6-1—5-6-9, pertained to similar subject matter, and derived from Ord. No. 7736, § 1, adopted May 26, 1998; Ord. No. 7779, §§ 1—3, adopted Oct. 13, 1998; Ord. No. 7925, §§ 1, 2, adopted March 28, 2000; Ord. No. 7958, § 1, adopted Aug. 8, 2000; Ord. No. 7991, adopted Dec. 12, 2000; Ord. No. 8645, §§ 1—9, adopted June 10, 2008.*

### § 5-6-1. Definitions.

Unless otherwise indicated by the context, the following terms used in this chapter shall be held to have the meaning as herein defined:

- (A) **Cruise or cruising**:The movement of unoccupied taxicabs over the public streets of the City in search of prospective passengers for hire; except, however, unoccupied taxicabs proceeding to answer a telephone call for taxicab service from an intending passenger, and taxicabs running by the most direct route, after having discharged a passenger, to the garage where such taxicab is housed or to the unoccupied taxicab stand nearest the place of discharge of the passenger or passengers, or to a bar, club, or retail establishment that will allow the standing of taxicabs on private property, shall not be considered to be cruising.
- (B) **Driver**:Any person who is actually driving a taxicab, limousine, or contract carrier vehicle while the vehicle is being used to deliver or pick up passengers, or is stopped and waiting to pick up passengers, whether as owner or agent, servant or employee of the owner.
- (C) **Owner**:Any person who has any control or direction over a driver who is operating a taxicab, limousine, or contract carrier and receives over the operation of a transportation for hire business or derives the benefit of the collection of revenue derived from the operation of vehicles transporting persons for hire on or over the streets or public ways of the City, whether as owner, or otherwise, and who appears as the owner of the vehicle on the registration and title of the vehicle, and is the person whose name appears on the operating certificate.
- (D) **Person**:Shall include both singular and plural and shall mean a person, firm, corporation, association, partnership, society or trustee, trustees, receiver or receivers thereof.
- (E) **Public stand**:Any place on a public street that is being generally appropriated and used by a taxicab, when not engaged in the transportation of passengers, for the purpose of awaiting public or private patronage.
- (F) **Street**:Any street, avenue, alley, highway, square or park within the City limits.
- (G) **Taxicab**:Every automobile or motor propelled vehicle used for the transportation by a driver of passengers for hire over the public streets of the City and irrespective of whether or not the operations extend beyond the incorporated limits of the City at rates for distance traveled, or for waiting time, or both, or at rates per hour, per week or per month; provided, however, the term "taxicab" shall not apply to:
  - 1. Motorbuses or limousines operated within the incorporated limits of the City under a franchise or permit from the City over a fixed or defined route;
  - 2. Motorbuses or limousines regularly operated over a fixed and defined route in the City to or from points outside the limits of the City;
  - 3. Ambulances that are permitted and regulated by the state department of health; or
  - 4. Vehicles operated exclusively as contract carriers.

- (H) **Limousine**:Any motor vehicle, with a driver, that is not equipped with a meter or device calculating the distance traveled or waiting time and that is engaged in the business of carrying passengers who control what the route will be and destination and who are charged based on the length of time the motor vehicle is engaged or by fixed rate schedule. The term "limousine" shall not include:
1. Vehicles rented without drivers;
  2. Taxicabs;
  3. Touring vehicles;
  4. Publicly franchised buses;
  5. Vehicles owned or operated by motels, hotels, and other businesses for the transporting of their guests or employees free of charge; or
  6. Vehicles operated exclusively as contract carriers.
- (I) **Contract carriers**:Carriers who transport persons for hire under the provision of a contract but do not publicly advertise themselves as a carrier and are not open to the solicitation of rides from individuals not covered by a contract.
- (J) **Motorbus**:Any vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or the suburban additions to the municipality, including airports. This term does not include over the road carriers, charter buses, or interstate buses.
- (K) **Shuttle**:Any chauffeured vehicle, other than a passenger car, with a minimum passenger capacity of five or more persons used to transport persons for compensation exclusively within the limits of a municipality or the suburban additions to the municipality, including the Midland International Air and Space Port. The operator shall provide transportation services seven days a week, as required to take any passenger desiring transportation to and from all scheduled airline flights at Midland International Air and Space Port.

(Ordinance 9577, sec. 1, adopted 6/28/2016)

## **§ 5-6-2. Operating certificates.**

- (A) **Operating certificate required**.It shall be unlawful for any person to knowingly operate a taxicab, limousine, or motorbus service, or permit such operation within the City without having first obtained an operating certificate required by this chapter.
- (B) **Grant of operating certificate**.No operating certificate shall be granted except when the same shall be authorized by resolution passed by the Council after compliance by the applicant with the provisions of this chapter; provided, that no operating certificate shall ever be granted unless the Council finds a public necessity exists for the service and that the applicant is, in the opinion of the Council, capable of rendering such service. No application shall be considered by the City Council until it has been on file with the City Secretary at least 15 days prior to the City Council meeting at which it is to be considered.
- (C) **Application for operating certificate**.Any person who is desiring to obtain an operating certificate to operate a taxicab business, limousine, or motorbus service in the City shall file a written, verified application directed to the Council with the city secretary, with a copy to the Chief of Police, setting forth full and complete information on the following matters:

1. The full name and permanent residence and mailing address of the applicant. If a partnership, then such information shall be given on all partners and persons having an interest in the business. If a corporation, the name and location of its principal place of business, the name and address of all the officers, directors and all stockholders in the corporation;
2. The current occupation of all persons having an interest in the taxicab business;
3. A financial statement of applicant. The same shall be furnished on each partner and if a corporation, the same shall reflect the financial status of the corporation;
4. A complete statement of the assets going into the taxicab business, limousine service, or motorbus service, for which the application is being made together with full information on liabilities existing against such assets;
5. The address and description of the contemplated headquarters of the taxicab company, limousine service, or motorbus service, and the location and description of other taxicab stands to be put into operation;
6. The trade name of the taxicab operation, limousine service, or motorbus service;
7. Corporate applicants must supply a copy of their corporate charter or a copy of the corporation's certificate from the Texas Secretary of State indicating the corporations authority to conduct business in the state;
8. An experience record of applicant related to operation of a taxicab or other commercial transportation;
9. Whether applicant operates or has an interest in any taxicab business, limousine service, or motorbus service anywhere other than Midland and complete information concerning the same;
10. Previous arrests and/or convictions for misdemeanor or felony offenses, including the nature of the offense, the date of arrest, and the jurisdiction in which the arrest occurred;
11. All information which is required of an applicant for a city chauffeur's license pursuant to Subsection 5-6-5(D), whether or not the applicant for the operating certificate intends to drive a taxicab, limousine, or motorbus;
12. The applicant shall submit a plan outlining the applicant's program for the random testing of its employees to determine if any of the employees are using illegal drugs. The plan must include, at a minimum, that 50 percent of the employees of the applicant and that 50 percent of the contract drivers be tested at least once each year. The cost of this program shall be the total responsibility of the applicant. Proof of compliance of this section shall be submitted to the City on an annual basis;
13. Such additional factual information as may be required under authority of the City Manager to afford complete information to the Council when presented to them in considering the application;
14. Limousine services, or motorbus services describe in particular the type of service, service area, and any other pertinent information on the proposed business, such information being complete enough for the Council to make a determination on whether to issue an operating certificate or deny the issuance of the operating certificate.

(D) Grant or rejection of operating certificate application: Such application shall be acted on by the

Council at a regular meeting thereof. If rejected by the Council, such determination by the Council shall be final.

- (E) Revocation of operating certificate: The Council shall have the right to revoke any operating certificate for:

1. Misrepresentation of facts given in the application;
2. For violation of provisions of this Code or state or federal laws by the holder of the operating certificate;
3. For violation of any provisions of this chapter or state or federal law by any person holding a city chauffeur's license and operating a vehicle under the operating certificate of another;
4. For knowingly or recklessly allowing vehicles operating under the person's operating certificate to be used in the transportation of people before, during or after the commission of a violation of a local, state, or federal law, ordinance, or regulation; or
5. For knowingly or recklessly allowing vehicles operating under the person's operating certificate to be used in the transportation of goods, supplies, equipment, or other personal property for which the person does not have a required local, state, or federal license to transport or which is otherwise unlawful to transport.

Written notice to the holder of an operating certificate which is subject to revocation shall be given of a hearing before the Council on the question of revocation of his operating certificate not later than ten days prior to the hearing by the City Council.

- (F) Insurance requirements: At the time of application and at all times during the term of the operating certificate, the holder of the operating certificate shall carry and maintain in force automobile liability insurance which meets the following minimum requirements:

1. The policy is written by a financially stable insurance company authorized to do business in the state and which is acceptable to the City. Such policies of insurance shall be issued by a company authorized to do business in the state that is in good standing which means that there is no order by the commission of insurance that the company is in a hazardous financial condition as described by Article 1.32, Insurance Code or an order placing the company in a state of supervision, conservation or ancillary conservation under Article 21.28-A, Insurance Code. The insurance must include a cancellation rider under which the insurance company is required to notify the city secretary in writing not fewer than 30 days before canceling the insurance policy and not fewer than 30 days before the insurance policy is due for renewal of the company's intention to renew or not renew the policy. If there is any question as to the solvency of the insurance company writing that insurance, then the Council or City Manager reserves the right to require that coverage to be written by a more financially stable company;
2. The coverage shall be:
  - (a) Not be less than \$20,000.00 for bodily injury or death in any one accident;
  - (b) Not less than \$40,000.00 because of injury or death of two or more persons in any one accident;
  - (c) Not less than \$15,000.00 for property damage;
  - (d) Not less than \$2,000.00 for personal injury protection for passengers;

- (e) Include uninsured motorists coverage in the same amounts as required for liability coverage;
3. A certificate of insurance indicating compliance with this subsection shall be filed with the city secretary at the time of application for the operating certificate;
4. The operating certificate holder shall be responsible for and shall file with the city secretary written assurance from the insurance company on the policy mentioned above that notice in writing shall be given to the City of its intention to cancel the insurance coverage not later than 30 days prior to the proposed cancellation date, and shall be signed by a duly authorized agent or representative of that insurance company;
5. The operating certificate holder shall be fully responsible for maintaining the insurance required by this chapter and section regardless of whether the City has been notified of cancellation of the insurance, and the City shall never be deemed to have assumed any liability by reason of a failure or bankruptcy of a company or by reason of the failure of the franchise holder to keep in force these insurance requirements. The operating certificate holder must provide proof that the minimum insurance requirements set forth in [Subsection] 5-6-2(F)2 are being met at all times by providing the city secretary with appropriate certificates of insurance. Failure to comply with the requirements of this chapter in regard to insurance may authorize the Council, in its discretion, to revoke the operating certificate.

(G) Annual fee:

1. Not later than January 31 of each calendar year, every holder of an operating certificate shall pay to the City an annual fee of \$200.00 for each taxicab which operates under that holder's operating certificate; provided that said annual fee shall not exceed a total amount of \$1,500.00, regardless of the number of taxicabs that operate under that holder's operating certificate. However, a holder of an operating certificate for limousine service or motorbus shall pay to the City an annual fee of \$100.00 for each limousine vehicle which operates under that holder's operating certificate; provided that said annual fee shall not exceed a total amount of \$1,500.00, regardless of the number of limousines or motorbuses that operate under that holder's operating certificate. At the time of payment of that fee, the operating certificate holder shall identify the particular vehicle to which the fee applies by license plate number and vehicle identification number;
2. If any holder of an operating certificate shall fail to pay the annual fee within 15 days after the date the same becomes due, the privilege of the holder of the operating certificate to operate, or to allow to operate, that particular vehicle in the City shall be deemed suspended until such fees are paid;
3. No fees shall be refunded for taxicabs, limousines, or motorbuses removed from service during the calendar year; provided, however, the annual fee may be transferred from one vehicle to another vehicle operated under the same operating certificate during the calendar year if:
  - (a) The vehicle for which the fee was originally paid has been removed from service as the result of mechanical failure or damage from an accident which is not repaired or for non-compliance with Subsection 5-6-3(B), and said vehicle is not placed back in service during the year for which the permit fee was paid by any person holding an operating certificate under this chapter; or
  - (b) The vehicle for which the fee was originally paid has been sold and not placed back in

service as a taxicab, limousine or motorbus, during the year for which the permit fee was paid; provided, however, a copy of documents evidencing the transfer of title and proof that all taxicab markings, equipment, and permit stickers have been removed from the vehicle sold must be presented at the time of request for transfer of the permit fee. Such permit sticker shall be returned to Midland Police Department.

4. If the holder of an operating certificate desires to add an additional vehicle during the year, he may pay a prorata fee based on the number of whole and partial months that exist from the date of payment and the next subsequent January 31 that the vehicle will be in service.

(H) In order to maintain an operating certificate for a taxicab service, a company must comply with the following regulations:

1. Maintain an office within Midland or Ector county, staffed by company agents or employees for an eight-hour period between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, five days per week, where records required by this chapter are kept and where vehicles may be inspected and, have a dispatch, or direct phone line, and taxicab service which provides continuous service 24 hours, seven days per week;
2. Submit to the City a copy of a current lease, if applicable, for the company premises, or an affidavit as to ownership and occupancy;
3. Maintain a publicly listed telephone number;
4. Maintain the name and home address of each driver affiliated with the company, along with the name of the person who owns or leases the vehicle operated by the driver;
5. Maintain a log listing the year, make, and model, vehicle identification number (serial number) of each vehicle for hire operating in the company fleet;
6. Maintain sufficient employees or answering devices at the office to answer its telephone after hours of company operation;
7. Provide each driver with a copy of this chapter;
8. Maintain at least one off-street parking lot capable of accommodating its vehicles for hire when not in use;
9. Have knowledge and proof that all vehicles for hire operating for the company have the insurance coverage required herein and have knowledge and proof that such vehicles are in compliance with the standards concerning inspection;
10. Provide taxicab service to the entire City and the Midland International Air and Space Port;
11. Operate at least three taxicabs each month and more if required by the operating certificate. Should a company's fleet drop below the three taxicab minimum or below that required by the company's operating certificate, the company shall have 120 days to bring its fleet into compliance with this section and/or its operating certificate;
12. The permit obtained from the police department is not transferable, or assignable and such benefit or privilege as the permit confers shall be conferred only to the person or corporation named on the permit. However, if a person sells his taxicab for which he has obtained a permit, he may not transfer the permit to cover his newly purchased taxicab;

13. Vehicle inspection; required; times; safe conditions. Before being allowed to operate upon the streets of the City, each taxicab shall be inspected and approved pursuant to the laws of the state. No taxicab shall be driven or operated upon the streets of the City unless the same is in safe condition and free of mechanical defects, brakes in excellent condition, and the interior and exterior appearance shall be clean and maintained in a reasonable state. Each taxicab shall be further regularly inspected once per year by a person designated by the Chief of Police. In the event that a taxicab is not approved, it shall be suspended from operation until it complies with all City requirements;
  14. All taxicabs must also meet the following requirements:
    - (a) The minimum weight of a taxicab shall be 2,000 pounds, as determined by the manufacturer's specifications.
    - (b) No taxicab shall be equipped with shades, curtains, or any other vision-obstructing device.
    - (c) No taxicab shall have less than four doors, including back doors, hatches, or gates, and each taxicab must be either a station wagon, a sedan, or a van.
  15. Any individual or corporation that is currently legally operating a taxicab service under a franchise or license granted by the City Council may continue to operate until August 1, 2008, provided that prior to March 1, 2008, application for a permit of nonconformance has been made and said certificate subsequently issued by the city police department as evidence that such exception is applicable to said vehicle.
- (I) In order to maintain an operating certificate for a limousine or motorbus service, a company must comply with the following regulations:
1. Maintain a place within the county where records required by this Chapter are kept and that vehicles may be inspected and where telephone service is maintained. This telephone shall be answered for an eight-hour period between 7:00 a.m. and 7:00 p.m., Monday through Friday, five days a week, where contact may be made for records or vehicle inspections;
  2. Submit to the City a copy of a current lease, if applicable, for the company premises, or an affidavit as to ownership and occupancy;
  3. Maintain a publicly listed phone number;
  4. Maintain the name and home address of each driver affiliated with the company, along with the name of the person who owns or leases the vehicle operated by the driver;
  5. Maintain a log listing the year, make, model, and vehicle identification number (serial number) of each vehicle for hire operating in the company fleet;
  6. Maintain sufficient employees or answering devices at the office to answer its telephone after hours of company operation;
  7. Provide each driver with a copy of this chapter;
  8. Maintain at least one off-street parking lot capable of accommodating its vehicles for hire when not in use;
  9. Have knowledge and proof that all vehicles for hire operating for the company have the insurance coverage required herein and have knowledge and proof that such vehicles are in

compliance with the standards concerning inspection;

10. The permit from the police department is not transferable, or assignable and such benefit or privilege as the permit confers shall be conferred only to the person or corporation named on the permit. If a person sells his limousine or motorbus for which he has obtained a permit, he may not transfer the permit to cover a newly purchased vehicle;
11. Vehicle inspection; required; times; safe conditions. Before being allowed to operate upon the streets of the City, each vehicle shall be inspected and approved pursuant to the laws of the state. No limousine or motorbus shall be driven or operated upon the streets of the City unless the same is in safe condition and free of mechanical defects, have brakes in excellent condition, and the interior and exterior appearance shall be clean and maintained in a reasonable state. Each limousine or motorbus shall be regularly inspected once a year by a person designated by the Chief of Police. In the event that a limousine or motorbus is not approved, it shall be suspended from operation until it complies with all City requirements.

(Ordinance 9577, sec. 2, adopted 6/28/2016)

### **§ 5-6-3. Vehicle permits.**

- (A) Taxicab permits required: It is unlawful for a driver, owner or any other person to operate a motor vehicle as a taxicab in the City or to permit the operation of a motor vehicle as a taxicab in the City, if said vehicle does not display a valid taxicab permit sticker issued pursuant to this chapter.
- (B) Application for taxicab permit; vehicle requirements: Application for a taxicab permit may be made only in the name of a person holding a valid operating certificate issued pursuant to Section 5-6-2. Vehicles for which an application for a taxicab permit is made must meet the following minimum requirements:
  1. Pass safety tests as required under state law before issuance of a state inspection sticker;
  2. Have a rated seating capacity of at least four passengers, excluding the driver;
  3. Have the name of the taxicab business, and the name of the partnership to which the cab belongs, if applicable, set forth in the operating certificate, painted in letters at least three inches high on both sides of the vehicle, together with a number of that taxicab designated by the operating certificate holder in lettering at least six inches in height under the name of the business;
  4. Have installed on the roof of the taxicab a dome light;
  5. Have inside the taxicab an operating taximeter meeting the requirements set forth in Section 5-6-7;
  6. Have a workable fire extinguisher installed within reach of the driver at all times;
  7. Have all interior upholstery intact, clean, and without tears;
  8. Have no body damage or rust visible on the exterior of the vehicle, and must have wheel covers if the wheels were designed for wheel covers, and shall not be leaking any fluids from the vehicle, with the exception of air conditioner condensation;
  9. Have properly posted on the interior the "complaint notice" sign as required by Subsection 5-6-4(M);

10. Have properly posted on the interior the current schedule of rates set forth in Subsection 5-6-6(D);
11. Have no litter, dirt, debris, or any other matter neither necessary to the safe operation of the vehicle nor the comfort, safety, or convenience of its passengers located within the passenger compartment or trunk;
12. Be equipped with a safe and operable interior heater and a safe and operable interior air conditioner;

(C) Issuance of taxicab permit: The Chief of Police or his designee shall issue a taxicab permit pursuant to this Section 5-6-3 for each vehicle for which application is made if:

1. The vehicle for which application is made complies with the minimum standards of Subsection 5-6-3(B), above;
2. The holder of the operating certificate has provided proof of compliance with the insurance requirements set forth in Subsection 5-6-2(F) for the vehicle;
3. With respect to the vehicle for which application is made, the holder of the operating certificate has paid the annual fee required by Subsection 5-6-2(G); and
4. Complies with all other applicable provisions of this Code.

Taxicab permits issued pursuant to this Section 5-6-3 shall be valid until January 31 of the year immediately following the year of issuance.

(D) Temporary taxicab permits: The Chief of Police or his designee is authorized to issue a temporary permit pending compliance with Section 5-6-3 and that temporary permit shall be good for not more than two weeks from the date of its issuance. If a permanent permit is not obtained before the expiration of the temporary permit, then the taxicab vehicle shall be taken out of service by the operating certificate holder unless, for good cause, the city manager issues an additional temporary permit, pending compliance with the above requirements. No more than two consecutive temporary permits shall be granted.

(E) Display of taxicab permit sticker: A taxicab permit sticker shall be issued for each taxicab indicating compliance with the requirements of this Section which must be displayed in a prominent place on the windshield of the taxicab at all times.

(F) Interim inspections: If at any time a city police officer, community service officer or person designated by the Chief of Police has reason to believe that a particular taxicab operating under a properly issued operating certificate has ceased to meet the requirements of Subsection 5-6-3(B), regardless of whether that particular vehicle bears a valid taxicab permit sticker issued pursuant to this Section, that police officer, community service officer, or designated person may inspect that vehicle to determine its compliance with Subsection 5-6-3(B). If this person's inspection reveals that the vehicle fails to meet the requirements of Subsection 5-6-3(B), the designee of the Chief of Police may revoke the taxicab permit if the holder of the operating certificate fails to bring the particular vehicle into compliance within ten days after issuance of the notice of proposed revocation. The operating certificate holder may appeal the revocation or threatened revocation of such permit to the Chief of Police within ten days of the revocation.

(G) Limousine or motorbus vehicle permits required: It shall be unlawful for an owner, driver, or other person to operate a limousine or motorbus without a valid permit sticker issued pursuant to this

chapter.

- (H) Application for limousine or motorbus vehicle permit; vehicle requirements: Application for a limousine or motorbus vehicle permit may be made only in the name of a person holding a valid operating certificate issued pursuant to this chapter. Vehicles for which an application for a limousine or motorbus permit must meet the following minimum requirements:
1. Pass safety tests as required under state law before issuance of a state inspection sticker;
  2. Have a rated seating capacity of at least four passengers, excluding the driver;
  3. Be painted with the color scheme approved by the Chief of Police or his designee in obtaining issuance of the operating certificate under which the vehicle will operate, or a subsequent color change request that has been approved by the Chief of Police or his designee;
  4. Have a workable fire extinguisher installed, readily accessible to the driver at all times;
  5. Have all upholstery intact, clean, and without tears;
  6. Have no body damage or rust visible on the exterior of the vehicle, and must have wheel covers or custom wheels designed not to have wheel covers;
  7. Have a properly posted "complaint notice" sign as required by Subsection 5-6-4(M);
  8. Have no litter, dirt, debris, or any other matter neither necessary to the safe operation of the vehicle nor the comfort, safety, or convenience of its passengers located within the passenger compartment or trunk; and
  9. Be equipped with a safe and operable heater and a safe and operable interior air conditioner.
- (I) Inspection of limousines or motorbuses: All limousines or motorbuses operating under an operating certificate issued by the City shall be subject to an initial and an annual inspection, to be completed in January of each year. Further, if at any time a city police officer, community service officer, or person designated by the Chief of Police has reason to believe that a particular limousine or motorbus vehicle operating under a properly issued operating certificate has ceased to meet the requirements of this section, that police officer, community service officer, or designated person may inspect that vehicle to determine its compliance with this section. If this person's inspection reveals that the vehicle fails to meet the requirements of this section, the Chief of Police may revoke the vehicle permit if the holder of the operating certificate fails to bring the particular vehicle into compliance within ten days after issuance of the notice of proposed revocation. The operating certificate holder may appeal the revocation or threatened revocation of such permit to the city manager within ten days of the revocation.
- (J) Issuance of limousine or motorbus permit: The Chief of Police or his designee shall issue a vehicle permit pursuant to this section for each vehicle for which application is made if:
1. The vehicle for which application is made complies with the minimum standards of [Subsection] 5-6-3(H), above;
  2. The holder of the operating certificate has provided proof of compliance with the insurance requirements set forth in Subsection 5-6-2(F) for the vehicle;
  3. With respect to the vehicle for which application is made, the holder of the operating certificate has paid the annual fee required by Subsection 5-6-2(G); and

4. Complies with all other applicable provisions of this Code.

Vehicle permits issued pursuant to this section shall be valid until January 31 of the year immediately following the year of issuance, unless revoked prior to that time.

- (K) Temporary limousine or motorbus permits: The City Manager or his designee is authorized to issue a temporary permit pending compliance with Section 5-6-3 and that temporary permit shall be good for not more than two weeks from the date of its issuance. If a permanent permit is not obtained before the expiration of the temporary permit, then vehicle shall be taken out of service by the operating certificate holder unless, for good cause, the City Manager issues an additional temporary permit, pending compliance with the above requirements. No more than two consecutive temporary permits shall be granted.
- (L) Display of limousine or motorbus permit: A permit sticker shall be issued for each limousine or motorbus, indicating compliance with the requirements of this section which must be displayed in a prominent place on the windshield of the vehicle at all times.

(Ordinance 9577, sec. 3, adopted 6/28/2016)

#### **§ 5-6-4. Operation regulations.**

- (A) Maximum seating in taxicabs, limousines, or motorbuses: It shall be unlawful for any person to knowingly operate a taxicab, limousine, or motorbus which is occupied by more than its rated passenger capacity. It shall further be unlawful for any person to knowingly operate a taxicab, limousine, or motorbus in which more than three persons are occupying the front seat of that taxicab, limousine or motorbus.
- (B) Receipt and discharge of passengers: No driver of a taxicab, limousine, or motorbus shall knowingly receive or discharge passengers from or in the traffic lane of any street.
- (C) Transportation of intoxicating beverages prohibited: It shall be unlawful to transport intoxicating beverages not owned and in the exclusive possession and control of a fare paying passenger in the taxicab or motorbus, or for any such vehicle's driver to have on his person any intoxicating beverage while driving and operating a taxicab, limousine, or motorbus in service while transporting a passenger.
- (D) Drinking of intoxicants or smoking is prohibited in taxicabs: It shall be unlawful for any driver or passenger of any taxicab to drink intoxicating beverages of any kind while inside the taxicab.
- (E) Transportation to prostitute's abode or of person committing crime: It shall be unlawful for any taxicab, limousine, or motorbus driver or owner to knowingly transport any passenger to the abode of a prostitute or knowingly to transport any criminal, narcotic peddler, prostitute, bootlegger or any other person in the commission of a crime or infraction of the law in any manner.
- (F) Selling liquor: No driver of a taxicab, limousine, or motorbus or owner of such a vehicle shall engage in selling intoxicating liquors or soliciting business for any person selling intoxicating liquors.
- (G) Transportation of persons other than passenger for hire: No taxicab driver or owner shall permit any other person to occupy or ride in a taxicab, except a passenger for hire. No taxicab driver or owner shall carry any person in such taxicab while on the streets of the City, unless such person has agreed to pay for the use and hire of such taxicab. This does not apply training of cab drivers or an authorized person inspecting the taxicab.

- (H) Cruising: Cruising, as defined in Section 5-6-1 of this Code, by taxicabs, is prohibited.
- (I) Direct route and first use of taxicabs: The first passenger employing a taxicab shall be entitled to its exclusive use until delivered to that passenger's destination by the most practicable and direct route, and no other passengers may be carried unless the passenger or passengers first engaging the taxicab shall consent to the additional passengers not with the first passenger or passengers' party. In all cases, the taxicab driver shall take the most direct and practical route to any passenger's destination unless that passenger consents to another route or directs the taxicab driver otherwise.
- (J) Solicitation of business: No driver of a taxicab shall solicit patronage in a loud or annoying tone of voice or in any manner annoy any person or obstruct the movement of any person or follow any person for the purpose of soliciting patronage.
- (K) Drivers to be neat and clean: It shall be the responsibility of every person operating a taxicab business, limousine service, or motorbus service in the City to require the drivers of the vehicles of such service to be neat and clean in appearance while on duty. No operating certificate holder shall allow any driver working under that holder's certificate to, while on duty, wear soiled or torn clothing, wear cut-off shorts, have offensive body odors or otherwise appear in a less than clean and orderly fashion.
- (L) Transportation of passengers prohibited during suspension or revocation: It shall be unlawful for any operating certificate holder or other person to knowingly continue to transport passengers for hire after the operating certificate holder's certificate has been suspended or revoked as provided by this chapter. It shall be unlawful for any operating certificate holder or other person to knowingly operate any vehicle as a taxicab, limousine, or motorbus if the annual fee on that vehicle, as imposed by Subsection 5-6-2(G), has not been paid.
- (M) Complaint information: All taxicabs, limousines, or motorbuses must display a sign in the rear passenger compartment which is clearly visible to passengers of the vehicle in a form and size approved by the Chief of Police, or his designee, which sign shall inform passengers of their rights, the duties of the operator of the vehicle, and other pertinent information as may be required by the Chief of Police.
- (N) Daily record of receipts: Each operating certificate holder shall keep and maintain a complete and correct record of daily receipts.
- (O) Limousine or motorbus: Routes for limousines or motorbuses shall be determined by the holder of the operating certificate or driver of the vehicle, based upon contractual specifications with the customers.

(Ordinance 9577, sec. 4, adopted 6/28/2016)

### § 5-6-5. City chauffeur's license.

- (A) City chauffeur's license required: It shall be unlawful for any person to drive any taxicab, limousine, or motorbus engaged in the business of transporting passengers upon or over any street within the corporate limits of the City without first having obtained from the Chief of Police a city chauffeur's license.
- (B) Driver regarded as agent of operating certificate holder: Every person who drives or operates a taxicab, limousine or motorbus which is authorized to operate within the City shall be regarded as an agent, representative, and employee of the holder of the operating certificate under which that taxicab, limousine or motorbus operates. Any other contractual or other type of relationship between

the driver of a taxicab and the operating certificate holder shall be irrelevant for purposes of this Code.

- (C) Regulations governing employment of drivers: Every person operating a taxicab business, limousine service, or motorbus service in the City shall employ as drivers of their vehicles only persons who are physically and mentally fit and able to operate a motor vehicle for hire, and also furnish to the City a valid state driver's license. It shall be the full responsibility of the operator of the business to select and employ drivers who are qualified for taxicab service, limousine service, or motorbus service, who can read and write the English language, who are familiar with the streets and addresses in the City and who are morally acceptable for such public service. The continued employment or contractual retention by an operating certificate holder of any person as a driver, when that person is a known criminal, or whose record as the driver of a motor vehicle, as reflected by official police and court records, shows a lack of mental, emotional, moral, or temperamental capacity to be a safe and reliable driver, or of any person who violates this Code more than three times within any given year, or commits two violations in a 90-day period, or a major safety violation, will be taken into consideration by the city manager or City Council when it is requested to grant, renew, or revoke any operating certificate to operate a taxicab service in the City. Every operator of a taxicab business or service is charged with the knowledge of the police and court records of all drivers in his employ or contractual retention and no such operator shall employ or retain a contract with any person, as a driver, who frequently violates laws relevant to the operation of taxicabs, limousines, or motorbuses.
- (D) Application; fee: Before obtaining a city chauffeur's license, the applicant shall make a written, signed application to the Chief of Police, accompanied by a fee of \$25.00, payable to the City. Such application shall contain the following information:
1. The full name, age, place of birth, and present residential and business addresses of the applicant;
  2. The name of the operating certificate holder for whom the applicant proposes to be employed;
  3. The length of the residence of the applicant in the City and the state, and whether the applicant is a citizen of the United States;
  4. A full personal description of the applicant, including age, height, weight, race, color of eyes, complexion, color of hair, body and facial marks and defects, if any, and a photograph, both front and side views (photograph to be furnished by police department);
  5. The experience, if any, that the applicant has had as a driver of a motor vehicle;
  6. Whether applicant has been charged with or convicted of any felony or misdemeanor, and if so, full information concerning each;
  7. Whether applicant has been convicted of any violation of any law in the operation of motor vehicles, and if so, full information concerning each;
  8. If the applicant has previously been convicted of a criminal offense, including a misdemeanor charge of driving while intoxicated but not including other misdemeanor offenses related to the operation of a motor vehicle, any recommendations of the prosecution, law enforcement, and correctional authorities that the applicant desires to submit with the application;
  9. If the applicant has previously been convicted of a criminal offense, including a misdemeanor charge of driving while intoxicated and including other misdemeanor offenses related to the

operation of a motor vehicle, any proof in such form as may be required by the Chief of Police that the applicant has maintained a record of steady employment, has supported his or her dependents, and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted;

10. Each applicant for registration as a taxicab, limousine, or motorbus driver shall submit to records division, a CCH, as herein provided. Every applicant shall be photographed so as to show clearly the head and facial features of applicant, and such photograph shall be securely affixed to the certificate of registration issued to the applicant by the Chief of Police on the first application of a taxicab, limousine, or motorbus driver. If the driver's local criminal history is clear and the driver shows adequate proof that the driver has submitted the application for the CCH, and all other ordinance requirements fulfilled, the driver shall be issued a temporary permit that is good for up to 45 days. The temporary permit shall expire on notice that the CCH shows criminal history that is not permitted or for violation of any provisions of this ordinance that required suspension, or at the end of the 45-day period, whichever is first. If the CCH is clear and not in violation of this ordinance, and all other requirements have been complied with, the City shall issue a certificate of registration for the remainder of the one-year period. On a renewal of permit, where a CCH has been provided, the records division shall do a local criminal history only and a CCH shall not be required. Permitted drivers shall be furnished proof of the current permitted status so that it can be displayed by the driver at any time when operating a taxicab, limousine, or motorbus;
11. An application shall not be deemed complete, and the Chief of Police shall not be required to consider an application, until all of the information and documents described above have been submitted.

- (E) Applicant must have state driver license: No person shall be issued a city chauffeur's license unless he first produces a valid driver license issued to him by the State of Texas.
- (F) Investigation and determination of applicant's fitness: The Chief of Police shall make or cause to be made such investigation of the character, experience, and qualifications of an applicant desiring a city chauffeur's license as may be deemed consistent and judicious; and he shall determine whether the applicant is fit and qualified to drive and operate a taxicab within the corporate limits of the City in a manner consistent with the welfare of the public. The Chief of Police is authorized to issue a temporary permit not to exceed 45 days permitting the applicant to drive a taxicab, limousine, or motorbus vehicle pending final decision on his application. The Chief of Police shall make his determination within ten days of receiving a completed application, or, if a temporary permit is issued within that time, by the day of the expiration of the temporary permit. In determining whether the city chauffeur's license should be granted, rejected, or revoked, the Chief of Police shall consider any record of the applicant for criminal offenses which directly relate to the dealings and responsibility of a taxicab, limousine, or motorbus driver. In determining whether a criminal conviction directly relates to the duties of a taxicab, limousine, or motorbus driver the Chief of Police shall consider:
1. The nature and seriousness of the crimes;
  2. The relationship of the crime to the purposes for requiring a city chauffeur's license;
  3. The extent to which a city chauffeur's license might offer an opportunity to engage in further criminal activity of the same type as that which the applicant previously had been involved;

4. The relationship of the crime to the ability, capacity, or fitness required to perform the duties of a taxicab, limousine, or motorbus driver;
5. The extent and nature of the applicant's past criminal activity;
6. The age of the applicant at the time of the commission of the crime;
7. The amount of time which has elapsed since the applicant's last criminal activity;
8. The conduct and work activity of the applicant prior to and following the criminal activity;
9. Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release;
10. Other evidence provided by the applicant of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and Chief of Police in the community where the applicant resides; and any other person in contact with the convicted applicant;
11. Further, the city chauffeur's license provided for hereinabove may be denied or suspended or revoked for any of the following reasons, in the discretion of the Chief of Police:
  - (a) Driver not at least 18 years of age;
  - (b) Fail to possess a valid State of Texas driver's license;
  - (c) Fail to be a citizen of the United States or an alien admitted for permanent residence or so has otherwise been granted employment authorization by the United States Immigration and Naturalization Service;
  - (d) Fail to exhibit a proficiency with the English language so as to be able to comprehend and interpret traffic signs, issue written receipts to passengers, and obey lawful order of police and others in lawful authority;
  - (e) Convicted of a crime that directly relates to the duties and responsibilities of the licensed occupation as provided in Tex. Occ. Code Ann § 53.001 et seq. Upon a licensee's felony conviction, felony probation revocation, revocation or parole, or revocation of mandatory supervision, his/her license shall be revoked. Any suspension, revocation or denial for reasons of criminal background shall be subject to the procedures set forth in Tex. Occ. Code Ann § 53.051 et seq.;
  - (f) Fail to wear "proper clothing" while operating a vehicle for hire. As used herein, the term "proper clothing" shall mean shoes, pants to ankle length or skirt or dress, dress shorts and shirt or blouse with sleeves and collar. If a hat is worn, it shall be a baseball-style cap or a chauffeur's cap. Clothes shall not be visibly soiled;
  - (g) Continue to smoke, or play a radio or tape player or use profanity, if objected to by a passenger;
  - (h) Fail to provide the police with notice of any change of address within five days of such change, and failure to have such information changed on the Texas driver's license;
  - (i) Mental incompetence to a degree that the person is not held responsible for criminal

actions in a court of law or is not competent to stand trial;

- (j) A violation of any provision of this article by the driver;
- (k) Any false or misleading statement made by the applicant for registration on the written application.

(G) Notwithstanding 5-6-5(F), the Chief of Police may allow such investigation of a driver desiring a city chauffeur's license to be conducted by the company seeking to employ said driver, provided that the company shall:

- (1) Provide to the Chief of Police a written request to conduct such investigation and the company's certification that such investigation will comply with the requirements set forth in [Subsection] 5-6-5(F);
- (2) Conduct a background check of the driver utilizing the driver's personal information in national, multi-state, and local databases for criminal convictions. Such databases are to include, but are not limited to, the National Sex Offender Registry and National Criminal Search;
- (3) Verify the results of the criminal background check upon identifying a potential criminal record of the driver;
- (4) Refuse to employ said driver if such investigation yields any result that would prohibit a driver from obtaining a city chauffeur's license under this chapter; and
- (5) Provide the Chief of Police with an annual written certification that any and all driver investigations conducted by the company comply with all requirements set forth in [Subsection] 5-6-5(F) and that each and every driver employed by the company passed a background check that complies with the requirements of this chapter and remains in good standing. Upon request from the Chief of Police, a company shall provide sufficient supporting documentation demonstrating that any and all driver investigations conducted by the company were done in conformance with this section.

If the company does not elect to perform an investigation or does not comply with the requirements set forth above for conducting such investigation of a driver seeking to obtain a city chauffeur's license, the Chief of Police shall conduct the investigation pursuant to [Subsection] 5-6-5(F) and shall conduct any and all future investigations for all prospective drivers of the company.

- (H) Applicant to be photographed: All applicants for a city chauffeur's license must have their picture taken by the police department's records section, with a copy of this photograph to be used as part of the identification of the driver as further specified in this section.
- (I) Issuance of city chauffeur's license: If the applicant for a city chauffeur's license has complied with all of the requirements of this chapter, and if the Chief of Police shall find that the applicant is otherwise a fit person and properly qualified under this chapter to receive a city chauffeur's license, he shall grant such license.
- (J) License must be carried and exhibited: The city chauffeur's license issued by the Chief of Police, shall be effective for a period of one year from the date of issuance and shall be carried on the person of the taxicab, limousine, or motorbus driver at all times while engaged in the business of carrying passengers for hire. A placard showing a picture of the driver with his name, address, and city chauffeur's license number must be exhibited in the vehicle at all times.

- (K) Renewal of city chauffeur's license: A city chauffeur's license may be renewed annually by filing a new application and remitting payment of \$25.00. Renewal may be refused for any reason the original application could have been rejected. New photographs will be required to be taken every five years, or at any time that the driver's appearance significantly changes.
- (L) Revocation of city chauffeur's license: In addition to any other penalty provided by this Code, a city chauffeur's license may be revoked by the Chief of Police after finding that the holder of the license has done or engaged in any of the following acts, which the Chief of Police shall consider in relation to the factors enumerated in Subsection 5-6-5(D) of this Chapter:
1. Made any false statements in his application for a city chauffeur's license;
  2. Knowingly engaged in the sale of intoxicating liquors, directly or indirectly, while serving as a driver of a taxicab, limousine, or motorbus;
  3. Consumed any intoxicating beverage while in a taxicab, limousine, or motorbus, or while on duty as a driver of one of these vehicles;
  4. Been found guilty of driving while intoxicated by any court of competent jurisdiction while this license is in effect;
  5. Knowingly engaged in the transportation of any known criminal, narcotic peddler, prostitute, or bootlegger in the furtherance of a crime, or knowingly and intentionally aided in the infraction of the criminal laws of this City or state;
  6. Acted in any manner as a pimp for prostitutes or as a contact man for bootleggers, or as a contact man for any unlawful establishment of any character;
  7. Have been convicted by any court of more than three moving traffic violations within a 12-month period;
  8. Shall have knowingly charged any passenger a fare in excess of the rates allowed by this chapter;
  9. Has been convicted of a misdemeanor or felony for which the original applicant would have otherwise been denied.
- (M) Surveillance and enforcement by police: Every police officer of the City has authority to watch and observe the conduct of holder of taxicab, limousine, or motorbus franchises and drivers operating under this chapter. Upon discovering a violation of the provisions of this chapter, every such officer shall take immediate steps to enforce the law, either by arrest or by report to proper officials. Specific instructions in this connection shall be delivered to every police officer of the City under the direction of the Chief of Police. Police officers are further authorized to stop and inspect any taxicab, limousine, or motorbus and any driver of such a vehicle in the City or Midland International Air and Space Port to insure compliance of the vehicle and driver with this chapter of the City Code. Such authority shall be accepted by the operator and the driver as a conditions for the franchise and driver certification. In the event that a driver refuses to stop or to permit such inspection, such refusal shall constitute an immediate abandonment and revocation of the franchise and permit for such vehicle and driver and further operation of such taxicab, limousine, or motorbus or further operation of the vehicle by the driver shall be a violation of this ordinance.
- (N) Procedures upon denial or revocation: Any person whose city chauffeur's license is denied or revoked by the Chief of Police may appeal that denial or revocation to the city manager, which

appeal must be filed in writing with the city manager not later than ten days of receipt of notification of the order of denial or revocation. Upon denying or revoking a license, the Chief of Police shall inform in writing the person affected of the reasons for denial or revocation, the earliest date and the manner in which that person may appeal such denial or revocation, and the person's rights of review pursuant to Tex. Occ. Code Ann § 53.001 et seq.

(Ordinance 9577, sec. 5, adopted 6/28/2016)

#### **§ 5-6-6. Rates and charges.**

- (A) Overcharge and refund of fares: It shall be unlawful for any person to knowingly charge any person a fare for taxicab service in excess of the fares established by this chapter. Evidence that a passenger of a taxicab was charged a fare in excess of that which is authorized by this section shall be prima facie evidence that both the driver and holder of the operating certificate under which the taxicab was operating did knowingly charge that passenger the excessive fare. The operating certificate holder for any taxicab, the service for which any person is charged a fare in excess of that allowed by this chapter, shall be responsible for refunding the person so overcharged all monies charged to that person in excess of the fare allowed, in addition to such other fines as may be levied for violation of this Section.
- (B) Rates established: The taxicab rates listed herein are hereby declared to be fair and reasonable for such services. No taxicab operator or driver operating within the incorporated limits of the City, or operating a taxicab from any point within the City or Midland International Air and Space Port to any point in the City of Odessa shall charge any fare in excess of the following rates. The following rates are the maximum rates that may be charged but taxicab operators may charge a lower rate.
  - 1. \$5.25 for the first mile;
  - 2. \$3.25 for the first one-sixth mile or fraction thereof traveled;
  - 3. \$0.40 for each additional one-sixth mile or fraction thereof after the first one-sixth mile traveled;
  - 4. \$15.00 for each hour of waiting time or proportionate fraction thereof;
  - 5. \$0.50 for each item of luggage the size of a footlocker or larger which is handled by the driver;
  - 6. \$0.25 total for each passenger above.
- (C) Multiple passengers; multiple destinations: When two or more passengers occupy a taxicab at the same time, but leave at different destinations, the first passenger to leave shall pay the regular fare, and the flag on the taximeter shall be thrown in the stop position indicating another trip. The next passenger to leave shall pay the regular fee from the point at which the flag was so thrown to his destination. The fare shall be similarly determined for any passenger in addition to the second passenger. When a taxicab is not originally engaged for a joint trip, nothing herein shall authorize the carrying of additional passengers without the consent of the passenger who first engaged the taxicab. The above rules determine the fare which may legally be demanded of each passenger when more than one passenger occupies a taxicab at the same time, but nothing herein shall prevent the passengers from dividing the cost of the trip in any manner that they may voluntarily agree upon. A taxi-cab may carry the amount of passengers for which the vehicle is designed and has seating positions, but may only have a maximum of three separate destination fares in one trip. This still allows more than one passenger per destination fare.
- (D) Posting of fare schedule: The schedule of fares indicating maximum prices to be charged by any

taxicab operator or driver shall be prominently displayed in each taxicab operated for public hire in the City or at Midland International Air and Space Port. It shall be unlawful for a driver or operator of a taxicab to offer for hire any taxicab that does not have a rate schedule posted as required by this section. Evidence that any taxicab was operated or offered for hire without the posting of the sign required by this Subsection (D) shall be *prima facie* evidence that both the driver and operator of that taxicab knowingly caused a taxicab to be operated or offered for hire without the required sign. Shuttles shall operate on the basis of established and defined charges. A schedule of rates and charges shall be filed with the Chief of Police upon issuance of a permit. It shall be unlawful to charge a fare in excess of the rates on the filed schedule.

- (E) Notwithstanding any other provision of this chapter, a driver may charge a fare that does not conform to the rate schedule of [Subsection] 5-6-6(B) or the procedures of [Subsection] 5-6-6(C) only if:

- (1) A driver and prospective passenger agree upon a pre-arranged route between two identified geographical points;
- (2) A driver and prospective passenger agree upon a pre-determined price for taxi services regarding the pre-arranged route;
- (3) The pre-arranged route and pre-determined price are agreed to by the prospective passenger before the initiation of the taxi services; and
- (4) A driver verbally notifies a prospective passenger of the passenger's option to obtain taxi services from said driver that conform to the rate schedule in [Subsection] 5-6-6(B) before the initiation of the taxi services; and
- (5) A driver has properly posted on the interior the "complaint notice" sign as required by [Subsection] 5-6-4(M).

Any driver that wishes to charge an agreed upon fare under Subsection 5-6-6(E), and that does not conform to the rate schedule of Subsection 5-6-6(B) or the procedures of Subsection 5-6-6(C), must prominently display the entirety of Subsection 5-6-6(E) in the taxicab operated by the driver.

(Ordinance 9577, sec. 6, adopted 6/28/2016)

#### **§ 5-6-7. Taximeters.**

- (A) Taximeters required equipment:It shall be unlawful for any taxicab to be operated for public hire in the City unless it is equipped with a taximeter, as defined under this Chapter, which taximeter shall be used as provided in this Chapter.
- (B) Taximeters required to determine fare:It shall be unlawful for any person owning, operating, driving or in charge of a taxicab to operate or drive such taxicab unless a taximeter is used in determining the fare to be charged, except as may be permitted by this chapter. No other or different fare shall be charged than the fare recorded on the reading face of such taximeter for such trip; and no other rates or methods of measuring the distance or time charges shall be allowed, except by taximeter as herein provided, or as expressly permitted by this Chapter.
- (C) No solicitation as taxicab without taximeter:It shall be unlawful for any person owning, operating, driving or in charge of any taxicab for hire in the City to drive or operate such taxicab, or to use or advertise in connection therewith the words "taxi", "taxicab" or "cab" or in soliciting trade from the

public, to represent or exhibit such vehicle as a taxi, taxicab or cab unless such vehicle be equipped with a taximeter in accordance with the provisions of this Chapter.

- (D) Taximeter specifications: Every taxicab shall use a taximeter of a size and design approved by the Chief of Police. Such taximeter shall conform to the following specifications:

1. The taximeter shall be a mechanical or electronic instrument or device by which the charge for hire of a taxicab is mechanically or electronically calculated for distance traveled, for waiting time, if any and extra passengers, if any, and upon which the charge or charge shall be indicated by means of clearly legible figures which are electrically lighted each time the taximeter is activated from nonearning to earning position;
2. Every taximeter must register upon visual counters the following items:
  - (a) Total miles (unless shown by accurate registration on speedometer tested and in good working order on the taxicab);
  - (b) Paid miles;
  - (c) Number of units;
  - (d) Number of trips;
3. Each taximeter must be furnished with a tamper-proof switch;
4. No taximeter shall be in such condition as to be more than five percent incorrect to the prejudice of any passenger. This does not allow a taxicab to charge five percent more for their services but relates only to the calibration of the taximeter.

- (E) Regulations for use of taximeter; inspection; approval: The following rules and regulations for inspection and approval of taximeters and for the operation and use of taximeters on taxicabs are prescribed:

1. No approval shall be given and no inspection certificate for any taximeter shall be issued for any taxicab until the taximeter attached thereto shall have been tested and inspected and found to be accurate and in conformity with the specifications required of such taximeter under the terms of this chapter;
2. No person shall use or permit to be used or driven for hire a taxicab equipped with a taximeter the case of which is unsealed and not having its cover and gear intact;
3. No driver of a taxicab equipped with a taximeter, while carrying a passenger or passengers, or while under employment, shall display the signal affixed to such taximeter in such position as to denote such vehicle is not employed, or in such position as to denote that the taxicab is employed at a rate of fare different from that which the use of the taxicab legally justifies under the provisions of this chapter;
4. It shall be the duty of the driver to call the attention of passengers to the amount registered on the taximeter, and the taximeter flag shall not be changed to a "vacant" position until after the fare is paid;
5. No person shall drive or operate a taxicab to which is attached a taximeter which has not been duly tested, inspected and approved as required by this chapter, and it shall be unlawful to change the size of the wheels or tires of any taxicab, or the gears operating the taximeter, or the

taximeter itself, from one taxicab to another unless the taximeter is again tested, inspected and approved under supervision the Chief of Police before using.

(Ordinance 9577, sec. 7, adopted 6/28/2016)

#### § 5-6-8. Airport service.

- (A) All taxicabs transporting passengers from the Midland International Air and Space Port must have an airport cabstand permit and must also meet all other requirements of this Code. All taxicab operations for which an operating certificate has been granted by the City, who is otherwise in full compliance with this Code, may drop passengers at the Midland International Air and Space Port without applying for an airport cabstand permit pursuant to Section 5-6-8 of this Code [or a permit pursuant to Sections 13-2-2, 13-2-7 and 13-2-10, of this Code]. However, any taxicab company wishing to service Midland International Air and Space Port which is not authorized to operate by the City must apply for a permit under Sections 13-2-2, 13-2-7 and 13-2-10 of this Code.
- (B) Cabstand use required; exception: No taxicab operator may solicit or receive passengers at Midland International Air and Space Port from any location except the cabstand at Midland International Air and Space Port as designated by the director of airports.
- (C) Airport cabstand permit required: No taxicab may enter the cab stand line at Midland International Air and Space Port which does not have on display on its windshield a current airport cabstand permit.
- (D) Application for airport cabstand permit; fee: Applications for airport cabstand permits shall be made to the director of airports. Each airport cabstand permit shall be valid for one month, beginning on the first day of that month; provided that a person may elect to apply for an airport cabstand permit that is valid for one year, beginning on the first day of that year. The fee for issuance of a one-month airport cabstand permit shall be \$25.00 per month and the fee for a one-year airport cabstand permit shall be \$300.00 per year, except that limousines are not responsible for payment of said fee.
- (E) Issuance of airport cabstand permits: No airport cabstand permit shall be issued to any taxicab which does not either bear a valid permit issued pursuant to Section 5-6-3 of this chapter, or which has a valid City of Odessa franchise. A taxicab operating under the authority of the City of Odessa must comply with Section 5-6-3 except for Subsection 5-6-3(C)3. If a taxicab bears a valid permit issued pursuant to Section 5-6-3 or pursuant to Title XIII of this Code, but the director of airports reasonably believes that the taxicab does not, in fact, meet the requirements of Section 5-6-3 or of the Title XIII, the director of airports may refuse to issue an airport cabstand permit until the applicant presents a statement from the Chief of Police or his designee that the vehicle has met the requirements of Section 5-6-3 or Title XIII, which statement must be presented not later than five days after the date of issuance. Further, no taxicab may receive an airport cabstand permit unless it is owned by a taxicab company which has a minimum of three taxicabs in operation which have a valid City of Odessa franchise or city operating certificate.
- (F) Denial of airport cabstand permit: The director of airports may deny issuance of an airport cabstand permit to any taxicab if the director of airports has determined that the driver of the taxicab has, while at Midland International Air and Space Port, violated the provisions of this Chapter more than once in each of the three preceding months. The director of airports may also deny an airport cabstand permit if the driver of the taxicab for which application is made has engaged in conduct which the director of airports reasonably believes to create a hazard to the traveling public using Midland International Air and Space Port or which may otherwise violate federal, state or local regulations governing operation of Midland International Air and Space Port.

(G) Suspension or revocation of airport cabstand permit: The director of airports may immediately revoke an airport cabstand permit if:

1. The driver of the taxicab to which the permit is issued has been determined by the director of airports to have violated the provisions of this chapter two times in the preceding 90-day period of time;
2. The driver of the taxicab to which the permit is issued has engaged in conduct which the director of airports reasonably believes to create a hazard to the safety of the traveling public using Midland International Air and Space Port or which may otherwise violate federal, state or local regulations governing operation of Midland International Air and Space Port;
3. The city chauffeur's license of the driver assigned to the taxicab to which the permit is issued has been revoked or not renewed pursuant to Subsection 5-6-5(K);
4. The City of Midland franchise or operating certificate or the City of Odessa franchise under which the taxicab is operating has been suspended or revoked, or has otherwise terminated on its own accord;
5. Notwithstanding [Subsection] 5-6-8(G)1., above, the taxicab is found to not be in compliance with Section 5-6-3.

(H) Appeal of denial or revocation of airport cabstand permit: The denial or revocation of an airport cabstand permit may be appealed to the city manager within three business days of the denial or revocation by the director of airports. In the case of a revocation pursuant to Subsections 5-6-8(G)2. and 3., the revocation shall remain in effect until the city manager has ruled on the appeal and determined to reinstate the permit. The procedures set forth in Subsection 5-6-5(N) shall be used in the appeal of such denial or revocation.

(I) Airport cabstand operations; certain acts prohibited: It shall be unlawful for any person to knowingly:

1. Park a taxicab or other vehicle at the Midland International Air and Space Port cabstand if that vehicle does not bear a current, valid airport cabstand permit;
2. Receive passengers in a vehicle at the Midland International Air and Space Port cabstand if that vehicle does not bear a current, valid airport cabstand permit;
3. Attach an airport cabstand permit to a vehicle other than that vehicle for which the airport cabstand permit was issued;
4. Operate a vehicle to which is attached an airport cabstand permit which was not issued for use on that particular vehicle;
5. Forge, alter, or counterfeit an airport cabstand permit; or
6. Knowingly operate a taxicab or other vehicle to which is attached a forged, altered, or counterfeit airport cabstand permit.

(J) Cabstand procedures: All taxicabs entering the cabstand at Midland International Air and Space Port must enter at the rear of the line of taxicabs already at the cabstand. Only the taxicab at the head of the line of taxicabs at the cabstand is permitted to receive passengers. No taxicab may advance around any other vehicle in the cabstand line unless directed to do so by a city police officer, community service officer or a designee of the Chief of Police for safety or administrative reasons.

The taxicab at the head of the cabstand line may not unreasonably refuse any passenger willing to pay. No maintenance or repair work may be done on any taxicab at the cabstand.

- (K) Drivers to remain with vehicles; exceptions: The driver of any taxicab in line at the Midland International Air and Space Port may stay in the taxicab driver's lounge at the airport until such time as passengers are deplaning and actually gathering luggage and preparing to leave the airport, when the taxicab drivers will be required to actually be with and attend their vehicles. They may leave the cab while passengers are deplaning or preparing to leave the airport only to assist passengers in boarding that driver's taxicab.
- (L) No solicitation at airport: No person shall knowingly solicit business for any taxicab while that person is at Midland International Air and Space Port.
- (M) Drivers shall not sleep in their vehicles while on the taxi line.  
(Ordinance 9577, sec. 8, adopted 6/28/2016)

#### **§ 5-6-9. Miscellaneous provisions.**

- (A) Issuance of guidelines: The Chief of Police, upon consultation with the city attorney, shall publish and post guidelines relating to the actual practice of the licensing authority pursuant to this chapter and any amendments thereto, at the county courthouse as required by Tex. Occ. Code Ann § 53.051 et seq., as amended.
- (B) City exempt from liability in matters pertaining to taxicabs, limousines, or motorbuses: The City shall not be liable for any sum on account of any claim or on account of any act or omission of any officer of the City in connection with any matter relating to taxicabs, limousines, or motorbuses.
- (C) Restrictions on City officers and employees: It shall be unlawful for any officer or employee of the City to accept, directly or indirectly, any gifts, discounts or gratuities from any holder of a taxicab franchise or operating certificate or any of their drivers or from any person engaged in the repair of vehicles for a holder of an operating certificate.
- (D) Police department charged with enforcement: The City's police department shall be the City department primarily responsible for the enforcement of the provisions of this chapter.
- (E) The City may also enforce the provisions of this article in any of the following ways:
1. A warning may be given by the Chief of Police, or designee of the Chief of Police, to the operator and/or driver concerning any violation. Warnings may form the basis for the use of more serious sanctions if any additional violations are accumulated;
  2. City may prosecute any violations through the municipal court and violations are subject to a fine up to \$500.00 for any offense;
  3. The Chief of Police may suspend operations by the operator of the franchise or any driver or any permitted vehicle for any violation of this article;
  4. The City Council may terminate the operating certificate;
  5. City may enforce the provisions of this article by means of any civil judicial remedies of law or equity in the county or district court of this state.
- (F) Procedure for denial, suspension or termination of a driver certification or vehicle permit or a franchise: In the event that the Chief of Police finds that a taxicab, limousine, or motorbus driver

certification or vehicle permit should be denied, suspended or terminated, the Chief of Police shall provide notice to the operator or driver and provide an opportunity for that person a defense prior to ordering a denial or suspension or termination, except in cases of emergency involving public safety, in which event such due process shall be afforded subsequent to the suspension or termination. The person shall have a right to appeal to the City Manager, if such appeal is filed in writing within ten days of the order of denial, suspension or termination, or the expiration of 30 days without a ruling, and such appeal shall stay or abate the suspension or terminating until the City Manager makes a final determination, except in cases of emergency as declared by the Chief of Police when it is a matter of public safety. In the event the Chief of Police or city manager fails to take action within 30 days, the requested action shall be considered to be denied by the applicable Chief of Police or city manager. All hearings shall be informal, providing the operation or driver with notice and an opportunity to present to the Chief of Police, or city manager the reasons or evidence in defense. In the event the City files a compliant in the municipal court, or a petition in any other court, and the defendant is afforded due process by the court, the procedure and due process provided herein for administrative review shall not be applicable. After denial, suspension or revocation of the driver certification or vehicle permit by the city manager, the person may seek prompt judicial review of such final administrative action in any court of competent jurisdiction. An appeal to the appropriate court must be filed within 21 days after the final decision by the city manager. The determination by the court shall be based on the substantial evidence rule. For purposes of this section, "day" means calendar day. The above described procedures and regulations regarding notice, hearing and appeal shall also apply regarding the termination or suspension of the operator's franchise prior to the end of the term of the franchise with the original hearing to be before the City Council and any appeal to be court based on the substantial evidence rule.

(Ordinance 9577, sec. 9, adopted 6/28/2016)

**TAXICABS**

**Chapter 5-7**

**(RESERVED)**

SPECIAL POLICE

**Chapter 5-8**

**SPECIAL POLICE**

**§ 5-8-1. Definitions.**

For the purposes of this Chapter the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

- (A) City: "City" is the City of Midland, Texas.
- (B) Person: "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (C) Special police officer: The term "special police officer," as used herein, shall include all private guards, private patrols, patrol systems, night watch services and burglar alarm services, private detectives and private investigators, together with each member and employee thereof.
- (D) Private detective or private investigator: The term "private detective or private investigator" shall mean any person whose business it is to detect criminals or discover matters of secrecy or pernicious import for the use or benefit of those who choose to employ him and pay his compensation, but shall not mean insurance adjustors or persons seeking information for the principal purpose of adjusting insurance or other claims.

(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-2. License required.**

No person shall operate as a special police officer in the City without first obtaining a license as hereinafter provided from the chief of police.

(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-3. Application for license.**

Application for licenses issued hereunder shall be made upon blank forms prepared and made available by the chief of police and shall state as follows:

- (A) The full name, age, residence, and present and previous occupations of the applicant.
- (B) Whether the person signing the application is a citizen of the United States.
- (C) A specific description of the location of the principal place of business of the applicant.
- (D) The number of years the applicant has spent as a special police officer or in related fields.
- (E) The length of time that the applicant has been a bona fide resident of Midland County and the State of Texas immediately preceding the filing of the application.
- (F) Such other information as the chief of police shall find reasonably necessary to effectuate the general purpose of this Chapter and to make a fair determination as to whether or not the terms of this Chapter have been complied with.
- (G) The extent of the area in which the business is to operate.

The applicant must be fingerprinted and photographed by the police department of the City.  
(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-4. Investigation by chief of police.**

Within 15 days after receipt of an application as provided for herein, the chief of police shall cause an investigation to be made of the applicant and his proposed operation.

(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-5. Standards for issuance of license.**

Before approving or disapproving any license the chief of police shall consider the following:

- (A) Whether the applicant has been convicted of a felony or any offense against the decency and morals of the community, or on renewal of license, for the violation of any of the provisions of this Chapter during the year next preceding the filing of this application.
- (B) Whether or not the applicant is of good moral character, and his reputation as a peaceable, law-abiding citizen.
- (C) Whether or not the applicant was a former member of the Midland police department or formerly employed as any special police officer and released for cause.
- (D) Such other lawful matters as he considers pertinent and proper to arriving at a fair and lawful conclusion with respect to such application for license.
- (E) The chief of police shall not issue a license hereunder when the applicant is not a natural born or fully naturalized citizen of the United States and has not been a bona fide resident of the State of Texas for one year just preceding filing of this application.

(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-6. Standards applicable to employees.**

All employees of any person having or applying for a license hereunder shall meet the standards set forth above and shall be subject to all the regulations of this Chapter.

(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-7. Notice of rejection.**

The chief of police shall act upon an application for a special police officer license within 30 days after the filing thereof. If the chief of police disapproves the application, he shall mail to the applicant, within 35 days after the date upon which the application was filed, a notice of his actions, stating the reasons for his denial of the permit.

(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-8. Appeal procedure.**

Any person aggrieved shall have the right to appeal the denial of a special police officer license to the City Council. The appeal shall be taken within 30 days after notice of the denial is received by the applicant. The City Council shall act upon the appeal within 30 days after its receipt.

(Ordinance 4301 adopted 1/10/1967)

**§ 5-8-9. License fee.**

A license shall be issued to a successful applicant upon payment of a license fee of \$50.00 for each firm of

special police officers and \$10.00 for each individual applicant.  
(Ordinance 4301 adopted 1/10/1967)

#### **§ 5-8-10. Conditions of licensing.**

- (A) Transferability. Licenses issued hereunder shall not be transferable.
- (B) Revocation and suspension. Licenses issued hereunder shall be subject to revocation or suspension by the chief of police for violation of any of the provisions of this Chapter or misconduct by the licensee or his employees, after reasonable notice and an opportunity to be heard has been given to the licensee. The chief of police shall immediately notify any licensee, by personal service, of such suspension or revocation.
- (C) Renewal. The chief of police shall issue renewal licenses to all licensees whose licenses have not been suspended at the time said licenses have expired, upon payment of the license fee.
- (D) Term of license. All licenses issued hereunder shall be for a term of one year.

(Ordinance 4301 adopted 1/10/1967)

#### **§ 5-8-11. Bond.**

- (A) Required. No license shall be issued hereunder unless the applicant files with the City a surety bond executed by such applicant with two or more sufficient sureties, or by a surety company authorized to do business in the State of Texas, in the sum of \$20,000.00, or such other financial security as may be approved by the city attorney of the City, conditioned upon the careful, faithful and honest conduct of the services to be performed by the applicant, or his or its employees, and such bond shall be approved by the city attorney of the City as to form, execution and sufficiency of sureties.
- (B) Protection to public. The bond or approved surety required herein shall be taken in the name of the people of the State of Texas; and every person injured by the negligence, wilful, malicious or wrongful act of the principal, his agent, servant, or employee, in the business of special police officer, may bring an action on the bond in his own name to recover damages for such negligent, wilful, malicious or wrongful act.
- (C) Suspension of license on failure of security. The chief of police shall suspend any license when the bond or other approved financial security required herein shall have lapsed or is reduced by reason of a judgment thereon, or for any other reason is no longer in full force and effect.

(Ordinance 4301 adopted 1/10/1967)

#### **§ 5-8-12. Promulgation of regulations by chief of police.**

The chief of police shall have the authority to enact and enforce reasonable rules and regulations for the operation of special police officers in the City in the interest of public safety, morals and welfare and to effectuate the general purpose of this Chapter.

Licensees hereunder shall not be officers as such term is defined by Vernon's Ann. C.C.P. art. 2.12, but shall enjoy and exercise all rights and duties regarding arrest as do private citizens.

(Ordinance 4301 adopted 1/10/1967)

#### **§ 5-8-13. Duties of licensee.**

- (A) Carry and post license certificates. The licensee hereunder shall cause a certificate of such license to

be displayed at all times in a conspicuous place in or on his place of business described in such license. The licensee shall carry on his person at all times when performing services as a special police officer a certificate of the license issued hereunder.

- (B) Impersonation of state police officers. No special police officer licensed hereunder shall impersonate or hold himself out as a peace officer of this state or of its political subdivisions.
- (C) Additional duties. It shall be the duty of all licensees hereunder to:
1. Report daily in writing, to the chief of police, all arrests made by their employees.
  2. Obey the orders of the chief of police in an emergency.
  3. When allowed to carry arms, to do so only when on duty at the premises or district guarded or patrolled.
  4. When on patrol or guard, to wear proper uniforms, said uniforms for said special police officers to be of a different color and design from those worn by the city police department and the Midland County sheriff's department and to be approved by the chief of police.
  5. Each guard or patrolman shall wear a shoulder patch on the upper left sleeve bearing the name of the special police organization to which he belongs.

(Ordinance 4301 adopted 1/10/1967)

#### **§ 5-8-14. Penalty.**

Any person who shall violate or fail to comply with any provision of this Chapter shall be deemed guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than \$500.00.

(Ordinance 6790 adopted 9/22/1987)



CARNIVALS AND MENAGERIES

**Chapter 5-9**

**CARNIVALS AND MENAGERIES**

**§ 5-9-1. Definitions.**

As used in this Chapter, the following words and phrases have the following meanings, unless context clearly demonstrates otherwise:

Amusement ride: Any mechanical device or devices that carry or convey passengers for a fee along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement, but such term does not include:

- (a) Any single-passenger coin-operated ride that is manually, mechanically or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; or
- (b) Nonmechanized playground equipment, including but not limited to swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines and physical fitness devices.

Appeal board: Shall consist of the Mayor, Mayor Pro Tempore and a member of the Midland City Council appointed by the Mayor. The Mayor shall have the authority to appoint alternate members to the appeal board as the need arises.

Carnival: The operation or exhibition of any number of amusement rides or games of skill. Chief of police: The chief of police of the City of Midland located in Midland County, Texas. City: The City of Midland located in Midland County, Texas.

Employee: Any individual who renders any service in connection with the operation of a carnival or menagerie and receives compensation.

Game of skill: A game that is played for a fee that allows one to win a prize upon demonstrating some physical skill.

Menagerie: The giving of any ride on any animal for a fee.  
(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-2. Licenses and certificates required.**

- (A) It shall be unlawful for any person to operate a carnival or menagerie without a valid carnival or menagerie operator's license therefor issued by the chief of police in accordance with the provisions of this Chapter.
- (B) It shall be unlawful for any person to operate a carnival or menagerie unless each and every employee thereof has a valid employee's license issued by the chief of police in accordance with the provisions of this Chapter.
- (C) It shall be unlawful for any individual to work as an employee of a carnival or menagerie without having a valid employee's license issued by the chief of police in accordance with the provisions of this Chapter.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-3. License displayed.**

- (A) A carnival or menagerie operator's license issued under the provisions of this Chapter shall be displayed at all times in an open and conspicuous place on the grounds of the carnival or menagerie for which it was issued.

(B) It shall be unlawful for any employee to work in any carnival or menagerie, unless he shall display on his person in an open and conspicuous manner the employee's license issued to said employee pursuant to this Chapter.

(Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-4. Alcoholic beverages.**

No person shall sell, give, dispense or provide any alcoholic beverages on the premises of a carnival or menagerie unless otherwise provided for in the temporary land use permit obtained by the applicant pursuant to Chapter 11-1, Section 6, subsection (D) of the Midland City Code.

(Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-5. Hours of operation.**

No carnival or menagerie shall be kept open for any purpose between the hours of 10:00 p.m. and 10:00 a.m. unless otherwise provided for in the temporary land use permit obtained by the applicant pursuant to Chapter 11-1, Section 6, subsection (D) of the Midland City Code.

(Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-6. Application for carnival or menagerie operator's license.**

Any person desiring a carnival or menagerie operator's license shall file a written application with the chief of police on a form to be furnished by the chief of police.

(A) The application shall set forth the following:

1. The name of the applicant and whether the applicant is an individual, partnership, corporation or otherwise, and if a corporation, the state of incorporation.
2. The address where the carnival or menagerie is to be operated.
3. The name, residence address and telephone number of the manager or other individual to be principally in charge of the operation of the carnival or menagerie.
4. The following personal information concerning the manager or other individual principally in charge of the operation of the carnival or menagerie:
  - (a) Name, age, date of birth, last place of employment, complete residence address and residence telephone number.
  - (b) Height, weight, color of hair, color of eyes, and sex.
  - (c) Driver's license number.
  - (d) All prior felony convictions which have occurred within the last ten years.
5. State the date or dates that the carnival or menagerie will be operated in the City.
6. The name of each and every employee who will be working at the carnival or menagerie.
7. The name and description of each amusement ride and game of skill that will be operated, exhibited or played at the carnival or menagerie.
8. The number and type of each wild or domestic animal to be exhibited.

9. A list of each and every wild or domestic animal that a ride will be offered upon.
  10. The Texas sales and use tax permit number and a copy of their Texas sales and use tax permit.
  11. A list and description of the food and drink concessions.
  12. A list of five people who shall be authorized to accept notice of the revocation of the operator's license.
- (B) The applicant shall submit, as part of the application for an operator's license, the following:
1. A certified copy of the resolution approved by the Midland City Council granting the applicant a temporary land use permit; and
  2. The fingerprints of the manager or other individual principally in charge of the operation of the carnival or menagerie, to be taken by the Midland police department; and
  3. Two front-face photographs of the manager or other individual principally in charge of the operation of the carnival or menagerie taken within 60 days of the date of the application and at least two inches by two inches in size.
- (C) The chief of police shall issue an operator's license within 48 hours, excluding weekends and holidays, of receipt of the application unless he finds that:
1. The applicant has knowingly made any false, misleading or fraudulent statements of fact in the license application, or required information is omitted; or
  2. No liability insurance policy or certificate has been posted to insure the safety of the people attending or to serve as reimbursement for personal or property damages; or
  3. No cash bond has been posted to insure that the premises will be left in a clean and sanitary manner; or
  4. The applicant has not paid the operator's license fee of \$50.00.

(Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-7. Insurance requirements.**

Before any applicant is granted a license to operate a carnival or menagerie, the applicant shall, at the applicant's sole expense, furnish the chief of police with a policy or certificate of public liability insurance that is valid during the term of the license, that provides coverage in the minimum amount of \$1,000,000.00 against liability for bodily injury to or the death of any one person in any one event, and \$1,000,000.00 against liability for bodily injury or death of two or more persons in any one event, and property damage insurance in the amount of \$100,000.00 for property damage as a result of any one event. Such insurance shall be written with insurance companies authorized to do business in the State of Texas and said insurance shall be approved by the city attorney. The applicant must present the actual policy or policies or a certificate to show compliance with this requirement. Such insurance shall name the City as an additional insured.

(Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-8. Deposit.**

Before any applicant is granted a license to operate a carnival or menagerie, the applicant shall deposit with the chief of police a cash bond payable to the City in the sum of \$100.00 to insure that no paper, litter or

other debris will be permitted to remain upon the city's streets or public rights-of-way or upon any private property by such applicant or by any employees or agents of the carnival or menagerie. Such cash bond shall be returned to the applicant upon certification by the chief of police that the premises do not violate Chapter 8-6, Section 20 of the Midland City Code. The applicant shall leave with the chief of police a mailing address where the deposit may be returned, or where notice of the retention of same may be given. (Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-9. Application for employee license.**

- (A) No person shall work at or in a carnival or menagerie in the City for pay without obtaining an employee's license as provided by this Chapter.
- (B) Any person desiring an employee's license shall file a written application with the chief of police on a form to be furnished by the chief of police. Such application shall contain the following information:
  - 1. The name, age, date of birth, sex, height, weight, color of hair and eyes, driver's license number and residence address of the applicant; and
  - 2. A complete statement of all convictions of the applicant for any felony which has occurred in the past ten years.
- (C) The applicant shall submit, as part of the application required in subsection (B) hereof, the following:
  - 1. Fingerprints of the applicant taken by the Midland police department; and
  - 2. Two front-face photographs of the applicant taken within 60 days of the date of the application and at least two inches by two inches in size.
- (D) The chief of police shall issue an employee's license within 48 hours, excluding weekends and holidays, of receipt of the application unless he finds that:
  - 1. The applicant has knowingly made any false, misleading, or fraudulent statements of fact in the license application, or required information is omitted; or
  - 2. The applicant has not paid the employee's license fee of \$6.00.

(Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-10. Fees.**

The fee for a carnival or menagerie operator's license shall be \$50.00. The fee for an employee's license shall be \$6.00.

(Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-11. Return of fee.**

No portion of any license fee collected under this Chapter shall be returned after a license has been issued. (Ordinance 6631 adopted 2/11/1986)

#### **§ 5-9-12. Transfer prohibited.**

Carnival or menagerie licenses or employee licenses are not transferable or assignable, and such privilege as a license confers shall be conferred only to the licensee named therein.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-13. License valid for six months.**

Each license issued under this Chapter shall be valid for six months from the date of its issuance as shown thereon.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-14. Obtaining license by fraud.**

It shall be unlawful for any person to knowingly make any false, fraudulent or untruthful statement, either written or oral, or to give or use any fictitious name in order to secure or aid in securing a license required by this Chapter, and any such license so secured shall be void.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-15. Fraudulent use of license.**

It shall be unlawful for any person to knowingly make use of, in any manner to his own or another's benefit, a carnival or menagerie operator's or employee's license which has not been duly issued to him in accordance with the provisions of this Chapter.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-16. Counterfeiting, changing, defacing license.**

It shall be unlawful for any person to counterfeit, forge, reproduce, change, or alter a license required or issued under the provisions of this Chapter.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-17. Revocation.**

Any license issued under this Chapter may be revoked by the chief of police for a violation of any of the provisions of this Chapter or any violation of the ordinances of the City, or laws of the State of Texas. Any carnival or menagerie operator's license issued under this Chapter may be revoked by the chief of police for a violation of this Chapter or any other ordinance of the City, or laws of the State of Texas, by an agent or employee of the carnival or menagerie, provided such violation occurred on the carnival or menagerie grounds.

Such revocation shall be effective 24 hours after written notice thereof is given to the licensee. Such notice shall inform the licensee of the reason(s) for such revocation, the beginning date of such revocation and the right to appeal under the provisions of this Chapter. Such notice shall be given by delivering the same to the licensee, or, if the notice is for revocation of a carnival or menagerie operator's license, the notice may be given by delivering the same to one of five people listed as an agent for receipt of notice of revocation in the application. Such notice of revocation may also be given by depositing the same in the United States mail, postage prepaid, certified, return receipt requested, and addressed to the licensee at the address stated on the license application.

Whenever the licensee has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period. An appeal, as provided herein, from any revocation hereunder shall automatically stay such revocation pending such appeal. After the effective date of the revocation, if any appeal is not made or if an appeal is made and the revocation is upheld, then and in either of those events, the chief of police shall have the authority to take possession of the license wheresoever it may be found.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-18. Compliance with city codes and ordinances.**

Any person, corporation, partnership or other entity issued a license under this Chapter shall comply with all applicable codes and ordinances of the City. Failure to comply with the applicable codes and ordinances of the City shall result in the revocation of the license.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-19. Appeals.**

Any person aggrieved by an action or decision of the chief of police or his duly authorized deputy regarding the issuance, suspension or revocation of a license required hereunder may, within 24 hours thereafter, appeal to the appeal board.

In the event that any person is aggrieved by an action or decision of the chief of police or his duly authorized deputy regarding the retention of a part or all of the cash bond required to insure that the premises will be left in compliance with the Midland City Code, that person may, within seven days thereafter, appeal to the appeal board. In the event that the applicant does not appeal the decision of the chief of police, the deposit required in Section 5-9-8 will be forfeited. In this event, the deposit will be used to cover the cost of clearing the premises of all debris and litter. Any unused portion of the deposit will be returned to the applicant.

The appeal to the appeal board shall be initiated by filing a written objection with the chief of police. The written objection shall state what the action or decision of the chief of police should have been and why. A copy of the document containing the notice of the action or decision complained of shall be attached to said written objection. Upon receipt of said written objection and attachment, the appeal board shall set the same down for a hearing to be held within the next 48 hours, excluding weekends and holidays, and advise all parties of the date, time and place of the hearing. The person filing the appeal shall state in his appeal a mailing address and telephone number where he will receive all notices. The person allegedly aggrieved shall bring to the hearing all licenses issued to him pursuant to this Chapter.

At hearings before the appeal board, all witnesses will be sworn, and the appeal board will hear the testimony of the chief of police or his duly authorized deputy, or other witnesses the chief of police wishes to testify that the appeal board deems relevant. Additionally, the appeal board will hear the testimony of the persons aggrieved along with any witnesses the person aggrieved may call that the appeal board deems relevant. The appeal board will review all documents and exhibits submitted to them by the parties. The appeal board will not be bound by formal rules of evidence and will control the evidence, reserving to itself the power to exclude testimony or exhibits it does not consider relevant.

Both the chief of police and the aggrieved person will be allowed representation by an attorney and the cross examination of witnesses.

The appeal board will maintain an accurate record of the evidence adduced at the hearing.

Within 24 hours of the close of the hearing, excluding weekends and holidays, the appeal board will notify the chief of police and the person aggrieved of its decision. Within 24 hours of the close of the hearing, the appeal board shall reduce to writing its report, which will consist of a finding of facts and its decision. The appeal board will file the original of its report with the Midland city secretary, will keep one copy for itself, will send one copy to the person aggrieved and will send one copy to the chief of police.

(Ordinance 6631 adopted 2/11/1986)

**§ 5-9-20. Penalty.**

Any person who intentionally, knowingly, or recklessly violates any of the provisions of this Chapter shall be guilty of City Code violation and, upon conviction, shall be punished by a fine not to exceed \$500.00.  
(Ordinance 6790 adopted 9/22/1987)

CARNIVALS AND MENAGERIES

**Chapter 5-10**

**SIDEWALK SALES AND SELLING FROM FIXED LOCATIONS**

***Editor's note(s)***—*Ord. No. 9270, § 1, adopted May 6, 2014, amended former Ch. 10, §§ 5-10-1—5-10-9, in its entirety to read as herein set out. Former Ch. 10 pertained to similar subject matter and derived from Ord. No. 8251, § 1, 8-24-2004; Ord. No. 8800, §§ 1, 2, 5-11-2010; Ord. No. 9157, §§ 1, 2, 7-9-2013.*

**§ 5-10-1. Sidewalk sales.**

- (a) An individual or business organization shall, prior to conducting a sidewalk sale, file with the Chief of Police a sworn application on a form furnished by the Chief of Police which shall contain the following information:
  - (1) Description of the business and the name of the owner or manager of such business;
  - (2) Name, description, local address, and business telephone number of such applicant, including local business address;
  - (3) Length of time such applicant has maintained a place of business within the corporate limits of the City;
  - (4) Name, local address, and telephone number of each employee, servant, and agent who will participate in the sidewalk sale;
  - (5) A signature line for the owner and authorized representative of the subject property;
  - (6) The address at which the goods are to be sold; and
  - (7) The entire length of time for which the right to do business is desired.
- (b) If the applicant meets the requirements for a sidewalk sale certificate, the Chief of Police shall issue said certificate to said applicant upon the payment of a fee of \$4.00 by the applicant, and no further fee, permit, or license under this Chapter shall be required. Notwithstanding anything in this Section, an individual who maintains a retail business location which conforms to zoning regulations may conduct, at that business location, the sale of the following seasonal items:
  - (1) Christmas trees, from November 15 through December 25, inclusive;
  - (2) Pumpkins, from October 1 through November 30, inclusive;
  - (3) Firewood, from October 1 through March 1, inclusive; and
  - (4) Potted plants, trees, shrubbery, sod, mulch, fertilizer, seed and other plant material items, from April 1 to September 1, inclusive, provided that such items are not placed or stored in any area normally designated for parking or vehicular traffic.
- (c) A sidewalk sale certificate holder shall not be required to obtain a new certificate for each subsequent sidewalk sale unless the certificate has expired. However, the sidewalk sale certificate holder shall notify the City Manager in writing before conducting a sidewalk sale. Said notification shall specify the location and duration of the sidewalk sale.
- (d) If a sidewalk sale certificate holder hires or otherwise procures the service of an employee, servant, or agent who was not identified on the application, the sidewalk sale certificate holder shall submit the employee's, servant's, or agent's name, local address and telephone number in writing to the Chief of Police before the employee, servant, or agent participates in a sidewalk sale.
- (e) An individual who is physically present at a sidewalk sale and who displays or assists with the display of goods, transfers or assists with the transfer of goods, prepares food, serves food, handles money,

or otherwise exercises care, custody, or control over goods, food, or money in connection with a sidewalk sale, shall be presumed to be conducting a sidewalk sale, or if another individual or business organization holds a sidewalk sale certificate in connection with the sidewalk sale, shall be presumed to be an agent of the sidewalk sale certificate holder.

- (f) A certificate shall be issued to any person who applies for said certificate and who otherwise meets the requirements of this Chapter. Said person may apply for a certificate for each employee, servant, and agent engaged in said business.
- (g) A person shall not conduct a sidewalk sale that lasts longer than three days, and a person shall not conduct a sidewalk sale at the same location until 15 days have passed since the end of the last sidewalk sale.
- (h) All individuals and business organizations who have maintained a legal place of business within the corporate limits of the City of Midland for at least twelve months preceding the date of the sidewalk sale may conduct a sidewalk sale at the business location only with a sidewalk sale certificate.

(Ordinance 9270, sec. 1, adopted 5/6/14)

#### **§ 5-10-2. Permit and license required if selling from a fixed location.**

- (a) A person who desires to do business from a fixed location, without traveling from place to place, shall make application for a permit and a license from the City of Midland Code Administration Division to do business at a fixed location. Said permit and license shall be valid for a one-year term. For each vending vehicle or trailer that an applicant desires to operate within the City of Midland, the applicant shall pay a fee of \$100.00. No permit or license shall be issued for the operation of such business in a fixed location in zoning districts AE, Agricultural-Estate District through MF-2, Multiple-Family Dwelling District, as enumerated in "Zoning Regulations," Chapter 11-1, "Zoning," of this Code.
- (b) An individual or business organization shall, prior to conducting business from a fixed location, file with the Code Administration Division a sworn application on a form furnished by the Code Administration Division which shall contain the following information:
  - (1) Description of the business and the name of the owner or manager of such business;
  - (2) Name, description, local address, and business telephone number of such applicant, including local business address;
  - (3) Length of time such applicant has maintained a place of business within the corporate limits of the City;
  - (4) Name, local address, and telephone number of each employee, servant, or agent who will participate in the operation;
  - (5) A signature line for the owner and authorized representative of the subject property;
  - (6) The address at which the goods are to be sold; and
  - (7) The entire length of time for which the right to do business is desired.
- (c) An applicant for a permit and license under this Section shall satisfy the following conditions:
  - (1) Submit to the City of Midland Police Department a current Texas Comptroller Sales Tax Certificate and a current Federal Tax Identification Certificate (EIN Certificate), and obtain a vendor's clearance letter from the Police Department following a criminal background check

that reveals no final conviction for a felony or a crime involving moral turpitude within the previous five years;

- (2) For each location at which an applicant wishes to operate, submit to the Code Administration Division an approval letter from the location's property owner of record according to the records of the Midland Central Appraisal District;
  - (3) Submit to the Code Administration Division copies of the vendor's clearance letter, current Texas Comptroller Sales Tax Certificate, current Federal Tax Identification Certificate (EIN Certificate), and, if applicable, a City of Midland Health Department Mobile Food Vendor permit; and
  - (4) For each location at which an applicant wishes to operate, obtain a permit and license from the Code Administration Division prior to conducting business at that location.
- (d) If a vendor who holds a permit and license under this Section hires or otherwise procures the service of an employee, servant, or agent who was not identified on the vendor's application, the vendor shall submit the employee's, servant's, or agent's name, local address and telephone number in writing to the Code Administration Division before the employee, servant, or agent participates in the operation.
- (e) A vendor who holds a permit and license under this Section and an employee, servant, and agent of the vendor:
- (1) Shall display the permit in a visible location on the vendor's equipment;
  - (2) Shall operate from a paved surface, and not on vacant, unimproved property;
  - (3) Shall not provide or allow off-street customer parking unless the area designated for off-street customer parking is paved;
  - (4) Shall conduct business from the fixed location only between the hours of 7:00 a.m. and 10:00 p.m.;
  - (5) Shall not leave a vending vehicle, trailer, equipment, or merchandise at the fixed location between the hours of 10:00 p.m. and 7:00 a.m.;
  - (6) Shall provide covered trash receptacles in conjunction with the vendor's operation while the vendor is conducting business, shall be responsible for the disposal of all trash collected in the receptacles, and shall remove the receptacles when the vendor leaves the fixed location;
  - (7) Shall not provide tables or seating for customers at the fixed location;
  - (8) Shall attach all signage to the vending vehicle or trailer, shall comply with all statutes, ordinances, rules, and regulations applicable to the signage, and shall not display free-standing signs, banners, flags, or similar objects;
  - (9) Shall, if the vendor is a food vendor, possess a current City of Midland Health Department Mobile Food Vendor permit; and
  - (10) Shall, if the vendor is food vendor who cooks at the fixed location, cook only within the vending vehicle or trailer, and, prior to cooking, receive the Midland Fire Department's approval of the cooking equipment.
- (f) An individual who is physically present at a fixed location and who displays or assists with the

display of goods, transfers or assists with the transfer of goods, prepares food, serves food, handles money, or otherwise exercises care, custody, or control over a vending vehicle, trailer, equipment, goods, food, or money in connection with business at the fixed location shall be presumed to be conducting business from the fixed location, or if another individual or business organization holds a permit and license in connection with the operation under this Section, shall be presumed to be an agent of the holder of the permit and license.

- (g) A licensed and Health Department-approved food vendor who desires to conduct business within the designated Texas Avenue right-of-way directly adjacent to Centennial Plaza or Tennessee Avenue right-of-way directly adjacent to the Midland County Courthouse, located on Block 42, Homestead Addition, shall obtain a permit from the Building Official in the Code Administration Division, 4th Floor, City Hall, to conduct business for up to one business week beginning on Monday and ending on Saturday; however, sanctioned special events in Centennial Plaza may alter this schedule. A vendor may not obtain a permit for successive weeks. There shall be a maximum of three vendors allowed per business week at Centennial Plaza. The permit can be obtained beginning Monday of the week prior to vending from Centennial Plaza or the Tennessee Avenue right-of-way. Business hours shall be from 7:00 a.m. to 10:00 p.m. Equipment shall be removed each day and the space shall be cleaned. The mobile equipment used at this location must be inspected and receive approval from the Building Official prior to obtaining a permit. The inspection shall ensure the equipment is in acceptable physical condition and appearance.
- (h) A licensed and Health Department-approved mobile food vendor may conduct business from a delineated parking space in a City of Midland right-of-way, except in zoning districts AE, Agricultural-Estate District through MF-2, Multiple-Family Dwelling District, as enumerated in Title XI, "Zoning Regulations," Chapter 11-1, "Zoning," of this Code, provided that the vendor obtains a permit from the Code Administration Division for On-Street Parking Vending. A mobile food vendor seeking to obtain a permit under this subsection shall indicate the duration of the proposed vending operation on the vendor's permit application. A mobile food vendor conducting business under this subsection and the vendor's employees, servants, and agents:
- (1) Shall display the permit in a visible location on the vendor's equipment;
  - (2) Shall legally park in the delineated space and adhere to all parking statutes, ordinances, rules, and regulations applicable to the space;
  - (3) Shall not park or operate from a parking space within five parking spaces in each direction from an entrance to a restaurant or from a parking space adjacent to Centennial Plaza or the Midland County Courthouse;
  - (4) Shall not conduct business within the travel or parking portion of the street, or in such a manner that results in an obstruction or interference with travel or parking;
  - (5) Shall not block the use of any sidewalk and shall insure that a width of at least four feet of sidewalk remains passable at all times;
  - (6) Shall not leave a vending vehicle, trailer, equipment, or merchandise on the street between the hours of 10:00 p.m. and 7:00 a.m.;
  - (7) Shall provide covered trash receptacles in conjunction with the vendor's operation while the vendor is conducting business, shall be responsible for the disposal of all trash collected in the receptacles, and shall remove the receptacles when the vendor leaves the site;

- (8) Shall not provide tables or seating for customers at the site; and
  - (9) Shall attach all signage to the vending vehicle or trailer, shall comply with all statutes, ordinances, rules, and regulations applicable to the signage, and shall not display free-standing signs, banners, flags, or similar objects.
- (i) It is an affirmative defense to prosecution under this Section that:
- (1) The defendant was engaged in the business of selling ice cream from an ice cream truck which traveled from place to place;
  - (2) The defendant was a licensed mobile food vendor traveling from place to place rather than operating from a fixed location; or
  - (3) The defendant held an annual seasonal permit from the Code Administration Division and was operating a Snow Cone Stand that:
    - (A) Was located on a lot or parcel that was not within zoning districts AE, Agricultural-Estate District through MF-2, Multiple-Family Dwelling District, as enumerated in Title XI, "Zoning Regulations," Chapter 11-1, "Zoning," of this Code;
    - (B) Was the only Snow Cone Stand located on the lot or parcel;
    - (C) Had maximum dimensions of ten feet by 20 feet;
    - (D) Was occupied only temporarily, seasonally during the months of April through September, and was stored in an area away from its normal place of business operation during off-season periods;
    - (E) Was wired in conduit;
    - (F) Had a minimum of 15 feet between the Snow Cone Stand and any other structure, and a minimum of 15 feet between the Snow Cone Stand and any lot line other than a lot line adjacent to a street or alley; and
    - (G) Had adequate rest room facilities readily available on the premises.
- (j) An individual engaging in business by virtue of a valid permit and license obtained under the provisions of this Section shall be allowed to display, sell, and store goods, merchandise, commodities, and other wares in the open, outside of a building, for the temporary period stated in such permit and license to the extent that such display, sale, and storage are not prohibited by the provisions of this Chapter, notwithstanding the provisions of Title XI, "Zoning Regulations," of this Code prohibiting such open display, sale and storage in certain zoning districts.

(Ordinance 9270, sec. 1, adopted 5/6/14)

#### **§ 5-10-3. Application for background check; fee for investigation.**

- (a) A person who applies for a permit and license under this Chapter shall first pay to the Chief of Police a fee of \$4.00, which is reasonably related to the cost of conducting a criminal background check, and file with the Chief of Police a sworn application in writing on a form to be furnished by the Chief of Police, which shall provide all of the following information:
  - (1) Name and description of the applicant;

- (2) Permanent home address and full local address of the applicant, including the local business address if applicable;
  - (3) A brief description of the nature of the applicant's business and the goods to be sold;
  - (4) If the applicant is employed, the name and address of the applicant's employer, together with credentials establishing the exact relationship;
  - (5) A statement as to whether or not the applicant has been convicted of a felony or crime involving moral turpitude;
  - (6) A copy of a current Texas Comptroller Sales Tax Certificate and a current Federal Tax Identification Certificate (EIN Certificate); and
  - (7) If the applicant is a food vendor, a current City of Midland Health Department Mobile Food Vendor permit.
- (b) Upon submission of the sworn application to the Chief of Police, the Police Department shall conduct a criminal background check of the applicant. If the criminal background check reveals that the applicant has not been finally convicted of a felony or a crime involving moral turpitude within the five years preceding the application, then the Chief of Police shall issue to the applicant a vendor's clearance letter.

(Ordinance 9270, sec. 1, adopted 5/6/14)

#### **§ 5-10-4. Appealing a denial or revocation of a permit, license, or certificate.**

- (a) Upon the denial or revocation of a permit, license, or certificate under this Chapter, the official who denied or revoked the permit, license, or certificate shall provide to the applicant or vendor written notice of the right to appeal described in this Section.
- (b) Any applicant or vendor aggrieved by an action of the Chief of Police, Building Official, or Code Administration Division official in the denial or revocation of a permit, license, or certificate as provided in this Chapter may appeal this action by submitting to the City Manager, within 14 days after notice of the action complained of has been mailed to such applicant's or vendor's last known address, a written request for a hearing setting forth fully the grounds for the appeal.
- (c) If a person requests a hearing under this Section, a hearing shall be held before the City Manager within five business 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.
- (d) The purpose of the hearing shall be to determine whether an action of the Chief of Police, Building Official, or Code Administration Division official resulted in the improper denial or revocation of a permit, license, or certificate under this Chapter.
- (e) If an appellant completed and submitted a sworn application and fee to the Chief of Police under Section 5-10-3 and was denied a permit, license, or certificate solely due to the denial of a vendor's clearance letter by the Chief of Police, then evidence that the appellant was not finally convicted of a felony or crime of moral turpitude within the five years preceding the application shall be *prima facie* evidence that the action of the Chief of Police resulted in the improper denial of the permit, license, or certificate.
- (f) If an appellant was denied a permit and license solely due to the appellant's failure to pay the fee required under Section 5-10-2(a), then evidence of the appellant's inability to pay the fee shall be

prima facie evidence that the action of a Code Administration Division official resulted in the improper denial of the permit and license.

- (g) 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.
- (h) If, after considering the evidence, the City Manager finds that an action of the Chief of Police, Building Official, or Code Administration Division official did not result in the improper denial or revocation of a permit, license, or certificate under this Chapter, then the City Manager shall affirm the denial or revocation and order that the permit, license, or certificate shall remain denied or revoked.
- (i) If, after considering the evidence, the City Manager finds that an action of the Chief of Police, Building Official, or Code Administration Division official resulted in the improper denial or revocation of a permit, license, or certificate under this Chapter, then the City Manager shall overrule the denial or revocation and order that the permit, license, or certificate shall be issued or reinstated. If the City Manager finds that the appellant cannot afford the fee required under Section 5-10-2(a), the City Manager may reduce the fee to an amount that he or she finds the appellant can afford, down to \$0.00, and order the issuance of a permit and license upon the appellant's payment of the reduced fee to the Code Administration Division.

(Ordinance 9270, sec. 1, adopted 5/6/14)

#### **§ 5-10-5. Expiration of permit, license, and certificate.**

A permit, license, and certificate issued under the provisions of this Chapter shall expire on the date specified on the permit, license or certificate. The date of expiration specified on a permit, license, or certificate shall be no more than 12 months after the date on which the permit, license, or certificate was issued.

(Ordinance 9270, sec. 1, adopted 5/6/14)

#### **§ 5-10-6. Transfer of permit, license, and certificate prohibited.**

- (a) A person to whom a permit, license, or certificate was issued shall not allow another to use the permit, license or certificate.
- (b) A person shall not use a permit, license, or certificate issued under the provisions of this Chapter at any time except the person to whom it was issued.

(Ordinance 9270, sec. 1, adopted 5/6/14)

#### **§ 5-10-7. Health permit required.**

An individual who offers for sale to the public food in any form not in the original package shall, before a license, permit, or certificate is issued to him or her under this Chapter, obtain a mobile food vendor permit from the Health Officer. Said individual shall comply with all provisions enumerated in Title VIII, "Food Establishments, Health and General Sanitation," Chapter 8-4, "Mobile Food Vendors," of this Code.

(Ordinance 9270, sec. 1, adopted 5/6/14)

#### **§ 5-10-8. Enforcement.**

Officers and inspectors of the Police Department, Fire Department, Health Department, and Code Administration Division shall enforce the provisions of this Chapter.

(Ordinance 9270, sec. 1, adopted 5/6/14)

**§ 5-10-9. Failure to cease operation and impoundment.**

- (a) An individual who operates in violation of this Chapter shall cease operation immediately upon discovery of the violation and not restart operation until the violation is corrected. When an officer or inspector of the City of Midland Police Department, Fire Department, Health Department, or Code Administration Division identifies a violation of this Chapter and orders an individual to cease operation, the individual shall cease operation immediately and shall not restart operation until the violation is corrected. If an individual fails to cease operation immediately upon the order of an officer or inspector of the City of Midland Police Department, Fire Department, Health Department, or Code Administration Division, or subsequently restarts operation before correcting the violation, then a peace officer employed by the City of Midland Police Department shall impound, or direct the impoundment of, the vending vehicle, trailer, equipment, and merchandise used by the individual in the operation.
- (b) Upon impoundment, the peace officer shall provide written notice of the right to appeal described in Section 5-10-10 to the vendor identified in the permit, license, or certificate issued for the operation. If the vendor is not present at the time of impoundment, or if no permit, license, or certificate was issued for the operation, the peace officer shall provide the notice to the individual who failed to cease operation.
- (c) The impounded vending vehicle, trailer, equipment, and merchandise shall be returned to the vendor upon the vendor's payment of the appropriate impound fees.

(Ordinance 9270, sec. 1, adopted 5/6/14)

**§ 5-10-10. Appealing an impoundment.**

- (a) A vendor whose vending vehicle, trailer, equipment, or merchandise is impounded under Section 5-10-9 may appeal this action by submitting to the City Manager within five business days after impoundment a written request for a hearing.
- (b) If a vendor requests a hearing under this Section, a hearing shall be held before the City Manager within five business 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 purpose of the hearing shall be to determine:
  - (1) Whether the vendor or the vendor's employee, servant, or agent operated in violation of this Chapter;
  - (2) Whether an officer or inspector of the City of Midland Police Department, Fire Department, Health Department, or Code Administration Division ordered the vendor or the vendor's employee, servant, or agent to cease operation; and
  - (3) Whether the vendor or the vendor's employee, servant, or agent failed to cease operation immediately, or subsequently restarted operation before correcting the violation.
- (d) 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.
- (e) If, after considering the evidence, the City Manager finds (1) that the vendor or the vendor's employee, servant, or agent operated in violation of this Chapter, (2) that an officer or inspector of the City of Midland Police Department, Fire Department, Health Department, or Code Administration Division ordered the vendor or the vendor's employee, servant, or agent to cease operation, and (3)

that the vendor or the vendor's employee, servant, or agent failed to cease operation immediately, or subsequently restarted operation before correcting the violation, then the City Manager shall affirm the impoundment and order that the impounded vending vehicle, trailer, equipment, and merchandise shall remain impounded until the vendor pays the appropriate impound fees.

- (f) If, after considering the evidence, the City Manager finds (1) that the vendor and the vendor's employees, servants, and agents operated in compliance this Chapter, (2) that an officer or inspector of the City of Midland Police Department, Fire Department, Health Department, or Code Administration Division did not order the vendor or an employee, servant, or agent of the vendor to cease operation, or (3) that the vendor or the vendor's employee, servant, or agent immediately ceased operation and did not subsequently restart operation before correcting the violation, then the City Manager shall overrule the impoundment, order the release of the impounded vending vehicle, trailer, equipment, and merchandise to the vendor, and direct the City to pay the appropriate impound fees.
- (Ordinance 9270, sec. 1, adopted 5/6/14)

**§ 5-10-11. Offense; penalty; affirmative defenses; judicial notice.**

- (a) Any person, corporation, or association who shall violate any of the provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not to exceed \$500.00. Each day on which the violation shall exist shall constitute a separate and distinct offense. Evidence of a culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared that, for all offenses under this Chapter, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (b) If a defendant is accused of operating while not holding a permit, license, or certificate required by this Chapter, it is an affirmative defense to prosecution that:
- (1) The defendant properly applied for the required permit, license, or certificate;
  - (2) The defendant completed and submitted a sworn application and fee to the Chief of Police under Section 5-10-3;
  - (3) The defendant was denied the required permit, license, or certificate solely due to the denial of a vendor's clearance letter by the Chief of Police; and
  - (4) The defendant was not finally convicted of a felony or crime of moral turpitude within the five years preceding the submission of the application.
- (c) If a defendant is accused of failing to display a permit in a visible location on equipment as required by this Chapter, it is an affirmative defense to prosecution that:
- (1) The defendant, or the person for whom the defendant acted as an employee, servant, or agent, possessed a valid permit of the type that was required to be displayed; and
  - (2) The defendant, or the person for whom the defendant acted as an employee, servant, or agent, subsequently displayed the permit in a visible location on the equipment.
- (d) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of:
- (1) This Chapter;
  - (2) All records of the Midland Central Appraisal District;

- (3) All records of Midland County, Texas; and
  - (4) All records of the City of Midland, Texas.
- (Ordinance 9270, sec. 1, adopted 5/6/14)

**SIDEWALK SALES AND SELLING FROM FIXED**

**Chapter 5-11**

**CREDIT ACCESS BUSINESSES**

**§ 5-11-1. Purpose.**

The purpose of this Chapter is to protect the welfare of the citizens of the City of Midland by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this Chapter establishes a registration program for credit access businesses, imposes restrictions on extensions of consumer credit made by credit access businesses, and imposes record keeping requirements on credit access businesses.

(Ordinance 9274, sec. 1, adopted 6/17/14)

**§ 5-11-2. Definitions.**

As used in this Chapter:

- (a) *Certificate of registration*means a certificate of registration issued by the Director under this Chapter to person who acts, operates, or conducts business as a credit access business.
  - (b) *City*means the City of Midland, Texas.
  - (c) *Consumer*means an individual who is solicited to purchase or who purchases the services of a credit access business.
  - (d) *Consumer's language of preference*means the language the consumer understands best.
  - (e) *Credit access business*has the meaning given that term in Section 393.601 of the Texas Finance Code.
  - (f) *Deferred presentment transaction*has the meaning given that term in Section 393.601 of the Texas Finance Code.
  - (g) *Director*means the City of Midland Director of Development Services or his or her designee.
  - (h) *Extension of consumer credit*has the meaning given that term in Section 393.001 of the Texas Finance Code.
  - (i) *Motor vehicle title loan*has the meaning given that term in Section 393.601 of the Texas Finance Code.
  - (j) *Municipal Court*means the City of Midland Municipal Court.
  - (k) *Person*means an individual, corporation, organization, partnership, association, financial institution, or any other legal entity.
  - (l) *Registrant*means a person to whom a certificate of registration for a credit access business was issued under this Chapter and includes all owners and operators of the credit access business identified in the registration application filed under this Chapter.
  - (m) *State license*means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393, Subchapter G of the Texas Finance Code.
- (Ordinance 9274, sec. 1, adopted 6/17/14)

**§ 5-11-3. Enforcement; offense and penalty; culpable mental state not required; judicial notice.**

- (a) The Director, officers of the City of Midland Code Administration Division, and peace officers of the City of Midland Police Department are authorized to enforce the provisions of this Chapter beginning

on September 1, 2014.

- (b) A person who violates a provision of this Chapter 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 separate violation of a provision of this Chapter. A person commits a separate and distinct offense for each day during which a violation of this Chapter is committed, permitted, or continued.
- (c) Evidence of a culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared that, for all offenses under this Chapter, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (d) The Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of:
  - (1) This Chapter;
  - (2) Chapter 393 of the Texas Finance Code;
  - (3) All records of the City of Midland, Texas;
  - (4) All records of Midland County, Texas; and
  - (5) All records of the Midland Central Appraisal District.
- (e) The criminal penalty in this Section shall be in addition to any other remedies that the City may have under City ordinance and/or state law.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-4. Affirmative defenses.**

It is an affirmative defense to prosecution under this Chapter that:

- (a) At the time of the alleged offense, the defendant, or the person for whom the defendant was acting as an employee, servant, or agent, was not required to hold a state license as a credit access business under Chapter 393, Subchapter G, of the Texas Finance Code;
- (b) The alleged offense arose from an agreement for an extension of consumer credit that existed prior to September 1, 2014, and did not arise from a renewal or refinancing that was provided on or after September 1, 2014;
- (c) The alleged offense arose from a violation of Section 5-11-14(a) and:
  - (1) The defendant has continually acted, operated, or conducted business as a credit access business on the lot since before September 1, 2014; or
  - (2) The defendant has continually acted, operated, or conducted business as a credit access business on the lot since before the other credit access business was operated on another lot located less than 1,000 feet away from the defendant's lot, as measured in a straight line between the nearest points of one lot to the other lot.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-5. Registration required.**

- (a) A person shall not act, operate, or conduct business as a credit access business unless the person holds

a valid certificate of registration.

- (b) A person who acts, operates, or conducts business as a credit access business shall hold a separate certificate of registration for each physically separate credit access business establishment.  
(Ordinance 9274, sec. 1, adopted 6/17/14)

**§ 5-11-6. Registration application; notification of changes required.**

- (a) To obtain a certificate of registration for a credit access business, a person shall submit to the Director an application on a form provided by the Director for that purpose. The application shall contain the following:
- (1) The name, street address, mailing address, facsimile number, and telephone number of the applicant;
  - (2) The business or trade name, street address, mailing address, facsimile number, telephone number of the credit access business, and the date on which the credit access business began operating, or expects to begin operating, at the specified street address;
  - (3) A statement from the applicant as to whether the lot on which the business is located, or will be located, is less than 1,000 feet from another lot on which a credit access business is operated, as measured in a straight line between the nearest points of one lot to the other lot;
  - (4) A certified copy of the plat containing the lot on which the business will be operated and the plat or plats containing all lots within 1,000 feet of that lot;
  - (5) The names, street addresses, mailing addresses, and telephone numbers of all owners of the credit access business and others with a financial interest in the credit access business, and the nature and extent of each person's interest in the credit access business;
  - (6) A copy of a current, valid state license held by the credit access business pursuant to Chapter 393, Subchapter G of the Texas Finance Code;
  - (7) A copy of a current, valid certificate of occupancy showing that the credit access business establishment is in compliance with the City of Midland Municipal Code; and
  - (8) A fee of \$25.00 which is reasonably related to the cost of processing the application materials and enforcing the provisions of this Chapter.
- (b) An applicant or registrant shall notify the Director in writing within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant.  
(Ordinance 9274, sec. 1, adopted 6/17/14)

**§ 5-11-7. Issuance and display of certificate of registration; presentment required upon request; no property right created.**

- (a) Upon receiving a completed application and fee under Section 5-11-6(a) and determining that the application does not indicate that the proposed credit access business will be operated in violation of the provisions of this Chapter, the Director shall issue to the applicant a certificate of registration.
- (b) If the Director denies the applicant a certificate of registration for any reason, the Director shall

provide the applicant with written notice of the applicant's right to appeal under Section 5-11-15. Any person who has been denied certificate of registration may apply again for a certificate of registration regardless of whether the person appealed the denial or the outcome of such appeal.

- (c) A registrant shall conspicuously display to the public in the credit access business establishment a certificate of registration issued under this Section, notify all of the registrant's employees, servants, and agents of the location of the certificate of registration, and allow the registrant's employees, servants, and agents to access the certificate of registration upon an order from the Director, an officer of the City of Midland Code Administration Division, or a peace officer of the City of Midland Police Department to produce the certificate of registration for inspection.
- (d) Upon an order from the Director, an officer of the City of Midland Code Administration Division, or a peace officer of the City of Midland Police Department to produce a certificate of registration during the usual and customary business hours of the credit access business, a registrant or an employee, servant, or agent of the registrant shall produce the certificate of registration issued under this Section for inspection.
- (e) A certificate of registration does not create a property interest or a vested right in the registrant. This Section creates no property interest or right of entitlement of any kind.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-8. Expiration and renewal of certificate of registration.**

- (a) A certificate of registration shall expire on the earliest of:
  - (1) One year after the date of issuance; or
  - (2) The date of revocation, suspension, surrender, expiration without renewal, or other termination of the registrant's state license.
- (b) A certificate of registration may be renewed by making application in accordance with Section 5-11-6. A registrant who seeks renewal of a certificate of registration shall apply for renewal at least 30 days before the expiration of the certificate of registration.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-9. Transfer of certificate of registration prohibited.**

- (a) A registrant shall not transfer or assign a certificate of registration to another person or otherwise allow another person to act, operate, or conduct business as a credit access business using the registrant's certificate of registration.
- (b) A person shall not act, operate, or conduct business as a credit access business using a certificate of registration unless the person is a registrant associated with the certificate of registration.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-10. Maintenance of records.**

A person who acts, operates, or conducts business as a credit access business and the employees, servants, and agents of such person shall:

- (a) Maintain a complete set of records of all extensions of consumer credit arranged or obtained by the credit access business, which shall include the following information:

- (1) The name and address of the consumer;
  - (2) The principal amount of cash actually advanced;
  - (3) The length of the extension of consumer credit, including the number of installments and renewals;
  - (4) The fees charged by the credit access business to arrange or obtain the extension of consumer credit; and
  - (5) The documentation used to establish the consumer's income under Section 5-11-11;
- (b) Maintain a copy of each written agreement between the credit access business and a consumer evidencing an extension of consumer credit, including, but not limited to, any refinancing or renewal granted to the consumer;
  - (c) Maintain a copy of each quarterly report filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code; and
  - (d) Maintain all records under this Section for at least three years and, upon an order from the Director, an officer of the City of Midland Code Administration Division, or a peace officer of the City of Midland Police Department to produce a record or records during the usual and customary business hours of the credit access business, shall produce the record or records for inspection.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-11. Restrictions on extension of consumer credit.**

- (a) A person who acts, operates, or conducts business as a credit access business and the employees, servants, and agents of such person:
  - (1) Shall determine a consumer's income by using the following documentation establishing income:
    - (A) A payroll document identifying the consumer's wages for a payroll period;
    - (B) A paycheck or pay stub issued to the consumer;
    - (C) An account statement issued by a bank or credit union to the consumer;
    - (D) A report from a nationally or regionally recognized credit and data reporting company that identifies the consumer's income;
    - (E) An Internal Revenue Service Form W-2 for the preceding year issued to the consumer;
    - (F) The consumer's income tax return for the preceding tax year; or
    - (G) A signed letter from the consumer's employer at the time the extension of consumer credit is sought identifying the length of the employer's payroll period and the total wages that the employer pays, or reasonably expects to pay, to the consumer per payroll period;
  - (2) Shall not obtain for a consumer or assist a consumer in obtaining cash advanced under an extension of consumer credit in the form of a deferred presentment transaction that exceeds 20 percent of the consumer's gross monthly income;
  - (3) Shall not obtain for a consumer or assist a consumer in obtaining cash advanced under an

extension of consumer credit in the form of a motor vehicle title loan that exceeds the lesser of:

- (A) Three percent of the consumer's gross annual income; or
  - (B) 70 percent of the retail value of the motor vehicle.
- (4) Shall not obtain for a consumer or assist a consumer in obtaining an extension of consumer credit that provides for repayment in installments that is payable in more than four installments, and:
- (A) Shall use the proceeds from each installment to repay at least 25 percent of the principal amount of the extension of consumer credit; and
  - (B) Shall not provide or assist in providing refinancing or renewal of the extension of consumer credit payable in installments; and
- (5) Shall not provide or assist in providing refinancing or renewal more than three times of an extension of consumer credit that provides for a single lump sum repayment, and shall use the proceeds from each refinancing or renewal to repay at least 25 percent of the principal amount of the original extension of consumer credit.
- (b) For purposes of this Section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer shall constitute a refinancing or renewal.

(Ordinance 9274, sec. 1, adopted 6/17/14)

### **§ 5-11-12. Requirement of consumer understanding of agreement.**

A person who acts, operates, or conducts business as a credit access business and the employees, servants, and agents of such person:

- (a) Shall not enter into an agreement with a consumer for an extension of consumer credit, including, but not limited to any refinancing or renewal granted to a consumer, unless said agreement is written in the consumer's language of preference;
- (b) Shall maintain on the credit access business' premises, and make available for use by consumers, agreements written in the English and Spanish languages;
- (c) Shall, for each consumer who cannot read, read aloud to the consumer in its entirety in the consumer's language of preference each agreement between the credit access business and the consumer evidencing an extension of consumer credit, including, but not limited to, any refinancing or renewal granted to the consumer, prior to the consumer signing the agreement; and
- (d) Shall, for each consumer who cannot read, read aloud to the consumer in its entirety in the consumer's language of preference each disclosure and notice required by law to be provided to the consumer, prior to the consumer signing the agreement.

(Ordinance 9274, sec. 1, adopted 6/17/14)

### **§ 5-11-13. Referral to consumer credit counseling.**

- (a) A person who acts, operates, or conducts business as a credit access business or an employee, servant, or agent of such person shall provide to each consumer a form, to be prescribed by the Director, which identifies non-profit agencies that provide financial education and training programs and agencies

with cash assistance programs, and contains information regarding extensions of consumer credit and the information required by 5-11-10(a)(1)-(5) of this ordinance specific to the loan agreement with the consumer.

- (b) If the Director has prescribed a form in the consumer's language of preference, a person who acts, operates, or conducts business as a credit access business or an employee, servant, or agent of such person shall provide the form to the consumer in the consumer's language of preference.
- (c) If the Director has not prescribed a form in the consumer's language of preference, or if the consumer cannot read, a person who acts, operates, or conducts business as a credit access business or an employee, servant, or agent of such person shall read aloud to the consumer in its entirety in the consumer's language of preference the form prescribed by the Director.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-14. Location of credit access businesses.**

- (a) A person shall not act, operate, or conduct business as a credit access business on a lot that is located less than 1,000 feet from another lot on which a credit access business is operated, as measured in a straight line between the nearest points of one lot to the other lot.
- (b) The Director shall not issue a certificate of registration to an applicant if the application indicates that the credit access business will be operated on a lot that is located less than 1,000 feet from another lot on which a credit access business is operated, as measured in a straight line between the nearest points of one lot to the other lot, unless:
  - (1) The applicant has continually acted, operated, or conducted business as a credit access business on the lot since before September 1, 2014; or
  - (2) The applicant has continually acted, operated, or conducted business as a credit access business on the lot since before the other credit access business was operated on another lot that is located less than 1,000 feet away from the applicant's lot, as measured in a straight line between the nearest points of one lot to the other lot.

(Ordinance 9274, sec. 1, adopted 6/17/14)

#### **§ 5-11-15. Appeal.**

- (a) Any person contesting any disapproval, conditional approval, 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 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 person wishes to contest.
- (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) Regarding an appeal in which the appellant contests the denial of issuance or renewal of a certificate of registration, if the City Manager finds that the appellant was denied issuance or renewal of a certificate of registration solely due to the appellant's failure to pay the fee required under Section 5-11-6(a)(8) and that the appellant cannot afford the fee, the City Manager may reduce the fee to an amount that he or she finds the appellant can afford, down to zero dollars (\$0.00), and order the issuance of a certificate of registration upon the appellant's payment of the reduced fee to the Code

Administration Division.

- (d) 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.
- (e) This Section shall not apply to a person contesting any matter or issue decided by a judge or jury in the Municipal Court. The procedure for an appeal from the Municipal Court in a case arising from an alleged violation of this Chapter shall be the same as the procedure for an appeal from the Municipal Court in any other criminal case.

(Ordinance 9274, sec. 1, adopted 6/17/14)

CREDIT ACCESS BUSINESSES

**Chapter 5-12**

**TRANSPORTATION NETWORK COMPANIES**

**Editor's note(s)**—Ord. No. 9571, § 1, adopted May 24, 2016, amended Chapter 12 in its entirety to read as herein set out. Former Chapter 12, §§ 5-12-1—5-12-21, pertained to similar subject matter, and derived from Ord. No. 9509, § 1, adopted Dec. 15, 2015.

### § 5-12-1. Purpose.

The purpose of this Chapter is to protect the welfare of the citizens of the City of Midland by regulating transportation network companies (TNCs) in an effort to expand the availability of transportation alternatives for the citizens of the City of Midland and to reduce the amount of alcohol-related vehicle crashes in and around the City. To this end, this chapter establishes a registration program for TNCs and, imposes regulations on TNC operations within the City of Midland, and imposes record keeping requirements on TNCs.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

### § 5-12-2. Definitions.

As used in this Chapter:

- (a) *Digital network*means any online-enabled application or system offered or used by a transportation network company (TNC) that enables a prearranged ride with a transportation network company driver.
- (b) *Dynamic pricing or surge pricing*means a TNC's ability to adjust pricing when market demand has increased and the TNC desires to attract more TNC drivers to make themselves available to accept passengers. Surge pricing can be turned off in the event of a public emergency.
- (c) *Fare estimator*means a feature provided by a TNC that is used to estimate the fare of a pre-arranged ride so that the TNC rider/passenger can check the price of the fare in advance.
- (d) *Operating permit*means the permission granted by the City to operate a TNC inside the City for a period of one year, renewable under the provisions of this Chapter. The permit term shall automatically renew for additional terms of one year upon the payment of fees, unless a party sends written notice of termination to the other party at least 30 days prior to the end of the then current term.
- (e) *Personal vehicle*means a vehicle that is used by a TNC driver and is: (1) owned, leased, or otherwise authorized for use by the TNC driver; and (2) not a taxicab, limousine, or similar for-hire vehicle.
- (f) *Prearranged ride*means the passenger transportation provided by a TNC driver to a TNC rider or passenger, beginning at the time a driver accepts a ride requested by a rider or passenger through a digital network controlled by a TNC and ending at the time such rider departs from the driver's vehicle. The term does not include:
  - (1) A shared expense carpool or vanpool arrangement or service; or
  - (2) Transportation provided using a taxicab, limousine, or similar for-hire vehicle.
- (g) *Transportation network company (TNC)*means an organization, whether a corporation, partnership, sole proprietor, or other form, operating in this state that uses a digital network to connect a TNC rider to a TNC driver for a prearranged ride. A TNC shall not be deemed to control, direct or manage the personal vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract. The term does not include an entity arranging non-emergency medical transportation under a contract with the state or a managed care organization for individuals qualifying for Medicaid or Medicare.

- (h) *Transportation network company (TNC) driver*means an individual who: (1) received connections to potential TNC riders and related services from a TNC in exchange for payment of a fee to the company; and (2) uses a personal vehicle to offer or provide a prearranged ride to a TNC rider in connection with the rider through a digital network controlled by the company in exchange for compensation or payment of a fee.
- (i) *Transportation network company (TNC) Rider/Passenger*means an individual in the City of Midland, who uses a TNC's digital network to connect with a TNC driver who provides a prearranged ride to the individual in the driver's personal vehicle between points chosen by the individual.
- (j) *Transportation network company (TNC) service*means transportation of a passenger between points chosen by the passenger, commencing in the City of Midland, and prearranged with a TNC driver through the use of a TNC digital network or software application. TNC service shall begin when a TNC driver accepts a request for transportation received through the TNC's digital network or software application, continues while the TNC driver transports the passenger in the TNC driver's vehicle, and ends when the passenger exits the TNC driver's vehicle. TNC service is not taxicab or street hail service.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

### **§ 5-12-3. Fare charged for services.**

- (a) A TNC may charge a fare for the services provided to passengers; provided that, if a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or within the software application service. The TNC shall also provide passengers with the option to view an estimated fare before the passenger enters the TNC driver's vehicle.
- (b) If a TNC utilizes dynamic pricing through its software application to incentivize drivers in an effort to maximize the supply of available vehicles on the digital network to match the demand for rides and increase reliability, the software application must:
- (1) Provide clear and visible indication that dynamic pricing is in effect prior to requesting a ride;
  - (2) Include a feature that informs riders that dynamic pricing will be applied prior to the ride request being completed; and
  - (3) Provide a fare estimator that enables the user to estimate the cost under dynamic pricing prior to requesting the ride.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

### **§ 5-12-4. Agent required.**

A TNC must maintain an agent for service of process in the State of Texas.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

### **§ 5-12-5. Identification of TNC vehicles and drivers.**

Once before a TNC is accepted by a TNC driver, the TNC's software application or website shall display the driver's first name, an accurate picture of the TNC driver, a picture or description of the vehicle, and the license plate number of the motor vehicle utilized for providing the TNC service.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-6. Electronic receipt required.**

- A. Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the passenger that lists:
- (1) The origin and destination of the trip;
  - (2) The total time and distance of the trip; and
  - (3) An itemization of the total fare paid, if any.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-7. Zero tolerance for alcohol or drug abuse.**

- (a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC services, and shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver to whom a passenger was connected and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.
- (b) Upon receipt of such passenger complaint alleging a violation of the zero tolerance policy, the TNC shall suspend such TNC driver's ability to accept trip requests through the TNC's digital network as soon as possible, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation. In the event the TNC driver is found to have violated the TNC's zero tolerance policy, the TNC driver shall immediately be removed from the TNC's platform and have their ability to access the TNC's digital network revoked.
- (c) The TNC shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a passenger complaint is received by the TNC.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-8. No street hails.**

A TNC driver shall exclusively accept rides booked through a TNC's digital network and shall not solicit or accept street hails.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-9. No cash rides.**

The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC drivers of such policy. TNC drivers shall not solicit or accept cash payments from passengers. Any payment for TNC services shall be made only electronically using the TNC's digital network or software application.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-10. No discrimination; accessibility.**

- (a) A TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to passengers and potential passengers and notify TNC drivers of such policy.
- (b) A TNC driver shall comply with all applicable laws regarding non-discrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or

affiliation, sex, disability, age, sexual orientation, or gender identity.

- (c) TNC drivers shall comply with all applicable laws relating to the accommodation of service animals.
- (d) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.
- (e) A TNC shall provide potential passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC services in any instance, it shall direct the potential passenger to an alternate provider of wheelchair-accessible service, if available.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

#### **§ 5-12-11. Records required.**

- (a) A TNC shall maintain:
  - (1) Individual trip records which must include driver and passenger identity information for at least one year from the date each trip was provided; and
  - (2) TNC driver records at least until the one year anniversary of the date on which a TNC driver's activation on the TNC digital network has ended.
- (b) Within seven business days of the receipt of a duly issued subpoena, court order or warrant relating to the investigation of a criminal matter, or within a longer period of time if reasonably agreed to by the parties, the TNC shall furnish the requested records to the Chief of Police or other appropriate person as designated in the subpoena, court order, or warrant. In response to a specific complaint against any TNC driver or TNC, the City is authorized to inspect records held by the TNC that are necessary to investigate and resolve the complaint. The TNC and City shall endeavor to have the inspection take place at a mutually agreed upon location in Midland County, Texas. Any record furnished to the City may exclude information that would tend to identify specific drivers or riders, unless the identity of a driver or rider is directly relevant to the complaint.
- (c) In the event that the TNC has specifically noted that a document is confidential and proprietary, and the City of Midland has received a formal request to inspect or copy information that may be subject to exception under sections of the Public Information Act, the City will process the request per the Public Information Act by requesting an attorney general decision under Section 552.301 and providing notice to the TNC regarding the request.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

#### **§ 5-12-12. Personal identity information.**

A TNC shall not disclose a passenger's personal identity information to a third party unless: the passenger consents, disclosure is required by a legal obligation, or disclosure is required to protect or defend the terms of use of a service or to investigate violations of those terms. In addition to the foregoing, a TNC shall be permitted to share a passenger's name and/or anonymized telephone number with the TNC driver providing TNC services to such passenger in order to facilitate correct identification of the passenger by the TNC driver, or to facilitate communication between the passenger and the TNC driver.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-13. Operating permit required.**

No TNC shall operate upon the City streets without having first obtained an operating permit from the City of Midland.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-14. Application.**

- A. An application for an operating permit required under this chapter shall be filed with the Chief of Police, or his designee, upon forms provided by the City Secretary's office. The application shall contain the following information:
- (1) The name of the business under which the TNC will be operated (if a partnership or corporation, a copy of the partnership agreement or articles of incorporation must be attached);
  - (2) The name, phone number, street address, and mailing address of the TNC's agent for service of legal process in the State of Texas (which information the TNC shall always keep current);
  - (3) The capabilities possessed by the TNC applicant with regard to using its digital network to connect TNC riders to TNC drivers for prearranged rides; and
  - (4) Any relevant information that tends to prove that public convenience and necessity require the granting of an operating permit.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-15. Fees.**

No operating permit required under this chapter shall be issued or continued in operation unless the holder thereof has paid an annual permit fee of \$1,500.00. The fee shall be paid to the City to compensate the City for its superintendence of the TNC business operated under this chapter and for the use of City streets, alleys and public ways.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-16. Issuance of operating permit.**

If the Chief of Police determines that the applicant is fit, willing and able to provide the public transportation and conform to this chapter, he or she shall issue an operating permit stating the name and address of the applicant; otherwise the application shall be denied.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-17. Suspension and revocation.**

- (a) Upon the filing of a written complaint alleging a violation of any of the provisions of this Chapter by a TNC driver or a TNC filed by any person with the Chief of Police, the Chief of Police, after five days' notice of the grounds of such complaint to the TNC driver or the TNC against whom complaint is made, may hear evidence with reference to such complaint, and after such hearing, the Chief of Police may revoke or suspend the permit of such holder or require the TNC to remove said TNC driver from its digital network or platform with good cause shown.
- (b) Good cause for the suspension or revocation of a permit includes, but is not limited to, the following:
  - (1) Failure of the operating permit holder to maintain any and all of the general qualifications applicable to the initial issuance of the permit as set forth by this Chapter;

- (2) Obtaining a permit by providing false information;
  - (3) Discontinuing operations for more than ten days;
  - (4) Violating any ordinance of the City, or any law of the United States or of the State of Texas, the violation of which adversely affects the ability of the permit holder to offer TNC services; or
  - (5) Violating any part of this Chapter.
- (c) The permit holder shall have the right to appeal the suspension or revocation to the City Manager within ten business days of the notice of suspension or revocation.

Such appeal must be submitted by a letter addressed to the City Manager setting forth the specific grounds for the appeal. Upon receiving such notice of appeal, the City Manager, as soon as practical thereafter, shall conduct a hearing at which the appealing party will be given an opportunity to present evidence that corroborates the specific grounds set forth in the notice of appeal. It shall be the burden of the appellant to establish that the decision of the Chief of Police is incorrect. The Chief of Police shall be entitled to present any information or evidence that supports the Chief's decision. The formal rules of evidence do not apply to an appeal hearing under this section. The City Manager shall issue a ruling on the basis of a preponderance of the evidence at the hearing.

- (d) The City Manager shall assess only the evidence presented at the hearing and shall affirm, modify, or reverse the decision of the Chief of Police. The decision of the City Manager is final.
- (e) If no appeal is taken from the ruling of the Chief of Police in the time and manner as provided in the chapter, the ruling of the Chief of Police shall be final.
- (f) Any TNC that continues to operate under a permit that has been suspended or revoked for any reason while the suspension or revocation is in effect shall be considered guilty of a misdemeanor and upon conviction thereof, shall be assessed a penalty accordingly. Every day's violation shall be considered a separate offense.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

#### **§ 5-12-18. Driver background check required.**

- (a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:
  - (1) Require the individual to submit relevant information to the TNC regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC;
  - (2) Conduct, or have a third party conduct, a local and national criminal background check for each TNC driver that shall include:
    - a. Multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and
    - b. National Sex Offender Registry database; and
  - (3) Obtain and review a driving history research report for such individual; and
  - (4) Perform a follow-up criminal background check annually thereafter.
- (b) The TNC shall not permit an individual to act as a TNC driver on its digital platform who:

- (1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license);
  - (2) Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or Class B misdemeanor or higher;
  - (3) Is a match in the National Sex Offender Registry database;
  - (4) Does not possess a valid driver's license;
  - (5) Does not possess proof of registration for the motor vehicle(s) used to provide TNC services;
  - (6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide TNC services; or
  - (7) Is not at least 19 years of age.
- (c) Audit. For the sole purpose of verifying that a TNC is in compliance with the requirements of this Chapter and no more than annually, the City shall have the right to visually inspect a sample of records that the TNC is required to maintain. The sample shall be chosen randomly by the City in a manner agreeable to both parties. The audit shall take place at a mutually agreed upon location in Midland County, Texas. Any record furnished to the City may exclude information that would tend to identify specific drivers or riders.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

#### **§ 5-12-19. Vehicle safety emissions.**

The TNC shall require that any motor vehicle(s) that a TNC driver will use to provide TNC services meets the requirements set forth in V.T.C.A., Transportation Code, Ch. 547 for vehicle safety equipment and inspection.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

#### **§ 5-12-20. Insurance requirements.**

TNCs and TNC drivers shall comply with the insurance requirements as set forth in Chapter 1954, Insurance for Transportation Network Company Drivers, Subtitle C, Title 10 of the Insurance Code, as may be amended.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

#### **§ 5-12-21. Disclosure requirements.**

A TNC shall disclose in writing to TNC drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the TNC provides while the driver uses a personal vehicle in connection with a TNC's online-enabled digital network. A TNC shall also disclose in writing to participating drivers, as part of its agreement with those drivers, that the driver's own automobile insurance policy might not provide coverage while the TNC driver uses a vehicle in connection with a TNC's digital network depending on its terms.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-22. Airport pickups.**

A TNC shall pay to the City of Midland a sum of \$1.00 for every ride originating on any portion of Midland International Air and Space Port property. Such funds shall be paid on a quarterly basis. All payments shall be delivered by mail, direct deposit, or in person, to the office of the Director of Airports, Midland International Air and Space Port, 9506 LaForce Boulevard, P. O. Box 60305, Midland, Texas 79711, or to such other location as specified by the City Manager from time to time. A TNC shall maintain such reports and documents for a period of one year following the expiration of the term for which they are applicable. (Ordinance 9571, sec. 1, adopted 5/24/2016)

**§ 5-12-23. Penalty provision.**

Each violation of this Chapter shall be punishable by a fine of not more than \$500.00. Each day a violation continues to exist shall constitute a separate offense.

(Ordinance 9571, sec. 1, adopted 5/24/2016)

TRANSPORTATION NETWORK COMPANIES

**Chapter 5-13**

**MASSAGE ESTABLISHMENTS**

**§ 5-13-1. Purpose.**

The purpose of this chapter is to lawfully regulate businesses that advertise or offer massage therapy or other massage services as authorized by section 455.005 of the Texas Occupations Code so as to protect the public health, ensure fire safety, and prevent nuisances.

(Ordinance 10608 adopted 4/8/2025)

**§ 5-13-2. Definitions.**

As used in this chapter:

City license means a license that is issued by the city of Midland to a restricted massage establishment.

City manager means the city of Midland's city manager or the city manager's designee.

Dwelling means a home or other place of residence.

Entrance notification means a written notice that says, "This is a restricted massage establishment that is subject to unannounced inspections by the city of Midland." The message on this notice shall be in bold 36 point or larger font.

Massage establishment means a place of business that advertises or offers massage therapy or other massage services. The term includes a place of business that advertises or offers any service described by a derivation of the terms "massage therapy" or "other massage services."

Massage therapy means the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. The terms "massage," "therapeutic massage," "massage technology," "myotherapy," "body massage," "body rub," or any derivation of those terms are synonyms for "massage therapy."

Other massage services means any services offered or performed for compensation at a massage establishment that involve physical contact with a client, and may include the use of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a tub, shower, jacuzzi, sauna, steam, or cabinet bath.

Premises means the real property where a massage establishment is operated. If a massage establishment is operated on real property that has multiple tenants, such as a shopping center, only the portion of the real property occupied by the massage establishment shall be considered the premises.

Restricted massage establishment means a massage establishment:

- (A) Where three or more arrests have occurred or citations in lieu of arrest have been issued for an offense under section 43.02, 43.021, 43.03, 43.04, 43.05, or 71.02, Penal Code, that was committed at the massage establishment;
- (B) Where an offense under chapter 20A, or section 34.02, 43.02, 43.021, 43.03, 43.04, 43.05, or 71.02, Penal Code, was committed that resulted in a conviction;
- (C) That is operating at a location where another massage establishment against which a sanction was imposed for a violation of chapter 455, Occupations Code, previously operated; or
- (D) That is operating at a location where another massage establishment owned or operated by an individual against whom a sanction was imposed for a violation of chapter 455, Occupations Code, previously operated.

Sexually oriented business means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other

commercial enterprise offering a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

State license means a license that is issued by the Texas Department of Licensing and Regulation or other department or agency of the state to a massage establishment in accordance with chapter 455, Occupations Code.

Unauthorized massage establishment means:

- (A) A massage establishment that is a sexually oriented business;
- (B) A massage establishment that:
  - 1. Is required to hold a state license under chapter 455, Occupations Code; and
  - 2. Does not hold a valid state license under chapter 455, Occupations Code; or
- (C) A restricted massage establishment that has not been issued a city license or whose city license is terminated unless the city council has granted the restricted massage establishment an exemption from the city license requirement.

(Ordinance 10608 adopted 4/8/2025)

**§ 5-13-3. General massage establishment regulations.**

- (A) A person shall not use, or allow the use of, the premises of a massage establishment as a dwelling or for any other use that violates the city's zoning ordinance.
- (B) A person shall not operate, or assist with or facilitate the operation of, an unauthorized massage establishment.
- (C) A person shall not administer massage therapy or other massage services on the premises of an unauthorized massage establishment.
- (D) A person who owns or leases real property shall not use the real property, or allow the use of the real property, as the premises of an unauthorized massage establishment.

(Ordinance 10608 adopted 4/8/2025)

**§ 5-13-4. City licensing of restricted massage establishments.**

- (A) City license requirement. A person shall not operate, or assist with or facilitate the operation of, a restricted massage establishment that has not been issued a city license or whose city license has been terminated unless the city council has granted the restricted massage establishment an exemption from the city license requirement.
- (B) Application for city license. A person who seeks to operate a restricted massage establishment shall submit an application for a city license. The following information shall be included on the application or submitted with the application:
  - 1. The legal name of the restricted massage establishment.
  - 2. The trade name of the restricted massage establishment, if different from the legal name.
  - 3. The physical address of the restricted massage establishment.
  - 4. For each direct owner of the restricted massage establishment:

- (a) If a direct owner of the restricted massage establishment is a business entity, the name, mailing address, telephone number, and email address of the business entity; and
  - (b) If a direct owner of the restricted massage establishment is an individual, the name, residence address, telephone number, email address, and date of birth of the individual.
5. The name, residence address, telephone number, email address, and date of birth of each individual who has an ownership interest in a business entity described in subsection (B)4(a) above, if applicable.
  6. The name, residence address, telephone number, and date of birth of each person who works, or is reasonably anticipated to work, at the restricted massage establishment, regardless of whether a person is an employee or will be an employee of the massage establishment.
  7. The name, mailing address, telephone number, and email address of the owner of the premises where the restricted massage establishment is operating or will operate.
  8. A written, notarized statement from each direct owner of the restricted massage establishment:
    - (a) Certifying that the owner has read, understands, and consents to the city's enforcement of the requirements of this chapter and shall comply with, and ensure that the restricted massage establishment is operated in compliance with, all applicable state laws and regulations and city ordinances, including this chapter; and
    - (b) Describing how the owner will ensure that the restricted massage establishment and the premises thereof are not used to commit or facilitate the commission of the following offenses:
      - (i) Trafficking of persons;
      - (ii) Prostitution;
      - (iii) Promotion of prostitution; and
      - (iv) Compelling prostitution.
  9. A written, notarized statement from the owner of the premises where the restricted massage establishment is operating or will operate certifying that the owner of the premises understands that the massage establishment is a restricted massage establishment and approves of the restricted massage establishment operating on the premises.
  10. A copy of the restricted massage establishment's state license or sufficient evidence reflecting that the restricted massage establishment is exempt from the state license requirement under chapter 455, Occupations Code.
  11. The floorplan or proposed floorplan of the restricted massage establishment.
- (C) Consideration of application. The city manager shall review and consider an application for a city license. As part of the city manager's review, the city manager may direct the chief of police to review the criminal histories of the entities and individuals identified in the application and make a recommendation to the city manager to approve or deny the city license. The city manager may, but is not required to, solicit written comments from owners of real property that are located within 200 feet of the premises of the restricted massage establishment. Within 45 days following the city manager's receipt of the application, the city manager shall issue to the applicant either a city license

or a written denial of a city license; provided, however, that if the city manager fails to take such action within 45 days, the failure to act shall be deemed a denial of a city license. In determining whether to issue a license, the city manager may consider factors including:

1. The circumstances that gave rise to the massage establishment being a restricted massage establishment;
2. Whether the restricted massage establishment has been operated in compliance with the requirements of all prior city licenses, if applicable;
3. Whether each direct owner's description of how the owner will ensure that the restricted massage establishment and the premises thereof are not used to commit or facilitate the commission of trafficking of persons and prostitution-related offenses appears to be sufficient to prevent such offenses;
4. The written comments from owners of real property that are located within 200 feet of the premises of the restricted massage establishment, if applicable; and
5. The recommendation of the chief of police, if applicable.

(D) Term of city license. Except as otherwise provided in this section, a city license shall be valid for a term of two years. A person who wishes to renew a city license shall submit a new application as provided in subsection (B). For the avoidance of doubt, the submission of a new application for a city license shall not stay the expiration of an existing city license if the expiration date of the existing city license occurs prior to the issuance or denial of a new city license as provided in subsection (C).

(E) Operating under a city license. Each owner, operator, employee, and agent of a restricted massage establishment that is operating under a city license, and each other person working on the premises of such restricted massage establishment, shall comply with, and ensure compliance with, the following requirements:

1. Post and keep posted at least one entrance notification, as described in section 5-13-2, at a location within the premises of the restricted massage establishment that is conspicuous and visible from each entrance to the restricted massage establishment.
2. Post and keep posted a copy of the city license at a location within the premises that is visible to each client.
3. Operate only between the hours of 8:00 a.m. and 8:00 p.m.
4. Consent to inspections described in this section.
5. Maintain a current list of the name, residence address, telephone number, and date of birth of each person who works at the restricted massage establishment, regardless of whether the person is an employee of the restricted massage establishment; provided, however, that this information need not be maintained for independent contractors who perform maintenance, repairs, or renovations of the premises of the restricted massage establishment.
6. Produce the list referenced in subsection (E)5 above on demand of an officer of the police department.
7. Prohibit a person who is required to register as a sex offender from working on the premises of the restricted massage establishment; provided, however, that this prohibition need not apply to

independent contractors who perform maintenance, repairs, or renovations of the premises of the restricted massage establishment.

8. Prohibit a person from [sic] who does not hold a valid state license from administering massage therapy or other massage services unless the person is exempt from the state license requirement under chapter 455, Occupations Code.
9. Prohibit the sale, possession, and consumption of alcoholic beverages on the premises of the restricted massage establishment.
10. Maintain the premises of the restricted massage establishment in a clean and sanitary condition.
11. Thoroughly sterilize each instrument or device that comes into contact with the human body before initial use on a client and, after having been used upon one client, thoroughly sterilize it before it is used upon another.
12. Thoroughly launder each towel, robe, and linen before it is furnished for use by a client and after it has been used by the client.
13. Wash hands thoroughly before administering massage therapy or other massage services.
14. Comply with all applicable state laws and regulations and city ordinances, including this chapter.

(F) Inspections. Employees of the police department, fire department, health department, and code administration division are hereby authorized to conduct periodic inspections of a restricted massage establishment that holds a city license for the purpose of ensuring compliance with this chapter, the city's fire regulations, the city's building regulations, and the city's zoning regulations, subject to the following conditions:

1. A department's or division's inspection shall be conducted in a reasonable manner that is tailored to the specific enforcement needs of the department or division.
2. An inspection shall be conducted during the restricted massage establishment's operating hours.
3. An inspection shall be conducted in a manner that respects the privacy of restroom occupants and clients to whom massage therapy or other massage services are being administered. To the extent that a department or division seeks to inspect an occupied restroom or an occupied room in which massage therapy or other massage services are being administered to a client, the department or division shall wait until each occupant has exited such room or has otherwise granted the department or division entry into such room; provided, however, that if an unreasonably long period of time has passed without each occupant exiting such room or otherwise granting the department or division entry into such room, the department or division may request that each occupant exit the room so it may be inspected.
4. The frequency with which a department or division conducts its inspections shall be reasonable; provided, however, that a department or division shall not conduct its inspections of a restricted massage establishment that is operating under a city license more frequently than once every 60 days.

(G) Request for exemption from city license requirement. The owner or operator of a restricted massage establishment described by section 5-13-2, subsection (C) of the definition "restricted massage establishment," may submit a written request to the city manager for an exemption from the city

license requirement. The request must include documentation sufficient to demonstrate the owner or operator has undertaken or implemented procedures and controls to prevent the commission of any offense listed in section 455.005(c)(2)(A) or (B), Occupations Code.

- (H) City council consideration of request for exemption. If the city manager receives a request for an exemption from the city license requirement from an owner or operator as provided in subsection (G), the city manager shall have the city council consider the request at the city council's next regularly scheduled meeting to be held on a date after the date on which the request is received and that allows sufficient time to comply with chapter 551, Government Code, and the city council shall:

1. Consider, but is not required to approve, the requested exemption if:
  - (a) The restricted massage establishment is one described by section 5-13-2, subsection (C) of the definition "restricted massage establishment," whose ownership changed less than two years before the date of the request for the exemption; and
  - (b) The current owner of the restricted massage establishment is not an individual against whom a sanction has been imposed for a violation of chapter 455, Occupations Code; or
2. Approve the requested exemption as soon as practicable if:
  - (a) The restricted massage establishment is one described by section 5-13-2, subsection (C) of the definition "restricted massage establishment," whose ownership changed at least two years before the date of the request for the exemption;
  - (b) In the two-year period preceding the date of the request for the exemption, an arrest has not occurred for, a citation in lieu of arrest has not been issued for, and a conviction has not resulted from an offense listed in section 5-13-2, subsection (A) or (B) of the definition "restricted massage establishment," committed at the restricted massage establishment; and
  - (c) The current owner of the restricted massage establishment is not an individual against whom a sanction has been imposed for a violation of chapter 455, Occupations Code.

- (I) No assignment of city license. A city license shall not be assigned and shall not run with the land. Any purported assignment of a city license shall be void.

- (J) Termination of city license.

1. Termination. If an owner, operator, employee or agent of a restricted massage establishment operating under a city license, or another person who is working on the premises of a restricted massage establishment operating under a city license, fails to comply with a requirement of section 5-13-4(E), the city manager may terminate the restricted massage establishment's city license. The termination of a city license shall become effective immediately upon giving the notice of termination described in subsection (J)2 below.
2. Notice of termination.
  - (a) The city manager shall give notice of the termination of a city license to each direct owner of the restricted massage establishment by certified mail and by email to each direct owner's address and email address listed on the restricted massage establishment's application for a city license. The notice shall specify each requirement of section 5-13-4(E) for which there was a failure to comply. If the city license is terminated due to

a failure to comply with section 5-13-4(E)14, the notice shall specify the applicable state law or regulation or city ordinance with which there was a failure to comply.

- (b) Promptly upon the city manager giving notice of a termination as provided in subsection (J)2(a) above, the police department shall personally serve such notice of termination to those who are on the premises of the restricted massage establishment and command them to cease operating the restricted massage establishment and cease administering massage therapy and other massage services on the premises.

- (K) Creation of documents. The development services department shall create forms to be used for applications, city licenses, and entrance notifications.

(Ordinance 10608 adopted 4/8/2025)

### **§ 5-13-5. Appeal of denial or termination of city license.**

- (A) Notice of appeal. Except as provided in subsection (B) below, an owner or operator of a restricted massage establishment may appeal the denial of a city license or the termination of a city license by submitting to the city manager a written notice of appeal that clearly states the reasons why the denial or the termination should be reversed. The notice of appeal must be received by the city manager not later than the 14th day after the date of the denial or the date of the termination. The owner or operator may include with the notice of appeal any documents that the owner or operator believes support the proposed reversal of the denial or termination.
- (B) Incomplete application. An owner or operator shall not be entitled to appeal the denial of a city license if any information required by section 5-13-4(B) was not submitted with the application.
- (C) No stay of denial or termination. During the pendency of an appeal under this section, the denial of a city license or the termination of a city license shall not be stayed.
- (D) Consideration of appeal. Within 45 days of the city manager's receipt of a notice of appeal that satisfies the requirements of subsection (A), the city council shall:
1. Hold a public hearing on the matter being appealed during which the owner or operator of the restricted massage establishment and any other member of the public may comment on whether the denial or termination should be reversed; and
  2. Consider the appeal and render a decision sustaining or reversing the denial or termination.
- (E) Reversal.
1. Reversal of denial. If the city council reverses the denial of a city license, the city manager shall promptly issue a city license.
  2. Reversal of termination. If the city council reverses the termination of a city license, the city manager shall promptly reinstate the city license.
- (F) Final decision.
1. Unappealed decision of city manager. If the city manager does not receive a notice of appeal that satisfies the requirements of subsection (A) on or before the 14th day after the date of the denial of a city license or the date of the termination of a city license, then the city manager's decision to deny the city license or terminate the city license shall constitute the city's final decision on the matter.

2. Decision of city council. If the city manager receives a notice of appeal that satisfies the requirements of subsection (A) on or before the 14th day after the date of the denial of a city license or the date of the termination of a city license, then the city council's decision shall constitute the city's final decision on the matter.

(Ordinance 10608 adopted 4/8/2025)

**§ 5-13-6. Offense.**

- (A) A person who recklessly, knowingly, or intentionally violates a provision of this chapter, other than section 5-13-4(E)4 or 6, shall be guilty of a misdemeanor and fined in a sum not to exceed \$2,000.00. A person commits a separate and distinct offense for each separate violation of a provision of this chapter. A person commits a separate and distinct offense for each day during which a violation of this chapter is committed, permitted, or continued.
- (B) Except as provided in subsection (A), a person who violates a provision of this chapter, other than section 5-13-4(E)4 or 6, 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 separate violation of a provision of this chapter. A person commits a separate and distinct offense for each day during which a violation of this chapter is committed, permitted, or continued. Evidence of a culpable mental state is not required to prove a criminal offense under this subsection (B). It is hereby declared that, for all offenses prosecuted under this subsection (B), the culpable mental state required by section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

(Ordinance 10608 adopted 4/8/2025)

**Title VI: Police Regulations**

**Chapter 6-1**

**GENERAL OFFENSES**

**§ 6-1-1. Abandoned containers.**

It shall be unlawful for any person to leave any electric refrigerator, commercial refrigerator, cooling box or icebox unattended in any abandoned house, building, barn, or structure of any kind, or upon any vacant lot or any other premises in the City where the same may be available to or accessible to children, without first removing the door from such refrigerator or icebox before leaving the same unattended.

(Ordinance adopted 8/25/1953)

**§ 6-1-2. Oil and gas well permits issued on or after March 1, 2007.**

- (A) Purpose. The purpose of this section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations on private and public property within the City of Midland related to the exploring, drilling, developing, producing, transporting, and storing of oil, gas, and other substances produced in association with oil and gas, in order to protect the health, safety and general welfare of the public; to minimize the potential impact to private property and mineral rights owners; to protect the quality of the environment; and to encourage the orderly production of available mineral resources. This Section shall apply to all oil and gas well permits issued by the City Council on or after March 1, 2007.
- (B) Definitions. For the purposes of this Section, the following words and terms wherever and whenever used or appearing herein shall have the scope and meaning hereafter defined and set out in connection with each:
1. "Abandonment" means "abandonment" as defined by the Texas Railroad Commission and includes the plugging of the well and the restoration of any well site as required by this Section.
  2. "Blowout Preventer" means a mechanical, hydraulic, or other device or combination of such devices secured to the top of a well casing, including valves, fittings and control mechanisms connected therewith, which can be closed around the drill pipe, or other tubular goods which completely close the top of the casing and are designed for preventing blowouts.
  3. "Building" means any structure which is built for the support, shelter, or enclosure or partial enclosure of persons, animals, chattels, or movable property of any kind including pools.
  4. "Building official" means the building official of the City of Midland, or the building official's duly authorized representative.
  5. "City" means the City of Midland, Texas.
  6. "City Council" or "Council" means the City Council of the City of Midland, Texas.
  7. "City Code" means the Midland City Code.
  8. "City attorney" means the city attorney of the City of Midland.
  9. "City manager" means the city manager of the City of Midland.
  10. "Completion of Drilling, Re-drilling and Re-working" means the date the work is completed for the drilling, re-drilling or re-working and the crew is released by completing their work or contract or by their employer.
  11. "Derrick" means any portable framework, tower, mast and/or structure which is required or used in connection with drilling or re-working a well for the production of oil and gas.

12. "Drilling" means digging or boring a new well for the purpose of exploring for, developing or producing oil, gas or other hydrocarbons, or for the purpose of injecting gas, water or any other fluid or substance into the earth.
13. "Drilling equipment" means the derrick, together with all parts of and appurtenances to such structure, every piece of apparatus, machinery or equipment used or erected or maintained for use in connection with drilling.
14. "Drill site" means all of the land area used during the drilling or re-working of a well or wells located there and subsequent life of a well or wells or any associated operation.
15. "Exploration" means geologic or geophysical activities, including seismic surveys, related to the search for oil, gas or other subsurface hydrocarbons.
16. "Fire department" means the fire department of the City of Midland.
17. "Gas" means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas.
18. "Occupied residence" means any single-family or multi-family dwelling occupied by an owner or lessee at the time an application for an oil and gas well permit is filed with the City of Midland. An occupied residence shall include a single-family or multi-family dwelling that has been occupied by the owner or lessee at any time during the six months prior to the application date of the oil and gas well permit.
19. "Occupied commercial structure" means any commercial structure occupied by an owner or lessee at the time an application for an oil and gas well permit is filed with the City of Midland. An occupied commercial structure shall include a structure that has been occupied at any time during the six months prior to the application date of the oil and gas well permit.
20. "Oil and gas well" means any well drilled, to be drilled, or used for the intended or actual production of oil or natural gas.
21. "Operation site" means the area used for development and production and all operational activities associated with oil and gas after drilling activities are complete.
22. "Operator" means, for each well, the person listed on the appropriate City of Midland application forms for an oil and gas well that is, or will be, actually in charge and in control of drilling, maintaining, operating, pumping or controlling any well, including, without limitation, a unit operator. If the operator, as herein defined, is not the lessee under an oil and gas lease of any premises affected by the provisions of this Section, then such lessee shall also be deemed to be an operator. In the event that there is no oil and gas lease relating to any premises affected by this Section, the owner of the fee mineral estate in the premises shall be deemed an operator.
23. "Owner" means the fee simple title owner of the surface estate.
24. "Person" means an individual, natural person, firm, partnership, corporation, company, association, joint stock association, organization, agency, business trust, estate trust, and any other legal entity, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

25. "Persons" means every person, firm, association, partnership, corporation or society; and shall include both singular and plural and the masculine shall include the feminine gender.
26. "Railroad Commission" means the Texas Railroad Commission.
27. "Residence" means a house, duplex, apartment, townhouse, condominium, mobile home or other building designed for dwelling purposes, including those for which a building permit has been issued on the date the application for an oil and gas well permit is filed with the City.
28. "Re-working" means re-completion or re-entry of existing well within the existing bore hole or by deepening or sidetrack operations which do not extend more than 150 feet from the existing well bore, or replacement of well liners or casings.
29. "Right-of-way" means any area of land within the City that is acquired by, dedicated to, or claimed by the City in fee simple, by easement, by prescriptive right or other interest and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, street, sidewalk, alley, utility, drainage, or public access easement or used for the provision of governmental services or functions. The term includes the area on, below, and above the surface of the public right-of-way. The term applies regardless of whether the public right-of-way is paved or unpaved.
30. "Street" means any public thoroughfare dedicated to the public use and not designated as an alley or private access easement.
31. "Tank" means a container, covered or uncovered, used in conjunction with the drilling or production of oil, gas or other hydrocarbons for holding or storing fluids.
32. "Well" means a hole or holes, bore or bores, to any sand, horizon, formation, strata, or depth, for the purpose of producing any oil, gas, liquid hydrocarbon, brine water or sulphur water, or for use as an injection well for the secondary recovery, disposal, or production of any oil, gas, liquid hydrocarbons, brine water or sulphur water.
33. "Well drill bore" means the open hole or uncased portion of an oil and gas well. A well drill bore may refer to the inside diameter of the well bore wall, the rock face that bounds the drilled hole.

All technical or oil and gas industry words or phrases used herein and not specifically defined shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry.

- (C) Permits required. It shall be unlawful and an offense for any person acting either for himself or acting as an agent, employee, or independent contractor to knowingly drill or participate in the drilling of any well or to re-enter any well which has previously been abandoned for any reason or to install any water and/or gas re-pressurizing or injection facility within the corporate limits of the City without a permit having first been issued by the authority of the City Council of the City in accordance with the terms of this Section. A separate permit shall be required for each well and each water and/or gas re-pressurizing or injection facility. A permit issued by the City Council shall be valid for one year from the date it is approved by the City Council, and is subject to be renewed in accordance with this Section. An oil and gas well permit must be approved by a resolution of the Midland City Council.

- (D) Designation of Official; Enforcement; Inspections; Access to Records.

1. The City manager shall designate an official (or officials), who is a certified peace officer, and who shall enforce the provisions of this Section. The official (or officials) shall have the authority to issue any orders, directives, warnings, or citations, required to carry out the intent and purpose of this Section and its particular provisions.
  2. The designated official (or officials) shall have the authority, in accordance with applicable law, to enter and inspect any premises covered by the provisions of this Section to determine compliance with the provisions of this Section and all applicable laws, rules, regulations, standards or directives of the state. The designated official (or officials) may conduct periodic inspections of all permitted wells within the City to determine that the wells are operating in accordance with the requirements as set out in this Section and with regulations promulgated by the Texas Railroad Commission.
  3. The designated official (or officials) shall have the authority to request and receive any records, including records sent to the Texas Railroad Commission, reports and the like, relating to the status or condition of any permitted oil and gas well necessary to establish compliance with the applicable oil and gas well permit.
  4. It is recommended that the designated official (or officials) contact the local office of the Texas Railroad Commission to seek their assistance in enforcing applicable oil and gas regulations.
- (E) Operator's agent. Every operator of any oil and gas well shall designate an agent, who is a resident of the City of Midland, upon whom all orders and notices provided in this Section may be served in person or by registered or certified mail. Every operator so designating such agent shall within ten calendar days notify the City in writing of any change of agent or the mailing address of such agent. Every operator shall attempt to maintain at all times during the term of an oil and gas well permit, an office address within the City of Midland.
- (F) No vested property rights of permit holder. An oil and gas well permit does not create a property interest or a vested right in the permittee. This section of the Midland City Code creates no property interest or right of entitlement of any kind.
- (G) Application procedure. The procedure for applying for an oil and gas well permit from the City of Midland shall be initiated with the filing of an application by the operator with the planning division of the City of Midland. The Application form to be completed by the operator, or its authorized agent, shall be in the form as described in Section (I) herein. There shall be two (2) levels of oil and gas well permits. The level shall be determined by the proximity of the proposed well drill bore to any occupied residence, occupied commercial structure, public building, public athletic field, property line of any property owned by a governmental entity, or any publicly dedicated right-of-way.
1. Level one. Oil and gas well drill bores that are not within 1,000 feet of any occupied residence, occupied commercial structure, public building, public athletic field, property line of any property owned by a governmental entity, or any publicly dedicated right-of-way are classified as level one. Level one oil and gas well permit applications do not require a public hearing. Authorization of level one oil and gas well permits may be granted by a majority vote of the city council. The 1,000 feet shall be measured in a direct, straight line.
  2. Level two. Oil and gas well drill bores that are less than 1,000 feet, but more than 500 feet from any occupied residence, occupied commercial structure, public building, public athletic field, property line of any property owned by a governmental entity, or any publicly dedicated right-of-way shall require a public hearing held before the City Council. Prior to the 15th day before

the hearing date, notice of the time and place of the public hearing shall be published in the official newspaper of the City. Prior to the tenth day before the hearing date, written notice of the time and place of the public hearing shall be sent to each owner, as indicated by the most recently approved tax roll from the Midland Central Appraisal District, of real property within a direct line radius of 1,000 feet from the proposed oil and gas well drill bore.

If a proposed oil and gas well permit is protested in accordance with this Subsection, the proposed oil and gas well permit must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the City Council. The protest must be written and signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the oil and gas drill bore and extending 1,000 feet from that area.

For the purposes of computing total land area described in (b) above, streets and alleys shall be included.

The Council shall not vote on granting or denying the permit at the Council meeting when the public hearing is held. The Council shall allow thirty (30) days for written input from the public and the operator, after the public hearing is concluded. All written material shall be submitted to the city manager. The Council shall vote on the permit at a regular meeting.

3. Prohibition. No oil and gas well drill bore shall be allowed within 500 feet of any occupied residence, occupied commercial structure, public building, public athletic field, property line of any property owned by a governmental entity, or any publicly dedicated right-of-way, within the City of Midland.

An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well. Any application for such a variance must be accompanied by a notarized petition signed by the owners of the residence or commercial structure that seeks to obtain a building permit within 500 feet of the previously permitted oil and gas well. In the event a variance is granted by the city council, the council may authorize the building official to issue a building permit to the applicant. Any building permit issued under this paragraph shall include the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred (500) feet of a previously permitted oil and gas well."

In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within 175 feet of a previously permitted oil and gas well.

For the purposes of this section, a "previously permitted oil and gas well" shall mean any oil and gas well that has been issued an oil and gas well drill permit under the authority of the City Council, regardless of whether or not any oil and gas well drilling has commenced at the permitted location. In the event an oil and gas well drill permit has expired without drilling commencing at the permitted location, or in the event the oil and gas well is abandoned as described by the Texas Railroad Commission and this Section, the location of the proposed or abandoned oil and gas well drill site shall not trigger the requirements of this Subsection when requesting a building permit.

A request for a variance under this Subsection shall require a public hearing held before the City Council. Prior to the 15th day before the hearing date, notice of the time and place of the public hearing shall be published in the official newspaper of the City. Prior to the 10th day before

the hearing date, written notice of the time and place of the public hearing shall be sent to each owner, as indicated by the most recently approved tax roll from the Midland Central Appraisal District, of real property within a direct line radius of 500 feet from the previously permitted oil and gas well drill bore.

The Council shall not vote on granting or denying the variance at the Council meeting when the public hearing is held. The Council shall allow 30 days for written input from the public, the Operator, and the variance applicant, after the public hearing is concluded. All written material shall be submitted to the City Manager. The Council shall vote on the variance at a regular meeting. A majority vote of the Council is required to pass a resolution authorizing a variance under this Subsection.

(H) Authority of City Council; considerations. The Midland City Council shall have the power and authority to grant or deny any oil and gas well permit within the city limits of the City of Midland. The City Council shall consider the following when determining whether to grant or deny a permit for an oil and gas well within the City of Midland:

1. The particular character and value of the improvements already erected on the property or on the property adjoining the site of the proposed oil and gas well.
2. Public health and safety issues concerning the particular location of the proposed oil and gas well.
3. Any special circumstances existing on the property on which the application is made related to the size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity.
4. Whether the particular location of the proposed oil and gas well would be injurious to the health and safety of the inhabitants in the immediate area of the City or to a substantial number of such inhabitants.
5. Whether an oil and gas well permit is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other properties in the vicinity.
6. Whether the granting of an oil and gas well permit on the specific property will adversely affect any other feature of the comprehensive master plan of the City of Midland.
7. Whether the permit, if granted, will have a material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity.
8. Whether the drilling of the proposed oil and gas well would conflict with the orderly growth and development of the City of Midland.
9. Whether there are alternative well site locations.
10. Whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with oil and gas well permit conditions to be imposed.
11. Whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface and ground water sources, of potentially impacted environmentally sensitive areas.
12. Whether there is reasonable access for the City of Midland fire personnel and fire fighting equipment.

13. Whether the impact upon the adjacent property and the general public by operations conducted in compliance with the oil and gas well permit conditions are reasonable and justified, balancing the following factors:
  - a. The reasonable use of the mineral estate by the mineral estate owner(s) to explore, develop, and produce the minerals; and
  - b. The availability of alternative drill sites.
14. Whether the applicant is a reasonable and prudent operator. The Council shall consider the number of citations issued for previous violations, convictions in municipal court, notice from City officials for non-compliance, failure to promptly rectify violations, conditions of well sites previously permitted, and input from citizens or the applicant; the Request for Inspection and Extension of Permit results; and infractions or violations submitted to or found by the Texas Railroad Commission on previous oil and gas wells permitted and drilled within the City of Midland.

- (I) **Permit application and filing fee.** Every application for a permit to drill or participate in the drilling of any oil and/or gas well, or to re-enter, re-drill or re-work any well for any reason, or to install any water and/or gas re-pressurizing or injection facility (hereinafter "oil and gas operations") within the corporate limits of the City shall be in writing; shall be signed by the operator or some person duly authorized to sign on the operator's behalf before a notary public; shall be filed with the city secretary; shall be accompanied by a non-refundable filing fee of \$1,500.00; and shall only be considered when complete. A separate complete application and permit shall be required for each well, as well as the re-entering, re-drilling or re-working of any existing well.

No application shall be accepted for filing until it is complete and all required fees have been paid. Each application shall include full information, and will be considered complete only when ALL of the following is included:

1. The date of the application.
2. The name and address of the operator.
3. Name of operator's registered agent.
4. The address within the City of Midland, Texas, of the office of operator's registered agent, including telephone number and fax number. Operator's registered agent must have an office within the corporate limits of the City of Midland, Texas.
5. A title opinion prepared by an attorney licensed by the State of Texas indicating that applicant has an ownership interest in the mineral estate that is the subject of the oil and gas well permit application.
6. The name and address of the mineral estate lessor.
7. A title opinion prepared by an attorney licensed by the State of Texas listing the name(s) and address(es) of all surface owners within 1,000 feet of the proposed well bore (Rather than along any right-of-way, this distance shall be measured directly, in a straight line (hereinafter "measured directly")).
8. Description of the current surface use within 1,000 feet, measured directly, of the proposed location for the well drill bore.

9. An accurate legal description of the surface property to be used for any oil and gas operations, the parcel and the production unit and name of the geologic formation as used by the Railroad Commission. Any property recorded by plat should reference subdivision, block and lot numbers.
10. A location site plan, drawn to scale, and produced by a professional land surveyor licensed in the State of Texas, showing the following:
  - a. The proposed operation site;
  - b. The proposed location of the well drill bore;
  - c. The proposed routing of any gathering lines;
  - d. The location of all improvements and equipment, and other facilities, including, but not limited to, tanks, pipelines, separators, and storage sheds;
  - e. Lot lines shown on any recorded subdivision plat for the area;
  - f. Right-of-way or public easement boundaries;
  - g. city limit boundaries;
  - h. Any residence, commercial structure, public building, property line of any property owned by any governmental entity or any publicly dedicated right-of-way or any permanent accessory structure used in connection with such residence, structure or building surrounding such proposed drill site, and the measured distance from the proposed well bore to each residence, structure or building, if within a distance of 1,000 feet (measured directly);
    - i. Impacted vegetation;
    - j. Creeks and other topographic features; and
    - k. Proposed fencing and landscaping.
11. The proposed depth of the well.
12. Proposed hole size, casing program and cementing program. The surface and intermediate portions of the hole shall have cement circulated to the surface of the hole.
13. A map showing proposed transportation route and road for equipment, chemicals or waste products used or produced by the oil and gas operations. These are the only roads that may be used unless an amended route plan is filed and approved.
14. Proposed well name.
15. A description of public utilities required during drilling and operation.
16. A description of the water source to be used during drilling.
17. A copy of the approved Railroad Commission permit to drill together with attachments and survey plats which are applicable to the drill and operation sites.
18. A copy of the determination by the Texas Commission on Environmental Quality of the depth of usable quality ground water.

19. Irrevocable Letter of Credit in accordance with Subsection (J) 2 of this Section.
20. Insurance Certificate(s) in accordance with Subsection (J) 3 of this Section.
21. A copy of approved Railroad Commission Form 1, Permit to Drill, shall be furnished to the city secretary prior to commencement of drilling operations.
22. A drainage plan approved by the city engineer.
23. An emergency action response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use extensive guidelines as established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation, and/or the Environmental Protection Agency. Plan should include "drive-to-maps" from public rights-of-way to drill site.
24. A hazardous materials management plan shall be submitted and be on file with the fire department.
25. The names, local physical addresses (not P.O. Box numbers), and local telephone numbers of three (3) individuals who are responsible to ensure compliance with all conditions of the oil and gas well permit, along with any applicable ordinances. Each of said individuals must provide to the city secretary a notarized statement that the individual understands and agrees that he or she is responsible for ensuring compliance with all conditions of the oil and gas well permit, along with any applicable laws, regulations and ordinances by any and all employees, contractors or subcontractors of operator at the oil and gas operation site. Further, each must state before a notary that, in the event said individual is for any reason relieved of his or her position regarding said responsibilities, that the name, local address and local telephone number of a responsible replacement will be provided to the city secretary.
26. The name and address, including a 24-hour phone number of the person to be notified in case of an emergency.
27. A list and location of each well the operator has permitted in the city. The list and location shall include any well that the Operator owns an interest in. The operator shall certify that the well(s) comply with all applicable permits and ordinances. An application for a new permit may not be considered until all well(s) previously authorized by permit shall be brought into compliance with the applicable permit or ordinances.
28. A list of all available alternative locations from which the operator may reach the same mineral estate and potentially drill a producing oil and/or gas well.
29. A notarized statement signed by the operator, or designated representative, that the information submitted with the application is, to the best knowledge and belief of the operator or designated representative, true and correct.
30. Tax certificates. Tax certificates from the Midland Central Appraisal District (indicating that all taxes on personal and real property, including minerals, owned by the applicant have been paid to the current year) must be submitted with the application.
31. If the applicant proposes a landscaping plan or fencing plan as stated in 6-1-2(L)3 or 6-1-2(L)4.c, the proposed plan must be attached. An estimate of costs and a site plan showing the fencing materials prepared by a fencing contractor must also be attached.

32. A road repair agreement must be attached which has been approved by the applicant. However, the approval of any road repair agreement is subject to Council approval by a separate resolution.

In connection with its review of an application for an oil and gas well permit, the City Council may determine that it is necessary to hire an oil and gas specialist to assist the Council in reviewing the application. If such a determination is made, the City Council will provide the Operator with a written "scope of work" that the Council proposes for such specialist. The City Council and the Operator will attempt to agree upon the "scope of work"; however, the decision of the City Council shall control. The operator shall be responsible to pay all fees, costs and expenses associated with the retention of and services rendered by the specialist. All work performed by the specialist shall be itemized (including a description of the work and the amount of time spent), and such itemization shall be provided to the operator.

(J) General conditions of all oil and gas well permits.

1. General obligations of operator. The operator shall be required to:
  - a. Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Texas Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.
  - b. Promptly clear drill and operation sites of litter, trash, waste and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.
  - c. Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property arising out of or in connection with the work done by operator under an oil and gas well permit:
    - i. Where such injuries, death or damages are caused by operator's sole negligence or the joint negligence of the operator and any other person or entity; and
    - ii. Regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of operator.
  - d. Release the City from any and all demands, claims, damages, or causes of action of any kind, whatsoever, which operator has or might have in the future, including any negligence or tort claims.
  - e. Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein.
  - f. Promptly restore to its former condition any public property damaged by the oil and gas operation.
  - g. Operator shall not, either directly or indirectly, assign all or any part of an oil and gas well permit, without the prior written consent of the City Council. The issue of whether or not to grant consent to an assignment is in the sole discretion of the City Council. The

assignment of the permit shall not relieve the Operator of any liability or requirements under the permit. A new application, including the required insurance certificates and letter of credit shall be submitted with any request for assignment. No assignment shall be valid until the assignee obtains a new oil and gas well permit from the City Council.

- h. Operator shall execute a "road repair agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any oil and gas well permit under this Section.
2. **Irrevocable letter of Credit.** Prior to the issuance of an oil and gas well permit, the operator shall provide the city attorney with a guarantee in the form of an irrevocable letter of credit that satisfies the following:
  - a. The letter of credit shall be issued by a reliable bank authorized to do business in the State of Texas;
  - b. The letter of credit shall be effective starting on or before the effective date of the oil and gas well permit;
  - c. The letter of credit shall be in the amount of seventy-five thousand dollars (\$75,000.00);
  - d. The letter of credit shall remain in full force and effect for a period of three years; and
  - e. The letter of credit shall authorize the City of Midland to draw upon such credit in the event the city manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the operator must renew the letter of credit on or before 120 days prior to the expiration of the letter of credit.

The City of Midland may draw upon the letter of credit to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit. The City may draw upon the letter of credit in the event the City has not received a new letter of credit within the 120-day renewal time period required above.

The operator shall maintain the principal amount of \$75,000.00 in the form of a letter of credit at all times throughout the term of the permit. In the event such letter of credit is not restored to \$75,000.00 within ten days after the date of the reduction of the letter of credit, the city may draw and receive the remaining balance of the letter of credit, and the oil and gas well permit shall be suspended on such date and the operator's right to operate under the oil and gas well permit shall immediately cease until the Operator files the required letter of credit.

3. **Insurance.** In addition to the letter of credit required above, the operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any oil and gas well permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such oil and gas well permit shall immediately cease until the operator files additional insurance as required herein.
  - a. General requirements applicable to all policies.
    - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "additional insured" on all policies, except under operator's workers compensation

policy.

- ii. All policies shall be written on an occurrence basis, except for environmental pollution liability (seepage and pollution coverage) and excess and umbrella liability, which may be on a claims-made basis.
  - iii. All policies shall be written by an insurer licensed to do business in the State of Texas.
  - iv. Deductibles shall be listed on the certificate of insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
  - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an oil and gas well permit under this Section.
  - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
  - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
  - viii. Each policy shall be endorsed to provide the city a minimum 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten-day notice shall be acceptable in the event of non-payment of premium.
  - ix. During the term of any oil and gas well permit issued hereunder, the operator shall report, in writing, within 30 days of the occurrence, to the city manager, any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
  - x. Upon request, certified copies of all insurance policies shall be furnished to the City.
- b. Standard commercial general liability policy. This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum combined single limit of \$1,000,000 per occurrence for bodily injury, accidental death, and property injury.
  - c. Excess or umbrella liability.

\$5,000,000	Excess, if the operator has a stand-alone environmental pollution liability (EPL) policy.
\$10,000,000	Excess, if the operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If seepage and pollution coverage is written on a "claims made" basis, the operator must maintain continuous coverage and purchase extended coverage period insurance when necessary.

- d. Environmental pollution liability coverage. Operator shall purchase and maintain in force

for the duration of any oil and gas well permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.

- e. Control of well coverage. The policy should cover the cost of controlling a well that is out of control, redrilling or restoration expenses, seepage and pollution damage as first party recovery for the operator and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents.

\$5,000,000	per occurrence/no aggregate, if available, otherwise an aggregate of ten million (\$10,000,000) dollars.
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- f. Workers compensation and employers liability insurance.
  - i. Workers compensation benefits shall be Texas statutory limits.
  - ii. Employers liability shall be a minimum of \$500,000.00 per accident.
  - iii. Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable state and federal laws.
- g. Automobile liability insurance.
  - i. Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
  - ii. Coverage must include all owned, hired and not-owned automobiles.
- h. Certificates of insurance.
  - i. The company must be admitted or approved to do business in the State of Texas.
  - ii. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.
  - iii. Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.
  - iv. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the city. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT

OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

- v. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

(K) Specific conditions of all oil and gas well permits; on-site requirements.

1. Abandoned wells. All wells shall be abandoned in accordance with the rules of the Texas Railroad Commission and pursuant to Subsection (N) of this Section.
2. Automated audible alarm system. An automated audible alarm system shall be installed at each oil and gas well drill site and maintained thereafter to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the fire marshall prior to any drilling or production operations at the oil and gas well drill site.
3. Blowout prevention. In all cases, ram-type and annular blowout preventers shall be used on all wells being drilled, worked-over or in which tubing is being changed. Protection shall be provided to prevent blowout during drilling operations as required by and in conformance with the requirements of the Texas Railroad Commission and the recommendations of the American Petroleum Institute. The operator must equip all drilling wells with annular blowout preventers, as well as flow lines and valves commensurate with the working pressures involved as required by the Texas Railroad Commission. Annular blowout preventers shall be rated at no less than 500 pounds of working pressure. Each hydraulic-activated blowout preventer shall be a double-ram rotating head design with blinds and pipe rams. Prior to commencing drilling operations, each annular blowout preventer shall be tested by an independent third-party chosen by the city manager or his designee. Testing expenses shall be the responsibility of the operator. The operator shall provide a complete report of the well blowout prevention test within 15 days of the test.
4. Casing. The surface and intermediate portions of the oil and gas drill hole shall have cement circulated to the surface of the hole. All surface casing must comply with all applicable rules of the Texas Railroad Commission.
5. Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.
6. Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including wastewater or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain without permits from the appropriate city departments, or any body of water or onto any private property in the City of Midland.
7. Drilling notice. The operator shall provide at least a 48-hour notice to the city manager before the start of drilling operations. The operator shall provide at least a 48-hour notice to all surface property owners within 1000 feet of the drill site before the start of drilling operations.
8. Drill stem testing. No drill stem testing shall be allowed.
9. Dust, vibration, odors. All drilling and production operations shall be conducted in such a

manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling or production site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10. Electric lines. All electric lines to production facilities shall be buried underground. All electric lines going under city roadways must be bored and encased pursuant to city standards. Any such plans must be submitted to the city manager for approval.
11. Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the city ordinances and the appropriate national codes.
12. Emergency response plan. Prior to the commencement of any oil or gas production activities, operator shall submit to the city manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Texas Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the emergency response plan shall be kept on site.
13. Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, storage tanks, buildings and structures. The City shall regularly inspect all painted structures and inform operator when repainting is necessary. Operator shall repaint within 60 days written notice from City. When requiring re-painting of such facilities, the city manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.
14. Explosives. Use of an explosive perforating gun during completion operations shall be allowed.
15. Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the operator shall immediately report such condition to the fire department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Texas Railroad Commission and not exceed any state or federal permitting limit. A copy of the hazardous materials release records required by TCEQ shall be forwarded to the Fire Marshal on an annual basis.
16. Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the fire department and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations. The operator shall be responsible for the maintenance and upkeep of such equipment. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All well heads shall contain an appropriately labeled emergency shut off valve to the well distribution line.
17. Fracing operations. No fracing or formation fracture stimulation operations may take place

before 8:00 a.m. or after 5:00 p.m. (or after 6:00 p.m. between May 1 and October 1).

18. Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest oil and gas well drill bore to the fresh water well drill bore.
  - a. Operator shall provide the city manager with a "pre-drilling" and "post-drilling" water analysis and flow rate from any existing fresh water wells within 1,000 feet of the permitted oil and gas well. If the owner of the adjoining property refuses entry for the purpose of testing any water well, the operator shall certify such to the city manager.
  - b. Operator shall conduct and fund biannual testing for water wells located within 1,000 feet of its oil and gas well. For those individuals wishing to participate in the program, Operator shall require an independent third party test of the applicable wells prior to drilling operations. This program shall continue for the production life of the well plus five years for a producing well, or for a period of one year for a dry hole.
  - c. A copy of the Texas Water Development Board permit shall be provided to the city manager along with the geographic coordinates of every water well within one-thousand (1000) feet of the oil and gas bore.
  - d. A copy of all plugging and abandonment reports filed with the state and/or transfer of ownership notices shall be provided to the city manager.
  - e. Any such well shall be drilled by a licensed driller certified by the Texas Department of Licensing and Regulation and in full compliance with Texas Occupations Code, Title 12, Chapters 1901 and 1902.
  - f. Operator shall ensure that the City receives a copy of the well log, as referred to in Texas Occupations Code, Section 1901.251, within 75 days of the date any such well is completed, deepened, or altered in any way.
19. Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event operator determines the use of such compressor is necessary, a detailed plan shall be submitted by operator to the city council for consideration. An on-site compressor plan shall include the following information:
  - a. The physical size of the compressor;
  - b. The power source of the compressor;
  - c. The horsepower of the compressor;
  - d. The noise of the compressor; and
  - e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20. Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Texas Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Texas Railroad Commission, then such vent or open flame shall not be located closer than 300 feet from any-

building not used in operations on the drilling site and such vent or open flame shall be screened in such a way as to minimize detrimental effects to adjacent property owners. Operator shall provide notice to the fire marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other property owners. If flaring gas, it shall not be burned as a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21. Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the city manager.
22. Grass, weeds, trash. All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of 100 feet around any tank or tanks or producing wells.
23. Hazardous plan. Hazardous materials management plan (HMMP) and all material safety date sheets (MSDS) for all hazardous materials that will be located, stored, transported and/or temporarily used on the operations site shall be submitted to, and must be approved by the City Manager.
24. Lights. Except under emergency circumstances, Operator shall not operate any lights located at the drill site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within 300 feet. This paragraph does not apply during initial drilling operations.
25. Monitoring for H 2 S gas. Equipment for the monitoring of H 2 S gas shall be used during initial drilling. Upon completion, a permanent monitoring station shall be installed and a thirty (30) day maintenance and inspection program shall be established to ensure that the monitoring equipment remains functional in accordance with the Texas Railroad Commission rules and regulations.
26. Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.
27. Pits. The following applies for pits used for drilling and completion operations:
  - a. Only steel working pits shall be used; however, if approved by Council, reinforced (or woven) high density polyethylene (HDPE)-lined earthen reserve pits may be used provided the HDPE lining is a minimum thickness of 12 millimeters. In the event HDPE-lined reserve pits are used, the operator shall, within 30 days of installation, provide the city manager with a copy of an invoice showing the cost and thickness of the lining used. All steel pits shall be removed from the property when drilling is completed.
  - b. All pits and contents shall be de-watered following the schedule established by the statewide rules of the Texas Railroad Commission. All lined reserve pits shall have the lining cut to the water or mud edge of the pit, hauled out and transported to an approved disposal site.

- c. No drill cuttings shall be buried on site, unless approved by the city manager. No rotary mud and wastewater generated during drilling operations may be buried on site unless permitted by the Texas Railroad Commission and approved by the city manager after submission of an acceptable pre-burial test plan.
  - d. No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.
  - e. No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all city, state and federal regulations.
  - f. Every drill pit used for drilling operations shall be fenced on all open sides during drilling operations and enclosed after drilling operations have ceased.
  - g. No flowback wastewater produced by frac operations shall be placed in any open pit without a copy of a valid state permit submitted to the city manager.
  - h. Fresh water fracing pits, not transferred to the surface owner, shall be closed and the site restored within one hundred twenty (120) days after completion operations have ceased unless extended by the city manager.
28. Salt water wells. No salt-water disposal wells shall be located within the City of Midland.
29. Signs.
- a. A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (L)2 of these specific conditions. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Texas Railroad Commission, shall have a surface area of not less than two square feet nor more than four square feet and shall be lettered with the following:
    - i. Well name and number;
    - ii. Name of operator;
    - iii. The emergency 911 number;
    - iv. Telephone numbers of two persons responsible for the well who may be contacted in case of emergency; and
    - v. A 24-hour phone number answered by an answering service.
  - b. Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the fire chief of the City. Sign lettering shall be four inches in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the fire department and the operator, well and lease designations required by the Texas Railroad Commission.
  - c. Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required on each tank and at the entrance to the site adjacent to the operator's sign. A label must be located on each tank indicating exact chemicals that may be

contained in the tank. Text shall be minimum 6 inches in height, contrasting with the background color.

30. Storage of equipment. On-site storage is prohibited on the operation site. No equipment shall be stored on the drilling or production operation site. Lumber, pipes, barrels, trucks, trailers, automobiles, tubing and casing shall not be left on the operation site except when drilling or well servicing operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley or upon any operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. The fire department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31. Storage tanks. All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications, unless other specifications are approved by the fire chief. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material. The secondary containment system shall be a minimum of three (3) feet in height and 1½ times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over ten feet in height. All storage tanks shall be low-profile tanks. All storage tanks shall be built on a concrete slab or according to a plan approved by the Midland City Council.

Temporary flowback tanks shall be removed within 90 days after completion of the well at the pad site unless permission is obtained from the city manager to extend the time period for no more than 30 days.

All tanks shall be set back pursuant to the standards of the Texas Railroad Commission and the National Fire Protection Association, but in all cases, shall be at least 200 feet from any public street, road, highway or future street, or right-of-way and 500 feet from a structure. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development Services.

Tanks must be at least 500 feet from any residence, religious institution, public building, hospital building, school or combustible structure.

32. Tank battery facilities. Tank battery facilities shall be equipped with a lightning arrestor system.
33. Valves. Each well must have a shutoff valve to terminate the well's production. The fire department shall have access to the well site and the shut-off valve in an emergency.
34. Waste disposal. Unless otherwise directed by the Texas Railroad Commission, all tanks used for storage shall conform to the following:
- Operator must use portable closed steel storage tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, flame arrester and pressure relief valve. All tanks must be enclosed by a fence as

required by Subsection (L) herein. All tanks shall be low-profile tanks. No tank shall exceed ten feet in height. No tank battery shall be constructed within 500 feet of any dwelling.

- b. Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit. All disposals must be in accordance with the rules of the Texas Railroad Commission and with a plan submitted to and approved by the city manager.
- c. Unless otherwise directed by the Texas Railroad Commission, waste materials shall be removed from the site and transported to an off-site disposal facility not less often than every 30 days. Water stored in on-site tanks shall be removed as necessary.
- d. All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.
35. **Work hours for site development.** No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 8:00 a.m. or after 5:00 p.m. (or 6:00 p.m. between the dates of May 1 and October 1).
36. **Wellhead status after fracing.** All wellheads between drilling and tank battery construction shall be:
  - a. Completed through the production casing flange with a metal plate or blind flange bolted across the head;
  - b. Surrounded with a six-foot feet tall chain link fence having a gate and lock;
  - c. The gate shall be locked at all times, except when the operator is involved in active operations;
  - d. The cellar shall be filled or closed; and
  - e. The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.
37. **Inspections.** In accordance within applicable law, the city manager, or his designee, shall have a right of entry to the drill site and may, at his discretion, visit the drill site to make sure operator is in compliance with the requirements of this section.
38. **Violation.** In the event a violation of this ordinance is determined by the city's official (or officials), the city may act in any or all of the following ways:
  - a. The city, through its designated official (or officials), may issue a notice of violation to the operator, its agent, agents, employees or independent contractors (whether on site or not), or to any person participating in the drilling of the well. Such notice may include a citation to appear before the Midland Municipal Court.
  - b. If the city manager, or his designee, finds the Operator to be in violation of any requirement of the applicable oil and gas well permit, then the City reserves the right after giving 72 hours written notice to the operator regarding such violation, to draw upon the letter of credit as outlined in Subsection (J) of this Section, in order to remedy such violation. In the event the City makes a claim on the letter of credit pursuant to the terms

hereof, reinstatement of the full amount of the letter of credit shall be a condition to the cure of the violation leading to such claim. Alternatively, if the city manager finds the operator to be in violation of any requirement of the applicable oil and gas well permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within 14 days, the city manager shall recommend to the City Council that the oil and gas well permit be cancelled by the City Council. If the City Council determines to consider the cancelling of the permit, it shall give the operator written notice of the date and time of the hearing and shall give the operator the opportunity to be heard and present facts the operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

(L) Fencing and landscaping.

1. Fences/walls. Fences shall not be required on drill sites during initial drilling, completion or re-working operations as long as 24-hour on-site supervision is provided. A secured entrance gate shall be required. All gates are to be kept locked when the Operator or his employees are not within the enclosure. Within 30 days after production has been established, all operation sites shall be completely enclosed by a solid masonry wall. Said masonry fence shall meet the following requirements:
  - a. All walls shall consist of brick or mission stone.
  - b. All walls shall be at least eight feet in height.
  - c. The design of the walls shall be compatible with the facilities, buildings and structures on and adjacent to the drill site.
2. Gate specifications. All masonry walls shall be equipped with at least one gate. The gate shall meet the following specifications:
  - a. All gates shall be constructed from a wrought-iron material painted to match the enclosed tanks and associated structures.
  - b. Each gate shall be not less than 12 feet wide and be composed of two gates, each of which is not less than six feet wide, or one sliding gate not less than 12 feet wide. If two gates are used, gates shall latch and lock in the center of the span.
  - c. The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site.
  - d. Operator must provide the City of Midland Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the well site to be used only in case of an emergency.
3. Operator submitted plan. The operator may propose an alternative plan in lieu of the requirements outlined in paragraphs 1 and 2 above. A fencing plan submitted pursuant to this paragraph shall describe the building materials, dimensions, and locations of the proposed fence/walls and gates. Such a plan should take into consideration the surrounding area and neighborhood. The City Council may consider any proposal prepared in accordance with this paragraph. Any alternative plan shall not be effective unless approved by the Midland City Council. In any event all gates must be kept locked when the operator or his employees or agents are not within the enclosed portion of the fence.
4. Landscaping.

- a. The City of Midland will require tree preservation and/or planting measures.
  - i. A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.
  - ii. At least 75 percent of the trees shall be evergreen.
  - iii. The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.
  - iv. All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three-years of planting will be replaced by the operator or agent and a new three-year guarantee will begin at the time of replacement.
- b. The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the city manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
<i>Pinus eldarica</i>	Afghan Pine, Mondell Pine
<i>Pinus 11 Sylvestris</i>	Russian Pine
<i>Ulmus Crassifolia</i>	Cedar Elm

- c. Operator may submit a plan in lieu of subparagraphs a. and b. above. The operator must describe the type, number, and location of trees to be planted under this section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the Midland City Council.
- d. Operator shall drill one freshwater well for the provision of irrigation water to maintain the trees required above. Said water well shall not be closer than 500 feet to the permitted oil and gas well. Operator shall maintain all required trees in a healthy and growing condition. The operator is authorized to drill only one well for irrigation purposes. Any such well shall be drilled by a licensed driller certified by the Texas Department of Licensing and Regulation and in full compliance with Texas Occupations Code, Title 12, Chapters 1901 and 1902. Operator shall ensure that City receives a copy of the well log, as referred to in Texas Occupations Code § 1901.251, within 75 days of the date any such well is completed, deepended, or altered in any way.

(M) Cleanup and Maintenance.

- 1. Cleanup after well servicing. After the well has been completed or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within 60 days.
- 2. Clean-up after spills, leaks and malfunctions. After any spill, leak or malfunction, the operator shall remove or cause to be removed to the satisfaction of the city fire chief and the city manager all waste materials from any public or private property affected by such spill, leak or

malfunction. Clean-up operations must begin immediately. If the operator fails to begin site clean-up immediately the city manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the city manager deems necessary to clean-up such spill, leak or malfunction. The city shall then be able to collect from operator the costs involved in the site clean-up. The city may collect from the posted letter of credit or any other legal means.

3. Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material within a radius of 100 feet around any separators, tanks and producing wells.
4. Painting. All production equipment shall be painted beige and maintained at all times, including wellheads, pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the city manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.
5. Blowouts. In the event of the loss of control of any well, operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall notify the city manager as soon as practicable.

(N) Plugged and abandoned wells.

1. Surface requirements for plugged and abandoned well. Whenever abandonment occurs pursuant to the requirements of the Texas Railroad Commission, the operator so abandoning shall be responsible for the restoration of the well site to its original condition as nearly as practicable, in conformity with the requirements of this permit.
2. Restoration of drill site. Abandonment shall be approved by the city manager after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the city manager:
  - a. The derrick and all appurtenant equipment thereto shall be removed from drill site;
  - b. All tanks, towers, and other surface installations shall be removed from the drill site;
  - c. All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Texas Railroad Commission;
  - d. All holes and depressions shall be filled with clean, compactable soil;
  - e. All waste, refuse or waste material shall be removed from the drill site; and
  - f. During abandonment, operator shall comply with all applicable sections in this section; and
  - g. The drill site shall be restored, as close as practicable, to its original condition.
3. Abandoned well requirement. The operator shall furnish the following to the city manager:
  - a. A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Texas Railroad Commission.

- b. Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.
  - c. All wells shall be abandoned in accordance with the rules of the Texas Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker pipe, with the well identity and location permanently inscribed, shall be welded to the casing and shall be at least four inches in diameter with a length of four feet visible above the ground level.
4. Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Texas Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.
- (O) Certificate of request for inspection and extension of permit. On or before 90 days prior to the expiration of operator's oil and gas well permit, operator shall submit to the city manager a certificate of request for inspection and extension of permit. The certificate of request for inspection and extension of permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection and Extension of Permit must be signed by the operator before a notary public stating that the well is in compliance with the permit and all applicable ordinances. The certificate of request for inspection and extension of permit must be accompanied by an application and inspection fee of \$300.00. The city manager shall grant an extension of one-year on the oil and gas well permit if the operator is in compliance with the permit and all applicable ordinances. Prior to authorizing the extension, the city manager, or his designee, shall inspect the oil and gas well site that is subject to the oil and gas well permit. The city manager shall issue his decision in writing, within 30 days of receiving the certificate for request for inspection and extension of permit, either granting or denying the extension of the oil and gas well permit.

The operator may appeal the city manager's denial of an oil and gas well permit extension by submitting, in writing, an appeal to the City Council within 30 days of the city manager's written denial of the oil and gas well permit extension. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil and gas well permit extension. The City Council shall hear and consider the recommendation of the city manager, or his designee, before deciding whether or not to uphold the city manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the Council. A majority vote of the City Council shall be required to uphold the denial of the oil and gas well permit extension by the City Manager. An extension of the permit shall be for one year from the expiration date.

- (P) Measurement. The measurement of all distances set forth herein shall be calculated from the proposed well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.
- (Q) Effect of denial of oil and gas well permit. If an application for an oil and gas well permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed oil and gas well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant.

(R) Amendment to oil and gas well permit.

1. Amendment required. Within 90 days after an operator has been granted an oil and gas well permit, an operator may submit an application to the city to amend an existing oil and gas well permit to commence drilling from a new drill site that is not shown on (or incorporated by reference as part of) the existing oil and gas well permit.
2. Application requirement for amendment to permit. An application for an amended oil and gas well permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the city, shall be signed by the operator, and shall include the following:
  - a. The application fee as set by the city's current fee ordinance.
  - b. A description of the proposed amendments.
  - c. Any changes to the information previously submitted with the Application for the existing oil/gas drilling permit (if such information has not previously been provided to the city).
  - d. Such additional information as is reasonably required by the city to demonstrate compliance with the original oil/gas drilling permit.
  - e. Such additional information as is reasonably required by the city to prevent imminent destruction of property or injury to persons.
3. Review of application for amendment to permit. All applications for an amended oil and gas well permit shall be considered in accordance with the factors listed in Subsection (H) herein. The City Council may elect to consider the application for an amended oil and gas well permit without the requirement of a public hearing.
4. Standard of review.
  - a. No material change from existing permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing oil and gas well permit, and are otherwise in conformance with the requirements of this section, other applicable city ordinances, the oil/gas drilling permit then the city council shall approve the amended application.
  - b. Material change from existing permit. If the activities proposed by the amendment are materially different from the activities covered by the existing oil/gas well permit, are not in conformance with the requirements of this Section, other applicable city ordinances, the oil/gas well permit, or if, in the judgment of the city council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing oil/gas well permit, the city council may require the amendment to be processed as a new oil and gas well permit application.

(S) Independent contractor. Operator understands and agrees that operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

- (T) Assignability. The operator shall not, either directly or indirectly, assign, sell, or transfer any part of the oil and gas well permit, or any interest, right, duty, obligation or privilege under the permit, without the prior consent of the City Council. The consent may only be granted by a resolution adopted by the City Council. The issue of whether or not to grant consent to an assignment, sale or transfer of any interest in the permit shall be in the sole discretion of the City Council. A new application, including the required insurance certificates and letter of credit shall be submitted with any request for assignment, sale or transfer. No assignment, sale or transfer shall be valid until a new oil and gas well permit is obtained from the City.
- (U) Time limit requirements. The failure of the City Council to review and approve an oil and gas well permit within a specified time limit shall not cause the application for the oil and gas well permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to reconsider the application. The Applicant may present any new evidence to the Council and may present any extenuating circumstances or other matters deemed relevant by the Applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.
- (V) Release. The oil and gas well permit may contain the following language:
- "NOTWITHSTANDING ANY OTHER PROVISIONS, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE."
- (W) Incident reports or written complaints. The operator shall provide a copy of any "incident reports" or written complaints submitted to the Texas Railroad Commission or any other state or federal agency within 30 days after operator has notice of the existence of such reports or complaints.
- (X) Expiration of Permit. Drilling must commence on the well covered by the oil and gas well permit within twelve (12) months of approval by the City Council, after which the oil and gas well permit shall automatically expire if no drilling has commenced.

(Ordinance 8498, sec. 2, 2/13/07)

### **§ 6-1-3. Arrest without warrant.**

An arrest, without a warrant, may be made by the chief of police or any other officer of the City, when offenses against the provisions of this Code are committed in their presence or where persons are found in suspicious places, and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten or are about to commit some offense against the law.  
(Ordinance adopted 6/10/1940)

### **§ 6-1-4. Noise.**

It shall be unlawful for any person to use or operate, or cause to be used or operated, any mechanical or electrical device, machine, apparatus or instrument to intensify or to amplify or to reproduce the human voice, or any other sound, on any public street within the corporate limits of the City. It shall likewise be unlawful for any person to use or operate, or cause to be used or operated, any such mechanical or electrical device, machine, apparatus or instrument or any other mechanical or electrical device, machine, apparatus

or instrument, whether involving amplification or not, that emits or causes any loud, excessive or unusual noise, in any building or on any premises in the City, whereby the sound therefrom is cast directly upon the public streets or places, or where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public or which is so placed or operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place, or of persons in neighboring premises.

(Ordinance 3705 adopted 5/24/1960)

#### **§ 6-1-5. Locomotive whistles.**

All persons are prohibited from blowing any whistles on any locomotive or single blasts therefrom, within the city limits, for a longer period of time than five seconds, except when there is imminent danger of an accident.

#### **§ 6-1-6. Boilers, noises from.**

All persons are prohibited from blowing off or blowing out a boiler when crossing any public street, alley, or other thoroughfare within the limits of the City.

(Ordinance adopted 5/21/1948)

#### **§ 6-1-7. Oil and gas wells.**

(A) Definitions. For the purposes of this Section, the following words and terms wherever and whenever used or appearing herein shall have the scope and meaning hereafter defined and set out in connection with each:

1. The word "well" shall mean any hole or holes, bore or bores, to any sand, horizon, formation, strata or depth, for the purpose of producing any oil, gas, liquid hydrocarbon, brine water, or sulphur water or for use as an injection well for secondary recovery, or any of them.
2. The term "drill site" shall mean all of the land area used in the drilling or other related operations, specifically including, but not limited to, rig locations, portable or permanent structures, steel slush pits, storage of pipe or other material, and the parking or maneuvering of vehicles, except roadways used for ingress or egress to the drill site.
3. The word "permittee" shall mean the person to whom is issued a permit or certificate for the drilling, operating and producing of a well under this Section, and his heirs, legal representatives, successors and assigns.
4. The word "person" whenever used in this Section means and includes any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary or representative of any kind.
5. All technical or oil and gas industry words or phrases used herein and not specifically defined shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry.
6. The word "street" is any street, highway, sidewalk, alley, avenue, recessed parking area, or other public right-of-way, including the entire right-of-way.
7. The phrase "right-of-way" is expressly limited to all public rights-of-way or streets or other public property within the City of Midland.

8. When the title of any city official is used herein such title shall include any duly authorized representative of such official.
  9. The term "property owner" shall mean real property surface record owner(s).
- (B) Permits required. It shall be unlawful and an offense for any person acting either for himself or acting as an agent, employee, or independent contractor to knowingly drill or participate in the drilling of any well or to re-enter any well which has previously been abandoned for any reason or to install any water and/or gas repressurizing or injection facility within the corporate limits of the City or outside the City Limits if any part of the drill site is within 1,000 feet of any occupied residence, commercial structure, public building, public athletic building or field, property line of any property owned by any governmental entity or any publicly dedicated right-of-way or any permanent accessory structure within the City Limits without a permit having first been issued by the authority of the City Council of the City in accordance with the terms of this Section.
- (C) Permit application and filing fee. Every application for a permit to drill a well or to install a water and/or gas repressurizing or injection facility shall be in writing, signed by the applicant or some person duly authorized to sign on his behalf before a notary public; and it shall be filed with the city secretary. In case a permit is requested for the purpose of drilling a well or re-entering and drilling to a deeper formation or re-entering a well which has previously been abandoned, the application shall be accompanied by a filing fee of \$500.00.

A separate application shall be required for each well and each water and/or gas repressurizing or injection facility. The application shall include full information, including the following:

1. The date of the application.
2. The name of the applicant.
3. The address of the applicant and the names and addresses of all property owners within 1,000 feet of the proposed drill site.
4. Proposed site of the well or water and/or gas repressurizing or injection facility, including:
  - (a) Name of the lease owner.
  - (b) Legal description of the lease land and current land use.
  - (c) Location with respect to property lines, lot lines shown on any recorded subdivision plat for the area, right-of-way or public easement boundaries, city limit boundaries and all residences, commercial structures, public buildings, property line of any property owned by any governmental entity or any publicly dedicated right-of-way or any permanent accessory structure used in connection with such residence, structure or building surrounding such proposed drill site, if within a distance of 1,000 feet.
  - (d) Location with respect to the same items of any off-site tank battery or other gathering facility, together with proposed routing of gathering lines.
5. The proposed depth of the well.
6. Location of compressor, compressor control, or safety devices with explanation of operating characteristics of each in any application for a permit for a gas repressurizing or injection facility.

7. The name of the person or persons to be notified in case of an emergency.
  8. Proposed hole size, casing program and cementing program.
  9. A copy of approved Railroad Commission Form 1, Permit to Drill, shall be furnished to the city secretary prior to commencement of drilling operations.
  10. A drainage plan as required by the City Engineer.
  11. The signature of the applicant or the individual duly authorized to sign the application.
  12. Acknowledgment by a Notary Public.
  13. The names and addresses of all individuals authorized to act on behalf of the applicant.
- (D) Permits; issuance or refusal to issue. The City Council, within 30 days after the filing of the application for a permit to drill a oil and gas well or permit to install water and/or gas repressurizing or injection facilities, shall determine whether or not the applicant is eligible to be permitted. If the application complies in all respects with the provisions of this Section, and if the entire boundary of the drill site for the well to be drilled or the facility to be installed is located more than 1,000 feet from any occupied residence, commercial structure, public building, public athletic field, property line of any property owned by a governmental entity, any publicly dedicated right-of-way or any permanent accessory structure used in connection with any of same and said drill site is not crossed by any public street, the Council may issue a permit for the drilling of the well or the installation of the facilities applied for.

If the Council determines that any part of the drill site for the well to be drilled or the facility to be installed is located less than 1,000 feet from any occupied residence, commercial structure, public building, public athletic field, property line of any property owned by a governmental entity, any publicly dedicated right-of-way or any permanent accessory structure used in connection with any of same, then the Council shall hold a public hearing on such application after giving notice at least once by publication in the official newspaper at least ten days prior to said hearing and in writing by regular United States mail to the surface owners of real property within 1,000 feet of the drill site and by a sign erected on the drill site premises. Such notice is not necessary to any property owner within such 1,000 feet-radius that executes and files with the city secretary a written waiver acknowledged before a notary public. If, however, the proposed drill site is outside the City Limits but any part of the drill sites is within 1,000 feet of any occupied residence, commercial structure, public building or structure, public athletic field, property line of any property owned by a governmental entity or any publicly dedicated right-of-way or any permanent accessory structure used in connection with same, within the City Limits, then a public hearing shall be called according to the above procedure, and public notice shall be given to the surface owners of real property inside the City Limits within 1,000 feet of the point on the City Limit line nearest the proposed drill site.

If, following said public hearing, the Council finds that exceptional circumstances exist, it may grant such permit upon such terms and conditions as it determines to be necessary to protect the public health and safety. However, no such permit shall ever be granted for a well with the well bore to be located closer than 175 feet to the nearest residence, commercial structure, public building or public structure without the unanimous consent of the property owners within a 175-foot radius around said well and the affirmative vote of not less than three-fourths of the members of the full City Council.

Written notices may be served by depositing the same, properly addressed and postage paid, in the city post office to the owners and at the addresses as shown on the last approved city tax roll, or as

shown in the application pursuant to subsection (C)3 if the latter is different from the tax roll.

The decision of the Council shall be final, and in making its decision, it shall, in addition to other considerations, have the power and authority to refuse any permit to drill any well at any particular location within the City, when by reason of such particular location and the character and value of the improvements already erected on or adjacent to the particular location in question for residences, commercial activities, schools, hospitals, parks, civic purposes, public health or safety reasons or any of them the drilling of such wells at such particular location would be injurious to the health or safety of the inhabitants in the immediate area of the City or to a substantial number of such inhabitants or would not promote orderly growth and development of the City. Each permit shall:

1. By reference have incorporated therein all the provisions of this Section with the same force and effect as if this Section were copied verbatim in such permit.
2. Specify the location of the proposed drill site, well, or injection facility with particularity to lot number, block number, name of addition or subdivision, or by metes and bounds description, or other available correct legal description.
3. Contain and specify that the term of the permit shall be for a period of one year from the date of the permit and so long thereafter as oil and gas are produced or until such time as the permittee has permanently abandoned the operation of such well or facility for which the permit was issued.
4. Contain and specify such other terms and provisions as may be necessary in a particular case to accomplish the purpose of this Section.
5. Contain and specify that no actual operations shall be commenced until the permittee has complied with the bond and insurance provisions of this Section.

Such permit, in triplicate originals, shall be signed by the city secretary, and prior to delivery to the permittee shall be signed by the permittee (with one original to be retained by the City and the others by the permittee); and when so signed, it shall constitute the permittee's drilling and installation license, as well as the contractual obligation of the permittee to comply with the terms of such permit and bond and of this Section.

- (E) Bond and insurance. A bond or letter of credit approved for form by the city attorney shall be filed with the City in the amount of \$50,000.00 along with the permit application for each well applied for by an operator. Said bond shall be executed by the operator, as principal, and a corporate surety on the list of authorized insurance companies published by the state board of insurance of the state, as surety, in a form approved by the city attorney and with the bond in favor of the City conditioned that the permittee will comply with all of the terms, conditions and requirements of this Section and any permit issued pursuant hereto, and further conditioned that the permittee will repair any damages to city streets, as determined by the city's director of public works, caused by the equipment and vehicles used by the permittee in going to and from the drill site, with such repairs to be in compliance with specifications therefor prepared and provided to the permittee by said director of public works.

In addition to the bond required above, the permittee shall carry a policy or policies of standard comprehensive public liability insurance including contractual liability coverage, for accidental death, bodily injury and property damage, naming both the permittee and City as insureds, with an insurance company authorized to do business in the state and appearing on the list of authorized

insurance companies prepared by the state board of insurance. Such policy or policies in the aggregate shall provide for the following minimum coverages:

1. Accidental death or bodily injury, \$5,000,000.00 one person and \$5,000,000.00 total for one accident.
2. Property damage, \$1,000,000.00 total one accident.

The permittee shall file with the city secretary a certificate of insurance showing compliance with the above prior to receiving a copy or copies of the permit or commencing any operations on the drill site. Said insurance shall not be canceled without written notice to the city secretary at least ten days prior to the effective date of such cancellation. In the event such insurance is canceled, the permit granted in connection with such policy or policies shall be suspended and ineffective until the permittee files additional insurance as provided herein.

- (F) Permit termination. In the event of a failure of a permittee to comply with any provision of this Section, the city secretary shall issue in writing a notice to the permittee of the nature of the noncompliance and stating a reasonable time, not to exceed 48 hours, necessary to gain compliance. After lapse of such reasonable time, if compliance has not been made, the Council may suspend the permit for a period of time or cancel the permit.
- (G) Supplemental permit for deep drilling. Once any well has either been completed as a producer or abandoned as a dry hole, it shall be unlawful and an offense for any person to drill such well to a deeper geological formation than that reached in the prior drilling operations or re-enter such well to produce from any geological formation than that reached in the prior drilling operations or change the location of any gathering lines or other facilities from that approved by the permit without the permittee, as to such well, obtaining a supplemental permit after filing a supplemental application with the City Council specifying:
1. The condition of the well and the casing therein.
  2. The depth to which it is proposed that such well will be deepened.
  3. The proposed casing and cementing programs to be used in connection with the proposed deepening operation.
  4. The proposed locations of gathering facilities and routing of lines.

In the event the Council is satisfied that such well may be deepened or re-entered with the same degree of safety as existed in the original well, a supplemental permit may be issued for an additional \$100.00 filing fee to the permittee authorizing the deepening or re-entering and operation of the well to such specified depth as applied for or the change in the location of gathering lines or other facilities. In any deeper drilling or any deeper completion or any deeper reproduction operations or any re-entry, the permittee shall comply with all provisions contained in this Section and applicable to drilling, completion, operation and production of a well or wells.  
If the operator has removed the derrick and drilling equipment from the location, the supplemental permit shall comply with the requirements specified for a permit in Section (D).

- (H) Use of streets and alleys.
1. No permittee shall make any excavations for any purpose or construct any lines for conveyance of fuel, water or minerals on, under or through the streets or alleys or other land of the City

without an express easement or right-of-way license from the City, at a price to be agreed upon, and then only in strict compliance with the ordinances of the City and the specifications established by the department of public works.

2. The digging up, breaking, excavating, tunneling, undermining, breaking up, or damaging of any street as herein defined, or leaving upon any street any earth or other material or obstruction, shall not be permitted unless such persons shall first have obtained written permission from the director of public works, and then only in compliance with specifications established by him.

(I) Streets and alleys; obstruction; permits. No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is within any of the streets or alleys of the City and/or streets or alleys shown by the master plan of the City, and no street or alley shall be blocked or encumbered or closed in any drilling or production operation except by written permission of the city traffic engineer, and then only temporarily.

(J) Derrick and rig types; those prohibited; removal of those allowed; watchmen. It shall be unlawful and an offense for any person to use or operate, in connection with the drilling or reworking of any well within the corporate limits of the City, any wooden derrick or any steam-powered rig. The drilling rig or derrick and other structures, material and drilling equipment shall be removed from the premises within 30 days from the date of completion of the well, as shown on the appropriate railroad commission form, and thereafter, when necessary, such completed well shall be served by portable rigs, which shall be removed from the premises within 15 days from the completion of the servicing operation. At all times from the start of erection of a derrick or a mast, or a ginpole, until the well is abandoned and plugged or completed as a producer and enclosed as herein provided, the permittee shall keep a watchman on duty on the premises at all times when other workmen of the permittee are not on such premises.

Provided, however, that the City Council may, for good cause shown by the applicant, for drill sites located more than 1,000 feet from any occupied residence, commercial structure or public building or any permanent accessory structure used in connection with any of same, waive in the permit (if one is issued) the watchman requirement contained in the preceding paragraph hereof, provided the fencing requirements of subdivision (N) are complied with.

Provided, however, that if the production string of casing is run into a well located between 1,000 feet and 1,320 feet from any occupied residence, commercial structure or public building or any permanent accessory structure used in connection with any of same, then and in that event, the preceding fencing and watchman requirements shall not apply during the interim period between the time the drilling rig moves off of the location and a workover rig moves onto the location so long as said interim period does not exceed 21 days and so long as the following requirements are met within 12 hours after the drilling rig is removed from the location:

1. No equipment remains on the location.
2. All free fluids are removed from the slush pits.
3. The cellar, rat hole and mouse hole are filled to ground level.
4. The operator notifies the designated office of the planning and development department when the drilling rig is released.

In the event that any permit is granted to drill or explore for oil or gas within such corporate limits, the permittee shall proceed with the drilling operations with the highest degree of care so as not to injure adjoining property or persons in any manner. All wastes must be contained within the drill site, as set out hereinafter, without any subsurface disposal, and upon the completion of such drilling operations the grounds around the well shall be immediately cleared of all drilling mud and/or all oil, saltwater or water, and shall be made to conform in appearance to the lands in the neighborhood wherein such drilling operations are so conducted.

Caliche drilling pads shall also be removed in the cleanup operation except the portion thereof within the fenced area around pump jacks. All cleanup and removal operations required above shall be completed within 30 days of the date of completion of drilling operations.

Steel slush pits shall be used in connection with all drilling and reworking operations. Such pits and contents shall be removed from the premises and drill site within 30 days after completion of the well. No earthen slush pits shall be used. However, cuttings from the drilling operations may be disposed of on the drill site according to the following requirements:

1. Disposal shall be in a pit lined with black six-millimeter PVC lining material.
2. Cuttings shall then be covered with not less than 24 inches of topsoil and the surface otherwise brought back to the same level and substantially the same appearance as the surrounding ground.

Provided, however, that the City Council may, for drill sites located more than 1,000 feet from any occupied residence, commercial structure or public building or any permanent accessory structure used in connection with any of same, authorize in the permit (if one is issued) the use of earthen slush pits in lieu of steel slush pits otherwise required by this subsection (J). Provided, further, that by simple majority vote the City Council may elect to hold a public hearing on the type of slush pits to be used outside the said 1,000-foot area by giving notice by publication and by mail in the manner provided for in subsection (D) hereinabove, but to all surface owners of real property within 1,320 feet of the proposed drill site.

(K) Operations and equipment; practices and standards.

1. All drilling and operations at any well performed by a permittee under this Section shall be conducted in accordance with the practices of a reasonable and prudent operation in the Permian Basin area. All casing, valves, and blowout preventers, drilling fluid, tubing, wellheads, Christmas trees, and wellhead connections shall be of a type and quality consistent with such practice. Setting and cementing casing and running drill stem tests shall be performed in a manner and at a time consistent with the practices of a reasonable and prudent operator. Each permittee under this Section shall observe and follow the regulations of the railroad commission of the State of Texas.
2. That an internal combustion engine may be used in the drilling operations of the well, or wells, and if an internal combustion engine is used, that mufflers be installed on all engines so as to reduce noise to not more than 70 decibels at any point 100 feet beyond the drill site; and all of said installations to be done in accordance with accepted practices for fire prevention purposes. For production purposes, only electric power may be used. Drilling operations must be conducted in such a manner that percolating or ground water will not be adversely affected, including the prevention of vertical movement of percolating water.
3. That all oil drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, noise, vibration or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances.

4. Except in cases of emergency, no materials, equipment, tools or pipe used for drilling or production operations shall be delivered to or removed from the site except between the hours of 7:00 a.m. to 9:00 p.m. on any day. On drill stem tests, only one trip will be allowed at night between 9:00 p.m. and 7:00 a.m. unless an emergency exists.
  5. Firefighting apparatus and supplies as approved by the Midland city fire department shall be maintained on the drilling site at all times during drilling and production operations. No refining process or any process for the extraction of products from natural gas shall be carried on at the drill site, except that a dehydrator and separator may be maintained on the drill site for the separation of liquids from natural gas. Any such separator shall serve only one well.
  6. All production equipment used shall be so constructed and operated so that noise, vibration, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in methods of production shall be adopted as they, from time to time, become available if capable of reducing factors of nuisance or annoyance. There shall be no venting of gas into the open air except as allowed by the Texas Railroad Commission in residential areas.
  7. The well site shall not be used for the storage of pipe, equipment or materials except during the drilling or servicing of the well and the production facilities allowed on the site.
  8. That no refinery, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises at any time. This shall not be deemed to exclude a simple gas separation process.
  9. All electric lines to production facilities shall be located in a manner compatible to those already installed in the surrounding area or subdivision.
- (L) Cleanliness and sanitation. The premises shall be kept in a clean and sanitary condition. The permittee shall prevent any mud, wastewater, oil, slush, or other waste matters from flowing into the alleys, streets, lots or leases within the corporate limits of the City.

All permittees' premises shall be kept clear of high grass, weeds and combustible trash within a radius of 100 feet around any oil tank, tanks, or producing wells. All waste shall be disposed of in such manner as to comply with the air and water pollution control regulations of the state and all ordinances of the City and removed as required in subsection (J) of this Section.

(M) Storage tanks and separators; types and requirements.

1. It shall be unlawful and an offense for any person to use, construct or operate, in connection with any producing well within the city limits, any crude oil storage tanks except to the extent of two low type tanks for oil storage, not exceeding 500 barrels capacity for each well connected thereto or, in the alternative, low type tanks of sufficient capacity to hold 24 hours of production from such well; said tanks to be so constructed and maintained as closed tanks and properly vented. A permittee may use, construct and operate a steel conventional separator, heater treater, vapor recovery unit and such other tanks and appurtenances as are necessary for treating oil with each of such facilities, to be so constructed and maintained according to API standards. Each oil/gas separator shall be equipped with both a pressure relief safety valve and burst plate. All such tanks shall be placed above ground, and the tanks shall be placed upon a suitable earth or concrete pad.

2. The use of a central tank battery is permitted so long as not more than two tanks as specified are used for each well connected to the battery plus one 500-barrel water tank.
3. The tank or tanks shall be enclosed with a conventional type firewall constructed of compacted earth; sufficient water shall be used during the firewall construction to assure adequate compaction.
4. The firewall enclosing the tanks shall have a minimum capacity equal to two times the volume of the tanks enclosed.

The top or crown of the firewall shall have a normal height of three feet above normal ground elevation.

5. It shall be unlawful and an offense for any person to locate a storage tank or separator site nearer than 175 feet to any residence or commercial or public building within the City.

It shall be unlawful and an offense for any person to locate a storage tank site or separator site between 175 feet and 1,000 feet from the nearest residence or commercial or public building within the City without the unanimous consent of all of the property owners within 1,000 feet of said site and the affirmative vote of three-fourths of all of the members of the City Council cast at the time of the consideration of the drilling permit application or at a subsequent meeting.

- (N) Fences required; locking gates; waiver by inspector. The well site, drill site, tank site, tank battery site, pump station site, or compressor site shall not be used for the storage of pipe, equipment or materials except during the drilling or servicing of the well, tanks, pump stations or compressor stations, and all such sites, including all surface facilities, whether located on the well site or at a separate location within the City, shall be enclosed and kept fenced by a substantial chainlink fence eight feet high, with slats woven through the links to make it sightproof and with concertina wire, barbed wire or other security wire on the top, and properly built and thereafter maintained so as to ordinarily keep persons and animals out of the enclosure, with all gates thereto to be kept locked when the permittee or his employees are not within the enclosure.

Provided, however, that the City Council may, for drill sites located more than 1,000 feet from any occupied residence, commercial structure or public building or any permanent accessory structure used in connection with any of same, waive in the permit (if one is issued) the fencing otherwise required by this subsection (N). Provided, further, that by simple majority vote the City Council may elect to hold a public hearing on the fencing requirement outside the said 1,000-foot area by giving notice by publication and by mail in the manner provided for in subsection (D) hereinabove, but to all surface owners of real property within 1,320 feet of the proposed drill site. If the drill site is located within 1,000 feet of any occupied residence, commercial structure or public building or any permanent accessory structure used in connection with any of same, the drill site shall be landscaped upon completion of the drilling of the well.

- (O) Fire prevention; escape of gas, burning; flaring; general requirements. Any permittee engaged in the drilling or operation of an oil and/or gas well or the operation of any facility used in conjunction with the production of oil and/or gas within the corporate limits of the City shall take reasonable precautions to prevent gas from escaping into the air, and shall not flare or burn gas from a torch or any similar means within the corporate limits of the City; provided gas may be burned for a limited time when necessary to complete any oil and/or gas well upon the original completion or upon the recompletion or workover jobs upon oil and/or gas wells, so long as the same does not constitute a fire hazard to the property of others within the vicinity of such oil and/or gas well.

The permittee shall place a sign at each well location or site to identify the well.

Each permittee shall fully comply with "Special Order Amending Rule 36 of the General Conservation Rules of Statewide Application State of Texas Having Reference to Oil and Gas Operation in Hydrogen Sulfide Areas," adopted by the Railroad Commission of Texas, Oil and Gas Division, in Oil and Gas Docket No. 20-65, 354 on March 15, 1976.

- (P) Flow lines and gathering lines. Each permittee shall place an identifying sign at each point where a flow line or gas gathering lines crosses any public street or road and it shall be unlawful and a misdemeanor for any person to remove, destroy or deface any such sign.

Each permittee shall also place a warning sign at each point where a line carrying H<sub>2</sub>S gas crosses any public street or road and it shall be unlawful and a misdemeanor to remove, destroy or deface any such sign.

No permittee shall make any excavation for any purpose or construct any lines for conveyance of fuel, water, or minerals, on, under, or through the streets and alleys of the City without express permission of the director of public works in writing, and then only in strict compliance with the ordinances of the City; provided, however, emergency repairs may be made without such permission when in the good faith opinion of the permittee the delay required to obtain written permission would involve a hazard to person or property.

The gathering lines and flow lines hereafter installed in the corporate limits of the City, for the purpose of transporting oil, gas and/or water in conjunction with the operation of any well, tank or tank battery, injection or gathering system, are hereby limited to a maximum operating gauge pressure of 250 psi (pounds per square inch) unless otherwise specifically approved by the director of public works. The location of any such gathering lines and flow lines, if not specified in the permit, must be specifically approved by the director of public works.

The pipeline shall be tested prior to being placed in service.

The companies responsible for any and all pipelines now existent or hereafter installed within the corporate limits are hereby required to furnish the City an "as-built" plot plan showing the location of all their facilities for permanent record with the City.

All pipelines within the corporate limits, other than the utility lines of the City and the franchised distribution system of Pioneer Natural Gas Company, designed or utilized to transport oil, gas or water in connection with the production and transportation of oil and/or gas or for repressurizing operations, shall hereafter be installed with the minimum of cover or backfill specified by the then applicable ASA code for such pipelines.

The director of public works is authorized to approve a lesser cover or specify a greater cover or backfill in special cases when in the opinion of the oil and gas inspector such variation is advisable and/or will not increase the degree of hazard.

The requirements for construction in public rights-of-way must conform to such ordinances of the City regulating such construction.

The digging up, breaking, excavating, tunneling, undermining, breaking up, or damaging of any street as herein defined, or leaving upon any street any earth or other material or obstruction, shall not be permitted unless such persons shall first have obtained written permission from the director of public works, provided, however, emergency repairs may be made without such permission when in the good faith opinion of the permittee the delay required to obtain the written permission would involve

a hazard to person or property.

- (Q) Exceptions. On well bores located no closer than 1,320 feet to any occupied residence, commercial structure or public building, the regulations contained hereinabove regulating decibel levels of sound, steel slush pits, fences around drill sites, and restricting nighttime operations and night watchmen shall not apply.
- (R) Penalties; fines; forfeitures; revocation of permit. Subject to subsection (F) of this Section, it shall be unlawful and an offense for any person to violate or fail to comply with any provision hereof, whether or not such Section contains the specific language that such violation or failure to comply is unlawful and is an offense. Any person who shall violate the provisions of this Section, or the provisions of a permit issued pursuant hereto, or who shall fail to comply with the terms hereof, shall be guilty of a misdemeanor and shall, on conviction thereof, be fined in any sum not less than \$100.00 nor more than \$500.00, and the violation of each separate provision of this Section, and of such permit, shall be considered a separate offense, and each day's violation of each separate provision thereof shall be considered a separate offense.
- (S) This section shall apply to all oil and gas well permits for which an application has been received and/or a permit has been issued before the 1st day of March, 2007. This section shall remain in full force and effect for any such oil and gas wells operating under this section.

(Ordinance 6364 adopted 1/24/1984; Ordinance 6411 adopted 6/26/1984; Ordinance 6450 adopted 9/11/1984; Ordinance 6717 adopted 12/16/1986; Ordinance 7707, secs. 1, 2 adopted 2/10/1998; Ordinance 7812, secs. 1—6 adopted 1/26/1999; Ordinance 8132, sec. 2, adopted 10/8/2002; Ordinance 8499, sec. 1, adopted 2/13/07)

#### **§ 6-1-8. Peeping Toms.**

It shall be unlawful for any person to enter upon the premises of another or upon any public property with the intention of peeping into a house or other building, or spying in any manner upon any person therein; provided, however, that the provisions of this Section shall not apply to an officer of the law in the performance of his duties.

#### **§ 6-1-9. Police radio; interception of communications.**

No solicitor, or other person, not being authorized by the City, shall intercept any communication and divulge or publish the existence, contents, substance, purpose, effect or meaning of such intercepted communication, and no solicitor or other person, not being entitled thereto, shall receive or assist in receiving any message emanating through the medium of KKA-662, and use the same or any information therein contained for his own benefit, or for the benefit of another solicitor or person.

(Ordinance adopted 3/24/1953)

#### **§ 6-1-10. Railroads; length of time at crossings.**

It shall be unlawful for any yardmaster, engineer, conductor or other person in any manner controlling or operating any railway locomotive, engine, car or train of cars to suffer or permit any such locomotive, engine, car or train of cars to remain standing upon any public street crossing within the corporate limits of the City for a longer period than five minutes, and all of the time such locomotive engine, car or train of cars is permitted to stand upon such public crossing shall be considered one period, unless, between said periods, five minutes elapses, during which time no such locomotive engine, car or train of cars is permitted to stand on such crossing.

(Ordinance adopted 10/14/1930; Ordinance adopted 11/27/1945)

**§ 6-1-11. Railroad trains speeding.**

It shall be unlawful for any engineer or other person in charge of a locomotive or train to run the same within the corporate limits of the City of Midland at a speed greater than 25 miles per hour.

(Ordinance 5107 adopted 11/9/1976)

**§ 6-1-12. Arsonists.**

There is hereby appropriated from the general fund of the City the sum of \$250.00 to be paid to any person procuring the arrest and conviction of any person found guilty of arson, or any attempt to commit arson, within the corporate limits of the City. If and when such fund is exhausted, then additional funds of like amount shall be appropriated so as to keep the fund a continuous one.

(Ordinance adopted 2/16/1928; Ordinance adopted 2/14/1950)

**§ 6-1-13. Auto part sales.**

Any person, firm, or corporation purchasing vehicle hubcaps, mirrors, fenders, skirts, ornaments, tires or other parts of vehicle accessories from individuals not engaged in the lawful business of selling auto parts and equipment shall make daily reports of all such purchases to the chief of police before the hour of 10:00 a.m., except on Sunday, giving the name, age and address of the seller and any proof of ownership furnished to the purchaser by the seller. Any person, firm or corporation failing to so report such purchases shall be guilty of a misdemeanor.

(Ordinance 3383 adopted 10/14/1958)

**§ 6-1-14. Go-carts.**

It shall be unlawful within the City for any person to offer for rent or hire or to rent out or hire out to another person, or otherwise use, offer for use or permit the use of, commercially, any go-cart, as hereinafter defined, owned or controlled by such person. It shall likewise be unlawful for any person to operate, or permit the operation of, a commercial racetrack or go-cart track on any property owned or controlled by him within the City.

For the purposes of this Section go-carts are defined as any small motor vehicle propelled by an internal combustion engine and not registered as a motor vehicle under the state licensing law or not equipped with certain safety devices, such as those required for a state safety inspection certificate under V.T.C.A., Transportation Code ch. 548, which shall include, but not be limited to, headlights, taillights, brakes, turn signals and a metal body to prevent the driver of said vehicle from falling from it in the event of an accident.

(Ordinance 3822 adopted 8/22/1961)

**§ 6-1-15. Police dogs; mistreatment, injury or killing.**

It shall be unlawful for any person to willfully or maliciously torture, torment, beat, kick, strike, mistreat, injure, disable, or kill any dog used by the police department of the City of Midland in the performance of the functions or duties of such department, or to interfere with or meddle with any such dog while being used by said department or any official or member thereof in the performance of any of the duties or functions of such department or of such official or member. Any person violating any provisions of this Section shall be deemed guilty of a misdemeanor.

(Ordinance 3951 adopted 10/23/1962)

**§ 6-1-16. City hall parking.**

- (A) It shall be unlawful for any person to park a motor vehicle on any part of Lots 7, 8, 9, 11, 12 and S/2 10, of Block 25, and Lot 11 of Block 26, all in the Original Town of Midland, Texas, unless such person is an elected or appointed official of the City of Midland or an employee of the City of Midland, duly authorized so to do by the city manager.
- (B) It shall be unlawful for any person to park a motor vehicle on any part of the N/2 of Lot 10 of Block 25 of the Original Town of the City of Midland, Texas, unless such person is an elected or appointed official of the City of Midland or an employee authorized so to do by the city manager, or unless such person has business to transact in the city hall.
- (C) The city traffic engineer is hereby authorized and directed to erect appropriate signs and markings on and near the above-described lots indicating the regulations established hereby.

(Ordinance 4304 adopted 2/14/1967)

#### **§ 6-1-17. Trespassing.**

- (A) It shall be unlawful for any person to prowl, loiter, enter into, or go about the premises of another, without the invitation or consent, either express or implied, of any occupant of any room, house, hotel, tourist cabin, business house, accessory building, or other buildings on or near the premises: and such person shall be guilty of trespassing and disorderly conduct.
- (B) It shall be unlawful for anyone to trespass upon, interfere with, or use property of another person, or of a corporation, without the consent of the owner or person in charge and control of such property.

(Ordinance 4303 adopted 2/14/1967)

#### **§ 6-1-18. Entering restrooms of the opposite sex.**

It shall be unlawful for any person to knowingly and intentionally enter any public restroom designated for the exclusive use of the sex opposite to his or her own without permission of the owner, tenant, manager, lessee, or other person in charge of the premises.

(Ordinance 6185 adopted 4/12/1983)

#### **§ 6-1-19. Nuisance water.**

- (A) It shall be unlawful for any person, corporation, partnership or association to allow any individual sprinkler, sprinkler system, hand-held hose, soaker hose, bubbler or any other device to emit water so as to allow water to directly land on any public street or emit water so as to allow such water to run off into or on any public street.
- (B) For the purposes of this Section, the word "street" shall mean the width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel.
- (C) It shall be an affirmative defense to prosecution under this Section if water is used by any of the following in the stated manners:
  1. The use of water by any person, corporation, partnership or association for roadway base preparation, flushing of utility lines, concrete and asphalt work and for building construction processes;
  2. The use of water by any person, corporation, partnership or association for the repair of water distribution facilities, repairing residential and commercial plumbing facilities, and repairing permanently installed landscape irrigation systems;

3. The use of water by a governmental entity in pursuit of its governmental functions for the benefit of the public, such as capital improvements, construction projects, the cleaning of public streets to prevent debris and harmful substances from entering water systems via storm sewers, and the use of water from fire hydrants and trucks related to fire fighting related activities;
  4. The use of water by any person, corporation, partnership or association to alleviate immediate health or fire hazards;
  5. The device that emitted water directly onto any public street or emitted water so as to allow water to run onto any public street is fixed or repaired within five days, excluding weekends and holidays, from the date of the issuance of the citation under this Ordinance and evidence detailing the repairs is presented to the Court; or
  6. The device is damaged or destroyed without the knowledge of the person, corporation, partnership or association that received the citation and the damage or destruction that caused the device to emit water directly onto any public street or emit water so as to allow water to run onto any public street is repaired. The damage or destruction must be repaired within five days, excluding weekends and holidays, from the date of the issuance of the citation under this Ordinance and evidence detailing the repairs is presented to the Court.
- (D) For purposes of this Section, it shall be presumed that a person, corporation, partnership or association in whose name City of Midland water is or was billed for at the subject property, or is receiving the economic benefit of said public water supply at the subject property, has caused public water to be emitted from a sprinkler, sprinkler system, soaker hose, bubbler or any other device if the public water has been:
1. Allowed to be emitted directly from the subject Property onto any public street; or
  2. Allowed to run off from the subject Property onto or on any public street.
- In the situation where a person, corporation, partnership or association does not use City water, it shall be presumed that the owner of the property has caused water to be emitted from a sprinkler, sprinkler system, soaker hose, bubbler or any other device if the water has been:
1. Allowed to be emitted from the owner's property directly on any public street; or
  2. Water is allowed to run off the owner's property into or on any public street.
- (E) Any person, corporation, partnership or association violating any provision of this Section shall be deemed guilty of an offense, and, upon conviction, shall be punished by a fine not to exceed \$500.00. Each day that a provision of this Section is violated shall constitute a separate offense. It is hereby declared that the culpable mental state required by Texas Penal Code Section 6.02 is specifically negated and clearly and plainly dispensed with and an offense under this ordinance is declared to be a strict liability offense. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. The City Attorney may file suit for an injunction to enforce any of the provisions of this Section.
- (F) Judicial Notice.
1. The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of this ordinance.
  2. The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of records in the City's Customer Service Division.

3. The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of all records of Midland County, Texas; all records of the Midland Central Appraisal District; and all records of the City of Midland, Texas.

(Ordinance 6671 adopted 7/8/1986; Ordinance 6790 adopted 9/22/1987; Ordinance 8947 adopted §1 adopted 10/11/2011)

#### **§ 6-1-20. Prohibiting fishing, swimming, and boating in stormwater drainage facilities.**

It shall be unlawful for any person to fish, swim, wade, dive, float, ski, boat, or participate in any type of water sport or activity in or on any channel, ditch, basin, pond, or other facility which is owned or operated by the City of Midland, Texas, for the control, conveyance, or storage of stormwater runoff or drainage. (Ordinance 7040 adopted 10/9/1990)

#### **§ 6-1-21. Discharge of firearms prohibited.**

- (A) It shall be unlawful for any person to knowingly shoot or discharge within the city limits any firearm.
- (B) For the purposes of this Section, "firearm" means any device used in the expulsion of shot, shell or bullets or other harmful objects by the action of gunpowder exploded within it or by compressed air, compressed gas, or springs capable of shooting or discharging any bullet, missile or projectiles and including, but not limited to, what are commonly known as air rifles, BB guns and pellet guns.
- (C) The provisions of this Section shall not apply to:
  1. The discharge of a firearm in a regularly established and properly supervised shooting range or gallery or other location properly registered in accordance with this Code.
  2. The discharge of a firearm by a citizen when lawfully defending person or property.
  3. The discharge of a firearm by a commissioned peace officer in the performance of his lawful duty.
  4. The discharge of an air rifle, BB gun or pellet gun by a citizen on his own property, provided such device is not fired into or onto another person's property.
- (D) Every person engaged in the operation of a shooting range, shooting gallery, gun club, or other such location for the discharging of firearms shall register each such location with the Midland police department.
- (E) This Section does not prohibit the discharge of a firearm within the city limits for ceremonial, theatrical or other such purposes provided that such discharge does not result in the shooting of a bullet, missile or projectile of any kind.

(Ordinance 7155 adopted 3/10/1992)

#### **§ 6-1-22. Garage and estate sales.**

*Garage or estate sale.* Garage sale or estate sale shall be defined as an offering for sale, on a residential premises, of household furnishings, clothing, appliances and related items. A person may not conduct a garage sale or estate sale except as provided herein. A garage sale or estate sale may not exceed three consecutive days in duration. A garage or estate sale may be held two times within a 90-day period. The number of garage or estate sales a person may hold within a 12-month period shall be limited to four. (Ordinance 7749, sec. 1, adopted 7/14/1998)

**§ 6-1-23. Oil and gas well permits issued on or after January 1, 2010.**

- (A) Purpose.The purpose of this Section is to establish reasonable and uniform limitations, safeguards, and regulations for operations on private and public property within the City of Midland related to the exploring, drilling, developing, producing, transporting, and storing of oil, gas, and other substances produced in association with oil and gas, in order to protect the health, safety and general welfare of the public; to minimize the potential impact to private property and mineral rights owners; to protect the quality of the environment; and to encourage the orderly production of available mineral resources. This Section shall apply to all oil and gas well permits issued by the City Council on or after January 1, 2010.
- (B) Definitions.For the purposes of this Section, the following words and terms wherever and whenever used or appearing herein shall have the scope and meaning hereafter defined and set out in connection with each:
1. Abandonmentmeans "abandonment" as defined by the Railroad Commission and includes the plugging of the well and the restoration of any well site as required by this Section.
  2. Blowout preventermeans a mechanical, hydraulic, or other device or combination of such devices secured to the top of a well casing, including valves, fittings and control mechanisms connected therewith, which can be closed around the drill pipe, or other tubular goods which completely close the top of the casing and are designed for preventing blowouts.
  3. Buildingmeans any structure which is built for the support, shelter, or enclosure or partial enclosure of persons, animals, chattels, or movable property of any kind including pools.
  4. Building officialmeans the building official of the City of Midland, or the building official's duly authorized representative.
  5. Citymeans the City of Midland, Texas.
  6. City Council or Councilmeans the City Council of the City of Midland, Texas.
  7. City Codemeans the Midland City Code.
  8. City attorneymeans the city attorney of the City of Midland.
  9. City managermeans the city manager of the City of Midland.
  10. Completion of drilling, or re-drillingmeans the date the work is completed for the drilling, or re-drilling and the crew is released by completing their work or contract or by their employer.
  11. Derrickmeans any portable framework, tower, mast and/or structure which is required or used in connection with drilling, or re-drilling a well for the production of oil and gas.
  12. Drillingmeans digging or boring a new well or re-entry of any well which has been previously abandoned for which a Form W-1 is required by the Railroad Commission for the purpose of exploring for, developing or producing oil, gas or other hydrocarbons, or for the purpose of injecting gas, water or any other fluid or substance into the earth.
  13. Drilling equipmentmeans the derrick, together with all parts of and appurtenances to such structure, every piece of apparatus, machinery or equipment used or erected or maintained for use in connection with drilling.

14. *Drill site*means all of the land area used during the drilling of a well or wells.
15. *Exploration*means drilling, geologic or geophysical activities, including seismic surveys, related to the search for oil, gas or other subsurface hydrocarbons.
16. *Fire department*means the fire department of the City of Midland.
17. *Gas*means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas.
18. *High volume well*means an oil or gas well which produces at least 125 barrels of oil per day or 300 mcf per day. The determination of 125 barrels or 300 mcf per day shall be from the average daily production sustained during the first 30 days of production.
19. *Occupied residence*means any single-family or multi-family dwelling occupied by an owner or lessee at the time an application for an oil and gas well permit is filed with the City of Midland. An occupied residence shall include a single-family or multi-family dwelling that has been occupied by the owner or lessee at any time during the six months prior to the application date of the oil and gas well permit. An occupied residence shall include a single family or multi-family structure which is under construction or for which a building permit has been issued by the City during the six months prior to the application date of the oil and gas well permit.
20. *Occupied commercial structure*means any commercial structure occupied by an owner or lessee at the time an application for an oil and gas well permit is filed with the City of Midland. An occupied commercial structure shall include a structure that has been occupied at any time during the six months prior to the application date of the oil and gas well permit. An occupied commercial structure shall include a structure which is under construction or for which a building permit has been issued by the City during the six months prior to the application date of the oil and gas well permit.
21. *Oil and gas advisory committee*or "committee" means the five member committee appointed by the City Council to assist with the technical and administrative review of all oil and gas well permits.
22. *Oil and gas well*means any well drilled, to be drilled, or used for the intended or actual production of oil or natural gas.
23. *Operation site*means the area used for production and all operational activities associated with oil and gas after completion of drilling.
24. *Operator*means, for each well, the person designated on the Railroad Commission Form P-4 as the operator, as well as the person listed on the appropriate City application forms for an oil and gas well permit.
25. *Owner*means the fee simple title owner of the surface estate.
26. *Person*means an individual, natural person, firm, partnership, corporation, company, association, joint stock association, organization, agency, business trust, estate trust, and any other legal entity, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

27. *Persons*means the plural of person and shall include both singular and plural and the masculine shall include the feminine gender.
28. *Public building*means any structure owned, leased or occupied by the City or any other governmental entity at the time an application for a permit for an oil and gas well is filed.
29. *Railroad Commission*means the Railroad Commission of Texas.
30. *Residence*means a house, duplex, apartment, townhouse, condominium, mobile home or other building designed for dwelling purposes, including those for which a building permit has been issued on the date the application for an oil and gas well permit is filed with the City.
31. *Re-working*means any work done on an existing well including deepening sidetrack operations which extends less than 150 feet from the existing well-bore, replacement of well liners or stimulation repair or replacement of existing casing or tubing, rod repair or replacement of pumping equipment.
32. *Right-of-way*means any area of land within the City that is acquired by, dedicated to, or claimed by the City in fee simple, by easement, by prescriptive right or other interest and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, street, sidewalk, alley, utility, drainage, or public access easement or used for the provision of governmental services or functions. The term includes the area on, below, and above the surface of the public right-of-way. The term applies regardless of whether the public right-of-way is paved or unpaved.
33. *Street*means any public thoroughfare dedicated to the public use and not designated as an alley or private access easement.
34. *Tank*means a container, covered or uncovered, used in conjunction with the drilling or production of oil, gas or other hydrocarbons for holding or storing fluids.
35. *Well*means a hole or holes, bore or bores, to any sand, horizon, formation, strata, or depth, for the purpose of producing any oil, gas, liquid hydrocarbon, brine water or sulphur water, or for use as an injection well for the secondary recovery, disposal, or production of any oil, gas, liquid hydrocarbons, brine water or sulphur water.

All technical or oil and gas industry words or phrases used herein and not specifically defined shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry.

- (C) Permits required. It shall be unlawful and an offense for any person acting either for himself or acting as an agent, employee, or independent contractor to knowingly drill or participate in the drilling of any well or to re-enter any well which has previously been abandoned for any reason or to install any water and/or gas re-pressurizing or injection facility within the corporate limits of the City without an oil and gas well permit having first been issued by a resolution of the City Council of the City in accordance with the terms of this Section. A separate permit shall be required for each well and each water and/or gas re-pressurizing or injection facility. A permit issued by the City Council shall be valid, until it is revoked by the City Council in accordance with Subsection (L), Paragraph (36). An oil and gas well permit must be approved by a resolution of the Midland City Council.

- (D) Designation of official; enforcement; inspections; access to records.

1. The city manager, or his designated representative, shall enforce the provisions of this Section. The official (or officials) shall have the authority to issue any orders, directives, warnings, or citations, required to carry out the intent and purpose of this Section and its particular provisions.

The city manager may retain the services of an independent consultant to aid in the detection of violations and enforcement of this Section.

2. The designated official (or officials) shall have the authority, in accordance with applicable law, to enter and inspect any premises covered by the provisions of this Section to determine compliance with the provisions of this Section and all applicable laws, rules, regulations, standards or directives of the state. The designated official (or officials) may conduct periodic inspections of all permitted wells within the City to determine that the wells are operating in accordance with the requirements as set out in this Section and with regulations promulgated by the Railroad Commission.
3. The designated official (or officials) shall have the authority to request and receive any public records, including records sent to the Railroad Commission, reports and the like, relating to the status or condition of any permitted oil and gas well necessary to establish compliance with the applicable oil and gas well permit.
4. It is recommended that the designated official (or officials) contact the local office of the Railroad Commission to seek their assistance in enforcing applicable oil and gas regulations.

(E) Oil and gas advisory committee.

1. There is hereby created the Oil and Gas Advisory Committee of the City of Midland consisting of licensed petroleum engineers, or engineers with a bachelor's degree, or geologists appointed by a majority vote of the City Council. The Council shall also appoint two members to the committee who have experience in real property development or real estate sales or development. Of the original members, two shall serve for one year, two for two years and the fifth for three years. Subsequent members shall serve staggered terms of three years each. The role of the five-member committee will be to assist the planning division of the City of Midland with the administrative review of oil and gas well permit applications for: (1) technical compliance with this Section and (2) administrative completeness. The committee may also recommend a surface location where there is disagreement between the operator and the owner. The city manager or his designee shall be an "ex-officio" member of the committee.

The oil and gas advisory committee shall be subject to the Texas Open Meetings Act and shall serve at the will of the City Council. All written findings and conclusions of the committee shall be included as part of the city staff report accompanying each permit application, which shall be delivered to the City Council, and a copy of such findings shall be made available to the operator and will be available for public inspection.

The committee shall not be classified as a department, agency or political subdivision of the City and shall have no authority to:

- (1) Exercise judgment and discretion, except in an advisory capacity;
- (2) Make binding orders and judgments;
- (3) Affect the personal or property rights of private persons;

- (4) Examine witnesses, compel the attendance of witnesses, or to hear the litigation of issues on a hearing; or
  - (5) Enforce decisions or impose penalties.
2. The oil and gas advisory committee shall make a final decision within 45 calendar days after the committee has received a full and complete application from the operator. If the committee fails to act within said 45 calendar days, the city manager shall begin the process to have the application considered by the City Council.
- (F) Operator's representative. Every operator of any oil and gas well shall designate at least one representative, who is a resident of the City of Midland, upon whom all orders and notices provided in this Section may be served in person or by registered or certified mail. Every operator so designating such representative shall within ten calendar days notify the City in writing of any change of representative or the mailing address of such representative. Every operator shall attempt to maintain at all times during the term of an oil and gas well permit, an office address within the City of Midland.
- (G) No vested property rights of permit holder. An oil and gas well permit does not create a property interest or a vested right in the permittee. This Section of the Midland City Code creates no property interest or right of entitlement of any kind.
- (H) Application procedure. The procedure for applying for an oil and gas well permit from the City of Midland shall be initiated with the filing of an application by the operator with the planning division of the City of Midland. The application form to be completed by the operator, or its authorized agent, shall be in the form as described in Subsection (J) herein.

The planning division shall coordinate the review of the application with the oil and gas advisory committee. If the permit "application" is found to be administratively complete, the director of planning shall forward the application, together with the findings and recommendations of the committee, to the City Council.

Once the committee has rendered its final report, the City Council shall consider the application as set forth below:

1. Oil and gas well permit. Prior to granting any permit to drill an oil and gas well, a public hearing shall be held before the City Council. Prior to the 15th day before the hearing date, notice of the time and place of the public hearing shall be published in the official newspaper of the City. Prior to the tenth day before the hearing date, written notice of the time and place of the public hearing shall be sent to each owner, as indicated by the most recently approved municipal tax roll from the Midland Central Appraisal District, of real property within a direct line radius of 860 feet from the proposed oil and gas well drill bore.

For the purposes of computing total land area described herein, streets and alleys shall be included.

The Council shall not vote on granting or denying the permit at the Council meeting when the public hearing is held. The council shall allow 30 days for written input from the public and the operator, after the public hearing is concluded. All written material shall be submitted to the city manager. The Council shall vote on the Permit at a regular meeting.

2. Prohibition; well spacing.

- a. No oil and gas well shall be allowed within 500 feet of any occupied residence, occupied commercial structure or occupied public building, church, public or private school, hospital, nursing home, college or university, or daycare center; 330 feet of any public athletic field; or 135 feet of any publicly dedicated street or alley right-of-way, within the City of Midland.

A variance may be requested under this subsection. In order to grant the variance, the Council must determine that the granting of the permit will not present a health or safety risk. The Council shall vote on the variance at a regular meeting.

- b. In the absence of agreement with the surface owner, identified pursuant to the most recently approved municipal tax roll of the Midland Central Appraisal District, or a title opinion prepared by an attorney licensed by the State of Texas, or take-off by a certified petroleum landman or a title commitment by an abstract company, the City Council shall consider all the factors listed in Subsection (I) hereof, when determining whether to grant or deny a permit. If the application is denied, the operator may appeal to the City Council under Subsection (Z) hereof, and the operator shall have the burden of showing that the denial of the permit is likely to result in a compassable taking under the Texas or United States Constitutions. If the operator and surface estate owner reach an agreement, the council will not consider Subsection I (15—18) but will consider the remainder of Subsection I.
- c. An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well. Any application for such a variance must be accompanied by a notarized petition signed by the owners of the residence or commercial structure that seeks to obtain a building permit within 500 feet of the previously permitted oil and gas well. In the event a variance is granted by the City Council, the Council may authorize the building official to issue a building permit to the applicant. Any building permit issued under this paragraph shall include the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within 500 feet of a previously permitted Oil and Gas Well."

In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within 300 feet of a previously permitted but undrilled oil and gas well or 135 feet of an existing oil and gas well or within 150 feet of a previously permitted tank battery.

In no event shall a building permit be issued by the City of Midland for any church, public or private school, hospital, college or university, nursing home, or day care center, within 300 feet of a previously permitted oil and gas well or within 350 feet of a previously permitted tank battery.

In the event an oil and gas well drill permit has expired without drilling commencing at the permitted location, or in the event the oil and gas well is abandoned as described by the Texas Railroad Commission and this Section, the location of the proposed or abandoned oil and gas well drill site shall not trigger the requirements of this Subsection when requesting a building permit.

A request for a variance under this Subsection shall not require a public hearing held before the City Council. In order to grant the variance, the council must determine that the granting of the permit would not present a health or safety risk to the applicant or

subsequent occupants of the structure.

An owner of property may request the setback variance at any time, including at the time of platting; provided, however, any plat approved permitting the construction of a private residence or commercial structure within such proximity to an existing well shall contain a notation on the face of the plat reflecting the approval of the setback variance.

The Council shall vote on the variance at a regular meeting. A majority vote of the Council is required to pass a resolution authorizing a variance under this Subsection.

3. No property right; notices.

- a. Issuance of any permit required by this section shall bestow upon the operator the privilege of conducting the operations detailed in the permit. In no event shall any such permit bestow a property right to an operator to conduct the operations detailed in the permit.
- b. The failure of the City to provide any notice required by this section shall not give rise to a private cause of action by any aggrieved owner, operator, person or persons. It being the specific intent of the City Council that all city-initiated notices shall be for informational purposes only and not for the purposes of affording any owner, operator, person or persons with additional due process.

(I) Authority of City Council; Considerations.

The Midland City Council shall have the power and authority to grant or deny any oil and gas well permit within the City limits of the City of Midland. The City Council shall consider the following when determining whether to grant or deny a permit for an oil and gas well within the City of Midland:

1. The particular character and value of the improvements already erected on the property or in the vicinity.
2. Public health and safety issues concerning the particular location of the proposed oil and gas well.
3. Any special circumstances existing on the property on which the application is made related to the size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity.
4. Whether an oil and gas well permit is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other properties in the vicinity.
5. Whether the granting of an oil and gas well permit on the specific property will adversely affect any other feature of the comprehensive master plan of the City of Midland.
6. Whether the permit, if granted, will have a material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity.
7. Whether the drilling of the proposed oil and gas well would conflict with the orderly growth and development of the City of Midland.
8. Whether there are alternative well site locations.
9. Whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with oil and gas well permit conditions to be imposed.

10. Whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface and ground water sources, of potentially impacted environmentally sensitive areas.
  11. Whether there is reasonable access for the City of Midland fire personnel and fire fighting equipment.
  12. Whether the impact upon the adjacent property and the general public by operations conducted in compliance with the oil and gas well permit conditions are reasonable and justified, balancing the following factors:
    1. The reasonable use of the mineral estate by the mineral estate owner(s) to explore, develop, and produce the minerals; and
    2. The availability of alternative drill sites.
  13. Whether the applicant is a reasonable and prudent operator. The council shall consider the number of citations issued for previous violations, convictions in municipal court, notice from city officials for non-compliance, failure to promptly rectify violations, conditions of well sites previously permitted, condition of well sites in the City of Midland even if not permitted, condition of well sites in the City's extraterritorial jurisdiction, and input from citizens or the applicant; the request for inspection and extension of permit results; and infractions or violations submitted to or found by the Railroad Commission on previous oil and gas well permitted and drilled.
  14. Whether to grant or deny the permit and request that the surface estate owners and the operator continue negotiations.
  15. Whether to grant or deny the permit leaving the parties to seek a judicial remedy.
  16. Any agreements between the operator and surface estate owners.
  17. The City Council may propose a surface location for the drilling of an oil and gas well different than the location proposed by the operator; and
  18. The spacing density of previously permitted wells.
- (J) **Permit application and filing fee.** Every application for a permit to drill any oil and/or gas well, or to install any water and/or gas re-pressurizing or injection facility (hereinafter "oil and gas operations") within the corporate limits of the City shall be in writing; shall be signed by the operator or some person duly authorized to sign on the operator's behalf before a notary public; shall be filed with the planning division of the City of Midland; shall be accompanied by a non-refundable filing fee of \$4,000.00; and shall only be considered when complete. A separate complete application and permit shall be required for each well.
- No application shall be accepted for filing until it is complete and all required fees have been paid. Each application shall include full information, and will be considered complete only when all of the following is included:
1. The date of the application.
  2. The name and address of the operator as identified on the W-1 filed with the Railroad Commission.

3. Name of operator's representative.
4. The address within the City of Midland, Texas, of the office of representative, including telephone number and fax number. Operator's representative must have an office within the corporate limits of the City of Midland, Texas.
5. A title opinion prepared by an attorney licensed by the State of Texas, or a take-off from a certified petroleum landman or a title commitment prepared by an abstract company, or a letter signed by an attorney licensed to practice law in the State of Texas indicating that the applicant has a legal right to develop the mineral estate that is the subject of the oil and gas well permit application.
6. The name and address of the mineral estate lessor (under the applicable oil and gas lease).
7. A title opinion prepared by an attorney licensed by the State of Texas, or a take-off from a certified petroleum landman or a title commitment prepared by an abstract company, or the most recently approved municipal tax roll from the Midland Central Appraisal District listing the name(s) and address(es) of all surface owners within 860 feet of the proposed surface location of the well (Rather than along any right-of-way, this distance shall be measured directly, in a straight line (hereinafter "measured directly").
8. General description of the current surface use within 860 feet, measured directly, of the proposed surface location for the well.
9. A location site plan, including a legal description drawn to scale, and produced by a professional land surveyor licensed in the State of Texas, showing the following:
  - a. The proposed operation-site;
  - b. The proposed surface location of the well;
  - c. The proposed routing of any gathering lines;
  - d. The location of all improvements and equipment, and other facilities, including, but not limited to, tanks, pipelines, separators, and storage sheds;
  - e. Lot lines shown on any recorded subdivision plat for the area;
  - f. Right-of-way or public easement boundaries;
  - g. City limit boundaries within 860 feet of the proposed surface location of the well;
  - h. Topographic features; and
  - i. Proposed fencing and landscaping.
10. A map, plat, or satellite/aerial photo depicting any residence, commercial structure, public building, or any publicly dedicated street or alley, right-of-way or permanent accessory structure used in connection with such residence, structure or building surrounding such proposed drill site, including marking two circles on the map, plat or satellite photo depicting a radius of 500 feet and a radius of 860 feet from the proposed surface location of the well.
11. Proposed hole size, casing program and cementing program. The surface portions of the hole shall have cement circulated to the surface of the hole.

12. A map showing proposed transportation route and road for equipment, chemicals or refuse products used or produced by the oil and gas operations. These are the only roads that may be used unless an amended route plan is filed and approved.
13. Proposed well name.
14. A description of public utilities required during drilling and operation.
15. A description of the water source to be used during drilling.
16. A copy of the approved Railroad Commission permit to drill, Form-W-1, together with attachments and survey plats which are applicable to the drill site and operation site.
17. A copy of the determination by the Texas Commission on Environmental Quality of the depth of usable quality ground water.
18. Irrevocable letter of credit or certificate of deposit or other approved financial assurance in accordance with Subsection (K)2 of this Section.
19. Insurance certificate(s) in accordance with Subsection (K)3 of this Section.
20. A copy of approved Railroad Commission Form W-1, Permit to Drill, shall be furnished to the city secretary prior to commencement of drilling operations.
21. A drainage plan approved by the city engineer, if required by the city engineer.
22. An emergency action response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use guidelines as established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation, and/or the Environmental Protection Agency. Plan should include "drive-to-maps" from public rights-of-way to drill site.
23. A hazardous materials management plan shall be submitted and be on file with the fire department.
24. The names, local physical addresses (not P. O. Box numbers), and local telephone numbers of one individual who is responsible to ensure compliance with all conditions of the oil and gas well permit, along with any applicable ordinances. The said individual must provide to the city secretary a notarized statement that the individual understands and agrees that he or she is responsible for ensuring compliance with all conditions of the oil and gas well permit, along with any applicable laws, regulations and ordinances by any and all employees, contractors or subcontractors of operator at the oil and gas operation site. Further, he or she must state before a notary that, in the event said individual is for any reason relieved of his or her position regarding said responsibilities, that the name, local address and local telephone number of a responsible replacement will be provided to the city secretary. Instead of the requirements stated above, the operator may provide two telephone numbers that will be answered by an answering service, seven days a week, 24 hours a day.
25. The name and address, including a 24-hour phone number of the person or company representative to be notified in case of an emergency.
26. A list and location of each well the operator has permitted in the City. The list and location shall include any well that the operator owns a controlling interest in or is the operator of. The operator shall certify that the well(s) comply with all applicable permits and ordinances. An

application for a new permit may not be considered until all well(s) previously authorized by permit shall be brought into compliance with the applicable permit or ordinances.

27. If available, a list of alternative locations developed in consultation with the oil and gas advisory committee from which the operator may reach the same mineral estate and potentially drill a producing oil and/or gas well.
28. A notarized statement signed by the operator, or designated representative, that the information submitted with the application is, to the best knowledge and belief of the operator or designated representative, true and correct.
29. Tax certificates. Tax certificates from the Midland Central Appraisal District (indicating that all taxes on personal and real property, including minerals, owned by the applicant have been paid to the current year) must be submitted with the application.
30. A fencing plan, as required by Subsection (M) of this Section and an irrigation plan containing the detail set forth in Subsection (M) of this Section.
31. A road repair agreement must be attached which has been approved by the applicant. However, the approval of any road repair agreement is subject to council approval by a separate resolution. The City Council may waive this requirement upon a showing by the operator that no City-owned streets or alleys will be used by the operator in connection with its oil and gas well operations. The City Council shall require a letter of credit, certificate of deposit or surety bond in the amount of not less than \$25,000.00 for every approved road repair agreement. If an operator has three or more road repair agreements in effect, that have been approved by the City Council, the operator may petition the Council to consolidate all repair agreements into one agreement. The council may grant the request and require a letter of credit, certificate of deposit or surety bond in an amount not less than \$75,000.00. This letter of credit or certificate of deposit is in addition to the security required in Subsection (K)2. hereof.
32. A concept plan depicting the proposed operations site, tanks, roads, power lines and pipeline routes sufficient to allow the City to determine that the future development will not be unreasonably restricted. The concept plan shall not constitute an application for development under the City's development ordinances or Chapter 245 of the Texas Local Government Code and is simply intended to allow the city to determine that the orderly growth and development of the City and its ETJ will not be unreasonably hindered by the proposed well and pipelines.
33. A written statement from the oil and gas advisory committee confirming that the application is complete and complies with the technical requirements of this Section, subject to final approval of the City Council.
34. All electric lines to production facilities.
35. A plan detailing the construction, location, and closure of pits used for drilling and completion operations.
36. A copy of the letter(s) sent to 100 percent of the surface owners within 860 feet of the well as shown in the most recently approved City municipal tax rolls as found in the Midland Central Appraisal District. The letter(s) must indicate that it was sent certified mail. The letter shall notify the surface owners that an application for an oil and gas well permit has been filed in accordance with this Section and that a copy of the application will be made available for review at the planning division of the City of Midland. The application will not be forwarded to the oil

and gas advisory committee for consideration until at least 21 days have passed from the date of the letter(s).

In connection with its review of an application for an oil and gas well permit, the City Council may determine that it is necessary to hire an oil and gas specialist to assist the Council in reviewing the application. If such a determination is made, the City Council will provide the operator with a written "scope of work" that the Council proposes for such specialist. The city council and the operator will attempt to agree upon the "scope of work"; however, the decision of the City Council shall control. The Council may request the committee's assistance with its review of the application.

(K) General conditions of all oil and gas well permits.

1. General obligations of operator. The operator shall be required to:
  - a. Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.
  - b. Promptly clear drill and operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.
  - c. Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property arising out of or in connection with the work done by operator under an oil and gas well permit: where such injuries, death or damages are caused by operator's sole negligence or the joint negligence of the operator and any other person or entity.
  - d. Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the operator does not agree that a breach has occurred, the operator may file a written objection with the city manager within ten days of being notified of the alleged breach. The city manager shall review the objections and give the operator the opportunity to be heard and present facts that the operator deems relevant.
  - e. Promptly restore to its former condition any public property damaged by the oil and gas operation.
  - f. Except as permitted by Subsection U, hereof, operator shall not, either directly or indirectly, assign all or any part of an oil and gas well permit.
  - g. If required by the permit, operator shall execute a "road repair agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any oil and gas well permit under this Section.
2. Irrevocable letter of credit, certificate of deposit, or surety bond. Prior to the issuance of an oil and gas well permit, the operator shall provide the city attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The applicant shall be entitled to receive the interest earned if the certificate of deposit reaches

maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

- a. The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;
- b. The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the oil and gas well permit;
- c. The letter of credit, certificate of deposit or surety bond shall be in the amount of \$25,000.00;
- d. The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and
- e. The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the city manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the operator must renew the letter of credit, certificate of deposit or surety bond on or before 120 days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the 120-day renewal time period required above.

The operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the oil and gas well permit shall be suspended on such date and the operator's right to operate under oil and gas well permit shall immediately cease until the operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more oil and gas well permits in effect which have been approved by the City Council, the operator may petition the council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all oil and gas wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the operator but in no event shall the amount be less than \$75,000.00.

3. **Insurance**. In addition to the letter of credit, certificate of deposit or surety bond required above, the operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any oil and gas well permit issued under this Section shall be suspended on such date of cancellation and the operator's right to operate under such oil and gas well permit shall immediately cease until the operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
  - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "additional insured" on all policies, except under operator's workers compensation policy.
  - ii. All policies shall be written on an occurrence basis, except for environmental pollution liability (seepage and pollution coverage) and excess and umbrella liability, which may be on a claims-made basis.
  - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
  - iv. Deductibles shall be listed on the certificate of insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
  - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an oil and gas well permit under this Section.
  - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
  - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
  - viii. Each policy shall be endorsed to provide the City a minimum 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten-day notice shall be acceptable in the event of non-payment of premium.
  - ix. During the term of any oil and gas well permit issued hereunder, the operator shall report, in writing, within 30 days of the occurrence, to the city manager, any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
  - x. Upon request, certified copies of all insurance policies shall be furnished to the City.
  - xi. Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the operator, operator's insurance shall be primary coverage as to any liabilities of the City.
- b. Standard commercial general liability policy. This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum combined single limit of \$1,000,000.00 per occurrence for bodily injury, accidental death, and property injury.
- c. Excess or umbrella liability.

\$1,000,000	Excess, if the operator has a stand-alone environmental pollution liability (EPL) policy.
\$10,000,000	Excess, if the operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If seepage and pollution coverage is written on a "claims made" basis, the operator must maintain continuous coverage and purchase extended coverage period insurance when necessary.

- d. Environmental pollution liability coverage. Operator shall purchase and maintain in force for the duration of any oil and gas well permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

- e. Workers compensation and employers liability insurance.
- i. Workers compensation benefits shall be Texas statutory limits.
  - ii. Employers liability shall be a minimum of \$1,000,000.00 per accident.
  - iii. Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable state and federal laws.
- f. Automobile liability insurance.
- i. Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
  - ii. Coverage must include all owned, hired and not-owned automobiles.
- g. Certificates of insurance.
- i. The company must be licensed or authorized to do business in the State of Texas.
  - ii. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.
  - iii. Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.
  - iv. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT

THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

- v. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.
- vi. At the request of an operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

(L) Specific conditions of all oil and gas well permits; on-site requirements.

1. Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.
2. Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the fire marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.
3. Blowout prevention. In all cases, ram-type and annular blowout preventers shall be used on all wells being drilled. In cases where re-working is being performed on a well, ram-type or annular blowout preventers shall be used. Protection shall be provided to prevent blowout during drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the blowout preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each blowout preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each blowout preventer shall be tested and witnessed by operator's personnel and the results of such test shall be documented in the operator's well file. Testing expenses shall be the responsibility of the operator. The operator shall provide a complete report of the well blowout prevention test to the city manager within fifteen (15) days of the test.
4. Casing. The surface portions of the well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.
5. Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.
6. Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any right-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain without permits from the appropriate city departments, or any body of water or onto any private property in the City.

7. Drilling notice. The operator shall provide at least a 48-hour notice to the city manager prior to mobilizing the drilling equipment. In addition to notification to the city manager, the operator shall provide a notice to the owners of at least 48 hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the city secretary's office.
8. Drill stem testing. No drill stem testing shall be allowed.
9. Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any drill site or operation site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.
10. Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.
11. Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.
12. Emergency response plan. Prior to the commencement of any oil or gas production activities, operator shall submit to the city manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City fire code. A copy of the emergency response plan shall be kept at the operator's office.
13. Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform operator when repainting is necessary. Operator shall repaint within 60 days written notice from City. When requiring re-painting of such facilities, the city manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the operator, a color other than beige may be approved by the City Council.
14. Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.
15. Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the operator shall immediately report such condition to the fire department in accordance with the City of Midland fire code. The reporting limits for hazardous materials release shall conform to the requirements of the

railroad commission and not exceed any state or federal permitting limit.

16. Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the fire marshal and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The operator shall be responsible for the maintenance and upkeep of such equipment.
17. Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.
18. Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest oil and gas well to the fresh water well.
  - a. Upon request of an owner of a fresh water well within 860 feet of an oil and gas well, who has been duly notified, operator shall provide the city manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).
  - b. Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of the well plus three years for a producing well, or for a period of one (1) year for a dry hole.
19. Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event operator determines the use of such compressor is necessary, a detailed plan shall be submitted by operator to the City Council for consideration. An on-site compressor plan shall include the following information:
  - a. The physical size of the compressor;
  - b. The power source of the compressor;
  - c. The horsepower of the compressor;
  - d. The noise of the compressor; and
  - e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20. Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than 330 feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the fire marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21. Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the city manager.
22. Grass, weeds, trash. All drill sites and operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of 100 feet around any tanks, production facilities, or producing wells.
23. Hazardous plan. Hazardous materials management plan (HMMP) and all material safety data sheets (MSDS) for all hazardous materials that will be located, or stored, on the operations site shall be submitted to the city manager.
24. Lights. Except under emergency circumstances, operator shall not operate any lights located at the drill site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within 300 feet. This paragraph does not apply during initial drilling operations.
25. Monitoring for H<sub>2</sub>S gas. If required by the Railroad Commission, equipment for the monitoring of H<sub>2</sub>S gas shall be used during drilling. The operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within 60 days after completion, and annually thereafter, operator shall submit to the city manager results of testing to determine the concentration of H<sub>2</sub>S produced from the well. If the results of the H<sub>2</sub>S testing proves to be 100 PPM H<sub>2</sub>S or greater, the operator is responsible for determining the 100 PPM H<sub>2</sub>S radius of exposure for each well and production facility. Wells and facilities where the concentration of H<sub>2</sub>S is equal to or greater than 100 PPM will be considered "Sour." Safety systems described herein must be approved by the fire marshall.
  - a. The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least 125 barrels of oil per day and/or 300 MCF of gas per day and for "sour" wells whose 100 PPM H<sub>2</sub>S radius of exposure is greater than 15 feet:
    - i. H<sub>2</sub>S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).
    - ii. Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H<sub>2</sub>S in concentrations greater than 100 PPM.
    - iii. Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H<sub>2</sub>S in concentrations greater than 100 PPM is detected.
  - b. The following safety alarms and equipment are required at "sour" tank battery facilities:
    - i. H<sub>2</sub>S monitors located along the fencing, as set forth in Subsection M.
    - ii. Automated audible alarm to provide warnings for the presence of H<sub>2</sub>S in concentrations greater than 100 PPM.
    - iii. An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H<sub>2</sub>S in concentrations great than 100 PPM is detected.
26. Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or

mounted on wheels, used in connection with the drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27. Pits.

The following applies for pits used for drilling and completion operations:

- a. No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City department of development services.
- b. No fresh water pit may be placed in any city recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.
- c. The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements:
  - (i) the maximum size of a reserve pit shall be no greater than 200 feet by 200 feet;
  - (ii) The pits shall be lined with a plastic liner having a minimum thickness of eight mil reinforced polyethylene;
  - (iii) Reserve pits used in drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;
  - (iv) Reserve pits shall be closed within 180 days of the cessation of drilling operations;
  - (v) Drill cuttings may be disposed of on the drill site using a deep burial method provided that the burial pit containing the cuttings is located entirely within 135 feet of the surface location of the well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of 36 inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located.

28. Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29. Signs.

- a. A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall

be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet nor more than four square feet and shall be lettered with the following:

- i. Well name and number;
  - ii. Name of operator;
  - iii. The emergency 911 number; and
  - iv. A 24-hour phone number that will provide an emergency phone number of operator's representatives as stated in Subsection F.
  - b. Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the fire chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the fire department and the operator, well and lease designations required by the Texas Railroad Commission.
  - c. Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the operation site adjacent to the operator's sign if chemicals are present. A label must be located on each chemical tank indicating exact chemicals that may be contained in such tank. Text shall be minimum two inches or greater in height, contrasting with the background color.
30. Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley or upon any operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. The fire department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31. Tank battery facilities. At the tank battery for either oil and/or gas wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over 16 feet in height. All storage tanks shall be built on an adequate foundation with a 12-mil liner being placed beneath each tank, extending a minimum of three feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as

required by Section (M) herein. No tank shall exceed 16 feet in height. No tank battery shall be constructed within 500 feet of any occupied residence, occupied commercial structure or occupied public building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the city manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within 90 days after completion date of the well at the pad site unless permission is obtained from the city manager to extend the time period for no more than 30 days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-1 filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at 135 feet from any street or alley right-of-way, 330 feet from any public athletic field, and 500 feet from an occupied residence, occupied commercial structure or occupied public building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the department of development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32. Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the operation site for either a fire or abnormal change in pressure. The fire department shall have access to the operation site and the shut-off valve in an emergency.
33. Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.
34. Wellhead status after fracing. The wellhead between the time of drilling/completion and tank battery construction, shall be:
  - a. Surrounded with a six-foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;
  - b. The gate shall be locked at all times, except when the operator is involved in active operations;

- c. The cellar shall be filled or closed; and
  - d. The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.
35. **Inspections.** In accordance within applicable law, the city manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the drill site/operation site and may, at his discretion, visit the drill site/operation site to make sure operator is in compliance with the requirements of this Section.
36. **Violation.** In the event a violation of this Section is determined by the City's official (or officials), the City may act in any or all of the following ways:
- a. The City, through its designated official (or officials), may issue a notice of violation to the operator, its agent, agents, employees or independent contractors (whether on site or not), or to any person participating in the drilling of the well. Such notice may include a citation to appear before the Midland Municipal Court.
  - b. If the city manager, or his designee, finds the operator to be in violation of any requirement of the applicable oil and gas well permit, then the City reserves the right after giving ten business days written notice to the operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten business day period, then operator must have commenced efforts to remedy such violation within said ten-business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the city manager finds the operator to be in violation of any requirement of the applicable oil and gas well permit, the City manager shall give written notice to the operator that unless all violations are corrected within ten business days of the operator's receipt of notice of the violation, the city manager shall recommend to the City Council that the oil and gas well permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten-business-day period, then operator must have commenced efforts to remedy such violation within said ten-business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the operator written notice of the date and time of the hearing and shall give the operator the opportunity to be heard and present facts the operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.
  - c. Prosecution of violations of this Section shall be given priority and expedited upon the municipal court docket. Provided, however, that this subsection does not grant or guarantee persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

- d. In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an operator retains all of its legal remedies.

(M) Fencing and landscaping.

1. Fences. A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with oil and gas wells shall be enclosed by a chain link fence at least seven feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the city fire chief with a "Knox Padlock" or "Knox Box with a key" to access the operation site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within 500 feet of the well at the time the oil and gas well permit is issued.

Additionally, if at any time within 24 months following the issuance of an oil and gas well permit, a structure intended for permanent occupancy is constructed within 500 feet of the well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2. Landscaping.

- a. The City will require tree preservation and/or planting measures.
  - i. A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.
  - ii. At least 75 percent of the trees shall be evergreen.
  - iii. The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.
  - iv. All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the operator or agent and a new three-year guarantee will begin at the time of replacement.

- b. The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the city manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
<i>Pinus eldarica</i>	Afghan Pine, Mondell Pine
<i>Pinus Sylvestris</i>	Russian Pine
<i>Ulmus Crassifolia</i>	Cedar Elm

- c. Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.
- d. Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.
- e. In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N) Cleanup and maintenance.

1. Cleanup after well servicing. After the well has been completed or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within 180 days.
2. Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the operator shall remove or cause to be removed to the satisfaction of the city fire chief and the city manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the operator shall furnish the city manager with all information filed with the railroad commission. If the operator fails to begin site clean-up immediately the city manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the city manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.
3. Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds,

brush, trash or other refuse material within a radius of 100 feet around any production facilities, tanks and producing wells.

4. Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the city manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.
5. Blowouts. In the event of the loss of control of any well, operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the city manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.
6. Cleanup after drilling/completion. After the well has been drilled and completed, the operator shall clean the drill site, complete restoration activities and repair all damage to public property caused by such operations within 90 days as specified previously in Subsection (L)27.

(O) Drilled and abandoned wells.

1. Surface requirements for plugged and abandoned well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the operator so abandoning shall be responsible for the restoration of the operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.
2. Surface requirements for drilled and abandoned well. Abandonment shall be approved by the city manager after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the city manager:
  - a. The derrick and all appurtenant equipment thereto shall be removed from drill site;
  - b. All tanks, towers, and other surface installations shall be removed from the drill site;
  - c. All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;
  - d. All holes and depressions shall be filled with clean, compactable soil;
  - e. All, refuse and trash shall be removed from the drill site; and
  - f. During abandonment, operator shall comply with all applicable subsections in this section; and
  - g. The drill site shall be restored, as close as practicable, to its original condition.
  - h. Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the operator shall comply with Subsection (L), Paragraph 27.
3. Abandoned well requirement. The operator shall furnish the following to the city manager:

- a. A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.
  - b. Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.
  - c. All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.
4. Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.
- (P) Certificate of request for inspection and extension of permit. On or before 90 days prior to each annual anniversary date of operator's oil and gas well permit, operator shall submit to the city manager a certificate of request for inspection of permit. The certificate of request for inspection of permit must state the location and name of the well and the date the permit was granted by the City Council. The certificate of request for inspection of permit must be signed by the operator before a notary public stating that the well is in compliance with the permit and all applicable ordinances. The certificate of request for inspection of permit must be accompanied by an application and inspection fee of \$300.00. The city manager shall grant a one-year inspection approval on the oil/gas drilling permit if the operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the city manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The city manager shall issue his decision in writing, within 30 days of receiving the certificate for request for inspection of permit, either granting or denying the inspection of the oil/gas drilling permit.
- The operator may appeal the city manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within 30 days of the city manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the city manager, or his designee, before deciding whether or not to uphold the city manager's decision. The operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the oil and gas well permit inspection by the city manager. An inspection that is approved shall be valid for one year from the inspection date.
- (Q) Measurement. The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.
- (R) Effect of denial of oil and gas well permit. If an application for an oil and gas well permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the city Council for the same proposed oil and gas well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the operator's administrative and legislative remedies have been exhausted herein, the operator may appeal or challenge the denial of an application in an appropriate Court in

Midland County Texas under applicable state or federal law.

(S) Amendment to oil and gas well permit.

1. Amendment required. Within 180 days after an operator has been granted an oil and gas well permit, an operator may submit an application to the City to amend an existing oil and gas well permit to commence drilling from a new drill site that is not shown on (or incorporated by reference as part of) the existing oil and gas well permit.
2. Application requirement for amendment to permit. An application for an amended oil and gas well permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the operator, and shall include the following:
  - a. An amendment fee of \$1,000.00.
  - b. A description of the proposed amendments.
  - c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
  - d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
  - e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.
3. Review of application for amendment to permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.
4. Standard of review.
  - a. No material change from existing permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing oil and gas well permit, and are otherwise in conformance with the requirements of this section, other applicable City ordinances, the oil/gas drilling permit then the City Council shall approve the amended application.
  - b. Material change from existing permit. If the activities proposed by the amendment are materially different from the activities covered by the existing oil/gas well permit, are not in conformance with the requirements of this section, other applicable City ordinances, the oil/gas well permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing oil/gas well permit, the City Council may require the amendment to be processed as a new oil and gas well permit application.

(T) Independent contractor. Operator understands and agrees that operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent

contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

(U) Assignability; transfer permit.

1. The operator shall not, either directly or indirectly, assign, sell, or transfer any part of the oil and gas well permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.
2. An oil and gas well permit may be transferred upon written request by the operator with the consent of the City Council:
  - a. If the transferee agrees in writing to be bound by the terms and conditions of the current oil and gas well permit and road repair agreement;
  - b. If all information previously provided to the City as part of the current oil and gas well permit is updated to reflect any changes; and
  - c. If the transferee provides the insurance and security required by this section.
3. In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new oil and gas well permit.
4. The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.
5. Applications for the transfer of oil and gas well permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of \$500.00.

(V) Time limit requirements. The failure of the City Council to review and approve an oil and gas well permit within a specified time limit shall not cause the application for the oil and gas well permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

(W) Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

- (X) Incident reports or written complaints. The operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within 30 days after operator has notice of the existence of such reports or complaints.
- (Y) Expiration of permit. Drilling must commence on the well covered by the oil and gas well permit 12 months of approval by the City Council, after which the oil and gas well permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six months may be granted by the city manager without reapplication after the city manager receives a written request from the operator.
- (Z) Takings determination.
1. Any aggrieved applicant that 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 council shall file its 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 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 Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, 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 Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of 120 days from the date the application is heard by the City Council.

(Ordinance 8769, sec. 2, adopted 12/8/2009)

#### **§ 6-1-24. Use of engine brake prohibited.**

- (A) This section applies to a roadway or street within the corporate limits of the City of Midland, including a state-maintained highway.
- (B) The use or operation of an engine brake, engine retarder, "Jake" brake or any other such device that is equipped on any motor vehicle and that is designed to aid in braking, decompression or deceleration in such a manner that results in an excessive, loud, unusual or explosive noise from such vehicle is prohibited; provided, however, that it shall be an exception to such prohibition if an emergency situation exists and the use of such brakes is necessary for the protection of persons or property.

(Ordinance 8775, sec. 1, adopted 1/12/2010)



**ANIMALS AND FOWL**

**Chapter 6-2**

**ANIMALS AND FOWL**

**§ 6-2-1. Definitions.**

In this Chapter, unless the context otherwise requires:

Animal: Means any live vertebrate creature, domestic or wild, excluding man.

At large: Means not under the control of the owner, or other persons acting for the owner.

Bite: Means any abrasion, puncture, or tear of the skin actually or suspected of being caused by the teeth or claws of an animal.

City enforcement agent: Means persons designated by the City who are responsible for the enforcement of this Chapter and the regulations promulgated hereunder.

Collar: Means a band, chain, harness or suitable device worn around the neck of a dog to which a license tag may be affixed.

Department of animal control: Means any establishment authorized by the city enforcement agent for the confinement, maintenance, safekeeping and control of dogs or other animals which come into the custody of the city enforcement agent in the performance of his official duties.

Dog: Means a member of the *Canis familiaris* family.

Livestock: Shall include any horse, mule, cow, sheep, goat, guinea pig, hamster, rabbit, ostrich or emu or other similar animal commonly classified as livestock.

Neutered: Shall include both male and female animals and means a variety of operations that prevent conception.

Owner: Means any person owning, keeping, possessing, harboring or maintaining a dog or other animal.

Poultry: Shall include any chicken, duck, turkey, goose, guinea fowl, peafowl, pigeon, or other similar animal commonly classified as poultry.

Quarantine: Means strict confinement under restraint by closed cage or paddock approved by the department of animal control on the private premises of the animal's owner, a licensed veterinarian or the department of animal control.

Vaccination: Means an antirabies vaccination, using a type of vaccine approved by the city's public health officer.

Veterinarian: Unless otherwise indicated, means any veterinarian licensed to practice in the State of Texas which provides clinical facilities and houses animals or birds for dental, medical or surgical treatment. A veterinary hospital may have adjacent to it, or in conjunction with it, or as an integral part of it, pens, stalls, cages, or kennels for quarantine, observation or boarding.

(Ordinance 7135 adopted 11/26/1991)

**§ 6-2-2. Running at large.**

(A) A person owning, keeping, possessing, harboring or maintaining a dog, cat, ferret, livestock, poultry, other bird or other animal shall prevent said dog, cat, ferret, livestock, poultry, other bird or other animal from being at large. 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.

(B) It is an affirmative defense to prosecution under this Section that the offense involved a dog at large and:

1. Said dog was securely restrained within a fenced area or other enclosure, or under the control of the person owning, keeping, possessing, harboring or maintaining said dog, either by leash, chain, cord or other suitable material of not more than six feet in length and of sufficient strength to control the action of said dog, provided that if said dog was tied or staked upon any open or unfenced lot or land within the City, said dog was tied or staked in a manner so as to prevent said dog from going onto, across, or within eight feet of any street, alley, park or other public property;
  2. Said dog was actively engaged in dog obedience training, accompanied by and under the control of the trainer or person owning, keeping, possessing, harboring or maintaining said dog, provided that said dog was actually enrolled in a dog obedience training school which was approved by the city enforcement agent at the time of the alleged offense, and that the person training said dog had in his or her possession a leash of not more than six feet in length and of sufficient strength to control the action of said dog;
  3. Said dog was being used for hunting purposes; or
  4. Said dog was being exhibited at an American Kennel Club-approved show.
- (C) The city enforcement agent shall have the authority to apprehend and impound any dog, cat, ferret, livestock, poultry, other bird or other animal that is at large contrary to the provisions of this Section.
- (D) When an enforcement agent has commenced pursuit of any dog, cat, ferret, livestock, poultry, other bird or other animal at large, he or she may continue said pursuit and follow said dog, cat, ferret, livestock, poultry, other bird or other animal onto any unenclosed private property for the purpose of apprehending it as soon as possible.

(Ordinance 6804 adopted 10/27/1987; Ordinance 9383, sec. 1, adopted 1/13/15)

#### **§ 6-2-3. Vicious dogs.**

- (A) It shall be unlawful for any person to keep within the corporate limits of the City any dog which has vicious propensities or which has evidenced a disposition to attack human beings or domestic animals.
- (B) Provided, however, that the provisions of this Section shall not apply to the keeping of a police dog which is under the supervision and control of a police officer pursuant to authorization by the chief of police.

(Ordinance 5360 adopted 8/8/1978)

#### **§ 6-2-4. Bitches in heat.**

It shall be unlawful for the owner or harborer of any female dog in heat to allow such dog to run at large in the City, or keep or maintain such animal in a public place. The owner or harborer of any female dog in heat shall keep such dog in a firm enclosure to prevent other dogs from entering the enclosure and prevent such female dog from running at large, either off or on the premises of the owner or harborer.

(Ordinance 5564 adopted 2/26/1980)

#### **§ 6-2-5. Barking dogs.**

Any person who shall harbor or keep on his premises, or in or about his premises, or premises under his control, any dog which, by loud or unusual barking or howling, shall cause the peace and quiet of the neighborhood or the occupants of the adjacent premises to be disturbed, or reasonably liable to be

disturbed, shall be guilty of a misdemeanor.

(Ordinance 5360 adopted 8/8/1978)

**§ 6-2-6. Wild animals.**

- (A) It shall be unlawful to harbor, have, keep, or possess any wild animal or poisonous snake, within the city limits, except in a zoo or circus approved by the City Council, a school or college for educational purposes, state and federally licensed rehabilitation agencies, facilities owned and used by a licensed veterinarian in connection with his practice of veterinary medicine, or by virtue of a temporary exhibition permit issued by the department of animal control.
- (B) A temporary exhibition permit shall be issued subject to the payment of a \$25.00 fee for administrative costs, and the agreement of the owner to comply with reasonable safety requirements regarding accessibility to the public, established by the department of animal control, which requirements shall be made a part of the permit. The permit shall set forth the period of time for which it is in effect, but in no instance shall the permit be valid for a period longer than ten days.
- (C) It shall also be unlawful to stand or park any vehicle containing wild animals or poisonous snakes any place in the City for a period of time longer than is necessary to make a lawful loading or unloading, except that the standing of such vehicles made necessary by mechanical trouble, traffic conditions, or accident or in obedience to the direction of a police officer or traffic signal shall not be considered a violation of this Section.
- (D) The term "wild animal" for purposes of this Section shall mean all wolves, coyotes, panthers, lions, bobcats, cougars, skunks, raccoons, armadillos, poisonous reptiles or hybrids of these species and any other animal typically found in a zoo except for the following:
  - 1. Domestic dogs;
  - 2. Domestic cats;
  - 3. Ferrets;
  - 4. Livestock as defined in Section 6-2-1 of this Chapter; and
  - 5. Poultry as defined in Section 6-2-1 of this Chapter.
- (E) Such wild animals may continue to be kept in any pen or corral which was erected and in which wild animals were kept prior to the annexation of any area into the City, if application for a certificate of nonconformance with the provisions of this regulation shall be made and said certificate subsequently issued by the department of animal control. Said certificate may only be obtained when the following four conditions have been complied with:
  - 1. The department of animal control has inspected the holding facility to insure that its structure, materials and size meet the requirements that are to be established by the director of the department of animal control.
  - 2. The applicant shall pay to the director of animal control, or his authorized representative, an annual certification fee of \$25.00 for each wild animal in his possession.
  - 3. The applicant shall provide a written statement by a licensed veterinarian stating that the wild animal is in good health.
  - 4. The applicant shall provide evidence to the director of animal control or his authorized

representative that he has in full force and effect a liability insurance policy on each wild animal sought to be certified, such insurance policy to be issued by an insurance company licensed to do business in the state. Such insurance policy or policies shall provide liability insurance in the amount of not less than \$300,000.00 for bodily injury and accidental death protection for any one accident or incident and not less than \$100,000.00 for bodily injury and accidental death protection for injury to any one person. Such insurance policy or policies shall provide liability insurance in the amount of not less than \$50,000.00 for property damage protection for any one accident or incident and not less than \$25,000.00 for property damage protection for damage to any one piece of property. Each liability insurance policy shall contain a provision obligating the insurer to give to the director of animal control written notice of cancellation not less than ten days prior to the date of any cancellation.

- (F) It shall be unlawful for any person to remove a wild animal from the confinement of the facility approved by the department of animal control, except when the wild animal requires medical attention. The removal of a wild animal from the facility shall not take place without notifying the department of animal control.
- (G) The owners of wild animals shall have 90 days to apply for a certificate of noncompliance from the department of animal control after the effective date of this Section.
- (H) Whenever a wild animal or ferret bites, scratches, or causes an open wound to any person, the incident shall be reported to the department of animal control immediately by any person having direct knowledge of the incident.
- (I) Any wild animal or ferret that bites, scratches or causes an open wound to any person shall be impounded in the facilities of the department of animal control within 24 hours of the incident, and the wild animal or ferret shall be humanely destroyed within 24 hours of impoundment in such a manner that the brain is not mutilated, and the brain shall be submitted to a Texas Department of Health certified laboratory for rabies diagnosis; unless, at the expense and request of the owner, the wild animal or ferret is placed in a veterinary hospital to be humanely destroyed in such a manner that the brain is not mutilated, and the brain is submitted to a Texas Department of Health certified laboratory for rabies diagnosis.
- (J) Upon receiving notice that a wild animal or ferret has bitten, scratched, or caused an open wound to any person, the department of animal control shall notify the owner of the wild animal or ferret to surrender the wild animal or ferret to the department of animal control, or its duly authorized representative, within 24 hours of the bite, scratch, or open wound, or to a veterinary hospital of the owner's choosing, as long as said veterinary hospital is located in Midland County, Texas, so that the wild animal or ferret may be humanely destroyed in such a manner that the brain is not mutilated, and for shipment of the brain to a Texas Department of Health certified laboratory for rabies diagnosis. The failure of any owner to impound a wild animal or ferret in accordance with the provisions of this Section shall be grounds for the issuance of a summons from the municipal court to the owner to appear and show cause for the failure to surrender such wild animal or ferret. The municipal court shall have authority to enforce the provisions of this Section by contempt proceedings against the owner and/or, alternatively, by the issuance of a seizure order authorizing and directing the department of animal control and any peace officer to enter upon the premises and within any house or other structure where the wild animal or ferret may be located, for the purpose of seizing and impounding said wild animal or ferret so that it may be humanely destroyed and for shipment of the brain to the state laboratory for rabies diagnosis as aforesaid.
- (K) In this Section, unless the context otherwise requires, the term "humanely destroy" means to cause

the death of a wild animal or ferret by a method which rapidly produces unconsciousness and death without visible evidence of pain or distress; or utilizes anesthesia produced by an agent which causes painless loss of consciousness, and death following such loss of consciousness.

(Ordinance 6430 adopted 8/14/1984; Ordinance 6823 adopted 4/26/1988; Ordinance 7135 adopted 11/26/1991)

**§ 6-2-7. License and fees; issuance of tags; penalties.**

- (A) Any person who keeps, harbors or maintains any dog, cat or ferret over the age of four months within the city shall apply for and obtain a one-year license from the city or its designated agents for each such animal. No license shall be issued until the applicant for the license provides proof of current rabies vaccination as required in this Chapter.
- (B) The animal license fee for dogs, cats and ferrets shall be \$7.00 per year.
- (C) Before a license is issued for any animal, the owner shall present a rabies vaccination certificate signed by a veterinarian stating the owner's name and address and giving the animal's description, date of vaccination, and type, manufacturer, and serial number of the vaccine and date revaccination is due. No license may expire later than the expiration date of the rabies vaccination.

Before any animal may be adopted from the City of Midland Animal Services Division, or before any impounded animal may be reclaimed from the City of Midland Animal Services Division, the owner shall either allow the animal to be micro-chipped pursuant to Animal Services Division guidelines and at the owner's expense, or show proof satisfactory to Animal Services personnel that said animal has previously been micro-chipped. Any misrepresentation by the owner regarding micro-chipping of the animal shall constitute a violation of this section. The term "micro-chip" means the implantation of an identification chip under the skin of an animal for the purpose of identifying the animal's owner.

If an owned animal is impounded twice within a three (3) year period, then prior to the release of said animal to the owner after the second such impoundment, the owner shall allow the animal to be neutered at the owner's expense, or show proof satisfactory to Animal Services personnel that said animal has been neutered previously. Any misrepresentation by the owner regarding the neutering of said animal shall constitute a violation of this section. In the event that the neutering cannot be done in a timely manner by a TVMA licensed veterinarian, located not further than fifteen (15) miles from the Midland Animal Shelter, Animal Services may release said animal to the owner, under the condition that the neuter surgery is completed and proof provided to Animal Services within thirty (30) days. Failure to do so shall constitute a violation of this section. The term "neuter" means either the surgical procedures of ovariohysterectomy, orchieotomy or castration.

- (D) Dog, cat and ferret license tags shall be issued by the department of animal services and authorized, licensed veterinarians. All licenses issued by the appointee shall be on numbered forms and tags furnished by the department of animal services, subject to the provisions of this Chapter and any other rules and ordinances relating to the issuance of such a license.
- (E) Every person engaged in the operation of a kennel shall comply with the provisions of section 11-1-10 of the Midland City Code and pay the city enforcement agent, or his authorized representative, an annual license fee of \$25.00. Upon approval, the recipient must and shall exhibit a copy of his specific use permit for a kennel at a prominent place which is easily visible at the location shown on his application. Except as described below, a person is engaged in the operation of a kennel if that person keeps more than five dogs, cats, or ferrets, or any combination of five thereof. A person who keeps only neutered animals is engaged in the operation of a kennel if that person keeps more than eight

dogs, cats, or ferrets, or any combination of eight thereof. Excluded from the determination made under this subsection are animals kept in compliance with Section 12 of this Chapter and offspring under four months of age. Those operating a kennel which houses animals other than dogs and ferrets shall be given exception to this subsection upon registration with the city enforcement agent within 30 days of the effective date of this ordinance. Those persons given exception to this subsection shall not replace an animal upon death, or other occurrence resulting in loss, unless replacement would not cause a violation of this subsection.

- (F) Persons who are residents of the state and own a guide dog for the blind or an aid dog for the hearing impaired, or any bona fide nonprofit organization which is in the business of breeding, raising or training dogs which are to be used for guiding the blind or for the hearing impaired, shall upon application by the owner or organization to the city enforcement agent and on presentation of proper proof of vaccination be licensed pursuant to this Section without payment of a fee.
- (G) Each dog, cat or ferret licensed under the terms of this Section shall receive at the time of licensing a tag on which shall be inscribed the name of the county, the number of the license, and the year in which it was issued. The tag shall be attached to a collar or harness which shall be worn by the dog, cat or ferret at all times except as otherwise provided in this Section. Whenever a tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a \$1.00 fee to the city enforcement agent or his authorized representative. If a dog, cat or ferret is impounded that does not have attached to its collar or harness a tag issued under the terms of this Section, then the impounded dog, cat or ferret shall be considered as unlicensed and the owner shall be subject to the impoundment fees as described in Title VI, "Police Regulations," Chapter 6-2, "Animals and Fowls," Section 10, "Impoundment time, notice and cost," of the Midland City Code.
- (H) Any person who counterfeits or attempts to counterfeit an official tag or remove such tag from any dog, cat or ferret for the purpose of willful and malicious mischief, or places a tag upon a dog, cat or ferret unless the tag was issued to that dog, cat or ferret, is guilty of a misdemeanor.
- (I) Whenever the ownership of a dog, cat or ferret has been changed, the new owner must secure a transfer of license to such owner. The transfer fee of \$1.00 shall be charged to transfer any license.
- (J) Dogs, while being used for hunting, or dogs while being exhibited at American Kennel Club approved shows, or cats and ferrets while being exhibited in similar shows, and such dogs, cats or ferrets while being transported to and from such events, need not wear a collar or harness with a valid license tag attached, provided that they are properly vaccinated and licensed.
- (K) The city enforcement agent shall apprehend and impound any dog, cat or ferret found without a current, valid license tag.
- (L) When at the owner's request a dog, cat, ferret or other animal is picked up by the department of animal control, a \$15.00 pickup fee shall be assessed in addition to a \$15.00 transfer fee to a veterinarian if so requested by the owner. For dead animal removal, a charge of \$10.00 for dogs, cats or ferrets and \$25.00 for small livestock will be assessed for transfer to veterinarian practices outside the city limits.
- (M) Dog dipping fee. Each time a dog is dipped at the department of animal control, a fee of \$15.00 shall be assessed to the owner.

(Ordinance 7135 adopted 11/26/1991; Ordinance 7207 adopted 11/24/1992; Ordinance 8171, sec. 1, adopted 6/24/2003; Ordinance 8692, sec. 1, adopted 1/13/09; Ordinance 9626, sec. 1, adopted 1/10/17)

#### **§ 6-2-8. Antirabies vaccination required.**

- (A) Every dog, cat or ferret four months of age or older shall be vaccinated at intervals specified by the Texas Department of Health in a manner adequate to maintain immunity to rabies. The amount of \$7.00 shall be included in the price of the vaccination to cover the cost of the license. A duplicate of each rabies vaccination certificate and each license issued shall be transmitted to the department of animal services before the tenth day of the month following the month during which said vaccination and licensing occurred. It shall be unlawful for any person to own any dog, cat or ferret unless such animal has been vaccinated against rabies and wears a current license tag as required by Section 6-2-7 of this Chapter.
- (B) A dog, cat or ferret vaccinated in any other place prior to entry into Midland may be licensed in Midland provided that, at the time of licensing, the owner of such animal presents proof that the animal has been vaccinated against rabies, showing the expiration date of the vaccination. The vaccination must be in conformity with the provisions of this Section and the regulations promulgated hereunder.

(Ordinance 7135 adopted 11/26/1991; Ordinance 8171, sec. 2, adopted 6/24/2003)

#### **§ 6-2-9. Rabies control and quarantine.**

- (A) If a dog, cat or ferret is impounded and found to be unvaccinated, the city enforcement agent is hereby authorized to cause such dog, cat or ferret to be vaccinated by a veterinarian at a cost to be borne by the owner. Said veterinarian shall issue a certificate of vaccination.
- (B) Whenever a dog or other animal bites or scratches any person, the incident shall be reported to the city enforcement agent immediately by any person having direct knowledge of the incident. The report shall include the name and address of any victim and the owner of the animal, if known, and any other data which may aid in locating the victim or animal.
- (C) Any dog or other animal that bites any person shall be quarantined and impounded in the facilities of the department of animal control within 24 hours of the incident or, at the expense and request of the owner, placed in a hospital, for a period of not less than ten days, for observation for evidence of rabies.
- (D) Upon receiving notice that a dog or other animal has bitten any person, or facts constituting probable cause that the dog or other animal is rabid, the city enforcement agent shall notify the owner of the dog or other animal to surrender the dog or other animal to the agent, or his duly authorized representative, within 24 hours of the bite, or obtaining facts constituting probable cause that the dog or other animal is rabid, or to a veterinary hospital of the owner's choosing, for impoundment for quarantine and observation as aforesaid. The failure of any owner to impound for quarantine a dog or other animal in accordance with the provisions of this Section shall be an offense under this Chapter. The municipal court shall have the authority to enforce the provisions of this Section in any manner it deems appropriate and authorized by law.
- (E)
  1. If it is determined by a veterinarian or authorized agent of the director of animal control that a quarantined animal shows the clinical signs of the disease of rabies, the department of animal control shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the local health authority shall remove the head or brain of the animal and submit it to the nearest Texas Department of Health laboratory for testing.
  2. If a veterinarian or authorized agent of the director of animal control determines that a quarantined animal does not show the clinical signs of rabies, the department of animal control shall release it to the owner following the quarantine period if:

- (a) The owner has an unexpired rabies vaccination certificate for the animal; or
- (b) The animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.  
(Ordinance 5440 adopted 2/13/1974; Ordinance 6804 adopted 10/27/1987; Ordinance 7135 adopted 11/26/1990)

**§ 6-2-10. Impoundment time, notice and costs.**

- (A) Each unlicensed dog, cat or ferret impounded shall be kept and maintained at the department of animal control for a minimum of two days. At the expiration of the impoundment period, anyone may adopt the dog, cat or ferret, provided such person pays all established fees and complies with the licensing provisions of this Section within 24 hours. If no person claims the dog, cat or ferret, the city enforcement agent may dispose of the dog, cat or ferret in a humane manner, or may place the dog, cat or ferret for adoption.
- (B) Any licensed dog, cat or ferret impounded may be reclaimed, provided that the person reclaiming the dog, cat or ferret furnishes proof of right to do so and pays all established fees. If the dog, cat or ferret is not reclaimed within ten days, the city enforcement agent shall take possession and may place the dog, cat or ferret for adoption or may dispose of the dog, cat or ferret in a humane manner. Any person adopting such dog, cat or ferret shall pay all established fees.
- (C) Immediately upon impounding a licensed dog, cat or ferret or other animal, the city enforcement agent shall make a reasonable effort to inform the owner or harborer of such dog, cat or ferret or other animal so impounded of the conditions whereby such dog, cat or ferret or other animal may be reclaimed.
- (D) The impoundment fees and all other fees and costs of the Animal Services Division are set forth in Ordinance No. 8333, passed September 13, 2005, as amended.

Any person adopting an animal from the Animal Services Division shall pay an adoption fee, as set forth in Ordinance No. 8333, plus a surgery deposit, as set forth in Ordinance No. 8333, toward the neutering of said animal and the adopter shall, within 30 days or when the animal reaches the age of six months, have the animal neutered by a veterinarian of his choice. Upon receipt of notice from the veterinarian (on forms provided by the Animal Services Division), said division shall pay over to the veterinarian the said surgery deposit toward his fee.

All animals shall be adopted from the Animal Services Division pursuant to a contract setting forth all conditions, terms and stipulations of the adoption. Such contract shall include, but not be limited to, the following:

1. The adopting person shall comply with all the adoption conditions and surgery conditions for the adopted animal as set forth in the contract.
2. Should the adopted animal be lost or die before the adoption and surgery conditions as set forth in the contract have been complied with, such loss or death shall be reported to the Animal Services Division within 24 hours of the occurrence.
3. The adopter shall forfeit the surgery deposit in the event that such surgery deposit has not been redeemed within 30 days after the date surgery was due to be performed.
4. The forfeiture of such surgery deposit shall in no way release the adopter from the obligation of having the required surgery performed.

5. The director of Animal Services or his representative shall have the right to repossess said adopted animal should the adopting person fail to comply with the adoption or surgery terms and conditions of the contract.

- (E) Any dog or other animal which apparently is suffering from serious injuries and is in great pain and probably will not recover, or which has evidence of any infectious disease which is a danger to other dogs or animals or to man, may be destroyed by the city enforcement agent in as humane a manner as possible after reasonable efforts to notify the owner have failed.

(Ordinance 7135 adopted 11/26/1991; Ordinance 7525, sec. 1, adopted 5/14/1996; Ordinance 7630, sec. 7, adopted 7/22/1997; Ordinance 8341, sec. 1, adopted 10/11/2005; Ordinance 9383, sec. 2, adopted 1/13/15)

#### **§ 6-2-11. Standards concerning the keeping of animals, fowls or birds.**

- (A) No animals, fowls or birds shall be kept in a pen or corral (terms not applying to general pasture areas of 20,000 square feet or more) within 50 feet of any residence, dining room, sleeping room or other place of human habitation, or within 50 feet of any private water well, except as otherwise permitted in Chapter 5 of this Title; provided, however, that such animals, fowls or birds may continue to be kept in any pen or corral which was erected and in which such animals, fowls or birds were kept prior to the annexation of any area into the City. However, if livestock are closer than the minimum 50 feet from a private water well then such water well shall be required to have a six-foot by six-foot by 5.5 inches thick concrete slab constructed around the well head within 180 days after annexation.
- (B) The maintaining or keeping of all animals within the City shall be allowed, as stated above, only if the presence of noise, flies, mosquitos, insects, vermin, rodent harborage, odors, dust, ponded water, accumulation of manure, garbage, refuse or other obnoxious or putrescible material or any other objectionable matter or effect does not cause, create, contribute to or become a health nuisance and subject to the provisions of Chapter 8-7, of this City Code.
- (C) No swine shall be kept within the city limits, except as provided in Section 6-2-12.
- (D) The provisions of subsection (A) above shall not apply to the keeping of small household pets, to include but not be limited to dogs and cats.
- (E) The keeping of all animals within the City shall be subject to all pertinent regulations of the State of Texas.
- (F) It shall be unlawful, except as provided in Section 6-2-12 of this Chapter, for any person to keep, possess, or maintain any livestock or poultry within the city limits.
- (G) It shall be unlawful for any person, corporation, association, partnership or business to keep, possess, or maintain any ferret within the city limits unless a written statement from a licensed veterinarian has been submitted to the city enforcement agent or his authorized representative stating that the ferret is in good health and a permit has been issued by the city enforcement agent or his authorized representative for such ferret.
- (H) Property owners in the AE, Agriculture Estate District, and CE, Country Estate District, shall take samples from their private water wells for quality testing by the Midland Health Department. The property owner shall maintain records of such testing for a minimum period of three (3) years.
- (I) Any roping arena or associated livestock holding pens shall be cleaned and scraped weekly. Short-term storage of all manure shall not exceed 30 days. Manure shall not be stored within 250 feet of

any private water well.

(Ordinance 5440 adopted 2/13/1974; Ordinance 5586 adopted 5/13/1980; Ordinance 6823 adopted 4/26/1988; Ordinance 8385, sec. 1, adopted 2/28/2006)

**§ 6-2-12. Area limitations and maintenance requirements for the keeping of livestock and poultry.**

(A) The provisions of Section 6-2-11(C) and (F) of this Chapter shall not apply to the following situations:

1. Zoos, stock shows, fairs, animal judgings and shows, and circuses.
2. Abattoirs, packinghouses or stockyards.
3. Public school projects, when conducted upon school property and under faculty supervision.
4. Facilities owned and used by a licensed veterinarian in connection with his practice of veterinary medicine.
5. Guinea pigs, hamsters, rabbits, chickens, ducks or other animals or fowls of similar size which are kept entirely within an enclosed building, which building is of such design and material as to retain any noises or odors caused by such animals or fowls.
6. Livestock (other than hogs or pigs) and poultry which are kept in compliance with the following requirements:
  - (a) Horses or other equine animals, as a private stable (not for commercial purposes) and other livestock and poultry of a size described in subsection (A)5 may be kept on tracts of land with not less than 20,000 square feet dedicated exclusively for animal use in an "AE" Agriculture-Estate District or "CE" Country Estate District.
  - (b) Bovine animals may be kept for personal use (not for commercial purposes) on tracts of land with not less than 40,000 square feet dedicated exclusively for animal use in an "AE" Agriculture-Estate District or "CE" Country Estate District.
  - (c) Livestock and/or poultry may be kept for commercial purposes at farms, ranches or stables, as permitted by the use regulations of an "AE" Agriculture-Estate Zoning District or "CE" Country Estate District, or where a legal nonconforming business involving the keeping of livestock and/or poultry has been established and verified by a certificate of occupancy, obtained within 18 months of annexation into the City or a change in zoning which renders the business nonconforming, but only for the duration of said nonconforming status.
  - (d) Regardless of whether livestock are kept for personal use or for commercial purposes, there shall be provided not less than 20,000 square feet of land area in the tract for each animal unit. The following animal unit values are to be assigned to livestock, except for small animals of a size described in subsection (A)5 above, in determining the number of animals which may be kept on a tract of land:

Each lamb: One-fifth animal unit.

Each goat: One-sixth animal unit.

Each horse or other equine animal: One-half animal unit.

Each cow or other large animal: One animal unit.

Offspring of equine animals may be kept for a period of 18 months, and other livestock for a period of 12 months, after birth before being assigned any animal unit values.

7. Guinea pigs, hamsters, rabbits, chickens, ducks or other animals or fowls of a similar size provided the total number of same kept per premises does not exceed four; provided, however, that the number limitation of four shall not apply to newborn offspring before they are weaned.
- (B) In connection with all of the above-described exceptions, the premises and facilities used for the keeping of animals and fowls authorized to be kept under any of the provisions of this Section must be kept in such a manner as to prevent the emission of odor or noise offensive to persons of ordinary sensibilities in the neighborhood or the existence of any nuisance dangerous to the public health. Also, any premises and facilities used for the keeping of animals or fowls authorized to be kept under any provisions of this Section must be approved for such purpose by the Midland city-county health department.

(Ordinance 5586 adopted 5/13/1980; Ordinance 7867, secs. 1—4 adopted 8/24/99; Ordinance 8588, sec. 1, adopted 11/27/2007)

#### **§ 6-2-13. Unlawful interference with city enforcement agent.**

- (A) It shall be unlawful for any person to interfere with the city enforcement agent while the agent is performing a duty or exercising authority imposed or granted by law. It shall be unlawful for the owner or person in control of any dog or other animal to refuse any enforcement agent's lawful request to see and examine any such animal or to conceal such animal or otherwise interfere with its lawful examination by an enforcement agent, when such agent advises the owner or person in control of such animal that he wants to make such lawful examination in connection with the licensing requirements contained in this Chapter or in connection with an investigation of a bite case or a cruelty to animal case. It shall be unlawful for any person to interfere with or injure an animal which is under the lawful control of the city enforcement agent.
- (B) It shall be unlawful for any owner or agent of a commercial retail business which sells pets to refuse to allow the city enforcement agent to conduct a lawful search of the premises of such business for the purpose of ensuring compliance with this Chapter.

(Ordinance 7189 adopted 9/8/1992)

#### **§ 6-2-14. Bird sanctuary established.**

The entire area embraced by the corporate limits of the City is hereby designated as a bird sanctuary. It shall be unlawful for any person to trap, shoot or attempt to shoot with a pistol, gun, rifle or any type of firearm, including a BB gun or air rifle, or molest in any manner, any bird or wild fowl, or to rob the nests thereof anywhere within the above-described area. Provided, however, that if the city health officer or the director of the animal shelter determines that a particular concentration of birds is constituting either a nuisance or a health hazard, then such birds may be trapped or otherwise eliminated without such activity constituting a "molesting" of such birds or any other violation of this Section or any other Section of this Code.

(Ordinance 5440 adopted 2/13/1979)

**§ 6-2-15. Dangerous or diseased animals.**

The chief of police or director may:

- (A) Kill by an appropriate or available means an animal which poses an imminent danger to a person or to property when a real and apparent necessity exists for the destruction of such animal; or
  - (B) Impound an animal which is diseased and endangers the health of persons or other animals.
- (Ordinance 6804 adopted 10/27/1987)

**§ 6-2-16. Interference with animal control traps or equipment.**

No person shall remove, alter, damage or otherwise tamper with animal control department traps or equipment set out to capture animals.

(Ordinance 7052 adopted 11/13/1990)

**§ 6-2-17. Animal nuisances.**

It shall be unlawful for any dog, cat or other animal to defecate or deposit fecal matter on or upon private property (other than the owner's), or on public walks, streets or recreation areas unless such waste is immediately removed and properly disposed of by the owner.

(Ordinance 7135 adopted 11/26/1991)

**§ 6-2-18. Spay/neuter voucher program.**

- A. <sup>1</sup>Upon providing sufficient proof of residency, any resident of the City of Midland may obtain from the Director of the City of Midland Animal Services a voucher with a value of \$70.00 toward the cost of sterilization surgery performed by a participating Midland veterinarian for an animal owned by the resident. The voucher is a three part form, Part 1 of which shall be retained by Animal Services at the time of issuance. To be eligible for the \$70.00 voucher, the owner must provide proof that the animal has a current license and rabies vaccination. Redemption of the voucher requires that dogs/puppies have distemper/parvo and bordetelia vaccinations and cats/kittens have FVRCP and FELV vaccinations, and/or a protective titre test within thirty (30) calendar days.
  - B. <sup>2</sup>A participating veterinarian in receipt of a sterilization surgery voucher shall complete the voucher certifying that the sterilization has been completed, retain Part 2 of the voucher for the veterinarian's records, and return Part 3 to City of Midland Animal Services within thirty (30) days of the sterilization. The veterinarian will receive reimbursement from the City of Midland at the rate of \$70.00 for each properly documented sterilization surgery voucher.
- (Ordinance 8112, sec. 1, adopted 8/13/2002)

**§ 6-2-19. (Reserved)****§ 6-2-20. Safety of animals in motor vehicles.**

- (A) Beginning on the first day of April and through the first day of October of each year, no person shall leave any animal enclosed within any unoccupied vehicle without at least two of the windows on said vehicle being rolled down at least four inches. The Director of Animal Services or his designee, or any police officer, is authorized to use reasonable force, including the breaking of a window or lock,

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1. Original has this as Subsection 1.

2. Original has this as Subsection 2.

to remove an animal which is enclosed within any vehicle whenever there is a violation of this Section. Said animal shall be impounded by the City of Midland's Animal Services Division.

- (B) If professional services are required to remove the animal, the owner of the vehicle, or owner of the animal, shall be responsible for any cost or fees related to the removal of the animal from the vehicle.
- (C) It shall be an affirmative defense to prosecution under this section that any window not rolled down at least four inches was rolled down as far as mechanically possible.
- (D) It shall be an affirmative defense to prosecution under this Section that it was raining at the time of the violation of this Section.

(Ordinance 8688, sec. 1, adopted 11/25/2008)

**ANIMALS AND FOWL**

**Chapter 6-3**

**ABANDONED, LOST OR STOLEN PROPERTY**

**§ 6-3-1. Impoundment generally.**

- (A) The chief of police shall take into his custody all abandoned, lost, stolen or recovered property of every kind.
- (B) "Abandoned motor vehicle" means a motor vehicle that is inoperable and more than eight years old and left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours, or a motor vehicle left unattended on the right-of-way of a designated county, state, or federal highway within this state for more than 48 hours or for more than 12 hours on a turnpike project constructed and maintained by the Texas Turnpike Authority.

(Ordinance adopted 1/3/1952; Ordinance 6160 adopted 2/8/1983)

**§ 6-3-2. Registration and tagging.**

All such property described in the preceding Section as is taken into custody by the chief of police shall by him be registered in a record book provided for that purpose and shall also be tagged. The chief of police shall enter upon his register and upon the tag the following information:

- (A) Description of the property.
- (B) Time and place seized and by whom.
- (C) Name of the owner, if known.
- (D) Storage and hauling charges accrued against the property.

The charges made against such property shall be the actual expense incurred by the City in hauling and storing the same, except that there shall be a minimum charge of \$1.00 per day for storage of automobiles and other vehicles.

(Ordinance adopted 1/3/1952)

**§ 6-3-3. Sale at public auction.**

All abandoned, lost, stolen or recovered property which shall remain unclaimed with the chief of police for a period of 60 days after the first charges accrue, without being claimed or reclaimed by the owners, whether known or not, may be sold at public auction.

(Ordinance adopted 1/3/1952)

**§ 6-3-4. Notice of sale.**

- (A) When the Midland police department takes into custody an abandoned motor vehicle, it shall notify not later than the tenth day after taking the motor vehicle into custody, by certified mail, the last known registered owner of the motor vehicle and all lienholders of record, pursuant to the Certificate of Title Act (V.T.C.A., Transportation Code ch. 501), that the vehicle has been taken into custody. The notice shall describe the year, make, model and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lienholders of their right to reclaim the motor vehicle not later than the 20th day after the date of notice, on payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, or garagekeeper's charges if notice is under V.T.C.A., Transportation Code §

683.032. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

- (B) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for notice by certified mail.
- (C) If an abandoned motor vehicle has not been reclaimed as provided above, then the chief of police shall sell such property. The chief of police shall give ten days' notice of the time and place of the sale. He shall also post or have posted at the courthouse door and at or near any regular entrance to the city hall a list of the property to be offered for sale.

(Ordinance adopted 1/3/1952; Ordinance 6161 adopted 2/8/1983; Ordinance 6235 adopted 6/28/1983)

#### **§ 6-3-5. Duties of purchasing agent.**

The purchasing agent, or his duly authorized representative, shall conduct the auction sale referred to in this Chapter. He shall keep an accurate statement of each article or motor vehicle, or both, sold, and the price bid and paid therefor. The purchasing agent shall make a complete report in writing to the finance officer of the time, place and manner of conducting the sale.

(Ordinance adopted 1/3/1952)

#### **§ 6-3-6. Conduct of public auction.**

The public auction provided for in this Chapter shall be conducted at the place and hour designated in the notice, and all sales shall be for cash.

(Ordinance adopted 1/3/1952)

#### **§ 6-3-7. Disposition of funds.**

All funds received on account of any auction held under the provisions of this Chapter shall be delivered to the finance officer, who shall give his receipt therefor. The finance officer is hereby required to place all funds received by him under and by virtue of this Chapter to the credit of the general fund.

(Ordinance adopted 1/3/1952)

#### **§ 6-3-8. Manner of selling property.**

After the notice provided for in Section 6-3-4 has been given, the property shall be offered for sale at public auction to the highest bidder for each piece of property, separately or assembled in lots, whichever in the discretion of the purchasing agent shall offer the best price obtainable for such property, except motor vehicles, which shall be sold separately.

(Ordinance adopted 1/3/1952)

#### **§ 6-3-9. Disposition of worthless property.**

Any property which has been listed and offered for sale and for which no price or sum has been offered, if deemed by the purchasing agent to be worthless and without sale value, shall be disposed of in such

manner as the Council may direct.  
(Ordinance adopted 1/3/1952)

**§ 6-3-10. Insurance.**

If and when requested to do so by the chief of police, the purchasing agent shall procure a policy of insurance from a reputable insurance company, which shall protect and indemnify the City and its agents and employees against claims arising from loss of or damage to such property.  
(Ordinance adopted 1/3/1952)



**ANTI-LITTER REGULATIONS**

**Chapter 6-4**

**ANTI-LITTER REGULATIONS**

**§ 6-4-1. Handbills.**

It shall be unlawful for any person to scatter or throw upon the public thoroughfares any handbills, poster, advertisement or papers. Nothing herein shall be construed to authorize any person to obstruct the public thoroughfares or create any nuisance therein. These provisions shall not interfere with or prevent the posting of notices required by law to be posted.

**§ 6-4-2. Posting on fences; telegraph poles.**

It shall be unlawful for any person to post, paint, tack or otherwise attach any notice or other advertising matter to any fence, wall or building or other property until first obtaining the consent of the owner of such property. It shall be unlawful for any person to post, paint, tack or otherwise attach any notices or advertising matter to any telegraph, telephone, electric or other such poles.

**§ 6-4-3. Littering public places.**

It shall be unlawful for any person to sweep or deposit dirt, trash or other litter into any street or onto any sidewalk within the City. It shall be unlawful for any person to scatter papers or other material detrimental to the order of the City in the public parks or streets, or on any sidewalk.

**§ 6-4-4. Littering private places.**

It shall be unlawful for any person to deposit any litter on any private lot or premises, whether such lot is owned by said person or another. All trash or litter shall be placed in approved receptacles.

**§ 6-4-5. Commercial premises; placement of material in refuse container.**

It shall be unlawful for the owner or person in charge of any commercial premises to allow material placed in a refuse container on the premises to protrude beyond the lip of said refuse container. It shall be the responsibility of the owner or person in charge of the commercial premises to provide sufficient refuse container space and sufficiently frequent pickups so that material placed within the containers does not extend beyond the lip of any container. For purposes of this Section, it shall be presumed that the owner or person in control of the premises, has caused the material, to protrude beyond the lip of said refuse container. For purposes of this Section material shall include wood, rubbish, trash, bottles, cans, boxes, plastic or paper bags or sacks, cardboard, paper, containers, food containers or cups, plastic wrapping, plastic, clothing, cloth or other similar material.

(Ordinance 8101, sec. 1, adopted 6/25/2002)

**ANTI-LITTER REGULATIONS**

**Chapter 6-5**

**PIGEON REGULATIONS**

**§ 6-5-1. Domestic pigeons.**

It shall be unlawful for any person to maintain, on any property zoned for residential use or purpose, a loft for domestic pigeons, regardless if kept for racing, performing, or as exhibition show pigeons, unless said person shall have secured a valid loft permit from the city health department. Such permit, unless sooner revoked, shall be valid and effective for not more than 12 months from the date of issuance thereof.  
(Ordinance 4190 adopted 10/26/1965)

**§ 6-5-2. Application for loft permit.**

Application for a loft permit shall be made on application blanks furnished by the city health officer, and it shall be signed by the applicant, and shall contain the following information;

- (A) Name and address of the applicant.
  - (B) Address of the real property involved.
  - (C) Name and address of the owner of said real property.
  - (D) A statement showing the type of pigeons to be kept, whether for racing, performing, or for exhibition only, and the number of pigeons the applicant desires to keep.
  - (E) A general statement that said applicant will at all times conform with the rules and regulations as set forth in this Chapter, and as enforced by the city health officer.
- (Ordinance 4190 adopted 10/26/1965)

**§ 6-5-3. Filing fee.**

This application for a loft permit shall be accompanied by a filing fee of \$3.00 to cover the cost of processing said application and all further expenses concerning same. In case the application for a loft permit is not approved, this filing fee shall be returned to the applicant.

(Ordinance 4190 adopted 10/26/1965)

**§ 6-5-4. Processing of application.**

Upon receipt of the application the city health officer shall inspect the requested premises and determine the following:

- (A) The maximum number of pigeons which should be allowed to be kept in said loft.
  - (B) Any special conditions or restrictions which should be imposed on said loft permit.
  - (C) The purpose for which the pigeons are kept, such as exhibition, racing or performing.
- (Ordinance 4190 adopted 10/26/1965)

**§ 6-5-5. Renewal of loft permits.**

Loft permits required under the provisions of this Chapter may be renewed on or before the anniversary date of the permit by payment of a \$2.00 fee, which shall be used to defray costs of inspections and renewing of permits. It is hereby made the duty of the health officer to inspect each pigeon loft prior to the permit therefor being renewed, such inspection being in addition to those made necessary by complaints, or deemed necessary by the health officer.

(Ordinance 4190 adopted 10/26/1965)

**§ 6-5-6. Enforcement of ordinance.**

A duly authorized representative of the city health department shall have the privilege of entering upon the said premises for the purpose of inspection of said loft, at any time, and it shall be his duty to do so upon receipt of any complaint relating thereto. If the inspector finds that the permit holder is not complying with the requirements of this Chapter, he shall issue a written citation or correction notice, citing the violation and the necessary corrections or improvements to be made. In the event the correction notice is not complied with within a period of ten days, the city health officer or inspector shall order the loft permit revoked, and it shall not be reissued for at least one full year.

It shall be unlawful for any person to interfere with the health officer in the performance of his duties under this Chapter.

(Ordinance 4190 adopted 10/26/1965)

**§ 6-5-7. Special conditions of permit.**

- (A) The loft permit shall be posted upon said loft at all times.
- (B) Any loft where pigeons are kept shall be at least 25 feet from the exterior limits of any residential dwelling and at least ten feet from any side property line, including the lot or tract upon which the loft is located. Provided, however, that lofts already in existence upon the effective date hereof, and located within ten feet of a side property line, may continue in such location if the applicant for the loft permit submits the affected adjoining property owner's written consent thereto with his loft application.
- (C) There shall be at least three square feet of floorspace for each pair of pigeons kept within the loft; and in any event, no more than 50 pigeons may be kept within 100 feet of the exterior limits of the nearest dwelling occupied by any person other than the owner of the pigeons.
- (D) The loft shall be kept clean and in a sanitary condition at all times, pursuant to Section 6-5-8 of this Chapter.
- (E) Any pigeons covered by this Chapter shall not be raised for any commercial or business purposes.

(Ordinance 4190 adopted 10/26/1965)

**§ 6-5-8. Special health standards.**

- (A) The standards of sanitation for the keeping of pigeons as established by the city health officer shall be followed.
- (B) Upon the obtaining of a permit from the city health officer, every keeper of pigeons shall observe the following practices:
  1. Every keeper of any pigeons shall confine the same in an enclosure or lot sufficient to prevent their running or flying at large, and such enclosure shall be maintained in a clean and sanitary condition at all times, and an approved insecticide shall be used as often as deemed necessary by the city health officer.
  2. Every keeper of any pigeons shall cause the litter and droppings therefrom to be collected at least once a week in a container or receptacle of such a type that when closed it is ratproof and flytight; and after such collection, shall cause said container or receptacle to be kept closed until disposed of, at least once a week, in such a way as not to permit fly breeding.

3. Every keeper of pigeons shall cause all feed provided therefor to be stored and kept in a ratproof, flytight building, box, container or receptacle.

(Ordinance 4190 adopted 10/26/1965)

#### **§ 6-5-9. Conditions for liberty and exercise.**

- (A) It shall be unlawful to allow any pigeons to fly outside uncontrolled.
- (B) Only such breeds of pigeons as are recognized by the National Pigeon Association, the American Racing Union, or the American Pigeon Club as racing or performing pigeons shall be allowed their liberty from the loft.
- (C) All pigeons allowed liberation for the purpose of exercise, training, or performing shall be under the direct supervision of the permittee at all times.

(Ordinance 4190 adopted 10/26/1965)

#### **§ 6-5-10. Special permits.**

It shall be the purpose and intent of this Section to allow any member of the Boy Scouts of America, or any member of the Future Farmers of America, to secure a loft permit and maintain a loft of pigeons, after complying with these regulations, except that under this Section there shall be no filing fee for the special permit when the applicant is a member of one of the above two groups and is maintaining said loft for the purpose of obtaining a merit badge, or as a project.

The applicant under this Section must also have the written permission of his parent or guardian, and must have a senior fancier who is a member of one of the following national organizations as a signed sponsor:

National Pigeon Association

American Racing Pigeon Union

American Pigeon Club

United Pigeon Fanciers

(Ordinance 4190 adopted 10/26/1965)

#### **§ 6-5-11. Definitions.**

Wherever in this Chapter the following terms are used they shall have the meaning respectively ascribed to them in this Section:

Keeper or person: Any individual, firm or corporation owning and/or actually having, using, or maintaining any pigeons.

Loft: Any box, cage, container or other enclosure of whatever kind for the keeping or confinement of pigeons.

Permit: Any permit granted by the city health officer pursuant to power granted to him in this Chapter.

Pigeons: The term "pigeons," as specifically named herein, by whatever other name they might be called, shall include every age and sex of each of such birds.

Ratproof: The state of being constructed so as to effectively prevent the entry of rats.

Sanitary: Any condition of good order and cleanliness which precludes the probability of disease

transmission.

(Ordinance 4190 adopted 10/26/1965)

**§ 6-5-12. Revocation of permit.**

The failure of any keeper of said pigeons to comply with the provisions of this Chapter or the sanitation standards and requirements established by the city health officer shall be cause for the city health officer to refuse to grant a permit for the keeping of such pigeons; or, if the permit shall have been previously granted to such keeper, shall be cause for the revocation of same.

(Ordinance 4190 adopted 10/26/1965)

**§ 6-5-13. Penalty.**

Violation of any of the provisions of this Chapter by any person shall constitute a misdemeanor, upon conviction of which in the municipal court of the City of Midland a fine of not more than \$500.00 shall be imposed; and every day that such violation continues shall be a separate offense.

(Ordinance 6790 adopted 9/22/1987)

## PIGEON REGULATIONS

**Chapter 6-6**

**PUBLIC NUISANCES**

**§ 6-6-1. Definitions.**

Whenever the following terms are used in this Chapter they shall have the following meanings respectively ascribed to them in this Section:

- (A) Demolisher.Any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.
- (B) Junked vehicle.A vehicle that is self-propelled and:
  - (1) Does not have lawfully attached to it:
    - (A) An unexpired license plate; or
    - (B) A valid motor vehicle inspection certificate; or
  - (2) Is wrecked, dismantled or partially dismantled, or discarded; or
  - (3) Is inoperable and has remained inoperable for more than:
    - (A) 72 consecutive hours, if the vehicle is on public property; or
    - (B) 30 consecutive days, if the vehicle is on private property.
- (C) Person.Any individual, firm, partnership, association, corporation, company or organization of any kind.
- (D) Antique vehicle.A passenger car or truck that is at least 35 years old.
- (E) Motor vehicle collector.A person who:
  - (1) Owns one or more antique or special interest vehicles; and
  - (2) Acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.
- (F) Special interest vehicle.A motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

(Ordinance 7722, sec. 1, adopted 4/14/1998; Ordinance 7869, sec. 1, adopted 8/24/99)

**§ 6-6-2. Location or presence of junked vehicles within City deemed public nuisance.**

- A. A junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way within the City:
  - (1) Is detrimental to the safety and welfare of the public;
  - (2) Tends to reduce the value of private property;
  - (3) Invites vandalism;
  - (4) Creates a fire hazard;
  - (5) Is an attractive nuisance creating a hazard to the health and safety of minors;

(6) Produces urban blight adverse to the maintenance and continuing development of municipalities; and

(7) Is a public nuisance.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

### **§ 6-6-3. Exceptions.**

A. Vehicles within the City are not deemed public nuisances when the vehicle or vehicle part:

- (1) Is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
- (2) Is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
  - (a) Maintained in an orderly manner;
  - (b) Not a health hazard; and
  - (c) Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

### **§ 6-6-4. Authority to abate nuisance.**

There is a separation of duties and responsibilities regarding the abatement and removal of a public nuisance between the regularly salaried full-time employees of code enforcement and the police department, except that any authorized person may remove the nuisance. The City of Midland municipal court or an appropriate court of Midland County may issue necessary orders to enforce the procedures set forth herein.

- (A) The provisions of this Section pertaining to the finding and inspecting of junked vehicles, and the notification of the property owner upon whose property the junked vehicle is found, or whose property is adjacent to the public property upon which said junked vehicle is found, shall be administered by the regularly salaried full-time employees of code enforcement.
- (B) The provisions of this Section pertaining to notification to vehicle owners and lienholders regarding a junked vehicle, and the removal of said junked vehicle, shall be administered by the regularly salaried full-time employees of the police department.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

### **§ 6-6-5. Notice.**

Once a public nuisance is found to exist on private property:

- (A) A ten-day written notice must be sent by certified mail with a five-day return requested to:
  - (1) The last known registered owner of the nuisance (vehicle) by the police department;
  - (2) Each lienholder of record of the nuisance (vehicle) by the police department; and

- (3) The owner or occupant of:
- (a) The property on which the nuisance (vehicle) is located by code enforcement; or
  - (b) If the nuisance (vehicle) is located on a public right-of-way, the property adjacent to the right-of-way by code enforcement.
- (B) The notice must state:
- (1) The nature of the nuisance, including, if possible, the vehicle's:
    - (a) Description;
    - (b) Vehicle identification number; and
    - (c) License plate number; and
  - (2) That it is the responsibility of the property owner or occupant to abate and remove the public nuisance not later than the tenth day after the date on which the notice was mailed; and
  - (3) Any request for a hearing must be made before that ten-day period expires, such notice to be mailed to the city manager's office.
- (C) If the post office address of the last known registered owner of the nuisance (vehicle) is unknown, notice may be placed on the nuisance itself or, if the owner is located, then the notice may be hand delivered.
- (D) If notice is returned undelivered, action to abate the nuisance (remove the vehicle) shall be continued to a date not earlier than the 11th day after the date of the return.
- (Ordinance 7722, sec. 1, adopted 4/14/1998)

#### **§ 6-6-6. Hearing.**

- (A) When a party requests a public hearing. A public hearing, when requested by any party receiving notice under Section 6-6-5 hereof, shall be held prior to the removal of the vehicle or any part of the vehicle.
- (1) Said hearing shall be held no earlier than the 11th day and no later than the 45th day after the date of the service of notice.
  - (2) Said hearing will be to determine if a public nuisance exists.
  - (3) It shall be the duty of the City to prove the existence of such a nuisance as defined by Sections 6-6-1 and 6-6-2 of the Midland City Code.
  - (4) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
  - (5) If it is determined that a public nuisance does exist, the city manager or his designee shall order the police department to remove said nuisance.
  - (6) If the information is available at the location of the nuisance, the order requiring removal of the nuisance must include the vehicle's:
    - (a) Description;

- (b) Vehicle identification number; and
  - (c) License plate number.
- (B) When a party does not request a public hearing. A public hearing is required to be held prior to the removal of the vehicle or any part of the vehicle.
- (1) Said hearing shall be held no earlier than the 11th day and no later than the 45th day after the date of the service of notice.
  - (2) Said hearing will be to determine if a public nuisance exists.
  - (3) It shall be the duty of the City to prove the existence of such a nuisance as defined by Sections 6-6-1 and 6-6-2 of the Midland City Code.
  - (4) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
  - (5) If it is determined that a public nuisance does exist, the city manager or his designee shall order the police department to remove said nuisance.
  - (6) If the information is available at the location of the nuisance, the order requiring removal of the nuisance must include the vehicle's:
    - (a) Description;
    - (b) Vehicle identification number; and
    - (c) License plate number.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

### **§ 6-6-7. Disposal of junked vehicles.**

- (A) Removal with permission of owner or occupant: If within ten days after receipt of the notice from Code Enforcement or the Police Department to abate the nuisance, as herein provided, the owner or occupant of the premises upon which a public nuisance exists, or the owner or occupant of the premises adjacent to the public right of way upon which a public nuisance exists, shall give his or her written permission to the City for the removal of the junked motor vehicle from said premises, the giving of such permission shall be considered in compliance with provisions 6-6-6(B).
- (B) The relocation of a junked vehicle that is a public nuisance to another location within the City of Midland limits after the proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the same location.
- (C) If the City Manager or his designee orders the removal of said public nuisance, the City shall take official action to abate the nuisance.
  - (1) Junked vehicles may be disposed of by removal to a scrapyard or to demolishers; or
  - (2) Should the City Council find that commercial channels of disposition are not available or are inadequate, the City Council may order that the public nuisance be removed to any suitable site operated by the City for the processing as scrap or salvage.
- (D) The actual removal of the junked motor vehicle shall be accomplished by any person authorized by

the Chief of Police.

- (E) After a vehicle has been removed pursuant to this Chapter, it shall not be reconstructed or made operable by any person.

(Ordinance 7722, sec. 1, adopted 4/14/1998; Ordinance 7869, sec. 2, adopted 8/24/99)

#### **§ 6-6-8. Procedures upon removal of nuisance.**

Notice identifying the vehicle or part of the vehicle must be given to the department of transportation not later than the fifth day after the date of removal.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

#### **§ 6-6-9. Offense.**

In the event that the public nuisance is not removed and abated by the owner or occupant within the ten days of the issuance of receipt of notice, if no hearing is requested, or within ten days of the issuance of an order from the city manager or his designee ordering the removal, a complaint may be filed against such owner or occupant in the municipal court of Midland, Texas, for the violation of maintaining a public nuisance. A person found guilty of maintaining a public nuisance, as defined in Section 6-6-1 and Section 6-6-2, shall be punished by a fine not to exceed \$500.00 and the court shall order abatement and removal of the nuisance on conviction.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

#### **§ 6-6-10. Authority to enforce.**

Pursuant to V.T.C.A., Transportation Code § 683.074, police officers and code enforcement officers may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance without the private property owner's consent.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

#### **§ 6-6-11. Application.**

Nothing in this Chapter shall affect ordinances or laws that permit immediate removal of any vehicle left on public property which constitutes an obstruction to traffic.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

#### **§ 6-6-12. Abandoned vehicles on city-owned parking facilities.**

It shall be unlawful for any motor vehicle to remain on a city-owned parking facility without the permission or authorization from the City for a period in excess of 90 days. Forty-eight hours after the expiration of said 90 days, the City shall consider the vehicle an abandoned motor vehicle. The City shall take control and custody, handle, and dispose of such abandoned motor vehicles in accordance with and as provided by V.T.C.A., Transportation Code ch. 683, and all applicable city ordinances.

(Ordinance 7722, sec. 1, adopted 4/14/1998)

#### **§ 6-6-13. Noise as nuisance.**

- (a) Any unreasonably loud, disturbing, raucous, or unnecessary noise that causes distress, discomfort, or injury to persons of ordinary sensibilities in the immediate vicinity thereof is hereby declared to be a nuisance and is hereby prohibited.

(b) Any noise of such a character, intensity and continued duration that interferes with the comfortable enjoyment of a private residence by people of ordinary sensibilities is hereby declared to be a nuisance.

(c) A minimum decibel level shall not be required to be in violation of this ordinance.  
(Ordinance 8128, sec. 2, adopted 19/24/2002)

#### **§ 6-6-14. Standards for determining violation.**

In considering whether or not a violation of [section] 6-6-13 has occurred, the trier of fact shall consider the following:

- (a) The volume of the noise;
- (b) The intensity of the noise;
- (c) The volume and intensity of the background noise, if any;
- (d) The proximity of the noise to residential sleeping facilities;
- (e) The nature and zoning of the area within which the noise emanates;
- (f) The density of the area within which the noise emanates;
- (g) The duration of the noise;
- (h) Whether the noise is recurrent, intermittent, or constant; and
- (i) The time of day or night the noise occurs.

(Ordinance 8128, sec. 2, adopted 9/24/2002)

#### **§ 6-6-15. Specific acts deemed loud and raucous.**

The following acts, among others, are declared to create loud and raucous noises, and shall be deemed a violation of [section] 6-6-13, but such enumeration shall not be deemed to be exclusive:

- (a) Musical instruments. The playing of any radio, CD player or similar device, or musical instrument in such manner or with such volume as to annoy or disturb the quiet, comfort or repose of persons of ordinary sensibilities in the immediate vicinity.
- (b) Loudspeakers and amplifiers. The use of any loudspeaker or amplifier of such intensity that annoys and disturbs persons of ordinary sensibilities in the immediate vicinity thereof. Provided, however, that it shall be a defense to prosecution under this subsection for operating such loudspeakers and amplifiers that the same were operated at a public event on property owned by the city, county, a school, or public entity and advance permission for such operation was obtained from the applicable entity.
- (c) Horns or other signal devices on vehicles. The continued or frequent sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle except as a danger or warning signal; the creation by means of any such signal device of any unreasonably loud or harsh noise for any unnecessary and unreasonable period of time.
- (d) Operation of vehicles. The operation of any automobile, motorcycle or vehicle in such a manner as to create loud or unnecessary grating, grinding, jarring or rattling noise or vibrations.

- (e) Exhaust without mufflers. The discharge into the open air of the exhaust of any internal combustion engine, motor vehicle or boat engine except through a muffler or other device that will effectively prevent loud or explosive noises therefrom.
- (f) Devices operated by compressed air. The use of any mechanical device operated by compressed air, unless the noise to be created is effectively muffled and reduced.
- (g) Near schools and hospitals. The creation of any excessive noise on any street adjacent to any school or institution of learning while the same is in session or adjacent to any hospital which unreasonably interferes with the workings of such institution.
- (h) Loading and unloading vehicles, etc. The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of boxes, creates and containers.
- (i) Use of devices to attract attention. The use of any loudspeaker or other instrument or device which creates unreasonable noise for the purpose of attracting attention to any performance, show or sale of merchandise.

(Ordinance 8128, sec. 2, adopted 9/24/2002)

#### **§ 6-6-16. Defenses.**

The following shall be affirmative defenses to prosecution under this Chapter:

- (a) The sound was produced by an authorized emergency vehicle;
- (b) The emission of any sound for the purpose of alerting one or more people to the existence of an emergency, danger, or attempted crime;
- (c) The sound is being made in accordance with a valid license or permit obtained from any department, board or commission of the city, county, school, or public entity authorized to issue a license or permit that specifically allows the sound;
- (d) Sound from the operation of emergency generators used in emergency situations;
- (e) Sound caused by emergency or public service work, including police, fire and public utility operations, when the sound is associated with the performance of lawful duties to protect the health, safety or welfare of the community, to restore property to a safe condition, to repair public utilities or telecommunications facilities, or to protect persons or property from imminent danger;
- (f) Amplifiers used on vehicles to attract patrons that are operated by ice cream and snowcone vendors that produce jingles or music from 10:00 a.m. to 8:00 p.m. provided, however, such amplified jingles or music shall not be done in a loud manner so as to be offensive to the ordinary sensibilities of a reasonable and prudent person;
- (g) The sound resulted from the use and operation of any bell or chime system in connection with the use and occupancy of a church or educational institution structure;
- (h) The sound resulting from the use and operation of a leaf blower, lawnmower, weed eater or edger between the hours of sunrise and sunset;
- (i) The sound was generated;
  - (1) At a lawfully scheduled stadium event;

- (2) By a parade and spectators and participants on the parade route during a permitted parade;
  - (3) By spectators and participants at lawfully scheduled amphitheater or pavilion events;
  - (4) By patrons and participants using cannons and gunfire during historical battle reenactments for which a permit was obtained and the explosives were inspected by the fire marshal;
  - (5) By a pyrotechnic display that was inspected and approved by the fire marshal;
  - (6) By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert which was sponsored, cosponsored, or permitted by the city, county, school or public entity;
  - (7) Any lawful activity protected under the Americans with Disabilities Act of 1990; or
  - (8) Any other lawful activity that constitutes protected expression pursuant to the First Amendment of the United States Constitution.
- (j) The sound was produced by aircraft in flight or in operation at an airport.
  - (k) It is a defense to prosecution if the sound was produced or caused by a person who has verification of deafness of 55 decibels or greater in both ears or a written determination by a physician that the person is deaf.

(Ordinance 8128, sec. 2, adopted 9/24/2002)

PUBLIC NUISANCES

**Chapter 6-7**

**EMERGENCY AMBULANCES**

**§ 6-7-1. Definitions.**

The following words and phrases are defined as follows for the purpose of this Chapter:

Ambulance: The word "ambulance" shall mean every motor vehicle used, designed or redesigned for the transportation of sick, injured, or dead persons, but funeral coaches are specifically excluded.

Ambulance operator: The term "ambulance operator" shall mean the person, partnership or corporation holding a city emergency ambulance permit.

Emergency ambulance: The term "emergency ambulance" shall mean a vehicle used, designed or redesigned for the purpose of transporting the sick, injured, or dead, the rendering of first aid, or the performance of rescue work while the vehicle is being operated under emergency circumstances.

Emergency response: The term "emergency response" shall mean the existence of circumstances in which the element of time in transporting the sick or injured for medical treatment is essential to the health or life of such person.

Emergency service: The term "emergency service" shall mean and include the emergency ambulance trip to the place of emergency, the rendering of first aid and assistance, and the trip to the hospital.

Operator's permit: The term "operator's permit" shall mean a city emergency ambulance operator's permit. (Ordinance 7532, sec. 1, adopted 5/28/1996)

**§ 6-7-2. Emergency ambulance operator's permit required.**

It shall be unlawful for any person to engage in furnishing emergency ambulance service by operating or driving or causing to be operated or driven an emergency ambulance upon the public streets of the City without first having obtained a city emergency ambulance operator's permit.

Application for an emergency ambulance operator's permit shall be filed with the fire chief and such application shall be submitted upon a form or forms to be furnished by said chief and the applicant shall furnish the following proof and information with the application. Such application shall be subscribed and sworn to before a notary public.

- (A) A statement that the applicant will obtain liability insurance in accordance with the requirements hereinafter provided before commencing emergency ambulance service in the event the chief determines that an emergency ambulance operator's permit should be granted. No emergency ambulance operator's permit will be issued until such insurance is in effect and a certificate of insurance has been filed with the application.
  - (B) Proof that the applicant has been issued a permit by the state board of health pursuant to authorization of V.T.C.A., Health and Safety Code § 773.041. No emergency ambulance permit will be issued unless the applicant has obtained such a permit.
- (Ordinance 7532, sec. 1, adopted 5/28/1996)

**§ 6-7-3. Condition of ambulance and supplies required.**

No emergency ambulance shall be operated on public streets of the City unless it complies with the following requirements:

- (A) The emergency ambulance is free of structural defects.
- (B) The emergency ambulance has no serious impairment of any safety feature resulting from an accident or otherwise.

(C) The emergency ambulance is equipped as required by state law for the level of emergency medical services on the state permit required herein by Section 6-7-2(B).

(Ordinance 7532, sec. 1, adopted 5/28/1996)

#### **§ 6-7-4. Public liability insurance required.**

Before an emergency ambulance operator's permit is granted to an applicant, or before any renewal thereof, the applicant or the operator seeking renewal shall provide evidence to the chief that he has in full force and effect a public liability insurance policy on each emergency ambulance, such insurance policy to be issued by an insurance company licensed to do business in the State of Texas, or by a surplus line insurance company which is not legally prohibited from doing business in the State of Texas. Such insurance policy or policies shall provide liability insurance in the amount of not less than \$1,000,000.00 for any one accident and not less than \$500,000.00 for injury to any one person. Such insurance policy shall not contain a passenger liability exclusion. Each liability insurance policy shall contain a provision obligating the insurer to give to the chief written notice of cancellation not less than ten days prior to the date of any cancellation.

(Ordinance 7532, sec. 1, adopted 5/28/1996)

#### **§ 6-7-5. Duty of care; use of red lights and sirens; speed.**

(A) The operator of an emergency ambulance has the duty to operate the vehicle with appropriate regard for the safety of all persons. This Chapter does not relieve the operator of an authorized emergency ambulance from the consequences of reckless disregard for the safety of others.

(B) It shall be unlawful to operate or drive an emergency ambulance on the public streets of the City in excess of the speed limits applicable to nonemergency vehicles unless the driver has notified the public safety communication center of the necessity of such action. Notification shall be by telephone to the 911 operator and shall include identification of the driver, the ambulance service, origin and destination of the request for service.

(C) The use of sirens or flashing emergency lights upon the public streets of the City shall be unlawful unless an emergency situation requires use of lights and sirens and the public safety communication center has been notified prior to activation of said lights and sirens. Notification shall meet standards in subsection (B) above.

(D) It shall be unlawful to operate an emergency ambulance more than ten miles per hour in excess of the posted speed limit.

(Ordinance 7532, sec. 1, adopted 5/28/1996)

#### **§ 6-7-6. Required training for attendants.**

Each emergency ambulance when in service must be staffed by at least two individuals certified as emergency care attendants or certified at a higher level of training as set forth in V.T.C.A., Health and Safety Code §§ 773.041—773.055.

(Ordinance 7532, sec. 1, adopted 5/28/1996)

#### **§ 6-7-7. Suspension or revocation of emergency ambulance operator's permit.**

The chief may suspend, without a hearing, an emergency ambulance operator's permit for up to 15 days for a violation of the provisions of this Chapter. A hearing shall be held for any greater suspension or for a revocation and such action shall be appealable to the city manager as provided for in Section 6-7-8.

(Ordinance 7532, sec. 1, adopted 5/28/1996)

**§ 6-7-8. Appeals from decisions of fire chief.**

The holder of an emergency ambulance operator's permit may appeal the suspension (in excess of 15 days) or revocation of his permit to the city manager or his designee by filing an appeal in writing with the city secretary within ten days of the date of notice thereof. Any party or parties who appeared at any hearing to support or oppose a suspension or revocation may, in similar manner, appeal the granting or denying thereof. The city manager or his designee will hold a hearing thereon as soon as practicable, after reasonable notice to the interested parties, and it may affirm, modify or reverse the action of the chief. The action of the city manager or his designee thereon shall be final.

(Ordinance 7532, sec. 1, adopted 5/28/1996)

**§ 6-7-9. Applicability to ambulances owned by the City of Midland or operated by city personnel.**

This Chapter does not apply to an ambulance owned by the City of Midland. This Chapter does not apply to an employee of the City of Midland while the employee is on duty.

(Ordinance 7804, sec. 1, adopted 1/12/1999)

**§ 6-7-10. Fees for ambulance services furnished by the city.**

- (A) For basic life support (BLS) emergency ambulance service there shall be a charge of \$399.00 per person per trip, plus \$8.00 per mile per person transported.
- (B) For advanced life support (ALS) emergency ambulance service there shall be a charge of \$432.00 per person per trip, plus \$8.00 per mile per person transported.
- (C) For advanced life support level two (ALS/Level II) emergency ambulance service there shall be a charge of \$609.00 per person per trip, plus \$8.00 per mile per person transported.
- (D) For ambulance service there shall also be charged a "waiting charge" of \$200.00 per hour.
- (E) For ambulance service provided to a person who does not reside within Midland County there shall also be charged a "non-resident fee" of \$100.00.

(Ordinance 8219, sec. 1, adopted 3/23/2004; Ordinance 8547, sec. 1, adopted 8/14/2007)



**FALSE ALARMS**

**Chapter 6-8**

**FALSE ALARMS**

**§ 6-8-1. Definitions.**

The following words and phrases are defined as follows for the purposes of this Chapter.

- (A) Alarm systemmeans a device or system that emits, transmits, or relays a signal intended to summon, or that would reasonably be expected to summon, police services of the City, including, but not limited to, local alarms. "Alarm system" does not include:
  - 1. An alarm installed on a vehicle unless the vehicle is permanently located at a site; or
  - 2. An alarm designed to alert only the inhabitants of a premises which does not have a local alarm.
- (B) Alarm notificationmeans a notification intended to summon the police department which is designed either to be initiated purposely by a person or by an alarm system that responds to a stimulus characteristic of unauthorized intrusion.
- (C) Alarm sitemeans a single premises or location (one street address) served by an alarm system or systems that are under the control of one owner.
- (D) Chiefmeans the chief of police or his authorized representative.
- (E) False alarm notificationmeans an alarm notification to the police department, when the responding officer finds no evidence of an attempted criminal offense or criminal offense and the police department responds to the alarm within 30 minutes of the alarm notification.
- (F) Local alarmmeans an alarm system that emits a signal at an alarm site that is audible or visible from the exterior of a structure.
- (G) Permit holdermeans the person designated in the application as required in subsection 2(C)(1) who is ultimately responsible for responding to alarms and giving access to the site and who is also responsible for proper maintenance and operation of the alarm system and payment of fees.
- (H) Personmeans an individual, corporation, partnership, association, organization, or similar entity.
- (I) Special trunk linemeans a telephone line leading into the city's communications division or police department that is for the primary purpose of receiving emergency messages that originate from automatic protection devices and are transmitted directly or through an intermediary.

(Ordinance 7175 adopted 5/26/1992; Ordinance 7325 adopted 5/24/1994)

**§ 6-8-2. Permit required; application; transferability; false statements.**

- (A) A person commits an offense if he operates or causes to be operated an alarm system without an alarm permit issued by the chief. A separate permit is required for each alarm site.
- (B) Upon receipt of a properly completed application form, and a permit fee of \$25.00 for commercial permits and \$20.00 for residential permits, the chief shall issue an alarm permit to an applicant, unless the applicant has failed to pay a service fee assessed under Section 11 or has had an alarm permit for the alarm site revoked, and the violation causing the revocation has not been corrected.
- (C) Each permit application must contain the following information:
  - 1. Name, address, and telephone number of the person who will be the permit holder and be responsible for the proper maintenance and operation of the alarm system and payment of fees assessed under this Chapter.

2. Classification of the alarm site as either residential or commercial.
  3. For each alarm system located at the alarm site, the purpose of the alarm system, i.e., burglary, robbery, personal hostage.
  4. Other information required by the chief which is necessary for the enforcement of this Chapter.
- (D) Any false statement of a material matter made by an applicant for the purpose of obtaining an alarm permit shall be sufficient cause for revocation or refusal to issue a permit.
- (E) An alarm permit cannot be transferred to another person. A permit holder shall inform the chief of any change that alters any information listed on the permit application within three business days. No fee will be assessed for such changes.
- (F) All fees owed by an applicant must be paid before a permit may be issued or renewed.

(Ordinance 7175 adopted 5/26/1992)

#### **§ 6-8-3. Permit duration and renewal.**

A permit is valid for one year and may be renewed at the end of that year upon submission of an updated application and a renewal fee of \$20.00 for commercial permits and \$15.00 for residential permits. The City shall give a permit holder 30 days' notice, in writing, prior to terminating an alarm permit for nonrenewal.

(Ordinance 7175 adopted 5/26/1992)

#### **§ 6-8-4. Proper alarm system operation and maintenance.**

(A) A permit holder in control of an alarm system shall:

1. Maintain the premises containing an alarm system in a manner that insures proper operation of the alarm system.
2. Maintain the alarm system in a manner that will minimize false alarm notifications.
3. Respond or cause a representative to respond within a reasonable period of time when notified by the City to repair or inactivate a malfunctioning alarm system, to provide access to the premises, or to provide security for the premises.
4. Not manually activate an alarm for any reason other than an occurrence of an event that the alarm system was intended to report.

(B) A person in control of a local alarm shall adjust the mechanism or cause the alarm signal to sound for no longer than 15 minutes after being activated.

(Ordinance 7175 adopted 5/26/1992)

#### **§ 6-8-5. Reporting of alarm signals.**

A permit holder in control of an alarm system shall not allow alarm signals to be reported through a relaying intermediary that does not comply with the requirements of this Chapter and any rules and regulations promulgated by the chief.

(Ordinance 7175 adopted 5/26/1992)

#### **§ 6-8-6. Indirect alarm reporting.**

(A) An intermediary who is engaged in the business of relaying alarm notifications to the City shall:

1. Report alarms only over special trunk lines designated by the chief.
2. Communicate alarm notifications to the City in a manner and form determined by the chief.
3. Be licensed by the Texas Board of Private Investigators and Private Security Agencies.

(Ordinance 7175 adopted 5/26/1992)

#### **§ 6-8-7. Dial alarm devices using auto-dial and prerecorded voice messages prohibited.**

No person shall use, or cause or permit to be used, any alarm device which automatically dials the city's communications division or police department, and then reproduces any prerecorded voice messages to report any robbery, burglary, or other emergency.

(Ordinance 7175 adopted 5/26/1992; Ordinance 7325 adopted 5/24/1994)

#### **§ 6-8-8. Alarm system operating instructions.**

A person in control of an alarm system shall maintain at each alarm site a complete set of written operating instructions for each alarm system. Special codes, combinations, or passwords must not be included in these instructions.

(Ordinance 7175 adopted 5/26/1992)

#### **§ 6-8-9. Alarm dispatch records.**

(A) The officer responding to an alarm call resulting from an attempted criminal offense or criminal offense or false alarm notification shall record such information as necessary to permit the chief to maintain records, including, but not limited to, the following information:

1. Identification of the permit holder.
2. Identification of the alarm site.
3. Arrival time and dispatch received time.
4. Time of day and date.
5. Weather conditions.
6. Area and subarea.
7. Name of permit holder's representative on the premises, if any.

(B) The responding police officer shall indicate on the dispatch record whether the notification was caused by a criminal offense or whether the notification was the result of a false alarm.

(Ordinance 7175 adopted 5/26/1992)

#### **§ 6-8-10. System performance reviews.**

If there is reason to believe that an alarm system is not being used or maintained in a manner that insures proper operation and suppresses false alarms, the chief may require a conference with an alarm permit holder and the individual or association responsible for maintenance of the alarm system to review circumstances of each false alarm.

(Ordinance 7175 adopted 5/26/1992)

**§ 6-8-11. Service fee.**

- (A) Except as provided in subsection (B), the holder of an alarm permit shall pay a service fee of \$50.00 for each police alarm notification in excess of five occurring during the preceding 12-month period.
- (B) If the responding police officer determines that an alarm notification was caused by an attempted criminal offense or criminal offense or by weather conditions, no service fee will be assessed for that notification.

(Ordinance 7175 adopted 5/26/1992)

**§ 6-8-12. Revocation of alarm permit.**

- (A) The chief shall revoke an alarm permit if he determines that:
  - 1. There is a false statement of a material matter in the application for a permit;
  - 2. The permit holder has violated Section 4, 5, 6, 7 or 8; or
  - 3. The permit holder has failed to make timely payment of a service fee assessed under Section 11 or has an excessive number of false alarms.
- (B) A person commits an offense if he operates an alarm system during the period in which his alarm permit is revoked.

(Ordinance 7175 adopted 5/26/1992)

**§ 6-8-13. Appeal from denial, revocation of a permit, or false alarm determination.**

- (A) If the chief refuses to issue or renew a permit, or revokes a permit, he shall send to the applicant or permit holder by certified mail, return receipt requested, written notice of his action and a statement of the right to an appeal. However, notification by certified mail is not required for false alarm determination and regular mailing shall be sufficient. The applicant or permit holder may appeal the decision of the chief to the city manager by filing with the city manager a written request for a hearing, setting forth reasons for the appeal, within ten days after receipt of the notice from the chief. The filing of a request for an appeal hearing with the city manager stays an action of the chief in revoking a permit until the city manager or his designated representative makes a final decision. If a request for an appeal hearing is not made within the ten-day period, the action of the chief is final.
- (B) The city manager or his representative shall serve as hearing officer at an appeal and consider evidence by any interested person. The formal rules of evidence do not apply at an appeal hearing; the hearing officer shall make his decision on the basis of a preponderance of the evidence presented at the hearing. The hearing officer must render a decision within 30 days after the request for an appeal hearing is filed. The hearing officer shall affirm, reverse, or modify the action of the chief. The decision of the hearing officer is final as to administrative remedies with the City.
- (C) It shall further be the function of the hearing officer to recommend prosecution of any violations of this article to the municipal court prosecutor pursuant to the sanctions contained in Section 14 of this ordinance.

(Ordinance 7175 adopted 5/26/1992)

**§ 6-8-14. Violations; penalty; corporations, partnerships and associations.**

- (A) A person commits an offense if he violates by commission or omission any provision of this Chapter that imposes upon him a duty or responsibility.

- (B) A person who violates a provision of this Chapter is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or permitted, and each offense is punishable by a fine of not more than \$500.00.
- (C) In addition to prohibiting or requiring certain conduct of individuals, it is the intent of this Chapter to hold a corporation, partnership, or other association criminally responsible for acts or omissions performed by an agent acting in behalf of the corporation, partnership, or other association, and within the scope of his employment.

(Ordinance 7175 adopted 5/26/1992)

**§ 6-8-15. Implementation of Chapter; review.**

- (A) This ordinance shall become effective 90 days after its passage.
- (B) The police chief shall monitor the enforcement and effect of this Chapter and report to the city manager one year after the effective date on its effect in reducing unnecessary alarm notifications.

(Ordinance 7175 adopted 5/26/1992)

**FALSE ALARMS**

**Chapter 6-9**

**CURFEW HOURS FOR MINORS**

**§ 6-9-1. Definitions.**(A) Curfew hoursmeans:

1. 12:01 a.m. on Sunday until 6:00 a.m. on Sunday;
2. 12:01 a.m. on Monday until 6:00 a.m. on Monday;
3. 12:01 a.m. on Tuesday until 6:00 a.m. on Tuesday;
4. 12:01 a.m. on Wednesday until 6:00 a.m. on Wednesday;
5. 12:01 a.m. on Thursday until 6:00 a.m. on Thursday;
6. 12:01 a.m. on Friday until 6:00 a.m. on Friday; and
7. 12:01 a.m. on Saturday until 6:00 a.m. on Saturday.

(B) Emergencymeans an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.(C) Establishmentmeans any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.(D) Guardianmeans:

1. A person who, under court order, is the guardian of the person of a minor; or
2. A public or private agency with whom a minor has been placed by a court.

(E) Minormeans any person under 17 years of age.(F) Operatormeans any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.(G) Parentmeans a person who is:

1. A natural parent, adoptive parent, or stepparent of another person; or
2. At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(H) Public placemeans any place to which the public or a substantial group of the public has access, and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.(I) Remainmeans to:

1. Linger or stay; or
2. Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(J) Serious bodily injurymeans bodily injury that creates a substantial risk of death or that causes death,

serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(Ordinance 7497, sec. 1, adopted 12/19/1995; Ordinance 7549, sec. 1, adopted 8/13/1996)

#### **§ 6-9-2. Offenses.**

- (A) A minor commits an offense if he remains in any public place or on the premises of any establishment within the City during curfew hours.
- (B) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the City during curfew hours.

(Ordinance 7497, sec. 1, adopted 12/19/1995; Ordinance 7549, sec. 1, adopted 8/13/1996)

#### **§ 6-9-3. Defenses.**

- (A) It is an affirmative defense to prosecution under Section 6-9-2 that the minor was:
  1. Accompanied by the minor's parent or guardian;
  2. On an errand at the direction of the minor's parent or guardian, without any detour or stop;
  3. In a motor vehicle involved in interstate travel;
  4. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  5. Involved in an emergency;
  6. On the sidewalk abutting the minor's residence or abutting the residence of a next door neighbor if the neighbor did not complain to the police department about the minor's presence;
  7. Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Midland, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Midland, a civic organization, or another similar entity that takes responsibility for the minor;
  8. Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
  9. Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31.

(Ordinance 7497, sec. 1, adopted 12/19/1995; Ordinance 7549, sec. 1, adopted 8/13/1996)

#### **§ 6-9-4. Enforcement.**

Before taking any enforcement action under this Section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Section 6-9-3 is present.

(Ordinance 7497, sec. 1, adopted 12/19/1995; Ordinance 7549, sec. 1, adopted 8/13/1996)

**§ 6-9-5. Penalties.**

- (A) A person who violates a provision of this Chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.
- (B) When required by V.T.C.A., Family Code § 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates Section 6-9-2(A) and shall refer the minor to juvenile court.

(Ordinance 7497, sec. 1, adopted 12/19/1995; Ordinance 7549, sec. 1, adopted 8/13/1996)

**§ 6-9-6. Custodial requirements.**

- (A) A peace officer taking into custody a minor for violation of this Chapter shall, without unnecessary delay:
  1. Release the minor to the minor's parent, guardian, or custodian;
  2. Take the minor before a municipal or justice court to answer the charge; or
  3. Take the minor to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person pursuant to V.T.C.A., Family Code § 52.028.

(Ordinance 7497, sec. 1, adopted 12/19/1995; Ordinance 7549, sec. 1, adopted 8/13/1996)



DANGEROUS DOGS

**Chapter 6-10**

**DANGEROUS DOGS**

***Editor's note(s)***—*Ord. No. 10224, § 1, adopted Aug. 24, 2021, amended Ch. 10 in its entirety to read as herein set out. Former Ch. 10, §§ 6-10-1—6-10-9, pertained to the same subject matter, and derived from Ord. No. 10027, § 1, adopted Dec. 10, 2019.*

### § 6-10-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the following meanings:

- (a) Authorized investigatormeans the director's designee, a City of Midland animal services officer, or a City of Midland police officer.
- (b) Bodily injurymeans physical pain, illness, or any impairment of physical condition.
- (c) Catmeans a domesticated animal that is a member of the feline family.
- (d) Dangerous dogmeans a dog that:
  - (1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own;
  - (2) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person; or
  - (3) Commits an unprovoked attack on another dog or cat that injures or harms such dog or cat and such unprovoked attack occurs in a place other than an enclosure in which the dog committing the attack was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own.
- (e) Directormeans the director of animal services for the City of Midland.
- (f) Dogmeans a domesticated animal that is a member of the canine family.
- (g) Municipal courtmeans the City of Midland municipal court.
- (h) Ownermeans a person who owns, possesses, harbors, keeps or has custody or control of a dog.
- (i) Public placemeans any place to which the public or a substantial group of the public has access and includes, but is not limited to, alleys, streets, rights-of-way, highways, parks, and public and private schools.
- (j) Secure enclosuremeans a fenced area or structure that is:
  - (1) Locked;
  - (2) Capable of preventing the entry of the general public, including children;
  - (3) Capable of preventing the escape or release of a dog; and
  - (4) In conformance with the requirements for enclosures established by the City of Midland Animal Services Division.
- (k) Serious bodily injurymeans an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical

professional and would require hospitalization without regard to whether the person actually sought medical treatment.

(Ordinance 10224, sec. 1, adopted 8/24/2021)

#### **§ 6-10-2. Dangerous dog determination.**

- (a) If a person reports an incident involving an alleged dangerous dog to the director or an authorized investigator, then the director or authorized investigator, as applicable, may investigate the incident. If after conducting the investigation, the director or authorized investigator, as applicable, determines that there is probable cause to believe the dog is a dangerous dog, then the director or authorized investigator, as applicable, shall file a sworn petition in municipal court seeking a judicial determination that the dog is a dangerous dog.
- (b) Notwithstanding subsection (a), the director or an authorized investigator may file a sworn petition in municipal court seeking a judicial determination that a dog is a dangerous dog based on his or her own observations and investigation without first receiving a report of an incident involving such dog.
- (c) The sworn petition filed with the municipal court may contain the following information:
  - (1) Name, address and telephone number of the complainant;
  - (2) Date, time and location of the incident involving the dog;
  - (3) Description of the dog;
  - (4) Name, address and telephone number of the dog's owner, if known;
  - (5) A statement regarding the dog that is believed to be a dangerous dog, stating the facts upon which such petition is based;
  - (6) A statement that the dog has exhibited vicious propensities in past conduct, if known; or
  - (7) Other facts or circumstances of the incident.

(Ordinance 10224, sec. 1, adopted 8/24/2021)

#### **§ 6-10-3. Possession of dog pending hearing.**

If after reviewing the petition, the municipal court finds that there is probable cause to believe that the dog in question is a dangerous dog, the municipal court shall order the animal services division to seize the dog and shall issue a warrant authorizing such seizure pending the hearing. The animal services division shall seize the dog and shall provide for the impoundment of the dog in secure humane conditions. If the animal services division has the alleged dangerous dog in its possession, the animal services division shall maintain such possession prior to the hearing unless the municipal court orders that the dog should be released to its owner pending the hearing.

(Ordinance 10224, sec. 1, adopted 8/24/2021)

#### **§ 6-10-4. Hearing.**

- (a) Upon filing of a petition under Section 6-10-2, the municipal court shall set a hearing to determine whether the dog is a dangerous dog. The hearing must be commenced not later than the tenth day after the dog is seized or delivered.
- (b) The municipal court shall give written notice of the time and place of the hearing to:

- (1) The owner of the dog or the person from whom the dog was seized;
  - (2) The director; and
  - (3) The person who filed the petition, if other than the director.
- (c) Any interested party, including the city attorney's office, is entitled to present evidence at the hearing.
  - (d) The person who filed the petition shall have the burden of proof at the hearing. The standard of proof required is by a preponderance of the evidence.
  - (e) The municipal court shall render a decision in writing within 72 hours after the conclusion of the hearing.
  - (f) The municipal court may order the humane destruction of the dog if the owner of the dog has not been located before the fifteenth day after the seizure and impoundment of the dog.
- (Ordinance 10224, sec. 1, adopted 8/24/2021)

**§ 6-10-5. Judicial determination.**

- (a) If the municipal court finds that the dog is not a dangerous dog, the municipal court shall order the animal services division to return the dog to the owner, if the dog is in the city's possession.
- (b) If the municipal court finds that the dog is a dangerous dog, the municipal court shall order the director to immediately seize the dangerous dog, unless the dangerous dog is already in the possession of the animal services division, and further order the owner of the dangerous dog to do the following not later than the eleventh day after the municipal court has determined that the dog is a dangerous dog:
  - (1) Register the dangerous dog with the animal services division and pay a \$50.00 yearly registration fee;
  - (2) Provide for a secure enclosure in which the dangerous dog will be kept and allow the animal services division reasonable access to said secure enclosure for the purpose of inspecting its sufficiency as a secure enclosure;
  - (3) Obtain a current animal license from the city for the dangerous dog;
  - (4) Obtain a current rabies vaccination for the dangerous dog;
  - (5) Obtain liability insurance coverage in an amount of at least \$1,000,000.00 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person, with the City of Midland named as an additional insured on such insurance policy;
  - (6) Pay all costs or fees assessed by the City of Midland related to the seizure and impoundment of the dangerous dog, which shall include a \$50.00 per day dangerous dog boarding/quarantine fee; and
  - (7) Provide satisfactory proof to the municipal court that the owner has complied with this subsection in all respects.
- (c) If the municipal court finds that the dog caused the death of a person by attacking, biting, or mauling the person, the court shall order the dog to be humanely destroyed.
- (d) If the municipal court finds that the dog caused serious bodily injury of a person by attacking, biting,

or mauling the person, the court may order the dog to be humanely destroyed.

- (e) If the municipal court finds that an owner has not fully complied with an order issued under subsection (b) within 11 days, the municipal court shall order the animal services division to humanely destroy the dangerous dog.
- (f) Any order to destroy a dog issued by the municipal court under Subsections (c), (d) or (e) is stayed for a period of ten calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal. The municipal court may not order the destruction of a dog during the pendency of an appeal under Section 822.0424 of the Texas Health and Safety Code.

(Ordinance 10224, sec. 1, adopted 8/24/2021)

#### **§ 6-10-6. Dangerous dog offenses; penalties.**

- (a) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to that person.
- (b) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with the conditions set by the municipal court in accordance with Section 6-10-5(b) of this code or Section 822.042 of the Texas Health and Safety Code.
- (c) A violation of this Section shall be punishable by a fine not to exceed \$500.00. If a person is found guilty of an offense under Subsection (a), the municipal court may order the dangerous dog to be humanely destroyed.

(Ordinance 10224, sec. 1, adopted 8/24/2021)

#### **§ 6-10-7. Affirmative defenses.**

It is an affirmative defense to prosecution under Section 6-10-6 that:

- (a) The person is a veterinarian, peace officer, person employed by a recognized animal shelter, or person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with the person's employment.
- (b) The person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency that trains or uses dogs for law enforcement or corrections purposes.
- (c) The person is an employee of a guard dog company under Chapter 1702, Texas Occupations Code, and has ownership, custody or control of the dog in connection with the person's employment.
- (d) The dog was defending a person from an assault or a person's property from damage or theft by the injured person.

(Ordinance 10224, sec. 1, adopted 8/24/2021)

#### **§ 6-10-8. Effect.**

This chapter does not affect the applicability of any other law, ordinance, rule, regulation or other legal requirement of the City of Midland or the State of Texas.

(Ordinance 10224, sec. 1, adopted 8/24/2021)

**§ 6-10-9. Governance.**

The City of Midland elects to be governed by Section 822.0422 of the Texas Health and Safety Code.  
(Ordinance 10224, sec. 1, adopted 8/24/2021)

**Title VII: Fire Regulations**

**Chapter 7-1**

**FIRE PREVENTION CODE**

**§ 7-1-1. Purpose.**

The purpose of this Chapter is to provide regulations consistent with nationally recognized practices for the reasonable protection of life and property from the hazards of fire and explosion due to the storage, use or handling of combustible, flammable, explosive or other hazardous materials, substances and devices and to minimize hazards to life and property due to fire and panic, exclusive of those hazards considered in Title IV, "Building Regulations," of the Midland City Code.

(Ordinance 7425 adopted 2/28/1995; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)

**§ 7-1-2. Code adopted.**

A certain document, one copy of which is on file in the office of the City Secretary of the City of Midland, Texas being marked and designated as the International Fire Code, including Appendix Chapters (See International Fire Code Section 101.2, 2015 edition), as published by the International Code Council, Inc., be and is hereby adopted as the code of the City of Midland for regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Midland and providing for the issuance of permits for hazardous uses or operations; and each and all of the regulations, provisions, conditions and terms of such International Fire Code, 2015 edition, published by the International Code Council, Inc., on file in the office of the City Secretary are hereby referred to, adopted and made apart hereof as if fully set out in this Chapter.

(Ordinance 7425 adopted 2/28/1995; Ordinance 8073, sec. 1, adopted 1/29/2002; Ordinance 8374, sec. 1, adopted 1/10/2006; Ordinance 8867, sec. 1, adopted 1/11/11; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)

**§ 7-1-3. Designation of fire code official.**

The Fire Marshal of the City of Midland, Texas, is hereby designated as the fire code official as set forth in the fire prevention code (see International Fire Code Section 103.1 2015 edition); provided, however, the Fire Chief, the Fire Marshal, each Assistant or Deputy Fire Marshal, and such other City employees as the Fire Chief deems necessary are hereby authorized to enforce the provisions of this Chapter.

(Ordinance 7425 adopted 2/28/1995; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)

**§ 7-1-4. Changes and additions to adopted fire prevention code.**

Notwithstanding any provisions in this Chapter or the adopted fire prevention code to the contrary, the latter is adopted with certain changes, additions, and deletions thereto so that the following sections and provisions of the fire prevention code shall read as follows:

*Section 101.1 Title.* These regulations shall be known as the Fire Code of the City of Midland, hereinafter referred to as "this code."

*Section 103.1 General.* The Department of Fire Prevention, also known as the Midland Fire Marshal's Office, established within the Fire Department under the direction of the Fire Chief shall consist of Fire Department personnel assigned thereto by the Fire Chief. The function of office shall be to assist the fire code official, also known as the Fire Marshal, in the administration and enforcement of the provisions of this code and the Code of the City of Midland, Texas.

*Section 104.10 Fire investigations.* The fire code official, the Fire Department or other responsible authority shall have the authority to investigate the cause, origin and circumstances of any fire, explosion or other hazardous condition. Information that could be related to trade secrets or processes shall not be made part of the public record except as directed by a court of law.

1. The fire code official or the fire code official's duly authorized agent is authorized to investigate or cause to be investigated the origin and cause of every fire occurring within the jurisdiction which results in injury, death, or loss of property.
2. The fire code official shall prepare a written investigation report to document the facts surrounding the origin and cause of all fires which are investigated. Fire reports shall include any evidence of apparent violations of this code which either caused or contributed to the occurrence or spread of the fire, which were the proximate or contributing cause of any injuries or deaths, or which interfered with or impaired the ability of firefighters to control the fire.
3. When the cause of a fire is determined to be incendiary or suspicious, the fire code official shall take charge of the scene and ensure that all evidence is preserved until it can be properly documented or collected for use in any criminal proceedings which may result.

*Section 104.11.1 Barricades.* The Fire Chief, Fire Marshal, Fire Inspector, or officer of the Fire Department in charge at the scene of an emergency or special event is authorized to place ropes, guards, barricades or other obstructions across any street, alley, place of private property in the vicinity of such operation as to prevent accidents or interference with lawful efforts of the Fire Department to manage and control special events, emergency situations and to handle fire apparatus.

*Section 104.11.2 Obstructing operations.* No person shall obstruct the operations of the Fire Department in connection with extinguishment or control of any fire, special event, or action relative to other emergencies, or disobey any lawful command of the Fire Chief, Fire Marshal, Fire Inspector, or officer of the Fire Department in charge of the emergency, special event, or any part thereof, or any lawful order of a police officer assisting the Fire Department.

*Section 105.3.3 Occupancy Prohibited before Approval.* The building or structure shall not be occupied prior to the fire code official issuing a permit when required and conducting associated inspections indicating the applicable provisions of this code have been met.

*Section 108 Board of Appeals.* Delete entire section.

*Section 109.3. Notice of violation; penalty for violation.* When the fire code official finds a building, premises, vehicle, storage facility or outdoor area that is in violation of this code, the fire code official is authorized to prepare a written notice of violation describing the conditions deemed unsafe and, when compliance is not immediate, specifying a time for reinspection. Persons who shall violate a provision of this code or who shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a Class C Misdemeanor punishable by a fine of not more than \$2,000.00. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

*Section 111.4 Failure to comply.* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than \$500.00 or more than \$2,000.00.

*Section 202 General Definitions.* All definitions in this Section shall remain unchanged except for the following:

**FIRE CODE OFFICIAL.** The Fire Marshal, as appointed by the Fire Chief or other designated authority, Fire Inspector, charged with the administration and enforcement of the code, or a duly authorized representative.

**FIRE WATCH.** A temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals or standby personnel when required by the fire code official, for the purposes of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the fire department.

**FIREWORKS.** Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration, detonation, and/or activated by ignition with a match or other heat producing device that meets the definition of 1.4G fireworks or 1.3G fireworks as set forth herein.

**REPAIR GARAGE.** A building, structure or portion thereof used for servicing or repairing motor vehicles. This occupancy shall also include garages involved in minor repair, modification and servicing of motor vehicles for items such as lube changes, inspections, windshield repair or replacement, shocks, minor part replacement and other such minor repairs.

**SELF-SERVICE STORAGE FACILITY.** Real property designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

**SPECIAL EVENT.** The term "special event" shall be hereafter defined as follows: any parade, race, block party, festival or permitted fireworks display or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof.

**STANDBY PERSONNEL.** Qualified fire service personnel, approved by the Fire Chief. When utilized, the number required shall be as directed by the Fire Chief. Charges for utilization shall be as normally calculated by the jurisdiction.

*Section 307.1.1 Prohibited open burning.* Open burning that is offensive or objectionable because of smoke emissions or when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited.

*Section 307.3 Extinguishment authority.* The fire code official is authorized to order the extinguishment by the permit holder, another person responsible, or the fire department of open burning that creates or adds to a hazardous or objectionable situation.

*Section 308.1.4 Open-flame cooking devices.* Open-flame cooking devices, charcoal grills and other similar devices used for cooking shall not be located or used on combustible balconies, decks, or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family dwellings, except that LP-gas containers are limited to a water capacity not greater than 50 pounds (22.68 kg) [nominal 20 pound (9.08 kg) LP-gas capacity] with an aggregate LP-gas capacity not to exceed 100 lbs (5 containers).
2. Where buildings, balconies and decks are protected by an approved automatic sprinkler system, except that LP-gas containers are limited to a water capacity not greater than 50 pounds (22.68 kg) [nominal 20 pound (9.08 kg) LP-gas capacity], with an aggregate LP-gas capacity not to exceed 40 lbs (2 containers).
3. LP-gas cooking devices having LP-gas container with a water capacity not greater than 2½ pounds [nominal 1 pound (0.454 kg) LP-gas capacity].

*Section 308.1.6.2 Portable fueled open-flame devices.* Portable open-flame devices fueled by flammable or combustible gases or liquids shall be enclosed or installed in such a manner as to prevent the flame from contacting the combustible material.

Exceptions:

1. LP-gas-fueled devices used for sweating pipe joints or removing paint in accordance with Chapter 61.
2. Cutting and welding operations in accordance with Chapter 35.
3. Torches or flame-producing devices in accordance with Section 308.1.3.
4. Candles and open-flame decorative devices in accordance with Section 308.3.

*Section 308.1.6.3 Sky Lanterns.* Unmanned free-floating devices containing an open flame or other heat source, such as but not limited to sky lanterns shall be prohibited.

*Section 311.5 Placards.* The fire code official is authorized to require marking of any vacant or abandoned buildings or structures determined to be unsafe pursuant to Section 110 of this code relating to structural or interior hazards, as required by Sections 311.5.1 through 311.5.5.

*Section 401.9 False alarms and nuisance alarms.* False alarms and nuisance alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted in any manner. Evidence of a culpable mental state is not required to prove a criminal offense under Section 401.9. It is hereby declared that, for all offenses under Section 401.9, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

*Section 501.4 Timing of installation.* When fire apparatus access roads or a water supply for fire protection is required to be installed for any structure or development, they shall be installed, tested, and approved prior to the time at which construction has progressed beyond completion of the foundation of any structure.

*Section 503.1 Where required.* Fire apparatus access roads shall be provided and maintained in accordance with Section 503.1.1 through 503.1.3 and Appendix "D".

*Section 503.2 Specifications.* Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.8 and Appendix "D".

*Section 503.2.2 Authority.* The fire code official shall have the authority to require or permit modifications to the required access widths and vertical clearances where they are inadequate for fire or rescue operations or where necessary to meet the public safety objectives of the jurisdiction.

*Section 503.2.5 Dead ends.* Dead end fire apparatus access roads in excess of 200 feet (61m) in length shall be provided with an approved area for turning around fire apparatus.

*Section 503.3 Marking.* Where required by the fire code official, approved signs or other approved notices or markings that include the words "NO PARKING FIRE LANE," striping, signs, or other markings, when approved by the fire code official, shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. The means by which a fire lanes is designated, striping, signs, and other markings shall be maintained in a clean and legible condition at all times and shall be replaced or repaired when necessary to provide adequate visibility.

1. Striping. Fire apparatus access roads shall be continuously marked by painted lines of red traffic paint six inches (6") in width to show the boundaries of the lane. The words "NO PARKING FIRE LANE" or "FIRE LANE NO PARKING" shall appear in four inch (4") white letters at 25 feet (25') intervals on the red border markings along both sides of the fire lanes. Where a curb is available, said striping shall be on the vertical face of the curb.
2. Signs. Signs shall read "NO PARKING FIRE LANE" or "FIRE LANE NO PARKING" and shall be twelve inches (12") wide and eighteen inches (18") high. Signs shall be painted on a white background with letters and borders in red, using not less than two-inch (2") lettering. Signs shall be permanently affixed to a stationary post and the bottom of the sign shall be six feet, six inches (6'6") above finished grade. Signs shall be spaced not more than fifty feet (50') apart along both sides of the fire lane. Signs may be installed on permanent buildings or walls or as approved by the Fire Chief.

*Section 503.4 Obstruction of fire apparatus access roads.* Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2.1 and any area marked as a fire lane as described in Section 503.3 shall be maintained at all times.

*Section 505.1.1 Addressing of rear doors.* The rear door entrance of access doors of all malls, strip centers, commercial center buildings, and other areas with multi-tenant spaces shall be identified with appropriate address number and business name. The address numbers and/or letters shall be at least three inches (3") (76.2mm) in height and no less than three eights inch ( $\frac{3}{8}$ ) (9.5mm) stroke. The Midland Fire Department may require the installation of address number and/or letters on other locations to prevent confusion in the event of an emergency.

*Section 507.5.4 Obstruction.* Unobstructed access to fire hydrants shall be maintained at all times. Posts, fences, vehicles, growth, trash, storage, and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections, or fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

*Section 807.5.2.2 Artwork in Corridors.* Artwork and teaching materials shall be limited on walls of corridors to not more than 20 percent of the wall area.

Exception: Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 shall be limited to 50 percent of the wall area.

*Section 901.7 Systems out of service.* Where a required fire protection system is out of service, or in the event of an excessive number of activations, the fire department and the fire code official shall be notified immediately and, where required by the fire code official, the building shall either be evacuated or an approved fire watch shall be provided for all occupants left unprotected by the shut down until the fire protection system has been returned to service.

Where utilized, fire watches shall be provided with not less than one approved means for notification of the fire department, and their only duty shall be to perform constant patrols of the protected premises and keep watch for fires.

*Section 901.9 Discontinuation or change of service.* Notice shall be made to the fire code official whenever contracted alarm monitoring services for monitoring of any fire alarm system are terminated for any reason, or a change in alarm monitoring provider occurs. Notice shall be made in writing to the fire code official by the building owner and monitoring service provider prior to the service being terminated.

*Section 903.3.1.2.1.1 Attics and Attached Garages.* Sprinkler protection is required in attic spaces of such buildings two or more stories in height and attached garages.

*Section 903.3.5 Water supplies.* Water supplies for automatic sprinkler systems shall comply with this Section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of this Section and the International Plumbing Code.

Water supply as required for such systems shall be provided in conformance with the supply requirements of the respective standards; however, every fire protection system shall be designed with a 10 psi safety factor. Reference Section 507.4 for additional design requirements.

*Section 903.4 Sprinkler system supervision and alarms.* All valves controlling the water supply for automatic sprinkler systems, pumps, tanks, water levels and temperatures, critical air pressures and water-flow switches on all sprinkler systems shall be electrically supervised by a listed fire alarm control unit.

Exceptions:

1. Automatic sprinkler systems protecting one- and two-family dwellings.
2. Limited area systems serving fewer than 20 sprinklers.
3. Automatic sprinkler systems installed in accordance with NFPA 13R where a common supply main is used to supply both domestic water and the automatic sprinkler system, and a separate shutoff valve for the automatic sprinkler system is not provided.
4. Jockey pump control valves that are sealed or locked in the open position.
5. Control valves to commercial kitchen hoods, paint spray booths or dip tanks that are sealed or locked in the open position.
6. Valves controlling the fuel supply to fire pump engines that are sealed or locked in the open position.
7. Trim valves to pressure switches in dry, preaction and deluge sprinkler systems that are sealed or locked in the open position.

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

*Section 903.4.2 Alarms.* An approved audible device, located on the exterior of the building in an approved location, shall be connected to each automatic sprinkler system. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system.

The alarm device required on the exterior of the building shall be a weatherproof horn/strobe notification appliance with a minimum 75 candela strobe rating, installed as close as practicable to the fire department connection.

*Section 905.1.1 Standpipe Testing.* Building owners/managers must maintain and test standpipe systems as per NFPA 25 requirements. The following additional requirements shall be applied to the testing that is required every 5 years:

1. The piping between the Fire Department Connection (FDC) and the standpipe shall be backflushed when foreign material is present, and also hydrostatically tested for all FDCs on any type of standpipe system. Hydrostatic testing shall also be conducted in accordance with NFPA 25 requirements for the different types of standpipe systems.
2. For any manual (dry or wet) standpipe system not having an automatic water supply capable of flowing water through the standpipe, the tester shall connect hose from a fire hydrant or portable pumping system (as approved by the fire code official) to each FDC, and flow water through the standpipe system to the roof outlet to verify that each inlet connection functions properly. The tester shall confirm that there are no open hose valves prior to introducing water into a dry standpipe. There is no required pressure criteria at the outlet. Verify that check valves function properly and that there are no closed control valves on the system.
3. Any pressure relief, reducing, or control valves shall be tested in accordance with the requirements of NFPA 25. All hose valves shall be exercised.
4. If the FDC is not already provided with approved caps, the contractor shall install such caps for all FDCs as required by the fire code official.
5. Upon successful completion of standpipe test, place a blue tag (as per Texas Administrative Code, Fire Sprinkler Rules for Inspection, Test and Maintenance Service (ITM) Tag) at the bottom of each standpipe riser in the building. The tag shall be check-marked as "Fifth Year" for Type of ITM, and the note on the back of the tag shall read "5 Year Standpipe Test" at a minimum.
6. The procedures required by Texas Administrative Code Fire Sprinkler Rules with regard to Yellow Tags and Red Tags or any deficiencies noted during the testing, including the required notification of the local Authority Having Jurisdiction (fire code official) shall be followed.
7. Additionally, records of the testing shall be maintained by the owner and contractor, if applicable, as required by the State Rules mentioned above and NFPA 25.
8. Standpipe systems tests where water will be flowed external to the building shall not be conducted during freezing conditions or during the day prior to expected night time freezing conditions.
9. Contact the fire code official for requests to remove existing fire hose from Class II and II standpipe systems where employees are not trained in the utilization of this firefighting equipment. All standpipe hose valves must remain in place and be provided with an approved cap and chain when approval is given to remove hose by the fire code official.

*Section 905.3.9 Building area.* In buildings exceeding 10,000 square feet in area per story, Class 1 automatic wet or manual wet standpipes shall be provided where any portion of the building's interior area is more than 200 feet (60960 mm) of travel, vertically and horizontally, from the nearest point of fire department vehicle access.

Exception: Automatic dry and semi-automatic dry standpipes are allowed as provided for in NFPA 14.

*Section 905.9 Valve Supervision.* Valves controlling water supplies shall be supervised in the open position so that a change in the normal position of the valve will generate a supervisory signal at the supervising station required by Section 903.4. Where a fire alarm system is provided, a signal shall also be transmitted to the control unit.

**Exceptions:**

1. Valves to underground key or hub valves in roadway boxes provided by the municipality or public utility do not require supervision.
2. Valves locked in the normal position and inspected as provided in this code in buildings not equipped with a fire alarm system.

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems, except for fire department hose connection valves, shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

*Section 906.1 Where required.* Portable fire extinguishers shall be installed in all of the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

**Exceptions:**

- 1.1. In all Group A, B, and E occupancies equipped throughout with quick-response sprinklers, fire extinguishers shall be allowed twice the travel distance as required in table 906.3(1) except for special hazard areas.
- 1.2. In Group R-2 occupancies, portable fire extinguishers shall be required only in locations specified in Items 2 through 6 where each dwelling unit is provided with a portable fire extinguisher having a minimum rating of 1-A: 10-B:C.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor with structures under construction, except Group R-3 occupancies, in accordance with Section 3315.1.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.

*Section 907.1.4 Design standards.* All alarm systems, new or replacement, shall be addressable. Alarm systems serving more than 20 smoke detectors shall be analog addressable.

Exception: Existing systems need not comply unless the total building remodel or expansion initiated after the effective date of this code, as adopted, exceeds 30% of the building. When cumulative building remodel or expansion exceeds 50% of the building, the systems must comply within 18 months of permit application.

*Section 907.2.3 Group E.* A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E educational occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system. An approved smoke detection system shall be installed in Group E day care occupancies. Unless separated by a minimum of 100' of open space, all buildings, whether portable buildings or the main building, will be considered one building for alarm occupant load consideration and interconnection of alarm systems.

**Exceptions:**

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less. Group E day care occupancies with an occupant load of more than 30 and no more than 50 shall install interconnected smoke alarms in each area occupied by the children or according to State regulatory requirements.
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 2.1. Interior corridors are protected by smoke detectors.
  - 2.2. Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
  - 2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation is provided from a normally occupied location.

*Section 907.4.2.7 Type.* Manual alarm initiating devices shall be an approved double action type.

*Section 912.2.3 Hydrant distance.* An approved fire hydrant shall be located within 100 feet of the fire department connection as the fire hose lays along an unobstructed path.

*Section 913.1 General.* Where provided, fire pumps shall be installed in accordance with this section and NFPA 20.

When located on the ground level at an exterior wall, the fire pump room shall be provided with an exterior fire department access door that is not less than three feet (3') in width and six feet eight inches (6'8") in height, regardless of any interior doors that are provided. A key box shall be provided at this door, as required by Section 506.1.

Exception: When it is necessary to locate the fire pump room on other levels or not at an exterior wall, the corridor leading to the fire pump room access from the exterior of the building shall be provided with equivalent fire resistance as that required for the pump room, or as approved by the fire code official. Access keys shall be provided in the key box as required by Section 506.1.

*Section 3310.1 Required access.* Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet (30,480 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent fire apparatus roads are available. When fire apparatus access roads are required to be installed for any structure or development, they shall be approved prior to the time of which construction has progressed beyond completion of the foundation of any structure.

*Section 5504.2.1 Stationary containers.* Storage of flammable cryogenic fluids in stationary containers is prohibited within the City of Midland, unless approval for such storage is received in advance from the fire code official.

*Section 5704.2.9.6.1 Location where above-ground tanks are prohibited.* Storage of Class I and Class II liquids in above-ground tanks outside of buildings is prohibited within the City of Midland, unless approval for such storage is received in advance from the fire code official.

*Section 5706.2.4.4 Locations where above-ground tanks are prohibited.* Storage of Class I and Class II liquids in above-ground tanks is prohibited within the City of Midland, unless approval for such storage is received in advance from the fire code official.

*Section 6103.2.1.8 Jewelry Repair, dental labs, and similar occupancies.* Where natural gas service is not available, portable LP-gas containers are allowed to be used to supply approved torch assemblies or similar appliances. Such containers shall not exceed 20-pound (9.0 kg) water capacity. Aggregate capacity shall not exceed 60-pound (27.2 kg) water capacity. Each device shall be separated from other containers by a distance of not less than 20 feet.

*Section 6104.2 Maximum capacity within established limits.* Storage of liquefied petroleum gas is prohibited within the City of Midland limits, unless (1) public utilities are not available at the location, or (2) approval for such storage is received in advance from the fire code official.

(Ordinance 7425 adopted 2/28/1995; Ordinance 8073, secs. 2 adopted 3 adopted 1/29/2002; Ordinance 8374, secs. 2 adopted 3 adopted 1/10/2006; Ordinance 8867, secs. 2 adopted 3 adopted 1/11/2011; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)

#### **§ 7-1-5. Modifications.**

The City Fire Chief and the City Fire Marshal are authorized to grant a variance from the provisions of the fire prevention code to the extent such matters are not covered by the city building code. Such variances may be made upon application in writing by the owner of the property or structure for which the variance is sought; provided, however, no variance shall be granted except based on a finding that there exist practical difficulties in carrying out the strict meaning of the Code provision from which variance is sought, and that the apparent intent of the Code will continue to be observed if a variance is granted, public safety will be secured, and substantial justice will be done. The decision of the Fire Chief or the Fire Marshal shall be placed in writing and kept on file with the Midland Fire Department. In the event a variance is granted, a copy of the decision shall also be placed on file with the City Building Official.

(Ordinance 7425 adopted 2/28/1995; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)

#### **§ 7-1-6. Appeals.**

Whenever the Fire Chief or the Fire Marshal denies an application for a variance from the fire prevention code, or denies an application for a permit which they are authorized to grant, or it is otherwise claimed that the provisions of the Code do not apply or have been wrongly interpreted by the Fire Chief or the Fire Marshal, the person whose application was denied or who alleges that the Code does not apply or is being wrongly applied may appeal the decision of the Fire Chief or the Fire Marshal to the city construction board of adjustments and appeals. Such appeal must be submitted in writing not later than 30 days after receiving the decision or interpretation on which the appeal is based. The decision of the construction board of adjustment and appeals is final.

(Ordinance 7425 adopted 2/28/1995; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)

#### **§ 7-1-7. New materials, processes or occupancies which may require permits.**

The City Council, the Fire Chief, and the Fire Marshal shall act as a committee to determine and specify, after giving affected people an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those enumerated now in said Code. The Fire Marshal shall post such list in a conspicuous place in his office and distribute copies thereof to interested persons.

(Ordinance 7425 adopted 2/28/1995; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)

**§ 7-1-8. Fire lanes on private property devoted to public use.**

- (A) The marking of fire lanes on private property, devoted to public use, shall be approved by the Fire Marshal.
- (B) No person shall hereafter park a motor vehicle upon or otherwise obstruct a fire lane established pursuant to this Section. For the purpose of enforcement of this subsection, an alleged fire lane shall be presumed to be a valid fire lane established pursuant to this Section if it substantially complies with the requirements of this Chapter.
- (C) The City Council shall have the power to establish fire lanes by ordinance.

(Ordinance 7425 adopted 2/28/1995; Ordinance 9348, sec. 1, adopted 11/18/14; Ordinance 9504, sec. 1, adopted 11/3/15)



(RESERVED)

**Chapter 7-2**

**(RESERVED)**

**Chapter 7-3**

**FIREWORKS**

**§ 7-3-1. Definition.**

"Fireworks" shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article, prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, Dago bombs, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include paper caps containing not in excess of an average of 0.25 grain of explosive content per cap, and toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall be permitted at all times.

**§ 7-3-2. Fireworks prohibited.**

It shall be unlawful for any person to have, keep, store, use, manufacture, assemble, sell, handle, transport, receive, offer for sale, or have in his possession with intent to sell, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise put in action any fireworks of any description.

(Ordinance 3083 adopted 6/25/1957)

**§ 7-3-3. Nuisance declared.**

The presence of any fireworks within the city limits and within the areas immediately adjacent and contiguous to the city limits and extending for a distance outside the city limits for a total of 5,000 feet is in violation of this Chapter and is declared to be a nuisance.

(Ordinance 5776 adopted 6/23/1981; Ordinance 8777, sec. 1, adopted 1/12/2010)

**§ 7-3-4. Power of attorney.**

The city attorney may file suit for injunction to enforce any of the provisions of this Chapter.

(Ordinance 3083 adopted 6/25/1957)

**§ 7-3-5. Exception.**

The above and foregoing provisions of this Chapter shall not apply to public displays of fireworks when conducted in accordance and compliance with all of the terms, conditions, requirements and provisions of V.A.T.S. Insurance Code, art. 5.43-4; to which Article and Section of the Penal Code reference is hereby expressly made for full particulars and for all other legal purposes.

(Ordinance 3288 adopted 7/2/1958)

**§ 7-3-6. Seizure of fireworks.**

The fire authority having jurisdiction shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, stored or held in violation of this Chapter.

(Ordinance 5800 adopted 7/28/1981)

**§ 7-3-7. Penalties.**

Any person who fails to comply with any of the requirements of this Chapter or who violates any of its provisions shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$2,000.00.

(Ordinance 6791 adopted 9/22/1987)

**Title VIII: Establishments, Health and General Sanitation**

**Chapter 8-1**

**IN GENERAL**

**§ 8-1-1. Definitions.**

(A) The following words and phrases when used in this Title shall, for the purposes of this Title, have the meanings respectively ascribed to them in this Section:

1. *Adulterated food.* A food containing any poisonous or deleterious substance as specified in the Texas Health and Safety Code, Chapter 431, 431.002(17).
2. *Approved.* Acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
3. *Base of operation.* An operating base location for a mobile food establishment or transportation vehicle as needed for such thing as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
4. *Bed and Breakfast.* An establishment with rooms for rent that serves only breakfast to overnight guests. The establishment is not a retail food establishment.
5. *Bed and Breakfast Food Establishment.* An establishment that provides food service other than to its overnight guests. The establishment must meet the rules and regulations applicable to retail food establishments.
6. *Beverage.* A liquid for drinking, including water.
7. *Caterer.* A food service establishment where food is prepared for delivery to a customer, and from which this food is transported to the customer at a separate location where it is meant to be served and consumed; or

A mobile food vendor who is not the operator of a food service establishment, but who transports food prepared in a food service establishment to a customer at a separate location where it is meant to be served and consumed.

8. *Child Care Center.* Any facility licensed by the regulatory authority to receive 13 or more children for child care which prepares food for onsite consumption.
9. *Cleaned in place.* (CIP) The circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subject to in-place manual cleaning without the use of a CIP system.
10. *Closed.* Without openings large enough for the entrance of insects or other vermin.
11. *Code of Federal Regulation (CFR).* The compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal government.
12. *Commissary.* Means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.
13. *Common dining area.* A central location in a group residence where people gather to eat at mealtime. The term does not apply to a kitchenette or dining area located within a resident's private living quarters.

14. *Confirmed disease outbreak.* A food borne illness outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis.
15. *Consumer.* A person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer for resale.
16. *Corrosion resistant material.* A material that maintains acceptable surface clean ability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.
17. *Critical control point.* A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
18. *Critical.* A provision of these rules that if in noncompliance, is more likely than other violations to contribute to food contamination, illness, injury, or environmental health hazard.
19. *Critical limit.* The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
20. *Dry storage area.* A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.
21. *Easily cleanable.* Means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.
22. *Employee.* The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
23. *Equipment.* An article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in-refrigerator, scale, sink, slice, stove, steam table, temperature measuring device for ambient air, vending machine, warewashing machine, and similar items other than utensils, used in the operation of a food service establishment.
24. *Failing score.* When an establishment receives an accumulation of critical and non-critical violations resulting in a rating below standards.
25. *Fish.* Fresh or salt water fin fish, crustaceans and other forms of aquatic life other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. The terms includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.
26. *Food borne disease outbreak.* An incident in which two or more persons experience a similar illness after ingestion of a common food, and epidemiological analysis implicates the food as the source of the illness; except that in the cases of botulism or chemical poisoning, one ill person shall constitute an outbreak.
27. *Food-contact surface.* A surface of equipment or a utensil with which food normally comes into contact; or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

28. *Food employee.* An individual working with unpackaged food, food equipment or utensils, or food contact surfaces.
29. *Food establishment.* An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation; market; remote catered operations; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders; restaurant take-out orders' or where consumption is on or off the premises; and regardless of whether there is a charge for the food. The term does not include: a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as religious or charitable organization's bake sale; bed and breakfast limited facility as defined in these rules; or a private home.
30. *Food processing plant.* A commercial operation that manufacturers, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food establishment as previously defined.
31. *Hazard.* A biological, chemical, or physical property that may cause an unacceptable consumer health risk.
32. *Hazard Analysis Critical Control point.* A rational, systematic approach that identifies and monitors specific food borne hazards (biological, physical or chemical) that may adversely affect of the food product. This system utilizes the HACCP Principles as defined by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF), 1992, or its successor document.
33. *Hazard Analysis Critical Control Point Plan.* A written document that delineates the formal procedures for following the HACCP principles as defined by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF), 1992, or its successor document.
34. *Health officer.* The director of the Midland city health department or his authorized representative.
35. *Hermetically sealed container.* A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.
36. *Highly susceptible population.* A group of persons who are more likely than other populations to experience food borne disease because they are immunocompromised or older adults; and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care such as a child care center.
37. *Hot truck.* A vehicle mounted food establishment which prepares foods on site within the vehicle. The vehicle is equipped to comply with regulations applicable to a fixed food service establishment.
38. *Imminent health hazard.* A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated

injury.

39. Kitchenware.All multi-use utensils other than tableware.
40. Law.Federal, state, and local statutes, ordinances, and regulations.
41. Linens.Fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
42. Microwave ovens.Microwave ovens shall meet the safety standards specified in (CFR) Code of Federal Regulation 178.1010 Refers to title 21, part 178.1010.
43. Misbranded.The presence of any written, printed or graphic matter upon or accompanying food or containers of food, including signs or placards displayed in relation to such products, which is false or misleading or which violates any applicable federal, state or local labeling requirements.
44. Mobile food unit.A vehicle mounted food establishment designed to be readily moveable.
45. Mobile food vendor:.A person who:
  - a. Travels by any conveyance or walks from place to place transporting food and offering the same for consumption with or without charge;
  - b. Without traveling from place to place, offers food for consumption with or without charge from any conveyance;
  - c. Solicits orders and as a separate transaction makes deliveries of food products to purchasers; or
  - d. Delivers food from a fixed location outside the City to food establishments located inside the City.

The term does not include persons making deliveries of food from a food establishment operated by them or their employer to another food establishment, nor does it include persons who cater food from a food service establishment operated by them or their employers.

46. Molluscan shellfish.Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.
47. Packaged.Bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. The term does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
48. Permit.The document issued by the regulatory authority that authorizes a person to operate a food establishment.
49. Person in charge.The individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.
50. Personal care items.Items or substances that may be poisonous, toxic, or a source of

contamination and are used to maintain or enhance a person's health, hygiene, or appearance. The term includes such items as medicines; first-aid supplies; and other items such as cosmetics and toiletries such as toothpaste and mouthwash.

51. *Personal Items.* Articles belonging to employees.
52. *Poisonous or toxic materials.* Substances that are not intended for ingestion including cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes and other chemicals; pesticides and rodenticides; and substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health.
53. *Potentially hazardous food.* Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms. The term does include clean, whole, uncracked, odor-free shell eggs. The term does not include foods which have a pH of 4.5 or below or a water activity (Aw) value of 0.85 or less.
54. *Premises.* The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the permit holder that may impact food establishment personnel facilities or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.
55. *Pushcart.* A non self-propelled mobile food unit limited to serving only prepackaged, nonpotentially hazardous food or prepackaged ice cream. A pushcart is classified as a mobile food unit.
56. *Ready-to-eat food.* Food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. The term includes unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under (229.164(k) of this title (relating to food); raw, washed, cut fruits and vegetables; whole, raw, fruits, and vegetables that are presented for consumption with the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peel, husks, or shells are removed.
57. *Refuse.* Solid waste not carried by water through the sewage system.
58. *Regulatory authority.* The Director of Health of the City of Midland or his designated representative.
59. *Safe material.* An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in Chapter 431 of the Texas Health and Safety code; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.
60. *Sanitization.* Effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce bacterial count, including

pathogens, to a safe level on utensils and equipment.

61. Sealed.Free of cracks or other openings that allow the entry or passage of moisture.
62. Seasonal food establishment.A food service establishment that operates at a fixed location for a period greater than 14 consecutive days, but less than six months consecutive days in conjunction with a single event or celebration.
63. Sewage.Liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.
64. Single-service articles.Cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one-person use and then discarded.
65. Single-use articles.Utensils and bulk food containers designed and constructed to be used once and discarded. The term includes items such as wax paper, butcher paper, plastic wrap, formed aluminum containers, jars, plastic tubs or buckets, bread, wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the material, durability, strength, and clean ability specifications in (299.165(a)(1), of this title (relating to equipment, utensils, and linens) for multi-use utensils.
66. Slacking.The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of 23 degrees Celsius (-10 degrees Fahrenheit) to -4 degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.
67. Temporary food establishment.A food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.
68. Utensil.Any implement used in the storage, preparation, transportation, or service of food.
69. Vending machine.A self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.
70. Vending machine location.The room, enclosure, space or area where one or more vending machines are installed and operated and includes the storage and servicing area on the premises that are used to service and maintain the vending machines.
71. Warewashing.The cleaning and sanitizing of food-contact surfaces of equipment and utensils.  
(Ordinance 6199 adopted 4/26/1983; Ordinance 7910, sec. 1, adopted 1/11/00)

### **§ 8-1-2. Prohibiting the supply of adulterated or misbranded food.**

It shall be unlawful for any person to manufacture for supply with or without charge, to possess with intent to supply, to offer or expose for supply, to sell or to supply with or without charge any food which is adulterated or misbranded. All food shall be prepared, packaged, transported and supplied in compliance with the provisions of V.T.C.A., Health and Safety Code ch. 431 (Texas Food, Drug and Cosmetic Act).  
(Ordinance 6199 adopted 4/26/1983)

### **§ 8-1-3. Examination and condemnation of food.**

- (A) Notwithstanding anything to the contrary in this Title, food supplied under the provisions of this Title may be examined or sampled by the health officer as often as necessary for enforcement of any applicable federal, state or local law. The health officer may, upon written notice to the owner or person in charge of any food establishment or operation, place a hold order on any food which he determines or has probable cause to believe is in violation of federal, state or local law. The health officer shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, sold or moved from the establishment. The health officer shall permit storage of the food under conditions specified in the hold order. The hold order shall specify with particularity the reasons therefor; and shall state that a request for hearing may be filed within ten days, and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at that hearing, the hold order may be directed by written order to denature or destroy such food or to bring it into compliance with applicable laws. Such order of the health officer to denature or destroy such food or bring it into compliance with the provisions of this Section shall be stayed if the order is appealed to a court of competent jurisdiction within three days.
- (B) Wherever the health officer shall find in any food establishment or operation any food which is unsound, or contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the health officer shall forthwith condemn or in any manner render the same unsalable as human food.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-4. Review of plans.**

- (A) Submission of plans. Notwithstanding anything to the contrary in this Title, whenever a food establishment is constructed or extensively remodeled or whenever an existing structure is converted for use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the health officer for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The health officer shall approve the plans and specifications if they meet the requirements of all applicable laws. No food establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the health officer.
- (B) Pre-operational inspection. Whenever plans and specifications are required by subsection (A) of this Section to be submitted to the health officer, the health officer shall inspect the food establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of all applicable laws.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-5. Inspection and enforcement; authority.**

The provisions of this chapter shall be enforced by the director of health and his representatives. The director of health and his representatives have authority to issue citations to persons violating the provision of this chapter. It shall be unlawful for any person to interfere with a health specialist, director of health or designee in the performance of his duties as prescribed in this chapter.

- (A) Access. Agents of the regulatory authority, after proper identification, shall be permitted to enter any food service establishment at any reasonable time, for the purpose of making inspections to determine compliance with this chapter. The agents shall be permitted to examine the records of the

establishment to obtain information pertaining to food and supplies purchased, received, or used or to persons employed.

- (B) Report of inspections. Whenever an inspection is made of a food service establishment, the findings shall be recorded on the inspection report form provided by the regulatory authority. The original of the inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of this chapter. The completed form is a public document that shall be made available for public disclosure to any person who requests it according to law.
- (C) Correction of violations. The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:
1. If an imminent health hazard exists, such as complete lack of sanitization, refrigeration, or sewage backup into the establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority.
  2. All violation of critical items shall be corrected within a time specified by the regulatory authority, but in any event, not to exceed ten days, or the next inspection, whichever comes first.
  3. All non-critical items shall be corrected as soon as possible, but in any event, by the time of the next routine, but not to exceed 20 days, or the next inspection whichever comes first.
  4. When the establishment receives a failing score; the establishment shall cease operations immediately. The establishment shall remain closed until reopened by the regulatory authority.
  5. In case of temporary food service establishments, all violations shall be corrected immediately.
- (D) Examination and condemnation of food.
1. The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of this chapter. The regulatory authority shall denature or destroy such food or bring it into compliance with the provision of this chapter.
  2. The regulatory authority shall, upon written notice to the owner or person in charge specifying the reason, place under detention any food, which it has probable cause to believe, is adulterated or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the regulatory authority, and neither food nor the containers shall be relabeled, repacked, reprocessed, altered, disposed of or destroyed without the permission of the regulatory authority.
  3. After the owner or person in charge has been afforded a hearing as provided for in section 8-11-7 of this article and on the basis of evidence produced at such hearing, or on the basis of examination in the event a written request is not received within ten days the regulatory authority may cancel the hold order or may oversee the disposal of the food placed under the hold order or direct the owner or person in charge to bring it into compliance with the provisions of this chapter.
  4. Whenever the health officer shall find in any food establishment or operation any food which is unsound, or contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the

health officer shall condemn or in any manner render the same unsalable as human food.

(E) Procedure when infection is suspected. When the regulatory authority has reasonable cause to suspect the possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The regulatory authority may require any or all of the following measures:

1. The immediate exclusion of the employee from all food service establishments;
2. The immediate closing of the food service establishment concerned until, in the opinion of the regulatory authority, no further danger of disease outbreak exists;
3. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;
4. Adequate medical and laboratory examination of the employee, of other employees and of his and their body discharges;
5. A medical release shall be required for excluded employee prior to returning to work.

(F) Heimlich Maneuver Poster.

1. Purpose. The purpose of this section is to establish the requirements for signs depicting the Heimlich Maneuver for dislodging an obstruction from a chocking person.
2. Placement. The prescribed sign shall be in all food service establishments and shall be in a place conspicuous to employees or customers.
3. Specification. The prescribed sign shall meet the following poster requirements:
  - a. The poster shall be printed on white 70 pound gloss coated cover stock and shall be no smaller than 15 inches wide by 18 inches long;
  - b. The poster shall be printed in English and Spanish and in at least two conspicuous contrasting colors. Major title and figure block shall be in contrasting color to remaining copy blocks;
  - c. The poster headings shall be a minimum Bengeat Bold 72 point or equivalent;
  - d. Subheadings shall be a minimum Bengeat Bold Italic 60 point or equivalent;
  - e. Remaining subheadings shall be a minimum Bengeat Bold 24 point or equivalent; and
  - f. Body copy shall be Helios Bold 14 point or equivalent.

(Ordinance 6199 adopted 4/26/1983; Ordinance 7910, sec. 8, adopted 1/11/00)

#### **§ 8-1-6. Disease control.**

Notwithstanding anything to the contrary in this Title, no person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound or an acute respiratory infection, shall work in a food establishment or as a mobile food vendor, or in connection with a food vending machine operation in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-1-7. Food protection in general.**

(A) General. Food shall be in sound condition, fresh, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

1. Food establishment or manufacture's dating information on food may not concealed or altered.
2. Food prepared in a private home may not be used or offered for human consumption.
3. Potentially hazardous foods can only be sold from a permitted fixed facility.

(B) Special requirements.

1. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.
2. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in unreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they are received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency.
3. Only clean whole eggs, with shell intact and without cracks or checks or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard boiled, peeled eggs, commercially prepared and packaged, may be used.

(C) Food Storage.

1. Food, whether raw or prepared, if removed from the container or package in which it was obtained shall be stored in a clean covered container, intended for food storage, except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
2. Containers of food shall be stored a minimum of six inches above the floor in the manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:
  - a. Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture; and
  - b. Containers may be stored on dollies or racks, provided such equipment is easily moveable.

3. Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.
4. Food shall be protected from cross contamination by separating raw animal food during storage, preparation, holding and display from:
  - a. Raw ready to eat food including other raw animal food such as fish sushi or molluscan shellfish, or other raw ready to eat food such as vegetables and,
  - b. Cooked ready to eat food.
5. Packaged food may not be stored in direct contact with ice or water if the food is subject to entry of water because of the nature of its packaging, wrapping, or container or its position in the ice or water. Unpackaged food may not be stored in direct contact with undrained ice with the exception of whole, raw fruits and vegetables; cut, raw vegetables and tofu may be immersed in ice or water. Raw chicken and raw fish that are received immersed in ice in shipping container may remain in that condition while awaiting preparation, display, service or sale.
6. Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar or flour not stored in the product container or package in which it was obtained, shall be stored in a container identifying the food by common name.
7. Proper separation and identification of employee or personal food or items must be stored in a manner that will prevent contamination.

(D) Refrigerated storage.

1. Conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of all potentially hazardous food at required temperatures during storage.
2. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to +/-3 degrees Fahrenheit, located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to +/-3 degrees Fahrenheit, may be used in lieu of indicating thermometers.
3. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 40 degrees Fahrenheit (five degrees Celsius) or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period shall not exceed four hours. Potentially hazardous food to be displayed for sale or service or transported shall be pre-chilled and held at a temperature of 40 degrees Fahrenheit, (five degrees Celsius) or below.
  - a. There will be a five year period from the date of the ordinance from which this section derives to phase out refrigeration equipment which is not capable of meeting the 40 degree Fahrenheit standard, but which meets the old standard of 45 degrees. Long term storage units, such as walk in coolers, must have been in use at the time of the adoption of this ordinance to enable them to be used during the "grandfather" period. Short term equipment, termed "in-use food preparation line equipment," is excepted from this requirement in clause (ii), provided they can maintain 45 degrees and all date marking and

shelf life requirements are met. At the end of the five-year grandfather period, in-use food preparation line equipment must be in place and in use in the food establishment in order to live out the remaining lifespan at 45 degrees.

- b. Equipment, except for in-use food preparation line equipment, must be replaced if required by the regulatory authority, if there is a change of ownership, or if the facilities are replaced during the normal course of operation.
4. Frozen foods shall be kept frozen and shall be stored at a temperature of zero degrees Fahrenheit (- 18 degrees Celsius) or below.
5. Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head. Ice used for cooling stored food and food containers shall not be used for human consumption.

(E) Date Marking.

1. Prepared on premise ready-to-eat potentially hazardous food held refrigerated for more than 24 hours in a food establishment shall be clearly marked at the time of preparation to indicate the date, including the day of preparation, by which the food shall be consumed which shall be seven calendar days or less from the day that the food is prepared.
2. Commercially processed ready-to-eat food prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date, including the day the original container is opened, by which the food shall be consumed which is seven calendar days or less after the original container is opened.

(F) Hot storage.

1. Conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to +/- three degrees Fahrenheit, located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to +/- three degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.
2. The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit (60 degrees Celsius) or above except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140 degrees Fahrenheit (60 degrees Celsius) or above.

(G) Food Preparation.

1. Food handling. Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross contamination.
2. Food employees shall prepare ready to eat foods using suitable utensils, such as tissue, spatulas, tongs, single use gloves or dispensing equipment.

- a. Food employees shall wash their hands.
- b. Gloves, use limitation. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation. Slash resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified by these rules, such as frozen food or a primal cut of meat. Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves are covered with a smooth, durable, and non-absorbent glove or a single-use glove. Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required in these rules such as frozen food or a primal cut of meat.
3. Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.
4. Cooking potentially hazardous foods. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit (60 degrees Celsius), except that:
  - a. Poultry, poultry stuffing, stuffed meats and stuffing containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit (74 degrees Celsius) with no interruption of the cooking process.
  - b. Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit (66 degrees Celsius).
  - c. Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit (54 degrees Celsius), and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit (54 degrees Celsius), unless otherwise ordered by the immediate consumer.
  - d. Reconstructed and/or ground beef products shall be cooked to an internal temperature of at least 155 degrees Fahrenheit for a minimum of 15 seconds, unless otherwise ordered by the immediate consumer.
  - e. Consumers shall be informed by brochures, deli case menu advisories, label statements, table tents, placards, or other effective written means of the potential hazards of raw animal food such as raw marinated fish; raw molluscan shellfish; steak tartar; partially cooked food such as lightly cooked fish, rare meat and soft cooked eggs that to ensure its safety, the food should be cooked to proper temperatures.
  - f. Food establishments which deliver shellfish to a consumer for raw consumption shall inform consumers by brochures, deli-case or menu advisories, label statements, table tents, placards, or effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such shellfish in raw or undercooked form. The language in the advisory shall be as follows unless otherwise approved by the Retail Foods Division of the Texas Department of Health in response to a written request from the food establishment: THERE IS A RISK ASSOCIATED WITH CONSUMING RAW OYSTERS OR ANY RAW ANIMAL PROTEIN. IF YOU HAVE CHRONIC ILLNESS OF THE LIVER, STOMACH, OR BLOOD, OR HAVE IMMUNE DISORDERS, YOU ARE AT THE GREATEST RISK OF ILLNESS FROM RAW OYSTERS AND

SHOULD EAT OYSTERS FULLY COOKED. IF UNSURE OF YOUR RISK,  
CONSULT YOUR PHYSICIAN.

- (H) Parasite destruction. Before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked or marinated partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of - four degrees Fahrenheit or below for seven days in a freezer or - 31 degrees Fahrenheit or below for 15 hours in a blast freezer. Records must be maintained for 90 calendar days beyond the time of service or sale of the fish. If the fish are tuna of the species Thunnus alalunga, Thunnus albacores (Yellow fin tuna), Thunnus atlanticus, Thunnus maccoyii (Blue fin tuna, Southern), thunnus obesus (Big eye tuna) or Thunnus thynnus (Blue fin, Northern), the fish may be served or sold in raw, raw-marinated or partially cooked ready-to-eat form without freezing.
- (I) Dry milk and dry milk products. Reconstituted dry milk products may be used in instant desserts and whipped products or for cooking and baking purposes.
- (J) Liquid, frozen, dry eggs and egg products.
1. Liquid, frozen, dry eggs and egg products shall be obtained pasteurized. Pasteurized liquid, frozen or dry eggs shall be substituted for raw eggs in preparation of: Caesar salad, hollandaise sauce or bernaise sauce, mayonnaise, eggnog, ice cream and egg fortified beverages.
  2. Shell eggs that are broken, combined in a container, and not cooked immediately are prohibited.
- (K) Reheating. Potentially hazardous foods that have been cooked and then refrigerated, shall be reheated rapidly to 165 degrees Fahrenheit (75 degrees Celsius) or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmer, and similar hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.
- (L) Cooling. Potentially hazardous foods that have been cooked and are required to be cooled shall be rapidly cooled to 40 degrees F (five degrees C) or below within four hours of preparation. Potentially hazardous foods shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container.
- (M) Product thermometers. Metal stem-type numerically scaled indicating thermometers, accurate to +/- two degrees Fahrenheit, shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.
- (N) Thawing potentially hazardous foods. Potentially hazardous foods shall be thawed:
1. In refrigerated units not to exceed 40 degrees Fahrenheit (five degrees Celsius);
  2. Completely submerged under running water at a water temperature of 70 degrees Fahrenheit (21 degrees Celsius) or below with sufficient water velocity to agitate and float off loose particles in an overflow;
  3. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of the continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
  4. As part of the conventional cooking process.
- (O) Slacking. Frozen potentially hazardous food that is slacked to moderate the temperature shall be held under refrigeration that maintains the food temperature at 41 degrees Fahrenheit or less or at any

temperature if the food remains frozen.

(P) Food Display and service.

1. Potentially hazardous foods. Potentially hazardous food shall be kept at an internal temperature of 40 degrees Fahrenheit (five degrees Celsius) or below or at an internal temperature of 140 degrees Fahrenheit (60 degrees Celsius) or above during storage, preparation, display, service and transport, except that rare roast beef shall be held for service at a temperature of at least 130 degrees Fahrenheit (54 degrees Celsius).
2. Time as public health control. If time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:
  - a. The food shall be marked, labeled, tagged or otherwise unmistakably identified to indicate the time which is four hours past the point when the food was removed from temperature control;
  - b. The food shall be cooked and served, served if a ready-to-eat food or discarded within four hours of the time at which the food was removed from temperature control;
  - c. The food in unmarked containers or packages or marked to exceed a four hour time limit shall be discarded; and
  - d. Written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance.
3. Milk and cream dispensing.
  - a. Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one pint in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. Where it is necessary to provide individual servings under special institutional circumstances, milk and milk products may be poured from a commercially filled container provided such a procedure is authorized by the regulatory authority. Where a bulk dispenser for milk and milk products is not available and portions of less than one-half-pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container.
  - b. Cream or half and half shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.
4. Nondairy products dispensing. Nondairy cream shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.
5. Condiment dispensing.
  - a. Condiments, seasonings and dressings for self-service use shall be provided in individual packages, from dispensers, or from containers protected in accordance with paragraph (h) of this subsection.
  - b. Condiments provided for table or counter service shall be individually portioned, except

that catsup and other sauces may be served in the original container or pour type dispenser. Sugar for consumer usage shall be provided in individual packages or in pouring-type dispensers.

6. **Ice dispensing.** Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-selfdispensing utensils or through automatic service, ice-dispensing equipment. Ice dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap.
  7. **Dispensing utensils.** To avoid unnecessary manual contact with food suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall be:
    - a. Stored in the food with the dispensing utensil handle extended out of the food;
    - b. Stored clean and dry;
    - c. Stored in running water; or
    - d. Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.
  8. **Reservice.** Once served to a consumer, portions of left-over food shall not be served again except that packaged food, other than potentially hazardous foods, that is still packaged and is still in sound condition may be served.
  9. **Display equipment.** Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases or by other effective means. The minimum height requirement for sneeze guards is 18 inches unless otherwise specified by the regulatory authority. Enough hot or cold food facilities shall be available to maintain the required temperatures of potentially hazardous foods on display.
  10. **Reuse of tableware.** Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement.
- (Q) **Food Transportation.** During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be over wrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this chapter relating to food protection and food storage.
- (R) **Hazard Analysis Critical Control Points (HACCP) Plan Requirements.** Before engaging in an activity that requires a HACCP plan, a food establishment shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under paragraph (2) of this subsection and the relevant provisions of these rules if a variance is required.

A food establishment shall have a properly prepared HACCP plan as specified in the Texas Food Establishment Rules (25 TAC 229.161—229.175)

Contents of a HACCP plan. For a food establishment that is required under paragraph (1) of this subsection to have a HACCP plan, the plan and specifications shall indicate:

1. A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;
2. A flow diagram by specific food and category type identifying critical control points and providing information on the following:
  - a. Ingredients, materials, and equipment used in the preparation of the food; and
  - b. Formulation or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
3. Food employee and supervisory training plan for the person(s) in charge and food employee(s) pertaining to public health and the safety and integrity of food;
4. A statement of standard operating procedures for the plan under consideration including and clearly identifying:
  - a. Each critical control point;
  - b. The critical limits for each critical control point;
  - c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;
  - d. The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
  - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
  - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
5. Additional scientific data or other information, as requested by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

Confidentiality, trade secrets. The regulatory authority shall treat as confidential in accordance with the requirements of the Public Information Act, Texas Government Code Chapter 552, information that meets the criteria for a trade secret and is contained on inspections report forms and in the plans as specifications submitted.

(Ordinance 6199 adopted 4/26/1983; Ordinance 7910, sec. 2, adopted 1/11/00)

#### **§ 8-1-8. Permits required.**

No persons shall operate a food establishment or as a mobile food vendor who does not have a valid permit to do so, issued to him by the health officer. Only a person who complies with the requirements of this Title shall be entitled to receive or retain such a permit. Permits are not transferrable. A valid permit shall be posted in every food establishment, except temporary food establishments. A valid permit shall be displayed on every mobile food vending unit. Approved permits shall be required; however, no permit fee

shall be assessed for any food establishment or operation funded by the City or operated by a public school system. No permit to operate a food establishment shall be issued for a residential food establishment unless such food establishment is separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-9. Permit issuance, expiration.**

- (A) Any person desiring to operate a food establishment or as a mobile food vendor shall make written application for a permit on forms provided by the health officer. Such application shall include at least the name and address of each applicant, the location and type of the proposed food establishment or operation and the signature of such applicant. It may include other information necessary to regulate the type of operation for which the permit is issued.
- (B) Prior to approval of an application for a permit, the health officer shall inspect the proposed food establishment or mobile food vending unit to determine compliance with the requirements of this Title.
- (C) The health officer shall issue a permit to the applicant if his inspection reveals that the proposed food operation complies with the requirements of this Title.
- (D) All permits issued under this Title expire December 31 of the year issued.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-10. Suspension of permit.**

- (A) The health officer may, without warning, notice, or hearing, suspend any permit issued under this Title if the holder of the permit does not comply with the requirements of this Title, or if the food establishment or operation does not comply with the requirements of this Title, or if the food establishment or operation otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 8-1-13. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten days of receipt by the health officer of a written request for hearing.
- (B) Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the health officer by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The health officer may end the suspension at any time if reasons for suspension no longer exists.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-11. Revocation of permits or denial of permit application.**

The health officer may, after providing opportunity for a hearing, revoke or deny a permit issued under this Title for serious or repeated violations of any of the requirements of this Title or for interference with the health officer in the performance of his duties. Prior to revocation, the health officer shall notify the holder of the permit or the person in charge, in writing, of the reasons for which the permit is subject to revocation or denial and that the permit shall be revoked or denied at the end of a specified time period following service of such notice unless a written request for a hearing is filed with the health officer by the holder

of the permit within ten days. If no request for hearing is filed within the ten-day period, the revocation or denial of the permit becomes final upon expiration of the time specified in the notice of pending revocation or denial. Whenever a revocation or denial of a permit has become final, the holder of the revoked or denied permit may make written application for a new permit.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-12. Hearings.**

The hearings provided for in this Title shall be conducted by the health officer of the Midland city-county health department or his designated representative at a time and place designated by him. Based upon the recorded evidence of such hearing, the health officer of the Midland city-county health department or his designated representative shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the health officer.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-13. Service of notices.**

A notice provided in this Title is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the health officer.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-14. Food sources.**

All food supplied within the City shall be obtained from sources approved by the health officer. Food obtained from establishments located outside the police jurisdiction of the City may be sold within the police jurisdiction of the City if such establishments conform to the provisions of this Title or to substantially equivalent provisions. To determine the extent of compliance with such provision, the health officer may accept reports from health authorities in jurisdictions where such establishments are located.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-15. Remedies.**

- (A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Title and any person (or responsible officer of that person) who is the holder of a permit or who otherwise operates a food establishment that does not comply with the requirements of this Chapter shall be fined not more than \$2,000.00.
- (B) Injunctions. The health officer may seek to enjoin violations of this Chapter.

(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

#### **§ 8-1-16. Grease interceptor requirements.**

- (A) Grease interceptors and sampling portals shall be installed and properly operated in all food establishments where preparation of food occurs on the premises, except for establishments which only serve beverages. The design and construction of any grease interceptor and sampling portal shall be approved by the City building official or his authorized representative. The building official or his authorized representative shall determine the minimum acceptable capacity and size of any grease interceptor and location of any sampling portal and shall issue a permit for the operation of a grease

interceptor and a sampling portal. This permit shall not relieve the food service establishment from its obligation to install, operate, maintain, and if necessary modify the grease interceptor so that the discharge is in compliance with all applicable laws. The health officer shall be responsible for enforcement of the proper operation of grease interceptors and sampling portals. The health officer shall adopt such procedures, forms, rules and regulations as are reasonably necessary to effectively enforce the provisions of this Section.

- (B) The grease interceptors shall be maintained and serviced on a regular basis to prevent grease and oil clogging the City of Midland's sewer line and to prevent the food service establishment's grease interceptors from being overloaded. Use of hot water, chemicals, other agents or devices, unless approved by the health officer or utilities department, for the purpose of causing the oil, grease or sand to pass through the facility provided is prohibited.
- (C) Right of entry. The health officer and the director of utilities, or their authorized designees, shall be permitted to gain access to such properties as may be necessary for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Section. The food service establishment shall compensate the City of Midland for all costs of sampling and laboratory analysis in accordance with the provisions of this Section. Said cost shall be charged in addition to the monthly sewer service charge.
- (D) The health officer shall suspend the food establishment's permit pursuant to the provisions of Midland City Code Section 8-1-10, "Suspension of permit," if the health officer shall find any grease interceptor to be in such a condition as to constitute a potential hazard to public health. Such suspension shall exist until such time as the grease interceptor's deficiency has been corrected and approved by the health officer.
- (E) The food service establishment shall notify the health officer of any change in the conditions of the food service establishment's operation. The health officer shall determine if the grease interceptor must be changed to meet the changed conditions of food establishment's operation.
- (F) Any sewer line stoppage, damage or restriction of flow caused by an illegal discharge shall be considered a violation of this ordinance and the person or persons responsible will be held liable.

(Ordinance 7103 adopted 8/13/1991)

#### **§ 8-1-17. Requirements for microwave ovens.**

Microwave ovens used in food establishments, food vending areas and mobile food units shall be operated, maintained and repaired in accordance with all applicable provisions of Rules 301.78-01.006 of the Texas Department of Health, entitled "Texas Regulations for the Control of Radio-Frequency Electromagnetic Radiation."

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-1-18. Employee health.**

- (A) No person while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.
- (B) Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens;

or unwrapped single-service or single-use articles.

- (C) The owner or person in charge shall require food employees to provide information about their health and activities as they relate to diseases that are transmissible through food.
  - (D) Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Food handlers shall keep their fingernails clean, trimmed, filed and unpainted.
  - (E) The outer clothing of all employees shall be clean.
  - (F) Food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
  - (G) This section does not apply to food employees such as counter staff who only serve beverages and wrapped; or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single use articles.
  - (H) Employees shall remove all jewelry, and during periods when food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.
  - (I) Employees shall consume food only in designated dining areas. An employee dining area shall not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection
  - (J) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment washing or utensil washing or food preparation areas.
  - (K) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.
  - (L) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment.
- (Ordinance 7910, sec. 3, adopted 1/11/00)

#### **§ 8-1-19. Equipment and utensils.**

- (A) General.Multi-use equipment and utensils shall be constructed and repaired with safe materials including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Equipment, utensils, and single service articles shall not impact odors, color, or taste, nor contribute to the contamination of food.
  - 1. Lead.Pewter alloys containing lead in excess of 0.05 percent may not be used as food contact surfaces. Solder and flux containing lead in excess of 0.2 percent may not be used as a food contact surface.
  - 2. Solder.If solder is used, it shall be composed of safe materials and be corrosion resistant and comply with Uniform Plumbing Code, Chapter 3.
  - 3. Wood.Hard maple or equivalently nonabsorbent materials that meets the general requirements set forth in paragraph (a) of this subsection may be used for cutting blocks, cutting boards,

salad bowls, and baker's tables. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons. The use of wood as a food-contact surface under other circumstances is prohibited.

4. Plastics. Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in this subsection, are permitted for repeated use.
5. Mollusk and crustacean shell. Mollusk and crustacea shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.
6. Single-service. Reuse of single-service articles is prohibited.

(B) Design and Fabrication.

1. General. All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, peeling, pitting, chipping and crazing.
2. Equipment in new or extensively remodeled establishments shall be National Sanitation Foundation or equivalent approval. Any other equipment is subject to approval by the regulatory authority.
  - a. Food contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits and similar imperfections, and free of difficult to clean internal corners and crevices.
  - b. Cast iron may be used as a food contact surface only if the surface is heated, such as in grills, griddle tops, and skillets.
  - c. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers or hot oil cooking equipment and hot oil filtering systems such threads shall be minimized.
  - d. Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.
  - e. Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice, provided that such tubing is fabricated from safe materials, is grommeted at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units shall not pass through the ice machine or the ice storage bin.
  - f. Sinks and drain boards shall be self-draining.
3. Accessibility. Unless designed for in-place cleaning, food contact surfaces shall be accessible for cleaning and inspection.
  - a. Without being disassembled;

- b. By disassembling without the use of tools; or
  - c. By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench.
4. In-place cleaning. Equipment intended for in-place cleaning shall be so designed and fabricated that:
    - a. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen;
    - b. Cleaning and sanitizing solutions will contact all interior food-contact surfaces;
    - c. The system is self-draining or capable of being completely evacuated; and
    - d. CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food contact surfaces throughout the fixed system are being effectively cleaned.
  5. Pressure spray cleaning. Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.
  6. Thermometers. Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled and accurate to +/- two degrees Fahrenheit.
  7. Nonfood-contact surfaces. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, nonabsorbent, corrosion-resistant, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.
  8. Ventilation hoods design. Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food contact surfaces.
    - a. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement if not designed to be cleaned in place. All ventilation hoods and related equipment must be installed according to the City of Midland Mechanical Code.
    - b. Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.
  9. Existing equipment. Equipment which was installed in a food service establishment prior to the effective date of this chapter, and which does not meet fully all of the design and fabrication requirements of this rule, shall be deemed acceptable in that establishment as long as there is no change of ownership, if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after the effective date of this chapter shall meet the requirements of this chapter.

(C) Equipment installation and location.

1. General. Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines or water lines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.
2. Table mounted equipment.
  - a. Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a four-inch clearance between the table or counter and equipment and shall be installed to facilitate the cleaning of the equipment and adjacent areas.
  - b. Equipment is portable within the meaning of subparagraph (a) of this paragraph if:
    - (1) It is small and light enough to be moved easily by one person; and
    - (2) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.
3. Floor-mounted equipment. Floor mounted equipment, unless readily moveable, shall be:
  - a. Sealed to the floor;
  - b. Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or
  - c. Elevated on legs to provide at least a six inch clearance between the floor and equipment, except that vertically mounted floor mixers may be elevated to provide at least a four-inch clearance between the floor equipment if no part of the floor under the mixer is more than six inches from cleaning access.
4. Equipment is easily movable if:
  - a. It is mounted on wheels or casters;
  - b. It has no utility connection or has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning; and
  - c. Unless sufficient space is provided for easy cleaning between and behind each unit of floor mounted equipment, the space between it and adjoining equipment units, and between it and adjacent walls, shall be closed; or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.
5. Aisles and working spaces. Aisles and working spaces between units of equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily moveable storage equipment such as pallets, racks, and dollies shall be positioned to provide accessibility to working areas.

(D) Equipment and utensil cleaning and sanitization.

1. Cleaning frequency.

- a. Tableware shall be washed, rinsed, and sanitized after each use.
  - b. The food contact surfaces of equipment shall be kept free of food debris and other oil accumulations. Equipment food contact surfaces and utensils shall be clean to sight and touch.
  - c. Equipment food contact surfaces and utensils shall be cleaned: before each use with a different type of raw animal food such as beef, fish, lamb, pork or poultry; each time there is a change from working with raw foods to working ready-to-eat foods; between uses with raw fruits or vegetables and with potentially hazardous food; before using or storing a food temperature measuring device; and at any time during the operation when contamination may have occurred.
  - d. The food contact surfaces of cooking and baking equipment, similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day (or at a frequency to preclude accumulation of soil residues). Except that this shall not apply to hot oil cooking equipment and oil filtering equipment.
  - e. The food contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.
  - f. The Regulatory Authority approves the cleaning schedule based on consideration of:
    - (1) Characteristics of equipment and its use;
    - (2) The type of food involved;
    - (3) The amount of food residue accumulation, the temperature at which the food is maintained during the operation and the potential for rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing food borne disease.
  - g. Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulations of dust, dirt, food particles, and other debris.
2. Wiping cloths.
    - a. Cloths used for wiping food spills on tableware, such as plates or bowls being served to the consumer, shall be clean, dry and used for no other purpose.
    - b. Moist cloths for wiping used for wiping food spills on kitchenware and food-contact surfaces of equipment shall be clean and rinsed frequently in an approved sanitizing solution and used for no other purpose. These cloths shall be stored in the sanitizing solution between uses.
    - c. Moist cloths used for cleaning nonfood-contact surfaces of equipment such as counters, dining table tops and shelves shall be clean and rinsed as specified in (b)(2) of this paragraph, and used for no other purpose. These cloths shall be stored in the sanitizing solution between uses.
    - d. Sponges may only be used for scraping and scouring soiled dishware.
  3. Manual cleaning and sanitizing.

- a. A three compartment sink shall be used for washing, rinsing and sanitizing of utensils and equipment done manually. Existing establishments not having a three compartment sink that can demonstrate an acceptable procedure for washing, rinsing and sanitizing utensils and equipment may be exempt from this requirement by the regulatory authority. Sinks shall be large enough to permit the complete immersion of the utensils and equipment and each compartment sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if washing, rinsing and sanitizing cannot be accomplished by immersion. Two compartment sinks are not acceptable.
- b. Drain boards or easily movable dish-tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.
- c. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.
- d. Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:
  - (1) Sinks shall be cleaned prior to use;
  - (2) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean;
  - (3) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and
  - (4) Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in this paragraph.
- e. The food contact surfaces of all equipment and utensils shall be sanitized by:
  - (1) Immersion for at least one-half minute in clean, hot water at a temperature of at least 171 degrees Fahrenheit (seventy-seven degrees Celsius);
  - (2) Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and a temperature of at least 75 degrees Fahrenheit (24 degrees Celsius);
  - (3) Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and have a pH not higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit (24 degrees Celsius);
  - (4) Immersion in a solution of quaternary ammonia shall have a minimum temperature of 75 degrees Fahrenheit (24 degrees Celsius) have a concentration of 200 ppm or as indicated by the manufacturer use directions included in the labeling and used in water with 500mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer label;
  - (5) Immersion in a clean solution containing any other solution of chlorine, quaternary ammonia or iodine may be used if it can be demonstrated that sanitization is achieved and they are approved by the regulatory authority or other chemical sanitizers may be used if approved by the regulatory authority and applied in accordance with the

manufactures use directions included in the labeling;

- (6) Treatment with steam, free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or
  - (7) Rinsing, spraying or swabbing with a chemical sanitizing solution at least twice the strength required for that particular sanitizing solution under clause (e) of this subparagraph, in the case of equipment too large to sanitize by immersion.
- f. When hot water is used for sanitizing, the following facilities shall be provided and used:
- (1) An integral heating devise or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of 171 degrees Fahrenheit (77 degrees Celsius);
  - (2) A numerically scaled indicating thermometer, accurate to +/- three degrees Fahrenheit, convenient to the sink for frequent checks of water temperature; and
  - (3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in hot water.
- g. When chemicals are used for sanitization, a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided, available, and used.
- h. Mechanical cleaning and sanitizing.
- (1) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machines or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. Machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agents, dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.
  - (2) The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A one-fourth-inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.
  - (3) Machine or water line mounted numerically scaled indicating thermometers accurate to +/- three degrees Fahrenheit, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.
  - (4) Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

- (5) Drain boards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily moveable dish tables for the storage of soiled utensils or the use of easily moveable dish tables for the storage of clean utensils following sanitization.
- (6) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of dishwashing machine operation. Equipment and utensils shall be placed in racks, trays or baskets, or on conveyors, in a way that food contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.
- (7) Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used provided that:
  - i. The temperature of the wash water shall not be less than 120 degrees Fahrenheit (49 degrees Celsius);
  - ii. The wash water shall be kept clean;
  - iii. Chemicals added for sanitization purposes shall be automatically dispensed;
  - iv. Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufactures' specifications for time and concentration;
  - v. The chemical sanitizing rinse water temperature shall not be less than 75 degrees Fahrenheit (24 degrees Celsius) nor less than the temperature specified by the machine's manufacture, and
  - vi. Chemical sanitizers used shall be approved and a test kit or device that accurately measures the parts per million concentration of the solution shall be available and used.
- (8) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained not less than the temperatures stated below:
  - i. Single-tank, stationary-rack, dual temperature machine:

Wash temperature: 150 degrees F (74 degrees C)  
Final rinse temperature: 180 degrees F (82 degrees C)
  - ii. Single-tank, stationary-rack, single temperature machine:

Wash temperature: 165 degrees F (74 degrees C)  
Final rinse temperature: 165 degrees F (74 degrees C)
  - iii. Single-tank, conveyor:

Wash temperature: 160 degrees F (71 degrees C)

Final rinse temperature: 180 degrees F (82 degrees C)

iv. Multi-tank, conveyor machine:

Wash temperature: 150 degrees F (66 degrees C)

Pumped rinse temperature: 160 degrees F (71 degrees C)

Final rinse temperature: 180 degrees F (82 degrees C)

v. Single-tank, pot, pan, and utensil washer (either stationary or moving rack):

Wash temperature: 140 degrees F (60 degrees C)

Final rinse temperature: 180 degrees F (82 degrees C)

- (9) All dishwashing machines shall be thoroughly cleaned once a day or more often when necessary to maintain them in a satisfactory operating condition.
- i. Drying. After sanitization, all equipment and utensils shall be air-dried. The use of towels is prohibited.

**(E) Equipment and Utensil Storage.**

1. Handling. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates and similar items shall be handled without contact with inside surfaces or surfaces that contact the users' mouth.
2. Storage.
  - a. Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.
  - b. Utensils shall be air dried before being stored or shall be stored in a self-draining position.
  - c. Glasses and cups shall be stored inverted. Other stored utensils shall be covered or inverted, whenever practical. Facilities for the storage of knives, forks, and spoons shall be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations, shall protect these articles from contamination and present the handle of the utensil to the consumer.
  - d. If presenting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table or counter is occupied.
3. Single service articles.

- a. Single-service articles shall be stored at least six inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.
  - b. Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.
  - c. Single-service knives, forks, and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks, and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination, and present the handle of the utensil to the consumer.
4. Prohibited Storage Area. The storage of food, equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

(Ordinance 7910, sec. 4, adopted 1/11/00)

#### **§ 8-1-20. Adoption of the Texas Food Establishment Rules.**

The City of Midland adopts by reference the provisions found in Title 25, Part 1, Chapter 228 of the Texas Admin. Code, as amended, regarding the regulation of food establishments in this jurisdiction.

(Ordinance 9717, sec. 1, adopted 11/21/2017 adopted eff. 1/1/2018)

City of Midland, TX

IN GENERAL

**Chapter 8-2**

**FOOD SERVICE**

**§ 8-2-1. Code adopted.**

The definitions, the rules, the regulations, and the enforcement provisions contained in the "Rules on Food Service Sanitation 301.73.11.001-011," of the Texas Department of Health, Division of Food and Drugs, a copy of which, authenticated by the signatures of the Mayor and city secretary and the impression of the City seal, was made a public record by resolution of the City Council passed at a regular meeting on March 29, 1983, as on file in the City secretary's office, are hereby adopted as the food service sanitation code of the City as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter. Provided that the words "regulatory authority" in said "Rules of Food Service Sanitation" shall be understood to refer to the City of Midland, Texas.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-2-2. Permit fees; permits.**

It shall be unlawful for any person to operate a food service establishment in the City who does not possess an unrevoked permit from the health department director. Such permit shall be posted in a conspicuous place within the food service establishment. Only persons who comply with the requirements of this Chapter shall be entitled to receive and retain such a permit. A person conducting an itinerant or temporary food service establishment shall also be required to secure a permit in accordance with the provisions of subsection (E) of this Section.

- (A) Renewal of permit. Permits for the operation of food service establishments shall expire on December 31 of each year and must be renewed annually, and the fee provided for herein will become due and payable January 1 of each year. Such permits may be obtained during the month of December just prior to the day of expiration, or they may be secured during a period of grace between January 1 and February 1 following the date of expiration. Failure to secure a permit within the time provided in this Section shall result in a penalty of 25 percent of the applicable permit fee in addition to the amount otherwise due for a permit under this Section.
- (B) Permit fee. The license fee for permits issued under this Section are set forth in the Health & Senior Services Fee Schedule, as amended.
- (C) Application. Any person desiring a permit to establish, maintain or operate a food service establishment shall make written application to the health department director of the City, on a form to be furnished by the department of health, stating the name and residence of all members of the firm, if a partnership, or the names and addresses of the principal officers, if the applicant is a corporation, and the location of the establishment.
- (D) Transfer. No permit issued under the provisions of this Section shall be transferable from either one establishment to another establishment at a different location, or from one person to another who may subsequently own a certain establishment.
- (E) Temporary permits. Establishments operating for a duration of less than 14 days shall be considered temporary, and a flat fee set forth in the Health & Senior Services Fee Schedule shall be charged for a temporary permit in lieu of the permit fees described in subsection (B) of this Section.
- (F) Bed and breakfast permits. The license fee for food service permits for bed and breakfast facilities are set forth in the Health & Senior Services Fee Schedule, as amended.

(Ordinance 6199 adopted 4/26/1983; Ordinance 7118 adopted 9/10/1991; Ordinance 7393 adopted 11/22/1994; Ordinance 9746, sec. 5, adopted 3/27/2018)

**§ 8-2-3. Restroom requirements.**

Every food service establishment shall provide its employees with at least one restroom, with associated handwashing facilities, conveniently located within the establishment. Food service establishments with five or more employees on duty at one time shall provide two restrooms, one for each sex. Whenever alcoholic beverages are provided or whenever sit-down service is provided to customers, at least two restrooms, one for each sex, shall be available for public use.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-2-4. Water supply.**

Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated according to law.

- (A) Transportation. All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed and operated according to law.
- (B) Bottled water. Bottled and packaged potable water shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.
- (C) Water under pressure. Water under pressure at the required temperatures shall be provided at all fixtures and equipment that use water.
- (D) Hot water. Hot water generation and distribution systems shall be sufficient to meet peak hot water demands throughout the food establishment. Water under pressure at the required minimum temperature of 110 degrees F (45 degrees C) must be provided.
- (E) Steam. Steam used in contact with food or food contact surfaces shall be free from any harmful materials or additives.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-5. Sewage.**

All sewage, including liquid waste, shall be disposed of by a public sewage system or septic system. Nonwater carried sewage disposal facilities are prohibited.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-6. Plumbing.**

*General.* Plumbing shall be sized, installed and maintained in accordance with the Uniform Plumbing Code. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

- (A) Non-potable water system. A nonpotable water system is permitted only for purposes such as air conditioning and fire protection and only if the system is installed according to law and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment, that contacts food or utensils. The piping of any nonpotable water system shall be durable identified so that it is readily distinguishable from piping that carries potable water.
- (B) Backflow. City of Midland Ordinance

Refer to Sections 8-9-1 et seq.

1. The potable water system shall be installed to preclude the possibility of backflow. A backflow or back siphon prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection and testing for that specific application and type of device.
2. An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch). Air gaps may be approved based on Section 601-C of the UPC.
3. A backflow prevention device shall be located so that it may be serviced and maintained.
4. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(C) Grease traps. Refer to City of Midland Requirements.

(Ordinance 7910, sec. 7, adopted 1/11/00)

#### **§ 8-2-7. Lavatory facilities.**

Lavatories shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation areas and utensil washing areas. Lavatories shall be accessible to employees at all times. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand washing.

- (A) Hand sinks. A separate sink assigned for handwashing provided with hot and cold running water tempered through a mixing valve shall be located to be accessible to each food preparation and utensil washing area. As a general rule, all handsinks shall be located within 25 linear feet of food preparation and utensil washing areas so it is convenient for employees to wash hands. Floor pedals, knee pedals, electronic eye and metered faucets are allowable. A liquid soap dispenser and individual sanitary hand towels are required. Blow dryers are not allowed in food preparation areas.
  - (B) Lavatory faucets. Each lavatory shall be provided with hot and cold water tempered by means of mixing valve or combination faucet. Any self-closing, slow-closing, or metered faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam-mixing valves are prohibited.
  - (C) Lavatory supplies. A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each lavatory. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.
  - (D) Lavatory maintenance. Lavatories, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair.
- (Ordinance 7910, sec. 7, adopted 1/11/00)

#### **§ 8-2-8. Garbage and refuse.**

##### **(A) Containers.**

1. Each food service establishment shall have its own, unshared food waste dumpster, compactor or compactor system of sufficient size to contain all the garbage and refuse that accumulates.

2. Garbage and refuse shall be kept in durable, easily cleanable, insect-proof, and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers, and they may be used for storage inside the food service establishment.
3. Containers used in food preparation and utensil-washing areas shall be kept covered except when actually in use.
4. Containers stored outside the establishment, and dumpsters, compactors and compactor systems shall be easily cleanable, shall be provided with tight fitting lids. Doors or covers, shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.
5. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulate.
6. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas.
7. Suitable facilities, including hot water and detergent or steam shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage. Power washing and contracted cleaning services shall be performed according to Law.

(B) Storage.

1. Garbage and refuse on the premises shall be stored in manner to make it inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited.
2. Cardboard or other packaging materials that does no contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside in covered receptacle if it is stored so that it does not create a rodent harborage problem.
3. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof and shall be large enough to store the garbage and refuse containers that accumulate.
4. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete, or machine-laid asphalt, that is kept clean and maintained in good repair.

(C) Disposal.

1. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.
2. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter in accordance with law. Areas around incineration facilities shall be kept clean and orderly.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-9. Insect and rodent control.**

Effective measures intended to prevent the presence of rodents, flies, cockroaches and other insects on the premises shall be utilized as determined by the regulatory authority. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

- (A) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device. Insect control devices shall be installed so that the devices are not located over food preparation area; and dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles
- (B) Preventive application for insect and rodent control shall be performed by a certified pest control operator.
- (C) Opening to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, Closed windows, screening, controlled air currents, or other means. Screen doors shall be self closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-10. Cleaning physical facilities.**

*General.* Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when least amount of food is exposed, such as after closing or between meals. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust arresting sweep compounds with brooms. In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall be installed and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of lavatories, utensil washing or equipment washing or food preparation sinks for this purpose is prohibited.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-11. Lighting.**

At least 50 foot candles of light shall be provided to all working surfaces and at least 30 foot candles of light shall be provided to all other surfaces and equipment in food preparation, utensil-washing, and hand washing areas, and in toilet rooms. At least 20 foot candles of light at a distance of 30 inches from the floor shall be provided in all other areas, except that this requirement applies to dining areas only during cleaning operations.

- (A) All light fixtures must be maintained clean, operational, and in good repair.
- (B) Preventive application for insect and rodent control shall be performed by a certified pest control operator.
- (C) Opening to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors. Closed windows, screening, controlled air currents, or other means. Screen doors shall be self closing, and screens for

windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch.

(D) Protective shielding.

1. Shielding to protect against broken glass falling onto food shall be provided and maintained in good repair for all artificial lighting fixtures located over, by, or within food storage, food preparation, food service, and food display facilities where utensils and equipment are cleaned and stored.
2. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed. Teflon coated safety bulbs are allowed.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-12. Ventilation.**

All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed operated according to law, kept clean, maintained in good repair, operated according to law, vented the outside, and shall not create an unsightly, harmful or unlawful discharge.

(A) Special Ventilation.

1. Intake and exhaust air-ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
2. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.
3. Ventilation hoods are required for any cooking, grilling, baking, and frying areas or as required by the latest edition of the Uniform mechanical Code.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-13. Dressing rooms and locker room areas.**

If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

(A) Locker area.Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms or in food storage rooms or areas containing only completely packaged single-service articles.

(B) Personal items.Personal items shall not be stored in food storage, food preparation or food service areas

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-14. Poisonous or toxic materials.**

Only those poisonous or toxic materials necessary for the maintenance of the establishment, cleaning or sanitizing of equipment and utensils, and the control of insects and rodents shall be present in food service

establishment.

(A) Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.

(B) Storage of Materials.

1. Poisonous or toxic materials consist of the following three categories:
  - (a) Insecticides and rodenticide;
  - (b) Detergents, sanitizer, and related cleaning or drying agents;
  - (c) Caustics, acids, polishes, and other chemicals.
2. Each of these categories shall be stored and located to be physically separated from each other. All poisonous or toxic materials shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose. To preclude potential contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils or single service articles except that this requirement does not prohibit the convenient availability of detergent or sanitizers at utensil or dishwashing stations.

(C) Use of Materials.

1. Bactericides, cleaning compounds or other compounds intended for use on food contact surfaces, shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees or other persons.
2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturers labeling.

(D) Personal Medications.

1. Only those medications that are necessary for the health of employees shall be allowed in the food establishment. This section does not apply to medicines that are stored or displayed for retail sale.
2. Medicines that are in a food establishment for the employees use shall be labeled and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.
3. Refrigerated Medicines, Storage. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be stored in a package or container and kept inside a covered, leak proof container that is identified for the storage of medicines; and located so that they are inaccessible to children.

(E) First aid supplies. First aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-15. Premises.**

(A) Food service establishments and all parts of the property used in connection with operations of the

establishment shall be kept free of litter.

- (B) The walking, and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete or asphalt or with gravel or similar materials and minimize dust. These surfaces shall be graded to prevent pooling and kept free of litter.
- (C) Only articles necessary for the operation and maintenance of the food service establishment shall be stored on the premises
- (D) The traffic of unnecessary or unauthorized persons through the food preparation and utensil-washing areas is prohibited.
- (E) Living areas. Living or sleeping quarters within a food service establishment is prohibited.
- (F) Laundry facilities in a food service establishment shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. If such items are laundered on the premises, an electric, gas, or steam dryer shall be provided and used.

Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

(G) Linens and Clothes Storage.

- 1. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.
- 2. Soiled clothes and linens shall be stored outside the food preparation area in nonabsorbent containers or washable laundry bags until removed for laundering.

(H) Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

(I) Animals. Live animals, including birds, and turtles shall be excluded from within the food service operational premises and from immediately adjacent areas under the control of the food service establishment. This exclusion does not apply to shellfish, or to fish in aquariums. Live fish tanks are subject to removal by the regularity authority if not maintained in clean, sanitary condition. Patrol dogs accompanying security or police officers, or guide dogs accompanying blind persons shall be permitted in dining areas.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-16. Construction and maintenance of physical facilities.**

- (A) Floor construction. Floors and floor coverings of all food preparation, food service, food storage, and utensil-washing areas, and the floors of all walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth durable material such as stainless steel, terrazzo ceramic or quarry tile, or the equivalent as approved by the Regulatory Authority and shall be maintained in good repair. Sealed concrete and VCT are not acceptable as a floor surface for areas mentioned above.
- (B) Durable grades of sheet vinyl may be used in dry storage areas. Sealed concrete may be used in walk-in freezer units maintaining a temperature of zero F or below. Nothing in this rule shall prohibit the

use of anti-slip floor covering in areas where necessary for safety reason.

- (C) Floor carpeting. A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where hand washing lavatories toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to grease, moisture, flushing, or spray cleaning methods. If carpeting is installed as a floor covering in areas other than those specified above it shall be: securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and install tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and the edges of the carpet secured by metal stripping or some other means.
- (D) Prohibited floor covering. The use of cardboard, sawdust, wood shavings, peanut hulls, or similar materials as a floor covering is prohibited.
- (E) Floor drains. Proper installed, trapped floor drains shall be provided in floors that are water flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Properly trapped floor drains are required in all restrooms. Such floor drains shall be constructed of stainless steel, terrazzo, ceramic tile, quarry tile or similar material and shall be graded to drain.
- (F) Mats and duckboards. Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.
- (G) Floor junctures. In all new or extensively remodeled establishments utilizing stainless steel, terrazzo, ceramic tile, quarry tile or similar materials, and where water flush cleaning methods are used, the junctures between walls and floors shall be of the same material.
- (H) Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.
- (I) Maintenance. Walls and ceilings, including doors, windows, skylights and similar closures, shall be maintained clean and in good repair.
- (J) Construction. The walls, including nonsupporting partitions, wall coverings, and ceilings of walk-in refrigerating units, food preparation areas, dry storage areas, food storage areas, equipment-washing and utensil washing areas, toilet rooms and vestibules shall be light colored, smooth nonabsorbent, and easily cleanable such as FRP (fiberglass reinforced paneling), stainless steel ceramic tile, quarry tile, terrazzo or equivalent approved by the Regulatory Authority.
- (K) Exposed construction. Studs, joists, and rafters shall not be exposed in those areas listed in paragraph (b) of this subsection. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.
- (L) Utility line installation. Exposed utility service lines and pipes shall be installed in away that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in paragraph (b) of Sec. 8-7-2 of this rule.
- (M) Attachments. Light fixtures, vent covers, wall mounted fans, decorative materials, and similar equipment attached to the walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(N) Covering material installation. Wall and ceiling materials shall be attached and sealed so as to be easily cleanable.

(Ordinance 7910, sec. 7, adopted 1/11/00)

**§ 8-2-17. Remedies.<sup>3</sup>**

(A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Chapter shall be fined not more than \$2,000.00.

(B) Injunctions. The health officer may seek to enjoin violations of this Chapter.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

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3. Editor's note(s)—Ord. No. 7910, § 7, adopted Jan. 11, 2000, renumbered section 8-2-4 as new section 8-2-17.

FOOD SERVICE

**Chapter 8-3**

**RETAIL FOOD STORES**

**§ 8-3-1. Code adopted.**

The definitions, rules, regulations, and enforcement provisions contained in Chapters 1 through 8 of the "Retail Food Store Sanitation Code," 1982 Edition, of the Association of Food and Drug Officials and the Food and Drug Administration, a copy of which, authenticated by the signatures of the Mayor and city secretary and the impression of the City seal, and made a public record by resolution of the City Council passed at a regular meeting on March 29, 1983, is on file in the City secretary's office, are hereby adopted as the retail food store sanitation code of the City as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter. Provided that the words "regulatory authority" in said "Retail Food Store Sanitation Code" shall be understood to refer to the City of Midland, Texas.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-3-2. Permit fees.**

It shall be unlawful for any person to operate a retail food store in the City who does not possess an unrevoked permit from the health department director. Such permit shall be posted in a conspicuous place within the retail food service. Only persons who comply with the requirements of this Chapter shall be entitled to receive and retain such a permit. A person conducting an itinerant or temporary retail food store shall also be required to secure a permit in accordance with the provisions of subsection (E) of this Section.

- (A) Renewal of permit. Permits for the operation of retail food stores shall expire on December 31 of each year and must be renewed annually, and the fee provided for herein will become due and payable on January 1 of each year. Such permits may be obtained during the month of December just prior to the day of expiration, or they may be secured during a period of grace between January 1 and February 1 following the date of expiration. Failure to secure a permit within the time provided in this Section shall result in a charge of twice the amount otherwise due for a permit under this Section.
- (B) Permit fees. The license fee for permits issued under this Section are set forth in the Health & Senior Services Fee Schedule, as amended.
- (C) Application. Any person desiring to establish, maintain or operate a retail food store shall make written application to the health department director of the City, on a form to be furnished by the department of health, stating the name and residence of the applicant, if an individual, or the names and residences of all members of the firm, if a partnership, or the names and addresses of the principal officers, if the applicant is a corporation, and the location of the establishment.
- (D) Transfer. No permit issued under the provisions of this Section shall be transferable from either one establishment to another establishment at a different location, or from one person to another who may subsequently own a certain establishment.
- (E) Temporary permits. Establishments operating for a duration of less than 14 days shall be considered temporary, and a flat fee set forth in the Health & Senior Services Fee Schedule shall be charged for a temporary permit in lieu of the permit fees described in subsection (B) of this Section.

(Ordinance 6199 adopted 4/26/1983; Ordinance 6437 adopted 8/28/1984; Ordinance 9746, sec. 6, adopted 3/27/2018)

**§ 8-3-3. Restroom requirements.**

Every retail food store shall provide its employees with at least one restroom with associated handwashing facilities, conveniently located within the establishment. Retail food stores with five or more employees on

duty at one time shall provide two restrooms, one for each sex.  
(Ordinance 6199 adopted 4/26/1983)

**§ 8-3-4. Use of tobacco.**

Use of tobacco in any form is prohibited within retail food stores in areas where unpackaged food is prepared or displayed, or in warewashing areas. Notice to this effect shall be posted in such areas.  
(Ordinance 6199 adopted 4/26/1983)

**§ 8-3-5. Remedies.**

- (A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Chapter shall be fined not more than \$2,000.00.
- (B) Injunctions. The health officer may seek to enjoin violations of this Chapter.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

**RETAIL FOOD STORES**

**Chapter 8-4**

**MOBILE FOOD VENDORS**

**§ 8-4-1. Code adopted.**

The definitions, the rules, the regulations, and the enforcement provisions contained in the "Rules on Food Service Sanitation 301.73.11.001-011," of the Texas Department of Health, Division of Food and Drugs, a copy of which, authenticated by the signatures of the Mayor and city secretary and the impression of the City seal, was made a public record by resolution of the City Council passed at a regular meeting on March 29, 1983, as on file in the City secretary's office, are hereby adopted as the mobile food vendors code of the City as fully as if copied at length in the Chapter and are hereby incorporated herein by reference and made a part of this Chapter. Provided that the words "regulatory authority" in said "Rules on Food Service Sanitation" shall be understood to refer to the City of Midland, Texas.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-4-2. Permit fees.**

It shall be unlawful for any person to operate a food establishment and mobile food unit or food-processing establishment within the City of Midland or its jurisdiction, who does not possess a valid permit issued to him by the regulatory authority. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permit shall not be transferable from one person to another person or place. A valid permit shall be posted in every establishment. Permits for temporary establishments shall be issued for a period of time not to exceed 14 days. Seasonal permits may be issued for a period not to exceed six months.

- (A) Fee permits. The license fee for permits issued under this Section shall be established in the Health & Senior Services Fee Schedule, as amended.
- (B) Review of plans. Whenever a food establishment and mobile food unit or food processing establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food service operation, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities.

The regulatory authority shall approve the plans and specifications if they meet the requirements of this ordinance. No food service or food processing establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority. A properitoneal inspection will be conducted in each food service establishments or food processing establishment prior to the start of operations to determine compliance with approved plans and with the requirements of this chapter.

- (C) Application. Any person desiring to operate a food service or food processing establishment shall make written application and pay the appropriate fee for a permit provided by the regulatory authority. Such application shall include the applicant's full name and post office address and whether such applicant is an individual, firm, or corporation, and if a partnership, the name of the partners, together with their addresses shall be included; the location and type of the proposed establishment; and the signature of the applicant or applicants. If the application is for a temporary or seasonal establishment, permit fees and applications must be received 48 hours prior to the event, it shall also include the inclusive dates of the proposed operation.
- (D) Fees. Food establishment annual permit fees shall be reviewed, set and adopted by ordinance of the City council of the City on a regular basis.

No fee shall be charged to any food establishment owned and operated by a governmental agency, independent school district, institution of purely public charity or church; however, such establishments shall comply with all other requirements of this chapter.

- (E) Inspection; issuance of permit. Upon receipt of such an application, the regulatory authority shall make an inspection of the establishment to determine compliance with the provisions of the article. When inspection reveals that the applicable requirements of this article have been met, a permit shall be issued to the applicant by the regulatory authority.
- (F) Suspension of permit. Permits may be suspended temporarily by the regulatory authority for failure of the holder to comply with the requirements of this article.

Whenever a permit holder or operator has failed to comply with an notice issued under the provisions of this division, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the permit holder within five days.

Notwithstanding the other provisions of this Chapter, whenever the regulatory authority finds unsanitary or other conditions in the operation of the establishment which in his judgement constitutes a substantial hazard to the public health, he may without warning, notice or hearing, issue a written notice to the permit holder or operator citing such conditions, specifying the corrective action to be taken; and if deemed necessary, such order shall state that the permit is immediately suspended, and all food operations are immediately suspended. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the regulatory authority, shall be afforded a hearing as soon as possible.

- (G) Reinstatement of suspended permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of the reinstatement of the permit. Within ten days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing the suspension of the permit has been corrected, the regulatory authority shall make a reinspection. If the applicant in complying with the requirements of this article, the permit shall be reinstated.
- (H) Revocation. For serious or repeated violations of any of the requirements of this article, or for interference with the regulatory authority in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided the regulatory authority. Prior to such action, the regulatory authority shall notify the permit holder in writing stating the reasons for which the permit shall be permanently revoked at the end of five days following service of this notice, unless a request for a hearing is filed with the regulatory authority, by the permit holder within such five-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.
- (I) Penalty. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in. Additionally, the City shall be entitled to pursue other civil and criminal remedies to which it is entitled under law.
  1. Penalties. Any person (or responsible officer of that person) who violates a provisions of this Title and any person (or responsible officer of that person) who is the holder of permit or who otherwise operates a food establishment that does not comply with the requirements of this Chapter shall be fined not more than \$2,000.00.

2. Injunctions. The health officer may seek to enjoin violations of this Chapter.

- (J) Hearing. The hearing provided for in this section shall be conducted by a permit appeals committee at a time and place designated by the regulatory authority. The Permit holder shall be notified of such hearing no less than five days prior to the hearing date. The permit appeals committee shall be appointed by the regulatory authority and be comprised of the City health specialist, the City chief building official and one other member engage in food establishment work, i.e. restaurant owner, cafeteria manager, grocery store operator, etc.

The regulatory authority shall maintain a list of such persons, from which members to the permit appeals committee, may be appointed on a rotating basis. Based upon the record of such hearing, the regulatory authority shall, upon the affirmative vote of the majority, make a finding to sustain, modify or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the regulatory authority within five days after the date of the hearing.

(Ordinance 6199 adopted 4/26/1983; Ordinance 7393 adopted 11/22/1994; Ordinance 7630, sec. 8, adopted 7/22/1997; Ordinance 7910, sec. 5, adopted 1/11/00; Ordinance 9746, sec. 7, adopted 3/27/2018)

#### **§ 8-4-3. Sticker required.**

Upon issuance of a permit under this Section, the health officer shall affix to the vehicle or conveyance, or give to walking vendors, a sticker bearing the types of food for which the permit is approved and the expiration date of the permit. This sticker shall be prominently displayed at all times when the mobile food vending unit is in operation.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-4-4. Use of public parks.**

No mobile food vendors shall go into or on any public park for the purpose of selling, offering for sale or displaying any food item, unless:

- (A) The mobile food vendor is on park property rented from the City by said vendor and is conducting the specific activities for which park property was rented; or
- (B) The mobile food vendor has obtained prior written permission or authorization from the director of parks and recreation or his authorized representative for the specific activities being performed.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-4-5. Inspection report.**

Whenever an inspection of a mobile food vending unit is made, the findings shall be recorded on an inspection report and shall include a time period of no more than ten days within which any deficiencies shall be corrected.

(Ordinance 6199 adopted 4/26/1983)

#### **§ 8-4-6. Sanitary requirements to be met by mobile food vendors.**

All mobile food vendors shall comply with the following sanitary requirements:

- (A) Food shall be in sound condition, free from spoilage, filth or other contamination, and shall be safe for human consumption.

- (B) Food shall be obtained only from sources approved by the health officer and shall comply with all laws relating to food and food labeling.
- (C) At all times, including while being stored, prepared, displayed, served or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or overhead drippage from condensation.
- (D) The surfaces of the mobile food vending unit shall be constructed of smooth, nonabsorbent, easily cleanable material. All parts of the mobile vending unit shall be kept clean and in good repair at all times.
- (E) The mobile food vending unit shall be equipped with a trash receptacle approved by the health officer. All solid and liquid waste shall be held, stored and disposed of in a receptacle designed for such disposition in a manner approved by the health officer.
- (F) Ice used as a storage medium for food shall be from approved sources and shall be continuously drained to a waste holding tank. Wrapped sandwiches shall not be stored in direct contact with ice.
- (G) The preparation or serving of food products which are not prepackaged, from a mobile unit, is hereby prohibited. Nothing in this Chapter shall be construed as prohibiting the expeditious vending, delivering or dispensing to the public, from an approved vehicle, of food products which have been previously wrapped, bottled, canned or otherwise packaged in sanitary containers through approved factory processes, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment. For purposes of this Section, the terms "potentially hazardous" as applied to beverages shall mean any beverage which consists in whole or in part of milk or milk products, eggs, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. "Approved factory processes" shall mean processes that comply with all laws relating to food and food labeling set forth in V.T.C.A., Health and Safety Code ch. 431. "Approved vehicle" shall mean vehicles approved by the health department. Those vehicles must be equipped with refrigeration capable of maintaining zero degrees Fahrenheit or below for frozen foods and 45 degrees Fahrenheit or below for other foods requiring refrigeration. In addition, vending such prepackaged food products on the street (not to include door-to-door delivery or solicitations of goods or products where the same is allowed, or in response to an order from a resident) is prohibited within the area of one city block or 300 feet, whichever is the lesser, from the grounds of any public, private or parochial school within the City between the hours of 8:00 a.m. and 3:45 p.m., Central Standard Time, on days when any such school is in session, and at any place within the City after 9:00 p.m. Central Standard Time, from and after the effective date of this Section.

All food shall be prepackaged, except for those listed below, which shall be protected in the following manner:

1. Nuts shall be dispensed with shell intact.
2. Fresh fruit and vegetables shall be dispensed with the natural skin intact.
3. Flavored crushed ice and beverages shall be kept in covered containers and served either in the original container or in sanitary single-service cups. Milk beverages shall only be served in the original container.
4. Fresh baked pastries shall be kept in containers with close-fitting lids and served on individual

single-service products.

5. Ice for human consumption shall be from approved sources and shall be kept in a covered container with no other items, such as food containers and utensils, stored in or over the ice. The ice shall be continuously drained to a waste holding tank. A scoop must be provided and must be kept either in the ice with the handle up or in a rack inside the ice container. Customers shall not be allowed to serve themselves ice.

(H) When utensil and hand washing facilities are provided, the following requirements shall be met:

1. The vehicle shall be equipped with:
  - (a) A tank to provide potable water.
  - (b) A water heating device to provide hot or tempered water.
  - (c) A liquid waste tank of 15 percent larger capacity than the water supply tank.
  - (d) At least one compartment sink of at least ten inches depth with hot and cold or tempered water supplied to it under pressure.
  - (e) Additional sinks as required for compliance with the Texas Department of Health Rules on Food Service Sanitation 301.73.11.001-.011.
  - (f) Soap and paper towels for hand washing.
2. There shall be no direct or indirect cross connections between the potable water supply and any nonpotable water system.

(I) Except as provided herein, all packaged food shall bear a label containing the following information:

1. The common and/or usual name of the food item;
2. The name and address of the manufacturer or distributor;
3. A list of all ingredients contained in the food item, starting with the most predominant ingredient and following with other ingredients in descending order based on the amount contained in the food item; and
4. The net weight of the food item (including any bread or bun in the case of sandwiches).

When all of the products dispensed from an individual mobile food vending unit are the same, such that all of the above four items of information would be the same for every product sold, then individual labels on each package may be replaced by one single prominently displayed sign giving the above four information items.

(J) When frozen dessert or flavored crushed ice machines are used, they shall be cleaned daily by flushing with a suitable cleanser, rinsed by flushing with clean water and sanitized by flushing with a sanitizing agent approved by the health officer.

(K) Restricted Operations.

Mobile food units that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of those sections, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not

comply with requirements of this chapter pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary.

1. Pushcarts shall be limited to pre-packaged ice cream or pre-packaged non-potentially hazardous food as approved by the regulatory authority.
2. Food prepared in a private home may not be used or offered for human consumption from a mobile unit. Food must comply with all labeling laws.
3. The person in charge of the Mobile Unit shall ensure:
  - a. All foods, including ice, are from an approved source or commissary; and
  - b. All repacked foods are properly labeled, except when prepared in and sold from the same unit.
  - c. Shall ensure proper temperature control of potentially hazardous foods on the unit by Monitoring temperatures of potentially hazardous foods with a thermometer.

(L) Single service articles.Mobile food units shall provide only single-service articles for use by the consumer.

(M) Water system.A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing and hand washing, in accordance with the requirements of this chapter. The water inlet shall be located in such a position that is will not be contaminated by waste discharge, road dust, oil or grease, and it shall be kept capped when not being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this chapter.

(N) Waste retention.If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All liquid waste shall be disposed of in compliance with all existing laws to include Chapter 21 of this Code. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of different size and type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

(O) Commissary.Mobile food units shall operate from a commissary or approved food source, other fixed food service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations. A letter from the commissary is required at the time of permit application and at each renewal of the permit.

The commissary or other fixed food service establishment, used as a base of operation for mobile food units, shall be constructed and operated in compliance with the requirements of this chapter or by the approval of the regulatory authority.

(P) Serving area.

1. A mobile food unit serving area shall be provided and shall include at least overhead protection

for any supplying, cleaning or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or where mobile food units do not contain retention tanks.

2. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and be graded to drain.
3. The construction of the walls and ceilings of the servicing area is exempt from the provisions of this Article.

(Q) Service operations.

1. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.
2. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewerage disposal system in accordance with (Article VI of this chapter relating to sanitary facilities and controls).

(R) Catering Services.

1. A person shall not engage in catering service unless the service is affiliated with a food service establishment operating from a fixed facility that is permitted by the regulatory authority.
2. A catering service shall comply with the requirements of this Section as the regulatory authority determines is necessary to protect public health and safety.

(S) Temporary food service. A temporary or seasonal food service establishment shall comply with the requirements of this chapter except as otherwise provided in this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this chapter. The operation of a temporary food service establishment may not exceed fourteen (14) consecutive days per event. The operation of a seasonal food service establishment is greater than 14 days, but less than six months.

1. If the temporary food service establishment is outdoors, every food preparation and serving area must have a fire resistant overhead covering that protects the interior of the facility from the weather. Floors must be constructed of concrete, asphalt, tight wood or other similar easily cleanable material, kept in good repair. Outdoor events will last no longer than 72 hours.
2. All food shall be prepared in a permitted food establishment or on the premises. No food or beverage stored or prepared in a private home may be offered for sale, sold or given away from a temporary or seasonal food facility.
3. All food and beverages shall be protected at all times from unnecessary handling and shall be stored, displayed and served so as to be protected from contamination.
4. The regulatory authority may establish additional structural or operational requirements as

necessary to ensure that food is of a safe and sanitary quality.

5. The regulatory authority may limit the number of seasonal or temporary permits issued per establishment per calendar year.

(T) Restricted Operations.

1. These provisions are applicable whenever a temporary food service establishment is permitted, under the provisions of section 9-91 of this section, to operate without complying with all the requirements of this rule.
2. Only those potentially hazardous food requiring limited preparation, such as hamburgers and frankfurter that only require seasoning and cooking, shall be prepared or served unless otherwise approved by the health authority. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that has been prepared or packaged under conditions meeting the requirements of this chapter, is obtained in individual servings, is stored at a temperature of 40 degrees Fahrenheit (five degrees celsius) or below, or at a temperature of 140 degrees Fahrenheit (60 degrees Celsius) or above, in facilities that meet the requirements of this chapter, and is served directly in the unopened container in which it was packaged.
3. Ice. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this chapter. The ice shall be obtained only in chipped, crushed, or cubed form and in a single-use safe plastic or wet-strength bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.
4. Equipment.
  - a. Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.
  - b. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where helpful to prevent contamination, effective shields for such equipment shall be provided.
5. Single-service articles. All temporary food service establishments which do not have effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.
6. Water. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment and for hand washing. A heating facility shall be located on the premises and capable of producing enough hot water for all operations requirements.
7. Wet storage. The storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.
8. Waste. All sewage, including liquid waste, shall be disposed of according to law. All refuse shall be disposed of in a manner approved by the regulatory authority.

9. Hand washing. A convenient hand washing facility shall be available for employee hand washing. This facility shall consist of at least warm running water, soap, and individual paper towels.
10. Floors. Floors shall be constructed of concrete, asphalt, tight wood or other similar cleanable material, and kept in good repair.
11. Ceilings of food preparation areas. Ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather, windblown dust, birds, and debris.
12. Walls of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors of food preparation areas shall be solid or screened and self closing. Screening materials used for wall, doors, or windows shall be at least sixteen (16) mesh to the inch.
13. Counter services openings shall not be larger than is necessary for the particular operation conducted. These openings shall be provided with tight fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-services openings shall be kept closed, except when in actual use.

(Ordinance 6199 adopted 4/26/1983; Ordinance 7910, sec. 6, adopted 1/11/00; Ordinance 7974, sec. 1, adopted 10/10/00)

#### **§ 8-4-7. Remedies.**

- (A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Chapter shall be fined not more than \$2,000.00.
- (B) Injunctions. The health officer may seek to enjoin violations of this Chapter.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)



FOOD PRODUCTS ESTABLISHMENTS

**Chapter 8-5**

**FOOD PRODUCTS ESTABLISHMENTS**

**§ 8-5-1. Code adopted.**

The definitions, the rules, the regulations, and the enforcement provisions contained in the "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food," 21 CFR 110 (1981), issued by the United States Department of Health and Human Resources, Food and Drug Administration, a copy of which, authenticated by the signatures of the Mayor and city secretary and the impression of the City seal, was made a public record by resolution of the City Council passed at a regular meeting on March 29, 1983, as on file in the City secretary's office, are hereby adopted as the food products establishments code of the City as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-5-2. Report of inspections; correction of violations.**

Whenever an inspection is made of a food products establishment, the findings shall be recorded on an inspection report. The inspection report form shall summarize the requirements of this Chapter and shall specify a reasonable period of time for the correction of the violations found. Correction of the violations shall be accomplished within the period specified.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-5-3. Permit fees.**

An annual fee set forth in the Health & Senior Services Fee Schedule, as amended, for a permit to operate a food products establishment shall be paid to the health officer upon application for a permit. No permit fee shall be charged for temporary food products establishments. Permit fees shall be refunded in the event that no permit is issued.

(Ordinance 6199 adopted 4/26/1983; Ordinance 7393 adopted 11/22/1994; Ordinance 9746, sec. 8, adopted 3/27/2018)

**§ 8-5-4. Restroom requirements.**

Every food products establishment shall provide its employees with at least one restroom, with associated handwashing facilities, conveniently located within the establishment. Food products establishments with five or more employees on duty at one time shall provide two restrooms, one for each sex.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-5-5. Use of tobacco.**

Use of tobacco in any form is prohibited within food products establishments in areas where unpackaged food is prepared or displayed or in warewashing areas. Notice to this effect shall be posted in such areas.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-5-6. Remedies.**

(A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Chapter shall be fined not more than \$2,000.00.

(B) Injunctions. The health officer may seek to enjoin violations of this Chapter.

(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

FOOD PRODUCTS ESTABLISHMENTS

**Chapter 8-6**

**GARBAGE, TRASH AND RUBBISH**

**§ 8-6-1. Definitions.**

Apartment: A room or suite of rooms arranged, designed or occupied by a family, and shall include, but not exclusively, a subordinate dwelling occupied as a garage apartment or a servant's quarters.

Apartment house: A building or portion thereof, or buildings, arranged, designed or occupied by four or more families.

Boarding house: A building or portion thereof, other than a hotel, where lodging and meals for five or more persons are served for compensation.

City utilities: The water, sewer and solid waste collection services provided by the City.

Compactor: A unit used to store and compact refuse and/or garbage, which unit has a self contained compaction device and must be serviced by a truck equipped with a roll off frame.

Family: One or more individuals living as a single housekeeping unit.

Garbage: Garbage shall be held to include, among other similar matter, all animal or vegetable matter, such as waste material and refuse from kitchens, residences, grocery stores, butcher shops, restaurants, cafes, hotels, rooming houses and boarding houses, and other deleterious or putrescible matter.

Hotel/motel: The space in a building designed for occupancy as a more or less temporary abiding place of individuals who are lodged with or without meals, in which there are more than 12 sleeping rooms, and in which, as a rule, the rooms are occupied singly for hire, and provision is not usually made for cooking in any individual apartment.

Mechanically loaded refuse container: A refuse container constructed in accordance with plans of the City for refuse containers which can be loaded with the mechanical loading equipment operated by the City.

Municipal recycling facility: The City's designated facility that is used to separate and recover recyclable material.

Non-collectible waste: Brick, lumber, plaster, concrete, large tree limbs, stumps, metal scrap, construction or remodeling materials, animal carcasses, demolition or fire debris, or any other material that produces excessive weight and/or that may damage the container or the collection vehicle.

One-family residence: A detached building having accommodations for, and occupied by one family.

Prohibited waste: Material named by the state Natural Resource Conservation Commission, Environmental Protection Agency, state Department of Health Research, or any other federal, state or local agency having jurisdiction which shall not be placed for collection or delivered to the sanitary landfill.

Roll-off open top container: A unit used to store refuse and/or garbage, which unit must be serviced by a truck equipped with a roll off frame.

Rooming house: A building or portion thereof, other than a hotel or motel, where five or more persons are lodged for compensation.

Solid waste division: Either the division of solid waste of the City or the duly authorized agents of said division. Terminology is interchangeable with sanitation division.

Solid waste superintendent: Either the superintendent of solid waste, his superiors, or his duly authorized agents. Same as sanitation superintendent.

Trash: Rubbish such as paper, boxes, grass, shrubs, yard cleanings, yard clippings, leaves, tree trimmings, weeds, hedge trimmings and similar matter, or solid waste that does not include any noncollectible or prohibited material.

Two-family residence: A detached building having separate accommodations for and occupied as a

dwelling by two families.

Waste: Waste shall be held to include, among other similar matter, all bottles, cans, containers, boxes, paper, plastic and other putrescible material.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-2. Containers—Use of alley.**

Mechanically loaded refuse containers hereinafter referred to as a "refuse container" will be furnished by the City to allow for disposal of garbage, trash and waste. If a refuse container is placed to provide for garbage, trash or waste collection, no other type of container may be placed in the alley or any other collection point. Building material, rocks, bricks, junk metal, dirt and other material that produces excessive weight may not be placed in the refuse container. These materials must be disposed of by the owner at the landfill or as otherwise herein provided for.

Alleys shall not be used for the storage or dumping of any material, except as hereinafter specifically permitted, regardless of description.

Neither animal carcasses nor liquids shall be placed in any refuse container. Any material placed in the refuse container must not project above the lip of the container at any point.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-3. Placement of refuse containers.**

Placement of refuse containers shall be at the discretion of the solid waste superintendent or his superiors.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-4. Yardwaste.**

All commercial yardmen, nurserymen and firms regularly engaged in lawn and garden service shall provide for hauling of all waste generated by their activities to the sanitary landfill or approved mulching/composting site. The disposal of tree trunks, dirt, grass or combinations thereof generated in renovating lawns should be disposed of at the sanitary landfill.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-5. Weight of refuse containers.**

Refuse containers of three cubic yard size may not be loaded to a total weight of more than 1,600 pounds.

If refuse containers are overloaded or contain construction debris, or commercial yardwaste, an additional charge of \$50.00 per container will be made to any person who can be identified as placing the material in the container.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-6. Garbage, trash or waste mixed with liquid; animal matter.**

Garbage, trash or waste that is mixed with water or other liquids shall be drained and placed in a plastic bag before being placed in a refuse container. All putrescible garbage from commercial customers must be placed in a tied plastic bag designed for garbage disposal before being placed in a refuse container. No free liquids or containers full of liquid may be placed in a refuse container.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-7. Collections from residences.**

The collection and removal of garbage, trash or waste for residential purposes shall be twice weekly (Ord. No. 6199, adopted April 26, 1983). Additional pickups by request shall be \$20.00 for each additional pickup.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-8. Charges for collection and disposal; mechanically loaded refuse container regulations.**

- (A) All residential customers of the City utilities shall pay a minimum solid waste fee of \$15.50 per month. All commercial customers of the City utilities shall pay a minimum solid waste fee of \$15.50 per month or as otherwise designated herein based on service selected.
- (B) In any location in which the City has provided refuse containers, all persons disposing of garbage, trash or waste in or about that location shall dispose of garbage, trash or waste only in that refuse container.
- (C) It shall be unlawful for any person to knowingly place any matter in a refuse container furnished by the City without paying the appropriate charges.
- (D) All commercial yardmen, nurserymen and firms regularly engaged in lawn and garden services shall, at their own expenses, provide for the disposal of all waste generated by their services as set out in Section 8-6-4 above, notwithstanding the provisions of this section.
- (E) All building debris, junk, scrap, dirt, rocks, lumber, used or scrap tires which are not shredded, split or quartered or other material that cannot be placed in an approved refuse container because of excessive weight or bulk shall be disposed of by the owner, at the owner's expense, and shall not be placed in the alley or other public right of way for collection or storage.
- (F) No person shall remove any recyclables, garbage, trash or waste from any recycle or refuse container except the owner or occupant of the premises served by that container, or that owner or occupant's agent or servant, or an officer or employee of the United States, the State, or the City, acting in the line of duty, or a person licensed by the City as specified in Section 8-6-12.
- (G) All residential utility customers shall be assessed an additional \$0.25 fuel surcharge per month.
- (H) All residential utility customers shall be assessed an additional \$0.50 recycling surcharge per month.
- (I) Permitted uses of the recycling surcharge.
  - 1. The recycling of materials;
  - 2. The purchase of capital items necessary to recycle material; and
  - 3. To establish and present educational programs regarding the benefits of recycling materials.
- (J) As approved by the City Council, the City Manager will have the authority to disperse funds as necessary, including wages and benefits, from the recycling surcharge. This shall include the hiring or contracting of sufficient staff or services to carry out the purposes herein. The City Manager shall have the authority to contract with independent contractors to carry out the purposes of Subsections (H)—(J) of this section.
- (K) All rates and fees referenced in Section 8-6-8 shall increase by two percent on February 1, 2017, February 1, 2018, and February 1, 2019, unless otherwise modified by the City Council.

(Ordinance 7764, sec. 1, adopted 9/8/1998; Ordinance 7881, sec. 1, adopted 10/12/1999; Ordinance 8377, sec. 1, adopted 1/24/2006; Ordinance 8436, sec. 8, adopted 8/22/06; Ordinance 8476, secs. 1—3 adopted 12/19/2006; Ordinance 8836, sec. 1, adopted 8/23/2010; Ordinance 9619, sec. 1, adopted 11/22/2016)

**§ 8-6-9. Collection from commercial customers.**

- (A) The charges for collection and removal of garbage, trash, or waste from all commercial customers which have refuse containers furnished by the City shall be as follows:

**TABLE 1. STANDARD COMMERCIAL LOCATIONS: THREE YARD CONTAINERS**

**Commercial rates: (Includes apartments and mobile home parks)**

**Twice a week service (Monday and Thursday or Tuesday and Friday)**

<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
0.25	\$15.50
0.5	31.00
0.75	46.50
1	62.00
2	117.80
3	173.60
4	229.40
5	285.20
6	341.00
7	396.80
8	452.60
9	508.40
10	564.20
11	620.00
12	675.80
13	731.60
14	787.40
15	843.20
16	899.00
17	954.80
18	1,010.60
19	1,066.40
20	1,122.20

**TABLE 1. STANDARD COMMERCIAL LOCATIONS: THREE YARD CONTAINERS****Commercial rates: (Includes apartments and mobile home parks)****Twice a week service (Monday and Thursday or Tuesday and Friday)**

<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
21	1,178.00
22	1,233.80
23	1,289.60
24	1,345.40
25	1,401.20

**Three Times a week service (Monday, Wednesday, and Friday)**

<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
0.25	\$23.25
0.5	46.50
0.75	69.75
1	93.00
2	176.70
3	260.40
4	344.10
5	427.80
6	511.50
7	595.20
8	678.90
9	762.60
10	846.30
11	930.00
12	1,013.70
13	1,097.40
14	1,181.10
15	1,264.80
16	1,348.50
17	1,432.20
18	1,515.90
19	1,599.60

**Three Times a week service (Monday, Wednesday, and Friday)**

<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
20	1,683.30
21	1,767.00
22	1,850.70
23	1,934.40
24	2,018.10
25	2,101.80

**Four times a week service (Monday, Tuesday, Thursday, and Friday)**

<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
0.25	\$31.00
0.5	62.00
0.75	93.00
1	124.00
2	235.60
3	347.20
4	458.80
5	570.40
6	682.00
7	793.60
8	905.20
9	1,016.80
10	1,128.40
11	1,240.00
12	1,351.60
13	1,463.20
14	1,574.80
15	1,686.40
16	1,798.00
17	1,909.60
18	2,021.20
19	2,132.80
20	2,244.40

**Four times a week service (Monday, Tuesday, Thursday, and Friday)**

<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
21	2,356.00
22	2,467.60
23	2,579.20
24	2,690.80
25	2,802.40

**Five times a week service (Monday through Friday)**

<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
0.25	\$38.75
0.5	77.50
0.75	116.25
1	155.00
2	294.50
3	434.00
4	573.50
5	713.00
6	852.50
7	992.00
8	1,131.50
9	1,271.00
10	1,410.50
11	1,550.00
12	1,689.50
13	1,829.00
14	1,968.50
15	2,108.00
16	2,247.50
17	2,387.00
18	2,526.50
19	2,666.00
20	2,805.50
21	2,945.00

<b>Five times a week service (Monday through Friday)</b>	
<i>No. of Containers</i>	<i>Rate (plus current tax rate)</i>
22	3,084.50
23	3,224.00
24	3,363.50
25	3,503.00

If a commercial location, an apartment complex or mobile home park requires more than one whole three-yard container, any additional whole three-yard container will be billed at ten percent less than the first whole three-yard container.

**TABLE II. ROLL OFF OPEN TOP CONTAINERS/COMPACTORS**

Three days (1 pick up)	OT 165.00	(Plus applicable tax & disposal fee)
One week (1 pick up)	OT 185.00	(Plus applicable tax & disposal fee)
One month (1 pick up per week)	OT 675.00	(Plus applicable tax & disposal fee)
Additional collections	OT 125.00 Each	(Plus applicable tax & disposal fee)

The term "OT" as used in TABLE II. ROLL OFF OPEN TOP CONTAINERS/COMPACTORS, shall mean an open top container or compactor. For roll off open top containers and compactors, the charge will be \$5.00 per day rental, \$25.00 delivery fee, and \$125.00 per pull (pickup) plus applicable tax and disposal fee. These rates are for rental, delivery and listed pickups only and do not include the per ton disposal charges.

- (B) No refuse container shall be utilized in any business district or by any commercial establishment except as approved by the solid waste superintendent. All garbage, trash or waste to be collected in such business districts or commercial establishments shall be placed in approved containers.
- (C) The minimum charge established herein for commercial customers shall apply to those commercial customers regardless of whether they make use of the collection services of the City. However, the minimum charge shall not apply if the commercial customer's building or facility is wholly unoccupied and the City is providing no water service to that building or facility.
- (D) All commercial utility customers shall be assessed an additional \$0.25 fuel surcharge per month.
- (E) All commercial utility customers shall be assessed an additional \$0.50 recycling surcharge per month.
- (F) Permitted uses of the recycling surcharge.
  - 1. The recycling of materials;
  - 2. The purchase of capital items necessary to recycle material; and
  - 3. To establish and present educational programs regarding the benefits of recycling materials.
- (G) As approved by the City Council, the City Manager will have the authority to disperse funds as

necessary, including wages and benefits, from the recycling surcharge. This shall include the hiring or contracting of sufficient staff or services to carry out the purposes herein. The City Manager shall have the authority to contract with independent contractors to carry out the purposes of subsections (E)—(G) of this section.

(H) All rates and fees referenced in Section 8-6-9 shall increase by two percent on February 1, 2017, February 1, 2018, and February 1, 2019, unless otherwise modified by the City Council.

(Ordinance 7764, sec. 1, adopted 9/8/1998; Ordinance 8297, sec. 3, adopted 3/22/2005; Ordinance 8377, sec. 2, adopted 1/24/2006; Ordinance 8436, secs. 7—9 adopted 8/22/06; Ordinance 8476, secs. 4—6 adopted 12/19/2006; Ordinance 8836, sec. 2, adopted 2010; Ordinance 8974, sec. 1, adopted 1/10/2012; Ordinance 9066, sec. 1, adopted 9/25/2012; Ordinance 9619, sec. 2, adopted 11/22/2016)

#### **§ 8-6-10. Charges for services outside City limits.**

Charges for collection services provided outside the corporate limits of the City shall be at one and one-half times the rates established by this Chapter. Services outside the City limits will be provided at the discretion of the solid waste superintendent.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-11. Collection of charges.**

The Customer Services Department shall include on its monthly bills mailed to persons who receive the services specified in this Chapter the charge designated for garbage, trash or waste collection services rendered to the premises of those persons. The charges fixed by this Chapter shall be payable to the City on or before the delinquency date specified in Section 3-1-4 of this Code. In the event that any person receiving services does not have a water connection billing, then a separate monthly bill shall be sent to that person on the same terms and conditions established in Section 3-1-4 of this Code.

(Ordinance 7764, sec. 1, adopted 9/8/1998; Ordinance 7881, sec. 2, adopted 10/12/1999)

#### **§ 8-6-12. Removal of garbage, trash or waste other than by the City.**

The owner or person in charge of any commercial premises may remove, or contract for the removal of garbage, trash or waste, with an entity other than the City solid waste division, if the hauler complies with the requirements of this Section. Garbage, trash or waste collection for residential premises will be provided by the City solid waste division unless otherwise approved.

(A) Permits required. No person (other than the City and its employees acting in the scope of their employment) shall collect, remove or dispose of garbage, trash or waste from any premises within the City, except premises owned or controlled by the person, without first obtaining a permit. Said person shall obtain all appropriate permits from federal, state, and city solid waste authorities. All federal, state, and city solid waste regulations must be adhered to.

A garbage hauler's permit entitles the holder to collect, remove and dispose of garbage, trash or waste from the premises of others with their consent.

(B) Application, insurance and fees.

1. Application for permits shall be filed with the Director of Solid Waste, stating the name and address of the applicant and the type of permit applied for, and shall be accompanied by the payment of the following fees:

For each garbage hauler's permit, \$500.00 per year for each vehicle.

2. All permits shall be issued for one calendar year beginning January 1 and ending December 31, and may be renewed for successive years upon approval by the Director of Solid Waste and payment for each vehicle at the same fee as for an original permit.
3. Before issuing any permit or renewal for vehicles over one ton capacity the solid waste superintendent shall inspect the vehicle proposed to be used and shall certify whether the vehicle complies with the requirements of this Chapter and the solid waste superintendent shall issue or refuse the permit in accordance with such certification. Provided, that the City Council has determined that there is a present public need and necessity for such additional service and that the applicant is qualified both financially and morally to engage in a public service.
4. No person shall hold a permit or do any act for which such permit is required without having in effect a policy of public liability insurance issued by a company authorized to do business in the state in the amount of \$100,000.00 for death of or injury to any one person in one accident, \$300,000.00 for death or injury to more than one person in any one accident and \$10,000.00 property damage.

(C) Identifying Vehicles. The solid waste superintendent shall assign and/or record an identifying number of each vehicle operated under a garbage hauler's permit, and the permit holder shall paint or decal the appropriate identifying number in a plainly visible place on the left side of the vehicle to which such number applies and/or any other location on the vehicle deemed appropriate for identification purposes.

(D) Equipment and methods of disposal.

1. Each vehicle operating under any permit shall be fully enclosed or shall be enclosed at the sides and equipped with a tarpaulin and methods of fastening the same so as to avoid spilling garbage, trash or waste, disseminating odors, or attracting insects. Such vehicle shall be kept closed or covered at all times when in use except as may be necessary for loading and unloading.

It shall be unlawful for any person to operate, or allow his employee to operate, any vehicle not complying with this paragraph.

2. No person shall dispose of any trash removed under a garbage haulers permit except as authorized and approved, in writing, by all appropriate regulatory bodies.
3. The driver of any vehicle licensed hereunder shall immediately gather up and place in his vehicle any garbage or trash which is spilled from such vehicle in transit or spilled from the vehicle while loading.
4. All vehicles carrying garbage or trash may be inspected by the division of solid waste at any time to determine whether they are properly equipped and kept in a sanitary condition.

(E) Revocation of permits. After five days notice, any permit may be revoked or suspended at any time by the superintendent of solid waste for violation of any provision of this Chapter, or for failure to carry out any lawful agreement for the removal of garbage or trash. The licensee may appeal to the City Council from the decision of the superintendent of solid waste.

(Ordinance 7764, sec. 1, adopted 9/8/1998; Ordinance 7881, sec. 2, adopted 10/12/99; Ordinance 9067, sec. 1, adopted 9/25/12)

**§ 8-6-13. Failure to pay charges, discontinuance of water or garbage, trash and waste collection**

**service.**

If any person shall fail or refuse to pay any charge specified in this Chapter upon proper billing, by the date the same becomes due and payable, the City manager, or his designated agent, is hereby authorized and directed to order the disconnection and discontinuance of water service to the premises so served by water and garbage, trash and waste collection service, or in the alternative, or in addition, to order the discontinuance of garbage, trash and waste collection services to said premises until all delinquent charges due under this Chapter are paid in full, plus, in the case of water disconnection, the City manager, or his designated agent is hereby authorized to charge a reconnection charge as established in Section 3-1-5, of this Code.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-14. Inspections.**

It is hereby made the duty of the superintendent of solid waste to make inspection trips at regular intervals to determine whether or not garbage, trash and waste are being properly collected, removed, and disposed of as required by the provisions of this Chapter, this Code or any other applicable health regulations, and in the event it is found that this Chapter or another regulation is being violated, appropriate and timely action shall be taken to insure full compliance with such provisions.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-15. Removal of heavy accumulations.**

Heavy accumulations, such as brick, broken concrete, lumber, yardwaste, construction materials, cinders, dirt, plaster, sand or gravel, automobile frames, dead trees and other bulky, heavy material, including debris from vacant lots, shall be immediately disposed of at the expense of the owner or person controlling same. Such heavy accumulations shall not be stored or placed in an alley or other public right of way or on any private property except the premises on which accumulation originated. The City reserves the right to pick up all such material placed in the alley and shall not be held liable for the disposal of said material regardless of its nature. If removed by the solid waste division the charge shall be at the rate of \$100.00 per truck load or fraction of a truck load.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-16. Dead animals; burial.**

- (A) Subject to the provisions of Subsection (B) of this Section and Section 8-6-17 of this Chapter, when any horse, cow, jack, jennet, goat, sheep, cat, dog, hog, chicken or any other kind of animal or fowl shall die within the corporate limits of the City, the owner or person in control of the animal or fowl shall be required to remove the body or carcass thereof and bury or otherwise dispose of such body or carcass so that the sight or odor thereof shall not be offensive to any citizen of the City.
- (B) When any animal or fowl shall die within the corporate limits of the City and the owner or person in control of said animal or fowl owns and is in possession of a tract of land within the City, the body or carcass of said animal or fowl may be buried on said tract at a depth of not less than three feet from the surface of the earth to any part of the body of said carcass, at a distance of not less than 100 feet from any water well to any part of the body of such carcass, and at a distance of not less than ten feet from any property line of said tract to any part of the body of such carcass.
- (C) Penalties: Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$1,000.00.

(D) **Injunctions:** The health officer may seek to enjoin violations of this Section.  
(Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-17. Cremation or burial of animals in the sanitary landfill.**

The carcass referred to in the preceding Section may be cremated at the City animal control facility or buried in the City landfill for the appropriate fee. All such animals shall be handled according to current regulations. Prior arrangements must be made with the receiving unit.

- (a) **Penalties.** Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.
  - (b) **Injunctions.** The health officer may seek to enjoin violations of this Section.
  - (c) **Fees.** Landfill fees shall be as set forth in Resolution 93-259. Cremation fees shall be as set forth in Ord. 7630, adopted July 22, 1997.
- (Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-18. Accumulation of stagnant water, filth, weeds, brush, and debris on lots.**

**(A) Prohibited accumulations:**

1. It shall be unlawful for any person or entity, who shall own, occupy, or possess any lot, lots, or other premises, except natural lake beds or playas, in the City, to permit or allow holes or places on that lot or other premises where water may accumulate and become stagnant, or to permit the same to remain. For purposes of this Subsection, "possess" means to have actual care, custody, control or management over the property.
2. It shall be unlawful for any person or entity, who shall own, occupy, or possess any lot, lots, or other premises, except natural lake beds or playas, in the City, to permit or allow the accumulation of stagnant water thereon, or to permit the same to remain.
3. It shall be unlawful for any person or entity, who shall own, occupy, or possess any house, building, establishment, lot, or yard in the City to permit or allow any carrion, filth, or other impure or unwholesome matter to accumulate or remain thereon. For purposes of this Subsection "filth or other impure or unwholesome matter" shall mean any organic or inorganic substance whether gaseous, solid or liquid, which shall be likely to harbor disease causing organisms, or attract rodents or reptiles, or shall create a nuisance or an attractive nuisance as defined by common law.
4. It shall be unlawful for any person or entity who shall own, occupy, or possess any lot, lots, or premises in the City to allow weeds, tall grass, rubbish, brush, animal refuse, industrial or commercial waste, spoiled foodstuffs, construction or remodeling wastes, or unsanitary matter to accumulate or grow on that property. For purposes of this Subsection the term "brush" shall include mesquite trees, greasewood, or any other tree or shrubbery occurring naturally in the area.
5. It shall be unlawful for any person or entity who shall own, occupy, or possess any lot, lots, or premises in the City to permit or allow debris to accumulate or remain thereon. For purposes of this Subsection the term "debris" shall include such material as brick, broken concrete, cinder blocks, lumber, construction materials, cinders, plaster, automobile frames, dead trees, demolished or partly demolished structures or buildings, structures or buildings destroyed by

fire, and other bulky heavy material, automobile parts, furniture, trunks, televisions, mattresses, box-springs, appliances, sinks, toilets, bath-tubs, doors, heating and air-conditioning units, fans, heaters, barrels, metal, pipe, carpet, drywall, ducts, roofing products/material, insulation, plumbing fixtures, vacuum cleaners, sewing machines, rugs, exercise equipment, weights, lawn mowers, lawn equipment, water heaters, office equipment, tires, tanks, trash bags, portable swimming pools and accessories, wood/chain fence panels, wood/metal fence posts, cardboard boxes, water coolers, bicycles/bicycle parts, toys, motorcycles/motorcycle parts, swing sets, clothing, tree limbs, Christmas trees, plastic waste/containers/products, paint cans/paint products, discarded pallets, discarded brick/stone/concrete block, tin and aluminum cans, batteries, oil, electronic equipment, glass, mirrors, windows curtains/valances, books/magazines, electrical cords, planting containers, bar-b-q pits/equipment, dinnerware, bedding material, water softener tanks and accessories, landscaping implements, and trailers.

6. For purposes of this Section, it shall be presumed that the following individual or entity owns, occupies or possesses the property, lot, lots or premises:
  1. The individual or entity whose name is on the City's water bill for the lot, lots, property or premises in question;
  2. The individual or entity who is paying the taxes or owns the property according to records of the Midland Central Appraisal District;
  3. The individual or entity who is paying the taxes or owns the property according to records of Midland County, Texas;
  4. An individual who is physically present on the lot, lots, property or premises in question; or
  5. An individual who is physically present in any structure on the lot, lots, premises or the property in question.

(B) Affirmative defenses: It is an affirmative defense to prosecution if any of the following apply:

1. The weeds or tall grass are less than eighteen inches (18") tall, and the brush is less than two feet tall.
2. The weeds, tall grass, or brush are located on a City Council approved wildlife sanctuary or on land that is zoned Agriculture-Estate as defined by Section 11-1-6 of this Code and is devoted to livestock grazing.
3. The tall grass is located on land in an Agriculture-Estate zoned district as defined by Section 11-1-6 of this Code and the grass is being cultivated for agricultural purposes.
4. The brush has a central trunk with a girth of ten inches or more at its base.
5. The weeds, tall grass, and brush are located more than 175 feet from any property line of a public park or of any tract of land under unitary ownership which is developed with growing crops or with one or more buildings or structures, and from any building, structure or any improvement to the realty, and more than 35 feet from the curb of any street or, if there is no curb, the edge of the pavement or traveled portion of the street.
6. The weeds, tall grass, and brush are located on an undeveloped area and are more than 35 feet from the curb of any street or, if there is no curb, the edge of the pavement or traveled portion

of the street. "Undeveloped area" means any unplatted land, which may or may not be under unitary ownership, which is in an undisturbed native biome for this part of the State of Texas, which is not less than 7.5 acres in area and has continuous width of at least 300 feet, and which has no streets, roads, commercial or residential improvements, or crops located thereon.

7. The weeds, tall grass, and brush are located on public property owned by the State of Texas, or any of its subdivisions, and such governmental entity has determined that it is in the public interest that such property should remain in its natural, undisturbed condition, and the vegetation on such property is in its native biome, and the condition of such property does not present a danger or hazard to abutting properties.
8. The debris is shielded from view by a screening fence or structure from any alley, street, public property or other private property with a different owner or occupant, and does not constitute a fire or health hazard or a violation of the zoning ordinance. Automotive service garages, wrecking and salvage yards shall be subject to the requirements of sections relating to those businesses as set forth in the City Code.
9. The construction materials are stored on residential property during a period of active construction or repair as evidenced by a current building-permit where applicable.
10. The person is actively engaged in a legally permissible garage or estate sale.

(C) Penalty and judicial notice:

Any person, corporation, or association who shall violate any of the provisions of this Section shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not to exceed \$500.00. Each day on which the violation shall exist shall constitute a separate and distinct offense. A culpable mental state is not required. A culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared, that for all offenses under this Chapter, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

*Judicial notice:*

- (a) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of this Section.
- (b) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of records in the City's Customer Service Division.
- (c) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of all records of Midland County, Texas; all records of the Midland Central Appraisal District; and all records of the City of Midland, Texas.

(D) Abatement:

1. Should any owner of such lot, lots or other premises that have places thereon where stagnant water may accumulate or which are not properly drained, or the owner of any premises or building upon which carrion, filth or other impure or unwholesome matter may be, fail or refuse to drain or fill the lot, lots or other premises or remove such filth, carrion or other impure or unwholesome matter as the case may be, after receiving notice from the City to do so according to the procedures set forth in Subsection (F) of this Section, then the City may do such filling or draining, or removal of filth, carrion or any other unsightly, objectionable or unsanitary matter, or cause the same to be done. The City may then charge the expenses it incurred in doing such work, or making such improvements, to the owner of the lot, lots or premises on which the work

was performed, according to the methods provided for in Subsection (E) of this Section.

2. Should any owner of any lot, lots, or premises within the City, permit or allow debris, as defined in Subpart (A)(5) of this Section, to accumulate thereon, fail or refuse to remove such debris after having received notice from the City to do so according to the procedures set forth in Subsection (F) of this Section, then the City may enter upon the premises and remove such debris or cause the same to be removed and may pay therefor. The City may then charge the owner of the premises for the expenses incurred in doing such work, or having such work done or improvements made, according to the provisions set forth in Subsection (E) of this Section.
3. Should any owner of any lot, lots or other premises within the City who shall allow weeds, tall grass, rubbish, brush or other unsightly, objectionable or unsanitary matter to grow and accumulate thereon, fail or refuse to cut down or remove such weeds, tall grass, rubbish, brush or other unsightly, objectionable or unsanitary matter, after having received notice from the City to do so according to the procedures set forth in Subsection (F) of this Section, then the City may enter upon the premises and do such cutting down or removing of weeds, tall grass, rubbish, brush or other unsightly, objectionable or unsanitary matter, or cause the same to be done and may pay therefor. The City may then charge the owner of the premises on which the work was done for the expenses incurred in doing such work or having such work done or improvements made according to the provisions set forth in Subsection (E) of this Section. No lien or other encumbrance shall attach to any property for any matter which could not be criminally prosecuted under Subsection (A) of this Section due to the availability of a defense listed in Subpart (A)(6) of this Section.

(E) Filing of a lien. After the City has entered upon and performed services upon any lot pursuant to the powers granted the City in Subsection (D) of this Section, the Mayor, municipal health authority or municipal official designated by the Mayor of the City shall file a statement of the expenses incurred in such operations with the county clerk of Midland County, Texas stating the name of the owner, if known, the legal description of the property, the amount of such expenses and the date on which the work was done or improvements made. The City shall then have a privileged lien on the property upon which the work was done or improvements made, to secure the expenditures so made, in accordance with the provisions of V.T.C.A, Health & Safety Code § 342.007. That lien shall be second only to tax liens and liens for street improvements. The amount of that lien shall bear ten percent per annum interest from the date of payment by the municipality. The Mayor, municipal health authority or municipal official designated by the Mayor add to any lien filed pursuant to this Section the amount of the filing fee charged by the county clerk for filing that lien. It is further provided that for any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure of that lien may be had in the name of the City, and the statement of expenses so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

(F) Notice and hearing.

1. Before exercising any of the powers granted in Subsections (D) and (E) of this Section, the City must send notices in writing to the owner of the lot, lots or other premises on which the City proposes to enter pursuant to Subsection (D) of this Section, at least ten days prior to the City's entry upon the same. The notice must be given:
  - (a) Personally to the owner in writing;
  - (b) By letter addressed to the owner's post office address; or

- (c) If personal service cannot be obtained or the owner's post office address is unknown:
  - (1) By publication at least twice within ten consecutive days;
  - (2) By posting the notice on or near the front door of each building on the property to which the violation relates; or
  - (3) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

The municipality in the notice of a violation may inform the owner by certified mail, return receipt requested, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the municipality without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this Subsection occurs within the one-year period, and the municipality has not been informed in writing by the owner of an ownership change, then the municipality without notice may do the work and make the improvements required and pay for the work done or improvements made and charge the expenses to the owners of the property and then access its expenses as provided for in Subsection (E).

The notice shall communicate the following information:

- (a) The name of the owner, if known, of the premises proposed to be entered upon by the City;
  - (b) The address or legal description of the premises proposed to be entered upon by the City;
  - (c) The offending conditions existing on the lot;
  - (d) A demand that the owner remedy such conditions;
  - (e) The day on which the City shall enter upon the premises and remedy the same should the owner not sooner do so;
  - (f) The City shall attach a lien to the property to secure payment for the services rendered;
  - (g) The customer has the right to appear and be heard at a hearing to contest the proposed entry, clearing and attachment of lien;
  - (h) The means by which the lot owner may arrange for such a hearing;
  - (i) The date by which the lot owner must request and set the hearing in order to receive it, which deadline may be no earlier than nine days after the giving of notice.
2. Should any owner request a hearing to review the decision to enter upon and clear that owner's lot, the hearing shall be presided over by the City manager or his designated appointee, who shall be a fair and impartial person who did not participate in the original decision to enter upon the owner's premises, hereafter in this context known as the hearing officer. The hearing shall be set by the next business day after being so requested by the lot owner, unless the hearing officer, in his discretion, sees fit to delay the hearing for up to five days upon showing of good cause by the lot owner. At the hearing, the owner shall be given the opportunity to be heard in person to present the owners case, to present testimony from other persons and to admit documents. The owner may be represented by counsel. The owner shall be given the opportunity to confront and cross examine any witnesses appearing against him at the hearing. However the rules of evidence for civil or criminal trials need not be enforced. The City's reasons for entering upon the owner's lot and clearing the same shall be stated at the hearing. Upon reaching a final decision, the hearing officer shall state his reasons for reaching that decision and state the

evidence on which he relied in reaching his conclusions. Should the hearing officer find in favor of the lot owner, the City shall not enter upon, nor clear, nor attach a lien to that lot. Should the hearing officer find against the lot owner, the City may enter upon, clear and attach a lien to that lot at any time before 60 days following the hearing.

(Ordinance 7764, sec. 1, adopted 9/8/1998; Ordinance 9046, secs. 1—3 adopted 8/14/2012)

#### **§ 8-6-19. Fire debris.**

It shall be unlawful for any person who is the owner of or in control of any City lot to permit the debris occasioned by the destruction of buildings by fire to remain in and upon such lot for more than 30 days after the date of destruction.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-20. Dumping.**

No person shall dump, throw, or place any garbage, rubbish, refuse, junk, ashes, filth, wastepaper, weeds, grass cuttings, rocks, or other waste matter of whatever kind, in or on any public street, alley, park, or other public ground or public building other than the City landfill or the City's municipal recycling facility except as herein otherwise provided.

No person shall dump, throw, or place any garbage rubbish, refuse, junk, ashes, filth, wastepaper, weeds, grass cuttings, rock or other waste matter of whatever kind, in or on any private property, except the premises on which such waste matter originated.

No person shall put any garbage, refuse, junk, rubbish, or any other substance capable of impeding the flow of water, into any gutter or drainage ditch.

No person shall sweep paper, litter, or debris into any public street or alley.

Nothing in this Section shall relieve any person of any obligation imposed elsewhere in this Chapter.

Each owner, occupant, tenant, or lessee shall be responsible for maintaining all property bounded by the owner's side property lines, the center line of the alley, and the back of the existing curb, or if the street is unpaved, the back of the proposed curb in a clean and sanitary condition, free of weeds, tall grass, and other unsightly matter.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

#### **§ 8-6-21. Dumping of certain materials prohibited.**

No person shall dump, throw, place or otherwise dispose of any material either in solution or solid form containing any type or amount of waste deemed hazardous or categorized as a waste requiring special handling and/or disposal by current EPA, TNRCC, TDH, or local regulations. Any noxious or malodorous substance, which either singularly or by interaction with other substances is capable of causing objectionable odors, or hazard to life is prohibited.

Any radioactive wastes (liquid or solid) greater than allowable releases specified by current United States Bureau of Standards Handbooks dealing with the handling and release of radioactivity is prohibited.

Any person who shall violate any of the provisions of this Section shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not exceeding \$2000.00, and each and every day's violation shall constitute a separate and distinct offense.

In addition, certain federal, state, and local civil and/or criminal sanctions may apply.

(Ordinance 7764, sec. 1, adopted 9/8/1998)

**§ 8-6-22. Accumulation of litter on lots.**

- (A) It shall be unlawful for any person or entity who shall own, occupy or possess any lot, lots or premises in the City to permit or allow litter to accumulate or remain thereon. For purposes of this Subsection the term "litter" shall include any bottles, cans, boxes, plastic or paper bags or sacks, cardboard, paper, containers, discarded food containers or cups, plastic wrapping, plastic, clothing, cloth or other similar material.
- (B) Penalty: Any person, corporation, or association who shall violate any of the provisions of this Section shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not to exceed \$2,000.00. Each day on which the violation shall exist shall constitute a separate and distinct offense.
- (C) Should any owner of any lot, lots, or other premises within the City, permit or allow any "litter" as defined in Subsection (A) of this Section, to accumulate thereon, fail or refuse to remove such litter after having received notice from the City to do so according to the procedures set forth in Subsection (E) of this Section, then the City may enter upon the premises and remove such litter or cause the same to be removed and may pay therefor. The City may then charge the owner of the premises for the expenses incurred in doing such work, or having such work done or improvements made, according to the provisions set forth in Subsection (D) of this Section.
- (D) Filing of a lien. After the City has entered upon and performed services upon any lot pursuant to the powers granted the City in Subsection (C) of this Section, the City of Midland Building Official shall file a statement of the expenses incurred in such operations with the county clerk of Midland County, Texas stating the name of the owner, if known, the legal description of the property, the amount of such expenses and the date on which the work was done or improvements made. The City shall then have a privileged lien on the property upon which the work was done or improvements made, to secure the expenditures so made, in accordance with the provisions of V.T.C.A, Health & Safety Code § 342.007. That lien shall be second only to tax liens and liens for street improvements. The amount of that lien shall bear ten percent per annum interest from the date of payment by the municipality. The City's Building Official shall add to any lien filed pursuant to this Section the amount of the filing fee charged by the county clerk for filing that lien. It is further provided that for any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure of that lien may be had in the name of the City, and the statement of expenses so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements. The City of Midland Building Official is designated by the Mayor as required by Section 342.007(b) of the Texas Health and Safety Code.
- (E) Notice and hearing.
  - 1. Before exercising any of the powers granted in Subsections (C) and (D) of this Section, the City's Building Official must send notices in writing to the owner of the lot, lots or other premises on which the City proposes to enter pursuant to Subsection (C) of this Section, at least ten days prior to the City's entry upon the same. The notice must be given:
    - (a) Personally to the owner in writing;
    - (b) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the Midland Central Appraisal District; or
    - (c) If personal service cannot be obtained or the owner's post office address remains unknown

after the Building Official has searched the City's utility records and the records of the Midland Central Appraisal District:

- (1) By publication in the City's official newspaper at least once;
- (2) By posting the notice on or near the front door of each building on the property to which the violation relates; or
- (3) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

If the Building Official mails a notice to the property owner and the United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered as delivered.

2. The notice may communicate the following information:
  - (a) The name of the owner, if known, of the premises proposed to be entered upon by the City;
  - (b) The address or legal description of the premises proposed to be entered upon by the City;
  - (c) The offending conditions existing on the lot;
  - (d) A demand that the owner remedy such conditions;
  - (e) The day on which the City shall thereafter enter upon the premises and remedy the same should the owner not sooner do so;
  - (f) The City shall attach a lien to the property to secure payment for the services rendered;
  - (g) The customer has the right to appear and be heard at a hearing to contest the proposed entry, clearing and attachment of lien;
  - (h) The means by which the lot owner may arrange for such a hearing;
  - (i) The date by which the lot owner must request and set the hearing in order to receive it, which deadline may be no earlier than nine days after the giving of notice; and
  - (j) The City in the notice of a violation may inform the owner that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the City without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this Subsection occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City without notice may do the work and make the improvements required and pay for the work done or improvements made and charge the expenses to the owners of the property and then assess its expenses as provided for in this Section.
- (F) Should any owner request a hearing to review the decision to enter upon and clear and clean that owner's lot, the hearing shall be presided over by the Director of Utilities or her designated appointee, hereafter in this context known as the hearing officer. The hearing shall be set by the next business day after being so requested by the lot owner, unless the hearing officer, in his/her discretion, sees fit to delay the hearing for up to five days upon showing of good cause by the lot owner. At the hearing, the owner shall be given the opportunity to be heard and to present the owners case, to present

testimony from other persons and to admit documents. The owner may be represented by counsel. The owner shall be given the opportunity to confront and cross-examine any witnesses appearing against him at the hearing. However the rules of evidence for civil or criminal trials need not be enforced. The City's reasons for entering upon the owner's lot and clearing the same of litter shall be stated at the hearing. Upon reaching a final decision, the hearing officer shall state her reasons, in writing, for reaching that decision and state the evidence on which she relied in reaching her conclusions.

In the event the owner desires to appeal the decision of the hearing officer, the owner shall provide a written notice of appeal to the City Manager's Office within ten days of the hearing officer's final decision. The appeal shall be heard by the City Manager or his designee within ten days of the City's receipt of the notice of appeal, and the hearing shall be conducted as described above.

Should the hearing officer find in favor of the lot owner and there is no appeal, the City shall not enter upon, nor clear, nor attach a lien to that lot. Should the hearing officer find against the lot owner and there is no appeal, the City may enter upon, clear and attach a lien to that lot at any time before 60 days following the hearing.

In the event of an appeal, should the City Manager find in favor of the lot owner, the City shall not enter upon, nor clear, nor attach a lien to that lot. Should the City Manager find against the lot owner, the City may enter upon, clear and attach a lien to that lot at any time before 60 days following the appeal hearing.

(Ordinance 8100, sec. 1, adopted 6/25/2002)

**§ 8-6-23. Placement of refuse containers on apartment and other commercial establishment premises.**

- (A) The owner or person in charge of an apartment complex shall provide, at a minimum, three cubic yards of refuse container space on the premises for each 15 individual apartment units. An individual apartment unit shall mean an efficiency, one, two or three bedroom apartment. Refuse container space shall be sufficient so that material placed within the container remains at or below the lip of the container. If at any time material protrudes beyond the lip of the container, the owner or person in charge of the premises is in violation of this Section.
- (B) The owner or person in charge of a commercial establishment other than an apartment complex shall provide sufficient refuse container space so that material placed within the container remains at or below the lip of the container. If at any time material protrudes beyond the lip of the container, the owner or person in charge of the premises is in violation of this Section.
- (C) The Director of Solid Waste of the City of Midland shall give written notice of a violation of this Section to the owner or person in charge of the apartment or other commercial establishment, and, if said establishment is serviced by a commercial trash hauler under Section 8-6-12 of the Midland City Code, duplicate notice shall be provided to the commercial trash hauler. The notice shall be hand delivered or sent by certified mail, return receipt requested, and shall advise the recipient that the City's placement of an additional refuse container is imminent and contain the protest procedure set out in this Section.
- (D) Issuance of a notice of violation of this Section imposes a duty on the owner or person in charge of the commercial establishment or apartment complex to eliminate material protruding beyond the lip of the container by either (1) providing additional refuse containers or (2) immediately arranging for additional trash pickups.

- (E) Twenty-four hours after the delivery of the notice of violation, excluding weekends and holidays, the Director of Solid Waste may, in his/her discretion, cause additional refuse containers to be placed on the violator's premises. In such an event:
- (1) The owner or person in charge of the commercial establishment or apartment complex may protest the placement of refuse containers on the premises to the Director of Solid Waste no later than the fifth day following placement, excluding weekends and holidays.
  - (2) Process to protest placement of refuse containers:
    - (a) The owner or person in charge of the commercial establishment or apartment complex must notify the City's Director of Solid Waste in writing of their intention to protest no later than the fifth day of placement of an additional refuse container or containers by the City, excluding weekends and holidays.
    - (b) The protest shall be heard, and a decision issued by the Director of Solid Waste, in writing, no later than seven days after the placement of the containers by the City, excluding weekends and holidays.
    - (c) Grounds for removal of the City's additional refuse container(s) may include evidence that the owner or person in charge has provided additional refuse container space or additional pickups of existing containers.
    - (d) If the Director of Solid Waste finds in favor of the owner or the person in charge, the City shall promptly remove any refuse container placed on the premises pursuant to this Section, without any charge being assessed against the premises.
    - (e) If the Director of Utilities finds in favor of the City, the Director may: (1) leave the container(s) on the premises; (2) in the case of premises served by City, provide for more frequent pickups; or (3) effect a combination of these, whichever is deemed by the Director to be more appropriate.
  - (3) Process to appeal decision of Director of Solid Waste. If the Director of Utilities finds in favor of the City, and the owner or person in charge wishes to appeal the decision, the owner or person in charge shall provide written notice of appeal to the City Manager no later than two days following receipt of the Director's decision, excluding weekends and holidays. The City Manager or his designee shall hear the appeal within three days of receipt of the notice of appeal, excluding weekends and holidays. The City Manager shall provide his decision, in writing, within 24 hours of hearing the appeal. The City Manager's decision is final.
  - (4) Normal commercial rates for collection pursuant to Section 8-6-9 of the Midland City Code shall begin to accrue the day following the conclusion of all protests and appeals.

(Ordinance 8102, sec. 1, adopted 6/25/2002; Ordinance 9068, sec. 1, adopted 9/25/2012)

#### **§ 8-6-24. Charges for dumping or unloading at sanitary landfill operated by the City of Midland.**

- (A) Landfill charges: The following schedule of fees shall be charged by the City of Midland to any person that unloads or dumps any refuse or debris at any sanitary landfill facility operated by the City of Midland in accordance with the type and size of vehicle used by any such person for such purposes, to wit:
- (1) Automobiles: \$7.75

- (2) Pickup trucks ( $\frac{1}{2}$  ton): \$15.50
- (3) Trucks and trailers, per ton: \$31.00
- (4) Holders of valid garbage hauler's permits, commercial hauler's permits, or trash hauler's permits under 8-6-12 of the Midland City Code, per ton: \$31.00

All Landfill Charges referenced in this Subsection (A) shall increase by two percent on February 1, 2017, and each February 1 thereafter, unless otherwise modified by the City Council.

- (B) In addition to the charges set out in this Section, surcharges shall be collected for certain types of refuse or debris as follows:

- (1) Vehicles over 15,000 pounds gross vehicle weight with no mechanical unloading devices—triple the fees set out in Subsection (A).
- (2) Any materials which are capable of being blown by wind currents which are not contained or tarped or netted—\$15.00 in addition to the fees set out in Subsection (A).
- (3) Special waste handling-Minor permits-TDH permits, etc.—double the fees set out in Subsection (A) plus a \$20.00 administrative charge.

- (C) The following types of debris cannot be processed at and shall not be accepted at any such sanitary landfill, to wit:

- (1) Tires, unless split, shredded or quartered.
- (2) Tree limbs, tree trunks or tree stumps that exceed six feet in length and eight inches in diameter.
- (3) Pieces of concrete larger than 2'  $\times$  2'  $\times$  3'.
- (4) Large animals expressly including, but not limited to, horses, cows, or hogs, or similarly sized animals, except animals that are disposed of in accordance with rules established by the City Council.
- (5) Any material requiring special handling without prior approval by Landfill Supervisor.
- (6) Any hazardous material as defined by the Texas Commission on Environmental Quality.

- (D) Landfill access fee.

- (1) In addition to other applicable fees and charges, a \$25.00 landfill access fee will be applied to all vehicles each time they enter the sanitary landfill premises to dispose of garbage, trash or any type of waste.
- (2) Vehicles owned by the City of Midland and operated by city employees acting within the course and scope of their employment with the City of Midland shall not be subject to the landfill access fee.
- (3) Upon application and the payment of \$500.00, owners or lawful operators of vehicles entering the sanitary landfill facility for the purpose of disposing of garbage, trash or any type of waste may purchase a landfill access permit, good for one vehicle, to be affixed to the vehicle.
  - a. Possession of a landfill access permit allows the permittee unlimited access to the sanitary landfill facility without being charged a landfill access fee, during normal business hours,

during a calendar year beginning January 1, and ending December 31, of the year during which the permit is purchased. All other applicable fees will still be charged.

- b. The cost of the landfill access permits purchased after March 31, June 30, and September 30, will be pro-rated as appropriate.
- (4) A landfill access permit shall be issued by the Director of Solid Waste upon application and payment of the fee authorized in this Chapter. The landfill access permit shall be affixed to the vehicle.
- (5) After five days notice, any landfill access permit may be revoked or suspended, without reimbursement of any payment made for said permit, at any time by the Director of Solid Waste for violation of any applicable local, state or federal rule or regulation. The permittee may appeal to the City Manager from the decision of the Director of Solid Waste.

(Ordinance 8836, sec. 3, adopted 8/23/2010; Ordinance 9069, secs. 1—3 adopted 9/25/12; Ordinance 9530, sec. 1, adopted 1/26/16)



SANITATION AND HEALTH

**Chapter 8-7**

**SANITATION AND HEALTH**

**§ 8-7-1. Interference with health officer; quarantine.**

Any person who shall hinder or obstruct the health officer in the discharge of any of the duties imposed upon him by this Chapter, or who shall intrude upon any person isolated by the health officer, or who, after being isolated by the health officer, shall remove from such place of isolation, without the consent of the health officer, or who, after having been with any person having a pestilential or contagious or infectious disease, or after being exposed to such disease, shall come upon any of the streets of the City without first complying with all regulations established by the health officer, or who shall fail to comply with or violate any of the rules and regulations established by the health officer for the purpose of making effectual any quarantine, or to prevent the spread of any disease, shall be deemed guilty of a misdemeanor.

(A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.

(B) Injunctions. The health officer may seek to enjoin violations of this Section.  
(Ordinance 6199 adopted 4/26/1983; Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

**§ 8-7-2. Littering streets.**

It shall be unlawful for any person to produce, collect or deposit, or cause the same to be done, in any street, alley, sidewalk or elsewhere in the City, any impure or unhealthy substance or any thing calculated to promote disease.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-7-3. Nuisances generally.**

It shall be unlawful for any person to establish or, where already established, to conduct or carry on any trade, business, vocation or calling which is dangerous or injurious to persons or property in the vicinity, or which occasions annoyance to the public or the inhabitants of the neighborhood, and the same is hereby declared to be a nuisance.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-7-4. Premises to be kept clean.**

It shall be the duty of every person within the City to keep the premises owned or controlled by him clean and free of filthy or offensive matter, whether the same be solid or fluid, and to remove or destroy, as often as need be, all filth, garbage, offal, hoops, stones, straw, chips and everything calculated to endanger or promote disease or to become offensive, from such premises and the buildings, yards and enclosures thereon and from the sidewalk.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-7-5. Trash in public places.**

It shall be unlawful for any person to throw or deposit in any City lot, street, alley, sidewalk, gutter, ditch or drain any paper, filth, dung, garbage, broken glass, tins, chips, parings or bits of leather shavings, ashes or other trash.

(Ordinance 6199 adopted 4/26/1983)

**§ 8-7-6. Nauseous structures.**

It shall be unlawful for any person owning or in control of any premises to maintain or allow to remain

upon his premises any unwholesome or nauseous house, stable, pit or any unwholesome or nauseous structure or accumulation declared by the Council to be a nuisance.

(A) Penalties.Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.

(B) Injunctions.The health officer may seek to enjoin violations of this Section.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

#### **§ 8-7-7. Order to abate unwholesome structures.**

Whenever the Council shall deem any house, stable, cesspool, pit or any other structure or accumulation to be unwholesome or nauseous and shall pass an order declaring the same to be a nuisance and order its destruction, removal, cleansing or abatement, the health officer shall deliver to the owner or person in control of the premises upon which the nuisance is situated a notice in writing, signed by the Mayor, and attested by the City secretary, commanding the destruction, removal, cleansing or abatement of the nuisance in accordance with the order. Any owner or person in control of the premises upon which such nuisance is situated who shall fail or neglect to destroy, remove, cleanse or abate the nuisance in accordance with such order, within ten days after the delivery to him of the notice, shall be deemed guilty of a misdemeanor.

(A) Penalties.Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.

(B) Injunctions.The health officer may seek to enjoin violations of this Section.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

#### **§ 8-7-8. Inspections.**

It shall be the duty of the health officer to inspect regularly the premises of all persons residing, doing business or owning property within the limits of the City; and should the health officer find any such premises kept or permitted to remain in a filthy or unclean manner, he shall notify such persons to purify their premises. Should any person so notified by the health officer fail to obey such notification, he shall be deemed guilty of a misdemeanor.

(A) Penalties.Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.

(B) Injunctions.The health officer may seek to enjoin violations of this Section.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

#### **§ 8-7-9. Maintenance of property in filthy manner.**

No person shall maintain any building, premises, lot, vehicle or other place in such an unsanitary condition as to encourage the breeding or harboring of rats, mice, fleas, bedbugs, cockroaches, lice, flies or vermin therein or thereon. Nor shall any person permit any property owned or controlled by him or in his possession to be so maintained.

(A) Penalties.Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.

(B) Injunctions.The health officer may seek to enjoin violations of this Section.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

**§ 8-7-10. Presumption of improper maintenance.**

Any building, premises, lot, vehicle or other place within the City shall be presumed to be maintained in such an insanitary condition as to encourage the breeding or harboring of rats, flies and other creatures mentioned in the preceding Section when any of the following are maintained on such premises:

Privies.

Cesspools.

Waste disposal areas.

Auto trailer courts, tourist courts, hotels, inns, sleeping houses or boardinghouses and garbage houses when they are maintained without adequate plumbing or without sanitary garbage disposal facilities or without adequate toilet facilities.

This list constitutes a list of items that shall be deemed as a manner of law to be insanitary and to constitute the condition forbidden by the preceding Section, but is not exhaustive of conditions and situations that are prohibited by such Section.

(A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.

(B) Injunctions. The health officer may seek to enjoin violations of this Section.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

**§ 8-7-11. Notice to abate improper maintenance.**

Where it shall come to the attention of the health officer, or such other person designated to perform the duties of such officer, that the condition described in the two preceding Sections exists and should be abated for the health and safety of the community, the health officer shall give written notice to the occupant within ten days from the date he acquires knowledge of such condition. The health officer shall then take such action and institute such proceedings as are necessary to effect the abatement of the same.

(A) Penalties. Any person (or responsible officer of that person) who violates a provision of this Section shall be fined not more than \$2,000.00.

(B) Injunctions. The health officer may seek to enjoin violations of this Section.  
(Ordinance 6441 adopted 8/28/1984; Ordinance 6791 adopted 9/22/1987)

**§ 8-7-12. Smoking prohibited in certain public areas.**

(A) A person commits an offense if he smokes or carries lighted tobacco in any form or any other burning plant matter in certain areas that have a sign posted in a conspicuous place and said areas are designated as "no smoking" areas. The said areas are as follows:

1. An elevator used by the public.
2. A hospital or nursing home corridor providing direct access to patients' rooms.
3. City Council chambers at Midland city hall.
4. Movie theaters and museums.

5. Public transportation facilities and vehicles.

6. All facilities of public education.

(B) A person commits an offense if that person smokes or carries lighted tobacco in any form or any other type of burning plant matter in the following designated areas, and the owner or person in control of the areas designated commits an offense if that person knowingly permits another person to smoke or carry lighted tobacco in any form in one of the following areas:

1. That area of food handling establishments where food is prepared or packaged for subsequent consumption, being that area within 20 feet of any spot where food is regularly prepared or packaged for subsequent consumption.
2. Serving lines where unpackaged food is displayed or served to customers.
3. Serving counters, including self-service counters, where unpackaged food is displayed or served to customers and within 15 feet thereof, but excluding that area at serving counters where customer seating is provided.

(C) Midland International Airport.

1. It shall be unlawful for any person to knowingly smoke or carry lighted tobacco in any form or discard tobacco in any form, or spit tobacco in any form, or smoke or carry any other form of burning plant matter, within the main terminal building of Midland International Airport.
2. It shall be an affirmative defense to any charge of smoking or carrying lighted tobacco filed under subsection 1 above that the person committed the alleged offense in an area which is:
  - (a) Leased exclusively by a tenant other than the City and is not an eating establishment and is separated from public areas of the terminal building by doors.
  - (b) Clearly designated by appropriate signage as a designated smoking area by the director of airports pursuant to the authority in subsection 3.
3. The director of airports shall have authority to establish designated smoking areas within the Midland International Airport terminal building. Those designated smoking areas shall occupy not less than five percent nor more than 30 percent of the floorspace open to the public generally in the terminal building of Midland International Airport. The designated smoking areas shall not be less than two nor more than six in number. A designated smoking area must be clearly delineated by appropriate signage bearing the words "DESIGNATED SMOKING AREA." The designated smoking areas shall not occupy more than 50 percent of the floorspace of the eating areas of the restaurants and other eating facilities in the terminal building exclusive of alcoholic beverage lounges. Prior to establishing or altering any designated smoking area, the director of airports shall clearly define the limits of the proposed designated smoking area or the alteration thereto in writing and file the same with the City secretary's office. That description and an accompanying diagram of the terminal building depicting the designated smoking areas shall be on file at least ten days prior to a regularly scheduled meeting of the City Council before becoming effective on the day following that same regularly scheduled meeting of the City Council.

(D) The sign heretofore mentioned shall contain the words "No Smoking, City of Midland Ordinance."

(E) For purposes of this Section, "hospital" means an institution that provides medical, surgical and

overnight facilities for patients.  
(Ordinance 6680 adopted 7/22/1986; Ordinance 6999 adopted 4/24/1990)

City of Midland, TX

**SANITATION AND HEALTH**

**Chapter 8-8**

**SMOKING REGULATIONS**

***Editor's note(s)***—*Ord. No. 8309, § 1, adopted April 26, 2005, amended Ch. 8 in its entirety to read as herein set out. Former Ch. 8, §§ 8-8-1—8-8-15, pertained to similar subject matter, and derived from ordinances listed in the code comparative table.*

#### **§ 8-8-1. Definitions [as applicable to the article.]**

For the purposes of this article, the terms herein are defined as follows:

City means the City of Midland.

City building means the City hall building, the police and municipal court buildings, all fire stations, the City warehouse, all water treatment and sewage treatment buildings, all city shop buildings, the animal services buildings, and the parks and recreation buildings, and all other buildings owned by the City.

Use of tobacco products means the lighting, emitting, or inhaling the smoke, the carrying or holding of a lighted pipe, cigar, or cigarette or any other lighted smoking equipment or the ingestion, chewing, spitting out or inhaling of snuff, chewing tobacco or any other product made of tobacco.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-2. Use of tobacco products prohibited.**

- (a) It shall be unlawful for any person to use tobacco products in a city building. Signs shall be posted at each entrance to the City building in English and in Spanish prohibiting use of tobacco products. Ashtrays, containers or other facilities for the containment of tobacco products shall be provided at convenient locations outside each city building so that persons attempting to bring tobacco products into the building can easily discard them.
- (b) It is an exception to the application of subsection (a) of this section that such use of tobacco products has been authorized by an employee of the Midland Police Department for persons who are incarcerated, under arrest, being investigated for a crime, or being interviewed or questioned by the police or for persons, other than employees of the City who are participating in a criminal investigation.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-3. Duty of city employees.**

It shall be the duty of all city employees to enforce the provisions of this chapter by informing the public and other city employees of the requirements of this article.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-4. Offenses.**

A person commits an offense if he or she:

- (a) Knowingly or intentionally uses tobacco products in a city building.
- (b) Mutilates or destroys any signs required by this article.

It is a defense to prosecution under this section that the City building in which the offense takes place does not have prominently displayed the sign listed in section 8-8-2.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-5. Disciplinary action.**

Any violations of section 8-8-4, offenses, shall also be a violation of the disciplinary rules of the City.

Employees committing a violation may be subject to a full range of disciplinary action up to and including dismissal. Progressive discipline is encouraged but shall not be required under this section. Nothing in this section shall be construed to grant a right or entitlement to employment or termination for just cause.  
(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-6. Other laws.**

Nothing in this chapter shall be construed to permit smoking where it is otherwise prohibited by law or regulations.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-7. Definitions [as applicable to the chapter.]**

The following terms, as used in this chapter, shall have the meanings ascribed to them in this section, unless context clearly indicates otherwise:

Air barrier system shall mean a system that creates an air curtain to prevent drift or penetration of tobacco smoke from a smoking area to a nonsmoking area and not allowing drift or penetration from the ceiling down to 24 inches above the floor.

Air purification system shall mean an electrically powered hospital grade, heap media filter that will clean all of the air in the designated smoking area every 15 minutes as follows: not less than 95 percent of 0.3-micron particulate efficiency including, but no limited to, dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than 95 percent removal of gases, vapors, volatile organic compounds (V.O.C.) and odors.

Building official shall mean the City of Midland building official, or his/her designee, charged with, among other things, the enforcement for compliance with any mechanical, electrical, structural or nonstructural modifications, or signage requirements for compliance with this chapter.

Designated smoking area shall mean an area which has been designated for smoking.

Common areas shall mean restrooms, reception areas, lobbies, service line areas, public telephone areas, and other areas commonly used by all patrons, including access thereto. However, common areas shall not include access to a restroom from a nonsmoking area if the premises are in full compliance with this ordinance.

Food products establishment means any restaurant, coffee shop, cafeteria, luncheonette, tavern, sandwich stand, soda fountain, private and public school cafeteria or eating establishment or any other eating establishment which gives or offers for sale, food to the public, guests, patrons or employees. Other food product establishments include, but are not limited to, grocery stores and food markets, not including those outdoors.

Midland shall mean the City of Midland, Texas.

Physical barrier as used herein shall mean a barrier that will form an effective membrane continuous from the inside of the outside wall to the inside of the outside wall, from a smoke barrier to a smoke barrier, from floor to deck or roof structure above, or any combination thereof, including continuity through all concealed spaces, including above suspended or lay in ceilings, interstitial structural and mechanical spaces. Self-closing, smoke tight doors shall protect openings in such barriers, or other approved air barrier systems.

Private club shall mean any building, premise or portion thereof which is permitted by the state and allowed by the zoning ordinance of the City as a private club for the storing, possession and dispensing for on-premise consumption of alcoholic beverages. Private club does include a premise operated by

an organization which is not available to and not customarily used by the general public and entry and privileges thereto are established by regulations of that organization.

Public area shall mean any indoor and/or enclosed area, whether existing prior to or subsequent to the effective date of the ordinance from which this chapter derives, that is open to or is used by the general public and includes the common area.

Public transportation conveyances means the use of any vehicle or mode of transportation providing transportation to the public over the streets of the City including any taxicab, bus, limousine, courtesy van or touring vehicle. It includes the area occupied by the operator as well as the passenger area.

Public transportation facilities means any establishments used in connection with public transportation conveyances wherein the public is provided access.

Retail and service establishment shall mean any establishment which sells goods or services to the general public.

Retail tobacco store means a retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than 50 percent of the total annual gross sales.

Service line shall mean an indoor line or area where persons await service of any kind, regardless of whether or not such service involves the exchange of money. Such service shall include, but is not limited to, sales, giving of information, directions or advice and transfers of money or goods.

Sign shall mean any required signage for smoking, no smoking or designated smoking areas, and shall refer to Exhibit A. (Exhibit A is on file with the City clerk.)

Ventilation system shall mean an HVAC system designed to a professional engineering standard to meet the requirements of the City's mechanical code, as amended.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-8. Smoking prohibited in certain public areas.**

- (a) A person commits an offense in violation of this chapter by smoking in any public area in any of the following places in the City, and an offense is punishable by fine not to exceed \$500.00.
  - (1) A public or private preschool, primary or secondary school;
  - (2) Elevators, museums, libraries, galleries, public transportation conveyances and facilities;
  - (3) Any building which is used for or designated for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital, athletic event or any other such event whenever open to the public;
  - (4) Any retail or service establishment serving the general public, including, but not limited to, any food products establishment, commercial indoor amusement, department store, bowling center, bar, night club, tavern, lounge, sexually oriented business, billiard hall, laundromat, bank, drug store, shopping mall, hair, nail or tanning salon or tattoo parlor;
  - (5) Within all areas available to and customarily used by the general public in all buildings of governmental subdivisions of the state located in the City, not the state or federal government, nonprofit entities patronized by the public, and private institutions of education;
  - (6) Within any public area of a health care facility or hospital, including, but not limited to, clinics,

physical therapy facilities, nursing and convalescent homes, residential treatment centers/homes and doctors' and dentists' facilities; or

- (7) Within any common area in subsections (1) through (6).
- (b) Notwithstanding any other provision of this chapter to the contrary, smoking is not prohibited in the following areas:
  - (1) Private residences, except when used as a licensed child care facility, health care facility, group care home, community home or other commercial use;
  - (2) Hotel and motel rooms rented to guests;
  - (3) Retail tobacco stores;
  - (4) Any area exterior to the building in which the establishment or facility is located;
  - (5) Any enclosed rooms in an establishment which are being used entirely for private parties, events or other social functions or by a private club;
  - (6) Enclosed areas of an employer that are not available to the general public;
  - (7) Any designated smoking area that meets the requirements specified herein; or
  - (8) General and administrative offices, professional, educational, or governmental offices primarily used by employees, and not the public.
  - (9) Premises on which bingo is conducted by a licensed authorized organization and the premises must be owned or leased by a licensed commercial lessor, as authorized by Chapter 2001 of the Texas Occupations Code, as amended.
- (c) Each of the following circumstances shall be a defense to prosecution under this section:
  - (1) The public place in which the offense takes place does not have prominently displayed a reasonably sized sign that smoking is prohibited by law and that an offense is punishable by a fine not to exceed \$500.00, or as authorized by law;
  - (2) In a facility listed in subsection (a)(6), all patients within the room are smokers and such smoking is ordered on the health care facility's admission form by an attending physician, in keeping with the guidelines established by the facility. Separate ventilation exhaust may be required by the building official to accommodate such orders;
  - (3) The smoking occurred in any public transportation conveyance or public place set out in this section that are not equipped with facilities for extinguishment of smoking materials;
  - (4) The person who is smoking does so exclusively within an area designated for smoking tobacco; or
  - (5) As a participant in an authorized theatrical performance.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-9. Owner violations.**

- A. The owner, operator or person in charge of a public area described in section 8-8-8(a), and not excluded by section 8-8-8(b), shall be guilty of an offense and subject to a fine not to exceed \$500.00,

and subject to the other remedies provided in this chapter, for failure to comply with the following requirements:

- (1) Failure to post signs, when required by the ordinance, which designate smoking or no smoking areas that are reasonably-sized, and prominently displayed and, in the case of signs which designate no smoking, state that smoking is prohibited by law and an offense which is punishable by a fine not to exceed \$500.00, or as authorized by state law.
- (2) When smoking is prohibited, failure to provide facilities for extinguishment of smoking materials within 20 feet of, and outside of, the public entrances, or as otherwise required by law.
- (3) Failure to provide designated smoking areas as required in section 8-8-10 when both a smoking area and nonsmoking area are designated.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-10. Designated smoking areas.**

A. In the event that both a smoking area and a nonsmoking area are designated, the owner, operator or person in charge of the public area shall provide for the smoking areas to meet the following requirements:

- (1) Such smoking areas are equipped with a functional air purification system or functional separate ventilation system. Such systems shall have a negative pressure on the area designated for smoking to prevent air from a smoking area to be drawn across or into the nonsmoking area. All ventilation systems shall provide a total air exchange every 15 minutes and shall exhaust that air to the exterior of the building. The system must also contain an air barrier system approved by the building official. All systems shall be tested not less than every six months by a Texas Licensed HVAC Contractor and such test results shall be made available to the building official when requested and the owner, operator or person in charge may be required to pass additional tests in the future as determined necessary by the building official if the adequacy of the system appears to fail to meet the objectives of this chapter or as a periodic maintenance check. The owner, operator or person in charge shall keep the records of the test for a minimum period of two years from the date of the tests.

Exception: An alternate system not complying with the above can be substituted, provided:

- a. Designated smoking areas must be substantially separated from the nonsmoking areas by physical barrier.
  - b. Designated smoking areas must be provided a separate HVAC system from those serving nonsmoking areas.
  - c. The system must remove visual smoke at a rate of four times per hour and that air from designated smoking areas must not be drawn across nonsmoking areas.
- (2) All systems shall be tested not less than every six months by a Texas Licensed HVAC Contractor and such test results shall be made available to the building official when requested and the owner, operator or person in charge may be required to pass additional tests in the future as determined necessary by the building official if the adequacy of the system appears to fail to meet the objectives of this chapter or as a periodic maintenance check. The owner, operator or person in charge shall keep the records of the test for a minimum period of two years from the date of the tests.

- (3) A sign, reasonably sized, must be prominently displayed by the owner, operator or person in charge of the public area on the premises and state that smoking is permitted in the designated smoking area and where smoking is not permitted, prominently display a reasonably sized sign or signs that give notice that smoking is prohibited by law and that an offense is punishable by a fine not to exceed \$500.00, or as authorized by law.
  - (4) Designated smoking areas shall not include common areas.
  - (5) Failure to meet these standards will result in the denial of the opportunity to operate such smoking area. Smoking areas failing the prescribed test or not in compliance with the requirements contained herein shall be deemed to be nonsmoking until successfully tested.
  - (6) All children's playgrounds associated with eating establishments shall be nonsmoking. All doors and gates leading to such play areas shall be posted with separate no smoking signs that comply with section 8-8-9(1) or state law.
- (7) This section shall be applicable to public transportation facilities.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-11. Smoking facilities, only.**

It shall be a defense to section 8-8-9, unless required by law, that the owner, operator, or person in charge of any establishment or facility described in this chapter has declared the establishment or facility as a smoking establishment by posting signs that are clearly visible at all public entrances stating "smoking area only" and has not attempted in any way to designate both a smoking area and a nonsmoking area. This section shall not be applicable to public transportation facilities.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-12. Nonsmoking facilities.**

- A. In the event that the public area is one which is designated as no smoking, the owner, operator or person in charge shall:
  - (1) Prominently display a reasonably sized notice that smoking is prohibited by law in such public place and that an offense is punishable by a fine not to exceed \$500.00; and
  - (2) Provide facilities for extinguishment of smoking materials.

(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-13. Culpability.**

There shall be a requirement of a culpable mental state for a violation of this chapter.  
(Ordinance 8309, sec. 1, adopted 4/26/05)

#### **§ 8-8-14. Compliance.**

- (a) The building official or designee shall provide each applicant for a certificate of occupancy with a copy of the ordinance from which this chapter derives.
- (b) All persons, owners, operators, persons in charge or managers of any facility, business or agency within the purview of this chapter shall comply with the provisions of this chapter.
- (c) The building official or his designee, the Midland Police Department and Fire Department, may

enforce this chapter by any of the following actions:

- (1) Serving written notice on the owner, operator, person in charge or manager of any facility, business or agency within the purview of this chapter, requiring the correction, within a specified reasonable time frame, of any violation of this chapter;
- (2) Issuing a municipal court citation; or
- (3) In cases where occupancy permits are required, the building official may deny an occupancy permit.

The Midland Health Department may enforce the ordinance as described in subsection (a)(1) above.

- (d) The remedies contained herein are cumulative of, and in addition to, any other remedies that are available to the City at law or in equity.
- (e) In undertaking the enforcement of this chapter, the City is assuming an undertaking only to promote the general health, safety and welfare of its citizens. The city is not assuming any duty or obligation, nor is it imposing any duty and/or obligation on its officers and/or employees, nor is it liable in money damages or otherwise to any person who claims that:
  - (1) The City and/or one of its officers and/or employees breached any such obligation; and
  - (2) The breach proximately caused injury.

(Ordinance 8309, sec. 1, adopted 4/26/05)



CROSS CONNECTIONS

**Chapter 8-9**

**CROSS CONNECTIONS**

## **ARTICLE I IN GENERAL**

### **§ 8-9-1. Declaration of policy.**

It is hereby declared the policy of the City to promote the public health, safety and welfare by:

- (A) Implementing the rules for drinking water standards governing drinking water quality and reporting requirements for public water supply systems promulgated by the Texas Natural Resource Conservation Commission (TNRCC) 31 Texas Administrative Code §§ 290.44 and 290.46, V.T.C.A., Health and Safety Code § 341.031 et seq., and the Federal Safe Drinking Water Act, 42 USCA § 300f et seq.
  - (B) Establishing a cross connection control program of uniform regulations governing the installation, testing and certification of backflow prevention assemblies and technicians.
  - (C) Establishing requirements to permit and control the installation, routine maintenance and inspection of backflow prevention assemblies.
- (Ordinance 7605, sec. 1, adopted 4/22/1997)

### **§ 8-9-2. Purposes.**

This Chapter shall be construed so as to achieve the following objectives:

- (A) To protect the public potable water supply of the City from the possibility of contamination or pollution by isolating within the customer's internal distribution system(s) or the customer's private water system(s) such contaminants or pollutants that could backflow into the public water system;
- (B) To promote the elimination or control of existing cross connections, actual or potential, between the customer's potable water system(s) and nonpotable water systems, plumbing fixtures, and process piping systems in conjunction with the current adopted plumbing code;
- (C) To provide for the maintenance of a continuing program of cross connection control that will systematically and effectively prevent the contamination or pollution of the City's potable water by requiring the certification and operational testing of all testable backflow prevention assemblies located on a premises, and requiring the installation of approved backflow prevention assemblies as required by the currently adopted plumbing code; and
- (D) To comply with the TNRCC Rules and Regulations for Public Water Systems (31 TAC §§ 290.38 through 290.49).

(Ordinance 7605, sec. 1, adopted 4/22/1997)

### **§ 8-9-3. Interpretation.**

This Chapter shall be liberally interpreted to achieve the policy and purposes stated above.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

### **§ 8-9-4. Applicability.**

This Chapter shall apply to the utility water service area and all cross connections and installations of backflow prevention assemblies within:

- (A) Any area where potable water is provided by the utility;
  - (B) Areas where water is purchased from the utility for the purpose of resale; and
  - (C) Any plumbing outside the City requiring plumbing inspection pursuant to an interlocal agreement between the City and a political subdivision.
- (Ordinance 7605, sec. 1, adopted 4/22/1997)

#### **§ 8-9-5. Definitions.**

For the purpose of this Chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. If a word or term used in this Chapter is not contained in the following list, its definition shall be as shown in the plumbing code found in Chapter 4-3, of the Midland City Code. Other technical terms used shall have the meanings or definitions listed in the latest edition of the Manual of Cross Connection Control published by the Foundation for Cross Connection Control and Hydraulic Research, University of Southern California.

Air gap separation means a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or nonpressure receiving vessel. An approved air gap separation shall be at least double the diameter of the supply pipe measured vertically above the overflow rim of the vessel, and in no case less than one inch (2.54 cm).

Atmospheric vacuum breaker (AVB) means a device consisting of a float check, a check seat, and an air inlet port. A shutoff valve immediately upstream may be an integral part of the assembly. The AVB is designed to allow air to enter the downstream water line to prevent backsiphonage. This unit may never be subjected to a backpressure condition or have a downstream shutoff valve, or be installed where it will be in continuous operation for more than 12 hours.

Auxiliary water supply means any water supply on or available to the premises other than the purveyor's approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural sources, such as, but not limited to, a well, spring, river, stream, used waters, or industrial fluids. These waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

Backflow means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of a potable water supply from any source(s).

Backflow prevention assembly means a device or means to prevent backflow into the potable water system, including reduced pressure backflow assemblies, double checkvalve assemblies, atmospheric vacuum breakers, pressure vacuum breaker assemblies or air gap.

Backpressure means a pressure higher than the supply pressure, caused by a pump, elevated tank, boiler, air/stream pressure, or any other means, which may cause backflow.

Backsiphonage means a form of backflow due to a reduction in system pressure which causes a negative or sub-atmospheric pressure to exist at a site in the water system.

Certified backflow prevention technician means a technician certified in writing by the TNRCC as capable and licensed to check, repair and maintain backflow prevention devices.

Commercial establishment means any property or location which is used primarily for the manufacture, production, storage, wholesaling or retailing of any good or ware which is or may be placed in the flow of commerce or any property or location which is used primarily for the provision of any service.

Commission means the Texas Natural Resource Conservation Commission (TNRCC).

Contamination means an impairment of the quality of the public potable water supply or a private potable water supply by the introduction or admission of any foreign substance that degrades the quality and which creates an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, or waste.

Cross connection means any actual or potential connection or structural arrangement between a public or private water system through which it is possible to introduce any used water, industrial fluids, gas, or substance other than the intended potable water with which the system is supplied; bypass arrangements, jumper connections, removal sections, swivel or changeover devices and other temporary or permanent devices through which or because of which backflow can or may occur.

Cross connection survey means a detailed inspection of a location and disposition of the water lines, including, without limitation, establishing water lines on the premises, the existence of cross connections, the availability of auxiliary or used water supplies, the use of or availability of pollutants, contaminants and other liquid, solid or gaseous substances which may be used for stabilization of water supplies and such other processes necessary to determine the degree of hazard.

Customer means the person, company or entity contracting with the City of Midland to receive potable water service.

Customer's potable water system means that portion of the privately owned potable water system lying between the point of delivery and the point of use. This system will include all pipes, conduits, tanks, receptacles, fixtures, equipment and appurtenances used to produce, convey, store or utilize the potable water.

Degree of hazard means the low or high hazard classification that shall be attached to all actual or potential cross connections.

Health hazard means an actual or potential threat of contamination of a physical or toxic nature to the public potable water system or the consumer's potable water system that would be a danger to health.

High hazard means the classification assigned to an actual or potential cross connection that potentially could allow a substance that may cause illness or death to backflow into the potable water supply.

Low hazard means the classification assigned to an actual or potential cross connection that potentially could allow a substance that may be objectionable but not hazardous to one's health to backflow into the potable water supply.

Plumbing hazard means an internal or plumbing-type cross connection in a consumer's potable water system that may be either a pollution or a contamination-type hazard.

Pollutional hazard means an actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system but which would not constitute a health or system hazard, as defined. The maximum degree of intensity of pollution to which the potable water system could be degraded under this definition would cause a nuisance or be aesthetically objectionable or could cause damage to the system or its appurtenances.

System hazard means an actual or potential threat of severe danger to the physical properties of the public or consumer's potable water supply or of a pollution or contamination that would have a detrimental effect on the quality of the potable water in the system.

Director means the director of utilities of the City of Midland or his authorized representative or designee.

Double checkvalve means an assembly composed of two independently acting approved checkvalves,

including tightly closing resilient seated shutoff valves located at each end of the assembly and fitted with properly located resilient seated test cocks. This assembly shall only be used to protect against a non-health hazard (i.e., pollutant).

Nonpotable water means water that does not comply with the commission's rules and regulations governing drinking water.

Nonresidential use means water used by any person other than a residential customer of the water supply and includes all uses not specifically included in "residential uses."

Pollution means an impairment of the quality of the public potable water supply to a degree which does not create a hazard to the public health but does adversely and unreasonably affect the aesthetic qualities of such potable water for domestic use.

Portable water or water means water which is satisfactory for drinking, culinary, and domestic purposes and meets the requirements of the commission.

Pressure vacuum breaker assembly means an assembly containing an independently operating internally loaded checkvalve and an independently operating loaded air inlet valve located on the discharge side of the checkvalve. The assembly is to be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached at each end of the assembly.

Public potable water system means any publicly or privately owned water system operated as a public utility under a health permit to supply water for domestic purposes. This system will include all sources, facilities and appurtenances between the source and the point of delivery such as valves, pumps, pipes, conduits, tanks, receptacles, fixtures, equipment and appurtenances used to produce, convey, treat or store potable water for public consumption or use.

Reduced pressure backflow prevention assembly shall consist of two independently acting approved checkvalves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the checkvalves and below the first checkvalve. These units are located between two tightly closing resilient seating shutoff valves and are fitted with properly located resilient seated test cocks.

Residential use means water used by any residential customer of the water supply and includes single-family dwellings, duplexes, multiplex housing and apartments where the individual units are each on a separate meter, or, in cases where two or more units are served by one meter, the units are full-time dwellings.

Service connection means the terminal end of a service connection from the public potable water system, i.e., where the water purveyor loses jurisdiction and sanitary control of the water at its point of delivery to the consumer's water system. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter.

Used water means any water supplied by a water purveyor from a public water system to a consumer's water system after it passes through the point of delivery and service connection, and is no longer controlled by the water purveyor. Used water shall not be returned to the public potable water system.

Utility means City of Midland utilities department.

Water purveyor means the utility, private owner, political subdivision or operator of a potable water system connected to the City of Midland's public water supply and supplying water to other water connections. (Ordinance 7605, sec. 1, adopted 4/22/1997)

**§ 8-9-6. Rulemaking.**

The director is hereby authorized to promulgate regulations not in conflict with this Chapter, the plumbing code, the City Charter, the laws of the State of Texas, V.T.C.A., Health and Safety Code § 341.031 et seq., as amended, and the Federal Safe Drinking Water Act, 42 USCA § 300f et seq., as amended.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

## **ARTICLE II CROSS CONNECTION CONTROL PROGRAM**

### **§ 8-9-7. Cross connections prohibited.**

- (A) No installation of potable water supply, piping, or part thereof shall be made in such a manner that allows used, polluted, or contaminated water, mixtures, gases, or other substances to enter any portion of such piping by reason of backsiphonage, backpressure or any other cause.
- (B) No person shall install any water-operated equipment or mechanism, or use any water-treating chemical or substance, if it is found that such equipment, mechanism, chemical or substance may cause pollution or contamination of the public potable water supply. Such equipment or mechanism may be permitted only when equipped with an approved backflow prevention assembly.
- (C) No person shall connect to the public potable water system any mechanism(s) or system(s) designed to return used water to the public potable water system through any measure.
- (D) No person shall connect an auxiliary water system to the public potable water system.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

### **§ 8-9-8. Backflow prevention assemblies.**

- (A) Installation.
  - 1. New installation.
    - a. New, replacement, or reconditioned backflow prevention assemblies shall be installed in accordance with the currently adopted plumbing code, as amended.
    - b. Prior to installation, the person must obtain a plumbing permit.
    - c. Prior to issuance of a certificate of occupancy, a completed test and maintenance report must be submitted to the utility for any connection requiring a testable backflow prevention assembly. Documentation of an approved air gap can be substituted where applicable.
  - 2. High health hazard installations.
    - a. Only approved air gaps or reduced pressure backflow prevention assemblies can be installed at high health hazard applications. All assemblies must be tested, at a minimum, on an annual basis, or more frequently at the director's discretion.
    - b. The director may require a secondary device if deemed necessary to protect the public water supply from the failure of or to allow maintenance of the primary cross control device.
  - 3. Other installations. A backflow prevention assembly shall be installed to protect the potable water system from contamination or pollution when such system is connected to any automatic fire protection systems, standpipe systems, or privately owned fire hydrants.
    - a. A reduced pressure backflow prevention assembly shall be required if chemicals or additives are combined or added to any fire protection system.
    - b. Installation of a reduced pressure backflow prevention assembly shall be required on

temporary water meters connected to the public potable water system unless an approved air gap is authorized.

4. **Wholesale customers.** Any customer purchasing water for the purpose of resale or distribution shall:
  - a. Install an air gap separation or a reduced pressure backflow assembly at the service connection, certified for operation upon installation and annually thereafter by a certified backflow prevention assembly technician forwarding the results to the director within ten days; or
  - b. Implement a plumbing inspection and cross connection control program not less restrictive than that of the City and provide annual program records to the director for review and audit.
  - c. A reduced pressure backflow prevention assembly shall be required on all carbonating beverage equipment.
5. **Government customers.** Any premises owned, operated, or occupied by a state, federal, county, city or foreign government or agency refusing to comply with the provisions of this Chapter shall install a reduced pressure backflow prevention assembly at each service connection, being certified and tested for proper operation upon installation and annually thereafter. In those instances where the director deems potential or actual hazard to be deleterious to human health, certified inspections and operational testing shall be required semiannually.
6. **Water hauling trucks.** Water hauling trucks obtaining water from a connection to the utility's public potable water system shall have an approved air gap separation or a reduced pressure backflow prevention assembly installed permanently on the vehicle and said assembly shall be registered with the utility and certified for operation annually.

(B) **Existing commercial service connections.**

1. The premises owner, customer or the designated representative shall have all testable backflow prevention assemblies which are currently installed certified for operation by a certified backflow prevention technician on an annual basis. If the device has not been certified for operation within the last year, the device must be tested and, if required, repaired, and the documentation submitted to the director within 90 days of the effective date of this Chapter.
2. Any existing connection which meets the definition of high health hazard must be protected by a backflow prevention device as required by (A) of this Section within 180 days of the effective date of this Chapter unless the director determines that circumstances exist which require installation within a shorter timeframe.
3. Installation of backflow prevention devices against nonhigh health hazard cross connections at existing facilities must be provided on a schedule determined by the director.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

**§ 8-9-9. Inspection and testing of backflow prevention assemblies.**

- (A) It shall be the duty of the customer at any premises where testable backflow prevention assemblies are installed to have certified inspections and operational tests conducted annually. In those instances where the director deems the hazard to be deleterious to human health, certified inspections may be required semiannually. Inspections and tests shall be at the expense of the owner, owner's

representative, or customer and shall be performed by a certified backflow technician.

- (B) Assemblies shall be repaired, overhauled, or replaced at the expense of the customer whenever said assemblies are found to be defective. Records of such tests, repairs, and overhaul shall be kept and submitted to the director within five days of the tests, repairs or overhaul of each backflow prevention assembly.
- (C) No device or assembly shall be removed from use, relocated, or other device or assembly substituted without the approval of the director. Whenever the existing assembly is moved from the present location, or requires more than minimum maintenance, or when the director finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow prevention assembly complying with requirements of this Chapter and the current plumbing code.
- (D) The director shall have the authority to conduct a customer service inspection prior to providing continuous water service to new construction, on any existing service, when there is a reason to believe that cross connections or other unacceptable plumbing practices exist, or after any material improvement, correction or addition to the private plumbing facilities has occurred.
- (E) Quality control. The utility reserves the authority to maintain a program of quality control by taking the following measures:
  - 1. Retesting of any backflow prevention assembly certified as operational;
  - 2. Notifying the technician certifying the operation of a backflow prevention assembly of test discrepancies; and
  - 3. Taking legal action against the certified technician for verified testing or reporting discrepancies, including without limitation:
    - a. False, incomplete, or inaccurate reporting of test completion or certification of a backflow prevention assembly;
    - b. Use of inaccurate gauges; and
    - c. Improper operational certification method.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

#### **§ 8-9-10. Customer responsibility.**

- (A) The customer shall be responsible for all costs associated with the installation, general maintenance, testing, upkeep, and replacement of the approved backflow prevention assembly.
- (B) Where an owner of property leases or rents the same to any person as tenant or lessee, the owner or tenant or both may be held financially responsible for any of the requirements of this Chapter.
- (C) Utility purchase and installation of backflow prevention assemblies.
  - 1. Any retail customer unable to purchase and install a backflow prevention assembly due to financial hardship may request assistance from the utility in order to comply with the intent of this Chapter. The customer must submit a written request for financial assistance to the director to purchase and install a backflow prevention assembly appropriate to the customer's needs.
  - 2. Installation shall be by a private contractor approved by the utility. The utility's cost to purchase and install the assembly shall be recovered through monthly billings. The director may establish

the payback period, but in no case shall the payback exceed 60 months.  
(Ordinance 7605, sec. 1, adopted 4/22/1997)

### **§ 8-9-11. Registered backflow prevention assembly tester.**

- (A) All individuals conducting backflow prevention assembly certification and testing for devices installed on the City's potable water system must complete an application provided by the utility. The director shall determine whether an applicant is eligible for registration based on the following minimum requirements:
1. The individual must provide documentation that he/she is currently accredited as a backflow prevention assembly tester registered with the Texas Natural Resource Conservation Commission.
  2. Each applicant certified as a backflow prevention assembly tester must furnish evidence that he/she has available the necessary tools and equipment to properly test and certify such assemblies. The serial number of each test kit shall be on record with the utility and all test kits must be certified annually in accordance with the University of Southern California's Foundation of Cross Connection Control and Hydraulic Research and/or the American Water Works Association Manual of Cross Connection Control (M-14).
  3. Other requirements as deemed necessary by the director.
- (B) Upon satisfactory completion of the above requirements, the director shall issue a registration number to the applicant.
- (C) The registered tester must renew his/her registration with the utility annually.
- (D) The registered tester must immediately notify the utility if:
1. The Texas Natural Resource Conservation Commission revokes his/her accreditation as a backflow prevention assembly tester.
  2. The test gauges used to certify the backflow prevention devices are not functioning properly or additional gauges have been put into service.
  3. Any of the information provided on the application is changed or incorrect.
- (E) Failure to comply with the above requirements will be cause to revoke the tester's registration with the utility.
- (F) Under no circumstance can any individual perform testing of backflow prevention devices located on the City's potable water system unless he/she is registered with the utility.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

### **§ 8-9-12. Test and maintenance report.**

- (A) Only test and maintenance report forms provided by the utility can be used to document testing of testable backflow prevention devices.
- (B) The registered backflow prevention assembly tester must provide a copy of the completed test and maintenance report form to the utility within ten days of the date of the test.
- (Ordinance 7605, sec. 1, adopted 4/22/1997)

**§ 8-9-13. Thermal expansion.**

It is the responsibility of the property owner to eliminate the possibility of thermal expansion if a closed system has been created by the installation of a backflow assembly.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

**§ 8-9-14. Pressure loss.**

Any water pressure drop caused by the installation of a backflow assembly shall not be the responsibility of the utility.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

## **ARTICLE III ENFORCEMENT**

### **§ 8-9-15. Enforcement.**

- (A) **Enforcement authority.** The director and the City attorney, and each of them, are hereby authorized to enforce the provisions of this Chapter by any one or more of the enforcement mechanisms set forth in this Chapter.
- (B) **Inspection and enforcement is a governmental function.** The inspectors, agents or representatives of the City charged with enforcement of this Chapter shall be deemed to be performing a governmental function for the benefit of the general public, and neither the City, the director nor the individual inspector, agent, or representative of the City engaged in inspection or enforcement activities under this Chapter when acting in good faith and without malice shall ever be held liable for any loss or damage, whether real or asserted, caused or alleged to have been caused as a result of the performance of such governmental function.
- (C) **Right of entry.** As a condition of the City providing water service, directly or indirectly, to property, whether within or outside the corporate limits, and as a condition of connection to the public potable water system by customers under the conditions hereinafter set forth, any authorized officer or employee of the City may enter, inspect, monitor or conduct enforcement activities with respect to any part of the public or private potable water system servicing such premises, and shall have a right to enter without delay to, upon, or through any premises to gain access to a cross connection, backflow prevention assembly or piping, without limitation, and may inspect any customer's potable water system or piping or records pertinent thereto, required under this Chapter, and rules or regulations of any governmental entity with whom the City may have an interlocal agreement for the provision of wholesale water services. This right of entry shall extend to public streets, easements, and private property within which any portion of the public or private potable water system servicing such premises may be located. If right of entry is refused by the customer an administrative search warrant will be pursued under the conditions of this Chapter.
- (D) **Arrangement for access.** The customer connected to the public potable water system shall make all necessary arrangements, at its sole expense, to remove without delay security barriers or other obstacles to access by the director.
- (E) **Obstruction of access and unreasonable delays prohibited.** Obstruction or unreasonable delay in allowing access by the director to premises connected to the public potable water system shall constitute a violation of this Chapter.
- (F) **Administrative search warrants.** If the director has been refused access to a building, structure, or property or any private potable system connected to the public potable water system and if the director has demonstrated probable cause to believe that a violation of this Chapter, a plumbing permit, or other order issued hereunder exists or that there is a need to inspect as part of the City's routine inspection program designed to verify compliance with this Chapter or any permit or order issued hereunder, or to protect the overall health, safety, and welfare of the community, then, upon application by the director, a judge of the municipal court may issue a search and/or seizure warrant describing therein the specific location subject to search and the property or items subject to seizure. Such warrant shall be served at reasonable hours in the occupancy of a uniformed police officer. In the event of an emergency affecting public health and safety, such inspection shall be made without the necessity of a warrant.

(G) Notice of violation (NOV). Upon violation of the conditions of registration as a certified backflow prevention technician, a plumbing permit, installation requirements of a backflow prevention assembly under this Chapter, or any other cross connection requirement, the director may, but shall not be required to, serve upon said person a written NOV describing the violation and the action required to correct the same. Such NOV shall inform the recipient that, within seven calendar days of receipt thereof, the person receiving the same shall provide to the director an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific actions for correction of the violation, provided, however that:

1. Submission of the proposed corrective plan shall in no form or manner relieve the user of criminal or civil liability for violations of this Chapter whether before or after receipt of the NOV; and
2. Nothing in this subpart shall be construed to limit the authority of the director to pursue any other enforcement action or remedy, including, without limitation, such emergency actions the director determines to be necessary, without first issuing an NOV.

(H) Criminal penalty. A person who violates any provision of this Chapter is violating a city ordinance that governs health and sanitation and shall be guilty of a Class C misdemeanor for each day or portion thereof during which the violation is continued. Each such offense is punishable by a fine not to exceed \$2,000.00.

(I) Culpable mental state not required. A culpable mental state is not required to prove a criminal offense under this Chapter.

(J) Civil actions. The city attorney is hereby authorized to enforce this Chapter by civil court actions in accordance with the procedures therefor provided by state or federal law, including, without limitation, actions for injunction, damages, declaratory relief or other remedies that the City attorney shall deem appropriate to pursue.

(K) Civil penalties. Notwithstanding any other provision of this Chapter, if:

1. A person has received actual notice of the provisions of this Chapter; and
2. After the person received notice of the provisions of this Chapter, such person committed or continued acts in violation of this Chapter or failed to take action necessary for compliance with this Chapter, the City attorney may initiate a suit against the owner, occupant, agent or manager of premises that are in violation of this Chapter, to recover a civil penalty not to exceed \$1,000.00 per day for each such violation. Each day or fractional part thereof that such noncompliance continues shall constitute a separate violation for which civil penalties shall accrue under this Chapter. Water service may be discontinued if violations are not corrected within five days of notification by the director.

A suit for civil penalties hereunder shall not prevent nor be a prerequisite for taking any other action against a person in violation of this Chapter. Such suit may also include therein a request for such other and further relief as the City attorney shall deem advisable, including, without limitation, an action for injunction or claim for damages to recover for expenses, loss, or damage to city property occasioned by reason of such violation.

(L) Remedies cumulative. All remedies authorized under this Chapter are cumulative of all others unless otherwise expressly provided. Accordingly, the filing of a criminal action shall not preclude the pursuit of a civil or administrative action for violation of this Chapter, nor shall the filing of a civil

action preclude the pursuit of any other action or remedy, administrative or criminal.

- (M) Persons responsible. A person is responsible for a violation of this Chapter if:
1. The person commits or assists in the commission of a violation; or
  2. The person is the owner, occupant, agent, or manager of the property or facilities determined to be the source of a violation of this Chapter.
- (N) Tenant responsibility. Where an owner of property or his agent leases or rents the same to any person as tenant or lessee, the owner, agent or tenant or all may be held responsible by the director for noncompliance with the provisions of this Chapter.
- (O) Expenses, loss or damage. Any person violating the provisions of this Chapter shall be liable to the City for all expenses, loss, or damage incurred by the City by reason of such violation.
- (P) Annual testing. The director may contract with a registered certified backflow prevention assembly technician to perform annual testing requirements and charge the customer for said expense(s) through monthly billings. Nonpayment of this special billing shall be grounds for termination of service in accordance with the Code of the City of Midland. The customer shall complete repairs and a recertification of said assembly(s) within five days of a failed annual "test." Failure to repair defective backflow prevention assembly(s) within the appropriate time will result in notification to remove said service connection.
- (Q) Termination of water service. The director may immediately refuse or discontinue water service if a backflow prevention assembly is not installed, certified for operation, repaired or replaced as required under this Chapter or an actual cross connection between the public and private water system exists.
- (R) Test and maintenance reports. The director shall require submittal of complete test and maintenance reports to the utility of any testable backflow prevention device installed prior to final release of water or wastewater inspections. Failure to secure final release of water or wastewater connections shall result in placement of a hold on the issuance of the certificate of occupancy from the director of the building inspection division.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

#### **§ 8-9-16. Water purveyor.**

- (A) Under this Chapter, the water purveyor has primary responsibility to prevent water from unapproved sources, or any other substances, from entering the public potable water supply. The water purveyor is prohibited from installing or maintaining a water service connection to a consumer's water supply system within its jurisdiction where a health, contaminant, plumbing or pollution hazard exists, or will probably exist, unless the potable water supply is protected against backflow by an approved assembly.
- (B) The water purveyor shall exercise reasonable vigilance to insure that the customer has taken the proper steps to protect the public potable water supply. To insure that the proper precautions are taken, the water purveyor is required to determine the degree of hazard to the public potable water supply. When it is determined that a backflow prevention assembly is required for the protection of the public potable water supply, the water purveyor shall require the customer, at the customer's expense, to install an approved backflow prevention assembly, to test immediately upon installation and to test periodically as required by this Chapter and the plumbing code.

(Ordinance 7605, sec. 1, adopted 4/22/1997)

**§ 8-9-17. Inspections.**

The director shall be authorized under this Chapter to conduct a cross connection survey at any premises, real property or building connected to the public potable water system. Inspections shall include, without limitation, a survey of such premises, real property or building for determination of cross connections, existing backflow prevention assembly installation(s), annual testing and certification of assemblies by a certified backflow prevention assembly technician or inspection and/or certification of any backflow prevention assembly(s).

(Ordinance 7605, sec. 1, adopted 4/22/1997)

**Title IX: Public Ways and Property**

STREETS AND SIDEWALKS

**Chapter 9-1**

**STREETS AND SIDEWALKS**

**§ 9-1-1. Excavation and placement of utilities.**

- (A) All right-of-way (ROW) users that operate within the City of Midland ROW shall make application for a ROW license or ROW use permit from the Department of Development Services prior to commencement of construction, excavation, or utility placement activity within the ROW. Each application shall set forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and the purpose of the excavation.
- (B) Franchisees of the city and certificated telecommunications providers (CTP) who have been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission (as said terms are defined by Chapter 283 of the Texas Local Government Code), shall not be exempt from the application process.
- (C) No work of any sort shall proceed within or upon City ROW until a ROW License or ROW use permit has been approved by the city.
- (D) The ROW user working in any right-of-way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The ROW user shall meet all requirements for barricading and traffic control as specified in the Texas Manual of Uniform Traffic Control Devices.
- (E) The ROW user shall obtain insurance covering all of ROW user's operations and provide the City with a certificate(s) of insurance, and shall maintain such insurance in effect during the term of its ROW use license or permit. Said insurance coverage shall be in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) against liability for injury to or the death of any one or more persons in any one event and property damage insurance in the amount of ONE MILLION DOLLARS (\$1,000,000.00) for property damage as a result of any one event. Such insurance shall be written with insurance companies authorized to do business in the State of Texas and acceptable to the City. All insurance policies shall include the City of Midland as an additional insured and shall cover all of ROW user's contractors and subcontractors, and copies of the policies of insurance that have been issued or certificates evidencing proof of said policies shall be deposited with the City Department of Development Services. The ROW user's insurance shall waive all rights of subrogation in favor of the City of Midland. The City's Director of Development Services shall be responsible for ensuring that the insurance required under this section remains in place during the entire term of the ROW use license or permit.
- (F) No excavation shall take place in the public streets without the written approval of the City Manager or his designated representative.
- (G) Definitions.
  - 1. A "street" means the paved portion of the ROW that has been constructed, reconstructed, or resurfaced with an asphalt overlay, hot in place recycling, full-depth reclamation, reconstruction or other structural street maintenance treatment.
  - 2. "New Street" means all concrete paved streets, streets constructed or structurally resurfaced during the preceding eight (8) years and a pavement condition index greater than eighty-five (85).

3. The "pavement condition index" (PCI) is a measure of the condition of the ROW on a scale of 1 to 100. The PCI is available through the Department of Development Services.
- (H) Any request to excavate a new street shall include a description of the proposed work and proposed restoration of the area, as well as a statement as to why alternate procedures cannot or should not be used in lieu of excavating a new street.
- (I) In the event that such request to excavate a new street is approved, such excavations will be deemed one hundred (100) percent loss of pavement life and will require one of the following methods, as specified by the City Engineer, for all cuts:
1. Block to block and curb to curb pavement reconstruction;
  2. Use of a hot mix asphalt repaving process; or
  3. Such other method of repair as approved by the City Engineer.
- (J) In the event of an excavation in a street or ROW having a PCI of 85 or less, the ROW user excavator shall promptly repair the trench envelope and surface in accordance with the specifications set forth in the City of Midland Standard Specification Manual.
- (K) The City reserves the right to lay, and allow to be laid, sewer, water and other pipe lines or cables and facilities, as well as drainage pipes and channels and streets, and to perform, and to allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City, in, across, along, over, or under any ROW or public place occupied by a ROW user and to change any curb or sidewalk or the grade of any street and to maintain all of the City's facilities. In allowing such work to be performed by others, the City shall not be liable to any ROW user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW user by such third party.

(Ordinance 8392, sec. 2, adopted 5/9/2006)

#### **§ 9-1-2. (Reserved)**

**Editor's note(s)**—Former § 9-1-2 (Masonry or frame construction on sidewalks) was repealed by Ord. No. 6879, enacted October 11, 1988.

#### **§ 9-1-3. (Reserved)**

**Editor's note(s)**—Former § 9-1-3 (Gasoline pumps on sidewalks) was repealed by Ord. No. 6879, enacted October 11, 1988.

#### **§ 9-1-4. (Reserved)**

**Editor's note(s)**—Former § 9-1-4 (Vehicles not to stop on sidewalks) was repealed by Ord. No. 6879, enacted October 11, 1988.

#### **§ 9-1-5. (Reserved)**

**Editor's note(s)**—Former § 9-1-5 (Gasoline tanks under sidewalks) was repealed by Ord. No. 6879, enacted October 11, 1988.

**§ 9-1-6. (Reserved)**

**Editor's note(s)**—Former § 9-1-6 (Obstructions caused by building purposes) was repealed by Ord. No. 6879, enacted October 11, 1988.

**§ 9-1-7. Openings in streets and sidewalks.**

Any person who shall keep or leave open or shall allow or suffer to be left open any cellar door or trap door or the grating of any vault in or upon any sidewalk, street, thoroughfare or passageway; or who shall make, keep or maintain any uncovered opening in any sidewalk or footway, or shall allow any sidewalk or footway, which it is his duty to maintain or repair, to be broken or to continue so broken, uneven or out of repair as to endanger any person's safety, shall be deemed guilty of maintaining a nuisance.

**§ 9-1-8. Defacing sidewalks and curbs.**

It shall be unlawful for any person to deface any sidewalk or curb by painting any portion thereof in any manner or by placing thereupon any marks or signs, by stencils or otherwise, of any nature or character whatsoever, without first receiving the express written consent and permission of the city manager.

(Ordinance 4096 adopted 6/9/1964)

**§ 9-1-9. Liability for damages.**

The abutting property owner or person enjoying the use of any property abutting on a sidewalk or curb that has become defective shall be primarily liable in damages for any loss or damage sustained as a result of such defective condition.

(Ordinance adopted 6/22/1954)

**§ 9-1-10. (Reserved)**

**Editor's note(s)**—Former § 9-1-10 (Water in streets) was repealed by Ord. No. 6879, enacted October 11, 1988.

**§ 9-1-11. Skating.**

A. It shall be unlawful for any person to skate on, along or upon the public streets, alleys and other public grounds, except for the sidewalks of the City, on roller skates, roller blades, inline skates, skateboards or similar devices.

It shall be an affirmative defense to prosecution under this Section if the individual was crossing the street or alley at a crosswalk.

In this Section:

(1) *Alley* means a street that:

- (A) Is not used primarily for through traffic; and
- (B) Provides access to rear entrances of buildings or lots along a street.

(2) *Crosswalk* means:

- (A) The portion of a street, including an intersection, designated as a pedestrian crossing by surface markings, including lines; or

(B) The portion of a street or alley at an intersection that is within the connections of the lateral lines of the sidewalks on opposite sides of the street or alley measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.

(3) *Street* means the width between the boundary lines of a publicly maintained way, any part of which is open to the public for vehicular travel.

(Ordinance 5750 adopted 5/12/1981; Ordinance 7713, sec. 2, adopted 2/10/1998)

**§ 9-1-12. Advertising.**

It shall be unlawful for any person to string upon or affix to any wire, pole, awning or other fixture placed in, upon or over any of the streets and sidewalks of the City any advertisement, banner, streamer or other thing of a similar nature.

(Ordinance adopted 8/4/1955)



HOUSE NUMBERING

**Chapter 9-2**

**HOUSE NUMBERING**

**§ 9-2-1. System.**

For the purpose of numbering and more particularly locating all residences and business houses in the City, all of the principal streets and avenues in the City shall be considered as even hundreds in the numbering scheme, according to the relative position of each street or avenue in the schedule shown below, and the house numbers in the block next to such streets or avenues shall be the units and tens of the complete numbers. All house numbering in the City shall proceed eastward, westward, northward and southward from the baselines hereinafter set forth and in accordance with this schedule.

(A) The dividing line for east and west numbering shall be as follows:

1. North from Wall Avenue, the said dividing line will be Main Street and its extension to an intersection point with State Highway 349 (North Big Spring Street) and State Highway 349 to the north from the said intersection point with Main Street (extended).
2. South from Wall Avenue, the said dividing line shall be Main Street and its extension to an intersection point with Interstate Highway 20, and south from Interstate Highway 20, the said dividing line shall be the survey section line which corresponds with the location of State Highway 349.

(B) The dividing line for north and south numbering shall be as follows:

1. East from Main Street, the said dividing line will be Wall Avenue and its extension to an intersection with Fairgrounds Road, and east from Fairgrounds Road the said dividing line shall be the survey section line which corresponds with the location of South Avenue (County Road 90E).
2. West from Main Street, the said dividing line will be Wall Avenue and its extension to Loop 50 West (Holiday Hill Road), and the extension of Illinois Avenue-Thomason Drive west of Loop 250.

For the purpose of locating houses in the respective blocks in the City, approximately 50 feet of frontage shall constitute a lot or space for a house number. Where the zoning of a residential area permits lots less than 50 feet wide, the minimum lot width permitted by the zoning district shall be used as the frontage interval. All odd numbers shall be placed on the lefthand side of the street proceeding away from the base line and even numbers shall be on the righthand side of the street proceeding away from the baseline.

(Ordinance adopted 11/19/1929; Ordinance 6749 adopted 4/28/1987)

**§ 9-2-2. Numbering of new additions.**

When future extensions to the City are made or new additions are placed on record, it shall be the duty of the building inspector to prepare numbers for the new additions, and such numbers shall correspond to the general scheme of numbering referred to in Section 9-2-1 of this Code, so far as it is possible.

(Ordinance adopted 11/19/1929)

**§ 9-2-3. Building inspector to designate numbers.**

It shall be the duty of the building inspector to designate the numbers of all houses in conformity with the provisions of this Chapter and he shall furnish the owner or agent of each house with its proper number. In case of houses to be built, such number shall be given at the time the building permit is taken out.

When any house is not correctly numbered or not numbered at all, the building inspector shall give such house its proper number and he shall notify the owner, agent or occupant to number such house properly in accordance with this Chapter.

(Ordinance adopted 11/19/1929)

#### **§ 9-2-4. Duty of owner.**

It shall be the duty of the owner or agent of business or residence buildings to number properly and correctly the same, and, in like manner, number all new buildings within 15 days after the building is completed, or within 15 days after it is occupied. Buildings removed from one lot to another shall, in like manner, be renumbered according to the new location, within 15 days after such removal and relocating, and the owners, agents or other persons making repairs to buildings shall cause the number, or others of proper kind, to be replaced, should the repairs or improvements require temporary removal of the numbers.

(Ordinance adopted 11/19/1929)

#### **§ 9-2-5. Numbers to be purchased by owner.**

House numbers on residences in the City shall be purchased and paid for by the owner or agent of the property.

(Ordinance adopted 11/19/1929)

#### **§ 9-2-6. Size, location and material of numerals.**

All numbers on houses or residences in the City shall be of a figure not less than three inches in height and approximately two or more inches in width and shall be so placed as to be seen readily from the street. The figures shall be of durable metal, glass or enamel, and they may be painted of neat design and durable material on the glass transom of the door. Perishable material such as wood, paper and card, and markings of pen, pencil or other easily displaced materials or substances, shall not be deemed to be in compliance herewith.

(Ordinance adopted 11/19/1929)

#### **§ 9-2-7. Violation of Chapter.**

Any person, whether owner, agent or occupant, who shall, after 15 days' written notice from the building inspector, fail or refuse to number correctly any house owned, occupied or controlled by him or who shall fail or refuse to number any house which has been removed from one lot to another, or which has been repaired, or who shall number any house otherwise than in conformity with this Chapter, or who shall obliterate, conceal or obscure any house number by paint or other means, shall be deemed guilty of a misdemeanor.

(Ordinance adopted 11/19/1929)



**HOUSE MOVING**

**Chapter 9-3**

**HOUSE MOVING**

**§ 9-3-1. Permits.**

It shall be unlawful for any person to move or cause to be moved a house or building from one location to another within the City, or to move a house or building from without the City to a location within the City, or to move a house or building within the City to a point outside the City, or to move a house through the City, without first securing a permit therefor from the building inspector. Should the building inspector, upon compliance with the provisions of this Chapter by any person, decline to issue a permit to such person, an appeal may be had to the City Council, which may, if it deems proper, by resolution, authorize the proposed move.

Nothing in this Chapter shall be construed as prohibiting the moving, without a permit, of small storage houses and builders' shanties as used by the building contractors, when the dimensions do not exceed those enumerated in subsection (A) of Section 9-3-3.

(Ordinance adopted 3/23/1948)

**§ 9-3-2. Deposit or bond required.**

Any person desiring to move a house or building as provided in Section 9-3-3 shall deposit with the city secretary the sum of \$250.00, upon condition with the express agreement that the City is to retain such money for a period of 15 days after the house or building reaches its new location. If within such time it shall appear to the Council that any damage has been done to the streets or any wires, or any trees, or any other private or public property, then the Council shall, by resolution, assess the amount of such damage, after viewing the alleged property injured, either in favor of the City or the owner of the property in front of which the trees or other injured property may be situated, or the owner of any private property alleged to have been injured. The finding of the Council shall be final. The deposit of the money above referred to with the city secretary shall be held to be an express agreement to the terms and provisions of this Chapter; however, should the damage caused by the moving of such house or building be greater than the amount on deposit with the City, the person injured by such moving shall have a cause of court action against the person moving such building for the amount of actual damage suffered.

In lieu of the deposit herein required, those regularly engaged in house moving may file a surety bond or other bond as may be approved by the Council, in the amount of \$1,000.00, and such bond shall inure to the benefit of any person damaged, as well as to the City. It shall be conditioned that the principal will pay to the City, or any other person damaged thereby, all such damages as may accrue to it or them by reason of moving such house or building along the streets permitted.

(Ordinance adopted 3/23/1948)

**§ 9-3-3. Fees.**

For the moving of any house or other structure within the territorial limits of the City, the permit fee shall be \$25.00.

(Ordinance adopted 3/23/1948; Ordinance 6502 adopted 1/8/1985 adopted eff. 2/1/1985)

**§ 9-3-4. Notice to utility companies.**

The persons moving a house, or causing it to be moved, shall notify all utility companies of the route to be followed. Such notice shall be given sufficient time in advance to allow the utility company to have a representative on the job, if it so desires.

(Ordinance adopted 3/23/1948)

**HOUSE MOVING**

**Chapter 9-4**

**SIDEWALKS, DRIVEWAYS AND CURBING**

***Editor's note(s)***—*Ord. No. 10184, § 2, adopted May 11, 2021, amended Ch. 4 in its entirety to read as herein set out. Former Ch. 4, §§ 9-4-1—9-4-11, pertained to similar subject matter, and derived from Ord. of 11-10-1930; Ord. of 11-10-1938; Ord. of 6-22-1954; Ord. No. 4297, adopted Jan. 24, 1967; Ord. No. 6724, adopted Jan. 13, 1987; Ord. No. 6735, adopted March 10, 1987; Ord. No. 6947, adopted July 25, 1989; Ord. No. 7128, adopted Oct. 15, 1991; Ord. No. 7145, adopted Jan. 28, 1992; and Ord. No. 7501, § 1, adopted Jan. 23, 1996.*

#### **§ 9-4-1. Permits and specifications.**

It shall be unlawful for any person to construct, reconstruct, alter, repair, remove or replace any sidewalk, driveway or curbing on any public property within the City without holding a valid permit from the City for said work, approved by the Director of Engineering Services of the City, or said Director's designee, and all such persons shall construct, reconstruct, alter, repair, remove or replace such sidewalk, driveway or curbing under the direction and supervision of the Director of Engineering Services and in accordance with plans and specifications provided by or approved by the Director of Engineering Services, which plans and specifications shall conform to the following requirements, except as otherwise provided:

(A) The locations where sidewalks shall be constructed and the required widths shall be as follows:

1. Arterial streets. Along arterial streets as defined by Chapter 11-2, of the Midland City Code: Within the street right-of-way and adjacent and parallel to the boundary of the said right-of-way, except as otherwise provided herein.
2. Other streets. Along all streets other than arterial streets: Abutting the outside edge of the street curb, except as otherwise provided herein.
3. Exceptions. The following exceptions shall apply to the locations specified in paragraphs 1 and 2 above:
  - (a) No street curb. Where a standard street curb does not exist, the sidewalk shall be located as specified in paragraph 1 above, regardless of the street classification.
  - (b) Narrow parkway. Where a standard street curb exists, and the width of the parkway, which is the area between the outside edge of said curb and the boundary of the street right-of-way, is equal to or less than six and one-half feet, the sidewalk shall be located abutting the outside edge of the curb.
  - (c) Existing sidewalks. In those cases where sidewalks exist along one side of a street within the block, new sidewalks shall then be constructed in line with those existing sidewalks.
  - (d) Street beautification. On Wall Street, between "A" Street and Andrews Highway, in order to protect and accommodate the trees planted as part of an environmental beautification program, the Director of Engineering Services may, when he deems it necessary, permit the sidewalk to be constructed adjacent to the right-of-way line, sometimes referred to as the property line, regardless of other requirements specified herein.
  - (e) City parks. The provisions of this subsection shall not apply to sidewalks constructed within City parks except to the extent that the outer edge of the sidewalk shall not be constructed or located at any point more than ten feet from the right-of-way line, sometimes referred to as the property line.
  - (f) Existing utilities. The Director of Engineering Services may, when he deems necessary, permit the sidewalk to be located with the outer edge abutting upon and parallel with the curbline when he determines that one or more public utility lines were constructed in a

location to accommodate a sidewalk in a different location from that specified herein, but which would have conformed to the Code requirements in effect at the time said utilities were installed.

- (g) Developer's option. A developer of a subdivision may elect to locate the sidewalks along all streets other than arterial streets, within his subdivision, as required for arterial streets by showing the sidewalks on the appropriate construction plans submitted to the City.
- 4. Required width. When a sidewalk is located along an arterial street, or along any other street and abutting or within one and one-half feet of the street curb or pavement edge, the minimum required width shall be six feet. A sidewalk otherwise located within the right-of-way of a street shall have a minimum required width of five feet. Adjacent to business properties, where a building is constructed on the street right-of-way line and the distance from the street curb or pavement edge to the street right-of-way line is ten feet or less, the sidewalk shall be continuous and unbroken from the street curb or pavement edge to the right-of-way line.
- (B) Materials. All sidewalks shall be constructed of concrete, asphaltic concrete, brick, exposed aggregate concrete, tile, stone, or terrazzo.
- (C) Thickness. All sidewalks shall be constructed to a minimum thickness of four inches. Alley and driveway approaches, as well as pedestrian ramps at intersections, shall have a minimum thickness of six inches.
- (D) Slope. All sidewalks shall be constructed with a maximum fall of one-fourth inch per foot toward the street pavement unless otherwise established by the Director of Engineering Services, depending upon local grade conditions. Pedestrian ramps shall have a maximum slope of one inch per foot (8.3 percent).
- (E) Joints. Transverse expansion joints one-half inch in thickness, and extending the full width of the concrete slab, shall be provided at intervals not more than 30 feet apart. These joints must be the full depth of the concrete and shall be well filled with a satisfactory filler approved by the Director of Engineering Services.
- (F) Surface finish. The finish on the surface of the concrete sidewalks shall be monolithic with the slab and shall be such that it does not present a hazardous condition when dry. The marking of the top of the sidewalk slab must be done with a specially devised marking tool. The transverse marking must cut through at least one-half the depth of the slab and shall be spaced so that the distance between each of these transverse markings is equal to the width of the sidewalk. The marking shall be done after the slab has set sufficiently so that the concrete will not flow. The exposed edges of all concrete shall be neatly finished with a special edging tool. The contractor shall employ adequate measures to protect work from the action of the sun, cold and wind until the same has thoroughly hardened and set.
- (G) Width variation. In case it is necessary to construct a sidewalk wider or narrower than the above requirements, upon a showing to the Director of Engineering Services that such special construction is necessary and at the same time the sidewalk affords adequate and safe facilities for pedestrian traffic, then the Director of Engineering Services may approve a permit for the construction of such narrower or wider sidewalk, as the case may be.
- (H) Mailbox locations. If a mailbox is installed within a sidewalk adjacent to the curb, the device may occupy only one foot of the sidewalk width, directly behind the curb, and a minimum of three feet of passable width of sidewalk must remain unobstructed. The mailbox and its support may not present

or be a hazard to the passage of a vehicle.

- (I) Accessibility.All work described in this Chapter shall be performed in accordance with applicable laws, rules and regulations regarding accessibility for persons with disabilities.
- (J) Traffic control.It shall be the responsibility of a person performing work described in this Chapter to ensure that pedestrian and vehicular traffic is properly protected in and around the work area through the use of temporary traffic control signs, barricades, and other devices appropriate to the scope and nature of the work. A traffic control plan shall be submitted to and approved by the Director of Engineering Services or said Director's designee prior to the placement of traffic control devices in public right-of-way.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-2. Permit fee.**

A fee in accordance with the Fee Schedule approved by the City Council, as may be amended, shall be paid before a permit can be secured under the provisions of this Chapter, which shall partially cover the costs to the City for processing and reviewing the permit application and making the necessary inspections of the work.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-3. Notice to water, sewer, light and gas companies.**

It shall be the duty of any owner, agent or contractor, before construction, reconstruction, repairing or moving of any sidewalk, driveway or curbing along and abutting on the property of such owner or over which such agent has control or in front of which such contractor intends to make such construction, repairing or moving, to notify in writing the water, sewer and light and gas companies of any such intention to construct, reconstruct, repair or remove such sidewalk, driveway or curbing, within a reasonable time before such work shall begin, in order that all water, gas, light and sewer pipes and connections may be properly placed before the sidewalk, driveway or curbing is constructed or repaired.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-4. Gutters to be kept open.**

Any person constructing, reconstructing, repairing or removing any sidewalk, driveway or curbing shall, during the time that such work of construction, reconstruction, repairing or moving is going on, keep all gutters open so as not to interfere with their drainage and shall remove from the work, or from in or about such work, upon completion of the work, all building material or other accumulation of debris that may be in and around such sidewalk, driveway and curbing by reason of the construction, reconstruction, repairing or moving of the same.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-5. Driveway location, width and permit requirements.**

(A) Definitions.For purposes of this Section:

1. *Access management policy* means the access management policy that has been adopted by the City Council, as may be amended.
2. *Arterial street* means a street designated as a state highway by the highway department or street designated as a primary or secondary arterial on the most recent major street plan or thoroughfare plan adopted by the City Council.

3. *Commercial driveway* means any driveway not serving a one-or two-family residence.
4. *Corner of an intersection* means the intersection of the projected line of the face of the existing or proposed curbs abutting the property.
5. *Curb cut* means the area between the points where the curb is removed or omitted, including any flares or radii.
6. *Driveway center* means the centerline of the driveway perpendicular to the street, measured at the property line.
7. *Full movement driveway* means a driveway where turns out of or into the property are allowed in both directions.
8. *Highway department* means the Texas Department of Transportation or its successor department or agency.
9. *Other street* means any street not defined as an arterial street; provided, however, that an alley is excluded from this definition.
10. *Plat restriction* means any driveway restriction on an existing plat.
11. *Property corner* means the intersection of the projected line of the property line parallel to the adjacent streets. This may or may not be an actual property corner on a plat.
12. *Right in, right out movement driveway* means a driveway where turning movements are restricted so only a right turn into the property or a right turn out of the property is allowed.
13. *Site plan* means a scaled plan of the property showing in detail property lines, curbline or edge of adjacent streets, alleys, off-street parking, buildings or structures including vehicular access doorways or docks on the lot, and all existing and proposed curb cuts.

- (B) Permit required. A driveway permit shall be obtained from the Development Services Department before any person removes, alters, or constructs any curb, approach or gutter on any public property. A site plan must be submitted and approved by the Director of Engineering Services or his authorized representative before a driveway permit will be issued.
- (C) Construction standards. All driveways and curb cuts shall be constructed in accordance with design standards and specifications prepared by the Engineering Services Department.
- (D) Access design standards. Access to property shall conform to the access management policy.
- (E) Appeals. A property owner contesting any disapproval or interpretation or application of any regulation of this Section directly or by delegation of authority shall have the right to appeal such ruling or decision in accordance with the appeal procedures set out in the access management policy.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-6. Conformance to established grade.**

It shall be the duty of the owner of any lot or any real estate of any kind within the limits of the City, in front of or along which a sidewalk, driveway or curbing is to be constructed, reconstructed, repaired or moved, to conform to the sidewalk abutting upon such property, and lying between such property line and the property curbline in such street, to the grade established by the City, by cutting down or filling up the

same, as may be necessary, so as to conform to such grade, and the owner shall pay all costs and expenses of the same.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-7. Changing grade.**

The City hereby expressly reserves the right, when putting down a permanent street pavement, either by original construction or reconstruction, to change or alter the lines or grades of the street, when in the opinion of the Council such change is necessary for the proper pavement or drainage of the street, and without liability on the part of the City by reason of such change. In the event that a sidewalk, driveway or curbing, the line or grade of which is changed, is in good condition and does not, in the opinion of the Council, require entire reconstruction, the owner thereof shall be given 30 days' notice to remove the curbing, or to break the sidewalk or driveway back to a point fixed by the Director of Engineering Services, and to remove the broken portion and reconstruct such portion to the line and grade determined by the Director of Engineering Services, at the cost of the abutting owner. In the event the owner shall fail or refuse to obey the order of the Council, he shall be guilty of a misdemeanor and the Council shall have the right to have such breaking and reconstructing to the grade of the sidewalk, driveway or curbing done by the paving contractor, or other person, at the expense of the abutting owner.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-8. Curb construction when driveway abandoned.**

Whenever any curb is removed, or when no curb has been constructed in order to provide a driveway, and the use of such driveway is at any time abandoned and not used for ingress and egress to the abutting property, it shall be the duty of the property owner of such abutting property to restore or construct the proper and necessary curb according to the plans and specifications furnished such person by the Director of Engineering Services. Any person allowing any of the conditions, as above set forth in this Section, to continue after 30 days' notice from the Director of Engineering Services shall be guilty of allowing a public nuisance to continue.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-9. Repairs.**

It shall be the duty of the owner of any property abutting upon any defective, unsafe or hazardous sidewalk, parkway, driveway or curb to repair the same at his own cost and expense. It shall be the duty of the Director of Engineering Services of the City, if in his opinion any sidewalk is defective, unsafe or hazardous, to inform the owner of the property abutting upon such sidewalk to make the necessary repairs to the sidewalk within 30 days of the date of his notice. Such repairs are to be made in accordance with plans and specifications submitted to the property owner by the Director of Engineering Services.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-10. Bond.**

Any person desiring to construct, reconstruct, repair or remove any sidewalk, driveway, or curbing within the public rights-of-way within the limits of the City shall, before entering upon such work, file with the Building Official a bond in favor of the City, in the penal sum of \$10,000.00, which bond shall be approved by the City Attorney as to form, conditioned that all sidewalks, driveways, or curbing which are to be constructed, reconstructed, repaired, or removed by such person during the time for which the bond is written shall be done and completed in accordance with all the provisions of this Code relating thereto. That bond shall be further conditioned that the quality of materials used in the construction of all such sidewalks,

driveways, or curbing shall be such as is prescribed by this Code and shall withstand the ordinary wear and tear of traffic without deterioration for a term of two years from the completion thereof. That bond shall further be conditioned that the City shall be saved free and harmless for any and all losses, damages, judgments or decrees that the City may sustain or be subjected to, directly or indirectly, by reason of any faulty construction, reconstruction, repair, or removing of such sidewalks, driveways, or curbing, or any work connected therewith, or for the failure of such obligor, his agents or employees to guard and light properly all openings and obstructions that may be made or placed in the street or where the work is to be done during the time of construction. The bond shall further be conditioned that the obligor upon the completion of each sidewalk, driveway, or curbing shall remove all building materials and accumulation of debris from the street in which any such edifice is built when such matter is arising through or connected with such construction. The City Attorney is authorized to bring suit in the name of the City against the obligor and surety of such bond upon default of its terms.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

#### **§ 9-4-11. Establishing grade.**

In those cases where the street, curb, and gutter have not been constructed in place when application is made for a permit as provided in Section 9-4-1 of this Chapter, the City Engineer shall establish the location and grade of such street, curb and gutter. Excavation shall be done to line and grade as established by the City engineer and all excess excavated material shall be removed from the right-of-way dedicated to street purposes. Before placement of concrete, the subgrade shall be wetted and tamped to secure a firm foundation. No excavation shall be done, no construction shall be commenced, and no material shall be placed for any such work in any public street or public place until a permit for such work has been obtained from the Director of Engineering Services, nor until stakes or lines and grades for such work have been given by the City Engineer. Contractors or other persons in charge of such work will be required to protect both line and grade stakes; and after same have been set, any errors in lines or grades caused by the stakes having been raised, lowered or otherwise changed or lost will be charged against the contractor or other person in charge of such work, and he shall be required to correct such mistakes at his own cost and expense.

(Ordinance 10184, sec. 2, adopted 5/11/2021)

City of Midland, TX

**SIDEWALKS, DRIVEWAYS AND CURBING**

**Chapter 9-5**

**PARKS AND PLAYGROUNDS**

**§ 9-5-1. Playing of musical instruments, amplified music and concerts.**

It shall be unlawful for any person within a park or playground to play musical instruments, to play amplified music, or to conduct a concert without permission from the director of the parks and recreation department.

**§ 9-5-2. Sales and plying vocations.**

It shall be unlawful for any person to sell, or offer for sale, any wares, merchandise or services, or to act as or ply the vocation of a solicitor, agent, peddler, fakir, beggar, strolling musician, organ grinder, exhorter or showman in any park or playground of the City without permission from the director of the parks and recreation department.

**§ 9-5-3. Practicing golf.**

It shall be unlawful for any person to practice golf with golf balls in any public park or public playground or public schoolground and/or school property within the City not designated for that purpose; except that the use of knit or plastic balls will be permitted in any such open areas not specifically designed or designated for some other specialized activity.

Golf practice with golf balls shall be permitted in the areas designated as follows:

- (A) That portion of Hogan Park adjacent to the Municipal Golf Course and marked as a golf practice area.
- (B) Dunagan Park, only for group golf practice or instruction under supervision approved by the parks director.

(Ordinance 5831 adopted 9/8/1981)

**§ 9-5-4. Tethering or pasturing animals.**

It shall be unlawful for any person to tether or pasture any cow, horse, mule, fowl or domestic animal in or upon any park or playground.

**§ 9-5-5. Disorderly conduct.**

It shall be unlawful for any person to conduct or carry on any boisterous, insulting or profane language, or to be guilty of disorderly, lewd or lascivious conduct of any kind in any park or playground in the City.  
(Ordinance 4045 adopted 10/8/1963)

**§ 9-5-6. (Reserved)**

**Editor's note(s)**—Former § 9-5-6 (Loafing or sleeping) was repealed by Ord. No. 5856, enacted November 10, 1981.

**§ 9-5-7. Advertising devices.**

It shall be unlawful for any person to place or erect any structure, sign, bulletin board, post, pole or advertising device of any kind whatsoever in any park or playground, or to attach any notice, bill, poster, sign, wire, rod or cord to any tree, shrub, fence, railing, post or structure therein; provided that the Council may permit erection of temporary decorations on occasions of public celebration or holidays, or permit advertising in certain baseball parks as designated by the Council.

**§ 9-5-8. Destruction, removal of property.**

It shall be unlawful for any person to remove, destroy, mutilate or deface any structure, portable pipe, irrigation device, monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, athletic installation (including tennis and other nets, backboards, goal posts and items of similar nature), tree, shrub, fern, plant, flower or other property in any park or playground.

(Ordinance 4045 adopted 10/8/1963)

**§ 9-5-9. Operation of vehicles.**

It shall be unlawful for any person to ride or drive any horse or animal, or to drive or propel any vehicle drawn or pulled by any horse or animal, or to drive, operate or propel any motorcycle, motorscooter, motorbike or any motor vehicle in, over or through any public park, public playground, public schoolground or public school property within the City, except along roads or drives designated for that purpose.

(Ordinance 4564 adopted 6/22/1971)

**§ 9-5-10. Entering restricted areas or conducting large gatherings.**

- (A) It shall be unlawful for any person to enter any area of a park which is designated as restricted, or to enter any area during the hours of the day it is not open to the public. Open hours shall be posted by the director of parks and recreation.
- (B) It shall be unlawful for any person to organize or participate in any public group or other large group gathering of people in excess of 25 persons in any public park owned and controlled by the City, and located either within or without the City, without the specific authorization of the director of parks and recreation. Provided, however, that this Section shall not apply to any such gathering in Hogan, Cole or Washington Parks, except for scheduling purposes.

(Ordinance 5831 adopted 9/8/1981; Ordinance 6563 adopted 6/25/1985)

**§ 9-5-11. Washing vehicles.**

It shall be unlawful for any person to wash a vehicle in any park not designated for that purpose.

(Ordinance adopted 2/17/1955)

**§ 9-5-12. Kites and model airplanes.**

- (A) It shall be unlawful for any person to fly a kite in any city park traversed by high voltage transmission lines.
- (B) It shall be unlawful for any person to propel or guide any gas powered radio controlled airplane in any park except the area set aside for those purposes at the Midland Police Department Training Facility.
- (C) It shall be unlawful for any person to propel or guide any electric powered radio controlled airplane in any park except the area set aside for those purposes at C.J. Kelly Park.

(Ordinance 8300, sec. 1, adopted 4/12/05)

**§ 9-5-13. Dumping.**

It shall be unlawful for any person to dump any kind of trash, refuse or garbage anywhere in a city park except in receptacles or other specifically designated areas of the park provided for that purpose.

(Ordinance 5831 adopted 9/8/1981)

**§ 9-5-14. Firearms.**

It shall be unlawful for any person to carry upon his person or discharge any gun, pistol or firearms of any kind, including airguns, within or across any park or playground of the City.

(Ordinance 4045 adopted 10/8/1963)

**§ 9-5-15. Dogs or other animals in park.**

- (A) It shall be unlawful for any owner or person in control of any dog or other animal to keep or permit the same in or about any park or playground of the city unless such dog or other animal is kept under restraint at all times by means of a restraining cord not more than ten feet in length. Dogs will be permitted to train off-leash in city parks, but only by permit given by the director of animal services and his authorized agents.
- (B) It shall be unlawful for any person or group of persons or organization of any kind to conduct, promote or sponsor or participate in any dog show or other animal show or exhibit of any kind or character whatsoever in any park owned and operated by the city, whether located within or without the city. Provided, however, that this section shall not apply to any such shows or exhibitions when held in either Hogan Park or the undeveloped part of Dennis the Menace Park when scheduled with and authorized by the director of animal control or his authorized agents.
- (C) The director of animal services or his authorized agents shall issue permits for off-leash training of animals in city parks, which permit will be assessed a fee of \$5.00. Such a training permit may be denied by said director to an applicant for an animal that has been in violation of the animal regulations of the city on one or more previous occasions. All permits shall be valid for the period of time set out in said permit.
- (D) It shall be unlawful for any owner or person in control of any dog or other animal to keep or permit the same in or about the fenced confines of the sporting facilities located in any City of Midland park during an organized city recreational league sporting event or other city-sanctioned event. It shall be an affirmative defense to prosecution under this subsection that such dog or other animal is used as an aid to a handicapped person or used for police purposes.

(Ordinance 7140 adopted 12/17/1991; Ordinance 7631, sec. 1, adopted 7/22/1997; Ordinance 8232, sec. 1, adopted 4/27/2004)

**§ 9-5-16. Fishing; swimming; boating.**

- (A) It shall be unlawful for any person or persons to wade, swim, float, dive, ski, or engage in any type of water sport or activity in or on any channel, basin, pond, reservoir or holding tank located within any park or playground of the City. The provisions of this paragraph shall not apply to any swimming pool duly authorized by the City for public use.
- (B) It shall be unlawful for any person or persons to boat within any park or playground of the City, except that organized groups under adult supervision who have obtained permits from the parks and recreation department may boat at Wadley-Barron Park Lake. The parks and recreation department may issue only two permits for boating purposes each month. Such permitted boating activities may take place only between the hours of 10:00 a.m. and 5:00 p.m. Life jackets must be worn by each person participating in such boating activities, and all boating activities must be under the direct supervision of a parent, guardian or adult instructor.

(C) Model boats are allowed on all City-owned ponds, with the exception of Wadley-Barron Park Lake. "Model boats" includes wind-powered or small electrical-powered water craft, but excludes any gasoline or nitro-powered water craft. Model boats shall be tethered to land by means of radio signal or retrieval line. Wading or swimming to retrieve such boats is prohibited.

(D) It shall be unlawful for any person or persons to fish at or in Wadley-Barron Park Lake.

(E) Any and all permits issued under the provisions of this Section by the parks and recreation department of the City shall be good and valid only for one calendar day and such permit shall specify the activities permitted, the calendar day on which the activities may be conducted, and the hours of such calendar day during which such activities may be conducted.

(Ordinance 5992 adopted 5/11/1982; Ordinance 6010 adopted 7/13/1982; Ordinance 6676 adopted 7/22/1986; Ordinance 7041 adopted 10/9/1990; Ordinance 7962, sec. 1, adopted 8/8/2000; Ordinance 8154, sec. 1, adopted 2/12/2003)

#### **§ 9-5-17. Enforcement of Chapter.**

Compliance with the rules and regulations of this Chapter is a condition of the use of the public parks and playgrounds of the City, and any person charged with the supervision and care of any park or playground and all police officers shall have authority to enforce the provisions of this Chapter by expulsion from the grounds. Such expulsion shall be in addition to any other penalty prescribed by this Code.

(Ordinance adopted 8/4/1955)

#### **§ 9-5-18. Hours of use of public parks.**

(A) It shall be unlawful for any persons, other than police officers, firemen and other similar public or quasi public emergency personnel, to use, remain or be in the following parks between the hours of 12:00 midnight and 6:00 a.m., to wit:

1. Beal Park;
2. C.J. Kelley Park;
3. Doug Russell Park;
4. Hidalgo Park;
5. Hogan Park;
6. John P. Butler Youth Sports Complex;
7. Reyes/Mashburn/Nelms Park;
8. Scharbauer Sports Complex;
9. Ulmer Park;
10. Washington Park; or
11. Windlands Park.

Provided, however, that, as the above-described parks are either adequately illuminated or have special facilities therein such as baseball fields, tennis courts, planetariums, libraries or community center type facilities, a permit may be issued by the director of parks and recreation upon the approval by the parks and recreation advisory board to civic organizations or other organized groups of ten or more persons to be in one of said public parks during such prohibited hours for special events as enumerated in such permit, and, in such an event, any group shall, in order to be entitled to such exemption, exhibit such permit to any police officer of the City upon request.

- (B) It shall be unlawful for any person or persons, other than police officers, firemen and other similar public or quasi public emergency personnel, to use, remain or be in the following neighborhood parks, which are either owned or leased by the City for park purposes and are not illuminated and do not contain any special facilities, between the hours of 10:30 p.m. of any day and 6:00 a.m. of the next day, to wit:
1. Centennial Plaza;
  2. Cowden Park;
  3. Crier Park;
  4. Dennis the Menace Park;
  5. Dunagan Park;
  6. Elkin Park;
  7. Frank B. Essex Park;
  8. Fasken Park;
  9. Garret-Brown Park;
  10. Grafa Park;
  11. Grasslands Park;
  12. Haley Park;
  13. Halff Park;
  14. Henderson Park;
  15. Hill Park;
  16. House Park;
  17. Ida Jo Moore Park;
  18. James M. Bradford Park;
  19. Kiwanis Park;
  20. Lancaster Park;
  21. Lloyd Park;

22. Martin Luther King, Jr. Park;
23. Pioneer Park;
24. Ratliff Park;
25. Reyes/Sanchez Memorial Park;
26. Rusk Park;
27. Santa Rita Park;
28. Scharbauer Park;
29. Sidwell Park;
30. Sparks Park;
31. TXU Easement Trail;
32. Taylor Park;
33. Trinity Park;
34. Tumbleweed Park;
35. Unity Plaza;
36. Volunteer Park; or
37. Wadley-Barron Park.

(C) The I-20 Wildlife Preserve hours of use, and rules and regulation shall be established as described in Exhibit "E" attached to Ord. No. 9098 are incorporated herein for all purposes.

1. Preserve hours:

- a. October to February—8:00 a.m. thru 6:00 p.m.
- b. March to September—8:00 a.m. thru 8:00 p.m.

2. Rules:

- a. Dogs are not allowed at anytime.
- b. Alcoholic beverages are not permitted.
- c. Firearms are not permitted on the property.
- d. No hunting or fishing is allowed on the property.
- e. There shall be no littering or dumping on the property.
- f. Motorized vehicles and bicycles are not allowed on trail system.
- g. Do not remove, damage, cut, disturb, destroy or carve any structure, sign, fence or living and non living material.

(Ordinance 6562 adopted 6/25/1985; Ordinance 7838, sec. 1, adopted 4/27/99; Ordinance 8510, sec. 1,

adopted 3/20/07; Ordinance 9098, sec. 2, adopted 1/8/2013)

**§ 9-5-19. Glass containers prohibited.**

It shall be unlawful for any person or persons to be in possession of a glass container in any public park, playground or tennis court in the City, or on any street abutting any such facility.

(Ordinance 5372 adopted 9/12/1978)

**§ 9-5-20. Possession and consumption of alcoholic beverages.**

(A) It shall be unlawful for any person to consume any alcoholic beverage (as defined in V.T.C.A., Alcoholic Beverage Code § 1.04(1)) while in or upon Hogan Park and any of the public parks listed in Section 9-5-18 of this Chapter, with the exception of those portions of Hogan Park and Ulmer Park, set forth in Subsection (B) of this Section. The possession of an alcoholic beverage not in the original unopened container shall be *prima facie* evidence of consumption for purposes of this Section.

(B) Consumption.

1. The consumption of alcoholic beverages within the golf course and Christensen Stadium at Hogan Park shall be allowed, subject to applicable state law and ordinances of the City.
  2. The consumption of beer, and no other alcoholic beverage, shall be allowed within the main picnic area at Hogan Park, being that area surrounded by a fence and designated as the main picnic area by appropriate signs and markings, and within 100 feet of the picnic tables at Ulmer Park, subject to the following conditions:
    - (a) Beer must be dispensed from a metal keg, and only paper or plastic cups may be used for the consumption of same.
    - (b) Use of the main picnic area for activities which include the possession and consumption of beer shall be limited to groups of 50 persons or more which have first obtained a reservation permit from the Parks Division office for the use of such area. Such permit shall be issued on a first come, first served basis. The Parks office may issue permits to smaller groups on any days that are not reserved by 50 or more persons, again on the first come, first served basis.
  3. The consumption of beer, but no other alcoholic beverage, shall be allowed within the Bill Williams Softball Complex at Hogan Park consisting of fields A, B, C, D, E and F which are all enclosed within a common fence and identified by appropriate signs, but only on the days during which national championship tournaments or state tournaments are being conducted within said complex. National Championship Tournaments are defined as being open to member teams from the sponsoring association or organization and at least 80 percent of the competing teams are from outside the State of Texas. State Tournaments are defined as tournaments which are open to all member teams in the State of Texas of the sponsoring association or organization that has at least 60 percent of the competing teams are from outside Midland County, Texas and where the opportunity exists for the champion to compete in other tournaments at a regional, bi-regional or national level.
- (C) The consumption and possession of beer and wine, and no other alcoholic beverages, will be permitted within Centennial Plaza subject to applicable state and local law and regulations promulgated by the Midland Center advisory board, and upon written approval by Midland Center management.

(Ordinance 6423 adopted 7/24/1984; Ordinance 6896, sec. 1, adopted 1/10/1989; Ordinance 7285 adopted 11/9/1993; Ordinance 7838, sec. 2, adopted 4/27/99)

**§ 9-5-21. Regulations at Hogan Park Municipal Golf Course.**

- (A) It shall be unlawful for any person to willfully interfere with, disrupt or prevent the orderly conduct of any person or persons engaged in the play of golf at Hogan Park Municipal Golf Course.
- (B) It shall be unlawful for any person to remain on or at Hogan Park Municipal Golf Course after being advised by a golf professional, a golf marshal or other authorized person of the City that he is interfering with, disrupting or preventing the orderly conduct of the play of golf, and after having been asked to leave.
- (C) No person at Hogan Park Municipal Golf Course engaged in the play of golf and using or operating a motorized golf cart shall operate or drive such cart on any area of such golf course except on the designated golf cart paths. It is an affirmative defense to the application of this provision that:
  - 1. Such person has provided the Hogan Park golf professional a doctor's written statement that such person's physical condition is such that walking should be minimized;
  - 2. Such person drove the cart off the cart path at a 90-degree angle to the ball and then back to the cart path by the same route;
  - 3. Such person did not leave the path within 20 yards of the greens or the tee boxes; and
  - 4. Such person did not drive such cart into the rough area at any time.

(Ordinance 6683 adopted 8/12/1986)

**§ 9-5-22. Roller skating and skateboarding in Centennial Plaza Park, Volunteer Park and Dennis the Menace Park prohibited.**

- (A) It shall be unlawful for any person to roller skate or ride a skateboard at any time in the following city parks:
  - 1. Centennial Plaza Park.
  - 2. Volunteer Park.
  - 3. Dennis the Menace Park.
- (B) As used in this Section, to roller skate shall mean to skate on any type of roller skates or street skates.

(Ordinance 7004 adopted 4/24/1990)

**§ 9-5-23. Regulations applicable to heritage district.**

- (A) The Heritage District is not designated herein, or otherwise as a public park by the City Council.
- (B) The consumption and possession of beer and wine, and no other alcoholic beverages, will be permitted within the Heritage District subject to applicable state and local law, regulations promulgated by the Heritage District Advisory Board, and upon written approval by the Heritage District Curator.

(Ordinance 7838, sec. 3, adopted 4/27/1999)

PARKS AND PLAYGROUNDS

**Chapter 9-6**

**PUBLIC FACILITIES**

***Editor's note(s)***—Formerly titled as "Scharbauer Sports Complex Rate Structure" and retitled by Ord. No. 8661, § 1, adopted Oct. 28, 2008.

**§ 9-6-1. Hours of use of public sports facilities.**

A. Other than while observing, coordinating or participating in authorized and scheduled events, it shall be unlawful for any person or persons, other than police officers, firemen and other similar public or quasi-public emergency personnel, to use, remain or be on the premises of the following public sports facilities between the hours of 10:30 p.m. to 6:00 a.m. on Sundays through Thursdays, or 12:00 midnight to 6:00 a.m. on Fridays and Saturdays, to wit:

1. Grande Communications Stadium;
2. Citibank Ball Park;
3. Parking and common areas at the Scharbauer Sports Complex.
4. Christensen Stadium.

(Ordinance 8681, sec. 1, adopted 10/28/2008)

**§ 9-6-2. Rate structure for the Scharbauer Sports Complex.**

The following rate structure is hereby adopted for all events to be held at the Scharbauer Sports complex:

**SCHARBAUER SPORTS COMPLEX RATE STRUCTURE**  
**FOOTBALL/SOCCER FIELD - FOOTBALL/SOCCER EVENTS**

\$500.00	ALL SCHOOLS THAT ARE MEMBERS OF THE TEXAS ASSOCIATION OF PRIVATE AND PAROCHIAL SCHOOLS.
\$500.00	UP TO 3A SCHOOLS
\$1,500.00 UP TO 12,000 ATTENDEES	4A AND 5A
+\$500.00 PER 5,000 ATTENDEES THEREAFTER	

WILL PROVIDE: CONCESSIONS, TICKET TAKERS, ANNOUNCER, CHAIN CREW, SECURITY, SPOTTERS, PRESS BOX ATTENDANT, EMT, SCOREBOARD/CLOCK KEEPER, TROPHIES (PLAYOFF GAMES ONLY).

**BASEBALL FIELD**

**BASEBALL EVENTS**

\$500.00	Flat Rate
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WILL PROVIDE: *TICKET TAKERS, SCOREBOARD/ANNOUNCER, SECURITY.*

**STADIUM RENTAL**

NON-PROFITS

\$500.00 Deposit

\$1,000.00 Per Day

**COMMERCIAL (CONCERTS, ETC.)**

\$1,000.00 Deposit

\$1,500.00 Per Day vs. 15% of Gross Gate Receipts

**SCHARBAUER SPORTS COMPLEX RATE STRUCTURE**

**PARKING LOT RENTAL**

MULTIPLE DAY EVENTS (Carnivals, Heavy Use Events)

\$1,000.00 Deposit

\$1,000.00 per Day

**LIGHT USE/SINGLE DAY**

\$500.00 Deposit

\$500.00 per Day

**Editor's note(s)**—Formerly numbered as § 9-6-1.

(Ordinance 8070, sec. 1, adopted 1/8/2002)

PUBLIC FACILITIES

**Chapter 9-7**

**SMALL WIRELESS FACILITY SITING**

**§ 9-7-1. Purpose and scope.**

- (A) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of node support poles in the public right-of-way and network nodes in the public right-of-way and on service poles within the City's jurisdiction, which will provide public benefits and will be consistent with the preservation of the integrity, safe usage, and visual qualities of the City public right-of-way and the City as a whole.
- (B) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by network nodes, including without limitation, ensuring that network nodes or node support poles do not adversely affect:
- (1) Use of streets, sidewalks, alleys, parkways and other public ways and places;
  - (2) Vehicular and pedestrian traffic;
  - (3) The operation of facilities lawfully located in public right-of-way or public property;
  - (4) The ability of the City to protect the environment, including the prevention of damage to trees;
  - (5) The character of residential and historic areas and City parks in which network nodes may be installed; and
  - (6) The rapid deployment of network nodes to provide the benefits of wireless services.
- (C) Conflicts. This Chapter supersedes all Chapters of the City Code, parts of Chapters of the City Code, and rules adopted prior hereto that are in conflict herewith, only to the extent of such conflict.  
(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-2. Definitions.**

Each term used in this Chapter that is not specifically defined herein but is defined in V.T.C.A., Local Government Code, ch. 284, as may be amended, shall have the meaning provided in V.T.C.A., Local Government Code ch. 284, as may be amended. For the purposes of this Chapter:

- (A) "Applicable law" means V.T.C.A., Local Government Code ch. 284, as may be amended.
- (B) "Applicant" means any person who submits an application and is a network provider.
- (C) "Application" means a request submitted by an applicant:
- (1) For a permit to collocate network nodes;
  - (2) To install a transport facility; or
  - (3) To approve the installation, replacement or modification of a pole.
- (D) "City Code" means the Midland Municipal Code and other ordinance provisions relevant to the use of the public right-of-way where compliant with applicable law.
- (E) "Day" means a calendar day.
- (F) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

(G) "Routine maintenance" means:

- (1) Maintenance in the public right-of-way that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) Replacing or upgrading a network node or pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or
- (3) The installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles in the public right-of-way in compliance with the National Electrical Safety Code.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-3. Permitted use; application and fees.**

- (A) Permitted use. Collocation of network nodes and the placement of node support poles meeting the parameters set forth in this Chapter and in applicable law shall be a permitted use. Except as provided in Section 9-7-5 or applicable law, no zoning review or land use approval shall apply.
- (B) Permit required. Except as otherwise provided in this Chapter, no person shall place a network node, transport facility or node support pole in the public right-of-way without first filing a permit application and obtaining a permit therefor.
- (C) Permit application. All permit applications filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly; however, the issue of whether such materials are subject to public disclosure will be governed by V.T.C.A., Government Code ch. 552, as may be amended.
- (D) Application requirements. A permit application shall be made by the network provider or its duly authorized representative and shall contain:
- (1) The applicant's name, address, and telephone number;
  - (2) The name and title, address, telephone number, and e-mail address of the person designated by the applicant to receive, on behalf of the applicant, all communications and required notices from the City in accordance with this Chapter and applicable law;
  - (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application; and
  - (4) Construction and engineering drawings and information confirming that the construction and location will be consistent with the City Code and the design manual adopted in accordance with Section 9-7-11.
- (E) Routine maintenance and replacement. A permit application shall not be required for:
- (1) Routine maintenance; or
  - (2) The replacement of a node with another node that is substantially similar.
- (F) Information updates. An applicant shall ensure that the information provided to the City in a permit

application is correct. If any change in facts or circumstances causes the information contained in a permit application to no longer be correct, the applicant shall submit in writing to the City an amendment to the application containing the correct information within 30 days after the change in facts or circumstances occurs.

(G) Application fees. All applications for permits pursuant to this Chapter shall be accompanied by:

- (1) A fee of \$500.00 for up to five network nodes addressed in the same application, and \$250.00 for each additional node in the same application; and
- (2) A fee of \$1000.00 for each node support pole.

To the extent applicable law prescribes an application fee that is different from the fee prescribed by this Section, the fee prescribed by applicable law shall apply.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-4. Action on permit applications.**

(A) Review of applications. The City shall review applications for network nodes, node support poles and transport facilities in light of their conformity with applicable law, the City Code, and the design manual adopted in accordance with Section 9-7-11 and shall issue such permits on nondiscriminatory terms and conditions subject to the following requirements:

- (1) Within 30 days of receiving an application for a network node or node support pole, or within 10 days of receiving an application for a transport facility, the City shall determine and notify the applicant whether the application is complete. If the application is incomplete, the City must specifically identify the missing information in such notification. There shall be no additional fee charged for completion and resubmittal of an application.
- (2) The City shall make its final decision to approve or deny a complete application that does not require zoning or land use approval under Section 9-7-5 or applicable law no later than:
  - (a) 21 days after receipt of a complete application for a transport facility;
  - (b) 60 days after receipt of a complete application for a network node; or
  - (c) 150 days after receipt of a complete application for a new node support pole.
- (3) The City shall advise the applicant in writing of its final decision. If the City denies the application, the City shall advise the applicant in writing of the basis for that denial, including specific provisions of the City Code, design manual, or applicable law on which the denial is based, and send the documentation to the applicant by e-mail on or before the day the City denies the application. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 90 days of receipt of the revised application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial documentation.
- (4) To the extent applicable law prescribes a date for approval or denial of an application that is different from the date prescribed by this Section, the date prescribed by applicable law shall apply.
- (5) An applicant seeking to collocate network nodes may, at the applicant's discretion, file a

consolidated application and receive permits for up to 30 network nodes. The City's denial of any node within a single application shall not affect other nodes submitted in the same application. The City shall grant permits for any and all nodes in a single application that it does not deny subject to the requirements of this Section.

- (B) Review of eligible facilities requests. Notwithstanding any other provision of this Chapter, the City may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure within 60 days according to the procedures established under 47 CFR § 1.40001(c).

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-5. Network nodes in the public right-of-way; maximum size and height; other requirements.**

- (A) Maximum size of permitted use. Collocation of permitted use network nodes and installation of new, modified, or replacement utility poles or node support poles in the public right-of-way shall be subject to the size and height limitations specified in V.T.C.A., Local Government Code §§ 284.003 and 284.103, as may be amended, and as otherwise provided in applicable law.
- (B) Undergrounding provisions. A network provider shall comply with nondiscriminatory undergrounding requirements, City Code provisions, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing above-ground structures in a public right-of-way without first obtaining zoning or land use approval. This requirement or restriction shall not be interpreted to prohibit a network provider from replacing an existing structure.
- (C) Historic areas and design districts. Subject to the permit application approval time frames in Section 9-7-4 of this Chapter, a network provider must obtain advance approval from the City before collocating new network nodes or installing new node support poles in any areas zoned or designated as a historic district or as a design district if the district has decorative poles. Such installations shall be subject to the design and aesthetic standards of such areas.
- (D) Installation in municipal parks and residential areas. A network provider may not install a new node support pole in a public right-of-way without the City's discretionary, nondiscriminatory, written consent of the City Manager if the public right-of-way is:
- (1) Located in a municipal park; or
  - (2) Is adjacent to a street or thoroughfare that is:
    - (a) Not more than 50 feet wide; and
    - (b) Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

A network provider shall comply with private deed restrictions and other private restrictions when installing network nodes in parks and residential areas.

- (E) Zoning. A network provider seeking to construct, replace or modify a pole or network node in the public right-of-way that exceeds the height or size limits contained in this Section shall be subject to applicable zoning requirements.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-6. Effect of permit.**

- (A) Authority granted. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the public right-of-way.
- (B) Time of installation. A network provider shall begin the installation for which a permit is granted not later than six months after final approval and shall diligently pursue the installation to completion. The City Manager may place a longer time limit on completion or grant reasonable extensions of time as requested by the network provider.
- (C) Right to occupy. Once a network provider has collocated a network node or placed a node support pole pursuant to a permit, the provider shall be permitted to continue to maintain such collocation or such pole unless required to remove or relocate under the terms of this Chapter.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-7. Removal, relocation or modification of network nodes in the public right-of-way.**

- (A) Notice. Within 90 days following written notice from the City, a network provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any network node or node support pole located within the public right-of-way whenever the City has determined that such protection, support, disconnection, removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the public right-of-way.
- (B) Emergency removal or relocation of facilities. The City retains the right and privilege to disconnect or move any network node located within the public right-of-way of the City as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the network provider and allow the network provider an opportunity to move its own facilities prior to the City disconnecting or removing a facility and shall notify the network provider after disconnecting or removing a network node or node support pole.
- (C) Abandonment of facilities. A network provider that abandons a network node or node support pole shall provide to the City written notice of such abandonment within 90 days of the abandonment. Following receipt of such notice, the City may direct the network provider to remove all or any portion of a network node or node support pole if the City Manager determines, subject to the City Code, that such removal is necessary to protect public health, safety and welfare.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-8. Public right-of-way rate.**

- (A) Annual rate.
  - (1) Once a network provider has installed and made operational a network node in the public right-of-way, the network provider shall pay to the City compensation for use of the public right-of-way in the amount of \$250.00 annually per network node in the City public right-of-way.
  - (2) To the extent applicable law prescribes a public right-of-way rate that is different from the rate prescribed by this Section, the rate prescribed by applicable law shall apply.

- (B) Ceasing payment. A network provider is authorized to remove its facilities at any time from the public right-of-way, subject to the removal requirements of the design manual adopted in accordance with Section 9-7-11, and cease paying the City compensation for use of the public right-of-way following removal and notification to the City Manager of such removal.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

#### **§ 9-7-9. Attachment to service poles in the public right-of-way.**

A network provider shall be permitted to attach network nodes to City-owned service poles consistent with applicable law and the City Code and subject to the requirements specified herein.

- (A) Permits. Prior to collocating a network node on a service pole, a network provider shall obtain a permit pursuant to the terms of this Chapter.
- (B) Make ready. The network provider shall be responsible for costs for make ready work on a City service pole to which the network provider seeks to place a network node.
- (C) Service pole attachment fee. The rate to collocate a network node on a service pole in the public right-of-way shall be \$20.00 per pole per year. To the extent applicable law prescribes a collocation rate that is different from the rate prescribed by this Section, the rate prescribed by applicable law shall apply. Subject to the provisions of Section 9-7-10 of this Chapter, such compensation together with the application fee specified in Section 9-7-3 of this Chapter and the public right-of-way rate specified in Section 9-7-8 of this Chapter shall be the sole compensation that the network provider shall be required to pay to the City for said collocation.
- (D) Ceasing payment. A network provider is authorized to remove its facilities at any time from a service pole in the public right-of-way, subject to the removal requirements of the design manual adopted in accordance with Section 9-7-11, and cease paying the service pole attachment fee to the City following removal and notification to the City Manager of such removal.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

#### **§ 9-7-10. Transport facilities.**

Installation of transport facilities and the applicable compensation to the City for such installation shall be governed by V.T.C.A., Local Government Code § 284.055, as may be amended.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

#### **§ 9-7-11. Design manual.**

- (A) Adoption and amendments. The City Manager is hereby authorized to approve and adopt, on behalf of the City, a design manual for the installation and construction of network nodes and new node support poles in the public right-of-way that includes installation and construction details. The City Manager is hereby authorized to approve and adopt, on behalf of the City, amendments to said design manual. The City's design manual, as may be amended, may not conflict with applicable law and must be competitively neutral. The City's design manual, as may be amended, shall be on file in the office of the City Secretary.
- (B) Compliance with Design Manual. A network provider shall comply with the City's design manual that is in effect on the date a permit application is filed in relation to work for which the City has approved a permit application.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-12. Improperly located facilities.**

- (A) A network provider shall construct and maintain network nodes and node support poles in a manner that does not:
- (1) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
  - (2) Obstruct the legal use of a public right-of-way by other utility providers;
  - (3) Violate nondiscriminatory uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or nondiscriminatory City amendments to those codes to the extent not inconsistent with applicable law;
  - (4) Violate or conflict with the City's publicly disclosed public right-of-way design specifications; or
  - (5) Violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as may be amended.

If a network provider installs a network node, node support pole or ground equipment that causes an obstruction or violation described in this Subsection (A), then the network provider shall promptly remove the network node, node support pole or ground equipment.

- (B) A network provider that has received a permit shall not construct and maintain a network node or node support pole at a location other than the location for which the permit was granted.
- (C) Within 30 days after receiving written notice from the City that a network node or node support pole is located at a location other than that for which a permit was granted, the network provider shall relocate the network node or node support pole to the correct location for which the permit was granted.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-13. Offense and penalty.**

- (A) A person who violates a provision of this Chapter 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 separate violation of a provision of this Chapter. A person commits a separate and distinct offense for each day during which a violation of this Chapter is committed, permitted, or continued.
- (B) Evidence of a culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared that, for all offenses under this Chapter, the culpable mental state required by V.T.C.A., Penal Code § 6.02 is specifically negated and clearly dispensed with.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**§ 9-7-14. Conflict with applicable law.**

To the extent any provision of this Chapter conflicts with applicable law, the relevant provision of applicable law shall apply.

(Ordinance 9710, sec. 1, adopted 10/24/2017)

**Title X: Traffic Regulations**

**GENERAL TRAFFIC REGULATIONS**

**Chapter 10-1**

**GENERAL TRAFFIC REGULATIONS**

**§ 10-1-1. Definitions.**

- (A) The following words and phrases when used in this Title shall, for the purpose of this Title, have the meanings respectively ascribed to them in this Section:
1. *Alley*: Any public or private passageway or street, as herein defined, having no legal or official name other than "alley" and open to traffic.
  2. *Authorized emergency vehicle*: Vehicles of the fire and police departments, ambulances and emergency vehicles of all municipal departments or public utilities as are designated or authorized by the chief of police of the City.
  3. *Bicycle*: Every device propelled by human power upon which any person may ride, having two tandem wheels either of which is over 20 inches in diameter, including any device generally recognized as a bicycle, though equipped with two front or two rear wheels.
  4. *Bus*: Every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.
  5. *Business district*: The territory contiguous to and including a roadway when within any 600 feet along such roadway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the roadway, or on any other areas so classified by the zoning regulations as set out in Title XI of this Code.
  6. *Crosswalk*:
    - (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway.
    - (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surfaces.
  7. *Curb loading zone*: A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.
  8. *Day*: One-half hour before sunrise until one-half hour after sunset.
  9. *Divided streets*: Any street providing two or more lanes for the exclusive use of traffic in one direction, whether or not divided by a physical barrier.
  10. *Double park*: The standing of a vehicle, whether occupied or not, upon a roadway where the wheels on the side nearer the curb are more than 18 inches from the curb.
  11. *Driver*: Every person who drives or is in actual physical control of a vehicle.
  12. *Excessive or unusual noise*: Any noise caused by a motor vehicle which is in excess of the noise made by the average vehicle of that make and model in good mechanical condition. Any noise made by any person, devices or mechanisms, either in or on a vehicle, which is in excess of audible warning necessary for safe operation of the vehicle.

13. **Explosives:** Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb.
14. **Farm tractor:** Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.
15. **Flammable fluid:** Any liquid which has a flashpoint of 70 degrees Fahrenheit or less, as determined by a tagliabue or equivalent closed-cup test device.
16. **Freight curb loading zone:** A space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight or passengers.
17. **House trailer:** Every vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle.
18. **Intersection:**
  - (a) The area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways, of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.
  - (b) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways, 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.
19. **Laned roadway:** A roadway which is divided into two or more clearly marked lanes for vehicular traffic.
20. **Limited access highway:** Every highway, street or roadway in respect to which owners or occupants of abutting property or lands and other persons have no legal right of access to or from the same, except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.
21. **Limit lines:** Boundaries of parking areas, loading zones, safety or danger zones, crosswalks and lines marked for the purpose of excluding traffic and parking.
22. **Motorcycle:** Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.
23. **Motor vehicle:** Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
24. **Night:** One-half hour after sunset until one-half hour before sunrise.
25. **Noise makers:** Any device or mechanism temporarily or permanently installed on or in a vehicle or omitted from a vehicle which causes or may cause excessive noise.

26. *Official time standard*: Whenever certain hours are named herein they shall mean standard time or daylight saving time as may be in current use in the City. When a 24-hour clock system is used, it shall begin with "0000" hour at midnight and run consecutively for 24 hours.

0000 hours: Midnight.

1200 hours: Noon.

2400 hours: Midnight.

27. *Official traffic control devices*: All signs, signals, markings and devices not inconsistent with this Title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

28. *One-way traffic*: Traffic restricted to movement in one direction.

29. *Park*: When prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in, loading or unloading.

30. *Passenger curb loading zone*: A place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

31. *Pedestrian*: Any person afoot.

32. *Pole trailer*: Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

33. *Police officer*: Every officer of the municipal police department, or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

34. *Private road or driveway*: Every way or place in private ownership and used for vehicular travel by the owner, and those having express or implied permission from the owner, but not by other persons.

35. *Railroad*: A carrier of persons or property upon cars operated upon stationary rails.

36. *Railroad train*: A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails.

37. *Residence district*: Any and all areas classified as an Agriculture-Estate or dwelling district by the zoning regulations of the City as set out in Title XI of this Code.

38. *Right-of-way*: The privilege of the immediate use of the roadway.

39. *Road tractor*: Every motor vehicle designed and used for drawing other vehicles, and not so constructed as to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn.

40. *Roadway*: That portion of a street or highway improved, designed or ordinarily used for vehicular travel. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately, but not to all such

roadways collectively.

41. **Safety zone:** The area of space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
42. **School bus:** Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
43. **School crossing:** Any crosswalk on a public street designated as such by ordinance of the Council and marked by signs or pavement markings identifying it as a school crossing.
44. **School zone:** Areas, whether adjacent to schools or not, when properly marked by signs or pavement markings designating them as school zones.
45. **Semi-trailer:** Every vehicle, with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.
46. **Sidewalk:** That portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.
47. **Stop:** When required, means complete cessation of movement.
48. **Stop, stopping or standing:** When prohibited, means any stopping or standing of vehicles, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control sign or signal.
49. **Street or highway:** The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
50. **Through street or highway:** Every street or highway or portion thereof at the entrances to which vehicular traffic from intersecting streets or highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this Title.
51. **Traffic:** Pedestrians, ridden or herded animals, vehicles and other conveyances, either singly or together, while using any street for purposes of travel.
52. **Traffic control signal:** Any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
53. **Traffic division:** The traffic division of the police department of the City.
54. **Traffic violations court:** The corporation court of the City.
55. **Trailer:** Every vehicle, with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.
56. **Truck:** Every motor vehicle designed, used or maintained primarily for the transportation of property.
57. **Truck-tractor:** Every motor vehicle designed and used primarily for drawing other vehicles and

not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

58. *Vehicle*: Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

59. *Yield signs*: Signs bearing upon their faces the phrase "Yield Right-of-Way."

(Ordinance adopted 6/23/1953; Ordinance 3848 adopted 11/14/1961; Ordinance 4915 adopted 1/14/1975)

## § 10-1-2. Permit required for special events.

### A. Definitions.

- (1) *Special event*: The term "special event" shall hereafter be defined as follows: any parade, race, block party, festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof. The term special event shall not include funeral processions. The term special event shall not include City-sponsored special events if evidenced by a resolution approved by the Midland City Council.
- (2) *Parade*: The term "parade" means any march, motorcade, or procession consisting of people, animals, vehicles of any type, or a combination thereof, upon any public street, alley or sidewalk or combination thereof, which does not comply with normal and usual traffic regulations or controls or requires the temporary blocking or temporary closing of any street, alley or sidewalk.
- (3) *Race*: The term "race" means a competition or series of competitions of speed or endurance between humans, motorized or other vehicles, animals or a combination thereof over a specified course or distance. The term also includes organizational walks and walks for fundraising or public awareness. The term also includes bicycle races or bicycle events for fundraising or public awareness.
- (4) *Block Party*: The term block party means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area zoned for or predominantly used as residential and in which some of the participants reside within the area of the street closure or are guests of such a resident.
- (5) *Festival*: The term festival means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area both zoned and used for commercial or industrial use, or within downtown Midland.

- B. Violation. No person shall participate in a special event that violates the terms of the permit required under this section or participate in a special event without the consent of the permittee or interfere in any manner with its progress or orderly conduct.

- C. Permit required. It is unlawful for any person to conduct or participate in any special event upon any public street, alley or sidewalk without a special event permit issued by the City Manager. Applications for the special event permit, as specified in this ordinance, shall be provided by the City Manager. An application for a Special Event shall be made not less than 15 days before the scheduled time for the Special Event and shall be accompanied by a \$50.00 application fee and a refundable \$250.00 clean-up and damage fee.

- D. Form of application. The special event application shall be made in writing, on a form provided by

the City Manager, as shown below. Non-substantive clerical amendments may be made to the form of the special event application, provided that said amendments are approved by at least two of the following City officials: the Mayor; the City Manager; and the City Attorney. Any amended special event application requirements shall be placed on file in the office of the City Secretary.

### CITY OF MIDLAND SPECIAL EVENT APPLICATION

Before any Special Event (The term "Special Event" means any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof) may be considered, this Special Event Application must be completed. Before a request can be considered for approval, the City Manager must:

1. Verify with the Planning Division (685-7400) if a Temporary Land Use Permit or other permit is also required. (y) \_\_\_\_\_ (n) \_\_\_\_\_ Planning Division signature: \_\_\_\_\_ Date: \_\_\_\_\_
2. Secure clearances and have authorized signatures in all designated areas of this Application prior to executing a Special Event Permit.
3. Complete or require an event map indicating the location or route of the Special Event and other event logistics, as listed below.
4. The applicant must submit the completed Application and event map to the City Manager's Office **at least 15 DAYS prior to the scheduled time for the Special Event**. The applicant may mail the completed application form to the City Manager, PO Box 1152, Midland, Texas, 79702, or return the Application to Room 310, City Hall, 300 N. Loraine Street, Midland, Texas, 79701.
5. The City Manager shall collect a refundable \$250.00 deposit for damages or the cleaning of any streets, alleys or sidewalks, before processing this Application.
6. The City Manager shall collect a non-refundable \$50.00 application fee before processing this application.

Contact the City Manager at 685-7202 with any questions.

**EVENT NAME:** \_\_\_\_\_ **Est. # of Participants:** \_\_\_\_\_

**SPONSORING ORGANIZATION (PERMITTEE):** \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_ **ADDRESS:** \_\_\_\_\_

**Phone No.: (h)** \_\_\_\_\_ **(w)** \_\_\_\_\_ **(m)** \_\_\_\_\_

**Event Date(s):** \_\_\_\_\_ **Hours:** \_\_\_\_\_

**(List approximate times when the event will assemble:** \_\_\_\_\_

**start:** \_\_\_\_\_ **and terminate:** \_\_\_\_\_

**LOCATION:** \_\_\_\_\_

**(Attach map of event area showing parking, dumpsters, tents, booths, stages, fences, barricades, etc. Applicant shall show proposed assembly area, route, disbanding area, the number and type of vehicles and or animals, the number of persons expected to participate, a general description of the organization of the Special Event and any other information the City Manager may deem reasonably necessary for the safety of event participants and the general public.)**

**Will the event be held on Midland County grounds? (y) \_\_\_\_\_ (n) \_\_\_\_\_**

**CITY OF MIDLAND SPECIAL EVENT APPLICATION**

If yes, please be aware that the use of Midland County property requires written permission from the County Commissioner's Court, the use of Sheriff Deputies for security on Midland County property, and may require additional clean-up and damage deposit fees.

**DESCRIPTION OF ANY TENT, TEMPORARY STRUCTURES OR FENCING:**

**NO. OF RESTROOMS OR PORTABLE TOILETS PROVIDED:** \_\_\_\_\_

**CLEAN-UP/DAMAGE DEPOSIT:** A \$250.00 clean-up or damage deposit is required for all Special Events; the total amount or a portion of which may be refunded following City inspection of the site of the Special Event. Also see above note regarding use of Midland County property.

**SECURITY PLAN (No. Of City and/or County security officers):** \_\_\_\_\_

**PARKING PLAN:** \_\_\_\_\_

(Attach written approval from the landowners, as needed)

**THE FOLLOWING SECTIONS MUST BE SIGNED BY AUTHORIZED STAFF.****I. DEPT. OF ENGINEERING SERVICES**

**REQUESTED STREET CLOSING:** \_\_\_\_\_

**REQUIRED BARRICADES, CONES, OR OTHER CONTROLS:** \_\_\_\_\_

**COMMENTS or RECOMMENDATIONS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Authorized Signature      Title

**II. POLICE DEPARTMENT**

**ARE OFF-DUTY POLICE OFFICERS NEEDED? (y)       (n)**

**If yes, how many?** \_\_\_\_\_ **Location?** \_\_\_\_\_

**COMMENTS or RECOMMENDATIONS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Authorized Signature      Title

**III. COMMUNITY SERVICES DEPARTMENT (Complete this section if a City Park will be used)**

**PARK PROPERTY LOCATION:** \_\_\_\_\_

**FENCING IS AVAILABLE FOR RENT TO USE IN PUBLIC PARKS.**

**REQUESTED? (y)       (n)**

**COMMENTS or RECOMMENDATIONS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Authorized Signature      Title

**IV. HEALTH DEPARTMENT**

**WILL FOOD BE SERVED? (y)       (n)**

**WILL PUBLIC RESTROOMS BE AVAILABLE (y)       (n)       AMOUNT? \_\_\_\_\_**

**CITY OF MIDLAND SPECIAL EVENT APPLICATION****WILL PORT-A-POTTIES BE PROVIDED? (y) (n) AMOUNT? \_\_\_\_\_****COMMENTS or RECOMMENDATIONS:**DATE: \_\_\_\_\_**Authorized Signature      Title****V. FIRE DEPARTMENT****IS AN OPEN FLAME, TENT, OR OTHER FLAMMABLE ITEM PLANNED? (y) (n) \_\_\_\_\_****IS A SITE INSPECTION REQUIRED PRIOR TO EVENT? (y) (n) \_\_\_\_\_****ARE CROWD MANAGERS/FIRE WATCH PERSONNEL REQUIRED? (y) (n) \_\_\_\_\_****If yes, How many? \_\_\_\_\_ Location? \_\_\_\_\_****ARE PARAMEDICS NEEDED? (y) (n) If yes, how many? \_\_\_\_\_****Location? \_\_\_\_\_****COMMENTS or RECOMMENDATIONS:**DATE: \_\_\_\_\_**Authorized Signature      Title****VI. SOLID WASTE DEPARTMENT****HAS CITY PICK-UP OF REFUSE BEEN SCHEDULED? (y) (n) \_\_\_\_\_****COMMENTS or RECOMMENDATIONS**DATE: \_\_\_\_\_**Authorized Signature      Title****SUMMARY OF THE SPECIAL EVENTS APPLICATION REQUIREMENTS**

- ( ) Have you attached a map of the Special Event, particularly relating to closing of streets for a Parade, Race, party or assembly of a crowd in the street?
- ( ) Have you verified with the Planning Division whether or not a Temporary Land Use Permit or other permit is also required?
- ( ) Have you contacted the City of Midland Traffic, Police, and Legal representatives to determine proper barricade, security and insurance requirements? Such representatives of the City must sign this application.
- ( ) Have you contacted a private barricade company to determine when and where the barricades will be set, along with necessary traffic markings?
- ( ) If alcoholic beverages are to be sold, have you acquired a temporary permit as is required from the Texas Alcoholic Beverages Commission (TABC)?
- ( ) Have you received and included Midland County approval as needed if any portion of your event will take place on County property?

**CITY OF MIDLAND SPECIAL EVENT APPLICATION**

- ( ) If you need assistance contacting the State of Texas or the railroad company, please contact the Traffic Engineer.
- ( ) Have you mailed or returned this application - completed and including a map - to the City Manager, PO Box 1152, Midland, Texas, 79702, at least 15 days prior to the Special Event?

E. Form of permit. The Permit for the Special Event, if granted, shall be made in writing, on a form provided by the City Manager, as follows:

**CITY OF MIDLAND  
SPECIAL EVENT PERMIT**

Permittee: \_\_\_\_\_

sponsoring organization

By: \_\_\_\_\_

title

Type of special event: \_\_\_\_\_

Does the Special Event include the consumption of alcoholic beverages? (y)        (n)       

The City of Midland hereby extends this Permit to the above named Permittee to hold the Special Event described above on City of Midland right of way at the location as shown on the site plan, attached hereto as exhibit "A" and on the following dates and times:

Permittee acknowledges that the City of Midland may unilaterally revoke this Permit at any time. In consideration herefor, the Permittee agrees to the following conditions:

**1. INDEMNITY PERMITTEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY NEGLIGENT ACT OF PERMITTEE, ITS AGENTS OR EMPLOYEES, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SPECIAL EVENT DESCRIBED ABOVE, AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

**CITY OF MIDLAND**  
**SPECIAL EVENT PERMIT**

**PERMITTEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, TEXAS, AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY PERSONAL INJURIES, ACCIDENTAL DEATH OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CITY OF MIDLAND, CITY'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH PERMITTEE OR PERMITTEES EMPLOYEES, OR AGENTS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SPECIAL EVENT DESCRIBED ABOVE AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES INCLUDING ATTORNEY'S FEES.**

**2. BARRICADES** - To properly barricade the right of way described in exhibit "A" in accordance with the requirements set forth in the Texas Manual on Uniform Traffic Control Devices and any instructions issued by the City's Traffic Engineer.

**3. SECURITY** - To provide \_\_\_\_\_ number of certified peace officers at the special event during all hours the special event is being held.

**4. COMPLIANCE WITH APPLICABLE LAWS** - Permittee shall, at all times during the Special Event contemplated herein, comply with applicable federal, state, and local laws regarding Licensee's activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

**5. RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, PERMITTEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE CITY OF MIDLAND, ITS EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PERMITTEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR THE CITY OF MIDLAND'S NEGLIGENCE.**

**6. CONSIDERATION** - The Permittee and the City of Midland acknowledge that this Permit is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

**7. CONTRACT** - The Permittee acknowledges and agrees that this Permit shall constitute a written contract between the City and the Permittee.

**CITY OF MIDLAND**  
**SPECIAL EVENT PERMIT**

**8. NOT A CONTRACT FOR GOODS OR SERVICES** - The Permittee and the City agree that this Special Event Permit is not and shall not be construed as being a written contract for providing goods or services to the City of Midland as defined in Chapter 271 of the Texas Local Government Code.

**9. Applicant and all participants shall be subject to the following conditions:**

- (A) All materials used in the construction of any floats shall be subject to requirements concerning fire safety as may be determined by the City Manager or his designee;
- (B) The Permittee shall advise all participants in the Special Event, either orally or by written notice, of the terms and conditions of the Permit prior to the commencement of the Special Event;
- (C) No participant in the Special Event may deviate from the Special Event route as it is described in the permit application;
- (D) The Parade shall continue to move at a fixed rate of speed not exceeding ten miles per hour and any delay or stopping by any participant in the Parade, except when reasonably required for the safe and orderly conduct of the Parade, shall constitute a violation of the permit; and
- (E) Any other requirements found by the chief of police to be reasonably necessary for the protection of persons or property.

**10. OTHER PROVISIONS-**\_\_\_\_\_

This Permit does not relieve the Permittee from the obligation of observing all applicable ordinances of the City of Midland, Texas.

SIGNED AND ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

CITY OF MIDLAND, TEXAS

By:\_\_\_\_\_

City Manager

**NOTARY AFFIDAVIT**

**STATE OF TEXAS §**

§

**COUNTY OF MIDLAND §**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of the City of Midland, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Notary Public, State of Texas

PERMITTEE: \_\_\_\_\_

(Name of Organization)

By: \_\_\_\_\_

**CITY OF MIDLAND**  
**SPECIAL EVENT PERMIT**

(Signature)

(Print Name)

(Office held in Organization)

**NOTARY AFFIDAVIT**

**STATE OF TEXAS §**

§

**COUNTY OF MIDLAND §**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of the City of Midland, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Notary Public, State of Texas

- F. Issuance. The City Manager shall issue a special event permit to the Permittee, unless the City Manager notifies the permittee in writing that:
- (1) The date; times when the Special Event will assemble, start or terminate; route; location of the assembly area; location of the disbanding area; or size of the Special Event will disrupt to an unreasonable extent the movement of other traffic;
  - (2) The parade is of a size or nature that it requires the diversion of so great a number of police officers to properly police the line of movement and the areas contiguous thereto, that allowing the parade would deny reasonable police protection to the rest of the city;
  - (3) The parade will interfere, with regard to proposed route, police supervision or other material factors, with another parade for which a permit has been issued; or
  - (4) The information contained in the application is found to be false or incorrect in any material respect.
- G. Assistance to un-permitted special event. In the event of any special event without a permit as is required by this section, no City of Midland employee, while on duty or acting within the course and scope of his employment, shall participate in, escort, assist or in any way whatsoever aid said un-permitted special event. Further, no City of Midland employee, whether or not said employee is on duty or acting within the course and scope of his employment, shall use or allow to be used any equipment owned by the City of Midland, including but not limited to City-owned vehicles, barricades and other traffic control devices, or City-owned uniforms, to assist in the operation of said un-permitted Special Event in any way whatsoever.
- H. Copies. Immediately upon the issuance of a special event permit, the City Manager shall send a copy thereof to the following:
- (1) The Police Chief;

- (2) The Fire Chief;
- (3) The Director of Engineering Services;
- (4) The Traffic Engineer;
- (5) The Midland County Emergency Management Coordinator; and
- (6) The Midland County Sheriff.

- I. Parking on Special Event Route. The Chief of Police is hereby authorized, whenever in his judgment it is necessary, to prohibit or restrict the parking of vehicles along a street or that part thereof constituting a part of the route of a special event, and to erect temporary traffic signs to that effect. It shall be unlawful to park or leave unattended any vehicle in violation of such signs.
- J. Driving through Processions. No driver of a vehicle shall drive between the vehicles comprising a procession (funeral procession, City-sponsored special event or special event as defined by this ordinance) while said procession is in motion. This provision shall not apply at intersections where traffic is controlled by traffic control signals or police officers.
- K. Railroad Crossing and State Highway Crossing. The City Manager shall not issue any special event permit for any special event proposed to cross over any railroad tracks. No special event permit shall be granted wherein the proposed route for said special event crosses or uses a Texas State Highway until the applicant shows that they have contacted and received permission from the appropriate state officials to do so. The City Manager may issue special event permits where the proposed route crosses under the railroad tracks on Texas State Highway 349 ("Big Spring Street") only if applicant shows permission from the appropriate state official. Only the City Council may issue special event permits wherein the proposed route crosses through or on a railroad crossing. The City Council shall not consider an appeal regarding the denial of a special event permit where the proposed route crosses through or on a railroad crossing until the applicant shows that they have contacted the appropriate railroad officials and shows proof that they have received permission to cross through or on a railroad crossing from said officials.
- L. Revocation. A special event permit issued under this Section may be revoked by the City Manager if a violation of any condition of the permit occurs or if, because of disaster, public calamity, riot or other emergency, the City Manager determines that the safety of the public requires revocation. Notice of the revocation shall be delivered in writing to the permittee by personal service or by certified mail. Upon revocation, a permittee may appeal the decision in the same manner as provided in this section.
- M. Appeal. Any applicant wishing to appeal the payment of any fees, or the denial or revocation of any permit, established by this Section may do so. Any applicant may appeal to the City Manager, or his designee, after denial of a permit, prior to paying the fees or after paying the fees. If an applicant wishes to appeal after payment of the fees, the person or operator shall appeal to the City Manager, or his designee, in writing within ten calendar days of paying the fees. 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 any applicant to challenge the accuracy and legal validity of their permit denial or 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 include but are not limited to a refund of any excess fees paid. Any person or operator may appeal to the City Manager, or his designee, if the person or operator

believes that he or she cannot afford the fees. The person or operator may seek an exemption from all or part of the fees. The City shall not file criminal charges against any applicant if any fees described in this Chapter are not paid. The City shall not file criminal charges against an applicant in an attempt to collect the fees.

The City Manager, or his designee, shall make his decision in writing within ten days of receiving the appeal. An applicant shall incur no financial hardship by exercising his or her right to appeal. Said fees shall not be required from a person or operator that cause a loss of livelihood, or damage to a business.

(Ordinance adopted 6/23/1953; Ordinance 9108, sec. 1, adopted 2/12/13; Ordinance 9135, sec. 1, adopted 4/23/13)

### **§ 10-1-3. Truck routes.**

No person shall operate a truck, truck-tractor, trailer, semi-trailer or pole trailer which has three or more axles on any street, roadway or highway within the City except upon the following portions of the following streets, which are hereby designated as "truck routes":

U.S. Interstate 20: In its entirety within the Midland city limits.

Loop 250: In its entirety within the Midland city limits.

State Highway 158: In its entirety within the Midland city limits.

State Highway 191: In its entirety within the Midland city limits.

State Highway 349: In its entirety within the Midland city limits.

Business State Highway 349: From Loop 250 to State Highway 349.

Fairgrounds Road: From the south Midland city limits to its northern terminus.

This Section shall apply to every motor vehicle designed, used or maintained primarily for the transportation of property which shall have three or more axles. This Section shall not apply to emergency vehicles.

Trucks, truck-tractors, trailers, semi-trailers, pole trailers and other vehicles restricted to streets designated as "truck routes" herein may depart from such routes where it is necessary to load or unload merchandise at locations situated off of designated routes; provided, however, such vehicles shall follow and use the most direct "local truck route," as hereafter designated, to the point nearest their ultimate destination, and provided further that such vehicles shall not leave designated truck routes until they have reached a turning-off point closest to the "local truck route," as hereinafter described, which would provide the shortest distance practical to the ultimate destination of the vehicle, and which is consistent with a reasonable operation of the vehicle; provided, further, said vehicles may depart from the designated truck routes for the purpose of traveling to and from a duly designated truck terminal, which is defined as an area for transshipment of merchandise and service and maintenance of trucks; provided that such vehicle proceeds by the most direct "local truck route," as hereinafter described, that is practicable. For purposes of this Section, the following portions of the following streets are hereby designated as "local truck routes."

Wadley Avenue: In its entirety.

Business State Highway 158: From Loop 250 to West Wall Street.

U.S. Business Interstate 20: From the west Midland city limits to the east Midland city limits.

West Wall Street: From U.S. Business Interstate 20 to Business State Highway 349.

Florida Avenue: From Garfield Street to Lamesa Road.

Garden City Highway: From Lamesa Road to U.S. Interstate 20.

Midland Drive: From Business State Highway 158 to Loop 250.

Midkiff Road: From the south Midland city limits to Loop 250.

Garfield Street: From West Wall Street to the south Midland city limits.

Business State Highway 349: From U.S. Interstate 20 to Loop 250.

Scharbauer Drive: From Business State Highway 349 to Golf Course Road.

Golf Course Road: From Scharbauer Drive to Business State Highway 158.

FM 307: From Lamesa Road to the east Midland city limits.

Any such vehicles may be driven off the designated routes to a public garage or repair shop when reasonably necessary for the maintenance and repair of such vehicle; provided, however, that this provision shall never be construed as authorizing the repair of vehicles in areas otherwise prohibited by the provisions of this Code, or by state law.

Any person operating any of the aforesaid vehicles upon any street or roadway which is not designated a truck route as provided for hereinabove shall have in his possession for the inspection of police officers his log book or evidence of his destination and point of origin to justify the presence of said vehicle on a street or roadway other than a designated truck route. Failure to have such log book or evidence in his possession shall not be an offense, but shall create a presumption that such person is unlawfully operating one of the aforesaid vehicles upon a street or roadway which is not designated a truck route.

The traffic engineer shall erect appropriate signs and markings advising operators of the above-named vehicles of the truck routes established herein. Whenever any street or roadway designated as a truck route is under repair or otherwise temporarily out of use, the traffic engineer shall be authorized to designate alternate truck routes.

(Ordinance 6226 adopted 6/14/1983; Ordinance 9384, sec. 1, adopted 1/13/15; Ordinance 9384, sec. 1, adopted 1/13/15)

#### **§ 10-1-4. Hazardous materials truck routes.**

##### **(A) Definitions.**

**Hazardous materials:** Materials which can cause death or disabling injury on brief exposure, highly flammable or volatile liquids, gases or solids, detonable materials, or highly self-reactive materials, including, but not limited to:

1. Explosives and explosively unstable materials.
2. High level or moderately radioactive materials.
3. Highly flammable gases and materials which give off extremely flammable vapors, and other flammable liquids and solids.
4. Gasoline (not including diesel fuel).

5. Extremely toxic materials which are so poisonous that no bodily exposure should occur, such as parathion and hydrogen cyanide, as well as highly toxic materials which are likely to cause some injury or illness but not death from a moderate exposure.
6. Materials which are extremely corrosive to living tissue, such as bromine, which can injure almost instantaneously, or hydrofluoric acid, which can strike through the skin to the tissues beneath and cause deep, slow-healing burns. Also included are materials that could cause severe eye injury, or destruction of tissue, particularly the eyes, if not removed from the body in a very short time.

Transporting vehicles: As the term is used in this Section shall mean all vehicles and appurtenances thereto used for the transportation of hazardous materials in commercial quantities, except that those vehicles which are equipped for the use of liquefied petroleum gas as a fuel system for the vehicle itself shall not be subject to the provisions of this Section insofar as liquefied petroleum gas is carried an such vehicle for fuel for such vehicle.

- (B) No person shall drive or operate or permit the driving or operation of any transporting vehicle of hazardous materials under their control over any street, alley or other public way within the corporate limits of the City, except upon the following portions of the following streets, which are hereby designated as "hazardous materials truck routes":

U.S. Interstate 20: In its entirety within the Midland city limits.

Loop 250: In its entirety within the Midland city limits.

State Highway 158: In its entirety within the Midland city limits.

State Highway 191: In its entirety within the Midland city limits.

State Highway 349: In its entirety within the Midland city limits.

Business State Highway 349: From Loop 250 to State Highway 349.

Fairgrounds Road: From the south Midland city limits to its northern terminus.

- (C) Any retail delivery of hazardous materials to local bulk facilities or users of such products located off the designated hazardous materials truck routes described above will be permitted and authorized provided that the transporting vehicle uses the most direct "local truck route," as above described and designated in Section 10-1-3 of this Code, to the point nearest the location of such using customer, and provided further that such transporting vehicle shall not leave the designated hazardous materials truck routes until it has reached a turning-off point closest to the "local truck route" which would provide the shortest distance practical to the location of such using customer, and which is consistent with a reasonable operation of the transporting vehicle. The return of such transporting vehicle to the designated hazardous materials truck routes shall be along the most direct "local truck route" to the designated hazardous materials truck route.
- (D) No transporting vehicle containing hazardous materials shall be parked or stored on the streets, alleys, or public thoroughfares or at any other point within the corporate limits of the City except upon premises owned or leased by the owner of such transporting vehicle and approved as a permanent commercial material location as provided by the fire prevention code of the City; provided, however, that such vehicle may be parked at the point where the commodity is to be delivered and such delivery shall be made without undue delay. In no event shall such transporting vehicle be parked for the purpose of unloading or delivery of the hazardous materials for a longer period of time than one hour, unless the express permission of the chief of the fire department is first obtained.

- (E) No hazardous materials shall be transferred from one transporting vehicle to another transporting vehicle on any street, alley or public thoroughfare or at any other point in the City other than on the premises on which permanent storage facilities are located; except that, in case of an emergency, such transfer may be made under the supervision of the chief of the fire department.
- (F) Transporting vehicles that are free of any liquid product may be driven off the designated routes as shown on the attached map to a public garage or repair shop when reasonably necessary for the maintenance and repair of such vehicle; provided, however, that this provision shall never be construed as authorizing the repair of vehicles in areas otherwise prohibited by the provisions of this Code, or by state law.

(Ordinance 5820 adopted 8/25/1981; Ordinance 6226 adopted 6/14/1983; Ordinance 9384, sec. 2, adopted 1/13/15)

#### **§ 10-1-5. Certain vans, trucks exceeding one ton in weight prohibited on certain streets.**

In addition to the truck route regulations contained in the two preceding Sections, no person shall operate a bus, van, truck, trailer, truck and trailer, or pickup truck, whether loaded or unloaded, which has a standard maximum load capacity which exceeds one ton, on those portions of the following described streets and avenues:

Neely Avenue: From the intersection of "A" Street to the intersection of State Highway 349.

Neely Avenue: From the intersection of Midland Drive to the intersection of Midkiff Road.

Cuthbert Avenue: From the intersection of Ward Street to the intersection of State Highway 349.

Louisiana Avenue: From the intersection of State Highway 158 to the intersection of Lamesa Road.

Michigan Avenue: From the intersection of State Highway 158 to the intersection of "A" Street.

Missouri Avenue: From the intersection of Garfield Street to the intersection of "A" Street.

Clark Street: From the intersection of U.S. Highway 80 to the intersection of Wall Avenue.

Lamesa Road: From the intersection of Golf Course Road to the intersection of Wadley Avenue.

Provided, however, that it shall be a defense from the prohibition of this Section that a person operating a vehicle covered by this Section crossed such portions of the herein described streets by only the use of the streets which intersect and cross the portions of the herein described streets, or traveled or used such portions of the herein described streets to deliver passengers or loads to property abutting such herein described streets. It is also a defense to this Section that the vehicle is a pickup truck or similar vehicle owned and operated by a resident on said restricted portions of the herein described streets and who was using same going to and from his home and not for a commercial purpose. However, any such resident operating a pickup truck or similar vehicle on said restricted portions of the herein described streets to go to and from his home and not for commercial purpose shall enter and exit such streets at the intersection of intersecting streets which is closest to his destination on such streets.

(Ordinance 6226 adopted 6/14/1983)

#### **§ 10-1-6. (Reserved)**

**Editor's note(s)**—Former § 10-1-6 (Certain vans, trucks prohibited on Louisiana Avenue) was repealed by Ord. No. 6226, enacted June 14, 1983.

**§ 10-1-7. Riding on portions of vehicles not intended for passengers.**

No person shall ride on any vehicle or upon any portion thereof not designated or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to persons riding within truck bodies in space intended for merchandise.

**§ 10-1-8. Clinging to moving vehicles.**

Any person riding upon any motorcycle, coaster, sled, roller skates or any toy vehicle shall not attach the same, or himself, to any moving vehicle upon any roadway.

**§ 10-1-9. Excessive or unusual noises.**

No person or vehicle shall emit excessive or unusual noise on the streets of the City. No vehicle shall be equipped with a noise maker.

(Ordinance adopted 6/23/1953)

**§ 10-1-10. Right-of-way landscaping and development regulations; sight triangles.****(A) Right-of-way regulations.****1. Obstructions forbidden.**

- (a) No person shall locate or maintain or cause to be placed, located or maintained, or allow to continue to exist, on or extending over onto city-held rights-of-way over his property or property under his control, any matter not naturally occurring or any plant without having received a permit for the same from the City manager or from the City Council. Each day such exists shall be a separate and distinct violation.
- (b) No person shall place or cause to be placed any material in a city-held right-of-way unless in compliance with this subsection.
- (c) Nothing in this subsection shall in any way restrain the City of Midland or the State of Texas from erecting traffic control devices and traffic signs. Neither shall this subsection prohibit any franchised utility of the City from installing any devices necessary to that utility if in conformance to the franchise agreement and operating agreements that utility has with the City.

**2. Presumptions.**

- (a) For purposes of this subsection, it shall be presumed that the owner of the abutting premises as well as any person in control thereof has caused the nonindigenous matter or any plant other than items listed in paragraph 4 of this subsection (A) to be placed, located or maintained, or allowed to exist, on his property over which the City holds a street right-of-way.
- (b) For the purposes of this subsection, it shall be presumed that any matter extending over a public sidewalk so as not to leave at least 60 percent or four feet, whichever is more, of the width of the sidewalk in contiguous feet clear to a height of at least seven feet above sidewalk level obstructs that sidewalk and is neither acceptable nor permissible under this subsection.
- (c) These presumptions are not conclusive and may be rebutted by a preponderance of the

evidence.

3. Removal. The city manager is hereby authorized to remove any object in, over or upon the City-held rights-of-way which exist in violation of this Section.
4. Exceptions. It shall be an affirmative defense to any charge of placing or maintaining a right-of-way obstruction that such obstruction is of the following nature:
  - (a) Mailboxes. Mailboxes which (i) do not occupy more than one foot of the width adjacent to one edge and one foot of the length of an improved sidewalk area for pedestrian use or more than two square feet not in an improved sidewalk area and (ii) which are constructed of breakaway material which would not cause injury to the occupants of an automobile in the event of a collision with that mailbox by an automobile shall be allowed.
  - (b) Turf grasses. Turf grasses such as Bermuda, zoysia, St. Augustine, fescues and similar species may be placed on any unimproved portion of a city-held right-of-way.
  - (c) Low-lying vegetation. If an approved public sidewalk is in place where such is appropriate, living, healthy vegetation may be placed on the unimproved portions of city rights-of-way in the following locations and to the following heights above sidewalk level, or above the top of the curb level where no sidewalk is in place:
    - (1) Vegetation no more than 20 inches high may be placed on any unimproved portion of city-owned rights-of-way.
    - (2) If such vegetation is of a species which will never exceed 24 inches in height, such as tam junipers (*Juniperus tamisafora*), that vegetation may be placed on any unimproved portion of city-held rights-of-way to 24 inches in height.
    - (3) Vegetation no more than 36 inches high may be placed ten feet behind the curbline on the City-held rights-of-way adjacent to local and minor collector streets. Vegetation 36 inches high may be placed ten feet behind the curbline on city-held rights-of-way of major collector streets if the adjoining property is zoned and used for one- or two-family residences.
    - (4) Vegetation 36 inches high may be placed 15 feet behind the curbline on all city-held rights-of-way.
  - (d) Trees. On unimproved city-held rights-of-way, on the sides, but not in the medians, of local streets and minor collector streets, living, healthy trees may be placed and maintained in the City-held rights-of-way; provided that approved curb, gutter and public sidewalks are in place and that the tree is located at least five feet behind the curbline. Furthermore, that tree must be free of branches and leaves below seven feet above sidewalk level. Immature trees may have branches and leaves below the minimum heights set herein if such trees are certified by the City manager not to cause a sight obstruction. The certification shall expire no later than the next December 31, or earlier if so set by the City manager for good cause, and may be withdrawn at any time. Furthermore, such trees may not be located so densely that their trunks create a sight obstruction.
  - (e) Median vegetation. Within the medians of local streets and minor collector streets, any cultivated vegetation may be placed by a person holding a median development permit

pursuant to paragraph 5(b) of this subsection (A); provided that vegetation is no closer than five feet to the nearest curbline nor closer than 30 feet to the nearest opening of that median for cross traffic. The opening of a median for cross traffic shall be measured from the curbline of the median extending into that opening at the furthest point.

- (f) Paving. Paving no higher than sidewalk level may be placed on any unimproved portion of city-held rights-of-way.
- (g) Central business district trees. Living, healthy, single-trunk trees may be placed in the rights-of-way of the central business district area of the City where approved public sidewalks are in place under conditions specified in this subparagraph. The central business district area of the City is defined as that area zoned C-1 Central Area District, except for the rights-of-way of any street with a speed limit in excess of 30 miles per hour. The trunks of such trees must be no closer than 18 feet apart. The trees must be clear of leaves and branches to a distance of seven feet above sidewalk level. A protective covering must be placed around the base of such trees such as is safe for expected pedestrian traffic if the tree is placed within an improved sidewalk area. Within one side of any one street block, the trunks of any trees in the rights-of-way must be to the greatest extent practical equidistant from the curbline, such distance to be specified by the City manager upon request of a party wishing to place such a tree. That distance shall be as near as is practical to the distance of existing trees within that block side taking into consideration the public needs for the particular area. Such trees must be of a deep-rooted species which is not likely to disrupt the surface of the surrounding sidewalk, curb, gutter and street by the tree's root activity. No shallow-rooted trees, such as mulberries (*Morus alba*), shall be allowed pursuant to this subparagraph. Neither shall any tree be allowed hereunder which has brittle branches or produces any poisonous fruit or bears thorns. No tree shall be allowed which sheds matter which, due to the shed matter's size, quantity or nature, would pose a hazard to vehicular or pedestrian traffic or create an unsanitary or unsightly condition. The city manager shall publish lists of several trees which conform and those that do not conform to the standards herein and shall evaluate any other species for conformity with this paragraph upon request of any person wishing to plant such a tree. No tree authorized hereunder shall occlude access to a parking meter, parking space, driveway, parking facility, public alley or public or private access.
- (h) Decorative construction. Any wall or other construction or item of masonry, wood, earth, stone, plastic or similar constituency shall be allowed to heights specified below. However, none of such construction may contain sharp, pointed or jagged surfaces such as could cut or injure persons touching or falling against the same. Public sidewalks, curbs, and gutters must be in place. The allowed height of such construction shall be:
  - (1) Along local and minor collector streets, up to an imaginary line 18 inches above sidewalk level from the property line to a point five feet behind the curbline, continuing from that point downward to zero inches at the back of the curb; or
  - (2) Along major collector and arterial streets, up to an imaginary line 18 inches above sidewalk level extending from the property line to a point 15 feet behind the curbline, continuing from that point downward to zero inches at the curbline.
- (i) Existing vegetation.
  - (1) Trees and shrubs in a living and healthy condition existing in the public rights-of-way at the time of the enactment of this Code Section shall be allowed to continue to

exist except as provided below. Should any person claim a tree or shrub is covered by this subparagraph, the burden of proof shall be upon that person to establish such. No new or replacement tree or shrub shall be authorized hereunder.

- (2) Should the City manager at any time determine that a tree or shrub excepted under this subparagraph fails to meet the traffic and pedestrian safety conditions of parts 5(a)(1)(aa), (bb), (cc) or (dd) of this subsection (A), then the exception of this subparagraph shall terminate, subject to the appeal procedures of paragraph (A)8 as to the City manager's findings, unless the owner of the abutting premises:
    - (aa) Immediately brings such tree or shrub into conformance with the referenced Code provisions; or
    - (bb) Executes an agreement as a covenant running with the land to indemnify the City for any liability that may be imposed on it because of the tree or shrub and supplies the City perpetually with a liability insurance policy on the tree or shrub. That policy must name the City as an additional insured and be conditioned that 60 days' notice to the City must be given before cancellation is effective. That policy must have limits no less than the maximum tort liability of municipalities as set by the Texas legislature.
  - (3) Should the City manager determine that a hereunder excepted tree or shrub constitutes an imminent traffic safety hazard, the exception shall terminate as to that tree or shrub and the City manager may remove the tree or shrub without opportunity of the abutting owner to save the exception by supplying indemnity or insurance.
- (j) Nothing in this paragraph shall authorize any violation of the sight triangle as described in subsection (B) of this Section. Nor shall this paragraph authorize any obstruction to an improved or planned sidewalk or roadway, nor obstruction of the view of any traffic control device. Nor shall this paragraph authorize any unsightly matter or violation of the health and sanitation codes of the City.

5. Continuous permits.

- (a) General.
  - (1) Rule. The city manager is hereby authorized and directed to issue permits to persons owning, developing or leasing property abutting a city-held right-of-way or sidewalk area and to persons developing medians pursuant to subparagraph (A)5(b) of this paragraph for the location of living plant matter and other forms of landscaping or other improvement or facility. The owner of the abutting property and the person leasing that property, or the median developer in the case of a median, must execute in favor of the City on a form approved by the City attorney an agreement to indemnify the City should the City ever incur any liability as a result of such permitted matter and agreeing to remove the same or allow the same to be removed at no cost to the City or to any franchised utility company should the same ever be damaged or removed by a utility company by reason of its occupation of the City-held rights-of-way or by the City should it ever damage or remove the same for any reason. The owner of the property must further agree to maintain all permitted vegetation in a healthy and safe condition and any other matter in a safe and repaired condition. All conditions of the permit shall be covenants running with the land. Permits for such shall be issued should the City manager be able to make

all the following findings:

- (aa) That the proposed material will not be located on, extend onto, or intrude on any portion of the roadway designed for vehicular use.
- (bb) That the proposed material will not be located or extend onto or intrude upon any portion of the improved sidewalk area which is designed or needed for pedestrian use.
- (cc) That the design and location of the proposed material includes all reasonable planning to minimize potential harm, injury or interference to the public in the use of the public street or pedestrian sidewalk area.
- (dd) That the proposed material will not create any hazardous condition or obstruction of vehicular or pedestrian travel upon the public street.
- (ee) That the proposed material shall not interfere with the needs of the City or franchised utility company regarding that area.
- (ff) That the proposed material will not violate the sight triangle as established by subsection (B) of this Section or obstruct the view of a traffic control device.
- (gg) That an approved public sidewalk is in place or the requirement for such has been waived by the City.
- (hh) That the proposed material will not violate the zoning code of the City, Title XI of this Code, nor that such material would violate the zoning code if it were on private property in the same zoning district.

(2) Exceptions.

- (aa) Should the City manager be unable to conclusively find that a proposed material for a permit would not interfere with the City's or a franchised utility's need for the right-of-way pursuant to paragraph 5(a)(1)(ee) of this subsection, but the matter does not create an immediate interference, then the City manager may issue a conditional permit for such material. However, the applicant for such conditional permit must supply the City with a perpetual bond in the amount of the estimated cost of removing such material in the event the City or a franchised utility may have need to remove such material. That bond shall be collectable in the instance that the person responsible for such material fails or refuses to remove such immediately upon request by the City or a franchised utility.
- (bb) In the event that the City manager finds that the material for which a permit is requested violates the zoning code, contrary to paragraph 5(a)(1)(hh) of this subsection, then the applicant for such permit may seek relief from the strict requirements of the zoning code before the zoning board of adjustment according to the terms of the Code sections governing the actions of that zoning board of adjustment. In the event that the zoning board of adjustment grants relief to the applicant, then the City manager may issue a permit for the material requested.
- (cc) Any conditional permit issued under paragraph 5(a)(2) of this subsection shall

in all respects conform to the requirements of paragraph 5(a)(1) of this subsection except as otherwise specifically indicated herein.

- (b) Median development permit. No person may place any material in any median, whether that material is excepted under paragraph (A)4 of this subsection or permittable under paragraph 5 of this subsection, without first obtaining a median development permit from the City. The person applying for a median development permit must present to the City a plan describing the type and location of plant and other landscaping material and providing for adequate maintenance of all material placed in the median. A person holding a median development permit may place items in that median excepted under paragraph (A)4 of this subsection and may obtain permits under paragraph (A)5 of this subsection. The person granted a median development permit for a specific median shall have the exclusive landscaping rights to that median until the City cancels such permit, or until the permittee defaults on the conditions of such permit, or until the permittee voluntarily assigns such rights to another with the prior approval of the City. The City may deny or rescind any such median development permit on grounds that the City has developed or intends to develop the median in question pursuant to paragraph (A)9 of this subsection or on grounds that the City has other needs of such median inconsistent with the median development permit.
- (c) Arterial beautification permit. Should the City Council of the City find it to be in the public interest, it may extend permits to individuals or entities for either private or public beautification of the rights-of-way of arterial and major collector streets within the City. Any matter so permitted shall conform with aesthetic standards and traffic safety standards adopted by the Council for that particular portion at the right-of-way upon recommendation of the director of community services and the traffic engineer, respectively. The applicant for a permit hereunder shall submit with the application an agreement signed by the owner of the adjoining property as a covenant running with the land to indemnify the City for any liability that may arise or be imposed upon the City because of the permitted matter. The applicant shall also provide a perpetual general liability insurance policy naming the City as an additional insured covering liability arising from the permitted matter and with limits no less than the maximum liability exposure of municipalities as set by the Texas legislature. However, the Council may waive the insurance requirement should it find that all reasonable safety standards have been met in the permitted matter. The Council may further waive the indemnity requirement should it find that the right-of-way in question is so heavily traveled by the public and that the permitted matter adds such an aesthetic quality to that right-of-way that all citizens will be benefited thereby.
- (d) Charge for permits. If in any incidence under this Section there is required the execution of covenants running with the land, those covenants shall be filed in the deed records of the county clerk of the appropriate county. The applicant shall pay for the permit a fee equal to the fee imposed by the county clerk for filing the covenants plus a \$2.00 administrative fee per lot on which items are permitted.
6. Temporary permits. The city manager may permit the obstruction of any portion of city-held rights-of-way for a limited period of time for purposes beneficial to the public, such as the construction of buildings or the holding of special events. However, prior to the issuance of such permit the applicant therefor must agree to indemnify the City for all liability that might be imposed upon the City as a result of those obstructions. The applicant must provide the City with a certificate of insurance reflecting that the City is an additional insured with limitations

adequate to cover the City's liability exposure therefor in the amounts of maximum liability exposure of municipalities as set by the Texas legislature, or provide other sufficient evidence of financial ability to indemnify the City, and the applicant must agree to remove such obstructions immediately upon city request or allow the same to be done by the City at any time at no cost to the City. Furthermore, the obstruction must be of such a nature or include adequate protections, as determined by the City manager, so as not to endanger vehicular or pedestrian traffic.

7. **Permits and exceptions rescinded.** Should any vegetation or other matter, regardless whether permitted under this subsection, obstruct the needful view of a traffic control device or extend over or onto or be located on city-held rights-of-way in such a way as to obstruct that right-of-way within a height the City deems needful for the right-of-way, die or become unsightly, or otherwise present a danger to the public, the City manager is authorized to rescind any permit to the extent of the offending matter and remove that matter. The adjoining property owner, permit holder and person placing plant items in the right-of-way shall have the duty to immediately remove any dead or dangerously damaged plants, or portions thereof. Any matter existing in city-held rights-of-way, whether permitted there by the City or existing there by exception stated in paragraph (A)4 of this subsection or whether there illegally, shall exist there no more than by sufferance by the City. If, at any time, the City or any franchised utility has any need of the right-of-way area, the City and the franchised utility are authorized to destroy that matter in the right-of-way without making compensation to any private party.
8. **Appeal.** The city manager shall issue or deny any permit applied for under this subsection within ten days of application. Should the City manager deny or rescind any permit applied for pursuant to this subsection, or should the City manager seek to remove any excepted item described in subsection (A)4 of this Section, the applicant therefor may appeal such denial or threatened removal to the City Council within 15 days. The City Council shall grant or deny that appeal based on the criteria set forth in this subsection for the particular type permit in question. This paragraph shall not diminish the City manager's authority to immediately remove dangerous obstructions.
9. **Parks.** Should the City manager be able to make findings (aa) through (gg) listed under subsection (A)5(a)(1) of this Section, he may authorize the parks department to place landscaping in the public right-of-way.
10. **Liability.** The City disclaims all responsibility and liability for and arising out of any plant or landscaping matter located in city-held rights-of-way. The sole responsibility and liability for such shall rest on the property owners and other persons responsible for the placement of the same.
11. **Definitions.** As used in this Section:
  - Arterial street:** Any street designated as an arterial or highway by the major thoroughfare plan as adopted by the City Council.
  - City-held rights-of-way:** Any land area over which the City or the public owns a dedicated or acquired easement for a public street.
  - Insurance:** General public liability insurance naming the City as an additional insured and with a deductible of not more than \$1,000.00 per occurrence.
  - Local street:** Any residential or business public street not otherwise defined herein as an arterial, collector, major collector or minor collector street and which is used primarily for access to

abutting properties.

Major collector street: Any street designated as an important collector by the major thoroughfare plan adopted by the City Council. It shall also include any street not defined as a "minor collector" but designed and used as a collector street pursuant to the subdivision code, Chapter 11-2 of this Code.

Minor collector: Any street designed and used as a collector street pursuant to the subdivision code, Chapter 11-2 of this Code, but which does not connect two arterial streets. The term shall also include any segment of a minor collector street which does not directly align with any other segment of the collector street and which segment does not connect two arterials.

(B) View of traffic at intersections.

1. In connection with the regulations provided herein, "intersection visibility triangle" shall mean a sight triangle area at all intersections in which the streets and highways intersect and shall include that portion of the City-held rights-of-way and any corner lot within a triangular area formed by extending the curblines of the intersecting streets, highways, alleys and driveways to their imaginary point of intersection for the first point of a triangle, then proceeding back from this imaginary point of intersection the distances specified below along the curblines of the intersecting streets and highways to establish the two remaining points of the triangle. These points shall then be connected with imaginary lines, thereby forming a triangle. If there are no curbs existing, the triangular area shall be formed by extending the pavement edges to the imaginary point of intersection of the streets or drives and then proceeding in the same manner described above. The distances along those curblines or street lines shall be as follows:
  - (a) At intersections controlled by traffic lights or four-way stop signs, 25 feet in each direction.
  - (b) At stop intersections with arterial streets, and alley and driveway intersections with arterial streets, ten feet along the curbline of the nonarterial street, alley or driveway and 200 feet along the curbline of the arterial street.
  - (c) At stop intersections other than with arterial streets, 20 feet along the street having the stop sign and 40 feet along the through street.
  - (d) At intersections of alleys and driveways with nonarterial streets, ten feet along the alley or driveway and 40 feet along the street.
  - (e) At all other street intersections, 40 feet in each direction.
2. No person shall park a vehicle nor plant, erect, maintain or allow to exist any fence, wall, screen, billboard, sign, structure or other view obstruction, or foliage of hedges, trees, bushes or shrubs, within the "intersection visibility triangle" so as to obstruct the sight lines at elevations between three feet and eight feet above the average street grade. Obstructions of this nature are declared to be a public traffic nuisance. However, needful traffic control signs and devices designated by the City traffic engineer shall be allowed. Temporary parking, signs, barricades, and warning devices such as are necessary for the maintenance of utilities and traffic control devices shall be allowed.
3. For purposes of this subsection, it shall be presumed that the owner of the premises or abutting premises as well as any person in control of that premises has placed, erected, maintained, or allowed to exist any violation of this subsection existing on that premises or its abutting

unimproved city-held rights-of-way. This presumption shall not be conclusive, but may be rebutted by a preponderance of the evidence. Each day which such violation exists shall be deemed to be a separate and distinct offense.

4. Any person owning or controlling property on which any fence, wall, screen, hedge, tree, bush, shrub, billboard, sign or structure is erected, planted or maintained in violation of these paragraphs must remove the same within ten days upon written notice from the City traffic engineer.
5. Exceptions. Any existing permanent building, and any fire hydrant or device necessary for the operation of a franchised utility and in conformance with that utility's franchise and operating agreements with the City, official traffic control sign, or traffic control device, or any trees planted so as to leave unobstructed view between tree trunks and with no limbs below eight feet above the average street grade, shall be excepted from these regulations. This paragraph shall not legalize any violation of the sight triangle which violation came into place after the enactment of Ordinance No. 5439 on February 27, 1979, and was illegal under that ordinance.
6. The provisions of these regulations shall not require a setback greater than is required by the zoning regulations contained in this Code for permanent buildings and for fences in the rear yard and side yard. Fences in front yard areas shall be governed by the more restrictive of this Section or the zoning regulations.

(Ordinance 6879 adopted 10/11/1988)

#### **§ 10-1-11. Immediate report of accidents.**

The driver of any vehicle involved in an accident resulting in injury or death of any person or damage to any property shall immediately, by the quickest means of communication, give notice of such accident to the police department if such accident occurs within the City. No driver of a vehicle involved in an accident shall leave the scene of the accident until contacted by a police officer, except in the event of personal injury requiring medical attention. Any such driver leaving the scene of the accident for medical treatment shall notify the police department and shall remain at the hospital or doctor's office until contacted by a police officer or the person shall report in person to the police department.

(Ordinance adopted 6/23/1953)

#### **§ 10-1-12. Negligent collision.**

If any person driving or operating or in charge of any motor vehicle, animal or any other vehicle shall, by negligence, cause or suffer or permit the same to come in collision with any other vehicle of any nature whatsoever, or with any animal, person, street sign, street post, water plug, mailbox or any other obstruction or object whatsoever in or on any public street, roadway or highway or other public place whatsoever in the City, such person shall be deemed guilty of a misdemeanor.

(Ordinance 3390 adopted 11/12/1958)

#### **§ 10-1-13. Cutting corners prohibited.**

The driver of any vehicle shall not turn across or cut across or drive in any other manner on or across any private or public property at or near any street corner or intersection to avoid traffic controls or to avoid the normal or designated traffic flow.

The act of going from one public street to another by driving across private or public property shall be *prima facie* evidence that such act was done for the purpose of avoiding a traffic signal or the normal flow

of traffic.

(Ordinance 4299 adopted 1/24/1967)

#### **§ 10-1-14. Ready-mix concrete transport vehicles.**

- (A) No ready-mixed concrete transport vehicle may operate upon any roadway within the City with a tandem-axle load exceeding 36,000 pounds, a single-axle load which exceeds 12,000 pounds and a gross load which exceeds 48,000 pounds.
- (B) The owner of any ready-mixed concrete transport vehicle shall file with the director of public works of the City of Midland a surety bond in the amount of \$15,000.00, conditioned that the owner of such vehicle will pay to the City of Midland all damages done to the highways and roadways within the City by reason of the operation of such vehicle with a tandem-axle load in excess of 34,000 pounds, prior to operating any such vehicle upon the said highways and roadways of the City.

(Ordinance 5228 adopted 10/11/1977)

#### **§ 10-1-15. Holiday Hill Road.**

- (A) No person shall operate a truck, truck-tractor, trailer, semi-trailer or pole trailer which has three or more axles (hereinafter called "restricted vehicles" or "restricted vehicle") on Holiday Hill Road except upon the following conditions as stated below.
  - 1. This Section shall apply to every motor vehicle designed, used or maintained primarily for the transportation of property which shall have three or more axles. This Section shall not apply to emergency vehicles or vehicles owned by governmental entities.
  - 2. It is an affirmative defense to prosecution under this section that an individual is operating a restricted vehicle on Holiday Hill Road only when it is necessary to load or unload merchandise at a location between Holiday Hill Road and the portion of Midland Drive north of Mockingbird Lane, and that said individual did follow and use the most direct route to the point nearest their ultimate destination and which is consistent with a reasonable operation of the vehicle.
  - 3. It is an affirmative defense to prosecution under this section that said restricted vehicle is neither designed, used, nor maintained primarily for the transportation of property.
  - 4. Any person operating any of the restricted vehicles upon Holiday Hill Road shall have in his possession for the inspection by police officers his log book or evidence of his destination and point of origin to justify the presence of said vehicle on Holiday Hill Road. Failure to have such log book or evidence in his possession shall not be an offense but shall create a presumption that such person is unlawfully operating a vehicle on Holiday Hill Road.
  - 5. It shall be an affirmative defense to prosecution under this Section that the restricted vehicle is owned or operated by a resident or property owner who resides or owns property between Holiday Hill Road and Midland Drive north of Mockingbird Lane or owns or lives on property that abuts Holiday Hill Road.
- (B) Holiday Hill Road shall mean Holiday Hill Road from the north right-of-way of Briarwood Avenue to the South right-of-way of the 349 Reliever Route.

(Ordinance 8398, secs. 1 adopted 2 adopted 4/25/2006)

**GENERAL TRAFFIC REGULATIONS**

**Chapter 10-2**

**TRAFFIC ADMINISTRATION**

**§ 10-2-1. Establishment and control of traffic division.**

There is hereby established in the police department of the City a traffic division, to be under the control of a traffic officer, who is to be appointed by and directly responsible to the chief of police.  
(Ordinance adopted 6/23/1953)

**§ 10-2-2. Duties of traffic division.**

It shall be the duty of the traffic division, with such aid as may be directed by the chief of police, to enforce the street traffic regulations of the City and the state vehicle laws applicable to street traffic in the City, to make arrests for traffic violations, to investigate accidents and to cooperate with the City traffic engineer and other officers of the City in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed upon the traffic division by this Title and other traffic regulations of the City, and to carry out those orders specially imposed upon the traffic division by the chief of police of the City.

(Ordinance adopted 6/23/1953)

**§ 10-2-3. Records of traffic violations.**

The corporation court of the City shall keep a public record of all violations of this Title and other traffic regulations of the City or of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such records shall be so maintained as to show all types of violations and the total of each. Such records shall accumulate during at least a five-year period and, from that time on, the records shall be maintained complete for at least the most recent five-year period. All such records of violations and notices of violations shall be serially numbered. All such records shall be deemed public records.

(Ordinance adopted 6/23/1953)

**§ 10-2-4. Investigation of traffic accidents.**

It shall be the duty of the traffic division, assisted by other police officers assigned to the traffic division by the chief of police, to investigate all traffic accidents, and to arrest those persons charged with violations of law causing or contributing to such accidents.

(Ordinance adopted 6/23/1953)

**§ 10-2-5. Traffic accident studies.**

Whenever the accidents at any particular location become numerous, the traffic division shall cooperate with the City traffic engineer in conducting studies of such accidents and determining remedial measures.  
(Ordinance adopted 6/23/1953)

**§ 10-2-6. Traffic accident records and reports.**

The traffic division shall maintain a suitable system of filing traffic accident reports. Such reports shall be available for the use and information of the City traffic engineer, and he shall keep an alphabetical record of accidents by location.

(Ordinance adopted 6/23/1953)

**§ 10-2-7. Monthly traffic safety report.**

The traffic division shall prepare and submit a monthly traffic report to the City manager and the chief of

police. Such report shall contain information on traffic matters in the City as follows:

- (A) The number of traffic accidents, the number of persons killed or injured and any other pertinent traffic accident data.
  - (B) The number of traffic accidents investigated and any other pertinent data on safety activities.
  - (C) The plans and recommendations of the traffic division for future traffic safety activities.
- (Ordinance adopted 6/23/1953)

#### **§ 10-2-8. Funeral processions.**

The traffic division shall designate a type of pennant or other identifying insignia to be displayed upon vehicles in funeral processions.

(Ordinance adopted 6/23/1953)

#### **§ 10-2-9. City traffic engineer.**

The office of city traffic engineer is hereby established. The traffic engineer shall be appointed by the City manager. It shall be the general duty of the traffic engineer to determine the installation and the proper timing and maintenance of traffic control devices, to conduct engineering analysis of traffic accidents and to devise remedial measures therefor, to conduct engineering investigations of traffic conditions and to cooperate with other city officials in the development of ways and means to improve traffic conditions and to carry out additional duties imposed upon the traffic engineer by the City manager.

(Ordinance adopted 6/23/1953)

#### **§ 10-2-10. Emergency and experimental regulations.**

The chief of police, by and with the approval of the City manager, is hereby empowered to make and endorse temporary or experimental regulations to cover emergency or special conditions of traffic. No such temporary or experimental regulations shall remain in effect for more than 90 days. The traffic engineer as directed by the City manager may test traffic control devices under actual conditions of traffic.

(Ordinance adopted 6/23/1953)

City of Midland, TX

TRAFFIC ADMINISTRATION

**Chapter 10-3**

**ENFORCEMENT AND OBEDIENCE**

**§ 10-3-1. Enforcement by police department.**

It shall be the duty of the police department of the City, or such officers as are assigned by the chief of police, to enforce all street traffic laws of the City and all of the state vehicle laws applicable to the street traffic in the City.

(Ordinance adopted 6/23/1953)

**§ 10-3-2. Police to direct traffic.**

Those officers of the police department that may be assigned by the chief of police are hereby authorized to direct all traffic by voice, hand or other signals in conformance with traffic laws; provided that, in the event of fire or other emergency, in order to expedite traffic, or to safeguard pedestrians, officers may direct traffic as conditions may require, notwithstanding the provisions of the traffic laws. Members of the fire department, when authorized by the chief of police, may direct or assist the police in directing traffic.

(Ordinance adopted 6/23/1953)

**§ 10-3-3. Obedience to police and fire department members.**

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or any member of the fire department.

(Ordinance adopted 6/23/1953)

**§ 10-3-4. Persons propelling pushcarts and riding animals.**

Every person propelling any pushcart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this Title applicable to the driver of any vehicle, except those provisions of this Title which by their very nature can have no application.

(Ordinance adopted 6/23/1953)

**§ 10-3-5. (Reserved)**

**Editor's note(s)**—Former § 10-3-5, which pertained to coasters, roller skates and similar devices, was repealed by Ord. No. 7713, § 1, adopted February 10, 1998.

**§ 10-3-6. Public employees to obey traffic regulations.**

The provisions of this Title shall apply to the driver of any vehicle owned by or used in the service of the United States government, or any state, county or city. It shall be unlawful for the driver of such a vehicle to violate any of the provisions of this Title, except as otherwise permitted in this Title or by state law.

(Ordinance adopted 6/23/1953)

**§ 10-3-7. Exemptions for authorized emergency vehicles.**

The provisions of this Title, or any other provision regulating the operation, parking and standing of vehicles, shall apply to authorized emergency vehicles, as defined in this Title, except as follows:

- (A) A driver, when operating any such vehicle in an emergency, except when otherwise directed by a police officer, may:
  1. Park or stand notwithstanding the provisions of this Title, or any other regulation.
  2. Proceed past a red or stop signal or stop sign, only after slowing down as may be necessary for

safe operation.

3. Exceed the prima facie speed limits so long as he does not endanger life or property.
4. Disregard regulations regarding direction of moving or turning in opposite directions, so long as he does not endanger life or property.

(B) The foregoing exemptions shall not protect the driver of any such vehicle from the consequences of his reckless disregard of the safety of others.

(Ordinance adopted 6/23/1953)

City of Midland, TX

**ENFORCEMENT AND OBEDIENCE**

**Chapter 10-4**

**TRAFFIC CONTROL DEVICES**

**§ 10-4-1. Authority to install traffic control devices.**

The city traffic engineer shall have the authority to install and maintain traffic control signs, signals and devices when required under this Title and other traffic regulations of the City, and he may install and maintain such additional traffic control devices as he may deem necessary to regulate traffic under this Title and other traffic regulation of the City or under state law, or to guide or warn traffic.

(Ordinance adopted 6/23/1953)

**§ 10-4-2. Manual and specifications.**

All traffic control signs, signals and devices shall conform to the state Manual on Uniform Traffic Control Devices. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the City. All traffic control devices so erected and not inconsistent with the provisions of state law or this Title shall be official traffic control devices.

(Ordinance adopted 6/23/1953)

**§ 10-4-3. Obedience to traffic control devices.**

The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with this Title and other traffic regulations of the City, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this Title.

(Ordinance adopted 6/23/1953)

**§ 10-4-4. Required for enforcement purposes.**

No provision of this Title for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

(Ordinance adopted 6/23/1953)

**§ 10-4-5. Traffic control signal legend.**

Whenever traffic is controlled by traffic control signals exhibiting the word "Go," "Caution" or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and such terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

**(A) Green alone or "Go":**

1. Vehicular traffic facing the signal may proceed straight through or turn right or left, unless a sign at such place prohibits either such turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection and adjacent crosswalk at the time such signal is exhibited.
2. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

**(B) Yellow alone or "Caution" when shown following the green or "Go" signal:**

1. Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the

intersection when the red or "Stop" signal is exhibited.

2. Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(C) Red alone or "Stop":

1. It shall be unlawful for any person, firm or corporation to drive or operate a motor vehicle in such a manner as to enter any of the intersections listed below for the purpose of executing a turning movement when faced with a red or "Stop" signal:

- (a) The intersection of Thomason Drive and West Wall Avenue.
- (b) The intersection of Williams Drive and West Wall Avenue.
- (c) The intersection of Andrews Highway and Midkiff Road.
- (d) The intersection of Neely Avenue and Midkiff Road.
- (e) The intersection of Cuthbert Avenue and Garfield Street.
- (f) The intersection of Dodson Street and Illinois Avenue.
- (g) The intersection of Ohio Avenue, Dodson Street, and Andrews Highway.

(D) Red with green arrow:

1. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow, but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.
2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(E) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this Section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of such signs or marking the stop shall be made at the signal.

(Ordinance adopted 6/23/1953; Ordinance 4811 adopted 8/14/1973)

**§ 10-4-6. Pedestrian "walk" and "wait" signals.**

Wherever special pedestrian control signals exhibiting the words "Walk" or "Wait" are in place, such signals shall indicate as follows:

- (A) Walk: Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by drivers of all vehicles.
- (B) Wait: No pedestrian shall start to cross to the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety zone while the wait signal is showing.

(Ordinance adopted 6/23/1953)

**§ 10-4-7. Flashing signals.**

Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

- (A) Flashing red (stop signal): When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection, or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
  - (B) Flashing yellow (caution signal): When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.
- (Ordinance adopted 6/23/1953)

**§ 10-4-8. Displaying of unauthorized signs, signals or markings.**

- (A) No person shall place, maintain or display upon or in view of any highway or street any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device, or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway or street any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways or streets of signs giving useful directional information and of a type that cannot be mistaken for official signs.
  - (B) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway or street is hereby empowered to remove the same or cause it to be removed without notice.
- (Ordinance adopted 6/23/1953)

**§ 10-4-9. Interference with official signals.**

- (A) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device or railroad sign or signal, or any inscription, shield or insignia thereon or thereof.
  - (B) No person shall, without lawful authority, possess or use any infrared or strobe light transmitter, or any other type of preemption device with the capability of preempting, controlling, altering, or modifying the operation or cycle of an official traffic control device or railroad signal.
  - (C) The city traffic engineer is hereby authorized to designate and maintain all traffic control signal operational codes, and shall release them only to the City of Midland fire chief or City of Midland police chief unless otherwise directed by the City manager.
- (Ordinance adopted 6/23/1953; Ordinance 8234, sec. 1, adopted 4/27/2004)

**§ 10-4-10. Authority of traffic engineer to designate crosswalks, establish safety zones and mark traffic lanes.**

The city traffic engineer is hereby authorized:

- (A) To designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where in his opinion there is particular danger to pedestrians crossing the

roadway, and at such other places as he may deem necessary.

- (B) To establish safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians.
- (C) To mark lanes for traffic on street pavements at such places as he may deem advisable, consistent with this Title and other traffic regulations of the City.

(Ordinance adopted 6/23/1953)

#### **§ 10-4-11. School zones.**

The following described areas or locations are hereby designated "School Zones" and are reduced speed zones designated on streets by the City of Midland to facilitate safe crossing of the streets by children going to or leaving public or private elementary or secondary schools during the times the reduced speed limits apply. No person shall drive a motor vehicle in such areas or locations at a speed greater than is reasonable and prudent under the circumstances then existing. The speed limits specified hereinafter shall be lawful, but any speed in excess of the limits specified below during the hours set out hereinafter for each location or when flashing lights are in place and operating shall be *prima facie* evidence that the speed is not reasonable or prudent and is unlawful on the days schools are in session.

- (A) Abell Junior High School - 20 mph - 7:30 a.m. to 4:45 p.m.
  - 1. Heritage Boulevard from the centerline of Wadley Avenue to a point 170 feet south of the centerline of Highland Boulevard/HIGHLAND COURT.
  - 2. Highland Boulevard from the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.
- (B) Abell Junior High School - 20 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

Wadley Avenue from a point 100 feet east of the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.
- (C) Alamo Junior High School - 25 mph - 6:30 a.m. to 9:00 a.m. and 2:30 p.m. to 4:45 p.m.

Illinois Avenue from a point 211 feet east of the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.
- (D) Alamo Junior High School - See "Bonham Elementary School and Alamo Junior High School."
- (E) Anson Jones Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Illinois Avenue from a point 210 feet east of the centerline of Stoneybrook Drive to a point 210 feet west of the centerline of Stoneybrook Drive.
- (F) Anson Jones Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.
  - 1. Stoneybrook Drive - from a point 88 feet north of the centerline of Shadylane Drive to the centerline of Shadylane Drive.
  - 2. Shadylane Drive - from a point 160 feet north of the centerline of Thomason Drive to a point 150 feet east of the centerline of Thornridge Drive.
  - 3. Thornridge Drive - from a point 160 feet north of the centerline of Thomason Drive to the centerline of Shadylane Drive.

(G) Ben Milam Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. Wadley Avenue - from a point 293 feet east of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue to a point 280 feet west of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue.
2. Lamesa Road - from a point 200 feet north of the centerline of the west leg of Dormard Avenue to a point 200 feet south of the centerline of the west leg of Dormard Avenue.
3. Main Street - from a point 175 feet north of the centerline of Dormard Avenue to a point 175 feet south of the centerline of Dormard Avenue.

(H) Ben Milam Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Shandon Avenue - from a point 230 feet west of the centerline of Edwards Street to a point 300 feet east of the centerline of Barber Drive.
2. Dengar Avenue - from a point 230 feet west of the centerline of Edwards Street to the centerline of Edwards Street.
3. Dengar Avenue - from the centerline of Barber Drive to a point 295 feet east of the centerline of Barber Drive.
4. Dormard Avenue - from a point 300 feet west of the centerline of Edwards Street to a point 230 feet east of the centerline of Barber Drive.
5. Edwards Street - from a point 205 feet south of the centerline of Dormard Avenue to a point 160 feet north of the centerline of Shandon Avenue.
6. Barber Drive - from a point 175 feet south of the centerline of Dormard Avenue to a point 155 feet north of the centerline of Shandon Avenue.

(I) Bonham Elementary School and Alamo Junior High School - 20 mph - 6:30 a.m. to 9:00 a.m. and 2:30 p.m. to 4:45 p.m.

Midland Drive from a point 205 feet north of the centerline of Crockett Avenue to a point 185 feet south of the centerline of Storey Avenue.

(J) Bonham Elementary School and Alamo Junior High School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Cuthbert Avenue - from a point 235 feet west of the centerline of Delmar Street to a point 185 feet east of the centerline of Bonham Street.
2. Storey Avenue - from a point 450 feet west of the centerline of Delmar Street to the centerline of McDonald Street.
3. Storey Avenue - from the centerline of Bonham Street to a point 220 feet east of the centerline of Bonham Street.
4. Delmar Street - from a point 195 feet south of the centerline of Storey Avenue to the centerline of Storey Avenue.
5. Delmar Street - from a point 170 feet north of the centerline of Cuthbert Avenue to the centerline of Cuthbert Avenue.

6. McDonald Street - from a point 200 feet south of the centerline of Storey Avenue to a point 115 feet north of the centerline of Cuthbert Avenue.
7. Bonham Street - from a point 170 feet south of the centerline of Storey Avenue to a point 118 feet north of the centerline of Cuthbert Avenue.
8. Dunbar Street - from a point 115 feet north of the centerline of Cuthbert Avenue to the centerline of Cuthbert Avenue.

(K) Bowie Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. "A" Street - from a point 140 feet north of the centerline of Elk Avenue to a point 175 feet south of the centerline of Douglas Avenue.
2. Douglas Avenue - from the centerline of "A" Street to a point 195 feet east of the centerline of "A" Street.
3. Douglas Avenue - from a point 205 feet east of the centerline of "D" Street to a point 175 feet west of the centerline of "D" Street.

(L) Bowie Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Elk Avenue - from the centerline of "B" Street to the centerline of "A" Street.
2. Douglas Avenue - from a point 90 feet east of the centerline of "C" Street to the centerline of "B" Street.
3. Princeton Avenue - from a point 255 feet west of the centerline of "B" Street to the centerline of "B" Street.
4. "B" Street - from a point 150 feet north of the centerline of Elk Avenue to a point 160 feet south of the centerline of Princeton Avenue.

(M) Bunche Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Pennsylvania Avenue - from a point 165 feet east of the centerline of Carver Street to a point 190 feet east of the centerline of Jackson Street.
2. Adams Street - from the centerline of Pennsylvania Avenue to a point 135 feet north of the centerline of Pennsylvania Avenue.
3. Jackson Street - from a point 140 feet north of the centerline of Pennsylvania Avenue to a point 215 feet north of the centerline of Cloverdale Road.
4. California Avenue - from the centerline of Jackson Street to a point 200 feet east of the centerline of Jackson Street.

(N) Burnett Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Spraberry Drive - from a point 175 feet north of the centerline of Devonian Drive to a point 130 feet north of the centerline of Pleasant Drive.
2. Ruby Drive - from the centerline of Canyon Drive to a point 165 feet north of the centerline of Devonian Drive.
3. Raymond Drive - from a point 185 feet north of the centerline of Canyon Drive to a point 50

feet north of the centerline of Pleasant Drive.

4. Devonian Drive - from a point 230 feet west of the centerline of Spraberry Drive to the centerline of Spraberry Drive.
5. Canyon Drive - from the centerline of Spraberry Drive to a point 280 feet east of the centerline of Raymond Drive.
6. Pasadena Drive - from the centerline of Spraberry Drive to a point 230 feet west of the centerline of Spraberry Drive.
7. Howard Drive - from the centerline of Raymond Drive to a point 295 feet east of the centerline of Raymond Drive.

(O) Bush Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Whittle Way from a point 175 feet north of the centerline of Preston Avenue to a point 200 feet south of the centerline of Preston Avenue.

(P) Bush Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Idlewilde Drive - from a point 90 feet north of the centerline of Rainbow Road to the centerline of Preston Drive.
2. Preston Drive - from a point 150 feet east of the centerline of Idlewilde Drive to a point 150 feet west of the centerline of Sunburst Drive.
3. Sunburst Drive - from a point 90 feet north of the centerline of Rainbow Road to a point 150 feet north of the centerline of Preston Drive.

(Q) Carver Center - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Wall Street - from a point 150 feet west of the centerline of Carver Street to a point 181 feet east of the centerline of Jesse Street.
2. Carver Street - from a point 175 feet north of the centerline of Texas Avenue to a point 160 feet south of the centerline of Wall Street.
3. Texas Avenue - from a point 150 feet west of the centerline of Carver Street to the centerline of Carver Street.
4. Adams Street - from a point 150 feet south of the centerline of Wall Street to the centerline of Wall Street.
5. Jesse Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.

(R) Coleman High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Golf Course Road - from a point 60 feet west of the centerline of Benton Street to a point 120 feet west of the centerline of Tilden Street.
2. Tilden Street - from a point 70 feet north of the centerline of Jax Street to the centerline of Golf Course Road.

(S) DeZavala Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. Lamesa Road - from a point 300 feet north of the centerline of Louisiana Avenue to a point 250 feet south of the centerline of Louisiana Avenue.
2. Louisiana Avenue - from a point 200 feet west of the centerline of Lamesa Road to a point 150 feet east of the centerline of Lamesa Road.
3. Garden Lane - from a point 180 feet west of the centerline of Lee Street to a point 191 feet east of the centerline of Lee Street.
4. Walnut Lane - from a point 184 feet west of the centerline of Lee Street to a point 196 feet east of the centerline of Lee Street.

(T) DeZavala Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Orchard Lane - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.
2. Lee Street - from a point 325 feet north of the centerline of Mesquite Street to a point 50 feet north of the centerline of South Street.
3. Mesquite Street - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.

(U) Emerson Elementary School and Goddard Junior High School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Ward Street - from a point 250 feet south of the centerline of Haynes Drive to a point 135 feet north of the centerline of Emerson Place.
2. Moss Avenue - from a point 465 feet east of the centerline of Whitney Drive to the centerline of Ward Street.
3. Goddard Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.
4. Emerson Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.
5. Lanham Street - from a point 85 feet north of the centerline of Goddard Street to a point 140 feet south of the centerline of Haynes Drive.
6. Haynes Drive - from a point 175 feet east of the centerline of Lanham Street to a point 150 feet west of the centerline of Ward Street.

(V) Fannin Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. Neely Avenue - from a point 290 feet east of the centerline of Lanham Street to a point 300 feet west of the centerline of Lanham Street.
2. Garfield Street - from a point 466 feet south of the centerline of Cimmaron Drive to a point 135 feet north of the centerline of Dengar Avenue.
3. Ward Street - from a point 150 feet north of the centerline of Fannin Avenue to a point 160 feet south of the centerline of Fannin Avenue.

(W) Fannin Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Cimmaron Avenue - from a point 285 feet west of the centerline of Lanham Street to a point 250 feet east of the centerline of Mogford Street.
2. Frontier Avenue - from a point 295 feet west of the centerline of Lanham Street to the centerline of Lanham Street.
3. Fannin Avenue - from a point 255 feet west of the centerline of Lanham Street to a point 325 feet east of the centerline of Mogford Street.
4. Lanham Street - from a point 160 feet south of the centerline of Fannin Avenue to a point 180 feet north of the centerline of Cimmaron Avenue.
5. Mogford Street - from a point 155 feet south of the centerline of Fannin Avenue to a point 170 feet north of the centerline of Cimmaron Avenue.

(X) Fasken Elementary School - 25 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Holiday Hill Road - from a point 200 feet north of the centerline of Sherwood Drive to a point 200 feet south of Sherwood Drive.

(Y) Fasken Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Sherwood Drive - from a point 100 feet east of the centerline of Sandstone Drive to a point 100 feet west of the centerline of Val Verde Drive.
2. Sandstone Drive - from a point 100 feet north of the centerline of Sherwood Drive to a point 100 feet south of the centerline of Val Verde Drive.
3. Val Verde Drive - from the centerline of Sherwood Drive to the centerline of Sandstone Drive.
4. Becker Drive - from the centerline of Sandstone Drive to a point 100 feet south of the centerline of Sandstone Drive.

(Z) General Tommy Franks Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Jax Avenue - from a point 190 feet west of the centerline of Fort Worth Street to the centerline of Terrell Street.
2. Parker Avenue - from a point 190 feet west of the centerline of Fort Worth Street to a point 155 feet east of the centerline of Terrell Street.
3. Fort Worth Street - from the centerline of Parker Avenue to a point 160 feet south of the centerline of Hamby Avenue.
4. Terrell Street - from the centerline of Parker Avenue to a point 100 feet north of the centerline of Jax Avenue.
5. Dallas Street - from the centerline of Parker Avenue to a point 180 feet south of the centerline of Parker Avenue.

(AA) General Tommy Franks Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Lamesa Road from a point 135 feet south of the centerline of Parker Avenue at its southernmost intersection with Lamesa Road to a point 200 feet north of the centerline of Parker Avenue at its

southernmost intersection with Lamesa Road.

(AB) Goddard Junior High School - See "Emerson Elementary School and Goddard Junior High School."

(AC) Greathouse Elementary School 25 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Briarwood Avenue from a point 540 feet east of the centerline of Mathis Street to a point 450 feet west of the centerline of Mathis Street.

(AD) Greathouse Elementary School 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Oriole Drive from a point 220 feet north of the centerline of Woodhollow Drive to a point 198 feet south of the centerline of Woodhollow Drive.

(AE) Greathouse Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Mathis Street - from a point 515 feet north of the centerline of Briarwood Avenue to a point 100 feet north of the centerline of Greathouse Avenue.
2. Greathouse Avenue - from a point 180 feet south of the centerline of Mathis Street to a point 450 feet north of the centerline of Mathis Street.
3. Quicksand Drive - from the centerline of Mathis Street to a point 180 feet west of the centerline of Mathis Street.
4. Woodhollow Drive - from the centerline of Mathis Street to a point 390 feet east of the centerline of Mathis Street.

(AF) Henderson Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Bentwood Drive - from a point 265 feet north of the centerline of Graceland Drive to a point 138 feet south of the centerline of Joy Drive.
2. Wilshire Drive - from the centerline of Graceland Drive to a point 160 feet north of the centerline of Graceland Drive.
3. Erie Drive - from the centerline of Graceland Drive to a point 205 feet north of the centerline of Graceland Drive.
4. Eisenhower Drive - from a point 135 feet north of the centerline of Graceland Drive to a point 135 feet south of the centerline of Graceland Drive.
5. Graceland Drive - from a point 130 feet west of the centerline of Bentwood Drive to a point 135 feet east of the centerline of Eisenhower Drive.

(AG) Hillander Private School - 20 mph - 7:30 a.m. to 9:00 a.m. and 1:30 p.m. to 4:00 p.m.

1. Wadley Avenue - from a point 275 feet east of the centerline of "I" Street to a point 560 feet west of the centerline of "I" Street.
2. "I" Street - from a point 170 feet north of the centerline of Wadley Avenue to a point 215 feet south of the centerline of Wadley Avenue.

(AH) Jane Long Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Devonian Drive - from a point 180 feet north of the centerline of Tanner Drive to a point 200

feet south of the centerline of Cedar Spring Drive.

2. Leddy Drive - from the centerline of Cedar Spring Drive to a point 165 feet north of the centerline of Tanner Drive.
3. Tanner Drive - from a point 250 feet west of the centerline of Devonian Drive to a point 215 feet east of the centerline of Leddy Drive.
4. Beckley Drive - from the centerline of Cedar Spring Drive to a point 150 feet south of the centerline of Cedar Spring Drive.
5. Aberdeen Drive - from the centerline of Cedar Spring Drive to a point 250 feet south of the centerline of Cedar Spring Drive.
6. Mercedes Drive - from a point 240 feet west of the centerline of Devonian Drive to the centerline of Devonian Drive.
7. Avondale Drive - from the centerline of Leddy Drive to a point 85 feet east of the centerline of Leddy Drive.
8. Cedar Spring Drive - from a point 125 feet west of the centerline of Devonian Drive to a point 185 feet east of the centerline of Leddy Drive.

(AI) Lamar Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Illinois Avenue from a point 330 feet east of the centerline of Crestview Road to a point 240 feet west of the centerline of Crestview Road.

(AJ) Lamar Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Kessler Avenue - from a point 120 feet east of the centerline of Midkiff Road to a point 220 feet east of the centerline of Crestview Road.
2. Peach Street - from a point 165 feet south of the centerline of Illinois Avenue to the centerline of Kessler Avenue.
3. Crestview Road - from a point 185 feet south of the centerline of Illinois Avenue to a point 170 feet south of the centerline of Kessler Avenue.
4. Barkley Street - from a point 180 feet east of the centerline of Crestview Road to the centerline of Crestview Road.

(AK) Legacy Freshman High School - 20 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

Scharbauer Drive from a point 195 feet west of the centerline of Butternut Lane to a point 202 feet east of the centerline of Butternut Lane.

(AL) Legacy Freshman High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Oak Avenue - from a point 150 feet west of the centerline of Butternut Lane to a point 200 feet east of the centerline of Lincoln Street.
2. Lincoln Street - from a point 145 feet north of the centerline of Oak Avenue to a point 145 feet north of the centerline of Magnolia Avenue.
3. Maple Avenue - from a point 229 feet east of the centerline of Lincoln Street to the centerline

of Lincoln Street.

4. Butternut Lane - from a point 150 feet north of the centerline of Oak Avenue to a point 50 feet north of the centerline of Magnolia Avenue.

(AM) Legacy High School - See "Rusk Elementary School and Legacy High School."

(AN) Midland Academy Charter School - 20 mph - 7:00 a.m. to 8:30 a.m. and 3:00 p.m. to 4:30 p.m.

1. Baird Street - from a point 97 feet north of the centerline of Michigan Avenue to a point 145 feet south of the centerline of Tennessee Avenue.
2. Michigan Avenue - from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.
3. Tennessee Avenue - from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.
4. Weatherford Street - from a point 95 feet north of the centerline of Michigan Avenue to a point 165 feet south of the centerline of Tennessee Avenue.

(AO) Midland Christian School - 20 mph - 7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:30 p.m.

Neely Avenue from a point 175 feet east of the centerline of Culver Drive to a point 225 feet west of the centerline of Culver Drive.

(AP) Midland Christian School - 20 mph - 7:30 a.m. to 4:30 p.m.

1. Culver Drive - from the centerline of Gulf Avenue to a point 385 feet north of the centerline of Gulf Avenue.
2. Gulf Avenue - from a point 190 feet east of the centerline of Culver Drive to the centerline of Culver Drive.
3. Northrup Drive - from a point 384 feet south of the centerline of Sinclair Avenue to a point 135 feet north of the centerline of Gulf Avenue.
4. Sinclair Avenue - from a point 158 feet east of the centerline of Culver Drive to the centerline at Northrup Drive.

(AQ) Midland Classical Academy School - 20 mph - 7:30 a.m. to 4:00 p.m.

Whitman Drive from a point 87 feet north of the centerline of Mockingbird Lane to a point 650 feet south of the centerline of Savoy Place.

(AR) Midland Freshman High School - 25 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

Rankin Highway from a point 265 feet north of the centerline of Hicks Avenue to a point 170 feet south of the centerline of Hicks Avenue.

(AS) Midland Freshman High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Main Street - from a point 180 feet north of the centerline of Hicks Avenue to a point 180 feet south of the centerline of Gist Avenue.
2. Baird Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of

Hicks Avenue.

3. Weatherford Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of Hicks Avenue.
4. Hicks Avenue - from a point 200 feet west of the centerline of Main Street to a point 175 feet east of the centerline of Weatherford Street.
5. Montgomery Avenue - from the centerline of Main Street to a point 210 feet west of the centerline of Main Street.
6. Gist Avenue - from a point 200 feet west of the centerline of Main Street to a point 1,040 feet east of the centerline of Main Street.

(AT) Midland High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Ohio Avenue - from a point 150 feet east of the centerline of San Angelo Street to the centerline of "A" Street.
2. "C" Street - from a point 130 feet south of the centerline of Illinois Avenue to the centerline of Illinois Avenue.
3. "D" Street - from a point 115 feet south of the centerline of Illinois Avenue to a point 45 feet north of the centerline of Ohio Avenue.
4. Illinois Avenue - from a point 267 feet west of the centerline of "E" Street to a point 185 feet east of the centerline of "A" Street.
5. "A" Street - from a point 85 feet south of the centerline of Tennessee Avenue to a point 280 feet south of the centerline of Illinois Avenue.
6. Tennessee Avenue - from a point 103 feet west of the centerline of "B" Street to a point 60 feet east of the centerline of "A" Street.

(AU) Midland Montessori School - 20 mph - 7:30 a.m. to 4:30 p.m.

Austin Street from a point 200 feet north of the centerline of Cuthbert Avenue to a point 80 feet south of the centerline of Bedford Avenue.

(AV) Pease Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Magnolia Avenue - from a point 280 feet west of the centerline of Benton Street to a point 295 feet east of the centerline of Peterson Street.
2. Hickory Avenue - from a point 340 feet west of the centerline of Benton Street to the centerline of Benton Street.
3. Scharbauer Drive - from a point 335 feet west of the centerline of Benton Street to a point 290 feet east of the centerline of Peterson Street.
4. Benton Street - from a point 215 feet north of the centerline of Scharbauer Drive to a point 290 feet east of the centerline of Peterson Street.
5. Peterson Street - from the centerline of Scharbauer Drive to a point 200 feet north of the centerline of Magnolia Avenue.

(AW) Quanah Parker Elementary School - 30 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Midland Drive from a point 340 feet north of the centerline of St. Andrews Drive to a point 350 feet south of the centerline of St. Andrews Drive.

(AX) Quanah Parker Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Godfrey Drive from a point 150 feet north of the centerline of St. Andrews Drive to a point 135 feet south of the centerline of St. Andrews Drive.

(AY) Quanah Parker Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. St. Andrews Drive - from a point 150 feet west of the centerline of Casady Court to a point 140 feet west of the centerline of Norwood Street.
2. Greenbriar Drive - from a point 150 feet south of the centerline of St. Andrews Drive to the centerline of St. Andrews Drive.
3. Merrill Drive - from a point 150 feet west of the centerline of Norwood Street to the centerline of Norwood Street.
4. Russell Drive - from a point 175 feet west of the centerline of Norwood Street to the centerline of Norwood Street.
5. Norwood Street - from the centerline of St. Andrews Drive to a point 150 feet north of the centerline of Russell Drive.

(AZ) Rusk Elementary School and Legacy High School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Neely Avenue - from a point 175 feet west of the centerline of McDonald Street to a point 250 feet east of the centerline of Tarleton Street.
2. McDonald Street - from a point 155 feet south of the centerline of Neely Avenue to a point 115 feet north of the centerline of Cimmaron Avenue.
3. Wedgewood Street - from a point 200 feet south of the centerline of Neely Avenue to the centerline of Cimmaron Avenue.
4. Cimmaron Avenue - from a point 205 feet west of the centerline of McDonald Street to a point 170 feet east of the centerline of Shandon Avenue.
5. Fannin Avenue - from the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.
6. Shandon Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.
7. Imperial Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.
8. Godfrey Street - from a point 145 feet south of the centerline of Neely Avenue to a point 158 feet north of the centerline of Rebel Drive.

(BA) Rusk Elementary School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Dengar Avenue - from a point 250 feet east of the centerline of Tarleton Street to the centerline

of Tarleton Street.

2. Fannin Avenue - from the centerline of Tarleton Street to a point 240 feet east of the centerline of Tarleton Street.
3. Cimmaron Avenue - from the centerline of Tarleton Street to a point 295 feet east of the centerline of Tarleton Street.
4. Tarleton Street - from a point 175 feet south of the centerline of Neely Avenue to a point 140 feet north of the centerline of Dengar Avenue.

(BB) St. Ann's School - 20 mph - 7:00 a.m. to 4:00 p.m.

1. Texas Avenue - from a point 195 feet west of the centerline of "N" Street to a point 30 feet west of the centerline of "L" Street.
2. "N" Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.
3. "M" Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.

(BC) Sam Houston Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:30 p.m.

1. Cuthbert Avenue - from a point 335 feet east of the centerline of "N" Street at its easternmost intersection with Cuthbert Avenue to a point 297 feet west of the centerline of "N" Street at its easternmost intersection with Cuthbert Avenue.
2. "N" Street - from the centerline of Louisiana Avenue to a point 175 feet north of Cuthbert Avenue.

(BD) Sam Houston Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 5:30 p.m.

1. Louisiana Avenue - from a point 285 feet east of the centerline of Garfield Street to a point 40 feet east of the centerline of "L" Street.
2. "L" Street - from a point 238 feet south of the centerline of Louisiana Avenue to a point 150 feet north of the centerline of Louisiana Avenue.
3. "M" Street - from a point 250 feet south of the centerline of Louisiana Avenue to the centerline of Louisiana Avenue.
4. Michigan Avenue - from a point 180 feet east of the centerline of North "N" Street to a point 180 feet west of the centerline of North "N" Street.
5. "N" Street - from a point 315 feet south of the centerline of Louisiana Avenue to the centerline of Louisiana Avenue.

(BE) San Jacinto Junior High School - 20 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

1. Golf Course Road - from a point 208 feet east of the centerline of "N" Street to a point 185 feet west of the centerline of "N" Street.
2. Garfield Street - from a point 287 feet south of the centerline of Community Lane to a point 287 feet north of the centerline of Community Lane.

(BF) San Jacinto Junior High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Community Lane - from a point 160 feet east of the centerline of Garfield Street to a point 120 feet east of the centerline of "N" Street.
2. Douglas Avenue - from the centerline of "N" Street to a point 190 feet east of the centerline of "N" Street.
3. Hodges Street - from the centerline of Community Lane to a point 225 feet north of the centerline of Community Lane.
4. "N" Street - from a point 340 feet north of the centerline of Community Lane to a point 170 feet south of the centerline of Douglas Avenue.

(BG) Santa Rita Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Bluebird Lane from a point 215 feet east of the centerline of Whitman Street to a point 200 feet west of the centerline of Whitman Street.

(BH) Santa Rita Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

Whitman Drive from a point 760 feet north of the centerline of Bluebird Lane to a point 920 feet south of the centerline of Mockingbird Lane.

(BI) Scharbauer Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Crowley Boulevard - from a point 250 feet south of the centerline of Hereford Boulevard to a point 575 feet north of the centerline of Hereford Boulevard.
2. Hereford Boulevard - from a point 250 feet south of the centerline of Homestead Boulevard to a point 136 feet north of the centerline of Crowley Boulevard.
3. Homestead Boulevard - from the centerline of Hereford Boulevard to a point 425 feet west of the centerline of Hereford Boulevard.

(BJ) South Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Big Spring Street - from a point 220 feet north of the centerline of Dakota Street to a point 165 feet south of the centerline of Dakota Street.

(BK) South Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Dakota Avenue - from a point 155 feet west of the centerline of Colorado Street to a point 240 feet east of the centerline of Main Street.
2. New Jersey Avenue - from a point 205 feet west of the centerline of Colorado Street to a point 235 feet east of the centerline of Main Street.
3. Colorado Street - from a point 145 feet south of the centerline of New Jersey Avenue to a point 230 feet north of the centerline of Dakota Avenue.
4. Loraine Street - from a point 230 feet south of the centerline of New Jersey Avenue to the centerline of New Jersey Avenue.
5. Loraine Street - from the centerline of Dakota Avenue to a point 175 feet north of the centerline of Dakota Avenue.

6. Main Street - from a point 120 feet south of the centerline of New Jersey Avenue to a point 200 feet north of the centerline of Dakota Avenue.

(BL) Travis Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

1. Gist Avenue - from a point 190 feet west of the centerline of Marshall Street to a point 170 feet east of the centerline of Atlanta Street.
2. Marshall Street - from the centerline of Gist Avenue to a point 205 feet north of the centerline of Gist Avenue.
3. Jefferson Street - from the centerline of Gist Avenue to a point 215 feet north of the centerline of Gist Avenue.
4. Atlanta Street - from the centerline of Gist Avenue to a point 190 feet north of the centerline of Gist Avenue.

(BM) Trinity Private School - 25 mph - 7:30 a.m. to 8:30 a.m. and 2:45 p.m. to 4:45 p.m.

Wadley Avenue from a point 150 feet west of the centerline of Godfrey Street to the centerline of Tarleton Street.

(BN) Trinity Private School - 20 mph - 7:30 a.m. to 8:30 a.m. and 2:45 p.m. to 4:45 p.m.

1. Godfrey Street - from a point 150 feet south of the centerline of Wadley Avenue to a point 265 feet south of the centerline of Trinity Drive.
2. Jordan Avenue - from a point 150 feet south of the centerline of Wadley Avenue to the centerline of Wadley Avenue.

(BO) Young Women's Leadership Academy - 20 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

1. Wall Street - from a point 67 feet west of the centerline of Jackson Street to the centerline of Calhoun Street.
2. Tilden Street - from a point 155 feet north of the centerline of Wall Street to a point 100 feet north of the centerline of Indiana Avenue.
3. Donald Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.
4. Lincoln Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.
5. Jackson Street - from a point 100 feet north of centerline of Wall Street to the centerline of Wall Street.
6. Indiana Avenue - from a point 225 feet west of the centerline of Tilden Street to a point 210 feet east of the centerline of Tilden Street.

(BP) West Education Center - 20 mph - 7:00 a.m. to 4:30 p.m.

1. Missouri Avenue - from a point 40 feet east of the centerline of Garfield Street to a point 255 feet east of the centerline of "N" Street.
2. Indiana Avenue - from a point 40 feet east of the centerline of Garfield Street to a point 155 feet

east of the centerline of "N" Street.

3. "N" Street - from a point 200 feet north of the centerline of Missouri Avenue to a point 215 feet south of the centerline of Indiana Avenue.
4. "O" Street - from a point 165 feet north of the centerline of Missouri Avenue to the centerline of Missouri Avenue.

(BQ) Yarbrough Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Shea Lane - from a point 340 feet east of the centerline of Hall of Fame Boulevard to a point 90 feet north of the centerline of Legends Boulevard.
2. Legends Boulevard - from the centerline of Shea Lane to a point 170 feet east of the centerline of Wagner Drive.
3. Wagner Street/Drive - from a point 100 feet north of the centerline of Legends Boulevard to a point 100 feet south of the centerline of Riverfront Drive.
4. Riverfront Drive - from a point 215 feet west of the centerline of Coliseum Court to the centerline of Wagner Drive.

(BR) Yarbrough Elementary School - 25 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Avalon Drive from a point 200 feet north of the centerline of Hall of Fame Boulevard to a point 200 feet south of the centerline of Hall of Fame Boulevard.

**Editor's note(s)**—Ord. No. 9672, § 1, adopted June 13, 2017, repealed the former § 10-4-11, and enacted a new § 10-4-11 as set out herein. The former § 10-4-11 pertained to school zones and crossings. See the Code Comparative Table for complete derivation.

(Ordinance 9672, sec. 1, adopted 6/13/2017; Ordinance 9787, sec. 1, adopted 7/10/2018; Ordinance 9961, sec. 1, adopted 8/13/2019; Ordinance 10114, sec. 1, adopted 9/22/2020; Ordinance 10222, sec. 1, adopted 8/24/2021; Ordinance 10345 adopted 9/27/2022; Ordinance 10394 adopted 4/11/2023)

TRAFFIC CONTROL DEVICES

**Chapter 10-5**

**SPEED REGULATIONS**

**§ 10-5-1. State speed laws applicable.**

The state traffic laws regulating the speed of vehicles, which provide 30 miles per hour as the maximum lawful speed within the corporate limits of a City, shall be applicable upon all streets within the City, except as this Chapter or other traffic regulations of the City may otherwise provide.

(Ordinance adopted 6/23/1953)

**§ 10-5-2. Speed regulations on specified streets or areas.**

Speed regulations specified by the traffic engineer shall be applicable upon specified streets or in certain areas, in which event it shall be *prima facie* unlawful for any person to drive any vehicle at a speed in excess of any speed limit so indicated by signs.

(Ordinance adopted 6/23/1953)

**§ 10-5-3. Authority to designate speed limits by signs.**

The city traffic engineer may designate the speed regulations upon any street or portion of a street by erecting signs giving notice thereof.

(Ordinance adopted 6/23/1953)



**TURNING MOVEMENT**

**Chapter 10-6**

**TURNING MOVEMENT**

**§ 10-6-1. Required position and method of turning at intersection.**

The driver of a vehicle intending to turn at an intersection shall do so as follows:

- (A) Both the approach for a right turn and a right turn shall be made as close as practical to the righthand curb or edge of the roadway.
- (B) Approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered.
- (C) Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the centerline of the street being entered upon leaving the intersection.
- (D) Where both streets or roadways are one-way, both the approach for a left turn and a left turn shall be made as close as possible to the lefthand curb or edge of the roadway.

(Ordinance adopted 6/23/1953)

**§ 10-6-2. Authority to place and obedience to turning markers.**

The city traffic engineer is authorized to place markers, buttons or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveled as so indicated may conform to or be other than as prescribed by law.

When authorized markers, buttons or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications.

(Ordinance adopted 6/23/1953)

**§ 10-6-3. Authority to place restricted turn signs.**

The city traffic engineer is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right, left or U turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted.

(Ordinance adopted 6/23/1953)

**§ 10-6-4. Obedience to no turn signs.**

Whenever authorized signs are erected indicating that no right, left or U turn is permitted, no driver of a vehicle shall disobey the directions of any such sign.

(Ordinance adopted 6/23/1953)

**§ 10-6-5. Limitations on turning around.**

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district, and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.

(Ordinance adopted 6/23/1953)

**§ 10-6-6. (Reserved).**

**Editor's note(s)**—Ord. No. 8290, §§ 1, 2, adopted Feb. 22, 2005, repealed § 10-6-6, which pertained to entering into alleys, private driveways or buildings and derived from Ord. No. 4043, adopted Oct. 8, 1963.

**§ 10-6-7. Continuous two-way left turn lanes.**

- (A) A continuous two-way left turn lane is a clearly marked lane in approximately the center of certain streets, which lane is designated by markings on the street surface or overhead signs or both for use by vehicular traffic from either direction for left turns only.
- (B) It shall be unlawful for any person to operate a motor vehicle within the City limits of this City, upon any street, or portion of a street, provided with a continuous two-way left turn lane, in such a manner as to fail to make the approach for the left turn within the continuous two-way left turn lane.
- (C) It shall further be unlawful for any person to operate a motor vehicle within this City in such a manner as to make a left turn off of any street, or portion of a street, provided with a continuous two-way left turn lane, in any lane other than the continuous two-way left turn lane.
- (D) It shall further be unlawful for any person to use a continuous two-way left turn lane in this City in any manner other than the approach for and making of left turns.
- (E) The driver of any vehicle proceeding within a continuous two-way left turn lane in an approach for a left turn shall slow its speed or stop if necessary to avoid colliding with another vehicle lawfully approaching from the opposite direction within such continuous two-way left turn lane.

(Ordinance 4786 adopted 5/22/1973)



**ONE-WAY STREETS AND ALLEYS**

**Chapter 10-7**

**ONE-WAY STREETS AND ALLEYS**

**§ 10-7-1. Erection of signs.**

Appropriate signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited by the City traffic engineer.

(Ordinance adopted 6/23/1953)

**§ 10-7-2. Driving on one-way streets and alleys.**

On any street or part of a street or any alley, marked by signs for one-way traffic, vehicular traffic shall move only in the direction indicated by the signs.

(Ordinance adopted 6/23/1953)

**§ 10-7-3. One-way streets designated.**

*Scharbauer Drive:* The following described portions of Scharbauer Drive be, and the same are, designated and shall be marked for one-way vehicular traffic and it shall hereafter be unlawful for any person to drive or otherwise operate a motor vehicle in such designated areas other than in the direction so marked, to wit:

That portion of Scharbauer Drive on the north side of the median and drainage channel dividing Scharbauer Drive extending from the east curbline of Lamesa Road to its intersection with the west curbline of Fairgrounds Road is hereby designated for, and restricted to, one-way movement of westbound vehicular traffic only.

That portion of Scharbauer Drive on the south side of the median and drainage channel dividing Scharbauer Drive extending from the east curbline of Lamesa Road to its intersection with the west curbline of Fairgrounds Road is hereby designated for, and restricted to, one-way movement of eastbound vehicular traffic only.

(Ordinance 6800 adopted 10/27/1987)

**ONE-WAY STREETS AND ALLEYS**

**Chapter 10-8**

**SPECIAL STOPS REQUIRED**

**§ 10-8-1. Authority to designate through streets.**

The city traffic engineer is hereby authorized to designate through streets.  
(Ordinance adopted 6/23/1953)

**§ 10-8-2. Authority to designate stop intersections.**

The city traffic engineer is hereby authorized to determine and designate intersections where particular hazards exist upon other than through streets and to determine whether vehicles shall stop at one or more entrances to any such stop intersection, and shall erect a stop sign at every such place where a stop is required.

(Ordinance adopted 6/23/1953)

**§ 10-8-3. Construction and location of stop signs.**

Every sign erected pursuant to this Chapter shall bear the word "Stop" in letters not less than six inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight illuminating the face of the sign or by efficient reflecting elements on the face of the sign. Every stop sign shall be located as near as practicable at the nearest line of the crosswalk on the near side of the intersection or, if none, at the nearest line of the roadway.

(Ordinance adopted 6/23/1953)

**§ 10-8-4. Vehicles to stop at stop signs.**

When stop signs are erected as provided in this Chapter at or near the entrance to any intersection, every driver of a vehicle shall stop such vehicle at such sign or at a clearly marked stop line before entering the intersection, except when directed to proceed by a police officer or traffic control signal.

(Ordinance adopted 6/23/1953)

**§ 10-8-5. Yield right-of-way signs.**

Yield right-of-way signs shall be placed on certain streets within the City. The traffic engineer of the City shall designate the streets upon which the yield right-of-way signs shall be placed.

(Ordinance adopted 6/23/1953)

**§ 10-8-6. Vehicles approaching yield right-of-way signs.**

Any vehicle approaching any yield right-of-way sign shall slow to a speed of not more than ten miles per hour, and yield the right-of-way to all approaching vehicles, from either the right or left intersecting street, when not to yield the right-of-way would constitute an immediate hazard.

(Ordinance adopted 6/23/1953)

**§ 10-8-7. Failure to yield right-of-way.**

If any driver of any vehicle approaching a yield right-of-way sign is engaged or involved in any collision at such intersection or interferes with the movement of other vehicles in the intersection, then it shall be prima facie evidence that the driver of the vehicle approaching the yield right-of-way sign failed to yield the right-of-way.

(Ordinance adopted 6/23/1953)

**§ 10-8-8. Vehicles entering through highways or stop intersections.**

After the driver of a vehicle has stopped at the entrance to a through highway, after obedience to a stop sign, such driver shall yield the right-of-way to other vehicles which have entered the intersection or which are approaching so closely to the intersection as to constitute an immediate hazard, but such driver, having so yielded, may proceed and the drivers of all other vehicles approaching the intersection on such through highways shall yield the right-of-way to the vehicle so proceeding into or across the through highway.  
(Ordinance adopted 6/23/1953)

**§ 10-8-9. Emerging from alley or private driveway.**

The driver of a vehicle emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, yielding the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching such roadway.

It shall be unlawful for the driver of any vehicle emerging from an alley, private driveway, or building to make a left turn across a double yellow centerline or across a traffic median area outlined by paint, or by a physical barrier or where prohibited by signs, except into a one-way street.

(Ordinance adopted 6/23/1953; Ordinance 4044 adopted 10/22/1963)

**§ 10-8-10. Stop when traffic obstructed.**

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.  
(Ordinance adopted 6/23/1953)

**§ 10-8-11. Obedience to signal indicating approach of train.**

Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this Section, the driver of such vehicle shall stop within 50 feet, but not less than 15 feet, from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

- (A) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train.
- (B) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train.
- (C) A railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such a distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard.
- (D) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad grade crossing while such gate or barrier is closed or is being opened or closed.

(Ordinance adopted 6/23/1953)

**§ 10-8-12. Vehicles at railroad crossings.**

An operator of any vehicle approaching a railroad crossing equipped with crossing gates within the City shall fully stop such vehicle not less than three feet outside of and from the nearest crossing gate, when such crossing gate is being lowered or is lowered, and he shall not proceed until the crossing gate is raised. (Ordinance adopted 7/8/1952)

**§ 10-8-13. Vehicle stops required.**

- (A) The operator of any vehicle approaching any street intersection in the City where stop signs have been placed in the City shall come to a full stop immediately before entering the intersection if proceeding along the street on and along which the said stop signs are displayed.
- (B) All persons operating or driving vehicles in the City shall obey all stop signs and slow signs and shall strictly conform thereto.
- (C) Where there are two or more streets or avenues having displayed on any or all of them slow or stop signs at the same intersection, vehicles on any of such streets shall come to a full stop, or shall slow down, in obedience to the direction of the signs displayed upon the street upon which such vehicles are proceeding before entering such intersection.

(Ordinance 5344 adopted 7/11/1978)

**§ 10-8-14. Designation of through streets.**

- (A) The following streets are hereby declared to be through streets, to wit:
  - 1. "A" Street: From Indiana Avenue to Air Park Drive and from Loop 250 to the north city limit.
  - 2. Air Park Drive: From "A" Street to Big Spring Street.
  - 3. Andrews Highway: From Wall Avenue to the west city limit.
  - 4. Big Spring Street/Rankin Highway: From the south city limit to the north city limit.
  - 5. Briarwood Avenue: From Midland Drive to the west city limit.
  - 6. Cloverdale Road: From Garden City Highway to Fairgrounds Road.
  - 7. Cottonflat Road: From Industrial Avenue to the south city limit.
  - 8. Fairgrounds Road: From Loop 250 to Garden City Highway.
  - 9. Florida Avenue/Garden City Highway: From Garfield Street to the east city limit.
  - 10. Front Avenue: From Wall Avenue to the east city limit.
  - 11. Garfield Street: From Carter Avenue to Wall Avenue and from Ohio Avenue to Bluebird Lane.
  - 12. Golf Course Road: From Andrews Highway to Scharbauer Drive.
  - 13. Holiday Hill Road: From Loop 250 to Briarwood Avenue.
  - 14. Illinois Avenue: From Front Avenue to Thomason Drive.
  - 15. Lamesa Road: From Loop 250 to Mulberry Lane and from Garden City Highway to the south

city limit.

16. Loop 250: From Interstate 20 to the east city limit.
17. Midkiff Road: From the south city limit to Mockingbird Lane.
18. Midland Drive: From Front Avenue to Greentree Boulevard.
19. Mineola Street: From Mulberry Lane to Tennessee Avenue.
20. Ohio Avenue: From Andrews Highway to Garfield Street.
21. Scharbauer Drive: From Golf Course Road to Main Street, from Main Street to Lamesa Road, and from Lamesa Road to Fairgrounds Road.
22. Terrell Street: From Ohio Avenue to Florida Avenue.
23. Texas Avenue: From Andrews Highway to Front Avenue.
24. Thomason Drive: From Front Avenue to Loop 250.
25. Wadley Avenue: From Loop 250 to Fairgrounds Road.
26. Wall Avenue: From the west city limit to Front Avenue.

- (B) The traffic engineer is hereby authorized and directed to erect and install appropriate stop signs at the intersection of any side street and through street not controlled by a traffic control signal. The stop signs shall be placed so as to cause the operators of motor vehicles on the side streets to stop for traffic on the through streets.

(Ordinance 6802 adopted 10/27/1987)

**SPECIAL STOPS REQUIRED**

**Chapter 10-9**

**MISCELLANEOUS DRIVING RULES**

**§ 10-9-1. Approach of authorized emergency vehicles.**

Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting a red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle or when the driver of any authorized emergency vehicle is giving audible signal by siren, exhaust whistle or bell the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the righthand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

This Section shall not operate to relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(Ordinance adopted 6/23/1953)

**§ 10-9-2. Following fire apparatus or emergency vehicles.**

The driver of any vehicle other than one on official business shall not follow any fire apparatus or emergency vehicle traveling in response to a fire alarm or emergency call closer than 500 feet or drive into or park such vehicle within 900 feet within any block where the fire or emergency vehicle has stopped in answer to a fire alarm or emergency call. Official business shall be construed to be any person or vehicle summoned by the police or fire department. No person shall stop or stand upon any street or sidewalk in such area except those persons on official business.

(Ordinance adopted 6/23/1953)

**§ 10-9-3. Crossing fire hose.**

No vehicle shall be driven over any unprotected hose of the fire department when laid down on any street or private driveway, which is to be used at any fire or alarm of fire, without the consent of the fire department.

(Ordinance adopted 6/23/1953)

**§ 10-9-4. Driving through funeral or other procession.**

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in Section 10-9-6. This provision shall not apply at intersections where traffic is controlled by police officers.

(Ordinance adopted 6/23/1953)

**§ 10-9-5. Drivers in a funeral or other procession.**

Each driver in a funeral or other procession shall drive as near to the righthand edge of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe.

(Ordinance adopted 6/23/1953)

**§ 10-9-6. Funeral processions to be identified.**

A funeral composed of a procession of vehicles shall be identified as such by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the traffic division.

(Ordinance adopted 6/23/1953)

**§ 10-9-7. Driving through school zones or across school crossings.**

No person shall drive through a school zone or across a school crossing at a speed in excess of the maximum permissible speed designated for such zone or crossing. The driver of any vehicle shall exercise due caution and shall yield to any child within a school zone.

Any driver approaching a school crossing or crosswalk within a school zone shall stop and shall not enter or cross such crossing or crosswalk when there is a child crossing or waiting to cross such school crossing or crosswalk.

(Ordinance adopted 6/23/1953)

**§ 10-9-8. Driving on sidewalks.**

The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway.

(Ordinance adopted 6/23/1953)

**§ 10-9-9. Driving through safety zones.**

No vehicle shall at any time be driven through or within a safety zone.

(Ordinance adopted 6/23/1953)

**§ 10-9-10. Limitations on backing.**

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

(Ordinance adopted 6/23/1953)

**§ 10-9-11. Riding on motorcycles.**

- (A) A person operating a motorcycle shall not ride other than upon the permanent and regular seat attached thereto, or carry any other person, nor shall any other person ride upon such motorcycle other than upon a firmly attached seat to the rear or side of the operator.
- (B) No person shall drive or operate any motorcycle in or upon any property within the incorporated limits of the City which is not a public street or highway unless such person has a valid license as an operator of such vehicle, issued under the applicable statutes of the State of Texas, for operation of such vehicles upon the public streets and highways.
- (C) No person shall drive or operate any motorcycle in or upon any property within the incorporated limits of the City which is not a public street or highway without having affixed thereto and displayed on the rear thereof a license number plate duly and lawfully assigned therefor under the provisions of the applicable statutes of the State of Texas for the operation of said vehicle upon public streets and highways, for the current period, or validated by the attachment of a symbol, tab or other device showing that the vehicle is currently registered.
- (D) No person shall drive or operate any motorcycle in or upon any property within the incorporated limits of the City which is not a public street or highway unless such vehicle is equipped with all parts and equipment required under the applicable statutes of the State of Texas for operation of such vehicles upon the public streets and highways and unless a valid certificate of inspection issued under applicable state statutes for operation of such vehicles is displayed thereon.

- (E) No person shall cause or knowingly permit his child or ward under the age of 18 years to drive or operate a motorcycle in violation of the provisions of this Section.

(Ordinance adopted 6/23/1953; Ordinance 5612 adopted 6/24/1980)

#### **§ 10-9-12. Restricted access roadway.**

No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority.

(Ordinance adopted 6/23/1953)

#### **§ 10-9-13. Horns and other warning devices.**

- (A) Every motor vehicle, when operated upon a street, shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when necessary to insure safe operation, give audible warning with his horn, but shall not otherwise use such horn when upon a street.

- (B) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle or bell, except as otherwise permitted in this Section.

- (C) It is permissible, but not required, that any commercial vehicle shall be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(Ordinance adopted 6/23/1953)

#### **§ 10-9-14. Manner of starting, accelerating and stopping vehicle.**

No person shall start, accelerate or stop a vehicle in such a manner as to cause the wheels to spin or slide except when necessary to prevent colliding with another vehicle.

(Ordinance 4478 adopted 10/14/1969)

#### **§ 10-9-15. Use of wireless communication devices.**

- (A) As used in this Section:

- (1) *Application software* means an electronic program, or set of electronic programs, designed to permit a person to perform a function, task, or activity.
- (2) *Electronic message* means a text-based, symbol-based, or photograph-based communication that is composed on, transmitted by, or received by a wireless communication device.
- (3) *Hands-free device* means speaker-phone capability, or a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a motor vehicle, that allows the use of the wireless communication device without use of either the operator's hands, except to activate or deactivate a function of the wireless communication device or hands-free device.
- (4) *Wireless communication device* has the meaning assigned in Section 545.425 of the Texas Transportation Code, as amended, as well as an electronic messaging device that is designed to receive and transmit voice communication, text or pictorial communication, or both, whether by internet or other electronic means, including but not limited to a mobile telephone, a tablet computer, a laptop computer, and a personal digital assistant (PDA).

- (B) A driver of a motor vehicle, other than an operator of an authorized emergency vehicle acting within the scope of his or her official capacity, shall not use a wireless communication device to view, send, or compose an electronic message, or engage other application software while operating a motor vehicle on a public roadway.
- (C) It is an affirmative defense to prosecution of an offense under this Section that the wireless communications device was used:
- (1) While the vehicle was completely stopped at a location other than in a traffic lane on a public roadway;
  - (2) Strictly to engage in a telephone conversation, including dialing or deactivating the call;
  - (3) Solely as a global positioning or navigation system;
  - (4) To contact police, fire, or emergency medical personnel in order to report a traffic accident, medical emergency, serious traffic hazard, or crime in progress, or to prevent a crime that the driver reasonably believed was about to be committed;
  - (5) In the reasonable belief that a person's life or safety was in immediate danger;
  - (6) If the device was permanently installed inside the vehicle; or
  - (7) In conjunction with voice-operated technology, a push-to-talk function, or a hands-free device.
- (D) A peace officer who stops a motor vehicle for an alleged violation of this Section may not take possession of or otherwise inspect a portable wireless communication device in the possession of the operator unless authorized by the Code of Criminal Procedure, the Penal Code, or other law.
- (E) To the extent that this Section conflicts with any provision of the Texas Transportation Code regarding the use of wireless communication devices or hand-held mobile telephones, this Section does not apply.
- (F) Evidence of a culpable mental state is not required to prove a criminal offense under this Section. It is hereby declared that, for an offense under this Section, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (G) A person who violates a provision of this Section shall be guilty of a misdemeanor and fined in a sum not to exceed \$500.00.

(Ordinance 9456, sec. 1, adopted 8/11/15)

#### **§ 10-9-16. Vulnerable road users.**

- (A) For purposes of this Section, a "*vulnerable road user*" means:
1. A pedestrian, runner, physically disabled person, child, skater, highway construction or maintenance worker, tow truck operator, utility worker, other worker with legitimate business in or near the road or right-of-way, or stranded motorist or passenger;
  2. A person on horseback;
  3. A person operating equipment other than a motor vehicle, including, but not limited to, a bicycle, unicycle, handcycle, horse-driven conveyance, or unprotected farm equipment; or
  4. A person operating a motor-assisted scooter.

(B) Duties.

1. An operator of a motor vehicle passing a vulnerable road user operating on a highway or street shall:
  - (a) Vacate the lane in which the vulnerable road user is located if the highway or street has two or more marked lanes running in the same direction; or
  - (b) Pass the vulnerable road user at a safe distance.
2. For purposes of this Section, when road conditions allow, "safe distance" means at least:
  - (a) Three feet, if the operator's vehicle is a passenger car or light truck; or
  - (b) Six feet, if the operator's vehicle is a truck, other than a light truck, or a commercial motor vehicle as defined by the Texas Transportation Code.
3. An operator of a motor vehicle that is making a left turn at an intersection, including an intersection with an alley or private road or driveway, shall yield the right-of-way to a vulnerable road user who is approaching from the opposite direction and is in the intersection, or is in such proximity to the intersection as to be an immediate hazard.
4. An operator of a motor vehicle may not overtake a vulnerable road user traveling in the same direction and subsequently make a right-hand turn in front of the vulnerable road user unless the operator is safely clear of the vulnerable road user, taking into account the speed at which the vulnerable road user is traveling and the braking requirements of the motor vehicle making the right-hand turn.

(C) Offense. An operator of a motor vehicle who violates a duty listed in this Section shall be guilty of a misdemeanor and fined in a sum not to exceed \$200.00.

(D) Affirmative defense. It is an affirmative defense to prosecution of an offense under this Section that at the time of the offense the vulnerable road user was acting in violation of any applicable law or ordinance governing movement on roads, streets or highways.

(Ordinance 9849, sec. 1, adopted 12/11/2018)



**PEDESTRIANS**

**Chapter 10-10**

**PEDESTRIANS**

**§ 10-10-1. Pedestrians subject to traffic control signals.**

Pedestrians shall be subject to traffic control signals as heretofore declared in Sections 10-4-5 and 10-4-6 of this Code, but at all other places pedestrians shall be granted those rights and be subject to the restrictions stated in this Chapter.

(Ordinance adopted 6/23/1953)

**§ 10-10-2. Pedestrians' right-of-way in crosswalks.**

- (A) When traffic control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be, to so yield to a pedestrian crossing the roadway within a crosswalk, and shall not enter such crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, or has reached the center of the roadway heading in the direction of the vehicle, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.
- (B) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(Ordinance adopted 6/23/1953)

**§ 10-10-3. Pedestrians to use right half of crosswalks.**

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(Ordinance adopted 6/23/1953)

**§ 10-10-4. Crossing at right angles.**

No pedestrian shall cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb, except in a crosswalk.

(Ordinance adopted 6/23/1953)

**§ 10-10-5. When pedestrians shall yield right-of-way.**

- (A) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
- (B) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.
- (C) The foregoing rules in this Section have no application under the conditions stated in Section 10-10-6 when pedestrians are prohibited from crossing at certain places.

(Ordinance adopted 6/23/1953)

**§ 10-10-6. Prohibited crossing.**

- (A) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a crosswalk.
- (B) No pedestrian shall cross a roadway other than in a crosswalk in any business district.

(C) No pedestrian shall cross a roadway other than in a crosswalk upon any of the streets designated as through streets.

(Ordinance adopted 6/23/1953)

**§ 10-10-7. Walking on roadways.**

(A) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(B) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(C) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.  
(Ordinance adopted 6/23/1953)

**§ 10-10-8. Drivers to exercise due care.**

Notwithstanding the foregoing provisions of this Chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

(Ordinance adopted 6/23/1953)



**BICYCLES**

**Chapter 10-11**

**BICYCLES**

**§ 10-11-1. Effect of regulations.**

- (A) It is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this Chapter.
- (B) The parent of any child or the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this Chapter.

(Ordinance adopted 6/23/1953)

**§ 10-11-2. through § 10-11-11. (Reserved)**

**Editor's note(s)**—Former §§ 10-11-2—10-11-11 were repealed by Ord. No. 4495, adopted December 16, 1969.

**§ 10-11-12. Traffic laws applicable to persons riding bicycles.**

Every person riding a bicycle upon any roadway or street in the City shall be granted all of the rights and privileges and shall be subject to all of the duties applicable to the driver of a vehicle.

(Ordinance adopted 6/23/1953)

**§ 10-11-13. Obedience to traffic control devices.**

- (A) Any person operating a bicycle shall obey the instructions of official traffic control signals, signs and other control devices applicable to vehicles.
- (B) Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except when such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

(Ordinance adopted 6/23/1953)

**§ 10-11-14. Manner of riding on bicycles.**

A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(Ordinance adopted 6/23/1953)

**§ 10-11-15. Manner of riding bicycle on roadways.**

- (A) Every person operating a bicycle upon a roadway or street shall ride as near to the righthand side of the roadway or street as practical, exercising due care when passing a standing vehicle or one proceeding in the same direction.
- (B) Persons riding bicycles on any roadway or street shall not ride more than two abreast.

(Ordinance adopted 6/23/1953)

**§ 10-11-16. Speed.**

No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

(Ordinance adopted 6/23/1953)

**§ 10-11-17. Emerging from alley or driveway.**

The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on such sidewalk or sidewalk area, and upon entering the roadway or street shall yield the right-of-way to all vehicles approaching on such roadway.

(Ordinance adopted 6/23/1953)

**§ 10-11-18. Clinging to vehicles.**

No person riding upon any bicycle shall attach the same or himself to any vehicle upon a roadway or street.  
(Ordinance adopted 6/23/1953)

**§ 10-11-19. Carrying articles.**

No person operating a bicycle shall carry any package, bundle or article which prevents the rider from keeping at least one hand upon the handlebars.

(Ordinance adopted 6/23/1953)

**§ 10-11-20. Parking.**

No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle, or against a building, in such a manner as to afford the least obstruction to pedestrian traffic.

(Ordinance adopted 6/23/1953)

**§ 10-11-21. Riding on sidewalks.**

No person shall ride a bicycle on a sidewalk within a business district. No person 12 or more years of age shall ride a bicycle upon any sidewalk in any district.

(Ordinance adopted 6/23/1953)

**§ 10-11-22. Riding on Big Spring Street underpass prohibited.**

It is hereby absolutely prohibited for any person to ride or drive a bicycle upon, under or in any portion of the Big Spring Street underpass in the City, including the roadway and the walkway.

(Ordinance adopted 10/28/1954)

**§ 10-11-23. Lamps and reflectors.**

Every bicycle when in use at nighttime shall be equipped with a lamp on the front of such bicycle which shall emit a white light visible from a distance of at least 500 feet to the front, and with a red reflector on the rear of the bicycle which shall be visible from all distances from 50 feet to 300 feet to the rear when directly in front of lawful upper beams of headlamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

(Ordinance adopted 6/23/1953)

**§ 10-11-24. Signalling device.**

No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that a bicycle shall not be equipped with nor shall any

person use on a bicycle any siren or whistle.  
(Ordinance adopted 6/23/1953)

**§ 10-11-25. Brakes.**

Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level pavement.  
(Ordinance adopted 6/23/1953)

BICYCLES

**Chapter 10-12**

**METHOD OF PARKING**

**§ 10-12-1. Standing or parking close to curb.**

No person shall stand or park a vehicle in a street or highway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the righthand wheels of the vehicle within 18 inches of the curb or edge of the roadway, except as hereinafter provided in this Chapter.  
(Ordinance adopted 6/23/1953)

**§ 10-12-2. Offset parking.**

Offset parking is hereby absolutely prohibited on that part of a street or highway lying outside the roadway unless the following conditions are met:

- (A) The curb shall be set back a distance of at least 18 feet from the nearest edge of the roadway.
- (B) Sidewalks of a minimum of eight feet in all business districts and five feet in all other districts shall be provided between the offset parking area and the building line.
- (C) Before offset parking shall be permitted, the owner of the adjacent property must make application to the City, and upon approval of the application by the City the owner shall dedicate to the use of the public all property lying outside the street or highway upon which parking area and sidewalk are to be constructed, for all offset parking shall be considered street parking and shall be subject to metering and all other regulations covering street parking. Provided, however, that upon application to the Council, the footage requirements set out above may be changed in the case of buildings in existence on or before June 23, 1953.

(Ordinance adopted 6/23/1953)

**§ 10-12-3. Permit to back to curb for purpose of loading or unloading.**

The city traffic engineer is authorized to issue special permits permitting the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials. Such permits may be issued to the owner or lessee of real property or to the owner of the vehicle and shall grant to such person the privilege as therein stated, and it shall be unlawful for any permittee or other person to violate any of the terms or conditions of the permit.

(Ordinance adopted 6/23/1953)

**§ 10-12-4. Lights on parked vehicles.**

Whenever a vehicle is lawfully parked at nighttime upon any street within a business or residence district, no lights need be displayed upon such parked vehicle. No parked vehicle shall display lighted headlamps in excess of parking lamps. All vehicles operating at night upon the streets of the City shall display depressed or dimmed headlamps.

(Ordinance adopted 6/23/1953)

**§ 10-12-5. Low angle parking.**

Low angle parking of 23 degrees outward from the normal parallel position is hereby expressly permitted on the following streets or portions thereof, to wit:

Baird Street, between the south right-of-way line of Ohio Street and the north right-of-way line of Missouri Avenue.

- (A) The above permitted low angle parking shall be permitted only in those areas properly striped for that

purpose.

(B) Parking in any other manner, except by loading or unloading vehicles, shall be prohibited on said streets.

(Ordinance 6061 adopted 9/14/1982)

METHOD OF PARKING

**Chapter 10-13**

**PARKING PROHIBITED**

**§ 10-13-1. Stopping, standing or parking prohibited in specified places.**

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

- (A) On a sidewalk.
- (B) In front of a public or private driveway.
- (C) Within an intersection.
- (D) Within 15 feet of a fire hydrant.
- (E) On a crosswalk.
- (F) Within 20 feet of a crosswalk at an intersection.
- (G) Within 30 feet upon the approach to any flashing beacon, stop sign or traffic control signal at the side of a roadway.
- (H) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the traffic engineer has indicated a different length by signs or markings.
- (I) Within 50 feet of the nearest rail of a railroad crossing, except as heretofore provided.
- (J) Within 20 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to any fire station within 75 feet of such entrance (when a proper sign is posted or color-coded curb markings are present).
- (K) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic.
- (L) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
- (M) Upon any bridge or other elevated structure upon a highway or within a highway tunnel.
- (N) At any place where official signs prohibit stopping.
- (O) Adjacent to any yellow curb zone.
- (P) Within any construction zone created under the provisions of Title IV, "Building Regulations," Chapter 4-1, "Building Code," of the Midland City Code of Ordinances, where such has an official sign prohibiting parking and designating such as a construction zone, unless such vehicle is heavy construction equipment or a truck authorized to be so parked by the construction zone permit holder.
- (Q) Alongside and contiguous to any construction zone created under the provisions of Title IV, "Building Regulations," Chapter 4-1, "Building Code," of the Midland City Code of Ordinances, where such zone has an official sign prohibiting parking and designating such as a construction zone.

No person shall move a vehicle not lawfully under his control into any prohibited area or away from a curb such distance as is unlawful.

(Ordinance adopted 6/23/1953; Ordinance 6104 adopted 11/2/1982; Ordinance 6196 adopted 4/12/1983)

**§ 10-13-2. Parking so as not to obstruct traffic.**

No person shall park any vehicle upon a roadway or alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway or alley for free movement of vehicular traffic.

(Ordinance adopted 6/23/1953; Ordinance 8155, sec. 1, adopted 2/25/2003)

**§ 10-13-3. Parking in alleys.**

- (A) No person shall park a vehicle within an alley in the business district except for loading or unloading materials or merchandise. No such vehicle shall be parked for a period of more than 30 minutes.
- (B) No person shall stop, stand or park a vehicle in the freight loading zone located within the north/south alley located in Block 54, Original Town Addition to the City, which serves the Midland Center ("Midland Center alley") except for the purpose of loading or unloading or delivering or picking up materials or merchandise or conducting maintenance work at the Midland Center and no such vehicle shall be parked for a period of more than eight hours. A person who stops, stands or parks a vehicle in the freight loading zone of the Midland Center alley must affix a freight loading zone sticker to the vehicle pursuant to Section 10-14-3 of the Midland City Code or display a valid Midland Center special event loading zone pass pursuant to Section 10-14-3(G) of the Midland City Code.
- (C) Notwithstanding the provisions of subsections (A) and (B) of this Section, no person shall park a vehicle within an alley in such a manner as to leave available less than 50 feet between the parked vehicle and the loading end of any stationary trash and garbage compactor under the control of the City of Midland.

(Ordinance adopted 6/23/1953; Ordinance 5293 adopted 2/28/1978; Ordinance 6183 adopted 3/29/1983; Ordinance 7893, sec. 1, adopted 11/23/1999)

**§ 10-13-4. All-night parking prohibited.**

No person shall park a vehicle on any street in a business district between the hours of 2:00 a.m. and 5:00 a.m. of any day, except physicians on emergency calls.

(Ordinance adopted 6/23/1953)

**§ 10-13-5. Parking in residence districts.**

- (A) It shall be unlawful for any person to place or deposit within any public street any nonvehicular property or material.
- (B) Vehicle with more than two axles. No truck, trailer, or truck-trailer combination equipped with a total of more than two axles shall be parked on any public street, alley or private property in any residence district under any circumstances, except during the process of loading or unloading.
- (C) Parking on streets or other public property. No person shall park, place or locate any trailer, trailer house, mobile home, motor home, vacation travel trailer, or other unit which is designed or used as living or sleeping quarters on any public or private street, alley, or public park in any residence district within the City for a period longer than four hours in any 24-hour period, except that a recreation vehicle may be parked and occupied by a non-Midland resident on the street abutting the property of the Midland resident 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 recreation vehicle 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 recreation vehicle be parked on a

public street where the recreation vehicle is closer than 40 feet to the near curbline, traveled portion or extension thereof of an intersecting public street or highway. No other vehicle larger than one ton capacity shall be parked on any street, public or private, in any residence district except during the process of loading or unloading. No other nonmotor vehicle may be parked on any street in a residence district for a period of more than one hour except during the process of loading or unloading such vehicle.

- (D) In a residence district no vehicle larger than one ton in rated capacity and exceeding 22 feet in length and no recreation vehicle shall be parked closer than five feet to the side lot line of the lot on which same is located.
- (E) Special front yard regulations. No automobile, truck, trailer, boat, recreation vehicle, other motor vehicle or nonmotor vehicle shall be parked, entirely or partially, within the front yard of any lot in a residence district or any other lot used for residential purposes, except as follows:
  - 1. An automobile or truck not exceeding one ton in rated capacity and not exceeding 22 feet in length.
  - 2. Any other truck, trailer or truck-trailer combination during the process of loading and unloading only.
  - 3. A recreation vehicle parked by its owner who is a Midland resident, on his lot, while engaged in active loading or unloading, for a period not exceeding 48 hours in a five-day period.
  - 4. The recreation vehicle of a non-Midland resident on the lot or parcel of a person he is visiting. However, the recreational vehicle shall only be allowed to be parked on the lot for a maximum of 72 hours during a 30-day period.
- (F) Any recreation vehicle, boat trailer or other trailer used to convey an off-road vehicle for personal, not business, use shall be considered as an exception and not subject to the above regulations of subsection (E) for as long as said vehicle is parked on a lot or parcel of land which has been and is the residence of a person who has owned the vehicle since the effective date of said regulation; provided that, not later than October 31, 1985, application for a permit of nonconformance with the provisions of said regulation has been made and said certificate subsequently issued by the department of planning and development as evidence that such exception is applicable to said vehicle.

The permit obtained from the department of planning and development is not transferable or assignable and such benefit or privilege as the permit confers shall be conferred only to the person named on the permit. However, if a person sells his recreation vehicle, boat trailer or other trailer for which he has obtained a permit, he may transfer the permit to cover his newly purchased recreation vehicle, boat trailer or other trailer. A person may only transfer his permit to another similar type vehicle or trailer.

No permit issued under this Section shall be valid beyond 15 years of the effective date of this Section.

- (G) No vehicle, as described above, whether said vehicle qualifies for the recreation vehicle, boat trailer, or other vehicle exception or not, shall for any period of time be parked, entirely or partially, within the front yard of any lot in a residence district or any other lot used for residential purposes except in conformance with the following conditions:
  - 1. No such vehicle shall be placed in or be allowed to project over the right-of-way of any public street or public alley (or any public property). Furthermore, in no event shall any such vehicle, other than an automobile or truck not exceeding one ton in rated capacity and not exceeding 22

feet in length, be placed so that any part of such vehicle lies within or projects over a distance of 11 feet from the rear of the curb, or if none exists, the traveled portion of any public street. No such vehicle shall be placed so as to interfere with any public utility service.

2. Any said vehicle, other than an automobile or truck not exceeding one ton in rated capacity and not exceeding 22 feet in length, must be parked with the long axis of said vehicle perpendicular or radial to the near street right-of-way or curbline, or if the lot or parcel is adjacent to the turnaround at the end of a cul-de-sac street, may alternatively be parked with the long axis of said vehicle perpendicular to the centerline of the through portion of the street projected in a straight line through the turnaround.
3. The said motor vehicle or motor vehicles must be parked by the Owner on a surface paved with asphalt, gravel, rock, caliche, brick, concrete or similar impervious all-weather surface. This applies to the front yard and side yard.
4. No person shall occupy or use as living or sleeping quarters any such vehicle except that recreation vehicles may be used as living or sleeping quarters for a maximum of 72 hours on any given lot or parcel of land during a 30-day period.
5. The vehicle shall not be parked within nor obstruct an "intersection visibility triangle" as defined by Title X, "Traffic Regulations," Chapter 10-1, "General Traffic Regulations," Section 10, "Obstructions, sidewalks and walking areas; view of traffic at intersections," of the Midland City Code.
6. In no event shall any person park, place or locate any such vehicle within five feet of the side lot line of the lot on which same is located except for an automobile or truck not exceeding one ton in rated capacity and not exceeding 22 feet in length.

(H) Definitions. As used in this Section, the following terms are hereby defined:

1. *Residence district*: Any of the districts designated as a dwelling district as set forth in Chapter 11-1 of the Midland City Code, and the right-of-way of any street or alley which abuts any parcel of property within such district.
2. *Private street*: A privately owned drive or roadway which has been designated as a private street or road on a subdivision plat of record or has been designated as a private street or road by the Midland City Council.
3. *Non-motor vehicle*: Any vehicle, including boat trailers, utility trailers, trailer-mounted equipment, or wheel-mounted machinery, which is a device in or by which any person or property is or may be transported or drawn upon a public highway by a motor vehicle.
4. *Recreation vehicle*: A vehicular portable structure designed for a temporary or shortterm occupancy for travel, recreational or vacation uses. Such vehicles shall include vacation travel trailers, converted buses, tent trailers, motor homes or similar devices used for temporary portable housing, but shall not include pickups which do not exceed one ton in rated capacity and are not longer than 22 feet in length, with campers mounted thereon.
5. *Front yard*: A space extending across the entire width of the front of a lot and having a uniform depth, measured perpendicular or radial to the front property line, equal to the minimum distance from the front property line (street right-of-way line) to the nearest point of a residential building.

(I) Enforcement. The police department of the City shall be responsible for enforcement of all provisions of this Section pertaining to public streets, alleys and other public property. The department of planning and development of the City shall be responsible for all other provisions of this Section.

(Ordinance adopted 6/23/1953; Ordinance 6571 adopted 7/23/1985; Ordinance 8813, sec. 1, adopted 11/16/2010)

**§ 10-13-6. Parking for certain purposes prohibited.**

No person shall park a vehicle upon any street or highway for the principal purpose of:

(A) Displaying such vehicle for sale.

(B) Washing, greasing or repairing such vehicle except repairs necessitated by an emergency.

(Ordinance adopted 6/23/1953)

**§ 10-13-7. Parking adjacent to school property.**

(A) The city traffic engineer is hereby authorized to erect signs indicating no parking upon that side of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation.

(B) When official signs are erected indicating no parking upon that side of a street adjacent to any school property, no person shall park a vehicle in any such designated place.

(Ordinance adopted 6/23/1953)

**§ 10-13-8. Parking prohibited on narrow streets.**

(A) The city traffic engineer is hereby authorized to erect signs indicating no parking upon any street when the width of the roadway does not exceed 20 feet, or upon one side of a street as indicated by such signs when the width of the roadway does not exceed 30 feet.

(B) When official signs prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any such street in violation of any such sign.

(Ordinance adopted 6/23/1953)

**§ 10-13-9. Standing or parking on one-way streets.**

The city traffic engineer is authorized to erect signs upon the lefthand side of any one-way street to prohibit the standing or parking of vehicles, and when such signs are in place no person shall stand or park a vehicle upon such lefthand side in violation of such sign.

(Ordinance adopted 6/23/1953)

**§ 10-13-10. Standing or parking on one-way roadways.**

In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon any such roadway, no person shall stand or park a vehicle upon the lefthand side of such one-way roadway unless signs are erected to permit such standing or parking. The city traffic engineer is authorized to determine when standing or parking may be permitted upon the lefthand side of any such one-way roadway and to erect signs giving notice thereof.

(Ordinance adopted 6/23/1953)

**§ 10-13-11. Stopping, standing or parking near hazardous or congested places.**

- (A) The city traffic engineer is hereby authorized to determine and designate by proper signs places not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.
  - (B) When official signs are erected at hazardous or congested places as authorized herein, no person shall stop, stand or park a vehicle in any such designated place.
- (Ordinance adopted 6/23/1953)

**§ 10-13-12. Parking of vehicles carrying flammable liquids or explosives.**

No person shall park or otherwise leave a vehicle transporting flammable fluids or explosives unattended on any street or alley in the City.

(Ordinance adopted 6/23/1953)

**§ 10-13-13. Parking on private property; signed.**

**(A) Offense.**

1. It shall be unlawful to park a motor vehicle on private property where a sign has been posted that prohibits such parking and contains the language of (a), (b), (c) or (d) below or language substantially similar thereto:

(a) "PARKING PROHIBITED AT ALL TIMES.

UP TO \$500 FINE.

VEHICLES MAY BE IMPOUNDED AT OWNER'S EXPENSE.

BY CITY ORDINANCE."

(b) "PARKING PROHIBITED FROM [THE HOUR INDICATED] TO [THE HOUR INDICATED].

UP TO \$500 FINE.

VEHICLES MAY BE IMPOUNDED AT OWNER'S EXPENSE.

BY CITY ORDINANCE."

(c) "PARKING OF [THE TYPE(S) OF MOTOR VEHICLE(S) INDICATED] PROHIBITED AT ALL TIMES.

UP TO \$500 FINE.

VEHICLES MAY BE IMPOUNDED AT OWNER'S EXPENSE.

BY CITY ORDINANCE."

(d) "PARKING OF [THE TYPE(S) OF MOTOR VEHICLE(S) INDICATED] PROHIBITED FROM [THE HOUR INDICATED] TO [THE HOUR INDICATED].

UP TO \$500 FINE.

VEHICLES MAY BE IMPOUNDED AT OWNER'S EXPENSE.  
BY CITY ORDINANCE."

A sign described by this subsection may specify the day or days during which parking is prohibited.

2. The definition of an offense under this ordinance does not require a culpable mental state. The definition of an offense under this ordinance plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared that for an offense under this ordinance, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

(B) Punishment.

1. A violation of this ordinance shall be punishable by a fine of not more than \$500.00.
2. For purposes of this section, it is presumed that the registered owner of the motor vehicle is the person who parked the motor vehicle at the time and place the offense occurred.
3. For purposes of this section, it is presumed that the following person or entity owns the property on which the motor vehicle is parked:
  - (a) The person or entity whose name is on the City of Midland water bill for the property;
  - (b) The person or entity who is paying the taxes or owns the property according to records of the Midland Central Appraisal District; or
  - (c) The person or entity who is paying the taxes or owns the property according to records of Midland County, Texas.
4. The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of this section, all records of the City of Midland, Texas, including records of the Customer Service Division, all records of the Midland Central Appraisal District, and all records of Midland County, Texas.

(C) Affirmative Defenses.

1. It is an affirmative defense to prosecution of any violation under subsection (A):
  - (a) That the required signage was not conspicuously located at all paved, curb cut entrances to the property where the violation is alleged to have occurred.
  - (b) That the motor vehicle was parked for a purpose specifically associated with the private property, including, but not limited to loading, unloading, delivery, or security purposes, or for a demonstrable emergency purpose.

(D) Impoundment. A motor vehicle parked in violation of this section may be impounded only by or under the direction of a peace officer.

(Ordinance 9816, §1, adopted 9/11/2018)

**§ 10-13-14. Commercial motor vehicle parking prohibited.**

(A) Commercial motor vehicle. For purposes of this Section, "commercial motor vehicle" has the same

meaning as is assigned to such term by Section 644.001 of the Texas Transportation Code, as may be amended.

(B) Offense.

1. Notwithstanding any provision of this Chapter to the contrary, a person shall not leave, park or stand a commercial motor vehicle upon any public street, alley or right-of-way, or permit the leaving, parking, or standing of a commercial motor vehicle upon any public street, alley or right-of-way.
2. For purposes of this Section, it is presumed that the registered owner of the commercial motor vehicle is the person who left, parked or stood the commercial motor vehicle at the time and place the offense occurred.
3. The definition of an offense under this Section does not require a culpable mental state. The definition of an offense under this Section plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared that for an offense under this Section, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

(C) Punishment. A violation of this Section shall be punishable by a fine not to exceed \$500.00.

(D) Affirmative defenses. It is an affirmative defense to prosecution under this Section that:

1. The commercial motor vehicle was being used for the construction, maintenance or repair of a street or utility;
2. The commercial motor vehicle was parked by an agent or employee of a public utility or franchise utility company, and the public utility or franchise utility company had assigned the agent or employee duties that required the agent or employee to use the commercial motor vehicle and to be on-call;
3. The commercial motor vehicle was parked by an agent or employee of a governmental body, and the governmental body had assigned the agent or employee duties that required the agent or employee to use the commercial motor vehicle;
4. The commercial motor vehicle was a passenger bus taking on or discharging passengers;
5. The commercial motor vehicle was parked for the purpose of loading or unloading freight or merchandise to a lawfully zoned business;
6. The commercial motor vehicle was parked for no more than four hours for the purpose of delivering personal property to or collecting personal property from a specific location; or
7. The commercial motor vehicle experienced a mechanical defect that made it unsafe or impossible to operate and was parked for such period of time necessary to make emergency repairs or, if repairs could not be made within four hours, until such time as a tow truck arrived to tow the commercial motor vehicle.

(E) Impoundment. A commercial motor vehicle parked in violation of this Section may be impounded only by or under the direction of a peace officer.

(Ordinance 9817, sec. 1, adopted 9/11/2018)

City of Midland, TX

**PARKING PROHIBITED**

**Chapter 10-14**

**STOPPING FOR LOADING AND UNLOADING**

**§ 10-14-1. Authority to erect and install appropriate signs and markings at curb loading zones.**

The city traffic engineer or his authorized designee is hereby authorized and directed to erect and install appropriate signs and markings, in accordance with the manual and specifications of the Texas Department of Highways and Public Transportation, for all passenger and curb loading zones at the locations designated by the City Council.

(Ordinance 5637 adopted 8/26/1980)

**§ 10-14-2. Standing in passenger curb loading zones.**

No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during the hours when the regulations applicable to such curb loading zone are effective, and then only for a period not to exceed three minutes.

(Ordinance 5637 adopted 8/26/1980; Ordinance 5818 adopted 8/25/1981)

**§ 10-14-3. Standing in freight curb loading zones; permit required for delivery vehicles.**

- (A) No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Furthermore, no person shall stop, stand or park a vehicle in any place marked as a freight curb loading zone unless such person has displayed on the righthand side of the windshield of said vehicle a permanent, nontransferable loading zone sticker, issued by the City in accordance with subsection (C) of this Section.
- (B) In any event, no person shall stop, stand or park a vehicle for the loading, unloading, delivery or pickup of materials in any place marked as a freight loading zone during the hours when the provisions applicable to such zones are in effect for a period exceeding 30 minutes.
- (C) Loading zone permits may be obtained by any person with a bona fide need to use freight curb loading zones who meets the prerequisites set out in this Chapter. The loading zone permit will be a permanent nontransferable sticker which will be issued to a specific commercial vehicle. "Commercial vehicle" shall mean any motor vehicle (other than a motorcycle or passenger car) designed and used primarily for the transportation of property, and which is being used primarily for delivery purposes. Provided that all vehicles bearing a loading zone permit as of the effective date of this Chapter shall be exempt from the commercial vehicle definition while remaining in service. Each such vehicle shall have the name of the commercial enterprise utilizing it inscribed or painted on both sides by letters no less than two inches high in contrasting colors to that of the vehicle or by a magnetic sign. The loading zone permit sticker shall be good for one calendar year, and the design of said sticker shall be at the option of the chief of police. Application, on forms provided by the police department, for loading zone permits shall be made to the chief of police or his authorized designee. Such permit application shall contain a statement by the applicant that he and persons within his control using such permit shall abide by the rules and regulations concerning freight loading zones as contained in this Code and that use of the freight loading zone by the applicant or persons within his employ or control for purposes other than loading or unloading of materials shall be grounds for forfeiture of the permit. Any application shall require the approval of the City traffic engineer and the chief of police or his designee in order for a permit to be issued. Should any person feel aggrieved by the decision of either the City traffic engineer or the chief of police or his designee in refusing to approve an application, such person may appeal such decision to the City manager. The decision of the City manager approving or disapproving the application shall be final for the first three permits

per commercial enterprise.

- (D) The freight curb loading zone permits issued to a commercial enterprise shall cost said commercial enterprise \$25.00 each. Any commercial enterprise which desires more than three freight curb loading zone permits shall apply to the City Council for the additional permits. The decision of the City Council on whether to issue these additional permits shall be final. Any commercial enterprise which purchases a freight curb loading zone permit after July 1 of any calendar year shall pay half price for its permit(s).
- (E) In the event that a commercial vehicle to which a freight curb loading zone permit has been issued is damaged, the chief of police, or his designee, may issue a temporary permit to the commercial enterprise owning said vehicle. The decision of the chief of police, or his designee, on whether to issue said temporary permit shall be final. This temporary permit shall be issued for a period not to exceed 30 days.
- (F) The chief of police or his authorized designee may revoke permits issued under the provisions of this Chapter after notice and hearing when a permittee or a person or persons under his employ or control are found to have used a freight curb loading zone for purposes other than the loading and unloading of materials. Notice of the hearing for revocation of a permit shall be given in writing, setting forth the ground of a complaint and the time and place of hearing. Such notice shall be mailed postage prepaid to the permittee at the address shown in his application at least five days prior to the date set for the hearing. Any person aggrieved by the action of the chief of police or his authorized designee in his decision with reference to the revocation of a permit shall have the right to appeal to the City manager. Such appeals shall be taken by filing with the manager, within three days of the decision of the chief of police or his authorized designee, a written statement setting forth fully the grounds for the appeal. The city manager 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 above for notice of hearing on revocation. The decision and order of the City manager on such appeal shall be final and conclusive.
- (G) A Midland Center special event loading zone pass may be obtained by any person with a bona fide need to stop, stand or park a vehicle in the freight loading zone located within the north/south alley located in Block 54, Original Town Addition to the City which serves the Midland Center ("Midland Center alley") for the purpose of loading or unloading or delivering or picking up materials or merchandise in connection with an event at the Midland Center. The pass shall be issued by the Midland Police Department and displayed by the person parking a vehicle in the freight loading zone in the Midland Center alley on the dashboard of the vehicle. The pass shall allow a person to park a vehicle in the freight loading zone of the Midland Center alley for a period of no more than eight hours.

(Ordinance 5637 adopted 8/26/1980; Ordinance 6023 adopted 7/13/1982; Ordinance 7893, sec. 2, adopted 11/23/99)

#### **§ 10-14-4. Authority to erect and install appropriate signs and markings at bus stops, taxicab and other public carrier stands.**

The city traffic engineer or his authorized designee is hereby authorized and directed to erect and install appropriate signs and markings, in accordance with the manual and specifications of the Texas Department of Highways and Public Transportation, for all bus stops, taxicab stands and stands for other passenger common carrier motor vehicles at the locations designated by the City Council.

(Ordinance 5637 adopted 8/26/1980)

**§ 10-14-5. Parking of buses and taxicabs regulated.**

The driver of a bus or taxicab shall not park upon any street in any business district at any place other than at a bus stop or taxicab stand, respectively, except that this provision shall not prevent the driver of any such vehicle from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers.

(Ordinance 5637 adopted 8/26/1980)

**§ 10-14-6. Restricted use of bus stops and taxicab stands.**

No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when any such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such stop or stand.

(Ordinance 5637 adopted 8/26/1980)

**§ 10-14-7. Loading and unloading of passengers.**

No person shall stop, stand or park a vehicle for the purpose of loading or unloading passengers in the roadway of any street, but shall drive to the righthand sidewalk as nearly as possible, or, in the absence of a sidewalk, to the extreme righthand side of the road as nearly as practicable, and there load or unload passengers.

(Ordinance 5637 adopted 8/26/1980)

**§ 10-14-8. Removal of vehicles violating provisions.**

In the event any vehicle shall be found parked in violation of any of the provisions of this Chapter, the same shall be a nuisance per se, and shall be removed by any police officer and taken to some place designated by the chief of police for such purpose, and kept by such officer until the application for its redemption shall be made by the owner or his duly authorized agent, who shall be entitled to the possession thereof upon payment to the City of the charges specified in Section 6-3-2 of this Code. In the event any vehicle so impounded should not be redeemed by the owner or his authorized agent after notice as provided in Section 6-3-4 of this Code, then such vehicle shall be disposed of in accordance with Sections 6-3-3 and 6-3-8 of this Code.

(Ordinance 5637 adopted 8/26/1980)

**§ 10-14-9. Rental of metered parking spaces; unauthorized use of rented spaces.**

- (A) Metered parking spaces may be rented for the purpose of providing a place for the loading and unloading of construction equipment, materials and debris.
- (B) The cost of such rentals shall be \$2.50 per metered space per day.
- (C) A person desiring to rent a metered parking space for the purpose of loading or unloading construction equipment, material and/or debris shall first obtain any required permit from the building official for the construction, remodeling or other work to be done. The applicant shall then make application for rental of the metered parking space or spaces to the chief of police or his designee and shall produce the building permit, if required, at the time of application. The application shall require approval of the chief of police or his authorized designee and the City traffic engineer. Upon approval of the application and payment to the chief of police, or his authorized designee, the chief of police

or his designee or designees shall issue a permit to the applicant, and install sacks over the meters at the appropriate spaces, which sacks shall state "PERMIT PARKING," or "LEASE PARKING."

- (D) It shall be unlawful for any person to stop, stand or park a motor vehicle in any parking space which is marked by a sack on the meter adjacent to said space stating "PERMIT PARKING" or "LEASE PARKING" unless (1) that person has obtained a rented metered space permit for said space; and (2) the parking space is actually being used for the loading or unloading of construction equipment, materials and/or debris.

(Ordinance 5637 adopted 8/26/1980)

**STOPPING FOR LOADING AND UNLOADING**

**Chapter 10-15**

**RESTRICTED OR PROHIBITED PARKING**

**§ 10-15-1. Determination and designation of no parking and limited parking areas.**

The city traffic engineer shall have the authority to determine areas in which parking is limited to a specified time or in which parking is prohibited. The traffic engineer is authorized to designate such limited parking or no parking areas by signs, street paintings or any other device.

**§ 10-15-2. Application of Chapter.**

The provisions of this Chapter prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

**§ 10-15-3. Regulations not exclusive.**

The provisions of this Chapter imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

(Ordinance adopted 6/23/1953)

**§ 10-15-4. Parking prohibited at all times on certain streets.**

Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or traffic control device, no person shall stop, stand or park a motor vehicle at any time in or upon any of the following places:

- (A) "A" Street: Along both the east and west sides from Neely Avenue to Louisiana Avenue, and from Tennessee Avenue to Missouri Avenue, except the east side of "A" Street from the north side of Cuthbert Avenue to a point 150 feet south of the south side of Crest Drive.
- (B) Adams Street: Along both the east and west lines from Front Avenue to South Street.
- (C) Andrews Highway: Along both the north and south sides from Holiday Hill Road to Wall Avenue.
- (D) Big Spring Street/Rankin Highway: Along both the east and west sides from Florida Avenue (State Highway 158) to Interstate 20.
- (E) Big Spring Street: Along both the east and west sides from Wadley Avenue to Indiana Avenue.
- (F) Bluebird Lane: Along both the north and south sides from the east curbline of Midland Drive to a point 2,895 feet east of the east curbline of Midland Drive.
- (G) Carver Street: Along both the east and west sides from Orchard Lane to a line 150 feet south of the south curbline of South Street.
- (H) Cuthbert Avenue: Along the north and south sides from Ward Street to the alley west of Midkiff Road.
- (I) The east service road connecting Front Street (U.S. Highway 80) and Big Spring Street (State Highway 349): Along both sides of the street.
- (J) The east/west alley in Block 9, Hyde Park Addition, Second Section, from the west right-of-way line of Tarleton Street to the east right-of-way line of Godfrey Street (the 3500 block of Shandon Avenue),

in the City of Midland: Along both sides of the alley.

- (K) Florida Avenue/Garden City Highway: Along both the north and south sides from Garfield Street to Interstate 20.
- (L) Front Street: Along both the north and south sides from the east city limits to Wall Street.
- (M) Garfield Street:
  - 1. Along the east and west sides from Florida Avenue to Wall Street.
  - 2. Along the west side from Ohio Avenue to a line 150 feet north of the north curbline of Fannin Avenue.
  - 3. Along the west side from Cimmaron Avenue to F.M. 868.
  - 4. Along the east side from Ohio Avenue to F.M. 868.
- (N) Golf Course Road:
  - 1. Along the north side from Andrews Highway to Bristol Court.
  - 2. Along the south side from Andrews Highway to Whitney Drive.
  - 3. Along both the north and south sides from Northrup Street to Scharbauer Drive.
- (O) Illinois Avenue:
  - 1. Along the north side from "K" Street to Andrews Highway.
  - 2. Along the south side from "J" Street to "L" Street.
  - 3. Along the north side from Carrize Street to "A" Street.
  - 4. Along both the north and south sides from Andrews Highway to a line 90 feet west of the west curbline of Powell Street.
  - 5. Along both the north and south sides from Peach Avenue to Midland Drive.
  - 6. Along both the north and south sides from the alley between Colorado Street and Big Spring Street to "A" Street.
- (P) "L" Street: Along both the east and west sides from Texas Avenue to Illinois Avenue.
- (Q) Lamesa Road: Along both the east and west sides from the south city limit to its intersection with State Highway 349.
- (R) Loraine Street: Along the east side from Wall Avenue to Texas Avenue.
- (S) Louisiana Avenue:
  - 1. Along both the north and south sides from the alley east of the Andrews Highway to a line 150 feet west of the west curbline of Andrews Highway.
  - 2. Along both the north and south sides from a line 150 feet west of the west curbline of "A" Street to a line 150 feet east of the east curbline of Main Street.

## (T) Main Street:

1. Along the east side from Tennessee Avenue to Louisiana Avenue.
2. Along the west side from Ohio Avenue to Louisiana Avenue.
3. Along both the east and west sides from a point 290 feet south of Golf Course Road to a point 290 feet north of Golf Course Road.

(U) Marienfeld Street: Along both the east and west sides from Kansas Avenue to North Big Spring Street.

## (V) Michigan Avenue:

1. Along the south side from Big Spring Street to a line 150 feet west of Big Spring Street.
2. Along the south side from the west curbline of Marienfeld Street continuing 161 feet west to a north/south alley located between Marienfeld Street and Pecos Street.
3. Along the south side from the east curbline of Colorado Street continuing 150 feet east to a north/south alley located between Colorado Street and Loraine Street.

## (W) Midland Drive:

1. Along both the east and west sides from Wall Street to Bedford Drive.
2. Along both the east and west sides from Princeton Avenue to Wadley Avenue.

(X) Midkiff Road: Along both the east and west sides from Interstate 20 to F.M. 868.

(Y) Mineola Street: Along both the east and west sides from Terrell Street to Lamesa Road.

## (Z) Ohio Avenue:

1. Along both the north and south sides from "N" Street to a line 160 feet west of the west curbline of "N" Street.
2. Along both the north and south sides from a line 100 feet east of the east curbline of Kent Street to a line 100 feet west of the west curbline of Secor Street.
3. Along the south side from the west side of Big Spring Street to the east side of Marienfeld Street.

(AA) Orchard Lane: Along both the north and south sides from Carver Street to the alley west of Carver Street.

## (BB) Princeton Avenue:

1. Along the north side from the east right-of-way line of Loop 250 (previously commonly known as Holiday Hill Road and F.M. 1369) to a point that is 20 feet east of the east right-of-way line of the north/south alley lying between Westgate Acres Addition and Block 8 of Westgate Acres, Section 2.
2. Along the south side from the east right-of-way line of Loop 250 to a point ten feet east of the radius point connecting the east curbline of Loop 250 and the south curbline of Princeton Avenue.

(CC) Scharbauer Drive: Along both the north and south sides from Golf Course Road to Lamesa Road.

(DD) South Street:

1. Along both the north and south sides from Carver Street to the alley west of Carver Street.
2. Along both the north and south sides from Adams Street to a line 150 feet east of the east curbline of Adams Street.

(EE) Texas Avenue:

1. Along the north side from "J" Street to "L" Street.
2. Along the north side from Weatherford Street to the alley located between Baird Street and Main Street.

(FF) Wadley Avenue:

1. Along both the north and south sides from Holiday Hill Road to Perry Street.
2. Along both the north and south sides from Parkway Drive to Fairgrounds Road.

(GG) Wall Street:

1. Along both the north and south sides from "A" Street to the west city limits.
2. Along both the north and south sides from Marienfeld Street to Colorado Street.

(HH) Williams Street: Along the west side of Williams Street from the north side of Wall Street to the east side of Midkiff Road.

(II) Wood Drive: Along both the north and south sides from Fir Drive to Oriole Drive.  
(Ordinance 7031 adopted 8/28/1990; Ordinance 7264 adopted 8/24/1993)

#### **§ 10-15-5. Parking prohibited from 7:00 a.m. to 6:00 p.m. on weekdays.**

Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of police officer or traffic control device, no person shall stop, stand or park a motor vehicle in or upon the following places from 7:00 a.m. to 6:00 p.m. on weekdays:

- (A) Cuthbert Avenue: Along both the north and south sides from "N" Street to a point 150 feet west of the west curbline of "A" Street.
- (B) Louisiana Avenue: Along the north side from Garfield Street to "N" Street.
- (C) Main Street: Along both the east and west sides from Louisiana Avenue to Kansas Avenue.
- (D) Neely Avenue: Along the north side from Wedgewood Drive to Godfrey Drive and along the south side from McDonald Street to Godfrey Drive.

#### **§ 10-15-6. Parking prohibited except on Sundays.**

Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or traffic control device, no person shall stop, stand or park a motor vehicle in or upon the following places, except on Sundays:

- (A) "A" Street: Along the east and west sides from Louisiana Avenue to Tennessee Avenue.
  - (B) Garfield Street: Along the west side from Cimmaron Drive to a line 150 feet north of the north curbline of Fannin Avenue.
  - (C) Golf Course Road: Along the north side from Northrup Drive to Bristol Court and along the south side from Northrup Drive to Whitney Drive.
  - (D) Illinois Avenue: Along the south side from "A" Street to "C" Street.
  - (E) Midland Drive: Along the east and west sides from Princeton Avenue to Bedford Drive.
- (Ordinance 6838 adopted 4/26/1988)

#### **§ 10-15-7. Parking time limited on certain streets.**

When signs are erected in each block giving notice thereof, no person shall park a vehicle for longer than the time specified on such signs.

(Ordinance 5495 adopted 8/28/1979)

#### **§ 10-15-8. Parking signs required.**

Whenever by this Title, or any other regulation of the City, any parking time limit is imposed or parking is prohibited or restricted on designated streets, it shall be the duty of the City traffic engineer to erect appropriate signs or paint color-coded curb markings giving notice thereof, and no such regulation shall be effective unless such signs are erected and in place or color-coded curb markings are present at the time of any alleged offense.

(Ordinance 6197 adopted 4/12/1983)

#### **§ 10-15-9. Parking spaces for exclusive use by permanently disabled persons and removal of other vehicles; special license devices.**

- (A) Any vehicle upon which special license plate devices are displayed, said special devices being obtained from the office of the county tax collector of the vehicle owner's resident county in accordance with the provisions of V.T.C.A., Transportation Code § 502.253 or 502.254, and which designate the vehicle as being regularly operated by or for the transportation of a permanently disabled person, when being operated by or for the transportation of a permanently disabled person, shall be allowed to park for unlimited periods, in accordance with the provisions of V.T.C.A., Transportation Code ch. 681, in such areas as may be designated and approved by the City Council, a list or map or both showing such designated and approved areas to be kept on file in the offices of the City traffic engineer and the City secretary.
- (B) Except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, no person shall park a vehicle upon which is not displayed a special license plate device, as provided in subsection (A) of this Section, in the areas designated in accordance with subsection (A) of this Section. Except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, any person not disabled or not transporting a disabled person shall not park a vehicle with such special device in the areas designated in accordance with subsection (A) of this Section.
- (C) In the event any vehicle shall be found parked in or upon the area designated in accordance with subsection (A) of this Section in violation of and contrary to the provisions of subsection (B) of this Section, the same shall be a nuisance per se, and shall be removed by any police officer and taken to

some place designated by the chief of police for such purpose, and there kept by such officer until application for its redemption shall be made by the owner or his duty authorized agent, who shall be entitled to the possession thereof upon payment to the City of Midland of the charges specified in Section 6-3-2 of the Midland City Code. In the event any vehicle so impounded should not be redeemed by the owner or his authorized agent after notice as provided in Section 6-3-4 of the Midland City Code, then such vehicle shall be disposed of in accordance with Sections 6-3-3 and 6-3-8 of the City Code.

- (D) The city traffic engineer or his authorized representative is hereby authorized and directed to erect and install appropriate signs and markings at the locations designated in accordance with subsection (A) of this Section.

(Ordinance 5591 adopted 5/13/1980)

**RESTRICTED OR PROHIBITED PARKING**

**Chapter 10-16**

**PARKING METERS**

**§ 10-16-1. Definition.**

The word "vehicle" as used in this Chapter shall mean any device in, upon or by which any person or property is or may be transported upon a highway, except those operated upon rails or tracks.

The word "park" or "parking," when used in this Chapter, shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading passengers or merchandise.

(Ordinance adopted 6/1/1946)

**§ 10-16-2. Authority of traffic engineer.**

The city traffic engineer is authorized to have installed parking meters and is authorized to cause parking meter spaces to be designated on any public street within the City.

(Ordinance adopted 6/1/1946)

**§ 10-16-3. Parking limited to time indicated by sign or meter.**

When signs are erected, curbs are painted, or parking meters are installed at any place within the City giving notice of 20 minutes, one hour, two hours or any other period of time limit for parking a vehicle, no vehicle shall remain parked at such place for a longer period than indicated by such sign or meter at any time between the hours of 8:00 a.m. and 6:00 p.m. of any day, except Sundays and holidays officially set by the City Council of the City, within such parking limit area or zone.

(A) Saturday, between the hours of 8:00 a.m. and 6:00 p.m., is hereby included with the above-listed days when parking is permissible (within parking areas with parking meters installed) for a longer period of time than indicated by said meter and without depositing coins in such meters.

(Ordinance adopted 6/1/1946; Ordinance 3925 adopted 7/10/1962)

**§ 10-16-4. Placing of meters; vacancy signal.**

Parking meters shall be placed upon the curb alongside of or next to individual parking places to be designated as provided in Section 10-16-2. Each parking meter shall be so set as to show or display a signal that the parking place alongside of such meter is or is not in use.

(Ordinance adopted 6/1/1946)

**§ 10-16-5. Installation, maintenance, construction.**

The traffic engineer, or such officers or employees of the City as he may select, shall provide for the installation, regulation, control, operation and use of the parking meters provided for in this Chapter and shall maintain such meters in good workable condition. Each parking meter shall be so set as to display a signal showing legal parking upon the deposit of a coin of the United States, as designated on the meter, therein for a period of time conforming to the parking limit as indicated on the meter. Each meter shall continue in operation from the time of depositing such coin until the expiration of the time indicated on the meter as the parking limit for the part of the street upon which such meter is placed. Each meter shall also be so arranged that, upon the expiration of the parking limit, it will indicate, by a mechanical operation and the appearance of a proper signal, that the lawful parking period as indicated by the meter has expired.

(Ordinance adopted 6/1/1946)

**§ 10-16-6. Deposit of coin; overtime parking.**

When any vehicle shall be parked in any space alongside of or next to which there is located, under this

Chapter, a parking meter, the owner, operator, manager or driver of such vehicle shall, upon entering the parking space, immediately deposit a coin of the United States, as designated on the meter, in the parking meter alongside of or next to the parking space, and such parking space may then be used by such vehicle during the parking limit indicated on the meter. If such vehicle shall remain parked in any such parking space beyond the parking limit fixed by the meter for such parking space, the parking meter shall display a sign showing illegal parking and, in that event, such vehicle shall be considered as parked overtime and beyond the period of time fixed by the meter. The parking of a vehicle overtime or beyond the period of time fixed by the meter shall be a violation of this Chapter. It shall be unlawful for any person to cause or allow, permit or suffer any vehicle to be parked overtime or beyond the lawful period of time as above described.

(Ordinance adopted 6/1/1946)

**§ 10-16-7. Coin not to be deposited for purpose of extending limit.**

It shall be unlawful and an offense for any person to deposit or cause to be deposited in a parking meter a coin for the purpose of extending the parking time beyond the time fixed by the parking meter.

(Ordinance adopted 6/1/1946)

**§ 10-16-8. Signal as prima facie evidence of overtime parking.**

The displaying of a signal showing illegal parking by any parking meter while a vehicle is parked in a parking space adjoining such meter shall be prima facie evidence that such vehicle has been parked overtime and beyond the period of time fixed by the meter.

(Ordinance adopted 6/1/1946)

**§ 10-16-9. Patrolmen to take number of meter indicating violation and file complaint.**

It shall be the duty of each traffic patrolman, or such other officer as shall be so instructed by the chief of police in his beat or district, to take the number of any meter at which any vehicle is overparked as provided in this Chapter and file a complaint for any violation in the corporation court of the City.

(Ordinance adopted 6/1/1946)

**§ 10-16-10. Manner of parking.**

Any vehicle parked in any space alongside a parking meter shall be parked with the hood of such vehicle alongside of or next to the meter in parallel parking spaces, and with the radiator directed at the meter in diagonal parking spaces, and in either event shall be parked within the lines marked on the street for such parking space as provided hereinafter.

(Ordinance adopted 6/1/1946)

**§ 10-16-11. Slugs not to be deposited.**

It shall be unlawful and an offense to deposit or cause to be deposited in any parking meter any slug, device or substitute for a coin of the United States.

(Ordinance adopted 6/1/1946)

**§ 10-16-12. Tampering with meters.**

It shall be unlawful and an offense for any person to deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter.

(Ordinance adopted 6/1/1946)

**§ 10-16-13. Coin required as regulation, inspection fee.**

The coins required to be deposited in parking meters are hereby levied as police regulation, supervision and inspection fees to cover the cost of inspection, supervision and regulation involved in the inspection, installation, operation, control and use of the parking spaces and parking meters described in this Chapter, and involved in checking up on and regulating the parking of vehicles in the parking meter spaces.  
(Ordinance adopted 6/1/1946)

**§ 10-16-14. Collection of coins.**

It shall be the duty of the traffic engineer to designate some member of his department to make regular collections of the money deposited in parking meters. In this connection, it shall be the duty of such person so designated to collect the coin deposited in the meters and deliver such coins to the office of the director of finance.

(Ordinance adopted 6/1/1946)



**TRAFFIC VIOLATIONS**

**Chapter 10-17**

**TRAFFIC VIOLATIONS**

**§ 10-17-1. Form and notices for appearance.**

The city finance officer shall provide in duplicate suitable serially numbered forms for notifying violators to appear and answer the charges of violating this Title. Such forms shall be issued to and receipted for by the chief of police or other person acting for him. The city finance officer shall each month report to the City manager the disposal made by the police of all duplicated forms issued to them. For this purpose the City finance officer or his representative shall have access to the necessary records of the police department and the corporation court.

(Ordinance adopted 6/23/1953)

**§ 10-17-2. Procedure upon arrest.**

Except when authorized or directed under state law to take immediately a person arrested for a violation of the traffic laws before a magistrate, any police officer, upon making an arrest for violations of the state traffic laws, this Title, or other traffic regulations of the City, shall take the name, address and operator's license number of the alleged violator and the registered number of the motor vehicle involved, and shall issue to the violator in writing a notice to answer to the charges against him at a place and at a time at least one day after such arrest. The officer, upon receiving the written promise of the alleged violator to answer as specified in the notice form, shall release such person from custody.

(Ordinance adopted 6/23/1953)

**§ 10-17-3. Failure to obey notice or summons.**

Any person who violates his written notice to appear is guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum of not less than \$1.00 nor more than \$200.00, regardless of the disposition of the charge for which he was originally arrested.

(Ordinance adopted 6/23/1953)

**§ 10-17-4. Notice on illegally parked vehicles.**

Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this Title or other traffic regulations of the City or by state law, the officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user and shall conspicuously attach to such vehicle a notice in writing, on a form to be provided by the City finance officer, for the driver to answer to the charge against him within five days within the hours and at a place specified in the notice.

(Ordinance adopted 6/23/1953)

**§ 10-17-5. Failure to comply with notice.**

If a violator of the restrictions on stopping, standing or parking under the terms of this Title does not appear in response to a notice affixed to such vehicle within a period of five days, the clerk of the corporation court shall send to the owner of the motor vehicle to which the notice was affixed a letter informing him of the violation and warning him that in the event such letter is disregarded for a period of five days a complaint will be filed and an arrest warrant will be issued for such person.

(Ordinance adopted 6/23/1953)

**§ 10-17-6. Presumption in reference to illegal parking.**

In any prosecution charging a violation of any regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the notice or complaint was parked in violation of any such

regulation, together with proof that the defendant named in the complaint was at the time of such parking a registered owner of such a vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where and for the time during which such violation occurred.

(Ordinance adopted 6/23/1953)

#### **§ 10-17-7. When complaint is to be issued.**

In the event any person fails to comply with a notice given to such person or attached to a vehicle, or fails to make appearance pursuant to a notice directing an appearance in the corporation court, or if any person fails or refuses to deposit the bail required by the judge of the corporation court, then the clerk of the corporation court shall forthwith enter a complaint against such person and secure and issue a warrant for his arrest.

(Ordinance adopted 6/23/1953)

#### **§ 10-17-8. Impoundment of illegally parked vehicles.**

In the event any vehicle shall be found standing or parked in or upon any regularly designated parking meter space, or in or upon any street, avenue, alley, sidewalk, thoroughfare or public place within the City limits, in violation of and contrary to any provision of this Chapter or other rules, regulations and ordinances of the City, the same shall be a nuisance and shall be removed by any police officer and taken to police headquarters, or some other place set aside for such purpose by the Council, and there kept by some officer until application for its redemption shall be made by the owner or his duly authorized agent. Such impoundment shall be in addition to any other penalty provided by this Code.

(Ordinance adopted 6/1/1946)

#### **§ 10-17-9. Right to redeem impounded vehicle.**

When a vehicle is impounded under the provisions of the preceding Section, the owner or his duly authorized agent shall be entitled to the possession thereof upon the payment to the City, within five days, of the sum of \$2.00, together with all other costs of removal and storage that may have accrued thereon.

(Ordinance adopted 6/1/1946)

#### **§ 10-17-10. Sale of impounded vehicle.**

In the event any impounded vehicle shall not be redeemed by its owner or its agent within five days as provided in the preceding Section, then such vehicle shall be sold for such penalty, charges, and costs, in the manner as nearly as practicable as is provided by Chapter 3 of Title VI of this Code for the sale of lost, stolen and abandoned property.

(Ordinance adopted 6/1/1946)

#### **§ 10-17-11. Disposition of traffic fines and forfeitures.**

All fines or forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any of the provisions of this Title shall be paid into the City treasury and shall be deposited in the general fund.

(Ordinance adopted 6/23/1953)

**Title XI: Planning and Development**

**ZONING ORDINANCE**

**Chapter 11-1**

**ZONING ORDINANCE**

## 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.

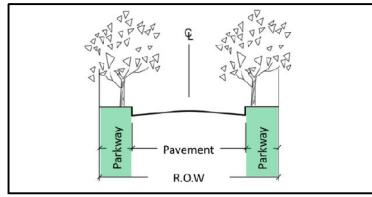


Figure 1: Example of a Parkway

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>4</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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4. 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>5</sup> and Section 11-1-4.04.A.19 within the Additional Development Standards for details.

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5. 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>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.

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>7</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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7. 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>8</sup> and all applicable regulations in Article IV.

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8. 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>9</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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9. 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>10</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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10. 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>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.

- 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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11. 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>12</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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12. 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>13</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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13. 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>14</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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14. 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>15</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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<sup>15</sup>. 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>16</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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**16. 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>17</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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17. 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>18</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>19</sup>.

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18. 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>20</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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19. Editor's Note-Said Use Chart is included as an attachment to this chapter.

20. 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>21</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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21. 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:**

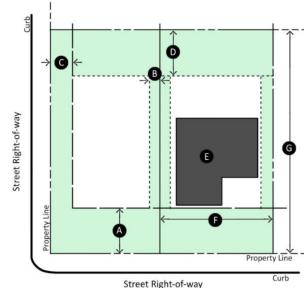
<sup>(1)</sup> SF = Square Feet.

<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.)

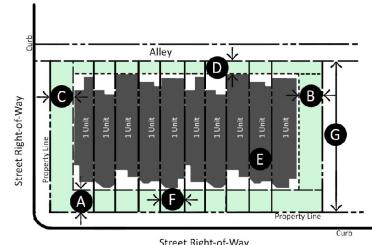
<sup>(3)</sup> Where fuel sales are permitted, fuel pump island canopies shall observe a minimum ten foot front yard (Yard, Front).

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

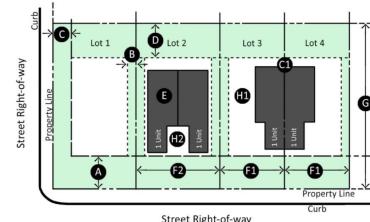
### § 11-1-5.06. Diagrams of Area Regulations.



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

(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.

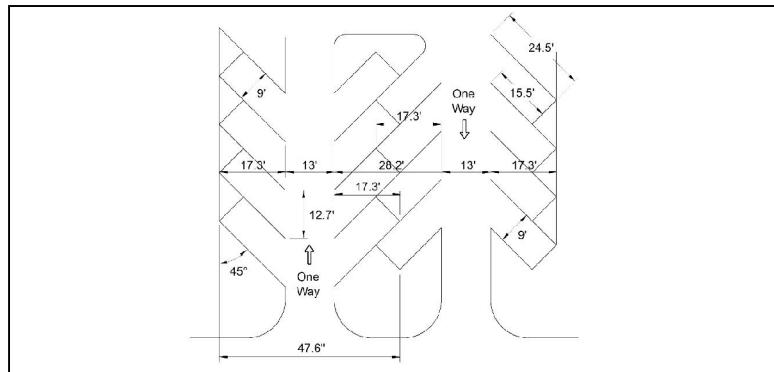


Figure 2: 45 Degree Layout with One-Way Traffic

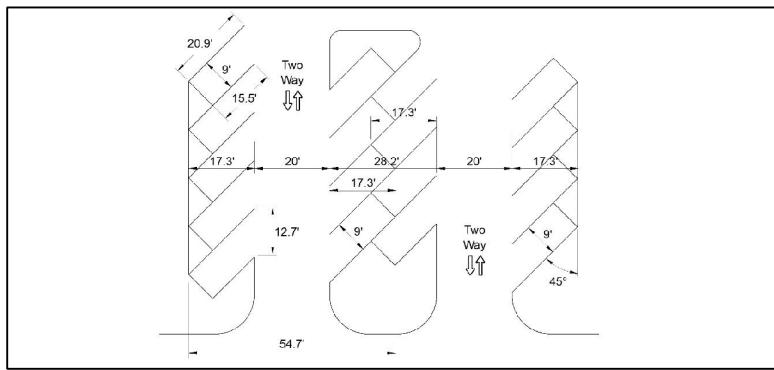


Figure 3: 45 Degree Layout with Two-Way Traffic

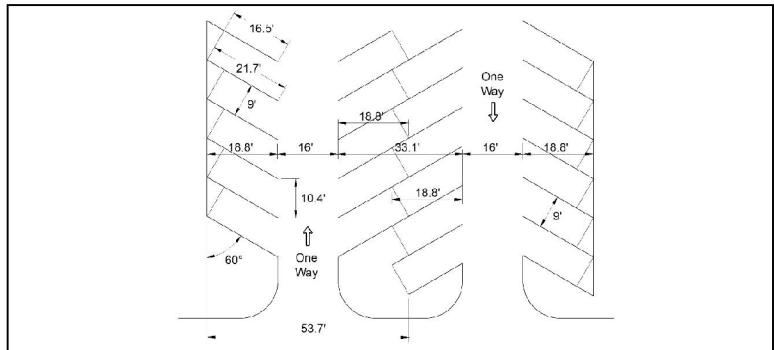


Figure 4: 60 Degree Layout with One-Way Traffic

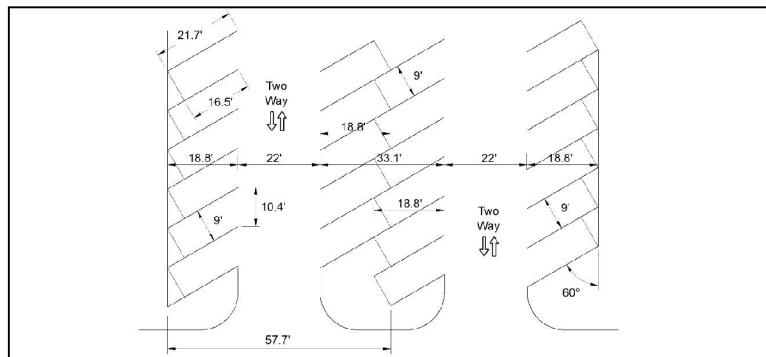


Figure 5: 60 Degree Layout with Two-Way Traffic

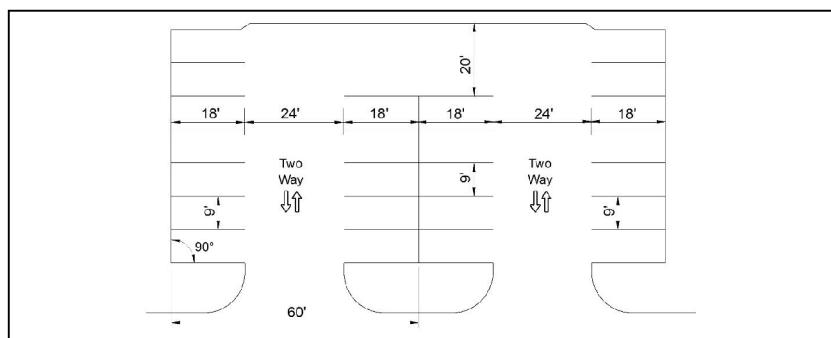


Figure 6: 90 Degree Layout

#### 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.

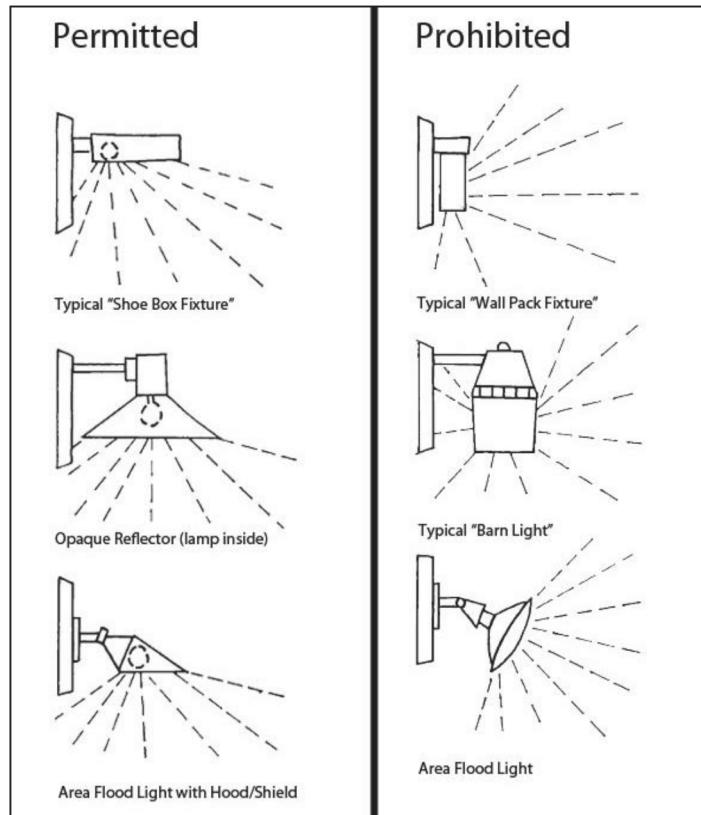


Figure 7: Shielded / Cutoff Light Source Required

## 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.

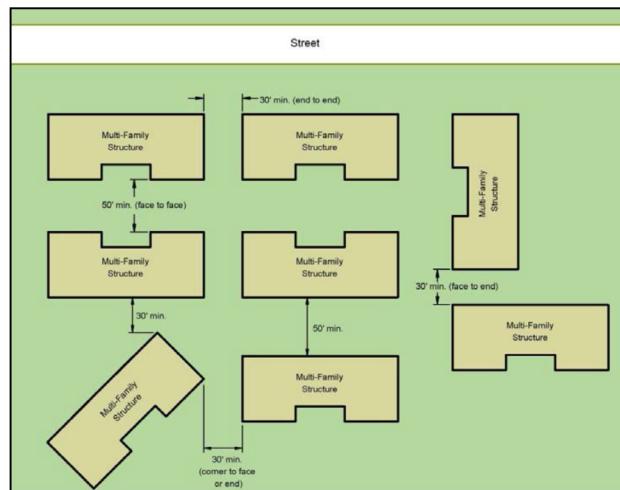


Figure 9. MF Structure Separation

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.

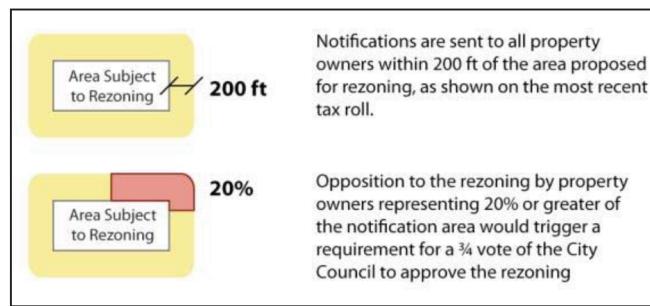


Figure 11: Calculation for Exterior Protestors

**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>22</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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22. 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>23</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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23. 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**

**§ 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**

**§ 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)



**Chapter 11-3**

**FLOOD DAMAGE PREVENTION CODE**

***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**

*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**

*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**

**§ 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**

**§ 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**

***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>	The area located within the following boundaries: <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> </ul>
	• Northwestern and Northern Boundaries: 500 feet northwest and 500 north of the centerline of Loop 250.

	<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:
- An existing billboard may be replaced one time.
  - 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.

- Permits required.
  - 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.
  - 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.
  - 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**

**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**

***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**

***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**

***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**

## **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.**

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**

**§ 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)

**Title XII: (Reserved)**

**Title XIII: Airports**

**Chapter 13-1**

**AIRPORT ADMINISTRATION**

**§ 13-1-1. Department for airports.**

There is hereby created the department for airports to exercise supervision and control over the affairs, management, maintenance and upkeep of all airports now or hereafter acquired by or placed under the control and supervision of the City.

(Ordinance adopted 3/27/1947)

**§ 13-1-2. Airport manager.**

The Council shall appoint an airport manager for the City, who shall be the administrative head of the department for airports and under the direction and supervision of the City Council and the city manager.

(Ordinance adopted 3/27/1947)

**§ 13-1-3. Residence of airport manager.**

The airport manager may or may not be a resident of the City when appointed, but during the term of his office shall reside in the City or any airport district thereof.

(Ordinance adopted 3/27/1947)

**§ 13-1-4. Absence or disability of airport manager.**

During the absence or disability of the airport manager, or during a vacancy in the office thereof, the city manager shall perform the duties of the office of airport manager, or the Council may appoint some properly qualified person to perform the duties of said office as acting airport manager.

(Ordinance adopted 3/27/1947)

**§ 13-1-5. Powers and duties of airport manager.**

The powers and duties of the airport manager shall be:

- (A) To promote, encourage and develop by all lawful and proper means the growth and expansion of air travel and air commerce, the facilities therefor and safety and good order therein, and to further safeguard at all times and by all lawful and proper means the public interest therein.
- (B) To enforce, or assist in the enforcement of, all provisions of this Code and rules and regulations of the City relating to the flight, takeoff, landing or maintenance of aircraft and airports or other property used for the takeoff and landing of aircraft, the maintenance of aircraft, and the furnishing of goods, wares or merchandise or services or instruction in connection therewith.
- (C) To make, promulgate and enforce orders, rules or regulations consistent with and for the purpose of implementing, supplementing, or carrying into effect with respect to all phases of air travel and transportation the provisions of this Code, the laws, rules and regulations of Texas or any proper agency thereof, and the air traffic rules of the Department of Commerce, Civil Aeronautics Administration, together with such other local air traffic rules and ground rules as may be necessary or advisable for and in connection with any airport of the City in the interest of safety and the prevention of unsafe practices.
- (D) To exercise supervision and control over all employees and personnel of the department for airports and all other employees of the City when assigned to any airport of the City.
- (E) To receive all applications for permits, licenses, leases or other rights to use or conduct any business at or within any airport of the City or the hangars, buildings or other facilities thereof, and to make

recommendations to the Council in connection therewith.

- (F) To render all bills and statements of account and collect and receive all fees, charges, rentals and other sums due the City for the use of its airports or any privilege or concession in connection therewith.
- (G) To exercise direct supervision and control over all matters connected with the management, operation and maintenance of the airports of the City.
- (H) To exercise direct supervision and control over all nonaviation buildings, facilities and activities upon or in any property of the City that is included in any airport district thereof.

(Ordinance adopted 3/27/1947)

#### **§ 13-1-6. Fees and conditions of use.**

The Council shall establish by ordinance, or by leases or contracts with individual users, the fees or charges to be paid for the use of the airports, or any privilege in connection therewith, and the conditions and standards of conduct to be observed in the use and enjoyment of the airports, or any privilege in connection therewith, and the airport manager shall have the duty of collecting all such fees and charges and enforcing such conditions and standards of conduct. The airport manager shall not have authority to alter any fee or charge established by the Council and shall not have authority to establish any fee or charge, but he shall from time to time submit to the Council his recommendations as to the fees or charges and the conditions and standards of conduct which should be made or established.

(Ordinance adopted 3/27/1947)

#### **§ 13-1-7. Restrictions upon use of proceeds.**

All proceeds derived from the operation of the airports of the City and from the property, facilities and improvements acquired or owned in connection therewith shall, as provided in V.T.C.A., Transportation Code § 22.054, be devoted exclusively to maintenance, upkeep, improvement and operation of such airports and the facilities, structures and improvements therein or acquired and owned in connection therewith, and the airport manager shall accordingly keep full books of account and records covering the proceeds received, and the respective sources thereof, and the expenditures made, and the respective projects for which incurred.

(Ordinance adopted 3/27/1947)

#### **§ 13-1-8. Airport budget.**

The airport manager shall submit annually to the city manager the information necessary to enable the city manager to include and provide in the budget for the City the items covering expenditures for airport purposes, showing the various projects thereunder and the expenditures for each. He shall submit also a full and detailed report by projects showing all expenditures for the prior year and the sources from which derived, the estimated receipts and proceeds from all sources for the ensuing year, and the amount of funds for the proposed budget items available from all other sources.

(Ordinance adopted 3/27/1947)

#### **§ 13-1-9. Applications for use.**

The airport manager shall conduct all preliminary negotiations with prospective airport users and shall recommend to the City Council, for its action thereon, the terms and conditions upon which the right to the use of the airport, or the exercise of any privilege in connection therewith, shall be granted any

person, firm, association, corporation or other entity. Any lease, contract, license or permit for the use of the airport, or any privilege in connection therewith, other than in case of transient users, shall be made or granted only by the Council at any regular or special meeting, unless the rate of charge therefor and the terms and conditions of such use or privilege are general and have been provided for by the provisions of this Code.

(Ordinance adopted 3/27/1947)

**§ 13-1-10. Care and maintenance.**

The airport manager, in exercising direct supervision and control over all matters connected with management, operation and maintenance of the airports of the City, shall have, in addition to the other duties and authority pertaining thereto, the following specific duties and authority:

- (A) The airport manager shall inspect, or provide for the inspection of, all landing areas, lighting facilities for landing areas, and navigation aids, at least one time during each 24-hour period, and shall keep currently for inspection at all times by the Council and the city manager a record of the time such inspection was made, the person making the same, and any unusual condition observed during such inspection. The airport manager shall prepare and file with the Council a manual of operating procedure to be followed in making such daily inspections and for keeping the office of the airport manager currently informed of any obstructions to or defects in the landing areas, lighting facilities therefor, and navigational aids as the same develop.
- (B) The airport manager shall close to the public any temporarily unusable portion of the landing area and mark the same with red flags during daylight hours and with red lanterns, torches, or other lighting during night hours. Notice of such temporary condition shall be given to the public by filing notice thereof with the nearest Civil Aeronautics Administration control tower or communication station.
- (C) Any aircraft that crashes or is wrecked or is parked on any runway or taxiway and is not removed by the owner or operator thereof and thereby becomes, or threatens to become, an obstruction to the use of the field shall be removed by the airport manager and the cost thereof assessed against the owner or operator, or both, and the aircraft so removed shall be held by the airport manager to secure the cost of such removal until the cost of removal so assessed has been paid or otherwise secured in full.
- (D) The airport manager shall prepare and submit annually to the Council for approval plans and specifications for the maintenance, repair and upkeep of:
  - 1. Landing areas, lighting facilities for landing areas, and other navigation aids.
  - 2. Hangars, buildings and other aviation facilities.
  - 3. All nonaviation buildings and facilities in or upon the property of the City included within any airport district thereof.

The plan shall include also, for such consideration and action as the City Council shall desire to take, the rate of depreciation applicable to such facilities, the probable remaining useful life thereof, the probable cost of replacement at the time of exhaustion or obsolescence, the necessary and advisable additions, extensions or modifications of such facilities, and the reserves to be set aside annually from proceeds derived from the operation of the airports and property, facilities and improvements acquired or owned in connection therewith to provide for financing the cost of such replacements and such additions, extensions or modifications. Upon approval of the plan, or any modification or revision thereof, then or thereafter made, it shall be the duty of the airport manager, and he shall have the authority, to provide for maintenance, repair and upkeep of such facilities in the manner specified in the approved plan and, in cooperation with the city manager, to employ the personnel and procure the materials, supplies and equipment to the extent and in accordance with the standards and specifications set forth in the approved plan.

- (E) All purchases of supplies, materials and equipment for the maintenance, repair and upkeep shall be made by the city manager as purchasing agent for the City in the manner prescribed therefor by the Charter and provisions of this Code.
- (F) The airport manager shall have the authority in case of an accident or emergency, where the public health, safety or property is jeopardized, to make such purchases and to employ such means or methods as are at his disposal and in his judgment necessary to meet the emergency, without prior authorization from the Council, and he shall thereafter, as soon as practical, report the emergency and the measures employed in dealing with it to the Council.

(Ordinance adopted 3/27/1947)

### **§ 13-1-11. Employment of personnel.**

The airport manager shall have power to appoint and remove all employees of the department for airports and to pass upon and prescribe their qualifications for employment. The airport manager shall not appoint any employee unless the duties of the employee and the rate of compensation therefor have been fixed or authorized by the Council by resolution or ordinance.

(Ordinance adopted 3/27/1947)

### **§ 13-1-12. Coordination with other departments.**

It shall be the duty of the airport manager to coordinate the activities of the department for airports in the enforcement of all provisions of this Code relating to aviation, the employment of personnel, the procurement of supplies, materials and equipment, and the use of supplies, materials and equipment with the activities of other departments and offices of the City, and it is hereby made the duty of all departments and offices to assist the airport manager in so coordinating the activities of the several departments of the City. The city manager shall accordingly provide for the assignment and exchange of employees, materials, equipment and supplies between the department for airports and the other departments and offices.

(Ordinance adopted 3/27/1947)

### **§ 13-1-13. Compensation of airport manager.**

The airport manager shall receive such compensation as the Council shall fix from time to time by ordinance or resolution.

(Ordinance adopted 3/27/1947)

**§ 13-1-14. Other employment by airport manager prohibited.**

The airport manager shall devote all of his working time and attention to the affairs of the City and shall not engage in any other business, as owner, employee or otherwise, while serving as airport manager.  
(Ordinance adopted 3/27/1947)

**§ 13-1-15. Airport boarding pass.**

- (A) Commencing on April 1, 1973, and continuing thereafter, a use and service charge of \$1.00 is hereby fixed, created and established for the use of facilities at the Midland-Odessa Regional Air Terminal to be charged to and paid by each departing passenger, as the term is defined herein, enplaning any commercial aircraft from said airport.
- (B) Each departing passenger shall purchase for the sum of \$1.00, from the City of Midland, a boarding pass, provided by the City, which pass shall be surrendered to the air carrier at the boarding gate prior to entry by the passenger upon the airport boarding apron.
- (C) Each scheduled air carrier is required to collect from each departing passenger enplaned by it, except those excluded in Section 13-1-15(F)4 hereinafter, a detachable stub of said boarding pass, and is required to turn in to the City on or before the tenth day of the first month following the commencement date hereof, and on or before the tenth day of each month thereafter, the stub so collected at the Midland Odessa Regional Air Terminal during the previous calendar month.
- (D) Each charter air carrier is required to collect from each departing passenger enplaned by it, except those excluded in Section 13-1-15(F)4 hereinafter, a detachable stub of said boarding pass and prior to departure of each charter flight from the Midland-Odessa Regional Air Terminal to deliver to the City one such stub, or the sum of \$1.00, for each departing passenger enplaned on said charter flight.
- (E) All revenues derived by the City of Midland under the terms of this ordinance shall be held and used by the City for the purpose of defraying the present and future costs of the City for airport security, airport operation and in the construction, improvement, equipment operation and maintenance of said airport and its facilities and not otherwise.
- (F) Definitions.
  - 1. *Boarding pass* shall mean a two-part ticket with a facsimile signature of the director of finance of the City of Midland, one-half of which, to be retained by the passenger, contains a receipt for the amount paid, and the other half of which, to be surrendered to the airline performing the transportation, contains the authorization for use of the boarding apron by the passenger to board the aircraft.
  - 2. *City* means the City of Midland, Texas, a home rule municipal corporation.
  - 3. *Airport* means the Midland-Odessa Regional Air Terminal.
  - 4. *Departing passenger* means each person enplaning any aircraft at Midland-Odessa Regional Air Terminal as a fare-paying passenger, on a scheduled or nonscheduled flight, including aircraft operated as a scheduled air carrier, air feeder line, and charter service, which uses the takeoff and landing facilities at Midland-Odessa Regional Air Terminal, whether in interstate, intrastate or international operations, except the following:
    - (a) Any passenger traveling on a through (no stopover) ticket, as defined in the Airline Local and Joint Passenger Rules Tariff, whose air transportation originated at a point other than

## Midland-Odessa Regional Air Terminal.

- (b) Passengers boarding any private aircraft and who pay no charge for transportation.
  - 5. *Scheduled air carrier* means a certified airline operating under authority of the Civil Aeronautics Board or Texas Aeronautics Commission on regular schedules between fixed termini.
  - 6. *Boarding gate* means an exit from the terminal building through which passengers go to board an airplane.
  - 7. *Boarding apron* means the area between the boarding gate and the airplane for which the departing passenger holds a ticket for passage.
  - 8. *Charter air carrier* means the operator of an aircraft when such aircraft is used for hire for individual flights and operates on no fixed schedule.
- (G) 1. It shall be unlawful for any departing passenger required to purchase a boarding pass under the terms of this ordinance to enter on or upon the boarding aprons of the Midland-Odessa Regional Air Terminal without first having purchased said pass and having surrendered the stub thereof to the airline performing the transportation for the passenger.
2. The service fee imposed hereunder shall be paid by the departing passenger and cannot be absorbed or otherwise paid by the passenger's carrier, nor can it be made a part of the passenger carrier's fare tariff or charter fee.
- (H) Any person who fails to surrender a boarding pass to the air carrier as required herein or who fails to display a boarding pass to a police officer upon request shall be presumed to be a departing passenger required to purchase a boarding pass.
- (I) Any departing passenger violating this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$100.00.

(Ordinance 4759 adopted 2/13/1973)

City of Midland, TX

AIRPORT ADMINISTRATION

**Chapter 13-2**

**AIRPORT REGULATIONS**

**§ 13-2-1. Definitions.**

The following words and phrases when used in this Chapter shall, for the purpose of this Chapter, have the meaning respectively ascribed to them as follows:

- (A) *Airport manager*: The administrative head of the department for airports of the City.
  - (B) *Airport*: The land, buildings, roads, hangars, landing areas, and all property of the City included within any airport district of the City.
  - (C) *Midland Air Terminal*: The landing field and all property and facilities within the area constituting the Number One Airport District of the City, located on U.S. Highway 80, approximately nine miles southwest of the City.
  - (D) *Midland Airpark*: The landing field and all property and facilities within the area constituting the Number Two Airport District of the City, located approximately two miles northwest of the City.
  - (E) *Resident aircraft*: Any aircraft, other than an air carrier or aircraft used for hire or student training, in the business of an aircraft service operator that remains in operation at either the Midland Air Terminal or the Midland Airpark, or both, using the same, or either or both of them, as a base for a period of 30 days or longer.
  - (F) *Air carrier*: Any aircraft operated for hire in which a pilot is provided, either for training purposes or passenger or cargo purposes, operated on scheduled or nonscheduled flights, including any aircraft operated or owned by an air transport line, air feeder line, air cargo line, or charter service and excluding any resident aircraft or aircraft of an aircraft service operator engaged only in student flying activities or sightseeing flights.
  - (G) *Airline passenger carrier*: An air carrier, other than an air carrier operated for charter service or charter parties, operated for the transportation of passengers only or passengers and air mail and air express.
  - (H) *Private aircraft*: Any aircraft other than an air carrier.
  - (I) *Aircraft service operator*: Any person engaged in the demonstration of aircraft and aircraft parts, the retail or wholesale distribution of aircraft and aircraft parts, aircraft repairs, aircraft storage, aircraft servicing, student flight training, sightseeing by aircraft, aircraft rentals other than as an air carrier, or any other activity connected with aircraft maintenance, servicing, storage, rentals, sales or instruction for which a fee or service charge is assessed or received.
  - (J) *Gasoline service operators*: Any person vending, handling, storing, servicing or furnishing gasoline or oil, or both, for use in such person's aircraft or the aircraft of another, with or without a charge or profit, at wholesale or retail, or as an accommodation for himself or another.
  - (K) *Concessionaire*: Any person engaged in the operation of any restaurant, newsstand, vending machine, shop or business, other than the business of an aircraft service operator, or the sale of any goods, wares, or merchandise other than aircraft, aircraft parts, gasoline or oil.
  - (L) *Motor carrier*: Any taxi, bus or other vehicle operated for hire in which a driver is provided, either for passenger or cargo purposes.
  - (M) *Person*: Any individual, firm, partnership, association, corporation or entity, incorporated or otherwise, and the agents, servants and employees thereof.
- (Ordinance adopted 4/2/1947; Ordinance adopted 3/23/1948)

**§ 13-2-2. General restrictions.**

The right to use any airport or to exercise any privilege in connection therewith, for any purpose, whether such right is granted generally by the provisions of this Chapter or any other Code provision or by lease, contract, permit or license, expressed or implied, shall be subject to the conditions that:

- (A) All fees or charges in connection with such use or privilege be paid as the same accrue and become payable.
- (B) All terms and provisions of this Chapter be fully and in good faith observed.
- (C) All orders, rules or regulations made by the airport manager be fully and in good faith observed.

The right to use any airport or to exercise any privilege in connection therewith shall automatically terminate upon the breach of any of the foregoing conditions and any such right or privilege so forfeited shall be reinstated or renewed only upon such terms and conditions as the Council shall deem necessary to assure that the foregoing condition will be satisfied. The use of an airport or the exercise of any privilege in connection therewith shall constitute an acceptance of the foregoing conditions and an acknowledgment that such use or privilege is subject thereto.

(Ordinance adopted 4/2/1947; Ordinance adopted 3/23/1948)

**§ 13-2-3. Student flying restrictions.**

No owner or operator of aircraft shall engage in student flying activities, except air transport lines, air feeder lines and air cargo lines in the regular course of pilot checks and instrument practice operation, at the Midland Air Terminal nor at any place within three miles of the boundaries thereof, at any height less than 2,000 feet above the surface of the ground.

(Ordinance adopted 4/2/1947; Ordinance adopted 3/23/1948)

**§ 13-2-4. Pilot license and radio restrictions.**

No aircraft shall take off or land at the Midland Air Terminal unless it is equipped with two-way radio communication or a comparable means of communication, and is being navigated by a pilot holding an effective, valid pilot's certificate of not less than private grade issued by the proper agency of the government of the United States, or an effective foreign pilot's certificate validated by such agency of the government of the United States.

(Ordinance adopted 4/2/1947; Ordinance adopted 3/23/1948)

**§ 13-2-5. Airworthiness restrictions.**

No aircraft shall take off or land at any airport unless the owner of the aircraft holds an effective, valid certificate of airworthiness from the proper agency of the government of the United States, and the aircraft is operated according to the terms thereof.

(Ordinance adopted 4/2/1947; Ordinance adopted 3/23/1948)

**§ 13-2-6. Reports of takeoff or landing.**

Immediately after any aircraft lands and is properly parked at any airport, and immediately before any plane leaves a parking area and enters a runway or taxiway preparatory to taking off from any airport, the pilot thereof shall notify the office of the airport manager of the landing or takeoff, the registered number

of the aircraft, and such other information as may be requested by the office of the airport manager to determine whether or not the provisions of this Chapter have been observed. The airport manager shall prescribe forms for making such reports.

(Ordinance adopted 4/2/1947; Ordinance adopted 3/23/1948)

**§ 13-2-7. Landing area, servicing and other privilege fees.**

There are hereby levied and imposed upon the owner and operator of all aircraft and all persons performing services or furnishing goods, wares or merchandise in connection therewith the following fees and charges for the use of the landing area and the privilege of performing such services or furnishing such goods, wares and merchandise, and such fees and charges shall accrue and be due and payable to and for the use and benefit of the City at the time and in the manner hereinafter provided:

- (A) Landing fees. The fee established by contract between the carrier and the City; provided, however, that such fee be not less than \$0.08 per 1,000 pounds of gross landing weight for each scheduled flight.
- (B) Motor carrier fees. The fee established by contract between the carrier and the City; provided that such fee be not less than \$0.08 per passenger to and from the airport.
- (C) Interest on accrued and unpaid fees. The amount of fees accrued and not paid on or before the same become due and payable shall bear interest from the due date until paid at the rate of ten percent per annum.
- (D) Time of payment. All fees shall be payable in advance, except that:
  - 1. All fees based upon the gross value or volume of sales or gross revenue, directly or in the alternative, shall be payable on or before the tenth day of the month next succeeding the month to which the fees are applicable; and
  - 2. All landing fees for nonscheduled air carriers that are based upon the gross weight of the aircraft shall be payable on the day the landing occurs.
- (E) Place of payment. All fees shall be paid to the City at the office of the airport manager.
- (F) Lien to secure payment. The right to use any airport or to exercise any privilege in connection therewith, where the use or privilege is subject to any fee or charge provided by provisions of this Code, is reserved to the City and withheld from every person unless and until the payment of such fees or charges to accrue and be incurred have been secured by express agreement with the City, and every person who shall use any airport or exercise any privilege in connection therewith without first having expressly provided by agreement with the City for security for such fees and charges shall, by the act of using the airport or exercising any privilege in connection therewith, grant, and give and consent to, a lien in favor of the City in the amount of the fees and charges to be incurred by him, then or thereafter, for such use or privilege, upon all property which he shall at any time use, or have in his possession or under his control, at the airport, in the same manner and to the same extent as if such lien were expressly agreed to and contracted for, and any such lien shall be foreclosed as provided by Vernon's Ann. Civ. St., Texas Rules of Civil Procedure, Rule 309.
- (G) Military and other aircraft owned and operated by the government of the United States or the State of Texas. Fees for use of the landing area by, and provisions for performing any services or furnishing any goods, wares or merchandise in connection with, any military, naval or other aircraft owned and operated by the government of the United States or the State of Texas, or any agency or

department of either of said governments, shall be determined and provided for by agreement between the City and the agency or department of said governments, and no person shall charge any fees in connection therewith or perform any services or furnish any goods, wares or merchandise to such aircraft unless and until permission therefor has been granted by ordinance or resolution of the Council.

- (H) All other aircraft. Except as herein otherwise specifically provided, the owners and operators of aircraft may use the landing area, tiedown facilities, ramps and roadways of any airport in common with others without charge; provided, however, that such use conforms in all respects to the field rules, air traffic patterns, ground rules and other rules, orders and provisions of this Code promulgated by the airport manager and the Council relating to aircraft, air services and aviation and to the civil air regulations and air traffic rules of the Civil Aeronautics Administration or other proper agency of the government of the United States and the State of Texas.
- (I) All aircraft service operators and gasoline service operators are required to enter into written contract with the City before they shall engage in any activities at the airports of the City.

(Ordinance adopted 4/2/1947; Ordinance adopted 3/23/1948)

#### **§ 13-2-8. Rental and lease of hangars, offices and airport space.**

The use or occupancy for any purpose of any hangar, shop, warehouse, office, building, or any portion of the grounds of any airport, except the use of the landing area, tiedown facilities, ramps, and roadways in common with others, by any person, shall be unlawful unless and until application therefor has first been made to the airport manager and a lease or contract for such use or occupancy has been made and entered into by and between such person and the City.

The airport manager, for and on behalf of the City, shall have authority and power to lease, for any period not exceeding one month, by oral or written agreement, space in any hangar for the storage of aircraft only and fix the rental or storage charge therefor. All other leases or contracts shall be in writing, signed by the lessee or user, approved by resolution of the Council, and executed on its behalf by the Mayor and city secretary.

Leases or contracts may be made for any period not exceeding five years, except that, in the case of housing facilities and hangar site ground rentals or ground rentals for other airport facilities, the lease or contract shall be for such period as may be agreed to by the lessee and the City.

Every lease or contract shall be subject to the following provisions, conditions and covenants, whether expressed therein or incorporated therein by reference or not:

- (A) That the lessee or user shall restore all buildings and the premises used to the same condition and good order as that existing at the time of entering upon the same, ordinary wear and tear excepted, at or before the expiration or termination from any cause of the lease or contract.
- (B) That the lessee or user shall not make alterations, attach fixtures, or erect additions, structures or signs in or upon the premises leased, unless the plans and specifications therefor have been submitted to the airport manager and the same have been approved in writing by the airport manager or by resolution of the Council.
- (C) That the lease or contract shall not be assigned, in whole or in part, without prior approval of the Council.
- (D) That the lessee or user shall keep the premises in a neat, safe and sanitary condition at all times and

that the City, its officers, agents and employees shall have the right at reasonable times to enter and inspect the premises and to make any necessary repairs thereto, or determine that any obligation or covenant of the lessee or user to maintain the premises in good repair has been observed.

- (E) That the City shall have the right, as it sees fit, to further develop or improve the area of the airport or any building or structure thereon and to take any action it considers necessary or advisable to protect the aerial approaches to the airport against obstruction and to increase the usefulness of the airport and prohibit and prevent structures and property which, in the opinion of the Council, constitute a hazard to aircraft.
- (F) That the lessee or user shall carry fire, wind and general insurance, as well as public liability and property damage insurance, with such coverage as the Council shall from time to time require by ordinance or resolution, upon the premises, equipment and property under the control of the lessee or user.
- (G) That the lessee or user shall restore any building or other property destroyed or damaged by fire or other casualty while the same is leased to or occupied or used by him and under his control.
- (H) That the lessee or user shall prevent his agents or employees, and all persons coming upon any airport at his invitation, expressed or implied, or to transact any business with him, from going upon or being at any restricted or unsafe portion of the airport and shall assume all liability and responsibility for, and shall indemnify and hold harmless the City from, any damage or claim of any nature or kind whatsoever by any such agent, employee or person, as well as the claims of any other person, arising from, or attributable directly or indirectly to, going upon or being at any restricted or unsafe portion of the airport.
- (I) That the lessee or user will indemnify and hold harmless the City from all claims or demands of any kind or character whatsoever arising out of, or connected in any way with, the demonstration of aircraft and aircraft accessories or student flying activities conducted by the lessee or user, his agents, employees, or students, or arising out of the operation of any aircraft owned or operated by him, his agents, employees or students.
- (J) That, as between the lessee or user, and the City only, the lessee or user shall assume all risks of every kind and character whatsoever incident to the use of the airport or the exercise of any privilege in connection therewith, including specifically, but not being limited to, the risk of damage or injury arising from any act done or omitted to be done by any other lessee, user or person, and that the lessee or user shall indemnify and hold harmless the City, its officers, agents and employees from any liability or loss to the lessee or user, its agents or employees, arising out of the use of any airport or the exercise of any privilege in connection therewith by the lessee or user, its agents or employees, or by any other person.
- (K) That the lessee or user, his agents, employees and students, shall fully and faithfully observe all ground rules, air traffic rules, and other rules, regulations or orders relating to safety or the prevention of unsafe practices which shall be promulgated from time to time by the airport manager.
- (L) That the lessee or user, his agents, employees and students, shall fully and faithfully observe all provisions of this Code, all laws of the State of Texas and the rules, regulations and orders of any agency or department thereof, and all laws of the United States of America and the rules, regulations and orders of any agency or department thereof, relating to air travel and commerce, aircraft and the maintenance and operation of aircraft and facilities in connection therewith.
- (M) That all rents or charges be paid monthly in advance in cash to the City at the office of the airport

manager.

- (N) That all fees and other charges imposed by Section 13-2-7 upon the lessee or user be paid at the time and in the manner herein provided.
- (O) That the lease or contract shall cease and terminate and be ineffective as to any unexpired portion of the term thereof automatically upon the expiration or termination of any permit or license granted to the lessee as user or required of the lessee under Section 13-2-10; or upon the failure, refusal or inability of the lessee or user to obtain or renew, or obtain the renewal of, any such permit or license.
- (P) That the rights of the lessee or user shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America relative to the operation or maintenance of the airport, the execution of which was or may be required as a condition precedent to the expenditure of funds of the United States government for the development or improvement of the airport.
- (Q) That the rights of the lessee or user shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America for use of the airport or any part thereof during time of war or national emergency for military or naval purposes, and that any provisions of the lease or contract shall be suspended insofar as the same are inconsistent with the provisions of such agreements with the United States of America.
- (R) That, in case of default in any covenants or conditions, the City may enforce performance of the lease in any modes provided by law, and the lease may be forfeited at its discretion if such default continues for a period of ten days after the lessee or user is notified of such default and the intention to declare the lease forfeited, such notice to be sent by mail or otherwise to the leased premises; and thereupon (unless the default has been completely removed or cured) the lease or contract shall cease and come to an end as if that were the day originally fixed for the expiration of the term thereof; and the City, its agent or attorney shall have the right, without further notice or demand, to reenter and remove all persons and property without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or breach of covenant, and the City shall have a lien as security for the unpaid rent upon all property of the lessee or user at the airport.

(Ordinance adopted 4/2/1947)

#### **§ 13-2-9. Ground rentals for hangar sites and other airport facilities.**

No lease or contract for the use of a site or space for the construction, erection or installation by the lessee or user of any hanger, office space, store, restaurant, service establishment, warehouse, building or other facility shall be made covering any portion of the grounds of any airport for so long as existing facilities at the airport are available and suitable for the intended purposes of the lessee or user. Leases or contracts for the use and occupancy of a site or space for the construction, erection or installation of any facility not available at any airport, or to take the place of unsuitable existing facilities at an airport, shall be made and entered into upon and conditions provided in Section 13-2-8 with the following exceptions in the case of a lease or contract for a site or space for any building, structure or facility other than for tanks or other means of storing or dispensing fuel:

- (A) The lessee or user may assign or sell the lease or contract to any person approved by the City Council.
- (B) The lessee or user, his successors and assigns, shall have an option, exercisable at any time within 30 days before the expiration of the original term, to renew the lease or contract for an additional term of not to exceed five years, to commence from the expiration of the original term, at the yearly or monthly rental then in effect for similar buildings, structures or facilities used for like purposes at a

comparable location at the airport and subject to the covenants and conditions then provided in similar leases or contracts.

- (C) The lease or contract shall be subject to such other and additional terms, covenants and conditions as may be agreed to and incorporated in the lease or contract.

(Ordinance 6424 adopted 7/24/1984)

**§ 13-2-10. Permits to engage in commercial activities.**

It shall be unlawful for any aircraft service operator, gasoline service operator, concessionaire or motor carrier to engage or offer to engage in any activity at any airport, and for any other person to perform or offer to perform any services, or to furnish or offer to furnish any goods, wares or merchandise, or to engage or offer to engage in any commercial activity, at any airport prior to the time a permit for each such activity has been granted by the City or after any permit for any such activity has expired or terminated from any cause.

The City Council shall grant any such permit or renewal thereof by resolution duly adopted at any regular or special meeting of the Council and shall issue or cause to be issued by the city secretary such certificate or other evidence of the granting of the permit, or renewal thereof, as it shall from time to time prescribe. Permits and renewals thereof for any such activity shall be granted only upon application therefor made to the airport manager. Each application for a permit or renewal thereof shall be accompanied by the application fee, if any, provided by Section 13-2-7, and the application fee shall be promptly returned to the applicant if the permit is not granted.

Each application shall fully identify the applicant; specify in detail the activities to be carried on by the applicant under the permit, the amount and kind of space in any hangar, shop or other building desired by the applicant, the name of the airport, and the qualifications, training and previous experience of the applicant and the agents or employees of the applicant, if such information is then available, in the particular activity for which a permit is requested; and shall include a financial statement, a complete inventory of the aircraft and all other property or equipment to be employed by the applicant in the particular activity for which a permit is requested, at least three letters from persons familiar with the applicant, attesting to the applicant's social and moral habits and previous business experience and stating the circumstances under which the persons acquired their knowledge of such matters, proof that all licenses, certificates or permits required for or issued in connection with the particular activity by any agency or department of the government of the United States or the State of Texas have been issued and are in good standing, and such additional information as may be requested by the airport manager or the Council in passing upon the application.

The determination of the Council to grant or deny a permit for any such activity shall be final and not subject to review. Any person whose application for a permit has been denied shall, upon request, be given a hearing thereon and an opportunity to present additional information.

Each permit shall be granted or renewed subject to the following specific conditions, limitations, restrictions, and reservations, whether expressed in the permit or not.

- (A) That the landing area, tiedown facilities, ramps and roadways may be used in common with others to the extent necessary to carry on the activity covered by the permit, subject to and in accordance with the field rules, air traffic pattern and control rules, safety rules, and all other provisions of this Code, and the air traffic rules of the Civil Aeronautics Administration.
- (B) That all privilege fees provided by Section 13-2-7 and any amendment thereto applicable to the activity for which the permit is granted be promptly paid.

- (C) That, on or before the tenth day of each month, a full and complete report, on the form prescribed by the airport manager and approved by the Council, be made to the office of the airport manager showing the information necessary to determine the gross value or volume of sales or gross revenue for the immediately preceding month and the amount of the privilege fee applicable thereto under Section 13-2-7 or any amendment thereto.
- (D) That all books and records of and concerning the activity be made available at any reasonable time upon the request of the airport manager for the purpose of an audit to determine the correctness of any report made and the amount of any privilege fees applicable to the activity.
- (E) That books and records be kept showing accurately the gross value or volume of sales or gross revenue for the activity for the purpose of determining the correct privilege fee applicable thereto.
- (F) That all aircraft used in connection with the activity, together with all other property and equipment, be registered at the office of the airport manager.
- (G) That public liability and property damage insurance, with such coverages as the Council shall from time to time require by ordinance or resolution be carried and maintained in force.
- (H) That the permit shall not be assigned, directly or indirectly, to any other person.
- (I) That no activity shall be engaged in except the particular activities for which a permit has been granted.
- (J) That the person to whom the permit is granted shall prevent his agents or employees, and all persons coming upon any airport at his invitation, expressed or implied, or to transact any business with him, from going upon or being at any restricted or unsafe portion of the airport and shall assume all liability and responsibility for, and shall indemnify and hold harmless the City from, any damages or claim of any nature or kind whatsoever by any such agent, employee or person, as well as the claims of any other person, arising from, or attributable directly or indirectly to, going upon or being at any restricted or unsafe portion of the airport.
- (K) That the person to whom the permit is granted will indemnify and hold harmless the City from all claims or demands of any kind or character whatsoever arising out of, or connected in any way with, the demonstration of aircraft and aircraft accessories or student flying activities conducted by the person to whom the permit is granted, his agents, employees, or students, or arising out of the operation of any aircraft owned or operated by him, his agents, employees or students.
- (L) That, as between the person to whom the permit is granted and the City only, the person to whom the permit is granted shall assume all risks of every kind and character whatsoever incident to the use of the airport or the exercise of any privilege in connection therewith, including specifically, but not being limited to, the risk of damage or injury arising from any act done or omitted to be done by any lessee, user or person, and that the person to whom the permit is granted shall indemnify and hold harmless the City, its officers, agents and employees from any liability or loss to him, his agents or employees, arising out of the use of any airport or the exercise of any privilege in connection therewith by him, his agents or employees or by any other person.
- (M) That the person to whom the permit is granted, his agents, employees and students shall fully and faithfully observe all ground rules, air traffic rules, and other rules, regulations or orders relating to safety or the prevention of unsafe practices which shall be promulgated from time to time by the airport manager.
- (N) That the person to whom the permit is granted, his agents, employees and students shall fully and

faithfully observe all provisions of this Code, all laws of the State of Texas, and the rules, regulations and orders of any agency or department thereof, and all laws of the United States of America and the rules, regulations and orders of any agency or department thereof, relating to air travel and commerce, aircraft and the maintenance and operation of aircraft and facilities in connection therewith.

- (O) That the rights of the person to whom the permit is granted shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America, relative to the operation or maintenance of the airport, the execution of which was or may be required as a condition precedent to the expenditure of funds of the United States government for the development or improvement of the airport.
- (P) That the rights of the person to whom the permit is granted shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America for use of the airport or any part thereof during time of war or national emergency for military or naval purposes, and that any provisions of the lease or contract shall be suspended insofar as the same are inconsistent with the provisions of such agreements with the United States of America.
- (Q) That in case of default in any of the conditions, or in case of a violation of any of the limitations, restrictions and reservations, applicable to the permit, the City may enforce performance or observance thereof in any of the modes provided by law, and the permit may be forfeited at its discretion if the default continues for a period of ten days after notice of such default or violation and the intention to forfeit the permit is given by the airport manager by sending the notice by mail or otherwise to the office or other address of the person to whom the permit is granted and, unless the default or violation is cured or stopped completely, the permit and all rights thereunder shall cease and come to an end at the expiration of said ten days as if that were the day originally fixed for the termination thereof.

(Ordinance adopted 4/2/1947; Ordinance 5719 adopted 3/10/1981)

#### **§ 13-2-11. Rental and lease of facilities for nonaviation purposes.**

The Council, upon the recommendation of the airport manager, shall designate the buildings and areas included in any airport district that are not suitable for, or are not currently required for, air commerce or other aviation purposes and that are suitable or adaptable for use as warehouses, stores, service establishments or any other commercial, industrial, agricultural or livestock purposes not connected directly with air commerce or the furnishing of services or goods, wares or merchandise to air passengers or aircraft owners or operators. Such nonaviation buildings and areas shall be leased by inviting competitive bids. The invitation to bid shall designate the particular building or area, the purpose for which it will be leased, the minimum and maximum term for which it will be leased, and the time within which bids must be submitted. The invitation to bid shall be publicized in any manner which the Council may determine. All bids submitted shall be sealed and delivered to the city secretary. At the time announced in the invitations, the bids shall be opened in the presence of a majority of the Council, and no award shall be made except to one of such bidders. The Council shall determine the most advantageous bid for the City and shall award the lease to such bidders, but the Council shall have the right to reject any and all bids and, in the event all bids are rejected, may call for new bids. Pending the time for submitting bids, the terms and conditions of the lease that is to be made and entered into with the successful bidder shall be on file in the office of the city secretary and the airport manager for inspection of all persons desiring to bid. The building or area shall also be made available for inspection by all persons desiring to bid.

The rental for such nonaviation buildings and areas shall be based upon the number of square feet of area, a fixed annual or monthly rental, a percentage or share of the gross value or volume of sales, or any combination thereof, as the Council shall determine and cause to be stated in the invitation of bids.

Each lease shall be in writing, executed by the lessee, approved by resolution of the City Council, and executed on behalf of the City by the Mayor and city secretary.

(Ordinance adopted 4/2/1947; Ordinance 5719 adopted 3/10/1981)

#### **§ 13-2-12. Rental and lease of housing facilities.**

The Council, upon recommendation of the airport manager, shall designate the buildings included in any airport district that are suitable for housing or conversion to housing accommodations, and are not required for air commerce or other aviation purposes, and such buildings shall be offered for lease upon such terms and subject to such conditions as the Council may prescribe by ordinance or resolution. No lease, contract or agreement for the use of a site or space for the construction, erection or conversion by the lessee of any housing accommodations or apartment shall be made covering any portion of the grounds of any airport district for so long as existing buildings at the airport are available and suitable, or could be made suitable, for use as housing accommodations or apartments.

(Ordinance adopted 4/2/1947; Ordinance 5719 adopted 3/10/1981)

#### **§ 13-2-13. Limitations upon availability of airport facilities.**

The Midland Air Terminal shall be open for public use at all hours of the day subject to the restrictions provided in this Chapter and to such other restrictions due to inclement weather, the condition of the landing area, the presentation of special events and like causes, as may be determined by the airport manager.

The Midland Airpark shall be open for public use at all hours when landings and takeoffs may be made without the assistance of artificial lighting and at such times when artificial lighting is required for landings or takeoffs as may be determined by the airport manager, subject to such restrictions due to inclement weather, the condition of the landing area, the presentation of special events and like causes, as may be determined by the airport manager.

(Ordinance adopted 4/2/1947; Ordinance 5719 adopted 3/10/1981)

#### **§ 13-2-14. Ground rules and air traffic rules.**

In order to promote and provide for the general welfare, safety, peace and good order in air travel and transportation and the use of the airports, it shall be unlawful for any person:

- (A) To navigate any aircraft over, land upon or take off from, or service, repair or maintain any aircraft on any airport or conduct any operation on or from any airport otherwise than in conformity with the rules and regulations of the Civil Aeronautics Administration of the United States of America, and such rules and regulations are hereby referred to, adopted and made a part of this Chapter as fully in all respects as if particularly set forth in this Chapter.
- (B) To do any act prohibited by, or to omit any act required by, rules, regulations and orders promulgated by the airport manager for the purpose of implementing, supplementing or carrying into effect with respect to all phases of air travel and transportation the provisions of this Code, the laws, rules and regulations of the State of Texas or any proper agency thereof, the air traffic rules of the Department of Commerce, Civil Aeronautics Administration, and such other local air traffic rules and ground rules relating to safety or the prevention of unsafe practices.
- (C) To drive any vehicle or walk or to be carried upon or to enter the loading aprons, taxiways, runways or useable landing area at any time as a spectator or for the purpose of sightseeing or any other purpose not authorized by the airport office.

- (D) To park any automobile or vehicle outside of the limits of designated parking areas for the particular kind or type of automobile or vehicle.
- (E) To taxi any aircraft on a loading apron or parking apron at a speed in excess of 20 miles per hour, and to taxi any aircraft not equipped with adequate brakes on a loading apron or parking apron at any speed unless an attendant is at all times beside at least one wing.
- (F) To taxi any aircraft on a loading apron so as to enter any area where passengers are entering or leaving any aircraft.
- (G) To taxi any aircraft in the vicinity of aircraft landing or taking off, or to fail to completely stop an aircraft being taxied in the vicinity of aircraft landing or taking off.
- (H) To taxi any aircraft upon a runway except as a necessary part of taking off or landing.
- (I) To taxi any aircraft at night or after sunset unless the navigation lights and at least one landing light, if equipped with landing lights, are turned on and burning.
- (J) To leave any aircraft standing or parked outside of a designated parking area at night or after sunset unless the navigation lights and at least one landing light, if equipped with landing lights, are turned on and burning.
- (K) To take off or land, except in case of emergency or accident, on any loading apron, parking apron, taxiway or any place other than a runway.
- (L) To leave any disabled or wrecked aircraft on any taxiway or runway or any place other than a designated parking area overnight unless specific prior authority has been granted by the airport office and the aircraft is guarded and danger lights are displayed around it.
- (M) To park any aircraft or vehicle within 25 feet of a fire hydrant.
- (N) To leave any aircraft unattended on any loading apron, taxiway, runway or area other than a designated parking area.
- (O) To fail to securely tie down any unattended aircraft.
- (P) To run up or check any aircraft engine within 100 feet of the terminal building or administration building or to run up or check any aircraft engine at any place without having adequate brakes fully set or without having the wheels set with blocks equipped with ropes or other suitable means for removing the blocks, or to start or run any aircraft engine in any hangar.
- (Q) To start or run any aircraft engine without a competent operator or pilot at the controls of the aircraft.
- (R) To fuel or drain any aircraft while the engine is running, or while in a hangar or other enclosed place, and without equipment for grounding static electricity continuously during such fueling or draining operation.
- (S) To bring, keep or store cylinders, flasks or open containers for any inflammable fuel in any hangar except in the fuel tanks of aircraft or such other containers as may have been approved in advance for use in hangars by the airport manager.
- (T) To clean, repair, paint or assemble motors, aircraft parts or aircraft within the storage area of any hangar when inflammable fluids or substances or open flames are used in such cleaning, repairing or assembling.

- (U) To smoke or ignite any match or cigarette lighter in any hangar or building used for the storage or repair of aircraft or fuel therefor except in offices, waiting rooms or portions of such buildings in which smoking is authorized by the airport manager, or at any other place where a "no smoking" sign is displayed.
- (V) To leave any aircraft on the landing or takeoff area for the purpose of instructing students between flights.
- (W) To take off or land any aircraft contrary to the instructions of the control tower and the air traffic pattern established for the airport.
- (X) To take off, land or operate any aircraft from, at or over any airport while under the influence of, or using, any intoxicating liquor or habit-forming drug.
- (Y) To borrow or use or enter any aircraft, or to borrow or use aircraft parts or accessories or tools or other equipment owned or controlled by any other person and stored or otherwise left at the airport without the consent of the owner or operator thereof.
- (Z) To park a disabled or damaged aircraft on any paved or sodden surface at Midland Regional Airport or Midland Airpark in excess of 30 days. The aviation director shall notify the owner of the aircraft found to be in violation of this provision in writing that said owner shall remove the aircraft or place it in operable condition within seven days of receipt of said notice. Failure to comply with the provisions of this subsection is punishable by a fine of not less than \$25.00, nor more than \$200.00, with each day that such violation continues constituting a separate offense. In addition to the foregoing the director of aviation of the City is hereby authorized to order and provide for the removal of said disabled or damaged aircraft from the offending location at the sole expense of the owner.

The landing area, runways, taxiways, loading aprons, parking aprons, parking areas and other areas and buildings referred to in the foregoing provisions of this Section shall respectively refer to and indicate the landing area, runways, taxiways, loading aprons, parking aprons, parking area or other particular type of area or building as designated by the airport manager and delineated on the ground by signs or markers or upon the map or plan of the airport.

(Ordinance adopted 4/2/1947; Ordinance 5719 adopted 3/10/1981)

#### **§ 13-2-15. Payment of fees before taking off.**

It shall be unlawful for any person who incurs or who is directly or indirectly responsible for incurring any landing fee, privilege fee or other fee or charge of any nature or kind whatsoever levied or imposed by or payable to or for the benefit of the City on account of or as a result of the use of any airport by, or the furnishing or sale of any services, goods, wares or merchandise to, for, or in connection with, any aircraft, or to take off or cause the taking off or attempt to take off from any airport any aircraft owned, operated or otherwise in the possession or under the control or supervision of such person, unless and until all such fees and charges have been satisfied and paid in full, and the airport manager is hereby authorized and instructed to close and deny to such person the use of the runways, taxiways, and other parts of any airport capable of being used for taking off aircraft, unless and until such fees and charges have been so satisfied and paid.

(Ordinance adopted 4/2/1947)

**§ 13-2-16. Signs and billboards.**

No sign, billboard or advertising device shall be installed, erected, constructed or maintained within the boundaries of any airport district of the City unless and until the location, size, height, materials and subject matter thereof have been approved by the airport manager, as evidenced by a drawing or specification thereof filed in the office of the airport manager bearing his written endorsement of approval.

(Ordinance adopted 4/2/1947)

**§ 13-2-17. General limitations upon use.**

Except as otherwise herein provided, there is hereby reserved to the City in the public interest any right to use or exercise any privilege at or in connection with any airport.

The right to use or exercise any privilege at or in connection with any airport is limited by the extent of the facilities available therefor at the airport, and there is hereby reserved to the City in the public interest the right to deny to any person the use of or the exercise of any privilege at or in connection with any airport whenever facilities therefor are unavailable either because of the absence of such facilities or because existing facilities are then being fully utilized by others.

There is hereby further reserved to the City in the public interest the exclusive right to judge, determine and pass upon the qualifications and fitness of any person to use or exercise any privilege at or in connection with any airport, and to deny an unqualified or unfit person such use or privilege whenever in the judgment or opinion of the Council such action is necessary or desirable for the purpose of promoting the protection and preservation of the public health, safety, order, property and general welfare of the City and its inhabitants.

(Ordinance adopted 4/2/1947)

**§ 13-2-18. Traffic code made applicable.**

The traffic code of the City, now in effect and as hereafter amended or supplemented, shall be applicable to and is hereby extended so as to apply to the area included in any airport district of the City.

(Ordinance adopted 4/2/1947)

**§ 13-2-19. Exemptions to Chapter.**

Persons, incorporated and unincorporated, engaged in the business of air transportation with respect to persons, property, cargo and mail are expressly exempted from the provisions of this Chapter; conditioned, however, that such person or persons shall first have entered into a contract with the City, acting through and by its Council, regulating the use by such person or persons of airports and air terminals operated by the City.

(Ordinance adopted 10/14/1947)

**§ 13-2-20. Public aircraft parking areas.**

It shall be unlawful to park an aircraft at Midland Airpark in any area which is not designated a public aircraft parking area. The public aircraft parking areas are the 2.798-acre, 2.009-acre and 0.386-acre tracts described below, and all such areas shall be clearly marked and signed as a public aircraft parking area by the person or persons maintaining such areas, to the satisfaction and approval of the director of aviation.

A fee not to exceed \$25.00 per month for locally based aircraft or \$1.50 per day for transient aircraft may be charged by the lessee of said ramps for parking aircraft in the designated parking areas.

Should anyone violate any of the above provisions of this Section, that person shall pay a fine not to exceed \$200.00.

The parking areas are described as follows:

A 2.798-acre tract in Section 15, Block 39, T-1-S, Midland County, Texas, further described as follows:

Beginning at a "t" set on concrete at the most easterly corner of this tract from whence the southeast corner of said Section 15 bears N 74°50'30" E a distance of 619.73 feet and S 15°09'30" E a distance of 3,118.84 feet;

Thence S 29°51'27" W a distance of 325.00 feet to a "t" set on concrete on the most southerly corner of this tract;

Thence N 60°08'33" W a distance of 375 feet to a 60d nail set in a concrete joint at the most westerly corner of this tract;

Thence N 29°51'27" E a distance of 325 feet to a 60d nail set in a concrete joint at the most northerly corner of this tract;

Thence S 60°08'33" E a distance of 375 feet to the point of beginning.

Contains 121,875 square feet.

AND

A 2.009-acre tract in Section 15, Block 39, T-1-S, T&P Survey, Midland County, Texas:

Beginning at a railroad spike set as the most easterly corner of this tract, from whence the southeast corner of said Section 15 bears N 74°50'30" E 839.77 feet and S 15°09'30" E;

Thence S 29°51'27" W along the northwesterly edge of an old concrete apron, a distance of 500 feet to a railroad spike set at the most southerly corner of this tract;

Thence N 60°08'33" W a distance of 175 feet to a one-half-inch iron rod with cap marked RPS-1974, set at the most westerly corner of this tract;

Thence N 29°51'27" E a distance of 500 feet to a one-half-inch iron rod with cap marked RPS-1974, set at the most northerly corner of this tract;

Thence S 60°08'33" E a distance of 175 feet to the point of beginning.

Contains 87,500 square feet.

AND

A 0.386-acre tract in Section 15, Block 39, T-1-S, Midland County, Texas, further described as follows:

Beginning at a "t" set in concrete at the most easterly corner of this tract, from whence the southeast corner of said Section 15 bears N 70°50'30" E a distance of 441.47 feet and S 15°09'30" E a distance of 3,350.72 feet;

Thence S 29°51'27" W a distance of 240 feet to a "t" set in concrete at the most southerly corner of this tract;

Thence N 60°08'33" W a distance of 70 feet to a "t" set in concrete at the most westerly corner of this tract;

Thence N 29°51'27" E a distance of 240 feet to a "t" set in concrete at the most northerly corner of this tract;

Thence S 60°08'33" E a distance of 70 feet to the point of beginning.

Contains 16,800 square feet.

(Ordinance 6137 adopted 1/25/1982)

**§ 13-2-21. Customer facility charge.**

(A) Definitions. As used in this Section:

1. *ConRAC* means a consolidated rental car facility.
2. *Customer facility charge (CFC)* means a user fee imposed on a transactional basis on a person renting a motor vehicle from an on-site vehicle rental concessionaire at Midland International Air and Space Port. The total CFC assessed per transaction shall be a product of the transaction days that are subject to agreement between the person and the on-site vehicle rental concessionaire. The CFC does not constitute income, revenue, or assets of the on-site vehicle rental concessionaire, and is, at all times, property of the City of Midland.
3. *On-site vehicle rental concessionaire* means any person, association, corporation, entity or other organization that enters into an agreement with the City of Midland for the purpose of occupying facilities located at Midland International Air and Space Port to offer motor vehicle rental concession services.
4. *Person* means any person, association, corporation, entity or organization that arrives at Midland International Air and Space Port and enters into an agreement either (a) directly with an on-site vehicle rental concessionaire; or (b) with a third party, if such agreement with the third party was facilitated, arranged, or otherwise coordinated by an on-site vehicle rental concessionaire.
5. *Transaction day* means a 24-hour period, or fraction thereof, that is subject to an agreement between a person and an on-site vehicle rental concessionaire.

(B) A customer facility charge (CFC) is hereby established and shall be charged to each person renting a motor vehicle from an on-site vehicle concessionaire.

(C) Airport Manager; Powers and duties.

1. The Airport Manager is authorized to implement and administer the CFC consistent with the provisions of this Section and the City Code of Midland, Texas.
2. The Airport Manager may deem an on-site vehicle concessionaire that fails to comply with this Section in default of its agreement with the City of Midland, regardless of whether said agreement incorporates the provisions of this Section, and may recommend said agreement's termination to the City Council.

(D) On-site vehicle concessionaire's duties. An on-site vehicle concessionaire shall:

1. Charge and collect from each person the total amount of the CFC due under the agreement between the person and the on-site vehicle concessionaire at the time the final number of transaction days are determined and shall list the CFC separately on the invoice, describing it as a "customer facility charge";
2. Remit the total amount of the CFC to the City on a monthly basis, and not later than the 15<sup>th</sup> day

of the month following the month in which the CFC is paid by the person, along with supporting documentation in a format acceptable to the Airport Manager.

3. Maintain adequate records that account for the CFC charged to its customers and collected for the benefit of the City of Midland, in accordance with generally accepted accounting principles, and make said records available to the City of Midland upon the request of the Airport Manager.

(E) Permitted uses of the customer facility charge funds. All funds collected from the imposition of the CFC shall be designated as such and used only for the study, design, construction, operations, management, and maintenance of:

1. Improvements to current facilities occupied by on-site vehicle rental concessionaires; and
2. A ConRAC to be located at Midland International Air and Space Port.

(F) Amount of customer facility charge. The customer facility charge shall be based on the rate found in the City of Midland Fee Ordinance.

(Ordinance 10266, sec. 1, adopted 12/14/2021)

AIRPORT REGULATIONS

**Chapter 13-3**

**AIRPORT DISTRICTS**

**§ 13-3-1. Number One Airport District.**

Number One Airport District shall consist of two tracts of land described as follows:

*Tract 1.* A tract of land out of Sections 4, 5, 8, 9 and 10, Block 40, T-2-S, and Section 44, Block 40, T-1-S, T&P RY. Co. Survey, Midland County, Texas, described by metes and bounds as follows:

Beginning at a one-half-inch iron pin at a point in the north right-of-way line of U.S. Highway 80, said point being the southwest corner of Midland Regional Airport, and from which the northeast corner of Section 8, Block 40, T-2-S, T&P Ry. Co. Survey, Midland County, Texas, bears N 58°48' E a distance of 2,549.5 feet and thence N 15° W a distance of 3,747 feet;

Thence N 30°56' W along the west boundary of Midland Regional Airport a distance of 920.02 feet to a point;

Thence N 0°28'30" E a distance of 387.85 feet to a point; Thence S 89°32' E 410.00 feet to a point;

Thence N 65°52'06" E 605.74 feet to an angle point this tract; Thence N 40°03'30" E 755.50 feet to an angle point this tract; Thence N 55°04'20" E 233.42 feet to an angle point this tract;

Thence N 04°56'30" W 1,449.93 feet to a point for the southwest corner of this tract;

Thence along the curved boundary line delta angle = 70°07'22" right, radius = 150.00 feet, chord distance = 172.33 feet, chord bearing = N 30°07'11" E, arc length = 183.58 feet to a point;

Thence N 04°56'30" W 690.83 feet to a point of curvature this tract;

Thence along the curved boundary line delta angle = 70°07'22" left, Radius = 150 feet, chord distance = 172.33 feet, chord bearing = N 40°00'11" W, arc length = 183.58 feet to a point of tangency this tract;

Thence N 04°56'30" W at 289.07 feet cross the southern boundary line of said Section 5, the southeast corner Section 5 bears N 74°17' E 344.01 feet, in all 979.51 feet to a point of curvature this tract;

Thence along the curved boundary line delta angle = 61°30' right, radius = 433.36 feet, chord length = 443.15 feet; chord bearing = N 34°41'30" W, arc length = 465.16 feet to a point of tangency this tract;

Thence N 66°26'30" W 834.03 feet to a point of curvature this tract; Thence N 40°03'30" E 130.37 feet to a point for an angle corner this tract;

Thence N 66°26'30" W 1,444.24 feet to a point for an angle corner this tract; Thence S 40°03'30" W 130.37 feet to a point for an angle corner this tract; Thence N 66°26'30" W 1,399.23 feet to a point for an angle corner this tract; Thence N 27°16'47" E 128.59 feet to a point for an angle corner this tract; Thence N 66°26'30" W 1,170.72 feet to a point for an angle corner this tract; Thence N 74°48'14" W a distance of 842.6 feet to a point;

Thence N 23°33'30" E a distance of 675 feet to a point;

Thence N 66°26'30" W at 236.0 feet cross the northern boundary line of said Section 5, in all a distance of 500 feet to a point;

Thence N 23°33'30" E a distance of 150 feet to a point; Thence N 66°26'30" W a distance of 400 feet to a point; Thence N 23°33'30" E a distance of 100 feet to a point; Thence S 66°26'30;" E a distance of 400 feet to a point; Thence N 23°33'30" E a distance of 150 feet to a point; Thence S 66°26'30" E a distance of 500 feet to a point;

Thence N 23°33'30" E a distance of 675 feet to a point; Thence S 57°54'56" E a distance of 842.6 feet to a point;

Thence S 66°26'30" E at 95.3 feet cross the northern boundary line of said Section 5, in all a distance of 1,266.8 feet to a point;

Thence N 27°16'42" E a distance of 235.4 feet to an iron pin set for a corner of this tract; Thence N 30°19'40" E a distance of 636.2 feet to an iron pin set for a corner of this tract; Thence S 59°29'26" E a distance of 1,211.5 feet to an iron pin set for a corner of this tract; Thence N 64°52' E a distance of 1,704.56 feet to an iron pin set for a corner of this tract; Thence N 4°56'30" W a distance of 4,210.33 feet to an iron pin set for a corner of this tract; Thence S 85°03'30" E a distance of 1,550.0 feet to an iron pin set for a corner of this tract; Thence S 4°56'30" E a distance of 7,063.59 feet to an iron pin set for a corner of this tract; Thence N 64°52' E a distance of 1,544.73 feet to a point;

Thence S 31°55' E a distance of 2,271.5 feet to a point; Thence N 58°05'06" E a distance of 1,491.9 feet to a point;

Thence S 15°07' E a distance of 2,179.8 feet to a point in the north right-of-way line of U.S. Highway 80, said point being the southeast corner of Midland Regional Airport;

Thence along the north right-of-way line of U.S. Highway 80, S 58°48' W a distance of 1,668.8 feet to a concrete marker;

Thence S 30°58' E a distance of 2 feet to a point; Thence S 58°48' W a distance of 404 feet to a point; Thence N 30°58' W a distance of 2 feet to a point;

Thence S 58°48' W along the north right-of-way line of U.S. Highway 80 a distance of 6,395.7 feet to the place of beginning;

Containing 1,180.00 acres of land, more or less.

*Tract 2.* LaForce Boulevard from its intersection with the north line of U.S. Highway 80 to its intersection with Sloan Field Boulevard and Sloan Field Boulevard from its intersection with the west line of Wright Drive to its intersection with LaForce Boulevard, all as set out and shown on the City of Midland, Texas, Industrial Park, Regional Air Terminal, Unit 7 plat recorded at Cabinet C, Page 27 of the plat records of Midland County, Texas.

Beginning at a one-half-inch iron pin at a point in the north ROW line of the entrance road to Midland Air Terminal, Airport Drive, from which the northeast corner of Section 8, Block 40, T-2-S, T&P Rwy. Co. Survey, Midland County, Texas, bears N 58°48' E a distance of 2,630.9 feet, and thence N 15° W a distance of 2,216.0 feet;

Thence north 0°18'30" east along the north ROW line of Airport Drive a distance of 1,054.76 feet to the P.C. of a 5°39' curve to the right;

Thence around said 5°39' curve a distance of 770.8 feet to a point for the P.T. of said curve;

Thence north 40°03'30" east a distance of 573.7 feet to a point for the northeast corner of this tract;

Thence south 49°56'30" east a distance of 100 feet to a point for the southeast corner of this tract;

Thence south 40°03'30" west a distance of 573.7 feet to a point for the P.C. of a 5°09' curve to the left;

Thence around said 5°09' curve a distance of 701.4 feet to a point for the P.T. of said curve; Thence south 0°18'30" west a distance of 934.1 feet to a point;

Thence south 40°03'30" west a distance of 156.8 feet to the place of beginning and containing 5.36 acres of land, more or less.

(Ordinance adopted 3/29/1947; Ordinance 3746 adopted 11/22/1960; Ordinance 5605 adopted 6/10/1980)

**§ 13-3-2. Number Two Airport District.**

Number Two Airport District shall be the tract of land situated in the County of Midland, State of Texas, being part of Sections 14, 15 and 22, Block 39, Township 1 South, T&P Railroad Survey, and being more particularly described as follows:

Beginning at a point in the west line of Section 15, which bears S  $15^{\circ}25'30''$  E, a distance of 50 feet from the northwest corner of Section 15;

Thence N  $74^{\circ}37'$  E a distance of 5,272.9 feet to a point for corner;

Thence S  $15^{\circ}09'30''$  E a distance of 42 feet to a point for corner;

Thence N  $77^{\circ}17'04''$  E a distance of 1,502.7 feet to a point for corner;

Thence S  $15^{\circ}05'$  E a distance of 2,420.2 feet to a point for corner;

Thence S  $74^{\circ}46'$  W a distance of 1,502.7 feet to a point for an interior corner;

Thence S  $15^{\circ}09'30''$  E along a line 34 feet west of and parallel to the east line of Section 15, a distance of 2,786.1 feet to a point in the south line of Section 15;

Thence S  $15^{\circ}09'30''$  E a distance of 613.35 feet to a point for corner;

Thence N  $60^{\circ}19'$  W along a line parallel to and 500 feet from the extension of the northwest-southeast runway, a distance of 748.7 feet to a point for an interior corner;

Thence S  $27^{\circ}18'$  W along a line parallel to and 250 feet from the centerline of the southeast taxiway which joins the north-south runway and the northwest-southeast runway a distance of 1,692.5 feet to a point for corner;

Thence S  $15^{\circ}17'$  E along a line parallel to and 500 feet from the centerline of the north-south runway a distance of 326.4 feet to a point for corner;

Thence S  $74^{\circ}37'$  W a distance of 933.1 feet to a point for corner;

Thence N  $15^{\circ}25'30''$  W a distance of 1,650.5 feet to a point in the south line of Section 15;

Thence S  $74^{\circ}35'$  W along said section line a distance of 59.8 feet to a point for corner;

Thence N  $15^{\circ}17'$  W along a line parallel to and 500 feet from the centerline of the north-south runway, a distance of 2,068.8 feet to a point for corner, said point being a point of intersection of two lines; one, 500 feet in a southwesterly direction from and parallel to the centerline of the northwest-southeast runway; and two, 500 feet in a westerly direction from and parallel to the centerline of the north-south runway;

Thence N  $60^{\circ}17'$  W along a line parallel to and 500 feet from the centerline of the northwest-southeast runway, a distance of 3,225.9 feet to a point for corner, said point being the point of intersection of two lines: one, 500 feet in a southerly direction from and parallel to the centerline of the east-west runway; and two, 500 feet in a southwesterly direction from and parallel to the centerline of the northwest-southeast runway;

Thence S  $74^{\circ}42'$  W along a line parallel to and 500 feet from the centerline of the east-west runway a distance of 330.5 feet to a point for corner in the west line of Section 15;

Thence N  $15^{\circ}25'30''$  W along said section line 881.5 feet to the place of beginning.

(Ordinance adopted 3/29/1947)

**§ 13-3-3. Prohibited construction.**

It shall be unlawful for any person, firm, association, corporation or entity, incorporated or otherwise, to build, construct, maintain or operate, or cause to be built, constructed, maintained or operated, either directly or through the agency of another, at any point within the corporate limits of the City, or outside of such corporate limits and within 5,000 feet thereof, or within 5,000 feet of any airport district of the City, and not within the boundaries of any such airport district, any one or more of the following:

- (A) An airport or property of any character used, or to be used, for or in connection with the takeoff and landing of aircraft of any nature or kind whatsoever.
- (B) Any place, business or establishment of any character for the purpose of leasing, selling or furnishing goods, wares or merchandise or services to the owner of any such place, business or establishment or to another for or in connection with the taking off or landing of aircraft of any nature or kind whatsoever.
- (C) Any school, club, or other place for instructing any person in the use, operation, flight, or maintenance of aircraft of any nature or kind whatsoever at which the instruction or course of instruction includes or involves therein the actual running or operation of the motors or other means of propelling such aircraft or the actual taking off, landing, or maneuvering of such aircraft.

The construction, use, maintenance or operation of any airport or other property for the takeoff and landing of aircraft, the selling, leasing or furnishing of goods, wares or merchandise or services for or in connection therewith, or the maintenance or operation of any school, club or other place for instruction in the operation, maintenance or flight of aircraft, or any combination of the same, contrary to the foregoing provisions of this Section, constitute, and are hereby defined to be, a nuisance.

(Ordinance adopted 3/29/1947)

**§ 13-3-4. Takeoffs and landings.**

It shall be unlawful for any person, firm, association, corporation or entity, incorporated or otherwise, to take off or land any aircraft of any nature or kind whatsoever, or to cause the taking off or landing of any such aircraft, directly or through the agency of another, at any point within the corporate limits of the City or outside of such corporate limits and within 5,000 feet thereof, or within 5,000 feet of any airport district of the City, and not at the place provided for such takeoffs and landings within the boundaries of any such airport district.

The taking off or landing of aircraft of any nature or kind whatsoever contrary to the foregoing provisions of this Section constitutes, and is hereby declared to be, a nuisance.

(Ordinance adopted 3/29/1947)

**§ 13-3-5. Prohibited structures.**

It shall be unlawful for any person, firm, association, corporation or entity, incorporated or otherwise, to construct, erect, or maintain, or to cause to be constructed, erected or maintained, any building, smokestacks, pole, flagpole, wire, fence, sign, derrick, tower or other structure, or to plant, cultivate, maintain or permit, or to cause to be planted, cultivated, maintained or permitted, any trees, vegetation or other growing thing, of such height that the angle made with the horizontal by the shortest line drawn from the highest point of such structure or growing thing to that boundary line of any airport district that is the shortest distance from the base of such structure or growing thing shall exceed eight degrees seven

minutes.

The construction, erection, maintenance, planting, cultivation, or sanctioning of any such structure or growing thing contrary to the foregoing provisions of this Section constitutes and is hereby defined to be a nuisance.

(Ordinance adopted 3/29/1947)

#### **§ 13-3-6. Red lights required.**

It shall be unlawful for any person, firm, association, corporation, or entity, incorporated or otherwise, to construct, erect or maintain or to cause to be constructed, erected or maintained any building, smokestack, pole, flagpole, wire, fence, sign, derrick, tower or other structure in excess of 50 feet in height and within 500 feet of that boundary line of any airport district which is the shortest distance from the base of such structure, unless the height of such structure and the length of such structure along the side thereof nearest to such boundary line is plainly marked and indicated by regularly spaced red lights that are capable of being seen and recognized by operators of aircraft taking off from or landing within the boundaries of such airport district and that are lighted and kept burning at all times between the hours of sunset and sunrise, or during such lesser periods of time between said hours when such airport district is regularly operated or open for taking off and landing of aircraft.

(Ordinance adopted 3/29/1947)

#### **§ 13-3-7. Permit for certain structures.**

Any person, firm, association, corporation, or entity, incorporated or otherwise, who proposes to construct, erect, maintain, plant, cultivate, or permit any structure or growing thing which is subject to the limitations prescribed in Section 13-3-5 or 13-3-6, or both, and who shall show, by application made in writing, to the satisfaction of the Council, after notice of such application has been given and a public hearing thereon has been held, that the location and elevation of the site for, and the proposed height and use of, such proposed structure or growing thing will not interfere with the safe taking off or landing of aircraft within the airport district, either then or thereafter, shall be granted a permit to construct, erect, maintain, plant, cultivate, or permit such proposed structure or growing thing, or any modification thereof, specified by the Council, upon such terms and conditions and subject to such limitations as the Council shall deem to be advisable in providing for the safe taking off and landing of aircraft within the airport district.

(Ordinance adopted 3/29/1947)

#### **§ 13-3-8. Prohibited flight.**

The flight of aircraft over the land, residences, roads, streets, parks, schools and all public places and property within the corporate limits of the City, or outside of such corporate limits and within 5,000 feet thereof, or over any property of the City within or outside the corporate limits thereof, is lawful:

- (A) If the owners of the aircraft hold an effective, valid certificate of airworthiness from the proper agency of the State of Texas, or the proper agency of the government of the United States, whichever shall be applicable, and the aircraft is being navigated by a pilot holding an effective, valid license or certificate of competency issued by the proper agency of the State of Texas or the proper agency of the government of the United States.
- (B) If at a height not less than 500 feet from the surface of the ground, or such other minimum height therefor permitted by laws, rules, regulations, or orders of the State of Texas, or any proper agency thereof, and the applicable rules of the proper agency of the government of the United States.

- (C) Unless so conducted as to involve a substantial risk of harm to individuals or property on the land.
- (D) Unless so conducted as to constitute a substantial interference with the then existing use and enjoyment of the land or structures on the land or space over the land or adversely affect the then existing value of the land and structures thereon.

It shall be unlawful for any person, firm, association, corporation or other entity, incorporated or otherwise, to fly, or to cause the flight of, aircraft of any nature or kind whatsoever contrary to the foregoing provisions of this Section. The flight of aircraft of any nature or kind whatsoever at any height contrary to the foregoing provisions of this Section constitutes, and is hereby declared to be, a nuisance.

(Ordinance adopted 3/29/1947)

#### **§ 13-3-8A. Prohibited flight, ultralight aircraft.**

It shall be unlawful for any person to operate an ultralight aircraft lower than 500 feet above the highest projection within or over any part of the incorporated area of the City, and no person shall operate an ultralight aircraft within or over any part of the incorporated area of the City without being the holder of a pilot's license with a sailplane rating. It shall also be unlawful for any person to operate an ultralight aircraft to, from or over any airport operated or owned by the City or make any takeoff or landing therefrom in such an aircraft.

The term "ultralight aircraft" as used herein shall specifically include motorized hang gliders.  
(Ordinance 6079 adopted 9/28/1982)

#### **§ 13-3-9. Altitude of flying.**

It shall be unlawful for any person, firm, association, corporation or other entity, incorporated or otherwise, to fly or to cause the flight of any aircraft at an altitude of less than 2,000 feet above the surface of the ground at any point within a three-mile radius of the landing area of any airport district of the City unless such flight is for the purpose of taking off from or landing within such airport district and is made, conducted and controlled in accordance with the traffic control pattern or plan prescribed and then in effect for such airport district.

The takeoff or landing of aircraft of any nature or kind whatsoever, or the navigation and maneuvering thereof in connection with taking off or landing, or both, over the land, residences, roads, streets, parks, schools and all public places and property within the corporate limits of the City, or outside of such corporate limits and within 5,000 feet thereof, or over any property of the City, within or without the corporate limits thereof, is lawful:

- (A) If the flight of such aircraft at all times during such takeoff or landing, or during the navigation or maneuvering thereof in connection with such takeoff or landing, or both, is for the purpose of taking off from or landing within any airport district of the City and is made, conducted and controlled in accordance with the traffic control pattern or plan prescribed and then in effect for such airport district.
- (B) If the flight of such aircraft over the aforesaid property and places during or as a part of such takeoff or landing or during or as a part of the navigation or maneuvering thereof in connection with such takeoff or landing, or both, from any place not within an airport district of the City, is at all times and during any portion thereof at a height not less than 500 feet from the surface of the ground.

It shall be unlawful for any person, firm, association, corporation or other entity, incorporated or otherwise, to fly, or to cause the flight of, any aircraft contrary to the foregoing provisions of this Section. The flight of aircraft of any nature or kind whatsoever at any height contrary to the foregoing provisions of this Section in taking off or landing aircraft or operating the same within a three-mile radius of any airport district of the City constitutes, and is hereby declared to be, a nuisance.

(Ordinance adopted 3/29/1947)

**§ 13-3-10. Abatement of nuisances.**

The nuisances declared and defined in this Chapter shall be suppressed, vacated, abated or enjoined as hereinafter provided, or by any method or proceeding authorized by law to suppress, vacate, abate or enjoin such nuisances. Such nuisances shall be so suppressed, vacated, abated or enjoined as a means to reasonably provide for the following: the protection of the public health, safety and general welfare of the people of the City; the prevention of annoyance, inconvenience and obstructions to the safe and comfortable use and enjoyment of property of the City and the people thereof; the protection of the lives, safety, health and property of users of publicly owned airports and the occupants of lands in the vicinity thereof; and the protection of the utility of publicly owned airports and the public investment therein. The enumeration of those nuisances declared and defined in this Chapter is not exclusive and shall not limit or restrict the power and duty of the Council to suppress, vacate, abate or enjoin any other nuisances at common law or under statute in connection with the use, navigation, operation or maintenance of aircraft or facilities therefor. The remedy of suppressing, vacating, abating or enjoining any nuisance herein declared and defined shall be cumulative of any other remedy, penalty, proceeding or relief, civil or criminal, legal or equitable, and shall not be a bar to recovering or obtaining any other relief, penalty, damages or remedy for or in connection with any such nuisance as may otherwise be provided by law or the provisions of this Chapter.

(Ordinance adopted 3/29/1947)

**§ 13-3-11. Notice to abate nuisances.**

Whenever it is brought to the attention of the city manager, the airport manager, the building inspector or any other department of the City that any act, thing or omission, or use of property, declared and defined in this Chapter to constitute a nuisance is, or has been, committed, and the same is in truth and fact contrary to the provisions of this Chapter, either the city manager or the airport manager shall in writing notify the offending party thereof and order such nuisance to be discontinued and abated, such notice and order to be given either by mailing or delivering the same by registered mail to the offending party, or anyone authorized to act for the offending party, or by publishing such notice and order in one issue of a newspaper of general circulation published in the City. Within five days from the giving of any such notice or order, the party or parties affected thereby may apply in writing to the Council for a hearing upon the propriety and reasonableness of such notice or order. Such notice or order and the determination therein that such nuisance was in truth and fact committed shall be final and conclusive in the absence of such application for a hearing thereon. The determination of the Council upon the propriety and reasonableness of any such notice or order, either sustaining or modifying the same, after opportunity to be heard has been given as aforesaid, shall be final and conclusive.

(Ordinance adopted 3/29/1947)

**§ 13-3-12. Power of City to abate nuisances.**

The Council may, upon failure or refusal to comply, within 30 days, with any notice or order to discontinue and abate any nuisance declared and defined in this Chapter, may cause any land, building, structure, or

activity to be vacated, demolished, discontinued, modified and abated, as the facts may warrant, and assess the cost thereof against the owner or occupant thereof and make the same a lien against such property and also a personal charge against the owner or occupant. The Council shall, through its city secretary, give notice of such proposed charge and assessment and, upon the date set in the notice, the owner or occupant shall have an opportunity for a full and fair hearing. The determination, after an opportunity to be heard, of the reasonableness of such proposed charge and assessment shall be final and conclusive and not subject to review unless appealed from to any court of competent jurisdiction within 20 days from the final determination and assessment thereof. The Council shall by ordinance levy said assessment and charge and payment thereof shall be enforced by suit or by sale of the property assessed in the same manner as may be provided by law for the sale of property for ad valorem city taxes. No assessment shall be made until notice of the assessment and hearing thereon has been given by inserting the same in some newspaper of general circulation published in the City for at least three times, the first publication to be made at least ten days before the date of the hearing.

(Ordinance adopted 3/29/1947)

AIRPORT DISTRICTS

**Chapter 13-4**

**HELICOPTERS; HELICOPTER LANDING FACILITIES**

**§ 13-4-1. Land use provisions.**

This Chapter shall be subject to all other provisions of the Midland Municipal Code, except as may be otherwise specifically set out herein.

(Ordinance 5801 adopted 8/11/1981)

**§ 13-4-2. Definitions.**

- (A) *Heliport—unlimited use:* Any land area used by helicopters, and includes the landing pad plus all necessary passenger and cargo facilities, maintenance, overhaul, fueling, service, storage, tiedown areas, hangars and other buildings and open spaces necessary for the operation of a complete facility.
- (B) *Heliport—limited use:* Landing area used for the landing and taking off of helicopters, including all necessary passenger and cargo facilities, and fueling.
- (C) *Helistop—unlimited use:* Any landing area used for the landing and taking off of helicopters for the purpose of picking up or discharging of passengers or cargo. No fueling, refueling or service facilities shall be permitted. This facility may be established on a rooftop.
- (D) *Helistop—limited use:* Any landing area used for the purpose of taking off or landing of private helicopters for the purpose of picking up and discharging of passengers or cargo. This facility shall not be open to use by any helicopter unless prior permission has been obtained from the owner. This facility may be established on a rooftop. No fueling, refueling or service facilities shall be permitted.

(Ordinance 5801 adopted 8/11/1981)

**§ 13-4-3. Area requirements.**

- (A) *Heliport, limited and unlimited use.* The minimum landing area for each of the heliports defined in Section 13-4-2 shall be 200 feet by 200 feet. This shall not include tiedown facilities, taxiways, terminal buildings, parking area, service areas and other necessary facilities.
- (B) *Helistops, limited and unlimited use.* The minimum landing area for each of the helistops defined in Section 13-4-2 shall be 100 feet by 100 feet. If erected on a building, the minimum touchdown area shall be 40 feet by 40 feet or 1.5 times the overall length of the largest helicopter planned to use the facility, whichever is greater.

(Ordinance 5801 adopted 8/11/1981)

**§ 13-4-4. Approach areas.**

- (A) Approach to a heliport or helistop shall be sufficiently clear of obstructions to provide a slope of 1:8 (approximately seven percent measured from the horizontal). Two such approaches shall be available at least 90 degrees removed from each other.
- (B) The descending approach zone shall be subject to the approval of the Federal Aviation Administration (FAA) and the planning and zoning commission of the City.
- (C) Approach zones and landing areas in close proximity to overhead utility transmission lines shall only be approved if it can be demonstrated that such areas are not unreasonably hazardous.

(Ordinance 5801 adopted 8/11/1981)

**§ 13-4-5. Development standards.**

- (A) The heliport and helistop and the operation thereof shall comply with all fire safety standards relating to heliports and helistops set out and defined in the National Fire Protection Association Booklet No. 403 (Aircraft Rescue and Fire Fighting Services at Airports and Heliports), published by the National Fire Protection Association, including all subsequent amendments, and as set out and defined in NFPA Booklet Edition 418, "Standard on Rooftop Heliport Construction and Protection," including all subsequent amendments thereto.
- (B) The use, operation and construction of a heliport or helistop shall comply with the "Heliport Design Guide" No. AC 150/5390-1B, published by the Federal Aviation Administration, dated August 22, 1977, including all subsequent amendments thereto, and with the requirements of FAR Part 77, Section 77.29, "Airport Imaginary Surfaces for Heliports" contained in the Federal Aviation Regulations revised May 16, 1971, including all subsequent amendments thereto.
- (C) Landing areas shall, as far as practicable, be aligned with regard to prevailing winds and/or air turbulence.
- (D) The area used for landing shall be surfaced with material that will be free of dust, loose organic or inorganic materials, and particles of concrete which may be blown about by the down-blast of air of the rotor or rotors.
- (E) Touchdown areas shall be surrounded by a fence or wall at least four feet high and constructed in such a manner as to deflect the horizontal wind velocities caused by the rotation of the rotor blades.
- (F) In addition, the following safety precautions shall be taken:
  1. Rooftop facilities.
    - (a) On all touchdown or landing areas, whether elevated or flush with the roof, provision shall be made for collecting volatile substances which may be spilled in event of any emergency. Separator or clarifier tanks for collecting spilled volatile substances shall be installed under approval and supervision of the Midland fire department.
    - (b) The rooftop shall have at least two conforming exits and they shall be located in such a manner as to permit safe exit from the roof area in the event one of the exits is blocked.
    - (c) A wind-indicating device shall be installed. A flag, banner or similar device shall be acceptable.
    - (d) Two or more wet standpipes shall be provided and equipped with 1½-inch rubber-lined fire hoses not over 100 feet in length. Hoses shall be equipped with combination fog nozzles. Sufficient pressure shall be available to afford a good fog pattern. Hose cabinets or racks shall be located near the separate exits. Standpipe outlets shall be so located that all portions of the roof area shall be within 120 feet of the outlet.
    - (e) Two fire extinguishers of at least 16 BC rating shall be provided, and be located remotely from each other.
    - (f) No rooftop obstructions which may be difficult to see from the air shall be permitted within the required glide slope.
    - (g) Such lights as are installed to illuminate the touchdown pad shall be directed onto the touchdown pad only, and in such a manner that the light rays cannot interfere with the helicopter pilot's vision or with other aircraft flying within the area of the landing facility.

- (h) No person shall be permitted in the general landing area in any location where any portion of his body will be higher than the touchdown area surface while landing or takeoff operations are underway.
  - (i) An approved means of communication such as a telephone, radio, fire alarm box or signaling device shall be provided adjacent to the landing area.
  - (j) If the roof has no parapet wall, a substantial fence shall be provided around the perimeter of the roof to insure the safety of all persons.
  - (k) Rooftop facilities shall be built in accordance with the city building code as applicable for structural and fire protective requirements.
2. Ground level helistops and heliports for helicopters.
- (a) All installed lights shall illuminate and be directed onto the touchdown pad only, and in such a manner that the light rays cannot interfere with the pilot's vision.
  - (b) A wind-indicating device shall be installed. A flag, banner or similar device shall be acceptable.
  - (c) Unauthorized persons shall not be permitted in the general landing area during flight operations.
  - (d) Two fire extinguishers of at least 16 BC rating shall be provided and be located remotely from each other.
  - (e) Where buildings or structures in proximity to the landing area present a fire exposure hazard, there shall be provided at least two 1½-inch wet standpipe outlets equipped with 1½-inch fire hoses, not over 100 feet in length, and a combination fog nozzle.
  - (f) An approved means of communication such as a telephone, radio, fire box or signaling device shall be provided adjacent to the landing area.
- (G) A detailed site plan shall be submitted showing all safety precautions, parking area layout, landscaping along the street frontages, type and size of aircraft proposed for use and approach and departure lanes.
- (H) Markings. All markings shall conform to those recommended in said FAA AC 150/5390-1B.
- (I) Touchdown area. The touchdown area (as opposed to the landing area) for helicopters under 3,500 pounds shall have a minimum dimension of 20 feet by 20 feet. Touchdown areas for helicopters over 3,500 pounds shall be a minimum of 1½ times the diameter of the rotor blades or 40 feet by 40 feet, whichever is greater.

(Ordinance 5801 adopted 8/11/1981)

#### **§ 13-4-6. Zoning restrictions.**

All heliports and helistops shall be permitted only at those locations for which a specific use permit has been granted by the City Council pursuant to Section 11-1-10 of the City Code. Unfavorable consideration may be given to proposed helistops which require approach lanes over residential areas or which create excessive noise in residential areas because of low approach or departure paths. If it is deemed necessary that a helistop be located in such a way so that approaches over a residential area are unavoidable, the Council may set limits on time and/or frequency of use. Such a condition may be expected to occur at

hospital sites, post offices or fire stations. Any such specific use permit may prescribe limitations regarding hours of use, types of helicraft and intensity of use in addition to the other possible conditions enumerated in said Section 11-1-10 of this Code. The planning and zoning commission shall obtain and consider the recommendation of the airport planning and development board and the director of aviation on each application prior to making its recommendation to the City Council.

(Ordinance 5801 adopted 8/11/1981)

#### **§ 13-4-7. Occasional use facilities.**

Special landing permits at sites other than established heliports or helistops may be granted in the case of a special necessity or event. Such permit shall be obtained through the city manager and shall fulfill the minimum requirements of the limited use helistop. Such sites shall be inspected by the fire department prior to use. These permits shall be allowed at ground elevation only.

(Ordinance 5801 adopted 8/11/1981)

#### **§ 13-4-8. Licenses required.**

- (A) Federal Aviation Administration (FAA). It shall be unlawful for the owner or person in control of any property within the Midland city limits to install, maintain or operate thereon a heliport or helistop as defined herein without first having filed the proper documents with the FAA and having received FAA airspace review and approval (FAA Form 7480-1).
- (B) It shall be unlawful for the owner or person in control of any property within the Midland city limits to install, maintain, or operate thereon a heliport or helistop as defined herein without first having obtained from the City a specific use permit from the City Council for the operation of the facility.
- (C) It shall be unlawful for any person other than one licensed as a commercial helicopter pilot with a minimum of 1,200 hours of helicopter flying time to take off or land a helicopter from any location within the City other than at Midland Regional Airport or Midland Airpark. It shall be unlawful to conduct any helicopter student/pilot training to or from any location within the City other than at Midland Regional Airport or Midland Airpark.

(Ordinance 5801 adopted 8/11/1981)

#### **§ 13-4-9. Insurance.**

Any person holding a specific use permit for a helicopter facility shall, as a condition for such permit remaining in effect, carry or cause to be carried in full force and effect at all times insurance insuring against all liabilities, judgments, costs, damages and expenses which may accrue against or be charged to or recovered from such permit holder by reason of or on account of damage to the property of, injury to, or

death of any person arising from the use and occupancy of and operations at the helicopter landing or operations site by the said permit holder or others. This insurance shall be carried with a bona fide insurer authorized to do business in the State of Texas. The policy or policies shall be presented to the city attorney for review and shall be kept up to date and on file for the duration of the specific use permit. Insurance shall be in the following kinds and minimum amounts:

Comprehensive public liability insurance:

\$1,000,000.00 per person.

\$3,000,000.00 per accident.

Comprehensive property damage insurance:

\$500,000.00 per accident.

(Ordinance 5801 adopted 8/11/1981)

**§ 13-4-10. Clearance by director of aviation.**

In addition to any other conditions or requirements that may be included therein, each specific use permit for a heliport or helistop shall contain the condition that notwithstanding the issuance of a building permit or otherwise no construction of such facilities shall be commenced until all plans for construction and operation and all required licenses have been submitted to and reviewed by the city's director of aviation and a certificate of clearance issued by him on a form to be prepared and provided by him.

(Ordinance 5801 adopted 8/11/1981)

**§ 13-4-11. Periodic review by City Council.**

All specific use permits issued by the City Council for helicopter landing facilities under the terms of this Chapter are subject to modification or cancellation by the City Council in the event that flight safety or the public safety and welfare are caused to be endangered. Such specific use permits shall be cancelled or modified only after the holder of such permit is given a hearing before the City Council and the Council has found that flight safety or the public safety and welfare are endangered.

(Ordinance 6067 adopted 9/14/1982)



**PROHIBITED AND REGULATED PARKING ZONES**

**Chapter 13-5**

**PROHIBITED AND REGULATED PARKING ZONES**

**§ 13-5-1. Definitions.**

As used in this Chapter, the following words and phrases have the following meanings, unless context clearly demonstrates otherwise:

City: The City of Midland, located in Midland County, Texas.

Director of airports: The administrative head of the department for airports of the City.

Midland International Airport: The land, buildings, roads, streets, hangars and all property of the City within the area constituting the Number One Airport District of the City, located on U.S. Highway 80, approximately nine miles southwest of the City.

Motor vehicle: Every vehicle which is self-propelled but not operated upon rails.

Park or parking: The standing of a motor vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

Vehicle: Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.  
(Ordinance 6846 adopted 5/10/1988; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

**§ 13-5-2. Prohibited and regulated parking zones.**

The following prohibited and regulated areas and zones at the Midland International Airport are located and identified on Exhibit A, attached hereto and made a part hereof for all legal purposes.

(A) Airline passenger terminal building roadways. For that portion of La Force Boulevard which is located immediately in front of (on the western side of) the terminal building, and the roadways located immediately on the northern and southern side of the terminal building, the following special restrictions shall apply:

1. An area of 550 feet in length extending from north to south on the east side of the roadway and indicated in blue shading on the attached Exhibit A, is hereby reserved for airline passenger loading and unloading only, and it shall be unlawful for any vehicle to be left parked or remain in said area unattended.
2. An area of 350 feet in length extending from north to south on the west side of the roadway on the northern side of the terminal building, and indicated in yellow shading on the attached Exhibit A, is hereby reserved for the temporary parking of commercial passenger limousines, buses, taxicabs, or courtesy shuttles only which bear a current Midland International Airport transportation permit decal, which has been issued by the department of airports and is permanently affixed to the vehicle. No person shall park, stand or stop any other vehicle in said area, nor shall any person park, stand or stop an authorized vehicle in said area for any purpose or length of time other than for the expeditious unloading and delivery or loading and pickup of airline passengers, but in no event for a period exceeding 30 minutes. Authorized vehicles bearing said permit decals shall also bear logos, signs, or other clearly visible permanent markings to indicate the name of the commercial enterprise operating the vehicle.
3. An area of 300 feet in length from north to south on the east side of the roadway on the northern side of the terminal building, and indicated in green shading on the attached Exhibit A, is hereby reserved for the temporary parking of commercial vehicles used in connection with the pickup and delivery of air cargo, freight, or mail, and for the temporary parking of commercial vehicles used in connection with the performance of service or maintenance work in the airline passenger

terminal building, or the delivery of supplies or materials to terminal building tenants. Authorized vehicles shall bear signs, logos or other clearly visible markings to indicate the name of the commercial enterprise operating the vehicle. It shall be unlawful for any person to park, stand or stop any other vehicle in said area, nor shall any person park, stand or stop an authorized vehicle in the area for any purpose or length of time other than for the expeditious unloading and delivery or loading and pickup of supplies or materials to terminal building tenants. No person shall park a vehicle in the zone herein established for longer than 30 minutes. However, if the driver of an authorized vehicle registers the parking of that vehicle on a specific occasion with the department of airports, then the department of airports may authorize the parking of that vehicle in that zone for a specific longer period of time, not to exceed ten hours.

4. An area of 200 feet in length from north to south on the roadway on the southern side of the terminal building, and indicated in pink shading on the attached Exhibit A, is hereby reserved for the parking of department of airports and airport emergency vehicles. It shall be unlawful for any person to park, stand or stop a motor vehicle in said area unless: (1) the vehicle bears a City of Midland department of airports logo on the vehicle or (2) the vehicle is operated by the Midland police department, or the vehicle is operated by the Midland fire department, and is assigned for authorized duty at the airport.
5. Parking is hereby prohibited at any time on the remainder of the airline passenger terminal building roadway (La Force Boulevard), and it shall be unlawful for any person to park, stand or stop any motor vehicle in said "no parking area" at any time.

(B) No parking zones.

1. It shall be unlawful for any person to park, stand or stop a motor vehicle at any time in or along any of the roadways, streets, avenues, boulevards, or unpaved areas immediately bordering on or adjacent to said areas as heretofore set out and shown on the attached Exhibit A, or in any other area of the airport not specifically designated and marked as a vehicle parking area.
2. It shall be unlawful for any person to park, stand or stop a motor vehicle at any time on or immediately adjacent to the following roadways, streets, avenues or boulevards as indicated below:
  - (a) La Force Boulevard.
  - (b) Sloan Field Boulevard.
  - (c) Windecker Street.
  - (d) Wright Drive.
  - (e) Pilot Avenue.
  - (f) Lindbergh Drive.
  - (g) Banks Drive.
  - (h) Earhart Drive.
  - (i) Airways Drive.
  - (j) Continental Drive.

- (k) Pliska Drive.
- (l) North Service Road.
- (m) South Service Road.
- (n) Enterprise Drive.

(Ordinance 6846 adopted 5/10/1988; Ordinance 6926 adopted 4/11/1989; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

### **§ 13-5-3. Specific instructions.**

Any unattended vehicle that is parked, standing or stopped anywhere on Midland International Airport premises (1) in a "no parking zone," or (2) not positioned wholly within the parking space lines provided, indicated and painted on the parking lot surface, or (3) in an area not specifically designated for parking, may be cited, removed and stored at the expense and liability of the owner or operator of said vehicle  
(Ordinance 6846 adopted 5/10/1988; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

### **§ 13-5-4. Special parking areas.**

The following special parking areas at the Midland International Airport are located and indicated by corresponding number on Exhibit A, attached hereto and made a part hereof for all legal purposes:

- (A) Parking Area No. 1—Employee parking. It shall be unlawful for any person to park, stand or stop a motor vehicle in Parking Area No. 1 unless: (1) the vehicle bears a current Midland International Airport employee parking decal issued by the department of airports and permanently affixed to the vehicle, and (2) the person operating the vehicle is an authorized holder of a identification badge issued by the department of airports.
- (B) Parking Area No. 2—Air cargo customer parking. It shall be unlawful for any person to park, stand or stop a motor vehicle in Parking Area No. 2 unless the vehicle is operated by a visitor or customer of air cargo building tenants. Employees of said building shall park only in authorized employee parking lots.
- (C) Parking Area No. 3—Rental car parking. It shall be unlawful for any person to park, stand or stop a motor vehicle in Parking Area No. 3 unless the vehicle is owned, operated, leased or controlled by a car rental agency which has a current car rental lease and concession agreement with the City of Midland department of airports, and bears a visible indicia of agency ownership.

(Ordinance 6846 adopted 5/10/1988; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

### **§ 13-5-5. Public parking charges.**

It shall be unlawful for any person, firm or corporation to park, stand or stop a motor vehicle, or cause same to be done, in the public parking areas, as designated and shown on Exhibit A, attached hereto and made a part hereof for all legal purposes, unless the following rates or fares are paid for such privilege upon presentation of a parking ticket to the cashier or automated pay station upon exit. These rates shall include the collection of applicable state, city and county sales and use taxes:

- (A) Covered parking area rates.

0—1 hour	\$3.00
1—2 hours	4.75
2—3 hours	6.75
3—4 hours	8.75
4—5 hours	10.50
5—24 hours	12.00
Rates repeat each 24 hours up to 145 hours.	
145—168 hours	80.00
Rates repeat each 168 hours.	

(B) Close-in parking area rates.

0—1 hour	1.25
1—2 hours	2.75
2—3 hours	4.00
3—4 hours	5.25
4—5 hours	6.75
5—24 hours	8.00
Rates repeat each 24 hours up to 145 hours.	
145—168 hours	50.00
Rates repeat each 168 hours.	

(C) Economy parking area rates.

0—1 hour	1.50
1—2 hours	2.50
2—3 hours	3.50
3—4 hours	4.50
4—5 hours	5.50
5—24 hours	6.00
Rates repeat each 24 hours up to 145 hours.	
145—168 hours	35.00
Rates repeat each 168 hours.	

(D) Remote covered parking rates.

(Long-Term)	
0—1 hour	2.00
1—2 hours	4.00
2—3 hours	5.00
3—4 hours	7.00
4—5 hours	8.00
5—24 hours	9.00
Rates repeat each 24 hours up to 145 hours.	
145—168 hours	55.00
Rates repeat each 168 hours.	

(1) Special assessments.

1. Should any person upon driving a vehicle from the paid parking areas of the airport not be able to present an officially issued ticket indicating where that person's vehicle was parked and at what time, then the charge assessed for the parking of that vehicle shall be at least \$12.00. In addition to that fee, there shall also be a fee assessed for the parking of that vehicle equal to the amount of the daily rate, times number of days, for the area in which that vehicle was parked as is indicated by the daily lot inventory taken by the airport administration.
2. Whenever a person or an entity shall pay for the parking fees assessed by this Section with a check or draft, and that check or draft is dishonored, then there shall be an additional \$25.00 assessed against that person or entity.

(Ordinance 6846 adopted 5/10/1988; Ordinance 6982 adopted 1/9/1990; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007; Ordinance 9281, sec. 1,(Exh. A) adopted 6/17/2014)

**§ 13-5-6. Ground transportation permits.**

It shall be unlawful for any person to operate a ground transportation service at the Midland International Airport without a valid airport ground transportation permit issued by the department of airports. A ground transportation service is defined as operating a vehicle or vehicles to carry, deliver, pickup or drop-off any passengers, customers, baggage, cargo, freight or mail for hire or other consideration, including, but not limited to taxicabs, buses and limousines, and including courtesy transportation of persons, customers and baggage between the airport and off-airport hotels, motels, car rental agencies and parking lots. "Airport associated revenues" as set forth in this Section shall mean inflows of cash, receivables, or other tangible or intangible personal property, or any combination thereof to the permittee from rendering services or conducting other activities that constitute the permittee's ongoing major or central operations which are facilitated by access to or use of the parking areas described in Subsection 13-5-2(A)2 of this Code. Each applicant for an airport ground transportation permit shall register with the department of airports, pay the appropriate fees, and shall comply with all rules and regulations set forth by the department of airports. The fee structure for each type of ground transportation service is:

- (A) Taxicabs: \$25.00 per vehicle per month for use of the parking area as described in Subsections 13-5-2(A)2 of this Title and Chapter, and Section 5-6-56 of this Code.

- (B) Limousines will not be responsible for payment of a per month per vehicle fee for the use of the parking area described in Subsection 13-5-2(A)2 of this Code. "Limousine" is defined for the purpose of this Section as any motor vehicle, with a driver, that is not equipped with a meter or device calculating the distance traveled or waiting time and that is engaged in the business of carrying passengers who control what the route will be and destination and who are charged based on the length of time the motor vehicle is engaged or by fixed rate schedule. The term "limousine" shall not include vehicles rented without drivers, taxicabs, touring vehicles, publicly franchised buses or vehicles owned or operated by motels, hotels, and other businesses for the transporting of their guests or employees free of charge.
- (C) Buses: \$25.00 per month per vehicle for use of the parking area described in Subsection 13-5-2(A)2. of this Code.
- (D) Courtesy vehicles for off-airport hotel/motel customers: \$25.00 per month per vehicle for use of the parking area described in Subsection 13-5-2(A)2. of this Code.
- (E) Courtesy vehicles for off-airport car rental customers: \$25.00 per month per vehicle and ten percent of airport associated revenues.
- (F) Courtesy vehicles for off-airport parking lot customers: \$25.00 per month per vehicle and ten percent of airport associated revenues.

(Ordinance 6846 adopted 5/10/1988; Ordinance 7221 adopted 1/26/1993; Ordinance 7778, sec. 1, adopted 10/13/1998; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

#### **§ 13-5-7. Employee parking charges.**

Employee parking privileges shall be limited to those individuals having an employer/employee relationship with a company possessing lease or concession agreements or other contracts with the department of airports, or a department of airports approved subtenant of the company, who receive salary or wages for work regularly performed at Midland International Airport on behalf of this employer or company.

- (A) Permanent employees of those companies referred to above may be issued a Midland International Airport employee parking decal. Temporary employees of those companies may be issued a temporary employee parking permit. Issuance of decals and permits shall be conditioned upon application and proof of employment, and payment of the applicable fees to the department of airports.
- (B) Employee parking decals expire on January 31 of each year, and fees are payable before issuance. The full annual fee is \$24.00. The cost for decals purchased during the year shall be prorated at the declining rate of \$2.00 per month based upon the number of months remaining in the year. A second decal may be purchased for \$5.00 if the second vehicle is also registered in the employee's name.
- (C) A replacement decal for a vehicle which is sold or damaged may be obtained at no cost, but shall be issued only after a portion of the old decal containing some part of the number or other proof satisfactory to the department of airports is presented by the employee requesting the replacement decal.
- (D) No refunds of payments for decals may be issued.

(Ordinance 6846 adopted 5/10/1988; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

#### **§ 13-5-8. Authority of airport administration.**

- (A) Exemptions. Notwithstanding any provisions in this Chapter to the contrary, vehicles which are operated by or under the control of the department of airports, the Midland police department, or the Midland fire department may park in any area while in performance of official functions.
- (B) If any provision in this Chapter shall require a vehicle to be identified with a business or media name, insignia, marking, or other identification in order to be allowed to park in any given area of the Midland International Airport, no name, marking, insignia, or other identification shall be sufficient unless it is recorded with and approved by the director of airports. The director of airports shall approve and list any such name, insignia, marking, or other identification of any legitimate business or media enterprise that shall comply with the duly ordained regulations of Midland International Airport and the approval of which shall not prejudice or otherwise impair the privileges of the City of Midland or any other legitimate business or media enterprise parking vehicles at Midland International Airport.

(Ordinance 6846 adopted 5/10/1988; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

#### **§ 13-5-9. Signs and markings.**

The city traffic engineer is hereby authorized and directed to install and erect, or have installed and erected by the director of airports or other person he may designate, proper signs and markings in the areas affected hereby indicating the intent and directions of this ordinance, and it shall hereafter be unlawful for any person to stop, stand, park or so operate a motor vehicle in the areas covered by this ordinance in violation or disregard of said signs and markings.

(Ordinance 6846 adopted 5/10/1988; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

#### **§ 13-5-10. Presumption in reference to illegal parking.**

In any prosecution charging a violation of any regulation in this Chapter governing the standing or parking of a motor vehicle, proof that the particular vehicle described in the notice of compliant was parked in violation of any such regulation, together with proof that the defendant named in the complaint was at the time of such parking a registered owner of said vehicles, shall constitute a rebuttable presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where and for the time during which such violation occurred.

(Ordinance 6846 adopted 5/10/1988; Ordinance 8540, sec. 1,(Exh. A) adopted 7/10/2007)

**Title XIV: Franchises**

**Chapter 14-1**

**TELECOMMUNICATION FRANCHISE**

## **DIVISION 1 IN GENERAL**

### **§ 14-1-1. Purpose.**

The purpose and intent of this Chapter is to:

- (A) Establish clear local guidelines, standards and timeframes for the exercise of local authority with respect to the use of city property and public rights-of-way to provide telecommunication services within the City.
  - (B) Permit and manage reasonable access to the property and public rights-of-way of the City for telecommunication purposes on a nondiscriminatory and competitively neutral basis.
  - (C) Conserve the limited physical capacity of the public rights-of-way held in public trust by the City.
  - (D) Assure that the city's current and ongoing costs of granting and regulating private access to and use of city property and public rights-of-way are fully paid by the persons seeking such access and charging such costs on a nondiscriminatory and competitively neutral basis.
  - (E) Secure fair and reasonable compensation on a nondiscriminatory and competitively neutral basis to the City and the residents of the City for permitting private use of city property and public rights-of-way.
  - (F) Assure that all telecommunication carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City.
  - (G) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare.
  - (H) Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.
- (Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-2. Definitions.**

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (A) *Access lines* means the transmission facilities located between the end use customer's premises network interface within the City and the serving facilities (including but not limited to central office facilities, distribution frame facilities, or other similar facilities) which provide access to the local and toll switched network. The term "access lines" does not include a private line termination point.
- (B) *Affiliate* means a person who offers a telecommunications service and falls into one or more of the following categories: (i) each person having, directly or indirectly, a controlling interest in a provider, (ii) each person in which a provider has, directly or indirectly, a controlling interest, (iii) each officer, director, general partner, limited partner or shareholder holding an interest of 15 percent or more, joint venturer or joint venture partner, of a provider, and (iv) each person directly or indirectly controlling, controlled by, or under common control with the provider, provided that "affiliate" shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not

otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with such provider.

- (C) *Cable Act* shall mean the Cable Communications Policy Act of 1984, 47 USC § 532 et seq., as now and hereafter amended.
- (D) *Cable operator* means a telecommunications carrier providing or offering to provide cable service within the City as that term is defined in the Cable Act.
- (E) *Cable service* for the purpose of this Chapter shall have the same meaning provided by the Cable Act.
- (F) *City* means the City of Midland, Texas.
- (G) *City property* means all real property owned by the City, other than public rights-of-way as that term is defined herein, and all other property held in a proprietary capacity by the City, that are not subject to public right-of-way licensing and franchising as provided in this Title.
- (H) *Excess capacity* means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public rights-of-way that is or will be available for use for additional telecommunication facilities.
- (I) *FCC* or *Federal Communications Commission* means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.
- (J) *Governing body* means the Mayor and City Council of the City.
- (K) *Grantee* means the person to whom or for which a telecommunication franchise is granted under this Chapter, and the lawful successor, transferee, or assignee of said person.
- (L) *Law* means any and all applicable laws, including but not limited to the Communications Act of 1943, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104 § 100 Stat. 70, codified at 47 USC, and subsequent amendments, and all orders, rules, tariffs, guidelines, and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto, as well as all applicable state and city law. The term "law" encompasses statutory law, administrative regulations, and case law.
- (M) *Municipal telecommunication line fee* means a fee set by the City compensating the City for the use and occupancy of the public rights-of-way.
- (N) *Overhead facilities* means utility poles, utility facilities and telecommunication facilities located above the surface of the ground, including the underground supports and foundations for such facilities.
- (O) *Person* means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, joint ventures, limited liability companies and individuals, and includes their lessors, trustees and receivers.
- (P) *Private line service* means a non-switched telephone circuit dedicated for use between specific locations identified by an end-user customer.
- (Q) *Private line termination point* means the channel termination point or points of a private line service within the City.

- (R) *Public street* means any highway, street, bridge, tunnel, alley, parkway or walkway for vehicular or pedestrian travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to purposes not inconsistent with telecommunication facilities.
- (S) *Public rights-of-way* means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest (fee title, easement or otherwise) or exercises any rights of management or control.
- (T) *PUC or Public Utility Commission of Texas* means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunication carriers, services and providers in the State of Texas.
- (U) *State* means the State of Texas.
- (V) *Surplus space* means that portion of the usable space on a utility pole which has the necessary clearance from other pole users to allow its use by a telecommunications carrier for a pole attachment.
- (W) *Telecommunication carrier* means and includes every person that owns, controls, operates or manages a plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service.
- (X) *Telecommunication facilities* means the plant, equipment and property, including but not limited to cables, wires, conduits, ducts, pedestals, poles, antennas, electronics and other appurtenances, used or to be used to transmit, receive, distribute, provide or offer telecommunications service.
- (Y) *Telecommunication provider* means and includes every person who provides telecommunications service over telecommunication facilities without any ownership or management control of the facilities.
- (Z) *Telecommunication service* means the providing or offering for rent, sale or lease, or in exchange for the value received, of the transmittal of, or of telecommunication facilities for the transmittal of, voice, data, images, graphics and other communications between or among points by wire, fiber optics or similar facilities, but does not include the provision to the public of any "wireless service," as defined by law.
- (AA) *Underground facilities* means utility facilities and telecommunication facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.
- (BB) *Usable space* means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum necessary vertical clearance.
- (CC) *Utility easement* means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunication facilities.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-3. Registration.**

Except as otherwise provided herein, all telecommunication carriers and providers engaged in the business of transmitting, supplying or furnishing of telecommunications services originating and/or terminating in the City, and any person with a private line service over or across any city property or public rights-of-way, with the exception of those that already hold a current city telecommunications franchise or have a pending application for same on file with the City, shall register with the City pursuant to Division 2 of

this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-4. Telecommunication franchise.**

Any telecommunication carrier who desires to construct, install, operate, maintain or otherwise locate telecommunication facilities in, under, over or across any city property or public rights-of-way for the purpose of providing telecommunication services within the City shall first obtain a franchise authorizing and regulating the use of such city property and public rights-of-way pursuant to Division 3 of this Chapter. (Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-5. Cable franchise.**

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or locate telecommunication facilities on city property or any public right-of-way for the purpose of providing cable service, as defined in the Cable Act, to persons in the City shall first obtain a cable service franchise from the City as provided in the city's current cable franchise ordinances in effect at the time the cable service franchise is sought.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-6. Application to existing franchise ordinances and agreements.**

This Chapter shall have no effect on any existing franchise ordinance or franchise agreement until:

(A) The expiration of said franchise ordinance or agreement.

(B) An amendment is added to an unexpired franchise ordinance or franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-7. Penalties.**

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter after receiving written notice of same from the city manager or his or her designated representative shall be fined not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues. (Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-8. No waiver for nonenforcement.**

A grantee shall not be excused from complying with any of the terms and conditions of this Chapter or the grantee's franchise agreement by any failure or omission of the City upon one or more occasions to insist upon, enforce, or otherwise seek compliance with any such terms and conditions.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-9. Other remedies.**

Nothing in this Chapter shall be construed as limiting any remedies that the City or a grantee may have, under the law, for enforcement of this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-10. Severability.**

If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any person, is for any reason declared invalid, in whole or in part, by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**DIVISION 2**  
**REGISTRATION OF TELECOMMUNICATION CARRIERS AND PROVIDERS**

**§ 14-1-11. Registration required.**

All telecommunication carriers and providers that offer or provide any telecommunication service for a fee directly to the public, either within the City, or outside the corporate limits from telecommunication facilities within the City, and any person with a "private line service" on public rights-of-way or city property, with the exception of those telecommunication carriers that already hold a current telecommunications franchise or have a pending application for same on file with the City, shall register with the City pursuant to this Chapter within 30 days following the date of final adoption of this Chapter, and shall thereafter register annually on or before January 30 of each calendar year on forms to be provided by the city secretary. The annual registration shall include the following:

- (A) The identity and legal status of the registrant, including any affiliates.
- (B) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- (C) A general description of registrant existing on proposed telecommunication facilities within the City.
- (D) A description of the telecommunication services that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.
- (E) Information sufficient to determine whether the registrant is subject to the franchise or license requirements of this Chapter.
- (F) Information sufficient to determine that the registrant has applied for and received any certificates of convenience and necessity, certificate of operating authority, construction permit, operating license or other approvals required by the Public Utility Commission of Texas and/or the Federal Communications Commission to provide telecommunication services or telecommunication facilities within the City.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-12. Registration fee.**

Each application for registration as a telecommunications carrier or provider or person with a private line service on public rights-of-way on city property shall be accompanied by a fee of \$25.00.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-13. Purpose of registration.**

The purpose of registration under this Chapter is to:

- (A) Provide the City with accurate and current information concerning the telecommunication carriers and providers who offer or provide telecommunication services within the City, or that own or operate telecommunication facilities within the City;
- (B) Assist the City in enforcement of this Chapter;
- (C) Assist the City in the collection and enforcement, on a nondiscriminatory and competitively neutral basis, of any franchise fees, license fees or other charges that may be due the City; and

(D) Assist the City in monitoring compliance with applicable laws.  
(Ordinance 7647, sec. 1, adopted 9/9/1997)

**DIVISION 3**  
**TELECOMMUNICATION FRANCHISE**

**§ 14-1-14. Telecommunication franchise.**

A telecommunication franchise shall be required of any telecommunication carrier who desires to occupy city property or public rights-of-way for the purpose of providing telecommunication services to any person or area in the City.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-15. Franchise application.**

Any person that desires a telecommunication franchise shall file four copies of an application with the city secretary, which shall include the following information:

- (A) The identity of the franchise applicant, including all affiliates of the applicant.
- (B) A description of the telecommunication services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities.
- (C) A description of the telecommunication facilities that are or will be used by the franchise applicant to offer or provide such telecommunication services; and, in addition, maps, and if available digital maps, showing the location of such facilities.
- (D) Preliminary engineering plans and specifications of any new facilities to be located within the City, if known at the time of application, in sufficient detail to identify:
  - (1) The location and route of the applicant's proposed telecommunication facilities.
  - (2) The location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities on city property or within the public rights-of-way along the proposed route.
  - (3) The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- (E) If the applicant is proposing to install new overhead facilities, satisfactory evidence that the telecommunication facilities cannot reasonably be installed in new or existing ducts or conduits, and that surplus space is not available for locating its telecommunications facilities on existing utility poles along the proposed route. This showing may be satisfied by submission of a sworn affidavit setting forth, in detail, the relevant facts supporting the applicant's contentions.
- (F) If the applicant is proposing to install new underground facilities in existing ducts or conduits under city property or within the public rights-of-way, information in sufficient detail to identify:
  - (1) The excess capacity currently available in such ducts or conduits before installation of the applicant's facilities.
  - (2) The excess capacity, if any, that will exist in such ducts or conduits after installation of the applicant's facilities.
- (G) If the applicant is proposing to install new underground facilities within new ducts or conduits to be constructed under city property or within the public rights-of-way:

- (1) The location proposed for the new ducts or conduits.
  - (2) The excess capacity that will exist in such ducts or conduits after installation of the applicant's facilities.
- (H) A preliminary construction schedule and completion date.
- (I) Audited financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to comply with all requirements and obligations imposed upon the grantee under this Chapter.
- (J) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunication services.
- (K) Whether the applicant intends to provide cable service, video dial tone service or other video programming service, and sufficient information to determine whether such service is subject to cable service franchising.
- (L) A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.
- (M) All fees, deposits or charges required to accompany the franchise application pursuant to Division 4 of this Chapter.
- (N) Such other and further information as may reasonably be requested by the city manager.
- (O) A description of the applicant's access and line extension policies.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-16. Determination by the City.**

Within 90 days after receiving a complete application, the governing body shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. The following standards will be used in determining whether to grant or deny an application:

- (A) The financial ability of the applicant.
- (B) The legal ability of the applicant, and to ensure that the applicant has the proper authority from the state.
- (C) The capacity of the public rights-of-way or city property to accommodate the applicant's proposed facilities.
- (D) The damage or disruption, if any, of public or private uses, facilities, improvements, service, travel or landscaping if the franchise is granted.
- (E) The public interest in minimizing the cost and disruption of construction within the public rights-of-way or on city property.
- (F) The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- (G) The availability of reasonable alternate routes and/or locations for the proposed facilities.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-17. Form and content of franchise award.**

All telecommunication franchise awards shall take the form of a municipal ordinance duly passed by the governing body and accepted by the grantee. Each telecommunication franchise ordinance shall incorporate all applicable provisions of this Chapter and shall follow a standardized format insofar as practical. Any special terms or conditions included within a grantee's franchise award shall be nondiscriminatory and competitively neutral.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-18. Nonexclusive franchise.**

No franchise granted under this article shall confer any exclusive right, privilege, license or franchise to occupy or use city property or public rights-of-way for delivery of telecommunication services or for any other purpose.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-19. Term of franchise.**

A telecommunication franchise granted hereunder shall be valid for a term of three years, subject to renewal pursuant to Section 19-79 of this Division.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-20. Rights granted.**

No franchise granted under this Chapter shall convey any right, title or interest in city property or public rights-of-way, but shall be deemed a franchise only to use and occupy city property and public rights-of-way to the limited extent and for the limited purposes and term stated in the franchise agreement. Further, no franchise shall be construed as any warranty of title. The act of approval consenting to, amending, denying or terminating a franchise is a legislative function within the sound discretion of the City Council.

Any person denied, or whose franchise is terminated, must petition the City Council for reconsideration before seeking judicial remedies. In case of conflict or interference between the facilities of other public utilities, the public utility whose facilities were first permitted shall have priority over a competing use of the public rights-of-way. Review and approval by the City does not constitute a guarantee of sufficiency of the design of the telecommunication facilities. The applicant retains full responsibility for the adequacy of the design of the telecommunication facilities.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-21. Compensation to City.**

Each franchise granted under this Division is subject to the city's right to fair and reasonable compensation, as specified in Division 4 herein, on a nondiscriminatory and competitively neutral basis, for the franchisee's use and occupancy of city property and public rights-of-way.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-22. Renewal applications.**

A grantee that desires to renew its franchise under this Chapter shall, not more than 240 days nor less than 150 days before expiration of the then current franchise, file an application with the City for renewal of its franchise, which shall include the following:

(A) The information required pursuant to Section 14-1-15.

(B) The application fee specified in Section 14-1-26.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-23. Renewal determinations.**

Within 150 days after receiving a complete application under Section 14-1-22 of this Chapter, the governing body shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards:

- (A) The financial ability of the applicant.
- (B) The legal ability of the applicant.
- (C) The continuing capacity of city property and public rights-of-way to accommodate the applicant's existing facilities.
- (D) The applicant's compliance with the requirements of this Chapter and the franchise agreement.
- (E) Applicable law and city requirements.

If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

If the renewal application is granted, the franchise terms and conditions must conform as necessary to comply fully with all requirements and conditions contained in this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-24. Obligation to cure as a condition of renewal.**

No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise agreement, or of the requirements of this Chapter, have been cured in accordance with Section 14-1-56 of this Chapter, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

## **DIVISION 4 FEES AND COMPENSATION**

### **§ 14-1-25. Purpose.**

It is the purpose of this Division to provide for reasonable and adequate compensation to the City for the use and occupancy of city property and public rights-of-way for the provisioning of telecommunication services, and to further provide for the payment and recovery of all direct and indirect costs and expenses of the City related to the enforcement and administration of this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-26. Application and review fee.**

- (A) Any applicant for a franchise pursuant to Section 14-1-15 of this Chapter shall pay a nonrefundable application and review fee of \$500.00.
- (B) Any applicant for a franchise renewal pursuant to Section 14-1-22 of this Chapter shall pay a nonrefundable application and review fee of \$500.00.
- (C) The application and review fee shall be deposited with the City as part of the application for a franchise or franchise renewal filed pursuant to Section 14-1-15 or Section 14-1-22 of this Chapter.
- (D) Should the ascertainable costs and expenses incurred by the City in connection with the city's review of an application for a franchise or franchise renewal exceed the amount of the application and review fee, the applicant shall reimburse the City for such excess costs and expenses within 60 days after written demand therefor.
- (E) The payment of an application fee does not guarantee the grant of a franchise or in any way obligate the City.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-27. Other city costs.**

All grantees shall, within 30 days after written demand therefor, reimburse the City for all ascertainable costs and expenses incurred by the City in connection with any modification, amendment or transfer of the franchise or franchise agreement. Upon request, the City shall provide the grantee a written itemization of the cost and expenses in question.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-28. Compensation for use of public rights-of-way.**

- (A) To compensate the City for the use and occupancy of the public rights-of-way, each grantee shall pay the City during the life of the grantee's franchise a monthly municipal telecommunications line fee for each access line and private line termination point owned by the grantee, calculated at month-end, that is activated for use by an end use customer. For calendar year 1997, the monthly municipal telecommunication line fee shall be fixed in the following amounts:
  - (1) One dollar and thirty-five cents per residential access line.
  - (2) Three dollars and forty-two cents per nonresidential access line or private line termination point.
- (B) At the beginning of each successive calendar year following the year of adoption of this Chapter, the

monthly municipal telecommunications line fee shall increase by four percent over the amount of the monthly municipal telecommunications line fee fixed for the prior calendar year.

(C) Administrative charge.

Any person who serves no customers within the City, other than itself, shall pay an annual administrative public rights-of-way use charge of:

- (i) Two dollars per linear foot for each diameter inch or less of underground conduit or wire and for each 0.250 diameter inch or less of aerial wire that is in the public rights-of-way per annum; and
- (ii) One thousand dollars for the first street crossing and \$250.00 for every street crossing thereafter.
- (iii) The fee shall also be increased pursuant to Section 14-1-28(b).

(D) Late fees. In the event a quarterly payment is made after 11:59 p.m. on the due date, the person shall pay a late payment fee of the greater of (i) \$100.00, or (ii) simple interest at ten percent annual percentage rate of the total amount past due.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-29. Responsibility for payment of fees by grantee.**

Each grantee shall be responsible for payment to the City of the municipal telecommunications line fee on each activated access line and private line termination point owned by the grantee regardless of whether the grantee is the entity providing telecommunication services to the end user over those facilities. Where a telecommunication provider is providing telecommunication services to an end user utilizing access lines owned by the grantee, it shall be the grantee's responsibility to properly track and account for the residential or nonresidential character of those access lines.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-30. Payment.**

Grantees shall remit the compensation required under Section 14-1-28 of this Division on a quarterly basis. Each quarterly payment shall be due on the 45th day following the close of each calendar quarter for which the payment is calculated.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-31. Compensation for city property.**

The compensation to be paid the City for the use and occupancy of city property for the installation of telecommunication facilities, as well as the method and manner of payment thereof, shall be determined by the City on a case-by-case, site-specific and nondiscriminatory and competitively neutral basis. Such compensation shall be separate than, and in addition to, the compensation to be paid for use of the public rights-of-way, if any, under Section 14-1-28.

The license fee for use of a city tower or building or city structure to place transmitting equipment, antenna or dishes shall be at a minimum \$200.00 per month, with increases pursuant to Section 14-1-28(c).

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-32. Right to audit.**

Grantees shall keep complete and accurate books of accounts and records of their business and operations

which pertain to any telecommunication services made the subject of any telecommunication franchise granted hereunder in accordance with generally accepted accounting principles. If required by the FCC, grantees shall use the system of accounts and forms of accounts, records and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting compensation due the City under Division 4 of this Chapter. In order to document the aggregate municipal telecommunication line fee revenues due the City each quarter from grantees, each grantee shall file with the city manager, at the time each quarterly payment is made, a sworn report, to be prescribed by and acceptable to the City, in sufficient detail to itemize, by month, the number and proper classification of the grantee's active access lines and private line termination points within the City. The City may, if it sees fit, have the books and records of grantees examined by a city representative to ascertain the correctness of the reports agreed to be filed herein; provided, however, that any city audit shall be limited to verification of such reports for a period not to exceed two years prior to the date of commencement of the audit. The city's right to examine the grantee's books and records expressly excludes the right to examine any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 USC § 2701 et seq.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-33. Additional conditions.**

The following additional conditions shall apply:

- (A) Default. Notwithstanding any other provision in this Chapter, in the event that full and proper payments due the City under this Chapter have not been made by a person within 20 days after the due date, an event of default shall have occurred, in which case the City may terminate the franchise or license agreement.
- (B) No release. No acceptance of any payment shall be construed as a release of, or an accord or satisfaction of, any claim that the City might have for further or additional sums payable under the terms of this Chapter, or for any other performance or obligations.
- (C) Permit and inspection charges. All permit and inspection charges related to a person's construction in the public rights-of-way shall be paid by the person as they are usually and customarily assessed by the City.
- (D) Other city fees, taxes and charges. Payments of compensation made by a person to the City pursuant to this Chapter shall be considered in addition to, and exclusive of, any and all authorized taxes, business license fees, other fees, other levies or assessments presently in effect, or subsequently adopted, to the extent provided under applicable law.
- (E) Nonmonetary consideration. To the fullest extent allowed by law, the City may require nonmonetary consideration from each grantee. To the extent not expressly provided by applicable law, a grantee may agree to furnish to the City nonmonetary consideration in the form of excess capacity, conduit or other infrastructure. This nonmonetary consideration may be negotiated with each grantee, taking into account the unique characteristics of each, shall be competitively neutral, and shall not discriminate in favor of or against any grantee with respect to total compensation. Such nonmonetary compensation shall be credited as an offset against any monetary consideration that may be mutually agreed to by the City and the grantee.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

## **DIVISION 5 CONDITIONS OF GRANT**

### **§ 14-1-34. Location of facilities.**

All facilities shall be constructed, installed and located in accordance with the following terms and conditions:

- (A) A grantee shall install its telecommunication facilities within an existing underground duct or conduit whenever excess capacity exists within such underground facility, absent the submission by the grantee or an affected telecommunications carrier or provider of satisfactory evidence to the city manager or his or her designee that this requirement is not reasonable or feasible in any specific instance.
- (B) A grantee with permission to install overhead facilities shall install its facilities on pole attachments to existing utility poles only, provided surplus space is available. If the installation of a new pole or poles is necessary, the number, location and installation of same shall be as designed by the City.
- (C) Whenever any existing electric utilities, cable facilities or telecommunication facilities are located underground within public rights-of-way of the City, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground, absent a compelling demonstration by the grantee or an affected telecommunications carrier that this requirement is not reasonable or feasible in any specific instance. This paragraph only applies to telecommunication facilities constructed or extended after the effective date of this Chapter.
- (D) Whenever any new or existing electric utilities, cable facilities or telecommunication facilities are located or relocated underground within public rights-of-way, the City may request, but not require, that a grantee, then currently occupying the same public rights-of-way, relocate its telecommunications facilities underground within a reasonable period of time. When such a request is made, the City and the grantee shall meet to discuss whether the request is technically and economically reasonable and feasible and, if so, under what circumstances the grantee might be willing to relocate its telecommunication facilities.
- (E) In determining whether any requirement under this Section is unreasonable or infeasible, the city manager or his or her designee shall consider, among other things, whether the requirement would subject the grantee or other affected telecommunication carrier or provider to an unreasonably increased risk of service interruption, or to an unreasonably increased liability for accidents, or to an unreasonably delay in construction or in the unavailability of its services, or to any other unreasonable technical or economic burden.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-35. Construction permits.**

All grantees performing major construction work are required to obtain construction permits to the extent and in the manner required in Division 6 of this Chapter. If not performing major construction work, the grantee must comply with the City Code when performing construction work in a public right-of-way.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-36. Interference with the public rights-of-way.**

No grantee may locate or maintain its telecommunication facilities so as to unreasonably interfere with

the use of city property or public rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon city property or public rights-of-way. In the event of unreasonable interference, such facilities shall be moved by the grantee, temporarily or permanently, as determined by the city manager or his or her designee, upon reasonable notice. If the temporary removal of a grantee's aerial facilities is necessary to permit the moving of houses or other bulky structures, the grantee shall be required to temporarily remove the same upon not less than 48 hours' advance notice by a party permitted to move a building, house or other bulky structure pursuant to city ordinances. The expenses of such temporary relocation or removal of aerial facilities shall be paid by the party or parties requesting and benefiting from such temporary relocation or removal.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-37. Damage to property.**

No grantee nor any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any city property, public rights-of-way, or other property located in, on or adjacent thereto.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-38. Notice of work.**

Unless otherwise provided in this Chapter, no grantee nor any person acting on the grantee's behalf shall commence any nonemergency work in or about city property or public rights-of-way without the provision of advance notice to the City.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-39. Repair and emergency work.**

In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee shall notify the City as promptly as possible before such repair or emergency work, or as soon thereafter as possible if advance notice is not practicable.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-40. Maintenance of facilities.**

Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable law.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-41. Relocation or removal of facilities.**

- (A) Within 120 days following written notice from the City, a grantee shall, without claim for reimbursement or damages against the City, temporarily or permanently remove, relocate, change or alter the position of any telecommunication facilities on city property or within the public rights-of-way whenever the governing body shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
- (1) The construction, repair, maintenance or installation of any city or other public improvement; or
  - (2) The operations of the City or other governmental entity.

- (B) In any instance in which operation of subsection (A) is deemed by a grantee to impose a financial hardship on the grantee, the grantee shall have the right to present alternative proposals to the City, and the City shall give due consideration to any such alternative proposals.
- (C) If the City requires a grantee to adopt or conform its telecommunication facilities to enable any other entity or person, except the City, to use, or to use with greater convenience, public rights-of-way or city property, the grantee shall not be required to make any such changes until such other entity or person shall reimburse or make arrangements satisfactory to the grantee to reimburse the grantee for any loss and expense caused by or arising out of such change; provided, however, that the City shall never be liable for such reimbursement.
- (D) If after proper notice the grantee fails or refuses to remove or abate the facilities in question, the City retains the right and privilege to remove or abate any such telecommunication facilities, at the sole cost and expense of the grantee. In performing or permitting such work to be done, the City shall not be liable to any telecommunication carrier or any telecommunication provider for any damages to any telecommunication facilities unless directly and proximately caused by willful or malicious act by the City, and shall not be liable in any event for any consequential damages relating to service interruptions.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-42. Removal of unauthorized facilities.**

Within 30 days following written notice from the City, any grantee, telecommunication carrier, or other person that owns, controls or maintains any unauthorized telecommunication facilities or related appurtenances on city property or within the public rights-of-way shall, at its own expense, remove such facilities or appurtenances from city property or public rights-of-way. All telecommunication facilities are unauthorized and subject to removal in the following circumstances:

- (A) Upon expiration or termination of the grantee's telecommunication franchise;
- (B) Upon abandonment of a facility on city property or within the public rights-of-way of the City;
- (C) If the facility was constructed or installed without the prior grant of a telecommunication franchise; or
- (D) If the facility was constructed or installed without the prior assurance of a required construction permit.

If after proper notice the owner fails or refuses to remove or abate the facilities in question, the City retains the right and privilege to remove or abate any such telecommunication facilities, at the sole cost and expense of the owner. In performing or permitting such work to be done, the City shall not be liable to any telecommunication carrier or any telecommunication provider for any damages to any telecommunication facilities unless directly and proximately caused by willful, intentional or malicious act by the City, and shall not be liable in any event for any consequential damages relating to service interruptions.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-43. Emergency removal or relocation of facilities.**

The City retains the right and privilege to cut or move any telecommunication facilities located on City

property or within the public rights-of-way, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall cooperate to the extent possible with the grantee in such instances to assure continuity of service, and to afford the grantee the opportunity to make such relocation and/or removal itself where deemed reasonable, at the city's sole discretion.  
(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-44. Damage to grantee's facilities.**

Unless directly and proximately caused by willful or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunication facility on City property or within the public rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on City property or in the public rights-of-way by or on behalf of the City, and shall not be liable in any event for any consequential damages relating to service interruptions.  
(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-45. Restoration of public rights-of-way and city property.**

- (A) When a grantee, or any person acting on the grantee's behalf, does any work in or affecting any public rights-of-way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such public rights-of-way or city property to as good a condition as existed before the work was undertaken.
  - (B) If weather or other conditions do not permit the complete restoration required by this Section, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
  - (C) A grantee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.
- (Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-46. Facility maps.**

- (A) Upon written request of the City, and within a reasonable time after completing any new construction of or expansion of existing telecommunication facilities, but in no case more than 60 days after such completion, a grantee shall provide the City with an accurate as-built map or maps, which shall be digital if possible, certifying the location of all such new or expanded telecommunication facilities.
  - (B) Each grantee shall maintain maps of all of the grantee's telecommunication facilities located on City property or within the public rights-of-way. Such maps shall be made available for review by other grantees, upon reasonable request, to the extent such review may be necessary to determine whether the sharing of conduit in a given location is feasible. Within five business days of a request from the City, the grantee shall provide the City with a copy of any portion of those maps showing the location of the grantee's facilities within the public rights-of-way or on city property in any specific geographic area designated by the City. Such map or maps shall be provided at no cost to the City. The grantee shall also promptly locate any buried or underground utilities at the city's request at no cost to the City.
- (Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-47. Duty to provide information.**

Within 20 days of a written request from the city manager or his or her representative, each grantee shall furnish the City with information sufficient to demonstrate:

- (A) That grantee has complied with all requirements of this Chapter.
- (B) That all franchise fees due the City under this Chapter as of the date of the request have been properly calculated and paid by the grantee.
- (C) All books, records, maps and other documents maintained by the grantee with respect to its facilities on city property or within the public rights-of-way shall be made available for inspection by the City at reasonable times and intervals. The city's right to examine the grantee's books and records expressly excludes the right to examine any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 USC § 2701 et seq.

Each grantee shall furnish the city attorney with notice of all petitions, applications, and reports submitted by the grantee to the Federal Communications Commission and the Public Utility Commission of Texas relating to any matters affecting both the use of public rights-of-way and telecommunication services within the City. Upon written request, the grantee shall furnish the city attorney with copies of all such documents.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-48. Grantee insurance.**

- (A) Except as provided in subparagraph (C) below, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as additional insureds:
  - (1) General liability insurance with limits not less than:
    - (a) Five million dollars for bodily injury or death to each person;
    - (b) Five million dollars for property damage resulting from any one accident; and
    - (c) Five million dollars for all other types of liability.
  - (2) Automobile liability for owned, nonowned and hired vehicles with a limit of \$3,000,000.00 for each person and \$3,000,000.00 for each accident.
  - (3) Workers' compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.
  - (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.00.
- (B) The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the telecommunications franchise, and any such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunication facilities. Each such insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew

be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Attorney of such intent to cancel or not to renew."

Within 60 days after receipt by the City of said notice, and in no event later than 30 days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

- (C) With respect to the obligation to comply with the requirements for automobile liability insurance and for workers' compensation insurance, a carrier may self-insure, provided the carrier tenders satisfactory evidence of self-insurance as contemplated by the Texas Motor Vehicle Safety Responsibility Act, V.T.C.A., Transportation Code § 601.124, and the Texas Workers' Compensation Act, V.T.C.A., Labor Code § 407.001 et seq. With respect to the obligation to provide other forms of insurance, a grantee may self-insure, provided that the grantee is given prior approval by the City. To be given prior approval for self-insurance, the grantee must show to the city's satisfaction that the grantee is in sound financial condition, and that the grantee maintains a dedicated reserve in an amount sufficient to ensure that the grantee's outstanding potential claims do not at any time exceed 50 percent of the value of the reserve.
- (D) Grantees shall obtain and maintain in full force and effect, throughout the term of a franchise granted under this Chapter, insurance with an insurance company licensed to do business in the State of Texas and acceptable to the City as determined by its representative. All companies will be required to be rated "A-VI" or better by A.M. Best or "A" or better by Standard and Poors. Grantees shall furnish the City with proof of such insurance so required at the time of filing the acceptance of a franchise. The City reserves the right to review these insurance requirements during the effective period of any franchise, and to reasonably adjust insurance coverage and their limits when deemed necessary and prudent by the city's risk manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the grantee. The City shall not increase by more than ten percent per year the amount of insurance coverage to be carried by the grantee, unless required by law or court decisions.
- (E) The city attorney shall be entitled, upon request and without expense, to receive copies of certificates of insurance evidencing coverage stated above. The City also may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either the City or a grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the city manager, the grantee shall exercise reasonable efforts to accomplish the changes and shall pay the cost thereof.
- (F) Grantees shall agree that, with respect to the above-required insurance, all insurance certificates will contain the following required provisions:
  - (1) Name the City and its officers, employees, board members and elected representatives as additional insureds (as the interests of each insured may appear) as to all applicable coverage;
  - (2) Provide for 30 days' notice to the City for cancellation, nonrenewal, or material change;
  - (3) Provide for notice to both the city manager and the city secretary by certified mail; and
  - (4) Provide that all provisions of the franchise, as amended, concerning liability, duty, and standard of care, including the indemnity election, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to the policy terms and

conditions.

- (G) The insurance certificates obtained by grantees in compliance with this Section shall be subject to a approval by the city attorney, and such proof of insurance shall be filed and maintained with the city attorney during the term of the franchise, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantees shall immediately advise the city attorney of any actual or potential litigation that might reasonably compromise or otherwise jeopardize the insurance coverage required by this Section, including, but not limited to, any levels of coverage.
- (H) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect the grantee and the City and shall be primary coverage for all losses covered by the policies.
- (I) The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy.
- (J) Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments, which all are set at the sole risk of the grantee. Insurance policies obtained by the grantee shall provide that the issuing company waives all rights of recovery by way of subrogation or assignment against the City in connection with any damage covered by these policies.
- (K) Whether or not the grantee purchases insurance or arranges for self-insurance, the grantee and its insurer waive all rights of subrogation against the City. If insurance is purchased, the City shall be furnished with a certificate which reflects this waiver of subrogation.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-49. General indemnification.**

Each franchise agreement shall include, to the extent permitted by law, the grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunication facilities, and in providing or offering telecommunication services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a franchise agreement made or entered into pursuant to this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-50. Performance and construction surety.**

Before a franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to City as may be required by this Chapter or by an applicable franchise agreement.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-51. Security fund.**

Each grantee shall establish a permanent security fund with the City by depositing the amount of \$25,000.00 with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of the grantee so long as any of the grantee's

telecommunication facilities are located on city property or within the public rights-of-way of the City.

- (A) The fund shall serve as security for the full and complete performance of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City.
  - (B) Before any sums are withdrawn from the security fund, the City shall give written notice to the grantee:
    - (1) Describing the act, default or failure to be remedied, for the damages, cost or expenses which the City has incurred by reason of the grantee's act of default.
    - (2) Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable.
    - (3) Providing a reasonable opportunity for the grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable.
    - (4) That the grantee will be given an opportunity to review the act, default or failure described in the notice with the city manager or his or her designee.
  - (C) Grantees shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.
- (Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-52. Construction and completion bond.**

For any construction project exceeding an estimated cost of \$50,000.00, a performance installation bond written by a corporate surety acceptable to the City equal to at least 100 percent of the estimated cost of construction of the grantee's telecommunication facilities (excluding cost of plant) on city property and within the public rights-of-way of the City shall be deposited before construction is commenced.

- (A) The construction bond shall remain in force until 60 days after substantial completion of the work, as determined by the city manager or his or her designee, including restoration of public rights-of-way and other property affected by the construction.
- (B) The construction bond shall guarantee, to the satisfaction of the City:
  - (1) Timely completion of construction.
  - (2) Construction in compliance with applicable plans, permits, technical codes and standards.
  - (3) Proper location of the facilities as specified by the City.
  - (4) Restoration of the public rights-of-way and other property affected by the construction.
  - (5) The submission of "as-built" drawings after completion of the work as required by this Chapter.
  - (6) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.
- (C) In the event that performance by a grantee of any of its obligations under the terms of the grantee's construction permit, construction bond and/or the construction requirements imposed by this Chapter shall be interrupted or delayed by an act of God, by acts of war, riot, or civil commotion, by an act of state, by strikes, fire, or flood, or by the occurrence of any other similar event, the grantee shall be

excused from such performance for such period of time as is reasonably necessary after such occurrence abates or the effects thereof have dissipated.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-53. Coordination of construction activities.**

All grantees are required to cooperate with the City and with each other.

- (A) By February 1 of each year, grantees shall provide the city manager or his or her designee with a schedule of their then known proposed construction activities in or around or that may affect city property or public rights-of-way.
- (B) Each grantee shall meet with the city manager or his or her designee, other grantees, and users of city property and public rights-of-way as determined by the city manager or his or her designee, but in no case less than once a calendar year or more frequently than once a month, to schedule and coordinate construction on city property and in public rights-of-way.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-54. Assignments or transfers of franchise.**

A franchise may not be transferred, assigned or disposed of by sale or lease without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance, and then only on such reasonable conditions as may be prescribed therein. Transactions between affiliated entities are not exempt from city approval.

- (A) The grantee and the proposed assignee or transferee of the franchise shall provide and certify the following information to the City not less than 150 days prior to the proposed date of transfer:
  - (1) Complete information setting out the nature, terms and location of the proposed transfer or assignment.
  - (2) All information required of a telecommunication franchise applicant pursuant to Division 3 of this Chapter with respect to the proposed transferee or assignee.
  - (3) Any other information reasonably required by the City.
  - (4) No transfer shall be approved unless the assignee or transferee has the legal, financial and other requisite qualifications to own, hold and operate the telecommunication facilities covered by the franchise pursuant to this Chapter.
  - (5) The grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications franchise.
  - (6) Any transfer or assignment of the franchise, or any part thereof, without prior approval of the City under this Section or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.
  - (7) Provided the rights of the City are not changed, modified or rescinded, the grantee may merge or consolidate without the consent of the City.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-55. Revocation or termination of franchise.**

A franchise granted by the City to use or occupy city property or public rights-of-way may be revoked for the following reasons:

- (A) Construction on city property or in the public rights-of-way at an unauthorized location.
- (B) Unauthorized sale, assignment or transfer of the grantee's franchise, or a substantial interest therein.
- (C) Misrepresentation of a material fact by a grantee or any of the grantee's officers, employees or agents in any application to the City.
- (D) Unauthorized abandonment of telecommunication facilities on city property or in the public rights-of-way.
- (E) Failure to relocate or remove facilities or the failure to reimburse the City for the involuntary relocation or removal of facilities as required in this Chapter.
- (F) Failure to pay compensation, fees or costs when and as due the City.
- (G) Insolvency or bankruptcy of the grantee.
- (H) Violation of material provision of this Chapter.
- (I) Violation of the material terms of a franchise agreement.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-56. Notice and opportunity to cure.**

In the event that the city manager believes that grounds exist for revocation of a franchise, he or she shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time not exceeding 30 days to furnish evidence:

- (A) That corrective action has been taken, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- (B) That rebuts the alleged violation or noncompliance.
- (C) That it would be in the public interest to impose some penalty or sanction less than revocation.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-57. Hearing.**

In the event that a grantee fails to provide evidence reasonably satisfactory to the city manager as provided in Section 14-1-56 of this Chapter, the manager shall refer the apparent violation or noncompliance to the governing body. The governing body shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-58. Standards for revocation or lesser sanctions.**

If persuaded that the grantee has violated or failed to comply with material provisions of this Chapter or of a franchise agreement, the governing body shall determine whether to revoke the franchise, or to establish

some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (A) Whether the misconduct was egregious.
- (B) Whether substantial harm resulted.
- (C) Whether the violation was intentional.
- (D) Whether the grantee has a history of prior violations of the same or other requirements.
- (E) The grantee's history of overall compliance.
- (F) Whether the grantee voluntarily disclosed, admitted, or cured the violation.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

## **DIVISION 6 CONSTRUCTION STANDARDS**

### **§ 14-1-59. General.**

No person shall commence or continue with major construction work as defined herein of telecommunications facilities on city property or within the public rights-of-way except as provided in this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-60. Construction codes.**

Telecommunication facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the National Electrical Safety Code.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-61. Construction permits.**

- (A) No person shall perform major construction work within the public rights-of-way or on city property without first obtaining a construction permit therefor, provided, however, no construction work whatsoever may be undertaken nor shall a permit be issued for the construction or installation of facilities on city property or in the public rights-of-way to provide telecommunications service within the City unless the telecommunications carrier has applied for and received a franchise pursuant to Division 3 of this Chapter.
- (B) As used in this Division, "major construction work" means any construction, installation, maintenance, repair, or other work activities on city property or within the public rights-of-way, the total estimated construction cost of which (excluding cost of plant) exceeds \$50,000.00 in damage to city surface facilities. All provisions contained in this Chapter relate to major construction work. With regard to construction work that is not major, the grantee shall comply with the City Code.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-62. Applications.**

- (A) Applications for permits to construct telecommunication facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
  - (1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
  - (2) The location and route of all aboveground facilities to be installed, including separate identification of any new poles.
  - (3) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights-of-way along the underground route proposed by the applicant.
- (B) The city manager or his designee may, in his or her discretion, require additional information to determine whether:

- (1) The construction methods to be employed will adequately protect existing structures, fixtures, and facilities within or adjacent to the public rights-of-way.
- (2) A landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction which is necessary.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-63. Engineer's certification.**

All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-64. Traffic control plan.**

All construction permit applications which involve work on, in, under, across, or along any public rights-of-way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Uniform Manual of Traffic Control devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-65. Issuance of permit.**

Within ten working days after submission of all plans and documents required of the applicant under this Chapter, the city manager or his or her designee, if satisfied that the applications, plans and documents comply with all requirements of this Chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he or she may deem necessary or appropriate. In the event that a grantee has a specific service request from a customer and upon written application to the city manager or his or her designee, the city manager or his or her designee may expedite the issuance of the permit or may issue a conditional permit, allowing the grantee to commence work on a day requested prior to the expiration of ten working days after submission of the application. The application for an expedited permit or for a conditional permit shall include all information normally required by this Chapter for a permit, and shall be supplemented by any additional information requested by the city manager or his or her designee which would reasonably be calculated to support the granting of an expedited permit or conditional permit. The city manager's approval, or that of his or her designee, will not be unreasonably withheld.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-66. Construction schedule.**

The permittee shall submit a written construction schedule to the city manager or his or her designee five working days before commencing any major work in or about the public rights-of-way exceeding surface damages of \$50,000.00. The permittee shall further notify the city manager or his or her designee not less than two working days in advance of any excavation or work in the public rights-of-way.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-67. Compliance with permit.**

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city manager and his or her representatives shall be provided

access to the work and such further information as he or she may require to ensure compliance with such requirements.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-68. Display of permit.**

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the city manager or his or her representatives at all times when construction work is occurring.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-69. Survey of underground facilities.**

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the city manager or his or her designee may require the permittee to provide written verification, if reasonably necessary, of the location of such facilities by a registered surveyor. If requested by the city manager or his or her designee, the permittee shall relocate any facilities which are not located in compliance with permit requirements.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-70. Noncomplying work.**

Upon order of the city manager or his or her designee, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed. The City has 180 days to notify the franchisee after completion of the work.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-71. Completion of construction.**

The permittee shall promptly complete all construction activities so as to minimize disruption of the public rights-of-way and other public and private property. All construction work authorized by a permit within public rights-of-way, including restoration, must be completed within 120 days of the date of issuance, or by such other date as may be agreed upon by the city manager or his or her designee.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-72. As-built drawings.**

Upon request of the City, within 60 days after completion of construction, the permittee shall furnish the City with a complete set of plans, certifying to the City that they accurately depict the location of all telecommunication facilities constructed pursuant to the permit.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-73. Restoration of improvements.**

Upon completion of any construction work, the permittee shall promptly repair or restore any and all public rights-of-way, including any and all public and private fixtures, structures and facilities therein, to as good a condition as before the start of construction.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

#### **§ 14-1-74. Landscape restoration.**

- (A) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of telecommunications facilities shall be replaced or restored as nearly as may be practical, to at least as good condition than prior to performance of work.
  - (B) All restoration work within the public rights-of-way shall be done in accordance with landscape plans approved by the city manager or his or her designee.
- (Ordinance 7647, sec. 1, adopted 9/9/1997)

**§ 14-1-75. Construction surety.**

Prior to issuance of a construction permit, the permittee shall provide a performance bond, as provided in Division 5, Section 14-1-52 of this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

## **DIVISION 7 PRIVATE SERVICE USE**

### **§ 14-1-76. License for private line service use only.**

A person who has a private service line on city property or public rights-of-way, but who is not in the business of offering telecommunication service to others or is a wireless service utilizing city property or public rights-of-way, and therefore is not required to obtain a franchise, shall register, pay the applicable fees and obtain a license, signed by the city manager, setting forth terms and conditions that impose reasonable requirements, including the term, provisions for payment of fees, requirement for co-location of facilities, required specifications for facilities, protection of city right-of-way and city property, applicable construction requirements, requirements grading broadcasting frequency, insurance, indemnity, restrictions on assignment, transfer and termination and other necessary provisions to protect the public health and safety of the City and its citizens. The provision of city property and public right-of-way is subject to the needs of the City, and availability of space. Application for a license, and renewal determinations, shall be the same as provided for a franchise pursuant to Sections 14-1-15, 14-1-16, and 14-1-22, unless superseded by zoning ordinance requirements. No license granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the terms and conditions under which the license shall be granted.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-77. Compensation to City.**

Each license granted under this Chapter is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the licensee, provided nothing in this Chapter shall prohibit the City and a licensee from agreeing to the compensation to be paid.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

## **DIVISION 8** **SPECIAL REQUIREMENTS**

### **§ 14-1-78. Responsibility of owner.**

The owner of the facilities to be constructed and, if different, the grantee, are responsible for performance of and compliance with all provisions of this Chapter.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-79. Preemption.**

No provision of this Chapter or of a franchise or license agreement shall be deemed void or unenforceable as a result of state or federal preemption unless and until so determined by a final, nonappealable order of a state or federal agency or court.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-80. Laws and venue.**

This Chapter shall be governed by the laws of the State of Texas. Exclusive venue shall be in Midland County, Texas, if any lawsuit is filed in state court. If a lawsuit is filed in federal court, exclusive venue shall be in the Western District of Texas, Midland-Odessa Division. Notwithstanding the foregoing, should a lawsuit be filed in state court and should the lawsuit be removed to federal court on any grounds, exclusive venue shall be in the Western District of Texas, Midland-Odessa Division.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-81. Attorney fees.**

Any franchise or license granted pursuant to this Chapter shall include a provision that, in the event of any conflict between the City and the franchisee or licensee, such that any party brings or commences any legal action or proceeding related to the franchise or license, including but not limited to any action pursuant to the provisions of the Uniform Declaratory Judgments Act (V.T.C.A., Civil Practice and Remedies Code § 37.001 et seq.), that the parties agree to waive any and all rights to recovery of attorney's fees to which the prevailing party might otherwise be entitled.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-82. Itemized fees.**

In the event that the franchise fee is itemized separately on the customer's telephone charge statement, it may be referred to as a municipal franchise fee but not as a municipal or city tax. However, it may be included as a part of "Total State and Local Taxes."

(Ordinance 7647, sec. 1, adopted 9/9/1997)

### **§ 14-1-83. City's police powers.**

No statement in this Chapter shall in any way be construed to waive or limit the city's police powers. The City reserves all of its power under the law of the State of Texas and the United States.

(Ordinance 7647, sec. 1, adopted 9/9/1997)

## **Appendix**

CODE COMPARATIVE TABLE ORDINANCES

**Appendix A**

**CODE COMPARATIVE TABLE ORDINANCES**

**§ A.001. Code comparative table.**

This table gives the location within this Code of those ordinances adopted since the 1960 Code which are included herein. Ordinances adopted prior to such date were incorporated into the 1960 Code. Ordinances adopted since 1960, and not listed herein, have been omitted as repealed, superseded or not of a general and permanent nature.

Ordinance Number	Date	Section	Section this Code
	2/16/1928(Ord.)		§6-1-12
	11/19/1929(Ord.)		§§9-2-1—9-2-7
	10/14/1930(Ord.)		§6-1-10
	11/10/1930(Ord.)		§9-4-7
	3/23/1934(Ord.)		§§5-1-1—5-1-12
	11/10/1938(Ord.)		§9-4-4
	6/10/1940(Ord.)		§6-1-3
	11/27/1945(Ord.)		§6-1-10
	6/1/1946(Ord.)		§§10-16-1—10-16-14
			§§10-17-8—10-17-10
	1/15/1947(Ord.)		§§1-5-1—1-5-6
	3/27/1947(Ord.)		§§13-1-1—13-1-14
	3/29/1947(Ord.)		§§13-3-1—13-3-12
	4/2/1947(Ord.)		§§13-2-7, 13-2-8
			§13-2-14
			§13-2-18
	10/14/1947(Ord.)		§13-2-19
	3/23/1948(Ord.)		§§9-3-1—9-3-4
			§13-2-7
	5/21/1948(Ord.)		§6-1-6
	2/14/1950(Ord.)		§6-1-12
	1/3/1952(Ord.)		§§6-3-1—6-3-10
	7/8/1952(Ord.)		§10-8-12
	3/24/1953(Ord.)		§6-1-9
	6/23/1953(Ord.)		§§10-1-1, 10-1-2
			§10-1-9
			§10-1-11
			§§10-2-1—10-2-10

<b>Ordinance Number</b>	<b>Date</b>	<b>Section</b>	<b>Section this Code</b>
			§§10-3-1—10-3-4
			§§10-3-6, 10-3-7
			§§10-4-1—10-4-10
			§§10-5-1—10-5-3
			§§10-6-1—10-6-5
			§§10-7-1, 10-7-2
			§§10-8-1—10-8-11
			§§10-9-1—10-9-13
			§§10-10-1—10-10-8
			§10-11-1
			§§10-11-12—10-11-21
			§§10-11-23—10-11-25
			§§10-12-1—10-12-4
			§§10-13-1—10-13-12
			§10-15-3
			§§10-17-1—10-17-7
			§10-17-11
	8/25/1953(Ord.)		§6-1-1
	6/22/1954(Ord.)		§9-1-9
			§9-4-9
	10/28/1954(Ord.)		§10-11-22
	2/17/1955(Ord.)		§9-5-11
	8/4/1955(Ord.)		§5-3-13
			§9-1-12
			§9-5-17
3083	6/25/1957		§7-3-2
			§7-3-4
3152	12/11/1957		§§1-6-1—1-6-11
3272	6/21/1958		§§2-2-1—2-2-5
3288	7/2/1958		§7-3-5
3383	10/14/1958		§6-1-13
3390	11/12/1958		§10-1-12
3705	5/24/1960		§6-1-4

<b>Ordinance Number</b>	<b>Date</b>	<b>Section</b>	<b>Section this Code</b>
3709	6/28/1960		§§4-5-1—4-5-8
3746	11/22/1960		§13-3-1
3803	6/13/1961		§§4-6-1—4-6-5
3822	8/22/1961		§6-1-14
3848	11/14/1961		§10-1-1
3902	5/8/1962		§§3-2-1—3-2-6
3925	7/10/1962		§10-16-3
3951	10/23/1962		§6-1-15
3975	1/8/1963		§11-1-9
			§11-1-11
			§11-1-19
4015	5/28/1963		§11-1-1
			§11-1-4
4043	10/8/1963		§10-6-6
4045	10/8/1963		§9-5-5
			§9-5-8
			§9-5-14
4044	10/22/1963		§10-8-9
4065	1/28/1964		§3-2-5
4096	6/9/1964		§9-1-8
4190	10/26/1965		§§6-5-1—6-5-12
4203	12/14/1965		§1-2-4
4216	2/8/1966		§§1-4-1, 1-4-2
4256	6/28/1966		§§3-1-1—3-1-8
			§§3-1-19—3-1-22
			§3-1-26
4279	10/11/1966		§11-1-11
			§11-1-15
4301	1/10/1967		§§5-8-1—5-8-13
4297	1/24/1967		§9-4-11
4299	1/24/1967		§10-1-13
4303	2/14/1967		§6-1-17
4304	2/14/1967		§6-1-16

Ordinance Number	Date	Section	Section this Code
4357	11/10/1967		§§4-9-1—4-9-15
4387	4/9/1968		§4-5-1
			§4-5-8
4400	5/28/1968		§§1-10-1—1-10-6
4478	10/14/1969		§10-9-14
4531	10/13/1970		§§7-2-1—7-2-3
4541	4/13/1971		§5-5-1
4564	6/22/1971		§9-5-9
4567	6/23/1971		§§5-4-1—5-4-4
4682	3/14/1972		§5-4-5
4759	2/13/1973		§13-1-15
4786	5/22/1973		§10-6-7
4811	8/14/1973		§10-4-5
4843	1/22/1974		§§2-5-1—2-5-4
5440	2/13/1974		§6-2-9
			§6-2-11
4855	4/15/1974		§5-5-1
4897	10/8/1974		§11-1-9
4908	12/17/1974		§5-5-1
			§5-5-8
			§5-5-10
			§5-5-14
4915	1/14/1975		§10-1-1
4937	3/25/1975		§3-1-6
			§3-1-20
			§3-1-23
5014	11/25/1975		§5-2-3
			§5-2-7
			§5-2-9
5107	11/9/1976		§6-1-11
5139	2/8/1977		Amnd. by Ord. 10498
5186	6/21/1977		§§2-6-1—2-6-5
5189	7/26/1977		§3-2-7

<b>Ordinance Number</b>	<b>Date</b>	<b>Section</b>	<b>Section this Code</b>
5228	10/11/1977		§10-1-14
5287	2/14/1978		§11-1-1
5293	2/28/1978		§10-13-3
5337	6/27/1978		§5-1-4
5344	7/11/1978		§10-8-13
5360	8/8/1978		§6-2-3
			§6-2-5
5372	9/12/1978		§9-5-19
5440	2/13/1979		§6-2-14
5456	4/24/1979		§§11-1-7, 11-1-8
			§11-1-12
			§11-1-16
5459	4/24/1979		§5-3-12
5495	8/28/1979		§10-15-7
5504	10/1/1979		§3-1-1
			§3-1-7
			§3-1-19
5549	1/22/1980		§11-1-7
5564	2/26/1980		§6-2-4
5585	5/13/1980		§11-1-6
5586	5/13/1980		§§6-2-11, 6-2-12
5591	5/13/1980		§10-15-9
5605	6/10/1980		§13-3-1
5612	6/24/1980		§10-9-11
5627	8/12/1980		§11-1-2
			§§11-1-6, 11-1-7
			§11-1-12
5629	8/12/1980		§5-3-7
5637	8/26/1980		§§10-14-1—10-14-9
5719	3/10/1981		§13-2-14
5750	5/12/1981		§9-1-11
5776	6/23/1981		§7-3-3
5782	7/14/1981		§§2-4-1—2-4-4

<b>Ordinance Number</b>	<b>Date</b>	<b>Section</b>	<b>Section this Code</b>
5800	7/28/1981		§7-3-6
5801	8/11/1981		§§13-4-1—13-4-10
5818	8/25/1981		§10-14-2
5820	8/25/1981		§10-1-4
5831	9/8/1981		§9-5-3
			§9-5-10
			§9-5-13
5843	9/22/1981		§3-1-21
5886	12/15/1981		§2-2-1
6137	1/25/1982		§13-2-20
5910	1/26/1982		§5-5-1
5920	1/26/1982		§§5-5-1, 5-5-2
			§5-5-9
			§5-5-13
5922	1/26/1982		§11-1-6
5923	1/26/1982		§11-1-7
			§11-1-12
5943	3/9/1982		§5-5-9
5992	5/11/1982		§9-5-16
6010	7/13/1982		§9-5-16
6023	7/13/1982		§10-14-3
6061	9/14/1982		§10-12-5
6067	9/14/1982		§13-4-11
6079	9/28/1982		§13-3-8A
6104	11/2/1982		§10-13-1
6138	1/25/1983		§§2-3-1—2-3-12
6143	1/25/1983		§§11-1-6, 11-1-7
6160	2/8/1983		§6-3-1
6161	2/8/1983		§6-3-4
6175	3/29/1983		§5-5-1
6183	3/29/1983		§10-13-3
6185	4/12/1983		§6-1-18
6196	4/12/1983		§10-13-1

<b>Ordinance Number</b>	<b>Date</b>	<b>Section</b>	<b>Section this Code</b>
6197	4/12/1983		§10-15-8
6199	4/26/1983		§§8-1-1—8-1-14
			§8-1-17
			§§8-2-1—8-2-3
			§§8-3-1—8-3-4
			§§8-4-1—8-4-6
			§§8-5-1—8-5-5
			§§8-6-1—8-6-21
			§§8-7-1—8-7-5
6205	5/10/1983		§11-5-1
6226	6/14/1983		§§10-1-3—10-1-5
6228	6/14/1983		§11-1-6
6229	6/14/1983		§5-5-14
6235	6/28/1983		§6-3-4
6252	7/26/1983		§11-1-6
6304	10/11/1983		§5-5-1
6313	11/8/1983		Rpld. by Ord. 7836
6317	11/22/1983		§§11-1-6, 11-1-7
6346	1/24/1984		§5-3-6
			§5-3-11
			§5-3-15
6364	1/24/1984		§6-1-7
6363	2/14/1984		§11-1-5
6395	5/22/1984		§§1-7-1—1-7-18
6402	5/22/1984		§3-1-20
6411	6/26/1984		§6-1-7
6423	7/24/1984		§9-5-20
6424	7/24/1984		§13-2-9
6430	8/14/1984		§6-2-6
6437	8/28/1984		§8-3-2
6441	8/28/1984		§8-1-15
			§8-2-4
			§8-3-5

<b>Ordinance Number</b>	<b>Date</b>	<b>Section</b>	<b>Section this Code</b>
			§8-4-7
			§8-5-6
			§§8-6-16, 8-6-17
			§8-7-1
			§§8-7-6—8-7-11
6450	9/11/1984		§6-1-7
6454	9/25/1984		§11-1-3
6453	10/1/1984		§§11-1-12, 11-1-13
6455	10/1/1984		§11-1-16
6463	10/16/1984		§5-4-6
6501	2/1/1985		§4-6-1
6502	2/1/1985		§9-3-3
6549	5/28/1985		§8-6-13
6562	6/25/1985		§9-5-18
6563	6/25/1985		§9-5-10
6570	7/23/1985		§5-5-15
6571	7/23/1985		§10-13-5
6577	9/1/1985		§1-3-1
6581	9/10/1985		§3-1-1
			§3-1-25
6631	2/11/1986		§§5-9-1—5-9-19
6632	2/11/1986		§1-5-5
6663	5/27/1986		§§11-4-1—11-4-14
			§11-5-1
6669	6/24/1986		§4-9-2
			§§4-9-5—4-9-7
			§§4-9-9, 4-9-10
			§4-9-13
6671	7/8/1986		§6-1-19
6672	7/8/1986		§§5-5-14, 5-5-15
6673	7/8/1986		§2-3-4
			§2-3-10
			§2-3-13

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8547	8/14/2007	1	§6-7-10
8564	9/25/2007	1	§11-10-1
8565	9/25/2007	1	§11-8-3
8588	11/27/2007	1	§6-2-12
8594	12/11/2007	§1—4	§11-1-7
8598	12/11/2007	1	§§11-11-1—11-11-20
8608	2/12/2008	1 Rpld	§§4-2-1—4-2-38
		Added	§§4-2-1—4-2-35
8609	2/12/2008	1 Rpld	§§4-1-1—4-1-8
		Added	§§4-1-1—4-1-8
		Amd	§4-1-9
8619	2/26/2008	1	§11-2-1(E)9

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8630	4/22/2008	1 Rpld	§§4-2-1—4-2-35
		Added	§§4-2-1—4-2-35
8642	5/27/2008	1	Amnd. by Ord. 10498
		2	Amnd. by Ord. 10498
8644	6/10/2008	1	§11-10-2
8645	6/10/2008	§1—9	§5-6-1—5-6-9
8648	6/24/2008	1 Rpld	§§11-7a-1—11-7a-16
		Added	§§11-7a-1—11-7a-16
8658	8/12/2008	1	§10-4-11
8666	9/9/2008	2	§4-1-3
		§3—6	§4-1-9
8667	9/9/2008	1	§§4-1-1—4-1-8
8669	9/23/2008	1	§10-4-11
8676	10/14/2008	1	§2-8-1
8677	10/14/2008	1	Amnd. by Ord. 10498
		2	Amnd. by Ord. 10498
8681	10/28/2008	1 Rnbd	§9-6-1
		as	§9-6-2
		Added	§9-6-1
8686	11/25/2008	1	§11-1-6(D)
8688	11/25/2008	1	§6-2-20
8692	1/13/2009	1	§6-2-7(C)
8731	6/23/2009	1	§11-10-2(B)
8755	10/13/2009	1	§10-4-1
8756	10/13/2009	1	§5-4-3
8769	12/8/2009	2	§6-1-23
8775	1/12/2010	1	§6-1-24
8776	1/12/2010	1	§10-4-1
8777	1/12/2010	1	§7-3-3
8790	4/13/2010	1	§11-2-5(B)8
8800	5/11/2010	1	§5-10-2
		2	§5-10-9
8801	5/11/2010	1	§2-8-5

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8805	7/13/2010	1 Rpld	§§4-1-1—4-1-8
		Added	§§4-1-1—4-1-8
8806	7/13/2010	1 Rpld	§§4-10-1—4-10-5
		Added	§§4-10-1—4-10-5
8807	7/13/2010	2	§4-1-9
8813	11/16/2010	1	§10-13-5(G)3
8819	7/27/2010	1 Rpld	§§4-12-1, 4-12-2
		Added	§§4-12-1, 4-12-2
8820	7/27/2010	1	§4-2-17
		2	§4-2-21
		3	§4-2-22
		4	§4-2-31
		5	§4-2-33
8826	8/10/2010	1 Rpld	§§4-4-1—4-4-6
		Added	§§4-4-1—4-4-6
8827	8/10/2010	Rpld	§§4-3-1—4-3-4
		Added	§§4-3-1—4-3-4
8828	9/10/2010	1 Rpld	§4-6-1
8836	8/23/2010	1	§8-6-8(A)
		2	§8-6-9
		3	§8-6-24
8841	9/28/2010	1 Rpld	§§4-11-1—4-11-4
		Added	§§4-11-1—4-11-5
8844	10/26/2010	1 Rpd	§§7-2-1—7-2-3
8846	11/16/2010	1	§10-4-11
8867	1/11/2011	1	§7-1-2
		2, 3	§7-1-4
8889	5/10/2011	1 Rpld	§§11-9-1—11-9-8
		Added	§§11-9-1—11-9-10
8920	8/23/2011	1	§10-4-11
8921	8/23/2011	1	§6-10-5
		2	§6-10-6
8922	8/23/2011	1	§6-10-8

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8942	9/27/2011	1	§3-1-2
8947	10/11/2011	1	§6-1-19
8968	1/10/2012	1	§4-12-2
8974	1/10/2012	1	§8-6-9(A)
8991	3/20/2012	1	§3-1-2(A)
9022	6/12/2012	1 Rpld	§11-2-1(E)9
9042	7/24/2012	1	§10-4-11(A)27
9046	8/14/2012	§1—3	§8-6-18
9065	9/25/2012	1	§3-1-9
9066	9/25/2012	1	§8-6-9(A)
9067	9/25/2012	1	§8-6-12
9068	9/25/2012	1	§8-6-23
9069	9/25/2012	1, 3	§8-6-24
9070	9/25/2012	1	§3-1-2(A)1.
9071	9/25/2012	1	§3-1-27
9076	11/27/2012	1	§3-1-2(A)1
9098	1/8/2013	2	§9-5-18
9103	1/22/2013	1	§3-1-2(A)2
9108	2/12/2013	1	§10-1-2
9135	4/23/2013	1	§10-1-2
9137	4/23/2013	1	§3-1-2(A)
9144	5/28/2013	1	§3-1-10
9145	5/28/2013	1	§3-1-11
9157	7/9/2013	1	§5-10-2
		2	§5-10-9
9183	9/24/2013	1	§10-4-1
9214	12/17/2013	1	§3-1-2
9222	1/28/2014	1	§3-1-2
9225	2/11/2014	1	§§4-1-1—4-1-9
9226	2/11/2014	1	§§4-3-1—4-3-4
9227	2/11/2014	1	§§4-4-1—4-4-6
9228	2/11/2014	1	§§4-10-1—4-10-5
9229	2/11/2014	1	§§4-11-1—4-11-4

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9270	5/6/2014	1 Rpld	§§5-10-1—5-10-9
		Added	§§5-10-1—5-10-11
9274	6/17/2014	1 Added	§§5-11-1—5-11-15
9281	6/17/2014	1(Exh. A)	§13-5-5
9302	8/12/2014	2 Rpld	§§11-11-1—11-11-20
		2 Added	§§11-11-1—11-11-20
9304	8/12/2014	1	§10-4-11
9307	8/26/2014	1	§11-2-5
9327	9/23/2014	1 Added	§11-2-1(E)9
9348	11/18/2014	1	§§7-1-1—7-1-8
9382	1/13/2015	1	§§11-7a-1—11-7a-16
9383	1/13/2015	1	§6-2-2
		2	§6-2-10
9384	1/13/2015	1	§10-1-3
		2	§10-1-4
9407	2/10/2015	1	§3-1-27
9410	3/10/2015	2 Rpld	§§11-3-1—11-3-14
		Added	§§11-3-1—11-3-15
9452	6/23/2015	1	§11-1-10(B)
9455	7/14/2015	1	§10-4-11
9456	8/11/2015	1	§10-9-15
9473	9/8/2015	1	§10-4-11
9490	10/20/2015	1	§§4-1-1—4-1-9
9491	10/20/2015	1	§§4-2-1—4-2-3
		Rpld	§§4-2-4, 4-2-5
			§§4-2-6—4-2-35
9492	10/20/2015	1	§§4-3-1—4-3-4
9493	10/20/2015	1	§§4-4-1—4-4-6
9494	10/20/2015	1	§§4-10-1—4-10-5
9495	10/20/2015	1	§§4-11-1—4-11-4
9496	10/20/2015	1	§§4-12-1, 4-12-2
9497	10/20/2015	1	§§2-1-1—2-1-4
9503	11/3/2015	1	§10-4-11

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9504	11/3/2015	1	§7-1-1
9509	12/15/2015	1 Added	§§5-12-1—5-12-21
9513	12/15/2015	1 Added	§§11-12-1—11-12-11
9530	1/26/2016	1	§8-6-24
9571	5/24/2016	1 Rpld	§§5-12-1—5-12-21
		Added	§§5-12-1—5-12-23
9577	6/28/2016	1—9 Rpld	§§5-6-1—5-6-9
		Added	§§5-6-1—5-6-9
9595	9/13/2016	1	§10-4-11
9619	11/22/2016	1, 2	§§8-6-8, 8-6-9
9624	12/13/2016	1 Added	Amnd. by Ord. 10498
9626	6/13/2017	1	§6-2-7(c)
9643	2/28/2017	1	§3-1-2
9672	1/10/2017	1 Rpld	§10-4-11
		Added	§10-4-11
9688	8/22/2017	1	§11-1-10(B)
9710	10/24/2017	1 Added	§§9-7-1—9-7-14
9717	11/21/2017	1 Added	§8-1-20
9746	3/27/2018	5	§8-2-2
		6	§8-3-2
		7	§8-4-2
		8	§8-5-3
9752	4/10/2018	1 Added	§§11-13-1—11-13-4
9753	4/10/2018	1 Added	§§11-13-11—11-13-16
9787	7/10/2018	1	§10-4-11
9816	9/11/2018	1 Added	§10-13-13
9817	9/11/2018	1 Added	§10-13-14
9848	11/20/2018	1 Rpld	§§2-6-1—2-6-5
		Added	§§2-6-1—2-6-5
9849	12/11/2018	1 Added	§10-9-16
9856	12/11/2018	1 Rpld	§§6-10-1—6-10-8
		Added	§§6-10-1—6-10-8
9920	5/28/2019	1(Exh. A) Rpld	§§11-1-1—1-1-20

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		Added	§§11-1-101—11-1-907
9921	5/28/2019	1	§§4-1-1—4-1-9
9922	5/28/2019	1	§§4-3-1—4-3-4
9923	5/28/2019	1	§§4-4-1—4-4-6
9924	5/28/2019	1	§§4-10-1—4-10-5
9925	5/28/2019	1	§§4-11-1—4-11-4
9926	5/28/2019	1	§§4-2-1—4-2-35
9960	8/13/2019	2 Added	§§11-14-1—11-14-13
9961	8/13/2019	1	§10-4-11
9965	9/10/2019	1	§§3-1-1—3-1-27
9979	9/24/2019	1 Rpld	§4-1-9
10027	12/10/2019	1	§§6-10-1—6-10-9
		Added	§6-10-9
10037	1/14/2020	1 Added	§11-1-902(G)
10047	1/28/2020	1 Added	§1-5-7
10061	3/24/2020	1	§2-10-2
10088	6/23/2020	1	§3-1-2
10089	7/14/2020	1 Added	§1-7-20
10114	9/22/2020	1	§10-4-11
10116	10/20/2020	1	§3-1-2
10184	5/11/2021	1 Rpld	§§9-4-1—9-4-11
		Added	§§9-4-1—9-4-11
10190	6/8/2021	1	§3-3-1
10222	8/24/2021	1	§10-4-11
10224	8/24/2021	1 Rpld	§§6-10-1—6-10-9
		Added	§§6-10-1—6-10-9
10266	12/14/2021	1 Added	§13-2-21
10282	1/25/2022	2 Rpld	§§11-3-1—11-3-15
		Added	§§11-3-1—11-3-15
10295	3/22/2022	2 Rpld	§§11-3-1—11-3-15
		Added	§§11-3-1—11-3-15

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	11/05/1940	Home Rule Charter	CHA	0.1
10296	4/12/2022	Grants Specific Use Designation	NIC	0.1
10297	4/26/2022	Grant Special Exception	NIC	0.1
10298	3/22/2022	General Obligation Refunding Bonds, Series 2022	NIC	0.1
10299	4/26/2022	Grants Specific Use Designation	NIC	0.1
10300	4/26/2022	Rezoning	NIC	0.1
10301	4/26/2022	Rezoning	NIC	0.1
10302	4/26/2022	Grants Specific Use Designation	NIC	0.1
10303	4/26/2022	Rezoning	NIC	0.1
10304	4/26/2022	Abandons Portion of Alley Right-of-Way	NIC	0.1
10305	5/10/2022	Rezoning	NIC	0.1
10306	5/10/2022	Grants Specific Use Designation	NIC	0.1
10307	5/10/2022	Grants Specific Use Designation	NIC	0.1
10308	5/24/2022	Rezoning	NIC	0.1
10309	5/24/2022	Rezoning	NIC	0.1
10310	5/24/2022	Rezoning	NIC	0.1
10311	5/24/2022	Grants Specific Use Designation	NIC	0.1
10312	5/24/2022	Grants Special Exception	NIC	0.1
10313	6/28/2022	Rezoning	NIC	0.1
10314	6/28/2022	Rezoning	NIC	0.1
10315	6/28/2022	Grants Specific Use Designation	NIC	0.1
10316	6/28/2022	Grants Specific Use Designation	NIC	0.1
10317	6/28/2022	Rezoning	NIC	0.1
10318	6/28/2022	Abandons Portion of Right-of-Way	NIC	0.1

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10319	6/28/2022	Rezoning	NIC	0.1
10320	6/28/2022	Grants Special Exception	NIC	0.1
10321	7/12/2022	Grants Special Exception	NIC	0.1
10322	7/12/2022	Grants Specific Use Designation	NIC	0.1
10323	7/26/2022	Rezoning	NIC	0.1
10324	7/26/2022	Grants Specific Use Designation	NIC	0.1
10325	7/26/2022	Grants Specific Use Designation	NIC	0.1
10326	7/26/2022	Grants Special Exception	NIC	0.1
10327	8/9/2022	Rezoning	NIC	0.1
10328	8/9/2022	Grants Special Exception	NIC	0.1
10329	8/9/2022	Adopts Fee Schedule	NIC	0.1
10330	8/23/2022	Rezoning	NIC	0.1
10331	8/23/2022	Grants Special Exception	NIC	0.1
10332	8/23/2022	Annexation	NIC	0.1
10333	8/23/2022	Zoning Classification for Specific Property	NIC	0.1
10334	8/23/2022	Erects Stop Signs	NIC	0.1
10335	9/13/2022	Budget	NIC	0.1
10336	9/13/2022	Tax Levy	NIC	0.1
10337	9/13/2022	Rezoning	NIC	0.1
10338	9/13/2022	Rezoning	NIC	0.1
10339	9/13/2022	Grants Specific Use Designation	NIC	0.1
10340	9/13/2022	Rezoning	NIC	0.1
10341	9/13/2022	Grants Specific Use Designation	NIC	0.1
10342	9/27/2022	Grants Specific Use Designation	NIC	0.1
10343	9/27/2022	Grants Special Exception	NIC	0.1
10344	10/25/2022	Rezoning	NIC	0.1
10345	9/27/2022	Amends Traffic Control Devices	Ch. 10-4	0.1

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10346	10/11/2022	Rezoning	NIC	0.1
10347	10/25/2022	Rezoning	NIC	0.1
10348	10/25/2022	Grants Specific Use Designation	NIC	0.1
10349	10/25/2022	Grants Specific Use Designation	NIC	0.1
10350	10/25/2022	Grants Specific Use Designation	NIC	0.1
10351	10/25/2022	Adopts Fee Schedule	NIC	0.1
10352	11/15/2022	Grants Specific Use Designation	NIC	0.1
10353	11/15/2022	Grants Special Exception	NIC	0.1
10354	11/15/2022	Rezoning	NIC	0.1
10355	11/15/2022	Grants Special Exception	NIC	0.1
10356	11/15/2022	Grants Specific Use Designation	NIC	0.1
10357	12/13/2022	Rezoning	NIC	0.1
10358	12/13/2022	Abandons Portion of Alley Right-of-Way	NIC	0.1
10359	1/10/2023	Designates Tax Reinvestment Zone	NIC	0.1
10360	1/10/2023	Grants Specific Use Designation	NIC	0.1
10361	1/10/2023	Grants Special Exception	NIC	0.1
10362	1/24/2023	Rezoning	NIC	0.1
10363	1/24/2023	Grants Specific Use Designation	NIC	0.1
10364	1/24/2023	Rezoning	NIC	0.1
10365	1/24/2023	Grants Special Exception	NIC	0.1
10366	1/24/2023	Grants Specific Use Designation	NIC	0.1
10367	1/24/2023	Rezoning	NIC	0.1
10368	1/24/2023	Grants Specific Use Designation	NIC	0.1
10369	1/24/2023	Abandons Portion of Alley Right-of-Way	NIC	0.1
10370	1/24/2023	Grants Special Exception	NIC	0.1

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10371	2/14/2023	Rezoning	NIC	0.1
10372	2/14/2023	Grants Special Exception	NIC	0.1
10373	2/28/2023	Rezoning	NIC	0.1
10374	2/28/2023	Grants Specific Use Designation	NIC	0.1
10375	3/28/2023	Rezoning	NIC	0.1
10376	2/28/2023	Grants Specific Use Designation	NIC	0.1
10378	2/28/2023	Zoning Classification for Specific Property	NIC	0.1
10379	2/28/2023	Repeals Specific Use Designation	NIC	0.1
10380	2/28/2023	Rezoning	NIC	0.1
10381	2/28/2023	Amends Plats and Subdivisions	Ch. 11-2	0.1
10382	3/28/2023	Grants Specific Use Designation	NIC	0.1
10383	3/28/2023	Grants Specific Use Designation	NIC	0.1
10384	3/28/2023	Grants Specific Use Designation	NIC	0.1
10385	3/28/2023	Rezoning	NIC	0.1
10386	4/11/2023	Rezoning	NIC	0.1
10387	3/28/2023	Grants Special Exception	NIC	0.1
10388	3/28/2023	Grants Special Exception	NIC	0.1
10389	3/28/2023	Temporary Right-of-Way Closure	NIC	0.1
10390	4/11/2023	Abandons Portion of Right-of-Way	NIC	0.1
10391	4/11/2023	Abandons Portion of Alley Right-of-Way	NIC	0.1
10392	4/11/2023	Abandons Portion of Right-of-Way	NIC	0.1
10393	4/11/2023	Abandons Sewer Easement	NIC	0.1
10394	4/11/2023	Amends Traffic Control Devices	Ch. 10-4	0.1
10395	4/25/2023	Rezoning	NIC	0.1

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10396	4/25/2023	Rezoning	NIC	0.1
10397	4/25/2023	Grants Specific Use Designation	NIC	0.1
10398	5/9/2023	Grants Specific Use Designation	NIC	0.1
10399	5/9/2023	Grants Special Exception	NIC	0.1
10407	6/13/2023	Grants Specific Use Designation	NIC	0.1
10408	6/13/2023	Grants Specific Use Designation	NIC	0.1
10409	6/13/2023	Abandons Street Right-of-Way	NIC	0.1
10410	6/13/2023	Amends Records Retention	Ch. 1-12	0.1
10411	6/27/2023	Rezoning	NIC	0.1
10412	6/27/2023	Rezoning	NIC	0.1
10413	6/27/2023	Annexation	NIC	0.1
10414	6/27/2023	Establishes Zoning Classification	NIC	0.1
10415	6/27/2023	Grants Special Exception	NIC	0.1
10416	6/27/2023	Grants Special Exception	NIC	0.1
10417	7/11/2023	Abandons Alley Right-of-Way	NIC	0.2
10418	7/11/2023	Rezoning	NIC	0.2
10419	7/11/2023	Abandons Right-of-Way	NIC	0.2
10420	7/25/2023	Designates Tax Reinvestment Zone	NIC	0.2
10421	7/25/2023	Annexation	NIC	0.2
10422	7/25/2023	Establishes Zoning Classification	NIC	0.2
10423	7/25/2023	Grants Specific Use Designation	NIC	0.2
10424	7/25/2023	Grants Specific Use Designation	NIC	0.2
10425	7/25/2023	Grants Specific Use Designation	NIC	0.2
10426	7/25/2023	Grants Specific Use Designation	NIC	0.2

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10427	8/8/2023	Adopts Fee Schedule	NIC	0.2
10428	8/22/2023	Rezoning	NIC	0.2
10429	8/22/2023	Rezoning	NIC	0.2
10430	8/22/2023	Amends Records Management Policy	Ch. 1-12	0.2
10431	8/22/2023	Releases Extraterritorial Jurisdiction	NIC	0.2
10432	8/29/2023	Budget	NIC	0.2
10433	8/29/2023	Tax Levy	NIC	0.2
10434	9/12/2023	Prima Facie Speed LImits	NIC	0.2
10435	9/26/2023	Grants Special Exception	NIC	0.2
10436	9/26/2023	Rezoning	NIC	0.2
10437		Ordinance Deferred	NIC	0.2
10438	9/26/2023	Grants Special Exception	NIC	0.2
10439	9/26/2023	Annexation	NIC	0.2
10440	9/26/2023	Establishes Zoning Classification	NIC	0.2
10441	9/26/2023	Calls Public Hearing	NIC	0.2
10442	10/10/2023	Annexation	NIC	0.2
10443	10/10/2023	Establishes Zoning Classification	NIC	0.2
10444	10/10/2023	Rezoning	NIC	0.2
10445	10/24/2023	Specific Use Designation	NIC	0.2
10446	10/24/2023	Rezoning	NIC	0.2
10447		Ordinance Failed	NIC	0.2
10448	11/14/2023	Reinvestment Zone	NIC	0.2
10449		Ordinance Pulled	NIC	0.2
10450		Ordinance Pulled	NIC	0.2
10451	11/14/2023	Grants Special Exception	NIC	0.2
10452	11/14/2023	Abandons ROW	NIC	0.2
10453	11/14/2023	Adds Centennial Entertainment Overlay District	Ch. 11-1a	0.2
10454	11/12/2023	Specific Use Designation	NIC	0.2
10455	12/12/2023	Specific Use Designation	NIC	0.2

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10456	12/12/2023	Specific Use Designation	NIC	0.2
10457	12/12/2023	Rezoning	NIC	0.2
10458	12/12/2023	Grants Special Exception	NIC	0.2
10459	12/12/2023	Amends Airport Height Hazard and Compatible Land Use Zoning	Ch. 11-11	0.2
10460	12/12/2023	Grants Special Exception	NIC	0.2
10461	12/12/2023	Grants Special Exception	NIC	0.2
10462	12/12/2023	Abandons ROW	NIC	0.2
10463	12/12/2023	Rezoning	NIC	0.2
10464	12/12/2023	Rezoning	NIC	0.2
10465	1/9/2024	Rezoning	NIC	0.2
10466	1/9/2024	Specific Use Designation	NIC	0.2
10467	1/9/2024	Specific Use Designation	NIC	0.2
10468	1/9/2024	Specific Use Designation	NIC	0.2
10469	1/9/2024	Specific Use Designation	NIC	0.2
10470	1/9/2024	Specific Use Designation	NIC	0.2
10471	1/9/2024	Rezoning	NIC	0.2
10472	1/9/2024	Rezoning	NIC	0.2
10473	1/9/2024	Amends Municipal Drainage Utility	Ch. 11-13	0.2
10474	1/9/2024	Rezoning	NIC	0.2
10475	1/9/2024	Specific Use Designation	NIC	0.2
10476	1/9/2024	Abandons ROW	NIC	0.2
10477	1/23/2024	Rezoning	NIC	0.2
10478	1/9/2024	Grants Special Exception	NIC	0.2
10479	1/9/2024	Grants Special Exception	NIC	0.2
10480	1/9/2024	Grants Special Exception	NIC	0.2
10481	1/9/2024	Increases Employer Contribution Rate to Firemen's Relief and Retirement Fund	NIC	0.2
10482	1/23/2024	Annexation	NIC	0.2
10483	1/23/2024	Establishes Initial Zoning Classification	NIC	0.2

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10484	1/23/2024	Rezoning	NIC	0.2
10485	1/23/2024	Specific Use Designation	NIC	0.2
10486	1/23/2024	Grants Special Exception	NIC	0.2
10487	1/23/2024	Specific Use Designation	NIC	0.2
10488	2/13/2024	Specific Use Designation	NIC	0.2
10489	2/13/2024	Abandons ROW	NIC	0.2
10490	2/27/2024	Rezoning	NIC	0.2
10491	2/27/2024	Rezoning	NIC	0.2
10492		Ordinance Pulled		0.2
10493	2/27/2024	Speed Limits on Specific Streets	NIC	0.2
10494	3/19/2024	Abandons ROW	NIC	0.2
10495	3/19/2024	Rezoning	NIC	0.2
10496	3/19/2024	Rezoning	NIC	0.2
10497	3/19/2024	Rezoning	NIC	0.2
10498	3/19/2024	Amends Dangerous and Dilapidated Buildings	Ch. 4-8	0.2
10499	3/9/2024	Abandons ROW	NIC	0.2
10500	4/9/2024	Grants Special Exception	NIC	0.2
10501		No Action Taken		0.2
10502	4/23/2024	Specific Use Designation	NIC	0.2
10503	4/23/2024	Specific Use Designation	NIC	0.2
10504	4/23/2024	Specific Use Designation	NIC	0.2
10505	4/23/2024	Specific Use Designation	NIC	0.2
10506	4/23/2024	Rezoning	NIC	0.2
10507	4/23/2024	Rezoning	NIC	0.2
10508	4/23/2024	Grants Special Exception	NIC	0.2
10509	4/23/2024	Grants Special Exception	NIC	0.2
10510		Ordinance Died	NIC	0.2
10511	4/23/2024	Stop Signs	NIC	0.2
10512		No Action Taken		0.3
10513	5/14/2024	Rezoning	NIC	0.3
10514		No Action Taken		0.3
10515		No Action Taken		0.3

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10516	5/14/2024	Rezoning	NIC	0.3
10517	5/14/2024	Specific Use Designation	NIC	0.3
10518	5/14/2024	Specific Use Designation	NIC	0.3
10519	5/28/2024	Specific Use Designation	NIC	0.3
10520	5/28/2024	Rezoning	NIC	0.3
10521	5/28/2024	Rezoning	NIC	0.3
10522	5/28/2024	Rezoning	NIC	0.3
10523	5/28/2024	Abandons ROW	NIC	0.3
10524		No Action Taken		0.3
10525	6/11/2024	Specific Use Designation	NIC	0.3
10526	6/11/2024	Specific Use Designation	NIC	0.3
10527	6/11/2024	Rezoning	NIC	0.3
10528	6/11/2024	Rezoning	NIC	0.3
10529	6/11/2024	Rezoning	NIC	0.3
10530	6/11/2024	Rezoning	NIC	0.3
10531	6/11/2024	Grants Special Exception	NIC	0.3
10532	6/11/2024	Rezoning	NIC	0.3
10533	6/11/2024	Rezoning	NIC	0.3
10534	6/11/2024	Adopts Fee Schedule	NIC	0.3
10535	6/25/2024	Specific Use Designation	NIC	0.3
10536	6/25/2024	Grants Special Exception	NIC	0.3
10537	7/9/2024	Rezoning	NIC	0.3
10538	7/9/2024	Rezoning	NIC	0.3
10539	7/9/2024	Specific Use Designation	NIC	0.3
10540	7/9/2024	Rezoning	NIC	0.3
10541	7/9/2024	Rezoning	NIC	0.3
10542	7/9/2024	Speed Limits on Specific Streets	NIC	0.3
10543	7/23/2024	Grants Special Exception	NIC	0.3
10544	7/23/2024	Grants Special Exception	NIC	0.3
10545	7/23/2024	Amends Code of Ethics	NIC	0.3
10546	8/13/2024	Abandons ROW	NIC	0.3
10547	8/13/2024	Abandons Alley	NIC	0.3

<b>Ordinance Number</b>	<b>Date</b>	<b>Subject</b>	<b>Disposition</b>	<b>Supp. No.</b>
10548	8/13/2024	Specific Use Designation	NIC	0.3
10549	8/13/2024	Specific Use Designation	NIC	0.3
10550	8/13/2024	Rezoning	NIC	0.3
10551	8/13/2024	Rezoning	NIC	0.3
10552	8/13/2024	Rezoning	NIC	0.3
10553	8/13/2024	Specific Use Designation	NIC	0.3
10554		Issuance of Tax and Limited Pledge Revenue Certificates of Obligation	NIC	0.3
10555	8/27/2024	Annexation	NIC	0.3
10556	8/27/2024	Establishes Initial Zoning Classification	NIC	0.3
10557	8/27/2024	Conveyance of Property	NIC	0.3
10558	8/27/2024	Termination of Campaign Treasurer Appointment	Ch. 1-14	0.3
10559	9/10/2024	Specific Use Designation	NIC	0.3
10560	9/10/2024	Rezoning	NIC	0.3
10561	9/17/2024	Budget	NIC	0.3
10562	9/17/2024	Tax Levy	NIC	0.3
10563	9/24/2024	Grants Special Exception	NIC	0.3
10564	9/24/2024	Rezoning	NIC	0.3
10565	9/24/2024	Adopts Fee Schedule	NIC	0.3
10566	9/24/2024	Speed Limits on Specific Streets	NIC	0.3
10567		No Action Taken		0.3
10568	11/12/2024	Annexation	NIC	0.3
10569	11/12/2024	Establishes Initial Zoning Classification	NIC	0.3
10570	10/22/2024	Abandons ROW	NIC	0.3
10571	10/22/2024	Abandons ROW	NIC	0.3
10572	10/22/2024	Amends Water Department	Ch. 3-1	0.3
10573	11/12/2024	Rezoning	NIC	0.3
10574	11/12/2024	Rezoning	NIC	0.3
10575	11/12/2024	Rezoning	NIC	0.3
10576	11/12/2024	Rezoning	NIC	0.3

<b>Ordinance Number</b>	<b>Date</b>	<b>Subject</b>	<b>Disposition</b>	<b>Supp. No.</b>
10577	12/17/2024	Rezoning	NIC	0.3
10578	12/17/2024	Specific Use Designation	NIC	0.3
10579	12/17/2024	Specific Use Designation	NIC	0.3
10580	12/17/2024	Reinvestment Zone	NIC	0.3
10581	12/17/2024	Reinvestment Zone	NIC	0.3
10582	1/14/2025	Specific Use Designation	NIC	0.3
10583	1/14/2025	Specific Use Designation	NIC	0.3
10584		Ordinance Pulled		0.3
10585	1/28/2025	Electric Power Franchise with Oncor Electric Delivery Company, LLC	NIC	0.3
10586	1/28/2025	Rezoning	NIC	0.3
10587	1/28/2025	Rezoning	NIC	0.3
10588	1/28/2025	Rezoning	NIC	0.3
10589	1/28/2025	Rezoning	NIC	0.3
10590	1/28/2025	Rezoning	NIC	0.3
10591	1/28/2025	Specific Use Designation	NIC	0.3
10592	1/14/2025	General Obligation Refunding Bonds	NIC	0.3
10593	1/14/2025	Certificates of Obligation	NIC	0.3
10594	2/11/2025	Grants Special Exception	NIC	0.3
10595	2/11/2025	Grants Special Exception	NIC	0.3
10596	2/25/2025	Amends Building Code	Ch. 4-1	0.3
10597	2/25/2025	Amends Residential Code	Ch. 4-11	0.3
10598	2/25/2025	Construction Work Hours	Ch. 4-13	0.3
10599	2/25/2025	Rezoning	NIC	0.3
10600	2/25/2025	Rezoning	NIC	0.3
10601	2/25/2025	Rezoning	NIC	0.3
10602	2/25/2025	Rezoning	NIC	0.3
10603		No Action Taken		0.3
10604	3/18/2025	Granting a Special Exception	NIC	0.3
10605	3/18/2025	Specific Use Designation	NIC	0.3
10606	4/8/2025	Specific Use Designation	NIC	0.3
10607	4/8/2025	Adopts Fee Schedule	NIC	0.3

Ordinance Number	Date	Subject	Disposition	Supp. No.
10608	4/8/2025	Massage Establishments	Ch. 5-13	0.3
10609	4/22/2025	Annexation	NIC	0.3
16010	4/22/2025	Establishing Initial Zoning Classification	NIC	0.3
10611	4/22/2025	Specific Use Designation	NIC	0.3
10612	4/22/2025	Specific Use Designation	NIC	0.3
10613	4/22/2025	Specific Use Designation	NIC	0.3