UTILITY AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF HAYS §

THIS UTILITY AGREEMENT (this "Agreement") is made and entered into as of the date herein last specified, by and between the CITY OF SAN MARCOS, TEXAS, a home-rule municipality (the "City"), and HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 8, a conservation and reclamation district, created pursuant to Article XVI, Section 59 of the Texas Constitution, and operating pursuant to Chapters 49 and 54, Texas Water Code, as amended (the "District").

WITNESSETH:

WHEREAS, the District is a municipal utility district created by order of the Texas Commission on Environmental Quality (the "TCEQ") dated _____, for the purposes of, among others, providing water, sanitary sewer, drainage, and road facilities to serve development within the boundaries of the District; and

WHEREAS, the City by that certain Consent Agreement and ordinance/resolution each dated _____, consented to the creation of the District (the "City Consent"); and

WHEREAS, the District plans to finance and construct, or cause to be constructed, a water distribution system, wastewater collection system, storm water control and drainage system, road facilities and, to the extent authorized by law, park and recreational facilities to serve the land within the District; and

WHEREAS, a portion of the District lies within water certificate of convenience and necessity ("CCN") held by Crystal Clear Special Utility District ("CCSUD"), which has the right to provide water service to such land within the District; and

WHEREAS, the District is entering into this Agreement with the City to set forth the terms and conditions regarding the City's provision of water supply services and wastewater collection and treatment services for land within the District; and

WHEREAS, the City and the District have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions, and conditions hereof are mutually fair and advantageous to each; NOW, THEREFORE;

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, the District and the City contract and agree as follows:

ARTICLE I
DEFINITIONS

The capitalized terms and phrases used in this Agreement shall have the meanings as follows:

"CCSUD Water System" shall mean the Water production pumps, lines, meters, components, facilities, and equipment owned and used by CCSUD to pump, treat, monitor, convey, supply, and distribute Water to the public.

"City Wastewater System" shall mean the sanitary sewer collection, transportation, and treatment facilities and equipment owned and used by the City to collect, transport, and treat Wastewater from the public.

"City Water System" shall mean the Water production pumps, lines, meters, components, facilities, and equipment owned and used by the City to pump, treat, monitor, convey, supply, and distribute Water to the public.

"Design Criteria" means, as applicable: (i) WWTR Collection System Design Criteria Technical Manual, effective April 17, 2015, (ii) WTR Distribution System Design Criteria Technical Manual, effective January 13, 2020, (iii) Lift station design standards, effective April 29, 2019, (iv) Stormwater Technical Manual, effective June 1, 2020, and (v) Transportation Design Criteria Manual, Section 2, TIA, and no other sections, all in effect as of the effective date of the Development Agreement.

"Developer" shall mean Landowner, HK Real Estate Development, LLC, a Texas limited liability company, and any successor in interest or assign, to the extent such successor or assign engages in Substantial Development Activities within the Property. Developer shall also include any entity affiliated with, related to, or owned or controlled by HK Real Estate Development, LLC, for purposes of acquiring, owning, or developing property subject to, or that may become subject to, this Agreement.

"Development Agreement" shall mean that certain Development Agreement dated _____, 2021, by and among the City, Landowner, HK Riley's Pointe, LLC, a Texas limited liability company, HK Real Estate Development, LLC, a Texas limited

liability company, and Benchmark Acquisitions, LLC, a Texas limited liability company, as may be amended from time to time.

"District Drainage System" shall mean the stormwater collection, detention, and drainage facilities to be financed, designed, and constructed by, or on behalf of, the District to serve land within the District.

"District Engineer" shall mean LJA Engineering, Inc., or its replacement or assignee.

"District Wastewater System" shall mean the sanitary sewer collection and transportation facilities to be financed, designed, and constructed by, or on behalf of, the District to serve land within the District.

"District Water System" shall mean the Water production pumps, lines, meters, components, facilities (including renovations and expansions), and equipment to be financed, designed, and constructed by, or on behalf of, the District to pump, treat, monitor, convey, supply, and distribute Water to the public within the District.

"End-Buyer" means any owner, tenant, user, or occupant of any lot, regardless of proposed use, for which a final plat has been approved by the City and recorded in the real property records.

"Facilities" shall mean and include (i) sanitary sewer collection, transportation and treatment, and storm water collection facilities constructed or acquired, or to be constructed or acquired, by the District to serve lands within the District, including, but not limited to, the District Wastewater System, the District Drainage System, and the Lift Station Facilities; (ii) if and only in the event the City provides Water Supply Services to the Property in accordance with this Agreement, Water distribution facilities constructed or acquired, or to be constructed or acquired, by the District to serve lands within the District, including, but not limited to, the District Water System; and (iii) and all improvements, appurtenances, additions, extensions, enlargements or betterments thereto, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites, and other interests related thereto.

"Landowner" shall mean HK Baugh Ranch, LLC, a Texas limited liability company, and any successor in interest to Landowner's interest in the Property.

"Land Development Code" shall mean Subpart B of the City Code of Ordinances.

"Lift Station Facilities" shall mean the lift station, force main, and related facilities to be financed, designed, and constructed by, or on behalf of, the District

and/or Hays County Municipal Utility District No. 9 on the WWTP Site to serve land within the District and Hays County Municipal Utility District No. 9.

"LUE" shall mean living unit equivalent and is a measure of the estimated average daily volume used by a single-family residence or its equivalent.

"Property" shall mean the approximately 567.663 acres of land described in **"Exhibit A"** and any other land annexed into the District with the consent of the City.

"Security Interest" means the interest granted pursuant to Section 3.01.

"Strategic Partnership Agreement" shall mean the Strategic Partnership Agreement to be entered into between the City and the District.

"Subdivision Regulations" shall mean Chapters 1, 2, 3 (including cross-references to Chapter 6 of the Land Development Code) and 8 of the Land Development Code, but only to the extent otherwise applicable to the ETJ, that are in effect as of the date of the Development Agreement and set forth in "**Exhibit D**" attached hereto and incorporated herein, and not including (i) any future amendments or changes thereto, provided that Landowner, Developer or the District may elect to have such future amendments or changes apply to the development of the Property in their sole discretion or (ii) any other chapters of the Land Development Code or any other City ordinances, regulations, manuals, administrative rules, standards, guidelines, plans and policies related to the development of the Property or any cross-references to the foregoing, unless approved by Landowner, Developer or the District in writing.

"Substantial Development Activities" means the subdivision of the Property or any portion thereof with the intent to sell to an End-Buyer, and includes, but is not limited to, any platting or construction of water, sewer, and/or drainage facilities or roads.

"Vertical Improvement" shall mean the construction of a house or building, not including, manufactured homes, modular housing, or industrialized buildings covered by Chapters 1201 or 1202 of the Texas Occupations Code.

"Wastewater" shall mean the water-carried wastes, exclusive of ground, surface, and storm waters, normally discharged from the sanitary conveniences of a residential or commercial structure of a domestic nature (not industrial).

"Wastewater Services" shall mean the services to be provided by the City in receiving, treating, testing, and disposing of Wastewater from the District Wastewater System.

"Water" shall mean potable water that meets federal and state standards for consumption by humans.

"Water Supply Services" shall mean treating, pumping, monitoring, conveying, supplying, and distributing Water from the CCSUD Water System or City Water System, as applicable, to the serve the Property.

"WWTP Site" shall mean a fifteen (15) acre parcel shown generally on "**Exhibit C**" attached hereto and incorporated herein, upon which the Lift Station Facilities shall be constructed.

ARTICLE II
DESCRIPTION, DESIGN, AND CONSTRUCTION OF THE FACILITIES

2.01. Facilities. The Facilities shall be designed and constructed in accordance with this Agreement, the Subdivision Regulations, the Design Criteria, and the Development Agreement, unless otherwise required by state or federal regulation or code. The plans and specifications for water, wastewater, and drainage facilities shall be subject to review and approval of the City in accordance with this Agreement. The plans and specifications for road facilities shall be subject to review and approval of the County. The District shall design, construct, or extend, or shall cause to be designed, constructed, or extended, the Facilities in such phases or stages as the District, in its sole discretion, from time to time may determine to be economically feasible. However, the facilities within any phase shall be constructed and completed at one time so as to allow extensions of said utilities to future phases. Except as otherwise provided in this Agreement, capacity in the Facilities constructed by or on behalf of the District shall be reserved to serve the Property. In the event facilities are oversized by the City, the additional capacity created by such oversizing shall be reserved to the City. Any conveyance or transfer of the Facilities shall not affect Developer's rights to reimbursement from the District for the cost of such improvements or capacity in improvements constructed or financed by Developer, or the District's right to affect such reimbursement.

2.02. Water Supply Services and Related Facilities. The City and the District acknowledge that some or all of the land within the District is located within CCSUD's CCN. CCSUD shall provide retail Water Supply Services to customers within the District as necessary to meet the District's capacity requirements at full build-out unless the Property is released from CCSUD's CCN, in which case the City shall provide Water Supply Services to the Property. To the extent CCSUD will provide Water Supply Services to customers within the District, the District will contract with CCSUD regarding the financing, design, construction, ownership, operation, and maintenance of the District Water System, and users of Water within the District will be customers of

CCSUD. In the event the Property is released from CCSUD's CCN and the City provides Water Supply Services to customers within the District, (a) this Agreement shall govern the financing, design, construction, ownership, operation, and maintenance of the District Water System; (b) all Water supply and distribution facilities constructed by, or on behalf of, the District will be conveyed upon completion to the City for ownership, operation, and maintenance and shall become part of the City Water System; and (c) users of Water within the District will be customers of the City.

2.03. Required Improvements, Easements, and WWTP Site Conveyance.

(a) In order for the City to provide water service, if applicable, a water line, the size of which shall be sufficient to serve the District, as determined by the District's engineer, shall be constructed by, or on behalf of, the District and/or Hays County Municipal Utility District No. 9 to connect to the City's existing 30" water line located along Old Bastrop Highway. With respect to wastewater service, the City has acquired certain sanitary sewer easement(s) along the route shown on "**Exhibit B**" attached hereto and incorporated herein (the "Easement Route"), and in order for the City to provide Wastewater Services, a sewer line, the size of which shall be sufficient to serve the District, as determined by the District's engineer, shall be constructed, by or on behalf of the District and/or Hays County Municipal Utility District No. 9, within such sanitary sewer easement along the Easement Route to connect to the City's existing 24-inch sewer line on De Zavala Drive, as shown generally on "**Exhibit B**". The City acknowledges and agrees that one additional sanitary sewer easement must be acquired from one landowner along the Easement Route ("Remaining Offsite Easement") for the City to provide wastewater service. The Developer, on behalf of the District and/or Hays County Municipal Utility District No. 9, shall attempt to obtain the Remaining Offsite Easement from the landowner identified by the City. However, if the Developer is unable to obtain the Remaining Offsite Easement, the Developer shall provide notice to the City of same, along with a survey of the Remaining Offsite Easement tract and request that the City proceed with obtaining the Remaining Offsite Easement (the "Notice"). Upon receipt of the Notice, the City agrees to use best efforts and proceed diligently with acquiring the Remaining Offsite Easement through eminent domain, and, if necessary, through condemnation proceedings, and will comply with all procedural requirements at the earliest allowable times set forth in the Texas Property Code. Within ten (10) days of receipt of the Notice, the City agrees to (i) make the initial written offer to purchase the Remaining Offsite Easement and (ii) take all necessary action to initiate obtaining an appraisal from a certified appraiser of the value of the Remaining Offsite Easement tract (the "Appraisal") at the earliest time practicable, but in no event shall the Appraisal take more than sixty (60) days from the City's initiation. Developer shall pay, on behalf of the District and Hays County Municipal Utility District No. 9, the costs to acquire such Remaining Offsite Easement, in an amount not to exceed fair market value of the Remaining Offsite Easement.

(b) In the event the Remaining Offsite Easement is acquired, as set forth above, the WWTP Site shall be conveyed to the City following completion of the Lift Station Facilities on the WWTP Site necessary for the City to provide Wastewater Services to the Property and property within Hays County Municipal Utility District No. 9. The lift station and related facilities on the WWTP Site shall be designed and constructed by, or on behalf of, the District and/or Hays County Municipal Utility District No. 9 and conveyed to the City upon completion for ownership, operation, and maintenance. If, in the future, the City determines to serve the Property and property within Hays County Municipal Utility District No. 9 by a wastewater treatment plant to be constructed on the WWTP Site, rather than the Lift Station Facilities and the City's existing wastewater facilities, the City shall design and construct such wastewater treatment plant on the WWTP Site, at its sole cost and expense.

(c) Notwithstanding anything herein to the contrary, the City acknowledges and agrees that, in the event the Remaining Offsite Easement has not been obtained within 210 days of the City's receipt of the Appraisal, the District, Hays County Municipal Utility District No. 9, or Developer on behalf of the districts, may proceed with construction of a wastewater treatment plant, whether temporary or permanent, on the WWTP Site to serve the Property and property within Hays County Municipal Utility District No. 9 in accordance with, and upon approval of, Texas Pollutant Discharge Elimination System Permit No. WQ0015784001. In the event such wastewater treatment plant is constructed by or on behalf of the District and/or Hays County Municipal Utility District No. 9 to serve the Property and property within Hays County Municipal Utility District No. 9, the wastewater treatment plant, whether constructed in one or more phases, will be conveyed, upon completion, to the City for ownership, operation, and maintenance.

2.04 Design and Construction.

(a) The Facilities shall be designed in accordance with sound engineering principles and in compliance with all applicable requirements as set forth in this Agreement. The plans and specifications for water, to the extent the City provides Water Supply Services, and wastewater, and drainage facilities shall be subject to review and approval by the City, which approval shall not be unreasonably withheld, conditioned, or delayed. Upon receipt of a complete set of plans for which the City can perform its review, the City shall have thirty (30) days to review the plans and specifications and submit written comments to the District. If the City does not approve or disapprove of the plans within this thirty (30) day period, the plans and specifications shall be deemed approved. If the City provides written comments within the thirty (30) day period, the plans and specifications will be deemed approved as long as the District complies with such written comments. To the extent CCSUD provides Water Supply Services to the District, the District Water System shall be designed in

accordance with the design standards of CCSUD, and such plans and specifications shall not be subject to review and approval by the City.

(b) The Facilities shall be installed, construction contracts shall be awarded, and payment and performance bonds obtained all in accordance with the general law for municipal utility districts. In addition to any other construction contract provisions, any construction contract for the Facilities shall include the contractor's one (1) year warranty of work performed under the contract.

(c) The City shall have the right to inspect and approve the construction of water facilities, in the event the District will receive Water Supply Services from the City, wastewater facilities, and drainage facilities in accordance with the Subdivision Regulations, which approval will not be unreasonably withheld, conditioned, or delayed. The District or the Developer, on behalf of the District, shall be obligated to pay for any required permits for construction of drainage, water, and wastewater improvements and pay for City inspection of any such public improvements that will be dedicated to the City for maintenance.

2.05. Wastewater and Water Facilities Capacity. The City shall provide the District with its ultimate requirements for Wastewater capacity and, in the event the City is providing Water Supply Services, Water capacity. The City represents that it has sufficient capacity in the City Wastewater System to serve the full development of the District, and the City shall at all times manage the capacity in the City Wastewater System so that capacity to serve development within the District is available at the time such improvements are to be connected to the City Wastewater System. The City represents that it has sufficient capacity in the City Water System to serve the full development of the District if the City is to provide Water Supply Services, and the City shall at all times manage the capacity in the City Water System so that capacity to serve development within the District is available if water system improvements are to be connected to the City Water System. In the event that either the City Wastewater System or City Water System, if applicable, does not have sufficient capacity to serve the full development of the District, the City agrees to make any necessary improvements to the City Wastewater System or City Water System, as applicable, necessary to handle the District's capacity, at no cost to the District, in order to serve the development within the District. The City represents and warrants that, at the execution of this Agreement, the City Wastewater System and City Water System have sufficient capacity to serve up to 2,500 LUEs for the Property.

2.06. Wastewater Connections. The District will pay, or cause to be paid, all design, easement, and construction costs for the District Wastewater System and the Lift Station Facilities that are required to collect Wastewater within the Property and cause the Wastewater to flow to the City Wastewater System. All Wastewater collected from customers within the District shall be delivered through the District Wastewater System

to its point of connection with the City Wastewater System. Notwithstanding the foregoing, the City shall not allow to be made any connection to the District Wastewater System until, with respect to such connection, the City has inspected the connection.

2.07. Water Connections. The District will pay, or cause to be paid, all design, easement, and construction costs for the District Water System within the District that is required to distribute water within the Property. In the event that the City provides Water Supply Services, the District Water System shall be constructed so that Water will be supplied from the City Water System through its point of connection to the District Water System.

2.08. Impact Fees.

(a) Subject to the terms of this Agreement, the City will assess wastewater impact fees in the amounts of $2,684 per LUE, as provided in Ordinance No. 2018-09, or the impact fee amount hereafter adopted by the City; provided, however, the City will offset and credit the amount of wastewater impact fees otherwise owed for the development on the Property by the costs to design and construct any offsite wastewater infrastructure conveyed to the City. Such credit, which shall be credited to the entity, whether one or more, that paid for the offsite wastewater infrastructure conveyed to the City, shall not exceed an amount equal to forty-eight percent (48%) of the wastewater impact fees otherwise owed for development on the Property. Credits for impact fees will be governed by this Agreement and Chapter 86 of the City's Code of Ordinances. Impact fees for each Vertical Improvement shall be payable, by or on behalf of the District, at the time a tap is requested for such improvement before connection of each particular Vertical Improvement to the City Wastewater System.

(b) Subject to the terms of this Agreement, the City will assess water impact fees in the amount of $3,801 per LUE, as provided in Ordinance No. 2018-09, or the impact fee amount hereafter adopted by the City; provided, however, to the extent applicable, the City will offset and credit the amount of the water impact fees otherwise owed for the development on the Property by the costs to design and construct any offsite water infrastructure conveyed to the City. Such credit, if any, shall be credited to the entity, whether one or more, that paid for the offsite water infrastructure conveyed to the City. Credits for impact fees will be governed by this Agreement and Chapter 86 of the City's Code of Ordinances. Impact fees for each Vertical Improvement shall be payable, by or on behalf of the District, at the time a tap is requested for such improvement before connection of each particular Vertical Improvement to the City Water System, if applicable. Notwithstanding the foregoing, water impact fees shall only be charged in the event that the Property receives Water Supply Services from the City rather than CCSUD.

2.09. Facilities Oversizing. The District shall not be required to oversize the Facilities to serve any areas outside of the Property unless the City agrees to oversize such Facilities in compliance with Chapter 86 of the City's Code of Ordinances. Notwithstanding the foregoing, the parties may, by separate written agreement, agree to some other method or mechanism for payment of the City's share of oversizing, including an offset or credit against impact fees otherwise due or reimbursement from the City.

2.10. Letter of Assurance. The City agrees that, from time to time, the City shall, upon request, issue a letter of assurance to the District confirming that the City has sufficient capacity in the City Wastewater System and, if applicable, the City Water System to serve the District. Upon request, the City agrees to issue a letter of assurance to the owner of platted property within the District confirming Wastewater and, if applicable, Water availability for such platted property.

2.11. Easements; Rights of Entry. The Facilities constructed by or on behalf of the District and conveyed to the City shall be constructed in dedicated easements or public rights-of-way. Any such easements, granted by separate instrument, shall be granted, or assigned, to the City following completion of construction of such facilities and the City's acceptance of such facilities. The City agrees to provide such existing easements and rights-of-entry necessary for construction and connection of any of the Facilities to the City systems.

ARTICLE III
OWNERSHIP, OPERATION, AND MAINTENANCE OF FACILITIES

3.01. Ownership by the City. As each phase of the District wastewater facilities and water facilities, to the extent the City provides Water Supply Services to the Property, are acquired and constructed, the District shall convey the same to the City, reserving a Security Interest in the conveyed facilities for the purpose of securing the performance of the City under this Agreement. The District will transfer all warranties of contractors and subcontractors, if any, and all other rights beneficial to the operation of the phase of the conveyed water facilities, if applicable, and wastewater facilities to the City. Performance by the City shall include, but not be limited to, (1) providing adequate maintenance and operation of the conveyed facilities; (2) providing the Wastewater and Water capacity, if applicable, as set forth herein; (3) providing reasonable and timely review and approval as required herein; (4) maintaining the water distribution line, if applicable, and wastewater collection line capacity as constructed by the District; and (5) timely making taps or connections to the District Wastewater System and, if applicable, District Water System. At such time as the District's bonds issued to acquire and construct the applicable phase of the facilities conveyed to the City have been discharged, the District shall execute a release of such

Security Interest with respect to such phase of facilities conveyed to the City and the City shall own such facilities free and clear of such Security Interest.

3.02. Acceptance and Operation by the City.

(a) As construction of each phase of the Facilities is completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the approved plans and specifications, and City project acceptance procedures, the City will accept the water facilities, if applicable, and wastewater facilities, whereupon such portion of the Facilities shall be conveyed to, and operated and maintained by, the City at its sole expense as provided herein. Drainage facilities shall be conveyed to Hays County. In the event that a portion of the Facilities has not been completed in accordance with the approved plans and specifications, the City will immediately advise the District in what manner the applicable infrastructure does not comply, and the District shall immediately correct the same; whereupon, the City shall again inspect such infrastructure and accept the same if the defects have been corrected. During the term of this Agreement, the City will operate the Facilities, excluding drainage facilities which will be maintained by Hays County, and provide Wastewater Services and, if applicable, Water Supply Services to all users within the District without discrimination. The City shall at all times maintain the Facilities, other than drainage facilities, or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles in operation and maintenance thereof, and the City will comply with all contractual provisions and agreements entered into by it and with all valid rules, regulations, directions or orders by any governmental administrative or judicial body promulgating the same.

(b) The City shall provide competent, trained personnel, licensed or certified as necessary by the appropriate regulatory authority, to operate, inspect, maintain, and repair the Facilities, other than drainage facilities, which shall be maintained by Hays County. Upon request, the City shall provide a report to the District indicating the total number of service connections within the District.

(c) Upon request by the District, the City agrees to provide a letter contemplated by Title 30, Section 293.69 of the Texas Administrative Code.

(d) The District may design, finance, construct, own, and operate detention ponds and drainage channels. The District shall maintain such detention ponds and drainage channels at no cost or expense to the City.

3.03. Rates/Tap Fees and Other Charges.

(a) As ownership of each portion of the District Water System, as applicable, and the District Wastewater System is transferred to the City, any persons applying for and receiving Water Supply Services through the District Water System, if applicable, and Wastewater Services through the District Wastewater System will be water, if applicable, and sewer customers of the City.

(b) The City shall bill and collect fees from customers of the District Wastewater System and, if applicable, District Water System, and shall from time to time fix such rates and charges for such customers as the City determines are necessary; provided, that rates and charges for Wastewater Services and Water Supply Services, if applicable, will be no greater than those charged other classifications of users in non-municipal utility district areas within the City's extraterritorial jurisdiction. The District agrees it will not contest the City's out-of-city retail rates for Wastewater Services afforded by the District Wastewater System and, if applicable, Water Supply Services afforded by the District Water System if such rates are no greater than one hundred twenty-five percent (125%) of the City's in-city retail rates. All Wastewater and, if applicable, Water revenues from customers within the District shall belong exclusively to the City. The City shall be responsible for providing and installing any necessary water meters for the individual customers.

(c) The City or its contractor will conduct sewer inspections and water inspections, if applicable, within five (5) days of request therefore. The City may charge the builders within the District a tap fee, sewer inspection charge and water inspection charge, if applicable. Other than the impact fees set forth in Section 2.08, water, if applicable, and sewer rates, tap fees, and sewer and water inspection charges, the City may not impose any additional fee or charge on users within the District.

ARTICLE IV
FINANCING OF FACILITIES

4.01. Authority of District to Issue Bonds. The District shall have the authority to issue, sell, and deliver bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such form and manner and as permitted or provided by federal law, and the general laws of the State of Texas. The District may issue bonds for any purpose authorized by law.

4.02. Bond Provisions. The District's bonds shall expressly provide that the District reserves the right to redeem the bonds on any interest payment date no later than subsequent to the fifteenth (15th) anniversary of the date of issuance without premium and (with the exception of refunding bonds) will be sold only after the taking of public bid therefore. The net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, will not exceed two percent (2%) above the highest average interest rate reported by the

Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period immediately preceding the date notice of the sale of such bonds is given or a similar index if such index should cease to exist.

4.03. Bonds as Obligation of District. Unless and until the City shall dissolve the District and assume the properties, assets, obligations, and liabilities of the District, the bonds of the District, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations or indebtedness of the City.

ARTICLE V
DISTRICT TAXES

5.01. District Taxes. The District is authorized to assess, levy, and collect ad valorem taxes upon all taxable properties within the District to provide for (i) the payment in full of the District's obligations, including principal, redemption premium, if any, or interest on the bonds and to establish and maintain any interest and sinking fund, debt service fund, or reserve fund and (ii) for maintenance purposes, all in accordance with applicable law. The parties agree that nothing herein shall be deemed or construed to prohibit, limit, restrict, or otherwise inhibit the District's authority to levy ad valorem taxes as the Board of Directors of the District from time to time may determine to be necessary. The City and the District recognize and agree that all ad valorem tax receipts and revenues collected by the District shall become the property of the District and may be applied by the District to the payment of all or any designated portion of the principal or redemption premium, if any, or interest on the bonds or otherwise in accordance with applicable law.

ARTICLE VI
DISSOLUTION OF THE DISTRICT

6.01. Dissolution of District Prior to Retirement of Bonded Indebtedness. The City and the District recognize that, as provided in the laws of the State of Texas, the City has the right to annex and dissolve the District and to acquire the District's assets and assume the District's obligations. Notwithstanding the foregoing, the City and the District acknowledge and agree that the annexation of property within the District by the City and dissolution of the District is governed by the Strategic Partnership Agreement. The City agrees that it will not annex the Property within the District until both of the following conditions have been satisfied (i) all water, sanitary sewer, drainage, and road facilities have been constructed to serve at least ninety percent (90%) of the land within the District and (ii) the Developer(s) within the District have been fully reimbursed by the District to the maximum extent permitted by the rules of the TCEQ or other applicable law.

6.02. Transition upon Dissolution. In the event all required findings and procedures for the annexation and dissolution of the District have been duly, properly, and finally made and satisfied by the City, and unless otherwise mutually agreed by the City and the District pursuant to then existing law, the District agrees that its officers, agents, and representatives shall be directed to cooperate with the City in any and all respects reasonably necessary to facilitate annexation and dissolution of the District in accordance with the terms of the Strategic Partnership Agreement.

ARTICLE VII
DEFAULT AND REMEDIES

7.01. Default; Notice. A breach of any material provision of this Agreement after notice and an opportunity to cure shall constitute a default. The non-breaching party shall notify the breaching party of an alleged breach, which notice shall specify the alleged breach with reasonable particularity. If the breaching party fails to cure the breach within a reasonable time not sooner than thirty (30) days after receipt of such notice (or such longer period of time as the non-breaching party may specify in such notice), the non-breaching party may declare a default hereunder and exercise the remedies provided in this Agreement in the event of default.

7.02. Remedies. In the event of a default hereunder, the remedies of the non-defaulting party shall be limited to the equitable remedy of specific performance or a writ of mandamus to compel any necessary action by the defaulting party. In the event that the non-defaulting party obtains a remedy as provided in this Section or as otherwise provided in this Agreement, the defaulting party shall be required to pay for the non-defaulting party's attorneys' fees and court costs. Notwithstanding anything contained herein to the contrary, the City understands that the City's timely provision of Wastewater collection and treatment capacity and, if applicable, Water supply and distribution capacity to serve the Property is essential to complete development of the Property. Therefore, in addition to the remedies set forth above, in the event that the City is unable to provide the necessary capacity consistent with this Agreement, the District shall: (1) no longer have the obligation to pay any impact fees; and (2) the District may finance, design, and construct the wastewater and, if applicable, water facilities necessary to serve the Property that would otherwise be provided by the City. In the event that the District proceeds with the design and construction of the facilities contemplated within this Section as needed to serve the Property, the Parties hereby agree that: (i) the City shall promptly provide (or cause to be provided) the necessary legal rights, including, but not limited to, any required right of entry or access agreements, required by the District in its sole and reasonable discretion to construct the facilities; and (ii) the City shall only be obligated to financially reimburse the District for any facilities contemplated by this Section solely to the extent that such facilities are designed and constructed to serve additional property located outside of the boundaries of the District. Notwithstanding the foregoing, the District shall have no

obligation to oversize any such facilities at the request of the City should doing so impact the facility construction, development timeline, or budget to the detriment of the District.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

8.01. Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused, to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and the full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority (but an order of the City shall not be an event of force majeure for the City), insurrections, riots, epidemics and pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other inabilities of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

8.02. Approvals and Consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution, or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm, or entity previously authorized to give such approval or consent on behalf of the party. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

8.03. Address and Notice. Unless otherwise provided in this Agreement, any notice to be given under this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery", addressed to the party to be notified, or (iv) by sending the same by electronic mail ("email") with confirming copy sent by regular

mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

If to the City, to:

City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
Attn: City Manager
Email: _____

If to the District, to:

Hays County Municipal Utility District No. 8
c/o Allen Boone Humphries Robinson LLP
1108 Lavaca Street, Suite 510
Austin, Texas 78701
Attn: D. Ryan Harper
Email: rharper@abhr.com

The parties shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice of such change to the other party.

8.04. Assignability. This Agreement may not be assigned by either party except upon written consent of the other party.

8.05. No Additional Waiver Implied. The failure of either party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other party.

8.06. Reservation of Rights. All rights, powers, privileges, and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

8.07. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.

8.08. Entire Agreement. This Agreement, and the documents and exhibits referenced herein, embody the entire understanding between the parties with respect to the subject matter hereof. If any provisions of the City Consent or Strategic Partnership Agreement appear to be inconsistent or in conflict with the provisions of this Agreement, the applicable provisions of the City Consent or Strategic Partnership Agreement shall govern; provided, that the provisions contained in this Agreement shall be interpreted in a way which is consistent with the City Consent and Strategic Partnership Agreement.

8.09. Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations, or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

8.10. Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

8.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

8.12. Term and Effect. This Agreement shall remain in effect for forty-five (45) years from the date hereof, unless terminated on an earlier date pursuant to other provisions or by express written agreement executed by the City and the District. Upon the expiration of the initial term, this Agreement shall automatically be extended for successive one-year periods, unless either the City or the District give notice to the other of its intent to terminate prior to any extension term.

8.13 Incorporation. The exhibits referred to herein and listed below, and all other documents referred to in this Agreement, are incorporated herein by reference for the purposes set forth in this Agreement.

List of Exhibits:

Exhibit "A": Legal Description of the Property
Exhibit "B": Easement Route
Exhibit "C": WWTP Site
Exhibit "D": Subdivision Regulations

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this ____ day of _____, 202__.

CITY OF SAN MARCOS, TEXAS

_____

Jane Hughson, Mayor

ATTEST/SEAL:

_____

City Clerk

HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 8

By:_____
President, Board of Directors

ATTEST:

By:_____
Secretary, Board of Directors
(SEAL)

EXHIBIT "A"
Legal Description of the Property

EXHIBIT A-1

D·A·MAWYER
LAND SURVEYING

METES AND BOUNDS DESCRIPTION
FOR A
567.663 ACRE TRACT OF LAND

Being a 567.663 acre tract of land situated in San Marcos, Hays County, Texas, and being out of the William Burnett, Jr., W. A. Matthews, and John McGuire original surveys, of Hays County, Texas, and consisting of a called 119.988 acre tract of land, as conveyed to HK Baugh Ranch, LLC, described in Document No. 19040023, of the Official Public Records of Hays County, Texas, and also a 140.166 acre tract of land (TRACT 1), a 139.898 acre tract of land (TRACT 2), a 231.501 acre tract of land (TRACT 3), a 8.674 acre tract of land (TRACT 4), and a 25.000 acre tract of land (TRACT 5), as described in Document No. 19040022, of the Official Public Records of Hays County, Texas, and said 567.663 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron pin with cap stamped "Chaparral" found at the intersection of the Northeasterly Right-of-Way line of Staples Road (F.M. 621) (a variable width R.O.W.), and the Southeasterly R.O.W. line of County Road 266 (C.R. 266) (Old Bastrop Road) (a variable width R.O.W.), being the most Westerly corner of said 119.988 acre tract of land and being the most Westerly corner of this herein described tract of land;

THENCE departing the Northeasterly R.O.W. line of said Staples Road, with the Southeasterly line of said C.R. 266, with the Northwesterly lines of said, 119.988 acre tract of land, and the Northwesterly lines of said TRACT 1, TRACT 2, and TRACT 3, the following courses:

N 44° 38' 30" E, a distance of 2,951.73 feet to a ½" iron pin found for a corner;

N 44° 14' 33" E, a distance of 1,178.84 feet to a ½" iron pin found for a corner;

N 44° 54' 36" E, a distance of 212.21 feet to a 5/8" iron pin found for a corner;

N 44° 37' 46" E, a distance of 63.65 feet to a ½" iron pin found for a corner;

N 48° 36' 16" E, a distance of 142.37 feet to a ½" iron pin found for a corner;

N 53° 11' 20" E, a distance of 59.88 feet to a ½" iron pin found for a corner;

N 58° 27' 40" E, a distance of 63.52 feet to a ½" iron pin found for a corner;

N 61° 08' 26" E, a distance of 57.83 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 65° 03' 57" E, a distance of 61.94 feet to a ½" iron pin found for a corner;

N 66° 03' 18" E, a distance of 120.20 feet to a ½" iron pin found for a corner;

N 67° 00' 43" E, a distance of 95.91 feet to a ½" iron pin found for a corner;

N 70° 45' 25" E, a distance of 139.04 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 73° 45' 23" E, a distance of 42.93 feet to a 5/8" iron pin found for a corner;

N 70° 54' 41" E, a distance of 56.15 feet to a ½" iron pin found for a corner;

N 75° 46' 03" E, a distance of 105.72 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 83° 35' 42" E, a distance of 58.93 feet to a ½" iron pin found for a corner;

N 84° 12' 12" E, a distance of 162.81 feet to a ½" iron pin found for a corner;

N 78° 43' 41" E, a distance of 17.62 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 67° 35' 05" E, a distance of 70.30 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 54° 18' 30" E, a distance of 64.17 feet to a ½" iron pin found for a corner;

N 42° 32' 41" E, a distance of 51.24 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 38° 22' 06" E, a distance of 248.17 feet to a ½" iron pin found for a corner;

N 28° 58' 26" E, a distance of 226.99 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 16° 09' 21" E, a distance of 245.58 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 04° 13' 37" E, a distance of 161.72 feet to a 5/8" iron pin found for a corner;

N 06° 09' 34" E, a distance of 271.80 feet to a 5/8" iron pin found for a corner;

N 13° 46' 59" E, a distance of 99.74 feet to a ½" iron pin with cap stamped "DAM #5348 PROP. COR." found for a corner;

N 27° 42' 27" E, a distance of 24.06 feet to a ½" iron pin found;

N 33° 11' 16" E, a distance of 24.49 feet to a ½" iron pin found for a corner;

N 36° 58' 08" E, a distance of 49.25 feet to a ½" iron pin found for a corner;

THENCE departing the Southeasterly line of C.R. 266, and across and through said TRACT 3, the following calls:

S 57° 23' 34" E, a distance of 636.30 feet to a point for a corner;

N 77° 59' 11" E, a distance of 878.49 feet to a point for a corner;

N 85° 33' 58" E, a distance of 600.99 feet to a point for a corner;

N 66° 39' 01" E, a distance of 893.51 feet to a point for a corner;

N 50° 45' 19" E, a distance of 685.86 feet to a point for a corner;

N 20° 22' 54" E, a distance of 327.71 feet to a point for a corner;

N 12° 45' 52" E, a distance of 673.85 feet to a point for a corner;

N 36° 24' 52" E, a distance of 267.80 feet to a point for the Northerly corner;

S 50° 55' 11" E, a distance of 1916.30 feet to a point in the Westerly line of a 12.270 acre tract of land called "PART 2" and described in Document No. 18001659 of the Official Public Records of Hays County, Texas, and in the Easterly line of said TRACT 4 for the most Easterly corner of this herein described tract of land;

THENCE with the Westerly line of said 12.270 acre tract of land, and with the Southeasterly line of said TRACT 4, S 32° 39' 13" W, a distance of 279.80 feet to a TXDOT Type II concrete monument found at the beginning of a curve to the right, being in the Westerly line of said 12.270 acre tract of land, for a corner of this herein described tract of land;

THENCE continuing with the common line between the Southeasterly lines of said TRACT 3, and said 12.270 acre tract of land, and with said curve to the right, having an arc length of 858.90 feet, a radius of 4,948.00 feet, a delta angle of 09° 56' 45", a tangent length of 430.53 feet, and a chord bearing and distance of S 44° 11' 56" W, 857.82 feet, at a distance of 633.05 feet to a TXDOT Type II concrete monument found in the Southeasterly line of said TRACT 3, being in the Northwesterly line of the remaining portion of a called 563.797 acre tract of land, as conveyed to The Mayan at San Marcos, LLC, and recorded in Volume 4892, Page 330, of the Official Public Records of Hays County, Texas, and being a Southeasterly corner of this herein described tract of land;

THENCE with the common line between the remaining portion of said TRACT 1, TRACT 2, and TRACT 3, S 49° 10' 21" W, a distance of 7,111.92 feet to a TXDOT Type II concrete monument found at the beginning of a curve to the right, being the most Northeasterly corner of a called 16.509 acre tract of land, as conveyed to Hays County, and recorded in Document No. 18001659, of the Official Public Records of Hays County, Texas, and being a Southeasterly corner of said TRACT 1, and this herein described tract of land;

THENCE with the common line between said TRACT 1, and said 119.988 acre tract of land, and with said 16.509 acre tract of land, and with said curve to the right, having an arc length of 301.33 feet, a radius of 11,052.00 feet, a delta angel of 01° 33' 44", a tangent length of 150.67 feet and a chord bearing and distance of S 67° 19' 07" W, 301.32 feet to a TXDOT Type II concrete monument found at the beginning of a curve to the left, being in the common line between the said 119.988 acre tract of land and said 46.509 acre tract of land, and being a Southeasterly corner of this herein described tract of land;

THENCE continuing with the common line between said 119.988 acre tract of land and said 16.509 acre tract of land, and with said curve to the left, having an arc length of 2,017.64, a radius of 5,048.00 feet, a delta angle of 22° 54' 02", a tangent length of 1,022.47 feet, and a chord bearing and distance of S 56° 38' 16" W, 2,004.23 feet to a TXDOT Type II concrete monument found in the common line between said 119.988 acre tract of land and said 16.509 acre tract of land, and being a Southerly Southeast corner of this herein described tract of land;

THENCE continuing with the common line between the remaining portion of said 119.988 acre tract of land and said 16.509 acre tract of land, S 45° 09' 42" W, a distance of 221.11 feet to a TXDOT Type II concrete monument found in the common line between said 119.988 acre tract of land and said 16.509 acre tract of land, and being the most Southerly corner of this herein described tract of land;

THENCE continuing with the common line between the remaining portion of said 119.988 acre tract of land and said 16.509 acre tract of land, N 89° 49' 28" W, a distance of 169.80 feet to a TXDOT Type II concrete monument found in the common line between the said 119.988 acre tract of land and said 16.509 acre tract of land, and being a Southerly corner of this herein described tract of land;

THENCE continuing with the common line between the remaining portion of said 532.212 acre tract of land and said 16.509 acre tract of land, N 44° 48' 35" W, a distance of 208.62 feet to a TXDOT Type II concrete monument found in the common line between the remaining portion of said 119.988 acre tract of land and said 16.509 acre tract of land, and being a Southerly interior corner of this herein described tract of land;

THENCE continuing with the common line between the remaining portion of said 119.988 acre tract of land and said 16.509 acre tract of land, S 45° 20' 25" W, a distance of 9.89 feet to a TXDOT Type II concrete monument found in the Northeasterly R.O.W. line of aforementioned Staples Road (S.H. 621), being the most Westerly corner of said 16.509 acre tract of land, and being a Southerly Southwest corner of this herein described tract of land;

THENCE with the Northeasterly R.O.W. line of said Staples Road, and with the Southwesterly line of the remaining portion of said 119.988 acre tract of land, N 44° 56' 21" W, a distance of 208.74 feet to a 5/8" iron pin found at the beginning of a curve to the left, being in the Northeasterly R.O.W. line of said Staples Road, and being a Southerly corner of the said 119.988 acre tract of land and this herein described tract of land;

THENCE continuing with the Northeasterly R.O.W. line of said Staples Road and the Southwesterly line of the said 119.988 acre tract of land and with said curve to the left, having an arc length of 211.77 feet, a radius of 2,904.79 feet, a delta angle of 04° 10' 38", a tangent length of 105.93 feet, and a chord bearing and distance of N 47° 07' 44" W, 211.72 feet to a TXDOT Type II concrete monument found in the Northeasterly R.O.W. line of said Staples Road, and being a Southwesterly corner of said 119.988 acre tract of land and this herein described tract of land;

THENCE continuing with the Northeasterly R.O.W. line of said Staples Road and the Southwesterly line of said 119.988 acre tract of land, N 48° 54' 14" W, a distance of 1,023.32 feet to a 5/8" iron pin found at the beginning of a curve to the left, being in the Northeasterly R.O.W. line of said Staples Road, and being a Southwesterly corner of the said 119.988 acre tract of land and this herein described tract of land;

THENCE continuing with the Northeasterly R.O.W. line of said Staples Road and the Southwesterly line of said 119.988 acre tract of land, and with said curve to the left, having an arc length of 448.45 feet, a radius of 994.93 feet, a delta angle of 25° 49' 30", a tangent length of 228.10 feet, and a chord bearing and distance of N 61° 51' 23" W, 444.71 feet, to the POINT OF BEGINNING, and containing 567.663 acres of land, more or less.

"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

Bearings based on the Texas State Plane Coordinate System, South Central Zone (4204), North American Datum 1983.

November 14, 2020.

Drew A. Mawyer
Registered Professional Land Surveyor No. 5348
TBPLS Firm Registration #10191500
5151 W SH 46, New Braunfels, Texas, 78132
LJA074- HK BAUGH RANCH- OVERALL "MUD" M&B- 110720

STATE OF TEXAS
REGISTERED
DREW A. MAWYER
5348
PROFESSIONAL
LAND SURVEYOR

EXHIBIT "B"
Easement Route

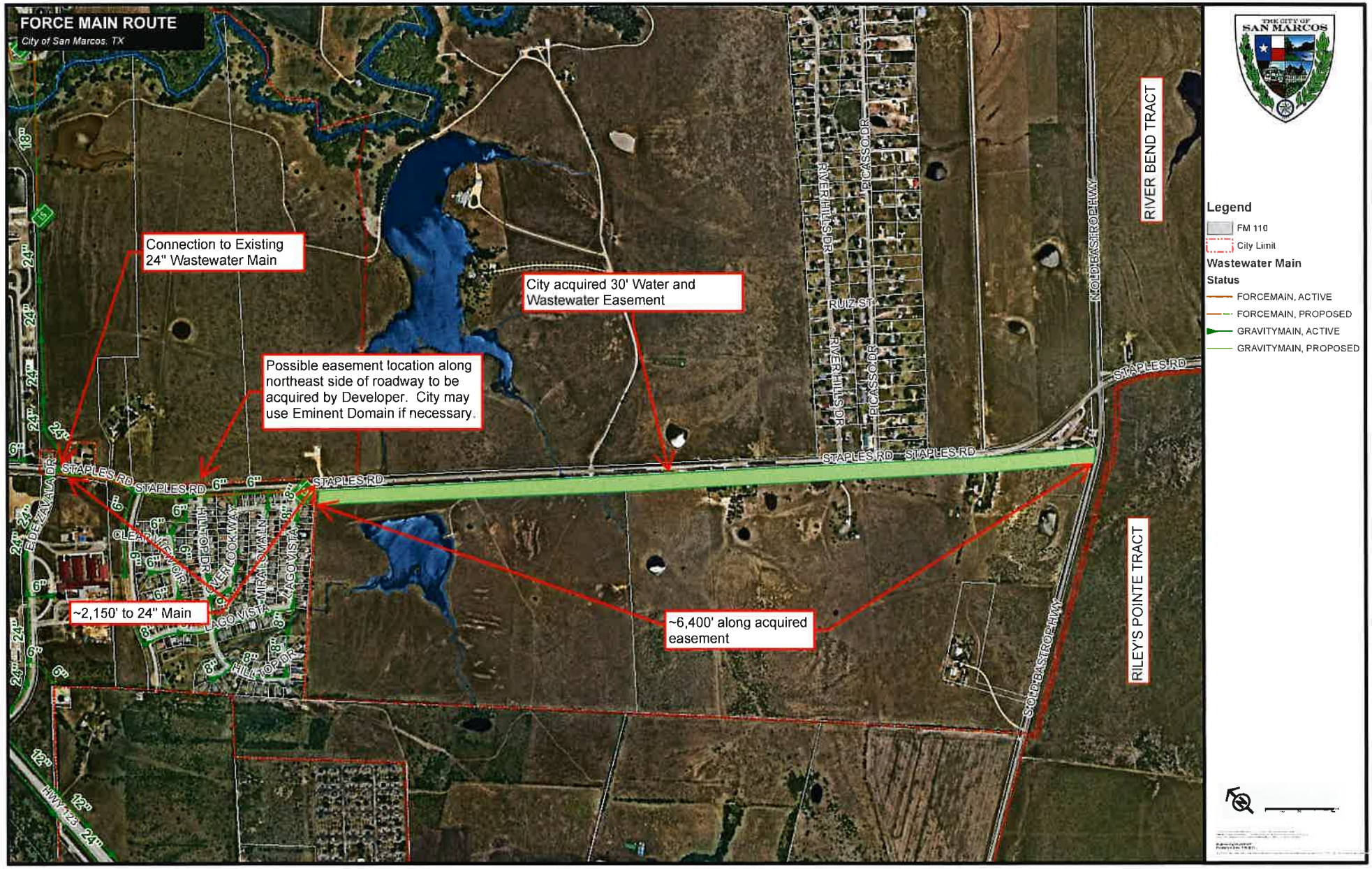
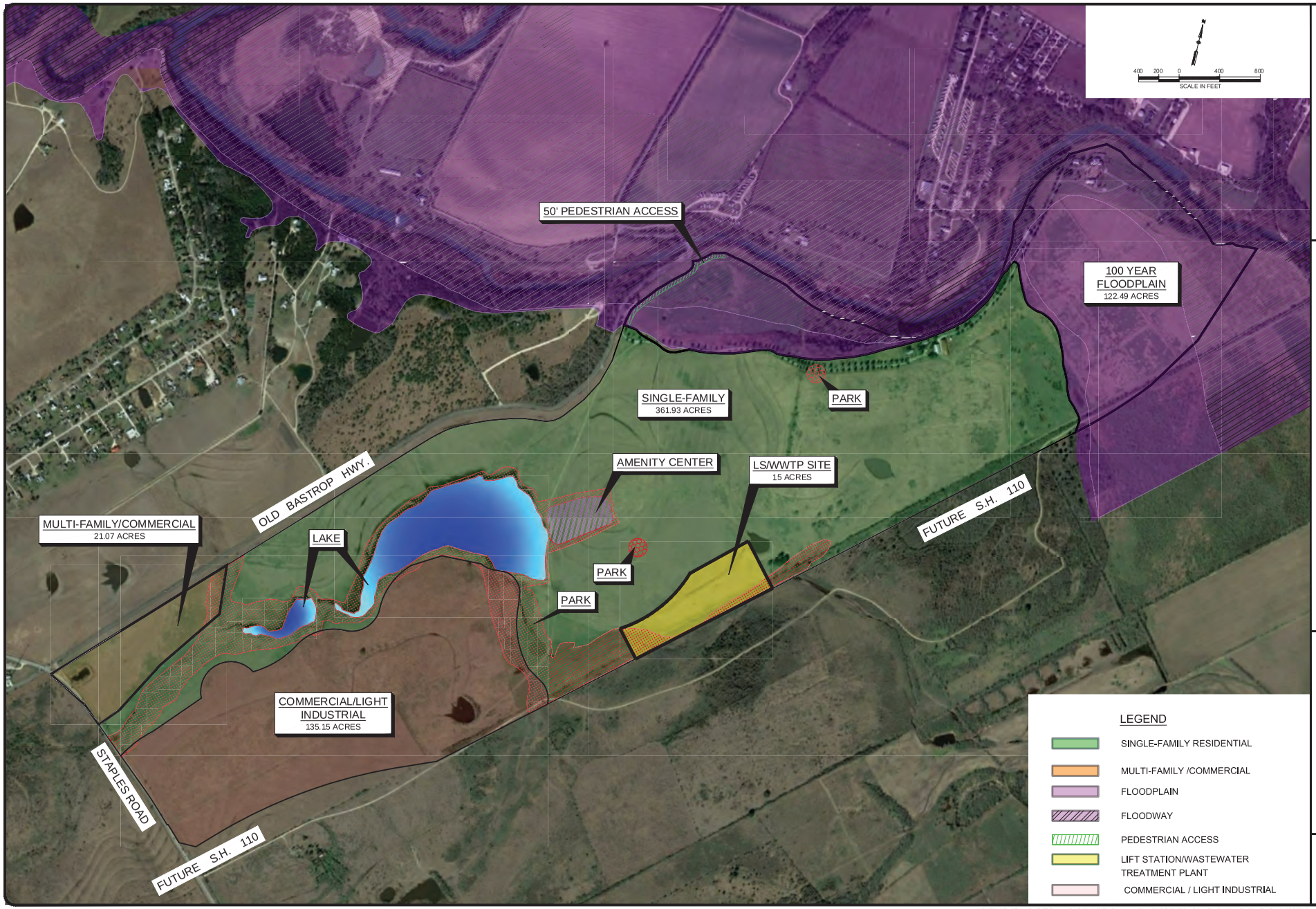

FORCE MAIN ROUTE
City of San Marcos, TX
Connection to Existing 24" Wastewater Main
City acquired 30' Water and Wastewater Easement
Possible easement location along northeast side of roadway to be acquired by Developer. City may use Eminent Domain if necessary.
~2,150' to 24" Main
~6,400' along acquired easement
STAPLES RD
EDEZAVALA DR
CLEARVIEW DR
HILLTOP DR
CLEARCOOK WAY
MIRALOMA LN
LAGO VISTA
RIVER HILLS DR
PICASSO DR
RUIZ ST
N OLD BASTROP HWY
S OLD BASTROP HWY
HWY 123
RIVER BEND TRACT
RILEY'S POINTE TRACT
THE CITY OF SAN MARCOS
Legend
FM 110
City Limit
Wastewater Main
Status
FORCEMAIN, ACTIVE
FORCEMAIN, PROPOSED
GRAVITYMAIN, ACTIVE
GRAVITYMAIN, PROPOSED

EXHIBIT "C"
WWTP Site



LAND USE CONCEPT EXHIBIT

RIVER BEND SUBDIVISION

LJA Engineering, Inc.
1100 NE Loop 410
Suite 850
San Antonio, Texas 78209
Phone 210.503.2700
Fax 210.503.2749
FRN - F-1386

K:\SA179 HK Real Estate Dev\0409 Freeman Subdivision\436 Site Development Plans\DWG-Exhibit\Rileys Pointe-RiverBend_LandUsePlan-RiverBend_11242021.dwg

Date/Time: Wed, 24 Nov 2021 - 12:17pm

<u>EXHIBIT "D"</u>
Subdivision Regulations

CHAPTER 1. GENERAL

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ARTICLE 1: INTRODUCTION

DIVISION 1: REFERENCE; AUTHORITY; CONSISTENCY; EFFECTIVE DATE

Section 1.1.1.1Official Name

This Subpart B of the San Marcos, Texas, City Code, as may be amended, shall be officially known and cited as the "Land Development Code of San Marcos, Texas". It may be referred to as the "Development Code" or herein simply, "this Development Code."

Section 1.1.1.2Authority

This Development Code is adopted pursuant to the statutory authority conferred by and pursuant to the Texas Local Government Code, as amended, and pursuant to and in accordance with the City's Comprehensive Plan entitled "Vision San Marcos - A River Runs Through Us," adopted April 16, 2013, as amended ("Comprehensive Plan"). This Development Code implements the Comprehensive Plan.

Section 1.1.1.3Consistency with Comprehensive Plan

The City Council has determined that this Development Code is consistent with the Comprehensive Plan.

Section 1.1.1.4Effective Date

This Development Code, as may be amended, shall take effect on April 17, 2018.

(Ord. 2020-60, 9-1-20; Ord. No. 2019-45, 12-17-19)

Section 1.1.1.5Amendment & Restatement of Previous Land Development Code and Smartcode

As of the effective date, this Development Code shall supersede, amend and restate in its entirety the Land Development Code previously adopted as Subpart B on December 13, 2004, as amended, and the San Marcos Smartcode previously adopted as Subpart C, of the San Marcos, Texas, City Code on May 3, 2011, as amended.

DIVISION 2: PURPOSE AND INTENT

Section 1.1.2.1General

This Development Code was adopted for the purposes of promoting the public health, safety, morals and general welfare, and protecting and preserving places and areas of environmental, historical, cultural and/or architectural importance and significance within the city limits.

Section 1.1.2.2Zoning Districts

The districts established under and pursuant to this Development Code have been designed to lessen the congestion in the streets, to secure safety from fire, panic and other dangers, to ensure adequate light and air, to prevent the overcrowding of land and thus avoid undue concentration of population, and to facilitate the adequate provision of transportation, water supply, wastewater treatment, schools, parks and other public requirements, and are established with reasonable consideration for, among other things, the character of each district and its suitability for the particular uses specified, conserving the value of buildings and environmentally sensitive features, and encouraging the most appropriate use of land throughout the City.

ARTICLE 2: APPLICABILITY AND COMPLIANCE

DIVISION 1: APPLICABILITY

Section 1.2.1.1Applicability

This Development Code, shall apply to all development, improvements, land, structures, construction, substantial modifications, uses, and buildings and lots, public and private, within the City and its Extraterritorial Jurisdiction. All such development, improvements, land, structures, construction, substantial modifications, uses, and buildings and lots existing on the effective date hereof or constructed or commenced hereafter, and all relocations or demolitions of any of the same occurring hereafter, shall be subject to this Development Code and all plans approved hereunder.

Section 1.2.1.2Regulations Applicable to the Extraterritorial Jurisdiction

A. Regulations and authority. The following regulatory standards shall govern development in the City's extraterritorial jurisdiction and shall be applied in deciding development applications in the extraterritorial jurisdiction:

1. Standards governing annexation and development agreements, on the authority of and pursuant to Tex. Loc. Gov't Code chs. 43 and 212, subchapter G;
2. Policies and standards governing utility extensions;
3. Policies and maps of the adopted Comprehensive Plan and interpretive rules, on the authority of and pursuant to Tex. Loc. Gov't Code ch. 213;
4. Environmental standards, on the authority of and pursuant to Tex. Loc. Gov't Code ch. 401 and Texas Water Code chs. 16 and 26;
5. Development standards in Chapter 3 when applied through platting procedures, on the authority of and pursuant to Tex. Loc. Gov't Code ch. 212 and ch. 242;
6. Development standards, when made applicable to the extraterritorial jurisdiction by this Land Development Code, on the authority of and pursuant to Tex. Loc. Gov't Code ch. 216;
7. Public facilities standards and park fees in Chapter 3, when applied through platting procedures, on the authority of and pursuant to Tex. Loc. Gov't Code ch. 212 and ch. 242;
8. Impact fees for water, wastewater and drainage facilities, on the authority of and pursuant to Tex. Loc. Gov't Code ch. 395;
9. Land use, zoning and development standards otherwise applicable only within city limits, when applied through development agreements, on the authority of and pursuant to Tex. Loc. Gov't Code chs. 43 and 212, subchapter G; and
10. All procedures required to apply the standards to developments in the extraterritorial jurisdiction under the same authority and pursuant to Texas laws authorizing the application of substantive standards to such development proposals.

B. Incorporation of statutory authorization. Each and every authorization to regulate development in the City's extraterritorial jurisdiction contained in Texas statutes, as may be enacted or amended from time to time, and which are identified generically in subsection (a) and implemented by this Land Development Code hereby is adopted and incorporated herein.

Section 1.2.1.3Relationship to & Conflict with Other Laws, etc

The provisions of this Development Code shall take precedence over those of other codes, ordinances, regulations, and standards that may be in conflict with this chapter, except the City Health and Safety Codes and applicable State and Federal law.

Section 1.2.1.4Conflict with Private Easements, Agreements, or Covenants

This Development Code is not intended to abrogate, annul, or otherwise interfere with any private easement, agreement, covenant, restriction or other private legal relationship including but not limited to homeowners association or property owners association relationships. The City shall have no obligation to enforce private agreements, easements, covenants or restrictions to which the City is not a party.

Section 1.2.1.5Compliance With Development Code

Except for non-conformances allowed pursuant to Section 1.5.1.1, all land, development, improvements, construction, structures, buildings, lots and appurtenances located or built within the City or the Extraterritorial Jurisdiction, as applicable, of the City shall be made, constructed, occupied, used, erected, altered, removed, placed, demolished and/or converted in conformance with the applicable provisions, standards and requirements of this Development Code.

All plans, applications and submissions required under this Development Code must comply with the applicable provisions, standards and requirements of this Development Code.

Section 1.2.1.6 Amendment of Development Code

This Development Code may be amended in accordance with the procedures in Section 2.4.1.1.

ARTICLE 3: COMPREHENSIVE PLANNING

DIVISION 1: COMPREHENSIVE PLAN AUTHORIZED

Section 1.3.1.1City Comprehensive Plan Created

The City shall, from time to time, prepare or have prepared for the City a Comprehensive Plan and amendments thereto in accordance with the Texas Local Government Code. Such Comprehensive Plan(s) and amendment(s) shall be subject to approval by the City Council. The city clerk and planning and development services department will keep a copy of this comprehensive plan on file for public inspection.

Section 1.3.1.2Implementation

A. The Director of Planning and Development Services is authorized and directed to implement the policies of the Comprehensive Plan through the activities described therein. Implementation tools and strategies within Vision San Marcos: A River Runs Through Us are found throughout the plan and include, but are not limited to:

1. Preferred Scenario Map.
2. Land Use Intensity Matrix.
3. Land Use Suitability Map.
4. 2035 Vision, Goals and Objectives.
5. Introduction Section - How to Use This Plan.
6. All Plan Element Sections.
7. Process for Updating the Plan Section.
8. Five Year Action Items Section.
9. All adopted updates to the plan, figures and addendum.

ARTICLE 4: TERMS AND PROVISIONS

DIVISION 1: GENERAL

Section 1.4.1.1Shall; Should; Must; May

Provisions of this Chapter are activated by "shall" or "will" or "must" when required; "should" when recommended; and "may" when optional.

Section 1.4.1.2 Conflict of Numerical & Graphical Metrics

Where in conflict, numerical metrics shall take precedence over graphic metrics.

DIVISION 2: EFFECT OF MAPS, TABLES, AND ILLUSTRATIONS

Section 1.4.2.1Maps & Tables Integral

Maps, tables, and the standards in this Development Code are an integral part hereof.

Section 1.4.2.2Diagrams, Images, & Illustrations

Diagrams, photographs and illustrations in tables are provided to provide guidance in implementing any associated written provisions and to indicate the general character or placement of and/or reference to the various elements shown thereon and shall have regulatory force and effect to that extent.

Section 1.4.2.3 "Illustration" & "Illustrative" Items

All depictions entitled "Illustration" or denoted as "Illustrative" are provided for purposes of explaining any associated written provisions and are regulatory to that extent.

DIVISION 3: MINIMUM REQUIREMENTS

Section 1.4.3.1Minimum Requirements

Unless otherwise provided, the standards of this Development Code are minimum requirements.

DIVISION 4: DEFINITIONS

Section 1.4.4.1Definitions

Terms used throughout this Development Code are defined in Chapter 8 "Definitions" or elsewhere in this Development Code. Such definitions are integral to this Development Code. When used in this Development Code, unless otherwise specifically provided, or unless clearly required by the context, the words and phrases used in this Development Code shall have the meanings given to them.

All other terms shall be accorded their commonly accepted meanings. For purposes of determining the common accepted meaning of any term, reference may be made to the latest edition of Webster's Dictionary; or for words used in combination, or where Webster's Dictionary does not define a word, reference may be made to A Planners Dictionary, published by the American Planning Association or The New Illustrated Book of Development Definitions, published by Rutgers University or Definitions published and utilized by the International Code Council.

For purposes of this Development Code, in the event of any conflict between the definitions in this Development Code and definitions provided by other codes, ordinances, regulations or laws, the definitions of this Development Code shall take precedence over any such conflicting definitions.

DIVISION 5: TRANSITIONAL PROVISIONS

Section 1.4.5.1Continued Violation

Any violation of the San Marcos Code of Ordinances which existed prior to the effective date of this Development Code shall continue to be a violation under this Development Code and be subject to penalties and enforcement under this Development Code unless the use, development, construction, or other activity complies with the provisions of this Development Code. If the prior violation is no longer a violation under this Development Code no new enforcement action shall be initiated as to such prior violation but any enforcement action initiated before the effective date of this Development Code, including the collection of any fines or penalties, may be pursued to conclusion.

DIVISION 6: SEVERABILITY

Section 1.4.6.1Severability

If any Court of competent jurisdiction rules any provision of this Development Code invalid, that ruling shall not affect any provision not specifically included in the judgment. If any Court of competent jurisdiction rules invalid the application of any provision of this Development Code to a particular property, building, structure, Improvement, development, or use, that ruling shall not affect the application of the Development Code provisions to any property, building, other structure, or use not specifically included in the judgment.

The provisions of this Development Code are hereby declared to be valid and enforceable, notwithstanding inadvertent and/or clerical error(s); such error(s) as may exist shall not affect the validity or intent of the associated provisions, nor that of the remainder of the Development Code provisions hereunder.

ARTICLE 5: NONCONFORMITIES

DIVISION 1: GENERAL

Section 1.5.1.1Intent of Provisions

A. Purpose. The purpose of this article is to establish provisions for the allowance and potential alteration of uses, lots and/or structures which do not conform to currently applicable zoning standards or regulations, but which were in conformance with standards in place at the time of their inception, and have been rendered nonconforming due to a change in the applicable standards and regulations.

1. Nonconformities occur in three (3) general categories: lots, structures, or uses, or combinations thereof.

B. Intent. It is the declared intent of this section that any modification to nonconforming uses and structures result in greater conformance with this Development Code such that nonconforming uses and structures eventually come into full compliance with this Development Code.

C. Incompatible Uses. Notwithstanding anything to the contrary, nonconforming uses are hereby declared incompatible with the permitted uses in the districts involved.

Section 1.5.1.2Establishment of Legal Nonconforming Status

A. Existence. For purposes of interpretation of Section 1.5.1.2, any uses, structures and/or lots which in whole or part are not in conformance with current zoning standards shall be considered as follows:

1. **Legal Nonconforming.** Those uses, structures or lots which in whole or part are not in conformance with current zoning standards, but were legally established at a prior date at which time they were in conformance with applicable standards. Such uses, structures or lots may be maintained or potentially altered subject to the provisions of this Section.

2. **Illegal Status.** Those uses, structures or lots 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 not be

considered nonconforming, but shall be considered illegal uses, structures, or lots and shall not be approved for any alteration or expansion, and shall undertake necessary remedial measures to reach conformance with current standards, or be discontinued.

B. **Time of Adoption.** Any use, platted lot, and/or structure that is a lawful use at the time of the adoption of any amendment to this Development Code but by such amendment is placed in a district wherein such use, platted lot, and/or structure is not otherwise permitted shall be deemed legal nonconforming.

C. **Annexation.** If a use, platted lot and/or structure was in existence at the time of annexation to the City and has since been in regular and continuous use, it shall be deemed legal nonconforming.

Section 1.5.1.3Burden of Demonstration

The burden of establishing that any nonconformity is a legal nonconformity as defined in this subsection shall be borne by the owner or proponent of such nonconformity.

Section 1.5.1.4Continuing Lawful Use of Property

A. **Abandonment of Nonconforming Use.** If a nonconforming use on a particular parcel of land ceases operations for a continuous period of more than six (6) months, then such nonconforming use shall be deemed to be permanently abandoned. Any nonconforming use which does not involve a permanent type of structure or operation and which is moved from the premises shall be considered to have been abandoned.

B. **Reinstatement of Nonconforming Use Rights.** An owner and/or operator of a nonconforming use that has been deemed permanently abandoned pursuant to Section 1.5.1.4(A) above, may request that the nonconforming rights to the use be reinstated pursuant to Section 1.5.1.10.

C. **Prohibited Expansion or Reoccupation.** A nonconforming use shall not be expanded, reoccupied with another nonconforming use, or increased as of the effective date of this Development code except as provided in Section 1.5.1.6.

Section 1.5.1.5Changing Uses and Nonconforming Rights

A. **Nonconforming Use to Conforming Use.** Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not be changed back to a nonconforming use.

B. **Nonconforming Use to Another Nonconforming Use.** A nonconforming use may not be changed to another nonconforming use.

C. **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 as outlined in Section 1.5.1.6 below.

Section 1.5.1.6Nonconforming Uses

An expansion of a nonconforming use is allowed in accordance with the following.

A. **Nonconforming Use Expansion in Existing Building.** A nonconforming use located within a building may be extended throughout the existing building, provided.

1. No structural alteration, except as provided in Section 1.5.1.7, may be made on or in the building except those required by law to preserve such building in a structurally sound condition.

2. 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 said use became a nonconforming use.

B. **Nonconforming Use Prohibited from Expansion beyond Existing Building.** Nonconforming use within a building shall not be extended to occupy any land outside the building except where the rights are fully or partially re-instated by the ZBOA under Section 1.5.1.9.

C. **Off-Street Loading and Parking.** Nonconforming use of land or building shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the time the land became a nonconforming use, except to provide off-street loading or off-street parking space when the additional parking complies with Section 7.1.1.1.

Section 1.5.1.7Nonconforming Principle Structures

A. Enlargement. Any nonconforming structure used for a conforming use may be enlarged or altered; provided, however, that no enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure.

B. Non-Conforming Build-To Requirements. Principle structures that do not meet the build-to requirements of the zoning district are subject to Section 4.3.3.3.

C. Reuse of Abandoned or Vacant Buildings by Conforming Uses Allowed. Buildings or structures which have been vacant or abandoned for more than six (6) months and do not meet the current area regulations or development standards shall be allowed to be re-occupied by a conforming use.

D. Restoration of Nonconforming Structures

1. **Total Destruction.** If a nonconforming structure is destroyed by fire, the elements, or other cause, it may not be rebuilt except to conform to the provisions of this Development Code unless the rights are fully or partially re-instated by the ZBOA under Section 1.5.1.9.

2. **Partial Destruction.** In the event that a nonconforming structure that is devoted in whole or in part to a conforming use is damaged or destroyed, by any means other than voluntary demolition, to the extent of 50% or less the replacement cost of the structure immediately prior to such damage, such structure may be repaired and reconstructed and used for the same purposes and degree as it was before the damage or destruction, provided that such repair or reconstruction is commenced with a valid building permit within 12 months of the date of such damage or destruction unless the rights are fully or partially re-instated by the ZBOA under Section 1.5.1.9.

E. Relocation. No nonconforming structure shall be relocated in whole or in part to any other location on the same or any other lot unless the entire structure conforms to the regulations of the district to which such structure is relocated.

Section 1.5.1.8Completion of Structures

Nothing herein contained shall require any change in the plans, construction, or designated use of the following:

A. Building in the Approval Process. A building or structure for which a complete application for a building permit was accepted by the Chief Building Official on or before the effective date of this Development Code or applicable amendments thereto, provided however, that such building permit shall comply with all applicable ordinances in effect on the date such application was filed.

Section 1.5.1.9Reinstatement of Nonconforming Rights

A. Applicability. A property owner may apply to the ZBOA for a change in the status of a nonconforming use or nonconforming structure for the following matters:

1. Resumption of a nonconforming use previously abandoned;

2. Expansion of the land area of a nonconforming use;

3. Expansion of the gross floor area of a nonconforming structure beyond 25%;

4. Reconstruction of a nonconforming structure that has been destroyed;

B. Effect. If the ZBOA grants the application for a change in nonconforming status, modifications made in the nonconforming use, structure or lot that are consistent with the approved application shall enjoy the same status and shall be subject to the same limitations as the original nonconformity under this Development Code.

C. Application Requirements

1. **Who May Apply.** An application for a change in nonconforming status may be filed by a property owner or the applicant for any administrative or quasi-judicial development application.

2. An application for a change in nonconforming status shall be prepared in accordance with Section 2.8.2.1.

D. An application for a change in nonconforming status shall contain a detailed written statement of the reasons why the nonconforming rights should be reinstated

Section 1.5.1.10Approval Process

A. Responsible Official Action

1. Upon receipt of an application for a change in nonconforming status, the Responsible Official shall transmit the application to the Zoning Board of Adjustments for processing and determination in accordance with this Section.

2. The Responsible Official shall provide personal notification of the public hearing before the ZBOA in accordance with Section 2.3.2.1.

3. The Responsible Official shall conduct a public hearing in accordance with Section 2.3.3.1.

B. Zoning Board of Adjustments Action

1. The ZBOA shall grant, grant subject to conditions or deny the request for a change in nonconforming status.

C. Burden of Proof. The applicant bears the burden of proof to demonstrate that an application for a change in nonconforming status should be granted.

D. Criteria for approval. In deciding the application, the ZBOA shall consider the following criteria.

1. The proposed change in nonconforming status results in greater conformance with the Comprehensive Plan.

2. The proposed change in nonconforming status results in greater conformance with this Development Code such that the nonconforming use or structure can eventually come into full compliance with this Development Code.

3. The degree of the proposed request is the minimum amount necessary.

4. Granting the application shall not result in greater harm to adjacent and neighboring land uses than the original nonconformity.

DIVISION 2: TERMINATION OF NONCONFORMING RIGHTS

Section 1.5.2.1Amortization of Nonconforming Uses

A. Purpose. The purpose of amortizing a nonconforming use is to terminate the rights of a non-conforming use or structure after the owner's actual investment in the use or structure has been realized.

B. Initiation of Compliance Case. Only the City Council, by majority vote, may request that the Zoning Board of Adjustments (ZBOA) consider establishing a compliance date for a nonconforming use.

C. Public Hearing Process. Upon receiving a request under Section 1.5.2.1 from the City Council, staff shall schedule the first public hearing before the ZBOA. The ZBOA may establish a compliance date only after holding two separate hearings.

1. **First Public Hearing.** The ZBOA shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the ZBOA determines that continued operation of the use will have an adverse effect on nearby properties, it shall schedule a second public hearing to establish a compliance date for the nonconforming use; otherwise, it shall not. In determining whether the continued operation will have an adverse effect on nearby properties, the ZBOA shall consider the following factors:

   a. The Comprehensive Plan.

   b. The character of the surrounding neighborhood.

   c. The degree of incompatibility of the use with the zoning district in which it is located.

   d. The manner in which the use is being conducted.

   e. The hours of operation of the use.

   f. The extent to which continued operation of the use may threaten public health or safety.

   g. The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

h. The extent to which public disturbances and nuisances may be created or perpetuated by continued operation of the use.

i. The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

j. Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

k. Notwithstanding anything to the contrary, the ZBOA cannot amortize the following uses unless it finds that the use is a nuisance and/or that the use presents a risk of imminent destruction of property or injury to persons:

1. The use was already legally operating on the date the annexation proceedings were initiated for the property; or

2. The use was not already operating on the effective date of annexation, but was planned for the property before the 90th day before the effective date of annexation, and

A. One or more licenses, certificates, permits, approvals, or other form of authorization by a governmental entity were required by law for the planned land use; and

B. A completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted. For the purpose of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant. For the purposes of this section, the date the annexation proceedings were instituted means the date the City Council approves the ordinance annexing the property.

2. Second Public Hearing. If the ZBOA has determined in the first public hearing that the nonconforming use has an adverse effect on nearby properties, it shall hold a second public hearing to set a date for compliance. The ZBOA shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. The following factors must be considered by the ZBOA in determining a reasonable amortization period:

a. The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

b. Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.

c. Any return on investment since inception of the use, including net income and depreciation.

d. The anticipated annual recovery of investment, including net income and depreciation.

e. A reasonable wind-up period for the nonconforming use.

3. If the ZBOA, at the first public hearing, requests financial documentation and/or records from the owner relating to the factors listed directly above, the owner shall provide said documents and/or records at least thirty (30) days before the second public hearing. If the owner does not provide said documentation, the ZBOA is authorized to make its determination of a compliance date based upon any reasonably available public records as well as public testimony at the hearing. Failure by owner to provide the requested financial documents and records shall not prevent the ZBOA from setting a compliance date.

D. Ceasing Operations. If the ZBOA establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

E. Definitions. For purposes of this subsection, "owner" means the owner of the nonconforming use at the time of the ZBOA's determination of a compliance date for the nonconforming use.

F. Finality of Decisions

1. **Decisions that Cannot be Immediately Appealed.** A decision by the ZBOA that the continued operation of a nonconforming use will have an adverse effect on neighboring property and the ZBOA's decision to schedule a second public hearing to establish a compliance date are not final decisions and cannot be immediately appealed.

2. **Decision to Deny a Request to Establish a Compliance Date.** A decision by the ZBOA to deny a request to establish a compliance date is final unless appealed to state court within ten (10) calendar days in accordance with Chapter 211 of the Local Government Code.

3. **Decision Setting a Compliance Date.** A decision by the ZBOA setting a compliance date is final unless appealed to state court within ten (10) calendar days in accordance with Chapter 211 of the Local Government Code.

CHAPTER 2. DEVELOPMENT PROCEDURES

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ARTICLE 1: DEVELOPMENT APPLICATIONS

DIVISION 1: CLASSIFICATION OF DEVELOPMENT APPLICATIONS

Section 2.1.1.1Classification of Applications & Decisions; Rules Governing Decision-Making

For purposes of this development code, development applications are classified either as legislative, quasi-judicial or administrative decisions.

A. Legislative Decisions. Legislative decisions are those which:

1. Establish or change the city's policies and rules governing the use or development of land;
2. Are finally decided by the city council;
3. Are characterized by exercise of broad discretion;
4. May involve fact finding and imposition of conditions;
5. Cannot be delegated, and;
6. Are not subject to appeal or deviation.

B. Quasi-Judicial Decisions. Quasi-Judicial decisions are those which:

1. Apply general standards contained in the city's established policies and rules governing land development to specific development proposals;
2. Require the exercise of considerable discretion;
3. May involve fact-finding or the imposition of conditions, and;
4. May be subject to appeal or deviation.

C. Administrative decisions. Administrative decisions are those which:

1. Apply specific standards contained in the city's established policies and rules governing land development to specific development proposals;
2. Shall be delegated to city staff persons or to an appointed board or commission for initial or final decision;
3. May require the exercise of limited discretion;
4. Shall not be prefaced by a public hearing, and;
5. May be subject to appeal or deviation.

D. Rules Governing Decisions

1. The final decision-maker in an appeal of a quasi-judicial or administrative decision shall not substitute its judgment for that of the official who has made such decision; instead such final decision-maker shall decide only if such decision was incorrect.
2. An amended or revised development application shall be of the same classification as the initial application and shall be subject to the same level of discretion as was the initial application.
3. An appointed board or commission shall be deemed to act in the same capacity as the city council when making a recommendation on a decision to be finally decided by the city council.
4. An applicant shall bear the burden of demonstrating that a request for approval of a development application meets the criteria for approval for that type of application.
5. An appellant bears the burden of demonstrating that a decision should be reversed or modified upon appeal.

Table 2.1 Development Applications, Decision Authority, and Notice Requirements Table

Approval Process			Review and Approval Authority						Notice			
	Citation	Responsible Official	Staff	Historic Preservation Commission	Neighborhood Presentation	Zoning Board of Adjustments	Planning Commission	City Council	Application Notice	Published Notice	Personal Notice	Posted Notice
Legislative												
City Initiated Comprehensive Plan Map Amendment	Section 2.4.2.1	P	R		PM		R/PH/ PM	D/PH/ PH/PM	Y	Y	N	N
Comprehensive Plan Map Amendment	Section 2.4.2.1	P	R		PM		R/PH/ PM	D/PH/ PH/PM	Y	Y	Y*	Y*
LDC Text Amendment	Section 2.4.1.1	P	R				R/PH	D/PH/ PM	Y	Y	N	N
City Initiated Zoning Map Amendment	Section 2.5.1.1	P	R		PM		R/PH	D/PH/ PM	Y	Y	Y*	N
Zoning Map Amendment (Rezoning)	Section 2.5.1.1	P	R		PM		R/PH	D/PH/ PM*	Y	Y	Y*	Y*
Development Agreement	Section 2.4.3.1	P	R					D/PH/ PM		Y	N	N
Establishment of Historic Landmarks and Districts	Section 2.5.3.1	P	R	R/PH			R/PH	D/PH	Y	Y	Y	Y
Quasi-Judicial												
Conditional Use Permit	Section 2.8.3.1	P	R				D/PH	A		N	Y	N
Conditional Use Permit - Alcohol		P	R				D/PH	A		N	Y*	Y*
Conditional Use Permit - Council Approved	Section 2.8.3.1	P	R				R/PH	D/PH		N	Y	N
Conditional Use Permit - Purpose Built Student Housing		P	R				R/PH	D/PH		N	Y*	Y*
Subdivision Concept Plat	Section 3.2.1.1	P	R				D/PM			N	N	N
Preliminary Subdivision or Development Plat	Section 3.2.2.1	P	R				D/PM			N	N	N
Final Subdivision or Development Plat	Section 3.2.3.1	P	R				D/PM			N	N	N

Legend

Responsible Official		Action		Meeting type			
P	Planning Director	R	Review/ Recommend	PM	Public Meeting	Y	Required
E	Engineering Director	D	Decision	PM*	May require Initial Authorization	Y*	Required 17 days notice
B	Building Official	A	Appeal	PH	Public Hearing	N	Not Required

Table 2.1 Development Applications, Decision Authority, and Notice Requirements Table

Approval Process			Review and Approval Authority						Notice			
	Citation	Responsible Official	Staff	Historic Preservation Commission	Neighborhood Presentation	Zoning Board of Adjustments	Planning Commission	City Council	Application Notice	Published Notice	Personal Notice	Posted Notice
Replat without Vacation	Section 3.3.2.1	P	R				D/PH			Y	Section 3.3.3.1	N
Certificate of Appropriateness	Section 2.5.5.1	P	R	D/PH		A				N	Y	N
Qualified Watershed Protection Plan	Section 2.6.1.1	E	R				D/PH	A		N	Y	N
Variance	Section 2.8.2.1	P	R			D/PH				N	Y	N
Alternative Compliance	Section 2.8.4.1	P	R				R/PH	A		N	Y	N
Alternative Compliance - Council Approved	Section 2.8.4.1	P	R				R/PH	D/PH		N	Y	N
Change in status of nonconforming uses or structures	Section 1.5.1.9	P	R			D/PH				N	Y	N
ADMINISTRATIVE												
Site Permit	Section 2.7.1.1	P	D				A			N	N	N
Minor or Amending Plat	Section 3.2.4.1	P	D							N	N	N
Public Improvement Construction Plan	Section 3.4.1.1	E	D				A			N	N	N
Watershed Protection Plan I or II	Section 2.6.1.1	E	D				A			N	N	N
Construction Permit	Section 2.7.3.1	B	D							N	N	N
Transportation Impact Assessment	Section 3.5.2.7	E	D				A			N	N	N
Floodplain Permit	Section 2.7.3.1	E	D				A			N	N	N
Regulating Plan	Section 2.5.5.1	P	D				A			N	N	N
Administrative Adjustment	Section 2.8.5.1	P	D				A			N	N	N

Legend

Responsible Official		Action		Meeting type			
P	Planning Director	R	Review/ Recommend	PM	Public Meeting	Y	Required
E	Engineering Director	D	Decision	PH	Public Hearing	N	Not Required
B	Building Official	A	Appeal				

DIVISION 2: SEQUENCE OF DEVELOPMENT APPLICATIONS

Section 2.1.2.1General Rules for Priority

Where more than one development application is required by this development code in order to initiate or continue development of land, the requests or applications shall be decided in the following general sequence:

A. Applications classified as legislative shall be first decided and determined prior to all other applications.

B. Applications classified as quasi-judicial shall be decided prior to applications classified as administrative.

C. Applications within a class which are assigned priority under this Development Code shall be decided prior to subordinate applications.

Section 2.1.2.2Specific Rules of Priority

A. **Applications of Mixed Classification.** A property owner may submit development applications of different priority classifications simultaneously unless otherwise written in this development code. Action on accompanying applications shall be as follows:

1. Denial of a legislative application shall be deemed a denial of any pending quasi-judicial or administrative applications, or subordinate applications for the same land, on the date the legislative application is denied.

2. Denial of a quasi-judicial application shall be deemed a denial of any pending administrative or subordinate quasi-judicial applications for the same land on the date the quasi-judicial application is denied.

3. Subordinate applications shall not be approved subject to approval of priority applications.

4. Any subordinate application that must be decided within a time certain under this development code and that is not accompanied by an express waiver of such time limitation pending decision on the priority application shall be deemed incomplete and shall not be further processed.

B. **Subordinate Applications.** Approval of any subordinate application shall be consistent with the terms and conditions of approval of all priority applications.

ARTICLE 2: AUTHORITY OF DECISION MAKERS

DIVISION 1: GENERAL PROVISIONS

Section 2.2.1.1Source of Authority

Authority under this development code shall be vested in and delegated to the officials and decision-makers designated in this Chapter 2, Article 2 and under the city's charter, the constitution and laws of the State of Texas and the city code. This authority shall be deemed supplemental to any other authority lawfully conferred upon the officials and decision-makers. The omission of a citation in this development code to any authority conferred upon the officials and decision-makers under the city's charter, the constitution or laws of the State of Texas or the city code shall not be construed as limiting the actions of such officials and decision-makers taken in accordance with and in reliance upon such authority.

Section 2.2.1.2Implied Authority

The officials and decision-makers shall have all implied authority necessary to carry out the duties and responsibilities expressly delegated by this development code to the extent the implied authority is not in conflict with the expressly delegated authority.

Section 2.2.1.3Limitation on Authority

A. **City Policy.** It is the policy of the city that the standards and procedures applicable to development of property within the city limits and within the city's extraterritorial jurisdiction are as stated in this development code, notwithstanding any representation by any city official summarizing, paraphrasing or otherwise interpreting such standards to the contrary, whether generally or as applied to development of specific property.

B. **Representations Concerning Future Action on Application.** No city official, whether an employee of the city or a member of an appointed board or commission, or a member of the governing body of the city, shall have the authority to make representations to a property owner concerning the likelihood of an outcome of that official's decision or the decision of an appointed board or commission or the city council, on any development application that has yet to be filed or is pending before the city for decision. An official may, however, upon request of a person, convey information concerning that official's position on a pending application in accordance with procedures established in this Chapter 2. No person is

entitled to rely upon any representation made by an official in contravention of this subsection, and each and every such representation shall be deemed in violation of the policy of the city, and is not binding on the city in any respect. No subsequent decision of the city shall be deemed a ratification of any representation made in contravention of this subsection.

C. **Representations Concerning Future Amendments.** No city official, whether an employee of the city or a member of an appointed board or commission, or a member of the city council, shall have the authority to make binding representations to any person concerning the likelihood that a change in any legislative classification or a change in the text of this development code as applied to a specific tract of land shall be granted, or that an existing legislative classification or text provision shall remain in effect, or that any application for relief shall be granted. No person is entitled to rely upon any representation made by an official in contravention of this subsection, and each and every such representation shall be deemed in violation of the policy of the city, and is not binding on the city in any respect. No subsequent decision of the city shall be deemed a ratification of any representation made in contravention of this subsection.

D. **Effect of Comprehensive Plan, Ordinance or Development Standard on Liability Claims.** The city's approval of a development application under the standards and procedures of this development code does not guarantee or assure that development of the property in accordance with the standards shall prevent, minimize or mitigate harm to adjoining property. A person who undertakes development activities shall not rely on the city's approval of a development application as ensuring that the development activities shall not result in harm to adjoining property. The regulations contained in this development code constitute an exercise of the city's governmental authority, and approval of a development application shall not give rise to any liability on the part of the city or its officers, agents and employees, nor shall an approval release the applicant from any liability for harm arising out of development of the property under applicable law.

E. **No Waivers.** Except as expressly provided for in this development code, no official, board, commission of the city, or the city council, shall have authority to waive or vary any requirement or standard for a development application. Any attempted waiver of a requirement or standard for a development application in contravention of this subsection shall hereby be deemed null and void, and, upon discovery, shall be grounds for revocation of a permit or approval, or reconsideration of a legislative decision.

Section 2.2.1.4Conflict in Authority

A. **Internal Inconsistency.** Whenever one or more provisions of this development code are in apparent conflict, the provisions shall be construed, if possible, so that effect is given to each. If the conflict is between a general provision and a specific provision, and the conflict is irreconcilable, the specific provision shall prevail as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision should prevail.

B. **Incomplete Provisions.** Whenever a specific standard or procedure of this development code is incomplete when applied in isolation to a development application or development activity, such standard shall be supplemented by any general or specific provision of this development code, the city code, or the city charter in order to give effect to the incomplete provision.

DIVISION 2: CITY STAFF

Section 2.2.2.1Administrator; Responsible Official; Determining Authority

A. **Administrator.** The administrator of this development code is the director of planning and development services. As such, the administrator shall be responsible for taking the following actions with regard to development applications in addition to all other responsibilities assigned under this development code:

1. Accepting the application for filing;
2. Processing the application;
3. Coordinating any comments from other city departments concerning the application, and;
4. Taking all other actions necessary for administration of the provisions of this development code with respect to all development applications which are not otherwise assigned to a responsible official with respect to a development application.

B. Responsible Official. The responsible official with respect to a development application is the responsible official designated under Table 2.1. In each case, the responsible official shall be responsible for taking the following actions with regard to the development application:

1. Seeking advice of other city departments;
2. Initially deciding the application, where so authorized;
3. Determining a request for exemption other than an exemption required to be granted by the planning and zoning commission, the City Council or the Zoning Board of Adjustment;
4. Preparing reports to and advising any board, commission or the City Council that has responsibility for making recommendations on or deciding the application;
5. Promulgating additional or modified policies, standards and administrative rules for adoption by the City Council that apply to the application;
6. Initiating enforcement actions concerning compliance with the standards applicable to the application and the conditions imposed thereon;
7. Taking all other actions necessary for administration of the provisions of this development code with respect to the application, and;
8. Delegating the official's authority as responsible official to subordinate officials, who shall thereupon be deemed the responsible official for purpose of carrying out the delegated duties.

C. Approval Authority. The approval authority with respect to a development application is the approval authority designated under Table 2.1. In each case, the approval authority shall make all decisions and determinations whether to approve, approve with conditions, or deny the development application.

Section 2.2.2.2Director of Planning and Development Services

A. Responsible Official. The Director or Planning and Development Services is the responsible official for the types of development applications and relief applications indicated in Table 2.1.

B. Determining Authority. The director of planning and development services is the determining authority for the types of development applications indicated in Table 2.1.

C. Administrative Adjustments. The director of planning and development services is hereby authorized to approve administrative adjustments as provided in Section 2.8.5.1.

Section 2.2.2.3Engineering Director

A. Responsible Official. The engineering director is the responsible official for the types of development applications and relief applications indicated in Table 2.1.

B. Determining Authority. The engineering director is the determining authority for certain types of development applications and relief applications identified in Table 2.1.

C. Floodplain Administrator. The engineering director is the floodplain administrator for the city and shall carry out the duties and responsibilities indicated in Chapter 39 of the city code.

D. Administrative Adjustments. The engineering director is hereby authorized to approve administrative adjustments as provided in Section 2.8.5.1.

Section 2.2.2.4Building Official

A. Determining Authority. The building official is the responsible official for certain types of development applications and relief applications identified in Table 2.1.

Section 2.2.2.5City Manager and Other City Officials

A. The city manager, city attorney and any other officials delegated responsibilities under this development code are authorized to take all actions necessary to carry out their responsibilities in accordance with the requirements and limitations prescribed herein.

DIVISION 3: PLANNING AND ZONING COMMISSION

Section 2.2.3.1Structure of Commission

The members of the planning and zoning commission are appointed by the council in accordance with Section 2.091 of the city's code of general ordinances.

Section 2.2.3.2Review Authority

A. The planning and zoning commission shall act as an advisory body, final or initial decision maker, and as an authority for deciding appellate and relief applications as indicated in Table 2.1.

B. **Advisory Board.** The planning commission shall act as an advisory body to the city council and, in that capacity, shall review, prepare reports upon and make recommendations concerning approval, conditional approval or denial of legislative decisions as authorized by this development code regarding:

1. The city's capital improvements program;

2. All matters related to the physical growth and development of the city as assigned by city council; and

3. The types of development applications summarized in Table 2.1.

C. **Quasi-Judicial Applications.** The planning and zoning commission shall finally decide or initially decide, subject to appeal to the city council, the types of applications identified in Table 2.1 in accordance with the procedures and standards that apply to the petition or development application.

D. **Appellate Authority.** The planning and zoning commission shall finally decide appeals and applications for relief on the development applications and relief applications identified in Table 2.1.

DIVISION 4: CITY COUNCIL

Section 2.2.4.1Authority for Amendments to Development Code

The city council may from time to time amend, supplement or change by ordinance the text of this development code on its own initiative or upon application for a text amendment.

Section 2.2.4.2Review Authority

The city council shall finally decide all types of development applications, appeals, or petitions for relief authorized under this development code Table 2.1.

A. **Super-Majority Vote.** Development applications where a super majority vote is required by this development code shall not become effective except by the favorable vote of six members of the City Council under the following circumstances:

1. When the planning and zoning commission recommends denial of the application.

2. When a written protest against the application is signed by the owners of 20 percent or more of either:

a. The area of the subject property; or

b. The land adjoining the subject property; or

c. The land within 200 feet of the subject property; or

d. The land within 400 feet of the subject property.

3. In computing the percentage of land area, the area of streets and alleys shall be included in the computation. For purposes of this subsection, the following shall apply:

a. The written protest of any one owner of land owned by two or more persons shall be presumed to be the protest of all such owners;

b. The written protest must be submitted to the city clerk at least five business days before the date of the meeting at which the proposed change is to be considered;

c. A person who wishes to withdraw a signature from a written protest must submit a signed, written request for the withdrawal to the city clerk by the deadline for

submitting a written protest. A signature may not be otherwise withdrawn; and

d. An application may not be modified to change the boundaries of the subject property after a written protest application requiring a super-majority vote of the city council has been submitted.

B. **Effect on Planning and Zoning Commission Decisions.** The authority of the city council to hear appeals and applications for relief in specific instances described in this Section 2.2.4.1 shall not be construed to divest the planning and zoning commission of its final approval authority over subdivision plats and development plats.

DIVISION 5: ZONING BOARD OF ADJUSTMENTS (ZBOA)

Section 2.2.5.1Structure of Board

The members of the zoning board of adjustments are appointed by the council in accordance with the city's code of general ordinances.

Section 2.2.5.2Review Authority

The Zoning Board of Adjustments shall act as a final decision maker or authority in deciding appellate or relief requests in accordance with Table 2.1 of this development code.

Section 2.2.5.3Rules Governing Proceedings

A. **Vote required for decisions.** The concurring vote of four members of the ZBOA is necessary to reverse an order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on a matter upon which the ZBOA is required to pass under this development code, or to authorize a variance from the terms of a provision of this development code.

B. **Quorum.** A quorum shall consist of four members of the ZBOA.

C. **Limitation on Authority.** The authority delegated to the ZBOA under this development code shall not be construed to affect any of the following:

1. Any legislative decision;

2. Approval of a conditional use permit;

3. Approval of a request for alternative compliance;

4. Authorization of a use not authorized in the district in which the applicant's property is located, except to the extent necessary to decide a variance or an application for a change in status of a nonconformity.

Section 2.2.5.4Appeals

A. **Procedure for Appeal.** Upon receiving a notice of appeal of a matter for which appeal to the ZBOA is authorized under this development code, the responsible official shall immediately transmit to the ZBOA all papers constituting the record of the action that is appealed. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the ZBOA facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the ZBOA or a court of record on application, after notice to the official, if due cause is shown.

B. **Appeals of Board Decisions.** Appeals of any decision of the ZBOA may be taken to a state district court, county court, or county court-at-law by filing a verified petition stating that the decision of the ZBOA is illegal in whole or in part and specifying the grounds of the illegality. The petition must be filed within ten days after the date the decision being appealed is filed with the department of Planning and Development Services and shall proceed in accordance with the rules and procedures of the court to which the appeal is taken.

Section 2.2.5.5Public Hearing

Personal notice of hearing before the ZBOA is required on all applications, appeals and relief applications in accordance with Table 2.1.

DIVISION 6: HISTORIC PRESERVATION COMMISSION

Section 2.2.6.1Structure of Commission

The members of the historic preservation commission are appointed by the council in accordance with the city's code of general ordinances.

Section 2.2.6.2Review Authority

A. The historic preservation commission shall act as an advisory body to the city council and as a final or initial decision maker in deciding certificates of appropriateness.

B. **Initiation of Application.** The historic preservation commission may initiate an application for the establishment or expansion of historic districts and historic landmarks.

C. The historic preservation commission shall review, prepare reports upon and make recommendations concerning approval, conditional approval or denial of an application for the establishment or expansion of historic districts and historic landmarks.

ARTICLE 3: UNIVERSAL PROCEDURES

DIVISION 1: APPLICATION PROCEDURES

Section 2.3.1.1Application Processing

This Article 3 is applicable to all applications required or submitted pursuant to this development code. Applications, petitions and requests initiated by the City Council, any city board or commission or city staff, however, are exempt from the requirements below except for the requirements pertaining to neighborhood presentations under subsections E, F and G of Division 1.

A. Who May Initiate Application

1. The City Council, the Planning and Zoning Commission or the Responsible Official may initiate an application for legislative review.

2. Any person, firm, corporation or agency may initiate any legislative decision or any development application provided they are the owner or the owner's designated agent of the subject property. If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf.

3. The historic preservation commission may initiate applications for the establishment or amendment of historic districts or historic landmarks.

B. **Sufficiency of Application for Filing.** The responsible official shall accept for filing every application that is deemed complete and gives the responsible official fair notice of the project and the nature of the decision, permit or approval sought.

C. **Completeness Determination.** Every application accepted by the responsible official for filing shall be subject to a determination of completeness by the responsible official no later than the tenth (10) business day after the application is submitted. If no official determination is made the application is deemed complete and the review period begins on the date the application is submitted.

1. The responsible official is not required to review an application unless it is complete.

2. The presumption is that an application is complete if all of the information required in this development code, technical manuals or the city's application forms is provided. However, it is recognized that each application is unique, and more or less information may be required according to the specifics of a particular case. The applicant may rely on the responsible official to determine whether more or less information has to be submitted.

3. The charging or collection of fees and the processing of an application shall not constitute a determination of completeness.

4. The application shall not be considered filed until the Responsible Official has determined it complete.

(Ord. No. 2019-45, 12-17-19)

D. **Pre-Development Meeting.** An applicant is required to request a pre-development meeting with the Responsible Official prior to filing an application. The Responsible Official shall have the authority to waive the pre-development meeting, if such application does not warrant a meeting, or if alternative measures have been taken to address concerns and/or questions that may arise out of the application. No application shall be accepted for filing at a pre-development meeting. A pre-development meeting does not trigger any grandfathering or vested rights or commence a review period.

(Ord. No. 2020-60, 9-1-2020)

E. **Neighborhood Presentation Meeting.** The purpose of a neighborhood presentation meeting is to begin the discussion about the proposal and is not a forum for final decisions or the acceptance of formal comments concerning public support or opposition.

F. Neighborhood presentation meetings are required for requests located in Existing Neighborhood areas only when required by Table 2.1 of this development code.

G. When a neighborhood presentation meeting is required:

1. An applicant or authorized representative must schedule and facilitate a minimum of one neighborhood presentation meeting to discuss the proposed application.

2. Within 12 days of application submittal the Responsible Official shall send electronic notification of the meeting to all parties requesting notification of a submitted application within that region and post the meeting date and location on the City's website.

3. The Responsible Official shall be present to take notes and report the number of participants included in the neighborhood presentation meeting in any subsequent staff reports. Meeting decorum should follow protocol as stated in section 2.045(h) of the City Code.

4. The neighborhood presentation meeting shall be held on or in close proximity to the area of the request.

5. The neighborhood presentation meeting shall be held 20-28 days prior to the Planning and Zoning Commission meeting.

(Ord. No. 2018-42, 11-07-18)

H. **Application Fees.** Filing fees have been established to help defray the cost of processing applications. The current fee schedule is prepared and adopted by the City Council as an appendix to this development code and is available on-line on the city's website.

1. An application is not considered complete until all fees are paid in full.

2. The fee schedule may be amended from time to time by resolution of the city council.

3. The following entities shall be exempt from all fees prescribed under this development code except that no exemption from or waiver of impact fees shall be permitted except as provided under Chapter 86 of the City's General Code of Ordinances of this development code:

   a. Non-profit organizations receiving funds from the city through the city's community development block grant or human services program;

   b. The city when using city employees on a construction project of the city;

   c. Contractors hired by the city to work on construction projects of the city;

d. San Marcos Reinvestment Corporation and San Marcos Habitat for Humanity when building new affordable single-family residential dwellings;

e. The Housing Authority of the City of San Marcos, for construction projects on property it owns, for low-income housing or administrative offices; and

f. Any taxing unit as defined under Section 1.04(11) of the Texas Tax Code for construction projects having a permitted value of $1,000.00 or less.

I. Modification of Applications. The applicant may modify any application following its filing and prior to the expiration of the period during which the city is required to act on the application.

1. Submittal of a modified application shall extend the time for deciding the application for a period equal to the time specified in this Development Code to decide the original application.

J. Application Review. Following the determination that an application is complete, the responsible official shall:

1. Circulate the application for review by city departments or external agencies as applicable and compile the comments and recommendations;

2. Forward the application for review to any advisory body and the final decision-maker, and prepare a report to such body; and

3. Prepare required notices and schedule the application for decision within the time and in the manner required by this Development Code.

K. Action by Advisory Body. In the absence of a recommendation from an advisory body by a majority vote on a proposed application, the advisory body shall be presumed conclusively to have recommended that the application be considered by the city council with no recommendation from the advisory body.

L. Decision. The decision-maker for the application shall approve, approve with conditions or deny the application.

M. Conditions. Where applicable the initial or final decision-maker may attach such conditions to the approval of an application as are reasonably necessary to assure compliance with this Development Code.

DIVISION 2: NOTICE REQUIREMENTS

Section 2.3.2.1General Notice Requirements

For public notice and hearing requirements see Table 2.1

A. Published Notice. Whenever published notice is required under state law, the City Charter, or this Development Code, the Responsible Official shall cause notice to be published in a newspaper of general circulation in the City at least 16 days before the date set for the required hearing.

1. The notice shall set forth the:

a. Date, time, and location of the hearing;

b. Purpose of the hearing; and

c. Identification of the subject property if the decision concerns an individual tract or parcel of land.

B. Personal Notice. Whenever personal notice of a public hearing is required by state law, the City Charter, or this Development Code, the responsible official shall cause notice to be sent by regular mail at least 11 days prior to the hearing date unless a longer time period is identified in this development code.

C. Comprehensive plan map amendments initiated by a property owner, any zoning map amendment, and a conditional use permit allowing the on premise consumption of alcohol or purpose built student housing require that the responsible official send notice by regular mail at least 17 days prior to the hearing date.

D. Whenever personal notice is required by this development code notice shall be sent to the following addresses:

a. Each owner of real property located within four hundred (400) feet of the exterior boundary of the property in question and any other persons deemed by the responsible official or decision-maker to be affected by the application;

b. Council of Neighborhood Associations (CONA) representative and president;

c. Neighborhood Commission representative and president;

d. Any other registered neighborhood organization representing the area in which the subject property is located;

e. The applicant and/or property owner; and

f. The appellant if an appeal.

1. The notice shall set forth the

a. Name of the applicant;

b. Date, time, and location of the hearing;

c. Purpose of the hearing;

d. Identification of the subject property; and

e. The name of the appellant if an appeal.

2. Notice shall be sent to each owner indicated on the most recently approved municipal tax roll for land inside the city limits, and, when required by state law, land in the extraterritorial jurisdiction.

3. For recently annexed land that is not included on the most recently approved municipal or county tax roll, notice may be given by published notice.

4. Notice may be served by depositing the notice, properly addressed and first class postage prepaid, in the United States mail.

E. Posted Notice. Whenever this Development Code requires that notice of a public hearing be posted on land, the responsible official shall cause notification signs stating the purpose and dates of the hearing to be placed on the subject property at least 11 days before the first public hearing unless a longer time period is identified in this development code.

F. Comprehensive plan map amendments or zoning map amendments initiated by a property owner, and a conditional use permit allowing the on premise consumption of alcohol or purpose built student housing require that the responsible official send post notice at least 17 days prior to the hearing date.

1. A minimum of one 2' x 2' sign shall be placed on each street frontage. Property with multiple street frontages shall have the requisite sign on each street. Signs shall be placed in a visible, unobstructed location near the front property line.

2. Signs shall utilize a minimum of 6" lettering to state the purpose of the request and all public hearing dates.

3. The notification signs shall be left in place until final action is taken or the request is withdrawn.

4. It shall be the responsibility of the applicant to periodically check sign locations to verify that signs remain in place and have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs.

5. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.

G. Notice of Application. Whenever notice of an application is required by this development code under Table 2.1, the Responsible Official shall send electronic notification:

1. To all parties requesting notification of an application submitted within the region;

2. Before the 12th day after an application is determined complete.

(Ord. No. 2019-45, 12-17-19)

H. Notification Following Decision. Within ten (10) business days of determination on a development application, written notification of the action shall be sent to the applicant, stating the action taken and including any conditions imposed or basis for denial if applicable.

I. Notification of Appeal or Revocation. If no public hearing was held prior to approval of the development application, personal notice of revocation or appeal shall be given only to the holder of the permit.

J. Special Notice. Whenever this Development Code requires, or the City Council prescribes, that notice of a public hearing be given that differs from the requirements of this Section, the Responsible Official shall cause such notice to be given in the manner otherwise required or prescribed.

DIVISION 3: PUBLIC HEARINGS

Section 2.3.3.1Public Hearings

A. Setting of the Hearing. When the responsible official determines that a development application is complete and that a public hearing is required by this Development Code, the official shall consult with the secretary of the body required to conduct the hearing and shall select a place and a time certain for the hearing, and shall cause notice of such hearing to be prepared and made under Section 2.3.2.1. The time set for the hearing shall conform to the time periods required by this Development Code.

B. Conduct of Hearing. The public hearing shall be conducted in accordance with the rules and procedures adopted by the body conducting the hearing. During the hearing the following may occur: presentation & recommendation from staff, presentation by the applicant, public testimony. Any person may appear at the public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing shall state his or her name, and if appearing on behalf of an organization, state the name of the organization for the record.

C. Record of Proceedings. The body conducting the hearing shall record the proceedings by any appropriate means.

D. Continuance of Proceedings. The body conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time and place. No notice shall be required if a hearing is continued. If a public hearing is closed, no further public testimony shall be taken.

E. Additional Rules. The body conducting the hearing may adopt rules of procedure to limit the number of applications for development approval which may be considered per meeting and the time for each presentation, and may apply such additional rules to govern the public hearing which are not inconsistent with this Section.

DIVISION 4: POST-DECISION PROCEDURES

Section 2.3.4.1Post-Decision Procedures

A. Re-Application Following Denial. Whenever any development application, with the exception of any plat application, is denied at a public hearing for failure to meet the substantive requirements of this Development Code, a development application for all or a part of the same property shall not be accepted for filing for a period of six months from the date of denial unless the subsequent application involves a proposal that is materially different from the previously denied proposal. City staff may accept an application for processing, but the application is not deemed accepted for filing until considered by the decision-maker under Section 2.3.4.1A(1).

1. The decision-maker on the first application shall resolve any questions concerning the similarity of the second application.
2. Non-compliance with this Section 2.3.4.1(a) shall be grounds for denial of the application.
3. The decision-maker may, at its option, waive the six-month waiting period if, after due consideration of the matter at a scheduled and posted meeting, it is determined that denial of the request was based upon erroneous or omitted information, or if substantial new information pertaining to the request is discovered.

B. Amendments and Revisions. Unless another method is expressly provided by this Development Code, any request to amend or revise an approved development application shall be considered a new application, which must be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the City.

DIVISION 5: EXPIRATION AND EXTENSION

Section 2.3.5.1Expiration and Extension of Approvals

A. Time of Expiration. An application, or permit approved under this code may lapse if certain actions related to the approved application are not taken within a specified time period as set forth in this Development Code or the conditions of the specific approval. Section 2.3.5.3 provides a summary of the expiration

dates for certain permits or approvals unless otherwise specified in the conditions of approval.

1. The approval period for a development permit or application begins on the date that the final decision is made unless otherwise specified in this Development Code.

B. **Effect of Expiration.** Upon the expiration of a quasi-judicial or administrative development permit, all previously approved quasi-judicial or administrative permits for the same land also shall expire on the expiration date if:

1. The expired permit is subordinate to such previously approved permits and,

2. The filing of an application for or approval of the expired permit was required to avoid expiration for the previously approved permit or permits.

C. Thereafter, a new application for each permit deemed expired under this Section must be approved subject to regulations in effect at the time the new application is accepted for filing.

D. **Extension of Approval Period.** The Responsible Official or the approving body for the development permit may grant a single extension of an approval period for a period of time as set forth in Section 2.3.5.3. An extension shall be granted by the final decision maker provided all of the following are met:

1. All requests for extensions shall be submitted to the Responsible Official in writing prior to the expiration period;

2. Unconstructed portions of the approved permit conform to all ordinances, laws, City policies and provisions of the Comprehensive Plan and other City Council adopted plans in effect at the time of the requested extension.

(Ord. No. 2019-45, 12-17-19)

E. If the extension is denied, the applicant may submit a new application, subject to the fees, standards, and regulations in effect at the time of submittal, for the same project.

F. **Effect of Decision on Extension.** The granting of an extension request for a permit also extends any other permits otherwise deemed expired under Section 2.3.5.1(b). The denial of an extension results in the immediate lapse of the permit and any other permits deemed expired under Section 2.3.5.1(b). Thereafter, the permit holder shall file a new application for a permit or permits before undertaking any activity authorized by the expired permit.

Section 2.3.5.2Expiration of Application To Be Decided By City Council Following Recommendation of Planning and Zoning Commission.

A. A development application for which the city council is the final decision-maker, and that is subject to a recommendation from the planning and zoning commission, shall automatically expire if not considered by the city council within two years after the date of the commission's recommendation if postponement of the city council's consideration is at the request of the applicant.

Section 2.3.5.3Expiration and Extension Times

TABLE 2.2 PERMIT EXPIRATIONS AND EXTENSIONS

PERMIT OR APPLICATION TYPE	SEC.	EXPIRATION	EXTENSION
Regulating Plan	Section 2.5.5.1	5YR	2YR
Concept Plat	Section 3.2.1.1	5YR	2YR
All Other Plats	Section 3.2.2.1, 3.2.3.1, 3.2.4.1, 3.3.1.1, 3.3.2.1, 3.3.4.1	2YR	2YR
Administrative Certificate of Appropriateness	Section 2.5.6.1	1YR/2YR	1YR/2YR
Certificate of Appropriateness	Section 2.5.5.1	1YR	1YR
Utility Extension	Section 2.4.4.1	2YR	1YR
Watershed Protection Plan	Section 2.6.1.1	2YR	2YR
Alternative Compliance	Section 2.8.4.1	1YR	90D
Site Permit	Section 2.7.1.1	2YR	90D
Public Improvement Construction Plan	Section 3.4.1.1	2YR	90D

(Ord. No. 2019-45, 12-17-19)

DIVISION 6: INSPECTIONS

Section 2.3.6.1Inspection Procedures

Whenever a development application approved under this Development Code authorizes development or construction of a structure, building or impervious surface, or authorizes installation of public or other improvements to serve a proposed development, or otherwise authorizes disturbance of the surface or subsurface of the land, the following procedures shall be followed during the development process:

A. Right of Entry. The owner of the land subject to the approved development application shall, as a condition of the approval, be deemed to have authorized city inspectors to enter onto the land during reasonable hours for the purpose of determining compliance with the terms, conditions and requirements of the application. If a city inspector is refused entry, the Responsible Official may obtain judicial authorization for the entry, may initiate the process for suspension or revocation of the approved application by the decision-maker for the application, or may exercise any other remedy provided by this Development Code or under other law.

B. Regular Inspections. The City shall make inspections of the land or premises during development and construction to ensure full compliance with all terms, conditions and requirements of the approved development application. The applicant shall designate one person, with a current address, email, and phone, to whom notice shall be given, and from whom information can be obtained, under this Section 2.3.6.1.

C. Authorized Inspectors. Employees of the City allowed by applicable law are authorized to issue municipal court citations for violations of this Development Code.

DIVISION 7: ENFORCEMENT AND REVOCATION OF PERMITS

Section 2.3.7.1Enforcement Procedures and Revocation of Permits

A. Enforcement Activities. Enforcement activities include informal contacts with individuals to advise them of requirements, the issuance of verbal warnings, written warnings, municipal court citations, formal court action, and billing and collection. Employees of the City of San Marcos are authorized to enforce this Development Code and any development application approved and any development permits issued hereunder, including without limitation, issuing municipal court citations for violations of this Development Code.

B. Right to Enter. The Responsible Official shall have the right to enter upon any premises, at any reasonable time, for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this Development Code. Submittal of any application for a development permit that authorizes development or construction of structures or improvements shall be construed as a grant of authority to the Responsible Official to enter on land subject to the application.

C. General Remedies. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this Development Code or any development application approved or development permit issued thereunder, in addition to other remedies, the City may institute any appropriate action or proceedings to prevent or abate such activity. Appropriate action or proceedings include without limitation termination of utility services (water, gas, electric); revocation of permits, licenses, or bonds; stop work orders and institution of legal action in a court of competent jurisdiction.

Section 2.3.7.2Stop Work Orders

A. Stop Work Orders. Whenever any construction or development activity is being done contrary to any terms, conditions or requirements of an approved development application, development permit, or this Development Code, the Responsible Official or the official's authorized representative may order the work stopped by notice in writing, served on the property owner or authorized agent.

B. Stop Work Order Procedures. Notice shall be given before the order shall be effective, except when the order should be effective immediately to protect and preserve the public health, safety, or general welfare.

1. Such notice may be given in person, by certified mail return receipt, or by posting on the applicable property.

C. Effect of Stop Work Order. Any person thereafter shall cease and desist from further development or construction activity which is material to the alleged noncompliance, until corrected by compliance and authorized by the Responsible Official to proceed with the work. This prohibition shall extend throughout any appeal period.

Section 2.3.7.3Court Actions

A. Municipal Court Actions. The City Attorney is authorized to prosecute violations of this Development Code in the municipal court where jurisdiction lies for the action.

B. Civil Court Actions. The City Attorney is authorized to file and prosecute an action at law or in equity, where permitted under the laws of Texas, in a court of competent jurisdiction to enforce the provisions of this Development Code. The initiation of one form of enforcement action by the City Attorney shall not preclude the City Attorney from initiating any other form of enforcement action.

Section 2.3.7.4Fines and Penalties

Unless expressly stated otherwise in this Code for specific offense, the culpable mental state for violating this Code shall be recklessness.

A. Life Safety Fines. A person who violates any provision of this Development Code pertaining to fire safety, zoning or public health and sanitation, including dumping of refuse, shall be punished, upon conviction, by a fine not to exceed $2,000.00.

B. Other Development Code Fines. A person who violates any other provision of this Development Code shall be punished, upon conviction, by a fine not to exceed $500.00.

C. The owner or owners of any building or premises or part thereof, where anything in violation of this Division shall be placed or shall exist, any architect, builder, contractor, agent, persons or corporation employed in connection therewith, and who may have assisted in the commission of any such violation, shall be guilty of a separate offense and upon conviction shall be fined as herein provided.

D. This Section 2.3.7.2 does not apply to enforcement of an ordinance in the City's Extraterritorial Jurisdiction.

E. Separate Offenses. Each day that a violation continues shall be deemed a separate offense under Section 2.3.7.1.

Section 2.3.7.5Revocation Proceedings.

A. If the Responsible Official determines, based on inspection or investigation by the City, that there are reasonable grounds for revocation of an approved development application or development permit, the official shall set a hearing before the original decision-maker, or if the decision was made by the official or another Responsible Official or other city staff, set the hearing before the board or commission to which appeal may be taken from such decision under this Development Code. If the City Council was the original decision-maker, the Council may, but shall not be required to, refer the proposed revocation to the Planning and Zoning Commission for its report and recommendation prior to such hearing. Circumstances that warrant revocation of an approved development application shall include but not be limited to the following:

1. A material mistake was made in approving the development application or development permit;
2. Approval of the development application or development permit was procured on the basis of material misrepresentations or fraud on the part of the applicant or its agents;
3. Development activities being undertaken on the land subject to the development permit are not in conformity with terms thereof;
4. Any use authorized by the development permit or approved development application is in violation of a condition of approval.

B. The applicant and any interested parties shall be given notice of the hearing in the manner provided in Section 2.3.2.1. The public hearing shall be conducted in accordance with the procedures described in Section 2.3.3.1.

C. In rendering its decision whether to revoke the approved application, the decision-maker shall determine whether the activity authorized under the original approved application complies with the terms, conditions and requirements of such approval. The decision-maker may revoke the application, affirm it, or affirm it with attached conditions that assure that the terms, conditions and requirements of the application shall be met.

D. A decision to revoke a development permit or an approved development application shall become final ten days after the date notice of the decision was given, unless appealed. After the effective date, it shall be unlawful to undertake or perform any activity that was previously authorized by the development permit or approved development application without applying for and obtaining approval of a new development application for the activity.

E. Appeal from the decision to revoke the development permit or approved development application shall be to the City Council, unless the decision to revoke was made by the City Council in which case appeal is to the Zoning Board of Adjustments.

F. This Division does not apply to construction permits issued under the requirements of Chapter 14 of the City Code.

ARTICLE 4: GENERAL LEGISLATIVE PROCEDURES

DIVISION 1: DEVELOPMENT CODE TEXT AMENDMENTS

Unless otherwise limited by this Development Code, an application for amending this Development Code may be initiated by the City Council, the Planning and Zoning Commission, a board, commission or advisory body, an ad hoc advisory body appointed by the Council, the Responsible Official on behalf of the City, any citizen or owner of land within the city limits, or any citizen or owner of land within the City's Extraterritorial Jurisdiction (for a regulation that applies to the ETJ).

Section 2.4.1.1Applicability

A. **Amendments.** The City Council may, from time to time amend, supplement, or change the text of this Development Code.

Section 2.4.1.2Application Requirements

A. An application for a text amendment to the Development Code shall be submitted in accordance with the universal application procedures in Section 2.3.1.1.

B. An application for a text amendment requires initial authorization by the City Council.

C. Text amendments initiated, requested, or directed by the City Council do not require initial authorization

D. The City Council shall consider the initial authorization of a text amendment and may reject the petition or direct further consideration of the application for text amendment in accordance with Section 2.4.1.3.

E. Except for amendments initiated on behalf of the City Council, the application to amend the text of this Development Code shall state with particularity the nature of the amendment and the reason for the amendment.

F. The City Council may establish rules governing times for submission and consideration of text amendments.

(Ord. No. 2020-60, 9-1-2020)

Section 2.4.1.3Approval Process

A. Responsible Official Action.

1. The Responsible Official shall provide a report and recommendation to the City Council when the Council considers authorizing a public hearing on a text amendment.

2. Upon authorization, the Responsible Official shall:

   a. Review the application for a text amendment in accordance with Section 2.4.1.4 and provide a report and recommendation to the Planning and Zoning Commission.

   b. Provide web notice of the application in accordance with Section 2.3.2.1(d).

   c. Provide published notice of a public hearing before the City Council.

B. Advisory Body Action. Where required by this Development Code, the City Charter, or other applicable law, the City Council shall consider the recommendation of any other advisory body prescribed by this Development Code, concerning the proposed amendment. Where action is required of the advisory body on a proposed amendment, the advisory body also shall conduct a public hearing.

C. Planning and Zoning Commission Action.

1. The Planning and Zoning Commission shall hold a public hearing on the text amendment in accordance with Section 2.3.3.1. The Planning and Zoning Commission shall make a recommendation regarding the text amendment to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the text amendment to this Development Code.

D. City Council Action.

1. The City Council shall cause published notice of the amendment to be published in accordance with Section 2.3.2.1 and conduct a public hearing on a proposed amendment to this Development Code in accordance with Section 2.3.3.1.

2. Before taking final action on a text amendment, the City Council may consider the recommendations of the Planning Commission and any other advisory bodies, the Responsible Official, and comments made at the public hearing.

3. The City Council shall approve, approve as revised, deny, send the proposed text amendment back to an advisory body or the Responsible Official for additional consideration.

4. All enactments, amendments and changes must be in the form of an ordinance. Copies of adopted city ordinances shall be kept on file at the office of the City Clerk.

Section 2.4.1.4Criteria for Approval

A. The following lists of criteria are not all-inclusive. Review and recommendations on text amendments to this Development Code should consider whether:

1. The proposed text amendment corrects an error or meets the challenge of some changing condition, trend or fact;

2. The proposed text amendment is in response to changes in state law;

3. The proposed text amendment is generally consistent with the Comprehensive Plan and other adopted plans;

4. The proposed text amendment does not conflict with any specific policy or action item of the Comprehensive Plan;

5. The proposed text amendment is generally consistent with the stated purpose and intent of this Development Code;

6. The proposed text amendment constitutes a benefit to the City as a whole and is not solely for the good or benefit of a particular landowner or owners at a particular point in time;

7. The proposed text amendment is not tied solely to a particular tract or development proposal.

8. The proposed text amendment significantly impacts the natural environment, including air, water, noise, stormwater management, wildlife and vegetation; and

9. The proposed text amendment significantly impacts existing conforming development patterns, standards or zoning regulations.

DIVISION 2: COMPREHENSIVE PLAN MAP AMENDMENTS

Section 2.4.2.1Applicability and Effect

A. Applicability. The process for a Comprehensive Plan map amendment applies to other associated City Master Plans and the maps thereof including:

1. Preferred Scenario Map;
2. Thoroughfare Plan Map; and
3. Greenways Plan.

B. Effect. Approved comprehensive plan map amendments shall authorize the approval of subsequent development applications consistent with the amendment.

C. Use of Preferred Scenario Map. The Preferred Scenario Map of the City's Comprehensive Plan shall be used to determine whether a request for a zoning map amendment may be considered by the City Council, based on Section 4.1.1.6.

Section 2.4.2.2Application Requirements

A. An application for a Comprehensive Plan map amendment shall be submitted in accordance with the universal application procedures in Section 2.3.1.1.

B. Consideration of Preferred Scenario Map amendments that meet either of the conditions below shall be limited to twice per year as determined by the Responsible Official.

1. Any modification to the Existing Neighborhood designation on the Preferred Scenario Map.
2. Any request for a medium or high intensity zone designation.

C. A request for amendment of the Preferred Scenario Map submitted by a property owner must be accompanied by an application for a consistent zoning amendment for land within the city limits, or by a subdivision concept plat, for land within the ETJ.

Section 2.4.2.3Approval Process

A. Responsible Official Action

1. Upon submission, the Responsible Official shall schedule the following informational meetings:
   - **a.** A neighborhood presentation meeting in accordance with Section 2.3.1.1(E).
   - **b.** An informational meeting with members of the Neighborhood Commission;
   - **c.** An informational meeting with members of the Planning and Zoning Commission, and;
   - **d.** An informational meeting with the City Council prior to the first City Council public hearing.
2. The Responsible Official shall provide notice of the application in accordance with Section 2.3.2.1.
3. The Responsible Official shall provide posted notice and personal notice in accordance with Section 2.3.2.1 for a public hearing before the Planning and Zoning Commission except for City Initiated changes where Notice shall be provided in accordance with Table 2.1.
4. The Responsible Official shall also provide published notice of two (2) public hearings before the City Council in accordance with Section 2.3.2.1.
5. The Responsible Official shall review the application for a Comprehensive Plan amendment in accordance with the criteria in Section 2.4.2.4 and provide a report to the Planning and Zoning Commission.
6. The Responsible Official shall also provide a report and any recommendations from the Planning and Zoning Commission to the City Council when the City Council considers the proposed amendment to a Comprehensive Plan Map.

(Ord. No. 2019-45, 12-17-19)

B. Planning and Zoning Commission Action.

1. The Planning and Zoning Commission shall hold a public hearing on the application in accordance Section 2.3.3.1.

2. The Planning and Zoning Commission shall make a recommendation regarding the proposed Comprehensive Plan amendment(s) to the City Council. The Planning and Zoning Commission may recommend approval, approval with conditions, or denial of the application for a Comprehensive Plan amendment.

3. A recommendation for approval from the Planning and Zonign Commission requires an affirmative vote of six (6) members of the Planning and Zoning Commission.

(Ord. No. 2019-60, 9-1-20)

C. City Council Action.

1. Before taking final action on a proposed Comprehensive Plan amendment, the City Council shall hold two (2) public hearings where they may consider the recommendations of the Planning Commission, Responsible Official and any comments made during the public hearings.

2. The Council may review the application in light of the criteria in Section 2.4.2.4.

3. An application for a Comprehensive Plan amendment is subject to a super majority vote of the City Council when applicable in accordance with Section 2.2.4.2.

4. The approval of a Comprehensive Plan amendment requires an affirmative vote of five (5) members of the City Council.

5. After the public hearing is closed, the Council may approve, reject or modify the requested amendments by adoption of an ordinance.

(Ord. No. 2019-60, 9-1-20)

Section 2.4.2.4Criteria for Approval

A. The following list of criteria for review and recommendations regarding a proposed Comprehensive Plan amendment are not all-inclusive. Review and recommendations of proposed Comprehensive Plan amendments should consider whether:

1. The proposed amendment is consistent with other policies of the Comprehensive Plan;

2. The proposed amendment is consistent with any adopted small area plan or neighborhood character study for the area.

3. The proposed amendment promotes the orderly and efficient growth and development of the community and furthers the public health, safety and general welfare of the City;

4. The proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact;

5. The proposed amendment constitutes a substantial benefit to the City as a whole and is not solely for the good or benefit of a particular landowner or owners at a particular point in time; and

6. The proposed amendment will impact:

   a. Adjacent properties;

   b. Existing or future land use patterns;

   c. Existing or planned public services and facilities;

   d. Existing or planned transportation networks or greenways; and

   e. The natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management.

DIVISION 3: DEVELOPMENT AGREEMENTS

Section 2.4.3.1Purpose, Applicability and Effect

A. **Purpose.** The purpose of an application for approval of a development agreement is to determine whether the City wishes to authorize by binding contract a plan of development for land located in the City's Extraterritorial Jurisdiction, to prescribe land uses, environmental standards, development standards and public facilities standards governing development of the land for the term of the agreement, to provide for delivery of public facilities to the property, and to provide for annexation of the property to the City.

B. The purpose of a development agreement is to enable development of land in the City's Extraterritorial Jurisdiction to occur at densities or intensities of use that require public water and wastewater services and that are to be governed by standards applicable to development inside the city limits.

C. The purpose of the agreement also shall be to provide for development outside the city limits that is compatible with development inside the city limits in anticipation of eventual annexation of the land subject to the agreement into the City.

D. **Applicability.** A development agreement shall be approved only for land located in the Extraterritorial Jurisdiction of the City and shall be used where either of the following is applicable:

1. It is likely that the property subject to the agreement shall remain in the Extraterritorial Jurisdiction for a period exceeding five years and the property owner seeks to pursue development prior to annexation at urban level residential densities or intensities of use.

2. The City proposes to annex a property within the ETJ that is appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber use. A development agreement, consistent with the provisions of the Local Government Code, shall be offered.

E. **Effect.** Approval of a development agreement puts into effect the regulations governing the use and development of the land subject to the agreement, authorizes provision of city services in accordance with the agreement, and authorizes the property owner to apply for subordinate development permits. An executed development agreement shall be binding on the property owner, the City and their respective successors-in-interest and assigns for the term of the agreement.

Section 2.4.3.2Application Requirements

A. An application for a development agreement shall be submitted in accordance with the universal application procedures in Section 2.3.1.1.

B. An application for a development agreement shall include without limitation a statement of the preferred scenario map area of the property applicable to the development agreement and that the requested development agreement is consistent with the comprehensive plan as contemplated in Section 4.1.1.6.

C. A development agreement application requires initial authorization by the City Council.

D. The City Council shall consider the initial authorization of a development agreement and may reject the application or direct further consideration and negotiation of the development agreement in accordance with Section 2.4.3.6.

E. A development agreement at a minimum shall contain the following provisions, which shall be drafted to the satisfaction of the City Attorney:

1. A legal description of the land subject to the agreement;

2. A description of the proposed development, identifying each land use authorized, including the density or intensity of such use, and including incorporation by reference of a land use plan prepared in accordance with Section 2.4.3.3;

3. The proposed schedule of development where a project will be phased;

4. Proposed base districts for the property following annexation to the City;

5. A complete list of all development standards that shall be applied to the property, referenced to the standards in this Development Code, through the agreement, together with a list of standards in the Code that do not apply to the development;

6. A complete list of all development application procedures that shall be applied to the property, referenced to the articles and divisions of this Development Code, through the agreement, together with a list of procedures in the code that do not apply to the development;

7. A list of special standards applicable to development of the property that normally do not apply to development of land within the City or its Extraterritorial Jurisdiction;

8. A schedule for providing public facilities and services to the development that identifies the service provider and the approximate dates within which service shall be provided for each phase of the development;

9. Identification of the means and provisions for financing each public service required to support development of the property, including but not limited to impact fees, contributions in aid of construction, dedication of rights-of-way for public improvements, and construction of such improvements;

10. A schedule for annexing the property to the City, together with any guarantees of immunity from annexation, identifying the period during which the property may not be annexed;

11. The term of the agreement and provisions for extension, if any, which shall not exceed 30 years;

12. Provisions for enforcement of the agreement by the City;

13. Provisions for amending the agreement;

14. Provisions for recording the agreement. The agreement shall be recorded in each county in which some of the land subject to the agreement is located; and

15. Provisions assuring that the agreement shall bind successors-in-interest to the parties.

Section 2.4.3.3Land Use Plan

A. **Purpose.** The purpose of the land use plan that is to be incorporated into the development agreement is to graphically depict the proposed locations of authorized uses for the land subject to the agreement, and to define prospective zoning district boundaries, acreages, and development standards for such areas.

B. **Relationship to Conceptual Plan.** The land use plan shall be consistent with the text of the development agreement.

C. **Consistency With Land Use Plan.** Subsequent development applications shall be consistent with the land use plan.

D. **Phasing and Development Standards.** Unless expressly provided to the contrary in the annexation agreement, only the initial phase of development shall be authorized while the property is located outside the city limits. Development that occurs outside city limits pursuant to the development agreement and land use plan shall be subject to the use limitations and standards in the zoning referenced in the land use plan.

E. **Zoning Upon Annexation.** Following annexation of the land to the City, the zoning classifications for the property shall be compatible with those designated in the development agreement, and consistent with the Comprehensive Plan.

Section 2.4.3.4City Services

In approving the development agreement and land use plan, the City Council shall decide the method by which city services shall be provided to serve development of the property subject to the agreement, and should resolve all issues pertaining to extension of water and wastewater facilities.

Section 2.4.3.5Approval Process

A. **Responsible Official Action.**

1. The Responsible Official shall provide a report and recommendation to the City Council when the Council considers initial authorization of a development agreement.

2. Upon authorization by City Council, the Responsible Official shall circulate the draft agreement prepared in accordance with Section 2.4.3.2 among city departments, the City Manager, and any Council sub-committee members for review.

3. Review of the development agreement shall consider the criteria in Section 2.4.3.6.

4. The Responsible Official shall cause published notice of the public hearing in accordance with Section 2.3.2.1.

5. The Responsible Official shall consolidate comments and recommendations in a report to the City Council.

B. City Council Action

1. During the initial authorization the City Council may appoint a committee of its members for purposes of reviewing and facilitating negotiations with the property owner.

2. The Council may accept, accept with modifications, or reject the proposed development agreement, and may approve, conditionally approve or deny the land use plan consistent with its decision on the development agreement.

3. If the Council accepts the agreement, it shall approve the agreement by resolution that authorizes the City Manager to execute the agreement on behalf of the City following execution by the property owner.

4. If the development agreement is approved by City Council and executed by the property owner, the Responsible Official shall record the approved development agreement at the developer's expense in the real property records of each county in which land subject to the agreement is located.

5. The land use plan for the property shall be approved as an exhibit to the development agreement and shall conform to the requirements of Section 2.4.3.3 of this Development Code. Thereafter, development applications for the land subject to the development agreement shall be consistent with the land use plan and shall be processed in accordance with the provisions in the agreement.

6. Unless a different time is specified in the resolution, the property owner shall accept the development agreement and land use plan and execute the agreement within ten (10) business days of the date the resolution is adopted. If the agreement is not accepted and executed by the property owner within such period, the Council's acceptance of the agreement shall be deemed withdrawn.

Section 2.4.3.6Criteria for Approval

A. The following list of criteria for review and recommendations regarding a proposed development agreement are not all-inclusive. Review and recommendations of proposed development agreements should consider whether:

1. Development of the property under the proposed agreement and land use plan implement the policies of the Comprehensive Plan;

2. Extension of public facilities and services to the property under the agreement do not compromise the City's ability to timely provide adequate public facilities to property inside the City;

3. Extension of public facilities and services to the property under the agreement do not degrade environmental resources;

4. Water quality impacts arising from the proposed development are mitigated by measures provided in the development agreement;

5. The agreement furthers the creation or expansion of other utility providers to the City's detriment;

6. The agreement authorizes the application of the City's zoning and development standards to the uses proposed, which otherwise could not be applied to the proposed development;

7. The agreement authorizes the City to recoup the costs of Capital Improvements provided to the development while it remains in the Extraterritorial Jurisdiction;

8. The schedule of annexation proposed in the agreement furthers the City's policies on expansion and growth of the City;

9. The agreement does not creates future barriers to annexation of land contiguous to the area subject to the agreement;

10. The agreement does not promote economic development that undermines or inhibits economic development within the city center or other economic centers of the community; and

11. The proposed agreement furthers the public health, safety and general welfare.

Section 2.4.3.7Expiration, Extension, Amendment and Termination of Agreement

A. Expiration. The development agreement shall expire on the date that its term ends. The conceptual plan of development governing development of the property shall expire on that date, except for any land that is subject to an approved or pending development application that remains in effect for the property.

B. Extension. The development agreement and land use plan may be extended for additional periods under the terms of the agreement. Extension of development applications on land subject to the agreement shall be in accordance with this development code, or as provided in the agreement.

C. Amendment. The development agreement and land use plan may be amended from time to time under the procedure for approval of an application for a development agreement.

D. Termination. The development agreement and land use plan may be terminated for breach of the agreement or other reasons in accordance with its terms.

DIVISION 4: APPLICATION FOR UTILITY EXTENSION

Section 2.4.4.1Purpose, Applicability, Effect, Universal Procedures

A. Purpose. The purpose of an application for approval of a utility extension shall be to determine whether the City wishes to authorize extension of water or wastewater facilities to provide services to a development located outside the city limits.

B. Applicability. Approval of a utility extension shall be required where:

1. A property owner seeks water or wastewater services from the City for a proposed project that shall be located outside the city limits at the time of the proposed extension and subsequent development, or
2. A property owner seeks wastewater service from the City but not water service.

C. Effect. Approval of an application for a utility extension authorizes:

1. The City to annex the property;
2. The applicant to submit development applications consistent with the capacity of the facilities to be extended; and
3. The applicant to construct extensions of the facilities in accordance with the terms of the approved application and construction plans.

Section 2.4.4.2Application Requirements

A. The universal procedures in Section 2.3.1.1 shall be applicable to applications for utility extension except as otherwise provided in this Division 4.

B. An application for a utility extension shall include without limitation a statement of the preferred scenario map area of the property applicable to the utility extension and that the requested utility extension is consistent with the comprehensive plan as contemplated in Section 4.1.1.6. If the applicant's property is not contiguous to the city limits, the application must be accompanied by a written request for annexation of an area meeting the requirements of the Texas Local Government Code from each property owner, or, for public right-of-way, the entity having jurisdiction over the right-of-way, along the intended route of the utility extension.

Section 2.4.4.3Approval Process

A. Responsible Official Action

1. The Responsible Official shall review the application for a utility extension in accordance with the criteria in Section 2.4.4.4 and shall provide a report and recommendation to the City Council for consideration.

B. City Council Action

1. The City Council shall evaluate the application on the basis of the staff report and the criteria listed in Section 2.4.4.4.
2. The City Council may either grant, grant subject to conditions, or deny the application.

3. The City Council may attach conditions that assure that the approval criteria shall be implemented, including but not limited to conditions related to the scope of the development to be served, the timing of annexation, the timing of utility improvements or extensions needed to provide adequate capacity to the development to be served, and provisions for financing the extensions.

Section 2.4.4.4Criteria for Approval

A. In deciding the application for approval of a utility extension, the Council shall consider:

1. Whether the location of the proposed development to be served by the extension is consistent with the Comprehensive Plan;

2. Whether the extension is proposed to be constructed in accordance with the TCSS, the provisions of Chapter 86 of the City Code, and all other applicable City regulations and standards;

3. Whether it is feasible to annex the property, and any intervening property which is needed for utility rights-of-way, to the City in a timely manner;

4. Whether the utility extension would compromise the City's ability to timely provide adequate water or wastewater facilities to property inside the City;

5. Whether the utility extension shall lead to premature development that cannot be served efficiently and timely by roadway, drainage or park facilities;

6. Whether the utility extension is financially feasible given the proposed means of financing the extension;

7. Whether the utility extension shall lead to significant degradation of water quality or other environmental resources, either from construction of the water or wastewater improvements, development of applicant's land, or development of other land that may be served through the extended facilities; and

8. Whether the applicant proposes to extend wastewater facilities without utilizing city water facilities.

Section 2.4.4.5Expiration and Extension

A. **Expiration.** If a plat application (of any type) has not been approved for the property to be served by a utility extension within two years from the date of approval of the application for utility extension by the City Council, the approved application for a utility extension shall expire in accordance with Section 2.3.5.3.

1. If progress is made towards completion of the project associated with the utility extension during the two-year period, but after the progress is made, no further progress is made towards completion of the project associated with the utility extension for a period of two years, the approved application for a utility extension shall expire.

2. In the event a plat application (of any type) subsequently expires or is revoked, the approved utility extension application shall likewise expire.

B. **Extension.** The City Council may extend the time of expiration for or reinstate an approved utility extension application, in accordance with the procedures in Section 2.3.5.1.

DIVISION 5: APPLICATION FOR WAIVER OR MODIFICATION OF DEVELOPMENT STANDARDS AS AN ECONOMIC DEVELOPMENT INCENTIVE

Section 2.4.5.1Purpose, Applicability and Effect

A. **Purpose.** The purpose of a request for waiver of development standards is to determine whether the City wishes to authorize, as part of the approval of a request for economic development incentives, alternative standards or criteria for approval for development applications related to a specific project within the city limits or extraterritorial jurisdiction, in order to support and implement the City's adopted economic development program.

B. **Applicability.** A waiver or modification of development standards may be approved only for projects approved by the City Council under the city's economic incentives policy.

1. A waiver or modification may not be granted pursuant to this Division 5 for a waiver or modification of the environmental standards in Chapter 6 of this Development Code.

C. Effect. Approval of a waiver or modification of development standards authorizes the applicant to submit applications for subordinate development permits for the specific project under the modified criteria set forth in the economic development incentives agreement.

1. Upon approval of a waiver or modification of development standards, applications shall be consistent with the specific project described in the economic development incentives agreement and shall be processed in accordance with the provisions of this Development Code as waived or modified by the agreement.

Section 2.4.5.2Application Requirements

A. A request for waiver or modification of development standards shall accompany an application for city economic development incentives and shall identify:

1. The nature of the project;
2. The specific portions of this Development Code to be modified or waived; and
3. The benefit of these actions to the City.

Section 2.4.5.3Approval Process

A. Responsible Official Action

1. The City Manager shall cause a city departmental review of the requested incentives and creation of a report consolidating comments and recommendations, which shall be delivered to the City Council prior to its consideration of the request.

B. City Council Action

1. The City Council may request review and recommendation of the request for modifications or waivers by the Planning and Zoning Commission or other appointed bodies.
2. The Council may grant a waiver or modification of standards at a public meeting.
3. The approved economic development incentives agreement shall specify all applicable deviations from this adopted Development Code.
4. Approval by the City Council authorizes the City Manager to execute the agreement.
5. If the agreement is not accepted and executed by the property owner within a period specified by the City Council in its approval, the Council's approval of the agreement shall be deemed withdrawn.

Section 2.4.5.4Criteria for Approval

A. In deciding the application the Council shall consider whether:

1. Failure to grant the waiver or modification shall have a material adverse impact to the City's ability to attract a significant economic development project to the City;
2. The request supports and implements the city's economic development program;
3. The nature of the use or project being incentivized is such that the requested waiver or modification of development standards is necessary to support or implement the City's adopted economic incentives policy;
4. The requested waiver or modification of development standards is the minimum necessary in order to support and implement the City's adopted economic development program;
5. Granting the request is consistent with the adopted Comprehensive Plan; and
6. The request furthers the public health, safety and general welfare.

ARTICLE 5: ZONING PROCEDURES

DIVISION 1: APPLICATION FOR ZONING MAP AMENDMENT

The property owner or the owner's authorized agent, the Planning and Development Services Director, the Planning and Zoning Commission, or the City Council on its own motion, may initiate an application for a zoning map amendment.

Section 2.5.1.1Purpose, Applicability and Effect

A. **Purpose.** The purpose of an application for a zoning map amendment is to establish the initial zoning district classification of land, or to authorize a use of land, or to change the zoning district classification of land.

B. **Applicability.** The requirements of this division do not apply to land outside of the city limits. The requirements of this division do apply to land annexed to the City upon the effective date of the annexation.

C. **Effect.** Enactment of an ordinance approving an application for a zoning map amendment results in a change in zoning district classification for the property, and the use of the land thereafter is subject to all requirements of the new zoning district. Approval of an application for a zoning map amendment authorizes the property owner to establish any use authorized in the new zoning district, subject to the standards and requirements applicable within the zoning district, upon obtaining approval of all development applications required by this Development Code.

Section 2.5.1.2Application Requirements

A. An application for a zoning map amendment shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Article 5.

B. An application for zoning map amendment to any Neighborhood Density District described in Section 4.1.2.4 requires the approval of an existing neighborhood regulating plan overlay district described under Section 2.5.3.1.

C. A landowner or agent seeking approval of an application for a zoning map amendment shall pay or otherwise satisfy all delinquent taxes, paving assessments, impact fees, or any other delinquent debts or obligations for the property to be rezoned at the time the application is submitted.

D. An application for a zoning map amendment shall include without limitation a statement of the preferred scenario map area of the property proposed to be re-zoned and that the requested zoning map amendment is consistent with the comprehensive plan as contemplated in Section 4.1.1.6.

E. An application for a zoning map amendment shall not be approved unless the following petitions, where applicable to the application, have been approved and remain in effect:

1. Any petition for a comprehensive plan amendment,

2. Any petition for a text amendment to this Development Code.

F. **Waiting Periods for Certain Amendments**

1. A request to change the zoning district designation for a tract of land shall not be considered by the Planning and Zoning Commission or the City Council within one year of any of the following:

a. A City Council vote to deny the same requested change for all or any portion of the parcel;

b. Withdrawal of the same requested change by the applicant after the City Council meeting at which the change is to be considered has been called to order; or

c. A modification to the boundary of the same requested change by the applicant after the Planning and Zoning Commission has voted on the matter.

2. The one-year waiting period may be waived if the Planning and Zoning Commission and City Council each determine that there has been a substantial change in conditions surrounding the parcel since the initial request, and agree to reconsider the change by a three-fourths vote of the members present and voting.

Section 2.5.1.3Approval Process

A. **Responsible Official Action**

1. Upon acceptance of an application for a zoning map amendment, the Responsible Official shall schedule a

neighborhood presentation meeting in accordance with Section 2.3.1.1.

2. Upon acceptance of an application for a zoning map amendment the Responsible Official shall provide a notice of application in accordance with Section 2.3.2.1.

3. The Responsible Official shall provide posted notice and personal notice of all required public hearings at least 17 days before the hearing in accordance with Section 2.3.2.1 except for City Initiated changes where notice shall be provided in accordance with Table 2.1.

4. The Responsible Official shall review an application for zoning map amendment in accordance with the criteria in Section 2.5.1.4 and provide a report and recommendation to the Planning and Zoning Commission. The report shall include guidance from public safety agencies regarding the ability to serve the subject property.

5. The Responsible Official shall also provide a report and any recommendations from the Planning and Zoning Commission to the City Council when the City Council considers the proposed zoning map amendment.

B. Planning and Zoning Commission Action.

1. The Planning and Zoning Commission shall hold a public hearing on the application in accordance with Section 2.3.3.1.

2. The Planning and Zoning Commission shall make a recommendation regarding the application for a zoning map amendment to the City Council.

3. The Planning and Zoning Commission may recommend approval or denial of the application for a zoning map amendment or, subject to consent of the owner, such other less intense zoning district classification.

4. The Planning and Zoning Commission may, on its own motion, or at the applicant's request, defer its recommendation or decision and table the request to a date certain that is not more than ninety (90) calendar days from the date of the public hearing, to consider other information or proposed modifications to the request which may have a direct bearing on the recommendation or decision.

5. If the Planning and Zoning Commission elects to table the request, the tabling shall specifically state the meeting date at which the request shall reappear on the Planning and Zoning Commission agenda, and further notice in the newspaper, to the property owner, and to surrounding property owners shall not be required.

(Ord. No. 2020-60, 9-1-2020)

C. City Council Action

1. The City Council shall consider an application for a zoning map amendment at its public hearing no sooner than seven days after the date of the Planning and Zoning Commission's recommendation.

2. The City Council should consider the criteria in Section 2.5.1.4 and may vote to approve or deny the specific proposed zoning map amendment or, subject to consent of the owner, such other less intense zoning district classification.

3. A decision of the City Council reclassifying land to a different zoning district shall be in the form of an ordinance that amends the City's official zoning map.

4. A zoning map amendment is subject to a super majority vote of the City Council when applicable in accordance with Section 2.2.4.2.

5. The City Council may, on its own motion, or at the applicant's request, defer its recommendation or decision and table the request for not more than ninety (90) calendar days from the date of the public hearing, to consider other information or proposed modifications to the request which may have a direct bearing on the recommendation or decision.

6. If the City Council elects to table the request, the tabling shall specifically state the meeting date at which the request shall reappear on the City Council agenda, and further notice in the newspaper, to the property owner, and to surrounding property owners shall not be required.

(Ord. No. 2020-60, 9-1-2020)

D. Determination of Intensity

1. For the purpose of determining a less intense zoning classification under subsections B.3 and C.2, the following Table 2.3 shall determine intensity of zoning districts in the order listed with Character District 1 (CD-1) being the least intense and Heavy Industrial (HI) being the most intense. Future Development (FD) is a default zoning classification available only upon annexation and may not be recommended or approved as a less intense zoning district in connection with an initial request for a more intense zonign district classification.

Table 2.3 Determination of Intensity

Character District 1	CD-1
Character District 2	CD-2
Single Family Rural	SF-R
Single Family 6	SF-6
Single Family 4.5	SF-4.5
Character District 2.5	CD-2.5
Manufactured Home	MH
Neighborhood Density 3	ND-3
Character District 3	CD-3
Neighborhood Density 3.2	ND-3.2
Neighborhood Density3.5	ND-3.5
Neighborhood Density 4	ND-4
Character District 4	CH-4
Neighborhood Commercial	N-CM
Character District 5	CD-5
Character District 5 Downtown	CD-5D
Employment Center	EC
Heavy Commercial	HC
Light Industrial	LI
Heavy Industrial	HI

(Ord. No. 2020-60, 9-1-2020)

Section 2.5.1.4Criteria for Approval

A. In making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

1. Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map;
2. Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area;
3. Whether the proposed zoning map amendment implements the policies of any applicable plan adopted by City Council;
4. Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect;
5. Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified;
6. Whether the proposed zoning will reinforce the existing or planned character of the area;
7. Whether the site is appropriate for the development allowed in the proposed district;
8. Whether there are substantial reasons why the property cannot be used according to the existing zoning;
9. Whether there is a need for the proposed use at the proposed location;
10. Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development;
11. Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property;
12. For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5.

13. The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management; and

14. Any other factors which shall substantially affect the public health, safety, morals, or general welfare.

(Ord. No. 2020-60, 9-1-2020)

DIVISION 2: APPLICATION FOR OVERLAY DISTRICT

Section 2.5.2.1Purposes and Effect

A. **Purpose.** An overlay district is a district for which there are established regulations that combine with the regulations of an underlying base district. The purposes of an overlay district shall be to prohibit uses otherwise allowed in the base district, to establish additional or different conditions for uses, or to authorize special uses, together with standards for such uses, not otherwise allowed in the base district.

B. **Effect.** Adoption of an overlay district does not repeal the base district, and all regulations in the base district shall remain applicable to the uses allowed in the overlay district, except as expressly modified by the regulations for the overlay district. In addition, any special standards set forth in the adopting ordinance shall apply to all development within the overlay district.

Section 2.5.2.2Establishment of Overlay Districts

A. **Creation.** An overlay district, other than an existing neighborhood regulating plan, shall be established as an amendment to the text of the zoning regulations in Chapter 4 and Chapter 5 of this Land Development Code in accordance with procedures in Section 2.4.1.1. Overlay zoning districts shall also be established on the Zoning Map in accordance with the procedures governing petitions for zoning map amendments in Section 2.5.1.1.

B. **Enacting Ordinance.** In creating an overlay district other than an existing neighborhood regulating plan, the City Council shall specify the following standards:

1. The intent and purpose of the district;

2. The types of base districts with which the overlay district may be combined;

3. Uses allowed by the overlay district which are not allowed in the base district and standards and conditions applicable to such uses;

4. Uses otherwise permitted within the base district, which are prohibited, limited or restricted within the overlay district, and the standards and conditions constituting such limitations or restriction;

5. Standards to be applied in the overlay which are intended to supersede conflicting standards in the base district; and

6. Special standards to be applied in the overlay district.

DIVISION 3: APPLICATION FOR AN EXISTING NEIGHBORHOOD REGULATING PLAN

Section 2.5.3.1Purpose, Applicability and Effect

A. **Purpose.** The purpose of an existing neighborhood regulating plan shall be to authorize a special overlay zoning district to ensure compatibility of the development with the surrounding neighborhood.

B. **Applicability.** An approved existing neighborhood regulating plan shall be required for any property owner requested zoning map amendment to any of the Neighborhood Density Districts described under Section 4.1.2.4

C. **Effect.** Approval of an existing neighborhood regulating plan authorizes the approval or issuance of subsequent requests and permits for the property subject to the regulating plan.

Section 2.5.3.2Application Requirements

A. An application for approval of an existing neighborhood regulating plan shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Division.

(Ord. No. 2019-45, 12-17-19)

B. Existing neighborhood regulating plans shall consist of one or more maps including the following elements where applicable:

1. The location of proposed base zoning districts;

2. The location and number of proposed lots.

3. The location of existing zoning districts surrounding the subject property;

4. The type, location, and number of units of all proposed building types under Section 4.4.6.1;

5. The type, location, and number of units of all existing building types surrounding the subject property;

6. The location of any required and proposed transitional protective yards under Section 7.2.2.1;

7. The location of any required or proposed residential infill compatibility standard under Section 4.4.2.5;

8. The location and type of all required and proposed street types under Section 3.7.1.1;

9. The location of all proposed parking in accordance with Section 7.1.1.1;

10. The location and type of all proposed and existing streestcape types under Section 3.8.1.1; and

11. The location and type of all proposed and existing parkland under Section 3.10.1.1.

Section 2.5.3.3Approval Process

A. The approval process for an existing neighborhood regulating plan follows the procedures established for approval of a zoning map amendment under Section 2.5.1.3.

Section 2.5.3.4Criteria for Approval

A. The following criteria shall be used to determine whether the application for an existing neighborhood regulating plan shall be approved, conditionally approved or denied:

1. The proposed regulating plan conforms with the compatibility of uses and density standards in Section 4.1.2.5.

2. The existing neighborhood regulating plan is consistent with all applicable standards and requirements of the base zoning district and this development code;

3. The existing neighborhood regulating plan is consistent with any adopted small area plan or neighborhood character study for the area.

4. The proposed provision and configuration of roads, electric, water, wastewater, drainage and park facilities conform to the Comprehensive Plan and any approved City Master Plans or Capital Improvement Plans;

Section 2.5.3.5Amendments

A. The Responsible Official may permit the applicant to make minor amendments to the existing neighborhood regulating plan without the necessity of amending the ordinance that established the existing neighborhood regulating plan.

B. If the Director determines that proposed amendments substantially impact the nature of the approval, whether individually or cumulatively, the Director will deny the request for approval of the modifications and provide the applicant with the opportunity to revise the proposed amendments to bring them into compliance with the existing neighborhood regulating plan.

C. If an applicant wishes to make any amendments other than minor amendments approved by the Responsible Official, the amendments will be submitted for review and approval as a revised existing neighborhood regulating plan.

D. Minor amendments shall be as follows:

1. Corrections in spelling, distances and other labeling that do not affect the overall development concept;

2. Changes in building position or layout that are less than ten feet or ten percent of the total building project or area; and

3. Changes in proposed property lines as long as the original total project acreage is not exceeded, and the area of any base zoning district is not changed by more than five percent.

4. Changes in parking layouts as long as the general original design is maintained.

DIVISION 4: APPLICATION FOR HISTORIC DISTRICT OR HISTORIC LANDMARK

Section 2.5.4.1Establishment and Expansion of Local Historic Districts or Historic Landmarks

A. **General Procedures for Local Historic District.** Except as provided in this Section, an application to establish or expand a Historic District (HD) shall be processed and decided in accordance with the procedures governing an application for an overlay district under Section 2.5.2.2.

B. **General Procedures for Historic Landmarks.** Except as provided in this Section, an application to establish a Historic Landmark shall be processed and decided in accordance with the procedures governing an application for a Zoning Map amendment under Section 2.5.1.1.

Section 2.5.4.2Historic Preservation Commission Action.

Before considering a request for the establishment of a Historic District or Landmark, the Historic Preservation Commission shall carry out the following activities:

A. The Historic Preservation Commission shall cause a report to be prepared for the commission's final review and approval that:

1. Identifies the historic significance of the exteriors of buildings, structures, features, sites, objects and surroundings in the area of the proposed district or landmark;

2. Reflects the current characteristics of the area of the proposed new Historic District or Landmark.

B. After final approval of the report concerning the area subject to the request, the Historic Preservation Commission shall hold a public hearing on the request for the establishment of the proposed Historic District or Landmark. The report shall be presented at the public hearing.

C. Personal notice and published notice of the public hearing shall be given in accordance with Section 2.3.2.1.

D. After the public hearing the Historic Preservation Commission shall:

1. Formulate a recommendation regarding the establishment of a historic district or landmark for the area subject to the request; and

2. Forward the recommendation and report to the Planning and Zoning Commission for consideration.

Section 2.5.4.3Planning and Zoning Commission Action

A. The Planning and Zoning Commission shall schedule a public hearing on the establishment of a Historic District or Landmark upon receiving the final report and recommendations of the Historic Preservation Commission.

B. The Planning and Zoning Commission shall take into consideration the report and recommendations of the Historic Preservation Commission at a public hearing.

C. The Planning and Zoning Commission shall recommend approval, approval with conditions, or denial of the establishment or expansion of a Historic District or Landmark.

D. Subsequent to the Planning and Zoning Commission's action, the final report, including the proposed ordinance and the recommendations of both commissions, shall be forwarded to the City Council for action.

Section 2.5.4.4City Council Action

A. Upon receipt of the final report and the recommendations of the Historic Preservation Commission and the Planning and Zoning Commission, the City Council shall take action on the application.

B. Upon approval, the ordinance establishing or expanding a Historic District shall provide for a suitable sign or marker on or near any part of the applicable property indicating that the property has been so designated, and shall set forth any restrictions on development or utilization of the Historic District or Landmark.

C. One copy of the ordinance shall be filed in the office of the County Clerk of the county in which the property is located.

D. **Notification of Designation.** Upon adoption of the ordinance, personal notice of the designation of the Historic District or Landmark shall be given in accordance with Section 2.3.2.1(b); provided that such notice is required to be given only to owners of property within the Historic District or Landmark.

Section 2.5.4.5Criteria for Approval

In making a determination or recommendation regarding the establishment or expansion of a Historic District or Landmark the following factors should be considered:

A. Historical, architectural and cultural significance of the site(s);

B. Suitability for preservation or restoration;

C. Educational value; and

D. Satisfaction of criteria established for inclusion of the site(s) and/or district in the National Register of Historic Places.

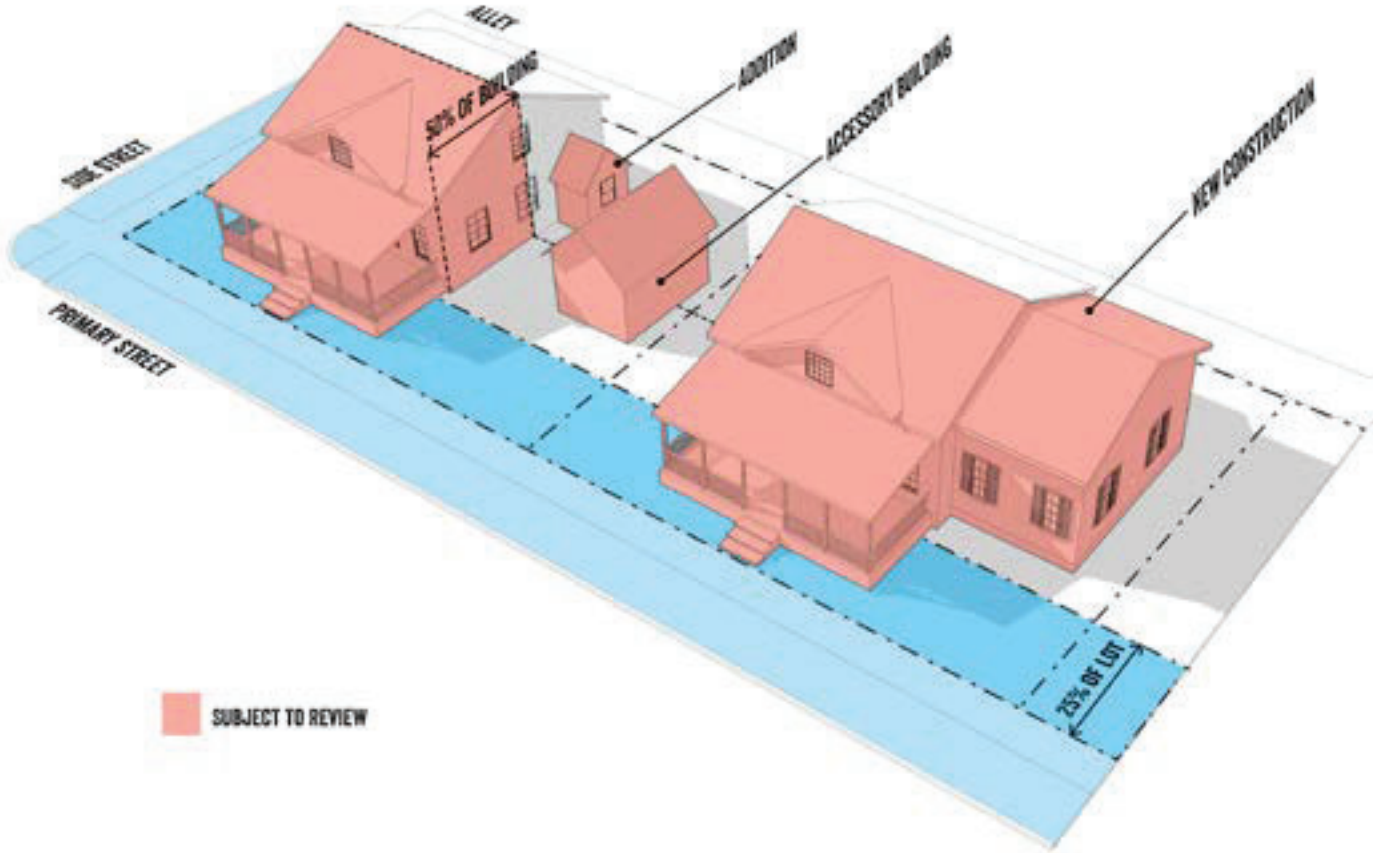
DIVISION 5: CERTIFICATES OF APPROPRIATENESS

Section 2.5.5.1Purpose, Applicability, Exceptions and Effect

A. **Purpose.** The purpose of a certificate of appropriateness is to assure that construction, alteration, restoration, relocation, or demolition of a structure, or alterations to the site or appurtenances in a Historic District or at a Historic Landmark is congruous with the historical, architectural or cultural aspects of the district or landmark. Furthermore, the purpose of a certificate of appropriateness is to make certain that historic structures, streets and neighborhoods are preserved and protected.

B. **Applicability.** A certificate of appropriateness is required for portions of buildings and sites visible from adjacent public rights-of-way, streets or alleys as defined by Section 2.5.5.1(D) prior to undertaking any of the following activities in a local Historic District or at a local Historic Landmark:

FIGURE 2.1 HISTORIC DISTRICT APPLICABILITY



1. Construction and reconstruction, including fences and walls;
2. Alteration, additions, restoration and rehabilitation;
3. Relocation;
4. Signage;
5. Construction or reconstruction of a parking lot;
6. Construction or reconstruction of an appurtenance;
7. Demolition; and
8. Establishment or alteration of lighting, furniture and seating plans, and/or awnings and umbrellas within public right-of-ways.

C. Exceptions. A certificate of appropriateness is not required for the following activities:

1. Changes in color to a structure's exterior, unless the structure is located in the Downtown Historic District. Painting of structures in the Downtown Historic District shall be subject to Section 4.5.2.1(J);
2. Interior arrangements for structures in a local Historic District or at a local Historic Landmark;
3. Ordinary maintenance or repair of any exterior feature that does not involve a change in:
   - **a.** Design,
   - **b.** Material, or
   - **c.** Outer appearance.
4. With the written approval of the Responsible Official, construction, reconstruction, alteration, restoration or demolition of any feature which the Building Official or other city department director shall certify is required for the public safety because of an unsafe or dangerous condition.

(Ord. No. 2019-45, 12-17-19)

D. The provisions of this Division 4 apply only to the following areas within the boundaries of each Historic District or Historic Landmark:

1. The lot area between the property line and the facade of any existing building or structure;
2. 25% of the depth of the lot area adjacent to the public right-of-way for vacant lots;
3. The first 50% of the depth of any existing principal building from the facade adjacent to a public right-of-way;
4. Any addition to a building or structure that projects beyond an existing building's front or side wall and roof plane envelope regardless of distance from the public right-of-way;
5. The entirety of any new principal building construction on a vacant lot;
6. The entirety of any new accessory building construction located in whole or in part in areas Section 2.5.5.1(D)1-3
7. The entirety of any Historic Landmark and its designated boundary area.

E. Effect. Approval of a Certificate of Appropriateness authorizes the applicant to apply for permits allowing construction, alteration, restoration, relocation, or demolition of a structure, or alterations to the site or appurtenances, in a Historic District or at a local Historic Landmark.

Section 2.5.5.2Application Requirements

A. An application for a certificate of appropriateness shall be submitted in accordance with Section 2.3.1.1 except as otherwise provided in this Division 5.

B. A certificate of appropriateness must be approved prior to the issuance of a building permit or any other permit that authorizes construction, alteration, restoration, relocation, or demolition of a structure, or alterations to the site or appurtenances in the local Historic District or at a local Historic Landmark.

Section 2.5.5.3Approval Process

A. Responsible Official Action

1. The Responsible Official shall review the application for a certificate of appropriateness in accordance with the criteria in Section 2.5.5.4 and provide a report and recommendation to the Historic Preservation Commission.

2. The responsible official shall schedule a public hearing and prepare personal notice before the public hearing in accordance with Section 2.3.2.1.

B. Historic Preservation Commission Action

1. The Historic Preservation Commission shall conduct a public hearing concerning the application in accordance with Section 2.3.3.1

2. The Historic Preservation Commission shall approve, approve with conditions or deny the application for a certificate of appropriateness after consideration of the request during the public hearing.

3. If the Historic Preservation Commission determines that a certificate of appropriateness should not be issued, or should be issued subject to conditions, it shall place upon its records the reasons for its determination.

4. The Historic Preservation Commission shall render its decision on the request within forty-five (45) days of the date the application is deemed complete and adequate for review, subject to the supplemental options available under Section 2.5.5.3(c).

Section 2.5.5.4Criteria for Approval

The following criteria shall be used to determine whether the application for a certificate of appropriateness shall be approved, conditionally approved or denied:

A. Consideration of the effect of the activity on historical, architectural or cultural character of the Historic District or Historic Landmark;

B. For Historic Districts, compliance with the Historic District regulations;

C. Whether the property owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness is issued; and

D. The construction and repair standards and guidelines cited in Section 4.5.2.1.

Section 2.5.5.5Appeals

A. General Procedure. An applicant or other interested person within the four-hundred foot (400') personal notification area may appeal a final decision of the Historic Preservation Commission on an application for a certificate of appropriateness to the Zoning Board of Adjustments within ten days of the Historic Preservation Commission's action on the application, except for appeals pertaining to property owned by the City of San Marcos. Appeals pertaining to property owned by the City of San Marcos shall be made to the City Council within ten days of the Historic Preservation Commission's action on the application. The appellate body shall decide the appeal in accordance with Section 2.8.1.1.

B. Supplemental Procedure. In considering the appeal, the appellate body shall:

1. Review the record of the proceeding from which an appeal is sought;

2. Receive an overview of the case from the Responsible Official, including previous recommendations from city staff and the decision of the Historic Preservation Commission;

3. Hear arguments from the party appealing the decision of the Historic Preservation Commission; and

4. Remand the matter back to the Historic Preservation Commission when relevant testimony and newly-acquired evidence is presented that was not previously presented at the time of the hearing before the Historic Preservation Commission.

C. Criteria on Appeal

1. The appellate body shall apply the substantial evidence test as established under Texas law to the decision of the Historic Preservation Commission;

2. The burden of proof before the Zoning Board of Adjustments shall be on the appealing party, who must establish that the record reflects the lack of substantial evidence in support of the decision of the Historic Preservation Commission;

3. The appellate body may not substitute its judgment for the judgment of the Historic Preservation Commission on the weight of the evidence.

(Ord. No. 2020-60, 9-1-2020)

Section 2.5.5.6Expiration and Extension

A. Time of Expiration. A certificate of appropriateness shall expire one year from the date it is issued if the proposed activity has not commenced, or two years from the date the certificate is issued, if the proposed activity has not been completed.

B. Extension. A certificate of appropriateness may be extended by the Historic Preservation Commission for a period not to exceed one year from the date required for commencement and two years from the date required for completion of the activity authorized by the certificate.

DIVISION 6: ADMINISTRATIVE CERTIFICATES OF APPROPRIATENESS

Section 2.5.6.1Purpose, Applicability, and Effect

A. Purpose. The purpose of an administrative certificate of appropriateness is to allow the Responsible Official to administratively approve certain applications for the painting of a structure located within the Downtown Historic District. Furthermore, the purpose of an administrative certificate of appropriateness is to make certain these buildings are preserved and protected.

B. Applicability. An administrative certificate of appropriateness is required for the painting of structures located within the Downtown Historic District.

C. Effect. Approval of an administrative certificate of appropriateness authorizes the applicant to paint a structure located within the Downtown Historic District.

Section 2.5.6.2Application Requirements

A. An application for approval of an administrative certificate of appropriateness shall be submitted in accordance with the universal application procedures in Section 2.3.1.1, except as otherwise provided in this Division 6.

B. An administrative certificate of appropriateness must be approved prior to the painting of structures located within the Downtown Historic District.

Section 2.5.6.3Approval Process

A. Responsible Official Action.

1. The Responsible Official shall approve, approve with conditions, or deny an administrative certificate of appropriateness based on the criteria in Section 2.5.6.4.

2. Should the Responsible Official be unable to approve the request, the Responsible Official may forward the request to the Historic Preservation Commission for review and final action at the next available meeting in accordance with Section 2.5.5.1.

Section 2.5.6.4Criteria for Administrative Approval

The following shall be used to determine whether the application for an administrative certificate of appropriateness shall be approved, conditionally approved, or denied.

A. Masonry that has not been previously painted shall not be painted;

B. The proposed paint color shall be selected from an exterior, historic paint palette from any major paint manufacturer;

C. The proposed paint color shall be appropriate to the time period of the structure; and

D. Consideration of the effect of the paint on the material of the building.

Section 2.5.6.5Expiration and Extension

A. Time of Expiration. An administrative certificate of appropriateness shall expire one year from the date it is issued if the proposed activity has not commenced, or two years from the date the certificate is issued, if the prposed activity has not been completed.

B. Extension. An administrative certificate of appropriateness may be extended by the Responsible Official for a period not to exceed one year from the date required for commencement and two years from the date required for completion of the activity authorized by the certificate.

(This Division was approved by Ord. No. 2019-45, 12-17-19)

DIVISION 7: REGULATING PLAN

Section 2.5.7.1Purpose, Applicability and Effect

A. Purpose. The purpose of a regulating plan shall be to designate Character Districts, streets, parkland, and any special requirements for any area zoned Planning Area District and to regulate development within the same Planning Area District.

B. Applicability. An approved regulating plan shall be required prior to any development, re-development, improvement or construction, or substantial modification of or on any property within a Planning Area District, and as a condition to submission, consideration, or approval of any other development application or permit.

C. Effect. Approval of a regulating plan authorizes the approval or issuance of subsequent requests and permits for the property subject to the regulating plan.

Section 2.5.7.2Application Requirements

A. An application for approval of a regulating plan shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Division 5.

B. An application for a regulating plan shall not be approved unless the following applications and development permits, where applicable, have been approved and remain in effect for the land included in the regulating plan:

1. All legislative approvals needed to authorize the proposed uses for the land;

2. Any requests for relief identified in Section 2.8.1.1;

3. A watershed protection plan (phase 1), and;

4. A transportation plan.

C. Regulating plans shall consist of one or more maps showing the following for each pedestrian shed in the Planning Area District, in compliance with the standards described in Section 4.4.3.7:

1. Character District Allocation;

2. Parkland;

3. Street Network; and

4. Special Requirements, if any.

Section 2.5.7.3Approval Process

A. **Responsible Official Action.** The Responsible Official shall approve, approve with conditions, or deny a regulating plan based on the criteria in Section 2.5.6.4.

Section 2.5.7.4Criteria for Approval

A. The following criteria shall be used to determine whether the application for a regulating plan shall be approved, conditionally approved or denied:

1. The regulating plan is consistent with all applicable standards and requirements in Section 4.4.3.7, and any prior approvals listed in Section 2.5.6.2;

2. The proposed provision and configuration of roads, electric, water, wastewater, drainage and park facilities conform to the Comprehensive Plan and any approved City Master Plans or Capital Improvement Plans;

3. The proposed provision and configuration of roads, water, electric, wastewater, drainage and park facilities, and easements and rights-of-way are determined to be adequate to serve each phase of the development in accordance with Section 3.5.1.1.

4. The schedule of development is feasible and prudent, and assures that the proposed development shall progress to completion within the time limits proposed; and

5. The location, size and sequence of the phases of development as required in Section 4.4.3.7 proposed assures orderly and efficient development of the land subject to the regulating plan.

Section 2.5.7.5Appeals

The applicant or other interested person within the notification area may appeal a decision on an application for approval of a regulating plan to the Planning and Zoning Commission in accordance with Section 2.8.1.1.

ARTICLE 6: WATERSHED PROTECTION PLANS

DIVISION 1: APPROVAL AND APPLICATION PROCESS

Section 2.6.1.1Purpose, Applicability, Exceptions and Effect

A. **Purpose of a Watershed Protection Plan Phase 1 or Qualified Watershed Protection Plan Phase 1.** The purpose of a watershed protection plan phase 1 or a qualified watershed protection plan phase 1 shall be to apply all Federal, State and Local environmental and flood control standards to a conceptual development design by establishing terms and conditions for approval of development applications and entitlements.

B. **Purpose of a Watershed Protection Plan Phase 2 or Qualified Watershed Protection Plan Phase 2.** The purpose of a watershed protection plan phase 2 or a qualified watershed protection plan phase 2 is to assure that the standards and conditions imposed under the conceptual development design and any additional specific standards applicable to the approval of construction permits shall be met at the time of development of the property.

C. **General Applicability.** A watershed protection plan or a qualified watershed protection plan is required within the city limits and within the city's extraterritorial jurisdiction.

D. **Applicability of a Qualified Watershed Protection Plan 1 or 2.** A qualified watershed protection plan is required when any of the following requests are made for developments greater than forty (40) acres:

1. A request for an increase in impervious cover requiring a mitigation plan;

2. A request for reclamation of land in the 100-year floodplain or within a water quality zone or buffer zone; or

3. The development of twenty (20) acres or more of land within the 100-year floodplain.

(Ord. No. 2020-60, 9-1-2020)

E. **Exceptions.** A watershed protection plan or a qualified watershed protection plan is not required for:

1. Any land that is expressly exempted from the environmental standards contained in Chapter 6, of this Development Code.

2. The construction of a single family home where a plat is not required by Section 3.1.1.1.

F. **Effect.**

1. Approval of a watershed protection plan or a qualified watershed protection plan entitles the applicant to seek approval of subsequent development applications.

2. The approval or conditional approval of a watershed protection plan (phase 1 and phase 2) or qualified watershed protection plan shall constitute conditions of approval of any subordinate development applications for the land subject to such plan, and such development applications must be consistent with such plan.

3. The following elements shall be incorporated within any subordinate development application consistent with the approved or conditionally approved watershed protection plan (phase 1 and phase 2) or qualified watershed protection plan:

a. Demarcation of all water quality zones and buffer zones for the property subject to the development application;

b. Location of impervious cover allocated to the property, including areas of intensified impervious cover, subject to the development application, or to be allocated among lots or tracts into which the property is to be divided;

c. For land in the Edwards Aquifer Recharge or Transition Zones, identification of all sensitive features and demarcation of all sensitive feature protection zones for the property subject to the development application;

d. The contours of any land authorized for reclamation; and

e. The location of LID practices that replace impervious cover or mitigate water quality from runoff of impervious cover.

G. **Modification of Previously Approved Plans.** The property owner shall submit a modified watershed protection plan (phase 1 or phase 2, as applicable) or qualified watershed protection plan for approval where the following activities are proposed:

1. Any change in the nature or character of the development from that covered by the approved plan, or any change that would significantly impact the ability of the approved plan to preserve water quality; and

2. Any development on land previously identified as undeveloped in the approved plan.

Section 2.6.1.2Application Requirements

A. **Phased Plans.** An application for a watershed protection plan may be prepared and acted upon by the City in two phases.

1. A watershed protection plan (phase 1) shall be prepared prior to approval of a conceptual development plan and prior to any development applications where no specific plan of development is portrayed.

2. A watershed protection plan (phase 2) shall be prepared prior to approval of the first development application that portrays a specific plan of development but at no time later than a development application or permit authorizing land disturbance including:

a. Final subdivision or development plat;

b. Minor subdivision plat or replat, if the land is located in any of the following areas:

1. Edwards Aquifer Recharge Zone, Transition Zone, and Contributing Zone within the Transition Zone;

2. A floodplain, water quality, or buffer zone;

3. The San Marcos river protection zone; or

4. San Marcos river corridor.

c. Public improvement construction plan; or

d. Site development permit.

3. An applicant may elect to submit a watershed protection plan (phase 2) in lieu of a watershed protection plan (phase 1).

4. The watershed protection plan (phase 2) shall be consistent with the watershed protection plan (phase 1).

(Ord. No. 2019-45, 12-17-19)

B. An application for a phase 2 watershed protection plan or phase 2 qualified watershed protection plan requires proof of compliance with the City's flood prevention ordinance Chapter 39, all federal regulations pertaining to the protection and mitigation based on proposed modifications of a floodplain constituting wetlands or waters of the United States protected under Section 404 of the Clean Water Act.

C. An application for a watershed protection plan phase 1 or 2 or a qualified watershed protection plan shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Article 5.

D. A watershed protection plan or a qualified watershed protection plan shall include all land contiguous to and in the same ownership with the land subject to the plat application or site permit.

E. An application for a watershed protection plan phase 2 may be applied for and approved as an element of a comprehensive site permit or public improvement construction plan when the land is not located in any of the following zones:

1. Edwards Aquifer Recharge Zone;

2. A floodplain, water quality, or buffer zone;

3. The San Marcos river protection zone; or

4. San Marcos river corridor.

Section 2.6.1.3Approval Process

A. Responsible Official Action. The Engineering Director is the Responsible Official for watershed protection plans and qualified watershed protection plans.

1. The Responsible Official shall initially decide an application for a watershed protection plan phase 1 or 2 based on the criteria in Section 2.6.1.4.

2. The Responsible Official may attach such conditions to approval of a watershed protection plan phase 1 or 2 as are necessary to assure that the plan meets water quality standards, based on the recommendation of the Engineering Director, a qualified geologist, or a Texas-licensed professional engineer.

B. Responsible Officials Action with regards to a Qualified Watershed Protection Plan Phase 1 or 2

1. The Responsible Official shall review the application and schedule an informative meeting with the Planning and Zoning Commission prior to providing approval.

(Ord. No. 2020-60, 9-1-2020)

Section 2.6.1.4Criteria for Approval

The following criteria shall be used to determine whether the application for a watershed protection plan or a qualified watershed protection plan shall be approved, approved with conditions, or denied.

A. Edwards Aquifer Zones - Factors. Where land subject to the plan lies in whole or in part within the Edwards Aquifer recharge or transition zones:

1. Whether the plan is consistent with approved legislative applications for the land subject to the plan;

2. Whether the plan meets the standards in Chapter 6 (except as to the components of a mitigation plan for a qualified watershed protection plan that vary from Chapter 6) and Chapter 3, Article 9;

3. Whether any proposed mitigation plan or enhanced geological assessment offsets the impacts to water quality resulting from increased development within a buffer zone;

4. Whether any proposed increase of impervious cover is warranted beyond that otherwise allowed by right for the land within the plan area; and

5. Whether the plan is consistent with any proposed clustering or development transfers outside the plan area.

(Ord. No. 2020-60, 9-1-2020)

B. Other Water Quality Zones - Factors. Where land subject to the plan lies in whole or in part within a floodplain, water

quality, or buffer zone located outside the Edwards Aquifer recharge or transition zones:

1. Whether the plan is consistent with approved legislative applications for the land subject to the plan;

2. Whether the plan meets the standards in Chapter 6 (except as to the components of a mitigation plan for a qualified watershed protection plan that vary from Chapter 6) and Chapter 3, Article 9;

3. Whether any proposed mitigation plan offsets the impacts to water quality resulting from increased development within a buffer zone or reclamation of water quality and / or buffer zone; and

4. Whether the plan is consistent with any proposed clustering or development transfers outside the plan area.

(Ord. No. 2020-60, 9-1-2020)

C. **Reclaimed Land - Factors.** For developments where reclamation of land within the 100-year floodplain is proposed:

1. Whether the reclamation concept plat (which is an element of watershed protection plans and qualified watershed protection plans when reclamation is proposed) is consistent with approved legislative applications for the land subject to the plan, including expressly any master drainage plan elements applicable to the land;

2. Whether the reclamation concept plat meets the general standards in Chapter 6 (except as to the components of a mitigation plan for a qualified watershed protection plan that vary from Chapter 6), Chapter 3, Article 9, and the City's Flood Damage Prevention Ordinance;

3. Whether any adverse impacts have been appropriately mitigated.

(Ord. No. 2020-60, 9-1-2020)

D. **Conditions.** The applicable decision-maker or the City Council on appeal may attach such conditions to approval of a qualified watershed protection plan or either phase of a watershed protection plan as are necessary to assure that the plan meets water quality standards, based on the recommendation of the Responsible Official, a qualified geologist, or a Texas-licensed professional engineer. Conditions may include a requirement to prepare or modify a mitigation plan.

E. No watershed protection plan or qualified watershed protection plan shall be approved or approved with conditions unless proper documentation is submitted to the Responsible Official indicating that all applicable federal, state, and local permits, approvals, and clearances have first been obtained including any required floodplain permit under Chapter 39 of the City Code.

Section 2.6.1.5Appeals and Expiration

A. **Appeal**

1. The applicant for either phase of a watershed protection plan or any interested person within the notification area may appeal the decision of the Responsible Official to the Planning and Zoning Commission.

2. For a qualified watershed protection plan, the decision of the Planning and Zoning Commission may be appealed to the City Council, in accordance with Section 2.8.1.1.

B. **Expiration.** A watershed protection plan (phase 1 and/or phase 2), is expired in accordance with Section 2.3.5.3 if an active permit for development of the land is not in place within two (2) years of the date of approval of either phase of the plan.

ARTICLE 7: SITE PERMIT

DIVISION 1: APPROVAL AND APPLICATION PROCESS

Section 2.7.1.1Purpose, Applicability, Exceptions and Effect

A. **Purpose.** The purpose of a site permit shall be to apply the standards contained in this Development Code to a specific development. A site permit assures that preparatory development and construction activities on the development site shall meet city standards prior to soil disturbance, development, construction, demolition or placement of a structure on the tract, parcel or lot.

B. **Applicability.** Approval of a site permit is required prior to any non-exempt development of land within the city limits or within the city's extraterritorial jurisdiction.

C. A site permit is required for all development meeting any of the criteria listed below.

1. Existing non-residential and multifamily uses that are proposing to add greater than five thousand (5,000) square feet of impervious cover.

2. Existing non-residential and multifamily uses that expand more than fifty (50) percent of the building's originally constructed floor area.

3. All non-residential and multi-family development located partially or completely on a lot within any of the following sensitive environmental regions:

a. Over the Edwards Aquifer Recharge Zone, Transition Zone, and Contributing Zone within the Transition Zone;

b. An identified floodplain, water quality or buffer zone;

c. The San Marcos river protection zone;

d. The San Marcos river corridor; or

e. Wetlands or other jurisdictional water.

(Ord. No. 2019-45, 12-17-19)

D. All other development shall require submission of a small site permit with the applicable construction permit application demonstrating compliance with the requirements of this Development Code.

E. Non-exempt development activities that do not meet the criteria above and do not require a construction permit shall require submission of a small site permit demonstrating compliance with any applicable standards.

F. **Exemptions.** The requirement to have a site permit does not apply in whole or in part to the following activities or land uses:

1. Clearing that is necessary only for surveying purposes.

2. Agricultural uses. Documentation is required.

3. Other activities which are exempted from site permit requirements pursuant to this Development Code.

(Ord. No. 2019-45, 12-17-19)

G. **Effect.** Approval of a site permit authorizes site preparatory activities other than construction or placement of a structure on the land, subject to the terms of the permit and for the duration of the permit. Approval of a site permit also authorizes the issuance of a construction permit.

Section 2.7.1.2Application Requirements

A. An application for a site permit shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Article 7.

B. A site permit required under Section 2.7.1.1 shall be sealed by an engineer licensed in the State of Texas.

C. A small site permit shall be prepared in accordance with the universal application procedures in Section 2.3.1.1 but shall not require a licensed engineer.

D. **Fiscal Security.** Fiscal security shall be applicable for all sites where no building permit is associated with the project.

1. Prior to the site permit being issued, the City shall collect from the property owner sufficient fiscal security to provide for the permanent stabilization of areas of soil disturbance associated with the development and construction activities to be permitted. The required security shall be in the amount of 125% of the permanent stabilization cost estimate approved by the Responsible

Official. The security shall be in the form of one of the following:

a. A cash escrow with the City;

b. An irrevocable letter of credit drawn upon a state or national bank that has a regular business office in the State of Texas that authorizes the City to draw upon the letter of credit by presenting to the issuer only a sight draft and a certificate signed by an authorized representative of the City attesting to the City's right to draw funds under the letter of credit;

2. Provision of this security in no way relieves the permittee from responsibility for completing permanent stabilization measures in accordance with the approved site plan. The security will be returned to the permittee following site final inspection approval and issuance of the certificate of occupancy or certificate of acceptance. In the event the permittee fails to complete required site-wide permanent stabilization, the security will be utilized to accomplish permanent stabilization of the site.

Section 2.7.1.3Processing of Application and Decision

A. Responsible Official Action. The Responsible Official shall approve, approve with conditions, or deny a site permit subject to appeal as provided in Section 2.8.1.1.

Section 2.7.1.4Criteria for Approval

A. Criteria. The following criteria shall be used to determine whether the site permit application shall be approved, approved with conditions, or denied:

1. The site plan is consistent with all prior approvals;

2. All standards of this Development Code, as applicable, have been and remain satisfied including:

a. All standards applicable to the district in which the property is located;

b. Standards applicable to a water quality protection plan;

c. Special dimensional and design standards applicable within an overlay district to which the use is subject;

d. Conditional use permit (CUP) requirements;

e. Any standards imposed as conditions for approval of a variance or alternative compliance; and

f. Must be served adequately by essential public facilities and services per Chapter 3, Article 5.

(Ord. No. 2019-45, 12-17-19)

Section 2.7.1.5Appeals and Relief Procedures

A. Appeal. The applicant for a site permit may appeal the decision of the initial decision-makers to the Planning and Zoning Commission in accordance with Section 2.8.1.1.

Section 2.7.1.6Expiration and Extension

A. A site permit is subject to the expiration and extension requirements in Section 2.3.5.1.

Section 2.7.1.7Completion and Acceptance

A. Prior to Occupancy. All improvements required by the site permit must be completed in accordance with applicable regulations and standards prior to the issuance of a certificate of occupancy for the last building on the site.

B. If the construction of any improvement is to be deferred until after the issuance of a temporary certificate of occupancy, the property owner shall first provide sufficient security to the City in the form of a cash escrow to ensure completion of the improvements.

C. Prior to Final Acceptance. The property owner shall submit an engineer's letter of concurrence certifying that all stormwater detention and water quality management facilities are in conformance with the approved plans and specifications before the City may finally accept such facilities.

DIVISION 2: COMMON SIGNAGE PLAN

Section 2.7.2.1Applicability and Effect

A. Applicability. Prior to the issuance of a sign permit for one or more buildings or businesses on the same lot or parcel of land, a common signage plan approved by the Responsible Official in accordance with the requirements of this section may be submitted.

B. Effect. Approval of a common signage plan authorizes the submittal of a sign permit in conformance with the common signage plan.

Section 2.7.2.2Application Requirements

A. An application for a common signage plan shall be submitted in accordance with the universal application procedure in Section 2.3.1.1.

Section 2.7.2.3Responsible Official Action

A. The Responsible Official shall review the proposed application against the requirements in Section 7.3.1.1 and other applicable technical requirements of the City.

B. Following review, the Responsible Official shall approve, approve with conditions that bring the application into conformance with this Development Code and other applicable technical requirements of the City or deny the application.

C. If the application is disapproved, the reasons for such disapproval shall be stated in writing and provided to the applicant, specifying the provisions with which the application does not comply. A revised application may be submitted to the Responsible Official for further consideration.

D. An appeal of the Responsible Official's action may be filed with the Planning and Zoning Commission in accordance with Section 2.8.1.1.

Section 2.7.2.4Enforcement of an Approved Plan

A. It shall be the responsibility of the applicant to enforce the terms of the common signage plan and a current copy of such plan, including any amendments, must be kept on file by the Responsible Official.

Section 2.7.2.5Existing Signs Not Conforming to Common Signage Plan

A. All signs not conforming to the proposed common signage plan shall be required to comply at the time of application for a new sign permit.

DIVISION 3: CONSTRUCTION PERMITS

Section 2.7.3.1Purpose, Applicability, Exceptions and Effect

A. Purpose. Approval of a construction permit confirms that the application conforms to all requirements of this Development Code pertaining to the construction of the proposed structure.

B. General Applicability. A construction permit is required prior to the construction, demolition, alteration or placement of a structure on a lot, tract or parcel.

1. **Applicability related to Building Permits.** An application for a building permit is required within the city limits, or in the city's extraterritorial jurisdiction when provided for in a development agreement or when tying into the City's water, wastewater or electric utility.

2. **Applicability related to Certificates of Occupancy.** A certificate of occupancy must be obtained prior to habitation, occupation, or use of any structure, within the city limits, or in the city's extraterritorial jurisdiction when provided for in a development agreement.

3. **Applicability to Demolition Permits for Historic Age Resources.** All applications for demolition of a building shall be subject to review in accordance with Division 4 of this Article for a determination whether historic age resources are affected before the application may be approved and a permit issued.

C. Effect. Approval of a construction permit authorizes the property owner to construct, demolish, alter or place the structure on the lot, tract or parcel in accordance with the terms of the permit.

1. Approval of a certificate of occupancy authorizes habitation, occupancy, or use of the structure, in accordance with the terms of the certificate.

(Ord. No. 2019-41, 11-19-19)

Section 2.7.3.2Application Requirements

A. General Requirements. An application for a construction permit shall be submitted in accordance with the universal application procedures in Section 2.3.1.1.

B. An application for a construction permit shall demonstrate compliance with the provisions of this Development Code and City Code.

Section 2.7.3.3Approval Process

A. Responsible Official Action. The Responsible Official shall approve, approve with conditions, or deny a construction permit based on the standards included in this Development Code and City Code subject to appeal as provided in Section 2.8.1.1.

Section 2.7.3.4Criteria for Approval

A. The Responsible Official shall apply the following criteria in deciding the application for a construction permit:

1. The application generally conforms to all prior approved development applications for the property and any applicable deviation granted from the standards otherwise applicable to the permit;
2. The structure and the location of the structure on the property is in accordance with all prior approved development applications;
3. The proposed plan for construction, demolition, alteration or placement conforms to the building code and other applicable construction codes adopted by the City;
4. Full payment of any applicable impact fees payable under City Code Chapter 86;
5. Where a change of use in an existing structure is proposed, the use conforms to the use regulations governing the property;
6. The structure, following inspection by the Building Official, was built in conformity with all applicable standards and requirements of this Development Code, all standards and requirements of each applicable development application and any granted deviation, and the building code, as incorporated in the City Code of Ordinances, as may be modified from time to time.
7. All outstanding permit requirements have been addressed.
8. When the property lies within a special flood zone, the structure is in compliance with Chapter 39 and FEMA standards as applicable.

Section 2.7.3.5Expiration and Extension and Revocation

A. Expiration. A construction permit expires in accordance with Codes adopted under Chapter 14 of the City Code.

B. Extension and Reinstatement. A construction permit may be extended in accordance with the Codes adopted under Chapter 14 of the City Code.

C. Revocation of Permit. The Responsible Official may institute proceedings to revoke a construction permit under Section 2.3.7.5.

DIVISION 4: DEMOLITION REVIEW FOR HISTORIC AGE RESOURCES

Section 2.7.4.1Purpose, Applicability, Exceptions, and Effect

A. Purpose. The purpose of this process is to provide criteria to prevent or minimize unnecessary damage to the quality and character of the city's historic resources by requiring the review of any request for demolition of a building meeting the criteria in this Division to enable a determination of its historic significance, and to provide the public, other interested preservation-based organizations, and city staff an opportunity to work with the property owner on alternative solutions to demolition where possible.

B. 90-Day Review Period for Certain Buildings. A demolition permit shall not be issued until at least 90 days after the date of filing of a complete application for the demolition of any building or part thereof:

1. located inside the My Historic SMTX historic resources survey (the "Historic Resources Survey") boundaries, as amended or supplemented, evaluated therein as a high or medium preservation priority; or
2. located outside the Historic Resources Survey boundaries, as amended or supplemented, that is listed on the National Register of Historic Places (NRHP), a Recorded Texas Historic Landmark (RTHL), or at least 80 years of age.

3. No building, nor any part thereof, subject to this Section maybe demolished or removed unless a permit authorizing such demolition or removal has been issued by the city.

C. **Exceptions.** This Section does not apply to:

1. the demolition of a building, or part thereof, within a local historic district or that is a local historic landmark and for which a certificate of appropriateness for demolition is required; or

2. the demolition of a building, or part thereof, the condition of which is determined by the Chief Building Official or the Fire Marshal to be an imminent threat to public safety; or

3. the demolition of a building, or part thereof, identified in the Historic Resources Survey as not historically significant; or

4. the demolition of a building, or part thereof, located on a property identified in the Historic Resources Survey that is not at least 50 years old or older.

(Ord. No. 2019-41, 11-19-19)

Section 2.7.4.2Application Requirements

A. An application to demolish a building, or part thereof, subject to this Division shall conform to the requirements for a construction permit and shall be submitted in accordance with the universal application procedures in Section 2.3.1.1, subject to the requirements of this Division.

(Ord. No. 2019-41, 11-19-19)

Section 2.7.4.3Process

A. **Responsible Official Action**

1. The responsible official shall complete the review of the application, and determine if the application concerns a building, or part thereof, subject to Section 2.7.4.1(B)

2. If the application is determined by the responsible official to concern a building subject to Section 2.7.4.1(B), the responsible official shall schedule a meeting and public hearing before the Historic Preservation Commission under Subsection (B). The responsible official shall send notice of the request for demolition and of the public hearing within 20 days of the complete application being submitted to the following:

a. San Marcos Daily Record (published notice) in accordance with Section 2.3.2.1(A);

b. The owners of real property Owners within 400 feet of the lot or tract of land subject to the request (mailed notice) in accordance with Section 2.3.2.1(B);

c. Historic Preservation Commission (E- Notice);

d. Planning and Zoning Commission (E-Notice);

e. Neighborhood Commission (E-Notice);

f. President of the Heritage Association (E- Notice);

g. Hays County Historical Commission (E- Notice);

h. Neighborhood Commission (E- Notice);

i. President of the Council of Neighborhood Associations (“CONA”) (ENotice);

j. Certified Local Government Coordinator with the Texas Historical Commission (E-Notice);

k. Executive Director of Preservation Texas (E-Notice); and

l. Any interested persons signed up to receive Notice of Application under Section 2.3.2.1 (E-Notice).

B. Historic Preservation Commission Action

1. The Historic Preservation Commission shall hold a public hearing to consider the demolition delay period and allow the discussion of alternatives to demolition and methods for the potential preservation of historic character.

2. The Historic Preservation Commission shall consider the criteria for eligibility in accordance with Section 2.5.4.5 and the potential for preservation of historic character when determining the demolition delay period.

   a. If the building, or part thereof, is not initially determined to be historically significant, the demolition permit shall be issued following the Commission's determination without further notice, subject to the requirements of other applicable ordinances.

   b. If the building is determined to be historically significant, and there is potential for the preservation of historic character then the Commission may extend delaying the issuance of the demolition permit to allow all potentially interested parties to take whatever steps deemedappropriate to accomplish the preservation of the building. The delay may be extended for good cause by the Commission for an additional 90 days but in no event shall the total extension be for more than 180 days.

(Ord. No. 2019-41, 11-19-19)

Section 2.7.4.4Violation and Penalties

A. It is a violation of this Division to demolish or remove a building subject to this Division, or part of or addition to such building, without having been issued a permit from the city specifically authorizing the demolition or removal. A person who violates this ordinance shall be subject to a fine of $2,000.00. A culpable mental state is not required to establish a violation of this ordinance.

B. In addition to the assessment of any criminal penalties, the city may pursue any remedies available at law or in equity, including injunctive relief, to enforce the provisions of this ordinance.

(Ord. No. 2019-41, 11-19-19)

ARTICLE 8: RELIEF PROCEDURES

DIVISION 1: APPEALS

Section 2.8.1.1Purpose, Applicability and Effect

A. Purpose. The purpose of an appeal is to contest a final quasi-judicial or administrative decision on a development application based upon alleged misapplication of the criteria for approval of the application.

1. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this Development Code that apply to the development application.

B. Applicability. A final administrative decision on a development application authorized by this Development Code, may be appealed to the board or commission designated in this Development Code, where no board is designated appeals are decided by the Zoning Board of Adjustments.

1. A final quasi-judicial decision on a development application may be appealed only if expressly provided for in the regulations establishing the procedure by which the decision was made.

2. No appeal shall be taken from a legislative decision authorized under this Development Code.

C. Effect. The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the development application for which approval was sought.

Section 2.8.1.2Application Requirements

A. Who May Appeal. The applicant and any owner of property within the area for personal notice, if applicable, may appeal a final decision on a development application to the appellate body designated by this Development Code, if any.

B. The appeal shall contain a written statement of the reasons why the final decision is erroneous.

C. The appeal shall be accompanied by the fee established by the City Council.

D. An appeal by an applicant shall be accompanied by a copy of the development application on which the initial decision was rendered.

E. **Time for Filing Appeal.** A written appeal must be filed with the Responsible Official within ten (10) working days from the final decision on the development application.

Section 2.8.1.3Approval Process

A. **Responsible Official Action**

1. Upon receipt of a written appeal, the Responsible Official shall compile all documents constituting the record of the decision on appeal and transmit the record to the appellate body.

2. The Responsible Official shall provide notice of the appeal under Section 2.3.2.1 and conduct a public hearing in accordance with Section 2.3.3.1.

3. Notification of decision on the appeal shall be provided to the appellant and the applicant in accordance with Section 2.3.2.1.

B. **Stay of Proceedings.** Receipt of a written appeal of a decision on a development application stays all proceedings of the City in furtherance of the decision from which appeal is taken, including without limitation acceptance, processing or issuance of any subordinate development applications, and any development activities authorized by initial approval of the development application.

1. The stay shall be lifted only if the Responsible Official certifies in writing to the appellate body that a stay would cause imminent peril to life or property.

2. Thereafter, the stay may be reinstated only by order of the appellate body or a court of record, on application, after notice to the Responsible Official, for due cause shown.

C. **Appellate Body Action**

1. The initial public hearing on the appeal shall be held within twenty-five (25) working days after the filing of the appeal with the Responsible Official, unless a different time is prescribed by the provisions of this Chapter.

2. **Decision on Appeal.** The appellate body shall decide the appeal within thirty (30) working days of the close of the public hearing. The appellate body shall affirm, reverse or modify the decision from which the appeal was taken.

Section 2.8.1.4Criteria

A. The appellate body shall apply the same criteria that govern the decision on the development application under the provisions of this Chapter 2 unless otherwise stated in this Development Code.

Section 2.8.1.5Expiration and Extension

A. For purposes of determining expiration or extension periods under this Development Code, the date of the appellate body's granting of relief on an appeal is the date on which the development application is deemed approved.

DIVISION 2: VARIANCES

Section 2.8.2.1Purpose, Applicability and Effect

A. **Purpose.** The purpose of a variance application is to vary one or more standards applicable to a development application, subject to the limitations set forth in this section or elsewhere in this Development Code.

1. A variance application shall not be used as a means of amending the text of this Development Code or of changing a zoning district, or other legislative classification of the property for which the variance is sought.

2. A variance application shall not be used as a means to contest the applicability of a standard to a development application, an exemption determination, or a decision on a development application.

3. Variance applications shall be decided by the Zoning Board of Adjustments. A variance application may not be used to vary standards applicable to an application for a legislative decision.

B. **Applicability.** A variance application may be filed to modify any standard other than a use standard which is applicable to an administrative or quasi-judicial development application, unless otherwise specified by this Development Code.

C. Effect. The granting of a variance application in whole or in part authorizes the applicant to submit a development application that complies with the standard as varied or modified, and authorizes the decision-maker to evaluate the application using the varied standard, for the duration of the variance.

Section 2.8.2.2 Application Requirements

A. Who May Apply. A variance application may be filed by a property owner or the applicant for any administrative or quasi-judicial development application.

B. A variance application shall be prepared in accordance with Section 2.3.1.1.

C. The variance application shall contain a detailed written statement of the reasons why the standards requested to be varied should not be applied.

D. The variance application shall be accompanied by the fee established by the City Council.

E. A variance application shall be accompanied by illustrations or other documents showing the effect of the requested variance on development to be proposed in the application.

F. Time for Filing Application. A variance application must be filed prior to filing of the development application for which the variance is requested.

Section 2.8.2.3Approval Process

A. Responsible Official Action

1. Upon receipt of a variance application, the Responsible Official shall transmit the application to the Zoning Board of Adjustments for processing and determination in accordance with Section 2.3.1.1
2. The Responsible Official shall provide personal notification of the public hearing before the Zoning Board of Adjustments in accordance with Section 2.3.2.1.
3. The Responsible Official shall provide a report and analysis on the criteria in Section 2.8.2.4 to the Zoning Board of Adjustments.
4. The Responsible Official shall conduct a public hearing in accordance with Section 2.3.3.1.
5. The Responsible Official shall notify the applicant of the decision on the variance application in the manner provided in Section 2.3.2.1 of this Development Code.

B. Zoning Board of Adjustments Action

1. The Zoning Board of Adjustments shall hold a public hearing and grant, grant subject to conditions or deny the request for one or more variances.

C. Burden of Proof. The applicant bears the burden of proof to demonstrate that a variance to the standards applicable to a development application should be granted.

Section 2.8.2.4Criteria for Approval

A. In making its decision on the variance application, the Zoning Board of Adjustments shall apply the following criteria:

1. There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance application, such that the strict application of the provisions of this Development Code to the development application would create an unnecessary hardship or inequity upon or for the applicant, as distinguished from a mere economic impact, an inconvenience, frustration of objectives in developing the land, not permitting the highest and best use for the land, or depriving the applicant of the reasonable and beneficial use of the land;
2. The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of or similarly classified as the applicant's land;
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
4. Granting the variance application shall not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
5. Granting the variance application shall not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Development Code, or adversely affect the rights of owners or residents of surrounding property;

6. Granting the variance application is consistent with any special criteria applicable to varying particular standards, as set forth in Chapters 3 through 7 of this Development Code;

7. The hardship or inequity suffered by applicant is not caused wholly or in substantial part by the applicant;

8. The request for a variance is not based exclusively on the applicant's desire for increased financial gain from the property, or to reduce an existing financial hardship, and;

9. The degree of variance requested is the minimum amount necessary to meet the needs of the applicant and to satisfy the standards in this Section.

Section 2.8.2.5Expiration and Extension

A. **Expiration on Failure to File Application.** Where the decision-makers for the variance application and the development application are different, a variance to a standard applicable to the development application shall expire within ninety (90) days of the date the variance application is granted, unless the property owner or applicant files the development application with the City in accordance with this Development Code within such period. The decision-maker may extend the time for filing the development application for good cause shown, but in any event, the expiration date for the variance shall not be extended beyond one year from the date the variance application was granted.

B. **Effect of Permit Expiration or Extension.** Variances granted in relation to a development application shall remain in effect for the period the development permit is in effect, and shall expire upon expiration of the development permit. Extension of the development permit also shall result in extension of the variance.

C. **Effect of Application Denial.** Denial of the development application in conjunction with which a variance application was granted or processed shall result in expiration of the variance.

DIVISION 3: CONDITIONAL USE PERMIT

Section 2.8.3.1Purpose, Applicability, Exceptions and Effect

A. **Purpose.** The purpose of a conditional use permit is to allow the establishment of uses which may be suitable only in certain locations in a zoning district or only when subject to standards and conditions that assure compatibility with adjoining uses.

1. Conditional uses are those uses which are generally compatible with the permitted land uses in a given zoning district, but which require individual review of their proposed location, design and configuration, and the imposition of conditions in order to ensure the appropriateness of the use at a particular location within a given zoning district.

B. **Applicability.** A conditional use permit is required to use or develop property within the city limits for any use designated as a "conditional" use in Sec. 5.1.1.2 of this Development Code for the zoning district in which the property is located.

C. **Effect.**

1. Approval of a conditional use permit authorizes the use or development of the property in accordance with the conditions of the permit.

2. Approval of a conditional use permit shall be deemed to authorize only the particular use for which the permit is issued and shall apply only to the property for which the permit is issued (i.e., it is not personal to the applicant).

3. No conditional use shall be enlarged, extended, increased in intensity or relocated unless an application is approved for a new conditional use permit in accordance with the procedures set forth in this Section. Initiation or development of the use shall not be authorized until the applicant has secured all the permits and approvals required by this Development Code.

4. Any conditional use shall require compliance with all conditions of such conditional use permit, all conditions generally applicable to conditional uses under this Development Code, and all conditions applicable to the specific conditional use under this Development Code.

Section 2.8.3.2Application Requirements

A. A Conditional Use Permit application shall be prepared in accordance with Section 2.3.1.1

Section 2.8.3.3Approval Process

A. Responsible Official Action

1. The Responsible Official shall provide personal notice of a public hearing in accordance with Section 2.3.2.1 and Table 2.1.
2. The Responsible Official shall provide posted notice of a public hearing in accordance with Section 2.3.2.1 and Table 2.1 for a CUP related to the on-premise consumption of alcohol or a CUP related to purpose built student housing.

B. Planning and Zoning Commission Action. Conditional use permits shall be decided by the Planning and Zoning Commission, subject to appeal to City Council, unless otherwise stated in this Development Code.

1. The Planning and Zoning Commission shall conduct a public hearing on the application in accordance with Section 2.3.3.1.
2. The Planning and Zoning Commission shall determine whether to approve, approve with conditions or modifications, or deny the permit.
3. The Planning and Zoning Commission may require modifications in the proposed use and attach conditions to the conditional use permit deemed necessary to mitigate adverse effects of the proposed use and to carry out the spirit and intent of this Section.

C. City Council Action. Conditional use permits expressly determined by this code to be decided by the City Council shall first receive a recommendation by the Planning and Zoning Commission then follow the procedure below:

1. The City Council shall conduct a public hearing on the application in accordance with Article 3, Division 3 of this Chapter 2.
2. The City Council shall decide whether to approve, approve with conditions or modifications, or deny the permit.
3. The City Council may require modifications in the proposed use and attach conditions to the conditional use permit deemed necessary to mitigate adverse effects of the proposed use and to carry out the spirit and intent of this Section.

D. Conditions Listed in Permit. Each approved conditional use permit shall list all applicable conditions.

Section 2.8.3.4Criteria for Approval

A. When considering an application for a conditional use permit, the Planning and Zoning Commission or City Council shall evaluate the impact of the proposed conditional use on and its compatibility with surrounding properties and residential areas to ensure the appropriateness of the use at the particular location, and shall consider the extent to which:

1. The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan;
2. The proposed use is consistent with any adopted small area plan or neighborhood character study for the area.
3. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
4. The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes Improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods;
5. The proposed use does not generate pedestrian and vehicular traffic which shall be hazardous or conflict with the existing and anticipated traffic in the neighborhood;
6. The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets;
7. The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties; and

8. The proposed use meets the standards for the applicable district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.

Section 2.8.3.5Duration; Expiration; Suspension; Violation; Revocation

A. Duration.

1. A conditional use permit shall remain in effect until it expires, is suspended, or is revoked in accordance with Section 2.3.7.5A(1 - 4) as supplemented by Section 2.8.3.5.

2. Conditional Use Permits granted for on-premises consumption of alcoholic beverages shall remain in effect no longer than three years, or until the license or permit is canceled, revoked, or allowed to expire, or until one of the following conditions occurs, after which the dispensing of alcoholic beverages for on-premises consumption requires issuance of a new Conditional Use Permit:

   a. The State TABC license or permit is reissued under a different [license or] permit holder's name.

   b. The Conditional Use Permit is forfeited, suspended, or revoked in accordance with Section 2.3.7.1.

   c. There is a significant change in the name of the establishment, or any physical or operational change in the business that increases off-site impacts to surrounding properties.

(Ord. No. 2020-60, 9-1-2020)

B. Expiration. A Conditional use permit shall expire if:

1. A construction permit, if any, for the conditional use has not been approved within one year of the date of approval of the permit;

2. The construction permit subsequently expires;

3. The conditional use has been discontinued for a period exceeding six months; or

4. A termination date attached to the conditional use permit has passed.

C. Suspension. In accordance with the authority granted to municipalities by the state, the City shall have the right to immediately suspend the conditional use permit for any property where the premises are determined to be an immediate hazard to the health and safety of any person or an immediate danger to any adjacent property. The suspension shall be for a period not to exceed 24 hours or until the danger or hazard is removed.

D. Violation. It is unlawful for any person to violate or to cause or permit to be violated any terms or conditions of a conditional use permit or upon which a conditional use permit was issued or renewed. For purposes hereof, the term "person"shall include the permit holder, the owner or a manager of the permit holder, and any office of the permit holder.

E. Revocation. The revocation of a Conditional Use Permit shall follow the revocation procedures established in Section 2.3.7.5.

Section 2.8.3.6Appeals

A. The applicant may appeal the decision of the Planning and Zoning Commission to grant or deny a permit in accordance with Section 2.8.1.1.

B. Any tenant or property owner within the personal notification area may appeal the decision of the Planning and Zoning Commission to grant a permit in accordance with Section 2.8.1.1.

C. The Council shall apply the criteria in Section 2.8.3.4 in deciding whether the Planning and Zoning Commission's action should be upheld, modified or reversed.

D. A super-majority vote in accordance with Section 2.2.4.2 shall be required to reverse a decision of the Planning and Zoning Commission.

(Ord. No. 2020-60, 9-1-2020)

Section 2.8.3.7Procedures Specific to Conditional Use Permits for On-Premise Sale of Alcohol

A. Administrative Approval. The Responsible Official may administratively approve a renewal or modification of an existing conditional use permit under the conditions below. Otherwise the application shall be considered by the Planning and Zoning Commission in accordance with this section.

1. Where a new State TABC license or permit is required for a currently licensed or permitted establishment due to a change in the name of the permit holder, the name of the business, or the ownership of the business.
2. Where remodeling occurs which does not involve the expansion of the existing business.
3. For renewal of a restaurant permit where the applicant demonstrates that they are in good standing with all requirements under this Development Code and any other statute and has not been assessed any violation values under this section.

B. The Conditional Use Permit shall be issued only to and for the benefit of the holder of an alcoholic beverage license or permit issued by the state for the place of business and premises for which the conditional use permit is requested.

C. Variance from the distance requirements For On-Premises Alcoholic Beverage Consumption. Certain businesses applying for a conditional use permit for on-premises alcoholic beverage consumption may seek a variance from the distance requirements set forth in Section 5.1.5.5, if the business meets all of the following:

1. Bars and package stores are not eligible for this variance.
2. The business seeking the variance is a restaurant that agrees to limit its operation characteristics such that the restaurant shall maintain its business in a manner to insure that its gross revenue from the sale of alcohol shall be less than twenty-five (25) percent of the total gross revenue of the business.
3. There is a distance of a least two hundred (200) feet from the primary entrance of the applicant business to the primary entrance of the church or school measured using a straight line.
4. The business seeking the variance shall comply with all aspects of the conditional use permit process.
5. All conditional use permits for the on-site alcoholic beverage consumption that include a distance variance shall be, for the life of the permit, subject to annual renewal. Variances are non-transferable and separate from the conditional use permit. Any hearing concerning a renewal shall be conducted by the commission who shall have authority to grant or deny the renewal.

D. Procedure.

1. For each neighboring church or school that is within the distances of the proposed restaurant, as described in and measured in accordance with Section 5.1.5.5, the proposed restaurant shall present a letter describing the operation characteristics of the restaurant and shall obtain a statement signed by the governing officer of the board of any such church or school stating that the church or school does not oppose the granting of the distance variance based on the operation characteristics stated in the letter.
2. The business must agree, in writing, to restrict its operation characteristics as set forth in the request to the church or school, as may have been set forth in the request to the church or school. These operating characteristics shall be included in the conditional use permit.
3. The business shall agree to file an annual report, due forty-five (45) days before the hearing on the annual conditional use permit renewal, setting forth the gross sales of the business and the gross sales derived from the sale of alcoholic beverages.

E. Hearing.

1. The Planning and Zoning Commission shall hold a hearing to consider the applicant's request for variance.
2. All property owners within two hundred (200) feet shall be notified and, in addition, all public and private schools and churches within three hundred (300) feet shall be notified.
3. At the conclusion of the hearing on the initial application for a variance, the Planning and Zoning Commission shall

rule on the request for a variance. If the Planning and Zoning Commission denies the applicant's request for a variance they shall include findings of fact to show that the location or the restaurant:

a. Is not in the best interest of the public;

b. Would constitute waste or inefficient use of land or other resources;

c. Creates an undue hardship on the surrounding properties;

d. Does not serve its intended purpose;

e. Is not effective or necessary: or

f. Any other reason the Planning and Zoning Commission finds after consideration of the health, safety, and welfare of the public and the equities of the situation.

DIVISION 4: ALTERNATIVE COMPLIANCE

Section 2.8.4.1Purpose, Applicability, Exceptions and Effect

A. Purpose. The purpose of a request for alternative compliance is to allow the modification of certain development standards where the modification is compatible and consistent with the character and intent of the applicable district and where the modification shall not substantially and adversely affect the adjacent property or the use thereof.

1. Alternative compliance requires individual review in order to ensure the appropriateness of the standard, as modified, within a given district.

B. Applicability. Alternative compliance may be requested and granted only for those standards with respect to which this Development Code specifically provides may be the subject of alternative compliance.

C. Effect. Approval of alternative compliance and all other required development permits authorizes the development of the property in accordance with standards, as modified by the alternative compliance, and other development permits.

1. Approval of an alternative compliance request shall be deemed to authorize the requested modified standard only with respect to the particular standard, situation and circumstance for which it is granted and shall apply only to the property for which it is granted (i.e., it is not personal to the applicant).

2. No alternative compliance may be enlarged, extended, increased in intensity or relocated unless a new alternative compliance is granted in accordance with this Section.

3. Initiation of development based upon any alternative compliance shall not be authorized until the applicant has secured all other permits and approvals required by this Development Code.

Section 2.8.4.2Application Requirements

A. An application for approval of alternative compliance shall be prepared in accordance with Section 2.3.1.1.

Section 2.8.4.3Approval Process

A. Responsible Official Action

1. The Responsible Official shall schedule a public hearing before the Planning and Zoning Commission on the application for alternative compliance, and shall cause personal notice to be given in accordance with Section 2.3.2.1.

B. Planning and Zoning Commission Action. Alternative compliance requests shall be decided by the Planning and Zoning Commission, subject to appeal to City Council, unless otherwise stated in this Development Code.

1. The Planning and Zoning Commission shall conduct a public hearing on the application in accordance with Section 2.3.3.1.

2. The Planning and Zoning Commission shall be the initial decision-maker, on whether to approve, approve with conditions or modifications, or deny the application.

3. Conditions. The Planning and Zoning Commission may require such modifications to the proposed alternative compliance request and attach such conditions deemed necessary to mitigate adverse effects of the proposed alternative compliance and to carry out the spirit and intent of this Section.

C. City Council Action. Alternative compliance requests expressly determined by this Code to be decided by the City Council shall first receive a recommendation by the Planning and Zoning Commission then follow the procedure below.

1. The City Council shall conduct a public hearing on the application in accordance with Section 2.3.3.1.
2. The City Council shall decide whether to approve, approve with conditions or modifications, or deny the application.
3. **Conditions.** The City Council may require such modifications to the proposed alternative compliance request and attach such conditions deemed necessary to mitigate adverse effects of the proposed alternative compliance and to carry out the spirit and intent of this Section.

Section 2.8.4.4Criteria for Approval

A. Factors. When considering an application for alternative compliance, the Planning and Zoning Commission or City Council where applicable shall evaluate the impact of the proposed alternative compliance on and its compatibility with surrounding properties to ensure the appropriateness of the requested alternative compliance for the particular location, and shall consider the extent to which:

1. The request is consistent with the policies embodied in the adopted Comprehensive Plan;
2. The request is consistent with the general purpose, intent and character of the development regulations applicable to the property;
3. There are special circumstances or conditions arising from the physical surroundings, shape, topography or other features affecting the subject property;
4. The request is detrimental to the public health, safety or welfare, or injurious to other property within the area;
5. The request either:
   - **a.** Does not have an adverse impact upon adjacent property or neighborhoods, including but not limited to, parking, traffic, noise, odors, visual nuisances, and drainage; or
   - **b.** Includes Improvements either on-site or within the public rights-of-way to mitigate any such adverse impacts.
6. The request shall not have the effect of preventing the orderly use and enjoyment of other property within the area in accordance with the provisions of this Development Code, or adversely affect the rights of owners or residents of adjacent property or neighborhoods;
7. The request shall not result in any incompatibility of the development to which it relates with, or the character and integrity of, adjacent property or neighborhoods; and
8. The request meets the standards for the applicable zoning district, or to the extent deviations from such standards have been requested, that such deviations are necessary to render the subject development or Improvement compatible with adjacent development or the neighborhood.

Section 2.8.4.5Expiration and Revocation

A. Time of Expiration. An approved alternative compliance shall expire if:

1. A building permit, if any, utilizing the alternative compliance has not been applied for of approved within one year of the date of approval of the alternative compliance;
2. The building permit or application subsequently expires;
3. The subject development, improvement or construction or use thereof has been discontinued for a period exceeding six months; or
4. A termination date attached to the alternative compliance has passed.

B. Revocation. Alternative compliance may be revoked by the decision maker for failure to comply with any standard, requirement or condition thereof in accordance with the procedures in Section 2.3.7.5.

Section 2.8.4.6Appeals

The applicant or other person within the personal notification area may appeal the decision of the Planning and Zoning Commission to grant or deny an alternative compliance request to the City Council in accordance with Section 2.8.1.1. The Council shall apply the criteria Section 2.8.4.4 in deciding whether the Planning and Zoning Commission's action should be upheld, modified or reversed. A three-fourths vote of all of the members of the City Council shall be necessary to reverse a decision of the Planning and Zoning Commission to deny a request for alternative compliance.

DIVISION 5: ADMINISTRATIVE ADJUSTMENTS

The applicable decision-maker for an administrative application is hereby authorized to approve administrative adjustments for certain standards in this Development Code.

Section 2.8.5.1Purpose, Applicability and Effect

A. **Purpose.** The purpose of an administrative adjustment application is to vary one or more dimensional standards or requirements applicable to a development application, subject to the limitations set forth in this Section or elsewhere in this Development Code.

1. An administrative adjustment application shall not be used as a means of amending the text of this Development Code or of changing a district or legislative classification of the property for which the administrative adjustment is sought.
2. An administrative adjustment application shall not be used as a means to contest the applicability of a standard or requirement to a development application, an exemption determination, or a decision on a development application.

B. **Applicability.** An administrative adjustment application may be filed under the following circumstances:

1. Standards with respect to which this Development Code specifically provides may be the subject of an administrative adjustment; or
2. Modification of up to 10% of any dimensional standard or requirement of this Development Code.

C. An administrative adjustment may not be requested or granted for any of the following standards or requirements:

1. Use
2. Signs
3. Parking
4. Density
5. Stormwater

D. **Effect.** The granting of an administrative adjustment in whole or in part authorizes the applicant to submit a development application which complies with the standard as adjusted, and authorizes the decision-maker to evaluate the related development application using the adjusted standard, for the duration of the administrative adjustment.

Section 2.8.5.2Application Requirements

A. **Who May File Application.** An administrative adjustment application may be filed by a property owner or the applicant for the applicable administrative development application to which the administrative adjustment application relates.

B. **Form of Application.** An administrative adjustment application shall be prepared in accordance with the universal application standards in Section 2.3.1.1.

C. **Time for Filing Application.** An administrative adjustment application must be filed with the development application for which an applicable standard is requested to be modified.

Section 2.8.5.3Approval Process

A. **Responsible Official Action.** Upon receipt of an administrative adjustment application, the Responsible Official shall transmit the application to the decision-maker for processing and determination in accordance with this Section.

B. **Burden of Proof.** The applicant bears the burden of proof to demonstrate that an administrative adjustment of the standards applicable to a development application should be granted.

C. **Decision on Application.** The Responsible Official shall grant, grant subject to conditions, or deny the request for one or more administrative adjustments. The decision on the administrative

adjustment shall be made at the same time as the decision is made on the related development application.

D. **Denial of an Administrative Adjustment.** The denial of an administrative adjustment authorizes the applicant to file the request for approval with the Planning and Zoning Commission under the alternative compliance Section 2.8.4.3.

E. **Notification of Decision on Application.** The applicant shall be notified of the decision on the administrative adjustment application along with the decision on the related development application in the manner provided in Section 2.3.4.1 of this Development Code.

Section 2.8.5.4Criteria for Approval

A. **Criteria.** In deciding the administrative adjustment application, the decision-maker shall apply the following criteria:

1. The requested administrative adjustment is justified by the purposes and intent of this Development Code;
2. The requested administrative adjustment is consistent with the policies embodied in the adopted Comprehensive Plan;
3. The requested administrative adjustment is consistent with the general purpose, intent and character of the applicable development regulations and district;
4. When taken with the requested administrative adjustment, the related development application meets all other applicable standards and requirements of this Development Code; and
5. The degree of adjustment requested is the minimum amount necessary to meet the needs of applicant and to satisfy the standards in this Section.

Section 2.8.5.5Expiration and Extension

An administrative adjustment shall expire simultaneously with the expiration of the development application to which the administrative adjustment relates and shall be automatically extended or vacated, as applicable, upon extension or vacation of such related development application.

Denial of the development application to which an application for administrative adjustment relates shall constitute denial of the requested administrative adjustment.

Section 2.8.5.6Appeal

Any applicant that is denied a request for an administrative adjustment may appeal the denial to the Planning and Zoning Commission under Section 2.8.1.1.

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ARTICLE 1: PROVISIONS APPLICABLE TO ALL PLATTING PROCEDURES

DIVISION 1: GENERAL PLATTING PROCEDURES

Section 3.1.1.1Authority, Purpose, Applicability, Exemptions

A. Authority. The procedures of this Chapter 3 are authorized under the authority of Tex. Loc. Gov't Code Ch. 212 and the City's charter. The provisions of this Chapter 3 expressly extend to all areas inside the city limits and throughout the city's extraterritorial jurisdiction.

B. Purpose. The provisions of this Chapter 3 are intended to implement the following specific objectives by assuring compliance of land divisions and development with certain environmental standards contained in Chapter 6, the subdivision requirements and standards contained in this Chapter, and other standards and requirements of this Development Code prior to site preparatory activities on individual lots, tracts or parcels:

1. Promote the development and the utilization of land in a manner that assures an attractive and high quality community environment in accordance with the Comprehensive Plan and this Development Code;
2. Guide and assist property owners and applicants in the correct procedures to be followed, and to inform them of the standards which shall be required;
3. Protect the public interest by imposing standards for the provision, location, design, class and type of streets, walkways (sidewalks), alleys, trails, bicycle accommodations, greenway connections, utilities and essential public services;
4. Assist orderly, efficient and coordinated development within the city's limits and its extraterritorial jurisdiction;
5. Provide neighborhood conservation and prevent the development of slums and blight;
6. Integrate the development of various tracts of land into the existing community, and coordinate the future development of adjoining tracts;
7. Provide that the cost of improvements to minimum standards which primarily benefit the tract of land being developed be borne by the owners or developers of the tract, and that the cost of Improvements to minimum standards which primarily benefit the whole community be borne by the whole community as contained in this Article;
8. Ensure the most efficient and beneficial provision of public facilities and services for each tract being subdivided;
9. Provide for compatible relationships between land uses and buildings; provide for the circulation of traffic throughout the municipality, having particular regard to the avoidance of congestion in the streets and highways; provide for pedestrian circulation that is appropriate for the various uses of land and buildings; provide for bicycle accommodations; provide for transit accommodations; and provide the proper location and width of streets;
10. Prevent pollution of the air, streams, bodies of water, and aquifers; assure the adequacy of drainage facilities; safeguard both surface and groundwater supplies; bolster the health of natural resources and area biodiversity; protect endangered or threatened plant and animal life; and encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability and beauty of the community and the value of the land;
11. Preserve the natural beauty and topography of the municipality, and ensure development that is appropriate with regard to these natural features;
12. Establish adequate and accurate records of land subdivision;
13. Ensure that public or private facilities are available and shall have sufficient capacity to serve proposed and future developments and citizens within the City and its extraterritorial jurisdiction;
14. Protect and provide for the public health, safety and general welfare of the community;
15. Provide for adequate light, air and privacy; secure safety from fire, flood and other danger; and prevent overcrowding of the land and undue congestion of population;

16. Protect the character and the social and economic stability of all parts of the community, and encourage the orderly and beneficial development of all parts of the community;

17. Protect and conserve the value of land throughout the community and the value of buildings and improvements upon the land, and minimize conflicts among the uses of land and buildings;

18. Encourage walkability, mixed use, the development and redevelopment of residential areas that meet a wide range of income levels;

19. Guide public and private policy and action in providing equitable access to sustainable, effective transportation systems, public utilities, and other public amenities and facilities; and

20. Encourage the development of a stable, prospering economic environment.

C. **Applicability.** The provisions of this Chapter 3 apply to any non-exempt division or development of land within the corporate boundaries of the City and within its extraterritorial jurisdiction.

D. **Exceptions.** A recorded subdivision or development plat is required prior to the issuance of a construction permit with the following exceptions:

1. Permits for accessory buildings not connected to wastewater service.

2. Permits for repair or remodeling of an existing structure which involves no increase in square footage.

3. Demolition permits, or permits for removal of a structure from a parcel or tract.

4. Permits for new construction or expansion, if all the following criteria are met:

   a. The current boundaries of the property existed in the same configuration on March 10, 1975; and

   b. The Responsible Officials, or their designees, have determined there is no need for additional easements or right-of-way dedication.

5. **Exceptions for Infill Development.** For the purposes of this Chapter, infill development is property located in an Existing Neighborhood, Downtown, or Midtown Comprehensive Planning area. Exceptions to platting in these areas are for:

   a. Construction of a single-family dwelling and related accessory structures and development activities if:

      1. The current boundaries of the property existed in the same configuration since April 17, 2018.

   b. Permits for the expansion of existing buildings up to a maximum of 50% of the original floor area if:

      1. The Responsible Officials, or their designees, have determined there is no need for additional easements or right-of-way dedication.

(Ord. No. 2019-45, 12-17-19)

Section 3.1.1.2Types of Plats

This Chapter 3 adopts procedures authorized in subchapters A and B of Tex. Loc. Gov't Code Ch. 212.

A. **Subdivision Plats.** Approval of a final subdivision plat or a minor subdivision plat must be obtained prior to any non-exempt land division.

B. **Development Plats.** Approval of a final development plat must be obtained prior to development of any tract or parcel for which no subdivision plat is required.

Section 3.1.1.3Exemptions from Certain Types of Plats

A. **Subdivision Exemptions.** The following land divisions are exempt from the requirements of this Chapter that apply to subdivision plats:

1. For the sale, inheritance, or gift of land by metes and bounds of tracts upon which no improvements, development, subdivision or alteration is intended;

2. Use of existing cemeteries complying with all state and local laws and regulations;

3. A division of land created by order of a court of competent jurisdiction;

4. A division of land that results in the creation of two or more parcels, each of which is greater than five acres inside the city limits, or each of which is greater than ten acres within the City's extraterritorial jurisdiction, when each parcel has direct access to an existing public street, and no dedication of public facilities is required under this Development Code in connection with the division;

5. Creation of a remainder tract; and

6. Acquisition of land for governmental purposes by dedication, condemnation, or easement.

B. **Development Plat Exemptions.** The following development activities are exempt from the requirements of this Chapter that apply to Development Plats:

1. Any development activity associated with a subdivision plat that conforms to the requirements set forth in Section 3.2.2.1 or Section 3.2.3.1;

2. Sale, inheritance, or gift of land by metes and bounds of tracts upon which no improvements, development, subdivision or alteration is intended;

3. Use of existing cemeteries complying with all State and local laws and regulations;

4. Bona fide agricultural activities; and

5. Construction of agricultural accessory structures and related development activities.

Section 3.1.1.4 Approval Process

A. **Application Requirements.** All plat applications shall be prepared by the property owner or its authorized agent in accordance with the universal procedures in Section 2.3.1.1 except as otherwise provided herein.

B. **Time for Decision.** All plat applications shall be acted upon within thirty (30) days from the official filing date unless a waiver is submitted in accordance with Section 3.1.1.4(C) below.

C. **Waiver Requests.** An applicant may request in writing a waiver of the 30 day decision timeline. The waiver request shall contain a statement of the reasons for the waiver and the time for which a waiver is sought. Where the Planning and Zoning Commission is the final decision-maker, no waiver shall be granted for a period less than the Commission's next regularly scheduled meeting. Waiver requests which have not been received by the responsible official on or before the fourth calendar day prior to the Planning and Zoning Commission meeting at which action is to be taken on the plat application shall be deemed statutorily denied and action shall be taken on the plat application at such meeting as scheduled.

D. **Action on the Waiver Request.** The Responsible Official shall take action on the waiver request within the thirty (30) day period for acting on the plat.

E. **Plat Application for Extraterritorial Jurisdiction.** Where the land to be platted lies within the extraterritorial jurisdiction of the City in a county with which the City has an interlocal agreement under Tex. Loc. Gov't Code Ch. 242, the approval process shall be in accordance with the appropriate interlocal agreement.

F. If the City has not received a decision from the county on matters pertaining to the plat application which are to be determined by the county under the interlocal agreement, the application for plat approval shall be statutorily denied, unless a waiver is submitted in accordance with Section 3.1.1.4(C) above.

Section 3.1.1.5Stages of Plat Approval

A. **Subdivision Plats.** A subdivision plat may be approved in three stages where applicable:

1. Subdivision concept plat;

2. Preliminary subdivision plat; and

3. Final subdivision plat.

B. **Development Plats.** A development plat may be approved in two stages:

1. Preliminary development plat; and

2. Final development plat.

C. Final Subdivision Plat in Lieu of Preliminary Subdivision Plat. An applicant may submit a final subdivision plat in lieu of a preliminary subdivision plat, provided that:

1. All criteria for approval for both the preliminary subdivision plat application and the final subdivision plat application shall be applied to the final subdivision plat application.
2. A subdivision improvement agreement is filed for any public improvement construction plans that may be required for a final subdivision plat application.

D. Final Development Plat in Lieu of Preliminary Development Plat. An applicant may submit a final development plat in lieu of a preliminary development plat, provided that:

1. All criteria for approval for both the preliminary development plat application and the final development plat application shall be applied to the final development plat application
2. A subdivision improvement agreement is filed for any public improvement construction plans required for a final development plat application.

Section 3.1.1.6Remainder Tracts

A. Status of Remainder Tracts. A remainder tract shall not be considered to be a lot or tract of the subdivision. Approval of a subdivision plat shall not constitute approval of development on a remainder tract.

B. Information on Remainder Tracts. Information accompanying a subdivision plat application for remainder tracts shall be deemed to be an aid to the Planning and Zoning Commission in taking action on the plat application and may be used to determine whether development of the land subject to the plat shall be adequately served by public facilities and services and is otherwise in compliance with this Development Code, taking into account the development of the property as a whole.

C. Information concerning remainder tracts, including topography, drainage, and existing and planned public improvements, may be considered in formulating conditions to approve the plat application. Based upon such information, the Planning and Zoning Commission may require that additional or less land be included in the subdivision plat in order to satisfy the standards applicable to the plat application.

D. A watershed protection plan (phase 1 or phase 2, as applicable) shall not be required for remainder tracts.

Section 3.1.1.7Easements

A. Platted easements and easements by separate instrument shall be provided in the locations and dimensions required by the City in order to:

1. Allow for adequate storm drainage facilities;
2. Allow for proper installation of water, electric, and sewer lines, whether immediately proposed or necessary for adequate service in the future;
3. Allow for cross-access between properties;
4. Allow for adequate transit facilities and access;
5. Allow for adequate pedestrian and bicycle access;
6. Allow for adequate right-of way for street types;
7. Allow for adequate public access; and
8. Allow for adequate slope for roadway construction.

B. Easement widths shall be specified by the City as necessary to accommodate existing and future needs as well as construction, inspection and maintenance, and repair of facilities. For drainage easements, the widths should be sufficient to accommodate areas anticipated to be inundated by stormwater. Electric overhead and underground easements shall be designed based on San Marcos Utilities (SMEU) Service Standards manual.

(Ord. No. 2019-45, 12-17-19)

DIVISION 2: CERTIFICATIONS

Section 3.1.2.1Certification of Reasons for Denial

A written summary of the reasons for denial of a plat application shall be provided by the Responsible Official to the applicant. For purposes of this Section 3.1.2.1, conditional approval of a plat application shall not be considered a denial.

Section 3.1.2.2Certifications Regarding Exemption

The Responsible Official, upon written application of a property owner, a utility provider, or the City Council, shall certify in writing whether a plat is required under this Chapter 3 or whether an exemption under Section 3.1.1.3 applies to a proposed development for the land. The Responsible Official shall notify the applicant of the determination within twenty (20) days of the date the application is received, or within ten days of the date of the decision, whichever is earlier, in the manner provided in Section 2.3.2.1. The applicant may appeal the Responsible Official's decision in the manner provided in Section 2.8.1.1.

DIVISION 3: RELIEF PROCEDURES

Section 3.1.3.1Alternative Compliance

The applicant may file an application for alternative compliance to specific standards identified in this Chapter applicable to a subdivision plat or a development plat, in accordance with Section 2.8.4.1. The application for alternative compliance shall be decided by the Planning and Zoning Commission in conjunction with the application for approval of the plat.

ARTICLE 2: PLAT APPLICATIONS

DIVISION 1: SUBDIVISION CONCEPT PLAT

Section 3.2.1.1Purpose, Applicability, and Effect

A. **Purpose.** The purpose of a subdivision concept plat shall be to delineate the sequence and timing of development within a proposed subdivision, where the tract to be developed is part of a larger parcel of land owned or controlled by the applicant, in order to determine compliance with the Comprehensive Plan and the availability and capacity of public improvements needed for the subdivision and the larger parcel.

B. **Applicability.** Approval of a subdivision concept plat must be obtained for any division of land where:

1. The proposed development is to occur in phases and

2. The tract to be subdivided is twenty (20) or more acres

C. **Exceptions.** A Concept Plat is not required where the subdivider elects to submit a Preliminary Subdivision Plat.

D. If the land subject to the subdivision concept plat is part of a larger parcel, the remaining land shall be shown as a remainder tract, but shall not be included within the official boundaries of the subdivision concept plat.

E. A subdivision concept plat application may be approved concurrently under the administrative regulating plan process for a Planning Area district in accordance with Section 4.4.3.7.

F. **Effect.** Approval of a subdivision concept plat authorizes:

1. Subsequent subdivision applications.

2. That all plats approved thereafter for the same land shall be consistent with the subdivision concept plat for so long as the subdivision concept plat remains in effect.

(Ord. No. 2020-60, 9-1-2020)

Section 3.2.1.2Application Requirements

A. An application for a subdivision concept plat shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Chapter 3.

B. An application for a subdivision concept plat shall not be approved unless the following applications and development permits, where applicable, have been approved and remain in effect for the land included in the subdivision concept plat:

1. All legislative approvals needed to authorize the proposed uses for the land.
2. A watershed protection plan (phase 1).
3. A transportation plan.

Section 3.2.1.3 Approval Process

A. Responsible Official Action.

1. The Responsible Official shall review the application for a concept plat in accordance with the criteria in Section 3.2.1.4 and provide a report and recommendation to the Planning and Zoning Commission.

B. Planning and Zoning Commission Action.

1. The Planning and Zoning Commission shall decide whether to approve, approve with conditions, or statutorily deny the subdivision concept plat application.
2. The conditions may relate to, among other matters, compliance with the Comprehensive Plan, and the availability and capacity of public improvements.
3. The Planning and Zoning Commission may condition approval on exclusion of land from the subdivision concept plat or adjustments in the proposed sequence or timing in the proposed phases of the development.

Section 3.2.1.4Criteria for Approval

A. The following criteria shall be used to determine whether an application for a subdivision concept plat shall be approved, approved with conditions, or statutorily denied:

1. The subdivision concept plat is consistent with all applicable standards and requirements for the property, and any prior approvals listed in Section 3.2.1.2;
2. The proposed provision and configuration of roads, electric, water, wastewater, drainage and park facilities conform to the Comprehensive Plan and any approved City Master Plans or Capital Improvement Plans;
3. The proposed provision and configuration of roads, water, electric, wastewater, drainage and park facilities, and easements and rights-of-way are determined to be adequate to serve each phase of the development in accordance with Section 3.5.1.1;
4. The schedule of development is feasible and prudent, and assures that the proposed development shall progress to completion within the time limits proposed;
5. The location, size and sequence of the phases of development proposed assures orderly and efficient development of the land subject to the subdivision concept plat; and
6. Where the proposed development is located in whole or in part in the extraterritorial jurisdiction of the City and is subject to an interlocal agreement under Tex. Loc. Gov't Code Ch. 242, the proposed subdivision concept plat meets any county standards to be applied under the agreement.

Section 3.2.1.5Modifications to an Approved Subdivision Concept Plat

A. Administrative Adjustment. After approval of a subdivision concept plat the responsible official may approve an administrative adjustment for minor variations in an approved subdivision concept plat that:

1. Do not increase the intensity, density, or number of units, by more than 10%; and
2. Do not negatively impact the adequate provision of public facilities.

Section 3.2.1.6Expiration and Extension

A. Expiration

1. Expiration of the subdivision concept plat shall be governed by the phasing schedule approved by the Planning and Zoning Commission as part of the concept plat.
2. Failure to make progress as defined by Texas Local Government Code Chapter 245 towards completion of each phase of the subdivision in accordance with the approved phasing schedule shall result in the expiration of

the subdivision concept plat in accordance with Section 2.3.5.1.

B. Extensions

1. The expiration date for any phase of the development may be extended by the Planning and Zoning Commission under Section 2.3.5.1. Extension of the expiration date for the phase extends the expiration date for the subdivision concept plat for a like period.

2. A subdivision concept plat is not subject to reinstatement following expiration.

DIVISION 2: PRELIMINARY SUBDIVISION OR DEVELOPMENT PLAT

Section 3.2.2.1Purpose, Applicability, Exceptions and Effect

A. Purpose. The purpose of a preliminary subdivision or development plat shall be to determine the general layout of the subdivision, the adequacy of public facilities needed to serve the intended development and the overall compliance of the land division with applicable requirements of this Development Code.

B. Applicability. A preliminary subdivision or development plat is required for developments where:

1. Public infrastructure is required and the developer has elected not to file a subdivision improvement agreement.

C. Effect. Approval of a preliminary subdivision or development plat shall authorize the installation of public improvements upon approval of public improvement construction plans under Section 3.4.1.1.

D. Approval of a preliminary subdivision or development plat shall also authorize the subdivider to seek approval of a final subdivision or development plat for the land subject to acceptance of the public infrastructure.

Section 3.2.2.2Application Requirements

A. An application for a preliminary subdivision or development plat shall be submitted in accordance with the universal application procedures in Section 2.3.1.1. except as otherwise provided in this Chapter 3.

B. An application for a preliminary subdivision or development plat shall not be approved unless the following applications and development permits, where applicable, have been approved and remain in effect for the land included in the preliminary subdivision or development plat:

1. All legislative approvals needed to authorize the proposed uses for the land.

2. A concept plat.

3. A regulating plan.

4. A watershed protection plan (phase 1 or 2).

5. A transportation impact assessment.

Section 3.2.2.3Approval Process

A. Responsible Official Action. The Responsible Official shall review the application for a preliminary subdivision or development plat in accordance with the criteria in Section 3.2.2.4 and provide a report and recommendation to the Planning and Zoning Commission.

B. Planning and Zoning Commission Action. The Planning and Zoning Commission shall decide whether to approve, approve with conditions, or statutorily deny the preliminary subdivision or development plat application. The action of the Commission shall be noted and the reasons for the action shall be entered in the minutes of the Commission.

Section 3.2.2.4Criteria for Approval

A. Criteria. The following criteria shall be used to determine whether the application for a preliminary subdivision plat or development plat shall be approved, approved with conditions, or denied:

1. If no subdivision concept plat has been approved the criteria in Section 3.2.1.4 shall apply;

2. The plat conforms to all prior approvals or phasing plans for the development;

3. The proposed provision and configuration of roads, water, wastewater, drainage and park facilities, and easements and rights-of-way are adequate to serve the subdivision and meet applicable standards of this Development Code; and

4. The plat meets any county standards to be applied under an interlocal agreement between the City and a County under Tex. Loc. Gov't Code Ch. 242, where the proposed development is located in whole or in part in the extraterritorial jurisdiction of the City and in the County.

Section 3.2.2.5Modifications to an Approved Preliminary Subdivision or Development Plat

A. **Administrative Adjustment.** After approval of a preliminary subdivision or development plat, the responsible official may approve an administrative adjustment for minor variations in an approved preliminary subdivision or development plat that:

1. Do not increase the intensity, density, or number of units, by more than 10%.
2. Do not negatively impact the adequate provision of public facilities.
3. Is a minor adjustments resulting from the installation of public infrastructure as determined by the responsible official.

Section 3.2.2.6Expiration and Extension

A. **Expiration.** The approval of a preliminary subdivision plat application shall remain in effect for a period of two years from the date the application was approved or conditionally approved by the Planning and Zoning Commission in accordance with Section 2.3.5.1.

B. **Extension.** A preliminary plat may be extended in accordance with Section 2.3.5.1.

DIVISION 3: FINAL SUBDIVISION OR DEVELOPMENT PLAT

Section 3.2.3.1Purpose, Applicability, Exceptions, and Effect

A. **Purpose.** The purpose of a final subdivision plat or a final development plat is to assure that the division or development of the land subject to the plat is consistent with all standards of this Development Code pertaining to the adequacy of public facilities, that public Improvements to serve the subdivision or development have been installed and accepted by the City or that provision for such installation has been made. It also serves to assure that all other requirements and conditions have been satisfied or provided for to allow the plat to be recorded, and to assure that the subdivision or development meets all other standards of this Development Code to enable initiation of site preparation activities for any lot or tract subject to the plat.

B. **Applicability.** Approval of a final subdivision plat or a final development plat must be obtained:

1. Prior to any non-exempt division of land.
2. Prior to the issuance of any construction permit in accordance with Section 2.7.3.1.

C. **Exceptions.** A final subdivision plat or final development plat application under this Article shall not be required for any land division that may be approved through the minor plat procedures of Section 3.2.4.1.

D. **Effect.** Approval of a final subdivision or development plat authorizes:

1. The subdivider to install any improvements in public rights-of-way under approved public improvement construction plans and a subdivision improvement agreement, where required;
2. The Responsible Official to record the plat upon completion and acceptance of public improvements or posting of security; and
3. Approval of subsequent development applications upon recordation of the final subdivision or development plat.

Section 3.2.3.2Application Requirements

A. An application for a final subdivision or development plat shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Chapter 3.

B. An application for a final subdivision or development plat shall not be approved unless the following applications and development permits, where applicable, have been approved:

1. All legislative approvals needed to authorize the proposed uses for the land.
2. A concept plat.

3. A preliminary plat.

4. A watershed protection plan (phase 2).

5. A transportation impact assessment.

C. **Title Requirements.** The applicant shall furnish with the initial application to the City and prior to recordation:

1. Any changes to a current title commitment or title policy issued by a title insurance company authorized to do business in Texas; or

2. A title opinion letter from an attorney licensed to practice in Texas,

D. The certification shall identify all persons having an interest in the property subject to the plat, including lien holders.

E. The applicant shall submit a written agreement executed by each lien holder consenting to the platting of the property and to the dedications and covenants that may be contained in the plat.

F. The title commitment, policy, or opinion letter and such consent agreement shall be subject to review and approval by the City Attorney.

Section 3.2.3.3Approval Process

A. **Responsible Official Action.** The Responsible Official shall review the application for a final subdivision or development plat in accordance with the criteria in Section 3.2.3.4 and provide a report and recommendation to the Planning and Zoning Commission.

B. **Planning and Zoning Commission Action.** The Planning and Zoning Commission shall decide whether to approve, approve with conditions, or statutorily deny the final subdivision or development plat application.

C. The action of the Commission shall be noted and the reasons for the action shall be entered in the minutes of the Commission.

D. **Plat Recordation.** After approval of the final subdivision plat or final development plat, the Responsible Official shall record the final subdivision plat or final development plat with the county clerk of the county in which the land is located upon the subdivider's or developer's performance of one of the following:

1. Completion and acceptance of the required improvements prior to recordation; or

2. Filing of security in lieu of completing construction in accordance with Section 3.4.2.3.

E. Upon receipt of a complete record plat, the Responsible Official shall procure the signature of the chair of the Planning and Zoning Commission on the plat and shall promptly cause the plat to be recorded.

Section 3.2.3.4Criteria for Approval

A. The following criteria shall be used to determine whether the application for a final subdivision plat or a final development plat shall be approved, approved with conditions, or statutorily denied:

1. If no preliminary subdivision or development plat has been approved the criteria in Section 3.2.2.4 shall apply;

2. The final subdivision plat or final development plat, as applicable, conforms to the approved preliminary subdivision plat or preliminary development plat, except for minor changes authorized under Section 3.2.3.5;

3. Where public improvements have been installed, the improvements conform to the approved public improvement construction plans and have been approved for acceptance by the Responsible Official;

4. Where the Planning and Zoning Commission has authorized public improvements to be deferred, the subdivision improvement agreement and surety have been executed and submitted by the property owner in accordance with Section 3.4.2.1;

5. The final layout of the subdivision or development meets all standards for adequacy of public facilities in accordance with Section 3.5.1.1; and

6. The plat meets any County standards to be applied under an interlocal agreement between the City and a County under Tex. Loc. Gov't Code Ch. 242, where the proposed development is located in whole or in part in the extraterritorial jurisdiction of the City and in the county.

Section 3.2.3.5Modifications to an Approved Final Subdivision or Development Plat

A. Administrative Adjustment. After approval of a final subdivision or development plat, the Responsible Official may approve an administrative adjustment for minor variations in an approved final subdivision or development plat that:

1. Do not increase the intensity, density, or number of units, by more than 10%.
2. Do not negatively impact the adequate provision of public facilities.
3. Constitute other minor adjustments resulting from the installation of public infrastructure as determined by the responsible official.

B. After Recordation. If the approved final subdivision plat or final development plat has been recorded, revisions may only be approved under Section 3.3.4.1.

Section 3.2.3.6Expiration and Extension

A. Expiration. Approval of a final subdivision or development plat shall expire if the plat is not submitted for recordation within two (2) years of the date of approval or conditional approval by the Planning and Zoning Commission.

B. Extension. A final plat may be extended in accordance with Section 2.3.5.1.

DIVISION 4: MINOR SUBDIVISION OR DEVELOPMENT PLAT

Section 3.2.4.1Purpose, Applicability, and Effect

A. Purpose. The purpose of a minor subdivision or development plat is to simplify divisions of land under certain circumstances by authorizing administrative approval of a plat.

B. Applicability. An application for approval of a minor subdivision plat may be filed only when all of the following circumstances apply:

1. The proposed division results in four or fewer lots;
2. The construction or extension of a street, thoroughfare, or alley is not required to meet the requirements of this Development Code; and
3. The plat does not require the extension of any municipal facilities to serve any lot within the subdivision.

C. Effect. Approval of a minor subdivision plat authorizes the Responsible Official to record the plat.

Section 3.2.4.2Application Requirements

A. An application for a minor subdivision or development plat shall be submitted in accordance with the universal application procedures in Section 2.3.1.1 except as otherwise provided in this Chapter 3.

B. An application for a minor subdivision or development plat shall not be approved unless the following applications and development permits, where applicable, have been approved.

1. All legislative approvals needed to authorize the proposed uses for the land.
2. A watershed protection plan (phase2).
3. A transportation impact assessment.

Section 3.2.4.3Approval Process

A. Responsible Official Action. The Responsible Official shall review the application for a minor subdivision or development plat in accordance with the criteria in Section 3.2.4.4 and shall approve, approve with conditions or statutorily deny the application subject to appeal.

B. Plat Recordation. After approval of the minor subdivision or development plat, the Responsible Official shall sign and record the plat with the county clerk of the county in which the land is located.

Section 3.2.4.4Criteria for Approval

A. The Responsible Official, or the Planning and Zoning Commission on appeal, shall decide whether to approve, conditionally approve or statutorily deny the minor subdivision plat application based upon the following criteria:

1. The minor subdivision plat is consistent with all zoning requirements for the property, all other requirements of this Development Code that apply to the plat, and any approved development agreement;

2. The minor subdivision plat conforms to the approved watershed protection plan (phase 2);

3. All lots to be created by the plat are already adequately served by all required city utilities and services; and

4. The plat does not require the extension of any municipal facilities to serve any lot within the subdivision.

Section 3.2.4.5Expiration and Extension

A. Expiration. Approval of a minor subdivision or development plat shall expire if the plat is not submitted for recordation within two (2) years of the date of approval or conditional approval by the Responsible Official or Planning and Zoning Commission on appeal.

B. Extension. A minor subdivision or development plat may be extended in accordance with Section 2.3.5.1.

(Ord. No. 2019-45, 12-17-19)

ARTICLE 3: REVISIONS TO RECORDED PLATS

DIVISION 1: GENERAL REQUIREMENTS FOR PLAT REVISIONS

Section 3.3.1.1Applicability and Terminology

The procedures in this Article 3 shall apply only if a property owner seeks to change any portion of a plat that has been filed of record with the county or a recorded covenant or restriction applicable to such plat. The term "replat" includes changes to a recorded plat, restriction or covenant, whether the change is effected by vacating the recorded plat and approval of a new plat application, replatting without vacation, or approving an amended plat.

Section 3.3.1.2Application Requirements

An application for a replat shall be submitted in accordance with the universal application procedures in Section 2.3.1.1. Except as otherwise provided in this Chapter 3.

Section 3.3.1.3Approval Process

Except as expressly stated otherwise in this Article 3, any change to a recorded plat or a recorded covenant or restriction applicable to such plat shall be subject to approval by the Planning and Zoning Commission under requirements and procedures for approval of a final subdivision plat application under Section 3.2.3.1.

Section 3.3.1.4Construction Management

If a replat requires construction of additional improvements, the provisions of Section 3.4.1.1 shall apply.

Section 3.3.1.5Recording

The replat shall be filed with the Responsible Official for recording.

DIVISION 2: REPLATS WITHOUT VACATION

Section 3.3.2.1Applicability

A replat of all or a portion of a recorded plat may be approved without vacation of the recorded plat if:

A. The replat is signed and acknowledged by only the owners of the property being replatted; and

B. The replat does not propose to amend or remove any covenants or restrictions previously incorporated in the recorded plat.

Section 3.3.2.2Notice and Hearing

Published notice of the public hearing on the replat application shall be given in accordance with Section 2.3.2.1. The hearing shall be conducted by the Planning and Zoning Commission in accordance with Section 2.3.3.1.

Section 3.3.2.3Partial Replat Application

Any replat which adds or deletes lots must include the original subdivision and lot boundaries. If a replat is submitted for only a portion of a previously platted subdivision, the replat must reference the previous subdivision name and recording information, and must state on the replat the specific lots which have changed along with a detailed "purpose for replat" statement.

Section 3.3.2.4Criteria for Approval

The replat of the subdivision shall meet all approval criteria for a final subdivision plat Section 3.2.3.4.

Section 3.3.2.5Effect

Upon approval of the application, the replat may be recorded and is controlling over the previously recorded plat for the portion related.

Section 3.3.2.6Expiration and Extension

A. **Expiration.** Approval of replat without vacation shall expire if the plat is not submitted for recordation within two (2) years of the date of approval or conditional approval by the Planning and Zoning Commission.

Extension. A replat may be extended in accordance with Section 2.3.5.1.

(Ord. No. 2019-45, 12-17-19)

DIVISION 3: SPECIAL REPLAT REQUIREMENTS

Section 3.3.3.1Applicability

In addition to compliance with the requirements of Division 2 above, a replat without vacation of the preceding plat must conform to the requirements of this Division 3 if:

A. 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; or

B. Any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

Section 3.3.3.2Exception

The requirements of this Division 3 shall not apply to any approval of a replat application for a portion of a recorded plat if all of the proposed area sought to be replatted was designated or reserved for usage other than for single-family or duplex residential usage. Such designation must be noted on the recorded plat or in the legally recorded restriction applicable to such plat.

Section 3.3.3.3Notice and Hearing

Published and personal notice of the public hearing on the replat application shall be given in accordance with Section 2.3.2.1. The hearing shall be conducted by the Planning and Zoning Commission in accordance with Section 2.3.3.1.

Section 3.3.3.4Protest

If the replat application is accompanied by a variance application and is protested in accordance with this Section, approval of the replat shall require the affirmative vote of at least three-fourths of the members of the Planning and Zoning Commission present at the meeting. For a legal protest, written instruments signed by the owners of at least twenty (20) percent of the area of the lots or land immediately adjoining the area covered by the replat application and extending two hundred (200) feet from that area, but within the original subdivision, must be filed with the commission prior to the close of the public hearing. In computing the percentage of land area under this section, the area of streets, thoroughfares and alleys shall be included.

DIVISION 4: AMENDING PLATS

Section 3.3.4.1Purpose, Applicability, and Effect

A. **Purpose.** The purpose of an amending plat shall be to provide an expeditious means of making minor revisions to a recorded plat consistent with provisions of state law.

B. Applicability. The procedures for amending plats shall apply only if the purpose of the amending plat is for one or more of the following and no other purpose:

1. Correct an error in a course or distance shown on the preceding plat;
2. Add a course or distance that was omitted on the preceding plat;
3. Correct an error in a real property description shown on the preceding plat;
4. Indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
5. Show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
6. Correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
7. Correct an error in courses and distances of lot lines between two adjacent lots;
8. Relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
9. Relocate one or more lot lines between one or more adjacent lots if the amendment does not increase the number of lots;
10. Make necessary changes to the preceding recorded plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat;
11. Replat one or more lots fronting on an existing street if:
    - **a.** The owners of all those lots join in the application for amending the plat;
    - **b.** The amendment does not attempt to remove recorded covenants or restrictions;
    - **c.** The amendment does not increase the number of lots; and
    - **d.** The amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.
12. Allow for modification, abandonment or addition of an easement with the written consent of entities to which the easement is dedicated.

C. Effect. An amending plat may be recorded and is controlling over the recorded plat without vacation of the previously recorded plat.

Section 3.3.4.2Application Requirements

A. An application for approval of an amending plat shall be prepared in accordance with Section 2.3.1.1 and this Chapter 3.

Section 3.3.4.3Approval Process

A. The Responsible Official shall review an application for amending plat in accordance with the criteria in Section 3.3.4.4 and either approve, approve with conditions, or deny the application for an amending plat.

Section 3.3.4.4Criteria for Approval

A. The Responsible Official shall decide whether to approve, conditionally approve or deny the amending plat application based upon the following criteria:

1. The amending plat makes only those changes to the recorded plat that are allowed under Section 3.3.4.1.

Section 3.3.4.5Expiration and Extension

A. Expiration. Approval of an amending plat shall expire if the plat is not submitted for recordation within two (2) years of the date of approval or conditional approval.

B. Extension. An amending plat may be extended in accordance with Section 2.3.5.1.

(Ord. No. 2019-45, 12-17-19)

DIVISION 5: WAIVER TO ALLOW BUILDING ACROSS LOT LINE

Section 3.3.5.1Purpose, Applicability, and Effect

A. Purpose. The purpose of a waiver to allow building across a lot line shall be to provide an expeditious means of developing over a middle lot line between two adjacent lots under the same ownership.

B. Applicability. The procedures for a waiver to allow building across a lot line shall apply only for the purpose of accommodating a single structure or building over a single lot line between two contiguous legally conforming lots.

C. Effect. Upon approval by the Responsible Official, the waiver may be recorded and is controlling over the recorded plat until such time as the structure or building requiring the waiver is destroyed or demolished.

Section 3.3.5.2Application Requirements

A. An application for waiver to allow building across a lot line shall be prepared in accordance with Section 3.3.5.1.

Section 3.3.5.3Approval Process

A. The Responsible Official shall either approve, approve with conditions, or deny the application for a waiver based on the criteria in Section 3.3.5.4.

Section 3.3.5.4Criteria for Approval

The Responsible Official shall decide whether to approve, conditionally approve, or deny the requested waiver based on the following criteria:

A. The combined area and dimensions of the two contiguous lots must meet all dimensional standards for a single lot under this Development Code;

B. Both lots must be under the same ownership;

C. Both lots must be legally platted whole lots within an existing subdivision;

D. The waiver shall not attempt to remove or modify recorded covenants or restrictions or easements; and

E. The waiver to allow building across a lot line shall not require the dedication of any additional right-of-way or easements.

Section 3.3.5.5Expiration and Extension

A. Expiration. A waiver to allow building across a lot line shall expire automatically if:

1. Development of the lot does not occur within two years of the recordation of the waiver.
2. The structure built under the waiver is either demolished or destroyed.

B. Recording. Upon expiration of the waiver, an instrument evidencing such expiration and rescinding the waiver shall be filed at the county of record. However, failure to file such instrument shall not extend the term of the waiver and the City may take any action available at law or in equity to enforce its ordinances or applicable laws, rules or standards that would apply to the Lots in the absence of the waiver under this Division 5.

C. Extension. A waiver to allow building across a lot line may be extended in accordance with Section 2.3.5.1.

(Ord. No. 2019-45, 12-17-19)

DIVISION 6: PLAT VACATION

Section 3.3.6.1Purpose

A. Purpose. The purpose of a plat vacation is to provide an expeditious means of vacating a recorded plat in its entirety, consistent with provisions of State law.

Section 3.3.6.2Application Requirements

A. Initiation of a Plat Vacation

1. **By Property Owner.** The property owner of the tract covered by a plat may submit an application to vacate the plat at any time before any lot in the plat is sold.
2. **By All Lot Owners.** If lots in the plat have been sold, an application to vacate the plat must be submitted by all the owners of lots in the plat.
3. **City Council.** The City Council may initiate a plat vacation on its own motion if it determines that the plat should be vacated in the interest of and to protect the public's health, safety and welfare; and:

a. No lots within the approved plat have been sold within five (5) years following the date that the final plat was approved by the City; or

b. The property owner has breached an improvement agreement, 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; or

c. The plat has been of record for more than five (5) years, and the City Council determines that the further sale of lots within the subdivision or addition 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.

Section 3.3.6.3Approval Process

A. Responsible Official Action

1. Published notice of the public hearing on the plat vacation application shall be given in accordance with Section 2.3.2.1. The hearing shall be conducted by the Planning and Zoning Commission in accordance with Section 2.3.3.1.

2. The Responsible Official shall review the application and recommend approval, approval with conditions, or denial of the application.

B. Planning and Zoning Commission Action.

1. The Planning and Zoning Commission, at its discretion, shall have the right to retain all or specific portions of road rights-of-way or easements shown on the plat being considered for vacation. However, the Planning and Zoning Commission shall consider plat vacation upon satisfactory conveyance of easements and/or rights-of-way in a separate legal document using forms provided by the City Attorney's office.

2. The Planning and Zoning Commission shall approve, approve with conditions or statutorily deny an application for a plat vacation.

Section 3.3.6.4Effective Date of Plat Vacation

A. 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. On the execution and recording of the vacating instrument, the vacated plat shall have no further effect.

ARTICLE 4: CONSTRUCTION MANAGEMENT

DIVISION 1: PUBLIC IMPROVEMENT CONSTRUCTION PLANS

Section 3.4.1.1Purpose, Applicability and Effect

A. Purpose. The purpose of public improvement construction plans is to assure that public improvements required to be installed in order to serve a subdivision or a development are constructed in accordance with all standards of this Development Code and any applicable technical manuals.

B. Applicability. An approved public improvements construction plan application is required prior to construction of any improvements that will be dedicated to the City

C. Effect. Approval of public improvement construction plans authorizes the property owner to install public improvements in existing or proposed rights-of-way and easements offered for dedication to the public under an approved preliminary or final subdivision or development plat, or under an approved site permit.

Section 3.4.1.2Application Requirements

An application for approval of public improvement construction plans shall be prepared in accordance with Section 2.3.1.1.

Section 3.4.1.3Approval Process

A. Responsible Official Action. The Responsible Official shall approve, approve subject to modifications, or reject the public improvement construction plans based on the criteria in Section 3.4.1.4 and subject to appeal to the Planning and Zoning Commission.

Section 3.4.1.4Criteria for Approval

The Responsible Official, shall render a decision on the public improvement construction plans in accordance with the following criteria:

A. The plans are consistent with the approved preliminary subdivision plat or approved preliminary development plat, or the proposed final subdivision plat or proposed final development plat;

B. The plans conform to the approved watershed protection plan (phase 2) where applicable;

C. The plans conform to the environmental standards, development standards, and standards for adequate public facilities contained in this Development Code; and

D. The plans conform to the specifications contained in the City's adopted technical manuals, standards and guidelines.

Section 3.4.1.5Expiration

A. Expiration. Public improvement construction plans shall expire two years from the date of approval if no progress has been made towards completion of the project as defined by the Texas Local Government Code Chapter 245.

DIVISION 2: SUBDIVISION IMPROVEMENT AGREEMENT

Section 3.4.2.1Obligations under Agreement

Whenever public improvements to serve the development are deferred until after final subdivision plat or final development plat recordation, the property owner shall enter into a subdivision improvement agreement by which the owner covenants to complete all required public improvements, including residential lot improvements for drainage or erosion control, and common area or parkland improvements, no later than two years following the date upon which the final subdivision plat or final development plat is approved and recorded. The agreement shall be subject to review and approval by the City Attorney, and shall be approved and executed by the City Manager with approval of the final subdivision plat or final development plat. Upon execution, the agreement shall be filed in the applicable county of record and shall contain the following provisions:

1. Covenants to complete the improvements;
2. Covenants to warranty the improvements for a period of one year following acceptance by the City;
3. Covenants to provide security in a form authorized under Section 3.4.2.3 for maintenance in the amount of twenty (20) percent of the costs of the improvements for such period;
4. Provisions for participation in the costs of the improvements by the City, if authorization has been obtained from the City Council, and a performance bond for such improvements from the contractor, with the City as a co-obligee;

5. Provisions for securing the obligations of the agreement consistent with Section 3.4.3.1 below; and

6. Such other terms and conditions as are agreed to by the property owner and City, or as may be required by this Development Code.

Section 3.4.2.2Covenants to Run with the Land

The subdivision improvement agreement shall provide that the covenants contained in the agreement run with the land and bind all successors, heirs and assignees of the property owner. All existing lienholders shall be required to execute the agreement or provide written consent to the covenants contained in the agreement. The City shall deliver a release to bona fide third party purchasers of individual lots when all required public improvements have been accepted by the City.

Section 3.4.2.3Security For Completion of Improvements

Whenever the obligation to install public improvements to serve a subdivision or development is deferred until after recordation of the final subdivision plat or final development plat, the property owner shall provide sufficient security to ensure completion of the required public improvements. The security shall be in the form of one of the following:

A. A cash escrow with the City;

B. An irrevocable letter of credit drawn upon a state or national bank that has a regular business office in the State of Texas that (A) is of a term sufficient to cover the completion, maintenance and warranty periods, but not less than two years and (B) authorizes the City to draw upon the letter of credit by presenting to the issuer only a sight draft and a certificate signed by an authorized representative of the City attesting to the City's right to draw funds under the letter of credit;

C. A construction funding agreement under which funds for the construction of the required improvements are escrowed in Texas with an office of a state or national bank, under which (A) the City has the irrevocable right to withdraw funds, and (B) the subdivider may be permitted to draw funds to make payments towards the construction of the improvements as progress is verified;

D. A first and prior lien on the property;

E. A performance bond submitted to the City by a surety company holding a license to do business in the State of Texas and providing a date for completion of the required public improvements.

Section 3.4.2.4Amount and Acceptability

The security shall be issued in the amount of one hundred twenty five (125%) percent of the cost estimate approved by the Responsible Official for all public improvements associated with the subdivision. The security shall be subject to the approval of the City Attorney.

Section 3.4.2.5Security for Construction in Extraterritorial Jurisdiction

Where the land to be platted lies within the extraterritorial jurisdiction of the City, the security shall be in a form and contain such terms as are consistent with the interlocal agreement between the City and the county in which the land is located. In cases where the requirements governing the form and terms of the security are defined in such an agreement, they shall supersede any conflicting provisions of this code.

Section 3.4.2.6Partial Release

If, in the opinion of the Responsible Official, the public improvements have commenced in good faith, a partial release for construction may be issued. A lot must have permanent street access installed to it prior to this release.

Section 3.4.2.7Remedies

In addition to all other remedies authorized where a subdivision improvement agreement has been executed and security has been posted and required public Improvements have not been installed in accordance with 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 instrument provided and complete the improvements itself or through a third party; or

C. Assign its right to receive funds under the security instrument to any third party, including a subsequent owner of the development, in exchange for the subsequent owner's

agreement and posting of security to complete the public improvements serving the tract.

DIVISION 3: INSPECTION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS

Section 3.4.3.1Inspections

A. Inspection shall be in accordance with Section 2.3.6.1.

Section 3.4.3.2Acceptance of Improvements

A. The Responsible Official shall accept the improvements on behalf of the City upon receipt of a close out package including:

1. A covenant to warranty the required public improvements for a period of one year following acceptance by the City of all required public improvements;

2. A maintenance bond in the amount of twenty (20) percent of the costs of the improvements for such period; and

3. A detailed "as-built" record drawing in conformance with the technical manual, recorded copies of any easements not shown on the plat, and any other information necessary to establish that the public improvements have been built in accordance with the approved construction plans.

B. Acceptance of the improvements shall mean that the property owner has transferred all rights to all the public improvements to the City for use and maintenance.

C. The Responsible Official may accept dedication of a portion of the required public improvements, provided adequate surety has been given for the completion of all of other improvements.

D. Upon acceptance of the required public improvements, the Responsible Official shall issue a certificate to the property owner stating that all required public improvements have been satisfactorily completed.

Section 3.4.3.3Disclaimer

A. Approval or recordation of a preliminary or final subdivision plat or final development plat shall not constitute acceptance of any of the public improvements required to serve the subdivision or development. No public improvements shall be accepted for dedication by the City except in accordance with this Section.

Section 3.4.3.4Acceptance of Improvements for Land in Extraterritorial Jurisdiction

A. Where the facilities to be constructed under the subdivision improvement agreement are located within the City's extraterritorial jurisdiction, and are to be dedicated to the county in which the land is located, the Responsible Official shall inform the county that the public improvements have been constructed in accordance with approved public improvement construction plans, and are ready for acceptance by the county.

ARTICLE 5: ADEQUATE PUBLIC FACILITIES

DIVISION 1: IN GENERAL

Section 3.5.1.1Applicability

A. Land proposed for development in the City and in the City's extraterritorial jurisdiction must be served adequately by essential public facilities and services, including water, wastewater, roadway, transit, bicycle, pedestrian, drainage, open space, greenways and parkland facilities.

B. Land shall not be approved for platting under Section 3.1.1.1 or site development under Section 2.7.1.1 unless and until adequate public facilities as defined in this Chapter 3 and according to the established levels of service exist, or provision has been made for the facilities, whether the facilities are to be located within the property being developed or off-site.

C. Public facilities shall be considered sufficient where it is demonstrated to have available capacity to accommodate the service demand generated by the proposed development, as well as other approved developments, the Comprehensive Plan and other adopted master plans for public facilities and services, and applicable capital improvement plans.

Section 3.5.1.2Dedication and Construction Requirements

A. Support for New Development.

1. New development must be supported by adequate levels of public facilities and services.

2. It is necessary and desirable to provide for dedication of rights-of-way and easements for capital improvements to support new development at the earliest stage of the development process.

3. Requirements for dedication and construction of capital improvements to serve a proposed new development should be attached as conditions of approval of any development application that contains a specific layout of the development.

B. Essential Nexus. There is an essential nexus between the demand on public facilities systems created by a new development and the requirement to dedicate rights-of-way and easements and to construct capital improvements to offset such impacts.

C. Mitigation of Development Impacts; Fair Share. The City desires to assure both that development impacts are mitigated through contributions of rights-of-way, easements and construction of capital improvements, and that a development project contribute its fair share of such costs.

D. Relief from Obligations. In order to achieve proportionality between the demands created by a proposed development on public facilities and the obligation to provide adequate public facilities the following options are available:

1. The City may participate in the costs of capital improvements in accordance with Section 3.5.2.11

2. The City may credit or offset the obligations against payment of impact fees in accordance with Chapter 86 of the City Code of Ordinances.

3. The City Council may consider the findings in this Section 3.5.1.2 and decide to relieve the property owner of some or part of the obligations in response to a request for relief.

4. The City may also request reservation of rights-of-way in accordance with Section 3.5.1.3.

Section 3.5.1.3Reservation of Public Land

A. Where a proposed thoroughfare, transit facility, park, greenway, open space, school, fire station or other public use shown in the Comprehensive Plan or other adopted city plan is located in whole or in part in a development where the proposed improvements do not serve the proposed development, the Responsible Official shall require the reservation of the land for future use.

DIVISION 2: DETERMINATION OF ADEQUATE PUBLIC FACILITIES

Section 3.5.2.1Initial Provision for Dedication or Construction.

A. The City shall require an initial demonstration that a proposed development shall be adequately served by public facilities and services at the time for approval of the first development application that portrays a specific plan of development but at no time shall the determination be made after the approval of a

subdivision or development plat under Section 3.1.1.1 or a site development permit under Section 2.7.1.1.

B. Deferral of Obligation. Once an obligation has been determined, the obligation to dedicate rights-of-way for or to construct one or more capital improvements to serve a new development may be deferred until approval of a subordinate development permit.

C. Responsibilities of the Developer. The following actions shall be demonstrated by the developer with regard to the provision of adequate public facilities related to the approval of a permit or application under Section 3.1.1.1 or Section 2.7.1.1.

1. Phasing of development or improvements in order to ensure the provision of adequate public facilities;
2. Extensions of public facilities and roadways (including any necessary on-site and off-site facilities) to connect to existing public facilities;
3. Improvements to existing facilities required to accommodate increased traffic demand from proposed land uses;
4. Providing and/or procuring all necessary property interests, including rights-of-way and easements, for the facilities (whether on-site or off-site);
5. Providing proof to the City of adequate public facilities;
6. Making provisions for future expansion of the public facilities as needed to serve future developments, subject to the City's oversize participation policies, if applicable;
7. Making provisions for the dedication of public facilities identified in the Comprehensive Plan and other city master plans in accordance with Section 3.5.1.1;
8. Providing for all operations and maintenance of the public facilities, or providing proof that a separate entity will be responsible for the operations and maintenance of the facilities;
9. Providing all fiscal security required for the construction of the public facilities;
10. Obtaining approvals from the applicable public and private utility providers other than the City; and
11. Complying with all requirements of the utility providers, including the City.

Section 3.5.2.2Water

A. All lots, tracts or parcels on which development is proposed shall be connected to a public water system which has capacity to provide water for domestic use and emergency purposes, including adequate fire protection.

B. Adequate water facilities shall be measured in accordance with the current rules and regulations for public water systems of the TCEQ, and the fire fighting standards of the Texas Board of Insurance, the standards of this Chapter 3 and the standards and specifications of the City in Chapter 86 of the City Code of Ordinances.

Section 3.5.2.3Wastewater

A. All lots, tracts or parcels on which development is proposed shall be served by an approved means of wastewater collection and treatment as determined by Chapter 86 of the City Code of Ordinances.

B. The adequate provision of wastewater services shall be measured in accordance with this Chapter 3 and Chapter 86 of the City Code of Ordinances.

Section 3.5.2.4Electric

A. The installation of new electrical distribution infrastructure shall be installed underground in accordance with Chapter 86 of the City Code of Ordinances.

Section 3.5.2.5Right of Way

A. The City shall require dedication, construction or reservation of the right-of-way under Section 3.5.1.2 along a street, greenway or thoroughfare designated in the Comprehensive Plan, Transportation Master Plan, Thoroughfare Plan, Parks Master Plan, Greenways Plan, Bicycle Plan, an approved regulating plan, or an established capital improvement project to protect a designated transportation corridor from development.

1. The Responsible Official shall determine the alignment of right-of-way based upon the applicable plan and additional construction criteria including grade, curvature, floodplain or drainage, property ownership, connections to existing roads and infrastructure and other site constraints.

Section 3.5.2.6Public Transit Facilities

A. **Intent.** The intent is to promote public transportation access and ensure that site design considers convenience and comfort factors for residents accessing the facilities.

B. Access points and shelter locations for current and future public transit facilities must be included in developments that could generate high volumes of transit use where a new route is warranted or that are along existing or proposed transit routes.

C. Where a transit facility is required, the following design considerations shall be applied:

1. Uninterrupted pedestrian paths, composed of an all-weather surface, or similar innovative material, shall be provided to connect transit stops with all adjacent sidewalks or pedestrian paths;

2. Lighting shall be provided along pedestrian walkway connections and adjacent to transit stop facilities; and

3. Seating for multiple people, signage and shade (structured or landscaping) shall be provided at all transit stops.

Section 3.5.2.7New streets

A. Required street capacity shall be measured based on the methodology of the Highway Capacity Manual.

B. The adequacy of the road network shall be demonstrated by preparation and submission of a transportation plan, transportation impact assessment or transportation impact assessment when applicable as determined by this Chapter 3 and the Responsible Official.

Section 3.5.2.8Vehicular Impact on Existing Streets.

A. The vehicular impact of proposed development on existing streets shall be measured by AM and PM peak trips based on the methodology of the Highway Capacity Manual.

B. A traffic impact analyses shall be required under the following conditions for non residential streets:

1. The creation of 200 or more dwelling units;

2. A development generating 2,000 or more trips per day; and/or

3. A development involving avenues, boulevards, and commercial streets not appearing on the City's adopted Thoroughfare Plan.

(Ord. No. 2019-45, 12-17-19)

C. The vehicular impact of a proposed development on existing residential streets shall be demonstrated by a transportation impact assessment prepared in accordance with Section 2.3.1.1 under the following conditions:

1. The proposed addition of more than 300 vehicle trips per day to the existing traffic volumes.

D. Where a transportation impact assessment demonstrates a degradation of overall intersection level of service below the existing intersection operating level or where the existing intersection is operating at a level of service F, the proposed site permit or subdivision may be approved provided that a traffic mitigation plan is submitted.

E. The traffic mitigation plan shall identify capital projects and phasing strategies that would bring the development impact to within a reasonable and adequate level as determined by the Responsible Official. This plan may identify improvements undertaken by the private sector, the public sector or both. Factors to be considered by the Responsible Official include whether:

1. The cost of the mitigation measures exceed the value of the proposed development;

2. Transportation demand strategies including multi-modal improvements are included; and

3. Alternative access strategies are evaluated and considered such as new street connections.

F. **Pedestrian, and Streetscape Improvements.**

1. Pedestrian and streetscape Improvements are required and determined adequate when the proposed development meets the requirements of the new streets under Section 3.7.1.1 or existing streets under Section 3.8.1.1.

Section 3.5.2.9Stormwater Facilities

A. **Drainage.** The minimum configuration of any stormwater facility shall accommodate potential runoff from the entire

upstream drainage area under developed conditions and shall be designed to prevent overloading the capacity of the downstream drainage system as determined by the Responsible Official and in accordance with Section 3.9.1.1 and the City's adopted stormwater technical manual.

B. The City may require the phasing of development, the use of control methods such as retention or detention, the construction of off-site drainage improvements, and/or payment of stormwater connection fees in order to mitigate the impacts of the proposed development.

Section 3.5.2.10Other Facilities

A. Parkland. Where a proposed park, open space, or greenway shown in the Comprehensive Plan or other adopted City Master Plan is located in whole or in part in a development, the City shall require the dedication of land in accordance with Section 3.10.1.1.

Section 3.5.2.11City Facilities Participation

A. City Facilities Oversize Participation

1. The developer shall, at the request of the Responsible Official, dedicate rights-of-way and easements, and construct roadway, drainage, wastewater, water and other public facilities, of a size greater than the City's minimum standards or the size needed to serve the area being developed, whichever is greater. In connection with the request, the City shall enter into an agreement with the developer under which the City reimburses the developer for the increase in the cost of the facilities within one year after the date the construction plans for the facilities are approved, or within sixty (60) days after the construction has been completed, whichever is later. The agreement will be subject to approval by the City Attorney and City Manager, and if the amount of the reimbursement exceeds the City Manager's authority to approve by the City Council.

2. **Determination of Reimbursement Amount.** Before a developer is entitled to reimbursement under this section, the developer shall furnish the Responsible Official with a construction cost estimate for the facilities prepared by the developer's engineer, or a signed copy of the construction contractor's bid for construction of the facilities. The cost estimate or the bid must clearly delineate the difference in cost between the facilities the developer is required to install and the oversize facilities requested by the City. The amount of the reimbursement shall be subject to review and approval by the Responsible Official.

B. Escrow Policies and Procedures

1. **Request for Escrow.** Whenever this Development Code requires a property owner to construct a street, road or thoroughfare, or other type of public improvement, the property owner may petition the City to construct the improvement at a later time, in exchange for deposit of escrow as established below, if unusual circumstances exist, such as a timing issue due to pending improvements by another agency such as TXDOT or the county, that would present undue hardships or that would impede public infrastructure coordination or timing. If more than one street, road or thoroughfare must be constructed in order to meet adequacy requirements for roadways, the Responsible Official may prioritize roadways for which escrow is to be accepted and require the deposit of all funds attributable to the development in escrow accounts for one or more of the affected roadways. The Responsible Official shall review the particular circumstances involved and may require a transportation impact assessment. The Responsible Official shall determine whether or not provision of escrow deposits will be acceptable in lieu of the property owner's obligation to construct the street or thoroughfare.

2. **Escrow Deposit with the City.** Whenever the City Council agrees to accept escrow deposits in lieu of construction by the property owner, the property owner shall deposit in escrow with the City an amount equal to the owner's share of the costs of design, construction, permits, reviews and approvals, inspections, any additional land acquisition, and an appropriate (and realistic) inflation factor to ensure that the actual "future dollar" costs will be covered when actual construction occurs in the future. This amount shall be reviewed and approved by the Responsible Official, and shall be paid prior to recording of the final plat. The obligations and responsibilities of the property owner shall become those of the property owner's transferees, successors and assigns; and the liability therefore shall be joint and several.

a. **Determination of escrow amount.** The amount of the escrow shall be determined by using comparable "turnkey" costs for construction of the improvements (including design, permits, reviews and approvals, inspections and any additional land acquisition that may be needed). The determination of the escrow amount shall be made as of the time the escrow is due hereunder, and shall be subject to the review and approval of the Responsible Official.

b. **Termination of escrow.** Escrows, or portions of escrowed amounts, which have been placed with the City under this Section and which have been held for a period of ten years from the date of such payment or agreement, in the event that the City has not authorized the preparation of plans and specifications for construction of such roadway facilities for which the escrow was made, shall, upon written request, be returned to the property owner or applicant who originally paid the escrow amount, along with one-half of its accrued interest. Such return does not remove any obligations of the property owner for construction of the required facilities if a building permit has not been issued on the subject Lot(s) or if application for a new building permit(s) is made.

c. **Refund.** If any street, road, highway or thoroughfare for which escrow is deposited is constructed by a party other than the City, or is reconstructed by another governmental authority at no cost to the City, the escrowed funds and accrued interest shall be refunded to the property owner or applicant who originally paid the escrow amount upon written request and after completion and acceptance of the public improvements. In the event that a portion of the cost is borne by the City and the other portion of the cost by another party or governmental authority, the difference between the property owner's actual proportionate cost and the escrowed funds, including accrued interest, if any, shall be refunded after completion and acceptance of the improvements.

d. **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 one-half of its accrued interest.

DIVISION 3: WATER

Section 3.5.3.1Facilities

A. **Alternative Water Sources.** Where a development is served by the City water system an alternative water source may be used, subject to City approval and the obtaining of all appropriate permits from the U.S. Army Corps of Engineers, TCEQ, and any other applicable agency. A well is prohibited for the purposes of potable water or irrigation uses. The design and construction of water system improvements and alternative water sources shall comply with the following standards:

1. Design and construction of a water source on the site shall be in accordance with applicable regulations of the TCEQ.

2. Design and construction of water service from the City shall be in accordance with the standards in the City's TCSS Manual.

3. Design and construction of a fire protection and suppression system shall be in accordance with the standards in the TCSS Manual, and in accordance with the City's Fire Department and Fire Code (also see Chapter 86 of the City Code of Ordinances for cross-connection control and backflow prevention).

B. **Line Extensions and Connections.**

1. Extension of water lines shall be made along the entire frontage of the subdivision or development plat adjacent to a street or thoroughfare. If the subdivision is not adjacent to a thoroughfare, the extension of utilities shall be accomplished in such a manner as to allow future connections to said utilities by new subdivisions. If new subdivisions will never be constructed beyond a developing subdivision due to physical constraints, the Responsible Official may waive the requirement for adjacent utility line construction at the time of final plat approval and prior to construction of the subdivision.

2. Pro rata fees under Ch. 86 of the City Code may be applicable to line extensions.

3. Connections to existing water lines shall be made in accordance with Chapter 86 of the City Code of Ordinances.

C. **Compliance with Other Regulations.** Installation, operations and maintenance of utilities not specifically referenced herein shall comply with regulations of TCEQ, and with any other applicable State and local rules and regulations, whichever is the most stringent requirement.

D. **Individual Wells.**

1. **No City Service to Property with Wells.** The provision of water or wastewater supply or service to a new or existing development served by individual wells, whether such wells are for irrigation or any other potable or nonpotable uses, is prohibited. No owner or developer of property having one or more water wells may connect from such property to a city water or wastewater system unless such owner or developer first abandons the water well or wells on the property under applicable water well abandonment laws and regulations.

2. **Other Wells Within the ETJ.** Individual wells on property within the ETJ that is not served by the city water or wastewater system shall be subject to approval by the county health official, and this approval shall be documented by the health official's signature on the water system statement on the plat. The developer must submit with the plat application a certificate from a professional engineer registered in this state or a geoscientist licensed to practice in this state verifying the adequacy of the proposed source of well supply prior to plat approval.

3. **Compliance with Other Regulations.** Installation, operations and maintenance of individual wells that are not otherwise prohibited under subsection (a), shall comply with city standards, regulations of TCEQ, any other applicable State rules and regulations, and applicable regulations of groundwater conservation districts. In the event of conflict among these regulations, whichever is the most stringent shall apply.

4. The prohibition of a well or wells in this section does not apply to:

   a. Texas State University properties being served by the Texas State University Public Water System, or

   b. Existing wells that were permitted and serving properties already connected to the city water or wastewater systems prior to July 1, 2014.

E. **Central Water Systems**

1. **Design and Construction.** All water facilities within a subdivision shall be designed and constructed to city standards and to all State laws, policies, standards, rules and regulations for an approved public water system, including those covering the preparation, submittal and approval of plans and specifications for water systems and acceptable operating practices, and in conformance with all laws, policies, standards and rules and regulations for establishing the fire insurance key rate of the standard city. The entire water system may not meet these standards, but the part that serves the subdivision must meet these standards in order to be approved by the City.

2. **Other Water Systems.** For water systems other than the City system, the following apply:

   a. If the water system that will serve a proposed development is not to be a part of the city water system, the developer must submit with the application for approval of the preliminary plat proof of compliance with fire fighting standards of the Texas Board of Insurance and a current letter from TCEQ certifying that the public water system that will serve the subdivision is in compliance with TCEQ rules and regulations. For a development in the ETJ, the developer must obtain the approval and signature of the county health official on the water system statement on the plat before the Planning and Zoning Commission approves the plat. The owner or manager of the water system shall sign the water system statement on the plat, which indicates that the subdivision will be served by a water system meeting the city standards before the Commission approves the plat. Plans and specifications for the subdivision's water system that will be built to serve the subdivision shall be submitted as part of the subdivision's construction plans.

b. The developer must submit a letter from TCEQ verifying that the public water system proposed to serve the development holds a current, valid certificate of convenience and necessity (CCN) for the area proposed for development. The letter must be accompanied by a map showing the boundaries of the water system CCN in the vicinity of the development.

3. Standards May Be Met Upon Annexation. If a water system cannot meet the standards of this Chapter, at the Planning and Zoning Commission's discretion, the subdivision may be approved, if arrangements have been made for an approved water system that will meet city standards to serve the subdivision upon annexation by the City. This shall be arranged by means of a mutually acceptable contract with the City, unless a contract with another entity ensures compliance with the technical requirements of this Chapter, as determined by the City Attorney.

DIVISION 4: WASTEWATER

Section 3.5.4.1Facilities

A. The City System. Establishment of a private wastewater utility district within the City or within the City's extraterritorial jurisdiction is prohibited (see Chapter 70).

B. Centralized Wastewater System

1. Design Requirements. Where wastewater is to be provided through a centralized system, the developer shall install adequate facilities, subject to the standards and specifications of the City and state design criteria for wastewater systems.

C. Line Extensions and Connections.

1. Extension of wastewater lines shall be made along the entire subdivision or development plat adjacent to a street, thoroughfare or within an easement. If the subdivision is not adjacent to a thoroughfare, the extension of utilities shall be accomplished in such a manner as to allow future connections to said utilities by new subdivisions. If new subdivisions will never be constructed beyond a developing subdivision due to physical constraints, the Responsible Official may waive the requirement for adjacent utility line construction at the time of final plat approval and prior to construction of the subdivision.

2. Connections to existing wastewater lines shall be made in accordance with Chapter 86 of the City Code of Ordinances.

D. Existing System. Where insufficient capacity exits downstream of a proposed connection, the replacement and upsizing of existing facilities to a point of sufficient capacity is required of the developer. The installation of a parallel main is prohibited.

E. Future Extension of Lines. Pipe stub-outs shall be located in manholes to facilitate the future extension of wastewater lines. The Responsible Official will determine the location and size of the stub-outs.

Section 3.5.4.2On-Site Sewage Facilities

A. Adoption of Procedures. The on-site sewage facility rules are adopted, and shall conform to Chapter 86 of the City Code of Ordinances and all state regulations.

B. Rule Conflicts. Where this Division or other provisions of this Development Code are more stringent than the on-site sewage facility rules, the local regulations take precedence over the corresponding provisions of the rules.

C. Penalties. The City will enforce these rules as provided in V.T.C.A., Health and Safety Code, Sections 306.091, Criminal Penalties, 366.092, Injunction or Civil Suit, 366.0921, Civil Penalty, and by any other remedies provided by State Law.

ARTICLE 6: BLOCKS, LOTS, ACCESS

DIVISION 1: IN GENERAL

Section 3.6.1.1Intent

A. The intent of the maximum block perimeter and connectivity regulations is to provide a well-connected street network.

B. Large blocks with limited connectivity discourages walking, contributes to street congestion and adds driving distance that can negatively impact emergency services.

C. New streets should be designed to consider future development.

D. The access regulations are intended to provide safe and convenient vehicular and pedestrian access within developments and between adjacent developments and to lessen traffic congestion. Pedestrian, bike and vehicular access should be safe, direct and convenient.

E. Administrative adjustments of up to 10% of the standards and requirements of this Division may be appropriate where:

1. Topographic changes are too steep;

2. Existing buildings, streams or other natural or man-made obstructions or site layout of developed properties prevent cross access;

3. Adjoining uses are incompatible; or

4. Strict compliance would pose a safety hazard.

F. Where the Responsible Official determines that the adjustment is greater than 10% an alternative compliance request under the findings in Section 2.8.4.4 may be made to the Planning and Zoning Commission in accordance with Section 2.8.4.1.

DIVISION 2: BLOCKS

Section 3.6.2.1Block Perimeter

A. Applicability. The City shall require an initial demonstration that the block perimeter standards are met at the time for approval of the first development application that portrays a specific plan of development but at no time shall the determination be made after the approval of a subdivision or development plat under Section 3.1.1.1 or if no platting is required a site development permit under Section 2.7.1.1.

B. Block Standards

1. Residential blocks must have sufficient width to provide for two (2) tiers of residential lots, except:

a. Where across from a public park or open space;

b. To allow for unusual topographical conditions; or

c. When adjacent to the outer perimeter of a subdivision as illustrated in Section 3.6.4.1.

2. The following table establishes the maximum block perimeter and maximum length for a dead-end street by zoning district. In the event that a single block contains more than one zoning district, the most restrictive requirement applies.

TABLE 3.1 BLOCK PERIMETERS

ZONING DISTRICT	BLOCK PERIMETER (MAX)	DEAD-END STREET (MAX)
FD, CD-1, CD-2	N/A	500 FT.
SF-6, ND-3, SF-R, SF-4.5	3,000 FT.	300 FT.
ND-3.2. ND-3.5, ND-4, CD-2.5, CD-3	2,800 FT.	250 FT.
CD-4	2,400 FT.	200 FT.
CD-5, CD-5D	2000 FT.	NOT ALLOWED
EC, HC, HI, LI, ETJ	5,000 FT.	400 FT.
LEGACY DISTRICTS	3,000 FT.	300 FT.

(Ord. No. 2020-60, 9-1-2020)

3. An Internal Drive in accordance with Section 3.7.2.6 may be used to satisfy the maximum block perimeter in the following circumstances:

a. Re-development in a CD5 or CD5D district where the existing transportation network does not meet the block requirements of this section.

b. In an EC, HC, HI, or LI District.

C. Block Measurement

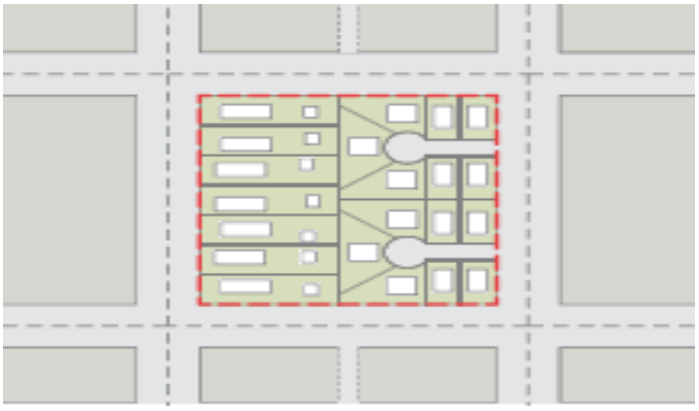
1. A block is bounded by a public right-of-way, not including an alley. All public rights-of-way proposed in order to meet the block standards must be improved with a street.

2. Block perimeter is measured along the edge of the property adjoining the public right-of-way, except for the measurement of dead-end streets, which are measured from intersecting centerlines.

FIGURE 3.1 RESIDENTIAL BLOCK

FIGURE 3.2 COMMERCIAL BLOCK

FIGURE 3.3 BLOCK WITH DEAD-ENDS



3. The maximum block perimeter may be extended by fifty (50%) percent where the block includes a pedestrian passage, shared street, or an alley in accordance with Section 3.7.2.6 that connects the two (2) streets on opposing block faces. Pedestrian passages and alleys may connect dead-end streets.

FIGURE 3.4 EXTENDED BLOCK

4. A block may be broken by a civic building or open lot, provided the lot is at least fifty (50) feet wide and deep and provides a pedestrian passage meeting the requirements of Section 3.7.2.6 that directly connects the two (2) streets on each block face.

FIGURE 3.5 SPLIT CIVIC BLOCK

5. Within a single phase of any subdivision or development, individual block perimeters may exceed the maximum by twenty five (25%) percent provided that the average of all block perimeters in the phase does not exceed the maximum.

6. The Responsible Official may waive the block perimeter requirements or maximum dead-end street length consistent with Section 3.6.2.1 when steep slopes in excess of twenty five (25%) percent, freeways, waterways, railroad lines, preexisting development, tree conservation areas, stream buffers, cemeteries, open space or easements would make the provision of a complete block infeasible or does not advance the intent of this Article.

FIGURE 3.6 NATURAL OBSTRUCTION

7. Where the block pattern is interrupted by a natural obstruction or public parkland, including greenways, that is open and accessible to the public, pedestrian access points shall be provided with a minimum spacing equal to one half (½) of the maximum block perimeter.

8. A larger block perimeter may be permitted for HI zoned lots with a building that exceeds 200,000 square feet. The block perimeter shall not exceed the lot area required to meet parking and landscaping provisions for the individual structure.

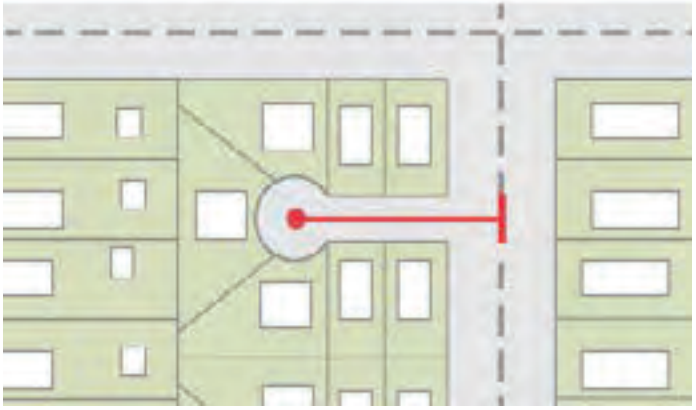
(Ord. No. 2020-60, 9-1-2020)

Section 3.6.2.2Dead End Streets

A. Dead-end streets must meet the maximum length standards in Section 3.6.2.1.

B. The maximum length is measured along the centerline of the street from the center of the intersection to the center of the turnaround.

FIGURE 3.7 MEASUREMENT OF DEAD-END STREET LENGTH



C. The applicant must provide for perpetual maintenance of any landscaped area in a form approved by the City and memorialized on the subdivision plat.

D. The following alternatives may be approved at the time of subdivision approval:

1. **Eyebrow.** An eyebrow is a rounded expansion of a street beyond the normal curb line. An eyebrow must have a landscaped island.

FIGURE 3.8 EYEBROW

2. **Loop Lane.** A loop lane is a two-way street, no portion of which may be more than two hundred and fifty (250') feet in length. The interior landscaped area must have an average width of at least seventy five (75) feet.

FIGURE 3.9 LOOP LANE

Section 3.6.2.3Perimeter Road Requirement and Participation

A. **Improvement of Adjacent (Perimeter) Roads and Utilities.** When an area within a proposed subdivision or development plat, whether residential or non-residential, abuts on one or both sides of an existing substandard road or utility facility, or a planned or future road or utility facility as shown on the City's Thoroughfare Plan and/or adopted plans related to water and wastewater, the subdivider/developer shall be required to improve its fair share of the road (including appurtenant curbs, sidewalks, barrier-free ramps, storm drainage facilities, screening and landscaping, median openings, left turn lanes, and water quality or erosion controls) and utility facilities, to provide or bring the facilities to city standards, or to replace them with standard city road or utility facilities as determined by a traffic or other public facilities impact study, if required, at no cost to the City.

B. **Calculation of Fair Share.** The developer's share of improvements to a substandard perimeter road is the equivalent of one-half of the street up to a maximum twenty four (24) feet of pavement (not including curb).

DIVISION 3: LOTS

Section 3.6.3.1Lot Standards

A. **Lot Frontage.** Every lot shall have frontage on a public street except as allowed under the courtyard or cottage court building types in Section 4.4.6.9 or Section 4.4.6.4.

B. **Lot Arrangement.**

1. Lots shall be subdivided to permit conformance with all laws and ordinances and to ensure orderly urban growth, proper building arrangement and to provide city services and facilities.

2. Lot dimensions shall provide for the potential development of all lots and future compliance with the development standards of this Development Code.

3. **Irregularly-Shaped Lots.** Irregularly-shaped lots shall have sufficient width at the front setback line to meet lot width requirements in Chapter 4.

   a. Triangular, tapered, or flag lots shall be not be permitted except for use as dedicated parkland lots.

   b. Severely elongated (in excess of a three to one (3:1) length to width ratio) lots shall not be permitted except for use as dedicated parkland lots, or for use as townhome or zero lot line building type lots.

   c. Townhome and zero lot line lots may not exceed a six to one (6:1) length to width ratio.

   d. Exceptions to the irregularly shaped lot requirements fall under the alternative compliance process in accordance with Section 2.8.4.1.

(Ord. No. 2019-45, 12-17-19)

C. **Lot Dimensions**

1. Lots that are occupied or are intended to be occupied shall conform with the minimum lot size, lot width and lot depth requirements provided under Chapter 4.

2. Exceptions to the minimum lot size, lot width and lot depth requirements fall under the alternative compliance process in accordance with Section 2.8.4.1.

3. The measurement of lots shall be in accordance with Section 4.3.2.2.

D. **Recombination of Lots.** The recombination of lots shall be done in accordance with Section 3.3.4.1.

DIVISION 4: ACCESS

Section 3.6.4.1Subdivision Access

A. **Open Access.** Subdivisions must provide roadways that remain permanently open to the public and provide community-wide access as part of an overall connected street network.

B. **Fire Department Access.** Fire department access shall be provided on an all weather surface in accordance with the Fire Code.

C. **Connectivity Required.** Proposed streets must be interconnected and must connect with adjacent streets external to the subdivision in order to provide multiple routes for pedestrian and vehicle trips from, to and within the subdivision.

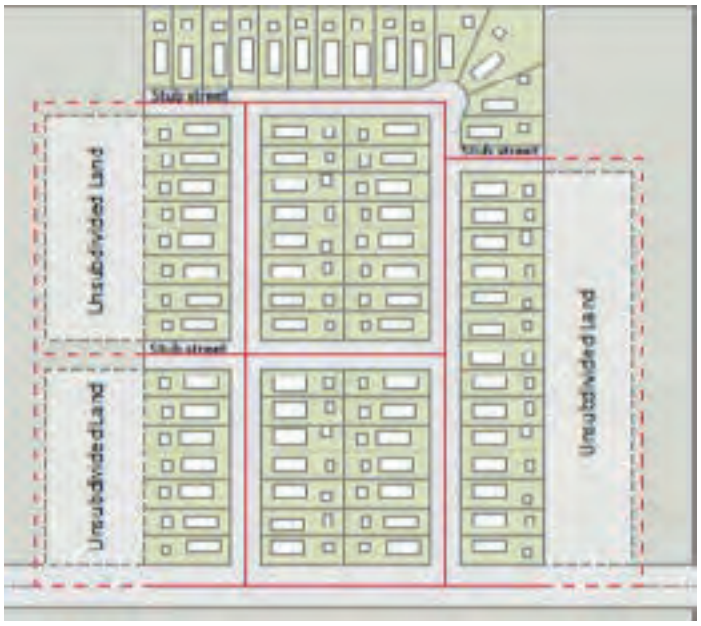
D. **Stub Streets**

1. Where a development adjoins unsubdivided land, stub streets within the new subdivision shall be extended to the meet maximum block perimeter standards of Section 3.6.2.1.

2. The stub street must be extended to the boundary of the abutting property to the point where the connection to the anticipated street is expected.

3. Stub streets must be located so that the portion of the block perimeter located on the subject property does not exceed 50% of the applicable block perimeter maximum.

FIGURE 3.10 SUBDIVISION ACCESS



4. If a stub streets exists on an abutting property, the street system of any new subdivision must connect to the stub street to form a through street.

5. When the entirety of a creek crossing is in the subdivision, the crossing must be in a single phase in its entirety.

6. Where a stub street is provided, a barricade using a design approved by the Responsible Official must be constructed at the end of the stub street, pending the extension of the street into abutting property. A sign noting the future street extension shall be posted at the applicant's expense.

7. The Responsible Official may eliminate the requirement for a stub street when:

   a. Steep slopes in excess of twenty five (25%) percent, freeways, waterways, railroad lines, pre-existing development, stream buffers, cemeteries, open space or conservation or other easements would make the provision of a stub street infeasible; or

   b. A high intensity nonresidential use is located adjacent to a proposed residential subdivision.

Section 3.6.4.2Site Access

A. General Access Requirements

1. All existing and proposed development must provide a satisfactory means of vehicular, pedestrian and bicycle ingress and egress to and from a street or an abutting site.

2. All on-site parking areas must have vehicular access from a street, an alley, a drive aisle or a cross-access easement.

3. All on-site parking areas must be designed to allow vehicles to enter and exit the parking area in a forward motion, unless otherwise approved by the Responsible Official. An improved alley may be used as maneuvering space for access to on-site parking areas.

B. Pedestrian Access

1. All existing and proposed development must provide safe, direct and convenient pedestrian access connecting main entrances of buildings, establishments or uses on a site that allows for public access with all other such entrances and with available access points including parking, streets, sidewalks and transit stops with the exception of the following exempted uses:

   a. Single- or two-unit living;

   b. Multi-unit living with six (6) or fewer dwelling units;

   c. Agricultural use;

   d. Parks, open space and greenways;

   e. Cemetery; and

   f. Other uses not containing a principal building on the premise (with the exception of a parking facility).

2. Pedestrian access shall consist of an accessible, easily-discernible and ADA compliant walkway or multi-use path with a minimum width of four (4) feet.

3. The pedestrian access surface located on private property shall be constructed of concrete, asphalt or other fixed, firm and nonslip material as approved by the Responsible Official.

4. Pedestrian access routes between buildings and public rights-of-way shall be physically separated from vehicular surface areas, except where required to cross a drive aisle; such crossings shall be perpendicular wherever practicable.

C. All Driveways

1. All driveway design and construction must comply with this Section, or the Fire Code when conflict exists.

2. Driveway dimensions measured at the street right-of-way shall be in accordance with the following table:

Table 3.2 Driveway Dimensions

	Width		Radius
	Min	Max	Max
Residential up to 6 off-street parking spaces	10’	18’	5’
Residential 7+ off -street parking spaces (one-way)	12’	16’	10’
Residential 7+ off -street parking spaces (two-way)	20’	24’	10’
Mixed Use/ Commercial (one-way)	12’	18’	10’
Mixed Use/ Commercial (two-way)	20’	32’	15’
Industrial/ Service	30’	40’	30’

3. The Responsible Official may require wider driveways where unusual traffic, grade or site conditions exist.

D. Driveways for Residential Use Up to 6 Off-Street Parking Spaces per Lot

1. When an alley is provided, all vehicular access shall take place from the alley. Access may be taken from the side street on corner lots.

2. All lots forty (40) feet or less in width platted after the effective date of this Development Code are required to take vehicular access from an alley. The Responsible Official may waive this requirement for minor subdivisions platted under Section 3.2.4.1.

3. No residential lot may have more than two (2) driveways on the same street. Multiple driveways that service one (1) lot may be no closer than forty (40) feet to each other.

4. Non-alley loaded driveways may intersect a street no closer than twenty (20) feet from the intersection of two (2) street rights-of-way.

5. Driveways must be located a minimum of three and one half (3.5) feet from the side lot line. However, a driveway may be located on the lot line closer than three and one half (3.5) feet if it is shared with an adjacent lot.

6. Parking and driveway areas shall not constitute more than forty (40%) percent of the area between the front building line and the front property line.

E. Driveways for Nonresidential, Mixed Use and Residential Greater than 6 Off-Street Spaces

1. If on-site parking areas can be accessed from an improved alley, access from the alley is required and new curb cuts along the public right-of-way are not allowed.

2. Driveways are allowed based on the property frontage of any street. Additional driveways require approval from the Responsible Official.

3. Driveways accessing up to eighty (80) foot wide street rights-of-way must be spaced two hundred (200) feet apart centerline to centerline and driveways accessing more than an eighty (80) foot wide street right-of-way must be spaced three hundred (300) feet apart centerline to centerline.

4. A driveway serving any non-residential use or multi-unit living shall not be permitted to access neighborhood yield or neighborhood local streets unless the proposed access point is the lesser of three hundred (300) feet from an avenue, boulevard or parkway, or the intersection of another public street.

5. Offers of cross-access shall be prohibited where a proposed nonresidential use or multi-unit living may potentially obtain access from a neighborhood or residential street, unless the resulting access meets the provisions of subsection 4 above.

6. Driveways may intersect a street no closer than fifty (50) feet from the intersection of two (2) street rights-of-way, not including an alley.

7. Nothing in this section shall prevent all site access to any property.

F. Cross-Access

1. All lots abutting a street other than a neighborhood street or neighborhood yield street where no alley is available shall comply with the following standards:

   a. Internal vehicular circulation areas shall be designed and installed to allow for cross-access between abutting lots;

   b. When an abutting owner refuses in writing to allow construction of the internal vehicular circulation on their property, a stub for future cross-access shall be provided as close as possible to the common property line.

   c. When cross-access is waived by the Responsible Official in accordance with Section 3.6.1.1 bicycle and pedestrian connections shall be provided between abutting properties except where there is a natural drainage feature greater than fifteen (15) feet across.

DIVISION 5: ALTERNATIVE COMPLIANCE

Section 3.6.5.1Alternative Compliance

A. Alternative Compliance Findings. The Planning and Zoning Commission may in accordance with Section 2.8.4.1 approve an alternative compliance request to this Article 6, subject to all the following findings:

1. The approved design adjustment meets the intent of this Article;

2. The approved design adjustment conforms with the Comprehensive Plan and adopted City plans;

3. The approved design adjustment does not increase congestion or compromise safety;

4. The approved adjustment does not create any lots without direct street frontage; and

5. The design adjustment is deemed reasonable due to one or more of the following:

   a. Topographic changes are too steep;

   b. The presence of existing buildings, stream and other natural features;

   c. Site layout of developed properties;

   d. Adjoining uses or their vehicles are incompatible;

   e. Strict compliance would pose a safety hazard; or

   f. The design adjustment does not conflict with an approved or built roadway construction project adjacent to or in the vicinity of the site.

ARTICLE 7: NEW STREETS

DIVISION 1: GENERAL PROVISIONS

This Article describes regulations for the construction of new streets throughout the City and is intended to provide a catalog of pre-approved street types that are appropriate to use.

Section 3.7.1.1Intent and Applicability

A. Intent

1. The intent of the new street regulations is to provide a palette of street typologies and design elements that reflect the character of different areas within the City.

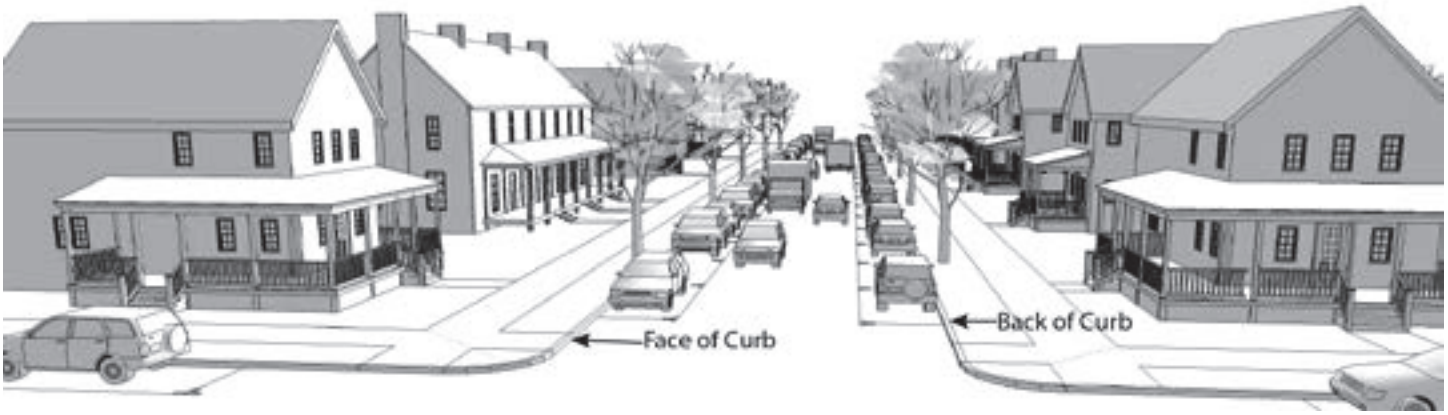
2. The new street regulations provide adequate travel lanes for vehicles, cyclists and pedestrians.

3. The City supports the use of context sensitive design solutions and complete streets and will review projects on a case-by-case basis for conformance with these concepts.

4. The street typical cross-sections displayed in this Section provide a guide to balancing the needs of all modes of travel. Modifications to these typical cross sections may be made by the Responsible Official.

5. The appropriate street typical cross-section will be selected by the Responsible Official based on both engineering and land use context factors, including anticipated vehicle volumes.

FIGURE 3.11 MEASUREMENT OF STREETS



6. Administrative design adjustments approved by the Responsible Official pursuant to Section 3.6.1.1 may be appropriate when an existing building would impede roadway expansion; when transitioning from a different street section; or where strict compliance with this Development Code would pose a safety hazard.

B. Applicability

1. When a preliminary plat, final plat or site permit proposes the construction of a new street, the requirements of this Article apply.

2. Sidewalks, streets and street trees must be installed and constructed in accordance with this Article.

3. Existing streets may remain serving existing development in their current configuration; however, they shall not be extended or substantially rebuilt except in conformance with this Article (see also Section 3.8.1.5 Existing Streets)

Section 3.7.1.2Street Right-of-Way Width

A. Street right-of-way width for Thoroughfare Plan streets must be dedicated as specified in the Transportation Master Plan. Alignments may be adjusted as approved by the Responsible Official.

B. Applicants must dedicate sufficient right-of-way to the City for streets and sidewalks. Typical street right-of way widths are illustrated in this Section.

C. A median may be added to the street cross-sections by increasing the right-of-way width. A median should be 18 feet in width in order to provide for landscaping and turn lanes. In no case will a median less than 8 feet in width be considered.

D. The Responsible Official may require turn lanes, and additional right-of-way beyond that shown in the applicable street typical cross-section to accommodate these lanes when warranted.

Section 3.7.1.3Measurement of Streets and Streetscapes

A. Face of Curb. All measurements of parking spaces and lane widths are taken from the face of curb and are inclusive of the gutter.

B. Pavement Markings. All measurements of parking spaces and lane widths are made to the center of pavement markings.

Section 3.7.1.4Standards

A. Tree Planting. All trees planted in accordance with this Article must be shade trees that meet the design, type and installation requirements of Sections 7.2.4.1, 7.2.4.2, and Appendix D of the San Marcos Design Manual.

B. Stormwater. Whenever funding is available and site conditions allow, rights-of-way may be designed to infiltrate stormwater, either through porous pavement treatments, curb cuts, or by directing stormwater into bioretention cells. Plants used in a bioretention cell must be comprised of species that require low maintenance and can tolerate frequent inundation as well as periods of drought.

C. Street Lighting. Street lights are required at all intersections and must meet IESNA Standards.

DIVISION 2: STREET TYPES

Unless modified by the Responsible Official, all new or extended streets must meet the requirements of the following street types.

Section 3.7.2.1Street Types

A. Conservation Corridors

1. Sensitive Area Parkway

2. Sensitive Area Residential Street

B. Conventional Corridors

1. Boulevard

2. Avenue

3. Industrial Street

C. Mixed Use Corridors

1. Multi-Way Boulevard

2. Avenue

3. Street

D. Neighborhood Streets

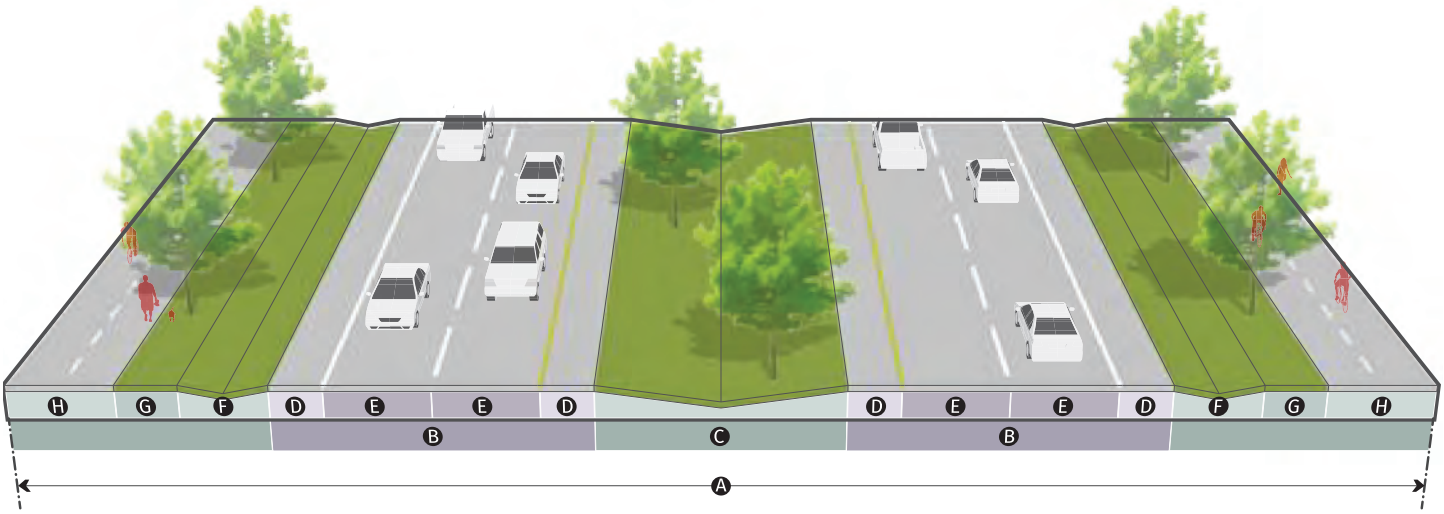
1. Neighborhood Queuing Street
2. Neighborhood Street; Limited Parking

E. Accessways and Alleyways

1. Rural/ Park Road
2. Shared Street
3. Pedestrian Passage
4. Internal Drive
5. Rear Alley and Rear Lane
6. Multiuse Greenway

Section 3.7.2.2Conservation Corridors

A. Sensitive Area Parkway

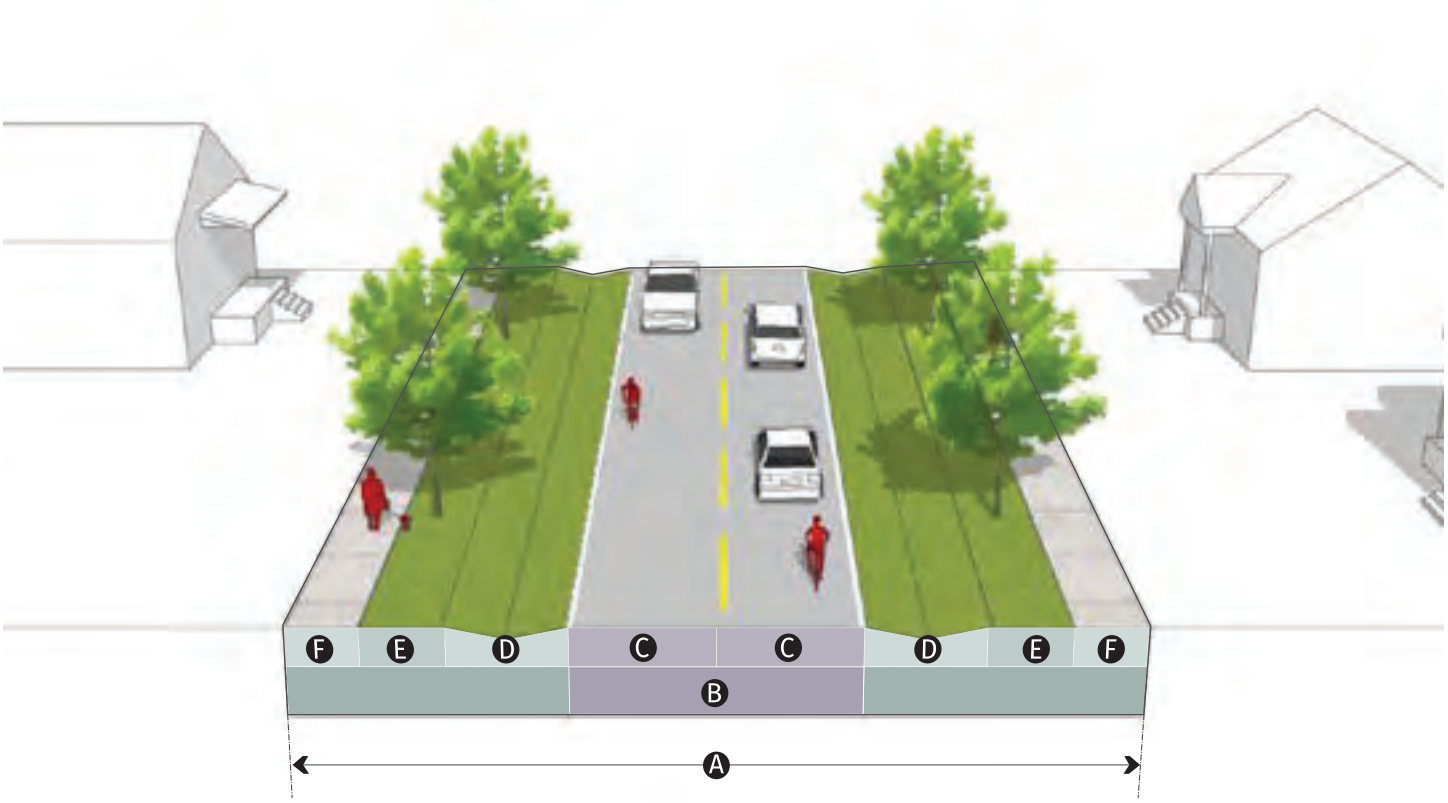


Description
A long-distance thoroughfare that traverses an environmentally sensitive area and is designed for high vehicular capacity, very limited access, and should be designed to infiltrate stormwater in medians and landscape strips wherever site conditions allow.

General		
Right of Way Width	158' min	A
Design Speed	45 mph	
Walkway	Multi-Use Path	
Bikeway	Multi-Use Path	
Parking	N/A	
Planting	Tree Lawn	

Travelway		
Pavement Width	36'	B
Median	28' min (Planted)	C
Paved Shoulder	6' min	D
Travel Lane	12' max	E
Streetscape		
Drainage	10' min	F
Planter Width	7' min	G
Tree Spacing	50' o.c. avg	
Multi-Use Path	12' min	H

B. Sensitive Area Residential Street



Description
A local thoroughfare of low speed and capacity intended for environmentally sensitive areas and should be designed to infiltrate stormwater where site conditions allow.

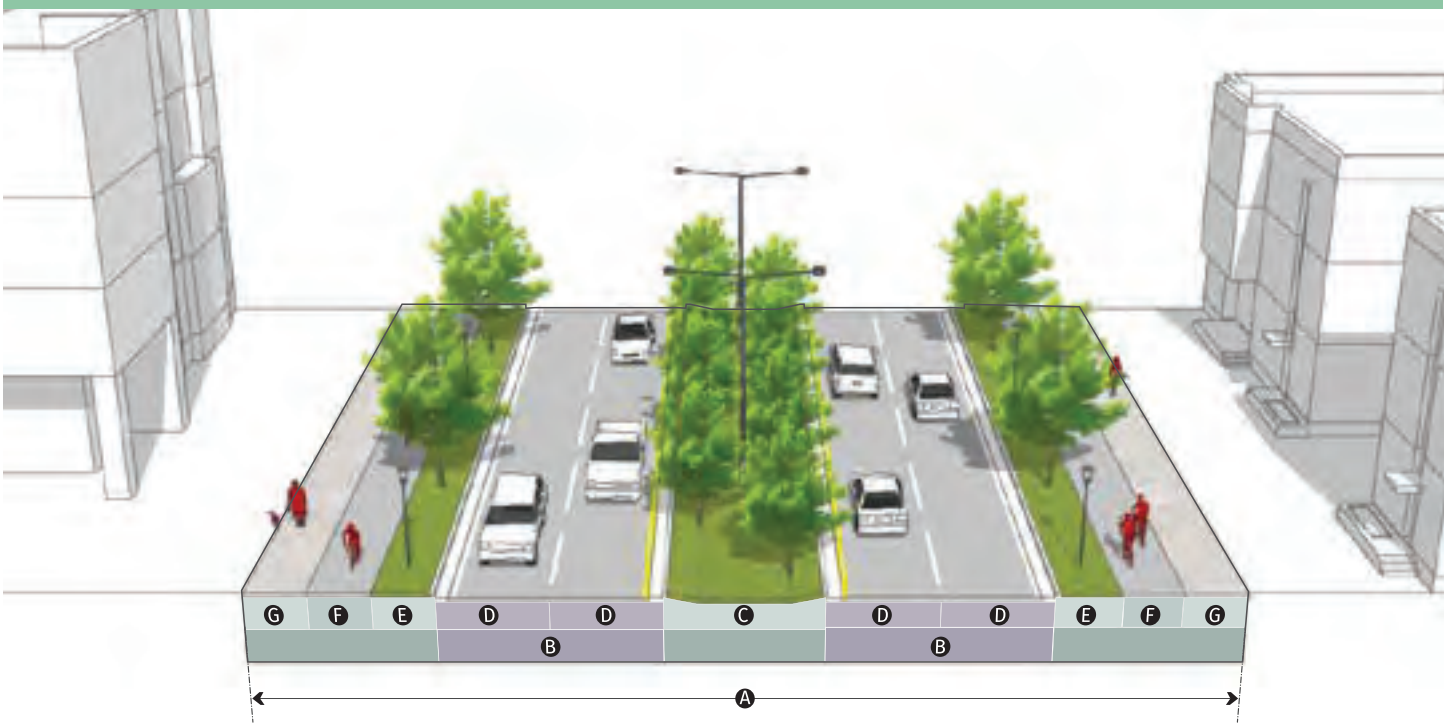
General		
Right of Way Width	70' min	A
Design Speed	25 mph	
Walkway	Sidewalk	
Bikeway	Shared Travel lane	
Parking	N/A	
Planting	Tree Lawn	

Travelway		
Pavement Width	24'	B
Travel Lane	12'	C

Streetscape		
Drainage	10' min	D
Planter Width	7' min	E
Tree Spacing	50' o.c. avg	
Sidewalk	6' min	F

Section 3.7.2.3Conventional Corridors

A. Boulevard

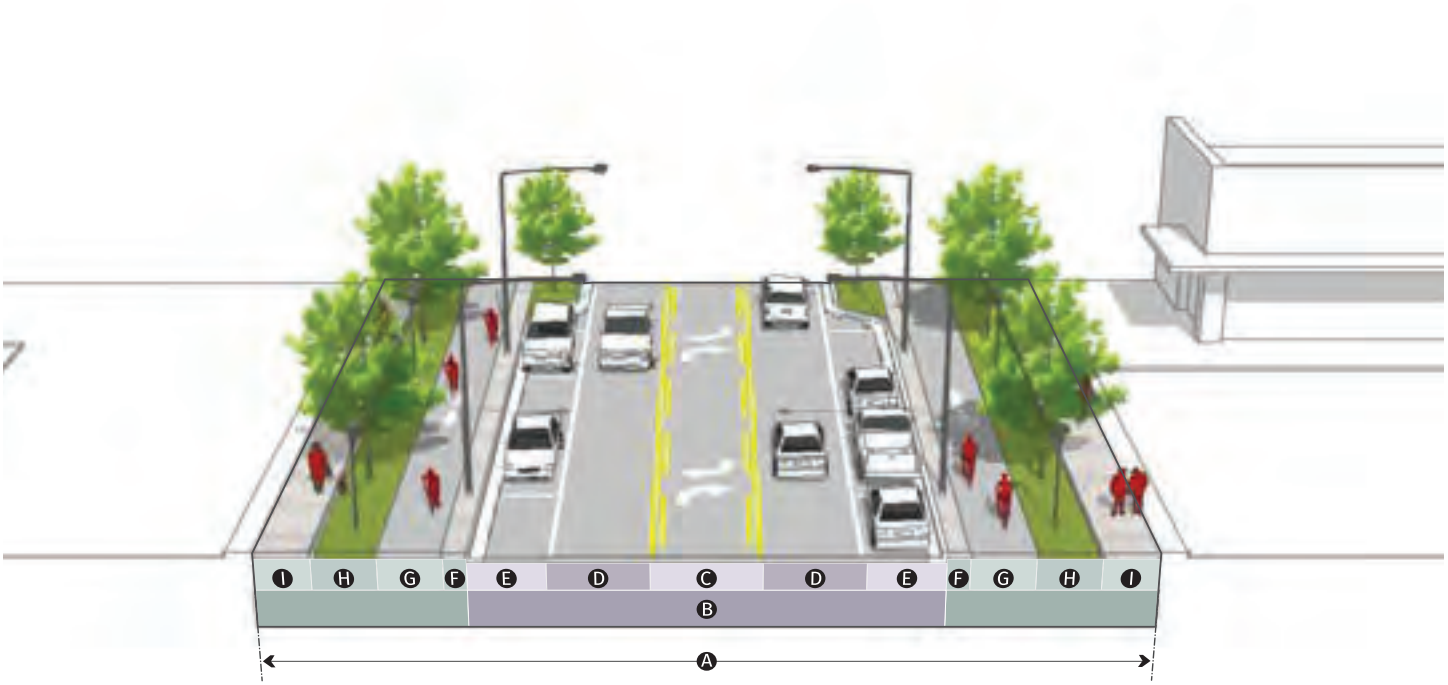


Description
A long-distance thoroughfare that is designed for high vehicular capacity and moderate speed.

General		
Right of Way	110' min	A
Design Speed	35 mph	
Walkway	Sidewalk	
Bikeway	Cycle Track	
Parking	N/A	
Planting	Tree Lawn	

Travelway		
Pavement Width	25'	B
Median	18' min (Planted)	C
Travel Lane	12.5'	D
Streetscape		
Planter	7' min	E
Tree Spacing	35' o.c. avg	
Cycle Track	7' min	F
Sidewalk	7' min	G

B. Avenue (with Center Turn Lane)



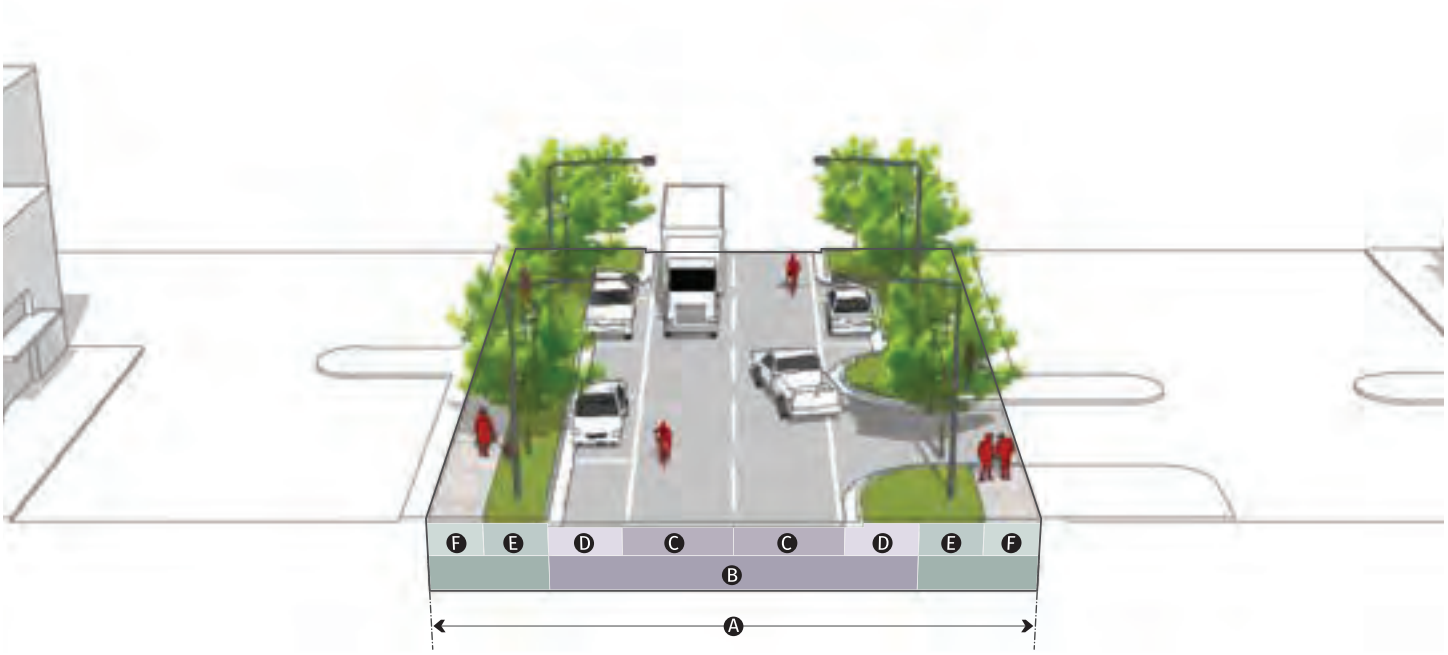
Description
A thoroughfare of high vehicular capacity and low speed, appropriate for areas with high turning volumes.

General		
Right of Way	100' min	A
Design Speed	30-35 mph	
Walkway	Sidewalk	
Bikeway	Cycle Track	
Parking	Parallel	
Planting	Tree Lawn	

Travelway		
Pavement Width	50'	B
Turn Lane	12'	C
Travel Lane	11'	D
Parking Lane	8'	E

Streetscape		
Parking Buffer Strip	3' min	F
Cycle Track	7' min	G
Planter	7' min	H
Tree Spacing	35' o.c. avg	
Sidewalk	8' min	I

C. Industrial Street

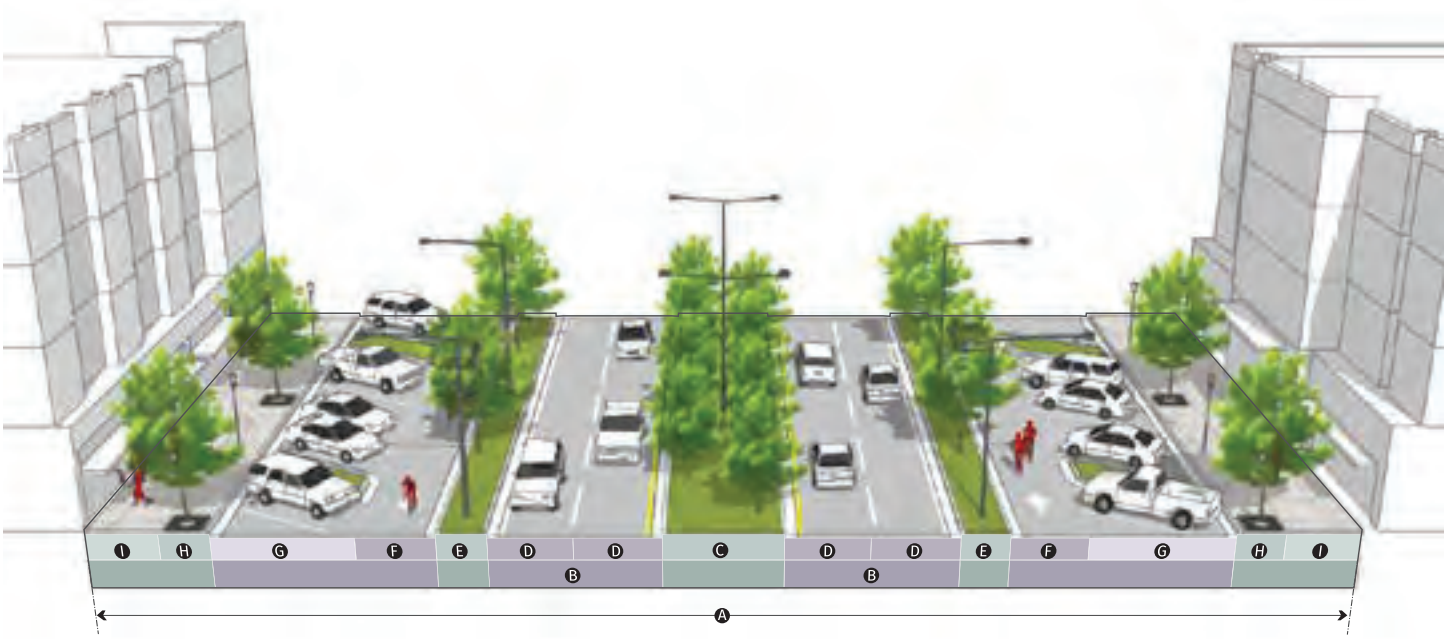


Description		
A thoroughfare of high vehicular capacity and low speed. Typically associated with large building setbacks and parking lots		
General		
Right of Way	67' min	A
Design Speed	35 mph	
Walkway	Sidewalk	
Bikeway	Shared Travel Lane	
Parking	Parallel	
Planting	Tree Lawn	

Travelway		
Pavement Width	40'	B
Travel Lane	12'	C
Parking Lane	8'	D
Streetscape		
Planter	7' min	E
Tree Spacing	35' o.c. avg	
Sidewalk	6' min	F

Section 3.7.2.4Mixed Use Corridors

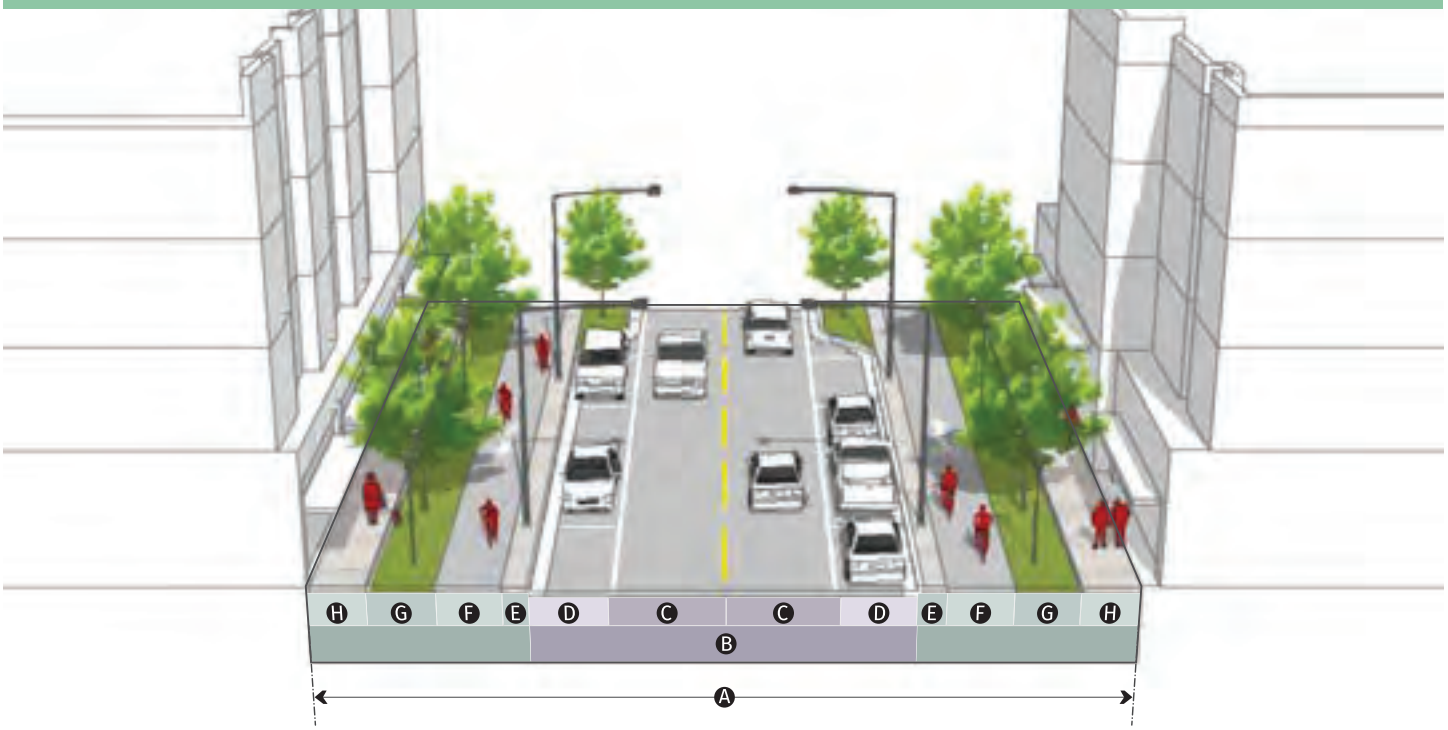
A. Multi-Way Boulevard



Description		
A variation of a boulevard characterized by a central roadway for through traffic and parallel lanes accessing abutting property, parking, and pedestrian and bicycle facilities.		
General		
Right of Way	173' min	A
Design Speed	55 mph	
Walkway	Sidewalk	
Bikeway	Shared Access Lane	
Parking	Angled	
Planting	Tree Grate / Tree Lawn	

Travelway		
Pavement Width	24'	B
Median	18' min (Planted)	C
Travel Lane	12'	D
Accessway		
Median	8' min (Planted)	E
Access Lane	11'	F
Parking Lanes	20'	G
Streetscape		
Planter	7' min	H
Tree Spacing	35' o.c. avg	
Sidewalk	7' min	I

B. Avenue

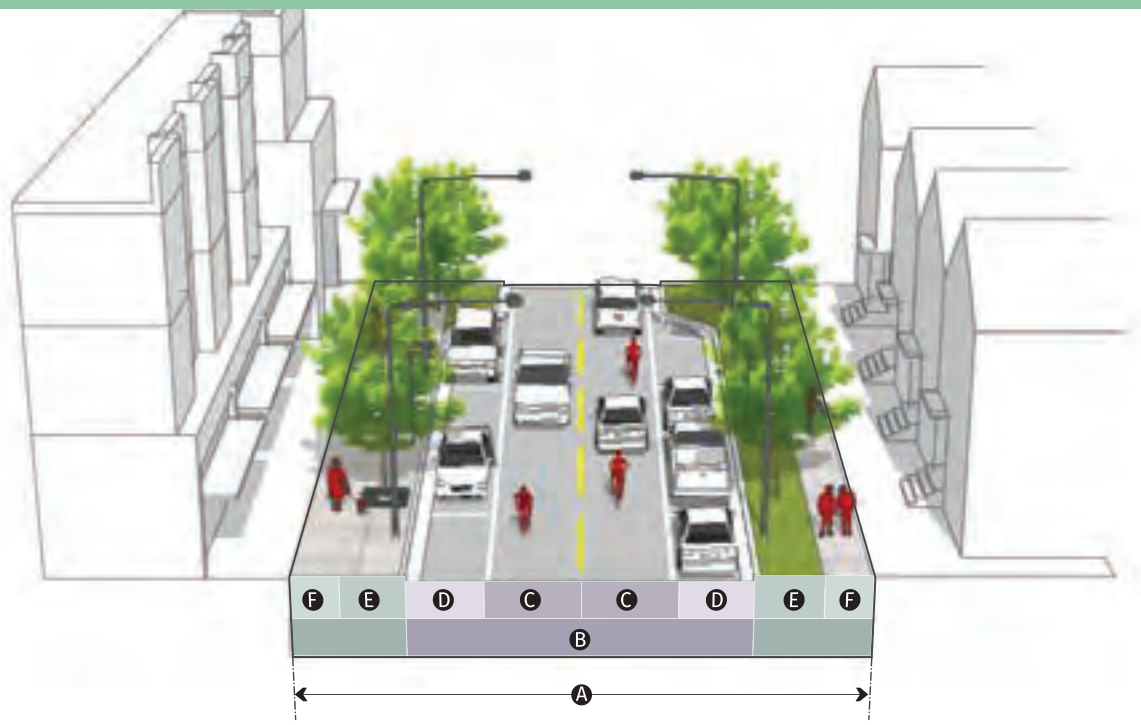


Description
A thoroughfare of high vehicular capacity and low speed, that is often a short distance connector between neighborhood centers or an approach to a civic building.

General		
Right of Way	90' min	A
Design Speed	25-30 mph	
Walkway	Sidewalk	
Bikeway	Cycle Track	
Parking	Parallel	
Planting	Tree Lawn	

Travelway		
Pavement Width	40'	B
Travel Lane	12'	C
Parking Lane	8'	D
Streetscape		
Parking Buffer Strip	3'min	E
Cycle Track	7' min	F
Planter	7' min	G
Tree Spacing	35' o.c. avg	
Sidewalk	8' min	H

C. Street

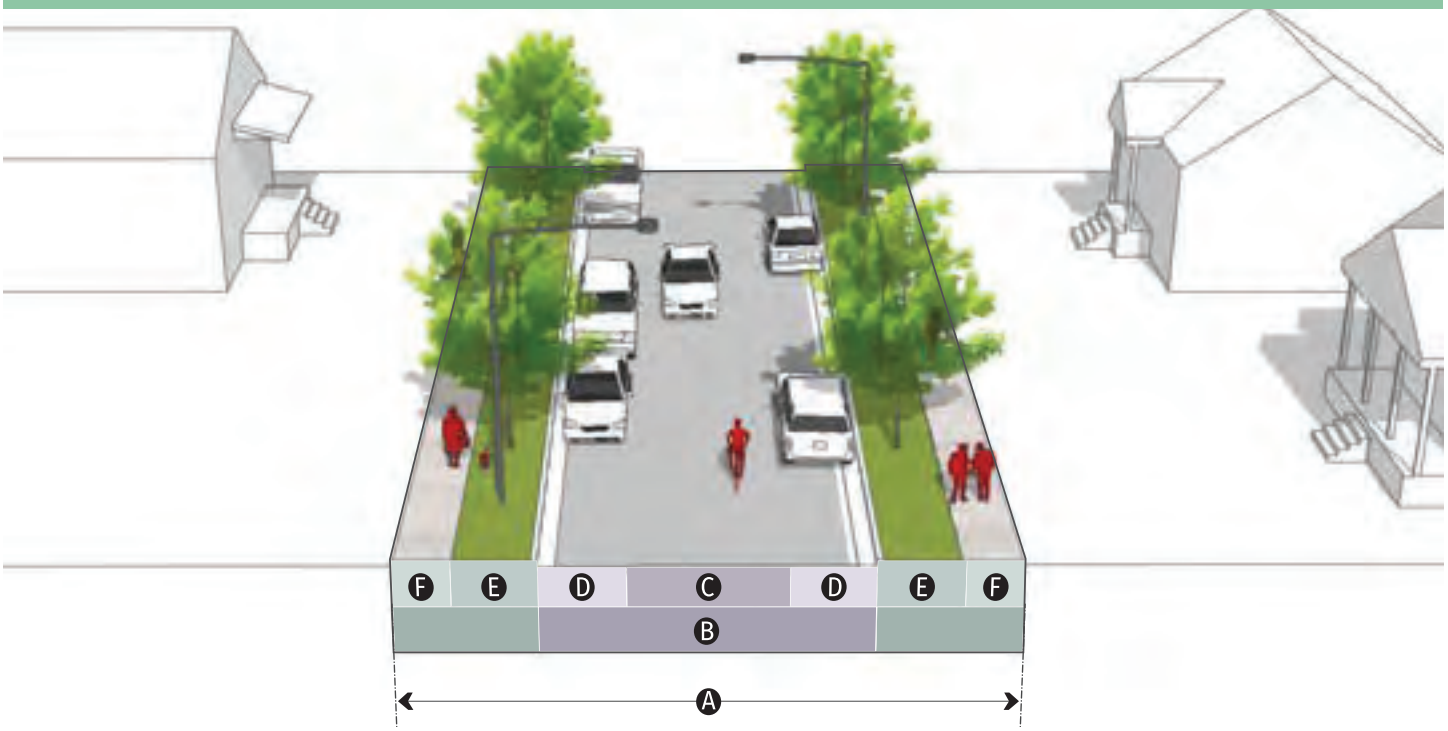


Description		
A local thoroughfare of low speed and capacity.		
General		
Right of Way	60' min	A
Design Speed	20-25 mph	
Walkway	Sidewalk	
Bikeway	Shared Travel Lane	
Parking	Parallel	
Planting	Tree Lawn	

Travelway		
Pavement Width	36'	B
Travel Lane	10'	C
Parking Lane	8'	D
Streetscape		
Planter	7' min	G
Tree Spacing	35' o.c. avg	
Sidewalk	5' min	H

Section 3.7.2.5Neighborhood Streets

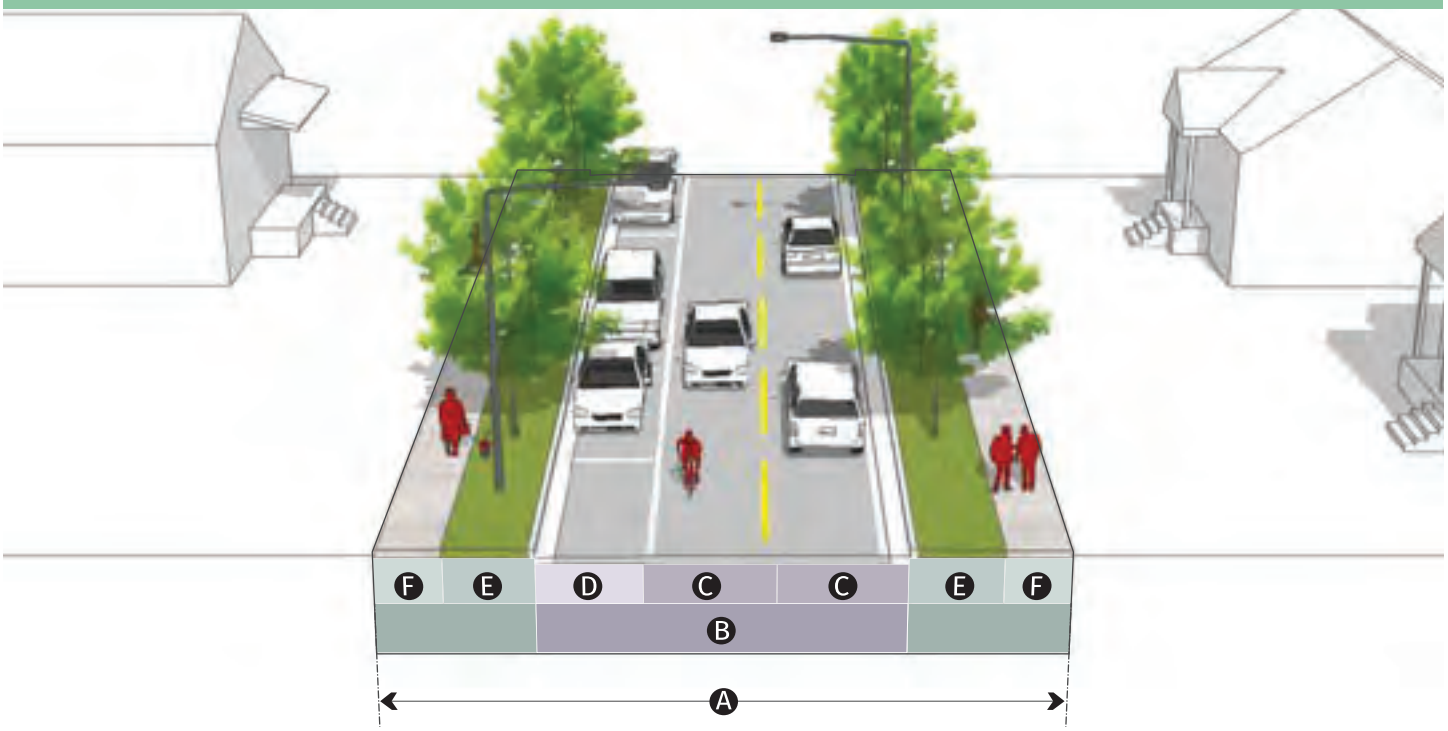
A. Neighborhood Queuing Street



Description		
A local thoroughfare of low speed and capacity.		
General		
Right of Way	54' min	A
Design Speed	20-25 mph	
Walkway	Sidewalk	
Bikeway	Shared Travel Lane	
Parking	Parallel	
Planting	Tree Lawn	

Travelway		
Pavement Width	30'	B
Queuing Lane	14'	C
Parking Lane	8'	D
Streetscape		
Planter	7' min	E
Tree Spacing	35' o.c. avg	
Sidewalk	5' min	F

B. Neighborhood Street; Limited Parking



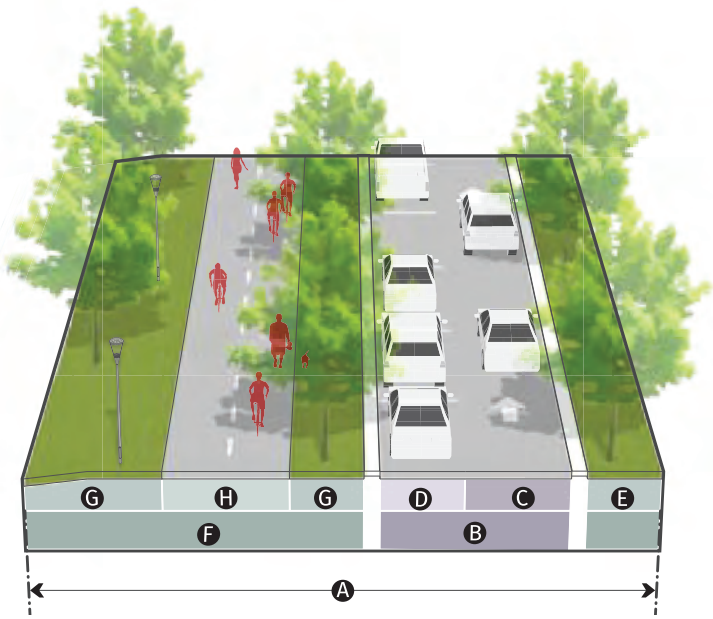
Description		
A local thoroughfare of low speed and capacity.		
General		
Right of Way	54' min	A
Design Speed	20-25 mph	
Walkway	Sidewalk	
Bikeway	Shared Travel Lane	
Parking	Parallel	
Planting	Tree Lawn	

Travelway		
Pavement Width	30'	B
Interior Travel Lane Curb Lane	10' 12'	C
Parking Lane	8'	D
Streetscape		
Planter	7' min	E
Tree Spacing	35' o.c. avg	
Sidewalk	5' min	F

(Ord. No. 2020-60, 9-1-2020)

Section 3.7.2.6Accessways and Alleyways

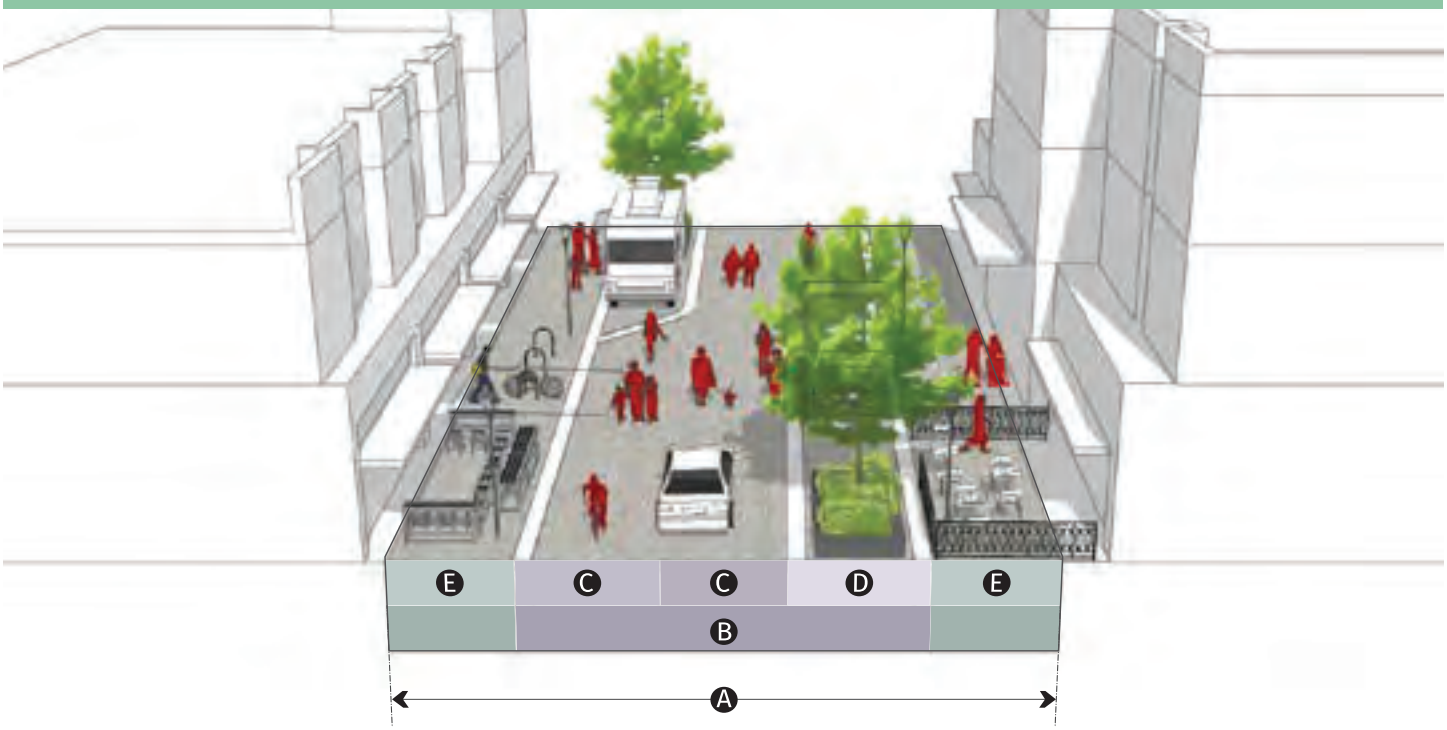
A. Rural/ Park Road



Description		
A narrow, slow movement thoroughfare, typically containing one travel lane.		
General		
Right of Way	51' min	A
Motorist Operating Speed	15 mph (one way)	
Walkway	Multi-Use Path	
Bikeway	Multi-Use Path	
Parking	Parallel (one side)	
Planting	Tree Lawn	

Travelway		
Pavement Width	18'	B
Travel Lane	10'	C
Parking Lane	8'	D
Streetscape		
Planter	7' min	E
Tree Spacing	35' o.c. avg	
Greenway		
Greenway Width	26'min	F
Greenway Shoulder	7' min	G
Multi-Use Path	12' min	H

B. Shared Street

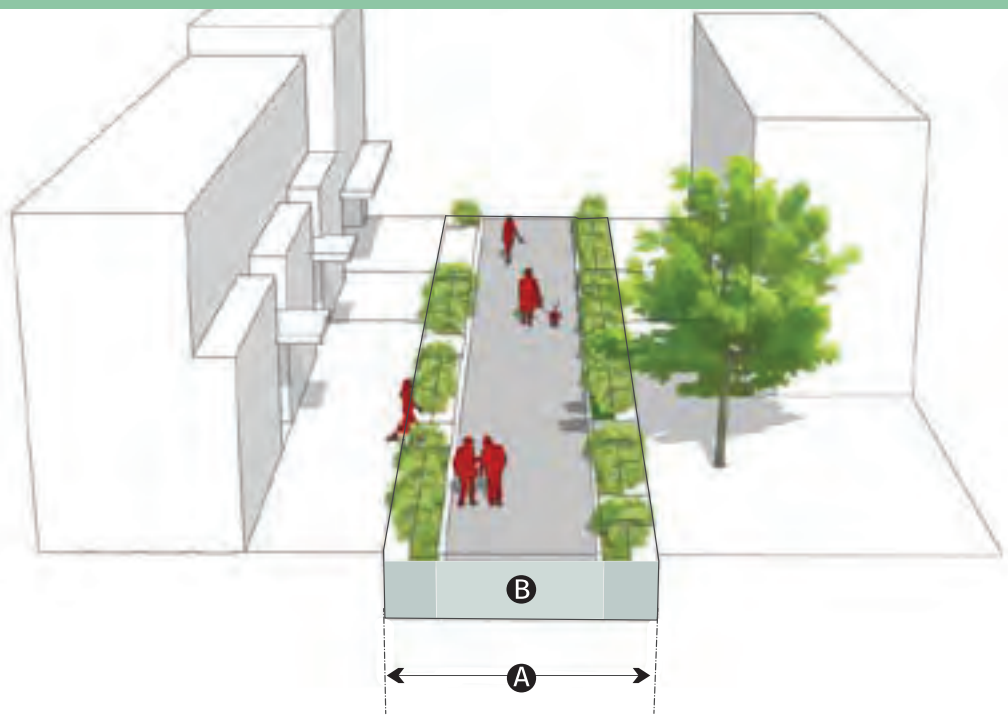


Description		
Very low traffic volume street used as a mid-block crossing in certain circumstances where the block length may be extended and characterized by 1-3 story mixed use buildings.		
General		
Right of Way	30' min, 53' max	A
Motorist Operating Speed	10 mph	
Walkway	Shared Right of Way	
Bikeway	Shared Right of Way	
Parking	Parallel (alternating)	
Planting	Planters (alternating)	

Travelway		
Pavement Width	30'	B
Travel Lane	10'	C
Parking Lane	10'	D
Streetscape		
Optional Streetscape	11.5''	E

(Ord. No. 2020-60, 9-1-2020)

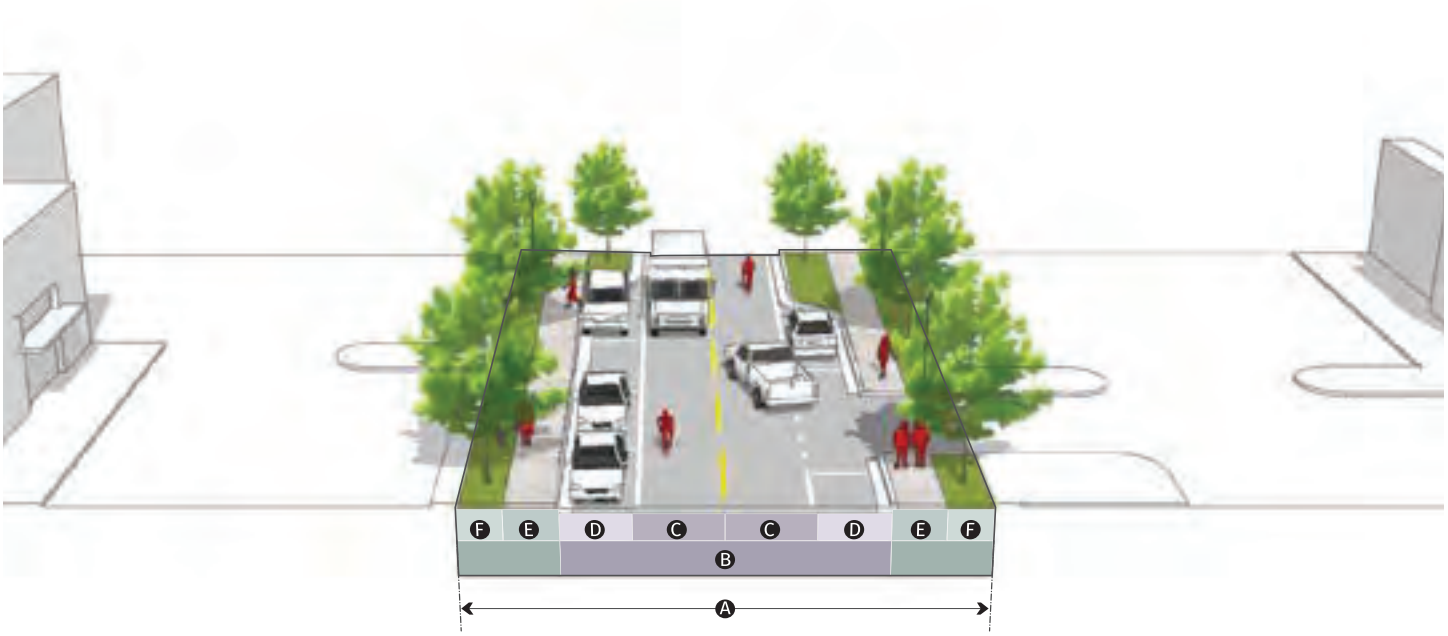
C. Pedestrian Passage



Description
A pedestrian connector passing between or through buildings, providing shortcuts through long blocks and sometimes connecting rear parking areas with frontages.

General		
Public Access Easement	20' min	A
Walkway	Sidewalk	
Bikeway	N/A	
Parking	N/A	
Planting	N/A	
Sidewalk	10' min	B

D. Internal Drives

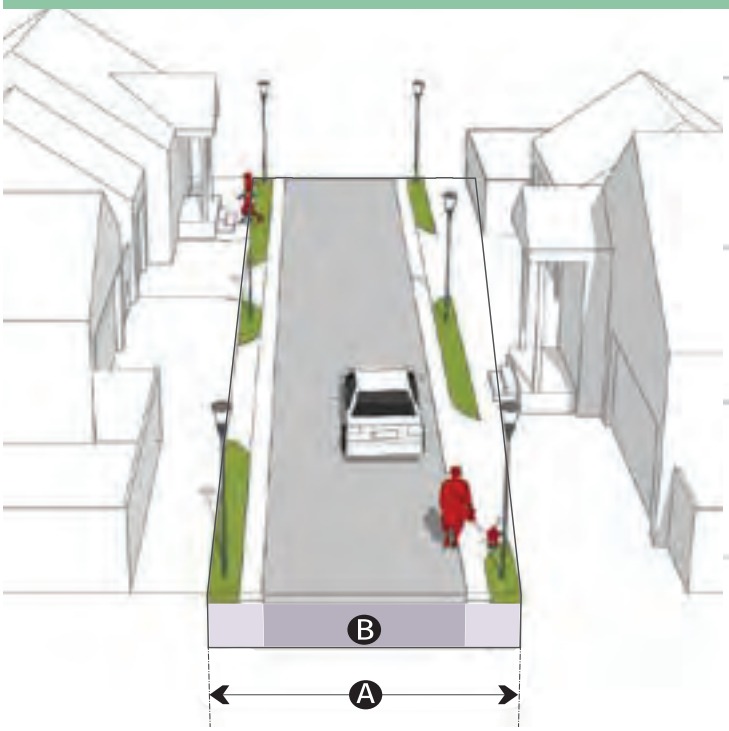


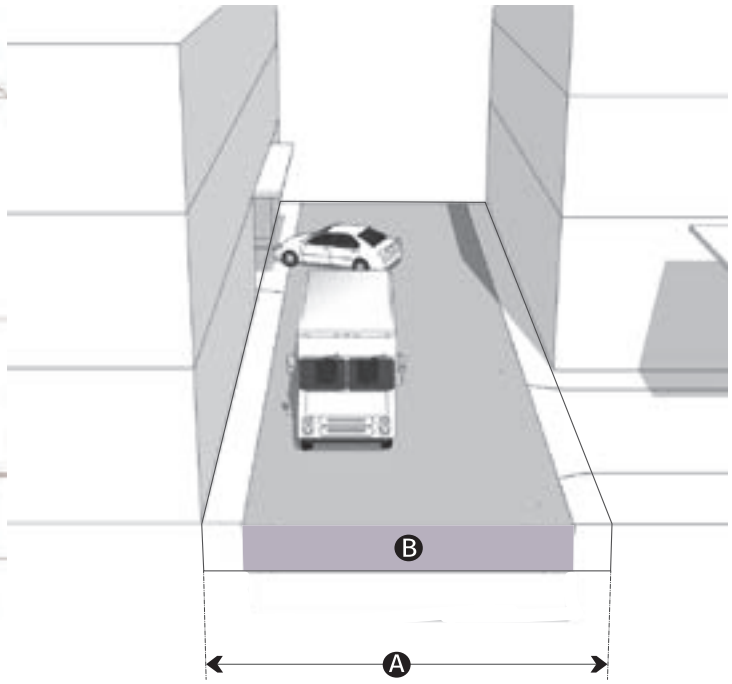
Description
Intended for use within a larger employment center or regional commercial development to provide for better circulation and pedestrian facilities.

General		
Public Access Easement	59' min	A
Walkway	Sidewalk	
Bikeway	Shared Travel Lane	
Parking	Parallel	
Planting	Tree Lawn	

Travelway		
Pavement Width	36'	B
Travel Lane	10'	C
Parking Lane	8'	D
Streetscape		
Sidewalk	6' min	E
Planter	5' min	F
Tree Spacing	35' o.c. avg	

E. Rear Alley and Lane





Description

A vehicular drive located to the rear of lots providing access to service areas, parking, or accessory structures, and containing utility easements.

General	Residential	
Right of Way	20' min	A
Walkway	Shared Alley	
Bikeway	Shared Alley	
Parking	N/A	
Planting	N/A	
Pavement Width	15' min	B

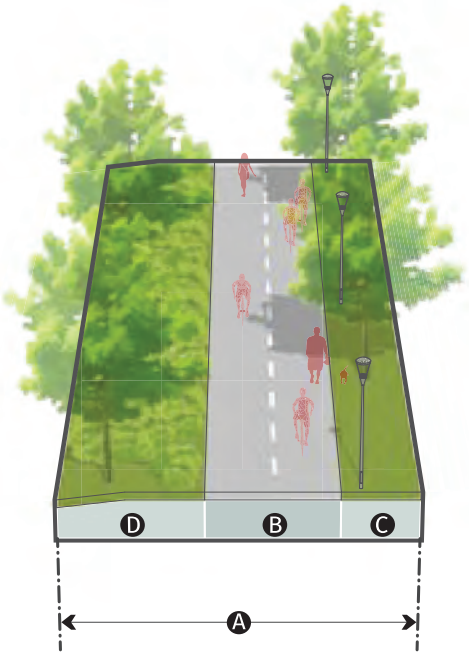
Description

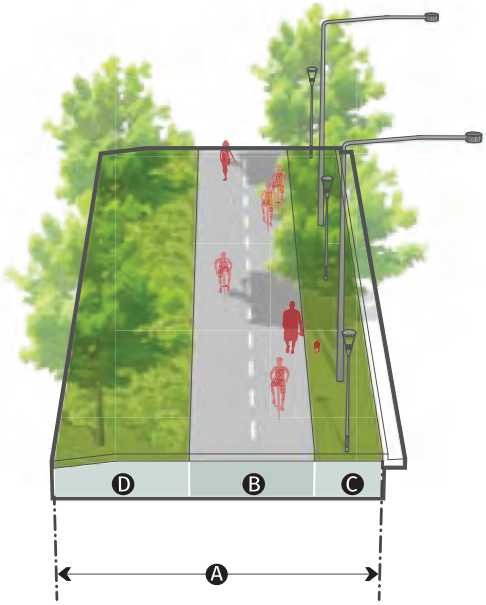
A vehicular drive located to the rear of lots providing access to service areas, parking, or accessory structures, and containing utility easements.

General	Commercial	
Right of Way	24' min	A
Walkway	Shared Alley	
Bikeway	Shared Alley	
Parking	N/A	
Planting	N/A	
Pavement Width	24' min	B

(Ord. No. 2020-60, 9-1-2020)

F. Multi-Use Greenway





Description		
Provides connected network of recreational trails and protected bikeways throughout San Marcos.		
General	**Typical**	
Right of Way or Public Access Easement	32' min	A
Walkway	Multi-Use Path	
Bikeway	Multi-Use Path	
Parking	N/A	
Planting	N/A	
Greenway		
Multi-Use Path	12' min	B
Greenway Shoulder	7'min	C

Description		
Provides connected network of recreational trails and protected bikeways along existing or future roads.		
General	**Along a Road**	
Right of Way or Public Access Easement	32' min	A
Walkway	Multi-Use Path	
Bikeway	Multi-Use Path	
Parking	N/A	
Planting	N/A	
Greenway		
Multi-Use Path	12' min	B
Greenway Shoulder	7'min	C

ARTICLE 8: EXISTING STREETS

DIVISION 1: GENERAL PROVISIONS

This Article describes regulations for the construction of street improvements and streetscapes for existing streets throughout the City. It is intended to address when street and streetscape improvements are appropriate through the application of the pre-approved street types in this chapter. The City has an approved Design Manual which provides further details for streetscapes in the downtown and midtown intensity zones.

Section 3.8.1.1Applicability and Intent

A. Intent

1. The intent of the existing street regulations is to provide the application of the streetscapes to existing streets to reflect the character and context of areas in the City.
2. The existing street regulations provide adequate travel lanes for vehicles, cyclists and pedestrians.
3. Administrative design adjustments approved by the Responsible Official pursuant to Section 3.6.1.1 may be appropriate when an existing building would impede expansion, when transitioning from a different street section or where strict compliance with this Development Code and the Street Design Manual would pose a safety hazard.

B. General Applicability

1. Any new development activity and any addition or repair subject to the requirements of Section 3.1.1.1 and Section 2.7.1.1 must meet street type and streetscape standards of this Article for existing streets abutting the subject property.
2. The streetscape types of Section 3.8.1.5 shall be applied based on the zoning or use of the subject property.
3. Unless otherwise specifically provided, no permit for the construction, reconstruction, extension, repair or alteration of any building, structure or use of land and no building or land or any part of any building or land, may be occupied or used until the streetscape requirements of this Article have been met.
4. Gated public streets shall not be permitted.
5. Administrative design adjustments approved by the Responsible Official pursuant to Section 3.6.1.1 may be appropriate when an existing building would impede roadway expansion; when transitioning from a different street section; or where strict compliance with this Development Code and the Street Design Manual would pose a safety hazard.

C. Applicability for Additions and Repairs

1. A building or site may be renovated or repaired without meeting the streetscape standards, provided there is no increase in gross floor area or improved site area.
2. When a building or site is increased in gross floor area or improved site area cumulatively by more than ten (10%) percent, the streetscape provisions of this Article must be met.

D. Change in Use Exempt. A change in use does not trigger application of the streetscape requirements of this Article.

Section 3.8.1.2Standards

A. Tree Planting

1. Unless otherwise noted below, all trees planted in accordance with this Article must be shade trees.
2. Where overhead utilities exist, one (1) understory tree shall be planted every twenty (20) feet on center, on average.
3. All required street trees must meet the design, type, and installation requirements of Sections 7.2.4.1, 7.2.4.2, and Appendix D of the San Marcos Design Manual.

B. Fee-in-Lieu

1. A cash fee for the installation of all or part of the sidewalk required under Article 8 may be accepted in lieu of construction by the Responsible Official based on the criteria included in this Section.
2. The fee in lieu shall be set by resolution of the City Council based on the average cost of construction of sidewalks.

3. The Responsible Official shall consider the following criteria when evaluating a request for fee-in-lieu of construction:

   a. Proximity to the nearest existing sidewalk;

   b. Proximity to public facilities, such as public or private schools, libraries and other government buildings;

   c. The percentage of the block face that would be improved with the construction of the streetscape improvements.

   d. Whether any public sidewalk improvements are planned or contemplated in the area; and

   e. Any other information deemed appropriate in the professional judgment of the Responsible Official.

4. **Sidewalk Benefit Areas.** The City shall establish a separate sidewalk account. The funds in the account shall be earmarked solely for the development of sidewalks either in the Comprehensive Plan Area in which the lot is located, or for regional sidewalk connectivity that will benefit all of the citizens of San Marcos. The City shall expend cash contributions within ten years of the date any such contribution is made.

Section 3.8.1.3Nonconforming Streetscapes

A. Where a streetscape along an existing street is constrained by an existing building, the Responsible Official may adjust the streetscape standards to the minimum extent necessary to accommodate the existing area between the face of the building and back of curb.

B. The standards shall be modified in the following order:

1. Reduce or eliminate the planting area.

2. If necessary, replace large canopy trees with small trees that are more appropriate for the reduced area. If the planting zone is eliminated, create a bumpout to provide for tree planting.

3. Reduce the sidewalk to the minimum width necessary to accommodate ADA accessibility.

Section 3.8.1.4Administrative Adjustment Findings

A. The Responsible Official may in accordance with Section 3.6.1.1 approve an existing street design adjustment, subject to all of the following findings:

1. The approved adjustment meets the intent of this Article;

2. The approved adjustment conforms with the Comprehensive Plan and adopted City plans;

3. The approved adjustment does not increase congestion or compromise safety;

4. The approved adjustment does not create additional maintenance responsibilities for the City; and

5. The approved adjustment has been designed and certified by a Professional Engineer.

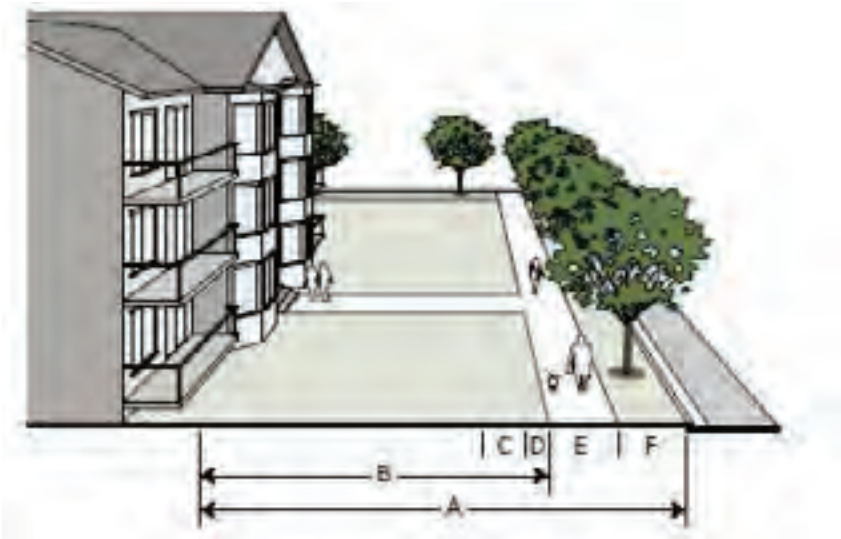
Section 3.8.1.5Streetscape Types

The required streetscape type is determined by the zoning district or building type. Additional design specifications for streetscape improvements can be found in the Design Manual.

Section 3.8.1.6Main Street

Applicability	CD5, CD5D
Streetscape width (max)	A 35’
Streetscape Elements	B Sidewalk (min): 10’ C Planting/ Lighting/ Furniture Zone (min): 7’
Planting Type	Tree Grate
Tree Spacing	35’ o.c. avg

Section 3.8.1.7Conventional



Applicability	ND4, CD4, EC, HC, LI, HI; and all other multi-family or non residential uses.
Streetscape width (max)	A 65’
Streetscape Elements	B Building Setback: Varies C Utility Placement: 5’ D Maintenance Strip: 2’ E Sidewalk (min): 6’ F Planting Area (min): 7’
Planting Type	Tree Lawn
Tree Spacing	40’ o.c. avg

Section 3.8.1.8Mixed Use

Applicability	N-CM
Streetscape width (max)	A 35’
Streetscape Elements	B Sidewalk (min): 8’ C Planting Area (min): 7’
Planting Type	Tree Grate; Lawn
Tree Spacing	35’ o.c. avg

Section 3.8.1.9Multi-Way

Applicability	Highway Overlay District
Streetscape width (max)	A 65’
Streetscape Elements	B Sidewallk (min): 10’ C Planting area (min): 7’ D Parking: 20’ E Access Lane: 11’ F Median (min): 11’
Planting Type	Tree grate / Lawn
Tree Spacing	35’ o.c. avg

Section 3.8.1.10Residential

Applicability	All Single Family Detached, Cottage Court, Single Family Attached, and Two Family Uses.
Streetscape Elements	A Building Setback: varies B Utility Placement: 5' C Maintenance Strip (min): 2' D Sidewalk (min): 5' E Planting Area (min): 7'
Planting Type	Tree Lawn
Tree Spacing	40' o.c.

ARTICLE 9: STORMWATER COLLECTION AND DRAINAGE SYSTEMS

DIVISION 1: IN GENERAL

Section 3.9.1.1Flood Control Requirements

A. Flood Damage Prevention Ordinance. Developments and improvements in or near a FEMA floodplain shall meet the requirements of the Chapter 39 of the City's Code of Ordinances.

B. Site Stormwater Management. The following two items should be considered during the design process:

1. Diversion of storm water away from the natural watercourse will not be allowed, except within the property boundaries controlled by the developer under the following conditions:

   a. The storm water is returned to its natural flowing watercourse prior to leaving the developer's property,

   b. For watersheds greater than twenty (20) acres, a timing analysis of the existing and diverted hydrograph must be performed to confirm that the peak flow rate has not been increased at the point that it reenters the watercourse, as a result of the diversion.

2. All developments shall provide adequate drainage outfall at the lower end of the site into an existing street, alley, drainage, easements or right-of-way, or to the centerline of an existing natural drain. Where a proposed street, storm drain, or open channel does not discharge into a natural low or into an existing adequate drainage easement, then facilities and drainage easements of adequate width — to contain the design discharge — shall be constructed and dedicated.

3. Developments cannot increase the water surface elevation off-site unless contained within a dedicated drainage easement or right-of-way.

C. Responsibility to Accept Storm Water. The owner or developer of property to be developed shall be responsible for the conveyance of all storm water flowing through the property. This responsibility includes the storm water flowing onto the property by any other developed property as well as the drainage naturally flowing through the property by reason of topography.

D. Design Based on Maximum Build-Out Configuration. Drainage improvements shall accommodate runoff from the upstream drainage area in its anticipated maximum "build-out" condition, 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, or the construction of off-site drainage improvements in order to mitigate the impact of the proposed development.

E. Design Storm Event. All drainage facilities (including streets, curbs, gutters, storm drains, ditches, creeks, detention ponds, etc.) shall be designed to intercept and transport runoff from a twenty five (25) year frequency storm. The drainage system shall be designed to convey those flows greater than a twenty five (25) year frequency, up to and including a one hundred (100) year frequency storm within defined rights-of-way or drainage easements.

F. Detention or Retention Required. Drainage facilities shall be designed and constructed so that the rate of runoff from a site after construction shall be equal to or less than the runoff prior to construction for the two (2), ten (10), twenty five (25), and one hundred (100) year storm frequencies.

1. The timing of the hydrograph released from the detention facility must be checked against the timing of the flow rate in the first open watercourse to prevent any increase in the peak flow rate in the receiving watercourse. For detention basins constructed in-line on an existing watercourse, the creation of the basin shall not increase flood elevations in the channel upstream of the new development boundaries.

2. Computation of the rate of runoff shall be based on an assumption of a contributing drainage area or watershed fully developed in accordance with the Stormwater Technical Manual.

3. Low impact development practices can be used to reduce peak flow rates to reduce or eliminate detention requirements when designed in accordance with the Stormwater Technical Manual criteria.

4. Detention pond bottoms must be vegetated.

G. **Waiver of Detention/Retention.**

1. Detention/retention may be waived for the following if no adverse impacts are demonstrated through drainage analysis and a payment-in-lieu is made into the stormwater management fund in accordance with Section 6.1.1.3.

   a. Non-residential small site permits,

   b. Developments within High Intensity Zones, and

   c. Plats of four (4) lots or less where the lots subdivided from the parent parcel do not exceed 0.5 acres each, are restricted by zoning or deed to 60% impervious cover or less, and are served by an existing street. An exemption is not allowed for the submittal of a series of plats of four (4) lots or less with the intention of producing a tract that is greater than four (4) lots.

2. Detention/Retention may be waived in High Intensity Zones if no adverse impacts are demonstrated through drainage analysis and a payment-in-lieu is made into the stormwater management fund in accordance with Section 6.1.1.3.

(Ord. No. 2020-60, 9-1-2020)

H. **Street Drainage.** Except for inverted crown thoroughfares, no lowering of the standard height of street crown shall be allowed for the purposes of obtaining additional hydraulic capacity. Bridges and culverts in residential streets, shall be designed for the runoff from the one hundred (100) year frequency flow based on a fully developed watershed. shall not produce a headwater depth at the roadway greater than either twelve (12) inches above the roadway crown or any top of upstream curb elevation, whichever is lower. For bridges and culverts in streets other than residential areas, the one hundred (100) year headwater depth is limited to six (6) inches. Storm drain system shall be designed to meet the criteria listed in the Stormwater Technical Manual.

I. **Minimize Cut and Fill.** The layout of the street network, lots and building sites shall minimize the amount of cut and fill on slopes in accordance with the standards for cut and fill set forth in Section 6.1.2.2.

J. **Permit Required.** No person, individual, partnership, firm or corporation shall deepen, widen, fill, reclaim, reroute or change the course or location of any existing ditch, channel, stream or drainage without first obtaining a site permit and permits from applicable agencies (such as FEMA or the U.S. Army Corps of Engineers) having jurisdiction. The Responsible Official may, at his or her discretion, require preparation and submission of a FEMA or flood study for a proposed development if there are concerns regarding storm drainage on the subject property or upstream or downstream from the subject property. The costs of such study, if required, shall be borne by the developer.

K. **Conformance with the City's Stormwater Technical Manual.** All stormwater facilities, including those for low impact development, detention, retention or water quality, shall be designed by a licensed professional engineer in accordance with the City's Stormwater Technical Manual, including requirements for location, screening and fencing not inconsistent with this Chapter and applicable ordinances. All plans submitted to the Responsible Official for approval shall include a layout of the stormwater management system together with supporting calculations for the design of the system.

Section 3.9.1.2Velocity Attenuation and Surface Drainage Channels

A. **Surface Drainage Channels.** Surface drainage channels constructed or altered for drainage purposes shall be designed to minimize potential erosion and to increase the bottom width to flow depth ratio as follows:

1. Channel cross sections shall be trapezoidal in configuration;

2. Side slopes of channels shall be no steeper than four horizontal to one vertical; and

3. All constructed and altered drainage channels shall be stabilized and vegetated as soon as practicable after final grading.

4. Channel velocities shall be non-erosive.

B. Additional runoff velocity attenuation strategies and techniques detailed in the City of San Marcos Stormwater Technical Manual shall be utilized.

Section 3.9.1.3Impervious Cover Calculation and Limitations

Paved roads, sidewalks, parking areas, parking lots, buildings and other impermeable construction covering the natural land surface shall be considered impervious cover. The methods to be used to calculate the percent of impervious cover created by the development of a parcel or tract of land are described in the City Stormwater Technical Manual. Note that the area of impervious cover for a surface may be reduced based on data acceptable to the Responsible Official showing that the surface has a significant degree of permeability.

Section 3.9.1.4Erosion Prevention and Highly Erodible Soils.

Erosion prevention and restoration measures detailed in the City Stormwater Technical Manual shall be utilized to attain nature mimicking drainage objectives. Refer to the Technical Manual for a list of local soils that have a high potential for erosion based on Soil Conservation Service data.

Section 3.9.1.5Drainage Requirements During Construction

During construction, on-site drainage shall be maintained so that water surfaces are not increased upstream or downstream of the site when compared to pre-project conditions unless fully contained within a drainage easement or designated right-of-way.

Section 3.9.1.6Drainage Improvement Responsibility

A. Drainage improvements required by this Article shall be provided at the sole expense of the owner of the property to be developed, unless otherwise expressly provided to the contrary in a subdivision improvements agreement.

B. Drainage easements shall be provided to the public by the owner of property to be developed for the purposes of drainage master planning of all drainage improvements, open or enclosed, and all storm water flows to the limits of the one hundred (100) year floodplain as determined in accordance with anticipated fully-developed contributing area land use conditions and allowing continuous access for inspection, operation, maintenance and rehabilitation of all drainage improvements.

C. At the discretion of the Responsible Official, the owner of the property to be developed shall dedicate drainage improvements to the public in a right-of-way rather than a drainage easement.

D. In determining whether drainage improvements should be dedicated to the public, the Responsible Official shall take the following factors into consideration:

1. Drainage improvements associated with a single development shall remain private; and

2. Drainage improvements that serve streets or other public property or may serve multiple developments or provide regional detention/treatment shall be dedicated to the public.

E. Drainage easement and right-of-way widths shall be specified by the City as necessary for inspection and maintenance of facilities as well as to accommodate areas anticipated to be inundated by stormwater.

F. Full detention basin design may be deferred until the site development permit stage if the property owner submits a "request for detention deferral" demonstrating an understanding of the implications of such design deferral AND the following notes are placed on the subdivision plat AND supporting documentation is provided.

1. "Stormwater detention is required for this property. The engineer of record for this subdivision plat has estimated that an area of approximately _____ acres and a volume of approximately _____ acre feet will be required for this use. This is an estimate only and detailed analysis may reveal different requirements."

2. "No building permit shall be issued for this platted property until a stormwater detention system design has been approved by the City of San Marcos or applicable county if in the ETJ."

Section 3.9.1.7Drainage Improvements Maintenance Responsibility

A. Drainage improvements constructed or installed under this Article shall be maintained in accordance with the following:

1. Drainage improvements located in public rights- of-way that have been accepted by the City shall be maintained by the appropriate jurisdiction.

2. Drainage improvements located on private property with publicly dedicated easements shall be maintained by the property owner.

ARTICLE 10: PARKS AND OPEN SPACE

DIVISION 1: IN GENERAL

Section 3.10.1.1Purpose, Applicability and Exceptions

A. **Purpose.** It is the intent of this Article 10, to require the dedication and construction of parkland, that is directly related to maintaining the existing quality of life through access to high quality parkland and open space based on the following findings:

1. Recreational areas in the form of public parklands and other open spaces are necessary for the well-being of the residents of the City.

2. A reasonable connection exists between the development of residential property and the need for additional parkland to serve new residents of the community.

3. It is necessary and desirable to provide for dedication of land for the purposes of parks and open space to support new development at the earliest stage of the development process.

4. The City of San Marcos Parks Master Plan utilizes the National Recreation and Parks Association's guidelines for park system planning.

5. The National Recreation and Parks Association's guidelines are that neighborhood parks have a service area between one-quarter (1/4) to one-half (1/2) mile.

6. The National Recreation and Parks Association's guidelines for park system planning are that community parks have a service area between one-half (1/2) to three (3) miles.

7. The existing level of service for city parkland is thirty three (33) acres of parkland or open space per every one thousand (1,000) residents.

8. The construction or development of parkland and open space is more closely related to the number of users than the size of the parkland facility.

B. Applicability. This Article 10 shall apply under the platting procedures of Section 3.1.1.1 or the issuance of site development permits under Section 2.7.1.1 for areas inside the city limits and the City's ETJ.

C. The Responsible Official for parkland dedication and development is the Director of Parks and Recreation.

D. Exceptions. Parkland dedication requirements shall not apply:

1. To the subdivision of commercial, industrial or other non-residential lots;
2. Where such lots were previously subject to parkland dedication requirements; or
3. To the Downtown or Midtown Intensity Zones on the Preferred Scenario Map where fewer than 30 residential units are constructed or added.

Section 3.10.1.2Parkland Dedication

A. General Calculation of Required Land. The calculation of required parkland in accordance with the findings in Section 3.10.1.1A is calculated based on the number of units added through approval of a subdivision or site permit under Sec. Section 3.1.1.1 or Section 2.7.1.1 and is calculated according to the table and formula below:

Table 3.3 Calculation of Population

Development Type	Population
Single Family Detached, Attached, Duplex, or Manufactured Home	2.7 persons per unit
Multi-Family	2.1 persons per unit
Purpose Built Student Housing	1 person per bedroom or 2.1 persons per unit whichever is greater

Calculation of Acreage

5.7 Acres * (Population / 1,000)

B. Land Required in the Downtown and Midtown Intensity Zones. Residential or mixed use developments with 30 or more dwelling units shall provide a minimum of five percent (5%) of the site or lot as plazas that are either privately held and open to the public or dedicated as parkland.

(Ord. No. 2019-45, 12-17-19)

C. Parkland and Open Space Dedication. Land proposed for dedication as public parkland or open space shall be reviewed by the Responsible Official and may be accepted by the parks board based on the findings in Sec. Section 3.10.1.1A and the criteria identified in Section 3.10.1.2D.

D. Criteria for Parkland and Open Space. The Parks Board should consider the following criteria when accepting land for parks or open space.

1. A minimum of fifty percent (50%) of the proposed land is determined by the parks board as acceptable for use as an area of active recreation. Active recreation sites do not typically include the following:
   - **a.** Drainage ditches;
   - **b.** Detention ponds;
   - **c.** Power lines easements;
   - **d.** Slopes greater than fifteen percent (15%);
   - **e.** Floodway; and
   - **f.** All other areas that are determined by the Parks Board as insufficient for active recreation based on the nature or size of the land proposed for dedication.
2. A minimum of 50% of the parkland required under this ordinance shall be dedicated to the City of San Marcos as a neighborhood or regional park under Section 3.10.2.1. The remaining 50% may be owned and managed by one of the entities under Section 3.10.1.6.
3. All parkland and open space dedication shall be consistent with the goals, objectives and policies of the City's adopted parks plan (as amended).
4. The dedicated parkland conforms with the intent, specifications, typical features and parking requirements of one of the identified park types in Section 3.10.2.1.

E. Park Access. Parkland shall be easily accessible for the public and open to public view so as to benefit area residents, enhance the visual character of the City, protect public safety, and minimize conflicts with adjacent land uses. Public park access shall meet the following requirements:

1. Access shall be required based on the access requirements of each park type identified in Section 3.10.2.1.

2. Access requirements shall be calculated based on the boundary of a parkland lot located adjacent to a parkway, boulevard, avenue, street or park road.

Section 3.10.1.3Fee in Lieu of Dedication.

A. A cash fee for the purchase of off-site parkland may be paid in lieu of all or part of the dedication of on-site parkland in accordance with the criteria below.

B. The cash fee in lieu of parkland dedication shall be based on the following formula:

$$\text{Parkland Cost Factor} \times \text{Number of Parkland Acres}$$

C. "Parkland Cost Factor" is based on the average purchase price to the City for acquiring an acre of parkland.

D. All fees in lieu of dedication shall be paid prior to the recordation of the final plat or prior to the issuance of a site permit where a plat is not required.

E. Fees in lieu of dedication may be accepted if one of the following conditions apply:

1. If requested by the subdivider and reviewed by the Responsible Official, the Parks Board may allow the option of the payment of a fee over the dedication of land within the subdivision; or

2. Upon review and recommendation of the Responsible Official, the Parks Board determines that there is no land suitable for dedication based on the criteria in Section 3.10.1.2D.

3. The total amount of the fee-in-lieu is less than $50,000 and the Responsible Official makes a determination based on the Parks Master Plan and the findings in Section 3.10.1.1A that dedication is not desired in this location.

Section 3.10.1.4Parkland Development Fee

A. Except as provided in Section 3.10.1.1D, the developer shall bear a proportional cost of parkland improvements required for a neighborhood park.

B. The parkland development fee is set by City Council and is based on the current construction costs of a neighborhood park as demonstrated in the calculation methodology below and the findings in Section 3.10.1.1.

C. **Development Offsets.** The developer's cost to provide park facilities shall offset the requirement for a parkland development fee.

1. The following improvements in a park may be credited towards parkland development:

   a. Typical facilities listed in Section 3.10.2.1.

   b. Site grading and preparation.

   c. Landscaping.

   d. One half the cost of adjacent perimeter roads in excess of 50% of the parkland lot boundary.

   e. LID or green infrastructure facilities located within the development that qualify as an amenity under Section 7.2.4.1.

2. Parkland development shall be approved as part of a public improvement construction plan in accordance with Section 3.4.1.1 prior to the approval of the final plat and shall meet city park construction requirements.

3. Prior to the City's acceptance of the parkland improvements, the subdivider shall deliver a warranty deed to the City conveying fee simple title of all parkland or open space shown on the final plat.

D. Parkland development fee:

1. For purposes of determining the development fee under Section 3.10.1.4:

$$\text{Park Development Cost per Unit} = \frac{\text{Park Development Cost Factor}}{\text{Park Facilities Level of Service}}$$

2. Where:

   a. "Park development cost factor" is determined by the City Council based on the average cost of developing an acre of parkland

   b. "Park facilities level-of-service" is:

$$\frac{\text{City Population}}{\text{Number of Developed Parks}}$$

c. Where "City Population" is determined by the city on an annual basis and "Number of Developed Parks" is the total number of parks developed with a recreational amenity or trail, as determined by the parks director prior to adoption of the annual fee ordinance by the City Council.

E. **Permit Required for Park Site Manipulation.** No individual, partnership, firm, or corporation shall deepen, widen, fill, reroute or change the course or location of any existing ditch, channel, stream or drainage way proposed for a parkland or open space without first obtaining a permit approved by the Responsible Official and any other agency having jurisdiction.

F. **Parkland and Open Space Improvements.** Parkland and open space improvements shall be consistent with the intended use of the parkland or open space and the overall goals, policies and objectives of the City, as stated in the Comprehensive Master Plan and the Parks Master Plan

Section 3.10.1.5Fee Payment and Expenditure

A. **Parkland Benefit Areas.** The City shall establish a separate parkland and open space account. The funds in the account shall be earmarked solely for the acquisition or development of parkland in accordance with Section 3.10.2.1 either in the same parkland benefit area in which the subdivision is located, or for regional parks and open space that will benefit all of the citizens of the City. The City shall expend cash contributions within ten years of the date any such contribution is made.

Section 3.10.1.6Ownership and Management

A. **Ownership.** Required parkland and any other common open space or area must be owned and maintained by one of the following entities:

1. **City of San Marcos.** Publicly dedicated parkland shall be owned and maintained by the City of San Marcos.

2. **Land Conservancy or Land Trust.** A bona fide land conservancy or land trust with legal authority as determined by the City Attorney may own the open space. The responsibility for maintaining the open space and any facilities may be borne by a land conservancy or land trust.

3. **Homeowners' Association.** A homeowners' association representing residents of the development may own the open space. The homeowners' association must have lien authority to ensure the collection of dues from all members. The responsibility for maintaining the open space and any facilities is borne by the homeowners' association.

4. **Public Easement.** Privately held open space shall be made permanently open to the public through an easement dedicated to the public and approved by the City Attorney.

B. **Conveyance.** The conveyance of parkland or other common open space shall be in accordance with the following:

1. Parkland or open space shall be conveyed to the City, land conservancy or homeowners' association in fee simple without any encumbrances except drainage, greenway and utility easements. Title to the real property shall be conveyed upon the recordation of the plat.

2. Parkland or open space shall be designated on the final plat and included in a separate lot, or multiple lots and include the following:

a. A statement on the plat indicating the conveyance or dedication of parkland or open space; and

b. The acreage of the land included in the dedication.

C. **Dissolution.** If the homeowner's association is dissolved, the open space may be offered to another entity who shall be responsible for the maintenance and upkeep of the open space. If no other offer is accepted, the open space shall be offered to the City and if accepted, deeded to the City.

DIVISION 2: PARKLAND TYPES

Section 3.10.2.1Summary

Table 3.4 Parkland Types

Regional Park Types	Illustration
A. Greenways: A natural preserve available for unstructured recreation and bicycle or pedestrian transportation. Its landscape shall consist of paths and trails, meadows, rivers or streams, woodland and open shelters, all naturalistically disposed. Open space or greenways may be lineal, following the trajectories of natural corridors. The minimum width shall be 300 feet. Greenways shall be dedicated to the public.	
B. Open Space: An open area, available for unstructured recreation. Open space may be spatially defined by landscaping rather than building frontages. Its landscape shall consist of lawn and trees, naturalistically disposed. The minimum size shall be 30 acres.	
C. Community Park: Community Parks typically contain a specialized amenity such as athletic fields. Community parks are designed to serve the recreational needs of the entire city and may serve residents of other nearby populations. The minimum size shall be 10 acres. A community park shall be dedicated to the public.	

Neighborhood Park Types	Illustration
D. General Neighborhood Park: A general neighborhood park typically includes open play areas, playgrounds, courts, practice athletic fields, and is available for civic purposes and gatherings. A general neighborhood park shall be spatially defined by streets and building frontages. The minimum size shall be 5 acres.	
E. Pocket Park: An open space designed and equipped for passive or active recreation. Pocket parks include a wide array of facilities and are designed as smaller gathering spaces within a neighborhood area. A pocket park may be spatially defined by streets or building frontages. There shall be no minimum or maximum size.	
F. Plaza: An open space available for civic purposes and commercial activities. A plaza shall be spatially defined by building frontages. Its landscape shall consist primarily of pavement. Trees are optional. Plazas should be located at the intersection of important streets. There shall be no minimum or maximum size.	
G. Playground: An open space designed and equipped for the recreation of children. A playground should be fenced and may include an open shelter. Playgrounds shall be interspersed within residential areas and should be located within 1/2 mile of all residential units. Playgrounds may be included within other regional or neighborhood parks. There shall be no minimum or maximum size.	

H. Community Garden:
A grouping of garden plots available for small-scale cultivation. Community garde
accommodate individual storage sheds. Running water is required. Community G
within residential areas and may be placed within a block or included within other
There shall be no minimum or maximum size.

Section 3.10.2.2Greenway

Specifications

Size	Minimum width 200' on average
Ownership and Management	City; Land Conservancy or Land Trust including easements
Character	Passive or Active

Typical Facilities

- Passive and active recreation
- Community gardens
- Playgrounds and play structures
- Multi-use paths
- Accessory structures
- Seating and signage

Parking

No on-site parking is required.

Access

Parkland boundary along public ROW	70% min.

Section 3.10.2.3Open Space

Specifications

Size	30 acres min.
Ownership and Management	City; Land Conservancy or Land Trust
Character	Passive

Typical Facilities

- Passive recreation
- Paths and trails
- Accessory structures
- Seating and signage

Parking

No on-site parking is required.

Access

Parkland boundary along public ROW	25% min.

Section 3.10.2.4Community Park

Specifications

Size	10 acres min.
Ownership and Management	City
Character	Active

Typical Facilities

- Civic buildings
- Athletic fields
- Accessory structures
- Specialized amenities
- Water features
- Seating and signage

Parking

On-site parking is required based on the facilities provided (Section 7.1.2.1). On street parking adjacent to the parkland lot may be counted.

Access

Parkland boundary along public ROW	70%

Section 3.10.2.5General Neighborhood Park

Specifications

Size	5 ac min.
Ownership and Management	City or HOA
Character	Passive or Active

Typical Facilities

- Passive recreation
- Paths
- Accessory structures
- Water features
- Athletic fields and courts
- Water features
- Play structures
- Garden plots
- Running water
- Lighting
- Civic buildings
- Seating and signage

Parking

On-site parking is required based on the facilities provided (Section 7.1.2.1). On street parking adjacent to the parkland lot may be counted.

Access

Parkland boundary along public ROW	70% min.

Section 3.10.2.6Pocket Park

Specifications

Size	No min. No max.
Ownership and Management	HOA
Character	Passive or Active

Typical Facilities

- Passive recreation
- Paths
- Accessory structures
- Water features
- Athletic fields and courts
- Play structures
- Running water
- Lighting
- Civic buildings
- Seating and signage

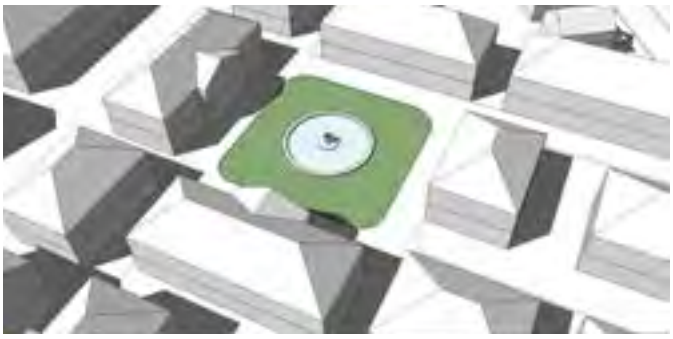
Parking

On-site parking is required based on the facilities provided (Section 7.1.2.1). On street parking adjacent to the parkland lot may be counted.

Access

Parkland boundary along public ROW	50' min.

Section 3.10.2.7Plazas



Specifications

Size	No min. No max.
Ownership and Management	City; HOA; Private with public access easement.
Character	Active

Typical Facilities

- Water features
- Hardscaping
- Public art
- Water features
- Accessory structures
- Civic buildings
- Seating and signage

Parking

No on-site parking is required.

Access

Parkland boundary along public ROW	50' min.

Legend: NA = Not Applicable

Section 3.10.2.8Playground

Specifications

Size	No min. No max.
Ownership and Management	City; HOA
Character	Active

Typical Facilities

- Play structures
- Running water
- Shade structures
- Seating and signage

Parking

No on-site parking is required.

Access

Parkland boundary along public ROW	50' min.

Section 3.10.2.9Community Garden

Specifications

Size	No min. No max.
Ownership and Management	City; HOA
Character	Active

Typical Facilities

- Active recreation
- Garden plots
- Accessory structures
- Running water

Parking

No on-site parking is required.

Access

Parkland boundary adjacent to street	Not Required

Legend: NA = Not Applicable

CHAPTER 6. ENVIRONMENTAL REGULATIONS

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ARTICLE 1: STORMWATER MANAGEMENT

DIVISION 1: GENERAL

Section 6.1.1.1Applicability, Exceptions, Authority and Findings

A. Applicability

1. The standards of this Article apply to the Development of all land within the City limits and within the City's Extraterritorial Jurisdiction (ETJ) and are intended to apply with uniformity throughout the City's ETJ Development including clearing or rough cutting of vegetation or grading or scarifying of the top soil.

2. **New Development & Redevelopment.** Any new impervious cover must comply with the environmental standards of this code. For redeveloped sites, this includes new impervious cover that replaces existing impervious cover. New impervious cover must comply regardless of whether the same amount or more existing impervious cover is removed.

3. **Renovations or Repairs.** An existing building or site may be repaired, maintained or modernized without providing additional environmental protections, provided there is no increase in impervious cover.

4. **Increases in Impervious Cover**

   a. When an existing building has an increase in new impervious cover area, up to 25% cumulatively, these environmental standards shall apply to the new impervious cover only.

   b. When an existing site has an increase in new impervious cover more than 25% cumulatively, both the existing impervious cover and new impervious cover must conform to the environmental standards of this code.

(Ord. No. 2019-45, 12-17-19)

B. Exceptions

1. The clearing of underbrush and the maintenance or removal of individual trees on a parcel of land where development has already occurred; provided, however, that the clearing or removal is not for the purpose of construction.

2. The hand clearing of underbrush and the trimming of trees necessary to allow sufficient access to the property for planning and engineering purposes.

3. Agricultural activities or related maintenance.

C. Authority. The requirements of this Article are authorized under Tex. Water Code Sections 16.316 and 26.177(b).

D. Findings. The City Council makes the following findings:

1. The City Council is a trustee of the natural environment of the San Marcos River, the Edwards Aquifer, the Balcones Escarpment, portions of the Blanco River, portions of the Texas Hill Country and the related watersheds for future generations of citizens of the City and surrounding areas.

2. Development activities within the City and within its Extraterritorial Jurisdiction can result in irreparable damage to the quality of water in the San Marcos River and Edwards Aquifer.

3. Development activities within the City and within its Extraterritorial Jurisdiction can damage the Balcones Escarpment and portions of the Texas Hill Country through increased erosion, alterations to natural drainage, unregulated vegetation removal, and installation of impervious cover.

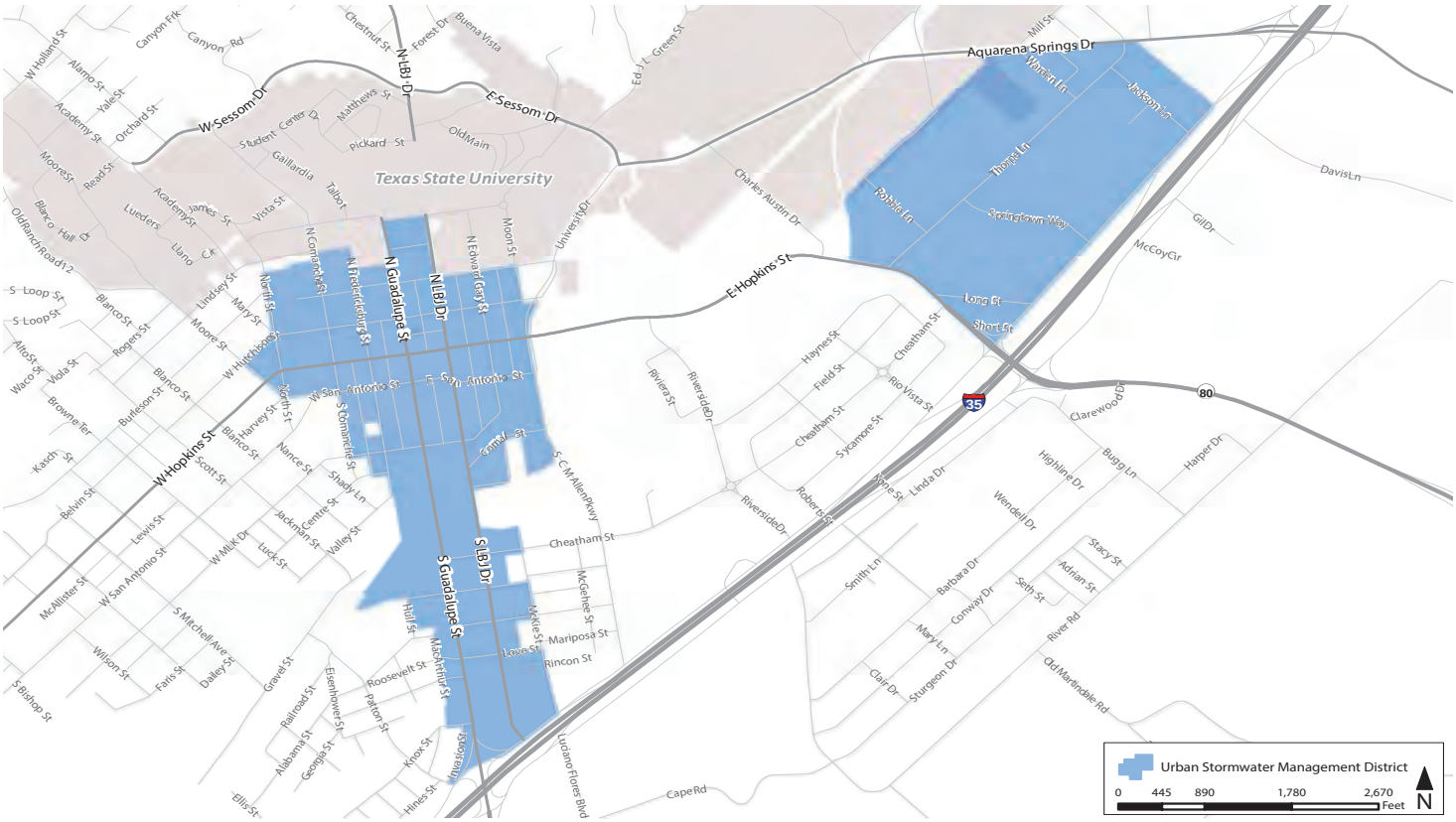
4. The San Marcos River, the Blanco River, the Edwards Aquifer, and other rivers, streams and waterways must be protected in order to preserve the health, safety and welfare of the citizens of the City and surrounding areas.

5. The continued economic growth of the City and the surrounding area is encouraged by a pleasing natural environment, protection of watersheds and groundwater, and recreational opportunities in close proximity to the City and smart development patterns that are compact and walkable.

6. The City Council desires to adopt site development rules and regulations for development within the City and within its Extraterritorial Jurisdiction for the purpose of protecting the San Marcos River, the Blanco River, the Edwards

Aquifer, rivers, streams and waterways from the effects of water quality deterioration related to development activities.

FIGURE 6.1 URBAN STORMWATER MANAGEMENT DISTRICT BOUNDARY



Section 6.1.1.2Urban Stormwater Management District

A. Intent. The Intent of the urban stormwater management district is to:

1. Provide for appropriate stormwater management in areas designated as high intensity zones on the preferred scenario map.

2. Provide for efficient regional stormwater management controls within the urban watershed area.

3. Support the efforts of the Edwards Aquifer Habitat Conservation Plan and the Watershed Protection Plan to protect the San Marcos River by:

   a. Protecting the biological integrity of the river habitat;

   b. Managing stormwater runoff rate, volume, and velocity;

   c. Reducing stormwater pollution concentrations and loads;

   d. Preventing the increase of soil deposition within the river, and

   e. Preventing the increase of river bank erosion.

B. Standards. Properties located within the urban stormwater management district established on the map above are eligible for waivers from requirements under Section 3.9.1.1(F) and Section 6.1.4.1 when the following standards are met:

   a. No adverse impacts are demonstrated through drainage analysis; and

   b. A payment is made into the stormwater management fund in accordance with Section 6.1.1.3.

C. Waiver for Property Outside of the District. Properties located outside the urban stormwater management district that are significantly constrained may be eligible for waivers from requirements under Section 3.9.1.1(F) and Section 6.1.4.1 with the approval of the Responsible Official and when the standards under Section 6.1.1.2(B) are met.

(Ord. No. 2020-60, 9-1-2020)

Section 6.1.1.3Stormwater Management Fund

A. The amount of payment into the Stormwater Management Fund is set by Council and is fixed by a resolution adopted by the City Council in included in the City's Development Fee Schedule.

B. Payments collected by the City shall be kept separate from other revenue of the City. Funds can only be used within the same watershed where they were collected and shall be dedicated solely to the purchase of land or construction of the following:

1. Retrofit and regional water quality Best Management Practices;
2. Regional detention and floodplain storage; or
3. Projects to increase flow conveyance.

C. Any development required to implement the stormwater fee or approved alternatives shall run with the land and any subsequent modification of the parcel that requires more site or building area shall require subsequent action to satisfy the stormwater management fee requirement.

Section 6.1.1.4Compliance with City and TCEQ Rules

A. All temporary and permanent Best Management Practices (BMPs) required in the approved watershed protection plan must be constructed, operated and maintained in accordance with the standards, criteria and requirements in the Section 86.531 of the San Marcos MS4 Ordinance found in Chapter 86, Article 8, Division 2 of the San Marcos City Code, the City's Stormwater Technical Manual, TCEQ Edwards Aquifer Protection Program rules and the TCEQ Technical Guidance on Best Management Practices, RG 348.

B. Property owners responsible for maintenance of permanent BMPs, as determined in accordance with Section 3.9.1.7, shall maintain, repair and report on such activities in accordance with the San Marcos MS4 Ordinance, Section 86.531.

C. The development applicant shall provide the City a copy of TCEQ's approval of the Water Pollution Abatement Plan prior to receiving a City development permit.

Section 6.1.1.5Calculation of Impervious Cover

A. Submittal of a series of applications prohibited. A person may not submit a series of applications for approval of any type of watershed protection plan for distinct sites on a single tract of property nor divide such land into smaller parcels for the purpose of increasing the impervious cover limit on the property. If the Responsible Official determines that an application involves a violation of this subsection, the Responsible Official will apply the impervious cover limitation for the entire tract of property, including those portions already developed, to the application.

B. Computation of Impervious Cover. The measurement of impervious cover shall be in accordance with Section 3.9.1.3 of this Development Code. Pervious cover credit will not be allowed for pervious pavements on the EARZ.

DIVISION 2: SITE PLANNING

Section 6.1.2.1Natural Drainage

A. Drainage Patterns. Natural drainage patterns shall be preserved whenever possible, and the loss of the pervious character of the soil should be limited in order to prevent erosion and attenuate the impact of contaminants collected and transported by stormwater. Open surface drainage through grass-lined swales is preferred. Drainage objectives can best be accomplished by leaving portions of a subdivision in an underdeveloped and natural state and located to receive runoff from the developed areas for purposes of unchannelized overland flow. The use of green streets utilizing drainage BMPs such as bioretention, pervious pavers, and bioswales shall be utilized whenever possible.

B. Storm Sewers. Construction of enclosed storm sewers and impervious channel linings are discouraged. If stormwater drainage systems and/or culverts are used, these systems shall be designed to mitigate their impact on water quality through the use of approved control strategies to control

sediment, neutralize contaminants and dissipate energy by the use of multiple smaller outlets, whenever practical, by locating discharges to maximize overland flow and by any other strategies that will accomplish the objectives defined and discussed in this Article.

Section 6.1.2.2Cut and Fill Standards

The layout of the street network, lots and building sites shall minimize the amount of cut and fill on slopes in accordance with the standards for cut and fill identified in this Section.

A. Cuts. Cuts or other excavation on a tract of land may not exceed four feet of depth, except:

1. In the CD5 or CD5D zoning districts;
2. In a street right-of-way;
3. For cuts within the perimeter of a building footprint and temporary cuts necessary during construction of a building foundation within a building footprint;
4. For utility construction or a wastewater drain field if the area is restored to natural grade; or
5. In a state permitted sanitary landfill or a sand or gravel excavation located in the Extraterritorial Jurisdiction, if:
   - **a.** The cut is not in a water quality or buffer zone;
   - **b.** The cut does not hydrologically alter for the worse a 100-year floodplain;
   - **c.** The landfill or excavation has an erosion and restoration plan approved by the City; and
   - **d.** All other applicable City Code provisions are met.

B. Fill. Fill on a tract of land may not exceed four feet in depth, except:

1. In the CD5 or CD5D zoning districts;
2. In a street right-of-way;
3. Under a foundation with sides perpendicular to the ground, or with pier and beam construction;
4. For utility construction or a wastewater drain field;
5. In a state-permitted sanitary landfill located in the Extraterritorial Jurisdiction, if:
   - **a.** The fill is derived from the landfill operation;
   - **b.** The fill is not placed in a water quality zone, buffer zone, or a 100-year floodplain;
   - **c.** The landfill operation has an erosion and restoration plan approved by the City, and
   - **d.** All other applicable City Code provisions are met.

C. Cut area surfaces and fill areas must be restored and stabilized in accordance with the City Stormwater Technical Manual.

Section 6.1.2.3Relief from Cut and Fill Standards

A. Administrative Adjustment. The Responsible Official may approve an administrative adjustment to a requirement of Section 6.1.2.2 for a water quality control or stormwater facilities, or for a cut or fill of not more than eight feet in accordance with Section 2.8.5.1 subject to the criteria below.

(Ord. No. 2019-45, 12-17-19)

B. Criteria. The following criteria are used to determine a request for relief from the cut and fill requirements.

1. The post-construction layout is integrated with natural contour lines.
2. Enhanced measures identified in the City Stormwater Technical Manual are used to manage construction and post-construction stormwater runoff quality to levels that would be the same or better quality as would result from a cut or fill of not more than four feet.

C. Alternative Compliance. An alternative compliance request for a cut or fill greater than eight feet may be approved by the City Council in accordance with Section 2.8.4.1 and subject to the Criteria in Sec Section 6.1.2.3(B)2.

Section 6.1.2.4Ecological Preservation along the San Marcos River

A. Stabilization of eroding Creek banks. Stabilization of eroding creek banks is permitted in order to protect threatened property, but only as approved by appropriate Federal and State

agencies and the Responsible Official. All these projects shall be designed to stabilize existing conditions only.

B. Excavation or filling. Excavation or filling shall be allowed only in accordance with Chapter 39 of the San Marcos City Code, and the following additional requirements:

1. The excavation or filling is necessary for the purpose of structural engineering or is in the area where a structure will be completed, including a building foundation; or

2. Excavation or filling, as demonstrated and certified by a registered professional engineer, will improve the water quality of the runoff and/or stabilize an existing area of erosion and will continue the maintenance of flood and flow characteristics.

Section 6.1.2.5Steep Slopes

The restrictions on impervious cover described in the table below shall apply in addition to impervious cover maximums identified in Chapter 4.

Criteria	Impervious Cover (Max)
Slopes of 15% - 25% gradient	35%
Slopes of > 25% gradient	20%

DIVISION 3: EROSION AND SEDIMENTATION CONTROL FROM CONSTRUCTION SITES

Section 6.1.3.1Erosion and Sediment Control Standards

A. The erosion and sedimentation control techniques for construction activities detailed in the San Marcos MS4 Ordinance in Chapter 86, Article 8, Division 2 of the San Marcos City Code and the City Stormwater Technical Manual shall be utilized to reduce environmental impacts from development and must be installed prior to commencing construction; be maintained during construction; and not be removed until vegetation is established and the construction area is stabilized.

B. All temporary erosion and sedimentation controls for projects within the EARZ must meet the applicable standards and requirements of the TCEQ Edwards Aquifer Protection Program, Complying with the Edwards Aquifer Rules, Technical Guidance on Best Management Practices, RG – 348, Chapter 2.

Section 6.1.3.2Applicability

A. In addition to the projects addressed in the San Marcos MS4 Ordinance in Chapter 86, Article 8, Division 2 of the San Marcos City Code, temporary erosion and sedimentation controls are required to be installed and maintained for the following activities that are or may not be covered by any type of watershed protection plan in the Edwards Aquifer Recharge Zone, Transition Zone, Contributing Zone within the Transition Zone or San Marcos River Protection Zone:

1. The construction or expansion of one single family home or accessory structure on a legally platted lot, or on an unsubdivided tract of land at least two acres in size, for which a legal description was contained in a deed recorded before March 1, 2000.

2. The installation or maintenance of utility lines by a governmental entity.

3. Landscaping activities involving more than 5,000 square feet of area of landscape installation.

4. The resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces.

B. Erosion and Sediment Control Monitoring. The Responsible Official will monitor stormwater discharges from these activities to evaluate the adequacy of the temporary erosion and sedimentation control measures. The Responsible Official may require the person performing the activity to use additional controls if the Responsible Official determines that the controls used by the person are inadequate to protect water quality.

DIVISION 4: POST-CONSTRUCTION STORMWATER PERFORMANCE STANDARDS

Section 6.1.4.1Stormwater Quality and Stream Protection

A. Water Quality Volume (WQV). Water Quality Volume is based on the amount of runoff produced over the developed area from the listed rainfall amount identified in Section 6.1.4.1(C).

1. WQV shall be retained or detained on-site. Drawdown time shall be 48-hours.
2. The 90th percentile rainfall event for San Marcos is 1.6 inches
3. The 85th percentile rainfall event for San Marcos is 1.25 inches.

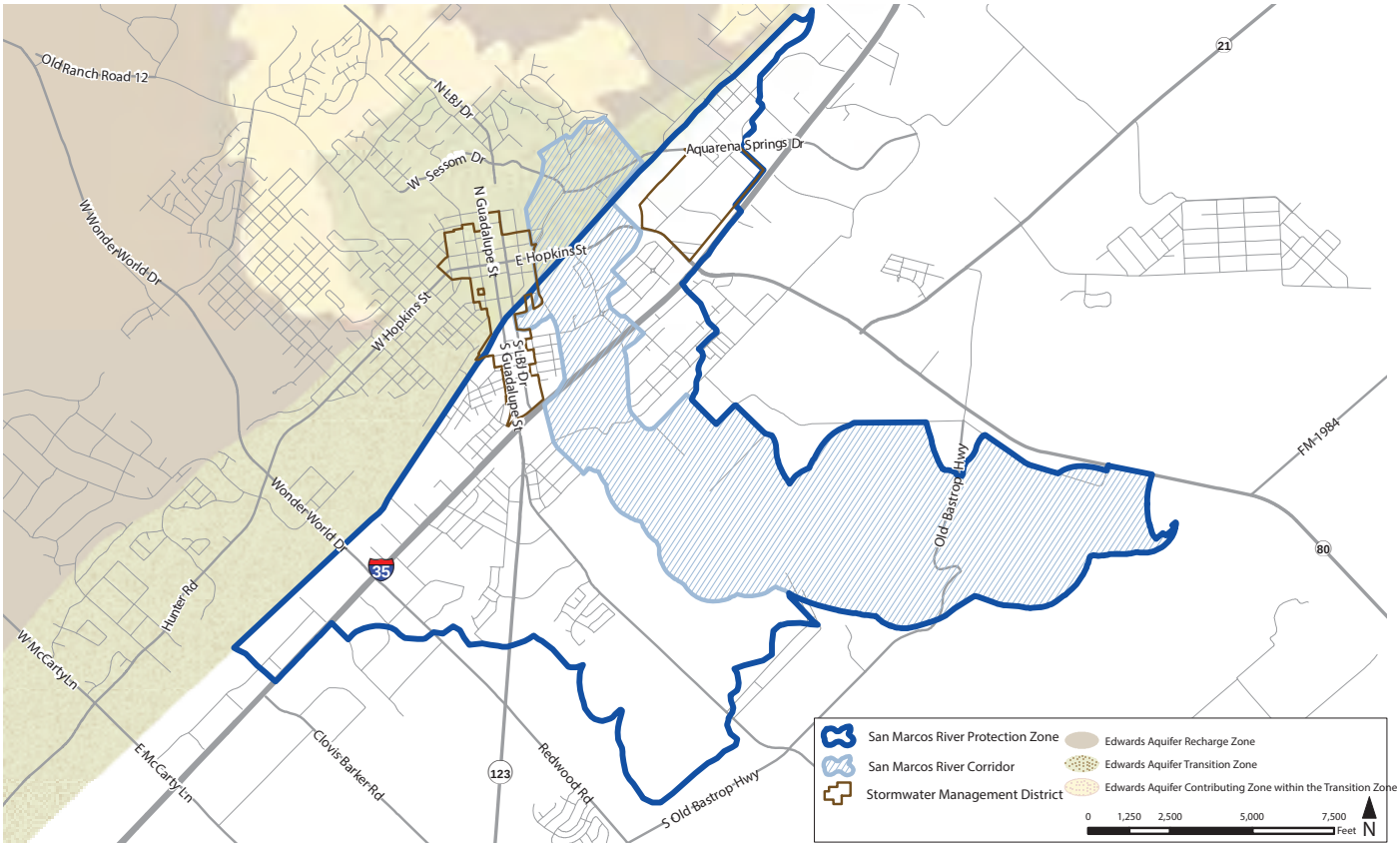
B. Water Quality Volume Treatment. Required water quality volume treatment level for different locations is listed in the table below and represents the percent reduction in the increased total suspeneded solids load.

C. Water Quality Volume and Treatment Level Table

Table 6.1 Water Quality Volume and Treatment Level Table

Location	WQV Amount Design Rainfall	WQV Treatment Level
Edwards Aquifer Recharge Zone	1.60”	89%
Edwards Aquifer Transition Zone and Contributing Zone within the Transition Zone	1.25”	85%
San Marcos River Protection Zone	1.25”	80%
San Marcos River Corridor	1.60”	89%

FIGURE 6.2 ENVIRONMENTAL PROTECTION ZONES



D. Exceptions to stormwater quality and stream protection volume requirements are allowed under the following conditions provided that disconnected impervious cover and treatment through vegetative filter strips or similar means is included:

1. evelopment applications proposing solely the construction or expansion of a single family home.

2. Plats of four (4) lots or less where the lots subdivided from the parent parcel do not exceed 0.5 acres each, are restricted by zoning or deed to 65% impervious cover or less, and are served by an existing street. An exemption is not allowed for the submittal of a series of plats of four (4) lots or less with the intention of producing a tract that is greater than four (4) lots.

(Ord. No. 2020-60, 9-1-2020)

Section 6.1.4.2Flood Control

Refer to Chapter 3, Article 9: Stormwater Collection and Drainage Conveyance Systems for flood control performance standards.

ARTICLE 2: ENHANCED PROTECTION ZONES

DIVISION 1: GENERAL

Section 6.2.1.1Purpose, Applicability and Exceptions

A. **Purpose.** The purpose of the standards in this Division are to protect water quality in more sensitive areas and to prevent flood damage throughout the City and its Extraterritorial Jurisdiction.

B. **Applicability.** This Article applies to development affecting any waterway including the Blanco and San Marcos Rivers located within the City or its Extraterritorial Jurisdiction unless otherwise stated in this Development Code and except as follows:

C. **Exceptions.** This Article does not apply to the following:

1. Any waterway having a drainage basin of less than 50 acres outside the EARZ, Transition Zone, and Contributing Zone within the Transition Zone and 5 acres within the EARZ, Transition Zone, and Contributing Zone within the Transition Zone measured upstream from the proposed development;

2. The construction of barns or other accessory structures related to agricultural uses.

D. **Designation required.** The water quality zones and buffer zones required by this Article shall be designated when a plat is required for a development, and shall be shown on all associated watershed protection plans, plats, site permits, and building plans. Unless required by the Responsible Official to be dedicated as a flowage easement and dedicated for public maintenance, water quality zones and buffer zones shall be privately held and maintained.

DIVISION 2: ZONE DESIGNATION

Section 6.2.2.1Water Quality Zones

A. A water quality zone shall be established for each waterway. Water quality zone have been predetermined by the City for certain waterways. A map of such predetermined water quality zones is on file with the City's Planning and Development Services Department and is available upon request. For

waterways not associated with a predetermined water quality zone by the City, the following options are available:

1. **FEMA-mapped Option.** For any waterway with a FEMA-defined floodway, a water quality zone shall be established 100 feet in width, measured from the boundary of the defined floodway on each side of the waterway if located outside the EARZ, or as all land within a distance of 100 feet from a bank of the San Marcos River or a side channel that returns to the main channel, whichever is greater, but shall not exceed the width of the 100-year floodplain. For any waterway with a FEMA-mapped detailed study floodplain, the area of the 100-year floodplain shall be the water quality zone if located within the EARZ.

2. **Waterway Centerline Offset Option**

   a. **Sub-minor Waterways.** Waterways draining five or more acres but less than 50 acres but, excluding roadside swales, shall have a minimum Water Quality Zone width of 25 feet on each side of the Waterway centerline. These are established within the EARZ, Transition Zone, and Contributing Zone within the Transition Zone only.

   b. **Minor Waterways.** Waterways draining 50 or more acres but less than 250 acres shall have a minimum water quality zone width of 50 feet on each side of the waterway centerline.

   c. **Intermediate Waterways.** Waterways draining 250 or more acres but less than 1000 acres shall have a minimum water quality zone width of 100 feet on each side of the waterway centerline.

   d. **Major Waterways.** Waterways draining more than 1000 acres shall have a minimum water quality zone width of 200 feet on each side of the waterway centerline.

3. **Floodplain Study Option**

   a. The water quality zone shall be defined as the 100-year floodplain boundary based on fully developed watershed paralleling each side of the waterway. The 100-year floodplain shall be based on modeling approaches as approved by the Responsible Official.

(Ord. No. 2020-60, 9-1-2020)

Section 6.2.2.2Buffer Zones

A. A buffer zone shall be established for each waterway. Buffer zones have been predetermined by the City for certain waterways. A map of such buffer zones is on file with the City's Planning and Developmetn Services Department and is available upon request. For waterways not associated with a predetermined buffer zone by the City, the following options are available:

1. **FEMA Mapped Option.** For any waterway with a FEMA-defined floodway outside the EARZ or FEMA-mapped detailed study floodplain inside the EARZ, a buffer zone shall be established 100 feet in width, measured from the outer boundary of the water quality zone established in Section 6.2.2.1, on each side of the waterway. The combined width of the water quality zone and the buffer zone shall not exceed the width of the 100-year floodplain if located outside the EARZ.

2. **Non FEMA Mapped Option.** For applicable waterways that do not have floodways officially mapped by FEMA, a buffer zone shall be established 25 feet in width for sub-minor waterways, 50 feet in width for a minor waterway and 100 feet in width for intermediate and major waterways, measured from the outer boundary of the water quality zone established in Section 6.2.2.1, on each side of the waterway. The combined width of the water quality zone and buffer zone shall not exceed the width of the 100-year floodplain based on a detailed study if located outside of the EARZ.

3. **San Marcos River Corridor.** The buffer zone for the San Marcos River Corridor is established in the map Section 6.1.4.1.

(Ord. No. 2020-60, 9-1-2020)

Section 6.2.2.3Sensitive Feature Protection Zones

A. Sensitive Feature Protection Zones Established. A sensitive feature protection zone shall be established around each sensitive feature in the Edwards Aquifer Recharge Zone, Edwards Aquifer Transition Zone, and Contributing Zone within the Edwards Aquifer Transition Zone. Unless an applicant submits an enhanced geologic assessment of a feature in accordance with Section 6.3.2.1(D), or an enhanced

topographic information in accordance with subsection (c) of this Section, the area of the zones shall be determined as follows (all measurements are to be made horizontally):

1. Around a Minor Recharge Feature, the zone shall extend 50 feet around the perimeter of the feature, and an additional 25 feet on the upstream side of the feature.

2. Around a Moderate Recharge Feature, the zone shall extend 100 feet around the perimeter of the feature, and an additional 50 feet on the upstream side of the feature.

3. Around a Major Recharge Feature, the zone shall extend 200 feet around the perimeter of the feature, and an additional 100 feet on the upstream side of the feature.

B. **Enhanced Geologic Assessments.** If an applicant obtains the Responsible Official's approval of an enhanced geologic assessment for a feature in accordance with Section 6.3.2.1(D), the area of the sensitive feature protection zone for a feature shall be the area identified by the assessment as contributing significantly to recharge through the feature.

C. **Enhanced Topographic Information.** If an applicant submits enhanced topographic information for a site, with contour intervals of two feet or less, the sensitive feature protection zone shall extend 25 feet around the perimeter of the sensitive feature and include the area within the following distance from the perimeter that is identified on the enhanced topographic survey as draining towards the perimeter around the feature:

1. For a minor recharge feature, 50 feet.

2. For a moderate recharge feature, 125 feet.

3. For a major recharge feature, 275 feet.

(Ord. No. 2020-60, 9-1-2020)

DIVISION 3: IMPERVIOUS COVER AND DEVELOPMENT LIMITATIONS WITHIN WATER QUALITY AND BUFFER ZONES

Section 6.2.3.1General

A. **Point Discharges.** New point discharges of runoff into water quality or buffer zones may be required to be dissipated to sheet flow conditions throughout the zone.

B. **Restricted Chemicals.** The use of fertilizers and pesticides shall be prohibited within water quality or buffer zones.

C. **Individual Wastewater Collection and Disposal Systems.** For development within the Edwards Aquifer Recharge Zone, the use of septic tanks, holding tanks, evapotranspiration units, cesspools or other private or individual sewage disposal systems shall not be allowed in water quality or buffer zones.

Section 6.2.3.2Water Quality and Buffer Zones outside the Edwards Aquifer Recharge Zone

A. **Water Quality Zone.** No impervious cover is allowed in a water quality zone except for those cases listed in Section 6.2.3.5(B).

B. **San Marcos River Corridor (SMRC).** The maximum impervious cover within the SMRC is 30%. Impervious cover cannot be increased with mitigation in the SMRC.

C. **Buffer Zones.** The maximum impervious cover in buffer zones is 30%. Impervious cover may be increased with mitigation based on the slope table below.

D. **Steep Slopes.** The maximum impervious cover in buffer zones and the San Marcos River Corridor is further restricted when steep slopes are present in accordance with the table below.

E. **Reclamation.** Reclamation of a water quality and/or buffer zone shall require mitigation to replace lost water quality benefits and be accomplished in a way that preserves natural channel function and aesthetics.

(Ord. No. 2020-60, 9-1-2020)

Table 6.2 Impervious cover on slopes outside the Edwards Aquifer

	Impervious Cover (Max)		
Slopes	SMRC	Buffer Zone No Mitigation	Buffer Zone with Mitigation
< 15%	30%	30%	50%
15% - 25%	20%	20%	--
> 25%	10%	10%	--

Section 6.2.3.3Water Quality and Buffer Zones Inside Edwards Aquifer Recharge Zone

A. Water Quality Zone. No development or impervious cover is allowed in a water quality zone within the Edwards Aquifer Recharge Zone except for those cases listed in Section 6.2.3.5(B).

B. Buffer Zones. The maximum impervious cover in buffer zones is 10%. Impervious cover may be increased with mitigation based on the slope table below.

C. Steep Slopes. The maximum impervious cover in buffer zones located within the Edwards Aquifer Recharge Zone is further restricted when steep slopes are present in accordance with the table below.

TABLE 6.3 IMPERVIOUS COVER ON SLOPES INSIDE THE EDWARDS AQUIFER

	Impervious Cover (Max)	
Slopes	**Buffer Zone No Mitigation**	**Buffer Zone with Mitigation**
< 20%	10%	20%
≥ 20%	0%	10%

Section 6.2.3.4Sensitive Feature Protection Zone

No development or impervious cover is allowed within a sensitive feature protection zone except for those cases listed in Section 6.2.3.5(C).

Section 6.2.3.5Mitigation and Exceptions

A. Mitigation. The following is permissible with adequate mitigation that replaces lost water quality benefits:

1. Impervious cover limitations may be exceeded in a buffer zone for land with a gradient of less than 15 percent outside the Edwards Aquifer Recharge Zone and 20 percent within the Edwards Aquifer Recharge Zone; and

2. Water quality and/or buffer zones may be reclaimed. Mitigation shall consist of meeting a Total Suspended Solid (TSS) removal requirement or increase in TSS removal requirement for the site or portion of the site as determined adequate by the Responsible Official.

(Ord. No. 2020-60, 9-1-2020)

B. Exceptions to impervious cover limitations in a water quality or buffer zones include:

1. Existing impervious cover in water quality or buffer zones may be replaced, subject to flood protection standards in Chapter 39 of the San Marcos City Code, but may not be increased except consistent with the limitations in this Section.

2. Arterial, residential and collector street crossings in accordance with the following:

   a. For FEMA- mapped waterways, water quality and buffer zones may be crossed by arterial and collector streets that are a distance of at least 2,000 feet horizontally from the nearest adjacent crossing of the waterway by an arterial or collector street.

   b. For other waterways subject to this Article, water quality zones may be crossed by arterial, collector and residential roads that are a distance of at least 1,000 feet horizontally from the nearest adjacent crossing of the waterway by an arterial, collector or residential street.

   c. Any water quality or buffer zone may be crossed by one collector or residential street regardless of the distance from the nearest crossing of the waterway by an existing arterial, collector or residential street, if the crossing will provide the only access to a public road or street for a portion of the tract of land on which the new street is proposed.

3. Utility line crossings that are in compliance with all City and TCEQ requirements.

4. Fences that do not obstruct or dam surface water flows.

5. Trails and related facilities, other than buildings, for walking, running, and non-motorized biking.

C. Exceptions to impervious cover limitations in a sensitive feature protection zone include:

1. Fences that do not obstruct surface water flows.

2. Pervious trails and other facilities, other than buildings, for walking, running, or non-motorized biking. Decomposed granite is not considered a pervious trail surface.

ARTICLE 3: DEVELOPMENT RELATED TO THE EDWARDS AQUIFER

DIVISION 1: GENERAL

Section 6.3.1.1Applicability and Authority

A. Applicability. The standards contained in this Article 2 apply to the recharge, transition, and upland zones of the Edwards Aquifer.

B. Authority. The requirements of this Article are authorized under Tex. Water Code Sections 16.316 and 26.177(b), and Tex. Loc. Gov't Code Ch. 212.

DIVISION 2: DEVELOPMENT DUTIES

Section 6.3.2.1Duties in Undertaking Development Over Aquifer

A. Excavations in Recharge Zone or Transition Zone.

1. When a development in the recharge zone or transition zone includes any excavation, the person performing the development must either engage a qualified geologist to inspect the excavation, or notify theResponsible Official to arrange for inspection of the excavation by city personnel. The inspection will be for the purpose of determining whether the excavation has uncovered any geologic or man made feature that presents a possible avenue for recharge to the aquifer. The inspection will be made either upon completion of the excavation, if it is in a single, defined area, or in segments, if the excavation is linear, or is in multiple locations, or is accomplished over an extended period of time. The excavation may be temporarily backfilled before inspection, but inspection must occur with the full excavation uncovered before permanent backfilling is performed. If an inspection reveals that one or more such features has been uncovered, the person performing the development must:

a. Immediately notify the Responsible Official;

b. Utilize temporary BMPs to prevent pollution from entering the aquifer through the features; and

c. Not perform any further work in the excavation until an application for an amendment to the approved watershed protection plan (phase 1, phase 2, or qualified, as applicable), for a development in the recharge zone, or an application for approval of a site permit, for a development in the transition zone, is submitted to and approved by the Responsible Official.

B. Discovery of Sensitive Feature in Recharge Zone or Transition Zone.

1. If a new sensitive feature, or any solution opening, cave, sinkhole, or similar feature, is encountered on a site in the recharge zone or transition zone during the construction process for a development, or if a previously known sensitive feature is found in the course of construction to be larger or more extensive than previously noted in the geologic assessment of the site, the holder or the holder's designated representative must:

a. Immediately suspend all excavation and construction activities within 50 feet of the feature, measured horizontally;

b. Immediately notify the Responsible Official of the discovery; and

c. Retain a qualified geologist to inspect the feature and make a recommendation to the Responsible Official based on the relative sensitivity of the feature.

2. The Responsible Official may require, for a development in the recharge or transition zone, that the holder submit an application to amend the approved watershed protection plan or site preparation permit to adequately protect a feature encountered or found under subsection (b)(1) above. For development with an approved watershed protection plan including a geological assessment, the Responsible Official will review the available information and within two working days of notification of the feature, will decide whether to allow construction activities to resume near the feature pending the amendment, and if so, at what locations. The Responsible Official will review and approve or deny a requested amendment to watershed protection plan or site preparation permit within five working days of submission of a geologic assessment if

not included with the original application. The holder may appeal a denial in accordance with Chapter 2, Article 6, Division 1.

C. **Geological Assessments.** All watershed protection plans (Phase 1) for developments in the recharge zone, transition zone, and contributing zone within the transition zone and site preparation permit for uses must be accompanied by a geologic assessment of the entire site prepared by a qualified geologist. The assessment must be based on 50-foot Transects across the Site, and must contain all information required for Geologic Assessments under the TCEQ Edwards Aquifer rules. The assessment must identify all sensitive features on the site, and for each sensitive feature, must state whether it is a major recharge feature, moderate recharge feature, or minor recharge feature. A waiver for a geologic assessment for sites that do not warrant an assessment within the transition zone may be obtained from the REsponsible Official if the property is located within the Geologic Assessment Exemption Zone. A map of such area is on file with the City's Planning and Development Services Department and is available upon request.

(Ord. No. 2020-60, 9-1-2020)

D. **Enhanced Geologic Assessment.** A watershed protection plan (phase 2) for a development in the recharge zone may be accompanied by an enhanced geologic assessment of the site prepared by a qualified geologist. The enhanced assessment is subject to review and approval by the Responsible Official as part of the approval process for the watershed protection plan (phase 2). The enhanced assessment must meet the requirements for assessments under (c) above, and in addition, must meet the following:

1. All caves that can be entered must be entered and mapped to establish the footprint of the cave, and to identify related surface hydro-geologic features (drainage areas, sinkholes, fractures, etc.) and cultural features (existing or proposed roads, buildings, utilities, etc.). Hydro-geologic features within each cave must be mapped or noted and interpreted to delineate the drainage area for the cave, which includes surface drainage into the cave's entrance(s), plus surface drainage into fractures, sinkholes, streambeds, or other features which appear to contribute recharge into the cave in areas beyond the cave entrance. Excavations must be conducted as part of the effort to fully map the caves when necessary for study and mapping of otherwise inaccessible parts of the caves. Where excavation may be unsafe, such as a passage that ends in collapse and likely continues on the opposite side of the collapse, geophysical methods should be employed to determine if and where the cave continues. The geophysical methods must be of a type that has proven accurate and appropriate for the depth, size, and geologic setting of the cave. The geophysical methods should not be used to replace mapping of the cave, but to supplement them and identify areas where excavation or drilling may find the continuation of the cave to allow its further mapping and study.

2. Recharge features that cannot be entered must be excavated to more fully evaluate the hydrogeologic significance of the features, and to determine if they lead to caves. Excavations may be conducted by hand, explosive, and/or mechanized means as appropriate. Excavations will be considered complete if a cave, or bedrock with no openings, or a compact clay at least one foot thick throughout the feature's floors and walls, is found. Where fractures or other openings in the bedrock extend indefinite distances with no fill material or loose fill material, and hydrogeologic indicators suggest the feature may lead to a cave, then geophysical methods should be employed to determine if and where a cave is present to guide further excavation and study.

Section 6.3.2.2Wastewater Collection and Disposal

A. **Individual Disposal Systems.** Lots overlying the Edwards Aquifer Recharge Zone that are not connected to a public wastewater system shall use sewage disposal systems that are installed in accordance with applicable state regulations.

DIVISION 3: SITE IMPERVIOUS COVER LIMITATIONS

Section 6.3.3.1Total Impervious Cover

A. **Impervious Cover Limitation.** The total of all impervious cover that may be developed on a site in the Recharge Zone shall not exceed the following percentages of the gross area of the site based on the size of the site on October 8, 2001. Additional impervious cover limitations apply to those areas of the

development site that are located within a water quality zone, a buffer zone or a sensitive feature protection zone.

Table 6.4 Impervious cover limits within the edwards aquifer recharge zone

Size of Site	Impervious Cover Limit
Up to and including three acres	40%
More than three acres and less than five acres	30%
Five acres or more	20%

Section 6.3.3.2Impervious Cover Allocation

A. **Utilization of Site.** Land included in water quality zones, buffer zones, and sensitive feature protection zones may be used in the calculation of the total impervious cover allowed on the site. The total allowed impervious cover on a site may be allocated by an applicant in a manner that concentrates the allowed impervious cover in one or more uplands zones on the site.

ARTICLE 4: TREE AND HABITAT PROTECTION

DIVISION 1: GENERAL

Section 6.4.1.1Purpose

The purpose of this Article is to conserve, protect and enhance existing trees and natural landscapes that are healthy and contribute to a safe and livable community, as well as to establish and maintain new trees. It is recognized that the presence of trees contributes to the overall quality of life and environment of the City. They are an integral part of healthy aquifers and river corridors, managing stormwater runoff, controlling erosion and dust, abating noise, reducing building energy costs, enhancing property values, and providing wildlife habitat.

DIVISION 2: TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT

Section 6.4.2.1General Tree Preservation Requirements

A. **Applicability.** The provisions of this section apply to all new development within the City and not within the ETJ, including development projects undertaken by the City of San Marcos.

B. **Intent**

1. In the course of development the existing natural landscape character shall be preserved to the maximum extent feasible. Native oaks, elms, sycamore, bald cypress, madrone, and pecan trees are particularly to be preserved. For example, when a site contains an existing stand of trees, the developer and builder shall use best good faith efforts to preserve such trees.

2. Indiscriminate clearing or stripping of natural vegetation on a site or lot is prohibited.

C. **City Approval.** The removal of any protected or heritage tree for the purpose of development without City approval is expressly prohibited.

D. **Tree Survey**

1. To request City approval for the removal of a protected or heritage tree, submit a tree survey with the applicable development permit application. Issuance of the applicable

permit constitutes approval of tree removal and shall occur prior to any action being taken to remove a tree(s) or that may damage or disturb a tree(s) or its root system in any way.

2. The tree survey required with an application for a Watershed Protection Plan, Phase 2 or a Site Permit under Section 2.6.1.1 or Section 2.7.1.1 shall include a drawing showing the species, size, location and scaled root protection zone of all protected and heritage tree(s), with an indication of those to be preserved or removed. The "Tree Preservation and Mitigation Table", located on the City's website, shall also be included.

3. Trees nine inches or larger shall be tagged and numbered, and numbers shall be depicted on the applicable drawing and associated table(s). The tags and associated numbers shall remain on the trees until the certificate of acceptance or certificate of occupancy is issued.

4. When submitting an application for a Watershed Protection Plan, Phase 1, under Section 2.6.1.1 an aerial photograph showing tree groupings and the location of heritage trees is required.

Section 6.4.2.2Tree Measurement.

A. **Existing Tree Size and Measurement.** Tree size shall be stated in inches of "Diameter at Breast Height (DBH)". Both single-trunk and multi-trunk trees shall be measured at "breast height" which is defined as four-and-one-half feet (54 inches) above natural grade.

(Ord. No. 2019-45, 12-17-19)

FIGURE 6.3 MEASURING EXISTING TREES

B. **Measurement of a Multi-Trunk Tree.** The DBH of a multi-trunk tree shall be calculated by the following equation: The DBH of the largest tree trunk, plus one-half the DBH of all other tree trunks. For example, a tree that has three trunks with DBHs of 7", 6", and 4" would be equivalent to a 12" DBH tree.

$$7" + (0.5 \times 6") + (0.5 \times 4") = 12"\text{DBH}$$

(Ord. No. 2019-45, 12-17-19)

C. **Measurement of Nursery Stock.** The size of small or young trees to be planted (i.e., those with diameters of four inches or less) shall be measured at six inches above the root ball in "caliper" inches.

FIGURE 6.4 MEASURING NURSERY STOCK

Section 6.4.2.3Classification of Protected and Heritage Trees.

TABLE 6.5 TREE CLASSIFICATIONS

TREE CLASSIFICATION	DBH (DIAMETER AT BREAST HEIGHT)
Protected Tree	9" - 23"
Heritage Tree	$\geq$ 24"

A. Trees of the following species with a DBH less than 12 inches are excluded from the mitigation requirements of this code:

1. Celtis occidentalis (Hackberry)
2. Juniperus ashei (Common Cedar)
3. Juniperus virginiana (Eastern Red Cedar)
4. Prosopis glandulosa (Mesquite)
5. Acacia farnesiana (Huisache)

B. Trees identified on the noxious and invasive species list of any size are excluded from the mitigation requirements of this code.

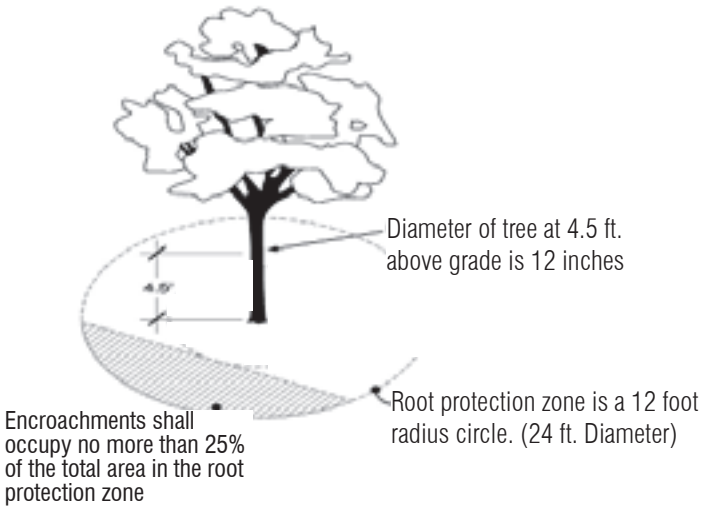
C. Trees deemed dead, in serious decline or hazardous by an ISA certified arborist, consulting arborist, and/or the City's Urban Forester are excluded from the mitigation requirements of this code.

Section 6.4.2.4Tree Protection Standards

A. Protection of Existing Trees During Development.

1. No more than 25% of the root protection zone of trees to be preserved shall be disturbed. The root protection zone is measured as 1 foot in radius for every 1 inch in DBH of the tree. This area may overlap with a grouping of trees.

FIGURE 6.5 TREE PROTECTION STANDARDS



2. All preserved trees on a demolition or construction site shall be provided protection for a minimum of 75% of their root protection zone in accordance with City of San Marcos standard design and technical specifications.
3. Tree protection fences shall be shown on submitted plans and shall be in place for City inspection before any demolition, site clearance or other site-disturbing activity commences.
4. All building materials, dirt, excavation or fill materials, chemicals, construction vehicles or equipment, debris, other materials, and vehicle parking shall be kept outside tree protection fences.
5. Tree protection fences shall remain in place until the final building and site inspections are approved and the certificate of acceptance or certificate of occupancy is issued.

(Ord. No. 2019-45, 12-17-19)

Section 6.4.2.5Tree Mitigation Requirements

Any protected or heritage tree that is removed from the site due to development must be replaced on-site as follows:

TABLE 6.6 TREE MITIGATION REQUIREMENTS

TREE CLASSIFICATION	MITIGATION REQUIRED IN DIAMETER INCHES
Protected Tree	1:1 (1 Inch per inch removed)
Heritage Tree	2:1 (2 Inches per inch removed)

A. All required mitigation trees shall be provided as shade trees meeting the planting, installation, and maintenance requirements of Sections 7.2.4.1, 7.2.4.2, and Appendix D of the San Marcos Design Manual.

B. Off-Site Mitigation. The primary goal is to replant trees on a development site. With the express, written approval of the Responsible Official, however, some or all of the required mitigation trees that cannot feasibly be planted in any area of the development site can be planted in a park or other city right-of-way located within the same quadrant of the City as the development site.

(Ord. No. 2019-45, 12-17-19)

C. Tree Fee-in-lieu. While the primary goal is to replant trees on a development site, when some or all of the required mitigation trees cannot feasibly be planted in any area of the development site or in a nearby park or other public property, the Responsible Official may allow the applicant to pay a fee-in-lieu of planting mitigation trees. Payment per caliper inch as set by City Council resolution for required mitigation trees shall be paid into the tree fund. The funds in this account shall be dedicated solely to tree planting and care and other tree preservation activities within the the same quadrant of the City as the development site. Refer to the fee schedule on the City's website for the current rates.

(Ord. No. 2019-45, 12-17-19)

Section 6.4.2.6Tree Credits

A. Incentives to Retain Existing Trees. In order to encourage the preservation of trees that are already established and growing, particularly heritage trees, additional credit as outlined in the table below shall be given for healthy existing trees. To receive credit, the existing tree must be of a species included on the preferred list in the technical manual and located within the limits of construction (LOC) of the development site. Tree credits for preserving existing trees can be used to meet either the landscaping requirements for trees or the mitigation requirements for other removed trees.

Table 6.7 Tree Credits

Tree Classification	Tree Credits in Diameter Inches
Protected Tree	1/2:1 (1/2 Inch per inch preserved)
Heritage Tree	1:1 (1 Inch per inch preserved)

Section 6.4.2.7Tree Preservation and Protection After Development

A. Duty of Persons for Trees on Property. It shall be the duty of the property owner to maintain all trees planted pursuant to, or preserved by, this Article in a healthy condition in accordance with the following:

1. Any person or persons owning or occupying real property on which there may be trees must ensure that such trees do not obstruct utility or telephone lines. Only city-contracted arborists are allowed to trim trees within 12 feet of utility and telephone lines.

2. Any person or persons owning or occupying real property bordering on any street upon which property there may be trees, must prune such trees in such a manner that they will not obstruct or shade the street lights, obstruct or interfere with the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct the view from any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be 8 feet over sidewalks and 16 feet over all streets, except truck thoroughfares which shall require a clearance of 18 feet.

3. Any person or persons owning or occupying real property on which there may be trees that are diseased or insect-infested, must remove, spray or treat any such trees in a manner that will not infect or damage nearby public vegetation or cause harm to the community or citizens therein.

4. When trees that are subject to or protected by this Article die, are missing, or are otherwise deemed unhealthy by the City, they shall be removed and replaced by the property owner to comply with the applicable standards.

5. Any person or persons owning, occupying or controlling real property upon which tree pruning or removal occurs must advise all landscape contractors, tree services, arborists and others who remove or prune diseased trees of the need for proper disinfection of all cutting tools. All wounds to the trunk, limbs, roots, or stumps of oak trees should be sprayed with paint within 20 minutes of cut or incident with wounding or removal to prevent the spread of oak wilt. This provision applies to any person, firm, corporation, business entity, City department or private utility.

B. If the owner or occupant of such property does not perform the duties set out in subsection A above, the City may order the pruning, removal or treatment of tree(s) on private property that cause obstructions, present insect or disease problems or otherwise present a danger to public health or safety. The order shall be in writing to the owner or occupant responsible for such condition and shall be acted upon within 30 days from the time of the receipt of the order. If, after 30 days, the owner or occupant has not responded or acted to prune, remove or

treat the tree(s), the City shall have the authority to enter upon the property to perform the work necessary to correct the condition and bill the owner or occupant for the actual costs incurred. In situations deemed necessary to the public health, safety, or welfare, the City may act without prior notification to the property owner or occupant.

CHAPTER 8. DEFINITIONS

ARTICLE 1: DEFINED TERMS 8:2

ARTICLE 1: DEFINED TERMS

THIS CHAPTER 8 PROVIDES DEFINITIONS FOR CERTAIN TERMS USED IN THIS DEVELOPMENT CODE.

Terms used throughout this Development Code may be defined in this Chapter 8 "Definitions" or elsewhere in this Development Code. Such definitions are integral to this Development Code. When used in this Development Code, unless otherwise specifically provided, or unless clearly required by the context, terms and phrases in this Development Code shall have the meanings given to such terms and phrases in this Chapter 8 or elsewhere in this Development Code.

All other terms shall be accorded their commonly accepted meanings. For purposes of determining the commonly accepted meaning of any term, reference may be made to the latest edition of Webster's Dictionary; or for words used in combination, or where Webster's Dictionary does not define a word, reference may be made to A Planners' Dictionary, published in 2004 by the American Planning Association or The New Illustrated Book of Development Definitions, published by Rutgers University in 1993.

For purposes of this Development Code, in the event of any conflict between the definitions in this Development Code and definitions provided by other codes, ordinances, regulations or laws, the definitions of this Development Code shall take precedence any such conflicting definitions.

1. **Abandonment:** as related to nonconforming uses and structures, see Section 1.5.1.1 of this Development Code. As related to signs see Section 7.3.1.8

2. **Access Lane:** an outer vehicular lane or lanes of a thoroughfare, designed for slow speeds and separated from inner lanes that carry higher speed traffic.

3. **Accessory:** being secondary or subordinate to something else.

4. **Accessory Building:** a building enclosing usable space where the use of such building is incidental and subordinate to one or more principal buildings. Synonymous with accessory structure.

5. **Accessory Dwelling, Accessory Dwelling Unit, or Accessory Unit:** A secondary living space which is on-site with a primary living space and that may be contained within the same structure as is the primary living space, or may be contained in a separate structure. A guest house and a garage loft are examples of accessory dwellings.

FIGURE 8.1 ACCESSORY DWELLING UNIT

6. **Accessory Structure:** a structure enclosing or covering usable space where the use of such structure is incidental and subordinate to one or more principal buildings. Synonymous with accessory building.

7. **Accessway:** a paved area intended to provide ingress and egress of vehicular traffic from a public right-of-way to an off-street parking lot, parking area, or loading area.

8. **Addition:** an extension or increase in floor area or height of an existing building or structure.

9. **Adjacent or Adjoin:** having any distance of real property boundary in common with, or being separated from such a common real property boundary by a right-of-way, alley or easement.

10. **Administrative Adjustment:** administrative modification of one or more dimensional standards or requirements applicable to a development application pursuant to and in accordance with Section 2.8.5.1.

11. **Affordable Housing:** dwellings consisting of rental or for-sale units that have a rent (including utilities) or mortgage payment typically no more than 30% of the income of families earning no more than 80% of median incomes by family size for the county.

12. **Agent:** a person authorized by a property owner to represent the owner in the development, improvement, or management of property or in a real estate transaction. In the context of a manufactured home park, agent means any person authorized by the owner of the manufactured home park to operate or maintain the manufactured home park.

13. **Agricultural Building:** A structure that is designed, constructed, and used to house farm implements, livestock, or agricultural goods and that is used by the owner, immediate family of the owner, and/or persons engaged in the pick-up or delivery of agricultural goods grown or raised on the premises. This definition shall not include a structure used as a dwelling.

14. **Alley:** a public access easement or right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a thoroughfare. An alley may provide the primary means of vehicular access from the thoroughfare to a garage, parking area, parking lot, or parking structure on an abutting lot.

15. **Altered or Alteration:** any change, modification or transformation.

16. **Amending Plat:** a Plat which makes minor revisions to a Recorded Plat in accordance with Chapter 3, Article 7, Division 4.

17. **Amusement Devices / Arcade (Also Video Arcade):** any Building, room, place or establishment of any nature or kind, and by whatever name called, where more than ten percent of the public floor area is devoted to three or more attractions that are operated for a profit, whether the same is operated in conjunction with any other business or not, including but not limited to such attractions as coin-operated pinball machines, video games, electronic games, shuffle boards, pool tables or other similar attractions. However, the term “attraction”, as used herein, shall not include musical devices, billiard tables which are not coin-operated, machines that are designed exclusively for small children, and devices designed to train persons in athletic skills or golf, tennis, baseball, archery or other similar sports.

18. **Antenna, Commercial:** an antenna or antenna support Structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain (e.g., commercial broadcasting, cellular/wireless telecommunications, etc.). A Satellite dish antenna that exceeds six feet in diameter shall also be considered as a Commercial Antenna.

19. **Antenna, Non-Commercial or Amateur:** an antenna or antenna support Structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use and not for the purpose of operating a business and/or for financial gain. A Satellite dish antenna not exceeding six feet in diameter shall also be considered as a non-Commercial Antenna.

20. **Antenna, Satellite Dish or Direct Broadcast:** an apparatus constructed of solid, open mesh, bar-configured, or perforated materials of any shape/configuration that is used to receive and/or transmit radio, television or microwave signals from a terrestrial or orbitally located transmitter or transmitter relay.

21. **Antenna Support Structure:** any tower, mast, pole, tripod, box frame, or other Structure utilized for the purpose of supporting one or more antennas or microwave reflectors.

22. **Appeal:** a request for review of and relief from any decision applying a provision of this Development Code and which is authorized under Section 2.8.1.1.

23. **Application for Development Agreement:** a request to authorize negotiation of a binding contract incorporating a plan of development for land located in the City's Extraterritorial Jurisdiction under Section 2.4.3.1 of this Development Code.

24. **Application for a Legislative Decision:** a request for approval of an action authorized under this development code requiring action by the City Council acting in its legislative capacity.

25. **Application for Change in Nonconforming Status:** a request by a property owner to the Zoning Board of Adjustments under Section 1.5.1.9 of this Development Code for a change in the status of a nonconforming use or structure to allow for modification to the use or property owned.

26. **Application for Utility Extension:** a request to extend water or wastewater facilities to provide services to a development located outside of the City limits..

27. **Aquifer:** a geologic formation, group of formations, or part of a formation capable of yielding, storing or transmitting groundwater to wells or springs.

28. **Area:**

    a. **Sign -** for purposes of sign measurement, is the largest area of a sign visible at any one time from any one point and enclosed by a single rectangle, including any framing or trim, but not including any structural parts lying outside the limits of the sign and which do not form an integral part of the display. If the copy of a sign is enclosed by a box, outline or frame, area is the total area of the enclosure. If the sign consists of individual letters, numbers or symbols, on a surface or having no frame, area shall be the sum of the areas of the rectangles which can encompass each portion of the copy. The area of four-sided signs is considered the same as two double-faced Signs.

    b. **Area of Shallow Flooding -** a designated AO, AH or VO zone on the 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. The Flooding is characterized by ponding or sheet flow.

    c. **Special Flood Hazard -** the land in the Floodplain within the City subject to a one percent or greater chance of Flooding in any given year. This area is shown as zones A, AE, AH, AO, A1—99, VO, V1—30, VE or V on the FIRM.

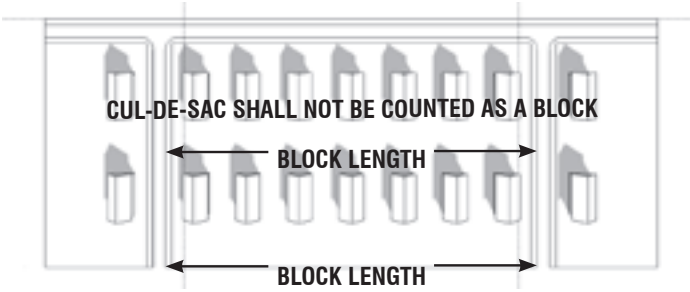
29. **ASTM:** American Society of Testing Materials.

30. **Avenue (AV):** a thoroughfare of high vehicular capacity and low to moderate speed, acting as a short distance connector between urban centers, and usually equipped with a landscaped median.

31. **Base Flood:** the flood having a one percent chance of being equaled or exceeded in any given year.

32. **Best Management Practices or BMPs:** activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the level of pollutants in surface water runoff. BMPs also include treatment requirements, operating procedures, and practices to control Site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

33. **Block Length:** the distance, measured along the thoroughfare centerline, from one end of a row or group of lots to the other end.



34. **Blocking:** the foundation for leveling and supporting a Mobile Home or manufactured home, as required by V.T.C.A., Occupations Code, Chapter 1201.

35. **Boulevard (BV):** a Thoroughfare, sometimes having Slip Roads on one or both sides, of high vehicular capacity

and moderate speed, acting as a short distance connector between urban centers, and sometimes equipped with a landscaped median.

36. **Building:** man-made construction completely enclosed by a roof, window, doors and solid exterior walls, and designed, built, or occupied as a shelter or enclosure for persons, animals, or property, and for the legal occupancy of which a Certificate of Occupancy approved is required, or has been issued prior to the effective date of hereof. Not synonymous with structure.

37. **Building, Dangerous:** a building that, due to its condition, poses a threat to the public's health, safety, and welfare.

38. **Building Element:** any component or part of a Building.

39. **Building, Main or Principal:** a building in which the principal use of the lot on which it is situated is conducted.

40. **Buffer or Bufferyard:** land area used to separate a lot or parcel from another lot or parcel or a rrontage, thoroughfare, or district. Buffers may be required to include fences, walls, berms, as well as shrubs and trees. Synonymous with protective yard.

41. **Buffer Zone:** an area of land adjacent to a water quality zone for a waterway that serves a function of filtering contaminants from water that drains across the area.

42. **Building Official:** the person designated as the Building Official in the Building Code adopted in Chapter 14 of the City Code.

43. **Building Permit:** a permit issued by the City's Building Official or building inspection officer under Chapter 2, Article 8, Division 2 of this Development Code.

44. **Caliper:** the American Association of Nurserymen standard for trunk measurement of nursery stock, as measured six inches above the ground for trees up to and including four inches caliper size, and as measured at 12 inches above the ground for larger sizes. If the Tree has been severed at less than 12 inches above the soil line, then the Caliper shall be measured across the stump.

45. **CCN:** a Certificate of Convenience and Necessity issued by a state agency to a utility service provider authorizing the provision of utility service in a defined geographic area.

46. **Central Business Area:** an area in which certain Development Standards are or are not applicable. The Central Business Area is not a zoning district, or overlay district.

47. **Certificate of Appropriateness:** a certificate issued under Section 2.5.5.1 of this Development Code for the construction, alteration, restoration, relocation, or demolition of a structure, or alterations to the site or appurtenances, in a Historic District or at a Historic Landmark.

48. **Channelization:** Alteration of the natural cross sectional area or profile of a Waterway to increase the hydraulic efficiency or carrying capacity of the Waterway.

49. **Charitable Gaming Facility:** any Building, Structure, establishment or facility of which up to 25 percent of the floor area is devoted to the use of any computerized video game machine owned, leased, controlled or operated by an Internal Revenue Service section 501(c)(3) tax-exempt charitable organization or an Internal Revenue Service section 501(c) tax-exempt veterans organization that, upon payment or charitable contribution, is available to play a video game or a sweepstakes authorized by the State of Texas, and which uses a video display and microprocessor in which, by chance, the player may receive, prizes, free games or credits that can be redeemed for cash.

50. **City:** the City of San Marcos, Texas, or any authorized person acting in its behalf.

51. **City Standards:** all of the City's standards, requirements, and specifications that apply to development, together with all tables, drawings and other attachments. All City standards described or referred to in this Development Code are adopted by referenced and are a part of this Development Code in the same way as if they were set out at length herein. See also TCSS.

52. **City Water System:** the entire potable water distribution system of the City, including, without limitation, all pipes, facilities, valves, pumps, conduits, tanks, receptacles and fixtures and appurtenances between the water supply sources and the points of delivery, used by the City to produce, convey, deliver, measure, treat or store potable water for public consumption or use.

53. **Collocation:** the use of a single antenna support Structure and/or Site by more than one communications provider.

54. **Commission:** the City Planning and Zoning Commission.

55. **Communications Operations, Commercial:** the transmission, retransmission, or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business or for financial gain.

56. **Communications Operations, Non-Commercial/Amateur:** the transmission, retransmission and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use, and not for the purpose of operating a business and/or for financial gain.

57. **Compatibility:** the characteristics of different land uses or activities that permit them to be located near each other in harmony and without conflict.

58. **Comprehensive Plan:** the "Vision San Marcos: A River Runs Through Us" Comprehensive Plan, including without limitation any unit or a part of any unit separately adopted and any amendment to the plan or parts thereof.

59. **Condominium:** a multifamily dwelling unit, within which title is conveyed to designated units or apartments, with an undivided interest in the building's common elements, such as halls, stairs, elevators, roofs, parking spaces, and the land when the building is not constructed on leased land.

60. **Configuration:** the form of a building, based on its massing, private frontage, and height.

61. **Construction:** with respect to a structure, is the assembly of materials into a structure, or the rehabilitation or replacement of a structure which has been damaged, altered or removed. For the purposes of this definition, construction includes the installation of a parking lot.

62. **Construction Permit:** any authorization to construct, demolish, alter or place a structure on a lot, tract or parcel; excluding, however, an authorization to construct a capital improvement to be dedicated to the public in support of a proposed land use, the grading of land, the removal of vegetation, and other activities authorized to prepare a development site for construction of a structure or improvement.

63. **Contiguous:** with respect to property, synonymous with Adjacent.

64. **Copy:** with respect to a sign, the letters, numbers, symbols or geometric shapes, either in permanent or changeable form, on the surface of the sign.

65. **Corridor:** a lineal geographic system incorporating transportation and/or other trajectories.

66. **Council:** the City Council.

67. **Coverage, Building:** the aggregate of the Lot area that is covered by Buildings located thereon, including the area covered by all overhanging roofs and canopies. See also Impervious Cover and Lot Coverage.

68. **Creek:** an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year-round. This definition is not meant to include storm water runoff devices or other entirely artificial waterways unless they are used to store or convey pass-through stream flows naturally occurring prior to construction of such devices.

69. **CUP:** Conditional Use Permit.

70. **Curb:** the edge of the vehicular pavement that may be raised or flush to a swale. It usually incorporates the drainage system.

71. **Decorative Fencing or Wall:** fencing or wall constructed of brick or stucco over masonry, wood, wrought iron, cast

aluminum, or other materials traditionally used in private fence construction; excluding without limitation chain link, woven wire mesh, metal panel and similar materials.

72. **Design Speed:** the velocity at which a thoroughfare tends to be driven without the constraints of signage or enforcement. There are four ranges of speed: Very Low: (below 20 MPH); Low: (20-25 MPH); Moderate: (25-35 MPH); High: (above 35 MPH). Lane width is determined by desired Design Speed.

73. **Developed Area:** that portion of a plot or parcel upon which a Building, Structure, pavement or other Improvements have been placed.

74. **Developer:** an individual, partnership, corporation or governmental entity undertaking the division or Improvement of land and other activities covered by this Development Code, including the preparation of a Subdivision Plat or Development Plat showing the layout of the land and the public Improvements involved therein. The term "Developer" is intended to include the term "Subdivider," even though personnel in successive stages of a Development project may vary.

75. **Development:** initiation of any activities related to the subdivision or platting of land or construction of buildings or structures, construction of impervious surfaces, the installation of utilities, roadways, drainage facilities or other infrastructure; the making of improvements or any disturbance of the surface or subsurface of the land in preparation for such activities, including without limitation removal of vegetation, grading, clearing, filling, or removal of soil.

76. **Development Agreement:** a contract between the City and a developer which establishes with respect to property in the Extraterritorial Jurisdiction a plan of development prescribing, among other standards and requirements, land uses, environmental standards, development standards, and public facilities standards, providing for delivery of public facilities to the property, and providing for the annexation of the property to the City.

77. **Development Application:** either an application for a legislative decision or an application for a development permit.

78. **Development Permit:** a decision by the commission, board or City staff designated by this Development Code, that authorizes the holder of the permit to undertake one or more development activities or to file further applications needed to initiate or continue development activities authorized under this Development Code. The filing of a complete application for a development permit may or may not stay the City from adopting new standards applicable to the permit or any subordinate permit, depending on the nature of the standards.

79. **Development Standards:** all regulations, standards, requirements and restrictions that apply to Development.

80. **Discharge:** to deposit, conduct, drain, emit, throw, run, allow to seep or otherwise release or dispose of or to allow, permit or suffer any of these acts or omissions.

81. **Drainage:** bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, 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 waterways.

82. **Driveway:** a vehicular lane within a lot or parcel of land, often leading to a garage.

83. **Dwelling Unit:** a room or suite or set of rooms occupied and suitable for occupancy as a family residence and having a kitchen, and bath and sanitary facilities, together with appropriate appurtenances to that occupancy.

    a. **Dwelling Unit Equivalent (DUE) -** a density value for multiple-family dwelling units based upon the number of bedrooms in the unit. This value shall be applied to the units per acre measurement in order to meet the dwelling unit requirement.

        1. Three-bedroom unit = one unit;
        2. Four-bedroom unit = one and one-half units;
        3. Five-bedroom unit = two units;
        4. Six-bedroom unit = two units
        5. Every second bedroom above the fifth bedroom = one additional unit

84. **Easement:** an interest in land other than a lease granted to the City, to the public generally to a private utility corporation, or to a person or entity, entitling the granter to use such land.

85. **Edwards Aquifer:** the portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards (Balcones Fault Zone) Aquifer trending from southwest to northeast in Hays and Adjacent counties.

86. **Effective Parking:** the amount of parking required for after adjustment by the Shared Parking Factor.

87. **Electric Sign:** a sign connected to an electric power source for any purpose.

88. **Elevation:** an exterior wall of a building not along a frontage line. Not synonymous with façade.

89. **Encroach:** to break the plane of a vertical or horizontal regulatory limit with a structural element, so that it extends into another lot of parcel of land, a setback, or the public frontage, or above a height limit.

90. **Encroachment:** any structural element that breaks the plane of a vertical or horizontal regulatory limit, extending into another lot or parcel of land, a setback, or the public frontage, or above a height limit, or the breaking of such limit by a structural element.

91. **Engineer:** a person duly licensed under the Texas Engineering Registration Act to practice the profession of engineering.

92. **Environmental Protection Agency or EPA:** the U.S. Environmental Protection Agency, or, where appropriate, the administrator or other duly authorized official of that agency.

93. **Erect:** to construct, reconstruct, install or build.

94. **ETJ:** Extraterritorial Jurisdiction.

95. **Excavation:** any digging, trenching, scraping or other activity that disturbs natural soil or rock to a depth of two feet or more, other than soil disturbance incidental to the removal of trees or vegetation.

96. **Extraterritorial Jurisdiction:** the unincorporated area, not a part of any other City, which 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 for the distances as may be stipulated in Chapter 42 of the Texas Local Government Code in accordance with the population of the City, and in which area the City may enjoin Violation of certain provisions of this Development Code.

97. **FAA:** the Federal Aviation Administration.

98. **Facade:** each exterior wall of a building that is set along a frontage line. See Elevation.

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99. **Family:** any number of individuals living together as a single housekeeping unit who are related by blood, legal adoption, marriage, or conservatorship.

100. **FCC:** the Federal Communications Commission.

101. **FEMA:** the Federal Emergency Management Agency.

102. **Fence:** means any structure or partition, constructed of any material or combination of materials, including, but not limited to wood, stone, rock, brick, wire, steel, metal or plastic, and [then] erected for the purpose of enclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous properties. Fence also includes any enclosure about a space, or about any object intended to prevent intrusion from without or straying from within.

103. **Flood or Flooding:** a general and temporary condition of partial or complete inundation of normally dry land areas from:

    a. The overflow of waters; or

    b. The unusual and rapid accumulation or runoff of surface waters from any source.

104. **Frontage Width:** Lot Width.

105. **Geologic Assessment:** a report prepared by a Qualified Geologist describing site-specific geology.

106. **Geologic Feature:** a feature including, but not limited to, closed depressions, sinkholes, caves, faults, fractures, bedding planes, interconnected vugs, reef deposits and springs.

107. **Greenfield:** an area that consists of open or wooded land or farmland that has not been previously developed.

108. **Green Roof:** a roof of a Building on which plants are grown.

109. **Height, Sign:** the vertical distance between the highest part of the Sign or its supporting Structure, whichever is higher, and the greatest elevation of the ground at the base of or below the Sign.

110. **Historic District:** an Overlay District intended to preserve and protect Historic Structures, Thoroughfares, and neighborhoods that serve as visible reminders of the history and cultural heritage of the City, the State and the United States.

111. **Historic Landmark:** a site having historical, architectural, or cultural significance which is suitable for preservation or Restoration, has educational value and satisfies the criteria established for inclusion in the National Register of Historic Places, as determined in accordance with Chapter 2, Article 5, Division 4.

112. **Historic Structure:** any Structure that is:

    a. Listed individually in the National Register of Historical Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; and/or

    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; and/or

    c. Individually listed on a local or state inventory of historic places.

113. **Holder:** the person who applied for and obtained approval of an application, license, or permit, or the successor-in-interest of such person.

114. **HUD-Code Manufactured Home:** a Structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, and V.T.C.A., Occupations Code, Chapter 1201, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when Erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems. The term does not include a Recreational Vehicle as that term is defined by this Development Code.

115. **Impervious Cover:** impermeable surfaces, such as pavement or rooftops, which prevent the infiltration of water into the soil and bedrock.

116. **Improved Lot or Tract:** a Lot or tract that has a Structure or other Improvement on it that causes an Impervious Coverage of the soil under the Structure or Improvement.

117. **Improvement:** any man-made Alteration of land, a Lot, a Building or a Structure.

118. **Industrialized Home (single-Family, also called modular prefabricated Structure or Modular Home):** a structure or building module, as defined under the jurisdiction and control of the Texas Department of Labor and Standards, that is transportable in one or more sections on a temporary chassis or other conveyance device, and that is designed to be installed and used by a consumer as a fixed residence on a permanent foundation system. The term includes the plumbing, heating, air-conditioning and electrical systems contained in the Structure. The term does not include Mobile Homes or HUD-Code Manufactured Homes as defined in the Texas Manufactured Housing Standards Act (V.T.C.A., Occupations Code, Chapter 1201), nor does it include a Recreational Vehicle as that term is defined by this Development Code.

119. **Infill:** as a noun, new development on land that had been previously developed including without limitation, greyfield and brownfield sites and cleared land within urbanized areas; as a verb, to develop such areas.

120. **Interested Person:** a person who is impacted by a final decision of the City to the extent that such impact exceeds the impact of the decision on a member of the general public. An Interested Person includes any officer or agency of the City.

121. **Intermediate Waterway:** any river, Creek, stream, channel, or other Waterway that drains a watershed of at least 250 acres and no more than 1,000 acres.

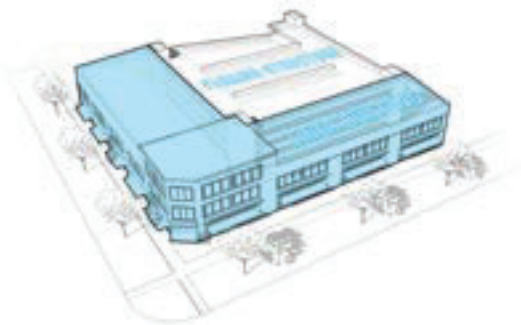
122. **ITE:** Institute of Transportation Engineers.

123. **Kitchen:** generally, that portion of a residential dwelling that is devoted to the preparation or cooking of food for the purpose of consumption by residents of the dwelling. A Kitchen, as referred to within this Development Code, generally indicates the presence of complete cooking facilities as differentiated from a "kitchenette" which provides limited cooking facilities limited to a single-burner hot plate, under-counter refrigerator and microwave oven.

124. **Landscape Area:** the area (greater than one foot in width) within the boundary of a Lot or parcel that is comprised of pervious surface integrated with living plant material, including but not limited to Trees, Shrubs, flowers, grass, or other living Ground Cover or native vegetation; excluding, however, undeveloped portions of the Site.

125. **LDC:** the Land Development Code of the City which was in effect immediately before the effective date of this Development Code.

126. **Liner Building:** a Building that is a least 24 feet deep measured from the Façade and is specifically designed to mask a Parking Lot or a Parking Structure from a Frontage.



127. **Lot:** an undivided tract or parcel of land having frontage on a Public Right of Way or on an approved Civic Space or Open Space having direct Thoroughfare access, and which is or may be offered for sale, conveyance, transfer or Improvement, which is designated as a distinct and separate tract, and which is identified by a tract, or Lot number or symbol in a duly approved Subdivision Plat that has been properly filed of record. See also Nonconforming Lot.

128. **Lot Coverage:** the percentage of a Lot that is covered by Impervious Cover.

129. **Lot Depth:** the length of a line connecting the midpoints of the front and rear Lot Lines.

130. **Lot, Flag Shaped:** an irregularly shaped Lot that takes its sole access via a long, narrow strip of land connecting the Principal Building Site to a Thoroughfare.

131. **Lot Frontage:** Total length of the front property line which is adjacent to the street.

132. **Lot, Irregular:** any Lot not having equal front and rear Lot Lines or equal side Lot Lines; a Lot, the opposite Lot Lines of which vary in dimension and the corners of which have an angle of either more or less than 90 degrees.

133. **Lot Layer:** a range of depth of a Lot within which certain elements are permitted.

134. **Lot Line:** the boundary that legally and geometrically demarcates a Lot.

135. **Lot Width:** the shortest average distance between the side Lot Lines, which is normally that distance measured along

a straight line connecting the midpoint of the two side Lot Lines; the length of the Principal Frontage Line of a Lot.

136. **Major Recharge Feature:** a sensitive Geologic Feature or Manmade Feature that, because of its characteristics and setting, is likely to cause a significant quantity of direct recharge of surface water to the Edwards Aquifer, and has a contributing Drainage area of greater than ten acres and/or occurs within a Floodplain or streambed.

137. **Manmade Feature:** a feature, including but not limited to, closed depressions, wells, borings and Excavations.

138. **Manufactured Home:** either a Mobile Home or a HUD-Code Manufactured Home.

139. **Manufactured Housing:** any one of three types of prefabricated housing products which are typically manufactured or assembled at a location other than the end user's permanent site, and which are regulated by the Texas Manufactured Housing Standards Act (V.T.C.A., Occupations Code, Chapter 1201).

140. **Master Plan:** the Comprehensive Plan, as amended.

141. **Mezzanine:** an intermediate or fractional Story between the floor and ceiling of a main Story, and usually located just above the ground or main floor and extending over only part of the main floor.

142. **Minor Recharge Feature:** a sensitive Geologic Feature or Manmade Feature that, because of its characteristics and setting, may cause small quantities of surface water to recharge the Edwards Aquifer, and has a contributing Drainage area of less than 1.6 acres.

143. **Mixed Use:** multiple Principal Uses within the same Building through superimposition or Adjacency, or in multiple Buildings by Adjacency or proximity.

144. **Mobile Home:** a Structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when Erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems. The term does not include a Recreational Vehicle as that term is defined by this Development Code.

145. **Moderate Recharge Feature:** a sensitive Geologic Feature or Manmade Feature that, because of its characteristics and setting, is likely to cause small quantities of surface water to directly recharge the Edwards Aquifer, and has a contributing Drainage area between 1.6 acres and 10 inclusive.

146. **Model Home:** a 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 within the same Subdivision.

147. **Modular Home:** synonymous with Industrialized Home.

148. **Motor Freight Company:** a company using Trucks or other Heavy Load Vehicles to transport goods, equipment and similar products. Includes companies that move Personal or commercial belongings.

149. **Natural Drainage:** the characteristics of surface Drainage where no disturbance of natural features, soils, or vegetation has occurred.

150. **Natural State:** substantially the same conditions of the land which existed prior to its Development, including but not limited to the same type, quality, quantity and distribution of soils, Ground Cover, vegetation and topographic features.

151. **New Development:** development of previously undeveloped areas.

152. **NIT:** Candelas per Square meter used to measure luminance or brightness.

153. **Nonconforming Sign:** any Sign lawfully existing on the effective date of this Development Code which does not conform to all applicable standards and requirements of this Development Code.

154. **Nonconforming Lot:** a Lot that does not conform to the regulations of Chapter 3 and Chapter 4 of this Development Code.

155. **Nonconforming Structure:** a Structure that does not conform to the regulations of Chapter 4 of this Development Code.

156. **Nonconforming Use:** a Use of property that does not conform to the regulations of Chapter 5 of this Development Code.

157. **Outbuilding:** an Accessory Building, usually located toward the rear of a Lot on which there is a Principal Building.

158. **Overland Flow:** stormwater runoff that is not confined by any natural or manmade channel, including but not limited to Creeks, Drainage ditches and Storm Sewers.

159. **Overlay District:** a district that establishes regulations that combine with the regulations of an underlying Base District. The purposes of an Overlay District shall be to prohibit Uses otherwise allowed in the base district, to establish additional or different conditions for such Uses, or to authorize special Uses, together with standards for such Uses, not otherwise allowed in the Base District.

160. **Parkland:** land dedicated to or purchased by the City for the purpose of providing public Open Space.

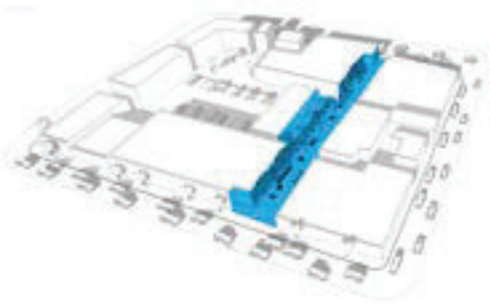
161. **Parkland Benefit Area:** the area that a specific Parkland, based on its size, location, and facilities, is intended to serve.

162. **Parking Area:** an off-street, ground-level open area within a Lot for parking vehicles as an Accessory Use incidental to a Principal Use of the Lot or Principal Building on the Lot. Not synonymous with Parking Lot.

163. **Parking Lot:** an off-street, ground-level open area within a Lot for parking vehicles as a Principal Use. Not synonymous with Parking Area.

164. **Parking Structure:** a Structure containing one or more Stories of parking above grade.

165. **Passage:** a pedestrian connector, open or roofed, that passes between Buildings to provide shortcuts through long Blocks and/or connect rear parking accommodations to Frontages. Sometimes referred to as a Cross-Block Passage.



166. **Paved Area:** any paved ground surface area, excepting Public Right-of-Way, used for the purpose of driving, parking, storing or displaying of vehicles, boats, trailers or Mobile Homes, including new and used car lots and other open lot uses. Parking Structures, covered drive-in Parking Areas or Parking Lots to the drip line of the covering, and/or Garages shall not be considered as Paved Areas.

167. **Pavement Width:** the portion of a Thoroughfare available for vehicular traffic and Parking (and when applicable, bicycle traffic); where curbs are laid, it is the portion between the face of curbs.

168. **Placement:** the act of locating, or the location of, a Building on its Lot.

169. **Plumbing Code:** the current version of the Plumbing Code adopted by the City.

170. **Plumbing Fixture:** a water closet, bathtub, separate shower, lavatory, urinal, Kitchen or kitchenette sink, household laundry, drain of any type or other similar receptacle that Discharges wastes into the Wastewater System.

171. **Plumbing Permit:** any Plumbing Permit issued by the City Building Inspection Division.

172. **Pollutant:** any gaseous, liquid or solid material capable of causing Pollution of surface waters or groundwaters.

173. **Pollution or Polluting:** the Alteration of the physical, thermal, chemical, or biological quality of, or the contamination of the natural environment that renders it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety or welfare, or impairs the usefulness of the public enjoyment of the natural environment for any lawful or reasonable purpose.

174. **Portable Sign:** a transportable Sign of durable construction, including a trailer used for advertising or promotional purposes, which is not designed to be permanently affixed to a Building, other Structure or the ground.

175. **Potable Water:** water that complies with TCEQ rules for drinking water and other domestic uses.

176. **Premises:** a parcel or tract of land or one or more platted Lots under the same ownership and use, together with the Buildings and Structures located thereon.

177. **Principal Building:** the Main Building on a Lot, usually located toward the Frontage.

178. **Principal Entrance:** the main point of access for pedestrians into a Building.

179. **Principal Use:** a predominant and primary Use of a Building or a Lot, described in Table 5.3.1.2 (Land Matrix Use).

180. **Private Sewage Facilities:** septic tanks, pit privies, cesspools, sewage holding tanks, injection wells used to dispose of sewage, chemical toilets, treatment tanks and all other facilities, systems and methods used for the disposal of sewage other than disposal systems operated under a waste Discharge permit issued by the state.

181. **Public Improvement Construction Plans:** the drawings and technical specifications, including bid documents and contract conditions, where applicable, providing a graphic and written description of the character and scope of the work to be performed in Construction or Development.

182. **Public Right-Of-Way:** a strip of land used or intended to be used, wholly or in part, as a Public Thoroughfare, Alley, Crosswalk Way, Sidewalk or Drainage way.

183. **Public View:** areas that can be seen from any Public Thoroughfare, Parkland, Civic Zone or other public place.

184. **Qualified Geologist:** a person who has received a baccalaureate or graduate degree in the natural science of geology from an accredited university and has training and experience in groundwater hydrology or Edwards Limestone karst geology, or has demonstrated such qualifications by registration or licensing through a state or professional organization that certifies their background of training and experience in groundwater hydrology or Edwards Limestone karst geology.

185. **Radio, Television or Microwave Tower:** See Antenna, Microwave Reflector and Antenna Support Structure.

186. **Recharge Zone:** the area where the stratigraphic units constituting the Edwards Aquifer outcrop, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other Geologic Features and Manmade Features would create a potential for recharge of surface waters into the Edwards Aquifer. The Recharge Zone is identified as such on official TCEQ maps, which are incorporated in this Development Code by reference. The Recharge Zone includes all areas defined as Water Quality Zones for the Edwards Aquifer in this Development Code.

187. **Reconstruction:** rehabilitation or Replacement of a Structure which either has been damaged, Altered or removed or which is proposed to be Altered or removed to an extent exceeding 50 percent of the replacement cost of the Structure at the time of the damage, Alteration or removal.

188. **Recorded Plat:** a Development Plat or a Subdivision Plat that has been finally approved by the City and that has been filed with the applicable county after meeting all City requirements for recordation under Chapter 3, Article 5, Division 8 of this Development Code.

189. **Recreational Vehicle:** a vehicle that is:

    a. Built on a single chassis;

    b. Four hundred square feet or less when measured at the largest horizontal projection;

    c. Designed to be self-propelled or permanently towable by a light-duty Truck; and

    d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

190. **Recreational Vehicle Park:** any Lot, tract or parcel of land upon which accommodation is provided for two or more Recreational Vehicles used as living or sleeping quarters by the day, week or month where a charge is or is not made.

191. **Redevelopment:** Development which replaces previously existing Development.

192. **Redevelopment Infill:** Development characterized by replacing existing Development or re-establishing formerly developed areas.

193. **Remainder Tract:** land that is part of a larger parcel that is not subject to a Subdivision Concept plat or Watershed Protection Plan affecting the parcel.

194. **Remodeling:** renovation, Alteration or Repair of an Existing Structure that is not an Addition.

195. **Repair:** to restore or mend to sound working condition after damage, decay or failure.

196. **Replacement:** the act of moving one Structure from its existing location or site and replacing it with another Structure, or the act of replacing a Structure previously removed with another Structure.

197. **Reserve Strip:** a privately owned strip of land, normally one foot in depth, Adjacent to the Public Right-of-Way or Easement preventing the extension of the Right-of-Way or Easement without the expressed consent of the owner.

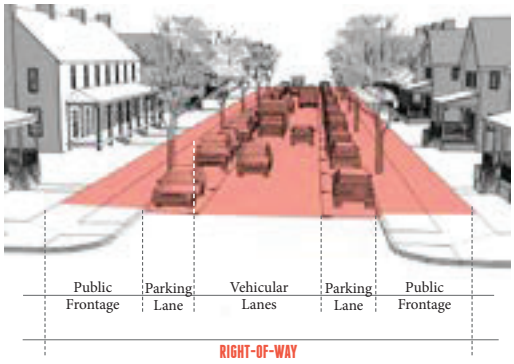
198. **Residential:** Use characterizing premises available for long-term human dwelling, exclusive of Lodging.

199. **Responsible Official:** the director of the City department who has been designated to accept a type of Development Application for filing, to review and make recommendations concerning such applications, and where authorized, to initially decide such applications, to initiate enforcement actions, and to take all other actions necessary for administration of the provisions of this Development Code with respect to such Development Applications. For all purposes of this Development Code, the Planning Director is the Responsible Official.

200. **Restoration:** for water quality regulation purposes, the establishment of plants, grasses and vegetation native to a particular Site for the purposes of erosion control and preservation or Restoration of biological and physical habitat; for all other purposes, to return an area, Building or other Structure to its previous condition.

201. **Restructure:** with respect to Signs, the replacement of structural members of a Sign for the purpose of extending the life of a Sign.

202. **ROW:** Right-of-Way.



203. **Satellite:** See Antenna.

204. **Screen/Screening:** to shield and/or separate physically and visually any Use, activity, Building, Structure, object, or element; a Structure which provides such separation.

205. **Senior Housing:** means a residential complex containing multifamily, townhomes, or fouplex dwellings designated for and occupied by senior adults of ages 55 or greater. Such facilities may include a congregate meals program in a common dining area, but exclude institutional care such as medical mursing care and are distinguished from an assisted living facility as elsewhere defined. Maxium density shall be as required by the applicable zoning district; or if not designated by the zoning district, maximum density shall be 14 units per acre.

206. **Sensitive Feature:** a permeable Geologic Feature or Man-made Feature located on the Recharge Zone or Transition Zone where:

   a. A potential for hydrologic connection between the surface and the aquifer exists;

   b. Rapid infiltration to the subsurface may occur; and

   c. The feature has a sensitivity rating, according to TCEQ rating criteria, of 25 points or more on a Geologic Assessment prepared to TCEQ standards by a Qualified Geologist.

207. **Sensitive Feature Protection Zone:** the area surrounding Sensitive Features where no Development or disturbance of native vegetation is allowed.

208. **Shared Parking Factor:** an accounting for parking spaces that are available to more than one Use. See Table 5.1.6.2B (Shared Parking Factor) and Section 5.1.6.2.

209. **Sharrow:** also known as Shared Lane Marking in the Manual of Uniform Traffic Control Devices, is a pavement marking indicating that motorists and cyclists share a travel lane. The Sharrow shall be placed so that the centers of the markings are at least 11 feet from the face of the curb, or from the edge of the pavement where there is no curb.

210. **Shopfront:** a Private Frontage type conventional for Retail Use, with substantial glazing and an awning, wherein the Facade is aligned close to the Frontage Line with the Building entrance at Sidewalk grade. See Table 5.2.8.11D (Private Frontage).

211. **Shrub:** any self-supporting woody evergreen and/or deciduous species.

212. **Sidewalk:** a paved pedestrian way generally located within Public Thoroughfare Right-of-Way but outside the roadway.

213. **Sight Triangle:** a triangle-shaped area Adjacent to the intersection of two Thoroughfares, formed by two lines measured a distance from 25 feet along the Curb Line of the Thoroughfares from their point of intersection and a third line connecting the two ends.

214. **Sign:** every device, Structure, frame, letter, figure, character, mark, plane, point, design, picture, stroke, stripe, projection, symbol, logo, trademark, or reading situated outdoors, or indoors affixed to a window, or located within 12 inches from a window facing the exterior, which is used, or intended to be used, to attract attention, convey information, identify or advertise any establishment, product, goods, or service when the same is placed in view of the off-Premises general public. The term Sign shall not include the flag or Pennant or insignia of any state, city or other political unit or of any charitable, educational, philanthropic, civic, or religious organization. The following are types of Signs:

a. **Sign, Address/Postal -** A Sign that consists of a numeric reference to a Structure or Thoroughfare, mounted onto the Wall of the Building.

b. **Sign, Animated -** any Sign that uses flashing lights, movement, changing of lighting, or any other means to depict motion, an illusion of motion, create a special effect or scene through the use of patterns of lights, changes in color or light intensity, computerized special effects, video displays or through any other method, including holographic displays, which create a three dimensional image through projection or television screens and which the message does not include a CEVM Sign as defined below in subsection (d) or a community information Sign.

c. **Sign, Attached -** any Sign attached to, applied on or supported by any part of a Building or Accessory Structure or moveable panels.

d. **Sign, Automatic Changing -** a Sign which automatically changes the Sign Copy on a preprogrammed cycle through the use of illumination.

e. **Sign, Awning -** An Awning that contains a Retail tenant Sign which may be painted, screen printed, or appliqueed on the Awning. This Sign type is a traditional Shopfront fitting and can be used to protect merchants' wares and keep Shopfront interiors shaded and cooled, and provide temporary cover for pedestrians

f. **Sign, Band -** A Sign that is flat against the Facade consisting of individual cut letters applied directly to the Building, or painted directly on the surface of the Building. These Signs are placed directly above the main entrance and often run horizontally along the entablature of traditional Buildings. Band Signs are typically intended to be seen from a distance and are often accompanied by additional pedestrian-scaled Signage. May also be referred to as a Wall Sign or Facade Sign.

g. **Sign, Blade -** A Sign mounted perpendicular to a Building Facade Wall, projecting at a 90-degree angle, made of metal or other material more than 1/2 inch in thickness, and typically hung from decorative cast or wrought iron brackets in a manner that permits it to swing slightly. These Signs are small, pedestrian scaled, and easily read from both sides. May also be referred to as a Projecting Sign.

h. **Sign, Changeable Electronic Variable Message (CVEM) -** a Sign that is activated electronically or by other means, whose message, content, or display,

either in whole or in part, may be changed by means of electronic, computerized programming, or any other means, and which the message is in text, alpha-numeric characters, symbols, logos, or static image. There shall be no more than one message or static image displayed at any time and the message, image or background shall not change more often than once every 60 seconds. Monument Signs on which the sole message is the grade and price of fuel, or time and temperature or a drive through menu board are not considered CEVM Signs.

i. **Sign, Community Information -** any Sign which promotes items of community interest including time, temperature, date, atmospheric conditions and upcoming noncommercial events or charitable causes.

j. **Sign, Directional -** a Sign which provides directions to a destination or other wayfinding information.

k. **Sign, Directory -** A Sign that displays the tenant name and location for a Building containing multiple tenants

l. **Sign, Freestanding -** any Sign affixed to the ground or mounted on a fence or wall which is not an integral part of a Building or Accessory Structure.

m. **Sign, Identification -** a Sign containing the name, address and recognized symbol or logo of a Subdivision, Building or complex of Buildings containing multiple occupancies or of any nonprofit, civic, religious, educational or governmental institution. Identification Signs for multiple occupancies may also contain the names, addresses and recognized symbol or logo of two or more of the individual tenants or businesses.

n. **Sign, Marquee -** A vertical Sign that is located either along the Building Facade where it projects perpendicular to the Facade; or at the corner of the Building where it projects at a 45 degree angle. Marquee Signs are a structural feature of a Building that provides both cover to pedestrians and Sign space. These Signs may extend beyond the parapet of the Building where it projects at a 45 degree angle, but may also terminate below the cornice or eave. Marquee Signs often have neon lettering used in conjunction with removable or painted lettering.

o. **Sign, Monument -** a Sign that is Erected on a solid base directly on the ground and not supported by a pole, and that is itself constructed of a solid material.

p. **Sign, Multi Business -** Signs that are mounted in a yard between the Public Right-of-Way and the Building Facade. Signs mounted in a yard may be placed parallel or perpendicular to the enfronting Thoroughfare. Multi-Business Signs are for Buildings in which multiple businesses are located in Mixed-Use environments that are in the process of transitioning from a suburban to an urban environment.

q. **Sign, Off Premises -** a Sign which does not exclusively refer to the name, location, products, persons, services or activities of or on the Premises where it is located, except for certain permitted Multiple Occupancy business centers.

r. **Sign, On Premises -** any Sign which relates exclusively to the name, location, products, persons, services or activities of or on the Premises where it is located.

s. **Sign, Outdoor Display Case -** a Sign which consists of a lockable metal or wood framed cabinet with a transparent window or windows, mounted onto a Building wall or free-standing support. It allows the contents, such as menus or maps, to be maintained and kept current.

t. **Sign, Pole -** A Sign other than an Outdoor Display Case which is mounted on one or more freestanding supports, such as a frame, column, mast, pole or similar support such that the bottom of the Sign face or lowest Sign module is not in contact with the ground.

u. **Sign, Sidewalk -** A Sign that provides secondary Signage and may be used to announce daily specials, sales, or point to shops located off the sidewalk. They may be painted wood panels or cut wood shapes. Traditional slate boards are highly recommended. Chaser lights or aluminum signs may not be used. May also be referred to as a Sandwich Board.

v. **Sign, Temporary -** a Sign which is displayed for a limited period of time only and which is typically associated with an activity or event of limited duration.

w. **Sign, Wall Mural -** a Sign which is flat against the Facade of a Secondary Frontage. These Signs are typically painted directly on the Building and contain a combination of text and graphic elements. They are intended to be visible from a greater distance and shall be accompanied by additional Signage on the primary front Facade at the business entrance. Billboards are not considered Wall Mural and are prohibited.

x. **Sign, Window Sign -** Professionally painted Signs, consisting of individual letters and/or designs, applied directly on the inside of a window or door. These Signs offer a high level of craftsmanship and visibility, and are often used for small professional offices. Window Signs are often repeated on storefronts with several divided openings, however, repetition should be done with great care to ensure that the entrance to the business is clearly marked. Sign Band: external area of Building Facade designated for placement of horizontal Signage typically above the transom and below the second floor window.

215. **Sign Permit:** a City-issued permit that authorizes the display, Erection, rebuilding, expansion or relocation of any On-Premises Sign or Off-Premises Sign.

216. **Site:** a tract of property that is the subject of Development or a Development Application.

217. **Site Plan:** a detailed plan showing the roads, parking, footprints of all Buildings, existing Trees, proposed landscaping, Parkland, Open Space, grading and Drainage, and similar features needed to verify compliance with the approved land use plan and Development standards.

218. **Site Permit:** a permit that is issued under Chapter 2, Article 7 of this Development Code that authorizes Site preparatory activities, other than Construction or placement of a Structure on the land, under one or more Site Plans and that, upon approval, authorizes the property owner to apply for a Construction Permit.

219. **SMRC:** the San Marcos River Corridor.

220. **Social Function:** any activity on an organization's Premises at which the number of nonmembers in attendance exceeds the number of resident members of the Fraternity or Sorority Building, and which involves the consumption of alcoholic beverages and either of the following:

a. The use of an amplified sound system indoors or outdoors which is audible from any property line of the Premises; or

b. The occurrence of any group activity outside of enclosed Buildings.

221. **Solid Waste:** any garbage, refuse, sludge and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, municipal, commercial and agricultural operations and from community and institutional activities.

222. **Space:** with respect to a Manufactured Home Park, a plot of ground within such Manufactured Home Park designed for the accommodation of one Manufactured Home, together with required Open Space. This term also includes the terms "Lot", "stand" and "Site". Space may also mean any plot or parcel of ground upon which there is Erected any accommodation for any Recreational Vehicle or Structures of a temporary nature for living and sleeping purposes.

223. **Special Flood Hazard Area:** a designation by the Federal Emergency Management Agency (FEMA) that may include the V (Velocity) Zones and Coastal A Zones where Building Construction is forbidden, restricted, or contingent upon raising to the Base Flood Elevation.

224. **Special Requirements:** requirements made applicable to Development pursuant to Section 5.2.8.2(h) of this Development Code and/or the associated designations on a Regulating Plan or other map for those provisions.

225. **Start of Construction:** 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, including the pouring of slab 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, including clearing,

grading and filling; nor does it include the installation of Streets and/or walkways; nor does it include Excavation for basement, footings, piers or foundations or the Erection of temporary forms; nor does it include the installation on the property of Accessory Buildings including Garages or sheds not occupied as Dwelling Units or not a 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.

226. **Steep Slope:** areas that contain slopes 15 percent or greater grade and that are characterized by increased runoff, erosion and sediment hazards.

227. **Storm Sewer:** any sewer or open Drainage channel designed to carry stormwater and surface water, Thoroughfare wash and Drainage water.

228. **Story:** a habitable level of a Building above grade, other than an Attic or a basement, that is included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, then the space between the floor and the ceiling above it. The definition of a Story does not include parapets, gables and other normal roof Structures. In cases where the Site has a significant slope, the number of Stories of a Building shall be measured from the point representing the average slope from front to back, or side to side, of the Building.

FIGURE 8.2 DIAGRAM OF A TWO-STORY STRUCTURE

229. **Streetscreen:** a freestanding wall or a hedge along the Frontage Line, or coplanar with the Facade. It may mask parking from the Thoroughfare, provide privacy to a side yard, and/or strengthen the spatial definition of the public realm. (Syn: Streetwall.)

230. **Structural Alteration:** for purposes of Sign regulation, any relocation, Replacement or enlargement of the structure of a Sign or change in the overall height, width, size or orientation of a Sign. Routine maintenance of nonstructural parts including removable faces, Copy and electrical fixtures shall not be considered Structural Alterations.

231. **Structural Improvement:** any Repair, 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 term includes Structures that 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 chief Building Official and which are the minimum necessary to ensure safe living conditions; or

    b. Any Alteration of a Historical Landmark, Historic Building, or other Historic Structure, provided that the Alteration shall not preclude the Structure's continued designation as a Historic Landmark, Historic Building, or Historic Structure, as applicable.

232. **Structure:** any vertical Improvement Constructed, Erected or artificially built up or composed of parts and joined together in a permanent manner. A Structure may or may not be intended for habitation and includes without limitation, a Building, park shed, bicycle storage facility, transit stop, ticket booth, utility facilities, and boathouses. Not synonymous with Building.

233. **Submittal Date:** the date upon which the Responsible Official makes a determination that a Development Application is complete.

234. **Substantial Modification:** modification, change, or alteration to a building that is valued at more than 50% of the replacement cost of all structures on a lot, if new. The Responsible Official shall publish a methodology

and worksheet utilizing industry accepted standards for determining replacement cost on the City's Website.

235. **Superstation:** any nonlocal broadcast signal secondarily transmitted by Satellite.

236. **Surveyor:** a licensed state land Surveyor or a registered professional land Surveyor, as authorized by state statutes, to practice the profession of surveying.

237. **Swale:** a low or slightly depressed natural area for Drainage.

238. **TABC:** the Texas Alcohol and Beverage Commission.

239. **TCEQ:** the Texas Commission on Environmental Quality.

240. **TCEQ BMP Guidance Manual:** TCEQ document RG-348, "Complying with the Edwards Aquifer Rules: Technical Guidance on Best Management Practices".

241. **TCEQ Edwards Aquifer Rules:** the TCEQ rules for the Edwards Aquifer, 30 TAC Chapter 213, Subchapter A, as amended.

242. **TCSS:** the City's design and construction standards for the installation and Construction of Subdivision or public Improvements that are associated with developing a piece of property. TCSS is an acronym for Technical Construction Standards and Specifications.

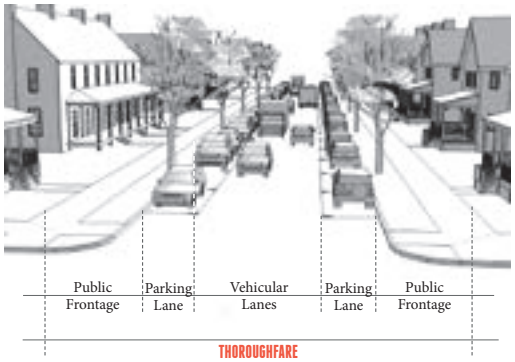
243. **TSDHS:** the Texas State Department of Health Services.

244. **Temporary BMPs:** Base Zones used to prevent and control Pollution from Development during Construction.

245. **Temporary/Mobile Antenna:** an antenna and any associated support structure/equipment (including, but not limited to, a support pole, a vehicle, etc.) that is placed and/or used on a temporary basis only (i.e., not intended to be permanent), usually in conjunction with a special event, news coverage or emergency situation, or in case of equipment failure or temporary augmentation of permanent communications equipment.

246. **Thoroughfare:** a way to provide access to Lots and Open Spaces.

FIGURE 8.3 THOROUGHFARE



247. **Thoroughfare Plan:** [Future Transportation Plan] a Street plan that is part of the Comprehensive Plan.

248. **Tiedown:** any device designed for the purpose of anchoring a Mobile Home or manufactured home to ground anchors, as required by V.T.C.A., Occupations Code, Chapter 1201.

249. **Trailer, Hauling:** a vehicle or device which is pulled behind an automobile or Truck and which is designed for hauling animals, produce, goods or commodities, including boats.

250. **Transect:** a cross-section of the environment showing a range of different conditions, results or habitats. The rural-urban Transect of the human environment is used to describe Character Based Districts and the physical form and character of a place.

251. **Transition Zone:** with respect to the Edwards Aquifer, the area Adjoining the Recharge Zone where faults, fractures, or other Geologic Features or Manmade Features would present a possible avenue for recharge of surface water to the Edwards Aquifer. The Transition Zone is identified as such on official TCEQ maps, which are incorporated in this Development Code by reference.

252. **Transit Route:** an existing or planned route for public intracity or intraurban transit service in the local or regional transportation plan or the plan of the relevant transit service provider. Does not include temporary routes.

253. **Transportation Plan:** A transportation plan illustrating new streets and existing roadways and/or highways. A transportation plan typicaly inlcudes the location, names and proposed cross sections identifying all right-of-way elements including vehicle, pedestrian, bicycle and transit provisions.

254. **Transportation Impact Assessment:** A detailed description of the existing and proposed infrastructure in the area surrounding the site for transit, pedestrians and cyclists.

255. **Tree:** any living, self-supporting woody plant species which normally grows to an overall minimum height of 15 feet.

256. **Tributary:** any Waterway, having a Drainage area of 120 acres or more, that drains directly into Purgatory Creek or Sink Creek or the Blanco River. A Tributary is measured from its confluence with the Creek or river upstream to a point at which the contributing area is less than 64 acres.

257. **TXDOT:** the Texas Department of Transportation.

258. **Underbrush:** low-growing vegetation, brush and Trees with a Caliper less than three inches.

259. **Upland Zone:** any area within the Recharge Zone or the Transition Zone that is not part of a Water Quality Zone, Buffer Zone or Sensitive Feature Protection Zone.

260. **Urbanized:** generally, developed. Specific to Character Based Districts, developed at intensities higher than those of CBD-2 (Rural).

261. **Use:** the classification of the functions, activities, purposes, or uses accommodated by a Building or Lot or for which land or Buildings are designated, arranged, intended, occupied or maintained. See Table 5.3.1.2 (Land Use Matrix) and Chapter 5, Article 3, Division 6.

262. **Use, Nonconforming:** See Section 1.6.2.1 of this Development Code.

263. **Variance:** authorization from the Zoning Board of Adjustments to deviate from or vary one or more standards of this Development Code applicable to a Development Application that is reviewed and decided under Chapter 2, Article 10, Division 2 of this Development Code.

264. **Vines:** any of a group of woody or herbaceous plants which may cling by twining, by means of aerial rootlets or by means of tendrils, or which may simply sprawl over the ground or other plants.

265. **Vision San Marcos Comprehensive Plan, or simply Vision San Marcos or the Comprehensive Plan:** the Comprehensive Plan adopted by the City entitled "Vision San Marcos – A River Runs Through Us", as amended.

266. **Violation:** the failure of a person, entity, Structure, Building, Lot, Improvement, Subdivision, or other Development to fully comply with this Development Code.

267. **VTCA:** Vernon's Texas Codes Annotated.

268. **Wastewater:** waterborne waste normally discharging from the sanitary conveniences of dwellings, hotels, office Buildings, retail establishments, factories, and institutions that is free from storm and surface water.

269. **Wastewater Service:** the collection of Wastewater that requires treatment prior to its return to nature.

270. **Wastewater System:** a system of pipes, conduits, lift stations and treatment facilities owned, controlled or subject to the jurisdiction of the City, designed to collect and transport Wastewater and industrial waste.

271. **Water Facilities:** any or all of the individual components of a Water System taken together.

272. **Water Quality Zone:** an area of land along a Minor Waterway, Intermediate Waterway, Major Waterway, or along a river, stream or Waterway in which Development is prohibited or limited.

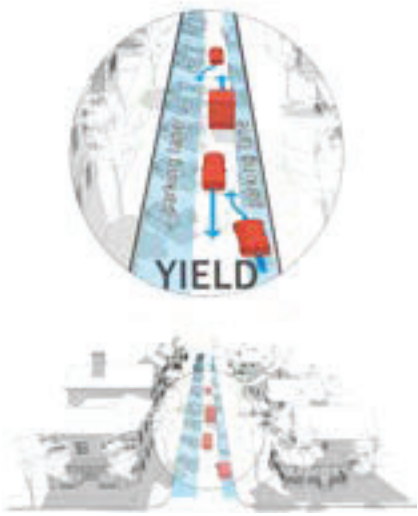
273. **Water System or Central Water System:** the Water Facility infrastructure for the collection, treatment, storage and distribution of Potable Water from the source of supply to one or more consumers.

274. **Waterway:** any natural or artificial channel in which a flow of water, either continuously or intermittently, occurs.

275. **Watershed Protection Plan:** a plan that is submitted that establishes terms and conditions for approval of applications for Plats and Site Permits relating to environmental standards in Chapter 6 of this Development Code, and that is reviewed and decided in phases under Chapter 2, Article 7 of this Development Code.

276. **Yield:** characterizing a Thoroughfare that has two-way traffic but only one effective travel lane because of parked cars, necessitating slow movement and driver negotiation. Also, characterizing parking on such a Thoroughfare.

FIGURE 8.4 YIELD



277. **ZBOA:** Zoning Board of Adjustment.

278. **Zoning Map:** the official map or maps that are part of the zoning ordinance and delineate the boundaries of individual