DIVISION 2. - PLANNING AND ZONING COMMISSION[5]

Footnotes:

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Charter reference— Planning and zoning commission, § 7.01 et seq.

Sec. 2.091. - Membership; eligibility; term of office; training qualification requirements.

(a) The planning and zoning commission consists of nine members, appointed by City Council.

(b) To be eligible for appointment and continued service on the commission, all of the commission members ~~except one~~ will reside and own real property in the city~~, and the remaining members will reside and own real property in the city's extraterritorial jurisdiction. To be eligible for election and continued service as chair of the commission, a commission member must reside in the city and own real property in the city. Effective March 1, 2015, the ETJ member position shall be eliminated and replaced with a member who resides in and owns real property in the city~~.

(c) The council will seek to ensure broad citizen representation and expertise among the membership which includes geographic, professional, gender, racial, and viewpoint diversity in making appointments to the planning and zoning commission.

(d) Three members of the planning and zoning commission are appointed each year for staggered three-year terms, with one-third to be appointed each year on a continuing basis.

(e) A newly appointed regular member, must attend an orientation meeting with the director of planning and development services, and must attend a seminar on land use, environmental and planning issues approved by the director. The director will advise newly appointed members who do not already meet these requirements of the date and location of approved seminars, and will facilitate their registration and attendance at the seminars. The members are entitled to reimbursement for reasonable costs of attendance. If a newly appointed member fails to fulfill these attendance requirements within six months of being appointed, the appointment is automatically rescinded and the city council will make a new appointment.

(Code 1970, § 2-113; Ord. No. 1994-49, § 1, 6-27-94; Ord. No. 1995-43, § 1, 7-10-95; Ord. No. 1999-59, § 1, 7-12-99; Ord. No. 2000-65, § 1, 9-25-00; Ord. No. 2001-36, § 1, 5-21-01; Ord. No. 2002-25, § 1, 3-25-02; Ord. No. 2002-50, § 1, 7-22-02; Ord. No. 2003-25, § 1, 5-12-03; Ord. No. 2004-69, § 2, 10-25-04 ; Ord. No. 2014-03, § 3, 1-21-14)

Secs. 2.092—2.110. - Reserved.

DIVISION 3. - NEIGHBORHOOD COMMISSION

Sec. 2.111. - Established; composition; appointment of members.

(a) There is hereby established the neighborhood commission. The commission is composed of ten voting members and three alternates appointed by the city council. Nine members will be citizens who reside in sectors 1, 2, 3, 4, 5, 6, 7, 8, and 9 as previously established in San Marcos by the Horizons Master Plan. The city council will consider recommendations from sector residents and organizations such as homeowners associations or the Council of Neighborhood Associations (CONA). At least one member of the neighborhood commission shall be a member nominated by CONA. A member shall be a representative nominated by the Texas State University Division of Student Affairs. Three alternate voting member positions shall be appointed; one from Sector 5, Sector 6, and the Texas State University Associated Student Government Representative. The alternates can be counted toward a quorum and vote in absence of any member of the ten voting slots. The Texas State University Associated Student Government Representative, also considered an alternate, will act as a tie breaker to any tie vote and shall be a representative nominated by the Texas State University Associated Student Government.

Summary Chart

Number of Appointments	Representing
7 citizens one from each of	Sectors 1, 2, 3, 4, 7, 8, and 9
2 citizens (1 as an alternate voting member)	Sector 5
2 citizens (1 as an alternate voting member)	Sector 6
1 representative	Texas State University, Division of Student Affairs
1 representative (alternate voting member)	Texas State University Association Student Government

(b) The voting members of the commission will be appointed to serve in staggered two-year terms and shall maintain his or her principal physical residence in the corporate limits of San Marcos; for purposes of this subsection. A voting member must meet all of the following to meet the requirements for principal physical residence:

a. The person must use the residence address for voter registration and driver's license purposes;

b. The person must use the residence address as the person's home address on documents such as employment records, resumes, business cards, government forms and application forms;

c. The person must not claim a homestead exemption on any property other than the residence;

(c) A map depicting the location of each sector ~~is incorporated by reference, will be maintained by the development services department and~~ may be viewed at the office of the city clerk ~~or the development services department~~.

(Ord. No. 2010-34, § 1, 7-20-10; Ord. No. 2014-04, § 1, 2-4-14)

Sec. 2.112. - Rules and regulations.

The neighborhood commission will adopt the rules and regulations it deems best to govern its actions, subject to the general laws of the city and state.

(Ord. No. 2010-34, § 1, 7-20-10)

Sec. 2.113. - Activities and duties.

(a) The neighborhood commission duties and activities include the following:

(1) Advise the city council, the city manager, and the other boards and commissions that are appointed by the city council.

(2) Advise on issues of importance to the overall quality of neighborhoods in the City of San Marcos as referred to the commission by the city council, other appointed boards and commissions of the city, or city staff.

(3) Foster better university/city relations in an effort to promote understanding between students of the Texas State University and non-student residents of the community.

(4) Advise on methods and means of maintaining and enhancing the visual quality of the city, and provide guidance for city programs related to maintaining and enhancing the visual quality of the city's neighborhoods and gateways.

(5) Advise on matters and issues related to code enforcement activities that affect the overall quality of neighborhoods.

(b) ~~Development~~ Neighborhood services staff will provide administrative support to the commission as necessary.

(Ord. No. 2010-34, § 1, 7-20-10)

Secs. 2.114—2.130. - Reserved.

DIVISION 22. - COMPREHENSIVE PLAN OVERSIGHT COMMITTEE[18]

Footnotes:

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Editor's note— Ord. No. 2013-58, § 1, adopted October 2, 2013 , set out provisions intended for use as §§ 2.072, 2.073. For purposes of classification, and at the editor's discretion, these provisions have been included as a new division 22, §§ 2.370.22, 2.370.23.

Sec. 2.370.22. - Comprehensive plan oversight committee; established; composition; appointment of members.

(a) There is hereby established a comprehensive plan oversight committee. The committee is composed of seven members with each council member having one appointment. All members must be residents of the city or the city's extraterritorial jurisdiction.

(b) The members shall serve a term of three years. The committee shall nominate and select a chair and vice-chair.

(Ord. No. 2013-58, § 1, 10-2-13)

Sec. 2.370.23. - Duties; meetings; reports.

(a) The committee shall review the progress of implementation of the Comprehensive Plan and determine the completeness of achieving the Comprehensive Plan's objectives.

(b) The committee shall, on an annual basis, provide a recommendation on the prioritization of the objectives to be completed by city staff relating to implementation of the Comprehensive Plan.

(c) The committee shall provide an annual status report to the planning and zoning commission and to the city council on the progress made toward implementation of the Comprehensive Plan's objectives.

(d) The committee shall schedule and conduct ~~at least two~~ meetings ~~per year~~ as necessary to complete the above referenced tasks.

(e) The committee has no responsibility to advise the planning and zoning commission or the city council regarding specific land use decisions.

(f) If the committee decides to solicit community input regarding a matter within the scope of its duties, it shall accept public comments for a period of 30 days.

(Ord. No. 2013-58, § 1, 10-2-13)

DIVISION X. ZONING BOARD OF ADJUSTMENTS

Sec. X.XXX – Membership; eligibility; training qualification requirements

(a) The zoning board of adjustments shall consist of five regular members and two alternates appointed by City Council, for terms of two years.

(b) All regular members and alternates shall reside within the City limits

(c) A newly appointed member must attend an orientation meeting with the director of planning and development services.

Sec. X.XXX – Rules and regulations

(a) The zoning board of adjustments will adopt rules and regulations to govern its proveedings. These rules must be consistent with this Code and state law.

Sec. X.XXX – Duties of the Director

(a) The director of planning and development services or designee shall be an ex officio member of the ZBOA without power of vote. The director or designee shall act as secretary of the ZBOA.

DIVISION Y. HISTORIC PRESERVATION COMMISSION

Sec. Y.YYY – Composition; term

(a) The historic preservation commission shall consist of seven members appointed by the City Council from the following sources:

(1) Two members shall be residents of the City, or shall be employed in the City.

(2) Two members shall be citizens of the City with a demonstrated interest in the history of the City of San Marcos

(3) Two members shall be property owners or residents from one of the Historic Districts designated in the Land Development Code., other than the downtown Historic District. The City Council shall endeavor to rotate appointments evenly among the districts.

(4) One member shall be a property owner, business owner, or resident of the downtown Historic District.

(5) If possible, at least two members shall be from the disciplines of architecture, history, archaeology, or other disciplines related to historic preservation.

(b) The members of the Historic Preservation Commission shall serve three-year staggered terms. Three members shall be appointed in one year. Two members appointed in the next year and two appointed in the 3rd year. An appointment to fill a vacancy shall be for the unexpired term.

Sec. Y.YYY Rules and regulations

(a) The Historic Preservation Commission shall elect from its membership a chair who shall serve for a term of one year and who shall be eligible for reelection. The chair shall preside over the Historic Preservation Commission and shall have the right to vote.

ARTICLE 2. - BUILDING CODE

Sec. 14.026. - Amendments.

The International Building Code 2015 Edition adopted by section 14.002 is amended as follows:

Section 3305 is amended by adding the following:

3305.2 Construction Debris / Trash Containment. Contractors shall ensure that every construction, remodel, repair, or renovation site has a method of containment for construction debris and trash ~~and debris~~. The contractor shall ensure that ~~the trash and~~ construction debris and trash are ~~is~~ removed from the site on a regular basis so that the site is maintained in a clean, sanitary, and safe condition at all times.

3305.3 Sanitary Facilities. Contractors shall ensure that every construction, remodel, repair, or renovation site has adequate sanitary facilities for all workers. The contractor shall ensure that these facilities are kept in a clean and sanitary condition at all times.

~~*Section* 3305.4 Street Cleaning.~~ Adjacent streets to the construction site shall be maintained and free of dirt, mud, rocks and other construction debris at all times. Dirt, gravel, etc., shall not be swept, washed, or otherwise deposited into unprotected storm water conveyance systems.

3305.5 Spoils piles. All spoils piles shall be utilized on site or removed from construction sites as soon as possible. While onsite, all piles must be minimized in height, volume and footprint, and in no case shall piles exceed eight feet in height. Seeding or covering of undisturbed portions of spoils piles is required if the piles will not be increased or decreased for more than 14 calendar days, as specified in TPDES construction stormwater pollution prevention plan regulations, regardless of the size of the site and/or pile. In no case shall site and/or building final inspections be approved until all spoils piles have been removed from construction sites~~Visible (full or partial) spoils piles located within fifty feet of a public ROW shall not exceed eight feet in height. The City maintains discretion in the management of spoils pile volume and foot print, which shall be minimized. Seeding undisturbed portions of the pile is required in accordance with all applicable TPDES regulations~~.

3305.6 Jobsite Management. The Building Official shall have approval of all staging areas for jobsites where there are site constraints that may affect the surrounding areas.

3305.7 Truck Routes. The Building Official shall have approval of all truck routes within the City Limits, used for construction purposes such as excavation transport, ready-mix pour, etc.

(Ord. No. 2015-21, § 1, 7-7-15)

Secs. 14.027—14.040. - Reserved.

ARTICLE 2. - ALCOHOLIC BEVERAGES

Sec. 18.026. - Alcoholic beverage license and permit fees.

(a) ~~(a)~~ An applicant who wishes to serve alcoholic beverages within the City limits must first comply with zoning and use requirements of the Land Development Code and pay associated fees. This includes, but is not limited to obtaining a Conditional Use Permit.

(b) A city license fee and permit fee is levied and assessed in the amount of one-half of the state license and permit fees on every person engaged in the sale, cartage or manufacture of beer, wine or liquor. The city license and permit fees shall be paid to the city at the same time as the state license and permit fees are paid to the state.

~~(a)~~(c) The following are exempt from the fee authorized in this section:

(1) Agent's, airline beverage, passenger train beverage, industrial carrier's, private carrier's, private club registration, local cartage, storage, and temporary wine and beer retailer's permit;

(2) A wine and beer retailer's permit issued for a dining, buffet or club car; and

(3) A mixed beverage permit during the three-year period following the issuance of the permit.

(Code 1970, § 16-14; Ord. No. 1995-15, § 3 (26-6), 2-13-95)

State Law reference— Authority to levy, V.T.C.A., Alcoholic Beverage Code, §§ 11.38(c), 61.36(c).

Secs. 18.027—18.060. - Reserved.

DIVISION 4. – PUBLIC NUISANCES

Sec. 34.106. - Placement of flyers on parked vehicles prohibited in Central Business Area (CBA) ~~district~~.

(a) It is unlawful for any person to place or cause to be placed a flyer on any vehicle parked or stopped on a public street or public parking place in the ~~central business area (~~CBA~~) zoning district~~. In this section the term "flyer" includes but is not limited to a poster, handbill, card, leaflet, pamphlet or other similar object.

(b) It is not unlawful to hand a flyer or any other such object to any person willing to receive it in the ~~central business area (~~CBA~~) zoning district~~.

(c) There is a rebuttable presumption, in any prosecution for violation of this section, that the primary beneficiary of any flyer is the person who caused it to be placed on the vehicle. In this subsection, the term "primary beneficiary" means the person whose goods, services, activity or identity is advertised or identified on or by the flyer.

(Ord. No. 2004-7, § 1, 2-9-04)

ARTICLE 7. - RENTAL PROPERTY STANDARDS

DIVISION 1. – DEFINITIONS

Sec. 34.80~~8~~1. - Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ~~a~~Article, shall have the meanings hereinafter designated. Where terms are not defined, they shall have their ordinary accepted meanings.

Advertise means the act of drawing the public's attention to a ~~home share~~ rental unit in order to promote the availability of the rental unit~~home share rental~~.

Code official means city marshal or designated official who is charged with the enforcement of this Code.

Complex. See "Multi-family unit (MFU)".

Duplex Unit (DU)—(two family dwelling). As defined by the International Building and/or Residential Code.

Home Share (Short-Term) Rental means a primary residence having fewer than five bedrooms, or portion thereof, used for lodging accommodations to guests with a lease term for a period of less than 30 consecutive days. A home share rental does not include a bed and breakfast inn as defined in the City's Land Development Code, Subpart B of the City's Code of Ordinances.

Hotel Occupancy Tax means the hotel occupancy tax required to be assessed and collected for the operation of any home share rental and paid pursuant to Chapter 351 of the Texas Tax Code.

Landlord means the owner, landlord, operator, and lessor, management company, managing agent or on-site manager of a rental unit or multi-family dwelling unit.

Local responsible party means an individual located in the City of San Marcos while a ~~home share~~ rental unit is being rented and who has access to the premises and is authorized to make decisions regarding the premises.

Long Term Rental means any rental unit with a lease term for a period of 30 consecutive days or more. A long term rental does not include a hotel or motel as defined in the City's Land Development Code, Subpart B of the City's Code of Ordinances.

Multi-family unit (MFU) means any building or portion thereof which is designed, built, rented, leased, or let to be occupied as three or more dwelling units or apartments. The term shall not include hotels, motels, nursing facilities, or assisted living units as defined in the City's Land Development Code, Subpart B of the City's Code of Ordinances.

Occupant means any individual living or sleeping in a building, or having possession of a space within a building. This includes, but is not limited to, persons that reside at a residence the majority of 21 calendar days, regardless if that person pays rent or provides in-kind services. The person is not required to have a lease, contract or other legal document to be considered an occupant.

Owner means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court.

Owner-occupied rental unit means a dwelling unit in which at least one owner of record of the property resides as his/her primary dwelling.

Premises means property, a lot, plot or parcel of land, easement or public way, including any structures thereon.

Primary Residence means the usual dwelling place of the owner or tenant of a residential dwelling and is documented as such by at least two of the following: motor vehicle registration, driver's license, Texas State Identification card, voter registration, tax documents, or utility bill(s). For purposes of this chapter, a person may have only one primary residence.

Property. See "premises".

Registrant means owner, manager or representative of a property. For home share rentals only, it also includes a lessee of property under a lease for a period of at least 30 days.

Rental Property means any property upon which a rental unit is located.

Rental unit means a structure, property, or portion thereof that is rented or offered for rent as a residence; including but not limited to, single-family unit, duplex unit, tri-plex, quad-plex unit, multi-family unit, manufactured or mobile home unit, town home or condominium..

Single Family Unit (SFU) as defined by the International Residential Code.

Unit. See "rental unit".

Sec. 34.802-34.809 - RESERVED

DIVISION 2. – HOME SHARE (SHORT-TERM) RENTAL

Sec. 34.810. – Purpose and Applicability.

(a) The purpose of this Division is to establish regulations for the registration and use of home share rentals. The requirements of this division apply only to home share rentals located in residential only zoning districts established under the City's Land Development Code, Subpart B of the City's Code of Ordinances.

(b) Nothing in this division, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than

30 consecutive days of property that is located outside of such residential only zoning districts ~~or that is located in any SmartCode zoning district~~.

(c) ~~Sunset Review – Home Share Rental Provisions.~~ The provisions of this ~~Chapter~~ Article pertaining to home share rentals shall be reviewed by the city council within one year of the adoption of Ordinance No. 2017-37. Those provisions are subject to amendment or repeal upon such review or at any other time. The adoption of the home share rental provisions of this ~~Chapter~~ Article shall not be construed to create any enforceable right to the continuation of home share rentals or any right to compensation for loss, damages, costs, or expenses alleged to have been incurred in reliance upon its adoption or suffered as a result its repeal.

Sec. 34.811. – Registration and Standards.

(a) Registration Required. An approved registration is required before operation of a ~~H~~home share rental ~~registration shall be required before renting any residential single-family homes, accessory dwellings, manufactured/mobile homes, duplexes, and multi-family units located in the City of San Marcos for a period of less than 30 consecutive days~~. Application for Home Share Rental Registration shall be made upon a form prescribed by the City of San Marcos for such purpose. The following ~~information~~ is required of all applications and missing items or information constitute an invalid application. Additional information may be required based on individual circumstances.

(1) Registrant's name, home address, telephone number, and electronic mail address.

(2) Proof of possession of the premises being registered, either by warranty deed, or valid lease.

(3) If the applicant does not own the property where the ~~premises are~~rental unit is located, the applicant must provide written documentation, signed by the property owner before a notary public, authorizing the registrant to operate a home share rental on the premises

(4) Proof that the premises is the primary residence of the applicant, including at least two of the following: motor vehicle registration, driver's license, Texas State Identification card, voter registration, tax documents, or utility bill.

(5) Signature or electronic signature by the registrant requiring the applicant to self-certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas.

(6) Payment of all fees, established by this Article or the City Council and, for registration renewals, proof of collection and payment of Hotel Occupancy Tax due during the preceding registration periods.

(7) The Zoning District Classification of the property, to be verified by the Planning and Development Services Department.

(8) Incomplete applications will not be processed and, as a result, any premises associated with an incomplete application will not be registered in compliance with or as required by this Division.

(a) *Standards Specific to Home Share (short-term) Rentals.*

(1) Home share rental is not permitted for any property that has not been registered under this Article or where the registrant's permission to operate a home share rental has been suspended or revoked ~~is~~ under ~~suspension or revocation of~~ this Article~~the Residential Rental Registration requirements~~.

(2) ~~Registration non-transferrable.~~ An approved home share rental registration shall not be assigned or transferred to any person or entity. Any attempt to transfer a registration shall render the registration subject to suspension or revocation as provided in this Article~~chapter~~.

(3) ~~Only one home share rental allowed per registrant.~~ No registrant shall be allowed to operate or register more than one home share rental in the city, and no registration for a new home share rental shall be authorized, while another registration in the registrant's name is still active or under suspension.

(4) ~~Only one home share rental per property owner and affiliates of owner.~~ An owner of property may not have more than one home share rental unit in the city that is registered or operated as a home share rental. When an owner of property registered or operated as a home share rental is a business organization, trust or other entity, no person or entity affiliated with such business organization, trust or other entity as an organizer, officer, member, manager, shareholder, trustee, beneficiary, partner, equity owner or investor shall be allowed to register or operate an additional home share rental at a different property address in the city.

(5) ~~Limit on occupants allowed.~~ No more than two adult guests per bedroom, plus no more than two additional adults, shall be allowed when renting a property as a home share rental.

(6) ~~*Safety features.*~~ Each home share rental registrant shall provide in the premises at least at least one working smoke detector and alarm and one working carbon monoxide detector and alarm per bedroom, and one working fire extinguisher. The premises shall, otherwise be in compliance with applicable building and fire codes adopted under Chapter 14 of the City's Code of Ordinances.

(7) It shall be the sole responsibility of the registrant, owner, and / or landlord to revew the registration for each home share rental unit in accordance with the terms outlined within this Article.

~~*Sec. 34.821.4. (c) Standards for Required*~~ *Brochure* ~~*and Safety Features.*~~

(1) ~~*Informational brochure.*~~ Each registrant operating a home share rental shall provide to guests a brochure that includes:

(a) the registrant's contact information;

(b) the property owner's contact information if the registrant is not the property owner;

(c) a local responsible party's contact information if neither the registrant nor the property owner are in the city limits when guests are renting the premises;

(d) pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, trash collection schedule, and relevant water restrictions;

(e) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.

Sec. 34.812. – Registration Term and Renewal

(a) All properties requiring registration of a Home Share Rental must complete an application prior to January 1, 2019. This initial registration shall be effective until January 1, 2020.

(b) All subsequent registrations approved under this Division shall be valid for a period of one year from the date of their issuance.

(c) A new registration shall be considered required if a change in ownership, trade name or transfer occurs prior to the expiration of the current registration. The new landlord, owner, or registrant of the premise or rental unit shall have 30 days from the date the change of ownership occurred to file a new registration with the City of San Marcos and pay the applicable fee.

(d) If the registrant has received notice of violation of any law or regulation including enforcement action under a current registration, ~~the~~an application for renewal shall include a copy of the notice.

(e) Upon receipt of an application for renewal of the registration, the director may deny the renewal if there is reasonable cause to believe that:

(1) The registrant has violated any ordinance of the City, or any State, or Federal law on the premises or has permitted such a violation on the premises by any other person; or

(2) There are grounds for suspension, revocation, or other registration sanction as provided in this Article.

Sec. 34.813. – Violations.

(a) A violation of this Division is a Class C misdemeanor offense. Any persons, firm, corporation or any others acting on behalf of said person, persons, firm or corporation violating or failing to comply with any of the provisions of this Article is subject to payment of a fine not to exceed $2,000.00 plus court costs. Each act of violation and each day upon which such violation occurs constitutes a separate offense. Additionally, this Article authorizes cumulative enforcement action against repeated or multiple violations under this Article.

(b) Violations of this Division shall be enforced in accordance with Division 4 of this Article. It is unlawful, and shall be considered a violation of this Article, to:

(1) rent, lease, or otherwise permit or allow any rental unit or premises to operate, or be operated as a home share (short-term) rental without first registering the property in which the rental is to occur and unless all requirements of this code and State laws and codes are met~~, including all registration requirements~~;

(2) operate a home share rental in any location that is not the registrant's primary residence;

(3) operate a home share rental without paying the required hotel occupancy taxes;

(4) ~~to~~ operate or allow to be operated a home share rental without first registering the property in which the rental is to occur with the city in accordance with this article;

(5) ~~to~~ operate a home share rental in any location that is not the registrant's primary residence;

(6) ~~to~~ operate a home share rental that does not comply with all applicable City and State laws and codes;

(7) ~~for a registrant to~~ operate or ~~property owner to~~ allow the operation of more than one home share rental within the City Limits;

(8) ~~to~~ operate a home share rental without paying the required hotel occupancy taxes;

(9) ~~to~~ offer or allow the use of a home share rental for having a party; or

(10) ~~to~~ fail to include a written prohibition against the use of a home share rental for having a party in every advertisement, listing, or other publication offering the premises for rent.

(11) fail to renew required registration (may result in double fees).

Sec. 34.814-34.819 – Reserved

DIVISION 3. – LONG TERM RENTAL REGISTRATION

Sec. 34.820. – Purpose and Applicability.

The purpose of this ~~chapter~~ division is to safeguard the life, health, safety, welfare, and property of the occupants of ~~single-family and multi-family residential~~ long-term rental unit(s) and the general public by establishing minimum standards and registration requirements. ~~for certain residential rental properties and home share rental properties in the city~~ Additionally, the purpose of this division is to identify and notify owners regarding minimum building standards, complaints and property maintenance codes in a timely manner. The provisions of this Code shall apply to all existing and future ~~residential~~ rental ~~properties,~~ units ~~and accessory structures~~

Sec. 34.821. – Registration and Standards

(a) Registration Required. ~~Residential r~~Long-Term Rental registration shall be required before renting any ~~residential single-family homes, accessory dwellings, manufactured/mobile homes, duplexes, and multi-family~~ rental unit~~s~~ located in the City of San Marcos for a continuous period of ~~at least~~ 30 days or more ~~when any of the conditions set forth in Section 34.818 exist on a rental property. Voluntary rental registration is permitted under Section 34.819~~. Application for Long-Term Rental Registration shall be made upon a form prescribed by the City of San Marcos for such purpose. The following is required of all applications and missing items or

information constitute an invalid application. Additional information may be required based on individual circumstances.

(1) Registrants name, business address, home address, telephone number, electronic mail address; or

(2) If owner is a partnership the principal business addresses, telephone and electronic mailing aqddress ~~contact (including electronic) information~~; or

(3) If owner is a corporation, the person registering must state whether it is organized under the laws of this state or is a foreign corporation, and must show the mailing address, business location, telephone number, electronic mail address, contact information and name of the primary individual in charge of the local office of such corporation, if any, and the names of all officers and directors or trustees of such corporation, and, if a foreign corporation, the place of incorporation; or

(4) Name, address, electronic mail address and telephone number of the property manager or management company (if any); and

(5) Street address of the rental ~~unit~~property; and

(6) Zoning district of the property (verified by the Planning and Development Services Department); and

(7) Indication whether the occupancy of each unit on the property is restricted to a family and one other person who is not related (as stated in the Land Development Code); and

(~~6~~8) Number of rental units and persons ~~the~~ each rental unit is designed to occupy; and

(~~7~~9) Whether there has been a change of occupancy use; and

(~~8~~10) The name(s), address, electronic mail address and phone number (24-hour contact number) of designated employee(s) or authorized representative(s) who shall be assigned to respond to emergency conditions. Emergency conditions shall include but not limited to; fire, natural disaster, flood, burst pipes, collapse hazard, emergency repairs and violent crime; and

(~~9~~11) Signature or electronic signature by the registrant requiring the applicant to self-certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas~~.~~; and

(12) Payment of any applicable fee established by this Article or the City Council.

(b) Standards Specific to Long-Term Rentals

(1) Each property upon which is located a rental unit is required to register under this division.

(2) It shall be the sole responsibility of the registrant, orner, and / or landlord to review this registration for each long term rental unit in accordance with the terms outlined in this Article.

Sec. 34.822. – Registration Term and Renewal

(a) All properties requiring registration of a Long Term Rental must complete an application prior to January 1, 2019. This initial registration of a Long Term Rental shall be effective until January 1, 2020.

(b) All subsequent registrations approved under this Division shall be valid for a period of one year from the date of their issuance.

(c) The City may by administrative order, divide the city into geographical areas and establish annual registration dates for rental units located within each geographical area. A copy of the geographical designation shall be on file with the code official.

(d) If the registrant has received notice of violation of any law or regulation including enforcement action, the application shall include a copy of this notice.

(e) A renewal shall be considered required if a change in ownership, trade name or transfer occurs ~~for the premise~~ prior to the expiration of the permit, the new landlord, owner, or registrant of the premise shall have 30 days from the date the change of ownership occurred to file a new registration with the City of San Marcos and pay the applicable fee.

Sec.34.823. – Violations

(a) A violation of this Article is a Class C misdemeanor offense. Any persons, firm, corporation or any others acting on behalf of said person, persons, firm or corporation violating or failing to comply with any of the provisions of this Article is subject to payment of a fine not to exceed $2,000.00 plus court costs. Each act of violation and each day upon which such violation occurs constitutes a separate offense. Additionally, this Article authorizes cumulative enforcement action against repeated or multiple violations under this Article.

(b) Violations of this Division shall be enforced in accordance with Division 4 of this Article. It is unlawful, and shall be considered a violation of this Article, to:
~~A registrant or landlord commits an offense if they:~~

(1) Allow operation of a rental unit that is not registered in accordance with this Division ~~with the City of San Marcos in violation of this Article~~;

(2) Fail to renew required registration (may result in double fees);

(3) Register past the deadline of required registration; ~~or~~

(4) Omit, or provide false or incorrect information on application;~~.~~

(5) Not comply with applicable City and State laws and codes;

Sec. 34.824 – Exceptions

The provisions of this Code do not apply to:

(1) Properties specifically registered as members, or affiliate members with property designation of the Achieving Community Together (ACT) program. However, if a property, member or affiliate withdraws or is suspended from the ACT program this provision shall apply before the end of a thirty day period from date of separation.

Sec. 34.825-34.829 RESERVED

DIVISION 4 – ENFORCEMENT

Sec.34.830 – Authorization to Enforce

The code official (city marshal), the marshal's authorized representatives, neighborhood services and other city personnel authorized may enforce the provisions of this ~~Code~~Article.

Sec. 34.831. – Notice of Violation

(a) For purposes of this ~~section~~ Division the code official must serve notice of suspension of a registration by mail, electronic notification, or posting on the subject property. The suspension is effective immediately until the requirements of this chapter are met or for the duration of the suspension set forth in the notice, or if no duration is listed in the notice, until such time as the code official lifts the suspension.

(b) Electronically transmitting a copy of the notice, acknowledgment of receipt requested, to the last known electronic address of the registrant or landlord shall serve as an accepted legal standard of contact and notice under this provision.

Sec. 34.832~~26~~. ~~–~~ Suspension and Revocation.

(a) The code official may suspend a ~~residential~~ rental ~~property~~ registration ~~or a home share rental registration for a rental property~~ if the code official determines that:

(1) The property is declared a substandard or dangerous building by the building department, the code official, or a court of competent jurisdiction;

(2) Registrant fails to comply with a notice of violation;

(3) Registrant fails to comply with applicable requirements of this Article.

~~Sec. 34.827. - Revocation.~~

(b) A court of competent jurisdiction may revoke a ~~residential~~ rental ~~property~~ registration ~~or a home share rental registration~~ that has been suspended pursuant to ~~section 34.826~~this Article if the court determines that during the suspension the registrant did not comply with the requirements of this ~~chapter~~Article, abate a notice of violation for which the suspension was ordered, or failed to comply with a court order. A suspension need not be in place in order to revoke a registration.

Sec. 34.833~~28~~. - Other remedies.

Nothing in this article prevents the city from seeking injunctive relief or other civil action required to enforce this chapter including suspension of utility services, placement of liens, and posting of notices prohibiting occupancy or use.

~~ADMINISTRATION~~

~~Sec. 34.801. - Administration.~~

~~Sec. 34.802. - Title.~~

~~These regulations shall be known as the "Rental Property Standards Code" hereinafter referred to as "this code", "chapter" or "provision".~~

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.803. - Applicability.

The provisions of this Code shall apply to all existing and future residential rental properties, units and accessory structures.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.804. - Purpose.

The purpose of this chapter is to safeguard the life, health, safety, welfare, and property of the occupants of single family and multi-family residential rental unit(s) and the general public by establishing minimum standards and registration requirements for certain residential rental properties and home share rental properties in the city.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.806. – Generally.

(1) Residential rental registration shall be required before renting any residential single-family homes, accessory dwellings, manufactured/mobile homes, duplexes, and multi-family units located in the City of San Marcos for a continuous period of at least 30 days when any of the conditions set forth in Section 34.818 exist on a rental property. Voluntary rental registration is permitted under Section 34.819.

(2) Home share rental registration shall be required before renting any residential single-family homes, accessory dwellings, manufactured/mobile homes, duplexes, and multi-family units located in the City of San Marcos for a period of less than 30 consecutive days.

(3) The code official (city marshal), the marshal's authorized representatives, neighborhood services and other city personnel authorized may enforce the provisions of this Code.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.807. - Application.

(a) Residential Rental Application Requirements. Application for residential rental registration shall be made upon a form prescribed by the City of San Marcos for such purposes. The following information is required of all applications and missing items or information constitute an invalid application. Additional information may be required based on individual circumstances.

(1) Registrants name, business address, home address, telephone number, electronic mail address; or

(2) If owner is a partnership the principal business addresses, and contact (including electronic) information; or

(3) If owner is a corporation, the person registering must state whether it is organized under the laws of this state or is a foreign corporation, and must show the mailing address, business location, telephone number, electronic mail address, contact information and name of the primary individual in charge of the local office of such corporation, if any, and the names of all officers and

directors or trustees of such corporation, and, if a foreign corporation, the place of incorporation; or

(4) Name, address, electronic mail address and telephone number of the property manager or management company (if any); and

(5) Street address of the rental unit; and

(6) Number of persons the rental unit is designed to occupy; and

(7) Whether there has been a change of occupancy use; and

(8) The name(s), address, electronic mail address and phone number (24-hour contact number) of designated employee(s) or authorized representative(s) who shall be assigned to respond to emergency conditions. Emergency conditions shall include but not limited to; fire, natural disaster, flood, burst pipes, collapse hazard, emergency repairs and violent crime; and

(9) Signature or electronic signature by the registrant requiring the applicant to self-certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas.

(b) *Home Share Rental Registration Requirements*. Application for Home Share Rental Registration shall be made upon a form prescribed by the City of San Marcos for such purpose. The following information is required of all applications and missing items or information constitute an invalid application. Additional information may be required based on individual circumstances.

(9) Registrant's name, home address, telephone number, and electronic mail address

(10) Proof of possession of the premises being registered, either by warranty deed, or valid lease.

(11) If the applicant does not own the property where the premises are located, the applicant must provide written documentation, signed by the property owner before a notary public, authorizing the registrant to operate a home share rental on the premises

(12) Proof that the premises is the primary residence of the applicant, including at least two of the following: motor vehicle registration, driver's license, Texas State Identification card, voter registration, tax documents, or utility bill.

(13) Signature or electronic signature by the registrant requiring the applicant to self-certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas.

(14) Incomplete applications will not be processed and, as a result,/ any premises associated with an incomplete application will not be registered in compliance with or as required by this Division.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

DIVISION 2. - DEFINITIONS

Sec. 34.808. - Definitions.

~~Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated. Where terms are not defined, they shall have their ordinary accepted meanings.~~

~~*Advertise* means the act of drawing the public's attention to a home share rental in order to promote the availability of the home share rental.~~

~~*Code official* means city marshal or designated official who is charged with the enforcement of this Code.~~

~~*Complex.* See "Multi-family unit (MFU)".~~

~~*Duplex Unit (DU) – (two family dwelling).* As defined by the International Building and/or Residential Code.~~

~~*Home Share Rental* means a primary residence having fewer than five bedrooms, or portion thereof, used for lodging accommodations to guests for a period of less than 30 consecutive days. A home share rental does not include a bed and breakfast inn as defined in the City's Land Development Code, Subpart B of the City's Code of Ordinances.~~

~~*Hotel Occupancy Tax* means the hotel occupancy tax required to be assessed and collected for the operation of any home share rental and paid pursuant to Chapter 351 of the Texas Tax Code.~~

~~*Landlord* means the owner, landlord, operator, and lessor, management company, managing agent or on-site manager of a rental unit or multi-family dwelling unit.~~

~~*Local responsible party* means an individual located in the City of San Marcos while a home share rental is being rented and who has access to the premises and is authorized to make decisions regarding the premises.~~

~~*Multi-family unit (MFU)* means any building or portion thereof which is designed, built, rented, leased, or let to be occupied as three or more dwelling units or apartments. The term shall not include hotels, motels, nursing facilities, or assisted living units~~

~~*Occupant* means any individual living or sleeping in a building, or having possession of a space within a building. This includes, but is not limited to, persons that reside at a residence the majority of 21 calendar days, regardless if that person pays rent or provides in-kind services. The person is not required to have a lease, contract or other legal document to be considered an occupant.~~

~~*Owner* means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court.~~

~~*Owner-occupied rental unit* a dwelling unit in which at least one owner of record of the property resides as his/her primary dwelling.~~

~~*Premises* means property, a lot, plot or parcel of land, easement or public way, including any structures thereon.~~

~~*Primary Residence* means the usual dwelling place of the owner or tenant of a residential dwelling and is documented as such by at least two of the following: motor vehicle registration, driver's license, Texas State Identification card, voter registration, tax documents, or utility bill. For purposes of this chapter, a person may have only one primary residence.~~

~~*Property.* See "premises".~~

Registrant means owner, manager or representative of a property. For home share rentals only, it also includes a lessee of property under a lease for a period of at least 30 days.

Rental unit means a structure or portion thereof that is rented or offered for rent as a residence; including but not limited to, single-family unit, duplex unit, tri-plex, quad-plex unit, multi-family unit, manufactured or mobile home unit, town home or condominium..

Single Family Unit (SFU) as defined by the International Residential Code.

Unit. See "rental unit".

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

DIVISION 3. - RESIDENTIAL RENTAL PROPERTY REGISTRATION

Sec. 34.809. - Residential rental property registration.

The purpose of this division is to identify and notify owners regarding minimum building standards, complaints and property maintenance codes in a timely manner. In this Division Rental Registration has the same meaning as Residential Rental Registration in Division 2.

Sec. 34.810. - Registration timeline.

Each registrant or landlord of a rental unit within the City of San Marcos subject to section 34.818 shall register each such rental unit with the City of San Marcos before January 1st of each year, or as prescribed in section 34.813. If subject to provisions of section 34.818 prior to the annual deadline, registration must be completed within 14 days of notice. Notice can be in the form of mail, electronic communication, or posting on the property.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.811. - Separate registration required.

Separate registration shall be required for each rental unit on a property. If more than one structure is on the same property, then each structure is considered separate.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.812. - Registration expires.

A residential rental property registration shall be valid for no more than 12 calendar months. There are no prorated registration time periods.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.813. - Geographic designation.

The City of San Marcos, may by administrative order, divide the city into geographical areas and establish annual registration dates for rental units located within each geographical area. A copy of the geographical designation shall be on file with the code official.

~~(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)~~

~~Sec. 34.814. - Incomplete application.~~

~~Incomplete applications will not be processed and as a result, any rental units associated with an incomplete application will not be registered in compliance with or as required by this Division.~~

~~(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)~~

~~Sec. 34.815. - Registrant registration responsibility.~~

~~It is the registrant's and/or landlord's responsibility to renew the registration for each rental unit within the City of San Marcos.~~

~~(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)~~

~~Sec. 34.816. - Renewals or change of status notice required.~~

~~If a change in ownership, trade name or transfer occurs for the premise prior to the expiration of the permit, the new landlord, owner, or registrant of the premise shall have 30 days from the date the change of ownership occurred to file a new registration with the City of San Marcos and pay the applicable fee.~~

~~A landlord, owner, or registrant required to register a property under this Division shall notify the new owner or transferee of the current registration and associated violations, as well as the requirement for the new owner or transferee to register under this Division. Notice shall be in writing and signed by both parties.~~

~~(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)~~

~~Sec. 34.817. - Liability.~~

~~Neither the registrant, it's officers, employees, agents, and representatives, nor any person, who is in good faith carrying out, complying with, or attempting to comply with, release of information pursuant to the provisions of this chapter shall be liable for any such activity.~~

~~(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)~~

~~Sec. 34.818. - Registration required.~~

~~Except as provided in section 34.820, a rental registration issued under this provision is required in order to operate, lease, occupy, or otherwise allow multi-family or single family rental property to be occupied by a non-owner if the following conditions exist:~~

~~(1) Two or more separate notices of violation are issued for the same property within a 12-month period and the owner of the property fails to correct the violations within the time frame required by the code official;~~

~~(2) Five or more separate code violations within a 12-month period regardless of whether the owner of the property corrects the violations within the time frame required by the code official; or~~

~~(3) Two or more citations are issued for the same property within a 12-month period.~~

For the purposes of this section, violations identified in the notices and citations must be related to the San Marcos Code of Ordinances, or violations of state law relating to public order and decency, controlled substances or alcohol, or public health, safety and morals.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.819. - Voluntary registration.

Nothing in this chapter prohibits voluntary submission of registration for convenience and expediency of landlord or owner notification. The voluntary registration submission cannot be related to any enforcement action or as a method to avoid enforcement of this chapter. For purposes of this section annual registration is not required. However, if a property that voluntarily registered meets requirements of section 34.818, the registrant must comply with this entire chapter.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.820. - Exceptions.

The provisions of this Code do not apply to:

(1) Owner-occupied rental units; or

(21) Properties specifically registered as members, or affiliate members with property designation of the Achieving Community Together (ACT) program. However, if a property, member or affiliate withdraws or is suspended from the ACT program this provision shall apply before the end of a thirty day period from date of separation.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.821. - Performance.

Registered properties that do not receive further notices of violation, or have any registration violations for three contiguous years, are not required to re-register. However, a previously registered property that was required to register under section 34.818 and has subsequent violations of section 34.818 must re-register and maintain a registration for a period of five years.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

DIVISION 4. HOME SHARE RENTALS

Sec. 34.821.1. Purpose and applicability.

The purpose of this Division is to establish regulations for the registration and use of home share rentals. The requirements of this division apply only to home share rentals located in residential only zoning districts established under the City's Land Development Code, Subpart B of the City's Code of Ordinances. Nothing in this division, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for less than 30 consecutive days of property that is located outside of such residential only zoning districts or that is located in any SmartCode zoning district.

Sec. 34.821.2. Home Share Rental Registration Restrictions.

(a) It is unlawful rent, lease, or otherwise permit or allow any rental unit or premises to be operated as a home share rental unless all requirements of this code are met, including all registration requirements.

(b) Home share rental is not permitted for any property where the registrant is under suspension or revocation of the Residential Rental Registration requirements.

(c) *Registration non-transferrable*. An approved home share rental registration shall not be assigned or transferred to any person or entity. Any attempt to transfer a registration shall render the registration subject to suspension or revocation as provided in this chapter.

(d) *Only one home share rental allowed per registrant.* No registrant shall be allowed to operate or register more than one home share rental in the city, and no registration for a new home share rental shall be authorized, while another registration in the registrant's name is still active or under suspension.

(e) *Only one home share rental per property owner and affiliates of owner*. An owner of property may not have more than one home share rental unit in the city that is registered or operated as a home share rental. When an owner of property registered or operated as a home share rental is a business organization, trust or other entity, no person or entity affiliated with such business organization, trust or other entity as an organizer, officer, member, manager, shareholder, trustee, beneficiary, partner, equity owner or investor shall be allowed to register or operate an additional home share rental at a different property address in the city.

Sec. 34.821.3. Restrictions on Home Share Rentals.

(a) *Limit on occupants allowed*. No more than two adult guests per bedroom, plus no more than two additional adults, shall be allowed when renting a property as a home share rental.

(b) *Other restrictions*. It is unlawful:

(1) to operate or allow to be operated a home share rental without first registering the property in which the rental is to occur with the city in accordance with this article;

(2) to operate a home share rental in any location that is not the registrant's primary residence;

(3) to operate a home share rental that does not comply with all applicable City and State laws and codes;

(4) for a registrant to operate or property owner to allow the operation of more than one home share rental within the City Limits;

(5) to operate a home share rental without paying the required hotel occupancy taxes;

(6) to offer or allow the use of a home share rental for having a party; or

(7) to fail to include a written prohibition against the use of a home share rental for having a party in every advertisement, listing, or other publication offering the premises for rent

Sec. 34.821.4. Brochure and Safety Features.

(a) *Informational brochure*. Each registrant operating a home share rental shall provide to guests a brochure that includes:

(2) the registrant's contact information;

(3) the property owner's contact information if the registrant is not the property owner;

(4) a local responsible party's contact information if neither the registrant nor the property owner are in the city limits when guests are renting the premises;

(5) pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, trash collection schedule, and relevant water restrictions;

(6) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.

(8) *Safety features*. Each home share rental registrant shall provide in the premises at least at least one working smoke detector and alarm and one working carbon monoxide detector and alarm per bedroom, and one working fire extinguisher. The premises shall, otherwise be in compliance with applicable building and fire codes adopted under Chapter 14 of the City's Code of Ordinances.

Sec. 34.821.5. Registration Term, Renewal.

(a)(f) All registrations approved under this Division shall be valid for a period of one year from the date of their issuance.

(b)(g) If the registrant has received notice of violation of any law or regulation including enforcement action, the application for renewal shall include a copy of the notice

(c)(h) Upon receipt of an application for renewal of the registration, the director may deny the renewal if there is reasonable cause to believe that:

(3) The registrant has violated any ordinance of the City, or any State, or Federal law on the premises or has permitted such a violation on the premises by any other person; or

(4) There are grounds for suspension, revocation, or other registration sanction as provided in this Article.

DIVISION 5. - OFFENSES AND ENFORCEMENT

Sec. 34.822. – Reserved.

Sec. 34.823. - Registrant/landlord offenses.

A registrant or landlord commits an offense if they:

(1) Allow operation of a rental unit that is not registered with the City of San Marcos in violation of this Article;

(2) Fail to renew registration;

(3) Register past deadline of required registration; or

(4) Omit, or provide false or incorrect information on application.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.824. - Failure to comply with requirements of code.

A violation of this Article is a Class C misdemeanor offense. Any persons, firm, corporation or any others acting on behalf of said person, persons, firm or corporation violating or failing to comply with any of the provisions of this Article is subject to payment of a fine not to exceed $2,000.00 plus court costs. Each act of violation and each day upon which such violation occurs constitutes a separate offense. Additionally, this Article authorizes cumulative enforcement action against repeated or multiple violations under this Article.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.825. - Electronic communication notice.

Electronically transmitting a copy of the notice, acknowledgment of receipt requested, to the last known electronic address of the registrant or landlord shall serve as an accepted legal standard of contact and notice under this provision.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.826. - Suspension.

The code official may suspend a residential rental property registration or a home share rental registration for a rental property if the code official determines that:

(1) The property is declared a substandard or dangerous building by the building department, the code official, or a court of competent jurisdiction;

(2) Registrant fails to comply with a notice of violation;

(3) Registrant fails to comply with applicable requirements of this Article.

For purposes of this section the code official must serve notice of suspension of a registration by mail, electronic notification, or posting on the subject property. The suspension is effective immediately until the requirements of this chapter are met or for the duration of the suspension set forth in the notice, or if no duration is listed in the notice, until such time as the code official lifts the suspension.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.827. - Revocation.

(a) A court of competent jurisdiction may revoke a residential rental property registration or a home share rental registration that has been suspended pursuant to section 34.826 if the court determines that during the suspension the registrant did not comply with the requirements of this chapter, abate a notice of violation for which the suspension was ordered, or failed to comply with a court order. A suspension need not be in place in order to revoke a registration.

(b) The code official may revoke a home share rental registration that has been suspended pursuant to section 34.826 if the Director determines that during the suspension the registrant

did not comply with the requirements of this chapter or abate a notice of violation for which the suspension was ordered.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.828. - Other remedies.

Nothing in this article prevents the city from seeking injunctive relief or other civil action required to enforce this chapter including suspension of utility services, placement of liens, and posting of notices prohibiting occupancy or use.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.829. - Rental prohibited.

Any person, landlord or registrant may not operate, lease, occupy, or otherwise allow another person to occupy a rental property without a residential rental property registration or a home share rental registration when required by this chapter or, if the property is under a suspension or revocation notice or order.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.830. - Time line for fees.

All fees are based on a calendar year. Prorated fees will not be allowed.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.831. - Fees schedule.

The registrant of a rental property shall annually pay the city a fee to offset the city's cost of administration and registration. The amount of the fee is set by the City Council in the passage of an annual Fee Schedule. The registrant shall also pay a technology fee of ten dollars ($10.00) per rental unit.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.832. - Late fee schedule.

Annual registration or renewals received after expiration date shall be assessed a double fee. Nothing in this section prohibits legal action for operation of a premise without a registration or operational permit.

(Ord. No. 2015-11, § 1(Exh. A), 3-17-15)

Sec. 34.833. - Sunset Review – Home Share Rental Provisions.

The provisions of this Chapter pertaining to home share rentals shall be reviewed by the city council within one year of the adoption of Ordinance No. 2017-37. Those provisions are subject to amendment or repeal upon such review or at any other time. The adoption of the home share

~~rental provisions of this Chapter shall not be construed to create any enforceable right to the continuation of home share rentals or any right to compensation for loss, damages, costs, or expenses alleged to have been incurred in reliance upon its adoption or suffered as a result its repeal.~~

Secs. 34.834—34.840. - Reserved.

DIVISION 5. – VIBRATION

Sec. 34.XXX. – No operation or use shall at any time create ~~earth borne~~ vibrations which when measured at the bounding property line of the source operation exceed the limits of displacement set forth in the following table in the frequency ranges specified:

Frequency (Cycles Per Second)	Displacement (inches)
0 to 10	0.001
10 to 20	0.0008
20 to 30	0.0005
30 to 40	0.0004
40 and over	0.0003

ARTICLE 3. – FLOODPLAIN RECLAMATION STANDARDS

Sec. 39.050. - Preservation of natural features.

No wetlands or other significant natural features shall be reclaimed within a water quality zone or buffer zone established under ~~articles 1, 2 or 3 of chapter 5 of~~ the city's land development code unless authorized under a mitigation plan prepared in accordance with this article and state and federal requirements. The mitigation plan must~~, which~~ demonstrate~~s~~ that reclamation or alteration of the floodplain 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 of the waterway, and which provides for protection of altered areas during and after alteration and development of adjacent land.

(Ord. No. 2016-50 , § 1, 11-15-16)

Chapter 70 - SPECIAL DISTRICTS

DIVISION 1. - GENERALLY

Sec. 70.026. - Out of district service requests for utility districts.

(a) The review process in this section for out of district service request for utility districts is established.

(b) Petitions for out of district service for a utility district shall be reviewed by the staff and planning and zoning commission prior to city council action. The request shall be filed with the city clerk. Upon receipt of the filed request, the city clerk shall immediately inform the city council, and the city manager. The recommendations of the staff and commission shall be forwarded to the city council for consideration within 30 days of the filing.

(Ord. No. 1986-85, Part C, 7-21-86; Ord. No. 2011-54, § 1, 10-18-11)

Sec. 70.027. - Fees established.

Under this article, an initial fee in ~~the~~ an amount ~~of $5,000.00~~ established by resolution of the City Council shall accompany the pre-application review request of any MUD petition. The petitioner shall reimburse the city for expenses incurred by the city in connection with the city's consent to formation of the district, including but not limited to professional fees incurred in connection with the review, negotiation and preparation of the consent resolution, consent agreement, development agreement, impact statements and plans of any proposed or newly formed political subdivision authorized to be created by the Texas Water Code is established by the city council.

(Ord. No. 1986-85, Part D, 7-21-86; Ord. No. 2011-54, § 1, 10-18-11)

Secs. 70.028—70.050. - Reserved.

DIVISION 2. - POLICY FOR CREATION OF DISTRICTS

Sec. 70.052. - Conditions and criteria for consent to creation of districts.

(a) If the city council consents to the creation of, or inclusion of land within a MUD then it should impose the following requirements as conditions of the city's consent, and such requirements shall be stipulated in the consent resolution and other ancillary agreement, unless the city council determines that the requirements are not appropriate with regard to a specific district.

(1) The utility district shall contain acreage necessary to ensure the economic viability of the utility district but no more acreage than can be feasibly annexed at one time. In general, a district is not expected to include less than 200 nor more than 500 acres.

(2) The economic viability of the utility district must be shown in the same manner as required by the state.

(3) The consent resolution and agreement must reflect and conform to all the applicable stipulations of this policy.

(4) The city council must determine that the utility district is not likely to be annexed by the city or be served by city water and wastewater within three years. This determination shall not be binding on the city however.

(5) When the city council receives a petition for creation of a utility district within the city's extraterritorial jurisdiction, it shall be evaluated in accordance with the City's comprehensive plan and master plan(s), the impacts of the utility district, and the policy set forth in this division.

(6) It is in the city's preferred growth area.

(7) The city does not support MUDS that are in industrial or commercial areas.

(8) The district's ad valorem tax rate will approximate or exceed the city's rate.

(9) It must be located entirely within the city's extraterritorial jurisdiction.

(10) The city discourages the use of sewer package treatment plants.

(11) It will require the developer(s) to contribute a portion of infrastructure without reimbursement by the MUD or the city.

(12) The development supported by the MUD provides extraordinary public benefits (such as extension or enhancement of infrastructure, affordable housing, environmental improvement, public transportation facilities, and open space). Whether development supported by the MUD provides sufficient public benefits should be determined by weighing the value of the benefits to the community, and to the property in the MUD, against the costs to the city including delayed annexation. The city council will consider benefits including but limited to:

a. Land use controls (including land plans') that otherwise would not be available in the city's ETJ;

b. Amenities that would not typically accompany a development with conventional financing;

c. Connectivity with other existing city infrastructure;

d. The potential for city capital improvement program funds to be redirected to other high priority needs by financing capital infrastructure with alternative MUD financing and by the application of post-annexation surcharges;

e. School and public safety sites, and transportation infrastructure, sufficient to meet development needs.

(b) The city shall not consent to the creation of any special taxing or public financing district within the city limits unless, in addition to the findings set forth in section (a) above, the city council finds that:

(1) The land within the district shall be developed to a higher development standard than that required under the city's land development code and other applicable development ordinances;

(2) The quality of the development over time shall be assured through ~~restrictive covenants applicable to all of the property within the district that are~~a development agreement~~:~~

~~a. A~~approved by the city council; and

~~b. Enforceable by a mandatory homeowners' association with assessment power, which the city may compel to perform its enforcement duties;~~

(3) The roads, parks, and utility infrastructure within the district shall generally be of higher quality than that required under the land development code, and other applicable development ordinances and regulations so as to reduce operation and maintenance costs to the city over time;

(4) The creation of the district shall contribute to the economic development of the city and improve the quality of life for residents of the city;

(5) Any loss of ad valorem property taxes incurred by the city as a result of the creation of a district may be made up through the collection of other fees and utility rates generated within the district; and

(6) The district shall connect to the city's water and sewer system. If the district is located within a geographical area that falls within the certificated service territory of another utility, the district shall purchase the certificated service area and transfer it to the city at no cost.

(Ord. No. 1986-85, Part E, § 1, 7-21-86; Ord. No. 1987-18, §§ 1—4, 2-9-87; Ord. No. 2011-54, § 1, 10-18-11)

DIVISION 3. - REQUIREMENTS FOR CREATION OF DISTRICTS

Sec. 70.078. - Preapplication submittals by applicant.

The applicant under this division shall file the following documents with the city manager in electronic format as well as three printed copies concurrent with the letter to the city manager initiating the pre-application review process:

(1) A market study prepared in conformance with state standards.

(2) A preliminary engineering report, containing the items required by the rules of the TCEQ and, in particular, a description of the area, land use plan, existing and projected populations, tentative cost estimates of the proposed improvements, projected tax rate and water and sewer rates, investigation and evaluation of the availability of comparable service from other systems and bond issue requirements.

(3) Environmental maps of the district at a scale of one inch to 500 feet. These shall include:

a. Contour intervals of ten feet or less.

b. Delineation of all areas sloping one percent or less; one percent to 15 percent; 16 percent to 25 percent; 26 percent or more.

c. All aquifer recharge structures to include the following: caves, sinkholes, cracks, fractures or fissures at the surface and watercourses or drainageways which have recharge structures within them.

d. One-hundred-year floodplain and floodway.

e. Any trees 50 feet or taller and all trees with a caliper of 30 inches or greater.

f. The habitat of endangered or threatened species of fauna or flora.

g. Soils with high shrink/swell ratios, soils that are easily eroded, and soils that are classified as prime agricultural by the state department of agriculture or the United States Department of Agriculture.

h. Wetlands.

i. Archaeological sites.

j. Manmade structures over 75 years old.

(4) Land use map at a scale of one inch to 500 feet. This shall include:

a. The location of all existing and proposed roads with a right-of-way of 60 feet or more.

b. Land use categories ~~using the same categories as shown on the master plan's future land use plan~~.

c. School sites, fire stations, recreational buildings.

d. Parks and the parks' uses.

e. The number of residential units for each residential land use category.

f. The number of units per acre for each residential land use category.

g. The acreage of each land use.

(5) Environmental impact statement. A description of how the proposed land use plan relates to:

a. The environmental constraints in the utility district; and

b. The City's comprehensive plan environment and resource protection plan element, including the vision, goals and objectives ~~master plan's natural and cultural resources and land use section goals, objectives and policies~~.

(6) Transportation impact statement which includes:

a. A description of the number of average daily trips (ADT) that will be generated and/or attracted to the utility district and a delineation on a map of that ADT in the existing roadway system within one mile of the utility district.

b. A statement and justification, including calculations, as to whether the existing roadway system within the city and its extraterritorial jurisdiction has the capacity to carry the utility district's ADT or not.

c. A description of the utility district's transportation plan and its ADT transportation impact as they relate to the City's comprehensive plan transportation plan element including the vision, goals and objectives, and the transportation master plan.~~'s transportation goals, objectives and policies.~~

(7) Proposed utility service maps showing all water and wastewater facilities and lines of six inches or larger.

(8) Drainage maps showing preconstruction and post construction runoff rates and proposed detention and filtration pond sizings and locations.

(9) The capacity calculations for sizing the facilities and a comparison of service levels to TCEQ utility requirements for supply, storage and treatment.

(10) Proposed consent ordinance.

(11) Proposed consent agreement.

(12) Proposed utility agreement if contract bonds with the city for city services are sought by the utility district.

(13) Proposed construction participation agreements for any facilities the utility district plans to construct or use in participation with any other utility district or entity.

(14) Proposed solid waste management plan.

(15) Proposed future utility district annexations or future service areas outside of the initial utility district boundaries.

(16) Annexation impact statements.

a. The applicant shall provide a document comparing the relationship of the indebtedness of the utility district to construction plans for water and wastewater lines and facilities and to the tax base or value of taxable development at one, three, five and ten years from the formation of the utility district.

b. The applicant shall describe how fire and police protection will be provided five years and ten years from creation of the utility district.

(17) Justification statement. The applicant shall justify the creation of the utility district. The justification statement shall include but not be limited to the following issues:

a. The probability of the city providing water and wastewater service to the area proposed to be a utility district within the next three years.

b. Job creation and economic base development for the citizens of the city by the utility district.

c. Improving the city's ability to participate in providing adequate and safe utilities to the utility district and elsewhere.

d. The utility district development's conformance to the City's comprehensive plan and master plan(s).

e. The economic viability of the utility district shown in the same manner as required by the state.

f. The costs of utilities to users of the utility district's facilities related to the cost of utilities for users of the city's utilities. The rates or taxes used to pay the costs of the city's facilities shall be compared to the rates or taxes used to pay the costs of the utility district's facilities if the latter were built.

(18) Application(s) and fee(s) for any necessary development applications. ~~city master plan amendments, if necessary.~~

(Ord. No. 1986-85, Part A, § 2, 7-21-86; Ord. No. 2011-54, § 1, 10-18-11)

Chapter 74 - STREETS AND SIDEWALKS[1]

ARTICLE 1. - IN GENERAL

Sec. 74.001. - Removal of earth, stones or other material.

It is unlawful for any person to remove any earth, stone or other material from any sidewalk, street, alley or public ground in the city without the permission of the director of public services~~works~~.

(Code 1970, § 25-7)

Sec. 74.002. - Complete Streets Policy.

(a) *Adopted.* The city council hereby adopts a policy for the development of Complete Streets (hereinafter, the "Complete Streets Policy") as set forth below.

(c) *Review and Compliance.* All relevant departments, boards, and commissions shall make this Complete Streets Policy an integral part of their planning and programming by reviewing plans, guides, regulations, and standard details to comply with this section.

(d) *Exemptions.* This section shall not apply to the following:

1) Streets and rights-of-way where pedestrian or non-motorized vehicle use is prohibited, such as interstate freeways;

2) When there is a documented absence of current or future need for a Complete Street;

3) Street maintenance projects (example: mill and overlay, slurry seal, overlay and restriping)

4) Overhead and underground electrical projects;

~~2)~~5) Projects that only contain drainage, water and / or wastewater improvements; or

~~3)~~6) When the accommodation is excessively disproportionate to the need, probable use or cost of a proposed new, reconstructed, or maintenance street project.

A determination that one or more of the above exemptions applies shall require the joint written concurrence of the director of public services, director of engineering and the director of planning and development services. Further exemptions, as appropriate, may be established by ordinance in conjunction with the development of specific street standards. The following types of projects are not exempt from complete streets and will require documentation form the Directors stating their concurrence when complete streets components are excluded:

1) Projects that contain full depth street reconstruction; or

~~1)~~2) Projects that contain sidewalk improvements.

(e) *Implementation.*

(1) *Design.* The city's Land Development Code and other development ordinances, Transportation Master Plan, Thoroughfare Plan, Technical Construction Standards and Specifications (TCSS) Manual and any successor ordinances or standards, as applicable shall develop specific design recommendations that implement this section. The city shall incorporate best practices for design as presented by agencies such as the American Association of State Highway and Transportation Organizations (AASHTO), National Association of City Transportation Officials (NACTO), United

States Department of Transportation (USDOT), Federal Highway Administration (FHWA), Association of Metropolitan Planning Organizations (AMPO), Institute of Transportation Engineers (ITE), Transportation Research Board, Texas Department of Transportation (TxDOT), Capital Area Metropolitan Planning Organization (CAMPO), and others as information becomes available.

(2) *Collaboration.* The city shall coordinate with the Texas Department of Transportation, Capital Area Metropolitan Planning Organization, Texas State University, Hays, Caldwell, Comal, and Guadalupe Counties to establish comprehensive Complete Street standards.

(3) *Context sensitive solutions.* Complete Streets shall be designed to complement the surrounding public and private realm by preserving scenic, historic and environmental resources. Context will determine appropriate modes and design on a project by project basis.

(4) *Performance measures.* The Transportation Master Plan and other applicable sources shall identify performance measures and procedures to track implementation of this section.

(Ord. No. 2013-63, §§ 2—5, 11-19-13)

Editor's note— Ordinance No. 2013-63, §§ 2—5, adopted November 19, 2013 , did not specifically amend the Code. Therefore, such ordinance was added as § 74.002 at the editor's discretion.

Sec. 74.027. - Temporary street closures.

(a) The city manager or the city manager's designee may permit the temporary closure of a public street in accordance with this section. The approval of a permit under this section shall be subject to the granting of any other permits, licenses or approvals under other ordinances or laws as may be applicable to the activity for which the closure is requested.

(b) Temporary street closures are allowed for purposes including, but not limited to, the following:

(1) For the filming of feature length movies, commercials, television or internet shows and programs, music videos, corporate films and similar audio and video productions;

(2) When the chief building official, the city engineer or executive director of public services determines that the closure is necessary to facilitate the safe and orderly construction, remodeling, renovation, repair, maintenance, removal or demolition of structures or improvements or installation or removal of landscaping materials, trees and vegetation on adjacent property. If the work to be completed involves construction within the right-of-way, a Right-Of-Way Permit must also be obtained.; or

(3) In connection with a special event approved under Chapter 19 of this Code.

(c) A person wishing to apply for a temporary street closure shall submit a completed application on a form prescribed by the city manager within a period of time established by the city manager that is at least five business days prior to the initiation of a closure for activities under subsection (b)(l) and ten business days prior to the initiation of a closure for all other activities under subsection (b).

(d) An application shall be accompanied by a fee established by the city council. This fee is not refundable.

(e) The application form shall contain an agreement by the applicant to reimburse the city for direct expenses associated with the street closure, including barricading, cleanup and police security. The form shall also contain a waiver and indemnification agreement in a form approved by the city attorney and, when deemed necessary by the city manager, require the applicant to provide liability insurance that names the city as an additional insured, in amounts determined by the city manager or his designee based on the nature and scope of the proposed activity.

(f) The city manager may deny a requested temporary street closure for any of the following reasons:

(1) The application is incomplete or contains any false or misleading information.

(2) The application is submitted after the deadline described m subsection (c) of this section.

(3) All or part of the area requested for closure has already been permitted for closure to a different applicant.

(4) The area requested for closure is of a location, size or nature that it requires an unreasonable diversion of traffic flow on affected streets.

(5) Adequate traffic control and related safety plans cannot reasonably be developed by the date(s) and time(s) originally requested by the applicant.

(6) Adequate personnel and resources necessary to facilitate or monitor the closure are unavailable at the date(s) and time(s) requested.

(7) The activity for which the closure is requested presents an unreasonable threat to public health, safety or peace, including, but not limited to damage to property, injury to persons, excessive noise, and emission or discharge of noxious or toxic fumes or chemicals.

(g) A permit for a temporary street closure issued by the city manager shall specify the dates, times and location of the closure, which may correspond with or differ from those requested by the applicant.

(h) This section shall apply only to temporary street closures requested by private persons. This section shall not limit or affect the city's authority to:

(1) Initiate temporary street closures for public purposes, including closures for the city's own construction, reconstruction or maintenance activities or closures necessary to prevent imminent threats to public health, safety or peace; or

(2) To authorize temporary street closures for non-commercial purposes such as neighborhood association gatherings, public ceremonies, festivals and civic functions.

(3) Temporary street closures associated with parades and construction or installation of utilities in public rights-of-way are regulated separately under other sections of this Code.

(Code 1970, § 25-10; Ord. No. 2015-49 , § 1, 11-17-15)

~~Sec. 74.028. - *Playing* ball.~~

~~It is unlawful for a person to *play* with any type of ball on any public street or alley.~~

~~(Code 1970, § 16-4; Ord. No. 1995-15, § 1 (16-2), 2-13-95)~~

Sec. 74.105. - Removal of obstruction by executive director of public services~~works~~.

Nothing in sections 74.102, 74.103 or 74.104 will affect the authority of the director ~~of public works~~ to summarily remove an obstruction from an alley without prior notice if the director determines this is in the interest of the public health, safety and welfare. If the director summarily removes an obstruction, the director will send a notice within ten days to the person who constructed, placed or maintained the obstruction stating the reason for the removal.

(Ord. No. 2001-16, § 1, 3-5-01)

Secs. 74.106—74.120. - Reserved.

ARTICLE 3. - SIDEWALKS

Sec. 74.121. - Definitions.

In this division:

Corner lot means a tract of property located at the intersection of two streets.

Curb line means the physical edge of that portion of any street which is improved, designed or ordinarily used for vehicular traffic.

Shrub means any hedge, bush, shrubbery, vine, palm or other similar vegetation, except trees.

Traffic means pedestrians, bicyclists, riders of animals, drivers of vehicles, while using any street for purposes of travel.

Tree means any self-supporting woody plant species which normally grows to a height of 15 feet or more.

Vehicle means every device in, or by which any person or property is or may be transported or drawn upon a street, except devices moved by human power.

(Ord. No. 1997-33, § 1, 7-28-97)

Secs. 74.128—74.150. - Reserved.

Sec. 74.XXX – Requirements for sidewalks in existing platted subdivisions

(a) Sidewalks are required with all new construction and shall be completed prior to issuance of a certificate of occupancy.

Sec. 74.153. - Penalties.

(a) An offense under this article is a Class C misdemeanor and, any person upon conviction thereof, shall be subject to a fine as provided in section 1.015 of the San Marcos Code. However, an offense under this article that breaches or endangers the integrity of a water line, waste water line, or other public utility is a threat to public health and sanitation and is punishable by a fine not to exceed the fine provided for in the San Marcos Code subsection 1.015(a).

(b) A culpable mental state is not required for commission of an offense under this article.

(c) Each and every day or portion thereof that such violation shall continue shall be deemed to constitute a separate offense.

(d) In addition to the penalties prescribed in chapter 1, section 1.015:

(1) Any person holding a ~~public~~ right-of-way ~~construction~~ permit who violates this article is subject to revocation of the permit which is being violated; and

(2) Any person violating this article is liable to the city for any expense, loss or damage resulting from the violation.

(Ord. No. 2011-24, § 1, 5-17-11)

Sec. 74.154. - Permit.

(a) Any person desiring to carry on construction within a public right-of-way shall apply to the director for a permit to carry on construction. A Temporary Road Closure permit must also be obtained as prescribed in Sec. 74.027. ~~The permit shall be termed a "public right-of-way construction permit."~~

(1) The director shall promulgate forms, policies and procedures to facilitate the applications, including but not limited to requirements for plans and specifications to govern construction, a copy of which forms, policies and procedures as well as any and all amendments thereto are on file in the office of the city clerk.

(2) The director shall promulgate design and materials standards for the placement or replacement of any pavements, curbs, gutters, sidewalks, inlets, water lines, wastewater lines or any other public facility which may be included in or disturbed by any construction, a copy of which standards as well as any and all amendments thereto are on file in the office of the city clerk.

(b) Exceptions:

(1) Emergency operations. Any ROW user may begin emergency operations without a permit; provided however, that the ROW user shall follow the procedures in subsection (g) of this section.

(2) City maintenance activities, construction or other activity performed by the city's own forces performed in the public right-of-way.

(3) Permits issued under chapter 74, article 5—Standards for Public Right-of-Way Access, as amended.

(c) A fee shall be paid to the city upon application for a ~~public~~ right-of-way ~~construction~~ permit unless provided otherwise in section 74.155. The amount of the application fee is established by resolution of the city council. No application shall be considered to have been received by the city until the fee has been paid.

~~(d) The director shall act to grant or deny a public right-of-way construction permit within ten days of the date that application for the permit is received by the city. Failure to act within that time shall result in the application being approved and the public right-of-way construction permit being issued on the following working day.~~

(d~~e~~) When acting to approve an application and to grant a ~~public~~ right-of-way ~~construction~~ permit, the director:

(1) May impose restrictions upon the timing of construction which, in his opinion, are reasonable measures to protect the safety and convenience of the general public.

(2) Shall prescribe the placement of barricades and warning lights and signs which are, in his opinion, reasonable measures to protect the safety of the general public and of the workers performing the construction.

(e~~f~~) If the director disapproves an application for a ~~public~~ right-of-way ~~construction~~ permit and denies it, the applicant shall be notified of this action in writing via certified mail. This notice shall include a statement of the reasons for disapproval and denial. An application for a ~~public~~ right-of-way ~~construction~~ permit may only be denied for the following reasons, which are not subject to appeal:

(1) The contents of the application do not fulfill the requirements outlined in this article and/or as prescribed in the city right-of-way construction policies and procedures as promulgated by the director.

(2) The design and/or materials proposed for execution of the construction do not meet the standards prescribed in the city right-of-way construction policies and procedures or the manual for design and construction.

(~~g~~f) Special procedures for emergency operations are as follows:

(1) Any person who initiates emergency operations in a public right-of-way shall notify the police department and the fire department before initiating construction.

(2) On the first working day following the initiation of emergency operations, the person initiating the operations shall perform all actions prescribed by this article and/or by the regulations promulgated pursuant to this article for issuance of a ~~public~~ right-of-way ~~construction~~ permit.

(3) Any person who initiates emergency operations shall contact the Texas One-Call System or any other company operating under the One-Call Statute and, to the extent required by Chapter 251 of the Texas Utilities Code, as amended, make inquiries of all ditch companies, utility companies, districts, local government departments, and all other ROW users that might have facilities in the area of work to determine possible conflicts in a public right-of-way shall notify the Dig-Tess service or other appropriate emergency line and utility location entities as required by state statute.

(Ord. No. 2011-24, § 1, 5-17-11)

Sec. 74.156. - Construction requirements, bonds and insurance.

(a) The director shall promulgate requirements to be met by any contractor who performs construction within public right-of-way. These requirements shall include proof of adequate insurance coverage and provision of a performance bond, as specified in the construction specifications of the city on the date when it is granted.

(b) Evidence that the contractor who will perform the construction meets the requirements in subsection (a) of this section shall be submitted as a part of the application for a ~~public~~ right-of-way ~~construction~~ permit.

(Ord. No. 2011-24, § 1, 5-17-11)

Sec. 74.157. - General right-of-way use and construction.

(a) *Minimal interference.* Work in the public right-of-way shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Facilities shall be constructed or maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the city, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the right-of-way by, or under, the city's authority. Facilities shall adhere to minimum separation dimensions and all other aspects of city standard specifications at the time of construction. Facilities shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons, or to interfere with city's Facilities or to unnecessarily hinder or obstruct the free use of the right-of-way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic.

(b) A temporary road closure permit, prescribed in Sec. 74.027, shall be required in accordance with 74.027(b)

(b) *Responsibilities under permit; location of facilities.*

(1) ROW users shall coordinate with other utilities and protect existing facilities. A ROW user working in the right-of-way shall obtain line locates from all affected utilities or others with facilities in the right-of-way prior to the commencement of any excavation. Use of the geographic information system or the plans of record does not satisfy this requirement.

(2) In performing location of facilities in the public right-of-way in preparation for construction under a permit, ROW users shall compile all information obtained regarding its or any other facilities in the public right-of-way related to a particular permit and shall make that information available to the city in a written and verified format acceptable to the director.

(3) Protection of utilities. Before beginning construction in any public right-of-way, a ROW user shall contact the Texas One-Call System or any other company operating under the One-Call Statute and, to the extent required by Chapter 251 of the Texas Utilities Code, as amended, make inquiries of all ditch companies, utility companies, districts, local government departments, and all other ROW users that might have facilities in the area of work to determine possible conflicts.

a. Field locations shall be marked prior to commencing work. ROW users shall support and protect all pipes, conduits, poles, wires, or other apparatus that may be affected by the work from damage during construction or settlement of trenches subsequent to construction at their sole cost and expense.

b. Only water-based paint may be used in the public right-of-way to mark the location of existing underground utilities. A person commits an offense, if the marking he makes in the public right-of-way to mark the location of existing underground utilities remains visible longer than 60 days after being applied.

(c) *Underground construction and use of poles.*

(1) ROW user's new facilities shall be placed underground at ROW user's expense when required in zoning districts, underground zoning areas or overlays, or by zoning regulations; provided however, that ground-mounted appurtenances are permitted. Where site or service conditions preclude underground location, the director may determine an alternate location or placement. Related equipment, such as pedestals, must be placed in accordance with the city's applicable code requirements and rules and utility plan, including all visibility easement requirements. The city will not require existing facilities to be placed underground until city places its facilities underground in zoning districts, underground zoning areas or overlays or zoning regulations that require that utilities be placed underground.

(2) For above-ground facilities, ROW users shall utilize existing poles wherever possible.

(3) ROW users shall cooperate with the city when construction by the ROW user involves trenching or boring. ROW users shall allow the city to place its facilities in the ROW user's trenches and bores, provided the city incurs any incremental increase in cost of the trenching and boring. The city shall be responsible for maintaining its respective facilities buried in the ROW user's trenches and bores under this paragraph.

(d) *Joint trenching.* The director may require a ROW user to share trench space to minimize the disruption of vehicular or pedestrian traffic if such sharing is:

(1) Technically, commercially, and economically feasible; and

(2) Not in violation of state or federal regulations or industry safety standards.

(e) ROW user facilities shall meet any applicable local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between ROW users and the other joint users. ROW user may, at its option, correct any attachment deficiencies and charge the joint user for its costs.

(f) *Excavation safety.* On construction projects in which excavation will exceed a depth of five feet, the ROW user must have detailed plans and specifications for excavation safety systems. The excavation safety plan shall be designed in conformance with state law and Occupational Safety and Health Administration (OSHA) standards and regulations.

(g) *Erosion control.* ROW users shall be responsible for stormwater management erosion control that complies with city, state and federal guidelines.

(Ord. No. 2011-24, § 1, 5-17-11)

ARTICLE 5. - STANDARDS FOR PUBLIC RIGHT-OF-WAY ACCESS

Sec. 74.186. - Definitions.

In this article:

Channelization means the use of traffic lane markers and/or curbed barriers to force vehicular traffic to follow a desired line of travel, often used to deny vehicles certain turning movements that would create traffic safety hazards.

City engineer means the person who holds the position of city engineer or as designated by the City Manager.

City secretary means the person who holds the position of city secretary.

Contractor means any individual, partnership, association, or corporation engaged in the business of installing or altering facilities within a public right-of-way. This term applies to any entity which represents itself to be engaged in this business, whether or not it is actually doing the work.

Curb means a vertical or sloping structure located along the edge of a roadway, normally constructed integrally with the gutter, which strengthens and protects the pavement edge and clearly defines the pavement edge to vehicle operators.

Curb cut means an opening in a curb to allow the roadway pavement to meet the pavement of a driveway approach or an intersecting roadway, or, where no physical curb exists, the length along the roadway edge where the transitional pavement exists or is proposed.

Director of public services~~works~~ means the person who holds the position of director of the city public services~~works division~~.

Driveway approach means the transitional pavement between the roadway and abutting property, installed in a curb cut to provide vehicular access from the roadway to the abutting property.

Engineer means a person duly authorized under the Texas Engineering Registration Act, as amended, to practice the profession of engineering.

Gutter means the area of pavement adjacent to a curb, designed to transport stormwater runoff along a roadway.

Inlet means an opening in a curb and/or gutter designed to intercept stormwater runoff flowing along a gutter.

Intersection means the common area contained between the projected edge line of two or more roadways which join at any angle, whether or not one street actually crosses the other.

Pedestrian way means a portion of a right-of-way, not on the roadway, usable for pedestrian traffic.

Right-of-way means the publicly owned area between private property lines designated as an easement for a roadway, whether or not the roadway is actually installed.

Roadway means that portion of the right-of-way designed and ordinarily used for vehicular travel, usually surfaced with a pavement.

Sidewalk means a paved pedestrian way generally located within the public street right-of-way, but outside the roadway, and built in accordance with city specifications.

Street means a public right-of-way which provides primary vehicular access to adjacent land, whether designated as a street, highway, thoroughfare, parkway, throughway, avenue, lane, boulevard, road, place, drive or however otherwise designated. Various types, categories and classifications of streets include:

(1) *Street, arterial* means a thoroughfare designated as a freeway, expressway, major arterial or minor arterial in the most recently adopted city thoroughfare plan. The primary function of an arterial is to carry traffic through the city. An arterial is designed for as high a speed as possible, to carry as much traffic as possible. It is also known as a major thoroughfare.

(2) *Street, collector* means a street that primarily carries traffic from local or residential streets to major thoroughfares and highways, including the principal entrance streets for circulation to schools, parks and other community facilities within a development, and also including all streets that carry traffic through or adjacent to commercial or industrial areas.

(3) *Street, local or residential* means a street used primarily for access to abutting residential property. It is of a width and design to discourage through traffic, thereby protecting the residential area. A local street serves the same purpose in a commercial or industrial district.

(4) *Street, frontage* means a local street lying parallel to and adjoining a major street right-of-way, which provides access to abutting properties.

(5) *Street, marginal access* means a street parallel and adjacent to an arterial street and that primarily provides vehicular access to abutting properties and protection from through traffic.

(6) *Street, private or service drive* means a vehicular accessway under private ownership and maintenance that has not been dedicated to the city and accepted by the city.

Type I driveway approaches means those driveway approaches located solely for access to individual single-family, duplex or townhouse structures.

Type II driveway approaches means those driveway approaches located solely for access to all other structures than those cited in the definition of type I driveway approaches.

(Code 1970, § 25-51)

Cross reference— Definitions and rules of construction generally, §§ 1.002, 1.003.

Sec. 74.187. - Findings and objectives.

The city council makes the following findings:

(1) The right of the public to free and unhampered passage over the public streets and sidewalks shall be held paramount over the convenience of access to abutting private properties.

(2) The city must be able to exercise a reasonable measure of control over the placement and quality of access to city streets and over the timing and quality of construction of accessways in order to ensure that the public can use city streets safely.

(3) The city should be able to exercise necessary control; the city council desires to adopt standards for the provision of access.

(Code 1970, § 25-50)

Sec. 74.188. - Remedies for violations.

In addition to the penalties prescribed in section 1.015:

(1) Any person holding a building permit or a ~~public~~ right-of-way ~~construction~~ permit who violates this article is subject to revocation of any and all permits; and

(2) Any person violating this article shall be liable to the city for any expense, loss or damage resulting from the violation.

(Code 1970, § 25-61)

Sec. 74.189. - Access driveway permit.

(a) Any person desiring to site and/or construct a driveway approach from an existing street shall apply to the city engineer for a permit to site and construct the driveway approach at the desired location. The permit is termed an "access driveway permit."

(1) The city engineer shall promulgate policies and procedures, if necessary, to facilitate applications, including requirements for plans and specifications for the construction of any driveway approach.

(2) The city engineer shall promulgate design and materials standards for driveway approaches, which shall govern the design and construction of all driveway approaches at the desired locations.

(3) If determined by the city engineer to be necessary, the city engineer may perform or cause to be performed a study of the effects of siting a driveway approach at the desired location upon the ability of the city street system to smoothly and safely pass vehicular traffic and of the sidewalk system to safely pass pedestrian traffic.

(4) The city engineer may deny the permit or the proposed driveway approach, if it is determined that the proposed driveway approach would cause disruption of traffic flow, or would adversely affect the safety of vehicular and/or pedestrian traffic at that location.

a. The city shall not deny vehicular access to private property by the execution of its power under this article. Denial of a permit of the proposed driveway approach shall not be construed as denial of access as long as an alternate access route to the property, acceptable to the city, is available.

b. Channelization of a driveway approach may be required to mitigate traffic conflicts if access alternatives not creating conflicts are unavailable.

c. Multiple driveway approaches to access a single parcel of property abutting an arterial street shall be avoided wherever possible.

d. Property abutting an arterial street shall obtain access from a nonarterial street wherever possible.

(5) All applications for a permit or a proposed driveway approach in a city street which is also a state highway shall be submitted to the state department of highways and public transportation for their approval before the permit or approval of the driveway approach may be granted.

(b) Permit exceptions are as follows:

(1) Application for separate access driveway permits shall not be required when the proposed driveway approach is part of development being reviewed as part of a proposed subdivision or for property for which a building permit or a site development permit has been made. All other sections of this article shall apply.

(2) Driveway approach applications will be reviewed as part of subdivision plats or building permits being reviewed by the city. Approval of the driveway approaches for subdivisions or for sites on which a building permit application is being made shall be necessary before the subdivision or building permit may be approved.

(c) A fee shall be paid to the city upon application for an access driveway permit unless the city has entered into a written tax abatement and economic development incentive agreement which provides otherwise. The amount of the application fee is established by the city council. No application shall be considered to have been received by the city until the fee has been paid. No additional fee shall be paid if the proposed driveway access is part of a subdivision, building permit or site development application.

(d) Procedures for denial of the permit and appeal are as follows:

(1) If the city engineer disapproves an application for a permit or driveway access and denies it, the applicant shall be notified of this action in writing ~~via certified mail~~. This notice shall include a statement of the reasons for disapproval and denial, which shall be based upon the requirements of this article and/or upon sound traffic engineering principles and/or upon the standards and

specifications for driveway approach design and construction which are promulgated by the city engineer.

(2) An applicant for a permit or driveway access approval who has been denied may reapply for a permit or approval for a driveway approach to access the same parcel of property, provided the following conditions are met:

a. The required fee, if applicable, is submitted along with the application.

b. This new application outlines how the applicant proposes to ameliorate the reasons for disapproval of the previous application. This new application must contain all requisite information and may not rely upon references to any previous submittals for completeness.

(3) Any person aggrieved by an interpretation of this article or by any decision or ruling of the city engineer under this article shall have the right to make an appeal to the planning and zoning commission. The appeal shall be perfected by giving a written notice containing the following information to the director of planning and development services within 15 days of the issuance of the decision or ruling of the city engineer:

a. The name and address of the person making the appeal.

b. The facts surrounding the particular ruling.

c. The ruling of the city engineer.

d. The reasons why the ruling should be set aside.

~~(4) The persons making the appeal shall send copies of it to the city engineer and to the city attorney at the same time the appeal is filed with the director of planning and development services for the planning and zoning commission.~~

(5) Not later than ~~30~~ 45 days from the filing of the appeal, the planning and zoning commission shall hear the appeal, together with the testimony of all parties concerned, and make a written statement of findings of fact not more than ten days after the conclusion of the appeal. In hearing the appeal, the commission shall not consider waiving or setting aside the requirements of this article but shall only consider the proper interpretation of this article.

(e) Obtaining a permit or driveway access approval conveys a right to site, construct and maintain a driveway approach at the permitted location for a period of five years from the date that the permit is issued. At the conclusion of this time period, driveway approaches permitted under this article will become subject to closure under the same procedures outlined in this article for driveway approaches existing on the effective date of the ordinance from which this article was derived.

(f) No building permit shall be issued for which an approved driveway approach for the building to be permitted has not been made by the city engineer or as varied or approved by the planning and zoning commission.

(g) Where there is a conflict between this Section and the provisions of the Land Development Code, the Land Development Code shall supersede.

(Code 1970, § 25-52)

Sec. 74.190. - Application for permit or approval.

(a) Applications for access driveways shall follow the universal application procedures prescribed in Chapter 2 of the Land Development Code. Including, but not limited to the provisions for Completeness Review and Application Review by internal departments and external agencies.~~*Type I driveway approaches.* To obtain a permit or approval of a driveway approach as required by section 74.189, the contractor or authorized representative shall file with the city engineer an application in writing on a~~

form to be furnished for that purpose. Each application shall describe the proposed work and shall describe the private property adjacent to the proposed work on public property either by lot, block, tract, house number and location on the street or similar description which will readily identify and definitely locate the site of the construction. Each applicant shall give any other pertinent information required by the city engineer.

(b) *Type II driveway approaches.* To obtain a permit or approval of a driveway approach as required by section 74.189, the applicant or his authorized representative shall file with the city engineer an application in writing on a form to be furnished for that purpose. The application shall include a lot or plot plan furnished by the applicant in a form approved by the city engineer and shall be drawn to scale or shall show all dimensions required to locate the driveway approach and other facilities required to be shown by this section and shall include the following:

(1) The dimensions and location of proposed driveway approaches.

(2) Parking layout and the location of any proposed buildings or structures.

(3) All existing driveway approaches or curb openings located on the adjoining tract or lot and within 50 feet of the common property line.

(4) All existing buildings or structures on abutting property, if buildings are located within 50 feet of the extension of the driveway approach or proposed driveway approach.

(5) All existing and/or proposed sidewalks, driveway approaches, curbs, gutters, pavements, public utility or signal poles, storm sewer inlets, manholes, fire hydrants or other appurtenances that may affect the location of construction and all trees with trunks measuring 15 inches or greater in circumference as measured 4½ feet above natural ground, located in the street right-of-way adjacent to the lot or tract affected by the proposed construction.

(6) Street width and curb openings on the opposite side of the roadway and, if applicable, median openings within the same limits of subsections (b)(3) and (4) of this section.

(7) The distance to all intersecting public streets which are within 100 feet of proposed driveway approaches or as needed to properly locate the proposed driveway approaches.

(8) A certificate by the applicant that the proposed driveway approach will comply in all respects as required by the city's standard specifications and details as maintained in the engineering department"City of Austin Standard Specifications," maintained in the office of the city secretary.

a. For any construction standard variance, a certificate of variance signed by the city engineer.

b. Additional information concerning unique physical site characteristics as the city engineer may, in his discretion, require.

(9) The method of disposal and the disposal site for all unused material, dirt, debris and loose concrete.

(Code 1970, § 25-54)

Sec. 74.191. - Review of plans.

The city engineer may request written comments on each access driveway permit or driveway approach application from the various affected departments of the city, including the public works department and planning and development services department, and from the public utilities, franchise holders and, as applicable, the state department of highways and public transportation and shall allow a period of ten working days for the receipt of all comments or objections from every request recipient. When the city engineer receives an objection based upon a demonstrable conflict with an ordinance or regulation of the city or with a state or federal statute or with a recognized standard or engineering practice, the city engineer may refuse to approve the permit, provided that written notice of disapproval is sent to the permit applicant stating clearly the grounds for disapproval.

~~(Code 1970, § 25-55)~~

Sec. 74.192. - Procedures relating to existing access to the public right-of-way.

(a) A driveway approach in existence and functioning as an access route to a parcel of property on the effective date of the ordinance from which this article derives may not be closed for five years thereafter without the consent of the owner of the parcel of property so accessed.

(b) Five years after the effective date of the ordinance from which this article was derived, the city engineer may order that any driveway approach on any public right-of-way be closed and cease to function as a point of vehicular access to the abutting property, provided the following conditions are met:

(1) On the basis of a study made to determine its impacts on the smooth and safe flow of vehicular and pedestrian traffic, the city engineer determines that continuing to allow the driveway approach to remain open would have a significant detrimental effect on traffic operations and/or safety.

(2) Closing the driveway approach does not result in the abutting property being denied reasonable access to a public street. If the consequences would result from the closure, the city engineer may direct that an alternative access route be developed. The alternative access route shall be complete and functional before a driveway approach is closed.

(3) The owners of all property directly served by the driveway approach are notified in writing via certified mail at least 120 days prior to the date when the closure is to be executed.

(c) Appeal procedures are as follows:

(1) Any person aggrieved by an interpretation under this section or by any decision or ruling of the city engineer under this section shall have the right to make an appeal to the planning and zoning commission. The appeal shall be perfected by giving a written notice containing the following information to the director of planning and development services within 15 days of the issuance of the decision or ruling of the city engineer:

a. The name and address of the person making the appeal.

b. The facts surrounding the particular ruling or refusal to make a ruling, specifically how, in the opinion of the owner, access has been denied.

c. The ruling, if any, of the city engineer.

d. The reasons why the ruling should be set aside or, if the ruling was refused, why the ruling should be made.

(2) ~~Appeal of the closure must be filed in writing with the director of planning and development services within 30 days of the date that the certified mail notice of the closure was delivered. The notice of appeal must point out specifically how, in the opinion of the owner, access has been denied. The planning and zoning commission shall set a date for a hearing to be held no later than 30 days after the date on which the appeal is filed. The owner shall be notified in writing via certified mail of the hearing date and time. The planning and zoning commission may order if it finds that closure of the driveway approach effectively denies reasonable access to the owner's property.~~

~~(3) The person making the appeal shall send copies of the appeal to the city engineer and to the city attorney at the same time the appeal is filed with the director of planning and development services for the planning and zoning commission.~~

(4) Within a period of ~~30~~45 days from the filing of the appeal with the planning and zoning commission, the commission shall hear the appeal, together with the testimony of all parties concerned, and make a written statement of findings of fact and a ruling within ten days of the conclusion of the hearing. In hearing the appeal, the planning and zoning commission shall not consider waiving or setting aside the requirements of this article, but shall only consider the proper interpretation of this article.

(Code 1970, § 25-53)

Sec. 74.193. - Site layout and construction standards.

Sidewalks, driveway approaches, curbs, gutters, pavements and appurtenances on public property and other facilities to provide access to abutting property shall be constructed, provided, altered or repaired in accordance with the city's standard specifications and details as maintained in the Engineering Department.~~"City of Austin Standard Specifications"~~ and as prescribed by the following standards:

(1) *Type I driveway approaches.* Type I driveway approaches shall comply with the following standards:

a. *Width of driveway approach.* Width of driveway approaches shall conform to the dimensions as required by table I.

b. *Radius.* Driveway approaches shall be constructed with either winged side slopes or with return curbs having a rolled face disappearing at the sidewalks and joining the street curb with a radius to conform to the dimensions as required by table I. Winged side slopes shall be used whenever a curb return may present an architectural barrier within a pedestrian path.

c. *Removal of sidewalk.* Where a driveway approach is designed to cross an existing sidewalk, the sidewalk included in the driveway approach area shall be removed and reconstructed as a driveway approach, unless the city engineer has determined that the section of sidewalk fully complies with the requirements of this section for driveway approaches.

d. *Removal of curb and gutter.* Where a driveway approach is to be constructed at a location where a curb and gutter is in place, the curb and gutter shall be removed to the nearest existing construction joint or a new construction joint formed by other methods, as may be approved by the city engineer. The driveway approach shall be constructed monolithically with the new curb and gutter section and shall extend back to the property line. If the existing curb and gutter is found to be of satisfactory condition and strength, as determined by the city engineer, a one-inch minimum depth longitudinal and vertical saw cut or equal cut along the face of the curb may be required for curb removal. Curb removal shall extend to the bottom of the cut. New driveway approach concrete at the cut shall be a minimum of two inches thick.

e. *Drainage.* Driveway approaches shall be designed to prevent the entrance of water from the street onto private property, except that a drainage system may be provided within the property to handle water coming from the street. Driveway approaches constructed below the street curb grade shall be deemed substandard, and the permit applicant/property owner shall be required to provide a certificate by a state-registered professional engineer certifying to the adequacy of the drainage system provided within the property to handle water coming from the street as a result of the substandard construction.

f. *Release of city.* In consideration for the approval of substandard construction, the applicant/property owner is required to release and acquit the city from any and all damages that may result from substandard construction. The form of release shall be as approved by the city attorney.

(2) *Type II driveway approaches.* Type II driveway approaches shall comply with the following standards:

a. *Width of driveway approach.* The width of any driveway approach shall conform to the dimensions as required by table I, and the width shall be as measured along the property line, except that driveway approaches for motor vehicle docks, within a building, shall not exceed 60 feet in width at the property line. Where more dock space is required, the driveway approaches shall be separated by a traffic island meeting the standards by a traffic island meeting the standards set out in subsection (2)d of this section.

b. *Maximum space to be occupied by driveway approaches.* Driveway approaches shall not occupy more than 70 percent of the roadway abutting frontage of the tract of ground devoted to one particular use, except as noted in subsection (2)o of this section.

c. *Number of driveway approaches allowed.* Not more than two driveway approaches shall be permitted on any parcel of property with a frontage of 150 feet or less, except that additional openings may be permitted with the approval of the city engineer for the necessity and convenience of the public.

d. *Separation between driveway approaches.* When more than one driveway approach is required to serve a parcel of property, the driveway approaches shall be separated by a minimum distance, as measured at the property line, as required by table I.

e. *Requirements for safety curb or secured parking block.* Where the grade at the property line may result in part of the vehicle extending into the pedestrian way, a safety curb or secured parking blocks shall be located so that no part of a vehicle shall extend over the property line into the right-of-way. The safety curb or parking blocks shall be constructed or arranged to end 24 inches from the intersection of the driveway approach with the property line.

f. *Joint approaches.* Driveway approaches shall be located entirely within the frontage of the premises abutting the work, except that joint driveway approaches with adjoining property holders may be permitted provided joint application is made by all interested parties and the required width, as measured at the property line, is not exceeded.

g. *Angle of driveway approach.* The angle of the driveway approach with the curbline shall be approximately 90 degrees for two-way driveways, or 45 degrees to 90 degrees for one-way driveways.

h. *Radius.* Driveway approaches shall be constructed with either winged side slopes or with return curbs having a rolled face disappearing at the sidewalks and joining the street curb with a radius to conform to the dimensions as required by table I. Winged side slopes shall be used whenever a curb return may present an architectural barrier within a pedestrian path.

i. *Sidewalk to be removed.* Where a driveway approach is designed to cross an existing sidewalk, the sidewalk included in the driveway approach area shall be removed and reconstructed as a driveway approach unless the city engineer has determined that the section of sidewalk fully complies with the requirements of this section for driveway approaches.

j. *Removal of curb and gutter.* Where a driveway approach is to be constructed at a location where a curb and gutter is in place, the curb and gutter shall be removed to the nearest existing construction joint or a new construction joint formed by other methods as may be approved by the city engineer. The driveway approach shall be constructed monolithically with the new curb and gutter section and shall extend back to the property line. If the existing curb and gutter is found to be of satisfactory condition and strength, as determined by the city engineer, a one-inch minimum depth longitudinal and vertical saw cut or equal cut along the face of the curb may be required for curb removal. Curb removal shall extend to the bottom of the cut. New driveway approach concrete at the cut shall be a minimum of two inches thick.

k. *Driveway approaches at intersections.* Along either side of any parcel, the driveway approaches shall be located no closer than 100 feet to the corner of the intersecting right-of-way. Corner parcels less than 150 feet in length along the right-of-way shall combine access with adjoining property, wherever possible. Where it can be shown that access is effectively denied a corner parcel because of the 100-foot distance from the corner of the intersecting right-of-way and combined access is not available from adjoining property, a variance to the requirement may be granted by the city engineer, provided the applicant demonstrates that a variance will not create a traffic hazard.

l. *Driveway approaches at roadway facilities.* Driveway approaches at or near traffic interchanges, grade separations and traffic circles shall be so located that traffic entering or leaving the street will not impede, confuse, imperil or otherwise interfere with vehicular traffic.

m. *Driveway approaches in existing on-street angle or head-in parking areas.* Driveway approaches shall not be constructed in existing on-street angle or head-in parking areas unless all curb is restored to a standard location along the roadway in front of the premises.

n. *Obstruction of driveway approaches.* Driveway approaches shall not be constructed or designed so that standing or parked vehicles may obstruct the driveway.

o. *Premises used as motor bank.* Premises used as a motor or drive-through bank may have driveway approaches as approved by the city engineer. The approaches shall be utilized for drive facilities and shall not be utilized for angle or head-in parking.

p. *Drainage.* Driveway approaches shall be designed to prevent the entrance of water from the street onto private property, except that a drainage system may be provided within the property to handle water coming from the street. Driveway approaches constructed below the street curb grade shall be deemed substandard, and the permit applicant/property owner is required to provide a certificate by a state-registered professional engineer certifying to the adequacy of the drainage system provided within the property to handle water coming from the street as a result of the substandard construction.

q. *Release of city.* In consideration for the approval of substandard construction, the applicant/property owner shall be required to release and acquit the city from any and all damages that may result from substandard construction. The form of release shall be as approved by the city attorney.

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Table I: Standards for Two-Way Driveways

		Curb				
		Width (W) (feet)		Radius (R) (feet)		
Driveway	Development	Min.	Max.	Min.	Max.	Min. Spacing (SP) Between Drives
Type I	Single-family	10	20	5.0	5.0	10
	Duplex and townhouses	15	25	5.0	10	20
	Multiresident apartments	24	30	5.0	10	20
Type II	Office, commercial and parking lots	24	35	10	15	20
	Industrial	24	45	10	15	20

	Banks, service stations, and convenience stores with fuel pumps	25	45	10	15	1/3 × Frontage

Standards for One-Way Driveways

One-way driveways shall have the same standards as two-way driveways, except for width, which shall be a minimum of 12 feet and a maximum of 25 feet and minimum spacing between drives, which shall be twice the curb radius.

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(3) *Site layout, construction and drainage of sidewalks.* Sidewalks shall be constructed in accordance with the the city's standard specifications and details as maintained in the Engineering Department ~~"City of Austin Standard Specifications," and as required by the city engineer~~. Sidewalks are required with all new construction and shall be completed prior to issuance of a certificate of occupancy. Where sidewalks are installed, the following minimum requirements shall be met:

a. *Sidewalk permits required.* Unless sidewalk construction plans are approved as part of subdivision construction plans, ~~or~~ site permit or building permit plans, a sidewalk permit shall be issued by the city engineer for all sidewalk construction installed within city right-of-way, easements or property.

b. *Widths and location.* Where sidewalks are installed, the following minimum widths and locations shall be required:

1. Sidewalk widths must conform, at a minimum, to the requirements of the Land Development Code. Where there is conflict between this Section 74.193 (3) (b) and the Land Development Code, the larger sidewalk width shall supersede.

2. Along ~~local~~ neighborhood or residential streets, sidewalks shall be a minimum of ~~three~~ five feet wide. The sidewalk shall be located in accordance with the approved cross sections in the Land Development Code or Transportation Master Plan. ~~anywhere between the curb, if curb and gutter are used, contiguous to the back of the curb, pavement and in the right-of-way. If curb and gutter are not used, the sidewalk shall be in the right-of-way, no closer than three feet to the pavement~~.

~~2~~3. Along ~~collector~~ commercial or multi-family streets, sidewalks shall be a minimum of ~~three~~ five feet wide. The sidewalk shall be located in accordance with the approved cross sections in the Land Development Code or Transportation Master Plan. ~~anywhere between the minimum of two feet from the back of the curb if curb and gutter are used and the lot line side of the right-of-way. If no curb and gutter are used, the sidewalk shall be no closer than four feet to the pavement and in the right-of-way.~~

~~3~~4. Along arterial streets, the sidewalk shall be a minimum of ~~four~~ six feet wide. The sidewalk shall be located in accordance with the approved cross sections in the Land Development Code or Transportation Master Plan. ~~at least four feet from the curb and gutter, if curb and gutter are used. If there is no curb and gutter, the sidewalk shall be no closer than four feet to the shoulder of the arterial street and in the right-of-way~~.

~~4~~5. In the central business area (CBA), as defined in ~~chapter 114~~the Land Development Code, in shopping centers or in ~~very~~ high intensity ~~commercial and/or business areas~~zones on the Preferred Scenario Map, ~~as determined by the planning and zoning commission,~~ sidewalks shall be a minimum of ~~five~~ seven feet wide.

~~5~~6. The city engineer shall permit the construction of sidewalks contiguous with the curb or between the curbline and the property line not less than 1½ feet off the property line in blocks which are predominately residential in character. If the available right-of-way between the curb and adjacent property line is of insufficient size to accommodate the requirements of this section, the location and width of the sidewalk shall be as approved by the city engineer. The sidewalk and the area between the sidewalk and the curb shall be sloped a minimum one-fourth inch in one foot above the curb.

~~6~~7. An entrance sidewalk, in the pedestrian way, for a resident in a residential area may vary from the three feet standard sidewalk width if the requirements of the particular location warrant a narrower or a wider walk, provided that no entrance walk shall be less than three feet or more than six feet in width.

~~7~~8. Wherever water from roof or adjacent buildings is drained or conducted under sidewalks through aqueducts or concrete troughs, any openings in the sidewalks shall be fitted with strong metal covers which shall be securely held in place with screws or other fasteners that will not rust or corrode. The covers shall be set flush with the surface of the sidewalk and securely bolted, fastened or so constructed that they cannot slip, shift or lose alignment with the surface of the sidewalk. Downspouts shall not drain across the surface of sidewalks or pedestrian ways.

(4) *Sidewalk ramps.* Sidewalks constructed to the requirements in this section shall include a standard sidewalk pedestrian ramp whenever a curb return or other structure may present an architectural barrier to handicapped access within a pedestrian path or at street/sidewalk intersections.

(g) Where there is a conflict between this Section and the provisions of the Land Development Code, the Land Development Code shall supersede.

(Code 1970, § 25-56)

ARTICLE 4. – STOPPING, STANDING, PARKING

DIVISION 2. - PARKING IN RESIDENTIAL AREAS

Sec. 82.183. - Definitions.

In this division:

Boat means a vessel for use on water propelled by oars, paddles, sail, or power, and includes the trailer upon which it is transported.

Construction vehicle means mobile construction equipment, including but not limited to, dump trucks, graders, back-hoes, front-end loaders, skid loaders, and other similar equipment.

Farm equipment means tractors and all accessories and instruments associated with farming and ranching.

Front yard means:

(1) For the purposes of an interior lot only, the yard extending across the front of a lot.

(2) For the purposes of a corner lot only, the yard extending across the front of a lot between the side lot line adjacent to an interior lot or other platted property and the side yard line. A corner lot shall be treated as having two front yards.

Large motor vehicle means a motor vehicle as defined in the preceding definition which is more than 22 feet in length and/or more than seven feet in height from ground level. Motor vehicles more than seven feet in height due to adaptations specifically to accommodate disabled persons are exempted. This term includes but is not limited to recreational vehicles.

Motor vehicle means any motor driven or propelled vehicle required to be registered under the laws of the State of Texas, and includes trailers, semi trailers and house trailers as those terms are defined in of the Texas Transportation Code.

Personal watercraft means any equipment used by one or more individuals for recreational or transportation purposes in or on the water and which is powered by a motor and includes the trailer upon which it is transported.

Pole trailer means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members, capable, generally, of sustaining themselves as beams between the supporting connections.

Side yard means any yard which is not a front yard or rear yard and which is behind the front building line.

Semi-trailer means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Single-family residential zoning district means zoning districts SF 11, SF6, SF 4.5, TH, DR, TH, and PH-Z, as designated on the official zoning map of the city, and as described in chapter 4 of the city Land Development Code.

Trailer means every vehicle with or without motor power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle.

Travel trailer means a vehicular, portable structure built on a permanent chassis, designed by the manufactured to be towed by another vehicle and used as a temporary dwelling or providing temporary living quarters for recreational use.

(Ord. No. 2006-10, § 5, 3-21-06)

Sec. 82.184. - Parking prohibited on front and side yards.

It is unlawful for a person to park or allow to remain parked a motor vehicle, large motor vehicle, farm equipment, construction vehicle, boat, personal watercraft or trailer of any kind at any time in the side or front yard, in any single-family residential zoning district.

(Ord. No. 2006-10, § 5, 3-21-06)

Sec. 82.185. - Exceptions.

(a) It is an exception to the prohibition in section 82.184 if all wheels of the motor vehicle, large motor vehicle, travel trailer, boat or personal watercraft parked in the front yard are on a permanently maintained parking area extending from the curb, street, or alley in a contiguous course, and constructed of materials permitted under the Land Development Code.~~:~~

~~(1) Gravel with barriers or permanent curbing to define the driveway;~~

~~(2) Concrete;~~

~~(3) Brick; or~~

~~(4) Asphalt.~~

(b) The ~~gravel, concrete, brick or asphalt~~ parking area referred to in subsection (a) shall be no greater than the area permitted under the Land Development Code ~~45 per cent of the size of the front yard, except in the following situations:~~

~~(1) A residential unit which does not meet the minimum setback requirements as set out in the Land Development Code is located on the property; or,~~

~~(2) A residential unit is located on the property, and the width of the lot is 25 feet or less; or,~~

~~(3) A residential unit is located on the property, and the property abuts a street which is curbless or is less than 30 feet wide~~.

(c) It is an exception to the prohibition in section 82.184 if the motor vehicle, large motor vehicle, travel trailer, boat or personal watercraft is parked in the side yard and the vehicle is screened from view from the public right-of-way by an opaque fence six feet in height.

(Ord. No. 2006-10, § 5, 3-21-06)

Sec. 82.186. - Parking prohibited on vacant lots.

(a) It is unlawful for a person to park or allow to remain parked at any time on a vacant lot in any single family residential zoning district more than two of the following:

(1) A motor vehicle;

(2) A large motor vehicle;

(3) A travel trailer;

(4) A boat or personal watercraft.

(b) It is unlawful for a person to park or allow to remain parked a semi-trailer, pole trailer, commercial vehicle, construction vehicle or farm equipment on a vacant lot in any single family residential zoning district.

(Ord. No. 2006-10, § 5, 3-21-06)

ARTICLE 6. - BICYCLES

Sec. 82.266. - Definitions.

In this article:

Bicycle means a device having two or three wheels, connected by a frame of metal or wood, and designed to be propelled by human power. This definition does not apply to toy tricycles or velocipedes.

(Code 1970, § 29-56)

Cross reference— Definitions and rules of construction generally, §§ 1.002, 1.003.

~~Sec. 82.267. - Riding on bicycle paths.~~

~~Whenever a usable path for bicycles has been provided adjacent to a roadway, it is unlawful for a bicycle rider to use the roadway.~~

~~(Code 1970, § 29-57)~~

Sec. 82.268. - Parking.

No person shall park a bicycle in a public place except upon a street parallel to and no more than 18 inches from the curb or upon a sidewalk in a rack designed to support the bicycle or against a building. The bicycle shall be secured in a manner so as to afford the least obstruction to pedestrian traffic.

(Code 1970, § 29-58)

Sec. 82.269. - Riding on sidewalks.

(a) It is unlawful for a person to ride a bicycle, adult-sized tricycle, roller skates, in-line skates, skateboard or any similar device or vehicle on any sidewalk within the ~~CBA~~ Central business area ~~zoning district~~. Peace officers and park rangers are exempt from these rules to the extent these rules conflict with the discharge of their official duties.

(b) Whenever any person is riding a bicycle upon a sidewalk, that person shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing the pedestrian.

(Code 1970, § 29-59; Ord. No. 1998-10, § 1, 2-23-98)

Secs. 82.270—82.289. - Reserved.

ARTICLE 1. - IN GENERAL[2]

~~DIVISION 1. - POLES AND WIRES IN CITY STREETS~~

~~Sec. 86.001. - Installation of poles and wires in streets.~~

~~Any person, whether acting for himself or another person, who does not have authority from the city council to do so, who places any pole or strings any wire in any street, alley or public way within the corporate limits or who in any way occupies or obstructs any of the streets, alleys or public ways or any portion of the streets, alleys or public ways with any pole or wire is guilty of a misdemeanor.~~

~~(Ord. No. 2010-38, § 1, 8-3-10)~~

DIVISION 2. - WATER AND WASTEWATER LINE EXTENSIONS

Sec. 86.001~~2~~. - Processing of applications for water or wastewater service, water or wastewater connections, and water or wastewater line extensions.

(a) *Definitions.* In this division:

Application means a ~~written~~ completed application to initiate service from a city water or wastewater line, an application for connection to a city water or wastewater line, or an application for extension of a city water or wastewater line, whether the water or wastewater line, or property are ~~is~~ within or outside the city limits.

Director means the director of ~~the~~ planning and development services or the director of enginnering ~~department~~, or the director's authorized representative.

Fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension means a written description of the development, accompanied by sufficient written information for the director to determine all of the following:

(1) The site of the proposed development, including its physical location and size;

(2) The nature of the proposed development, in sufficient detail to be able to:

a. Determine the physical characteristics of the development (e.g., fill or excavation, building construction, public infrastructure installation or improvement);

b. Determine the nature and extent of public facilities or infrastructure, if any, that would be associated with or impacted by the development;

c. Confirm that the proposed development requires a decision, permit or approval by the city under the Land Development Code before the development is initiated; and

d. Confirm the manner in which the proposed development contributes to completion of the project for which the decision, permit or approval is sought, if the development is part of a larger project; and

e. Confirm the specific type of decision, permit or approval that is required by the city for the development under the Land Development Code before the development is initiated.

(3) The director shall presume that an application provides "fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension" if the application is submitted on the proper application form promulgated by the city, is accompanied by all required attachments, and reasonably appears to be complete.

Project means a development that requires a decision, permit or approval by the city under the Land Development Code before it is initiated.

Project-related application means an application for approval of a development that requires a decision, permit or approval by the city under the Land Development Code before it is initiated.

(b) *Initial review of applications by director.* The director shall review each application to determine whether it is a project-related application. If not, the director shall accept and process the application. If so, the director shall accept the application for filing only if the application gives the director fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension. If the application gives fair notice of the project and the nature of the development to be served by the utility service, utility connection or utility extension, the director shall accept the application for filing, and transmit a copy of the application to the ~~director of planning and development services and the~~ director of engineering. If the director determines that an application does not give fair notice of the project and the nature of the use to be served by the utility service, utility connection or utility extension, the director shall not accept the application for filing, and shall request clarification from the applicant.

(c) *Review of applications for completeness.* The director shall review for completeness each project-related application using the procedures and criteria in ~~section 1.3.1.1 of~~ the Land Development Code.

(d) *Processing of applications.* The director shall process each project-related application using the applicable procedures and criteria contained or referenced in the Land Development Code.

(Ord. No. 2010-38, § 1, 8-3-10)

Sec. 86.00~~23~~. - Water and wastewater line extensions.

(a) Water or wastewater line extensions, are subject to the following:

(1) The extension must be of a size that conforms to the city's construction design and materials standards and the provisions of the city master plan(s) and capital improvements plans that pertain to utility development, and the design and construction of the extension must meet all state and city regulations.

(2) Subject to the possibility of reimbursement from pro rata fee assessments under division 3 of this article, the applicant must pay the total cost for the extension for a line up to eight inches in diameter, or the line size required to properly serve the use proposed by the applicant, as determined by the city ~~director of water and wastewater~~, whichever is greater.

(3) For lines required by the city to be more than eight inches in diameter, or the line size required to properly serve the use proposed by the applicant, ~~as determined by the director of water and wastewater, whichever is greater~~, the city will pay the oversizing cost, subject to the limits and requirements of V.T.C.A., Local Government Code, § 212.072, consisting of the difference between the actual cost of the city-required line and the engineer's approved estimated cost for an eight-inch line, or the line size required to properly serve the use proposed by the applicant, as determined by the director of water and wastewater, whichever is greater. Payment from the city will be due only after the improvements are dedicated to and accepted by the city.

(4) The extension must begin at a city-approved point at which adequate capacity is available. Notwithstanding the foregoing, the city does not warrant or guarantee line capacity and there shall be no recourse against the city for failure of line capacity to serve the needs of any property.

(5) Any required valves, fire hydrants, appurtenances or other equipment, appliances or improvements related to and required for the water or wastewater line must be paid for by the applicant.

(6) The extension must be made in a public utility easement or public right-of-way. If an easement or right-of-way is not in place, it will be the applicant's responsibility to acquire an easement on behalf of the city. The form of the easement shall be subject to approval by the city.

(7) The extension shall be made along the entire frontage of the property or development adjacent to the easement or public right-of-way in which the line is or lines are located to a point at which extensions and connections to future subdivisions or developments can be made. If the property or development is not adjacent to an easement or public right-of-way, the extension of water or wastewater lines shall be accomplished in such a manner as to allow future extensions and connections to new subdivisions or developments. If new subdivisions or developments cannot be constructed beyond the applicant's property due to physical or legal constraints, the director may waive this requirement.

(8) The location of all fire hydrants, all water supply improvements and the boundary lines fo special districts, private systems, and certified water services areas, indicating all improvements proposed to be served, shall be shown on the construction plans. The cost of installing all water supply improvements to be made by the developer, including off-site improvements, shall be included in the performance guarantees furnished by the developer.

(9) The location of all wastewater improvments and the boundary lines of special districts, private systems, and certified areas, indicating all improvements proposed to be served, shall be shown on the construction plans. The cost of installing all wastewater improvments to be made by the developer, including off-site imrpovements, shall eb included in the performance guarantees firnished by the developer.

(10) Installation, operations, and maintenance of utilities not specifically referenced herein shall comply with regulations fo the TCEQ, and with any other applicable State rules and regulations, whichever is the most stringent requirement.

(b) For wastewater extensions, the following requirements apply in addition to the requirements of subsection (a):

(1) The depth must be sufficient to develop the city's wastewater system in conformance with the city's construction design and materials standards and the provisions of the city master plan.

(2) Any lift station required will be financed as follows:

a. The developer must pay the total cost for a system of sufficient capacity for the applicant's proposed use.

b. If the city determines that additional capacity is necessary, the city will pay the difference between the engineer's approved estimate of the cost to install a system sufficient for the applicant's proposed use and the actual cost of the system required by the city, subject to the limits and requirements of V.T.C.A., Local Government Code, § 212.072. Payment from the city will be due only after the improvements are dedicated to and accepted by the city.

(3) Manholes, cleanouts, odor control facilities and other required appurtenances, equipment, appliances or improvements will be the responsibility of and paid for by the applicant, subject to city oversizing participation if applicable.

(4) Pipe stub-outs shall eb located in manholes to facilitate the future extension of wastewater lines. The Director of Engineering will determine the location and size of stub-outs.

(c) Extensions of the city wastewater system will be made only if the customer is purchasing city water, unless a variance from this requirement is granted by the city council.

(d) Any necessary boring for line extensions will be at the applicant's expense.

(e) Ownership of line extensions, appurtenances and facilities will be transferred to the city upon final acceptance of the improvements by the city. Operation and maintenance of the improvements will become the responsibility of the city upon final acceptance, with the exception of any warranty items.

(Ord. No. 2010-38, § 1, 8-3-10)

Sec. 86.0034. - Extensions and connections to city water or wastewater system outside the city limits.

(a) Applications for service connections to existing city water or wastewater lines to serve a property located outside the city limits will be granted only with the approval of the city manager. Each such application must be accompanied by a written request for annexation of the applicant's property.

(b) Applications for extension of city water or wastewater lines to serve a property located outside the city limits will be granted only with the approval of the city council. An application for approval of such an extension must be accompanied by a written request for annexation of the applicant's property. If the property is not contiguous to the city limits, the application must be accompanied by a written request for annexation of an area at least 15 feet in width 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 line extension.

(c) Annexation requests must be submitted on forms approved by the city.

(Ord. No. 2010-38, § 1, 8-3-10)

Sec. 86.0045. - Extension of lines by city at owner or developer's expense.

(a) *Request to city.* In connection with an application for extension of a water or wastewater line, the owner or developer of property may submit a request to pay the city to construct a water or wastewater line to serve development on the property in lieu of construction by the owner or developer.

(b) *City approval of request.* The city may, but shall not be required to, construct a water or wastewater line with funds provided by the owner or developer to serve a development in lieu of construction by the owner or developer subject to any requirements of this section and any terms and conditions imposed by the city council. Before the city may construct facilities under this section, the owner or developer shall execute an agreement approved by the city council setting forth the terms and conditions under which the city will perform such service.

(c) *Bidding and contract.* If the city agrees to extend the water or wastewater line, the city's procedures for competitive bidding and the award of contracts established by applicable provisions of the Texas Local Government Code and ordinances must be followed. The city shall not solicit bids for construction until the owner or developer has entered into a contract approved by the city council under subsection (b) and received the developer guarantee under subsection (d).

(d) *Developer guarantee.* As a condition of granting the developer's request to extend a water or wastewater line, the developer shall deposit cash or execute a payment bond or letter of credit in such form as acceptable to the city, in its sole discretion, in an amount equal to 100 percent of the projected costs of the extension, less the added cost resulting from oversizing requested by the city, if applicable.

(Ord. No. 2010-38, § 1, 8-3-10)

Sec. 86.0056. - Health and safety extensions to serve individual lots.

For paramount public purposes of health and safety, the city council may authorize the city, at its expense, to extend a water or wastewater line to individual residential areas, subdivisions or lots.

(Ord. No. 2010-38, § 1, 8-3-10)

Sec. 86.0067. - Other public purpose extensions by the city.

For other lawful public purposes, the city council may authorize the city, at its expense, to extend water or wastewater lines to an approved location.

(Ord. No. 2010-38, § 1, 8-3-10)

Sec. 86.007~~8~~. - Water wells to be abandoned.

(a) No owner or developer of property having one or more water wells may connect from such property to a city water or wastewater line unless such owner or developer first abandons the water well or wells on the property under applicable water well abandonment laws and regulations. The requirements of this section may only be waived by the city council.

(b) *Within the City Limits.* The provision of water supply to a new development served by individual wells within the City Limits is prohibited.

(c) *Within the Extraterritorial Jurisdiction (ETJ).* Individual wells within the ETJ 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 shall 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 proprosed source of well sypply prior to plat approval.

(d) *Compliance with Other Regulations.* Installation, operations and maintenance of individual wells shall comply with City standards, regulations of the 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.

Sec. 86.008. - RESERVED

ARTICLE 2. - WATER

DIVISION 1. - GENERALLY

Sec. 86.026. - Water system connections.

(a) It is unlawful for any person to make a connection to the city water system without submitting a completed application on a form provided by the city and paying the water tap fee established by the city council.

(b) For all connections made after March 27, 1972, each single-family residence and each dwelling unit within a duplex shall be individually metered. For all connections made after January 1, 2003, each single-family residence and each dwelling unit within a duplex, triplex or fourplex shall be individually metered.

(c) For all connections made on construction begun after January 1, 2003, the manager of each condominium, or owner of each apartment house, manufactured home rental community, multiple use facility or any residence other than those identified in subsection (b) above, shall provide for the measurement of the quantity of water used by each individual living unit in accordance with Subchapter H, Rules 291.121—291.127 of the Utility Regulations established by the Texas Commission on Environmental Quality. For this purpose, construction is begun upon the issuance of a building permit for the use to be served by the connection. In addition:

(1) Where a single platted lot requires multiple water service connections, service may be provided by a single city master meter with private submeters, or multiple city meters. If the owner or manager elects to use multiple city meters, the meters shall be located in the public right-of-way

in conformance with city design standards, unless location of the meters in a utility easement is specifically approved by the director of water and wastewater.

(2) If private submeters are used, they shall be properly installed and maintained by the property owner in compliance with city standards and with state laws. At the request of the city, the owner or manager of property subject to this subsection shall provide documentation of individual usage through private submeters, or shall provide the city with access to the private submeters for the calculation of fees associated with city programs such as the industrial pre-treatment program and for verification of compliance with state laws.

(d) A developer who dedicates right-of-way and constructs water lines of a size adequate to serve an area being developed in accordance with the city's subdivision regulations is exempt from payment of the water tap fee, but must pay a water meter fee established by the city council for each city installed meter.

(e) All water facilities connected to the City's water system shall be capable of providing water for health and emergency purposes, including fire protection, as required in Chapters 14 and 38 of this Code.

(~~e~~f) In this section:

(1) *Apartment house* means a building or buildings containing five or more dwelling units which are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rental paid at intervals of one month or longer.

(2) *Manufactured home rental community* means a property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rent is paid at intervals of one month or longer.

(3) *Multiple use facility* means a commercial or industrial park, office complex or marina with five or more units which are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(Code 1970, §§ 30-1, 30-2; Ord. No. 1995-22, § 1 (30-1), 2-27-95; Ord. No. 2003-6, § 1, 1-27-03)

ARTICLE 4. - ELECTRICITY[7]

DIVISION 1. - IN GENERAL

Sec. 86.176. - Rules and ~~r~~Regulations, Line Extension Policy.

The city council is authorized and directed to promulgate, revise, amend and supplement the city electric utility rules and regulations for electric service, and the City's line extension policy, subject to the following:

(1) The city council may propose changes to the rules and regulations only at a public meeting, to which notice is given as required by the Texas Open Meetings Act, V.T.C.A., Government Code, § 551.001 et seq.

(2) Proposed rules and regulations must be published twice in a newspaper of general circulation in the city, and notice of a public hearing must be given with the publications not more than 22 days or less than eight days before the public hearing is held.

(3) Adoption of proposed rules and regulations by the city council may occur after a public hearing has been closed and not more than 30 days thereafter, or the council must schedule, provide public notice for and conduct a separate public hearing before the proposed rules and regulations may be adopted.

(4) Any proposed rule or regulation that is adopted by the city council must be published at least once in a newspaper of general circulation in the city.

(5) A rule or regulation adopted by the city council shall not take effect less than 30 days from the date of its first publication in a newspaper of general circulation in the city.

(6) Any and all amendments of the electric utility rules and regulations adopted by the city council shall be provided to the city clerk and shall remain on file in the office of the city clerk with the originally adopted rules and regulations.

(Code 1970, § 9½-2; Ord. No. 2001-65, § 3, 9-10-01; Ord. No. 2010-39, § 2, 8-3-10; Ord. No. 2012-12, § 1, 3-6-12; Ord. No. 2012-15, § 1, 4-3-12)

Sec. 86.177. - Rate schedules.

The city electric utility rate schedules are established by the city council.

(Ord. No. 2002-73, § 1, 11-4-2002; Ord. No. 2010-39, § 2, 8-3-10; Ord. No. 2012-12, § 1, 3-6-12; Ord. No. 2013-50, § 1(Exh. A), 9-17-13, eff. 10-1-13)

Editor's note— Ord. No. 2002-73, § 1, adopted Nov. 4, 2002, repealed the city's electric utility rate schedules established under City Code Section 86.167 and added new electric utility rate schedules. These rate schedules are on file in the office of the city clerk. Prior to this amendment § 86.167 pertained to similar subject matter and derived from Code 1970, § 9½-1; and Ord. No. 2002-14, § 1, adopted Feb. 11, 2002.

~~Sec. 86.178. - Line extension policy.~~

~~The city council is authorized and directed to promulgate, revise, amend and supplement the city electric utility line extension policy for electric service, subject to the following:~~

~~(1) The city council may propose changes to the policy only at a public meeting to which notice is given as required by the Texas Open Meetings Act, V.T.C.A., Government Code, § 551.001 et seq.~~

~~(2) Proposed changes must be published twice in a newspaper of general circulation in the city, and notice of a public hearing must be given with the publications not more than 22 days or less than eight days before the public hearing is held.~~

~~(3) Adoption of proposed changes by the city council may occur after a public hearing has been closed and not more than 30 days thereafter, or the council must schedule, provide public notice for and conduct a separate public hearing before the proposed changes may be adopted.~~

~~(4) Any proposed change that is adopted by the city council must be published at least once in a newspaper of general circulation in the city.~~

~~(5) A change adopted by the city council shall not take effect less than 30 days from the date of its first publication in a newspaper of general circulation in the city.~~

~~(6) Any and all amendments of the electric utility line extension policy adopted by the city council shall be provided to the city clerk and shall remain on file in the office of the city clerk with the originally adopted line extension policy.~~

~~(Code 1970, § 9½-3; Ord. No. 2001-65, § 3, 9-10-01; Ord. No. 2010-39, § 2, 8-3-10)~~

DIVISION 2. - PRO RATA FEES FOR ELECTRIC UTILITY EXTENSIONS

Sec. 86.178. - RESERVED

Sec. 86.179. - Effective date.

This division shall apply only to electric primary line extensions for which application is made on or after October 1, 2014.

(Ord. No. 2014-39, § 3, 7-1-14)

Sec. 86.180. - Meaning of terms.

Within this division, the term "director" shall mean the city manager or the city official designated by the city manager to be responsible for the management of the city's electric utility system.

(Ord. No. 2014-39, § 3, 7-1-14)

Sec. 86.181. - Pro rata fees to be established.

(a) *Nature of fee.* A charge known as a "pro rata fee" may be assessed against all property abutting the easement or public right-of-way in which an electric primary line is located and that is eligible to be served by the line and for which a pro rata fee assessment has been requested and approved or imposed in accordance with this division. The pro rata fees collected will be used to reimburse all or a portion of the eligible costs to construct the line. The pro rata fees collected will be paid to the owner or developer, including the city, as applicable, that paid for constructing the line, subject to the limitations of this division and applicable law. If the city constructs or pays any portion of the costs to construct the line, any pro rata fees collected will be paid to the city in proportion to its participation, subject to the limitations of this division.

(b) *Calculation pro rata fee.* The total cost of the electric primary line, together with all appurtenances, as approved and determined by the director will be apportioned across the length of the line establishing a unit cost per linear foot. The amount of the pro rata fee assessed against any property shall be the unit cost per linear foot multiplied by the number of linear feet of the front footage of the subject property that abuts the easement or public right-of-way associated with the electric primary line for which pro rata fees have been authorized. If the easement or public right-of-way associated with the line is abutted on two or more sides by tracts or parcels of land subject to the pro rata fee assessment, the pro rata fee will be divided equally or proportionately between or among the abutting properties.

(1) *Determining front footage.* Front footage is measured along the length in feet along the property line of a tract or parcel of land which abuts the easement or public right-of-way associated with the line. If the property abuts more than one easement or right-of-way, associated with a line subject to reimbursement from pro rata fees, the property shall be subject to the pro rata fee assessment associated with the line to which a connection will be made. Thereafter, the property may be subject to additional assessments associated with any additional lines to which connections are made, if any.

(2) *Alternate fee calculation.* If the director finds that property subject to a pro rata fee assessment is so situated or shaped that applying the front footage calculation above results in an inequitable allocation of the pro rata fee assessment relative to other property in the line's service area, he or she may apply an alternate fee calculation as provided in this paragraph. The director shall establish a unit cost for the improvements by dividing the approved total cost of the improvements by the total land area of the properties eligible to be served by the improvements. The fee to be assessed against a property under this paragraph shall be the product of the unit cost multiplied by the land area of the property to be assessed.

(3) *Equitable adjustments to pro rata fee assessments.* The director may make adjustments to the apportionment of pro rata fees assessed against a property upon a finding that, due to physical constraints of the property and any improvements thereon and/or any other legal constraints under applicable laws, rules or standards, a beneficial connection from the property to a line associated with the pro rata fee assessment cannot be made or the benefit to the property is limited to a degree substantially greater than other properties connecting to the line. Any adjustments upon new information any time a new development on the property is initiated or an application or request for any approval or permit under the Land Development Code or successor development code for the property is filed by the owner or other authorized representative. After any review of the adjustment, if the director determines that the property will benefit from the line to a degree greater than determined when the adjustment was originally approved, the city may reinstate all or any portion the pro rata fee assessment for the property.

(4) An owner or developer that is a party to a pro rata reimbursement contract under this division shall have no recourse against the city for any failure of the pro rata fees assessed and collected by the city to meet the owner's or developer's expectations or for a reduction in the amount of fees collected to as a result of adjustments made by the director under this section or any other waivers of fees provided under this division.

(Ord. No. 2014-39, § 3, 7-1-14)

Sec. 86.182. - Pro rata fee account.

A pro rata fee account is hereby established. The city shall deposit all pro rata fees collected into such account. The funds deposited into this account shall be used solely to reimburse the city and/or any owner or developer for the costs authorized under this division of installing electric primary lines subject to a pro rata fee assessment.

(Ord. No. 2014-39, § 3, 7-1-14)

Sec. 86.183. - Request for reimbursement from pro rata fee assessments.

(a) *Owner or developer request for reimbursement from pro rata fee assessment.* In connection with an application for extension of an electric primary line, but before an owner or developer begins construction or causes construction of an electric primary line an owner or developer may file with the city a written request for reimbursement from pro rata fee assessments.

(b) *Submittal requirements.* The request for reimbursement from pro rata fee assessments shall be submitted on a pro rata contract request form approved by the director. The request shall be accompanied by a copy of the plans and specifications for and survey showing the proposed location of the electric primary line. The request shall also be accompanied by a map or survey identifying all properties within the area of the proposed line.

(c) *Pro rata reimbursement contract.* Upon receipt of a complete submission from the owner or developer under subsection (b), the director shall establish a maximum amount eligible for reimbursement from pro rata fee assessments. The director shall then submit for consideration by the city council a contract with the owner or developer setting forth the terms and conditions under which the owner or developer may be reimbursed from a pro rata fee assessment and the maximum amount eligible for reimbursement, less any fees, offsets and other adjustments or approve or reject the proposed contract and in approving a contract may add such terms and conditions its deems appropriate under the circumstances.

(d) *Submission of actual cost information.* After completion of the improvements pursuant to a contract approved by the city council under subsection (c), but before the improvements are dedicated to and accepted by the city, the owner or developer shall supplement the request for reimbursement with such other information the director may request to verify the actual cost to construct the improvements,

including evidence satisfactory to the director that such cost and all subcontractors and suppliers have been paid. City cost information to construct portions of the electric primary line extension shall be obtained from the city's electric utility and included in the submittal. Engineering and similar professional, design and consulting fees may not be included in the cost to construct the improvements and are not eligible for reimbursement.

(e) *Determination of potential reimbursement amount.* Upon receipt of a complete submission of the actual cost information in subsection (d) from the owner or developer, the director shall verify the costs submitted in support of the reimbursement request. The director shall then establish a reimbursement amount and apportion such amount as a pro rata fee among the properties eligible to be served by the electric primary line.

(f) *No guarantee of reimbursement.* By entering into a pro rata reimbursement contract with an owner or developer under this section, the city in no manner guarantees that the owner or developer will be reimbursed or will receive any minimum reimbursement amount. The owner or developer, regardless of the terms of any contract with the city under this section, shall have no recourse against the city based on the failure of the pro rata fees collected by the city to meet the owner or developer's expectations.

(g) *City participation in line extension.* The city shall be reimbursed from pro rata fees for its proportionate share of costs for any electric primary lines funded in whole or in part by the city. If an electric primary line is to be funded entirely by the city, the city council may approve a pro rata fee assessment using methods consistent with this division. This section shall not apply to an electric primary line for which the city paid oversizing costs if the developer does not request pro rata fees under subsection (a).

(Ord. No. 2014-39, § 3, 7-1-14)

Sec. 86.184. - Collection of pro rata fees.

(a) *Obligation to pay fee.* Except as provided in this division, the owners of all properties abutting an easement or public right-of-way in which an electric primary line is located and for which pro rata fees have been authorized shall be obligated to pay a pro rata fee. The pro rata fee shall be due and payable before the approval of any plat or the issuance of any permit under the Land Development Code, or successor code or connection of any utilities to the site and the city may postpone processing of requests for any such approval or withhold any such approval until payment in full has been made.

(b) *Waiver of fees for certain residential areas.* For extensions serving low to moderate income residential areas or properties being developed by tax-exempt non-profit housing providers or for extensions to residential areas that are required for paramount public health and safety reasons, the city council may elect, in its discretion, to exempt such residential properties served by the line from the assessment of a pro rata fee.

(Ord. No. 2014-39, § 3, 7-1-14)

Sec. 86.185. - Disbursement of funds from pro rata fee account.

(a) *Reimbursement amount.* The owner or developer may be reimbursed from the pro rata fee account an amount not to exceed the eligible costs approved by the city council under section 86.183(c), less any costs incurred by the city for oversizing and any other deductions permitted under this division. When the city participates in the oversizing of a line, the owner or developer and the city shall each be reimbursed in proportion to their respective costs.

(b) *Offset.* Before disbursing any funds to the developer from the pro rata fee account, the city may deduct as an offset any amounts owed by the owner or developer to the city.

(c) *Ten-year disbursement period.* As pro rata fees are collected from individual property owners benefitting from an electric primary line, disbursements, less any deductions allowed under this

division, shall be made to reimburse the costs to construct the line incurred by the owner or developer and/or the city as applicable. Disbursements shall be made for a period of ten years after the date the completed improvements are dedicated to and accepted by the city or until such time as all pro rata fees attributable to the improvements have been collected, whichever is sooner.

(d) *Time for making disbursements.* The city shall make disbursements on its own account or to a developer, as applicable, within 90 days after receipt of a pro rata fee.

(e) *Assignment.* Pro rata fee assessment rights are not assignable from the original owner or developer to any third party. In the event a property for which an extension was constructed is sold prior to collection or payment of pro rata fees from other properties benefitting from the extension, no payments shall be due the new or original owner.

(f) *Unclaimed funds.* It shall be the responsibility of any owner or developer entitled to reimbursement from the pro rata fee account to notify the city of any change of address or other information necessary for it to receive payment. If the city is unable to reimburse a developer entitled to reimbursement from the pro rata account following reasonable attempts to locate such developer, the city shall retain such unpaid funds for a period of two years after expiration of the ten year reimbursement period. If the funds have not been disbursed within such time, the city may refund fees collected to the depositors of any pro rata fees. If any depositor cannot be located, after reasonable attempts to locate such depositors, the pro rata fees shall be transferred to the city electric utility fund for expenditure by the city. For purposes of this section, publication of notice regarding the unpaid funds or eligibility for a refund of such funds shall constitute a reasonable attempt by the city to locate a person or entity.

(Ord. No. 2014-39, § 3, 7-1-14)

Sec. 86.186. - City administrative collection fee.

On all pro rata fees reimbursed to the developer, the city shall deduct two percent of the amount collected as an administrative collection fee. The city shall deposit administrative collection fees into the city electric utility fund for expenditure by the city.

(Ord. No. 2014-39, § 3, 7-1-14)

DIVISION 1. - POLES AND WIRES IN CITY STREETS

Sec. 86.187. - Installation of poles and wires in streets.

Any person, whether acting for himself or another person, who does not have authority from the city council to do so, who places any pole or strings any wire in any street, alley or public way within the corporate limits or who in any way occupies or obstructs any of the streets, alleys or public ways or any portion of the streets, alleys or public ways with any pole or wire is guilty of a misdemeanor.

(Ord. No. 2010-38, § 1, 8-3-10)

DIVISION 4. – UNDERGROUND ELECTRIC UTILITIES

Sec. 86.188 – Standards for Development

(a) Any new development, or redevelopment that encroaches upon existing overhead electric infrastructure will be required to convert to underground electric infrastructure along the entire

frontage of the property or development adjacent to the easement or public right-of-way in which the infrastructure is in, and located to a point at which extensions and connections to future subdivisions or developments can be made. If the property or development is not adjacent to an easement or public right-of-way, the extension of electric lines shall be accomplished in such a manner as to allow future extensions and connections to new subdivisions or developments. If new subdivisions or developments cannot be constructed beyond the applicant's property due to physical or legal constraints, the director may waive this requirement. In order to maintain electric system reliability, the developer shall pay all costs associated with upgrading any electric utility infrastructure necessary to serve new or increased electric load resulting from any new development or redevelopment within the San Marcos Electric Utility service area.

(b) Design and construction standards for overhead and underground electric utility infrastructure are available from the San Marcos Electric Utility (SMEU), a division of the City of San Marcos Public Services Department.

DIVISION 5. – RENEWABLE AND DISTRIBUTED ENERGY SYSTEMS

Sec. 86.189 – Standards for Development

(a) Design and construction standards for the interconnection of renewable and distributed energy systems to the City's electric distribution grid are available from the San Marcos Electric Utility (SMEU), a division of the City of San Marcos Public Services Department.

DIVISION 6. – ROADWAY LIGHTING

Sec.86.190 – Standards for Development

(a) Design and construction standards for roadway lighting are available from the San Marcos Electric Utility (SMEU), a division of the City of San Marcos Public Services Department.

DIVISION 7. – ELECTRIC UTILITY ROW CLEARANCE

Sec. 86.191 – Maintaining Electrical Clearances

(a) San Marcos Electric Utility crews or contract crews shall be allowed access to all primary voltage overhead and underground electric utility infrastructure to remove encroaching vegetation in order to maintain safe operational clearances. Electric utility customer responsibilities to convey right-of-way, and provide unobstructed access are defined in the CITY OF SAN MARCOS ELECTRIC RULES AND REGULATIONS (see Sec. 86.176).

Sec. 86.192 – *Electric Utility Tree Trimming Policy*. The City of San Marcos Electric Utility (SMEU) is committed to maintaining its infrastructure in a manner that helps ensure the safety of its customers, community and employees. Part of that commitment is to our urban forest. We understand the importance of trees to the well-being of our city. We value the shade and beauty of trees. They have an enormous dollar value benefit for everyone living in San Marcos by controlling erosion and storm water, lowering air conditioning costs, and providing wildlife shelter. However, trees that interfere with power lines can cause power outages that interrupt service. This can create potential danger for you and your property. But that danger can be avoided by not planting tall-growing trees under or near electric lines and by routine tree trimming. The following are answers to the most commonly asked questions concerning SMEU tree trimming policy.

(a) Safety. Overgrown trees or limbs near power lines can pose a serious danger to unsuspecting children or adults who could come in contact with a live power line while climbing a tree. Appropriate vegetation clearance on the power lines allows for much safer access by personnel during any restoration effort. By maintaining this clearance, we can restore customer power much more safely and efficiently. Power lines can carry up to 14400 volts and can be deadly. Never touch an electrical wire; always assume it is conducting electricity and is dangerous. If you are planning to trim or remove a tree near any power or service line, please contact the San Marcos Electric Utility. Trained personnel can identify potential reliability or safety threats and advise you what can be done.

(b) Reliability. Storms and high winds are the leading cause of power outages. Trees that are too close to power lines can interrupt electric service, damage our infrastructure, and create dangerous situations when the lines go down. A single tree-to-wire contact may interrupt electric service to hundreds of homes and businesses. If electric service is lost to medical facilities, water systems, traffic lights, or emergency service providers, the results can seriously impact the community. One of the best ways to reduce interruption to electric service is by maintaining adequate clearance between power lines and trees by trimming or removing trees that are too close to the power lines. SMEU performs only the work needed to maintain reliable electric service.

(c) Tree Trimming. We appreciate the environmental benefits and natural beauty of trees as much as our customers do. We trim trees only when necessary, and we go to extra effort to preserve the health of the trees to the degree possible. To do this, we follow specifications developed by the **International Society of Arboriculture** and industry-consensus standard known as **ANSI A300**. This standard, created in accordance with the American National Standards Institute, is often used to direct future tree growth away from power lines by trimming limbs that are growing toward the wire while leaving the remaining limbs. This standard was created through a consensus of representatives from the residential and commercial tree care industry, the utility, municipal and federal sectors, the landscape and nursery industries and other interested organizations. SMEU and its tree trimming contractors follows these guidelines.

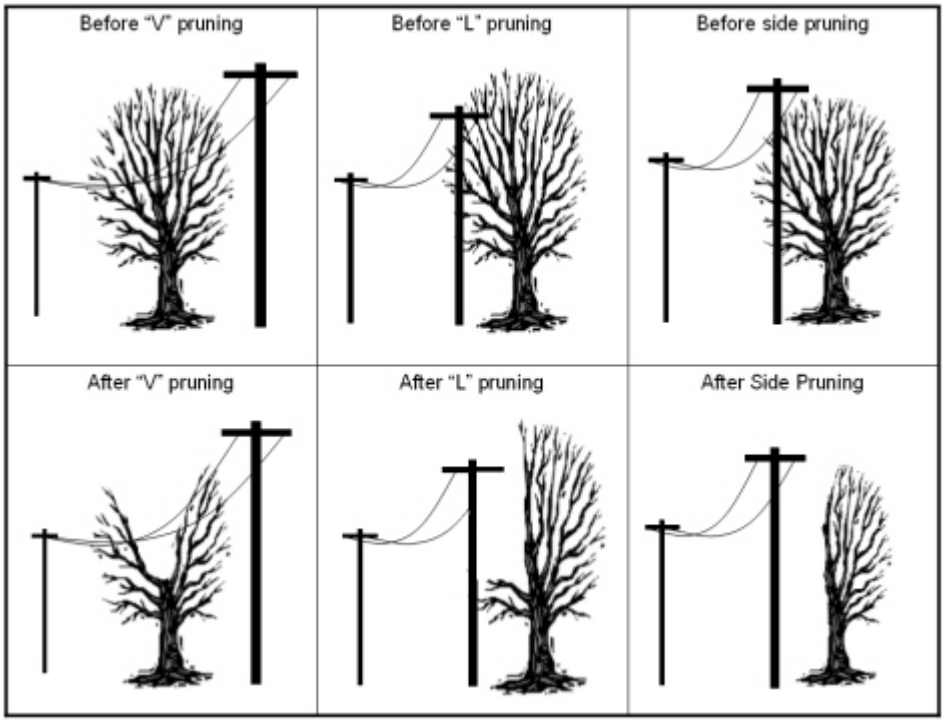
i. **Except in emergency situations, in order to reduce the possibility of spread of the oak wilt fungus we do not trim oak trees between February 1 and July 1 as recommended by the TX forest service Oak Wilt guidelines.**

ii. **We sterilize our pruning tools between oak trees and immediately paint all wounds on oak trees.**

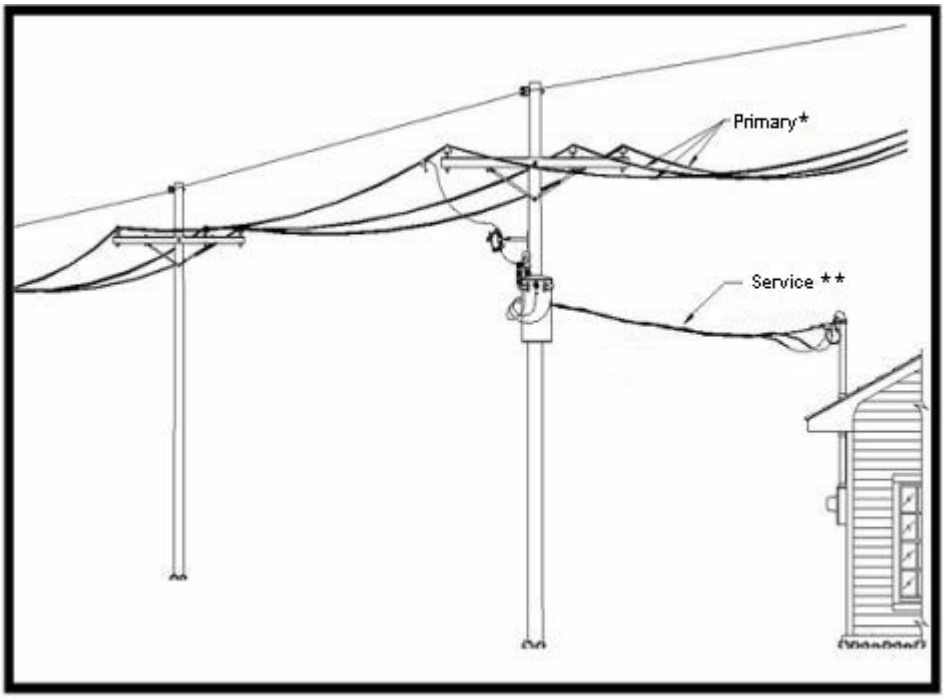
iii. See: http://texasforestservice.tamu.edu/main/popup.aspx?id=1648

iv. Prior to tree trimming in your area, we place door knockers. This courtesy message lets you know we will begin tree trimming work in your area within the next few weeks. It is not necessary that you be home on the day of the trimming; contractors will proceed with trimming and cleanup.

~~i.~~v. The three most common methods of pruning are: V, L and side.



~~ii.~~ vi. *What We Trim.* *Power Lines: SMEU routinely maintains the vegetation along our primary lines* (pole to pole). Generally, the utility plans to trim 10' clear space on primary lines.

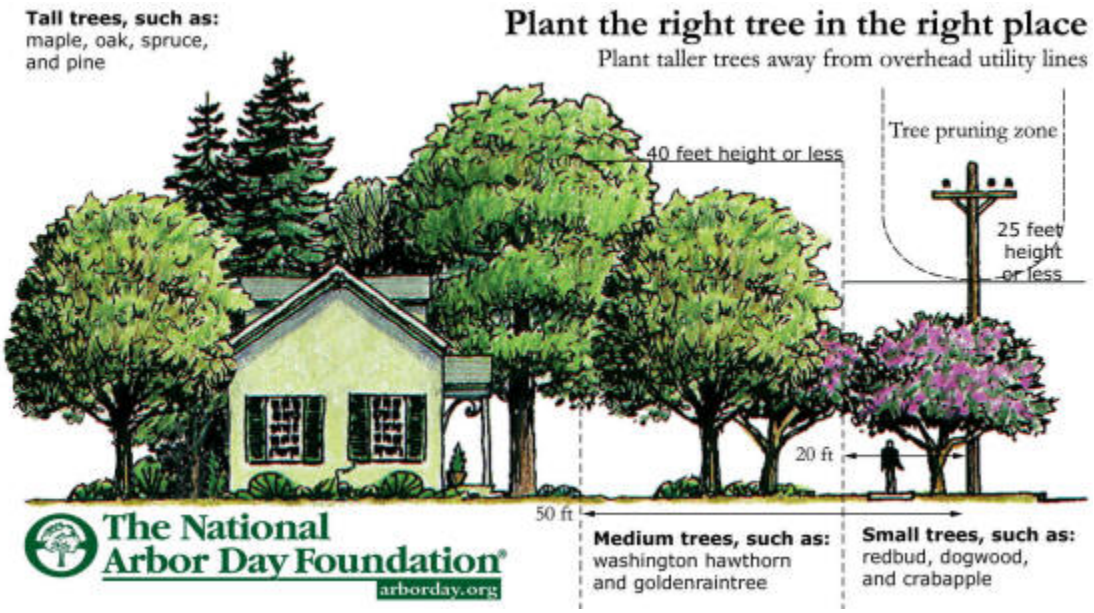


~~iii.~~ vii. *What We Do Not Trim*. Cable and Telephone Lines: We do not trim around cable or telephone lines. These lines are always attached at lower heights on the utility poles, directly to the pole and have black plastic coatings. Please contact your cable or telephone company if you are concerned about trees contacting these lines. **Services (Secondary) and Security Lighting ("Night Watchers"): We do not prune or remove trees that appear to threaten individual service lines (pole-to-home) or security lighting ("night watchers"). These service lines are the responsibility of the customer. If you have trees that need pruning or removal near your service lines, please hire a professional tree-trimming contractor to perform the work. If requested, we can temporarily disconnect the service to your home, at no charge to you, so the contractor can work safely.

~~iv.~~ viii. *Customer Requests*. If you see a tree or branch that looks dangerously close to the power lines (pole-to-pole), you can contact the San Marcos Electric Utility (SMEU) and report it. A representative of SMEU will assess the situation and will advise the customer and the tree trimming contractor on what needs to be done.

ix. *Permission of Property Owner*. Provisions of right-of-way dedications and easement documents grant SMEU the authority to trim trees. Separate permission from individual private property owners is not required to provide for a safe and reliable electric system. However, SMEU respects the property of its customer-owners and will notify the property owner of the need for tree work before trimming is done. In unusual or emergency situations, it may be necessary to trim trees without first notifying the property owner in order to restore service or eliminate safety hazards. SMEU sometimes recommends the removal of trees that are severely split in storms or will require extensive trimming which will affect the life span of the tree. However, In these cases, trees will not be removed without the property owner's permission.

b. *Planting Trees.* The National Arbor Day Foundation encourages thoughtful practices that help preserve community trees while also serving a utility company's customers. The following image demonstrates effective planign and placing th right tree in the right place. Trees propertly placed can lower line clearance costs for utility companies, reduce tree mortality and result in healthier community forests. Trees can add value to your home, help cool your home and neighborhood, break the cold winds to lower your heating costs and provide food for wildlife. When planting near utility lines, consider a 25 foot maximum mature height and 20 foot spread



Secs. 86.193~~187~~—86.195. - Reserved.

Sec. 86.198. - Miscellaneous service fees.

(a) *Water/wastewater utility.*

(1) A new service fee established by the city council must be paid when a permanent utility service is installed for the first time to a new structure or a new point of delivery. Additional charges may apply if connection is requested after normal installation hours. In addition to the new service fee, a new account fee must be paid, but shall be waived for new homes constructed by Habitat For Humanity.

(2) A new account fee established by the city council must be paid for the costs associated with establishing a new customer account on the books and records of the city and connect services at an existing location. Additional fees may apply if connection is requested after normal connection hours.

(3) A nonpayment reconnect fee established by the city council must be paid to restore services to a customer whose service was terminated for nonpayment of a bill. An additional fee must be paid for a request to reconnect services outside of normal connection hours.

(4) A temporary meter rental fee established by the city council must be paid for the use of any temporary meter which may include a meter deposit, installation charge, and monthly rental fee, in addition to the new account connection fee.

(5) A tampering fee established by the city council must be paid each time a customer causes or permits any tampering with city metering equipment or causes or permits any attempt to divert utility service around metering equipment. This fee will be in addition to the reconnect charge, cost of repairs and replacement of equipment and estimated charges for any diverted services.

(6) A meter test fee established by the city council must be paid when a customer requests a test of city metering equipment. The request must be in writing, and the current standards of the American Water Works Association will apply to the test. If the test result is outside the standards, the meter test fee will be refunded, the city will pay all testing costs and the test results will be used to make an adjustment in the customer's account. The adjustment will be for a period of either the six months preceding the request or the period of time the account has been in the customer's name, whichever is shorter.

(7) A customer-side service call fee established by the city council must be paid by a customer if the city dispatches a crew to a request for service or disconnection of service from the customer and/or the crew determines that the problem is on the customer's property.

(8) A repeat-line locate fee in the amount of the city's actual cost plus ten percent must be paid for second or subsequent water or wastewater utility line locates at the same service location within 90 days of a previous line locate.

(b) *Electric utility.*

(1) A new service fee established by the city council must be paid when a permanent utility service is installed for the first time to a new structure or a new point of delivery. Additional charges may apply if connection is requested after normal installation hours. In addition to the new service fee, a new account fee must be paid, but shall be waived for new homes constructed by Habitat For Humanity.

(2) A new account fee established by the city council must be paid for the costs associated with establishing a new customer account on the books and records of the city and connect services at an existing location. Additional fees may apply if connection is requested after normal connection hours.

(3) A nonpayment reconnect fee established by the city council must be paid to restore services to a customer whose service was terminated for nonpayment of a bill. An additional fee must be paid for a request to reconnect services outside of normal connection hours.

(4) A temporary service connection fee established by the city council must be paid for temporary overhead service. This cost of this service is the estimated cost of installing and removing the necessary overhead facilities in addition to the new account fee. Additional fees may apply if connection is requested after normal connection hours.

(5) A tampering fee established by the city council must be paid each time a customer causes or permits any tampering with city metering equipment or causes or permits any attempt to divert utility service around metering equipment. This fee will be in addition to the reconnect charge, cost of repairs and replacement of equipment and estimated charges for any diverted services.

(6) A meter test fee established by the city council must be paid when a customer requests a test of city metering equipment. The request must be in writing, and the current standards of the American National Standards Institute will apply to the test. If the test result is outside the standards, the meter test fee will be refunded, the city will pay all testing costs and the test results will be used to make an adjustment in the customer's account. The adjustment will be for a period of either the six months preceding the request or the period of time the account has been in the customer's name, whichever is shorter.

(7) A customer requested outage fee established by the city council must be paid by a customer if they request that the city dispatches a crew to disconnect their electrical service ~~a request for service or disconnection from the customer and/or the crew determines that the problem is on the customer's~~.

(8) A repeat-line locate fee in the amount of the city's actual cost plus ten percent must be paid for second or subsequent ~~water or wastewater~~ electric utility line locates at the same service location within 90 days of a previous line locate.

(9) A street banner installation/removal fee established by the city council may be charged for the installation and removal of street banners.

(10) The City of San Marcos provides residential electric utility customers an option to have a Manual Read Electric Meter. If the property owner wishes to place the AMI meters in a location where they do not properly communicate the owner shall either work with SMEU to correct the problem, or pay a manual read fee. If approved, the utility account holder agrees to:

(a) Pay a Meter Exchange Fee of $100.00 to replace an AMI Meter with a Manual Read Meter, and

(b) Pay a monthly Meter Reading Fee of $25.00, in addition to the existing electric utility charges. ~~Effective on January 1, 2009, an electric transformer cost recovery fee shall be paid for new or upgraded residential, commercial, industrial, or institutional electric service. The electric transformer cost recovery fee shall be set at the purchase price paid by the San Marcos Electric Utility (SMEU) for each transformer. In the case of a transformer upgrade, which is defined to be replacement of existing transformers with a higher capacity transformer to supply greater loads (due to remodeling, redevelopment or other changes creating a need for additional energy capacity), the electric transformer cost recovery fee shall be set at the difference of the purchase price paid by SMEU for the new transformer and the value of the transformer being removed. The fee will be waived if a developer furnishes, at its own expense, transformers that meet SMEU's specifications. SMEU will become the owner of the transformer at the time of installation. Transformer sizing will be determined by SMEU staff or a representative acting on SMEU's behalf.~~

(Code 1970, § 30-21; Ord. No. 1995-22, § 4 (30-21), 2-27-95; Ord. No. 2003-5, § 2, 1-27-03; Ord. No. 2008-33, § 1, 9-16-08; Ord. No. 2011-04, § 1, 1-18-11; Ord. No. 2011-58, § 1, 11-15-11; Ord. No. 2014-34, § 1, 6-17-14)

DIVISION 4. - IMPACT FEE ORDINANCE OF THE SAN MARCOS CITY CODE[8]

Sec. 86.303. - Appeals.

(a) *Applicability.* The property owner or applicant for new development may appeal the following administrative decisions to the city council:

(1) The applicability of an impact fee to the development;

(2) The amount of the impact fee due;

(3) The availability of, the amount of, or the expiration of an offset or credit against payment of an impact fee for inclusion in a subdivision improvement agreement;

(4) The expiration of an offset or credit

(45) The application of an offset or credit against an impact fee due;

(~~5~~6) The amount of the impact fee in proportion to the benefit received by the new development;

(~~6~~7) The availability of or amount of a refund due, if any; or

(~~7~~8) The applicability of an exception or exemption.

(b) *Exception. If the property owner or applicant contends that the amount of the impact fee or the availability or amount of an offset or credit against an impact fee due places a disproportionate burden on the property owner or applicant, or that payment of the impact fee exceeds the benefit that payment of the impact fee exceeds the benefit received by the new development, the procedures of this Section do not apply. In such instance, the property owner or applicant shall file a petition for relief from a dedication or construction requirement under the Land Development code in order to resolve the issue. Such petition may include a claim that the dedication or construction of a public improvement places a disproportionate burden on the property owner or applicant.*

(c) *Effect.* The granting of an impact fee appeal supersedes the decision from which appeal was taken. If relief includes reduction in the amount of an impact fee paid under protest, the amount of the reduction shall be refunded to the appellant.

(d) *Appellant Requirements.* The property owner or applicant for a building permit or out of city utility connection who is subject to payment of an impact fee may file an impact fee appeal provided that the burden to demonstrate an erroneous decision shall be on the appellant.

(e) *Form of Appeal.* The appeal shall contain a written statement of the reasons why the impact fee decision was erroneous. The appellant may submit evidence directly relevant and material to the grounds for the appeal. The burden of proof shall be on the appellant to demonstrate that the decision being appealed was not in accordance with impact fee standards.

(f) *Time for Filing Appeal.* The appellant must file a written notice of appeal with the ~~city clerk~~ director of engineering within 30 days after the decision being appealed. If the notice of appeal is accompanied by a payment or other security satisfactory to the city attorney in an amount equal to the original determination of the impact fee due, the development application may be processed and approved while the appeal is pending. If the impact fee is not paid or otherwise secured, all proceedings on a development application associated with the appeal shall be stayed, including without limitation the acceptance, processing or approval of the application or subordinate applications.

(c) *Decision on Appeal.* The appeal shall be heard by the city council within 30 days ~~at its next regular meeting that is scheduled at least 15 days~~ from the date the appeal is filed. ~~The appellant may present evidence directly relevant and material to the grounds for the appeal. The burden of proof shall be on the appellant to demonstrate that the decision being appealed was not in accordance with this division or standards or guidelines adopted under or referred to in this division.~~

(d) The city council, after public hearing, may grant the appeal in whole or in part, or deny the appeal. If the amount of an impact fee is reduced, any portion of the impact fee paid under protest shall be refunded to the appellant.

(Ord. No. 2013-70, § 1, 12-17-13)

Sec. 86.531. - Maintenance and repair of permanent stormwater facilities.

(a) Control measures. The City of San Marcos has the authority to require installation, implementation, and maintenance of temporary and permanent control measures in accordance with TPDES Phase II MS4 Permit TXR040000.

(b) Drainage easements. Drainage easements shall be required for permanent stormwater management facilities ~~and recorded~~ in accordance with Subpart B of the City's Code of Ordinances ~~the city's LDC, Chapter 1, Article 7~~.