

CHAPTER 3

BUILDING REGULATIONS

ARTICLE 3.01 GENERAL PROVISIONS

Sec. 3.01.001 Payment of professional fees for review of development applications

(a) All reasonable costs incurred by the city for professional review of concept plans, zoning applications, site plans, planned development, plat applications, consent requests and other land use related permits shall be borne by the applicant and determined and billed by the city and payable by the applicant to the city no later than 60 calendar days after final approval of the plat or permit as the case may be. Such professional fees shall include, but not necessarily be limited to, civil engineering, traffic engineering, expenses for related legal fees, land planning and financial analysis in order that the application can be properly evaluated to achieve compliance with the city's comprehensive plan, thoroughfare plan, facilities plan, comprehensive zoning ordinance, subdivision regulations and other city regulations.

(b) In accordance with the subsection above, the city clerk shall require a deposit in the amount of \$1,000.00 for such services at the time the initial development or permit application is filed. The actual costs will be determined following final approval and either an additional sum will be due from the applicant or a reimbursement made if the actual cost is less than the deposit. The applicant shall be provided with documentation detailing actual costs of development or permit review.

(c) The city manager, or his or her designee, may refuse to issue any building permits to the applicant, or their successors or assigns, if such fees are not paid.

(2000 Code, sec. 3.901)

Sec. 3.01.002 Waiver of certain fees for qualifying homeowners

(a) The purpose of this section is to establish standards pursuant to which certain limited waiver of fees may be granted to a qualifying homeowner (herein defined).

(b) Homeowners in the city shall be considered a "qualifying homeowner" under this section and shall thereby be eligible to receive a waiver of an eligible fee (herein defined) provided that:

(1) Damage to their home was caused by fire (with the exception of arson) or other natural disaster; and

(2) The homeowner submits documentation that their insurance company will not pay the eligible fees.

(c) A qualifying homeowner may apply for a waiver of the following fees (a "fee waiver request") as identified in the fee schedule adopted from time to time by the city council (an "eligible fee"):

(1) Demolition permit fees;

(2) Temporary electric permit fees;

(3) Building permit fees, including any associated plumbing, electrical, or mechanical permit fees;

Eligible fees shall specifically exclude inspection, plan review, or professional fees.

(d) Every fee waiver request shall be processed through the city manager and/or the city manager's designee. Requests must be submitted on a form prescribed by the city. The city manager shall have the absolute discretion to determine whether a fee waiver request submitted by any such property owner is to be approved or denied. Decisions of the city manager may be appealed to the city council.

(2000 Code, art. 3.1400)

Sec. 3.01.003 Tree preservation

Any and all building and construction activity within the city shall comply with the tree preservation regulations contained in [division 7 of article 10.03](#) of this code. (2000 Code, sec. 3.1201)

ARTICLE 3.02 BUILDING INSPECTOR AND BUILDING PERMITS

Sec. 3.02.001 Office of building inspector created; appointment; duties

(a) The office of building inspector is hereby created, and the official in charge shall be known as the building inspector of the city.

(b) The building inspector shall be appointed by the city council. His appointment shall continue during satisfactory service, and subject to the pleasure of the city council.

(c) During temporary absence or disability of the building inspector, the appointing authority shall designate an acting building inspector.

(d) The building inspector shall not have any interest whatever, directly or indirectly, with the sale or manufacture of any material, process or device entering into or used in or in connection with building, construction, alterations, removal or demolition within the city.

(e) The building inspector shall receive applications required by the construction codes of the city from the city secretary for review, to determine if the applications, as filed, conform with the subdivision ordinance, the construction ordinances and the zoning ordinance, and other ordinances affecting construction and building in the city. If the building inspector shall approve the application, he shall report his approval, in writing, to the city secretary. If he shall disapprove the application, he shall give his reasons for disapproval, in writing, to the city secretary.

(f) The building inspector shall examine the premises for which permits have been issued and shall make necessary inspections to see that the provisions of the law are complied with and that construction is prosecuted safely.

(g) The building inspector shall enforce all provisions of the construction codes.

(2000 Code, art. 3.900(a))

(h) The building inspector shall, when requested by proper authority or when the public interest so

requires, make investigations in connection with matters referred to in the construction codes and render written reports on the same. (2000 Code, art. 3.900(a); Ordinance adopting Code)

(i) To enforce compliance with law, to remove illegal or unsafe conditions, to secure the necessary safeguards during construction, or to require adequate exit facilities in buildings and structures, he shall issue such notices or orders as may be necessary.

(j) The building inspector, or his duly appointed assistants, shall make the inspections required under the provisions of the construction codes, provided the person who shall make plumbing inspections shall be licensed in accordance with the Plumbing License Law of 1947. The building inspector may accept reports of inspectors of recognized inspection services, after investigation of their qualifications and reliability. No certificate called for by any provision of the construction codes shall be issued on such reports unless the same are in writing and certified by a responsible officer of such service.

(k) The building inspector shall keep comprehensive records of applications, of permits issued, of certificates issued, of inspections made, of reports rendered, and of notices or orders issued.

(l) All such records shall be open to public inspection during office hours, but shall not be removed from the office of the building inspector without his written consent.

(m) The building inspector shall make written reports to the city council once each month, or oftener if requested, including statements of certificates issued and orders promulgated.

(n) The building inspector shall perform such other duties as the city council shall, from time to time, impose upon the office.

(2000 Code, art. 3.900(a))

Sec. 3.02.002 Building permits

(a) Application. Any person, firm or corporation desiring to construct any structure or to construct any alterations or repairs to any existing structure within the city, or to move any structure from without the corporate limits to within the corporate limits of the city, or move any structure within the corporate limits of the city, shall file an application requesting a building [permit, which shall include] detailed plans and specifications and an estimate of the cost of the contemplated construction.

(b) Filing fee. Each applicant for a building permit shall, at the time of filing his application with the city, pay to the city a filing fee according to the fee schedule found [appendix A](#) of this code.

(c) Issuance. The city secretary, upon the filing of an application for a building permit, shall refer such application to the building inspector for review and recommendations. At such time as the building inspector shall give his approval of such application to the city secretary, in writing, the city secretary shall issue a building permit to the applicant.

(d) Posting. The building permit issued by the city secretary shall be posted in plain view at the site of the construction during the entire period of construction.

(2000 Code, art. 3.900(b)–(e))

Sec. 3.02.003 Conformance with plans and specifications

Any person, firm or corporation who has been granted a building permit to construct any structure within the city, or to move any structure from without the corporate limits to within the corporate limits of the city, or to move any structure within the corporate limits of the city, pursuant to and under the terms of this article, shall prosecute such construction in strict conformity with the plans and specifications on file, and the permit issued hereunder. Upon being notified in writing of a failure to prosecute such construction in accordance with the plans and specifications and permit, any such person, firm or corporation shall have ten days in which to make such structure or construction conform to the plans and specifications and building permit. Failure to make such correction shall constitute a violation under the terms of this article. (2000 Code, art. 3.900(f))

Sec. 3.02.004 Liability of enforcement officers

Any officer or employee charged with the enforcement of the construction codes, acting for the city in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit brought against any officer or employee because of such act performed by him in the enforcement of any provision of the construction codes shall be defended by the attorney for the city until the final termination of the proceedings. (2000 Code, art. 3.900(g))

Sec. 3.02.005 Right of entry of building inspector

The building inspector, in the discharge of his official duties, and upon proper identification, and with the permission of the occupant, shall have the authority to enter any building, structure, or premises at any reasonable hour. (2000 Code, art. 3.900(h))

Sec. 3.02.006 Appeals

(a) Any person, firm or corporation aggrieved by any interpretation or by any decision or ruling of the building inspector under the construction codes shall have the right to make an appeal to the city council. Notice of appeal shall be in writing and filed within 15 days.

(b) Within a period of 15 days from the filing of the appeal, the city council shall hear the appeal, together with the testimony of all parties concerned, and render a decision thereon within three days thereafter. In hearing an appeal, the city council shall not have the power to waive or set aside the requirements of the construction codes, but shall have the power to interpret its provisions, and in case of alternate types of construction or materials shall determine whether or not such alternate type of construction or material is in fact equal to the standards of the construction codes, considering adequacy, stability, strength, sanitation and safety to the public health and welfare. The action of the city council thereon shall be final.

(2000 Code, art. 3.900(i))

Sec. 3.02.007 Certificate of occupancy

No building hereafter erected or structurally altered, or moved from without the corporate limits to within

the corporate limits of the city, or moved within the corporate limits of the city, shall be used, occupied or changed in use until a certificate of occupancy has been issued by the city secretary, stating that the building or proposed use of the building or premises complies with the detailed statement and plans submitted to and approved by the building inspector, and all other regulations pertaining to construction in the city. (2000 Code, art. 3.900(j))

Sec. 3.02.008 Requirements for furnishing utilities

No person, firm or corporation having a franchise in the city shall furnish light, power, water, sewer, gas and/or telephone service to any building hereafter erected or structurally altered, or moved from without the corporate limits to within the corporate limits of the city, or moved within the corporate limits of the city, unless and until a building permit and certificate of occupancy has been issued by the city secretary. (2000 Code, art. 3.900(k))

ARTICLE 3.03 TECHNICAL AND CONSTRUCTION CODES AND STANDARDS

Division 1. Generally

Secs. 3.03.001–3.03.050 Reserved

Division 2. Building Code^{*}

Sec. 3.03.051 Adopted; amendments

(a) Adoption. The 2006 edition of the International Building Code, a publication of the International Code Council (ICC), adding regional North Central Texas Council of Governments amendments and additional amendments, as outlined in Ordinance 2009-07-03, is hereby adopted and designated as the building code for the city to the same extent as if such code were copied verbatim in this section, subject to the deletions, additions, and amendments prescribed in this section. A copy of the 2006 edition of the International Building Code is on file in the office of the city secretary.

(b) Local amendments. [The local amendments to the 2006 International Building Code are on file in the office of the city secretary.]

(2000 Code, sec. 3.101)

Secs. 3.03.052–3.03.100 Reserved

Division 3. Electricity^{*}

Part I. In General

Sec. 3.03.101 Penalty

(a) Any person, firm or corporation who shall violate any of the provisions of this division or who shall fail to comply with any requirement of this division, or of the National Electrical Code hereby adopted, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed

\$2,000.00, and each and every day's continuance of any violation of any provision of this division shall constitute and be deemed a separate offense.

(b) In case of any such violation of any of the terms or provisions of this division by any corporation or company, the officers and agents and person or persons actually performing the violation for any such corporation or company shall be subject to the penalties herein provided.

(2000 Code, sec. 3.512)

Sec. 3.03.102 Inspections

(a) The building inspector or assistant inspector shall inspect personally and pass on all electric wiring being constructed or placed in service in the city, and shall issue a certificate of approval thereof if he shall approve the same, or, if he shall not approve the same, direct by written order to the owner or agent in charge of the premises to stop the installation, construction or use of the imperfect electrical work or parts, until it shall have been made right by repairs, alterations or replacement as conditions may show as being necessary.

(b) The building inspector or any assistant inspector may enter any house or premises in the city connected to the electrical distribution system serving the city and its inhabitants at any time between the hours of 9:00 a.m. and 4:30 p.m. when request or complaint is made, and with the permission of the owner or occupant, to examine and inspect any electrical wiring, apparatus or appliance, or connections therewith.

(c) The building inspector shall investigate all alleged violations of the electrical ordinances reported to him, and file complaints against all persons whom he may know to be guilty of violations of any of the electrical ordinances of the city.

(d) The building inspector shall inspect all electric wiring and installations, whether now in existence or hereafter to be installed or placed in service, on premises served by the electric distribution system serving the city and its inhabitants, and perform all such other duties as may be directed by the city council.

(e) The building inspector shall keep a complete, legible record of all official work performed as required by this division, and shall monthly make a detailed report thereof to the city council. The record shall be so arranged as to provide full information concerning conditions existing at the time of each and every inspection made.

(f) The building inspector shall have the power, and it shall be his duty, where any building has or contains improper or defective electrical conditions or where same has been installed or placed in service without a permit as provided by law and the ordinances of the city, to order the power company serving such building to immediately shut off the current supply and to prevent any reconnection until the improper or defective electrical condition shall have been made to comply fully with the laws and ordinances and a certificate of approval of the building inspector has been issued.

(2000 Code, sec. 3.501)

Sec. 3.03.103 Wiring requirements

All electrical wiring for light, heat and power purposes hereafter to be used or installed within the primary fire zone limits of the city, except residential buildings, shall be as respectively described in the subsections hereof and shall be contained and encased in metallic conduit, viz:

- (1) All electric wiring for all purposes in buildings situated within the primary fire zone.
- (2) All brick, tile, stone, concrete, or wood commercial buildings within the corporate limits of the city.
- (3) All electric wiring in residential buildings shall be "Romex" or better.
- (4) All supply wiring for electric signs.
- (5) All electric wiring for inside decorative or display lighting except where the decorative or display wiring is temporary, and not to be used for any period exceeding 30 days, in which case or cases the building inspector may grant permission for the use of open wiring, provided an assurance is given him that all such wiring will be removed in its entirety at the expiration of 30 days. If the owner of the temporary wiring does not remove it at the expiration of the permitted 30 days, it shall be the duty of the building inspector to cut off, or have cut off, all electricity supply to the premises where the wiring is located, and no reconnection shall be permitted until the defect shall have been remedied.

(2000 Code, sec. 3.503)

Sec. 3.03.104 Fixtures in kitchens, bathrooms and basements

All kitchens, bathrooms and basement lights must have ceiling fixtures controlled by wall switches, or all kitchens, bathrooms and basements may have bracket fixtures controlled by wall switches and with the fixtures grounded. (2000 Code, sec. 3.504(a))

Sec. 3.03.105 Wires interfering with fire department or fire escapes

All wires now installed, or hereafter to be installed, or maintained over any street, alley, sidewalk or building within the city shall be so arranged by their respective owners in such manner as not to interfere seriously with or obstruct the work of the fire department or in any way interfere with safe use of fire escapes. The city fire marshal shall have authority and is hereby empowered to order proper rearrangement of any such interfering or hazardous wire or wires. (2000 Code, sec. 3.504(b))

Sec. 3.03.106 Separation of high potential wires and signal wires

Wherever possible and expedient, signal wires shall not be carried on the same pole with or in dangerous proximity to high potential electric wires, and where one pole must carry two or more classes, or where there is a traverse of the systems, the high potential electric wire or wires shall be placed and maintained not less than four feet above every signal wire. Where it is impossible to provide for such separation, it shall be the duty of the building inspector to enforce an equitable and safe alternative plan. (2000 Code, sec. 3.504(c))

Sec. 3.03.107 Electrician's license; certificate of qualification; bond

- (a) It shall be unlawful for any electrician or other person or persons to do, or have done, any electrical wiring or installation of electric equipment within the city without first being in proper

possession of a certification of qualifications and such license and permit or permits required by this division; provided, however, the provisions of this division shall not apply to service calls.

(b) Any master electrician holding a valid current license issued by an incorporated city or town situated in the county shall be entitled to a certificate of qualification. Any master electrician holding a certificate of qualification issued by the city desiring to contract electric work in the city shall exhibit his respective certificate to the city secretary, and shall file an application for a license to contract electrical work in the city together with a filing fee as provided for in the fee schedule found in [appendix A](#) of this code, and at the same time shall file with the city secretary a properly executed surety bond in the amount of \$5,000.00, payable to the city, conditioned to protect the city and/or any person, firm or corporation and hold it harmless for any or all loss or damage occasioned by the negligence of the principal therein in failing to execute properly and protect all work done by him, or under his supervision in any way whatsoever, and further conditioned to observe and abide by all ordinances at any time enacted by the city relating to electrical work.

(c) Said bond must be acceptable to the city council and shall run to the end of the current calendar year, which is December 31st of each calendar year.

(d) When said bond has been approved and the applicant has fully complied with the requirements of this division, a license will be issued to him licensing him as a contracting electrician, to do, or have done, electrical work in the city, which license shall continue in effect to the end of the calendar year in which issued, unless same should be sooner revoked for cause.

(e) The license will be issued by the city secretary upon payment of the fee for such license. Such license may be renewed for the ensuing calendar year by the filing of a new bond in the same amount and upon the same conditions as were provided for herein for the issuance of the original license and the payment of a renewal fee as set forth previously in this division. No refund shall be paid in the event of the revocation or surrender of any such certificate of license.

(f) In the event that said surety executing said bond as surety should for any reason withdraw from said bond as surety thereon, it shall be unlawful for said electrician to continue in, on or with any electrical work then being done by him until said bond shall be properly executed and secured by another surety, and until said bond shall have been deposited with the city secretary and approved by the city council.

(2000 Code, sec. 3.505)

State law reference—Texas Electrical Safety and Licensing Act, V.T.C.A., Occupations Code, ch. 1305.

Sec. 3.03.108 Work on one's own property

Nothing contained within this division shall ever be construed or operate to prevent any person from actually doing his own electrical work on his own property or premises, provided the permit is paid for and obtained, and that the materials and equipment and the work be in strict accord with the rules and regulations of the city's electrical ordinances and that the building inspector's approval can be obtained

upon inspection in regular order, and further provided that the property owner must actually perform the work and that no other than the actual owner shall do any part of it, unless the other person or persons are bonded and licensed in full compliance with all of the provisions of this division. (2000 Code, sec. 3.506)

Sec. 3.03.109 Permits

(a) It shall be unlawful for any person or persons to do, or have done, any electrical wiring, any installation of electric equipment, or any extension or alterations of electrical work, until an electrical work permit to do same has been obtained from the city secretary authorizing the work to be done; provided that no permit shall be required for any electrical work which is to use or be operated with electric current of not exceeding 50 volts potential. No permit shall be required for placing, attaching or using portable electrical appliances of either commercial or domestic purposes. No permit will be required for repairs or maintenance work in any power or industrial plant where a certified electrician for the city is regularly and continuously employed to do such work, but all new work, whether original or extension, shall be done only on authority of a permit by the city.

(b) A permit for electrical work will be issued by the city only upon:

(1) Written request or application which has been filed with the city and which properly describes the exact character and extent of the electrical work proposed to be done; and

(2) Receipt of the fee as provided for in the fee schedule found in [appendix A](#) of this code.

(c) The term "outlet," as used in this division, shall include the outlet to which there is to be or can be connected a lighting fixture or any portable appliance. The terms "dynamo" and "motor" shall include any machine, equipment or device requiring electric power for other than actual lighting.

(d) When additional outlets or more power requirements are to be installed than called for on the permit issued, the permit shall be taken to the city secretary, who will add the additional items, if permissible, and shall collect the additional permit and inspection fees. The additions must be noted on the building inspector's copy of the permit at the same time.

(2000 Code, sec. 3.507)

Sec. 3.03.110 Extensions; installations for future use; permit for temporary service

(a) Extensions of wiring or equipment. All extension to or of electric wiring or equipment shall be done under the regular permit and shall be inspected by the building inspector of the city, all subject to the full requirements of this division.

(b) Wiring or equipment for future use. All wiring or equipment to be installed in any building or on any premises for future use must have a permit, inspection and approval per all requirements of this division.

(c) Permit for temporary service. When for good and sufficient cause it is necessary to have electricity turned on any installation before a final certificate can be issued, the building inspector may (if all parts

of which current is to be applied are in safe and satisfactory condition) authorize a temporary permit to be issued for a period of 120 days, provided the applicant for the temporary service pays to the city at the time of making application a fee as provided for in the fee schedule found in [appendix A](#) of this code.

(2000 Code, sec. 3.508)

Sec. 3.03.111 Reconnection of discontinued service

Whenever electric service is discontinued to any building or premises within the city for any cause whatsoever, reinstatement or reconnection of electric service shall not be made or given to anyone until a certificate of occupancy is obtained from the building inspector, who shall first make sure that no changes or additions have been made to the wiring so as to cause overloading of circuits or fire hazards. The fee for such certificate of occupancy shall be as established by the fee schedule contained in [appendix A](#) of the Code of Ordinances. (2000 Code, sec. 3.509)

Sec. 3.03.112 Tagging by building inspector

Upon inspection of the wiring for any building, the building inspector shall leave a tag or notice attached to or near some part of the wiring, stating if approved, or if to be kept open for further inspection. No person shall lathe, seal, or in any manner conceal any wiring until it has been approved by the building inspector. (2000 Code, sec. 3.510)

Sec. 3.03.113 Condemnation of work and disconnection of service

The building inspector shall have at all times the power to condemn any electrical wiring or apparatus theretofore installed or used, if and when he finds, upon proper inspection, that such work or material or apparatus is unsafe or dangerous to life or property in any manner, in whole or in part. When any such condemnation is made, the building inspector shall serve notice in writing upon the owner or operator of such wiring or equipment and allow a reasonable time for remedying the defects. If, at the expiration of the time allowed on said notification, the defect or defects have not been satisfactorily remedied, the building inspector shall order the electric current supply for such premises to be cut off immediately, and no reconnection shall be allowed until all defects have been fully remedied, and approved after regular inspection. (2000 Code, sec. 3.511)

Sec. 3.03.114 Rules of power and light companies incorporated

The rules and regulations of the power and light companies holding a franchise to serve the city and its inhabitants with electrical power regarding service meters and other instrument installations for the kind and character of service to be rendered, as approved by the city council, are incorporated herein and made a part hereof for all purposes. (2000 Code, sec. 3.513)

Secs. 3.03.115–3.03.140 Reserved

Part II. Electrical Code

Sec. 3.03.141 Adopted; amendments

(a) Adoption. The 2008 edition of the National Electrical Code is hereby adopted and designated as

the electrical code for the city to the same extent as if such code were copied verbatim in this section, subject to any deletions, additions, and amendments prescribed in this section. A copy of the 2008 edition of the National Electrical Code is on file in the office of the city secretary.

(b) Local amendments. [The local amendments to the 2008 National Electrical Code are on file in the office of the city secretary.]

(2000 Code, sec. 3.102)

Secs. 3.03.142–3.03.200 Reserved

Division 4. Plumbing*

Part I. In General

Sec. 3.03.201 Penalty

(a) Any person, firm or corporation who shall violate any of the provisions of this division, or who shall fail to comply with any requirement of this division, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed \$2,000.00, and each and every day's continuance of any violation of any provision of this division shall constitute and be deemed a separate offense.

(b) In case of any such violation of any of the terms or provisions of this division by any corporation or company, the officers and agents and person or persons actually performing the violation for such corporation or company shall be subject to the penalties herein provided.

(2000 Code, sec. 3.409)

Sec. 3.03.202 Inspections

(a) The building inspector, or assistant inspectors, shall inspect and pass on all plumbing now in use or being constructed or placed in service or which may hereafter be installed, constructed or placed in service in the city and issue a certificate of approval thereof, if he shall approve the same, or, if he shall not approve the same, direct, by written order to the owner or agent in charge of the premises, to stop the construction, installation or use of the imperfect plumbing work until it shall have been made right by repairs, alterations or replacement, as conditions may show as being necessary; provided, however, that the building inspector or the assistant inspector shall possess either a master or journeyman plumber's license in accordance with the provisions of the Plumbing License Law of 1947, and amendments thereto, prior to making any inspections provided for herein.

(b) The building inspector or any assistant inspector may enter any house or premises in the city at any time between the hours of 9:00 a.m. and 4:30 p.m. when request or complaint is made, and with the permission of the owner or occupant, to examine and inspect any plumbing.

(c) The building inspector shall investigate all alleged violations of the plumbing ordinances reported to him, and file complaints against all persons whom he may know to be guilty of violation of any of the plumbing ordinances of the city.

(d) The building inspector shall keep a complete legible record of all official work performed as required by this division, and shall monthly make a detailed report thereof to the city council. The record shall be so arranged as to provide full information concerning conditions existing at the time of each and every inspection made.

(2000 Code, sec. 3.401)

Sec. 3.03.203 Authority to order discontinuation of water or gas service

The building inspector shall have the power and it shall be his duty, where any building has or contains improper or defective plumbing or where same has been installed or placed in service without a permit, as provided by law and the ordinances of the city, to order water or gas service discontinued to such building immediately, and to prevent restoring such service until the improper or defective plumbing shall have been made to comply fully with the laws and ordinances and a certificate of approval of the building inspector shall have been issued. (2000 Code, sec. 3.402)

Sec. 3.03.204 Liability of inspectors; removal from office

(a) Neither the building inspector nor any of his assistants shall, when acting in good faith without malice, be liable for damages by reason of duty performed under the provisions of this division.

(b) The building inspector or any of his assistants may be removed from office by the city council for incompetence or neglect of duty.

(2000 Code, sec. 3.403)

Sec. 3.03.205 License and permit required

(a) It shall be unlawful for any plumber or other person or persons to do, or have done, any plumbing within the city without first being in proper possession of a license and permit or permits as provided in this division.

(b) "Plumbing," as used in this division, means and shall include:

(1) All piping, fixtures, appurtenances and appliances for a supply of water or gas, or both, for all personal or domestic purposes in the buildings where a person or persons live, work or assemble; all piping, fixtures, appurtenances and appliances, outside a building, connecting the building with the source of water or gas supply, or both, on the premises, or the main in the street, alley or at the curb; and all piping, fixtures, appurtenances, appliances, drains, or waste pipes carrying waste or sewage from or within a building to the sewer service lateral at the curb or in the street or alley or other disposal terminal holding private or domestic sewage;

(2) The installation, repair, and maintenance of all piping, fixtures, appurtenances and appliances in the buildings where a person or persons live, work or assemble, for a supply of gas, water, or both, or disposal of wastewater or sewage.

(c) A "master plumber," within the meaning of this division, is a plumber having a regular place of business who, by himself or through a person or persons in his employ, performs plumbing work, and

who is licensed by the state board of plumbing examiners, as provided by the Plumbing License Law of 1947 and amendments.

(d) A “journeyman plumber,” within the meaning of this division, is any person other than a master plumber who engages in or works at the actual installation, alteration, repair and renovating of plumbing, and who is licensed by the state board of plumbing examiners as provided by the Plumbing License Law of 1947 and amendments thereto.

(2000 Code, sec. 3.404)

State law reference–Plumbing License Law, V.T.C.A., Occupations Code, ch. 1301.

Sec. 3.03.206 Registration of plumbers; bond

(a) Any person who shall possess either a master or journeyman license in accordance with the provisions of the Plumbing License Law of 1947, and amendments thereto, desiring to operate a plumbing business or do plumbing work in the city shall exhibit his license to the city secretary, and shall file an application for a certificate of registration to operate a plumbing business or do plumbing work in the city, and at the same time shall file with the city secretary a properly executed surety bond in the amount of \$5,000.00, payable to the city, conditioned to protect the city and/or any person, firm, or corporation, and hold it harmless for any or all loss or damage occasioned by the negligence of the principal therein in failing to execute properly and protect all work done by him, or under his supervision in any way whatsoever, and further conditioned to observe and abide by all ordinances at any time enacted by the city relating to plumbing work.

(b) A certificate of registration shall be issued by the city secretary upon payment of a fee as provided for in the fee schedule found in [appendix A](#) of this code. Such registration may be renewed for the ensuing calendar year by the filing of a new bond in the same amount and upon the same conditions as were provided for herein for the issuance of the original certificate of registration and the payment of a renewal fee as provided for in the fee schedule found in [appendix A](#) of this code. No refund will be paid in the event of the revocation or surrender of a certificate of registration; provided, however, that renewal may not be granted if the city council shall have found the business or moral integrity of the holder of said certificate of registration to be not such as would entitle him to such renewal.

(c) Said certificates of registration are personal only to the holder thereof and are not in any manner or effect transferable, and all such certificates of registration are revocable for sufficient cause shown upon the filing of specific written charges under oath with the city council and after notice and hearing before the city council.

(2000 Code, sec. 3.405)

Sec. 3.03.207 Permit procedures; fee

(a) Required. It shall be unlawful for any person or persons to do, or have done, any plumbing work until a plumbing work permit to do same has been obtained authorizing the work to be done.

(b) Issuance. The permits for plumbing work will be issued by the city secretary only upon written

request or application which has been filed with the city secretary and shall properly describe the exact character and extent of the plumbing work proposed to be done.

(c) Fee. The city secretary shall collect an inspection fee at the time of filing the application for the permit according to the fee schedule found in [appendix A](#) of this code.

(2000 Code, sec. 3.406)

Sec. 3.03.208 Work on one's own property

Nothing contained within this division shall ever be construed or operate to prevent any person from actually doing his own plumbing work on his own property or premises, provided the permit is paid for and obtained, and that the materials and equipment and the work be in strict accord with the rules and regulations of the plumbing ordinances and that the building inspector's approval can be obtained upon inspection in regular order; and further provided that the property owner must actually perform the work and that no other than the actual owner shall do any part of it unless the other person or persons are bonded and licensed in full compliance with all of the provisions of this division. (2000 Code, sec. 3.407)

Sec. 3.03.209 Check valves and backflow preventers

Check valves or backflow preventers [shall] be required in the main water service between the water meter and any structure being built, altered, reconstructed or moved into the city limits. (2000 Code, sec. 3.408)

Secs. 3.03.210–3.03.240 Reserved

Part II. Plumbing Code

Sec. 3.03.241 Adopted; amendments

(a) Adoption. The International Plumbing Code, 2006 edition, is hereby adopted and designated as the plumbing code for the city. A copy of the 2006 edition of the International Plumbing Code is on file in the office of the city secretary.

(b) Local amendments. [The local amendments to the 2006 International Plumbing Code are on file in the office of the city secretary.]

(2000 Code, sec. 3.104)

Secs. 3.03.242–3.03.300 Reserved

Division 5. Mechanical Code^{*}

Sec. 3.03.301 Adopted; amendments

(a) Adoption. The International Mechanical Code, 2006 edition, is hereby adopted and designated as the mechanical code for the city. A copy of the 2006 edition of the International Mechanical Code is on file in the office of the city secretary.

(b) Local amendments. [The local amendments to the 2006 International Mechanical Code are on file in the office of the city secretary.]

(2000 Code, sec. 3.105)

Secs. 3.03.302–3.03.350 Reserved

Division 6. Residential Code^{*}

Sec. 3.03.351 Adopted

(a) Adoption. The International Residential Code, 2006 edition, is hereby adopted and designated as the residential code for the city. A copy of the 2006 edition of the International Residential Code is on file in the office of the city secretary.

(b) Local amendments. [The local amendments to the 2006 International Residential Code are on file in the office of the city secretary.]

(2000 Code, sec. 3.106)

Secs. 3.03.352–3.03.400 Reserved

Division 7. Energy Conservation Code[†]

Sec. 3.03.401 Adopted; amendments

(a) Adoption. The International Energy Conservation Code, 2006 edition, is hereby adopted and designated as the energy conservation code for the city. A copy of the 2006 edition of the International Energy Conservation Code is on file in the office of the city secretary.

(b) Local amendments. [The local amendments to the 2006 International Energy Conservation Code are on file in the office of the city secretary.]

(2000 Code, sec. 3.107)

Secs. 3.03.402–3.03.450 Reserved

Division 8. Fuel Gas Code^{}**

Sec. 3.03.451 Adopted; amendments

(a) Adoption. The International Fuel Gas Code, 2006 edition, is hereby adopted and designated as the fuel gas code for the city. A copy of the 2006 edition of the International Fuel Gas Code is on file in the office of the city secretary.

(b) Local amendments. [The local amendments to the 2006 International Fuel Gas Code are on file in the office of the city secretary.]

(2000 Code, sec. 3.108)

ARTICLE 3.04 CONSTRUCTION SITES

Sec. 3.04.001 Penalty

Any person, firm or corporation violating any of the provisions of this article shall be punished by a penalty of fine, not to exceed the sum of \$2,000.00, for each offense. Each and every day such offense shall continue to occur shall be deemed to constitute a separate offense. (2000 Code, sec. 3.1104)

Sec. 3.04.002 Notice of violation

Determination of the threat to public health, safety, and comfort which creates a nuisance under the provisions of this article shall be made by the mayor or designee. Upon determination of nuisance, the mayor or designee will notify the general contractor in writing citing the location and nature of the determination and provide notice of 24 hours to properly remove or correct the nuisance. Failure to remove or correct the nuisance within the 24-hour notification period will subject the general contractor (or, in the case of a firm, the primary owner of the general contracting firm) to a municipal citation as provided by the penalty clause of this article. (2000 Code, sec. 3.1103)

Sec. 3.04.003 Confinement and disposal of construction debris

All debris on a construction site must be confined in a container or other enclosure in such a manner as to not pose a threat to public health, safety, and comfort and so as not to create a nuisance. Such container or enclosure may not exceed ten feet in height and must be placed according to the minimum building setbacks established under the city zoning ordinance and amendments thereof. Under no circumstances will construction debris be disposed of by on-site burial or burning. (2000 Code, sec. 3.1101)

Sec. 3.04.004 Placement of temporary structures and materials

All temporary structures and materials on a construction site must be placed in a manner as not to pose a threat to public health, safety, and comfort and so as not to create a nuisance. Said temporary structures or materials must be placed according to the minimum building setbacks established under the city zoning ordinance and amendments thereof. Nothing in this section authorizes any temporary structure not specifically provided for and/or properly permitted under the provisions of another ordinance of the city. (2000 Code, sec. 3.1102)

ARTICLE 3.05 MOVING BUILDINGS OR OTHER STRUCTURES

Sec. 3.05.001 License; bond

No person, firm, or corporation shall move or cause to be moved over or along any street or highway within the city any house or other building unless such person, firm, or corporation is duly qualified to engage in such occupation and shall have or obtain a license therefor, and such license shall not be granted until such person, firm or corporation applying for same shall first file with the city secretary a surety bond in the sum of \$2,000.00 payable to the city, said bond to be made by an approved bonding or surety company doing business in the state, conditioned, among other things, that said bonding company will pay any and all damages to any tree, pavement, sewer line, water main, sidewalk, awning, wire, traffic signals, fire alarm, telegraph, telephone, streetlight, power or other pole, providing such awning, wires, or pole are in place according to the ordinance governing the same, or to any other thing

injured or damaged by said person, firm, or corporation, whether such injury or damage shall be inflicted by said party or his agents, employees, or workmen, and conditioned also that said party will save or indemnify and keep harmless the city against any and all liabilities, judgments, costs and expenses which may in any way accrue against the city in consequence of the granting of such permit or license and will in all things strictly comply with the conditions of this permit. Upon the execution of said bond, the license may be issued to the person, firm, or corporation applying therefor to the city secretary.

(2000 Code, sec. 3.301)

Sec. 3.05.002 Permit required; application; issuance

(a) No person, firm, or corporation shall move or cause to be moved upon the streets, alleys, or public places within the city any building, house, boat, yacht, or structure in excess of 400 square feet, or in excess of 18 feet in height when mounted, without a permit. The permit shall be obtained in the following manner: Application shall first be made to the city secretary, who shall be furnished full information as to the location of the house, building, boat, yacht, or structure to be moved and the location to which it is desired to be moved.

(b) The application shall further be accompanied by a statement by said house mover of all obstructions that will be along the route that will in any way interfere with the moving of said house. This includes, but is not limited to, all bridges, culverts, telephone poles, wires, trees, shrubbery, light poles, signs, awnings or any other obstruction along said route.

(c) The application shall further state the route desired to be traveled by the house mover, but this route must be approved by the building inspector. The building inspector shall have the right to change said route or to give a different route. Final approval of the proposed route shall be within the sole discretion of the city.

(d) The application shall further state the date when said removal is to be commenced, the probable time for completion, and the total length, width and height of the structure when mounted.

(e) Such application, with all supporting papers required by this article, shall be filed with the city secretary not less than 48 hours, exclusive of Saturday, Sunday, and holidays, prior to the date it is desired to move such building or other structure, and no permit as herein provided for shall be issued until the end of the 48-hour period after the filing of such application; provided, however, that the building inspector or his representative [may waive said requirement if he] has had an opportunity to make proper inspections as hereinafter provided and if he determines that inconvenience or danger affecting the public welfare would be occasioned by said 48-hour delay.

(2000 Code, sec. 3.302)

Sec. 3.05.003 Route and time of move; height limit

Upon presentation of a proper application for a building moving permit to the building inspector, the building inspector shall examine the property to be moved, the location where said building or other structure is to be placed, and the proposed route of moving, and if he determines that such building or

structure can be moved along the proposed route to the proposed location without undue damage to the streets, alleys, and other public property, and that the moving of such building or other structure along such proposed route could be accomplished without danger or hazard to public or private property or to the public generally and would not cause or lead to undue or continued congestion of traffic, and if he further determines that said movement of such structure can be made in compliance with all ordinances of the city and statutes of the state, then the application for moving of said building shall be granted; provided, however, that the following rules and regulations pertaining to the proposed movement routes and hours for moving shall be strictly observed:

- (1) No structure shall be moved along any highway passing within the city between the hours of 6:30 a.m. to 9:00 a.m. or 4:00 p.m. to 6:30 p.m., or at any time on Saturdays or Sundays.
- (2) No structure shall be moved along any thoroughfares or streets within the city between the hours of 6:30 a.m. to 9:00 a.m. or 4:00 p.m. to 6:30 p.m., or at any time on Saturdays or Sundays.
- (3) No structure, building, or part thereof shall be moved along any street, alley or highway within the city if the extreme height of such building, structure, or part thereof shall, when mounted, exceed the height of 25 feet from the surface of the street, alley or highway along which the structure is to be moved. The building inspector of the city shall have the sole discretion to waive restrictions as to the height and width of the building or other structure being removed if and when there are no trees or structures along or overhanging the route along which such building or other structure is to be moved.

(2000 Code, sec. 3.303)

Sec. 3.05.004 Delinquent property taxes; permit fee; notification of fire department and utility companies

Before the application has been approved by the building inspector, the city secretary shall first check and see if there are any delinquent taxes due or owing against the property for which the application is made to be removed. If there are any delinquent taxes, the permit shall not be issued until all taxes have been paid on the property for which the application is made. If no delinquent taxes exist, the city secretary shall issue the house moving permit. A fee as provided for in the fee schedule found in [appendix A](#) of this code shall be charged and collected by the city secretary for such permit for the moving of any house, building, or structure. The person, firm, or corporation to whom such permit is issued shall immediately notify the chief of the fire department and any and all companies maintaining any electric and/or telephone wires across or along any street or streets included in the designated route along which such building or other structure is to be moved. (2000 Code, sec. 3.304)

Sec. 3.05.005 Utility company clearance

At the request of the building inspector, the person, firm, or corporation making the application shall present a written clearance to the city from each of the utility companies and any other person, firm, or company owning or having any overhead wires or cables which cross any street, alley, or public way in the city along the route the house, building, or structure is to be moved. Such clearance shall approve the route over which such house, building, or structure is to be moved, and said written clearance shall

also indicate that satisfactory arrangements have been made with said companies, firms or corporations for the payment of the services of said company in the cutting or lifting of wires, removing and/or raising of cables, and for the removal of poles or other structures of said companies. No wire or cable shall be touched by any person other than an employee or designated representative of the firm or utility owning the wire or cable. (2000 Code, sec. 3.305)

Sec. 3.05.006 Notice to utility companies prior to move

After having obtained written clearance from the utility companies and any other person, firm, or corporation owning or having overhead wires and cables across any street, alley, or public way in the city along the route which said house, building, or structure will pass, [the house mover] shall give 24 hours' notice to said companies, not including Saturdays, Sundays, and holidays, for said persons, firms, or corporations to cut any wires necessary, for the lifting of necessary wires, and removing or raising cables, and for the removal of poles or structures along said route, should the building inspector deem it necessary. (2000 Code, sec. 3.306)

Sec. 3.05.007 Injuring property

All house movers and persons engaged in the moving of a house or other structure shall proceed in a careful manner in accordance with the terms of the permit granted therefor and within the time set in such permit, and shall not destroy trees, curbing, and/or sidewalks, or in any manner interfere with the property of individuals, and no person, firm, or corporation, while engaged in the moving of a house or other structure, shall damage or destroy any public or private property, including trees and shrubs, without the consent of the owner thereof. (2000 Code, sec. 3.307)

Sec. 3.05.008 Offenses; penalty

Any person or persons who move or assist in moving upon or along any street, alley, or public way in the city any house, building or structure without first obtaining a permit as required, or without complying with the terms and conditions of this article, and/or the terms and conditions of the permit granted; or who, having begun the moving of any house, building, or structure under a permit, shall fail to continue such moving with all reasonable dispatch and speed so as not to unreasonably obstruct any street, alley or public ground; or who shall in any other manner violate any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not to exceed \$500.00 for each offense. Each day a violation of any provision of this article shall continue, it shall constitute a separate offense. (2000 Code, sec. 3.308)

ARTICLE 3.06 SUBSTANDARD BUILDINGS*

Sec. 3.06.001 Purpose and scope

(a) Purpose. It is the purpose of this article to provide a just, equitable, and practical method, to be cumulative with and in addition to any other remedy provided by the building code, V.T.C.A. Local Government Code, chapter 214, or otherwise available at law, whereby buildings, as defined herein, which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general

public or their occupants, may be required to be repaired, vacated, demolished, removed or secured.

(b) Scope. The provisions of this article shall apply to all buildings which are hereinafter defined as dangerous or substandard buildings whether now in existence or whether they may hereafter become dangerous.

(2000 Code, sec. 3.1301)

Sec. 3.06.002 Definitions

Building. Any structure which is built for the support, shelter or enclosure of persons, animals, chattels, or moveable property of any kind, including pools.

Building board of appeals (sometimes referred to as "the board"). Means and consists of the members of the zoning board of adjustment.

Building code. The International Residential Code for One- and Two-Family Dwelling Code [sic] with appendices and amendments as adopted by the city.

(2000 Code, sec. 3.1302)

Fire code. The International Fire Code with appendices and amendments as adopted by the city. (2000 Code, sec. 3.1302; Ordinance adopting Code)

Inspection. The examination of property by the enforcement officer or his authorized representative for the purpose of evaluating its condition as provided for in this article.

Owner. Any person, agent, firm, corporation, association or other entity having legal or equitable interest in a property as shown on the most recent tax roll.

Person. Any person, agent, firm, corporation, association or tenant.

Public nuisance. Any act, condition or thing existing, done or in being, which act, condition or thing endangers the peace, property, health, and safety of the citizens of the city.

Tenant. Any person, agent, firm, corporation, or association who occupies a property or premises and who is not the owner.

(2000 Code, sec. 3.1302)

Sec. 3.06.003 Enforcement

(a) Generally.

(1) Administration. The building official is authorized to enforce the provisions of this article. The building official shall have the power to render interpretations of this article and adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose this article.

(2) Inspections. The building official and the director of public safety or their designees are authorized to make such inspections and take such actions as may be required to enforce the provisions of this article.

(3) Right of entry. When it is necessary to make an inspection to enforce the provisions of this article, or when the building official or his designee has a reasonable cause to believe that there exists in a building or upon premises a condition which is contrary to or in violation of this article that makes the building or premises unsafe, dangerous or hazardous, the building official or his designee may enter the building or premises at reasonable times to inspect or perform the duties imposed by this article; provided that, if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the building official or his designee shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

(b) Abatement of dangerous or substandard buildings. All buildings or portions thereof that are determined after inspection by the building official to be dangerous or substandard as defined by this article are declared to be public nuisances and shall be abated by repair, vacation, demolition, removal or securing in accordance with the procedures specified in this article.

(c) Violations. It shall be unlawful for any person, firm or corporation to erect, construct, or use, occupy or maintain any building or cause or permit the same to be done in violation of this article.

(d) Inspection authorized. All buildings within the scope of this article and all construction or work for which a permit is required shall be subject to inspection by the building official.

(2000 Code, sec. 3.1303)

Sec. 3.06.004 Conditions constituting substandard building

For the purposes of this article, any building, regardless of the date of its construction, which has any or all of the conditions or defects hereinafter described shall be deemed to be a substandard building:

- (1) Any building that is dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety and welfare;
- (2) Any building that, regardless of its structural condition, is unoccupied by its owners, lessees or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children;
- (3) Any building that is boarded up, fenced or otherwise secured in any manner if:
 - (A) The building constitutes a danger to the public even though secured from entry; or
 - (B) The means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by subsection (2) of this section;
- (4) Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic;
- (5) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in

case of fire or panic;

(6) Whenever the stress in any materials, or members or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the building code for new buildings of similar structure, purpose or location;

(7) Whenever any portion thereof has been damaged by fire, earthquake, wind or flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the building code for new buildings of similar structure, purpose or location;

(8) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property;

(9) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof, is not of sufficient strength or stability, or is not so anchored, attached or fastened in place, so as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for such buildings;

(10) Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction;

(11) Whenever the building, or any portion thereof, is likely to partially or completely collapse because of:

(A) Dilapidation, deterioration or decay;

(B) Faulty construction;

(C) The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;

(D) The deterioration, decay or inadequacy of its foundation; or

(E) Any other cause;

(12) Whenever, for any reason, the building, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;

(13) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;

(14) Whenever the building, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) or more damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings;

(15) Whenever the building has been so damaged by fire, wind, earthquake, flood or other causes, or has become so dilapidated or deteriorated, as to become:

- (A) An attractive nuisance to children; or
- (B) A harbor for vagrants, criminals or immoral persons;

(16) Whenever any building has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building provided by the building regulations of this jurisdiction, as specified in the building code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings;

(17) Whenever any building, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than fifty percent (50%), or in any supporting part, member or portion less than sixty-six percent (66%), of the strength, fire-resisting qualities or characteristics, or weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location;

(18) Whenever a building, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the building official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease for reasons including, but not limited to, the following:

- (A) Lack of or improper water closet, lavatory, bathtub or shower in a dwelling unit or lodging house;
- (B) Lack of or improper water closets, lavatories and bathtubs or showers per number of guests in a hotel;
- (C) Lack of or improper kitchen sink in a dwelling unit;
- (D) Lack of hot and cold running water to plumbing fixtures in a hotel;
- (E) Lack of hot and cold running water to plumbing fixtures in a dwelling unit or lodging house;
- (F) Lack of adequate heating facilities;
- (G) Lack of, or improper operation of, required ventilating equipment;
- (H) Lack of minimum amounts of natural light and ventilation required by this code;
- (I) Room and space dimensions less than required by this code or the building code;
- (J) Lack of required electrical lighting;
- (K) Dampness of habitable rooms;
- (L) Infestation of insects, vermin or rodents;
- (M) General dilapidation or improper maintenance;
- (N) Lack of connection to required sewage disposal system;

- (O) Lack of adequate garbage and rubbish storage and removal facilities;
 - (19) Whenever any building, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal or director of public safety to be a fire hazard;
 - (20) Whenever any building is in such a condition as to make a public nuisance known to the common law or in equity jurisprudence;
 - (21) Whenever any portion of a building remains on a site after the demolition or destruction of the building;
 - (22) Whenever any building is abandoned so as to constitute such building or portion thereof an attractive nuisance or hazard to the public;
 - (23) Any building constructed and still existing in violation of any provision of the building code or fire code of the city to the extent that the life, health or safety of the public or any occupant is endangered.
- (2000 Code, sec. 3.1304)

Sec. 3.06.005 Determination and action by building official

When the building official has inspected or caused to be inspected any building and has found and determined that the building is substandard, the building official may take any or all of the following actions, as he or she deems appropriate:

- (1) Issue notice to the record owner that the building is substandard and must be repaired or demolished;
- (2) Issue citation(s) for violation(s) of this article;
- (3) Secure the building if permitted by [section 3.06.012](#); or
- (4) Recommend to the board that abatement proceedings be commenced pursuant to [section 3.06.006](#).

(2000 Code, sec. 3.1305)

Sec. 3.06.006 Public hearing

- (a) Commencement of proceedings. When the building official has found and determined that a building is a substandard building, the building official shall commence proceedings to cause the repair, vacation, relocation of occupants, removal, demolition or securing of the building.
- (b) Hearing required. Except when the city council finds that a building is likely to immediately endanger persons or property, a public hearing before the board shall be held to determine whether a building complies with the standards set out in [section 3.06.004](#). If the city council determines that the building constitutes an immediate danger, the procedures set forth in [section 3.06.012](#) shall be followed.
- (c) Notice. Not less than ten (10) days prior to the date on which the hearing is set, the building official

shall issue a notice of the public hearing directed to the record owner of the building, and to all mortgagees and lienholders. The city shall use best efforts to determine the identity and address of any owner, lienholder or mortgagee of the building through the records of the county clerk in the county in which the building is located and through any other source available to the city. The notice shall contain:

- (1) The name and address of the record owner;
 - (2) The street address or legal description sufficient for identification of the premises upon which the building is located;
 - (3) A statement that the building official has found the building to be substandard or dangerous, with a brief and concise description of the conditions found to render the building dangerous or substandard under the provisions of [section 3.06.004](#);
 - (4) A statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with this article, and the time it will take to reasonably perform the work;
 - (5) Notice of the time and place of the public hearing; and
 - (6) A statement that, if the building is found to be in violation of this article, the board may order that the building be vacated, secured, repaired, removed or demolished within a reasonable time.
- (d) Additional notice. Prior to the public hearing, the city secretary may file notice within ten (10) days of the public hearing in the county real property records. The notice must contain the name and address of the owner of the affected real property, if that information can be determined from a reasonable search of the instruments on file with the county clerk; a legal description of the property; and a description of the hearing. If such notice is not filed of record, each identified mortgagee and lienholder must be notified of any abatement order issued by the board at the public hearing, prior to any remedial action by the city.
- (e) Burden of proof. At the public hearing, the owner, lienholder or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this article, and the time it will take to reasonably perform the work.
- (f) Conduct of hearing. At the public hearing, the owner of the building, and all other interested persons, may make their appearance and be heard. Any evidence may be received and considered by the board. The chairman of the board, or, in his absence, any officer designated by rules adopted by the board to preside at meetings, shall preside and shall determine all questions of order. The hearing may be adjourned from day to day or continued upon a majority vote of the board.

(2000 Code, sec. 3.1306)

Sec. 3.06.007 Issuance of order

- (a) Findings of board. If the board, by a majority vote, finds upon evidence presented at the public hearing that the building is in violation of standards set out in [section 3.06.004](#), the board may order that

the building be repaired, vacated, removed or demolished, secured, or the occupants relocated by the owner, mortgagee or lienholder within a reasonable time as provided herein.

(b) Time allowed to complete work.

(1) The order must require the owner, lienholder or mortgagee of the building to within thirty (30) calendar days:

(A) Secure the building from unauthorized entry; and/or

(B) Repair, remove or demolish the building unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) calendar days.

(2) If the board allows the owner, lienholder or mortgagee more than thirty (30) calendar days to repair, remove or demolish the building, the board shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the board.

(3) The board may not allow the owner, lienholder or mortgagee more than ninety (90) calendar days to repair, remove or demolish the building or fully perform all work required to comply with the order unless the owner, lienholder or mortgagee:

(A) Submits a detailed plan and time schedule for the work at the hearing; and

(B) Establishes at the hearing that the work cannot be reasonably completed within ninety (90) calendar days because of the scope and complexity of the work.

(4) If the board allows the owner, lienholder or mortgagee more than ninety (90) calendar days to complete any part of the work required to repair, remove or demolish the building, the board shall require the owner, lienholder or mortgagee to regularly submit progress reports to the building official to demonstrate that the owner, lienholder or mortgagee has complied with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder or mortgagee appear before the board or the building official to demonstrate compliance with the time schedules.

(c) Contents of order. The order of the board must contain at minimum:

(1) An identification, which is not required to be a legal description, of the building and the property on which it is located;

(2) A description of the violation of minimum standards present in the building;

(3) A description of the ordered actions, including a statement that the owner may repair, if feasible, or demolish or remove at his option;

(4) A statement that the city will vacate, secure, remove or demolish the building or relocate the occupants of the building if the ordered action is not taken within the time allowed, and charge the cost

to the property; and

(5) If the board has determined that the building will endanger persons or property, or if the building is a dwelling with ten (10) or fewer dwelling units, a statement that the city may repair the building and charge the costs to the property if the ordered action is not taken within the time allowed.

(2000 Code, sec. 3.1307)

Sec. 3.06.008 Notice of order

(a) Mailing or personal delivery of order. After the public hearing, the building official shall promptly mail, by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver a copy of the order to the owner of the building, and to any lienholder or mortgagee of the building. The municipality shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building.

(b) Filing of order with city secretary. Within ten (10) calendar days after the date that the order is issued by the board, the building official shall file a copy of the order in the office of the city secretary.

(c) Publication of notice. Within ten (10) calendar days after the date the order is issued by the board, the building official shall publish in a newspaper of general circulation within the city a notice containing:

- (1) The street address or legal description of the property;
- (2) The date the hearing was held;
- (3) A brief statement indicating the results of the order; and
- (4) Instructions stating where a complete copy of the order may be obtained.

(2000 Code, sec. 3.1308)

Sec. 3.06.009 Enforcement of order

(a) Action by city upon failure to comply with order. If the building is not vacated, secured, repaired, removed or demolished within the time specified by the order, the city may vacate, secure, repair, remove or demolish the building or relocate the occupants at its own expense; provided, however:

- (1) The city may not act to remove or demolish a building until after the board has found:
 - (A) That such defects or conditions exist to the extent that the life, health, property or safety of the public or the occupants of the building is endangered;
 - (B) The building is infeasible of repair; or
 - (C) There is no reasonable probability that the building will be repaired within a reasonable period of time if additional time is given.
- (2) The city may only repair a building as provided herein to the extent necessary to correct the conditions which render the building dangerous, and may not act to repair a building unless:
 - (A) The board has made a determination that the building is likely to endanger person or property; and

(B) The building is a residential dwelling with ten (10) or fewer dwelling units.

(b) Posting of notice to vacate building. If the order requires vacation or if compliance with the order has not occurred within the time specified therein, the building official is authorized to require that the building be vacated. Notice to vacate shall be mailed by certified mail with return receipt requested, to the occupant of the building, and it shall be posted at or upon each entrance to the building and shall be in substantially the following form:

SUBSTANDARD BUILDING

DO NOT ENTER

UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building or to remove or deface this notice.

Building Official

City of Oak Point

(c) Remedial action by city. Any repair or demolition work or securing of the building shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided. Any surplus realized from the sale of such building, or from the demolition thereof, over and above the cost of demolition and cleaning of the lot shall be paid over to the person or persons lawfully entitled thereto.

(d) Penalty for failure to obey order. Any person to whom an order pursuant to [section 3.06.007](#) is directed who fails, neglects or refuses comply with such order shall be guilty of a misdemeanor and may be prosecuted in municipal court in addition to any other remedies available to the city provided herein.

(e) Interference prohibited. No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city or with any person who owns or holds any estate or interest in the building which has been ordered repaired, vacated, demolished, removed or secured under the provisions of this article, or with any person to whom such building has been lawfully sold pursuant to the provisions of this article, whenever such officer, employee, contractor or authorized representative of the city, person having an interest or estate in such building, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing, removing or securing any such building pursuant to the provision of this article, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this article.

(f) Permits required. Any work of closure, repair, removal or demolition by the property owner or any lienholder or mortgagee or their agents must be performed pursuant to valid unexpired permits issued by the city. All permits issued pursuant to an order of the board shall expire upon expiration of the time for compliance set forth in the order.

(2000 Code, sec. 3.1309)

Sec. 3.06.010 Performance of work by city

(a) Procedure. When any work of repair, removal, demolition or securing is to be performed by the city pursuant to the provisions of any order of the city council or the board, the work may be accomplished by city personnel or by private contract as may be deemed necessary. Rubble and debris shall be

removed from any premises and the lot cleaned if removal or demolition is ordered. The building or building materials may be sold if removal or demolition is ordered, and the proceeds shall be used to offset other costs of the work.

(b) Payment of costs. The cost of such work shall be paid from city funds and shall constitute a special assessment and a lien against such property to secure payment thereof, together with ten percent (10%) interest on such amount from the date on which the work is performed.

(c) Extent of repair. The city may repair the building at its own expense and assess the expenses on the land on which the building stands or is attached to only to the extent necessary to bring the building into compliance with minimum standards.

(2000 Code, sec. 3.1310)

Sec. 3.06.011 Recovery of city's costs

(a) Itemized account and notice of lien. The building official shall keep an itemized account of the expenses incurred by the city in the securing, repair, removal or demolition of any building pursuant to this article. Upon completion of the work, the building official shall prepare and file with the city secretary a sworn account and notice of lien containing the following information:

- (1) The name and address of the owner if that information can be determined with a reasonable effort;
- (2) A legal description of the real property on which the building is or was located;
- (3) The type of work performed; and
- (4) The amount of expenses incurred by the city in performing the work and the balance due.

(b) Filing of notice in county records. The city secretary shall file the notice of lien along with a copy of the order of abatement issued by the board in the deed records of the county in which the premises are located.

(c) Expenses to be personal obligation of owner. The expenses incurred by the city as set forth in the sworn account of the building official shall be a personal obligation of the property owner in addition to a priority lien upon the property. The city attorney may bring an action in any court of proper jurisdiction against the owner or property to recover the costs incurred by the city.

(d) Conditions of lien. Upon filing of the notice of lien in the deed records of the county, the lien shall be valid against the property so assessed. The lien shall be privileged and subordinate only to tax liens and existing special assessment liens, and shall be paramount to all other liens. The lien shall continue until the assessment and all interest due and payable thereon has been paid.

(e) Restrictions on property. No utility service, building permit or certificate of occupancy shall be allowed on any such property until the assessment is paid and such lien is released by the city.

(f) Release of lien. After the expenses incurred by the city, as set forth in the sworn account of the building official, have been fully paid, with interest of ten percent (10%) per annum from the date the

work was performed, the building official shall execute a release of lien, which shall be filed in the deed records of the county.

(2000 Code, sec. 3.1311)

Sec. 3.06.012 Additional authority to secure unoccupied building; building constituting immediate danger

(a) Securing of unoccupied substandard building. Notwithstanding any other provisions of this article, the city may secure a building if the building official determines:

- (1) That the building violates the minimum standards set forth in [section 3.06.004](#);
- (2) That the building is unoccupied or is occupied only by persons who do not have the right of possession to the building.

(b) Building constituting immediate danger. Notwithstanding any other provisions of this article, if the city council finds that a building is likely to immediately endanger persons or property, the city council may:

- (1) Order the owner of the building, the owner's agent, or the owner or occupant of the property on which the structure is located to repair, remove, or demolish the structure, or the dangerous part of the structure, within a specified time; or
- (2) Repair, remove, or demolish the structure, or the dangerous part of the structure, at the expense of the municipality, on behalf of the owner of the structure or the owner of the property on which the structure is located, and assess the repair, removal, or demolition expenses on the property on which the structure was located.

(c) Notice required. Before the eleventh (11th) day after the date the building is secured pursuant to subsection (a) of this section, or action is ordered pursuant to subsection (b)(1) of this section, or the building is repaired, removed or demolished pursuant to subsection (b)(2) of this section, the building official shall give notice to the owner by:

- (1) Personally serving the owner with written notice;
- (2) Depositing the notice in the United States mail addressed to the owner at the owner's post office address;
- (3) Publishing the notice at least twice within a ten (10) day period in a newspaper of general circulation in the county in which the building is located, if personal service cannot be obtained and the owner's post office address is unknown;
- (4) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown; or
- (5) In addition to the above, depositing notice in the United States mail to all lienholders and mortgagees who can be determined from a reasonable search of instruments on file in the office of the county clerk.

(d) Contents of notice. The notice must contain:

- (1) An identification, which is not required to be a legal description, of the building and the property on which it is located;
 - (2) A description of the violation of the minimum standards present in the building;
 - (3) A statement that the city will secure or has secured, as the case may be, the building, or that the city has taken or will take the action ordered pursuant to subsection (b) of this section; and
 - (4) An explanation of the owner's entitlement to request a hearing about any matter relating to the city's securing, removing, demolishing or repairing of the building.
- (e) Hearing. The city council shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the city's securing, repairing, removing or demolishing of the building, if, within thirty (30) calendar days after the date the city has taken action pursuant to subsection (a) or (b) of this section, the owner files with the city a written request for the hearing. The hearing shall be conducted within twenty (20) calendar days after the date the request is filed.
- (f) Recovery of city's costs. If the city incurs expenses under this section, such expenses incurred shall be a personal obligation of the property owner in addition to a priority lien upon the property, and costs shall be recovered as provided by [section 3.06.011](#).
- (g) Compliance with order. It shall be unlawful to fail to comply with an order issued pursuant to this section.

(2000 Code, sec. 3.1312)

Sec. 3.06.013 Civil penalty

- (a) Authorized. In addition to any other enforcement authority provided for by law, the board may, by order, at an administrative hearing, assess a civil penalty against a property owner as provided for herein for failure to comply with an order issued by the board pursuant to [section 3.06.007](#).
- (b) Showing required. The civil penalty may be assessed if it is shown at the administrative hearing that:
- (1) The property owner was notified of the contents of the order issued pursuant to [section 3.06.007](#); and
 - (2) The property owner committed an act in violation of the order or failed to take an action necessary for compliance with the order.
- (c) Amount of penalty. The civil penalty may be assessed in accordance with the general penalty provision found in [section 1.01.009](#) of this code.
- (d) Notice of administrative bearing. Not less than ten (10) calendar days prior to the date on which the administrative hearing is set, the property owner shall be sent a notice of the hearing by certified mail with return receipt requested. The notice shall contain:

- (1) A copy of the order issued by the board [pursuant] to [section 3.06.007](#);
- (2) A statement that the building official has determined that the property owner committed an act in violation of that order, or failed to take an action necessary for compliance with that order;
- (3) A statement that at the administrative hearing the board may assess a civil penalty in accordance with the general penalty provision found in [section 1.01.009](#) of this code; and
- (4) Notice of the time and place of the hearing.
- (e) Filing of order with district clerk. After the civil penalty is assessed, the city secretary shall file with the district clerk of the county in which the property is located a certified copy of the order assessing the civil penalty stating the amount and duration of the penalty.
- (f) Enforcement. The civil penalty may be enforced by the city in a suit brought by the city in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty. A civil penalty under this section is final and binding and constitutes prima facie evidence of the penalty in any suit.

(2000 Code, sec. 3.1313)

Sec. 3.06.014 Authority not limited

Notwithstanding all other provisions of this article, nothing herein shall be deemed a limitation on the duty of the city to summarily order the demolition of any building or structure where it is apparent that the immediate demolition of such building or structure is necessary to the protection of life, property or general welfare of the people in the city. (2000 Code, sec. 3.1314)

ARTICLE 3.07 FLOOD DAMAGE PREVENTION*

Division 1. Generally

Sec. 3.07.001 Statutory authorization

The legislature of the state has, in the Flood Control Insurance Act, Texas Water Code, section 16.315, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the city does ordain as follows.

Sec. 3.07.002 Findings of fact

- (a) The flood hazard areas of the city are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Sec. 3.07.003 Statement of purpose

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

Sec. 3.07.004 Methods of reducing flood losses

In order to accomplish its purposes, this article uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

Sec. 3.07.005 Definitions

Unless specifically defined below, words or phrases used in this article shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application.

Alluvial fan flooding. Flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex. A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant structure. A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

Area of future conditions flood hazard. The land area that would be inundated by the 1 percent annual chance (100-year) flood based on future conditions hydrology.

Area of shallow flooding. A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's flood insurance rate map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard. The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as zone A on the flood hazard boundary map (FHBM). After detailed rate-making has been completed in preparation for publication of the FIRM, zone A usually is refined into zone A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood. The flood having a 1 percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE). The elevation shown on the flood insurance rate map (FIRM) and found in the accompanying flood insurance study (FIS) for zone A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year (also called the base flood).

Basement. Any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature. An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development. Any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building. For insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction. For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study. An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood insurance rate map (FIRM). An official map of a community on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood insurance study (FIS). See “Flood elevation study.”

Floodplain or floodprone area. Any land area susceptible to being inundated by water from any source (see definition of flooding).

Floodplain management. The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood protection system. Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodproofing. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. See “Regulatory floodway.”

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (A) By an approved state program as determined by the Secretary of the Interior; or
 - (B) Directly by the Secretary of the Interior in states without approved programs.

Levee. A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system. A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

Manufactured home. A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more

manufactured home lots for rent or sale.

Mean sea level. For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction. For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle. A vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine. Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area. See "Area of special flood hazard."

Start of construction. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers

or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Variance. A grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see section 60.6 of the National Flood Insurance Program regulations.)

Violation. The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) [of the National Flood Insurance Program regulations] is presumed to be in violation until such time as that documentation is provided.

Water surface elevation. The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sec. 3.07.006 Lands to which this article applies

This article shall apply to all areas of special flood hazard within the jurisdiction of the city.

Sec. 3.07.007 Basis for establishing the areas of special flood hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled “The Flood Insurance Study (FIS) for Denton County, Texas and Incorporated Areas,” dated April 18, 2011, with flood insurance rate map (FIRM), dated April

18, 2011, and any revisions thereto, are hereby adopted by reference and declared to be a part of this article.

Sec. 3.07.008 Establishment of development permit

A floodplain development permit shall be required to ensure conformance with the provisions of this article.

Sec. 3.07.009 Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this article and other applicable regulations.

Sec. 3.07.010 Abrogation and greater restrictions

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 3.07.011 Interpretation

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 3.07.012 Warning and disclaimer of liability

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur, and flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

Secs. 3.07.013–3.07.040 Reserved

Division 2. Administration

Sec. 3.07.041 Designation of floodplain administrator

The city manager or designee is hereby appointed the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

Sec. 3.07.042 Duties and responsibilities of floodplain administrator

Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this article.
- (2) Review permit applications to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this article.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the floodplain administrator shall make the necessary interpretation.
- (6) Notify, in riverine situations, adjacent communities and the state coordinating agency, which is the state water development board (TWDB), and also the state commission on environmental quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (7) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (8) When base flood elevation data has not been provided in accordance with [section 3.07.007](#) of this article, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of [division 3](#) of this article.
- (9) When a regulatory floodway has not been designated, the floodplain administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (10) Under the provisions of 44 CFR chapter 1, section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in zones A1-30, AE, and AH on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by section 65.12.

Sec. 3.07.043 Permit procedures

- (a) Application for a floodplain development permit shall be presented to the floodplain administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale

showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (1) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
 - (2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of [section 3.07.072](#)(2) of this article;
 - (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
 - (5) Maintain a record of all such information in accordance with [section 3.07.042](#)(1) of this article.
- (b) Approval or denial of a floodplain development permit by the floodplain administrator shall be based on all of the provisions of this article and the following relevant factors:
- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (3) The danger that materials may be swept onto other lands to the injury of others;
 - (4) The compatibility of the proposed use with existing and anticipated development;
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - (7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
 - (8) The necessity to the facility of a waterfront location, where applicable;
 - (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

Sec. 3.07.044 Variance procedures

- (a) The board of adjustment shall hear and render judgment on requests for variances from the requirements of this article.
- (b) The board of adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this article.

- (c) Any person or persons aggrieved by the decision of the board of adjustment may appeal such decision in the courts of competent jurisdiction.
- (d) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this article.
- (f) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in [section 3.07.043\(b\)](#) of this article have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (g) Upon consideration of the factors noted above and the intent of this article, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article ([section 3.07.003](#) of this article).
- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (j) Prerequisites for granting variances:
- (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (2) Variances shall only be issued upon:
 - (A) Showing a good and sufficient cause;
 - (B) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (C) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Any applicant to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor

elevation.

(k) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

- (1) The criteria outlined in subsections (a) through (i) of this section are met; and
- (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Secs. 3.07.045–3.07.070 Reserved

Division 3. Flood Hazard Reduction Standards

Sec. 3.07.071 General standards

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters; and
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Sec. 3.07.072 Specific standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in [section 3.07.007](#), [3.07.042\(8\)](#), or [3.07.073\(c\)](#) of this article, the following provisions are required:

- (1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation.

A registered professional engineer, architect, or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection, as proposed in [section 3.07.043\(a\)\(1\)](#) of this article, is satisfied.

(2) Nonresidential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to two (2) feet above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the floodplain administrator.

(3) Enclosures. New construction and substantial improvements with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(A) A minimum of two openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(B) The bottom of all openings shall be no higher than 1 foot above grade.

(C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured homes.

(A) Require that all manufactured homes to be placed within zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(B) Require that manufactured homes that are placed or substantially improved within zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a

manufactured home has incurred “substantial damage” as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to two (2) feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(C) Require that manufactured homes being placed or substantially improved on sites in an existing manufactured home park or subdivision within zones A1-30, AH and AE on the community’s FIRM that are not subject to the provisions of subsection (4) of this section be elevated so that either:

(i) The lowest floor of the manufactured home is at [least] two (2) feet above the base flood elevation; or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) Recreational vehicles. Require that recreational vehicles placed on sites within zones A1-30, AH, and AE on the community’s FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of [section 3.07.043\(a\)](#) of this article and the elevation and anchoring requirements for “manufactured homes” in subsection (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

Sec. 3.07.073 Standards for subdivision proposals

(a) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with [sections 3.07.002](#) to [3.07.004](#) of this article.

(b) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet floodplain development permit requirements of [sections 3.07.008](#) and [3.07.043](#) and [division 3](#) of this article.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to [section 3.07.007](#) or [3.07.042\(8\)](#) of this article.

(d) Base flood elevation data shall be generated by a detailed engineering study for all zone A areas, within 100 feet of the contour lines of zone A areas, and other streams not mapped by FEMA, as indicated on the community’s FIRM.

(e) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

(f) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Sec. 3.07.074 Standards for areas of shallow flooding (AO/AH zones)

Located within the areas of special flood hazard established in [section 3.07.007](#) of this article are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified); or
- (2) All new construction and substantial improvements of nonresidential structures:
 - (A) Have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or
 - (B) Together with attendant utility and sanitary facilities, be designed so that below the base specified flood depth in an AO zone, or below the base flood elevation in an AH zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
 - (C) A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in [section 3.07.043](#) of this article, are satisfied.
 - (D) Require within zone AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ordinance 2010-11-311, sec. 2, adopted 11/15/10)

ARTICLE 3.08 SWIMMING POOLS, WATER WELLS AND PONDS*

Sec. 3.08.001 Definitions

As used herein:

Pond. Any body of water in its natural state or artificially formed or increased that has a surface area of 500 square feet or more with a depth no less than 12 inches.

Swimming pool. A body of water in an artificial or semi-artificial receptacle or other container, used or intended to be used for public, semi-public or private swimming by adults or children, or both adults and

children, operated and maintained by any person, whether he be an owner, lessee, operator, licensee or concessionaire, and shall include swimming pools used or intended to be used solely by the owner or friends invited to use it without payment of any fee.

(2000 Code, art. 3.200(c), (g))

Sec. 3.08.002 Location on lot

Every outdoor swimming pool, spa, or pond shall be five feet from the setback line. (2000 Code, art. 3.200(a))

Sec. 3.08.003 Swimming pool inspections

All pools will undergo the following inspections:

- (1) Plan inspections (including septic and building plans).
- (2) Site evaluation.
- (3) Belly steel (including belly steel grounding inspection).
- (4) Deck steel.
- (5) Final.

(2000 Code, art. 3.200(b))

Sec. 3.08.004 Water well inspections

All water wells will undergo the following inspections:

- (1) Plan inspection.
- (2) Site evaluation.
- (3) Plumbing inspection.
- (4) Electrical inspection.
- (5) Final inspection.

(2000 Code, art. 3.200(d))

Sec. 3.08.005 Pond inspections

All ponds will undergo the following inspections:

- (1) Plan inspection.
- (2) Site evaluation.
- (3) Final.

(2000 Code, art. 3.200(e))

Sec. 3.08.006 Drainage study for ponds

Prior to submission of a building permit application, an applicant must have a drainage study performed by a state-registered professional engineer to assess the potential impact of the pond on on-site and off-site drainage. Such study must bear the seal of the Texas registered professional engineer and must

be submitted with a building permit application. (2000 Code, art. 3.200(f))

ARTICLE 3.09 CULVERTS AND DRAINAGE DITCHES

Sec. 3.09.001 Penalty

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed \$500.00 for each offense for each offense [sic] and a separate offense shall be deemed committed upon each day during or on which a violation occurs. (2000 Code, sec. 3.606)

Sec. 3.09.002 Culvert required

All buildings and other structures constructed, placed or installed on all undeveloped property within the city, whether used for residential or business purposes, shall, at the time of such construction, placement or installation, install or construct a culvert or drainage ditch along the side of and adjacent to the street or road which abuts the property, said culvert to be used to provide drainage for water flowing in, upon or adjacent to the street or property. The culvert shall be constructed or installed in accordance with the standards and regulations set forth in this article and with any other requirements not inconsistent herewith which may be developed by the city building official. (2000 Code, sec. 3.601)

Sec. 3.09.003 Construction standards

The following standards shall apply to the construction or installation of a culvert or drainage ditch:

- (1) The culvert and/or drainage ditch shall be constructed along the entire frontage of the property adjacent to the street so as to connect the culvert or drainage ditch with culverts or drainage ditches constructed on adjacent and contiguous property, if any.
- (2) The culvert and drainage ditch shall be constructed in accordance with the line and grade indicated on the approved subdivision plans. The plans may be on file at city hall.
- (3) If subdivision construction plans are not available or if the line and grade for the drainage facilities is not shown thereon, then the culvert shall be at a prescribed depth and width determined by the city engineer in order to meet the particular needs of the property to ensure proper drainage.

(2000 Code, sec. 3.602)

- (4) Whenever there exists or is placed a driveway or other accessway for vehicles to cross a city easement, there shall be placed under said driveway or accessway a pipe which shall be made of reinforced concrete or 16 gauge galvanized corrugated steel at least 12 inches in diameter and minimum of 20 feet in length. Each end of the culvert shall be fitted with a safety end treatment having a slope of not greater than 3:1. The culvert and safety end treatment shall be installed in accordance with either state department of transportation or City of Denton standards, unless otherwise specified by the city, including clearance from the edge of the driveway. (2000 Code, sec. 3.602; Ordinance adopting Code)

- (5) In any case, no pipe or culvert downstream shall be smaller than a pipe or culvert upstream.

(6) Minimum length for a pipe or culvert is 20 feet.

(2000 Code, sec. 3.602)

Sec. 3.09.004 Certificate of installation

(a) Upon completion of the installation, the permittee shall cause a certificate of installation to be prepared by either a licensed engineer or a licensed surveyor. The certificate shall indicate the location of the culvert relative to the site property lines and shall indicate the elevations of the ends and any other information that may be necessary to demonstrate that the drainage facility was constructed in accordance with the size, line and grade of the approved subdivision plans or other design document as approved by the city engineer.

(b) The certificate must also contain a statement indicating that the drainage facility was installed in accordance with the approved subdivision plans or with the design document approved by the city engineer.

(c) A certificate of occupancy shall not be issued until a certificate of installation has been prepared, submitted to the city, determined acceptable by the city engineer and filed with the city.

(2000 Code, sec. 3.603)

Sec. 3.09.005 Maintenance

The owner or occupant of the property on which the culvert or drainage ditch is constructed shall keep the culvert free from silt, trash, vegetation over 12 inches tall or other debris so as to allow for the proper flow of water through the culvert. The owner or occupant shall maintain the culvert or drainage ditch at the capacity, depth, width and length at which it was constructed as herein set forth. (2000 Code, sec. 3.604)

Sec. 3.09.006 Authority to withhold certificate of occupancy

For failure to comply with the provisions of this article, the city shall have the power and authority to withhold the issuance of a certificate of occupancy until such time as the provisions of this article are complied with. (2000 Code, sec. 3.605)

ARTICLE 3.10 FENCE OR WALL CONSTRUCTION*

Sec. 3.10.001 Definitions

For the purposes of this article, the following words and phrases will have the meanings respectively ascribed to them by this section:

City. The City of Oak Point, Texas.

Easement. A right created by grant, reservation, agreement, prescription, or necessary implication, which one has in the land of another dedicated by plat or implied by right. It is either for the benefit of appurtenant land such as for the right to cross, or egress, such as a public utility easement, or in specific, such as an exclusive utility easement. An easement may or may not have descriptive bounds.

Fence. An artificially constructed barrier enclosing, separating, or screening areas of land, serving as a boundary, a means of protection, a buffer, a decorative element, a means of visually modifying the view, and/or for confinement. Except where otherwise required in this code, regulations governing the height, location and opacity of fences also applies to walls, hedges or landscaping used in lieu of a fence or in combination with a fence. A fence is any part of a fence including the base, footings, supporting columns, post, braces, structural members, or any other of its appendages.

Game court. A structure having a playing surface, paved or unpaved, with or without enclosing fences, designed to be used for playing or practicing tennis, badminton, volleyball, paddle tennis handball, baseball, batting, handball, racquet ball, squash, basketball, or similar games.

Lot, key. A corner lot that is so designed that the lots located directly behind it face the side street of the corner lot and are not separated by an alley.

Opacity. The degree of openness which light or views are blocked measured perpendicular to the fence for each fence section between supports.

Public right-of-way. A strip of land which is used as a roadbed for a street, alley or highway intended for use by the public at large, or land set aside as an easement or in fee, either by agreement or condemnation.

Repair. A repair to a fence shall be defined as maintenance to a fence where replacement of materials does not exceed fifty percent (50%) of the total length of the fence and does not change the scope, location or dimensions of the fence. Repairs shall be made using the same material, or material with comparable composition, size, shape and quality of the original fence to which the repair is being made.

Residential district. A district where the primary purpose is residential use and is defined in the comprehensive zoning ordinance excluding multifamily.

Retaining wall. A wall not laterally supported at the top that resists lateral soil loads and other imposed loads.

Street. Any dedicated public thoroughfare that affords the principal means of access to abutting property.

Vision or visibility triangle. The corner visibility triangle is defined at an intersection by extending the two right-of-way/property lines at the corner of a property from their point of intersection to a distance. These two points are then connected with an imaginary line to form the corner visibility triangle. This distance shall be ten (10) feet at the intersection of residential streets and forty (40) feet for streets of collector size or larger.

Yard. An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward. In measuring a yard for the purpose of determining the width of the side yard, the depth of a front yard or the depth of a rear yard, the shortest horizontal distance between the lot line and the main building shall be used.

Yard, front. A yard located in front of the front elevation of a building and extending across a lot between

the side yard lines and being the minimum horizontal distance between the front property line and the outside wall of the main building.

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

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

Sec. 3.10.002 Permitting requirements

(a) Permit required. It is unlawful for any person to construct or replace, or cause to be constructed or replaced, a fence or any part of a fence in the city without first obtaining a fence permit from the city. No permit is required for repairs as defined by this article. In residential zoning districts on tracts or lots that are five (5) acres or greater in area, a permit is not required except for fences located in the front yard, along side or rear property lines, or fences required to enclose swimming pools as required by city code or state or federal law.

(b) Permit fees. The fee for a permit shall be in the amount established in [appendix A](#) to this code. When a person begins any work for which a permit is required by this article without first obtaining a permit, the permit application fee shall double. Payment of the fee shall not exempt any person from compliance with all other provisions of this article nor from any penalty prescribed by law.

(c) Application for permit. Any person making application for a fence permit shall complete a permit application on a form prescribed by the city showing the following information:

- (1) Applicant's name, address, phone number and, if the applicant represents a corporation, the name, address, and phone number of the registered agent of the corporation, or if the applicant represents an association, the name, address, and phone number of a high managerial agent of the association;
- (2) Name of owner of property;
- (3) Local address where fence is proposed to be erected;
- (4) Type of fence construction (material);
- (5) Height of fence;
- (6) Diagram showing proposed location of the fence and listing relevant dimensions between the fence and other structures on the lot and the location of property lines and easements;
- (7) Approximate value of the proposed fence;
- (8) The fence contractor's registration number if a contractor is used;

- (9) The applicant's authorized signature; and
- (10) Other documentation as required by the city manager or his/her designee.
- (d) Construction documents. Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets, as required by the city manager or his/her designee, with each application for a permit. When required by the city manager or his/her designee, the applicant shall also provide additional information as required by the building code most recently adopted by the city. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the city manager or his/her designee is authorized to require additional construction documents to be prepared by a registered design professional. Exception: The city manager or his/her designee is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code. Construction documents shall not be required of wood, chain link, and pipe and cable fences to be constructed on residential lots.
- (e) Availability of plans. One set of approved plans, specifications, and a copy of the permit shall be made available, by the applicant, for inspection of the work authorized by the permit. The said set of approved plans, specifications and permit shall be kept on the work site by the applicant during the construction process.
- (f) Contractor's registration. It is unlawful for any person to engage in the business of fence contracting without a valid contractor's registration. The owner of a property who is constructing a fence on his/her own property is not required to register as a contractor.
- (1) There is no charge to register as a fence contractor provided the applicant completes the required forms furnished for that purpose and files them with the city manager or his/her designee.
- (2) Any person making application for a fence contractor's registration shall sign an application for the same showing the following information:
- (A) Applicant's name, business address, phone number, and, if the applicant represents a corporation, the name and address of the registered agent of the corporation, or if the applicant represents an association, the name and address of a high managerial agent of the association;
- (B) A copy of the fence contractor's Government ID; and
- (C) The fence contractor's authorized signature.
- (3) Every contractor registration provided for in this code shall expire one (1) year, following the date of its issuance, and shall be renewed by the city manager or his/her designee upon application.
- (4) The city manager or his/her designee may revoke or suspend a fence contractor's registration for a twelve-month period for either of the following reasons:

- (A) The registrant violates the requirements of this article twice within a twelve-month period.
- (B) The registrant fails to obtain permits and/or inspections twice within a twelve-month period.

Sec. 3.10.003 General requirements

- (a) Encroachment on city or public right-of-way. No person shall construct a fence, guy wire, brace or any fence post upon or protruding over any city or public right-of-way.
- (b) Fence not to create a traffic hazard. It is unlawful to erect, maintain, suffer or permit any fence on any corner lot in such a manner as to create a traffic hazard or restrict visibility. Failure of the owner, agent or occupant to remove such obstruction within the specified time limit required on the receipt of notice to do so is a violation of this article.
- (c) Fence orientation. Fence sections essentially parallel with a public street shall have their backside (the side with the exposed posts and rails) oriented to the interior of the residential lot to minimize their exposure to the public.
- (d) Gate required. Each fence constructed under the provisions of this article shall include in its perimeter at least one gate with a minimum width of three (3) feet.
- (e) Fence not to be located in right-of-way or easements. No fence shall be erected within, on, or across any public right-of-way, drainage easement, or vision or visibility triangle unless otherwise authorized in writing by the city manager or his/her designee. Property owners that allow a fence to be constructed in a utility easement on their property do so at their own risk. Unless the terms of a specific easement state otherwise, fences constructed within utility easements may be removed by a utility company with rights to the easement and such utility company shall not be responsible for replacement of the fence or liable for damage to the fence that occurred during its removal.
- (f) Fence materials. Fences may be constructed of materials or products such as chain link, wood planks and boards, commercial or livestock grade vinyl (supported by the manufacturer's specifications), masonry as defined by the building code, pipe and cable, wrought iron or ornamental iron. Materials or products such as rope; string; barbed wire; razor ribbon wire; corrugated metal panels; plywood; or a fence that has in it or on it barbs, projections, broken glass, or anything reasonably capable of causing harm to persons or animals are prohibited. Wood, metal or plastic products that are designed specifically for uses other than fence construction are also prohibited.
- (g) Temporary fences. Temporary fences are prohibited, except where required by city code or state or federal law for construction, excavation, or life safety issues. Temporary fence materials include, but are not limited to, rope; string; wire products such as chicken wire, hog wire, wire fabric, and similar welded or woven wire fabrics; chain; live bamboo, netting; cut or broken glass; paper; unapproved corrugated metal panels; galvanized sheet metal; plywood; or fiberglass panels in any fence or any other material that are not manufactured specifically as fencing materials. The city manager or his designee may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material. Exceptions shall include:

- (1) A dog window may be installed in a fence no larger than two hundred eighty-eight (288) square inches with corrosion resistant material capable of restraining the dog.
- (2) Temporary fences made of wire, not in excess of thirty-six (36) inches, in residential districts are permitted for residential garden uses only.
- (3) Temporary fences or panels used for corrals, pens, or chutes are permitted for the purpose of corralling or confining livestock.
- (h) Perimeter walls. Where a fence intersects a screening wall and the height of the fence exceeds the height of the screening wall, the height of the fence shall transition to the height of the screening wall over a distance of twenty (20) feet or greater.
- (i) Pool or spa enclosures. A person constructing or maintaining a fence or wall enclosure around a swimming pool, hot tub, or spa shall comply with the minimum requirements of the building code, as it exists or may be amended.
- (j) Retaining walls. Retaining walls greater in height than thirty-six (36) inches shall be in compliance with a design submitted by a registered engineer.
- (k) Determining fence height and opacity.

- (1) Height. Fence height is measured to include the body of the fence, plus allowing a maximum of six (6) inches (on average between posts) above the natural grade (i.e., for drainage purposes). When a fence or wall is placed atop a retaining wall, the height of the fence shall be determined exclusive of the height of the retaining wall such that the top of the retaining wall is considered the finished grade. Fence posts are permitted to extend a maximum of four (4) inches above the body of the fence. Columns are permitted to extend a maximum of twelve (12) inches above the body of the fence. The creation of a berm or other method for the primary purpose of increasing the elevation of the fence is not allowed.
- (2) Opacity. Opacity is the degree of openness which light or views are blocked measured perpendicular to the fence for each fence section between supports.

Sec. 3.10.004 Fences in residential areas

- (a) Fences and gates in front yards. All fences, walls, gates, or other enclosures constructed in the front yard of a residential property shall:
 - (1) Not exceed forty-eight (48) inches in height.
 - (2) Allow a minimum of fifty (50%) percent opacity.
 - (3) Not encroach into a vision or visibility triangle.
- (b) Fences and gates in side yards. It is unlawful for any person to construct, erect, maintain, suffer, or permit a fence or gate in any side yard or along any side yard lot line which fence exceeds eight (8) feet in height. On key lots, where side yards are required adjacent to the street to conform to minimum front yard setback of lots fronting upon such street, within the same block and upon the same side, no fence shall be constructed or maintained within such required side yard.

- (c) Fences and gates in rear yards. It is unlawful for any person to construct, erect, maintain, suffer, or permit a fence or gate in any rear yard or along any rear yard lot line which fence exceeds eight (8) feet in height.
- (d) Decorative gate embellishments. Ornate gates may exceed the maximum height of a fence by up to two (2) feet.
- (e) Vertical support posts. Vertical support posts may extend up to four (4) inches above the top of a fence.
- (f) Electrically charged fences in residential districts. It is unlawful for any person to erect, maintain, or permit a fence that is electrically charged in any manner, except single-strand wires designed to conduct electricity through a low-voltage regulator shall be allowed along the fence's interior for the purposes of securing pets within a fenced yard.

Sec. 3.10.005 Fences in nonresidential zoning districts

- (a) Height. A fence in a nonresidential zoning district may not exceed eight (8) feet in height.
- (b) Vertical support posts. Vertical support posts may extend up to four (4) inches above the top of a fence.
- (c) Opacity. Where fencing is constructed in the front yards of nonresidential and multifamily projects, the opacity of the fencing shall be fifty percent (50%) or greater.

Sec. 3.10.006 Exemptions

- (a) Federal or state law. Fences that are required by federal or state law or regulation shall be exempt from the requirements of this article.
- (b) Game court fences. Notwithstanding any other regulation set forth in this article, game court fencing may be constructed up to sixteen (16) feet in height, except that such fencing shall not be constructed in the front yard of a property. All game court fencing shall be set back from a neighboring property line a distance equal to or greater than the height of the fence.
- (c) Large lot residential lots. Notwithstanding any other regulation set forth in this article, fences of up to five (5) feet in height and ornate entry gates of up to ten (10) feet in height may be constructed in residential zoning districts on tracts or lots that are five (5) acres or greater in area.
- (d) Fences used to contain livestock. In addition to the materials permitted in [section 3.10.003\(f\)](#), fences used to contain livestock and/or fences that are located on properties of five (5) acres or greater in area and used for agricultural purposes may be constructed of barbed wire, smooth or non-climb wire, and/or contain electrical current.

Sec. 3.10.007 Maintenance of fences

- (a) All fences shall be maintained reasonably plumb and structurally sound. Each structural and decorative member of a fence shall be free of deterioration and be compatible in size, material and appearance with the remainder of the fence.

- (b) A fence shall not lean more than one inch out of vertical for each foot of height as measured from the top of the fence.
- (c) A fence that has deteriorated to a condition that it is likely to fall shall be repaired or replaced.
- (d) Fences shall not be externally braced in lieu of replacing or repairing posts, columns or other structural members.
- (e) After receiving notice from the city, the owner shall replace broken, damaged, removed or missing parts of a fence with the same material, or material with comparable composition, size, shape and quality of the original fence to which the repair is being made. No permit is required for repairs as defined in this article. The notice shall include a deadline by which the repairs are to be completed. The deadline shall range from 10 to 30 days after the date of the letter depending upon the extent of the damage and repairs. The city manager or his/her designee may, upon written notice from the owner that unusual circumstances prevent the timely repair of a fence, extend the replacement time as required. The city manager or his/her designee shall not extend the replacement time longer than reasonably necessary. The owner requesting a replacement time extension shall provide the city manager or his/her designee a written scope and schedule detailing materials and estimated time period of the completed replacement for approval.

Sec. 3.10.008 Nonconforming fences

The lawful use of any fence on the effective date of the ordinance from which this article derived may be continued, although such use does not conform to the provisions of this article; provided however, the right to continue such nonconforming use shall be subject to the following regulations:

- (1) Normal repairs and maintenance may be made to a nonconforming fence; provided those repairs do not exceed fifty percent (50%) of the total length of the fence.
- (2) Unless otherwise provided, a nonconforming fence shall not be added to in any manner unless such additions are made to conform to all the requirements of the district in which such fence is located.
- (3) A nonconforming fence shall not be moved in whole or in part unless every portion of such fence is made to conform to all regulations of the district in which it is located.
- (4) If a nonconforming fence is damaged, destroyed or in disrepair to an extent greater than fifty percent (50%) of the total length of the fence, such fence shall be replaced and must conform to all regulations of the district in which it is located and shall be treated as a new fence.

Sec. 3.10.009 Variances

Appeals to the conditions of this article shall be heard by the board of adjustment. The board of adjustment shall have the authority to authorize such variances from the terms of this article. In order to approve a variance, the board of adjustment shall determine that the requested variance meets three (3) of the following four (4) criteria:

- (1) The proposed fence will not adversely impact the adjacent property (visibility, size and the like);

- (2) The proposed fence is of a unique design or configuration or serves a unique function;
- (3) The variance is needed due to restricted area, shape, topography, physical features, or conditions that are unique to the property on which the proposed fence would be constructed; or
- (4) The variance will substantially improve the health, safety, or welfare of the public and does not violate the spirit of this article.

Sec. 3.10.010 Offenses; penalties

- (a) Any person violating any of the provisions of this article shall be deemed guilty of a class C misdemeanor and, upon conviction, shall be fined, except as otherwise provided herein, in a sum not to exceed five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- (b) If the city council determines that a violation of this article creates a threat to the public safety, the city may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity. The city is not required to give bond as a condition to the issuance of injunctive relief.

(Ordinance 2012-03-341 adopted 3/26/12)

ARTICLE 3.11 STREETS AND SIDEWALKS

Division 1. Generally

Sec. 3.11.001 Address numbering

- (a) System adopted; record. The street address numbering system heretofore adopted, implemented and currently in use by the United States Postal Service for buildings within the city is hereby adopted by the city as its official street numbering system. A complete record of the numbering of all buildings shall be kept by the city; such record shall be supplemented and amended from time to time when necessary. Building numbers shall be public property, and subject to change by the city, with or without notice.
- (b) Placement of numbers required. Owners of buildings within the city shall place or have placed thereon the proper street number as designated by the city, in some conspicuous place so that the same can be plainly seen and read from the street.
- (c) Standards for numbers. The street address numbers shall be at least three inches high, and composed of some bright metal, plastic or similar durable material.
- (d) Penalty. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed \$50.00 for each offense. Each day a violation of any provision of this section shall continue, it shall constitute a separate offense.

(2000 Code, art. 1.400)

Division 2. Construction in Right-of-Way*

Sec. 3.11.031 Purpose; title

(a) The purpose of this division is to:

- (1) Assist in the management of facilities placed in, on or over the public rights-of-way in order to minimize the congestion, inconvenience, visual impact and other adverse effects and the cost to the citizens resulting from the placement of facilities within the public rights-of-way;
- (2) Govern the use and occupancy of the public rights-of-way;
- (3) Assist the city in its efforts to protect the public health, safety and welfare;
- (4) Conserve the limited physical capacity of the public rights-of-way held in public trust by the city;
- (5) Preserve the physical integrity of the streets and highways;
- (6) Control the orderly flow of vehicles and pedestrians;
- (7) Keep track of the different entities using the public rights-of-way to prevent interference between or among them;
- (8) Assist in scheduling common trenching and street cuts;
- (9) Protect the safety, security, appearance and condition of the public rights-of-way.

(b) This division may be referred to as the construction in the public rights-of-way ordinance.

(2000 Code, sec. 3.1001)

Sec. 3.11.032 Applicability

This division applies to all persons that place facilities in, on or over public rights-of-way. (2000 Code, sec. 3.1002)

Sec. 3.11.033 Definitions

Affiliate. A person who controls, is controlled by, or is under common control with a provider.

Certificated telecommunications provider. Any entity that has been granted a certificate from the state public utility commission under chapter 54 of the Texas Utility Code authorizing that entity to provide local exchange telephone service.

City. The City of Oak Point, Texas. As used throughout, the term “city” also includes the designated agent of the city.

City manager. The city manager of the city or the city manager’s designee.

Direction of the city. All ordinances, law, rules, resolutions, and regulations of the city that are not inconsistent with this division and that are now in force or may hereafter be passed and adopted.

Facilities. Any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, underground

and overhead passageways and other equipment, structures, plant and appurtenances and all associated physical equipment placed in, on or under the public rights-of-way.

Person. A natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company, or association, and other such entity.

Public right-of-way. The area on, below or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airwaves above a public right-of-way with regard to wireless telecommunications.

(2000 Code, sec. 3.1003)

Sec. 3.11.034 Penalty

Any person violating or failing to comply with any provision of this division shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed \$2,000.00. Each and every day during which the violation continues shall constitute a separate offense. (2000 Code, sec. 3.1010)

Sec. 3.11.035 Authorization required

- (a) Any person seeking to place a facility on, in or over the public rights-of-way shall first file an application for a building permit with the city and shall abide by the terms and provisions of this division pertaining to use of the public rights-of-way.
- (b) Any person, except a certificated telecommunications provider, prior to placing, reconstructing or altering facilities in, on or over the public rights-of-way, must obtain separate municipal authorization from the city.
- (c) Any person with a current unexpired consent, franchise, agreement or other authorization from the city ("grant") to use the public rights-of-way that is in effect at the same time this division takes effect shall continue to operate under and comply with that grant until the grant expires or until it is terminated by mutual agreement of the city and the person, or terminated as otherwise provided by law.

(2000 Code, sec. 3.1004)

Sec. 3.11.036 Administration and enforcement

- (a) The city shall designate a person to administer and enforce compliance with this division.
- (b) A person shall report information related to the use of the public rights-of-way that the city's designee requires in the form and manner reasonably prescribed by that designee.

(2000 Code, sec. 3.1005)

Sec. 3.11.037 Construction obligations

A person is subject to a reasonable police power regulation of the city to manage its public rights-of-way in connection with the construction, expansion, reconstruction, maintenance or repair of facilities in the public rights-of-way, pursuant to the city's rights as a custodian of public property, based upon the city's historic right under state and federal laws. Such regulations include, but are not limited to, the following:

- (1) At the city's request, a person shall furnish the city accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of facilities performed by the person in the public right-of-way.
- (2) A person may be required to place certain facilities within the public rights-of-way underground according to applicable city requirements absent a compelling demonstration by the person that, in any specific instance, this requirement is not reasonable or feasible nor is it equally applicable to other similar users of the public rights-of-way.
- (3) A person shall perform operations, excavations and other construction in the public rights-of-way in accordance with all applicable city requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations of other similar users of the public rights-of-way. The city shall waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the city by the person. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A person shall follow all reasonable construction directions given by the city in order to minimize any such interference.
- (4) A person must obtain a permit, as reasonably required by applicable city codes, prior to any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of the person's facilities. Once a permit is issued, the person shall give to the city a minimum of 48 hours' notice (which could be at the time of issuance of the permit) prior to undertaking any of the above-listed activities on its network in, on or under the public rights-of-way. The failure of the person to request and obtain a permit from the city prior to performing any of the above-listed activities in, on or over any public rights-of-way, except in an emergency as provided for in subsection (11) below, will subject the person to a stop-work order from the city and enforcement action pursuant to the city's Code of Ordinances. If the person failed to act upon any permit within 90 calendar days of issuance, the permit shall become invalid, and the person will be required to obtain another permit.
- (5) When a person completes construction, expansion, reconstruction, removal, excavation or other work, the person shall promptly restore the rights-of-way in accordance with the applicable city requirements. A person shall replace and properly re-lay and repair the surface, base, irrigation system and landscape treatment of any public rights-of-way that may be excavated or damaged by reason of the excavation, construction, maintenance or repair of the person's facilities within 30 calendar days after completion of the work in accordance with the existing standards of the city in effect at the time of the work.
- (6) Upon failure of a person to perform any such repair or replacement work, and five days after written notice has been given by the city to the person, the city may repair such portion of the public rights-of-way as may have been disturbed by the person, its contractors or agents. Upon receipt of an invoice from the city, the person shall reimburse the city for the costs so incurred within 30 calendar

days from the date of the city invoice.

(7) Should the city reasonably determine, within two years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the city, a person shall perform such additional restoration work to the satisfaction of the city, subject to all city remedies as provided herein.

(8) Notwithstanding the foregoing, if the city determines that the failure of a person to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the city may undertake emergency repairs and restoration efforts. A person shall promptly reimburse the city for all costs incurred by the city within 30 calendar days from the date of the city invoice.

(9) A person shall furnish the city with construction plans and maps showing the location and proposed routing of new construction or reconstruction at least 15 days before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the public rights-of-way. A person may not begin construction until the location of new facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the city, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the facilities and routing.

(10) If the city's designee declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of facilities, a person shall remove or abate the facilities by the deadline provided in the city designee's request. The person and the city shall cooperate to the extent possible to assure continuity of service. If the person, after notice, fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the person, without paying compensation to the person and without the city incurring liability for damages.

(11) Except in the case of customer service interruptions and imminent harm to property or person ("emergency conditions"), a person may not excavate the pavement of a street or public right-of-way without first complying with city requirements. The city's designee shall be notified immediately regarding work performed under such emergency conditions, and the person shall comply with the requirements of city standards for the restoration of the public rights-of-way.

(12) Within 60 days of completion of each new permitted section of a person's facilities, the person shall supply the city with a complete set of "as built" drawings for the segment in a format used in the ordinary course of the person's business and as reasonably prescribed by the city, and as allowed by law.

(13) The city may require reasonable bonding requirements of a person, as are required of other entities that place facilities in the public rights-of-way.

(2000 Code, sec. 3.1006)

Sec. 3.11.038 Conditions of occupancy

(a) In the exercise of governmental functions, the city has first priority over all other uses in the public

rights-of-way. The city reserves the right to lay sewer, gas, water, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in aerial facilities, in, across, along, over or under a public street, alley or public right-of-way occupied by a person, and to change the curb, sidewalks or the grade of streets.

(b) The city shall assign the location in or over the public rights-of-way among competing users of the public rights-of-way with due consideration to the public health and safety considerations of each user type, and, to the extent the city can demonstrate that there is limited space available for additional users, may limit new users, as allowed under state or federal law.

(c) If the city authorizes abutting landowners to occupy space under the surface of any public street, alley, or public rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the public rights-of-way that contains a portion of a person's facilities, [and] the city shall close or abandon such public right-of-way subject to the rights of the person.

(d) (1) If the city gives written notice, a person shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of the person's facilities that are in the public rights-of-way within 120 days, except in circumstances that require additional time as reasonably determined by the city based upon information provided by the person. For projects expected to take longer than 120 days to remove, change or relocate, the city will confer with the person before determining the alterations to be required and the timing thereof. The city shall give notice whenever the city has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a city or other governmental public improvement in the public rights-of-way. This section shall not be construed to prevent a person's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with the person.

(2) If the person fails to relocate facilities in the time allowed by the city in this section, the person may be subject to liability to the city for such delay and as set forth in the city codes or ordinances, now or hereafter enacted.

(3) Notwithstanding anything in this subsection (d), the city's designee and a person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

(e) During the term of its municipal consent, a person may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the city. Should the person, or its contractor or agent, fail to remove such trimmings within 24 hours, the city may remove the trimmings or have them removed, and upon receipt of a bill from the city, the person shall promptly reimburse the city for all costs incurred within 30 working days.

(f) A person shall temporarily remove raise or lower its aerial facilities to permit the moving of houses or other bulky structures if the city gives written notice of no less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. A person may require prepayment or prior posting of a bond from that party requesting the temporary move.

(2000 Code, sec. 3.1007)

Sec. 3.11.039 Insurance requirements

(a) Each person applying for a building permit shall obtain, maintain and provide proof of each of the following types of insurance and coverage limits. These insurance policies shall be underwritten by insurance companies with an A.M. Best rating of A VI or better.

(1) Commercial general liability on an occurrence form with minimum limits of \$2,000,000.00 per occurrence and \$5,000,000.00 aggregate. This coverage shall include the following:

(A) Products/completed operations to be maintained for one year.

(B) Personal and advertising injury.

(C) Owners and contractors protective liability.

(D) Explosion, collapse, or underground (XCU) hazards.

(2) Automobile liability coverage with a minimum policy limit of \$1,000,000.00 combined single limit. This coverage shall include all owned, hired and non-owned automobiles.

(3) Worker's compensation and employer's liability coverage. Statutory coverage limits for Coverage A and \$500,000.00 Coverage B employer's liability is required.

(b) The preferred method of proof of insurance is the Acord Form certificate of insurance.

(c) The city reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the city manager determines that changes in statutory law, court decisions, or the claims history of the industry or the person require adjustment of the coverage.

(d) The city will accept certificates of self-insurance issued by the state or letters written by the person in those instances where the state does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the city manager.

(e) The person shall furnish, at no cost to the city, copies of certificates of insurance evidencing the coverage required by this section to the city. If the city requests a deletion, revision or modification, the person shall exercise reasonable efforts to pay for and accomplish the change.

(f) The person shall file and maintain proof of insurance with the city manager or his/her designee. An insurance certificate obtained in compliance with this section is subject to city approval. The city may require the certificate to be changed to reflect changing liability limits. A person shall immediately advise

the city manager of actual or potential litigation that may develop which may affect an existing carrier's obligation to defend and indemnify the city.

- (g) Such insurance shall be kept in full force and effect during the period of time for which a permit shall be issued or the space occupied. Insurance coverage must be available on a "per project" basis.
- (h) An insurer has no right of recovery against the city. The required insurance policies shall protect the person and include the city and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage. The insurance shall be primary coverage for losses covered by the policies.
- (i) The policy clause "other insurance" shall not apply to the city.
- (j) The person shall pay premiums and assessments. A company that issues an insurance policy has no recourse against the city for payment of a premium or assessment. Insurance policies obtained by a person must provide that the issuing company waives all right of recovery by way of subrogation against the city in connection with damage covered by the policy.
- (k) Each policy must include a provision that requires the insurance company to notify the city in writing and by certified mail at least 30 days before canceling or failing to renew the policy or before reducing policy limits or coverages.
- (l) Each person must comply with the insurance requirements in this section, unless the person's current franchise or license agreement with the city specifically addresses insurance requirements, in which case the franchise or license agreement shall control.
- (m) All persons shall be subject to the city's insurance requirements as set forth in the city codes or ordinances, now or hereafter enacted.

(2000 Code, sec. 3.1008)

Sec. 3.11.040 Indemnity

- (a) Except as to certified telecommunications utilities, each person placing facilities in the public rights-of-way shall agree to promptly defend, indemnify and hold the city harmless from and against all damages, costs, losses, or expenses (i) for the repair, replacement, or restoration of the city's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the person's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to loss of the property of any person (including but not limited to the person, its agents, officers, employees and subcontractors, city's agents, officers and employees, and third parties), and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the person, the person's subcontractors and the city and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the persons its agents, employees, and/or subcontractors, in the performance of activities pursuant to this division.

- (b) This indemnity provision shall not apply to any liability resulting from the negligence of the city, its officers, employees, agents, contractors, or subcontractors.
- (c) The provision of this indemnity is solely for the benefit of the city and is not intended to grant any rights, contractual or otherwise, to any other person or entity.
- (d) Certified telecommunication utilities shall be governed by the indemnity provision contained in V.T.C.A., Local Government Code section 283.057, as amended.

(2000 Code, sec. 3.1009)