CODE OF ORDINANCES

CITY OF

LEXINGTON, TEXAS

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OFFICIALS
of the
CITY OF
LEXINGTON, TEXAS

Mayor and Councilmembers

2019 - 2020
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CODE OF ORDINANCES

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CITY OF LEXINGTON, TEXAS

CODE OF ORDINANCES

Chapter 1. General Provisions

Chapter 1. GENERAL PROVISIONS

Sec. 1.1. Designation and citation of Code. The ordinances embraced in this and the following chapters shall constitute and be designated the "Code of Ordinances, City of Lexington, Texas," and may be so cited. **State law reference**-Authority to adopt codification of ordinances, *Loc. Gov't. Code § 53.001 et. seq*.

Sec. 1.2. Definitions and rules of construction. In the construction of this Code, and of all ordinances and resolutions passed by the council, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the council:

Chapter. Whenever the words "section," "subsection," "division," or "article," are sued, they shall pertain to the chapter or section of this Code of Ordinances in which they are found, unless specifically and clearly in reference to a separate chapter or section.

City. The words "the city" or "this city," shall mean the city of Lexington in the county of Lee, in the State of Texas.

City council. Whenever the words "city council" or "council," are used, they shall mean the city council of Lexington in the County of Lee in the State of Texas.

Code. Whenever the term "Code" or "this Code" is referred to without further qualification, it shall mean the Code of Ordinances, City of Lexington, Texas, as designated in section 1-1.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given or such act is done shall not be counted in computing the time, but the day on which such proceeding is to be had shall be counted. **State law reference**-Computation of time, *Gov't. Code § 311.014*.

County. The words "the county" and "this county" mean Lee County, Texas.

Gender. Throughout this Code, words used expressing masculine gender shall be construed to include the feminine and neuter. **State law reference**- *Gov't. Code § 311.012(c)*.

Number. The singular includes the plural, and the plural includes the singular. **State law reference**-Similar provisions, *Gov't. Code § 311.012(b)*.

Officers, employees, departments, boards, commissions, agencies. Any reference to an officer, employee, department, board, commission or agency shall be construed as if followed by the words "of the City of Lexington, Texas."

"***Or***" may be read "*and*" and "*and*" may be read "*or*," if the sense requires it.

Person. The word "person" includes an individual, firm, company, corporation, organization, society, government or governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity. **State law reference**-*Gov't. Code § 311.005(2).*

Shall, may. The word "shall" is mandatory; the word "may" is permissive.

State. The words "the state" or "this state" means the State of Texas.

Tense. Words used in the past or present tense include the future as well as the past and present. Words used in the future tense include the present. **State law reference**-*Gov't. Code § 311.012(a).*

Vernon's Ann. C.C.P. The designation "*Vernon's Ann. C.C.P*." means *Vernon's Annotated Code of Criminal Procedure*, as amended from time to time.

Vernon's Ann. Civ. St. The designation "*Vernon's Ann. Civ. St*." means *Vernon's Annotated Civil Statutes*, as amended from time to time.

V.T.C.A. The designation "V.T.C.A." means *Vernon's Texas Codes Annotated*, as amended from time to time. **State law reference** - Code Construction Act, *Tex. Gov't. Code § 311.001 et seq.*; construction of *Loc. Gov't. Code, Loc. Gov't. Code § 1.002*; application of Penal Code definitions, *Pen. Code § 1.03*.

Sec. 1.3. Section catchlines and other headings. The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the sections, not, unless expressly so provided, shall they be so deemed when any such sections, including the catchlines, are amended or reenacted. No provision of this Code shall be held invalid by reason of deficiency in any such catchline or in any heading or title to any chapter, article or division. **State law reference**-Headings in state codes, *Gov't. Code § 311.024.*

Sec. 1.4. History notes. The history notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the sections.

Sec. 1.5. Editor's notes and references. The editor's notes, cross references and state law references in this Code are not intended to have any legal effect but are merely intended to assist the user of this Code.

Sec. 1.6. General penalty for violations of Code.

(a) Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefore, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding $500.00. However, a fine for the violation of a provision of this Code or any such ordinance that governs fire safety, or public health and sanitation, including dumping of refuse, shall be punished by a fine not to exceed $2,000.00

(b) However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

(c) The city may bring a civil action, as necessary, to enjoin any threatened violation of this Code for the protection of public health and safety. **State law references**-Amount of fine or penalty imposed by the city, *Loc. Gov't. Code § 54.001*; abatement of health nuisances, *Health and Safety Code § 341.011 et seq.*; jurisdiction of municipal court, *Gov't. Code § 29.003*.

Sec. 1.7. Severability of parts of Code. If any provision, section, sentence, clause or phrase of this Code, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid or unenforceable, the validity of the remaining portions of this Code or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the city council in adopting, and of the mayor in approving this Code, that no portion of this Code or provision or regulation contained in this Code shall become inoperative or fall by reason of any unconstitutionality or invalidity of any other portion, provision or regulation. **State law reference**-Severability of statutes, *Gov't. Code §§ 311.032, 312.013.*

Sec. 1.8. Amendments or additions to Code.

(a) All ordinances passed subsequent to the adoption of this Code, which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section or subsection, or any portion of the Code, such repealed portions may be excluded from the Code by omission from reprinted pages.

(b) Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the council to make such additions and amendments a part of this Code, shall be deemed to be incorporated in this Code, so that a reference to the Code shall be understood and intended to include such additions and amendments.

(c) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That chapter , section ____ of the Code of Ordinances, City of Lexington, Texas, is hereby amended to read as follows:..." The new provisions shall then be set out in full as desired.

(d) If a new section not heretofore existing in the Code is to be added, the following language shall be used: "That chapter ____ of the Code of Ordinances, City of Lexington, Texas, is hereby amended by adding a section, to be numbered section _____, which section reads as follows:...." The new section shall then be set out in full as desired.

(e) All sections, articles, chapters or provisions desired to be repealed shall be specifically repealed by section, article or chapter number, as the case may be.

(f) The provisions of this section are directive and no ordinance or amendment to the Code shall be held invalid because any such directive wording or form is not included or used.

Sec. 1.9. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the council. A supplement to the Code shall include all substantive parts of permanent and general ordinances passed by the council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of adoption of the latest ordinance included in the supplement.

(b) In the preparation of a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person authorized to prepare the supplement) may make formal non-substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions.

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles.

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to ____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated in the Code).

(5) Make other non-substantive changes necessary to preserve the original meaning of the ordinance sections inserted into the Code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1.10. Actions and ordinances not affected by Code. Nothing in this Code or the ordinance adopting this Code shall affect any of the following:

(a) Any event, offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code;

(b) Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness;

(c) Any contract or obligation assumed by the city;

(d) Any right or franchise granted by the city;

(e) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, or affecting the right-of-way of any street or public way in the city;

(f) Any ordinance relating to municipal street maintenance agreements with state;

(g) Any ordinances establishing or prescribing grades for streets in the city; Any appropriation ordinance or ordinance providing for the levy of taxes or for an annual budget or for salaries of city officers or employees;

(h) Any ordinance relating to local improvements and assessments therefor;

(i) Any ordinance annexing territory to the city or discontinuing territory as a part of the city;

(j) Any ordinance dedicating or accepting any plat or subdivision in the city;

(k) Any ordinance enacted after the effective date of this Code;

(l) Any ordinance pertaining to the holding of municipal elections;

(m)Any ordinance pertaining to traffic control devices or speed limits;

(n) Any ordinance pertaining to economic development service electrical rates;

(o) Any ordinance consistent with this Code pertaining to the Texas Municipal Retirement System;

(p) Any temporary or special ordinance; and all such actions and ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

Sec. 1.11. Validation. Any statute hereafter adopted validating any codes and/or ordinances of municipalities shall apply to this Code and ordinance according to its term effect and reading.

Sec. l.12. Culpable Mental State Not Required. Unless otherwise specifically set forth in the Code of Ordinances of the City, or in state law as adopted, allegations and evidence of culpable mental state are not required for proof of an offense. *[Ord. No. 03-1112-17, adopted November 12, 2003]*

Chapter 2. Administration[4]

Article I. In General

Article II. Council

Article III. Officers

Division 1. Generally

Division 2. Administrative

Division 3. City Attorney

Division 4. Mayor-Council Form of Government

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[4] **Cross references**-Building official, § 22-26 et seq.; electrical board, § 22-180; electrical inspectors § 22-181; civil emergencies, ch. 38; courts, ch. 42; fire prevention and protection, ch. 46; bureau of fire prevention, § 46-28; solid waste, ch. 90; streets, sidewalks and other public places, ch. 94; traffic engineer, § 106-1; utilities, ch. 110. **State law references**-Extraterritorial jurisdiction, Tex. Loc. Gov't. Code § 42.001 et seq.; municipal finances, Tex. Loc. Gov't. Code ch. 101 et seq.; compensation of officers, Tex. Loc. Gov't. Code § 141.001; open meetings, Tex. Gov't. Code ch. 551; open records, Tex. Gov't. Code ch. 552.

Division 5. Police Department

Division 6. Fire Department

Division 7. Emergency Management

Article IV. Records Management

Article V. Claims Against City

Article VI. Investment Policy

Chapter 2. ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2.1. City to be a type A general law municipality. Tex. Loc. Gov't. Code, as amended from time to time, relating to cities and towns are hereby adopted by the city and the government of the city, and its affairs shall be guided thereby. The council having determined that there exist 600 inhabitants or more within the city, and having adopted this section by a two-thirds vote of the council, the city secretary is hereby directed to file notice of such adoption with the county clerk as the law provides. **State law reference** - Type A general law municipality, *Tex. Loc. Gov't. Code, §§ 5.001, 6.011 et seq.*

Sec. 2.2. Adoption of fiscal year. There is hereby adopted a fiscal year for the city to begin October 1 and end September 30 of the following year. **State law reference** - Fiscal year, *Tex. Loc. Gov't. Code, § 101.042.*

Sec. 2.3. Returned Checks.

(a) **Acceptance of Checks**. The general policies, rules and regulations of the City with respect to the acceptance of personal and business checks for the payment of services provided, permits,

fees and other funds owed to the City, shall continue in effect, except as hereinafter provided in this subsection. *[Ord. No. 12-0613-14, adopted June 13, 2012]*

(b) **Return Check Charge**. A charge and fee in the amount of $30.00 is hereby established for each check made payable to the City that is not honored or is returned unpaid by the bank or financial institution on which such check is drawn. Such $30.00 fee shall be collected prior to the release, or resubmittal of any such returned check. If the issuer, or representative of the issuer, requests any such check to be resubmitted to such bank or financial institution, the $30.00 return check charge shall be collected prior to resubmittal of the check. A separate fee of $30.00 shall be charged and collected each time the issuer or his/her representative requests a check to be resubmitted and such check is returned unpaid. *[Ord. No. 12-0613-14, adopted June 13, 2012]*

(c) **Suspension of Privilege**. Any person, firm or legal entity that, within any twelve (12) calendar month period, has two (2), or more, checks returned to the City for insufficient funds, or otherwise returned and not honored by the financial institution on which written, shall have their privilege and convenience of paying for City services, permits and fees by personal check suspended for a period of twelve (12) months. During such twelve (12) calendar month suspension, such person, firm or entity shall be required to pay for all City services, fees and permits with cash, money order or certified check.

(d) **Forfeiture of Privilege**. After any such twelve (12) month suspension has been completed, the privilege and convenience of paying for City services, fees and permits by personal check shall be reinstated for any such person, firm or entity; provided that if such person, firm or entity shall, at any time during any twelve (12) calendar month period after such privilege and convenience is reinstated, have two (2) or more checks returned to the City for insufficient funds, or otherwise returned and not honored by the financial institution on which written, the privilege and convenience of such person, firm or entity to pay for City services, fees and permits by personal check shall be forfeited and shall not thereafter be reinstated except upon a majority vote of the City Council. *(Ord. 98-0114-4, passed 01-14-98)*

Sec. 2.4 through 2.26. Reserved.

ARTICLE II. COUNCIL.

Sec. 2.27. Compensation for mayor and aldermen. The mayor shall be paid and compensated in the sum of $200.00 monthly. Each alderman shall be paid and compensated in the sum of $50.00 monthly, effective May 15, 1999.

Sec. 2.28. Smoking tobacco in meetings. Any person attending a meeting of the council in the city hall council chambers is hereby prohibited from smoking tobacco during such meetings. **State law reference**-Smoking tobacco, *Tex. Penal Code § 48.01*.

Secs. 2.29 through 2.50. Reserved

ARTICLE III. OFFICERS

DIVISION 1. GENERALLY

Secs. 2.51 through 2.60. Reserved.

DIVISION 2. ADMINISTRATIVE

Secs. 2.61 through 2.80. Reserved.

DIVISION 3. CITY ATTORNEY

Sec. 2.81. Office created. There is hereby created the office of city attorney.

Sec. 2.82. Conditions of appointment. The city attorney shall be a regularly licensed attorney and counselor at law, licensed by the supreme court of the state, as the law provides. Before entering upon the duties of office, he shall take the oath prescribed by law, and shall furnish such surety bond as may be required by the council, the premium to be paid by the city. ***State constitution reference***-Official oath, art. XVI, § 1. **State law reference**-Licensing of attorneys, *Tex. Gov't., Code ch. 82.*

Sec. 2.83. Duties.

(a) It shall be the duty of the city attorney to:

(1) Be the legal advisor of the mayor, the council, any committee or board of the city, and all city officers and authorities upon legal questions touching their official duties, and shall give his opinion upon all legal questions arising under the city government whenever called upon by the mayor, city secretary, or the council, and shall advise any officer of the city upon any legal questions affecting the interests of the city that may be referred to him at any time by such officer.

(2) Attend, either in person or by deputy at each meeting or term of the municipal court, for the purpose of prosecuting all cases in the court arising under the ordinances of the city.

(3) Prepare and draw all complaints for offenses cognizable in the municipal court, and all complaints for misdemeanors against the mayor, aldermen, or any of the offices or agents of the city.

(4) Prepare all subpoenas and attachments for witnesses, and shall cause all necessary witnesses to be summoned on the part of the prosecution before the municipal court or the council, and shall have full power and authority to administer oaths to person making complaints before the municipal court. Draw and prepare all bonds, contracts, agreements, deeds, and other papers or instruments which may be made or entered into by the city, or to which the city may be a party.

(b) The city attorney may be asked to:

(1) Institute, prosecute, defend, generally manage and attend to all cases and suits in any court in the state wherein the city may be a party in interest unless the council of the city shall otherwise provide.

(2) Attend meetings of the council to give advice.

(3) Draw all ordinances when requested to do so by the mayor or any aldermen, and inspect and advise upon all papers, instruments and documents involving any interest of the city.

(4) Attend before the council upon the trial of any officer of the city to conduct and manage the prosecution thereof.

(5) Do and perform such other duties on behalf of the city as may from time to time be required of him by the council. **State law reference**-Municipal court, *Tex. Gov't. Code, Chapt. 29.*

DIVISION 4. MAYOR-COUNCIL FORM OF GOVERNMENT

Sec. 2.84. Mayor-Council Form of Government. The Mayor of the City of Lexington is hereby named the chief executive officer of the City of Lexington with all powers, as set out herein and under the laws of the State of Texas. *[Ord. No. 11-0810-6, adopted August 10, 2011]*

Sec. 2.85. Authority, Duties and Responsibilities of Mayor.

(a) **Presiding over Meetings.** The Mayor shall preside over all meetings of the City Council. The Mayor shall not have a vote except to break a tie. He shall not have the right and privilege of veto, however, he shall have the right of objection as stated below. *[Ord. No. 11-0810-6, adopted August 10,2011]*

(b) **Signature of Ordinances.** Every ordinance, resolution or motion of the City Council shall, before it takes effect, be presented to the Mayor for his approval and signature. If the Mayor shall fail to sign any ordinance, resolution or motion within five days after adoption, it shall nevertheless be in full force and effect as if he had signed the same. The Mayor shall at all times preside over all meetings of the City Council. The Mayor shall not have a vote except to break a tie. He shall not have the right and privilege of veto. [*Ord. No. 12-0111-16, adopted January 11, 2012*]

(c) **General Powers of the Mayor.** The Mayor shall have and exercise such powers, prerogatives and authority, acting independently of or in concert with the City Council, as are conferred by the provisions of this Article or as may be conferred upon him by the City Council, not inconsistent with the general purposes and provisions of this ordinance, and shall have the power to administer oaths. Subject to the confirmation of the Council, he shall have the power

to appoint all advisory boards created by the Charter ordinance. [*Ord. No. 12-0111-16, adopted January 11, 2012*]

(d) **Additional Powers and Duties of the Mayor.** All the administrative work of the city government shall be under the control of the Mayor. Among others, the powers and duties of the Mayor shall be as follows:

(1) To see that all laws and ordinances are enforced.

(2) The Mayor shall have the power to appoint, subject to confirmation by the City Council, such heads of department in the administrative service of the City as may be created by ordinance, and the Mayor shall have the power to remove such heads of department at any time he shall see fit without confirmation by the City Council. The Mayor shall also have the power to appoint and remove all other employees of the City, such appointments and removals to be subject, however, to the civil service provisions of the Charter.

(3) To exercise administrative control over all departments of the City.

(4) It shall be the duty of the Mayor from time to time to make such recommendations to the Council as he may deem to be for the welfare of the City, and each year to submit to the Council the annual budget of the current expenses of the City in accordance with the requirements of the State Budget Law applicable to cities and towns.

(5) To keep the Council at all times fully advised as to the financial condition and needs of the City. [*Ord. No. 12-0111-16, adopted January 11, 2012*]

(e) The Council shall have authority to prescribe ordinances, rules and regulations governing the operation of each department, but the Mayor may prescribe such general rules and regulations as he may deem necessary or expedient for the general conduct of the administrative department, the heads of which are responsible to him. In order to expedite the work of any department, or to adequately administer an increase in the duties which may devolve on any department, or to cope with periodic or seasonal changes, the Mayor, subject to civil service regulations, is empowered to transfer employees temporarily from one department to perform similar duties in another such department. Likewise, each department head shall have power to transfer employees from one bureau or division to another within his department, subject to the rules and regulations of civil service. The Mayor may direct any such department or bureau to perform work for any other department or bureau. *[Ord. No. 12-0111-16, adopted January 11, 2012]*

(f) In case of general conflagration, rioting, earthquakes, or other emergency menacing life and property, the Mayor shall be authorized to marshal all the forces of the different departments of the City for the maintenance of the general security, and shall have the power to deputize, or otherwise employ, such other persons as he may consider necessary for the purpose of protecting the City and its residents. [*Ord. No. 12-0111-16, adopted January 11, 2012]*

(g) Neither the Council nor any of its committees or members shall in any manner interfere in the appointment of officers and employees in the departments of administrative service vested in the Mayor by this Charter, except that all department heads appointed by the Mayor shall be subject to confirmation the City Council as herein provided. Except for the purpose of inquiry, the Council and its members shall deal with administrative service for which the Mayor is responsible solely through the Mayor, and neither the Council nor any member thereof shall give orders to any of the subordinates of the Mayor in said departments, either publicly or privately. *[Ord. No. 12-0111-16, adopted January 11, 2012]*

(h) The Council, the Mayor or any person or committee authorized by either or both of them shall have power to inquire into the conduct of any department or office of the City and to make investigations as to City affairs. For that purpose the Council may subpoena witnesses, administer oaths and compel the production of books, papers and other evidence material to said inquiry. The Council shall provide by ordinance penalties for contempt in refusing to obey any such subpoenas or failure to produce books, papers and other evidence, and shall have the power to punish any such contempt in the manner provided by such ordinance. *[Ord. No. 11-0810-6, adopted August 10, 2011]*

Sec 2.86. Mayor Pro Tem. At the first regular meeting of the City Council after the induction of the newly elected Mayor and Councilmen in office, the Mayor shall nominate, subject to confirmation by the City Council, one of the Councilmen who shall be known and designated as "Mayor Pro Tem," and shall continue to hold the title and the office until the expiration of the term of office for which he was elected as council man, but shall receive no extra pay by reason of being or acting Mayor Pro Tem. The Mayor Pro Tern shall act as a liaison between the police department and the City Council. *[Ord. 12-0111-16, adopted January 11, 2012]*

Sec. 2.87. Disability of the Mayor. If for any reason the Mayor is absent from the City, sick or unable to perform the duties of his office, the Mayor Pro Tern shall act as Mayor, and during such absence or disability shall possess all of the powers and perform all of the duties of the Mayor. *[Ord. No. 12-0111-16, adopted January 11, 2012]*

Sec. 2.88. Vacancy. In case of the death, resignation or permanent disability of the Mayor, or whenever a vacancy in the office of Mayor shall occur for any reason, the Mayor Pro Tem shall act as Mayor, and shall possess all of the rights and powers of the Mayor and perform all of his duties, under the official title, however, of "Mayor Pro Tern" until an election is ordered by the City Council to fill the vacancy in the office of Mayor shall be called by the City Council and held within thirty days after the vacancy occurred and notice by publication given for at least twenty days, as may be required by law. *[Ord. No. 12-0111-16, adopted January 11, 2012]*

Sec. 2.89. Removal of the Mayor. [5]

(a) In case of misconduct, inability or willful neglect in the performance of the duties of his office, the Mayor may be removed from office by the City Council by vote of two-thirds of all

[5] **State Law Reference**- District Judge may remove. Tx. Loc. Gov't. Code, Sec. 21.023 et seq

the Councilmen elected, but shall be given an opportunity to be heard in his defense, and shall have the right to have process issued to compel the attendance of witnesses, who shall be required to give testimony, if he so elects. The hearing, in case of impeachment of the Mayor, shall be public and a full and complete statement of the reasons for such removal, if he be removed, together with the findings of facts as made by the Council, shall be filed by the City Council in the public archives of the city, and shall become and be a matter of public record.

(b) Pending the charge of impeachment against the Mayor, the City Council may suspend him from office for a period of not exceeding thirty days by a vote of two-thirds of the Councilmen elected, and if upon final hearing the conclusions and findings of the City Council are that the Mayor be impeached and removed from office, such findings shall be final. *[Ord. No. 12-0111-16, adopted January 11, 2012]*

DIVISION 5. POLICE DEPARTMENT[6]

Sec. 2.90. Establishment of Police Department. There is created the Lexington Police Department for the health, safety, and welfare of the general public and the protection of the citizens of the City. The City Council may appoint and employ personnel for the Police Department at the recommendation of the Chief of Police, and may provide duties for the Department.

Sec. 2.91. Chief of Police. The Police Department shall be headed by a Chief of Police who shall be appointed and commissioned by the City Council. All officers, including the Chief of Police, shall serve at the pleasure of the City Council. The Police Department shall have such personnel as may be authorized in the annual budget of the City.

(a) Members of the police force may not carry a weapon or otherwise act as a police officer until the Council has approved such member to act as a police officer. After approval, such person may so act only when specifically so authorized by the Chief of Police and when discharging official duties as a duly constituted peace officer for the City of Lexington. Peace officers shall, at all times while employed with the City of Lexington, be a certified peace officer in the State of Texas through the State of Texas Commission on Law Enforcement Standards and Education. The powers, rights, duties, and jurisdiction granted in the Texas Code of Criminal Procedure shall apply to each police and reserve police officer acting within the scope of his or her employment unless specifically restricted or removed by the City Council or Chief of Police.

(b) The Chief of Police and all police officers shall be a certified peace officer in the State of Texas and shall satisfy the minimum requirements established by the laws and regulations of the State of Texas for such position. The Chief of Police shall further satisfy and maintain the training and qualifications established, from time to time, by the City Council.

[6] This Division was created by the adoption of Ord. No. 05-0419-8, adopted April 19, 2005, created this Division. Section numbers were changed in the 2015 update of this Code.

(c) Working a second or additional employment is strictly prohibited of all police officers unless approved by the Chief of Police in writing and if the work involves any security type activities, the police officer must receive a written release from the additional employer in a form acceptable to the City Attorney.

(d) Subject to the approval of the City Council, the Chief of Police may prepare and enforce a policy, regulations and requirements, applicable to the qualifications, appointment, service, training, conduct, discipline and dismissal of reserve police officers appointed pursuant to this ordinance.

(e) The Chief of Police shall oversee the personnel of the Lexington Police Department and may remove police officers or perform other disciplinary actions as the Chief deems appropriate subject to appeal to the Mayor within 5 days of such action and if the employee is aggrieved with the determination of the Mayor the employee may appeal to the City Council within 5 days of the determination of the Mayor. Failure to appeal the decision shall all decisions to be final and unappealable. If appeal is taken to the City Council, the decision of the City Council shall be final.

(f) The regular police officers shall maintain and complete not less than the continuing training as is required by the Chief of Police. All training must be approved by the Chief of Police to be paid by the City. It shall be the duty of each police officer to notify the Chief of Police of the officer's need for training. Failure of any police officer on the police force to maintain certified peace officer standing with the State of Texas shall constitute immediate grounds for removal and termination.

(g) Subject to the direction, supervision and oversight of the Mayor and the City Council and within the funds appropriated, budgeted and available for such purposes, the Chief of Police shall:

(1) Supervise and manage the Police Department;

(2) Coordinate and maintain a liaison with the Sheriff's Department and other appropriate law enforcement agencies;

(3) Provide the day to day operations of the Police Department;

(4) Enforce the State penal code and, except as provided otherwise in the ordinances, enforce the ordinances adopted by the City Council;

(5) Keep and maintain the public peace within the City;

(6) Facilitate communications with the Mayor and City Council and advise the Mayor and the City Council regarding the budgetary and law enforcement needs of the department and the City;

(7) Perform other duties and responsibilities as directed by the City Council that are not inconsistent with the position of Chief of Police;

(8) Conduct such patrol, security checks and surveillance as is reasonably necessary and customary for the public safety.

Section 2.92. Reserve Police Force.

(a) A police reserve force is hereby established in the City of Lexington, Texas. The police reserve force shall be under the supervision of the Chief of Police and shall be a pair of the Lexington Police Department police force subject to the rules, policies and requirements of the Lexington Police Department.

(b) The City Council may appoint and employ personnel for the Police Department Reserve Force at the recommendation of the Chief of Police. The appointment of individual members of the police reserve force shall not be in effect until such individual appointments are approved by City Council.

(c) It shall be the individual responsibility of each reserve police officer to maintain their standing as a certified police officer and to receive such training as is required to maintain such certification. The reserve police officers shall further maintain and complete not less than the continuing training as is required by the Chief of Police.

(d) The Chief of Police may call reserve police officers into service and schedule such reserve officers for duty as the Chief determines necessary and reasonable. Such reserve police officers shall have the authority of a police officer within the City only when such reserve officer is on duty as requested, directed or scheduled by the Chief of Police.

(e) No reserve police officer may work additional employment which requires use of the City of Lexington's uniform, badge or equipment.

DIVISION 6. FIRE DEPARTMENT[7]

Sec. 2.100. Lexington Volunteer Fire Department Established. A volunteer fire department is hereby established in the City of Lexington, Texas. The department shall be a volunteer only department.

Sec.2.101. Fire Chief. The City Council shall appoint a Fire Chief who shall establish the rules, policies and regulations for the Department subject to the ratification and approval of the City Council. The Fire Chief shall work at the pleasure of the City Council.

(a) The Fire Chief shall oversee the operation and maintenance of all fire engines and other fire-protection equipment.

[7] *Division 7 and Secs. 2-100 - 2.101 adopted by Ord. No. 05-0419-8, adopted April 19, 2005.*

(b) The Fire Chief shall be responsible for directing the activities of the Department.

DIVISION 7. EMERGENCY MANAGEMENT[i]

Sec. 2.101. Organization. There exists the office of Emergency Management Director of the City of Lexington, which shall be held by the Mayor in accordance with State law.

(a) An Emergency Management Coordinator may be appointed by and serve at the pleasure of the Director;

(b) The Director shall be responsible for a program of comprehensive emergency management within the City and for carrying out the duties and responsibilities set forth in this ordinance. He/she may delegate authority for execution shall remain with the Director.

(c) The operational Emergency Management organization of the City of Lexington shall consist of the officers and employees of the City so designated by the Director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the Emergency Management plan.

Sec 2.102. Emergency Management Director – Powers and Duties. The duties and responsibilities of the Emergency Management Director shall include the following:

(a) Surveying actual or potential hazards, which threaten life and property within the City, and identifying and requiring or recommending the implementation of measures, which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.

(b) Supervision of the development and approval of an emergency management plan for the City of Lexington, and shall recommend for adoption by the City Council all mutual aid arrangements deemed necessary for the implementation of such plan.

(c) Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of 7 days except by or with the consent of the City Council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.

(d) Issuance of necessary proclamations, regulations, or directives, which are necessary for carrying out the purposes of this ordinance. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede promptly filed with the City Secretary.

(e) Direction and control of the operations of the Lexington Emergency Management organization as well as the training of Emergency Management personnel.

(f) Determination of all questions of authority and responsibility that may arise with the Emergency Management organization of the City.

(g) Maintenance of liaison with other municipal, County, District, State, regional or federal Emergency Management organizations.

(h) Marshaling of all necessary personnel, equipment, or supplies from any department of the City to aid in the carrying out of the provisions of the emergency management plan.

(i) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the State and of other local political subdivisions of the State, and the drafting and execution, if deemed desirable, of an agreement with the county in which said City is located and with other municipalities within the County, for the County-wide coordination of Emergency Management efforts.

(j) Supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions, which may be offered for the purpose of improving Emergency Management within the City.

(k) Authorizing of agreements, after approval by the City Attorney, for use of private property for public shelter and other purposes.

(l) Surveying the availability of existing personnel, equipment, supplies, and services that could be used during a disaster, as provided for herein.

(m)Other requirements as specified in the Texas Disaster Act (*Chapt. 418, Tex. Gov't Code*)

Sec. 2.103. Emergency Management Plan. A comprehensive Emergency Management Plan shall be developed and maintained in a current state. The plan shall set forth the form of the organization; establish and designate divisions and functions; assign responsibilities, tasks, duties, and powers; and designate officers and employees to carry out the provisions of this ordinance. As provided by State law, the plan shall follow the standards and criteria established by the State Division of Emergency Management of the State of Texas. Insofar, as possible, the form of organization, titles, and terminology shall conform to the recommendations of the State Division of Emergency Management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this ordinance and have the effect of law during the time of a disaster.

Sec. 2.104. Inter-Jurisdictional Program. The mayor is hereby authorized to join with the County Judge of the County of Lee and the Mayors of the other cities in said County in the formation of an inter-jurisdictional emergency management program for the County of Lee, and shall have the authority to cooperate in the preparation of an inter-jurisdictional emergency

management plan and in the appointment of a joint Emergency Management Coordinator, as well as all powers necessary to participate in a County-wide program of emergency management insofar as said program may affect the City of Lexington.

Sec. 2.105. General Provisions.

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

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

(c) **Commitment of Funds.** No person shall have the right to expend any public funds of the City in carrying out any Emergency Management activity authorized by this ordinance without prior approval of the City Council unless during a declared disaster.

(d) **Declared Disaster**. During a declared disaster, the Mayor may expend and/or commit public funds of the City when deemed prudent and necessary for the protection of health, life, or property.

ARTICLE IV. RECORDS MANAGEMENT

Sec. 2.106. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department head means the officer who by ordinance, order, or administrative policy is in charge of an office of the city that creates or receives records.

Director and librarian mean the executive and administrative officer of the state library and archives commission.

Essential record means any record of the city necessary to the resumption or continuation of operations of the city in an emergency or disaster, to the recreation of the legal and financial status of the city, or to the protection and fulfillment of obligations to the people of the state.

Permanent record means any record of the city for which the retention period of the records control schedule is given a permanent.

Records control schedule means a document prepared by or under the authority of the records management officer listing the records maintained by the city, their retention periods and other records disposition information that the records management program may require.

Records liaison officers means the persons designated under section 2.115.

Records management means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of record keeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

Records management committee means the committee established in section 2.111.

Records management officer means the person designated in section 2.110.

Records management plan means the plan developed under section 2.112.

Retention period means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction. **Cross reference**-Definitions generally, § 1.2. **State law reference**-Definitions pertaining to local government records, *Tex. Loc. Gov't. Code § 201.003, and Tex. Gov't. Code § 441.151.*

Sec. 2.107. City records-Designated.

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

(b) Subsection (a) of this section does not include:

(1) Extra identical copies of documents created only for convenience of reference or research by officers or employees of the city;

(2) Notes, journals, diaries, and similar documents created by an officer or employee of the city for the officer's or employee of the city for the officer's or employee's personal convenience;

(3) Blank forms;

(4) Stocks of publications;

(5) Library and museum materials acquired solely for the purposes of reference or display; or

(6) Copies of documents in any media furnished to members of the public to which they are entitled under *Texas Government Code ch. 552*, as amended from time to time, or other state law. **State law reference**-"Local government record" defined, *Tex. Loc. Gov't. Code § 201.003(8).*

Sec. 2.108. Same-Declared public property. All city records defined in section 2.107 are hereby declared to be the property of the city. No city official or employee has, by virtue of his position, any personal or property right to such records even though he may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited. **State law reference**-Local government records as public property, *Tex. Loc. Gov't. Code § 201.005.*

Sec. 2.109. Policy. It is hereby declared to be the policy of the city to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all city records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Local Government Records Act (*Tex. Loc. Gov't. Code, Ch. 201 et seq.*, as amended from time to time), and accepted records management practice.

Sec. 2.110. Designation of records management officer. The mayor shall designate an individual, employed by the city, to serve as records management officer for the city. In the event of the resignation, retirement, dismissal, or removal by action of the mayor of the individual so designated, the mayor shall promptly designate another individual to serve as records management officer. The individual designated as records management officer shall file his name with the director and librarian within 30 days of the date of designation, as provided by law. **State law reference**-Designation of records management officer, *Tex. Loc. Gov't. Code § 203..025.*

Sec. 2.111. Establishment of records management committee; duties. A records management committee consisting of the mayor, the city secretary and the records management officer if other than the city secretary is hereby established. The committee shall:

(a) Assist the records management officer in the development of policies and procedures governing the records management program;

(b) Review the performance of the program on a regular basis and propose changes and improvements if needed;

(c) Review and approve records control schedules submitted by the records management officer;

(d) Give final approval to the destruction of records in accordance with approved records control schedules; and

(e) Actively support and promote the records management program throughout the city.

Sec. 2.112. Records management plan to be developed; approval of plan; authority of plan.

(a) The records management committee shall develop a records management plan for the city for submission to the city. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of record keeping, to adequately protect the essential records of the city, and to properly preserve those records of the city that are of historical value. The plan must be designed to enable the records management officer to carry out his duties prescribed by state law and this article effectively.

(b) Once approved by the city, the records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of the city, and records shall be created, maintained, stored, microfilmed or disposed of in accordance with the plan.

(c) State law relating to the duties, other responsibilities, or record keeping requirements of a department head do not exempt the department head or the records under the department head's care from the application of this article and the records management plan adopted under it and may not be used by the department head as a basis for refusal to participate in the records management program of the city. **State law references**-Custodians of records required to participate in records management program, *Tex. Loc. Gov't. Code § 203.022(b); records management program to be established, Tex. Loc. Gov't. Code § 203.026*.

Sec. 2.113. Duties of records management officer. In addition to other duties assigned in this article, the records management officer shall:

(a) Administer the records management program and provide assistance to department heads in its implementation;

(b) Plan, formulate, and prescribe records disposition policies, systems, standards, and procedures;

(c) In cooperation with department heads, identify essential records and establish a disaster plan for each city office and department to ensure maximum availability of the records in order to reestablish operations quickly and with minimum disruption and expense;

(d) Develop procedures to ensure the permanent preservation of the historically valuable records of the city;

(e) Establish standards for filing and storage equipment and for record keeping supplies;

(f) Study the feasibility of and, if appropriate, establish a uniform filing system and a forms design and control system for the city;

(g) Provide records management advice and assistance to all city departments by preparation of manuals of procedure and policy and by onsite consultation;

(h) Monitor records retention schedules and administrative rules issued by the state library and archives commission to determine if the records management program and the city records control schedules are in compliance with state regulation;

(i) Disseminate to the council and department heads information concerning state laws and administrative rules relating to local government records;

(j) Instruct records liaison officers and other personnel in policies and procedures of the records management plan and their duties in the records management program;

(k) Direct records liaison officers or other personnel in the conduct of records inventories in preparation for the development of records control schedules, as required by state law and this article;

(l) Ensure that the maintenance, preservation, microfilming, destruction, or other disposition of the city is carried out in accordance with the policies and procedures of the records management program and the requirements of state law;

(m)Maintain records on the volume of records destroyed under approved records control schedules, the volume of records microfilmed or stored electronically, and the estimated cost and space savings as a result of such disposal or disposition;

(n) Report annually to the city council on the implementation of the records management plan in each department of the city, including summaries of the statistical and fiscal data compiled under subsection (m) of this section; and

(o) Bring to the attention of the city council noncompliance by department heads or other city personnel with the policies and procedures of the records management program or the Local Government Records Act (*Tex. Loc. Gov't. Code ch. 201 et seq*., as amended from time to time).
State law reference-Duties of records management officer, *Tex. Loc. Gov't. Code § 203.023.*

Sec. 2.114. Duties and responsibilities department heads. In addition to other duties assigned in this article, department heads shall: (1) Cooperate with the records management officer in carrying out the policies and procedures established in the city for the efficient and economical management of records and in carrying out the requirements of this article; (2) Adequately document the transaction of government business and the services, programs, and duties for which the department head and his staff are responsible; and (3) Maintain the records in his care 2:7 and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the records management program of the city and the requirements of this article.

Sec. 2.115. Records liaison officers-Designation. Each department head shall designate a member of his staff to serve as records liaison officer for the implementation of the records management program in the department. If the records management officer determines that in the best interests of the records management program more than one records liaison officer should be designated for a department, the department head shall designate the number of records liaison officers specified by the records management officer. Persons designated as records liaison officers shall be thoroughly familiar with all the records created and maintained by the department and shall have full access to all records of the city maintained by the department. In the event of the resignation, retirement, dismissal, or removal by action of the department head of a person designated as a records liaison officer the department head shall promptly designate another person to fill the vacancy. A department head may serve as records liaison officer for his department.

Sec. 2.116. Same-Duties and responsibilities. In addition to other duties assigned in this article, records liaison officers shall: (1) Conduct or supervise the conduct of inventories of the records of the department in preparation for the development of records control schedules; (2) In cooperation with the records management officer coordinate and implement the policies and procedures of the records management program in their departments; and (3) Disseminate information to department staff concerning the records management program.

Sec. 2.117. Records control schedules-Development; approval; filing with state.

(a) The records management officer, in cooperation with department heads and records liaison officers, shall prepare records controls schedules on a department by department basis listing all records created or received by the department and the retention period for each records. Records control schedule shall also contain such other information regarding the disposition of city records, as the records management plan may require.

(b) Each records control schedule shall be monitored and amended as needed by the records management officer on a regular basis to ensure that it is in compliance with records retention schedules issued by the state, and that it continues to reflect the record keeping procedures and needs of the department and the records management program of the city.

(c) Before its adoption, a records control schedule or amended schedule for a department must be approved by the department head and the members of the records management committee.

(d) Before its adoption, a records control schedule must be submitted to and accepted for filing by the director and librarian as provided by state law. If a schedule is not accepted for filing, the schedule shall be amended to make it acceptable for filing. The records management officer shall submit the records control schedules to the director and librarian. **State law references**-Records control schedules, *Tex. Loc. Gov't. Code § 203.041 et seq*.; records retention schedules, *Tex. Gov't. Code § 441.158*.

Sec. 2.118. Same-Implementation; destruction of records under schedule.

(a) A records control schedule for a department that has been approved and adopted under section 2.112 shall be implemented by department heads and records liaison officers according to the policies and procedures of the records management plan.

(b) A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending lawsuit, or the department head requests, in writing, to the records management committee that the record is retained for an additional period.

(c) Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained by the records management officer from the records management committee. **State law references**-Retention periods, *Tex. Loc. Gov't. Code § 203.042.*

Sec. 2.119. Destruction of unscheduled records. A record that has not yet been listed on an approved records control schedule must be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule, and the records management officer has submitted to and received back from the director and librarian an approved destruction authorization request.

Sec. 2.120. Records center. A records center, developed pursuant to the plan required by section 2.112, shall be under the direct control and supervision of the records management officer. Policies and procedures regulating the operations and use of the records center shall be contained in the records management plan development under section 2.112.

Sec. 2.121. Electronic Storage. Unless a records storage program in a department is specifically exempted by order of the city council, all archived permanent records will be centralized and under the direct supervision of the records management officer. The records management plan will establish policies and procedures for the electronic storage of city records, including policies to ensure that all computer disk and CD Rom storage is done in accordance with standards and procedures for the storage of local government records in rules of the state library and archives commission. The plan will also establish criteria for determining the eligibility of records for microfilming, and protocols for ensuring that a microfilming program that is exempted from the centralized operations is, nevertheless, subject to periodic review by the records management

officer as to the cost-effectiveness, administrative efficiency, and compliance with commission rules. **State law references**-Microfilming records, *Loc. Gov't. Code, Chapt. 204*.

Sec. 2.122 through 2.140. Reserved

ARTICLE V. CLAIMS AGAINST CITY

Sec. 2.141. Notification requirements.

(a) Before the City shall be liable in any suit, including suits for damages, injury or destruction to property of any kind or nature or for damages, torts or injuries to persons of any kind or nature, in the event the injury results in death or injuries to another, the person or persons who may have a cause of action under the law by reason of such death or injury, shall, within ninety (90) days or for good cause shown within six (6) months from the date the damage or injury was received, serve written notice upon the Mayor and City Council which includes all of the following information:

(1) The date and time when the injury or damage occurred and the location of the incident.

(2) The nature of the damage or injury sustained.

(3) The apparent extent of the damage or injury sustained.

(4) A specific and detailed statement of the facts of the incident and under what circumstances the damage or injury occurred.

(5) The amount for which each claimant will settle.

(6) The actual place of residence of each claimant by street, number, city and state on the date the claim is presented and the actual residence of such claimant for the six months immediately preceding the incident.

(7) In the case of personal injury, tort claims, or death, the names and addresses of all persons who, according to the knowledge or information of the claimant, witnessed the happening of the injury or any part thereof and the names of the doctors, if any, to whose care the injured person is committed.

(8) In the case of property damage, the location of the damaged property at the time the claim was submitted along with the names and addresses of all persons who witnessed the incident or any part thereof or who have relevant information. (*Ord. 98-1014-4, passed 10-14-98; Amend Ord. 99-0811-6, passed 08-11-99*)

(b) The notice requirements in subsection (a) of this section do not apply if the city has actual notice that death has occurred, that the claimant has received some injury, or that the claimant's property has been damaged. **State law reference**-Notice of claim, *Civ. Prac. & Rem. § 101.101*.

Sec. 2.142. Institution and maintenance of suit; requirements. No suit of any nature whatsoever shall be instituted or maintained against the City unless the plaintiff(s) therein shall ever prove that prior to the filing of the original petition the plaintiff(s) complied with the notification requirements set forth herein and did thereby request from the City Council the redress, satisfaction, compensation, or relief demanded in such suit, and that the same was by vote of the City Council refused. *(Ord. 98-1014-4, passed 10-14-98; Amend Ord. 99-0811-6, passed 08-11-99)*

Sec. 2.143. Effectuation of notice; service. All notices required herein must be served upon the Mayor and the City Council by certified mail or by personally serving said persons. All such notices shall be effective only when actually received. The claimant must prove that service upon the appropriate persons was perfected as herein required. *(Ord. 98-1014-4, passed 10-14-98; Amend Ord. 99-0811-6, passed 08-11-99)*

Sec. 2.144. Authority to waive article provisions not provided. Neither the mayor, an alderman, or any other officer or employee of the city shall have the authority to waive any of the provisions of this article. No person may waive the notification requirements established herein. Actual knowledge of the incident shall not constitute a waiver of the requirement of a written notification and service of such notice. *(Ord. 98-1014-4, passed 10-14-98; Amend Ord. 99-0811-6, passed 08-11-99)*

Sec. 2.145. Swearing to; verification of notice. The written notice required under this article shall be sworn to by the person claiming the damage or injuries or by someone authorized by him to do so on his behalf. Failure to swear to the notice, as required in this section, shall not render the notice fatally defective, but failure to so verify the notice may be considered by the city council as a factor relating to the truth of the allegations and to the weight to be given to the allegations contained therein. *(Ord. 98-1014-4, passed 10-14-98)*

Sec. 2.146. Failure to notify. Failure to notify the Mayor and City Council within the time and manner provided herein shall exonerate, excuse and exempt the City from any liability whatsoever. *(Ord. 98-1014-4, passed 10-14-98; Amend Ord. 99-0811-6, passed 08-11-99)*

Sec. 2.147—2.155. Reserved.

ARTICLE VI. INVESTMENT POLICY

Sec. 2.156. Adoption. This article amends, established and adopts the authorized and official investment policy of the city. Such investment policy shall be as set forth in section 2.157 of this article and, for the purposes of administrative efficiency and use, section 2.157 may be excerpted and placed in any manuals, reports or documents as the "City of Lexington, Texas Investment Policy."

Sec. 2.157. Requirements. The funds and financial resources of the city shall be managed and invested in conformance with the provisions and requirements of the Public Funds Investment Act, *Ch. 2256, Texas Government Code*; provided that, where the requirements of this policy are more restrictive, the terms, provisions and requirements of this investment policy shall control.

Sec. 2.158. Scope. This investment policy applies to all financial assets of the city, and includes all funds listed as follows: (1) General Fund; (2) Special revenue funds; (3) Debt service funds; (4) Enterprise funds; (5) Internal service funds; (6) Trust and agency funds.

Sec. 2.159. Statement of cash management philosophy. The city shall maintain a comprehensive cash management program, to include the effective collection of all accounts receivable, the prompt deposit of receipts to the city's bank accounts, the payment of obligations so as to comply with state law and in accord with vendor invoices, and the prudent investment of idle funds in accord with this policy.

Sec. 2.160. Objectives. The city's investment program shall be conducted so as to accomplish the following objectives, listed in priority order: (1) Safety of the principal invested; (2) Availability of sufficient cash to pay obligations of the city when due; (3) Provide for diversification as appropriate given the total funds invested; (4) Investment of idle cash at the highest possible rate of return, consistent with state and local laws and the objectives listed above.

Sec. 2.161. Delegation of authority. The city treasurer is responsible for overall management of the city's investment program and is designated as the city's investment officer. Accordingly, the city treasurer is responsible for day-to-day administration of the investment program and for the duties listed below: (1) Maintain current information as to available cash balances in city accounts, and as to the amount of idle cash available for investment. (2) Make investments in accord with this policy. (3) Ensure that all investments are adequately secured.

Sec. 2.162. Prudence. Investments shall be made with judgment and care, under prevailing circumstances that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs. not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. investment of funds shall be governed by the following investment objectives, in order of priority: (1) Preservation and safety of principal; (2) Liquidity; and (3) Yield.

Sec. 2.163. Authorized investments.

(a) The funds available for investment in any fund of the city may be invested in the following: (1) U.S. Treasury Bills, notes or bonds which are guaranteed as to principal and interest by the full faith and credit of the United states of America; (2) Collateralized or fully insured certificates of deposit at FDIC insured banks in the state, consistent with provisions of the city's current bank depository agreement; (3) Direct obligations of the state or its agencies; and (4) Other obligations which are unconditionally guaranteed or insured by the state or the United States of America.

(b) Provided that no security shall be purchased from any person who has not delivered the city an instrument in substantially the form required by *Texas Government Code.§ 2256.005(k).*

Sec. 2.164. Maximum maturity.

(a) No individual investment will be made for longer than a 12-month period, except with the prior approval of the city council.

(b) The maximum average dollar-weighted maturity allowed for pooled investments, based on the stated maturity date for the portfolio, shall not exceed 60 days.

Sec. 2.165. Qualifying institutions. Investments may be made with or through the following institutions: (1) Federally insured banks located in the state; (2) Primary government security dealers reporting to the market reports division of the Federal Reserve Bank of New York; and (3) Local government investment pools.

Sec. 2.166. Collateralization and safekeeping. The city will accept as collateral for its certificates of deposit and other evidence of deposit the following securities: (1) FDIC coverage; (2) U.S. Treasury Bills, notes or bonds; (3) State bonds; (4) Other obligations of the U.S. or its agencies and instrumentalities; and (5) Bond issued by other state governmental entities (city, county, school, special districts), with a remaining maturity of 20 years or less. Securities pledged as collateral must be retained in a third party bank in the state and city shall be provided the original safekeeping receipt on each pledged security. The mayor must approve release of collateral in writing prior to its removal from the safekeeping account. The financial institution(s) with which the city invests and/or maintains other deposits shall provide quarterly, and as requested by the city, a listing of the collateral pledged to the city marked to current market prices. The listing shall include at a minimum, total pledged securities itemized by:

(a) Name, type and description of the security; Safekeeping receipt number.

(b) Par value; Current market value; Maturity date.

Sec. 2.167. Diversification. The city's investments shall be diversified to eliminate the risk of loss resulting from over concentration of assets in a specific maturity, a specific issuer or a specific class of securities. The following general constraints shall apply: Maturities shall be staggered to avoid undue concentration of assets in a specific maturity sector and maturities selected shall provide for stability of income and reasonable liquidity.

Sec. 2.168. Reports and review.

(a) The city treasurer shall prepare and submit to the city council each calendar quarter, a summary report showing a list of investments by city fund, the market value of each such investment, the total value of all investments and cash on hand for each such fund, the annualized return for such fund for the previous calendar quarter and the projected return for the then current calendar quarter for each city fund.

(b) The city treasurer shall further schedule and cause the city council to review the investment policy of the city during the last calendar quarter of each calendar year.

(c) The mayor and the city treasurer shall cause a compliance audit of management controls on the investments and adherence to this investment policy.

Sec. 2.169. Continuing education and training. The city treasurer shall become and remain familiar with the requirements of *Texas Government Code, Ch. 2256*; and advise and consult with the officers and governing body of the city for the purpose of assuring the city's compliance with this investment policy and *Ch. 2256*, and to assure that the officers and councilmembers of the city receive the training, if any, required by *Ch. 2256*.

Chapters 3 through 5 Reserved

Chapter 6. Alcoholic Beverages[8]

Chapter 6. ALCOHOLIC BEVERAGES

Sec. 6.1. Definitions. For the purpose of this chapter, all definitions of words, terms, and phases set forth in the Texas Alcoholic Beverage Code, as amended from time to time, are hereby adopted and made a part of this chapter. **Cross reference**-Definitions generally, § 1.2. **State law reference**-Definitions, *Alcoholic Beverage Code § 1.04*.

Sec. 6.2. Adoption of state law. This chapter is passed pursuant to and is referable to the Texas Alcoholic Beverage Code, and the provisions of such code are hereby adopted insofar as the same are applicable, and shall govern the administration and enforcement of this chapter.

Secs. 6.3 – 6.4. Reserved.

Sec. 6.5. Location restrictions.

(a) It shall be unlawful to sell any form of alcoholic beverage within 300 feet of any church, hospital, school or other educational institution.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the school or other educational institution shall be from the nearest property line of the public school to the nearest doorway by which the public may enter the place of business, along street lines and in direct line across intersections.

(c) Mixed beverage sales shall be permitted on properties suitable for a commercial use.

[8] **Cross references**-Businesses, ch. 26; traffic and vehicles, ch. 106. **State law references**-Local regulation of alcoholic beverages, *V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36, 108.55, 109.31 et seq*.; local option elections, *V.T.C.A., Alcoholic Beverage Code § 251.01 et seq.*

(d) Package stores, to the extent otherwise permitted by law, shall be permitted only on properties the Council finds to be commercial property. **State law reference**-Sales near school, church or hospital, *Al. Bev. Code § 109.33*.

Sec. 6.6. Late hours sale; permit required. It shall be unlawful for any person to sell alcoholic beverages or offer the same for sale, except where a private club late hours permit has been obtained: (1) On Sunday at any time between the hours of 1:00 a.m. and 12: noon; (2) On any day except Sunday between the hours of 12:00 midnight and 7:00 a.m. **State law reference**-Hours, *Al. Bev. Code § 105*.

Sec. 6.7. Consumption in public place; prohibited hours. It shall be unlawful for any person to consume any alcoholic beverage in any public place, for any person to possess any alcoholic beverage in any public place for the purpose of consuming the same in such public place, at any time on Sunday between the hours of 1:15 a.m. and 12:00 noon, and on all other days at any time between the hours of 12:15 a.m. and 7:00 a.m. **State law reference**-Hours, *Al. Bev. Code § 105.06*

Sec. 6.8. Consumption and service on private club premises; prohibited hours. It shall be unlawful for any private club to cause, permit or allow any person to consume or be served any alcoholic beverage on the club premises at any time on Sunday between the hours of 1:15 am. and 12:00 noon, or any other day at any time between the hours of 12:15 a.m. and 7:00 a.m. **State law reference**-Penalty, *Al. Bev. Code § 105*.

Chapters 7 through 9 Reserved.

Chapter 10. Amusements and Entertainment[9]

Article I. In General

Sec. 10.1-10.25. Reserved

Article II. Carnivals and Related Amusements

Chapter 10. AMUSEMENTS AND ENTERTAINMENT

Article I. IN GENERAL

Sec. 10.1-10.25 Reserved

Article II. CARNIVALS AND RELATED AMUSEMENTS

Sec. 10.26. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Carnival means the operation or exhibition of any aggregation of riding or skill devices (not constituting an amusement park) side shows, concessions or other features, ordinarily operated or exhibited at what is commonly known and accepted as a traveling or itinerant carnival show.

Sec. 10.27. Penalty for violation of article. Any person who shall violate any of the provisions of this article, upon conviction, shall be subject to a fine in an amount not to exceed $2,000, but not less than $50.00. Any person who shall aid, abet or assist in the violation of any of the provisions of this article, upon conviction, shall be fined not less than $50.00.

Sec. 10.28. Operational restrictions.

(a) ***Permit required***. It shall be unlawful for any person to operate or exhibit, or to assist in the operation or exhibition, within the city limits, any circus, wild west show, dramatic or theatrical show, medicine show, vaudeville show, minstrel show, moving picture show or any carnival, merry-go-round, Ferris wheel, whip, skyride, hobby-horse, bat-a-ball, tilt-a-whirl, pony ride, kiddy train, mechanical bull or other riding or skill device of such character, with or without name, where any such operation or exhibition is given in or under a tent, awning, canopy, enclosure within a

[9] **State law references** – Houses of amusement, *art. 178 et seq, Tex. Rev. Civ. Stat*; Theft of service, *Tex. Pen. Code, Sec. 31.04*.

temporary structure, outside of a building or in the open air without first obtaining a permit from the city building official's office.

(b) ***Term of permit.*** The term of any permit required by this article shall in no case be for a period longer than: (1) One day and one night in any one year in the case of a circus or wild west show; (2) Two weeks in any one year in the case of a dramatic or theatrical show; (3) One week in any one year in the case of a medicine show, vaudeville show, minstrel show, or moving picture show; and (4) One week in any one year, unless sponsored for compensation by one or more civic, charitable or other local organizations in which event, for a period of time no longer than two weeks in any one year, in the case of a carnival or other related outdoor amusement ride or skill device of such character.

(c) ***Permit fee***. A permit shall not be issued until the applicant pays to the city a permit fee of $25.00 per day of proposed operation.

(d) ***Revocation or suspension of permit***. The city building official may revoke or suspend the permit of any person holding a permit under this article, for good cause shown, after notice and hearing, Good cause shall include: (1) any material misrepresentation in the application for a permit or any fraud in its procurement; (2) any cause which would have prevented the granting of the permit in the first place; (3) misconduct of the permittee, such as the violation of any unlawful act prohibited by this article, or any other law involving honesty, good faith, responsibility or moral turpitude that directly relates to the duties and responsibilities of the permitted occupation; or (4) the violation of any of the conditions of the permit issued under this article.

(e) ***Games of chance***. No permit shall be issued to an operation in connection with which any game of chance is operated.

(f) ***Liability insurance***. Before any permit shall be issued for any operation permitted in this section, the applicant shall file with the city and thereafter keep in full force and effect for the term of the permitted operation, a policy of public liability insurance to be approved by the mayor and the city attorney. Such policy shall be performable in the city, insuring the public against any damage, loss or injury that may result from the operation of such permitted activity. **State law references**-Amusement Ride Safety Inspection and insurance Act, *Tex. Ins. Code, § 21.60*; Eligibility of persons with criminal backgrounds for licenses, *arts. 6252-13c and 6252-13d, Tex. Rev. Civ. Stat.*

Sec. 10.29. General regulations.

(a) Each ride or skill device shall be operated under the direct and full-time supervision and attendance of a person 18 years of age or older.

(b) No ride or skill device shall be operated or attended by a person who is intoxicated or who is believed to be under the influence of intoxicating liquors and/or drugs, prescription or otherwise.

(c) No permitted operation shall be operated in the city between the hours of 12:00 midnight and 8:00 a.m. on any day, or between the hours of 12:00 midnight and 1:00 p.m. on any Sunday.

(d) The permitted operator shall, on a continuing basis, police the general area of operation for litter and debris.

(e) At reasonable times, the permitted operator shall allow the mayor and/or his designated agent to conduct any onsite inspection that is deemed necessary to protect the health, safety and welfare of the public. The mayor and/or his designated agent is authorized to require the permitted operator to discontinue use of rides, skill devices and/or other attractions which may be found to be unsafe and/or to require the permitted operator to cordon off and make inaccessible areas within which an unsafe or unhealthy condition may exist. The permitted operator shall not allow the use of and/or any access to any ride, skill device or area which may have been found to be an immediate threat to the health, safety and welfare of the public until direct permission from the mayor and/or his designated agent has been obtained.

Chapters 11 through 13 Reserved

Chapter 14. Animals[10]

Article I. In General

Article II. Impoundment

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[10]**Cross references--Businesses, ch. 26; health and sanitation, ch. 54; disposal of dead animals, § 90-58; traffic and vehicles ,ch. 106. State law references--**Local Public Health Reorganization Act, Tex. Health and Safety Code § 121.001 et seq.; animals, Tex. Health and Safety Code § 821.001 et seq.; dangerous dogs, Tex. Health and Safety Code § 822.001 et seq.; Rabies Control Act of 1981, Tex. Health and Safety Code § 826.001 et seq.; livestock, Tex. Agriculture Code § 141.001 et seq.; permitting cattle or domestic turkeys to run at large in certain counties, Tex. Agriculture Code § 143.082; cruelty to animals, Tex. Penal Code § 42.09; dog fighting, Tex. Penal Code § 42.10; certain tax exemptions for charitable organizations, Tex. Tax Code § 11.18.

Chapter 14. ANIMALS

ARTICLE I. IN GENERAL

Sec. 14.01.001 Purpose and Intent. The purposes of this chapter are to promote the public health, safety and general welfare of the citizens of the city and to ensure the humane treatment and welfare of animals by regulating the care and control of animals within the city.

Sec. 14.01.002 Enforcement Officers. The animal control officer, health authority, or any police officer of the city shall have the authority to enforce any animal regulations of the city and to impound and dispose of any animals found in violation of any regulation in accordance with the terms set out herein. This section specifically includes the authority to issue citations.

Sec. 14.01.003 Definitions. When used in this chapter, the following words, terms and phrases and their derivations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal - Any live creature, both domestic and wild, except humans. "Animal" includes fowl, fish, and reptiles.

Animal nuisance - Any nuisance arising out of the keeping, maintaining or owning or, or failure to exercise control of, an animal.

Animal Shelter - Any facility operated by the city for the temporary care, confinement and detention of animals and for the humane euthanasia and other disposition of animals. The term shall also include any private facility authorized by the city to impound, confine, detain, care for or destroy any animal.

At Large - An animal is off the premises of the owner, and is not on a leash or other restraint under the immediate control of a person physically capable of restraining the animal or not restrained securely within an enclosure or fence capable of fully and totally securing the animal.

Cat - Any member of the family of Felis domestica.

Chief of Police - The chief of police of the city, or his or her designee.

Cruelty - Any act or omission whereby unjustifiable physical pain, suffering or death of an animal is caused or permitted, including failure to provide proper drink, air, space, shelter, a sanitary and safe living environment, veterinary care or nutritious food in sufficient quantity.

Dangerous Animal – An animal that has made an unprovoked attack on a human being or another animal. A dangerous animal does not include guard or attack dogs as defined by this section, as long as such guard or attack dogs are restrained and confined in compliance with this chapter.

Disposition - Adoption, quarantine, voluntary or involuntary custodianship or placement, or euthanasia humanely administered to an animal. "Disposition" includes placement or sale of an animal to the general public, or removal of an animal from any pet shop or other location.

Dog - Any member of the family Canis familaris.

Domestic animal - Includes livestock, caged or penned fowl, pigeons, and normal household pets, such as, but not limited to dogs, cats, cockatiels, ferrets, hamsters, guinea pigs, gerbils, rabbits, fish, or small nonpoisonous reptiles or nonpoisonous snakes.

Exotic or wild animal - Any live monkey, alligator, crocodile, cayman, raccoon, opossum, skunk, fox, wolf, sea mammal, bear, poisonous snake, nonhuman primate, prairie dogs, African servals, member of the feline species other than domestic cat, member of the canine species other than domestic dog, or any other animal that would require a standard of care and control greater than that required for customary household pets sold by commercial pet shops or livestock. The term "exotic or wild animal" does not include domestic cats (excluding hybrids with ocelots or margays), domestic dogs (excluding hybrids with wolves, coyotes or jackals), farm animals, rodents and captive-bred species of common cage birds.

Fowl - Any goose, pheasant, chicken, prairie chicken, guinea, duck, turkey and other normally undomesticated fowl.

Guard or attack dog - A dog trained to attack on command or to protect persons or property, and who will cease to attack upon command.

Impoundment - The taking into custody of an animal by a police officer, animal control officer or any other authorized representative thereof.

Livestock - Any horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jenny, llama, all species of sheep, all species of goats, all species of cattle or an emu, ostrich or rhea. For purposes of this chapter, the term "livestock" does not include fowl, rabbits or hares.

Muzzle - A device constructed of strong, soft material designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

Owner - Any person or persons, firm, association, or corporation having temporary or permanent custody of, sheltering or having charge of, harboring, exercising control over, or having property rights to any animal covered by this chapter. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days.

Public nuisance animal - Any animal that unreasonably annoys humans, endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property. The term "public nuisance" shall include, but not be limited to:

(1) Any animal that is found running at large more than three times in a twelve month period;

(2) Any dog in a park or public recreation area unless the dog is controlled by leash or similar restraint;

(3) Any animal that damages, soils, defiles, or defecates on any property other than that of its owner or unless allowed by the owner of the property.

(4) Any animal that makes disturbing noises, including but not limited to howling, barking, whining or other utterances that lasts more than fifteen minutes; or causes an unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored. An animal shall be presumed to be a nuisance under this section if the animal owner has been notified by the person's neighbors, the animal control officer or any police officer of the disturbance and shall have refused or failed for a period of 24 hours to correct the disturbance and prevent its recurrence.

(5) Any animal that causes fouling of the air by noxious or offensive odors and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;

(6) Any animal in heat that is not confined so as to prevent attraction or contact with other animals;

(7) Any animal, whether or not on the property of its owner, that, without provocation, molests, attacks, or otherwise interfered with the freedom of movement of person in a public right-of-way; and

(8) Any animal that attacks a domestic animal.

Rooster - An adult make of the domestic fowl.

Sanitary - A condition of good order and cleanliness to minimize the possibility of disease transmission.

Under restraint - An animal is secured by a leash, or securely enclosed within the real property limits of the owner's premises.

Sec. 14.01.004 Enforcement

(a) **Interference with enforcement officers**. It shall be unlawful for any person to interfere with any enforcement officer in the performance of his duties.

(b) **Self-defense.** Upon attack by an animal or reasonable belief of imminent attack by an animal, an enforcement officer can defend himself or a complainant, at his discretion, taking such means as he deems necessary in that situation.

(c) **Entry on Private Property in pursuit of an animal.** For purposes of discharging the duties imposed by this chapter, and to enforce the same, an enforcement officer may enter upon private property to the fullest extent permitted by law, which shall include but not be limited to entry upon private property when in pursuit of an animal which he has reason to believe is subject to impoundment pursuant to the provisions of this chapter or other applicable laws. An enforcement officer shall have the right to pursue and apprehend an animal that is at large by entering onto private property without first requesting permission from the property owner or without obtaining a search warrant.

(d) **Entry on private property for purpose of inspection.** Whenever an enforcement officer has reasonable cause to believe that there exists in any building or structure or upon any premises any violations of this chapter or other applicable law, the officer is hereby authorized to enter such property, to the extent permitted by law, at any reasonable time, and to perform any duty imposed upon the officer by this chapter or other applicable law; provided that, if such property be occupied, the officer shall first present proper credentials to the occupant and request to enter, explaining the reason therefore, and obtain permission from said occupant.

(e) **Immediate Inspection Access.** Notwithstanding the foregoing, if the officer, has reasonable cause to believe that the keeping or the maintaining of any animal is so hazardous, unsafe or dangerous as to require immediate inspection to safeguard the animal or the public health or safety, the officer shall have the right to immediately enter and make such inspection, whether or not permission to inspect has been obtained. If the property is occupied, the officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefore and the purpose of inspection.

(f) **Inspection Warrant.** Whenever an enforcement officer is denied admission to inspect any premises under this chapter and the officer cannot determine whether violations exist on the premises, the officer is authorized to request a warrant for the inspection of the premises from the municipal judge, a magistrate or justice court to enter and inspect the premises.

Sec. 14.01.005 Violations. It shall be a violation of this chapter to:

(a) Fail to comply with any provision of this chapter;

(b) Fail to comply with any lawful order of an animal control officer, an enforcement officer, or a police officer unless such order is lawfully stayed or reversed.

Sec. 14.01.006 Penalty.

(a) Any person who violates or fails to comply with any provision or provisions of this chapter shall be charged with a misdemeanor and upon conviction therefore shall be punished by a fine as provided in Section 1.6 of this Code; and any person who shall aid, abet or assist in the violation

of any provision of this chapter shall also be charged with a misdemeanor and upon conviction thereof shall be punished by a fine as provided for in Section 1.6 of this Code, or otherwise provided by ordinance.

(b) For any animal that has all of the necessary tags attached, the base fine amount shall be reduced by one-half the normal charge. The purpose being that owners can be contacted easily.

(c) Each day's violation shall constitute a separate offense.

Sec. 14.01.007 Nuisances. It shall be unlawful for any person to keep any animal on any property located within the corporate limits of the city when the keeping of such animal constitutes a public nuisance or menace to public health or safety.

Sec. 14.01.008 Keeping exotic or wild animal. It shall be unlawful for anyone to own, harbor, maintain, have in their possession, have on their premises or under their control or permit at large any exotic or wild animal without the written permission of the chief of police. Such permission shall be given only in limited temporary circumstances, such as circuses, animal auctions, etc.

Sec. 14.01.009 Limit on number of animals. It shall be unlawful for any person to keep animals within the city of such number that the animals constitute a public nuisance or menace to public health or safety or constitute cruelty to the animals. It shall be presumed to be unlawful to raise, own, or keep more than a total of four dogs and/or cats three months of age or older on any premises used for residential purposes.

Sec. 14.01.010 Livestock.

(a) **Keeping generally; number of animals; enclosures.** It shall be unlawful for any person to keep livestock within the corporate limits of the city unless the livestock is being kept in accordance with the following restrictions:

(1) Livestock shall be kept on a parcel of land at least 1/3 of an acre in size;

(2) There shall be no more than one unit (as defined below) of livestock for the first one-third acre of land. There shall be no more than one additional unit of livestock for each additional one-half acre of land in the same parcel. For the purpose of this subsection, units of livestock shall be defined as follows:

(i) The following types of livestock shall be counted as one head equals one unit horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jenny, burro, jennet, pony, llama, and all species of cattle.

(ii) The following types of livestock shall be counted as one head equals one-fourth of a unit: emu, ostrich, rhea, all species of sheep, and all species of goat.

(3) Livestock shall be enclosed with adequate fences or barriers that will prevent such livestock from damaging shrubbery or other property situated on adjacent property. Such fences or barriers shall be sufficient to prevent the livestock from escaping the enclosure.

(4) The owner keeping any livestock shall keep all barns, pens, stables, sheds or other enclosures in which such animals are confined in such a manner so as not to give off odors offensive to persons of ordinary sensibilities in the immediate vicinity, or to breed or attract flies, mosquitoes, or other noxious insects or rodents, or in any manner to endanger the public health, safety, or welfare or to create a public nuisance. All yards, barns, pens, stables, sheds or other enclosures in which livestock is confined shall be of a size to allow said animals sufficient space to move freely and not endanger the health, safety, or welfare of the animal or animals. Barns, stables, corrals, sheds, pens or other similar structures or enclosures where livestock may be housed, fed or confined shall not be located within 100 feet of any residence, business or commercial establishment (other than the animal owner's residence, business or commercial establishment).

(5) All feed inside the city limits shall be kept in rodent free containers.

(6) Subsections (1) through (4) shall not apply to a licensed veterinarian at the veterinarian's place of business.

(b) **Public Right of Way.** It shall be unlawful to tie or stake livestock on a public right-of-way.

(c) **Livestock at Large.** It shall be unlawful for any livestock to be at large off the property of the owner of the livestock. The owner of the livestock found to be at large shall be responsible for the offense and no culpable mental state is required.

(d) **Impoundment.** Animal enforcement officers are authorized to impound all livestock in violation of (a)(1) and (a)(2) above, subject to terms and conditions established throughout this chapter. Livestock will be held by a private contractor with the owner being responsible for all impound, transportation, boarding, feeding and any other expenses incurred in impounding the livestock. All fees and charges must be paid prior to release of the livestock.

(e) **Authority to tranquilize or destroy animals**. To insure the public safety and to avoid serious accidents, any livestock that is in danger of getting on a public roadway will be tranquilized if possible or in extreme cases destroyed by enforcement officers. If it is necessary to tranquilize or destroy livestock to prevent property damage or injuries, the city will not be liable for damages to owners of said livestock.

(f) **Swine.** It shall be unlawful and it is declared a nuisance for any person to own, keep or harbor swine at any location in the city, with the exception that hogs may be kept on the city public school grounds as are necessary for agricultural and educational purposes, and with the further exception

that those children participating in 4-H and FFA programs may be permitted to raise two (2) hogs each within the city limits for *4-H* and FFA purposes only.

Sec. 14.01.011 Fowl. The following regulations shall govern the keeping of fowl within the city:

(a) It shall be unlawful for any person owning chickens, turkey, ducks, geese, guineas, or other fowl to permit such fowl to run at large within the city limits.

(b) There shall be a minimum of five (5) square feet for each fowl kept in the city limits. An enclosure shall be provided on the premises which shall be no closer than one hundred feet (100') to any dwelling. The enclosure must be of such construction as will allow for ease in cleaning and airing and kept in such a manner as not to become unreasonably offensive to adjacent neighbors or the public. No more than 100 fowl may be maintained by any family or on any tract of land within the city limits.

Sec. 14.01.012 Keeping of Roosters.

(a) Notwithstanding the provisions of section 14.01.011 above permitting the keeping of fowl no person may own or keep a live rooster on any premises located within the city limits containing less than one acre of land, except as follows:

(1) The rooster is being raised for exhibition at a fair or livestock show, provided the owner or person keeping the rooster, if different from the owner, has given written notice to the enforcement officer of his or her intent to keep an raise the rooster for such period of time as is necessary to exhibit the rooster in a fair or livestock show, stating the location (address) where the rooster will be kept, the length of time the rooster will be kept at said location, the name and date of the fair or livestock show where the rooster will be exhibited; or

(2) The rooster is owned by a medical, educational, or research institution operating within the corporate limits of the city in compliance with all city ordinances and state and federal law; and the owner or person keeping the rooster, if different from the owner, has complied with the provisions of subsection (b) of this section.

(b) A person who owns or keeps a rooster within the corporate limits of the city in accordance with subsection (a) above commits an offense if he or she:

(1) Fails to confine the rooster at all times within an enclosure that is of sufficient height, width and strength to retain the rooster;

(2) Confines the rooster in an enclosure that is wholly or partially located less than 20 feet from any adjacent property line;

(3) Maintains the enclosure in which the rooster is confined in a manner that creates unreasonably offensive odors, fly breeding, or any other nuisance or condition that is injurious to the public health, safety or welfare; or

(4) Allows the rooster to violate the noise restrictions set out in this chapter.

Sec. 14.01.013 Animal Care.

(a) **Basic Care.** It shall be unlawful for the owner or custodian of any animal to refuse or fail to provide such animal with sufficient wholesome and nutritious food, potable water, veterinary care when needed to prevent suffering, grooming when lack thereof would adversely affect the health of the animal and humane care and treatment, or fail to provide adequate shelter. All pens, cages or other enclosures where animals are kept shall be securely built and maintained, be adequate in size for the kind and number of animals contained therein, contain adequate and appropriate bedding and be maintained in a sanitary condition; such enclosures shall be cleaned and maintained so as not to become offensive.

(b) **Animals in parked vehicles**. It shall be unlawful to leave any animal inside any standing or parked vehicle in such a way as to endanger the animal's health or safety. Any animal control officer or police officer is authorized to use reasonable force, including breaking of a side window to remove an animal from a vehicle whenever it appears the animal's health or safety is or soon will be endangered, and said neglected or endangered animal shall be impounded.

(c) **Abandonment.** It shall be unlawful for any owner or custodian of any animal to willfully abandon such animal on any street, road, highway or public place, or on private property when not in care of another person.

(d) **Unsupervised animals.** If an enforcement officer determines that an animal is without proper care because of the owner's absence, injury, illness, incarceration, or other voluntary or involuntary absence, the animal control officer may impound such animal until reclaimed by its owner. The owner is responsible for all costs associated with the impoundment and must pay all costs before the animal is released. If the owner does not reclaim the animal within 5 days from the date of impoundment, the animal shall become the property of the city.

(e) **Removal of pet excrement**. No person shall appear with a pet upon the public ways or within the public places or upon the property of another, absent that person's consent, without some means for the removal of the excrement; nor shall any person fail to remove any excrement deposited by such pet. This section shall not apply to a blind person while walking his guide dog.

(f) **License fee**. There is hereby fixed and assessed as a police regulation for the protection of the public health an annual license fee for each dog within the city. The fee shall be $7.00 each year per animal that has been spayed/neutered, and for each dog that has not been spayed/neutered the fee for the first year will be $25.00, and $15.00 annually thereafter for the same animal. The fee shall be payable by the owner or keeper of each and every dog that is more than four months of

age and kept in the city. The license shall run from April 1st of each year to April 1st of the following year, and any part of such year is deemed and considered the entire year.

(g) **Issuance and wearing of license tag.** It shall be the duty of the city secretary to provide suitable metal tags for said dogs, with a number thereon beginning at one (1) and running consecutively, which tags shall evidence the payment of the license fee and the registration of the dogs, and each person owning or keeping a dog within the limits of the city shall apply to the city secretary for a tag, and upon payment of said license fee and presentation of a certificate by a practicing veterinarian showing that said dog has a current rabies vaccination when making application for a license, the city secretary shall supply to each applicant therefore a tag suitable to be placed upon a collar around the dog's neck, and shall in a well-bound book kept for such purpose register the number of said tag, the name of the owner and his or her address, and a description of said dog, and no such license shall be issued unless the application is accompanied by such certificate. It shall be the duty of the owner of each dog to apply to said officer for such license, pay the fee for same and obtain a tag therefore, and to have and to keep said tag at all times during the year securely fastened around the neck of said dog, and the failure of the owner in this respect shall have the same effect as if no license had been paid upon said dog, and it shall be unlawful for any person to issue any counterfeit license tag upon said dog.

(h) **Lost license tags.** It shall be the duty of the owner or keeper of any dog to procure a duplicate tag from the city secretary in the event that the original tag is lost or destroyed, and the city secretary shall issue a duplicate tag upon application of any person who has complied with the provisions of this division and upon payment of the fee of $5.00.

(i) **Keeping unlicensed or unvaccinated dog**. It shall be unlawful for any person to keep any dog in the limits of the city for which the license herein provided has not been procured from the city secretary, and which has not been vaccinated for rabies or upon which the tag hereinabove provided for is not at all times fastened about the neck of such dog.

Sec. 14.01.014 Slaughtering animals in public view. The slaughtering of animals in public view within the city limits is hereby prohibited. Any slaughtering of animals shall be limited to private property within an enclosed area that is not in view of the public. Slaughtering an animal in public view in violation of this section shall be an offense and shall constitute a misdemeanor.

Sec. 14.01.015 Poisoning animals. It shall be unlawful for any person, except a licensed veterinarian for humanitarian purposes, to administer poison to any animal, or knowingly leave any poisonous substance of any kind or ground glass in any place with the intent to injure any animal. A substance, such as antifreeze, is considered poisonous even if it is not labeled "poison" if the substance is poisonous to animals. The provisions of this section are not applicable to licensed exterminators using poisons as part of a pest control program or the use of commercial insecticides and rodent baits used to control insects and wild rodents. If any person is found guilty of having violated any part of this section, any license or permit held by such person under this chapter shall be automatically revoked, in addition to possible criminal charges and fines.

Sec. 14.01.016 Vaccination and tag for dogs and cats.

(a) **Required**. It shall be unlawful for a dog or cat to be present in the city and not be vaccinated against rabies by a registered veterinarian duly licensed to practice by the State Board of Veterinary Medical Examiners or otherwise inoculated against rabies in compliance with *Rule 169.29, Texas Administrative Code (25 TAC 169.29).* Every owner of a dog or cat shall furnish proof of rabies vaccination upon request by an animal control officer by presentation upon demand of the vaccination tag and a current certificate of anti-rabies vaccination. The certificate must show the name and address of the owner of said dog or cat containing a description of the color, breed, sex and weight of said dog or cat together with the kind and amount of vaccine used and the date of administration, and certifying that said dog or cat was so vaccinated and immunized against rabies. Failure to furnish proof upon request shall create a presumption that the animal has not been vaccinated for rabies. In addition to the owner maintaining the certificate of vaccination, the owner shall place on the dog or cat a metal tag, on one side of which shall be stamped the words "rabies vaccine administered" or words of similar import, the date of the vaccination, and an identification number for the animal.

(b) **Tag Secured on the Animal**. The tag shall at all times be securely attached to a collar around the neck of the dog or cat. An animal found in violation of this section for not wearing a vaccination tag creates a presumption that the animal has not been vaccinated against rabies. The owner of the animal shall be responsible for the offense and no culpable mental state is required.

(c) **Proof of sterilization**. Any owner claiming that his dog or cat has been spayed or neutered must show to the satisfaction of the animal control officer that such operation has been performed.

(d) **Reporting of suspected rabies**. Any person having knowledge of the existence of any animal known to have been or suspected of being, exposed to rabies of having knowledge of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies must immediately report such knowledge or incident to the animal control officer, or any police officer, and in no case longer than twenty-four hours from the time of the incident.

(e) **Authority to quarantine**. The animal control officer or any police officer shall have the authority to order the quarantine of animals responsible for bite incidents or suspected of having any zoonotic disease considered to be a hazard to the human population or other animals.

(d) **Animals subject to quarantine**.[11]

(1) When a dog or cat which has bitten or scratched a human or attacked another animal has been identified, the owner will be required to produce the animal for ten (10) days confinement to determine whether such dog or cat has been exposed to rabies. Any

[11] **State law references** - Authority of municipalities to establish rabies control programs, *V.T.C.A., Health and Safety Code, sec. 826.015*; rabies vaccinations, *V.T.C.A., Health and Safety Code, sec. 826.021 et seq.;* registration of dogs and cats, *V.T.C.A., Health and Safety Code, sec. 826.031 et seq.*

unclaimed animal may be destroyed for rabies diagnosis prior to the end of this observation period. The dog or cat may be released from quarantine if a veterinarian determines that the animal does not show the clinical signs of rabies, provided the owner has paid all reasonable costs associated with the quarantine. Refusal to produce such animal is a misdemeanor and each day of such refusal constitutes a separate and individual violation.

(2) No animal which has a high probability of transmitting rabies, including skunks, bats, foxes and raccoons, will be placed in quarantine for observation. All such animals involved in biting incidents will be humanely killed in such a manner that the brain is not mutilated. The brain shall be submitted to a laboratory certified by the department of state health services for rabies diagnosis.

(3) The animal enforcement officer may require an animal which has inflicted multiple bite wounds, punctures, or lacerations to the face, head or neck of a person to be humanely kicked and the brain tested for rabies.

(g) **Disposition of animals exposed to rabies.**

(1) Vaccinated animals which have been bitten by or otherwise significantly exposed to a rabid animal should be humanely destroyed or if sufficient justification for preserving the animal exists, the exposed vaccinated animal should be immediately given a booster rabies vaccination and placed in strict isolation for forty-five days. Unvaccinated animals shall be immediately given a rabies vaccination and placed in strict isolation for 90 days and given booster vaccinations during the third and eighth weeks of isolation. If the unvaccinated animal is under three months of age at the time of the second vaccination, an additional booster should be given when the animal reaches three months of age.

(2) If a veterinarian determines that a quarantined animal does not show the clinical signs of rabies, it may be released to the owner prior to or upon the expiration of the quarantine period, provided the owner has paid all the reasonable costs of such quarantine and any veterinarian bills. However, if the quarantined animal shows the clinical signs of rabies, the animal shall be humanely destroyed and its head or brain submitted to the nearest laboratory certified by the department of state health services for rabies diagnosis for testing.

(3) Wild or exotic animals. No wild or exotic animal will be placed in quarantine. All wild or exotic animals will be humanely destroyed in such a manner that the brain is not mutilated. The brain shall be submitted to a laboratory certified by the department of state health services for rabies diagnosis.

Sec. 14.01.017 Restraint and confinement generally.[12]

(a) **Animals at large prohibited**. It shall be unlawful for any animal to be at large. An owner of an animal found to be at large shall be responsible for the offense and no culpable mental state is required. Any animal found to be at large and impounded more than three times in a one-month period or more than four times in a one-year period shall be spayed or neutered prior to release to the owner. The owner is responsible for any and all fees involved with the spay or neuter.

(b) **Cats**. Although cats shall be exempt from any leash requirements, it shall be unlawful for any owner of a cat to allow said cat to stray onto the property of anyone except the owner. Any cat found straying onto the property of anyone except the owner may be deemed a public nuisance and may be subject to impoundment.

(c) Tying or staking animal. Animals shall not be inhumanely chained, tied, fastened or otherwise tethered to dog houses, trees, stakes, poles, fences, walls, or any other stationary objects outdoors or indoors as a means of confinement. The owner of the animal or the person actually tying or staking the animal shall be responsible for the offense. If an animal is confined on a tether which is not attached to a stationary object as described above, the following conditions must be met:

(1) Only one animal may be tethered to each cable run.

(2) The tether must be attached to a properly fitting collar or harness worn by the animal, with enough room between the collar and the animal's throat through which two fingers may fit. Choke collars and pinch collars are prohibited for purposes of tethering an animal to a cable run.

(3) There must be a swivel on at least one end of the tether to minimize tangling of the tether.

(4) The tether and cable run must be of adequate size and strength to effectively restrain the animal and must weigh no more than 1/18 of the animal's body weight.

(5) The cable run must be at least fifteen (15) feet in length and mounted to either a swivel tie-out or to a cable/trolley/pulley system.

(6) The length of the tether from the cable run to the animal's collar should allow access to the maximum available exercise area and should allow continuous access to water, food, shelter, shade and a dry area. The animal must be able to have space to urinate and defecate in a separate area from the area where it must eat, drink or lie down. The tether system must allow the animal to be able to escape harm. The tether system must

[12] **State law references** - Restraint, impoundment and disposition of dogs and cats, *V.T.C.A., Health and Safety Code, sec. 826.033*; cruelty, *V.T.C.A., Penal Code, sec. 42.09*; quarantine of animals, *V.T.C.A., Health and Safety Code, sec. 826.042*.

be of appropriate configuration to confine the animal to the owner's property, to prevent the tether from extending over an object or an edge that could result in injury or strangulation of the animal, and to prevent the tether from becoming entangled with other objects or animals.

(7) Any animal tethered as described in subsections (1) through (6) above must be removed from the tether at least once a day for adequate exercise.

(d) **Restraint of dogs**. Any dog, while on a street, sidewalk, or public way or in any park, public square, or other public space, shall be restrained and secured by a leash or chain of sufficient tensile strength to restrain the particular dog. Said leash or chain shall not be longer than twenty-five (25) feet in a public park and shall not be longer than six (6) feet on or in any other place. An animal that is not restrained in compliance with this subsection shall be considered at large in violation of subsection (a) of this section.

(e) **Preventing animal from becoming public nuisance.** It shall be unlawful for any owner or custodian of any animal to fail to exercise proper care and control of such animal to prevent the same from becoming a public nuisance.

(f) **Female dogs in heat**. It shall be unlawful for the owner or person in control of (any unspayed female dog, while such dog is in heat, to allow the same to be upon, in, or about any public building, public place, street or alley in the city.

(g) **Quarantining of animals exposed to rabies.** Any dog or cat that has rabies, or symptoms thereof, or that is suspected of having rabies, or that has been exposed to rabies, shall be handled in a manner consistent with state law regarding the disposition of animals exposed to rabies. It shall be unlawful for any owner to fail to comply with a quarantine requirement or condition, including a home quarantine authorized by an animal control officer. If an owner fails to comply, in addition to any criminal penalties, the animal shall be immediately seized and impounded.

Sec. 14.01.018 Restraint of guard dogs.[13]

(a) **Confinement required.** Every owner of a guard or attack dog shall keep such dog confined in a building, compartment or other enclosure. Any such enclosure shall be completely surrounded by a fence at least six (6) feet in height and capable of confining the animal at all times.

(b) **Gates, entrances and fences**. The areas of confinement shall all have gates and entrances thereto securely closed and locked, and all fences properly maintained and escape-proof.

[13] **State law references** - *Private Security Act, V.T.C.A., Occupations Code, ch. 1702*; licensing and duties of guard dog companies, *V.T.C.A., Occupations Code, sec. 1702.109 et seq*.; qualifications for guard dog company license, *V.T.C.A., Occupations Code, sec. 1702.116*.

(c) **Warning sign**. It shall be unlawful for any person to leave any guard or attack dog unattended in any place inside any building unless a warning sign has been placed in a clearly visible location at the premises, located so that it can be seen by any person before entering the premises, warning that a guard or attack dog is present. It shall be unlawful for any person to leave any guard or attack dog unattended in any place outside a building without a warning sign placed in a clearly visible location at the premises, located so that it can be seen by any person before entering the place to which the dog has access, warning that a guard dog or attack dog is present.

(d) **Exemption**. The provision of this section shall not apply to dogs owned or controlled by government agencies.

Sec. 14.01.019 Dangerous animals.[14]

(a) **Nuisance declared.** It is hereby declared to be a public nuisance for an owner or other person to harbor, keep, or maintain a dangerous animal in the city unless the owner complies with the requirements of this section.

(b) **Offenses**. It shall be unlawful for any person to own, keep, or harbor a dangerous animal within the city. For purposes of this section, a person is the owner of a dangerous animal when the owner knows of an unprovoked attack committed by the animal against a person or another animal, or when the animal has been determined to be dangerous by the court under this section or any other court or determining body.

(c) **Defenses**. In response to the determination that an animal is a dangerous animal, it is a defense that:

(1) The threat, injury or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal;

(2) The person was teasing, tormenting, abusing, or assaulting the animal or has in the past been observed or reported to have teased, tormented, abused, or assaulted the animal;

(3) The person was committing or attempting to commit a crime;

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[14] **State law references** -Dogs that are a danger to persons, *V.T.C.A., Health and Safety Code, sec. 822.001 et seq*.; dangerous wild animals, *V.T.C.A., Health and Safety Code, sec. 822.101 et.seq*. Sec. 14.01.020 Dangerous dogs. Dangerous dogs, as defined in *V.T.C.A., Health and Safety Code, section 822.041*, shall be regulated in accordance with the provisions of *V.T.C.A., Health and Safety Code, chapter 822, subchapter D, section 822.041 et seq.* (Ordinance adopting Code) **State law reference** -Authority of city to regulate the keeping of dangerous dogs, *V.T.C.A., Health and Safety Code, sec. 822.041 et seq.*

(4) The animal attacked or killed was at the time teasing, tormenting, abusing or attacking the alleged dangerous animal;

(5) The animal was protecting or defending a person within the immediate vicinity of the animal from an unjustified attack or assault;

(6) The animal was injured and responding to pain; or

(7) The animal was protecting its offspring, itself, or its kennelmates.

(d) **Complaints**. Should any person desire to file a complaint concerning an animal which is believed to be a dangerous animal, a sworn, written complaint must first be filed with an animal control officer containing the following information:

(1) Name, address, and telephone number of complainant and other witnesses;

(2) Date, time and location of any incident involving the animal;

(3) Description of the animal;

(4) Name, address, and telephone number of the animal's owner, if known;

(5) A statement describing the facts upon which such complaint is based;

(6) A statement describing any incidents where the animal has exhibited propensities in past conduct, if known.

(e) **Investigation**. After a sworn complaint is filed with the animal control officer, the animal control officer shall investigate the complaint, and if there be sufficient evidence to believe the animal is dangerous, the animal control officer may file a complaint with the municipal court of the city and request the judge of the municipal court to set a time and place for a hearing for a determination.

(f) **Hearing**.

(1) **Jurisdiction.** The jurisdiction for the determination of a dangerous animal in a proceeding brought under this chapter shall be vested in the municipal court.

(2) **Notice**. If a complaint is filed by an enforcement officer with the municipal court, the clerk of the court shall set the case for a hearing and shall give notice of the hearing to the owner of the animal in the complaint by personal service or certified mail, return receipt requested, at least ten (10) days prior to the hearing date. The enforcement officer may complete personal service.

(3) **Impoundment pending hearing**. If the animal has not already been impounded, the enforcement officer shall seize and impound the animal upon personal service of the notice of hearing on the owner or three (3) days after the notice of hearing is mailed to the owner by certified mail, return receipt requested. It shall be unlawful for a person to possess and fail to release to an enforcement officer an animal that has been made the subject of a hearing under this section. No person shall be allowed to reclaim the animal while a hearing under this section is pending.

(4) **Purpose of hearing**. The purpose of the hearing is for the court to determine if the animal specified in the complaint is a dangerous animal.

(g) **Result of hearing**.

(1) If the court finds that the animal is a dangerous animal:

(i) The court shall order that the animal be destroyed or permanently removed from the city, based on the least restrictive means necessary to protect the public health, safety, and welfare of the community according to all of the evidence presented.

(ii) If the owner is not present at the hearing, the clerk shall notify the owner of that decision as well as the ordered disposition of the animal by personal service or certified mail, return receipt requested. The enforcement officer may complete personal service.

(iii) The court shall order that the owner of the animal pay any fees due for the impoundment of the animal within 30 days of the order.

(2) If the court orders the removal of the animal from the city, the owner shall have five (5) days from the date of the order to remove the animal. The owner must provide proof of the removal to the court within five (5) days after the deadline to remove. If adequate proof is not provided to the court within the required time, an enforcement officer shall investigate and, if the animal is found within the city, the animal control officer shall be authorized to immediately seize and impound the animal. Upon impoundment of such animal, the animal becomes the property of the city and it shall be humanely destroyed. If the animal has been previously removed from the city or is not present in the city on the date of the hearing, the court shall order that animal shall be permanently banned from the city and not be allowed to return.

(3) If the court orders the destruction of the animal, the clerk or the animal control officer shall notify the facility where the animal is kept.

(4) If the Court finds that the animal is not a dangerous animal, the animal shall be released to the owner upon payment by the owner of any fees due.

(h) **Failure to obey court order**. It shall be unlawful for a person to possess and fail to release an animal that has been ordered destroyed or removed by the court to an animal control officer.

(i) **Law enforcement defense**. It is a defense to enforcement under this section that the person is an employee of the institutional division of the state department of criminal justice or of a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes; provided, however, that for any person to qualify for this defense, that person must be acting within the course and scope of his or her official duties with regard to the dangerous animal.

(j) **Other defenses**. It is a defense to enforcement under this section that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody or control of the animal; provided, however, that for any person to qualify for this defense, that person must be acting with the course and scope of his or her official duties with regard to the dangerous animal. (*Ordinance 584, sec. 2, adopted 8/29/05*)

Sec. 14.01.020 Sale of animals prohibited in certain places. It shall be unlawful for any person to sell, trade, barter, lease, rent, raffle, give away or display for commercial purposes a live animal on a roadside, public right-of-way, sidewalk, street, parkway or any other public property or any property dedicated to public use, on a commercial parking lot, or at an outdoor special sale, swap meet, flea market, parking lot sale or similar event. This section does not apply to a sale held on privately owned property with the written permission of the owner of the property, on a parking lot where the seller has the parking lot owner's written permission, or on the seller's own property.

ARTICLE II. IMPOUNDMENT

Sec. 14.02.001 Seizure and Impoundment. In addition to any other remedies provided in this chapter, an enforcement officer or a police officer may seize, impound, and humanely confine to an animal shelter or hospital any of the following animals:

(a) Any dog or cat without a valid vaccination tag;

(b) Any animal at large;

(c) Any animal constituting a public nuisance or considered a danger to the public;

(d) Any animal that is in violation of any quarantine or confinement order of the city's local rabies control authority;

(e) Any unattended animal that is ill, injured, or otherwise in need of care;

(f) Any animal that is reasonably believed to have been abused or neglected;

(g) Any animal that is reasonably suspected of having rabies;

(h) Any animal that is charged with being potentially dangerous or dangerous where an animal control officer determines that there is a threat to public health and safety;

(i) Any animal that a court of competent jurisdiction has ordered impounded or destroyed;

(j) Any animal that is considered unattended or abandoned, as in situations where the owner is deceased, has moved, has been arrested or has been evicted from his regular place of residence;

(k) Any exotic or wild animal that is kept illegally;

(l) Any animal that is in violation of this chapter or whose owner is in violation of this chapter; and

(m) any animal surrendered or delivered to the animal control officer or to the city animal shelter.

Sec. 14.02.002 Issuance of citation. In addition to, or in lieu of, impounding an animal found at large, an animal control officer or a police officer may issue to the known owner of such animal a citation for a violation of this chapter.

Sec. 14.02.003 Length of impoundment. Except as provided in sections 14.01.013 and 14.01.019, the city shall keep untagged impounded animals for a minimum of seventy-two (72) hours before disposing of said dog or cat without the consent of the owner. The city shall keep dogs and cats wearing vaccination/identification tags, dogs and cats that are micro chipped or dogs or cats that are tattooed until the owner is contacted or, if the current contact information for the owner is incorrect, for not fewer than seven (7) business days. The animal control officer, or other designated person, shall have the duty to notify known owners of impounded animals and to advise such owners of reclaiming rights as provided in section 14.02.006.

Sec. 14.02.004 Disposition of unclaimed animals. Any animal impounded in the animal shelter for a period exceeding the times laid out in this chapter shall become the property of the local government authority and shall be placed for adoption or humanely euthanized. Any livestock kept over 5 days may be sold or auctioned to cover the costs of impoundment and boarding. In lieu of euthanization or adoption, the animal control officer may make available impounded animals to any state-accredited school of veterinary medicine or science or to any institution, corporation, laboratory, or individual engaged in bona fide research in the animal sciences in which the animal can serve a beneficial and useful purpose in research. Such disposition shall be without cost to the city and shall be approved by the mayor.

Sec. 14.02.005 Disposition of sick or injured animals. When an animal is not wearing a tag of any kind so that the rightful owner cannot be notified of their animal's injuries, obviously sick or injured animals may be humanely euthanized, and the animal control officer has the discretion to determine whether the animal is obviously sick or injured.

Sec. 14.02.006 Reclaiming animals; fees. Any animal found to be at large and impounded more than three times in a one month period or more than four times in a one-year period shall be spayed

or neutered prior to release to the owner. An owner reclaiming an impounded animal shall pay all impounding fees, vaccination fees, spay/neuter fees and boarding fees for the animal before the animal shall be returned to the owner. The fees charged for the impoundment of an animal under this article shall be paid prior to the animal being released. The fees charged for the impoundment of an animal under this Article shall be $35.00 for the first offense, $70.00 for the second offense, $140 for the third offense, and $280 for the fourth offense.

Sec. 14.02.007 Warrants. An enforcement officer or peace officer may apply for and obtain a warrant or other legal writ from the municipal judge or justice court to seize any animal alleged to be in violation of this chapter. The municipal judge or justice of the peace shall have the authority to issue such warrant.

Sec. 14.02.008 Duties of animal control officer and police officers. It shall be the duty of the animal control officer or any of his or her deputies or any city police officer while on duty to cause all dogs running at large within the limits of the city to be picked up and impounded, to keep and properly care for all dogs impounded, to put to death or destroy all dogs that have not been redeemed or sold and to perform such duties as may be directed by the mayor under the terms of this division.

Sec. 14.02.009 Reports. It shall be the duty of the animal control officer or any of his or her deputies or any city police officer on duty to report in writing to the mayor once each month the total number of dogs impounded, the total number of dogs redeemed or sold to private parties, and the total number of dogs put to death under the provisions of this division, which report shall be approved by the mayor and filed with the city secretary.

Sec. 14.02.010 Redemption of impounded dog after sale. At any time within 30 days from the date of the sale, the owner of any dog impounded and sold shall have the right to redeem the same by paying to the purchaser thereof double the amount paid by said purchaser for such dog and his or her reasonable expenses incurred in keeping the same.

Sec. 14.02.011 Reports of expenses. The animal control officer or police department shall render each month a report of all costs and expenses for the caring and feeding of all animals to the city council for approval and payment.

Sec. 14.02.012 Remittance of fees to city secretary. It shall be the duty of the animal control officer or any of his or her deputies or any city police officer, to pay all money collected by him or her under the terms of this article to the city secretary.

Chapter 15. Signs[15]

Article I. Generally

Article II. Prohibitions

Chapter 15. SIGNS

ARTICLE I. GENERALLY

Sec. 15.1. Definitions.

(a) **CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGN ("CEVMS")** shall mean a sign which permits light to be turned on or off intermittently or which is operated in a way whereby light is turned on or off intermittently, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign, and which varies in intensity or color. A CEVMS sign does not include a sign located within the right-of-way that functions as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) approved by the Federal Highway Administrator as the National Standard.

(b) **OFF-PREMISE SIGN** shall mean any sign, commonly known as a billboard, that advertises a business, person, activity, goods, products or services not located on the premises where the sign is installed and maintained, or that directs persons to a location other than the premises where the sign is installed and maintained.

(c) **ON-PREMISE SIGN** shall mean any sign identifying or advertising the business, person, activity, goods, products or services sold or offered for sale on the premises where the sign is installed and maintained when such premises is used for business purposes.

(d) **SIGN CODE APPLICATION AREA** shall mean the corporate limits of the city and the area of its extraterritorial jurisdiction as defined by *Section 42.021 of the Texas Local Government Code.*

ARTICLE II. PROHIBITIONS

Sec. 15.2. Prohibitions.

[15] *Sec. 15-1 and 15-2 were adopted by Ord. No. 08-0309-14, on March 9, 2008.*

(a) **PROHIBITION OF NEW OFF-PREMISE SIGNS**. From and after the effective date, no new construction permit shall be issued for the erection of any new off-premise CEVMS or the conversion of an existing non-CEVMS off-premises sign to a CEVMS, within the Sign Code Application Area.

(b) **LIMITATION OF ON-PREMISES CHANGEABLE VARIABLE MESSAGE SIGNS**. From and after the effective date, no ON-PREMISES CEVMS shall be allowed within the Sign Code Application Area except that not more than one ON-PREMISES CEVMS shall be permitted at each business location within the Sign Code Application Area that:

(1) does not exceed 144 square feet in sign-face area, and

(2) does not stand more than thirty feet in height from the ground to the sign's highest point.

Chapters 16 through 21 Reserved

Chapter 22. Buildings and Building Regulation[16]

Article I. In General

Article II. Building Official

Article III. Building Codes

Article IV. Substandard and Dangerous Buildings

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[16] **Cross references**--Businesses, ch. 26; fire prevention and protection, ch. 46; floods, ch. 50; manufactured homes and trailers, ch. 62; removal of building waste, § 90-59; streets, sidewalks and other public places, ch. 94; taxation, ch. 102; utilities, ch. 110; zoning, ch. 118. **State law references**--Trench excavation safety, V.T.C.A., Health and Safety Code § 756.021 et seq.; fire escapes, V.T.C.A., Health and Safety Code § 791.001 et seq.; protection of workmen on buildings, Vernon's Ann. Civ. St. arts. 5182, 5182-1; Manufactured Housing Standards Act, Vernon's Ann. Civ. St. art. 5221f; industrialized housing and buildings, Vernon's Ann. Civ. St. art. 5221f-1; Plumbing License Law, Vernon's Ann. Civ. St. art. 6243-101; Residential Service Company Act, Vernon's Ann. Civ. St. art. 6573b; establishment of building lines, V.T.C.A., Local Government Code § 213.001 et seq.; municipal regulation of structures, V.T.C.A., Local Government Code § 214.001 et seq.

Article V. Housing Codes

Article VI. Plumbing Regulations

Division 1. Adoption of Plumbing Codes

Division 2. Grease Traps.

Article VII. Mechanical Code

Article VIII. Electrical Codes

Division 1. In General

Division 2. Electrical Standards

Article IX. Manufactured Homes

Chapter 22. BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

Secs. 22.1 – 22.25. Reserved.

ARTICLE II. BUILDING OFFICIAL

Sec. 22.26. Establishment of office.

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

(b) *Appointment; removal.* The building official shall be that employee designated from time to time to perform the duties of the position.

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

Sec. 22.27. Qualifications. The building official shall be in good health and physically capable of making the necessary examinations and inspections. He shall not have any interest whatever, directly or indirectly, in the sale or manufacture of any material, process or device entering into or used in or in connection with building construction, alterations, removal, and demolition.

Sec. 22.28. Duties.

(a) ***Permits***. The building official shall receive applications required by the building code, issue permits and furnish the prescribed certificates. He shall examine the premises for which permits have been issued and shall make necessary inspections to see that the provisions of law are complied with and that construction is conducted safely. He shall enforce all provisions of the building code and, when requested by proper authority, or when the public interest so requires, make investigations in connection with matters referred to in the building code and render written reports on the same. To enforce compliance with the 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.

(b) ***Inspections***. Inspections required under the provisions of the building code shall be made by the building official or his duly appointed assistant. The building official may accept reports of inspectors or recognized inspection services, after investigation of their qualifications and reliability. No certificate called for by any provision of the building code shall be issued on such reports unless the same are in writing and certified to by a responsible officer of such service.

(c) ***Records of work***. The building official shall keep comprehensive records of applications, permits issued, certificates issued, inspections made, reports rendered, and of notices or orders issued.

(d) ***Records open to public inspection***. All such records shall be open to public inspection for good and sufficient reasons at the stated office hours, but shall not be removed from the office of the building official without his written consent.

(e) ***Monthly reports***. The building official shall make written reports to his immediate superior once each month, or more often if requested, including statements of permits and certificates issued, and orders promulgated.

Sec. 22.29. Right of entry. The building official in the discharge of his official duties and upon proper identification shall have the authority to enter any building, structure or premises at any reasonable hour.

Secs. 22.30 – 22.50. Reserved.

ARTICLE III. BUILDING CODES

Sec. 22.51 Adoption of Codes. Those certain documents listed below, one copy of each of which is on file and is open for the inspection of the public in the office of the city secretary, are hereby adopted as the building codes of the city for regulating the erection construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings or structures in the city and providing for the issuance of permits and the collection of fees therefor, to-wit:

(a) The "International Building Code", including Appendix F, 2012 edition, published by the International Conference of Building Officials;

(b) The "International Property Maintenance Code", 2012 edition, published by the International Conference of Building Officials;

(c) The "International Existing Building Code", 2012 edition, published by the International Conference of Building Officials; and

(d) The "International Energy Conservation Code", 2012 edition, published by the International Conference of Building Officials. *[Ord. No. 15-0211.6, adopted February 11, 2015]*

Cross reference – See: Sec. 22.101.

Sec. 22.52. Interpretation of article. Wherever in the building code hereby adopted it is provided that anything must be done to the approval of or subject to the direction of the enforcing officer, this shall be construed to give such officer only the power to determine whether the rules and regulations established by this article have been complied with, and shall not be construed as giving such officer discretionary powers.

Sec. 22.53. Officers acting for city not personally liable. Any officer or employee, or member of the board of adjustment, charged with the enforcement of this building code, 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 this duties. Any suit brought against any officer or employee because of such act performed by him in the enforcement of any provision of this building code shall be defended by the city attorney until the final termination of the proceedings.

Sec. 22.54. Definitions. The following words, terms and phrases, when used in the code adopted in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) ***Corporation counsel*** means the attorney for the city.

(b) ***Municipality*** means the city.

Sec. 22.55. Reserved.

Sec. 22.56. Penalty for violation of article. Whenever in the building code or in any ordinance of the city amending such code an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of such code or any such ordinance shall be punished by a fine of not exceeding $500.00; provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense.

Sec. 22.57 – 22.75. Reserved.

ARTICLE IV. SUBSTANDARD AND DANGEROUS BUILDINGS

Sec. 22.76. Definitions. The following terms whenever used or referred to in this Article shall have the meanings herein set forth:

Appraised Value. Shall mean the value given the structure by the county tax assessor's office.

Building. Shall mean any structure of any kind or any part thereof, erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind.

Building Official. Shall be the Code Enforcement Officer and the Building Inspector.

City. Shall mean the City of Lexington, Texas.

City Council. Shall mean the city council of the City of Lexington.

Diligent Effort. Shall mean best or reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee including a search of the following records:

(1) county real property records of the county in which the building is located;
(2) appraisal district records of the appraisal district in which the building is located;
(3) records of the secretary of state;
(4) assumed name records of the county in which the building is located;
(5) City tax records; and
(6) City utility records.

Minimum housing standards. Shall mean those standards found in the City's adopted standard building, electrical, plumbing, gas, mechanical, existing building and fire prevention codes.

Owner. Shall mean any person, agent, firm or corporation, named in the real property records of Lee County, Texas as owning the property.

Structure. Shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, or any part thereof.

Sec. 22.77. Declaration of Nuisance. Any building or structure requiring repair, removal, or demolition, as described in Sec. 22.80, as well as all buildings or structures within the City, which because of their condition are unsafe, unsanitary, uninhabitable or otherwise dangerous to the health, safety, and general welfare of the citizens of the City are hereby declared to be a public nuisance and are unlawful and subject to the provisions of this Article regarding repair, removal, or demolition.

Sec. 22.78. Inspection. An inspection shall be made of every building located within the City which is suspected of being in violation of this Article. The Building Official or his/her official designee is hereby authorized to conduct inspections of buildings suspected of being in violation of this Article and take such actions as may be required to enforce the provisions of this Article.

Sec. 22.79. Notice of Violation.

(a) Whenever a violation of this Article has been discovered and reported by the Building Official, a public hearing shall be held before the City Council to determine whether a building complies with the standards set out in this Article.

(b) A notice of the hearing shall be sent to the occupant, if any, and any record owner, lienholder or mortgagee of the property. Such notice shall be in writing and shall be served by certified mail, return receipt requested, signature confirmation through the United States Postal Service, or personal delivery to the record owner of the property, lienholder or mortgagee, and all unknown owners, lienholders, or mortgagees, by posting a copy of the notice on the front door of each affected improvement situated on the property or as close to the front door as practicable; and if the owner's address is different than the address shown for the property involved, to the address of the property, addressed to the occupant of such address. It is not necessary that the notice to the occupant of the property list an occupant by name.

The notice shall contain:

(1) the names of all persons to whom notice is being served,

(2) the street address or legal description of the premises,

(3) the date of inspection,

(4) the nature of the violation,

(5) the date, time and location of the hearing, and

(6) 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.

Sec. 22.80. Application of Standards. The following standards shall be utilized in determining whether a building should be ordered repaired or demolished. Buildings or structures that meet one or more of the following standards shall be required to be repaired, removed, or demolished:

(1) The building or structure is liable to partially or fully collapse.

(2) The building or structure was constructed or maintained in violation of any provision of the City's building code, standard codes, or any other applicable ordinance or law of the City, county, state, or federal government.

(3) Any wall or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle one-third (1/3) of its base.

(4) The foundation or the vertical or horizontal supporting members are twenty-five percent (25%) or more damaged or deteriorated.

(5) The nonsupporting coverings of walls, ceilings, roofs, or floors are fifty percent (50%) or more damaged or deteriorated.

(6) The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.

(7) The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public, health, safety and welfare.

(8) The structure does not have adequate light, ventilation, or sanitation facilities as required by the City.

(9) The structure has inadequate facilities for egress in case of fire or other emergency or which has insufficient stairways, elevators, fire escapes or other means of ingress or egress.

(10) The structure has been found to contain molds which are known to be harmful to humans, and remediation of such mold contamination would exceed fifty percent (50%) of the value of the structure.

(11) A portion of a building or structure remains on a site when construction or demolition work is abandoned.

(12) The building or structure, because of its condition, is unsafe, unsanitary, or dangerous to the health, safety or general welfare of the City's citizens including all conditions conducive to the harboring of rats or mice or other disease carrying animals or insects reasonably calculated to spread disease.

Sec. 22.81. Hearing.

(a) The date of the hearing shall not be less than ten (10) days after notice is made, as described in Sec. 22.79.

(b) If a building is found to be in violation of this Article, the City shall require the owner, lienholder, or mortgagee of the building to within thirty (30) days repair or demolish the building, unless it is proven at the hearing that the work cannot reasonably be done in thirty (30) days.

(c) If the City allows more than thirty (30) days for the building to be repaired or demolished, the City shall establish specific time schedules for the work to be commenced and finished and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the City Council.

(d) The City shall not allow the owner, lienholder or mortgagee more than ninety (90) days to repair or demolish the building unless a detailed plan and time schedule for the work are submitted at the hearing and it is proven at the hearing that the work cannot reasonably be completed within ninety (90) days. Additionally, the owner, lienholder, or mortgagee must submit work progress reports to demonstrate compliance with the time schedule established. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the City's boundaries that exceeds $100,000 in total value, the City may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building. In lieu of a bond, the City may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the City. The bond must be posted, or the letter of credit or third party guaranty provided, not later than the thirtieth (30^{th}) day after the date the City issues an order.

(e) In any case where fifty percent (50%) or more of the value or structure is damaged or deteriorated, a building shall be demolished or removed, and in all cases where a structure

cannot be repaired so that it will no longer exist in violation of the provisions of this Article, it shall be demolished or removed.

Sec. 22.82. Order for Repair or Demolition.

(a) After the public hearing, if a building is found to be in violation of this Article, the City may order that the building be repaired or demolished by the owner within a reasonable time, as established under Sec. 22.81.

(b) If the building is ordered to be repaired or demolished, the City shall promptly mail by certified mail, return receipt requested, signature confirmation through United States Postal Service, or personal delivery, a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The City shall make a diligent effort to discover each mortgagee and lienholder having an interest in the building or property on which the building is located.

(c) If the ordered action is demolition of the building or structure, demolition shall not occur until the time for appeal of the order to district court under Sec. 22.84 has expired and no appeal has been taken; or, in the alternative, the order was appealed to district court but the appeal has been finally resolved in a manner that does not prevent the City from proceeding with demolition.

Sec. 22.83. Notice of Repair or Demolition.

(a) In addition to the order, each identified mortgagee or lienholder shall be sent a notice containing:

(1) an identification of the building and property on which it is located (this does not have to be a legal description);

(2) a description of the violation of this Article; and

(3) a statement that the City will demolish the building if the ordered action is not taken.

(b) If the notice is returned "refused" or "unclaimed," the validity of the notice is not affected and the notice shall be deemed delivered.

(c) Within ten (10) days after the date that the order is issued, the City shall:

(1) file a copy of the order in the office of the City Secretary; and

(2) publish a notice in a newspaper where the building is located stating:

(a) the street address or legal description of the property;

(b) the date of the hearing;

(c) a brief statement indicating the results of the order; and

(d) instructions as to where a complete copy of the order may be obtained.

Sec. 22.84. Appeal. The owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of the City Council issued under this Article may file in state district court a verified petition setting forth that the City Council's decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder, or mortgagee within thirty (30) calendar days after the date a copy of the order of the City Council is served on the owner, lienholder, or mortgagee by certified mail, return receipt requested, signature confirmation through the United States Postal Service, or personal delivery; otherwise, said order shall become final as to each owner, lienholder, or mortgagee of the property.

Sec. 22.85. Demolition and Repair Expenses.

(a) Whenever it is discovered upon reinspection that the owner, mortgagee or lienholder has failed to either repair or demolish the building within the allotted time, the City, or its authorized agent, may repair or demolish and remove said building or cause the same to be done and charge the expenses incurred in doing such work or having the same done to the owner, mortgagee or lienholder of said land.

(b) If such work is done at the expense of the City, then the said expense shall be assessed against any salvage resulting from the demolition of the building and against the lot, tract, or parcel of land, or the premises upon which such expense was incurred.

(c) For the purposes of this section, any repair, alteration or improvement made to a building by the City will only be to the extent necessary to bring the building into compliance with the minimum housing standards and only if the building is a residential building with ten (10) or fewer dwelling units; provided, however, the City may elect to obtain a judicial determination by a decree of a court of competent jurisdiction of the existence, in fact, of a public nuisance in cases contemplated by this Article. Such judicial determination may include any available remedy for the abatement of such a nuisance.

Sec. 22.86. Assessment of Lien

(a) When the City incurs expenses to repair or demolish and remove the building, the City has a lien against the property on which the building is located, unless it is a homestead as protected by the Texas Constitution. The lien arises and attaches to the property when the City Council or the Building Official records and indexes notice of the lien with the County Clerk of Lee County, Texas. The notice shall contain:

(1) the name and address of the owner, if that information can be determined with a

reasonable effort;

(2) a legal description of the property on which the building was located;

(3) the amount of expense incurred by the City;

(4) the balance due; and

(5) the date on which said work was done or improvements made.

(b) The City shall have a privileged lien on such lot, lots, or other premises or real estate upon which said building was located, to secure the expenditure so made, which said liens shall be second only to tax liens and liens for street improvements; and said amount shall bear ten percent (10%) interest from the date such statement was filed. It is further provided that for any such expenditure and interest, as aforesaid, suit may be instituted and recovered, and foreclosure of said lien may be made in the name of the City; and the statement of expenses so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or expense.

(c) The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City for the expenses.

Sec. 22.87. Additional Authority to Secure Building.

(a) In addition to all other powers and authority elsewhere set forth, the Building Official shall have the authority to immediately and without prior notice secure, by boarding up, locking, or other appropriate and effective means, any building that:

(1) is in violation of this Article and the minimum standards set forth herein; and

(2) is unoccupied or is occupied only by persons who do not have a right of possession to the building.

(b) Before the 11th day after the date the building is secured, 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 Lee County if personal service cannot be obtained and the

owner's post office address is unknown; or

(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.

(c) 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 violations of this Article that are present at the building;

(3) a statement that the City will secure or has secured, as the case may be, the building; and

(4) an explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the building.

(d) The City shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the City's securing of the building if, within thirty (30) days after the date the City secures the building, the owner files with the City Secretary a written request for a hearing. The City shall conduct the hearing within twenty (20) days after the date the request is filed.

(e) The City has the same authority to assess expenses under this section as it has to assess expenses under Sec. 22.85.

(f) A lien is created under this section in the same manner that a lien is created under Sec. 22.86 and is subject to the same conditions as a lien created under that section.

Sec. 22.88. Emergencies.

(a) For the purpose of this section, an emergency is hereby defined as any case where it reasonably appears there is immediate danger to the health, life, safety, or welfare of any person because of a dangerous condition which exists in violation of this Article.

(b) In any emergency case, the Building Official shall have the power to take emergency measures to abate or to correct such dangerous condition. The emergency power herein granted shall include the power to cause the immediate vacation of any building and the summary correction of any emergency condition which exists in violation of this Article, including but not limited to demolition of dangerous buildings.

(c) The City has the same authority to assess expenses under this section as it has to assess expenses under Sec. 22.85, and is authorized to create a lien as provided for in Sec. 22.86.

Sec. 22.89 Penalty for violation.

(a) The City shall have the power to administer and enforce the provisions of this Article as may be required by governing law. Any person violating any provision of this Article is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Article is hereby deemed to be a nuisance.

(b) Criminal Prosecutions. Any person violating any provision of this Article shall, upon conviction, be fined a sum not exceeding Two Thousand Dollars ($2,000.00). Each day that a provision of this Article is violated shall constitute a separate offense. An offense under this Article is a misdemeanor.

(c) Civil Remedies. Any person violating any provision of this Article may be assessed a civil penalty, after a hearing on the violations, in a sum not exceeding One Thousand Dollars ($1,000.00) for each and every day of violation or, if the owner shows the property is the owner's lawful homestead, in an amount not to exceed Ten Dollars ($10.00) per day for each violation, provided that:

(1) The owner was notified of the requirements of this Article and the owner's need to comply with the requirements; and

(2) After notification, the owner committed an act in violation of this Article or failed to take action necessary for compliance with this Article.

If such a civil penalty is assessed, the City Secretary shall file a certified copy of the order containing such penalty with the County Clerk's office no later than three (3) business days after such order.

(d) Other Remedies. The remedies provided herein shall be available to the City in addition to any penal or other remedy provided by law or equity which the City, state, or any other person may have to remedy the unsafe building condition.

(e) The City may bring a civil action in a court of competent jurisdiction to collect the amount due plus all associated costs and fees.

Sec. 22.90. Liability. Neither the City nor any authorized agent acting under the terms of this Article shall be liable or have any liability by reason of orders issued or work done in compliance with the terms of this Article.

Secs. 22.91 – 22.100. Reserved.

ARTICLE V. HOUSING CODES

Sec. 22.101. Adoption of Housing Codes. There is hereby adopted by the council that certain health and housing standard known as the International Residential Code for One/Two Family

Dwellings, including Appendix A, B, E, G, J, being particularly the 2012 edition, of which not less than one copy has been and is not filed in the office of the city secretary of the city. The code is hereby adopted and incorporated as fully as if set out at length in this section, and the provisions of such code shall be controlling on all dwellings and premises within the corporate limits of the city. *[Ord. No. 15-0211.6, adopted February 11, 2015]*

Sec. 22.102 Appeals. Appeals filed on violations of the housing code shall be heard by the members of the board of adjustment, who are appointed by the city council.

Sec. 22.103. Penalty for violation of article. Whenever in the housing code or in any ordinance of the city amending such code an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of such code or any such ordinance shall be punished by a fine of not exceeding $500.00; provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this housing code or of any ordinance shall continue, shall constitute a separate offense.

Secs. 22.104 – 22.125. Reserved.

ARTICLE VI. PLUMBING REGULATIONS

DIVISION 1. GENERALLY

Sec. 22.126. Adoption of the Plumbing License Law. For the protection and preservation of the health, safety, property, and the general welfare of the people of the city, the city hereby adopts and incorporates Texas Occupations Code Chapter 1301, as amended from time to time, cited herein as the "Plumbing License Law" in its entirety as its own into the Code of Ordinances of the City. All plumbing work and plumbing inspection done in the city must be done in accordance with the Plumbing License Law. In the event of a conflict or inconsistency between this Article and state law, the tenants and provisions of state law shall preempt this Article. *[Ord. No. 03-1112-17, adopted November 12, 2003]*

Sec. 22.127. Adoption of Uniform Plumbing Code. That certain document, one copy of which is on file in the office of the city secretary, being marked and designated as the "International Plumbing Code- including Appendix A, C, E and F," 2012 edition, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted as the code of the city for regulating the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of plumbing systems in the city; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, conditions and terms of such "International Plumbing Code," 2012 edition, on file in the office of the city secretary, are hereby referred to, adopted and made a part of this section as if fully set out in this article. *[Ord. No. 15-0211.6, adopted February 11, 2015]*

Cross reference: See: Sec. 110.21

Sec. 22.128. Inspection and supervision.

(a) ***Position of plumbing inspector created.*** There is hereby created the position of plumbing inspector who shall be employed by the city.

(b) ***Qualifications of plumbing inspector.*** The plumbing inspector shall have experience in plumbing to the extent that enables him to know when plumbing is installed correctly.

(c) ***Plumbing inspector to avoid conflicts of interest.*** The plumbing inspector shall not be directly connected in any way with any person, directly or indirectly, engaged in the business of plumbing or with plumbing suppliers.

(d) ***Duties of plumbing inspector.*** The plumbing inspector shall:

(1) Enforce all provisions of this Article, including issuing warnings, notices of violations, or citations to a person whom violates a provision of this Article or tile Plumbing License Law, as amended from time to time. Such inspector is hereby granted authority to enter all buildings within or without the corporate limits of the city when such buildings are connected, or are to be connected, to the municipal water and/or sewage system. *[Ord. No. 03-1112-17, adopted November 12, 2003]*

(2) Prepare or cause to be prepared suitable forms for applications, permits, inspection reports and other such materials.

(3) Inspect and test all plumbing work for compliance with this article and its adopted plumbing code, and to enforce changing of such installations that do not meet the requirements. It further shall be his duty to see that all persons installing or altering plumbing shall be qualified by state law.

Sec. 22.129. Plumbing permit fees. All applications for permits shall be made on suitable forms provided by the City and shall be accompanied by the required fees which shall be set by resolution of the City Council. Said fees shall be organized on a fee schedule, a copy of which shall be kept on file in the office of the City Secretary.

Sec. 22.130. Licensed Plumbers. *[Sec. 22-130 added by Ord. No. 03-1112-17, adopted November 12, 2003]*

Definitions. The following words, tenants and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Plumbing* means:

(1) A fixture, appurtenance, appliance, or piping, including a disposal system, used in or around a building in which a person lives or works or in which persons assemble, to:

(i) supply or recirculate water, other liquid, or gas; or

(ii) eliminate sewage for a personal or domestic purpose;

(2) A fixture, appurtenance, appliance, or piping used outside a building to connect the building to: a supply of water, other liquid, or gas on the premises; or

(i) the main in the street or alley or at the curb;

(3) A fixture, appurtenance, appliance, or piping, including a drain or waste pipe, used to carry wastewater or sewage from or within a building to:

(i) a sewer service lateral at the curb or in the street or alley; or

(ii) a disposal or septic terminal that holds private or domestic sewage; or

(iii)The installation, repair, service, or maintenance of a fixture, Appurtenance, appliance, or piping described by .Paragraph (l), (2), or (3).

(b) ***Plumbing repair*** means service, adjustment, or maintenance of existing plumbing fixtures, appurtenances, appliances, or piping and limited replacement or installation of plumbing fixtures, appurtenances, appliances, or piping for the purpose of maintaining an existing plumbing system.

(c) ***License Required.***

(1) It shall be unlawful for any person who is not licensed by the Texas State Board of Plumbing Examiners to perform plumbing on any property, building, or structure in the city.

(2) It shall be unlawful for any person to employ a person to perform plumbing on a property, building, or structure in the city who is not licensed by the Texas State Board of Plumbing Examiners.

(d) ***Exceptions.*** A person is not required to be licensed by the Texas State Board of Plumbing Examiners to perform:

(1) Plumbing for a property that the person owns as a homestead;

(2) Plumbing repair incidental to and in connection with the business in which the person is employed or engaged if the person:

(i) is regularly employed as or acting as a maintenance person or maintenance engineer;

(ii) is employed by only one business to perform plumbing repair; and does not engage in plumbing for the public;

(3) Construction, installation, or maintenance on the premises or equipment of a railroad if the person is an employee of the railroad who does not engage in plumbing for the public;

(4) Plumbing if the person is engaged by a public service company to:

(i) lay, maintain, or operate its service mains or lines to the point of measurement; and

(ii) install, change, adjust, repair, remove, or renovate appurtenances, equipment, or appliances;

(iii) Appliance installation and service work that involves connecting appliances to existing piping if the person performs the work as an appliance dealer or an employee of an appliance dealer;

(iv) Water treatment installations, exchanges, services, or repairs;

(v) Plumbing if the person performs the plumbing as an LP gas installer licensed under *Subchapter D, Chapter 113, Texas Natural Resources Code*, as amended from time to time; or

(vi) Plumbing if the person holds a:

(A) certificate of registration as au irrigator issued under Chapter 1903, Texas Occupations Code, as amended from time to time; or

(B) license as a water well pump installer issued under *Chapter 1902, Texas Occupations Code*, as amended from time to time.

Sec. 22.131. Penalty for violation of article. Whenever in the plumbing code, or in any ordinance of the city amending such code, an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of such code or any such ordinance shall be punished by a fine not to exceed $2,000.00; provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this plumbing code or of any ordinance shall continue, shall constitute a separate offense. *[Original Sec. 22-130 renumbered in 2015 Codification]*

DIVISION 2. GREASE TRAPS

[Ord. No. 05-0419-10, adopted May 18, 2005]

Sec. 22.132. Applicability and Prohibitions.

(a) This ordinance shall apply to all non-domestic users of the City Owned Treatment Works (COTW), as defined in Section 22-132 of this Ordinance.

(b) Grease traps or grease interceptors shall not be required for residential users. Facilities generating fats, oils, or greases as a result of food manufacturing, processing, preparation, or food service shall install, use, and maintain appropriate grease traps or interceptors as required in Section 22.132 of this Chapter. These facilities include but are not limited to restaurants, food manufacturers, food processors, hospitals, hotels and motels, prisons, nursing homes, and any other facility preparing, serving or otherwise making any foodstuff available for consumption.

(c) No user may intentionally or unintentionally allow the direct or indirect discharge of any petroleum oil, non-biodegradable cutting oil, mineral oil, or any fats, oils, or greases of animal or vegetable origin into the COTW system in such amounts as to cause interference with the collection and treatment system, or as to cause pollutants to pass through the treatment works into the environment.

Sec. 22.133. Definitions.

(a) **Act** means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, *33 U.S.C. 1251, et. seq.*

(b) **BOD** means the value of the 5-day test for Biochemical Oxygen Demand, as described in the latest edition of "Standard Methods for the Examination of Water & Wastewater."

(c) **COTW** or City Owned Treatment Works means a treatment works which is owned by a municipality as defined by *section 502(4)* of the Clean Water Act. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes all sewers, pipes and other conveyances that convey wastewater to the COTW Treatment Plant. The term also means the municipality as defined in section *502(4) of the Act*, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. For purposes of this ordinance, the terms "sanitary sewer system" and "COTW" may be used interchangeably and where the context requires a person or representative of the COTW the City designated code enforcement officer or public works director shall be deemed the representative.

(d) **COD** means the value of the test for Chemical Oxygen Demand, as described in the latest edition of "Standard Methods for the Examination of Water & Wastewater."

(e) **EPA** means the United States Environmental Protection Agency.

(f) **Fats, oils, and greases (FOG)** means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases."

(g) **Generator** means any person who owns or operates a grease trap/grease interceptor, or whose act or process produces a grease trap waste.

(h) **Grease trap or interceptor** means a device designed to use differences in specific gravities to separate and retain light density liquids, waterborne fats, oils, and greases prior to the wastewater entering the sanitary sewer collection system. These devices also serve to collect settleable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer system collection system. Grease traps and interceptors are also referred to herein as "grease traps/interceptors."

(i) **Grease Trap Waste** means material collected in and from a grease trap/interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from de-watering processes.

(j) **Indirect Discharge** or **Discharge** means the introduction of pollutants into a COTW from any non-domestic source.

(k) **Interference** means a discharge which alone or in conjunction with a discharge or discharges from other sources inhibits or disrupts the COTW, its treatment processes or operations or its sludge processes, use or disposal, or is a cause of a violation of the city's TPDES permit.

(l) **pH** means the measure of the relative acidity or alkalinity of water and is defined as the negative logarithm (base 10) of the hydrogen ion concentration.

(m)**TCEQ** means the Texas Commission on Environmental Quality, and its predecessor and successor agencies.

(n) **Transporte**r means a person who is registered with and authorized by the TCEQ to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste in accordance with 30 Texas Administrative Code §312.142.

(o) **TSS** means the value of the test for Total Suspended Solids, as described in the latest edition of "Standard Methods for the Examination of Water & Wastewater."

(p) **User** means any person, including those located outside the jurisdictional limits of the city, which contributes, causes or permits the contribution or discharge of wastewater into the COTW, including persons who contribute such wastewater from mobile sources.

Sec. 22.134. Installation and Maintenance Requirements.

(a) Installations

(1) **New Facilities.** Food processing or food service facilities which are newly proposed or constructed, or existing facilities which will be expanded or renovated to include a food service facility, where such facility did not previously exist, shall be required to design, install, operate and maintain a grease trap/interceptor in accordance with locally adopted plumbing codes or other applicable ordinances. Grease traps/interceptors shall be installed and inspected prior to issuance of a certificate of occupancy.

(2) **Existing Facilities**. Existing grease traps/interceptors must be operated and maintained in accordance with the manufacturer's recommendations and in accordance with these Model Standards, unless specified in writing and approved by the COTW.

(b) **Disposal**. All grease trap/interceptor waste shall be properly disposed of at a facility in accordance with federal, state, or local regulation.

(c) **Cleaning and Maintenance**

(1) Grease traps and grease interceptors shall be maintained in an efficient operating condition at all times.

(2) Each grease trap pumped shall be fully evacuated unless the trap volume is greater than the tank capacity on the vacuum truck in which case the transporter shall arrange for additional transpiration capacity so that the trap is fully evacuated within a 24-hour period, in accordance with *30 TEXAS ADMINISTRATIVE CODE §312.143.*

(d) **Cleaning Schedules**

(1) Grease traps and grease interceptors shall be cleaned as often as necessary to ensure that sediment and floating materials do not accumulate to impair the efficiency of the grease trap/interceptor; to ensure the discharge is in compliance with local discharge limits; and to ensure no visible grease is observed in discharge.

(2) Grease traps and grease interceptors subject to these standards shall be completely evacuated a minimum of every ninety (90) days, or more frequently when:

(i) twenty-five (25) percent or more of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases; and

(ii) the discharge exceeds BOD, COD, TSS, FOG, pH, or other pollutant levels established by the COTW; or

(iii) if there is a history of non-compliance.

(e) **Extension.** Any person who owns or operates a grease trap/interceptor may submit to the COTW a request in writing for an exception to the ninety (90) day pumping frequency of their grease trap/interceptor. The COTW may grant an extension for required cleaning frequency on a case-by-case basis when:

(1) the grease trap/interceptor owner/operator has demonstrated the specific trap/interceptor will produce an effluent, based on defensible analytical results, in consistent compliance with established local discharge limits such as BOD, TSS, FOG, or other parameters as determined by the COTW, or

(2) less than twenty-five (25) percent of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the level of the outlet pipe, contains floating materials, sediment, oils or greases.

(3) In any event, a grease trap and grease interceptor shall be fully evacuated, cleaned, and inspected at least once every 180 days.

(f) **Manifest Requirements**

(1) Each pump-out of a grease trap or interceptor must be accompanied by a manifest to be used for record keeping purposes.

(2) Persons who generate, collect and transport grease waste shall maintain a record of each individual collection and deposit. Such records shall be in the form of a manifest. The manifest shall include:

(i) name, address, telephone, and commission registration number of transporter;

(ii) name, signature, address, and phone number of the person who generated the waste and the date collected;

(iii) type and amount(s) of waste collected or transported;

(iv) name and signature(s) of responsible person(s) collecting, transporting, and depositing the waste;

(v) date and place where the waste was deposited;

(vi) identification (permit or site registration number, location, and operator) of the facility where the waste was deposited;

(vii) name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received;

(viii) the volume of the grease waste received; and

(ix) a consecutive numerical tracking number to assist transporters, waste generators, and regulating authorities in tracking the volume of grease transported.

(3) **Manifests.** Manifests shall be divided into five parts and records shall be maintained as follows.

(i) One part of the manifest shall have the generator and transporter information completed and be given to the generator at the time of waste pickup.

(ii) The remaining four parts of the manifest shall have all required information completely filled out and signed by the appropriate party before distribution of the manifest.

(iii) One part of the manifest shall go to the receiving facility.

(iv) One part shall go to the transporter, who shall retain a copy of all manifests showing the collection and disposition of waste.

(v) One copy of the manifest shall be returned by the transporter to the person who generated the wastes within 15 days after the waste is received at the disposal or processing facility.

(vi) One part of the manifest shall go to the local authority.

(vii) Copies of manifests returned to the waste generator shall be retained for five (5) years and be readily available for review by the COTW.

(g) **Alternative Treatment**

(1) A person commits an offense if the person introduces, or causes, permits, or suffers the introduction of any surfactant, solvent or emulsifier into a grease trap. Surfactants, solvents, and emulsifiers are materials which allow the grease to pass from the trap into the collection system, and include but are not limited to enzymes, soap, diesel, kerosene, turpentine, and other solvents.

(2) It is an affirmative defense to an enforcement action of Section 22.133 (e)(i) that the use of surfactants or soaps is incidental to normal kitchen hygiene operations.

(3) Bioremediation media may be used with the COTW's approval if the person has proved to the satisfaction of the COTW that laboratory testing which is appropriate for the type of grease trap to be used has verified that:

(i) The media is a pure live bacterial product which is not inactivated by the use of domestic or commercial disinfectants and detergents, strong alkalis, acids, and/or water temperatures of 160°F (71°C).

(ii) The use of the media does not reduce the buoyancy of the grease layer in the grease trap and does not increase the potential for oil and grease to be discharged to the sanitary sewer.

(iii) The use of the bioremediation media does not cause foaming in the sanitary sewer.

(iv) The BOD, COD, and TSS discharged to the sanitary sewer after use of the media does not exceed the BOD, COD, and TSS which would be discharged if the product were not being used and the grease trap was being properly maintained. pH levels must be between 5 and 11.

(4) All testing designed to satisfy the criteria set forth in Section 22.133 (e)(iii) shall be scientifically sound and statistically valid. All tests to determine oil and grease, TSS, BOD, COD, pH, and other pollutant levels shall use appropriate tests which have been approved by the Environmental Protection Agency and the Texas Commission on Environmental Quality and which are defined in Title 40, Code of Federal Regulations, Part 136 or Title 30, TEXAS ADMINISTRATIVE CODE §319.11. Testing shall be open to inspection by the COTW, and shall meet the COTW's approval.

Sec. 22.135. Schedule of Penalties.

(a) If the COTW determines that a generator is responsible for a blockage of a collection system line the generator shall owe a civil penalty of $1,000 for the first violation, $1,500 for a second violation, and $2,000 for the third violation within a two-year period. Continuous violations shall result in an increase in penalty by $500 and may also result in termination of services.

(b) Any person violating any of the provisions of this Ordinance shall be subject to a written warning for the first violation, a $1,000 civil penalty for the second violation, a $1,500 civil penalty for the third violation, and a $2,000 civil penalty for the fourth violation within a two-year period. Consistent violations will result in a $500 increase in civil penalty and may result in termination of service.

Sec. 22.136 – 22.150. Reserved

ARTICLE VII. MECHANICAL CODE

Sec. 22.151. Adoption. That certain document, one copy of which is on file in the office of the city secretary, being marked and designated as the "International Mechanical Code- including Appendix B," 2012 edition published by the International Conference of Building Officials, is hereby adopted as the mechanical code of the city for regulating the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of heating, ventilating, cooling, refrigeration systems, incinerators or other miscellaneous heat-producing appliances in the city; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, conditions and terms of such "International Mechanical Code," 2012 edition, published by the International Conference of Building Code Officials, on file in the office of the city secretary are hereby referred to, adopted and made a part of this section as if fully set out in this article. *[Ord. No. 15-0211.6, adopted February 11, 2015]*

Sec. 22.152. Mechanical permit fee. All applications for permits shall be made on suitable forms provided by the City and shall be accompanied by the required fees which shall be set by resolution of the City Council. Said fees shall be organized on a fee schedule, a copy of which shall be kept on file in the office of the City Secretary.

Sec. 22.153. Penalty for violation of article. Whenever in the mechanical code or in any ordinance of the city amending such code an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of such code or any such ordinance shall be punished by a fine of not exceeding $500.00; provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this mechanical code or of any ordinance shall continue, shall constitute a separate offense.

Secs. 22.154 – 22.175. Reserved

ARTICLE VIII. ELECTRICAL CODES

DIVISION 1. GENERALLY

Sec. 22.176. Scope of article.

(a) The object of this article is to reduce the personal hazard and the fire hazard from electrical causes. To accomplish this, the requirements set forth in this article are intended to provide a minimum standard for electrical work in the city.

(b) The provisions of this article shall not be construed to apply to the installation, operation, alteration, or repairs of electrical installations or equipment owned and used by an electric light and power company, telephone and/or telegraph company, or railroad company for generation, transmission, distribution, or metering of electricity , or for the operation of signals or the transmission of intelligence.

Sec. 22.177. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved means inspected and accepted as usable under this article by the electrical inspector.

Circuit means a final two or more wire branch circuit rated at 15 amperes, 120 volt or as required for load.

Dwelling means a building used exclusively for residential purposes. Garage buildings for private use shall be included in this definition.

Electrical inspector means the chief electrical inspector and his duly authorized assistants.

Electrical work means all materials, devices, appliances, machinery, and equipment used in connection with the production, transmission or consumption of electrical energy, together with installing, maintaining or repairing of same.

Journeyman electrician means any person who performs the work of installing or repairing any electrical work regulated by this article.

Maintenance means the keeping in safe repair and operation of any and all existing installations, apparatus, and equipment.

Master electrician means a person who holds a master electrician's license, as provided for by this article.

Meter loop means the service entrance conductors, meter base, service breakers or fuses, service disconnect, and the system and equipment grounding.

National Electrical Code means the 1996 edition of the National Electrical Code, as prepared by the National Fire Protection Association.

Outlet means a point on the wiring system at which current is or may be taken, consumed; lights, receptacle, etc.

Permit electrician means any person who has met all requirements for approval and has been granted a license or registration, which includes the privilege of taking out permits to install one or more types of electrical work, as covered by this article.

Spot means the location at which the power company will install the conductors supplying a customer.

Sec. 22.178. Adoption of National Electrical Code and Administrative Provisions.

(a) There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, removal and maintenance of electric wiring and apparatus, including permits and penalties, that certain electrical code known as the National Electrical Code of the National Fire Protection Association, being particularly the 2014 edition of the National Electrical Code and the whole thereof, save and except such portions as are hereafter deleted, modified or amended as set forth in the following Subsection 22.178(b), of which no less than one copy has been and now is filed in the office of the city secretary. Such code is hereby adopted and incorporated as fully as if set out at length in this section, and the provisions of such code shall be controlling in the construction, alteration, maintenance or removal of all electric wiring and apparatus within the corporate limits of the city.

(b) The 2014 National Electrical Code as adopted and applied within the City is hereby amended as follows:

(1) All conductors shall be copper only, save and except as follows.

(2) The use of copper conductors or series 8000 aluminum conductors or better shall be allowed, provided that:

(i) All conductors shall be installed as per the National Electric Code.

(ii) Aluminum conductors can be used for main secondary distribution located outside the structure.

(iii) Conductors used in meter loops shall be copper only.

(c) The "International Electrical Code Administrative Provisions", 2012 edition, is adopted and in full force and effect within the City. A copy of the International Electrical Code Administrative Provisions is on file in the office of the city secretary and available for public inspection. *[Ord. No. 15-0211.6, adopted February 11, 2015]*

Sec. 22.179. Penalty for violation of article. Whenever in the electrical code or in any ordinance of the city amending such code an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of such code or any such ordinance shall be punished by a fine of not exceeding $500.00; provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this electrical code or of any ordinance shall continue, shall constitute a separate offense.

Sec. 22.180. Reserved.

Sec. 22.181 Electrical inspectors.

(a) ***Chief electrical inspector to keep records***. The chief electrical inspector and his assistants shall keep a complete record of the activities of the electrical inspection division and shall render monthly and yearly reports to the mayor, or to any person duly designated by the mayor.

(b) ***Qualifications of chief electrical inspector***. The chief electrical inspector and his assistants shall be well versed in electrical safety requirements generally, and especially those set out in this article, the National Electrical Code, and the safety regulations of the state applying to electrical work.

(c) ***Inspectors to enforce article***. The chief electrical inspector and his assistants are hereby authorized, empowered, and directed to enforce all of the provisions of this article, and the electrical inspector and his assistants are hereby vested with full authority to enter any building or premises and any manhole, subway, or plant at any time during business hours and at any and all times in case of emergency in the discharge of their duties. They are authorized to pass upon and decide any questions under the provisions of this article.

(d) ***Answering questions***. The electrical inspector shall answer any relevant questions concerning, or give any desired information in respect to the meaning, intent or application of the regulations and rules of this article.

(e) ***Requiring of plans and specifications***. The electrical inspector shall, when he deems it necessary to accomplish the objectives of this article, require plans and specifications as prepared by the architect. Then such plans and specifications are demanded, it shall be a violation of this article for any person to install any part of the electrical work concerned until the electrical inspector approves the installation.

(f) ***Inspection of all electrical work***. The City may, but shall not be required to, inspect all electrical work. The City may rely on a representation by an owner or electrician that electrical work has been completed in compliance with this Article; provided that the electrical inspector shall make a thorough inspection of all electrical work within the city from time to time, and where the electrical work is in a dangerous or unsafe conditions, or is deemed to be an interference with the work of the fire department of the city, the inspector shall notify the person owning, using or operating such electrical work to place same in a safe, secure, and non-interfering condition. Any person failing, neglecting, or refusing within a reasonable time to make the necessary repair or changes, and have the necessary work completed within a reasonable time after the receipt of such notice, shall be deemed guilty of violation of this article. Every day which shall elapse after the expiration of such reasonable time until the wires and apparatus are repaired, removed, or changed, as required by the electrical inspector, shall be considered a separate offense within the intent and meaning of this article.

(g) ***Complaints***. All complaints are to be taken before the City Council.

Sec. 22.182. Master and journeyman electricians.

(a) ***License required***. No person shall engage in the business of contracting or, installing, altering, or repairing any electrical work within the city which is regulated by this article, unless such person has been issued a master electrician's license, as specified in this section, except as otherwise set out.

(b) ***Journeyman electrician***. A journeyman electrician is a person holding a journeyman's license.

(c) ***Reciprocal licensing***. Electricians holding a currently valid license or certificate of registration issued by or from another city located within the state shall be deemed to hold such license with the City of Lexington.

Sec. 22.183. Electrical signs.

(a) ***Applicability of section***. The provisions of this section shall apply to all electrical signs, outline wiring, and to all classes of lighting used for advertising purposes or to attract attention.

(b) ***Conditions for erection***. No electrical sign shall be erected, installed, or connected to a source of energy within the city unless such sign bears an approval label of the Underwriters' Laboratories, Inc., or unless it has met the requirements set forth in this section for signs and has an approval card attached by the electrical inspector. All signs erected before an inspection is called for must be open, and means of access shall be supplied by the person erecting the sign.

(c) ***Permit required***. No signs or neon tubing shall be installed until a permit has been applied for and issued by the electrical inspector. No sign or neon tubing shall be connected to a source of energy until an approval tag is attached to the same by the electrical inspector.

(d) ***Compliance with National Electrical Code***. No neon or similar tubing and no electrical work regulated by this article shall be fastened to any sign structure which does not comply with section no. 600-21 of the National Electrical Code.

(e) ***Fees***. Fees shall be paid for each sign constructed and for each installation of neon or similar tubing which is installed within the city. Fees are to be paid as specified under section 22.187.

(f) ***Permits; inspection fees***. Section 22.187 shall govern all permits and inspection fees.

(d) ***Installation of high tension conductors***. All high tension conductors installed within a building shall be enclosed in approved raceways and shall be equipped with insulation approved for the voltage of the circuit, except:

(1) Short connections between the tube terminals, which are enclosed in glass in an approved manner, may be bared conductors; and

(2) As set forth in section no. *600-31(f) of the National Electrical Code*. Outside the main building walls, the conductor for high tension current shall be equipped with insulation approved for the voltage of the circuit and shall be enclosed in rigid conduit, except that when conductors are not readily accessible from a standing surface, they may be installed exposed, if supported or approved insulators at intervals not exceeding two feet and so arranged that all required clearance will be maintained permanently. Straight connections between tube terminals may be enclosed in glass and supported in an approved manner.

Sec. 22.184. Special licenses.

(a) ***Required in certain cases***. No person shall assemble or manufacture any appliances, equipment, or apparatus to be used in the city, and which is partly or wholly operated by electricity at a potential of 50 volts or more, unless the same bears an approval label of the Underwriters' Laboratories, Inc., until such person has been granted a license by the board.

(b) ***Conditions***. Such license shall be limited to the electrical work within or attached to appliances, equipment, and apparatus specified on the license and permits. Inspection and inspection fees, as called for in this article, shall be required. A special license shall not include any privilege to do any other electrical work, or to connect to or to disconnect from a source of energy.

Sec. 22.185. Building Permit (E).

(a) ***Required under certain conditions***. It shall be unlawful for any person to install, alter, or repair any electrical work in the City, as covered by this Article, without first having applied for and obtained a building permit (e) to make such installation, alteration, or repair. No person shall be granted a building permit (e) until said person has fully complied with all requirements of this Article. Applications for a building permit (e) shall be on forms furnished by the City. All Sec. 22.181 applications for permits and requests for inspection shall be made to the building official.

(b) ***Not required under certain conditions***. No building permit (e) shall be required for installation of electrical bells or other low energy wiring, provided such installation is made by a licensed electrician. Intercom and public address systems shall also be considered low energy wiring. No building permit (e) shall be required where specifically exempt in this Article. No building permit (e) shall be required for repairing portable appliances. No building permit (e) shall be required for minor repairs, such as the replacement of sockets, fuses, drop cords, snap switches, and the like.

Sec. 22.186. Inspections.

(a) ***Electrical work not to be concealed until inspected and approved***. No electrical work for which a permit is required under this article shall be concealed in any manner from access or sight until such work has been inspected or approved by the electrical inspector. No electrical work

shall be connected to a source of energy until the electrical work is completed or has the approval of the electrical inspector.

(b) ***Twenty-four-hour notice required***. Any person having charge of the construction, alterations or repair of any buildings, or any other person who covers or conceals, or causes to be covered or concealed, or any such person who connects, or causes to be connected, any electrical work, for which a permit has been issued or is required, before such electrical work has been inspected and approved, without having notified the electrical inspector at least 24 hours previously, shall be subject to the penalty provided for in this article.

(c) ***Final inspection***. When any electrical work for which a permit is required has been installed, the permit electrician in charge shall deliver to the office of the electrical inspector a request for the final inspection. The electrical inspector may inspect the electrical work.

(d) ***Electrical requirements met***. If the electrical work meets all requirements of this article, the electrical inspector shall immediately make the necessary service records, and allow the city or other utilities, to connect the work to a source of supply. Should the electrical work fail to meet the requirements of this article, the electrical inspector shall notify the permit electrician in writing of all the defects. The permit electrician shall, within a reasonable time, correct such defects and notify the electrical inspector. If inspection and reinspection is made, the person taking out the permit shall pay a reinspection fee, as provided in section 22.187. When any permit electrician fails or refuses to provide a statement of compliance or request a final inspection, the owner of the premises on which the electrical work has been performed may request an inspection, and, upon payment of a reinspection fee by such owner or person, the electrical inspector shall inspect the electrical work as soon thereafter as practicable.

(e) ***Completion of partial work***. When a master electrician does not have the contract for the finishing of the electrical work covered by his permit, he shall make his inspection request to the electrical inspector when his part of the work is completed.

(f) ***Certificates of approval***. A written certificate of approval shall be used, upon request, to a permit electrician to cover any electrical work approved by the electrical inspector.

(g) ***Defects to be promptly corrected***. When a permit electrician is given notice that defects exist in his electrical work, he shall make corrections promptly. If these corrections are not made within 30 days, he shall not be issued any other permits until the defects are corrected and approved by the electrical inspector; provided, however, that a time extension may be granted by the inspector.

(h) ***Compliance with article provisions***. No permit or certificate on inspection shall be conclusive as against the city that the electrical work therein referred to has been installed in conformity with the requirements of the law, but the owner of the premises, the permit electrician, and all other persons concerned shall be obligated to see that all matters, things, and acts to which this article and such permit or certificate relate shall conform to the regulations of the city.

Sec. 22.187. Fees and reinspection.

(a) ***Required under certain conditions***. The City Council shall set by resolution the fees to be paid to the City for any electrical work done in the city for which a building permit (e) is issued, or as required by this Article.

(b) ***Schedule of fees***. All fees shall be paid to the City by each person doing any electrical work for which such fees are required in subsection (a) of this section. The fees shall be paid to the City before the issuance of a building permit (e) and before any work is started. A copy of the fee schedule shall be kept on file in the office of the City Secretary.

(c) ***Provision of utility services; requirements***. The building inspector will not make the final inspection until all required fees have been paid. No utility services, other than temporary services for construction, will be provided by the City until the statement of compliance has been given, or the final inspection has been made and the work approved by the building inspector.

(d) ***Reinspections***. When any electrical work, as covered by this Article, is reported to the electrical inspector as ready for inspection, and, upon such inspection, the electrical work does not meet the requirements of this Article, the permit electrician shall be notified of the defects. After correcting the defects, he shall call for a reinspection and be charged a reinspection fee, as provided for on the fee schedule adopted by the City Council.

(e) ***Payment of fees***. Unless otherwise stated in this Article, all fees shall be delivered to the City and all fees shall be payable during regular business hours at City Hall. All accounting and records concerning finances covered by this Article shall be under the supervision and control of the Mayor.

Secs. 22.188 – 22.200. Reserved.

DIVISION 2. ELECTRICAL STANDARDS

Sec. 22.201. Safety and inspection standards.

(a) ***Electrical work to conform with standards***. No electrical work in the city shall be approved unless the electrical work has been represented as in conformity with this article and the laws of the state, and unless such electrical work has been represented as in conformity with the approved methods of construction for the safety of life and property. When not specifically covered by this article, the regulations as prescribed by the National Electrical Code shall be prima facie evidence of such approved methods, provided that the provisions of this article shall prevail over the National Electrical Code in case of conflicting provisions.

(b) ***Electrical installations***. All electrical work as covered by this article shall be installed in a safe and secure manner with materials of such kind, quality, and capacity as will maintain satisfactory and economical service to both the service and consuming parties. No electrical materials, devices, or appliances shall be used or installed in the city unless such materials, devices, and appliances are in conformity with the provisions of this article and the laws of the state, and

unless same are in conformity with the approved methods of construction for safety to life and property. Unless otherwise covered by this article, conformity of electrical materials, devices , and appliances with the Standards of Underwriters' Laboratories, Inc., as approved by the American Standards Association, and other standards approved by the American Standards Association shall be prima facie evidence that such electrical materials, devices, and appliances comply with the requirements of this article.

Sec. 22.202. Wiring and other specifications.

(a) ***Wiring in Residential districts***. All structures located within residential districts may be wired in any wiring method approved by the National Electrical Code.

(b) ***Wiring in any other districts***. All structures located in any other use or districts, including business, commercial and industrial, shall be wired in one or more of the following approved methods:

(1) Standard rigid conduit;

(2) Thin wall conduit; and

(3) Surface metal raceways.

(c) ***Flexible metallic conduits***. Flexible metallic conduit may be used to connect up vibrating equipment, provided it does not exceed six feet in length without prior approval of the electrical inspector, as provided for under subsection (d) of this section. Flexible metallic conduits shall not be enclosed in plaster. Flexible metallic conduit, as the expression is used in this section means Greenfield, not BX cable. BX cable shall not be used without prior approval in writing from the electrical inspector.

(d) ***Exceptions***. The following exceptions to the wiring methods outlined in subsection (c) of this section shall be recognized:

(1) Equipment wired with other methods and which bears the Underwriters' Laboratories, Inc., label of approval.

(2) Wiring methods especially approved in this article.

(3) The electrical inspector may approve other methods of wiring, such as special raceway, or busway, or methods to meet conditions where the methods named in subsections (b) and (c) of this section are not suitable for the use intended, or where the National Electrical Code requires a certain method.

(e) ***Other conduits***. Only rigid metal (not thin wall) and nonmetallic conduit shall be used underground within concrete construction, where exposed to excessive moisture, and where required under the National Electrical Code, except that thin wall conduit may be run through a

concrete beam or wall without coupling or connection. Thin wall conduit will be considered as not exposed to weather if run on the ceiling 24 inches or more from the outside edge of an awning or on side walls more than 45 degrees inside from a vertical line at the outside edge of a roof.

(f) ***Requirements for metal enclosed system***. No metal enclosed system shall be installed which does not allow the easy pulling and replacing of the conductors which it encloses.

(g) ***Moved-in buildings***. Moved-in houses and other types of buildings shall be treated as new construction under this article. Old buildings moved within the city limits shall meet the requirements of this article for repair work. New buildings moved within the city limits shall be treated as new construction under this article.

(h) ***Rewirings or additions***. Any rewiring or additions to existing wiring representing over 60 percent of the original outlets' installations value shall require the total installation to meet the requirements of this article.

Sec. 22.203. Connection of Electricity.

(a) Electric service will only be connected by City personnel, and only after the wiring of the location has been inspected and approved by the City inspector. Upon making an application, the applicant covenants that the location will be wired in accordance with the policies and requirements of the City, the National Electric Code, the National Electrical Safety Code, and all applicable government regulations.

(b) The owner of any premises, and the contractor for any work performed, shall be responsibility for the compliance of such premises and work with the requirements of this Article. The owner and the contractor shall, by making the application for service, agree that if required changes and corrections are not made within thirty (30) days after such inspection and failure to approve, the City may discontinue service to the property until such changes have been made. The owner and the contractor shall, by making the application for service, release the City of Lexington from any liability of every kind and nature for damage which may occur from defective wiring of said premises or from failure to inspect said wiring; and such permit application shall further be an agreement to hold the City of Lexington harmless from any and all liability.

ARTICLE IX. MANUFACTURED HOUSING.

Sec. 22.301. Definitions. For the purpose of this Article, certain terms, words and phrases shall have the meaning hereinafter ascribed thereto.

Agent means any person authorized by the licensee of a trailer and motor home park to operate or maintain such park under the provisions of this Article.

Building Official means the legally designated inspection authority of the City, or his authorized representative.

Certificate of Occupancy means a certificate issued by the Building Official for the use of a building, structure and/or land, when it is determined by him that the building, structure and/or land complies with the provisions of all applicable divisions of the City Code.

City Health Officer means the legally designated head of the City Health Department or his authorized representative.

City Official means the legally designated head of a City department of his authorized representative when acting in an official capacity.

Common Access Route **or** ***Internal Street*** means a private way which affords the principal means of access to individual lots or auxiliary buildings.

Fire Chief means the legally designated Chief of Fire Department of the City, or his authorized representative.

License means a written license issued by the City Council or its authorize representative, permitting a person to operate and maintain a trailer and motor home park under the provisions of this Article and regulations issued hereunder.

Licensee means any person licensed to operate and maintain a trailer and motor home park under the provisions of this Article.

Manufactured Home means a manufactured home as defined in *art. 5221f, Tex. Rev. Civ. Stat*.

Mobile Home means a movable or portable dwelling constructed to be towed by a motor vehicle on its own wheels and chassis over Texas Roads and Highways under special permit. A mobile home is designed without a permanent foundation for permanent or semi-permanent living quarters. A mobile home, for the purposes of these regulations, shall also include any HUD-code manufactured home.

Mobile Home Subdivision means a unified development of mobile home lots arranged on a tract of land for permanent or semi-permanent location of mobile homes which has been subdivided and is under ownership of two or more persons meeting all requirements of City subdivision regulations.

Permit means a written permit or certification issued by the Building Official permitting the construction, alteration, or extension of a trailer or motor home park, under the provisions of this Article and regulations issued hereunder.

Plot Plan **or** ***Site Plan*** means graphic representation, drawn to scale, in a horizontal plane, delineating the outlines of the land included in the plan and all proposed use locations, accurately dimensioned; the dimensions also including the relation of each use to that adjoining and to the boundary of the property.

Police Chief means the legally designated Chief of the Police Department of the City, or his authorized representative.

Replacement means the act of moving one trailer or motor home from an existing stand and replacing it with another trailer or motor home.

Service Building means a structure housing toilet, lavatory, and such other facilities as may be required by this Article.

Sewer Connection means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of a trailer or motor home to the inlet of the corresponding service riser pipe of the sewage system serving the park.

Sewer Service Riser Pipe means that portion of a sewer service which extends vertically to the ground elevation and terminates at a space.

Space means a plot of ground without a park designated for the accommodation of one unit, together with such open space as required by this Article. This term also shall include the terms "lot", "stand" and "site".

Trailer or Motor Home Park means a parcel of land authorized by the City Council and not prohibited for such use by deed restrictions, for the purpose of renting trailer or motor home spaces on a temporary basis.

Trailer* or *Motor Home* or *Unit* or *Recreational Vehicle, includes trailer homes and travel trailers, and means a vehicle which stands on wheels and is built to be towed by a motor driven vehicle. A motor home (recreational vehicle) is a self-propelled vehicle which stands on wheels. Both are built to Federal and State specifications to be licensed for operation on public roads and highways, and are not considered mobile homes.

Water Connection means the connection consisting of all pipes, fittings, and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within a trailer or motor home.

Water Riser Pipe means that portion of the private water service system serving a park, which extends vertically to the ground elevation and terminates at a designated point at a trailer or motor home space.

Sec. 22.302. General Design and Construction Requirements. Mobile home design and construction shall conform to generally accepted standards of the mobile home industry and the Texas Manufactured Housing Standards Code.

(a) **Placement and Underpinning Requirements**.

(1) Placements of mobile home on mobile home stand by jacks or supports shall be such as to insure the retention of the mobile home in a fixed position.

(2) All mobile homes must be leveled and its foundation must be single block up to thirty inches (30") in height from the ground level and double blocked or between thirty inches (30") to forty-eight inches (48"), and forty eight inches (48") is maximum, except for any gap, opening, or space between the frame and ground level which exceeds forty-eight inches (48") must have a foundation designed by a certified engineer. The design must be signed and sealed by the engineer and be approved by the Building Official.

(3) A fire resistive skirting, or underpinning, shall be installed around the bottom of the perimeter of any mobile home to the ground within thirty (30) days from the placement of the mobile home and which shall be finished with not less than two (2) coats of paint or be constructed of such materials not requiring painting (galvanized metal not included).

(b) **Space Requirements and Maximum Occupancy**. The minimum square footage of heated area for any mobile home shall be 600 square feet. The maximum number of occupants of a mobile home shall be limited to the number determined on the basis of the square feet of floor area of habitable space, exclusive of habitable space used for cooking purposes, in accordance with the following:

(1) 150 square feet for one (1) or two (2) occupants;

(2) 250 square feet for three (3) occupants; and

(3) 80 square feet additional for each occupant thereafter.

(c) **Ceiling Height Requirements**. Habitable space shall have a minimum ceiling height of seven feet (7') over fifty percent (50%) of the floor area; and the floor area where the ceiling heights is less than five feet (5') shall not be considered in computing gross floor area.

(d) **Bathrooms and Toilets**. Bathrooms and toilets shall have provisions for privacy and shall be provided with floors of moisture resistant material.

(e) **Bathrooms and Kitchens Prohibited for Sleeping Purposes**. Bathrooms, toilet rooms, kitchens and kitchenettes shall not be used for sleeping purposes.

(f) **Exits**. A mobile home shall have a safe and unobstructed primary exit and an emergency exit located remote from the primary exit.

(g) **Light and Ventilation**.

(1) **Habitable Space**. A mobile home shall be provided with natural light and ventilation adequate for the intended use of each habitable space in accordance with the following:

(i) Window area shall equal at least ten percent (10%) of the floor area of each habitable space; and

(ii) Openable area of windows and other openings used for natural ventilation of each habitable space shall equal at least forty-five percent (45%) of the required window area, or mechanical ventilation shall be provided as set forth in this section.

(2) **Non-habitable Space**. A mobile home shall be provided with light and ventilation adequate for the intended use of non-habitable space in accordance with the following:

(i) Kitchenettes, bathrooms, and toilet rooms shall be provided with light of sufficient intensity and so distributed as to permit the maintenance of sanitary conditions and the safe use of the space and the appliances, equipment, and fixtures; and

(ii) Kitchenettes, bathrooms, and toilet rooms shall be provided with natural ventilation consisting of openable areas of not less than one and one-half (1 1/2) square feet for bathrooms and toilet rooms, and not less than three (3) square feet for kitchenettes; or mechanical ventilation shall be provided as set forth in this section.

(h) **Plumbing Standards**. The following shall apply to plumbing in a mobile homes:

(1) A mobile home shall contain:

(i) Kitchen sink,

(ii) Flush type water closet,

(iii) Bathtub or shower, and

(iv) Lavatory.

(2) Hot and cold water supply shall be provided at kitchen sink, bathtub or shower, and lavatory. Cold water shall be supplied to water closets and urinals.

(3) Plumbing system shall be designed and arranged so as to facilitate connecting to approved exterior water supply and sewerage disposal systems, provide adequate water supply to all plumbing fixtures and dispose of all liquid wastes therefrom.

(i) **Heating Standards**. The following shall apply to heating units in a mobile home.

(1) A mobile home shall contain:

(i) Space heating equipment, and

(ii) Water heating equipment.

(2) Areas allowed for installation of space heating and water heating equipment shall provide adequate clearance so that the surface of adjacent combustible materials will not exceed a safe temperature. Curtains and draperies shall not be used in such areas.

(3) Space and water heating units shall be of an approved type for installation in a mobile home. Fuel burning water heaters and furnaces other than those having a sealed combustion space, shall not be located in sleeping rooms, bathrooms and toilet rooms.

(4) Space heating units shall have sufficient capacity to maintain a minimum inside temperature of 70 F, based on the average of the recorded annual minimum outside temperatures for the locality and shall be provided with a manual or automatic temperature control devices.

(5) Water heater units shall have sufficient capacity to deliver at each hot water outlet an ample supply of water at a minimum temperature range of 130 to 140 F, and such units shall be provided with safety devices arranged to relieve hazardous pressures and excessive temperatures.

(6) Electrical space and water heating equipment shall be an approved type and shall have adequate circuit protection devices.

(7) Gas and liquid fuel-burning equipment shall be specifically designed for the type of fuel used. Flues and vents shall be suitable for the type of fuel used and shall be installed so that the surface of adjacent combustible material will not exceed a safe temperature.

(8) Automatically operated heat-producing equipment using utility gas shall have a valve that will automatically shut off the flow of gas to the main burner when the pilot flame is extinguished.

(9) Automatically operated heat-producing equipment using liquefied petroleum gas shall have a valve that will automatically shut off the flow of gas to the pilot light and main burner when the flame is extinguished.

(j) **Heating Ventilation Standards**. The following shall apply to heating ventilation of mobile homes:

(1) Fuel-burning space and water heating units shall be vented. Other fuel-burning equipment shall be vented where the discharge of products of combustion into the space where the equipment is installed would be unsafe.

(2) Liquid fuel-burning equipment shall be vented and shall be provided with means to prevent spilling of fuel.

(3) Fuel storage containers and gas cylinders shall be mounted outside the mobile homes, or in a space that is vented to the outside and is vapor-tight to the inside.

(4) Warm air supply ducts and fittings shall be of non-combustible material.

(5) Return air ducts shall be of non-combustible material where exposed to temperatures which are unsafe for combustible materials.

(6) Return air grills in doors and partitions shall be of a permanent non-closable type. Openings for return air shall not be located in bathrooms, toilet rooms or kitchenettes.

(7) Mechanical ventilation, where required, shall exhaust air at rates not less than the following:

(i) For habitable space - 2 air changes per hour;

(ii) For bathroom and toilet rooms - 25 cfm; and

(iii) For kitchenettes - 100 cfm.

(k) **Air Conditioning**. Air conditioning for habitable space provided in lieu of mechanical ventilation shall supply an amount of air not less than that set forth in this Article with at least twenty-five percent (25%) of the required quantity taken from the outside.

(l) **Electrical Standards**. The following standards shall apply to the electrical system in mobile homes:

(1) A mobile home shall contain an electrical wiring system and service equipment.

(2) Electrical wiring shall have adequate capacity for designed lighting and appliance equipment. Individual circuits shall contain overload protection devices.

(3) At least one receptacle outlet shall be provided for each multiple of twelve (12) linear feet of wall space or major fraction thereof in each habitable space and kitchenette. Bathrooms and toilet rooms shall have permanently installed lighting fixtures and switches located so as not to be an electrical hazard.

(4) Exterior equipment shall be weatherproofed to insure protection of equipment from the elements. Service equipment shall have means of quick disconnection from the source of supply.

(5) Provision shall be made for grounding non-current carrying metallic parts of the electrical system. Such grounding shall be common to one external supply point. Provision shall be made for exterior source grounding of electrical system.

(m) **Cooking and Refrigeration Standards**. The following standards shall apply to cooking and refrigeration units in a mobile home:

(1) A mobile home shall contain cooking equipment and refrigeration equipment.

(2) Electrical cooking and refrigeration equipment shall be of an approved type for installation in a mobile home and shall have adequate circuit protection devices.

(3) Gas burning cooking and refrigeration equipment shall be of an approved type for mobile home installation and connections to rigid pipe shall be made with approved flexible metal gas appliance connectors.

(4) Fuel storage shall conform to the requirements of fuel storage for heating.

(n) **Interior Maintenance Required**. Floors, walls, ceilings, furnishing and fixtures shall be maintained in a clean and sanitary condition. Exits shall be maintained free of obstructions.

(o) **Garbage and Refuse Containers Required**. Suitable containers shall be provided for the temporary storage of garbage and refuse within the mobile home.

(p) **Screening Requirements**. From May 1st to October 1st, entrances to the mobile home shall be provided with self-closing type devices or screens, and windows and other openings used for ventilation shall be appropriately screened.

(q) **Mobile Homes to be Pest Free-Extermination**. Mobile homes shall be maintained free of insects, vermin and rodents. Extermination shall be effected in conformance with generally accepted practice.

(r) **Storage of Flammable Materials**. Flammable cleaning liquids and other flammable materials shall be stored in a safe, approved manner.

Sec. 22.303. Unfit Dwellings.

(a) Any mobile home shall be subject to condemnation procedures when found to have any of the following defects:

(1) One which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public.

(2) One which lacks illumination, ventilation, or sanitation facilities adequate to protect the health or safety of the occupants or of the public.

(b) No mobile home that was manufactured prior to January 1, 1993 shall be installed, located or occupied within the City after the date of this Article. Save and except for a new manufactured home delivered and installed by the dealer, no mobile home or manufactured home may be located, installed or occupied within the City without a permit being issued by the City. The fee for such permit and required inspection shall be $50.00 and no such mobile home or manufactured shall be located, installed or occupied within the City that is not inspected and found to be in compliance with all the applicable codes and ordinances of the City.

Sec. 22.304. Service of Notice for Unfit Dwellings. Whenever the Building Official has determined that a mobile home displays defects as described in this Article, he shall give written notice to the owner of such and shall placard the mobile home as unfit for human habitation in accordance with the following:

(a) Such written notice shall include a description of the real estate sufficient for identification.

(b) The placard shall be placed on the main entrance of the mobile home and read:

"THIS MOBILE HOME IS UNFIT FOR HUMAN HABITATION; THE USE OF THIS MOBILE HOME FOR HUMAN HABITATION IS PROHIBITED AND UNLAWFUL".

(c) Service of notice shall be one of the following three (3) methods:

(1) By delivery to the owner personally or by leaving the written notice at the usual place of abode of the owner with a person of suitable age and discretion;

(2) By depositing the written notice in the United States Post Office address to the owner at the last known address with postage prepaid thereon; or

(3) By posting and keeping posted for twenty-four (24) hours a copy of the written notice in a conspicuous place on the premises.

Sec. 22.305. Compliance with Written Notice. The owner of the mobile home shall have ten (10) days from the date of service of the notice to comply with the provisions of this section.

Sec. 22.306. Procedure on Noncompliance.

(a) **Condemnation**. The City Council shall hold a public hearing on all condemnation proceedings resulting from non-compliance with the provisions of this section.

(b) **Notice of Public Hearing.** Written notice of such public hearing shall be sent to owners of real property lying within two hundred feet (200') of the property on which the appeal is made not less than ten (10) days before the date set for the hearing. Such notice may be served by depositing the same properly addressed and postage paid in the United States Post Office. Notice shall also

be given by publishing the same prior to the date set for the hearing which notice shall state the time and place of such hearings.

(c) **Notice of Condemnation**. Following the public hearing determining the mobile home to be unfit for human habitation, the City Council shall immediately adopt a resolution condemning the mobile home and requiring the occupants to vacant the premises.

(d) **Vacating Mobile Home**. One of the following procedures are to be used when required to vacate the mobile home:

(1) Any occupant of a mobile home condemned as unfit for human habitation under the provisions of this section shall vacate said mobile home within thirty (30) days after adoption of said resolution by City Council.

(2) The owner or occupant of a mobile home which has been condemned under the provisions of this section may move said mobile home outside the city limits. Such action shall be deemed in compliance with this section.

(e) **Further Occupancy Restricted**. One the occupant or occupants of a mobile home which has been condemned and placarded as unfit for human habitation vacate said premises, no person shall again use said premises for human habitation until approval is secured from and such placard is removed by the Building Official. The Building Official shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

Sec. 22.307. Exceptions. Any new manufactured home delivered and installed by a licensed installer shall be exempt from the requirements of this Article as to quality of construction and construction standards, including but not limited to wiring and plumbing, so long as such home is maintained in substantially the same condition as when purchased and installed; provided that this exemption shall expire upon sale or conveyance of the manufactured home by the purchaser at retail to any third party.

Sec. 22.308. Additional Exceptions and Severability. If any provision of this Article or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. Further, no provision or term of this Article shall be interpreted as adding any additional requirement to any federal or state standard for the quality, construction and/or requirements for any manufactured home, but shall, with respect to manufactured homes, be applied to those homes that do not at any time meet any such applicable standards, or that because of damage, deterioration or a failure to clean and maintain do not comply with such laws and this Article.

Chapter 23. Fair Housing

Article I. In General

Article II. Discrimination in Housing.

Article III. Enforcement.

Chapter 23. FAIR HOUSING

Article I. GENERAL.

Sec. 23.1. Purpose. It is hereby declared to be the policy of the city to bring about through fair, orderly and lawful procedures, the opportunity of each person to obtain housing without regard to race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age.

It is further declared that such policy is established upon a recognition of the inalienable rights of each individual to obtain housing without regard to race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, age; and further that the denial of such rights through considerations based on race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age is detrimental to the health, safety and welfare of the inhabitants of the city and constitutes an unjust denial or deprivation of such inalienable rights which is within the power and the proper responsibility of government to prevent. (*Ord. 00-0412-12, passed 04-12-00*)

Sec. 23.2. Definitions. As used in this ordinance the following words and phrases shall have the meanings respectively ascribed to them in this section unless the contest requires otherwise:

Age means the calendar age of an individual eighteen (18) years of age or over.

Creed means any set of principles, rules, opinions and precepts formally expressed and seriously adhered to or maintained by a person.

Director means the director of the human relations department or authorized assistant.

Discriminatory housing practice means an act which is unlawful under this ordinance.

Dwelling means any building, structure or portion thereof which is occupied as, or designed and intended for occupancy as, a residence by one or more persons and any vacant land which is offered for sale or lease for the construction or location thereof of any such building, structure or portion thereof.

Family means a single individual or a group of individuals living together under one common roof.

Major life activities means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Marital status means an individual's status as a single, married, divorced, widowed or separated person.

Parenthood means a person's status as a parent or legal guardian of a child or children under the age of eighteen (18).

Person means one or more individuals, corporations, partnerships, associates, labor organization, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

Physical or mental handicap means any physical or mental impairment which substantially limits one or more major life activities.

Physical or mental impairment shall include:

(1) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems, neurological; musculoskeletal; special sense organs; respiratory including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

To rent includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Senior adult means a person fifty-five (55) years of age or older.*(Ord. 00-0412-12, passed 04-12-00)*

Sec. 23.3. Interpretation and Effect. This Chapter shall in no way be interpreted as creating a judicial right or remedy which is the same or substantially equivalent to the remedies provided under *Title VIII of the Civil Rights Act of 1968*, as amended or the Federal Equal Credit Opportunity Act *(15 U.S.C. 1691)*. All aggrieved parties shall retain the rights granted to them to Title VIII of the Civil rights Act of 1968, as amended and the Federal Equal Credit Opportunity Act. In construing this Chapter, it is the intent of the city council that the courts shall be guided by Federal court Interpretations of *Title VIII of the Civil Rights Act of 1968*, as amended, and the Federal Equal Credit Opportunity Act, where appropriate. *(Ord. 00-0412-12, passed 04-12-00)*

Secs. 23.4 - 23.25. Reserved

ARTICLE II. DISCRIMINATION IN HOUSING.

Sec. 23.26. Discrimination in the Sale or Rental of Housing. Except as exempted by it shall be unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age.

(b) To discriminate against any person in the terms, conditions, or privileges of a sale or rental of a dwelling or in the provision of services or facilities in connection therewith because of race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age.

(c) To make, print or publish or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation of discrimination based on race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or an intention to make any such preference, limitation or discrimination.

(d) To represent to any person because of race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age that any dwelling is not available for inspection, safe or rental when such dwelling is in fact so available.

(e) To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular

race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age. (*Ord. 00-0412-12, passed 04-12-00*)

Sec. 23.27. Discrimination in Housing financing. It shall be unlawful for any bank, building and loan association, insurance company, or other person whose business consists in whole or in part in the making of commercial real estate loans to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to discriminate against him in the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance because of the race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age of such person or such persons associated therewith or because of the race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings for which such loan or other financial assistance is to be made or given. (*Ord. 00-0412-12, passed 04-12-00*)

Sec. 23.28. Discrimination in Providing Brokerage Service. It shall be unlawful for any person to deny another person access to membership in, or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling and renting dwellings or to discriminate against another person in the terms or conditions of such access, membership or participation, on account of race, color, creed, religion, sex, national origin, physical or mental handicap, marital status, parenthood, or age. (*Ord. 00-0412-12, passed 04-12-00*)

Sec. 23.29. Unlawful Intimidation. It shall be unlawful for any person to harass, threaten, harm, damage or otherwise penalize any individual, group or business because such individual, group, or business has complied with the provisions of this ordinance or has exercised in good faith rights under this ordinance, or has enjoyed the benefits of this ordinance, or because such individual, group, or business has made a charge in good faith, testified in good faith or assisted in good faith in any manner in any investigation, or in any proceeding hereunder or has made any report to the director. *(Ord. 00-0412-12, passed 04-12-00)*

Sec. 23.30. Exemptions and Exclusions.

(a) Nothing in this Chapter shall apply to:

(1) Any single-family house sold or rented by an owner, provided that:

(i) Such private individual owner does not own more than three (3) single-family houses at any one time; and

(ii) If the owner does not reside in the house at the time of the sale or was not the most recent resident of such house prior to the sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four (24) month period; and

(iii) Such bonafide private individual owner does not own any interest in, nor is there owned or reserved on such person's behalf, under any express voluntary agreement, title to or any right to all or any portion of the proceeds from the sale or rental of more than three (3) such single-family houses at any one time; and

(iv) The sale or rental is made without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(v) The sale or rental is made without the publication, posting or mailing of any advertisement or written notice in violation of this ordinance; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of subsection (a). A person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein; or

(2) He has, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.

(c) Nothing in this Chapter shall prohibit a religious organization, association or society or a nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to person of the same religion or from giving preference to such persons, unless membership in such religion is restricted

on account of race, color, sex, national origin, physical or mental handicap, marital status, parenthood, or age.

(d) Nothing in this Chapter shall prohibit a private club, which is not in fact open to the public, and which incidentally to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members, or from giving preference to its members.

(e) Nothing in this Chapter shall bar any person from owning and operating a housing accommodation in which rooms are leased, subleased or rented only to persons of the same sex, when such housing accommodation contains common lavatory, kitchen or similar facilities available for the use of all persons occupying such housing accommodation.

(f) Nothing in this Chapter shall prohibit the sale, rental, lease or occupancy of any dwelling designed and operated exclusively for senior adults and their spouses, unless the sale, rental, lease or occupancy is further restricted on account of race, color, creed, religion, sex, national origin, physical or mental handicap and marital status.

(g) Nothing in this Chapter shall bar a person who owns, operates or controls rental dwellings whether located on the same property or on one or more contiguous parcels of property, from reserving any grouping of dwellings for the rental or lease to tenants with a minor child or children; provided however, in the event that said reserved area is completely leased or rented, the person owning, operating or controlling said rental dwelling may not refuse to rent or lease any other available dwelling to the prospective tenant on the basis of the tenants status as parent or any other of the protected classifications set forth in this Chapter. *(Ord. 00-0412-12, passed 04-12-00)*

Sec. 23.31. Violations. No person shall violate any provision of this Chapter, or knowingly obstruct or prevent compliance with this Chapter. *(Ord. 00-0412-12, passed 04-12-00)*

Secs. 23.32 - 23.40. Reserved.

Article III. Enforcement.

Sec. 23.41. Generally. The director of the human relations department shall have the responsibility of administering and implementing this Chapter. The director may delegate the authority to investigate and conciliate complaints to other designated city employees. *(Ord. 00-0412-12, passed 04-12-00)*

Sec. 23.42. Complaints – Generally.

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to

occur (hereinafter referred to as the "charging party") may file a complaint with the director. Such complaints shall be in writing and shall identify the person alleged to have committed or alleged to be committing a discriminatory housing practice and shall state the facts upon which the allegations of a discriminatory housing practice are based. The director shall prepare complaint forms and furnish them without charge to any person, upon request.

(b) The director shall receive and accept notification and referral complaints from the U.S. Attorney General and the Secretary of Housing and Urban Development pursuant to the provisions of *Title VIII, Fair Housing Act of 1968, Public Law 90-284*, and shall treat such complaints hereunder in the same manner as complaints filed pursuant to subsection (a) of this section.

(c) All complaints shall be filed within one hundred eighty (180) days following the occurrence of an alleged discriminatory housing practice. Upon the filing or referral of any complaint, the director shall provide notice of the complaint by furnishing a copy of such complaint to the person named therein (hereinafter referred to as the "respondent") who allegedly committed or were threatening to commit an alleged discriminatory housing practice. The respondent may file an answer to the complaint within fifteen (15) days of receipt of the written complaint.

(d) All complaints and answers shall be subscribed and sworn to before an officer authorized to administer oaths.

(e) If at any time the director shall receive or discover credible evidence and shall have probably cause to believe that any person or persons have committed a discriminatory housing practice as to which no complaint has been filed or is about to be filed, the director may prepare and file a complaint upon his own motion and in his own name and such complaint shall thereafter be treated in the same manner as a complaint filed by a person aggrieved. (*Ord. 00-0412-12, passed 04-12-00*)

Sec. 23.43. Investigation and Conciliation.

(a) Upon the filing or referral of a complaint as herein provided, the director shall cause to be made a prompt and full investigation of the matter stated in the complaint; provided, however, that before any charge becomes accepted for investigative purposes, the director or an investigator shall have personally reviewed with the charging party the allegations contained therein and shall have determined that said charge comes within the provisions of this ordinance. In the event such review results in the determination that a particular charge does not come within the provisions of this ordinance, the charging party shall be given a clear and concise explanation of the reasons why it does not.

(b) If the director determines that there is not probably cause to believe that a particular alleged discriminatory housing practice has been committed, the director shall take no further action with respect to that alleged offense.

(c) During or after the investigation, but subsequent to the mailing of the notice of complaint, the director shall, if it appears that a discriminatory housing practice has occurred or is threatening to

occur, attempt by informal endeavors to effect conciliation, including voluntary discontinuance of the discriminatory housing practice and to obtain adequate assurance of future voluntary compliance with provisions of this ordinance. Nothing said or done in the course of such informal endeavors may be made public by the director, the commission, the investigator, the conciliator, the charging party, or the respondent, or be used as evidence in a subsequent proceeding without the written consent of all persons concerned.

(d) Upon completion of an investigation where the director has made a determination that a discriminatory housing practice has in fact occurred, if the director is unable to secure from the respondent an acceptable conciliation agreement, then the human relations commission of the city must, upon a majority vote, refer the case to the city attorney for prosecution in municipal court or to other agencies as appropriate. With such recommendation of the director and the referral of the human relations commission, the director shall refer his entire file to the city attorney. The city attorney shall, after such referral, make a determination as to whether to proceed with prosecution of such complaint in municipal court. *(Ord. 00-0412-12, passed 04-12-00)*

Sec. 23.44. Penalty. If a discrimination housing practice is found to have in fact occurred and the case has been referred to municipal court, the respondent shall be assessed a penalty of $300.00 per violation. *(Ord. 00-0412-12, passed 04-12-00)*

Chapters 24 and 25 Reserved.

Chapter 26 Business

Article I. In General

Article II. Public Auctions

Division 1. Generally

Division 2. License

Article III. Economic Development Incentives

CHAPTER 26. BUSINESS

ARTICLE I. IN GENERAL

Sec. 26.1 and 26.2. Reserved.

Sec. 26.3. Tourist courts and camps.

(a) ***Standards to be met prior to operation***. It shall be unlawful for any owner or lessee of any tourist camp, trailer camp, cabin, construction camp, or any similar establishment, to own, rent, or operate the same in the city without first providing a water supply; excreta and sewage disposal connection; garbage and refuse disposal; and heating, lighting, ventilation, plumbing, screening and spacing, as provided and approved by the United States Public Health Service, as provided in this section, and by ordinances and law of the city and state health department supplementing and cumulative of the terms of this section.

(b) ***Water supply systems***. Connections must be made with the city water supply wherever available, and all private water supplies must be of a standard to meet the requirements of the state health department.

(c**)** ***Sewage disposal systems***. There shall be provided at each establishment a method of excreta and sewage disposal which complies with the requirements of the sanitary Code of the United States Health Service and state law. If the establishment is within 300 feet of a sewer line, then the same shall be connected therewith and shall be governed by the rules and regulations of the city sewer system. If the establishment is not within 300 feet of such line, then there shall be provided by such owner or lessee an approved septic tank connection which shall meet the approval of the city plumbing inspector. At least one connection shall be made for each 15 persons of each sex.

(d) ***Disposal of garbage and refuse***. The disposal of all garbage and refuse shall be in compliance with the requirements of the city health department and all laws of the state, and the Sanitary Code of the United States Health Service.

(e) ***Heating, lighting, ventilation and screening of buildings***. All cabins, trailers, and other inhabited buildings of such establishments located on such premises shall be heated, lighted, ventilated and screened so as to meet the requirements of the city building code and the laws and regulations of the state health department and part VIII of the Sanitary Code of the United States. There shall be a space of 20 feet between each row or tier of such improvements, and the ground shall be well drained so as to carry off the water. Not less than 20 feet shall be allowed from side to side of each improvement in the establishment.

(f) ***Proposed plan to be submitted to city***. Before erecting and maintaining any tourist camp, trailer camp, or any form of establishment for occupancy of persons or vehicles, a plan of the same, including the plan for water supply, excreta and sewage disposal, garbage and refuse disposal, heating, lighting, ventilating, plumbing, sewer connection, screening and drainage shall be reduced

to writing and submitted to the building official or the city planning and zoning commission if such commission is functioning, and must be approved by the city health officer and superintendent of the water and sewer department for approval. No class of establishment described in this section shall be erected and offered to the public for occupancy until such plans have been approved and signed by such authorities. It shall be unlawful to maintain for rent and use by the public any of the establishments described above on any premises in the city, until a permit has been issued permitting the same, and signed by the authorities designated in this subsection. Any person violating any term or condition of this section, and any person maintaining any establishment on his premises, or on any premises rented or leased by him, without first obtaining the permit provided for in this section, and complying with the conditions specified in this section shall be deemed guilty of a misdemeanor.

Secs. 26.4 through 26.25 Reserved

ARTICLE II. PUBLIC AUCTIONS

DIVISION 1. GENERALLY

Sec. 26.26. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

New means all goods, wares and merchandise which shall have been purchased from manufacturers, jobbers or wholesalers by the person selling the same at auction, without having heretofore been exposed for sale to the public at retail.

Salvage means all goods, wares and merchandise, however secured, when the same has theretofore been exposed for sale to the public at retail by any person, provided that the property, otherwise new, shall not be classified as salvage by reason of having theretofore been offered for sale at retail by the person offering the same at auction.

Used means all goods, wares and merchandise that has theretofore at any time been sold at retail regardless of by whom. **Cross reference**--Definitions generally, § 1.2.

Sec. 26.27. Auctioneer not to substitute articles. No auctioneer after offering for sale and selling any articles in the manner prescribed by law, or under the provisions of this article shall thereafter substitute any article in lieu of that offered for sale and purchased by the bidder.

Sec. 26.28. Misrepresentations. It shall be unlawful for any person acting as an auctioneer to make any statements which are false in any manner or which have a tendency to mislead any person present, or to make any misrepresentation whatever, or at all, as to the quality, quantity, character, present condition, value, cost, general selling price, or whether new, salvage or used, or partly so, of any property offered for disposal by auction sale.

Sec. 26.29. By-bidders. It shall be unlawful for any person to act as a by-bidder, or what is commonly known as a capper or a booster at any such auction, or place where such auction is taking place, or to offer to make or to make any false bid to buy, or to pretend to buy any such article sold or offered for sale at any such auction.

Sec. 26.30. Sale of article not shown in inventory; exception. It shall be unlawful for any auctioneer to offer for sale or to sell any article not shown in the inventory filed in the office of the tax assessor and collector of the city. It shall be unlawful to expose for sale, or to offer to sell or otherwise dispose of at any place where an auction sale is being held, or authorized to be held, any such article, not shown in the inventory filed in the office of the tax assessor and collector, or on inventory posted as provided in section 26.44. This section does not apply if section 26.44 has been waived under the conditions set forth in section 26.45

Secs. 26.31 - 26.40. Reserved.

DIVISION 2. LICENSE

Sec. 26.41. Required; exceptions. It shall be unlawful for any person, firm, association or corporation to sell, dispose of or offer for sale, in the city, at a public auction within the corporate limits of the city, any goods, wares , and merchandise, whether the same shall be their own property or whether the sale of same shall be by and through agents, or employees, or others, without first complying with the provisions of this article and obtaining a license from the tax assessor and collector of the city. This section shall not apply to judicial sales; to sales by executors or administrators, trustees, or assignees under the terms of any instrument given to secure a bona fide indebtedness granting the power of sale; nor to sales of unclaimed freight, or express, as provided by law; not to sales by sheriffs, constables, or other officers of the state or the United States of America, as provided by law; nor to any kind of auction sale expressly authorized by the statutes of the state or the United States, or as may hereafter be authorized; not to the sale of any livestock, agricultural products or farming tools, implements, or equipment; not to auctioneers and associate auctioneers who are licensed under and comply with Vernon's Ann. Civ. St. art. 8700, as amended from time to time.

Sec. 26.42. Issuance. Any person desiring to hold an auction sale for the sale of the goods described in this article shall make application to the assessor and collector of taxes of the city, as provided in section 26.43, and shall state in such application the residence of such person seeking to hold such auction sale for the 12 months next preceding the filing of such application and the period of days such person desires to hold the auction sale. The assessor and collector of taxes of the city shall issue to such person a license for the period of time designated, upon the compliance by such person with the terms of this article; provided, however, that no such license shall be issued for a period longer than one year.

Sec. 26.43. Application. The application for a license shall be in writing and sworn to, stating the name of the applicant, his residence, and his residences for the 12 months next preceding the filing of this application, the street and number of the proposed place of sale, the length of time for which the license is desired, whether or not the applicant has previously conducted sales within

the city or elsewhere engaged in a like or similar business, either with or without sales at auction, and shall designate the places and length of time such sales were conducted.

Sec. 26.44. Inventory of goods offered for sale to be attached to application.

(a) The application for a license shall have attached to it a sworn inventory of the stock of merchandise or goods to be offered for sale, setting out the quality, quantity, kind or grade of each item. Such inventory shall also designate the character of the merchandise offered for sale as new, salvage, or used. To such inventory there shall be attached an affidavit that such inventory is in all respects true and correct, and, in the case of an individual, such affidavit shall be made by him as such; in the case of a firm or association, it shall be made by one of the partners or members; and in the case of a corporation, it shall be made by its president, general manager, secretary or treasurer.

(b) Such inventory and affidavit when so made shall be kept on file in the office of the tax assessor and collector of the city as a part of the public records. No merchandise shall be sold at such auction sale except that referred to and included in the inventory which inventory and affidavit thereto are specifically made a part of the application for license. such inventory shall also be posed at the city office, county courthouse and the place where the auction is to be held for a period of time not less than one week prior to opening date of sale or to date on which such merchandise is offered for sale.

(c) Whenever any extension of time covered by any license granted under this article is sought, and no new or additional merchandise is to be sold during such extension, other than that covered by the inventory theretofore filed, such license shall be issued upon the payment of the license fee, if any, provided in this division for such period of time. Should the licensee desire to sell any new or additional goods, wares, or merchandise not included in the original inventory, such application shall be accompanied by an inventory covering such additional merchandise in the same manner and form as is provided for in the original application.

Sec. 26.45. Exceptions to Section 26.44. Section 26.44 may be waived by the council upon the applicant's showing of good cause.

Sec. 26.46. Bond required of applicant.

(a) The applicant shall, before the issuance of a license, tender a bond payable to the city. Such bond shall be signed by the applicant, as principal, and by some solvent surety company authorized to do a surety bond business within the state, as surety, in the penal sum of $1,000.00, and shall be approved by the mayor, and shall be conditioned as follows: The principal thereon shall pay all losses and damages which may be lawfully claimed against him on account of any material misrepresentations of facts, or any material suppression of facts concerning the merchandise to be offered or auctioned at such sale, or caused by any violation of any of the provisions of the terms of this article. such bond shall be made amenable to the claim or suit of any person who may sustain any loss or damage on account of any such misrepresentation, or suppression, and shall

cover all auction sales of merchandise described in the inventory made, and required to be filed in the office of the tax assessor and collector of the city.

(b) However, if the inventory requirement of section 26.44 has been waived, then such bond shall cover all auction sales held in the city by the principal license.

(c) Any such person sustaining any loss or damage may bring suit in any court of competent jurisdiction to recover the same, and the provisions of the bond shall be construed liberally in favor of any such person on account of any loss or damage sustained by any such person, either directly or indirectly. All remedies upon or under such bond shall be in addition to and cumulative of all other remedies the parties may have at law, or in equity for recoupment of any such losses or damages. Successive recoveries may be had upon such bond without exhausting them, or in any manner discharging the same, provided that when the penal amount of the bond shall be reduced by such recoveries below $500.00, then and if an additional bond shall be filed by the licensee in such an amount as will provide a penal liability of $1,000.00

Sec. 26.47. Fees. Before any license shall be issued under this article, the applicant shall pay to the tax assessor and collector of the city a license fee, in advance, at the rate of $5.00 per day for each of the days for which sales are authorized by the license granted under this article, provided that the total license fee for any permit for any one year shall not exceed $50.00

Sec. 26.48. Revocation. After conviction in the municipal court of the city for any offenses defined by this article, the council may, in its discretion, revoke the license theretofore granted under this article, provided that, upon revocation of any such license, any license fee theretofore collected in excess of the license fee which would have been used for the period during which the auction had theretofore operated shall be refunded to such licensee.

Sec. 26.49. Applicants Previously Licensed. If any person shall present an application for a license who has theretofore been the owner of a license which has been revoked by conviction of a misdemeanor under this article, the application shall be passed upon by the council, and the council shall, in its discretion, issue or deny such license for good cause shown.

Secs. 26.50 - 26.60. Reserved.

ARTICLE III. ECONOMIC DEVELOPMENT INCENTIVES

Sec. 26.61. Purpose.

(a) The city is committed to the promotion of quality development in all parts of the city and to improving the quality of life for its citizens. In order to help meet these goals, the city will consider providing tax abatement and other incentives within the "reinvestment zone" to stimulate economic development within the city. It is the policy of the city that such incentives will be provided in accordance with the procedures and criteria outlined in this document. However, nothing in this policy shall imply or suggest, by implication or otherwise, that the city is under any obligation to provide any incentive to any applicant; and all such decisions and actions shall be at the sole

discretion of the city council. All applicants for tax abatement and other economic development incentives will be considered on an individual basis.

(b) It is the intent of the city to offer tax abatement and other economic development incentives on an individual basis so that the total package of incentives, if any, may be designed specifically for each project which is proposed. This approach will allow the city the flexibility necessary to satisfy the unique needs and concerns of each applicant and the needs and concerns of the city and its citizens.

Sec. 26.62. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Eligible business means a new or existing business, other than a retail business selling direct to consumers, which does not compete to a substantial degree with an existing business.

Eligible facility means a structure or building that is designed, constructed or remodeled for use as a commercial or industrial business purpose and that is located wholly within the "reinvestment zone."

New employment means that not less than three full-time equivalent employee positions will be maintained or created and: (1) At least 25 percent of the jobs provided will be made available to residents of the city; (2) At least 50 percent of the jobs provided will be made available to residents of the county; and (3) Compliance with the requirements of local hiring will remain in effect for the entire period that economic incentives are being offered.

New value means the net increase in the value of an eligible facility, including the real estate, improvements and fixtures, together with the machinery and equipment therein.

Reinvestment zone means that area of the city identified as a reinvestment zone in a current ordinance; such designation being made by the city council in the manner specified in *Tex. Tax Code, §§ 312.201 or 312.2011.*

Sec. 26.63. Minimum requirements and criteria. The following are the minimum requirements that must be satisfied for any application for tax abatement or other incentives to be considered:

(a) ***Employment and development.***

(1) The proposed development and/or redevelopment must maintain or create at least three jobs;

(2) the applicant must be investing at least $30,000.00 in property improvements; and

(3) the proposed project must be in compliance with the city's master plan, building codes and all other applicable city ordinances.

(b) ***Offsets and adjustments****.*

(1) At the discretion of the city council, the assessed value of any property that is demolished will be subtracted from the value of the property replacing it, for the purpose of calculating the portion eligible for abatement; and

(2) For businesses relocating from a non-reinvestment zone location onto the reinvestment zone, eligibility for incentives will be determined using the increase in the number of jobs at the new location over the jobs at the previous site.

Sec. 26.64 Tax abatements. The portion of the property for which a business may qualify for a tax abatement will be determined on the basis of the level of new value or new employment added within the reinvestment zone. For example, if new value is added having an aggregate value of at least the amount specified in the following qualifying schedule, or if new employment adds at least the number of jobs specified in such schedule, then the abatement schedule for which the business qualifies shall be the greater of the two.

Value added at least	*New Jobs at least*	*Use schedule number*
$30,000--80,000	3--5	1
$80,001--200,000	6--15	2
$200,001--500,000	16--25	3
$500,001 and over	26+	4

Depending on the schedule for which the business qualifies, a percentage of the tax may be abated on an eligible facility for each of five years as follows:

Year	#1	#2	#3	#4
1	50	75	100	100
2	60	75	100	100
3	25	75	70	100
4	--	50	50	70
5	--	25	25	50

Sec. 26.65. Other incentives.

(a) It is the intent of the city to offer tax abatement and other economic development incentives on an individual basis so that the total package of incentives may be designed specifically for each proposed project. This approach will allow the city the flexibility necessary to satisfy the unique needs and concerns of each applicant and the needs and concerns of the city and its citizens.

(b) In addition to tax abatement, the following economic development incentives may be offered, providing the city council, in its sole discretion, approves the applicant's request:

(1) Reduction or elimination of capital recovery fees and the costs of certain other infrastructure improvements;

(2) Implementation of special economic development utility rates for electricity, as outlined in the utility rate ordinance; and/or

(3) Reduction or elimination of building permit fees, inspection contractor's fees, and utility tapping fees.

Sec. 26.66. Application procedures.

(a) Any person, organization, joint venture, partnership, association or corporation desiring that the city consider providing tax abatement and other economic development incentives to encourage location of a business or expanded business operations within the reinvestment zone shall be required to comply with the following procedures.

(1) Applicants shall make verbal or written application to the city;

(2) A complete legal description of the property along with a plat showing the precise location of the project shall be submitted;

(3) A brief description of the proposed improvements or expansion must be provided along with the project's estimated cost, the type of business operation proposed, the number and type of jobs created, the expected source of labor to fill such jobs, the projected date of beginning operation and the type and value of the tax abatement and other economic development incentives which are requested;

(4) Applicants shall submit either a current financial statement, if currently in business, or a prospective financial statement, if a start-up business; and

(5) Applicants shall provide other information as required by the city.

(b) All applications will be reviewed by the mayor-authorized representative for completeness and accuracy, and comments will be received from appropriate city departments. Once this information is compiled, the application and review comments will be forwarded to members of the city council and to other taxing entities which may be involved in offering tax abatement. After the review by the city council and other taxing entities, additional information may be requested of the applicant.

(c) All requirements of the Property Redevelopment and Tax Abatement Act, *Chapt. 312, Tex. Tax Code, shall be followed.*

Sec. 26.67. City council approval.

(a) If the city council determines in its sole discretion that it is in the best interest of the city to grant incentives to a particular applicant, a resolution shall be adopted approving the terms and conditions of a tax abatement and economic development incentive agreement ("tax abatement agreement") with the applicant. The tax abatement agreement will enumerate the types of incentives to be provided and the conditions applicable to such incentives.

(b) All such tax abatement agreements must, at minimum, be in writing and include:

(1) A description of each of the types of incentives to be provided and their duration;

(2) A legal description of the property indicating its location in the reinvestment zone;

(3) Detailed information regarding the type, number, location and cost of planned improvements;

(4) A plan providing access to and inspection of the property and proposed improvements by city inspectors and officials to ensure that the improvements are made according to the requirements and conditions of the agreement;

(5) A provision limiting the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that tax abatements and other economic development incentives are in effect; and

(6) A method to provide for the city to recover property tax revenues and all waived fees and costs which are lost as a result of the agreement if the applicant fails to perform its obligations under the agreement.

Chapters 27 through 29 Reserved

Chapter 30 Cable Communications[17]

Article I. In General

Secs. 30.1 – 30.25. Reserved.

Article II. Cable Television

Chapter 30. CABLE COMMUNICATIONS

ARTICLE I. IN GENERAL

Secs. 30.1 - 30.25. Reserved.

ARTICLE II. CABLE TELEVISION[18]

Sec. 30.26. Franchise and Permits Required. No person, firm or entity shall use the city streets, alleys, rights-of-way or any other property of the City to provide cable television, fiber optic, communications, or any similar or related service to the general public unless such person, firm or entity shall first obtain a franchise approved by an ordinance of the city council. No person, firm or entity shall use the city streets, alleys, rights-of-way or any other property of the City to provide or obtain cable television, fiber optic, communications, or any similar or related service for the use or benefit of such person, firm or entity, or for the use or benefit of one or more such persons, firms or entities, without having first obtained a license or permit approved by an ordinance of the City.

Sec. 30.27. Adoption of FCC rules. The rules applicable to cable television providers promulgated by the FCC pursuant to the Telecommunications Act of 1996, as may be amended from time to time, are hereby adopted and incorporated by reference in their entirety.

Sec. 30.28. Provision by cable service providers of required information. A provider of cable television service shall provide, without cost to the city, all information requested by the city pursuant to the franchise or in the exercise of the city of its police powers or regulatory authority.

Chapters 31 through 37 Reserved

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[17] **Cross references-** Amusements and entertainments, ch. 10; businesses, ch. 26; streets, sidewalks and other public places, ch. 94; utilities, ch. 110; zoning, ch. 118. **State law reference--**"Cable television service" defined, V.T.C.A., Tax Code §151.0033.

Chapter 38 Civil Emergencies[19]

Article I. In General

Sec. 38.1 through 38.25. Reserved.

Article II. Emergency Management

Chapter 38. CIVIL EMERGENCIES

ARTICLE I. IN GENERAL

Secs. 38.1 through 38.25. Reserved.

ARTICLE II. EMERGENCY MANAGEMENT

Sec. 38.26. Office of director and coordinator.

(a) There exists the office of emergency management director of the city which shall be held by the mayor in accordance with state law.

(b) An emergency management coordinator may be appointed by and serve at the pleasure of the director.

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[19]**Cross references**-Administration, ch. 2; aviation, ch. 18; fire prevention and protection, ch. 46; floods, ch. 50; health and sanitation, ch. 54; offenses and miscellaneous provisions, ch. 70; traffic and vehicles, ch. 106. **State law references**-Emergency management, V.T.C.A., Government Code § 418.001 et seq.; local and inter-jurisdictional emergency management, V.T.C.A., Government Code § 418.101 et seq.; false alarm or report, V.T.C.A., Penal Code § 42.06; powers of mayor during riot or unlawful assembly, V.T.C.A., Local Government Code § 22.042(e); power of mayor to summon special police force, V.T.C.A., Local Government Code § 341.011.

(c) The director shall be responsible for conducting a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in section 38.27(b). He or she may delegate authority for execution of these duties to the coordinator, but ultimate responsibility for such execution shall remain with the director. **State law reference**- Municipal programs, *Tex. Gov't. Code § 418.103*.

Sec. 38.27. Powers and duties of director.

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

(b) ***Specifically***. The duties and responsibilities of the emergency management director shall include the following:

(1) The direction and control of the actual disaster operations of the city emergency management organization as well as the training of emergency management personnel.

(2) The determination of all questions of authority and responsibility that may arise within the emergency management organization of the city.

(3) The maintenance of necessary liaison with the municipal, county, district, state, regional, federal, or other emergency management organizations.

(4) The marshaling, after the declaration of a disaster, as provided for in subsection (a) of this section, of all necessary personnel, equipment or supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan.

(5) The issuance of all necessary proclamations as to the existence of a disaster and the immediate operational effectiveness of the city emergency management plan.

(6) The issuance of reasonable rules, regulations or directives which are necessary for the protection of life and property in the city. Such rules and regulations shall be filed in

the office of the city secretary and shall receive widespread publicity, unless they would be of aid and comfort to the enemy.

(7) The supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which the city is located and with other municipalities within the county, for the countywide coordination of emergency management efforts.

(8) The supervision of an final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city.

(9) Authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes. **State law references**--Local emergency management plans, Tex. Gov't. Code § 418.106; declaration of local disaster, *Tex. Gov't. Code § 418.108*; mutual aid, *Tex. Gov't. Code § 418.109*.

Sec. 38.28. Formation of county emergency management council. The mayor is hereby authorized to join with the county judge and the mayors of the other cities in the county in the formation of an emergency management council for the county and shall have the authority to cooperate in the preparation of a joint emergency management plan and in the appointment of a joint emergency management coordinator, as well as all powers necessary to participate in a countywide program of emergency management insofar as the program may affect the city. **State law references**-County programs, *Tex. Gov't. Code § 418.102*; interjurisdictional emergency management plans, *Tex. Gov't. Code § 418. 106*.

Sec. 38.29. Organization of officers and employees of city.

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

(b) The plan must provide for:

(1) Wage, price, and rent controls and other economic stabilization methods in the event of a disaster; and

(2) Curfews, blockades, and limitations on utility use in an area affected by a disaster, rules governing entrance to and exit from the affected area, and other security measures.

Sec. 38.30. Operation of siren or warning signal. Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this article and shall be subject to the penalties imposed by this article. **State law reference**-False alarm or report, *Tex. Penal Code § 42.06.*

Sec. 38.31. Orders and rules of this article to supersede. At all times when the orders, rules, and regulations made and promulgated pursuant to this article shall be in effect, they shall supersede and override all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

Sec. 38.32. Article not to conflict with state, federal or military or naval orders and rules. This article shall not be construed so as to conflict with any state or federal statute or with any military or naval order, rule, or regulation.

Sec. 38.33. Liability for damages, death or injury. This article is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety and except as otherwise provided by law, neither the city, the agents and representatives of the city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this article shall be liable for any damage sustained to persons as the result of such activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the city a license of privilege, or otherwise permits the city to inspect, designate and use the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person. **State law reference**-Liability, *Tex. Civ. Prac. & Rem. Code, § 101.0215*.

Sec. 38.34. Expending public funds for emergencies. No person shall have the right to expend any public funds of the city in carrying out any emergency management activity authorized by this article without prior approval by the city council, nor shall any person have any right to bind the city by contract, agreement or otherwise without prior and specific approval of the city council. **State law reference**-Local finance, *Tex. Gov't. Code § 418.107.*

Sec. 38.35. Obstruction, hindrance or delay of members of organization. It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this article, or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this article.

Sec. 38.36. Oath of employees and individuals with functions and responsibilities. Each employee or any individual that is assigned a function or responsibility shall solemnly swear or

affirm to support and defend the Constitution of the United States, laws of the state and the ordinances of the city.

Sec. 38.37. Public shelter managers.

(a) ***To take charge during natural emergencies***. In case of natural emergency, public shelter managers, duly appointed by the emergency management director. shall open public shelters; take charge of all stocks of food, water, and other supplies stored in the shelter; admit the public according to the city's shelter use plan; and take whatever control measures are necessary for the protection and safety of the occupants.

(b) ***Authorized to use reasonable restraint***. Shelter managers are authorized to use reasonable restraint against those who refuse to cooperate with the routine of shelter living under emergency conditions. Refusal to carry out the orders of the shelter manager and his appointed staff shall be deemed a misdemeanor.

Chapters 39 through 41 Reserved

Chapter 42. MUNICIPAL COURT[20]

Article I. In General

Article II. Municipal Court

Article III. Statutory Fees and Costs

Article IV. Fees, Costs and Funds Established

[20] **Cross references**--Administration, ch. 2; personnel, ch. 82. **State law references**--Municipal court, V.T.C.A., Government Code ch. 29; court procedures, Vernon's Ann. C.C.P. art. 45.01 et seq.

Article V. Enforcement and Collection

Article VI. Evidence and Procedural Provisions

Chapter 42. MUNICIPAL COURT[21]

ARTICLE I. IN GENERAL

Secs. 42.1. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Access Device shall mean a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other access devices may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

Conviction* or *Convicted shall mean any person be deemed to have been convicted for whom the municipal court imposes any penalty or sentence, the person receives community service, supervision or deferred adjudication, or the Court defers final disposition of the case.

[21] The Sections of *Chapter 42, Municipal Court*, were reordered in 2015 as part of the revision and update of the Code and incorporating prior amendments to the Code of Ordinances. Except as noted for specific sections the sections are from Ord. No. 04-0512-15. adopted May 12, 2004.

Rules of the Road shall mean offenses committed under *Subtitle C, Title 7 of the Transportation Code being subsections 541 through 6-00 of the Transportation Code*.

School Crossing Zone shall mean a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduce speed limit applies. [*Sec. 42-1 Definitions as set forth in Ord. No. 04-0512-14, adopted May 12, 2004]*

Sec. 42.2. Fines and Punishment. The court is authorized to establish policies and procedures for setting and assessing fines that arc consistent with the appropriate policies and procedures set forth by the State in the Code of Criminal Procedure and applicable to the particular offense alleged. Punishment and fines may be assessed and include all remedies available under the State law for the particular offense alleged. Fines and punishment under any ordinance of the City shall be set forth in the ordinance and include any additional remedies that would be available under State law. *[Ord. No. 04-0211-14, adopted February 11, 2004]*

Sec. 42.3. Cases to be Tried in Open Court. All cases coming before the municipal court shall be tried and disposed of in open court. *[Ord. No. 04-0211-14, adopted February 11, 2004]*

Sec. 42.4. City Employee Not to Represent Defendant. It shall be unlawful for any person who receives a salary from the city to be in any way, directly or indirectly, interested in the defense of any person charged with the violation of any ordinance of the city or any of the criminal laws of the state, except so far as may be necessary, to give evidence on behalf of persons so charged with violating any of such ordinances or criminal Jaws. *[Ord. No. 04-0211-14, adopted February 11, 2004]*

Sec. 42.5. Local Rules. The judge may from time to time adopt local rules and procedures for administration of the court, which are not inconsistent with the procedural requirement of the State. *[Ord. No. 04-0211-14, adopted February 11, 2004]*

ARTICLE II. MUNICIPAL COURT ESTABLISHED

Sec. 42.26. Created. There is hereby created and maintained in the city a municipal court. Such court shall have the full powers as set forth in Tex. Gov't. Code ch. 29, as amended from time to time. **State law reference**-Creation of municipal court, *Tex. Gov't. Code § 29.002.*

Sec. 42.27. Jurisdiction. The municipal court shall have concurrent jurisdiction within the limits of the city, in criminal matters, with the courts of the justices of the peace, as is provided by statutes of the state. The rules of procedure for justice courts and the rules of evidence, as provided by the statutes of the state for the county court, shall be the rules of procedure and laws governing the different subjects tried in the municipal court. **State law references**-Jurisdiction of municipal court, *Tex. Gov't. Code § 29.003 and Tex. Code Crim. Proc. art. 4.14;* evidence, *Tex.. Code Crim. Proc. art. 4.15*; court procedures, *Tex. Code Crim. Proc. art. 45.01 et seq*.

Sec. 42.28. Municipal judge.

(a) ***Appointment***. The office of judge of the municipal court shall be filled by appointment by the council. The judge shall be at least 18 years of age and shall not have been convicted of a felony or a crime involving moral turpitude.

(b) ***Duties***. The judge of the municipal court shall perform the duties as prescribed by the laws of the state.

(c) ***Term of appointment; compensation***. The judge shall be appointed for a term of office running concurrently with that of the mayor. He shall receive such compensation as the council shall fix by ordinance or resolution, and shall furnish such surety bond as may be required by the council, the premium to be paid by the city.

Sec. 42.29. Clerk of court. The city secretary, or other person appointed by the council, shall be ex-officio clerk of the court and is hereby authorized to appoint a deputy with the same powers as the secretary. The ex-officio clerk shall hold his office during this term as city secretary, or as otherwise prescribed by the city council. The clerk shall keep minutes of the proceedings of the municipal court, issue all process and generally perform the duties of the clerk of a county court, as prescribed by law for a county clerk in so far as the same may be applicable. It shall be the further duty of the clerk to make a monthly report of all fines and collections and the disposition of all cases, and file the same with the council. **State law reference**-Municipal court clerk, *Tex. Gov't. Code § 29.010*

Sec. 42.30. Fines imposed by court. The fines imposed in the municipal court may be the same as are prescribed for like offenses by the penal statutes of the state, but shall never be greater. Where an offense is covered solely by ordinances, such ordinance shall control. The Municipal Court Clerk shall collect and report all court costs. [*Ord. No. 04-0512-14, adopted May 12, 2004*]

Sec. 42.31. Clerk may tax costs. The clerk of the municipal court may tax costs in each case the same as is allowed in the justices' courts of this state to the justice of the peace and county attorney and the constable for like services. Such costs and fines may be collected by the clerk and turned into the city treasury, taking the receipt of such treasurer for the same. **State law reference**-Misdemeanor costs, *Vernon's Ann. C.C.P.arts 102.015, 102.051*.

Sec. 42.32. City attorney to represent city. The city attorney, either in person or by deputy, shall as required by the city council from time to time, represent the city in the prosecution of each and every complaint, and for such representation there may be taxed and collected as cost by the clerk of the municipal court the same fees as are allowed in a like case to the county attorney by the statutes of the state. Such fees when collected are to be paid to the clerk of the city by the clerk of the municipal court and the clerk of the city shall pay the same over to the city attorney.

Sec. 42.33. Reserved.

Sec. 42.34. Fees. The fines imposed in the municipal court may be the same as are prescribed for like offenses by the penal statutes of the state, but shall never be greater. the Lexington Municipal

Court fine schedule is hereby adopted in Appendix A: Fee Schedule. Where any offense is covered solely and alone by ordinances of the City, such ordinance shall control. All fines assessed by the municipal court shall be paid to the clerk of the municipal court or some officer designated by her to receive the same. [*Ord. No. 04-0211-14, adopted February 11, 2004*]

Sec. 42.33 to Sec. 42.50 Reserved.

ARTICLE III. STATUTORY FEES AND COSTS[22]

Sec. 42.50. State Court Costs.

(a) The Municipal Court Clerk shall collect each and every court cost statutorily mandated to be collected for the State of Texas. The Municipal Court Clerk shall keep a record of each court cost collected for the benefit of the State of Texas and report the collection to the City Treasurer including forwarding the tnoro.es to be deposited with the City Treasurer as required by internal policy.

(b) The City Treasurer may deposit the money in an interest bearing account. The City Treasurer shall keep records of the money collected and on deposit in the treasury and shall remit the court costs collected for the benefit of the State of Texas to the Comptroller of Public Accounts not later than the last day of the month following the calendar quarter in which the court costs were collected.

(c) The City Treasurer shall report the fees collected for a calendar quarter categorized according to the class of offense and shall report the court costs collected, for the benefit of the State of Texas, to the Comptroller of Public Accounts not later than the last day of the month following the calendar quarter in which the court costs were collected. ***Reference***- §133. 055, Local Government Code.

(d) The Municipal Court Clerk shall forward a completed quarterly report form to be reviewed and confirmed by the City Treasurer.

(e) The City Treasurer shall ensure the accuracy of the report and for all fees collected for the Consolidated Court Cost Fund (CCC Fund) to be forwarded to the State of Texas. The City Treasurer shall retain 10% of all court costs collected, except for court costs collected pursuant to *Section 542.4031, Transportation Code*, as a service fee and deposit the retained sums to the general fund to offset administrative expenses, save and except the 10% shall not be retained on sums not timely forwarded to the Comptroller of Public Accounts. ***Reference***- *§102.075, CCP.*

[22] *Added by Ord. No. 04-0512-15, adopted May 12, 2004.*

(f) The City Treasurer shall retain 5% of court costs collected pursuant *to Section 542.4031, Transportation Code*, as a service fee and deposit the retained sums in the general fund to offset administrative expenses, save and except the 5% shall not be retained on sums not timely forwarded to the Comptroller of Public Accounts. ***Reference*** *- § 541.4031, Transportation Code.*

Sec. 42.51. Warrant of Arrest Fees. The Municipal Court Clerk shall collect a warrant fee of $50.00 from any defendant upon whom a peace officer executed a warrant issued by the Municipal Court at the time of conviction. For arrests made by a State Trooper, the Municipal Court Clerk shall report $10.00 as payable to the Comptroller. Law Enforcement agencies other than State Troopers and City Police Officers executing a warrant must submit a request for payment within 15 days of the conviction in order to be paid the warrant fee. If demand is not made within 15 days or a City Police Officer executed the warrant, the Municipal Court Clerk shall report the warrant fees collected as payable to the City Police Department. The City shall refund the fees in cases where the defendant pleas and demonstrates within thirty (30) days of payment of such fee that the court failed to give the person proper notice. ***Reference****-§102.01I CCP*.

Sec. 42.52. Failure to Appear Fee.

(a) ***Special Expense***. The Municipal Court Clerk shall collect a special expense of $25.00 for the issuance and service or a warrant of arrest from each defendant served with a warrant for failure to appear or violation of a promise to appear. The Municipal Court Clerk shall report each special expense collected to the City Treasurer for deposit into the general funds of the City.

(b) ***Contract with Texas Department of Public Safety***. At all times that the City has a contract with the Texas Department of Public Safety to deny renewal of licenses for individuals Failing to Appear at court as directed, the Municipal Court Clerk shall collect an additional $30.00 administrative fee at the time of the following:

(1) the court enters judgment on the offense for which the failure to appear was submitted;
(2) the case is dismissed;

(3) bond or other security is posted to reinstate the charge for which the warrant was issued; or

(4) the Defendant falls to pay or satisfy the judgment in the manner ordered by the court. Distribution of the funds shall be as provided by agreement with the Texas Department of Public Safety. The Municipal Court Clerk shall maintain a copy of the agreement and report each failure to appear fee collected as well as the distribution of the fee to the City Treasurer. Should a defendant fail to pay the $30.00 administrative fee as required, the Municipal Court Clerk shall report such failure to the Texas Department of Public Safety and request the Department deny renewal of the defendant's license. *Reference-§706.006. Transportation Code.*

Sec. 42.53. Establishment of Time Payment Fee.

(a) Each defendant being permitted to make payments on any part of a fine, court cost or restitution on or after the 31" day after the date on which a judgment is entered, including deferred adjudication and deferred disposition, shall pay a $25.00 time payment fee on or before the 31" day after the judgment is entered. ***Reference*** *- §51.92/ (a}, Government Code.*

(b) The Municipal Court Clerk shall keep separate records of the Time Payment Fees collected. Each month 50% of the Time Payment Fees collected shall be forwarded to the comptroller, 40% shall be deposited in the general revenue account of the City, and 10% shall be deposited in the general fund of the City to be allocated to improving the efficiency of the administration of justice in the City.

(c) No defendant shall be permitted more than 180 days to pay fines, fees, costs, restitution or any other fees ordered to he paid in the judgment of the court.

Sec. 42.54. Arrest Fee. The Municipal Court Clerk shall collect a $5.00 arrest fee with each conviction. The arrest fee shall be reported quarterly to the Comptroller of Public Accounts. For each citation submitted to the Municipal Court by a State Trooper for which a conviction occurs, the Municipal Court Clerk shall report $1.00 of the Arrest fee as payable to the Comptroller with the remaining $4.00 being reported as distributable to the City Police Department. Any law enforcement agency other than the State Trooper or a City Police Officer submitting a citation to the Municipal Court for which a conviction occurs, the Municipal Court shall hold the $5.00 arrest fee for fifteen working days. Should the law enforcement agency fail to claim the arrest fee in fifteen working days after the conviction, the Municipal Court Clerk shall report the arrest fee as payable to the City. For each citation that the City Police Department issues and a conviction occurs, the full arrest fee shall be reported as payable to the City Police Department. ***Reference****· §102.009 (a)(J), CCP.*

Sec. 42.55. Dishonored Check Fee. A service charge of $25.00 shall be assessed against any person who pays the city with a check, draft or money order which is returned unpaid for lack of sufficient funds or closed or nonexistent account. ***Reference****- §3.506, Business & Commerce Code.*

Sec. 42.56. Peace Officer's Time. For any trial at which a Peace Officer is required to testify while off duty, the Municipal Court Clerk shall calculate the officers' overtime for time spent testifying at trial and time spent traveling to or from home, if the officer was not at work that day or scheduled to be at work, and add such costs as court costs to be paid by the defendant. ***Reference****- §102.01I (g), CCP.*

Sec. 42.57. Jury Fee. The Municipal Court Clerk shall collect a $3.00 fee from each defendant that requests a jury and is convicted thereby, or requests a postponement or accepts a conviction less than 24 hours before the time of trial. ***Reference*** *-§.l02.004, CCP.*

Sec. 42.58. Rules of the Road Fee. The Municipal Court Clerk shall collect an additional $3.00 fee as court costs for each defendant convicted of violating the "Rules of the Road". The Municipal Court Clerk shall deposit the fee collected with the City Treasurer. Fines and fees collected for violations of

the Rules of the Road shall be deposited to the general fund of the City and utilized to construct and maintain roads, bridges and culverts in the City and to enhance the enforcement of laws regulating the use of highways. ***Reference*** *-§§542.402 and 542.403, Transportation Code.*

Sec. 42.59. Establishment of Administrative Fees when Certain Charges are Dismissed.

(a) **Vehicle Inspection Certificate**. On the finding of the Municipal Court Judge, having been presented credible evidence, that a defendant remedied the failure to have a valid vehicle inspection certificate within 10 working days of the issuance of a citation for an expired inspection certificate which has not been expired more than 60 days, the Municipal Court Clerk shall collect a $10.00 administrative fee from the defendant at the time of dismissal. Inspection Certificates expired more than 60 days on the date of the citation shall not be dismissible on proof of correction. ***Reference*** *- §548.605(b)(J)(B), Transportation Code.*

(b) **Vehicle Registration**. On the finding of the Municipal Court Judge, having been presented credible evidence, that a defendant remedied the failure to register the motor vehicle alleged in the offense not more than 10 working days from the date of the offense and within the discretion of the Judge the court grants the request to dismiss, the Municipal Court Clerk shall collect a $10.00 administrative fee from the defendant at the time of dismissal. Vehicle Registration corrected more than 10 work days after the date of the citation shall not be dismissible on proof of correction. ***Cross Reference*** *- §502.407, Transportation Code.*

(c) **Driver's License Proof**. On the finding of the Municipal Court Judge, having been presented credible evidence, that a defendant remedied the expired driver's license within 10 working days and within the discretion of the judge, the court grants the request to dismiss, the Municipal Court Clerk shall collect a $10.00 administrative fee from the defendant at the time of dismissal. ***Reference-*** *§521.026, Transportation Code.*

(d) **Deferred Disposition**. Defendant's pleading no contest or guilty and requesting defensive driving on or before the date mandated for the first appearance date for an offense involving operation of a motor vehicle, other than speeding more than 25 miles per hour over the posted speed, speeding in a construction: zone while workers are present, or any other offense listed 1n Texas Transportation Code §542.404, who has a valid Texas Driver's permit or driver's license that is not a commercial driver's license and adequate financial responsibility, and provides a sufficient affidavit and records from the Texas Department of Public Safety demonstrating that the individual has not had defensive driving in the preceding 12 months from the date of the offense, upon granting of such request, the Municipal Court Clerk shall collect, in addition to the other court costs, an administrative fee of $10.00 to be distributed to the City Treasurer for deposit in the general fund of the City. ***Reference-*** *§45.0511, CCP.*

Sec. 42.60. Public Records.

(a) **Copy Charge**. The service and copy charge for copying governmental and public records shall be as follows:

(1) For readily available information on standard size pages (up to 8-1\2" x 14"), the copying charge shall be $0.25 per page.

(2) For information which is not readily available, the copying charge shall be $0.15 per page plus actual labor costs incurred by the city in providing the requested information.

(3) In addition, the city may also add any postal expenses which may be necessary to transmit the reproduced documents to the requesting party.

(4) The City Secretary shall establish the copying or reproduction charge for nonstandard sized pages or documents (maps, books, etc.). *Cross Reference - §552.266. Government Code.*

(b) **Confidential Payment and Communication Records**. The Municipal Court Clerk shall separately file from the records of any case in the Municipal Court any documents collected, assembled or otherwise maintained containing a credit card. debit card, charge card, or other access device number. The Municipal Court Clerk shall redact the e-mail address from any communications received via e-mail or shall maintain such documents separately of the documents of the case. The e-mail address of any individual communicating with the court shall not be disclosed to a member of the public without express consent of the individual. Any requests for documents containing this information shall be immediately referred to the City Attorney's office. ***Reference*** *- §§552. 136 and 552.137, Government Code.*

Sec. 42.61 to 42.75 Reserved.

ARTICLE IV. FEES, COSTS AND FUNDS ESTABLISHED[23]

Sec. 42.75. Jury Duty Pay. The City shall pay each person appearing in response to a duly noticed jury summons $6.00 for service in Municipal Court for each day or fraction of each day they serve as a juror.

Sec. 42.76. Other Fees and Costs. In addition to the court costs mandated to be collected under state statute for the State of Texas and remitted to the comptroller as court costs as set out in Article III above, the fees and costs provided for and established in this Article IV shall be collected on each conviction, as applicable, and applied as provided in this Article IV.

Sec. 42.77. School Crossing Fee. Each defendant convicted of violating any provision of the Rules of the Road, Transportation Code Title 7, within a school crossing zone or convicted for passing a school bus, in violation of Transportation Code §545.066, shall pay an additional $25.00 taxable as court costs.

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[23] *Added by Ord. No. 04-0512-15, adopted May 12, 2004.*

Sec. 42.78. Failure to Attend School Fee. Each defendant convicted of violating the Education Code, § 25.094, Thwarting Compulsory Attendance, or § 25.094, Failure to Attend School, shall pay an additional $20.00 taxable as court costs.

Sec. 42.79. Technology Fee. A $4.00 technology fee is hereby established and imposed as a court cost to be paid by every person convicted of a misdemeanor in the municipal court, pursuant to *Sec. 102.0172, CCP*. The technology fee shall be charged for each separate case, matter or charge upon which any person is convicted in the municipal court. [Amended by *Ord. No. 04-0512-15, adopted May 12, 2004*]

Sec. 42.80. Creation of Child Safety Fund. There is hereby created a "Child Safety Fund" (the "CS Fund") which shall be maintained and reported as a separate fund of the City. The CS Fund may be maintained in an interest bearing account and may be maintained in the general revenue account.

(a) **Collection and Deposit**. The Municipal Court Clerk shall collect such court costs, including the School Crossing Fee and Failure to Attend School Fee, and pay such court costs to the City Treasurer for all offenses governed by this section. For all fines collected pursuant to §25.093, Thwarting Compulsory Attendance, the Municipal Court Clerk shall report 50% of the fine to be deposited to the credit of the operating fund of the school district in which the child attends or to the juvenile justice alternative education program, if the child has been ordered to attend such a program. The remaining 50% of the fee collected under §25.093 shall be reported and payable to the general fund of the City.

(b) **Payment**. The City Treasurer shall deposit the $25.00 School Crossing Fee and the $20.00 Failure to Attend School Fee portion of such Court costs into the "Child Safety Fund". The City Treasurer shall quarterly forward 50% of the fine collected under §25.093 payable to the school district which the convicted children attend or, if the children were sentenced to a juvenile justice alternative education program, the city treasurer shall forward the 50% to that program. The remaining 50% shall be deposited into the general fund of the City.

(c) **Designated Use of the CS Fund and Administration**. All School Crossing Fees and Failure to Attend School Fees collected shall be deposited in the CS Fund which shall be administered by the City Council. Excluding funds paid pursuant to (b) above, no expenditures or withdrawals shall be made from the fund except to fund eligible items listed in. *Section 102.014(g), Code of Criminal Procedure*, and as authorized by a majority vote of the City Council. On the finding of the City Council that an expenditure is authorized, CS Funds may be removed from the Fund solely to be used to improve child safety, including:

(1) School Crossing Guard program, if one is established all money must first fund this program; and

(2) Programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention.

Sec. 42.81. Municipal Court Security Fund.

(a) **Creation of Security Fund.** There is hereby created a "Municipal Court Building Security Fund" (the "Security Fund") which shall be maintained and reported as a separate fund of the City.

(1) The Municipal Court Clerk shall collect court costs, including the security fee, and pay such court costs to the City Treasurer.

(2) The City Treasurer shall deposit the $3.00 security fee portion of such court costs into the "Municipal Court Building Security Fund".

(b) **Designated Use of the Fund and Administration**. All security fees collected shall be deposited in the Security Fund which shall be administered by the City Council. No expenditures or withdrawals shall be made from the fund except to finance eligible items listed in *Section 102.017(d), Code of Criminal Procedure,* and as authorized by a majority vote of the City Council. On the finding of the City Council that an expenditure is authorized, Security Funds may be removed from the Fund solely to be used to finance items to be used for the purpose providing security services for the Municipal Court of the City, including:

(1) the purchase or repair of X-ray machines and conveying systems;

(2) handheld metal detectors;

(3) walkthrough metal detectors;

(4) identification cards and systems;

(5) electronic locking and surveillance equipment;

(6) bailiffs, deputy sheriffs, deputy constables or contract security personnel during times when they are providing appropriate security services;

(7) signage;

(8) confiscated weapon inventory and tracking systems;

(9) locks, chain's, alarms or similar security devices;

(10) the purchase or repair of bullet-proof glass; and

(11) continuing education on security issues for court personnel and security personnel.

Sec. 42.82. Technology Fund. *[Amended by Ord. No. 04-0512-15, adopted May 12, 2004]*

(a) **Creation of Fund**. There is hereby created a "Municipal Technology Fund" (the "Technology Fund') which shall be maintained and reported as a separate fund of the City. The Fund shall be maintained in an interest bearing account and may be maintained in the general revenue account.

(b) **Collection**. The Municipal Court Clerk shall collect all court costs, including the technology fee, and pay such court costs to the City Treasurer for all offenses governed by this section. .

(c) **Deposit**. The City Treasurer shall deposit the $4.00 technology fee portion of such court costs into the "Municipal Technology Fund".

(d) **Designated Use of the Fund and Administration**. All technology fees collected shall be deposited in the Technology Fund which shall be administered by the City Council. No expenditures or withdrawals shall be made from the: fund except to finance eligible items listed in *Section. l02.0172(d), Code of Criminal Procedure*, and as authorized by a majority vote of the City Council. On the: finding of the City Council that an expenditure is authorized, Technology Funds may be removed from the Fund solely to be used to nuance the purchase of technological enhancements for the Municipal Court of the City, including:

(1) computer systems;

(2) computer networks;

(3) computer hardware;

(4) computer software;

(5) imaging systems;

(6) electronic kiosks;

(7) electronic ticket writers;

(8) docket management systems; or

(9) service and maintenance agreements for enhancements purchased pursuant to this section.

Sec. 42.83. Seat Belt Fund. The Municipal Court Clerk shall report each fine collected for. violations of the requirements to wear a seat belt contrary to §545.412 and §545.4l3(b), Transportation Code, committed after September 1, 2001. The report shall designate 50% of each fine as funds to be remitted to the Comptroller annually. Tue City Treasurer shall maintain the seat belt funds in a separate interest bearing account and annually remit 50% of all fines collected from defendants for violations §545.412 and §545413(b), Transportation Code. The City Treasurer shall retain the entire fine for violations of §545.413(a) and deposit said fine with the City pursuant to this ordinance and applicable policy. **R*eference*-** *§545.412, Transportation Code.*

42.84 to 42.100 Reserved

ARTICLE V. ENFORCEMENT AND COLLECTION[24]

Sec. 42.100. Waiver of Fines, Fees and Costs of Court. The Municipal Court Judge may hold a hearing to determine the economic capabilities of any defendant filing a written motion seeking a finding of the Court that the defendant is per se indigent and each alternative method of discharging the fine or costs of court under CCP §43.09 would impose an undue hardship on the defendant. The Municipal Court Judge shall review the motion of the defendant, including any another evidence deemed necessary, and on a finding that defendant is indigent as a matter of law and that the alternative methods of discharge would work an undue hardship on the defendant the Municipal Court Judge may waive payment of any fines or costs for which the defendant has defaulted. ***Reference*** *- §45.09I, CCP.*

Sec. 42.101. Post Judgment Collection of Fines and Court Costs. As provided in the ordinances of the City and Texas State Statutes, the Municipal Court Judge shall assess fines and court costs against each defendant entering a plea of guilty or no contest or based on the verdict of the Court or Jury finding a defendant guilty. Defendants having not timely appealed the judgment of the court and who fail to timely pay fines, fees, costs or restitution as ordered shall be subject to permitted post-judgment collection procedures.

(a) ***Capias Pro Fine***. The Municipal Court Judge may order a capias pro fine be issued for any defendant failing to satisfy a judgment of the court according to the terms of the judgment. The Municipal Court Clerk shall ensure that each capias states the amount of the judgment and sentence and commands a peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court. ***Reference*** *- §45.045, CCP.*

(b) ***Commitment***. Defendants failing to satisfy any judgment may be committed as provided in the Code of Criminal Procedure to satisfy the judgment. Any defendant committed to jail serving less than 8 consecutive hours in jail shall not be given credit for time served. The court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fines and cost in the case must remain in jail to satisfy $50.00 of the fine and costs. Defendants committing offenses prior to January 1, 2004 shall receive $100.00 credit for each time period served. ***Reference*** *- §45.048, CCP.*

(c) ***Private Collection Contract***. At all times that the City Council has authorized a private collection contract with a private attorney or a public or private vendor for collection services relating to fines, fees, restitution or other debts or costs, other than forfeited bonds, the Municipal Court is authorized to collect an additional 30% on each such debt or account receivable that is more than 60 days past due and has been collected as a result of the action of a duly authorized contractor. The Municipal Court Clerk shall report the 30% as payable to the contractor. Should the contractor collect less than the full sum due from defendant, the Municipal Court Clerk shall ensure that the

[24] *Added by Ord. No. 04-0512-15, adopted May 12, 2004.*

payment is distributed first in an amount sufficient to fully compensate the contractor and then in equal shares to the comptroller and the City until the comptroller is paid in full. ***Reference*** - *§103.003, CCP.*

(d) ***Civil Assessment Against Property***. The Municipal Court Judge may review judgments in which the defendant has defaulted in payment, either in whole or part after sentencing, and may order the fine and costs be collected by execution against the defaulting defendant's property in the same manner as a judgment in a civil suit. ***Reference*** - *§45.047, CCP.*

Sec. 42.102 to 42.110 Reserved.

ARTICLE VI. EVIDENCE AND PROCEDURAL PROVISIONS[25]

Sec. 42.110. Prima Facie Evidence.

(a) ***Vehicles***. In any prosecution charging a violation of the ordinance governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of the ordinance, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(b) ***Properties***. In any prosecution charging a violation regarding nuisances upon a property, the failure to comply with any notice or order regarding a nuisance on a property or building in violation of an ordinance of the City, including but not limited to failure to apply for a building permit or other permit or license required by ordinance, proof that the particular property described in the complaint was in violation of an Ordinance regulating the property, together with proof that the defendant named in the complaint was, at the time of such notice, violation or order, or at the time when work was performed without a permit the registered owner of such property, shall constitute in evidence a prima facie presumption that the registered owner of such property was the person who failed to comply with the ordinance, notice or order, or failed to apply for a permit for the time during which such violation occurred in violation of the charged Ordinance of the City.

(c) ***Animals***. In any prosecution charging a violation of an Ordinance or Statute regulating or governing the abuse, neglect or ownership of an animal or failure to license an animal as required, proof that the particular property described in the complaint was the premises upon which the animal resided, was harbored or maintained and a violation of an Ordinance or Statute regulating or governing the animal alleged in the complaint together with proof that the defendant named in the complaint was, at the time of such complaint or at the time when the animal was in violation of said Ordinance or Statute, the registered owner of such animal or the person with legal rights to reside on said property, shall constitute in evidence a prima facie presumption that the registered owner of such property or the person with legal rights to reside on said property was the owner of the animal and the person who failed to comply with or violated the Ordinance or Statute.

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[25] *Added by Ord. No. 04-0512-15, adopted May 12, 2004.*

Chapters 43 through 45 Reserved

Chapter 46. Fire Prevention and Protection[26]

Article I. In General

Article II. Fire Code

Article III. Fire Marshal

[26] **State law references-** Motor vehicle liability coverage for firefighters, Tex. Loc. Gov't. Code § 142.006; hazardous substances, Tex. Health and Safety Code § 501.001 et seq.; flammable liquids, Tex. Health and Safety Code § 753.001 et seq.; fire escapes, Tex. Health and Safety Code § 791.001 et seq.; commission on fire protection, Tex. Gov't. Code § 419.001 et seq.; fire detection and alarm devices, Tex. Ins. Code, art. 5.43-2; fire protection sprinkler systems, Tex. Ins. Code, art. 5.43-3; fireworks, Ins. Code, art. 5.43-4; municipal fire protection, Tex. Loc. Gov't. Code § 342.001 et seq.; liquefied petroleum gas, Tex. Nat. Res. Code § 113.001 et seq.; arson, Tex. Penal Code § 28.02; county fire protection, Tex. Loc. Gov't. Code § 352.001 et seq.; smoke detectors in hotels, V.T.C.A., *Tex. Health and Safety Code § 792.001* et seq.; disabling fire exit alarms, *Tex. Health and Safety Code § 793.001 et* seq.; smoke detectors in residential tenancies, *Tex. Prop. Code §§ 92.006, 92.251 et seq***.**

Article IV. Fireworks

CHAPTER 46. FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Sec. 46.1. Compliance with State Statutes and Regulations. Outdoor burning within the City shall be done in compliance with applicable state statutes and regulations. *[Ord. No. 05-0216-7, adopted February 16, 2005]*

Sec. 46.2. Recreational Burn. Any person wishing to burn outdoors for recreational purposes may notify dispatch of the recreational burn. *[Ord. No. 05-0216-7, adopted February 16, 2005]*

Sec. 46.3 thru 46.25. Reserved. *[Secs. 46-3 through 46.25 were repealed by Ord. No. 05-0216-7, adopted February 16, 2005]*

ARTICLE II. FIRE CODE

Sec. 46.26. Adoption of International Codes. There is hereby adopted by the city council, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion, the "NFPA 101 Life Safety Code", 2012 edition, the "International Fuel Gas Code – Appendix A and B", and that certain code known as the "International Fire Code", published by the International Fire Code Institute, being particularly the 2012 edition and the whole of such code, save and except such portions as are deleted, modified or amended by section 46.34, one copy of which has been and is now filed in the office of the city clerk. The same is hereby adopted and incorporated as fully as if set out at length in this section, and the provisions of such code shall be controlling within the incorporated limits of the city. The NFPA 101 Life Safety Code, the International Fuel Gas Code, and the International Fire Code are hereinafter referred to collectively in this Code of Ordinances as the "Fire Code". *[Ord. No. 15-0211.6, adopted February 11, 2015]*

Sec. 46.27. Penalty for violation of Fire Code.

(a) Any person who violates any of the provisions of the Fire Code, as adopted and amended in this article or fails to comply therewith, or who violates or fails to comply with any order made under such code, or who builds in violation of any detailed statement of specifications or plans submitted and approved under such code, or any certificate or permit issued under such code, and from which no appeal has been taken, or who fails to comply with such an order as affirmed or

modified by the board of appeals or by a court of competent jurisdiction, within the required time, shall severally for each and every such violation and noncompliance, respectively be guilty of a misdemeanor, punishable by a fine of not less than $100.00 nor more than $2,000.00. The imposition of a fine for any violation shall not excuse the violation or permit it to continue. All persons shall be required to correct or remedy such violations or defects with a reasonable time, and, when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the penalty described in subsection (a) of this section shall not be held to prevent the enforced removal or prohibited conditions.

Sec. 46.28. Establishment and duties of bureau of fire prevention.

(a) The Fire Code, as adopted and amended in this article, shall be enforced by the chief of the office of the fire marshal of the city which is hereby established and which shall be operated under the supervision of the chief of the fire department.

(b) The fire marshal in charge of the office of the fire marshal shall be appointed by the council on the basis of examination to determine his qualifications.

(c) The fire marshal shall recommend to the mayor the employment of technical inspectors, who, when such authorization is made, shall be selected through an examination to determine the fitness for the position. The examination shall be open to members and nonmembers of the fire department, and appointments made, after examination, shall be for an indefinite term with removal only for cause.

Sec. 46.29. Definitions. The following words, terms and phrases, when used in the Uniform fire Code, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Bureau of fire prevention means the office of the fire marshal.

Chief of the bureau of fire prevention means fire marshal.

Fire marshal means the chief of the office of the fire marshal.

Jurisdiction means the city.

Sec. 46.30 to 46.33. Reserved.

Sec. 46.34. Appeals. Whenever the fire marshal disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appear from the decision of the fire marshal to the five members appointed by the council to the board of adjustment with 30 days from the date of the decision appealed.

Sec. 46.35. New materials, processes or occupancies which may require permits. The mayor and the fire marshal shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies for which permits are required in addition to those now enumerated in the Fire Code. The fire marshal shall post such list in a conspicuous place at the office of the fire marshal and shall distribute copies to interested persons.

Sec. 46.36. Owners of buildings maintaining same as fire hazards. Any owner or occupant of a building, structure or premises, who shall keep or maintain the same when, for want of repair, or by reason of age or dilapidated condition, or for any cause, it is especially liable to fire, and which is so situated as to endanger buildings or property of others, or is especially liable to fire and which is so occupied that fire would endanger other persons or their property therein, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished as provided for in Section 46.27.

Sec. 46.37. Owners maintaining hazards within buildings, structures or premises. Any owner or occupant of any building, structure or premises, who shall keep or maintain the same with an improper arrangement of a stove, range, furnace, or other heating appliance of any kind whatever, including chimneys, flues and pipes with which the same may be connected, so as to endanger others in the matter of fire, health or safety of persons or property of others; who shall keep or maintain any building, other structure or premises with an improper arrangement of lighting device or system; with the storage of explosives, petroleum, gasoline, kerosene, chemicals, vegetable products, ashes, combustibles, inflammable materials, refuse, or with any other condition which shall be dangerous in character to the persons, health or property of others; which shall be dangerous in the matter of promoting, augmenting or causing fires; or which shall create conditions dangerous to firefighters, or occupants of such building, structure or premises, other than the maintenance thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished as provided for in section 46.27.

Sec. 46.38. Prosecution under sections 46.36 and 46.37; notice required. No prosecution shall be brought under sections 46.36 and 46.37 until the order provided for in section 46.68 is given, and the party notified shall fail or refuse to comply with the same.

Secs. 46.39 - 46.60. Reserved.

ARTICLE III. FIRE MARSHAL

Sec. 46.61. Office created. The office of fire marshal is hereby created and shall be independent of other city departments, the fire marshal reporting to the mayor and council. Such office shall be filled by appointment by the mayor with the consent of the council within 30 days after the council takes office. The fire marshal shall be properly qualified for the duties of his office, and shall be removed only for cause. He or she shall receive a monthly wage as compensation for service.

Sec. 46.62. Investigation of all fires. The fire marshal shall investigate the cause, origin and circumstances of every fire occurring within the city by which property has been damaged or destroyed, and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within 24 hours, not including Sunday, of the occurrence of such fire. The fire marshal shall keep in his office a record of all fires, together with all facts, statistics and circumstances, including the origin of the fires and the amount of loss, which may be determined by the investigation required by this article. **State law reference**- Investigation of fire by state fire marshal, *V.T.C.A., Government Code § 417.007*.

Sec. 46.63. Taking of testimony and furnishing evidence. The fire marshal, when in his opinion further investigation is necessary, shall take or cause to be taken the testimony, on oath, of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing. If he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, conspiracy to defraud, or criminal conduct in connection with such fire, he shall cause such person to be lawfully arrested and charged with such offense, or either of them, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all information obtained by him, including a copy of all pertinent and material testimony taken in the case.

Sec. 46.64. Summoning witnesses. The fire marshal shall have the power to summon witnesses before him to testify in relation to any matter which is, by the provisions of this article, a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent thereto. The fire marshal is hereby authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before him.

Sec. 46.65. Disobeying any lawful order of fire marshal. Any witness who refuses to be sworn; who refuses to appear or testify; who disobeys any lawful order of the fire marshal; who fails or refuses to produce any book, paper or document touching any matter under examination; or who is guilty of any contemptuous conduct during any of the proceedings of the fire marshal, in the matter of the investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation, shall be deemed guilty of a misdemeanor. It shall be the duty of the fire marshal to cause all such offenders to be prosecuted.

Sec. 46.66. Private investigations. All investigations held by or under the direction of the fire marshal may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held. Witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.

Sec. 46.67. Extent of authority to investigate fires. In the investigation of fires, the fire marshal shall have the same authority as the state fire marshal, including the following: The fire marshal may at any time enter a building or premises at which a fire is in progress or has occurred and is under control of law enforcement or fire service officials to investigate the cause, origin, and

circumstances of the fire. If control of the building or premises has been relinquished, entry must be in compliance with search and seizure law and applicable federal law.

Sec. 46.68. Periodic inspections and reports; aggrieved persons may appeal decisions. The fire marshal, upon complaint of any person having an interest in any building or property adjacent and without any complaint, shall have a right at all times within reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within the city. It shall be his duty, monthly or more often, to enter upon and make or cause to be entered and made, a thorough examination of all mercantile, manufacturing and public buildings, together with the premises belonging thereto. Whenever he shall find any building or other structure which, for want of repair or by any reason of age or dilapidated condition, or for any cause, is especially liable to fire and which is so situated as to endanger persons or property therein; and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues, and pipes with which the same may be connected; a dangerous arrangement of lighting devices or systems; a dangerous or unlawful storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials; or other conditions which may be dangerous to the firefighters or occupants; he shall order the same to be removed or remedied. Such order shall be forthwith complied with by the owner or occupant of the building or premises; provided, however, that if the owner or occupant deems himself aggrieved by such order, he may, within five days, appeal to the mayor, who shall investigate the cause of the complaint, and unless by his authority the order is revoked, such order shall remain in force and be forthwith complied with by the owner or occupant. At the end of each month the fire marshal shall report to the state fire marshal all existing hazardous conditions, together with a separate report on each fire and in the city during the month. **State law reference**-Right of entry of state fire marshal. *Tex. Gov't. Code, § 417.008*

ARTICLE IV. FIREWORKS

Sec. 46.71. Definitions. For the purposes of this Article the following words and terms shall, when used, have the meaning given in this section.

Fireworks means and includes any firecrackers, cannon crackers, skyrockets, torpedoes, Roman candles, sparklers, squibs, fire balloons, star shells or any other substance in whatever combination by any designated name intended for use in obtaining visible or audible pyrotechnic display and includes all articles or substances within the commonly accepted meaning of fireworks, whether specifically designated and defined in this Article or not.

Sec. 46.72. Fireworks Prohibited.

(a) It shall be unlawful for any person to manufacture, assemble, store, transport, receive, keep, offer or have in his possession with intent to sell, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description, except under special permit as authorized in the Fire Prevention Code.

(b) It shall be unlawful for any parent or guardian of any minor child below the age of 14, or for any adult, to permit or allow such a minor child to use, discharge, ignite, detonate, fire or otherwise set in action any fireworks.

Sec. 46.73. Public Nuisance - Enforcement. The presence of any fireworks within the jurisdiction of the City in violation of this Article is declared to be a common and public nuisance. The Fire Marshal is directed and required to seize and cause to be safely destroyed any fireworks found within the jurisdiction in violation of this Article and the Fire Marshall or any police officer of the City or any other duly constituted peace officer is empowered to stop the transportation of and detain any fireworks found being transported illegally or to close any building where any fireworks are found stored illegally until the Fire Marshal can be notified in order that said fireworks may be seized and destroyed in accordance with the terms of this Article. Notwithstanding any penal provision of this Article, the City Attorney is authorized to file suit on behalf of the City or the Fire Marshal or both for injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the jurisdiction of the City and to aid the Fire Marshal in the discharge of his duties and to particularly prevent any person from interfering with the seizure and destruction of such fireworks, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction. The Fire Marshal is authorized to enter any commercial, retail or manufacturing building or establishment where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks.

Sec. 46.74. Exceptions. This Article does not apply to (a) signal flares and torpedoes of the type and kind commonly used by any railroad and which signal flares and torpedoes are received by and stored or transported by any railroad or trucking company for use in railroad or trucking operations; and (b) fireworks only being transported through the City by railroad, or on any state or county maintained roadway, by a licensed carrier.

Sec. 46.75. Territorial Applicability. This Article is applicable and in force throughout the territory of the City within its corporate limits.

Sec. 46.76. Penalty.

(a) A person who violates the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed $2,000.00.

(b) Any person who manufactures, assembles or stores, or who transports, receives, keeps, sells, offers for sale or has in his possession with intent to sell, any fireworks within the City shall be fined an amount not less than $500 and not more than $2,000 for each offense. If the fireworks are separately wrapped or packaged, doing any act prohibited by, or omitting to do any act required by this Article shall be a separate offense as to each such separately wrapped or separately packaged fireworks. Each day that a violation of this Article continues with respect to any package of fireworks constitutes a separate offense.

(c) Any person who uses, discharges, causes to be discharged, ignites, detonates, fires or otherwise sets in action any fireworks shall be fined an amount not to exceed $500 for the first such offense for which such person is convicted.

Chapters 47 through 53 Reserved

Chapter 54 Health and Sanitation[27]

Article I. In General

Secs 54.1 - 54.25. Reserved.

Article II. Privies and Dry Closets

Article III. Weeds, Grass and Harmful Vegetation

CHAPTER 54. HEALTH AND SANITATION

ARTICLE I. IN GENERAL

Secs. 54.1 - 54.25. Reserved.

ARTICLE II. PRIVIES AND DRY CLOSETS

[27] **State law references-** Local Public Health Reorganization Act, *Tex. Health and Safety Code § 121.001 et seq.*; Texas Controlled Substances Act, *Tex. Health and Safety Code § 481.001 et seq.*; community services for mental health and mental retardation, *Tex. Health and Safety Code § 534.001 et seq.*

Sec. 54.26. Applicability of article. When section 110.1 of this Code is not applicable, this article shall govern.

Sec. 54.27. Operation and maintenance. It shall be unlawful for any person to own, maintain or operate in the city, or in the area of police jurisdiction thereof, a privy or dry closet for the reception of human excreta, unless the closet is built, rebuilt, or constructed as provided in this article.

Sec. 54.28. Improper disposition of excreta. It shall be unlawful for any person to throw out deposit or buy within the city any excreta from human bodies, solid or liquid, or to dispose of such excreta in any manner other than in compliance with Tex. Health and Safety Code § 341.014, as amended from time to time.

Sec. 54.29. Maintenance of improperly constructed privy prohibited. It shall be unlawful for any person to construct, maintain or permit a privy to exist on any property under their control within the corporate limits of the city unless the privy is of an improved, sanitary type constructed as provided in this article.

Sec. 54.30. Minimum requirements. Minimum requirements of an improved sanitary privy are that it be so constructed and built that: (1) The excreta deposited therein shall not fall upon the surface of the ground, but enter into a compartment or an excavation in the ground. (2) The contents of the compartment or excavation shall be inaccessible to flies, fowls or small animals at all times. (3) The compartment shall consist of an excavated chamber conforming to the following dimensions: width inside curbing, not less than 2 1/2 feet; length inside curbing, not less than 3 1/2 feet; depth from ground surface not less than four feet. Where necessary to prevent caving, the compartment shall be provided with a box curbing extending from the top downward to the first stratum of clay or rock. (4) Over the pit shall be placed a metal slab and a fly tight metal riser fitted with a suitable wooden seat and cover. The pit shall be ventilated by a metal pipe not less than three inches in diameter, extending from the pit to eight inches above the roof of the building.

Sec. 54.31. Cleanliness standards. All sanitary privies in the city shall be kept in a clean condition at all times, and the lids shall be closed at all times when not in use, and so used that all excreta deposited therein will fall into the pit. Such pit shall be used only for the purpose of a privy, and no wash water, garbage, or other refuse matter, other than human excreta and toilet paper, shall be deposited therein.

Sec. 54.32. Cave-ins to be promptly repaired. In case the pit should cave in at any time, it must be repaired promptly by the owner. All repairs necessary to make the pit fly proof shall be made whenever needed.

Sec. 54.33. Improperly maintained privies declared a nuisance. All privies existing or maintained in the city which do not conform to the requirements set out in this article are hereby declared a nuisance and dangerous to the public health, and the city shall proceed to abate such nuisance in accordance with the law and ordinances of the city.

Secs. 54.34 - 54.55 Reserved

ARTICLE III. WEEDS, STAGNANT WATER, AND OTHER UNSANITARY OR UNSIGHTLY MATTER

Sec. 54.56. General prohibition. Whatever is dangerous to human life or health, or whatever renders the ground, the water, the air, or food a hazard or injury to human life or health or that is offensive to the senses or that is or threatens to become detrimental to the public health, is hereby declared to be a nuisance, and as such, liable to be abated, and the person guilty of causing, permitting, or suffering a nuisance to exist upon any premises or upon any building occupied or controlled by him or in any street, alley, sidewalk, or gutter immediately adjacent to such premises shall, upon conviction, be punished as provided in Sec. 54.63.

Sec. 54.57. Specific enumeration. The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

1. *Weeds or grass.* Weeds and/or grass, or other uncultivated plants on any premises, which grow in such profusion as to harbor reptiles or rodents, or create a fire hazard; and weeds and/or grass, or other uncultivated plants on any premises, which are permitted to, or do, attain a height greater than twelve (12) inches. Exemptions from the provisions of this section are as follows:

    (a) Actively utilized crop production and/or grazing areas; and

    (b) Hay, that is grown within its designated growing season for the specific purpose of cultivation and is a part of a predominantly homogeneous plant population, may be grown to any height provided it is located no closer than fifteen (15) feet to an adjacent property under different ownership and on which any building or improvement exists; and

    (c) Heavily wooded areas filled with uncultivated underbrush.

2. *Garbage.* The keeping of any garbage, including decayable waste from public and private residences, businesses, establishments and restaurants including vegetable, animal and fish offal, and animal and fish carcasses.

3. *Junk.* The keeping of any junk, including worn out, used and/or discarded material or items, including, but not limited to, odds and ends, lawn maintenance equipment, dilapidated or junked trailers, travel trailers, automotive parts or other machinery parts, furniture, iron or other scrap metal, tires, and glass.

4. *Litter*. The keeping of any litter, including garbage, refuse and rubbish and all other waste material which if thrown or deposited as herein prohibited tends to create a danger to public health, safety and welfare.

5. *Animal carcasses.* The carcasses of animals or fowl not disposed of within a reasonable time after death.

6. *Pollution of water.* The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.

7. *Stagnant water.* Any accumulation of unwholesome, impure, stagnated or offensive water permitted or maintained, as well as the conditions or other causes that give rise or permit such accumulation.

8. *Other impure matter.* Any accumulation of carrion, filth or other impure or unwholesome matter.

9. *Abandoned wells and sewers.* Any abandoned well, sewer, or excavation not properly protected.

Sec. 54.58. Owner or occupant shall abate nuisance. It shall be the duty of the owner or his agent or the occupant of any lot, building, or place in the City where any nuisance may exist, to remove, abate, or destroy the same without delay. If any owner or occupant of any lot, building, or place of any kind in the City refuses to remove or abate a nuisance, the Code Enforcement Officer shall abate the nuisance as provided for in this Article.

Sec. 54.59. Notice to property owners.

(a) When any violation of this Article is found to exist in the judgment of the Code Enforcement Officer, such individual shall serve the owner or occupant or any other person responsible for creating the violation with a notice alleging the specific violations occurring.

(b) The notice must be given:

(1) Personally to the owner in writing;

(2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located, by certified mail, return receipt requested; or

(3) If personal service cannot be obtained or the owner's address is unknown:

a. By publication at least once;

b. By posting the notice on or near the front door of each building on the property to which the violation relates; or

c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(c) The notice shall inform the owner:

(1) Of each violation causing the nuisance occurring on the property;

(2) That failure of the owner to abate, or cause abatement of, the violation within seven (7) calendar days of receipt of said notice:

d. May subject the owner to further penalties as set forth in this Article,

e. May result in the City abating the nuisance, assessing the costs against the owner and filing a lien on the property; and

(3) That if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, and the City has not been previously informed, in writing, by the owner of an ownership change, the City, without further notice, may correct the violation at the owner's expense and assess the expense against the property.

Sec. 54.60. Abatement by City.

(a) If the owner does not comply with the City's requirements set forth in the notice within seven (7) calendar days after the date of notification, the City may:

(1) do the work or make the improvements required; and

(2) pay for the work done or improvements made and charge the expenses to the owner of the property.

(b) If the City abates a nuisance under this Article, the owner shall be charged an administrative fee, which shall include the actual administrative costs associated with abating the nuisance, including, but not limited to: filing fees, hourly wages of the Code Enforcement Officer for time spent working on case, postage, hourly wages of other City employees for time spent working on case.

Sec. 54.61. Assessment of expenses; lien.

(a) To obtain a lien against the property, the Mayor or city official designated by the Mayor shall file a statement of expenses, including administrative expenses and fees, with the county clerk. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the county clerk.

(b) The lien obtained by the City is security for the expenditures made and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the City.

(c) The lien is inferior only to:

(1) tax liens; and

(2) liens for street improvements.

(d) The City Council may authorize the City Attorney to bring a suit for foreclosure in the name of the City to recover the expenditures and interest due.

(e) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the City in doing the work or making the improvements.

(f) The remedy provided by this section is in addition to the remedy provided by Sec. 54.63.

(g) The City Council may authorize the City Attorney to foreclose a lien on property under this Article in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Sec. 54.62. Additional authority of City to abate dangerous weeds.

(a) The City may abate, without notice, weeds that:

(1) have grown higher than forty-eight (48) inches; and

(2) are an immediate danger to the health, life, or safety of any person.

(b) Not later than the tenth calendar day after the date the City abates weeds under this section, the City shall give notice to the property owner in the manner required by Sec. 54.59.

(c) The notice shall contain:

(1) An identification, which is not required to be a legal description, of the property;

(2) A description of the violation of the ordinance that occurred on the property;

(3) A statement that the City abated the weeds; and

(4) An explanation of the property owner's right to request an administrative hearing before the Municipal Court Judge about the City's abatement of the weeds.

(d) The City shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the thirtieth calendar day after the date of the abatement of the weeds, the property owner files with the Court Clerk a written request for a hearing.

(e) An administrative hearing conducted under this section shall be conducted not later that the twentieth day after the date a request for hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement of the weeds.

(f) The City may assess expenses and create liens under this section as it assesses expenses and creates liens under Sec. 54.61. A lien created under this section is subject to the same conditions as a lien created under Sec. 54.61.

(g) The authority granted by this section is in addition to the authority granted by Sec. 54.60.

Sec. 54.63. Penalty. Any person violating any provision of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not to exceed two thousand dollars ($2,000.00) for each violation. Each day a violation continues shall be considered a separate offense.

Sec. 54.64. Abatement of nuisances. Notwithstanding any penal provision herein, the City Attorney is authorized to file suit on behalf of the City for such injunctive relief as may be necessary to abate such nuisance whenever any nuisance as herein defined is found in any place within the City.

Chapters 55 through 61 Reserved

Chapter 62. Manufactured Homes, Mobile Homes and Modular Structures[28]

Article I General Provisions[29]

Article II Modular Structure Provisions

Article III Manufactured Home Provisions

Article III Unfit Dwellings and Compliance

Chapter 62. Manufactured Homes, Mobile Homes and Modular Structures

Article I. GENERAL PROVISIONS

Sec. 62.1. General Design and Construction Requirements for Manufactured Homes. Manufactured home design and construction shall conform to generally accepted standards of the manufactured home industry and the Texas Manufactured Housing Standards Code.

Sec. 62.2. Definitions. For the purpose of this Chapter, certain terms, words and phrases shall have the meaning hereinafter ascribed thereto.

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[28] *Chapter 62 amended in its entirety by Ordinance No. 04-0709-7, adopted on July 9,2014.*

[29] Sections of this Chapter were re-ordered during recodification in 2015.

Agent means any person authorized by the licensee of a trailer and motor home park to operate or maintain such park under the provisions of this Article.

Certificate of Occupancy means a certificate issued by the Building Official for the use of a building, structure and/or land, when it is determined by him that the building, structure and/or land complies with the provisions of all applicable divisions of the City Code and any applicable local, state, federal, international laws.

City Council means the governing body of the City of Lexington.

City Official means the legally designated head of a City department or his authorized representative when acting in an official capacity.

Code Compliance Official means the legally designated inspection authority of the City or his authorized representative.

Common Access Route or Internal Street means a private way which affords the principal means of access to individual lots or auxiliary buildings.

Fire Chief means the legally designated Chief of the Fire Department of the City or his authorized representative.

License means a written license issued by the City Council or its authorized representative, permitting a person to operate and maintain a trailer and motor home park under the provisions of this Article and regulations issued hereunder.

Licensee means any person licensed to operate and maintain a trailer and motor home park under the provisions of this Article.

Manufactured Home means a structure, constructed on or after June 15, 1976, according to the rules of the U.S. Department of Housing and Urban Development, transportable in one or more sections, which in travel mode is eight (8) feet or more in width or forty (40) feet or more in length, or, when erected on-site, is three hundred and twenty (320) or more square feet in area, and which is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems. This term does not include "recreational vehicle" as that term is defined by *24 CFR section 3282.8 (g*). As used herein, the term "manufactured home" or "manufactured housing" shall include modular homes.

Manufactured Home Park means any plot of ground upon which three are more manufactured homes are occupied for permanent dwelling purposes regardless of whether or not a charge is made for such accommodation. This term is not to be used in conjunction with any mobile home or travel trailer sales lots which contain unoccupied units that are intended for purposes of inspection and sale. This term shall apply to both the lease and sale of pads or lots.

Manufactured Home Subdivision means a unified development of manufactured home lots arranged on a tract of land for permanent or semi-permanent location of manufactured homes which has been subdivided and meets all requirements of City subdivision regulations.

Mobile Home means a structure, constructed before June 15, 1976, is transportable in one or more sections, which in travel mode is eight (8) feet or more in width or forty (40) feet or more in length, or, when erected on-site, is three hundred and twenty (320) or more square feet in area, and which is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems.

Permit means a written permit or certification issued by the Building Official, or his authorized representative, permitting the construction, alteration or extension of a trailer or motor home park, under the provisions of this Article and regulations issued hereunder.

Plot Plan or Site Plan means graphic representation, drawn to scale, in a horizontal plane, delineating the outlines of the land included in the plan and all proposed use locations, accurately dimensioned; the dimensions also including the relation of each use to that adjoining and to the boundary of the property.

Recreational Vehicle. A portable home designed as a temporary dwelling for travel and recreational and vacation uses. This term applies whether or not the wheels, rollers, skids or other rolling equipment have been removed, and whether or not any addition thereto has been built on the ground; and shall also include pick-up campers, travel trailers, camping trailers, motor homes, converted buses, self-powered motor homes, tent trailers, tents and analogous temporary portable housing and accessory buildings.

Recreational Vehicle or Motor Home Park means a parcel of land authorized by the City Council and not prohibited for such use by deed restrictions, for the purpose of renting recreational vehicle or motor home spaces on a temporary basis.

Replacement means the act of moving one trailer or motor home from an existing stand and replacing it with another trailer or motor home.

Service Building means a structure housing toilet, lavatory, and such other facilities as may be required by this Article.

Sewer Connection means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of a trailer or motor home to the inlet of the corresponding service riser pipe of the sewage system serving the park.

Sewer Service Riser Pipe means that portion of a sewer service which extends vertically to the ground elevation and terminates at a space.

Space means a plot of ground without a park designated for the accommodation of one unit, together with such open space as required by this Article. This term also shall include the terms "lot", “land” and “site”.

Trailer or Motor Home or Unit, includes trailer homes and travel trailers, and means a vehicle which stands on wheels and is built to be towed by a motor driven vehicle. A motor home is a self-propelled vehicle which stands on wheels. Both are built to Federal and State specifications to be licensed for operation on public roads and highways, and are not considered manufactured homes or mobile homes.

Water Connection means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within a trailer or motor home.

Water Riser Pipe means that portion of the private water service system serving a park, which extends vertically to the ground elevation and terminates at a designated point at a trailer or motor home space.

Sec. 62.3. Recreational vehicles. A recreational vehicle may be stored in an enclosed garage, other accessory building on any lot, in an area which is screened from view by a six-foot (or higher) solid hedge or fence, and provided that no living quarters shall be maintained nor shall any business be conducted in connection therewith while such recreation vehicle is so parked or stored. No recreational vehicle shall be connected to municipal utilities.

Sec. 62.4. Connection to municipal utilities. No manufactured home or other modular structure will be connected to any municipal utility system until such manufactured home, or other modular structure complies with all applicable provisions of the City's ordinances.

Sec. 62.5. Additional Exceptions and Severability. If any provision of this Chapter or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. Further, no provision or term of this Article shall be interpreted as adding any additional requirement to any federal or state standard for the quality, construction and/or requirements for any manufactured home, but shall, with respect to manufactured homes, be applied to those homes that do not at any time meet any such applicable standards, or that because of damage, deterioration or a failure to clean and maintain do not comply with such laws and this Article.

Article II. Modular Structure Provisions

Sec. 62.6. Modular Homes.

(a) No permits shall be issued for the placement of a modular home until a complete set of plans and specifications of the modular home has been submitted to the building official.

(b) A plat map of the land that the modular home is to be placed upon must be furnished. The home must be located on the land in compliance with all side yard, setback and use requirements provided for in City Ordinances.

(c) Permit fees shall be determined in the same manner as for any other single-family or duplex residence, apartment or commercial building, as applicable.

Sec. 62.7. Permitted uses of modular structures.

(a) No modular home may be located, installed or occupied within the City without a permit being issued by the City. The fee for such permit and required inspection shall be fifty ($50.00) and no such modular home shall be located, installed or occupied within the City that is not inspected by the City Code Official and found to be in compliance with all the codes and ordinances of the City. This section shall not apply to any modular home that is installed, located and occupied within the City limits on the date this Ordinance is passed. Such modular home shall be considered legal non-conforming as long as the home remains occupied. If new occupants occupy a legal nonconforming modular home, an inspection will be required.

(b) The owner of a tract, parcel or lot may install a modular home on said tract, parcel or lot. The modular home is required to be owner occupied and used as his or her homestead.

(c) **Area Regulations**

(1) Front. There shall be a minimum front yard having a depth of not less than twenty-five (25) feet.

(2) Side.

(i) There shall be a minimum side yard on each side of the manufactured home of not less than ten (10) feet.

(ii) At no time shall there any manufactured home located closer than twenty (20) feet from to each other.

(iii) A side yard adjacent to a side street shall not be less than fifteen (15) feet.

(3) Rear. There shall be a minimum rear yard having a depth of not less than ten (10) feet measured from the rear lot line.

(d) **Permitted Uses**

(1) one modular home on each approved space or lot.

(2) Accessory buildings located on a lot for use by the owner or occupant of a structure that is located on such lot.

(3) All electrical material, devices, appliances, and equipment are in sound and safe condition.

(4) All mechanical systems including space and water heating, are in sound and safe condition.

(5) All plumbing, gas piping, and wastewater systems are in sound and safe condition.

(6) The unit is in sound and safe structural condition. Uncompressed finish floorings greater than 1/8 inch in thickness beneath load-bearing walls that are fastened to the floor structure are not acceptable. Any such structure that shows signs of fire damage are not acceptable.

(7) The determination of the foregoing acceptance of any noncertified unit shall be made jointly by the Code Official.

(8) Axle and hitch assemblies shall be removed at the time of placement on the foundation.

(9) Electrical power supply shall be made from a meter installation on the mobile home, or from a permanent meter pedestal. The use of copper conductors or series 8000 aluminum conductors or better shall be allowed. All conductors shall be installed as per the current National Electric Code adopted by the City. The use of aluminum conductors is only allowed from the point of metering to the mobile home or manufactured home means of disconnect.

(10) A driveway and off-street parking shall be provided for each lot.

(11) Garage and carport additions are permitted provided they:

(i) cover a hard surface dust free parking area and are connected to a street by a hard surface dust free drive;

(ii) meet the minimum building setback requirements; and

(iii) have roof and siding material compatible with the primary structure.

(12) Living area additions are permitted provided they meet the minimum building setback requirements, have roof and siding material that is compatible with the primary structure, and comply with the same structural standards as the primary structure.

(13) Not less than two (2) off street parking spaces for each lot, or home pad site.

(14) Patio and porch covers are permitted, provided they cover an improved patio, deck, or porch, and meet the minimum building setback requirements.

(e) **Accessory Buildings**. All accessory buildings shall have a setback from all lot and properties lines of not more than five (5) feet and no less than ten (10) feet from any habitable structure.

Sec. 62.8. Modular structures to have permanent foundation.

(a) A perimeter curtain wall is required, which shall be one of the following types:

(1) Four-inch wide cement beam from the footing up to the bottom of the structure frame, with six-inch by six-inch by ten-inch gauge wire mesh within the beam; shall have anchor bolts at least ten feet on center (o.c.), to anchor the structure to the beam.

(2) Brick, rock or cement footing from the ground to the bottom of the structure frame, with anchor bolts ten feet o.c., to anchor the structure to the beam.

(3) Three-quarters-inch lath and plaster with support piers ten feet o.c. around the perimeter of the structure; each pier to have anchor bolts to anchor the pier to the structure frame.

(4) Fire resistive siding that corresponds with that of the structure, and support piers ten feet o.c. around the perimeter of the structure, with anchor bolts.

(b) Center support piers are required, which shall be one of the following:

(1) Cement pier with cement footing and an anchor strap.

(2) Cement footing with approved steel piers that are bolted to the footing and welded to the frame.

Article III. Manufactured Home Provisions

Sec. 62.9. Installation of Manufactured Home.

(a) The installation of mobile homes for use or occupancy as residential dwellings in the City is prohibited. This provision is prospective and shall not apply to any mobile homes used and occupied as residential dwellings in the City on July 18, 2016.

(b) Manufactured homes may only be installed in the City for use or occupancy as residential dwellings in validly existing manufactured home parks, manufactured home subdivisions, and on Simpson Street. The installation of a manufactured home for use or occupancy as a residential dwelling outside of these specific areas is prohibited.

(c) Mobile homes which on July 18, 2016 are located within the City shall become legal nonconforming. Replacement of legal nonconforming mobile homes shall be permitted only if the replacement home is a manufactured home.

(d) Manufactured homes which on July 18, 2016 are located within the City, but outside of a valid manufactured home park, manufactured home subdivision, or on Simpson Street, shall become legal nonconforming. Replacement of a legal nonconforming manufactured home shall be permitted only if the replacement manufactured home is newer than the manufactured home being replaced and is at least as large in living space as the manufactured home being replaced.

(e) A manufactured home may not be located, installed or occupied within the City without a permit being issued by the City. The fee for such permit and required inspection shall be fifty ($50.00) and no such manufactured home shall be located, installed or occupied within the City that is not inspected by the City Code Official and found to be in compliance with all the codes and ordinances of the City. This section shall not apply to any manufactured home that is installed, located and occupied within the City limits on the date this Ordinance is passed. Such manufactured home shall be considered legal non-conforming as long as the home remains occupied. If new occupants occupy a legal nonconforming manufactured home, an inspection will be required.

(f) A licensed retailer or installer is not required to obtain a permit, pay a fee, provide a bond, or insurance for the transportation and installation of manufactured housing, except as approved by the department in accordance with *Texas Occupation Code Section 1201.008*.

(g) **Area Regulations**

(1) Front. There shall be a minimum front yard having a depth of not less than twenty-five (25) feet.

(2) Side. There shall be a minimum side yard on each side of the manufactured home of not less than ten (10) feet. At no time shall there any manufactured home located closer than twenty (20) feet from to each other. A side yard adjacent to a side street shall not be less than fifteen (15) feet.

(3) Rear. There shall be a minimum rear yard having a depth of not less than ten (10) feet measured from the rear lot line.

(h) **Permitted Uses**

(1) One manufactured home or modular home on each approved space or lot.

(2) Accessory buildings located on a lot for use by the owner or occupant of a structure that is located on such lot.

(3) All electrical material, devices, appliances, and equipment are in sound and safe condition.

(4) All mechanical systems including space and water heating, are in sound and safe condition.

(5) All plumbing, gas piping, and wastewater systems are in sound and safe condition.

(6) The unit is in sound and safe structural condition. Uncompressed finish floorings greater than 1⁄8 inch in thickness beneath load-bearing walls that are fastened to the floor structure are not acceptable. Any such structure that shows signs of fire damage are not acceptable.

(7) The determination of the foregoing acceptance of any noncertified unit shall be made jointly by the Code Official and the Fire Marshall.

(8) The frame shall be supported by, and tied to, a foundation system capable of safely supporting the loads imposed as determined from the character of the soil. The minimum acceptable foundation design shall be a series of eight-inch grout-filled concrete block piers spaced no more than eight feet on center and bearing on 12" x 12" solid concrete footings, or equivalent. A tie-down and anchoring system separate and apart from the foundation ties shall be provided as recommended by the manufacturer, if different from the foundation ties.

(9) Axle and hitch assemblies shall be removed at the time of placement on the foundation.

(10) Each manufactured home shall be totally skirted with fire resistive material which is compatible with the design and exterior materials of the primary structure and is approved by the Code Official.

(11) Electrical power supply shall be made from a meter installation on the mobile home or manufactured home, or from a permanent meter pedestal. The use of copper conductors or series 8000 aluminum conductors or better shall be allowed. All conductors shall be installed as per the current National Electric Code adopted

by the City. The use of aluminum conductors is only allowed from the point of metering to the mobile home or manufactured home means of disconnect.

(12) A driveway and off-street parking shall be provided for each lot.

(13) Garage and carport additions are permitted, provided they:

(i) cover a hard service dust free parking area and are connected to a street by a hard service dust free drive;

(ii) meet the minimum building setback requirements; and

(iii) have roof and siding material compatible with the primary structure.

(14) Living area additions are permitted, provided they meet the minimum building setback requirements, have roof and siding material that is compatible with the primary structure, and comply with the same structural standards as the primary structure.

(15) Not less than two (2) off street parking spaces for each lot, or home pad site.

(16) Patio and porch covers are permitted, provided they cover an improved patio, deck, or porch, and meet the minimum building setback requirements.

(i) **Accessory Buildings**. All accessory buildings shall have a setback from all lot and properties lines of not more than five (5) feet and no less than ten (10) feet from any habitable structure.

Sec. 62.10. Exceptions. Nothing in this article shall affect manufactured homes lawfully located within the city as of the effective date of this chapter, as set out above.

Sec. 62.11. Manufactured Home Parks.

(a) **Purpose**.

(1) The requirements for manufactured home parks are established for the protection of the public health, safety and welfare, and for the following additional purposes:

(i) To provide adequate space and site diversification for residential purposes that are planned to accommodate the design criteria of manufactured homes.

(ii) To protect against pollution, environmental hazards and other objectionable influences.

(iii) To make adequate provisions for vehicular and pedestrian circulation.

(2) To promote housing densities appropriate to and compatible with existing and proposed public support facilities.

(3) To promote the most desirable use of land and direction of building development; to promote stability of development; to protect the character of neighborhoods; to conserve the value of land and buildings; and to protect the city's tax base.

(b) **Standards**. The installation, occupancy and maintenance of manufactured homes and modular homes in manufactured home parks shall be subject to the following requirement. The structures shall be of adequate quality and safe design, as certified by a label stating that the unit is constructed in conformance with the applicable federal standards in effect on the date of manufacture; or other such applicable standards. Any such structure without such certification, but meeting all other requirements, may be accepted as a safe and quality construction.

(c) **Required Conditions**.

(1) A development designed as a manufactured home or recreational vehicle park shall meet all requirements of the manufactured home park ordinance of the city. The park so designed shall be for the explicit purpose of renting or leasing of manufactured home sites and shall not be construed to permit the sale of any such spaces as lots. A plat showing each lot and the dimensions, the street(s), easements and common areas must be submitted to and approved by the City Council, and filed of record in the real property records of Lee County. The minimum street right-of-way and construction standards shall be as established by the City; provided that if not established by the City such right-of-way and construction standards shall be as required in the Lee County Subdivision regulations.

(2) At no time may an existing manufactured home or recreational vehicle park be converted to a manufactured home or recreational subdivision without first meeting all requirements of the city subdivision ordinance and receiving approval by the City Council. For the purpose of this Ordinance, a "manufactured home park" is restricted and the lots or spaces therein may only be rented or leased out for occupancy. A manufactured home subdivision is a development designed for manufactured homes and the sale and private individual ownership of each separate lot.

(d) **Manufactured Home Park**. Property and areas of the City may not be used and occupied as a Manufactured Home Park, or for the installation and location of manufactured homes or modular components except as provided in this ordinance. Property and areas shall not be approved as a manufactured home park, or for the installation and/or occupancy by manufactured homes without a specific use permit, unless such property and areas are planned, used, approved, platted and occupied as a manufactured home park. Land and areas of the city authorized for use as a manufactured home park and having an approved subdivision plat or site plan for a manufactured home park may be used for manufactured homes and modular components as provided in this ordinance.

(e) **Area Regulations**.

(1) **Front.** There shall be a minimum front yard having a depth of not less than twenty-five (25) feet.

(2) **Side**.

(i) There shall be a minimum side yard on each side of the manufactured home of not less than ten (10) feet.

(ii) At no time shall there be any manufactured home located closer than twenty (20) feet to each other.

(iii) A side yard adjacent to a side street shall not be less than fifteen (15) feet.

(3) **Rear**. There shall be a minimum rear yard having a depth of not less than ten (10) feet measured from the rear lot line.

(f) **Permitted Uses**.

(1) One manufactured home or modular home on each approved space or lot.

(2) Accessory buildings located on a lot for use by the owner or occupant of a structure that is located on such lot.

(3) Recreational, civic and/or commercial facilities designed for exclusive use of the occupants of the manufactured home park.

(4) Accessory buildings for use by the owner or manager of the manufactured home park.

(5) All electrical material, devices, appliances, and equipment are in sound and safe condition.

(6) All mechanical systems including space and water heating, are in sound and safe condition.

(7) All plumbing, gas piping, and wastewater systems are in sound and safe condition.

(8) The unit is in sound and safe structural condition. Uncompressed finish floorings greater than 1/8 inch in thickness beneath load-bearing walls that are fastened to the floor structure are not acceptable. Any such structure that shows signs of fire damage are not acceptable.

(9) The determination of the foregoing acceptance of any noncertified unit shall be made jointly by the Code Official and the Fire Marshall.

(10) The frame shall be supported by, and tied to, a foundation system capable of safely supporting the loads imposed as determined from the character of the soil. The minimum acceptable foundation design shall be a series of eight-inch grout-filled concrete block piers spaced no more than eight feet on center and bearing on 12" x 12" solid concrete footings, or equivalent. A tie-down and anchoring system separate and apart from the foundation ties shall be provided as recommended by the manufacturer, if different from the foundation ties.

(11) Axle and hitch assemblies shall be removed at the time of placement on the foundation.

(12) Each manufactured home shall be totally skirted with fire resistive material which is compatible with the design and exterior materials of the primary structure and is approved by the Code Official.

(13) Electrical power supply shall be made from a meter installation on the mobile home or manufactured home, or from a permanent meter pedestal. The use of copper conductors or series 8000 aluminum conductors or better shall be allowed. All conductors shall be installed as per the current National Electric Code adopted by the City. The use of aluminum conductors is only allowed from the point of metering to the mobile home or manufactured home means of disconnect.

(14) A driveway and off-street parking shall be provided for each lot.

(15) Garage and carport additions are permitted, provided they:

(i) cover a hard service dust free parking area and are connected to a street by a hard service dust free drive;

(ii) meet the minimum building setback requirements; and have roof and siding material compatible with the primary structure.

(16) Living area additions are permitted, provided they meet the minimum building setback requirements, have roof and siding material that is compatible with the primary structure, and comply with the same structural standards as the primary structure.

(17) Not less than two (2) off street parking spaces for each lot, or home pad site.

(18) Patio and porch covers are permitted, provided they cover an improved patio, deck, or porch, and meet the minimum building setback requirements.

(19) No thru traffic shall be permitted in a Manufactured Home Park.

(g) **Accessory Buildings**. All accessory building shall have a setback from all lot and properties lines of not more than five (5) feet and no less than ten (10) feet from any habitable structure.

Sec. 62.12 Manufactured Home Subdivision.

(a) A development designed as a manufactured home subdivision shall meet all requirements of the city subdivision ordinance and this ordinance, and if presented and approved as a manufactured home subdivision for sale of the lots to individual owners, shall establish a property owners association and fees for the maintenance of the common areas and amenities within the subdivision.

(b) Area Regulations

(1) Front. There shall be a minimum front yard having a depth of not less than twenty-five (25) feet.

(2) Side.

(i) There shall be a minimum side yard on each side of the manufactured home of not less than ten (10) feet.

(ii) At no time shall there any manufactured home located closer than twenty (20) feet from to each other.

(iii) A side yard adjacent to a side street shall not be less than fifteen (15) feet.

(3) Rear. There shall be a minimum rear yard having a depth of not less than ten (10) feet measured from the rear lot line.

(4) Lot Area. The minimum lot area for any manufactured home subdivision lot shall be a minimum width of seventy five (75) feet and be a minimum length of one hundred and twenty five (125) feet.

(5) Parking Regulations. Not less than two (2) off street parking spaces for each lot, or home pad site.

(6) All accessory buildings shall have a setback from all lot and properties lines of not more than five (5) feet and no less than ten (10) feet from any habitable structure.

Sec. 62.13 Existing and New Manufactured Home Parks.

(a) **New Parks**. After the date of adoption of this ordinance, manufactured home parks shall not be permitted within any area of the City except upon authorization and permit by City Council given after notice and public hearing held in compliance with this paragraph. The notification and public hearing process for the approval of a manufactured home park under this section shall be as follows:

(1) A public hearing shall be held by City Council prior to the issuance of any such authorization or permit;

(2) Written notice of the application shall be sent by U.S. Mail to the last known address of the owner and/or occupant of each property within two hundred feet of the tract or parcel of land for which the specific use permit is requested;

(3) Such written notice shall be mailed at least fifteen days prior to the date of the public hearing to be held with respect to the application; and

(4) Not more than thirty no less than 10 days prior to the date of the public hearing a notice shall be published in the official newspaper giving notice of the application and the public hearing to be held with respect to such application.

(b) **Existing manufactured home parks**. Requests for the location of additional manufactured homes within the City shall be made in compliance with this Chapter. Manufactured homes shall be installed only in the parks designated in this section, or hereinafter authorized and approved pursuant to this Chapter and the City's Subdivision Ordinance. The following Manufactured Home Parks are established at designated locations within the City of Lexington, Texas, for mobile homes and manufactured homes existing in said locations and for installation of any additional manufactured homes qualifying for installation within the City under this Chapter. Such Manufactured Home Parks shall be known by their common names as follows:

Name	Location
Enders Mobile Home Park	729Avenue A
Grandpa's Mobile Home Park	821 Yegua Street
Herklotz Mobile Home Park	305 Avenue G
Hooper Mobile Home Park	504 Fifth Street
Lexington Country Estates	1024 Cherry Street
Nash Mobile Home Park	113 Hale Street and 416 Cherry
Sanders Mobile Home Park	909 North Rockdale

Article III. Unfit Dwellings and Compliance

Sec. 62.15. Unfit Dwellings.

(a) Any manufactured home, mobile home, modular home or recreational vehicle shall be subject to condemnation procedures when found to have any of the following defects:

(1) One which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public.

(2) One which lacks illumination, ventilation, or sanitation facilities adequate to protect the health or safety of the occupants or of the public.

(b) A legal non-conforming use, when discontinued or abandoned, cannot be resumed. Prima facie evidence of discontinuance or abandonment is as follows:

(1) When a manufactured home is not occupied for a period of at least 180 days; or

(2) When utilities have been disconnected from a manufactured home for a period of one hundred eighty (180) days or more.

Sec. 62.16. Service of Notice for Unfit Dwelling.

(a) Whenever the Building Official has determined that a mobile home or manufactured home displays defects as described in this Article, he shall give written notice to the owner and all persons having an interest in the building after a diligent effort to discover each owner, mortgagee and lienholder and shall placard the structure as unfit for human habitation in accordance with the following:

(1) Such written notice shall include:

(i) A description of the real estate sufficient for identification;

(ii) A statement of the particulars which make the building or structure unfit;

(iii) Notice of the date and time of the public hearing before city council to determine whether the building is unfit; and

(iv) A statement that the owner, lienholder, mortgagee or persons with a legal interest in the structure 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 amount of time it will take to reasonably perform the work.

(2) The placard shall be placed on the main entrance of the mobile home and read:

"THIS STRUCTURE IS UNFIT FOR HUMAN HABITATION; THE USE OF THIS STRUCTURE FOR HUMAN HABITATION IS PROHIBITED AND UNLAWFUL"

(b) A notice to repair and notice of public hearing pursuant to this article shall be deemed properly served upon the responsible parties if a copy thereof is:

(1) Served upon him/her personally;

(2) Sent by registered or certified mail, return receipt requested, to the last known address of such persons as shown on the records of the city;

(3) Published at least twice within a 10 day period in a newspaper of general circulation, in the county in which the building is located if personal service cannot be obtained and the owner's post office address is unknown; or

(4) Posted on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(c) The requirements to make a diligent effort to determine the identity and address of an owner, a lienholder, or a mortgagee, are satisfied if the municipality searches the following records:

(1) County real property records of the county in which the structure is located;

(2) Appraisal district records of the appraisal district in which the building is located;

(3) Records of the secretary of state;

(5) Assumed name records of the county in which the structure is located;

(6) Tax records of the city; and

(7) Utility records of the city.

Sec. 62.17 Compliance with Written Notice. The owner of the structure shall have ten (10) days from the date of service of the notice to comply with the provisions of this section.

Sec. 62.18 Procedure on Noncompliance.

(a) **Condemnation**. The City Council shall hold a public hearing on all condemnation proceedings resulting from non-compliance with the provisions of this section.

(1) **Notice of Public Hearing**. Written notice of such public hearing shall be sent to owners of real property lying within two hundred feet of the property on which the appeal is made not less than ten days before the date set for the hearing. Such notice may be served by depositing the same properly addressed and postage paid in the United States Post Office. Notice shall also be given by publishing the same prior to the date set for hearing which notice shall state the time and place of such hearings.

(2) **Notice of Condemnation**. Following the public hearing determining the structure to be unfit for human habitation, the City Council shall immediately adopt a resolution condemning the structure and requiring the occupants to vacate the premises.

(3) **Vacating the Structure**. Any occupant of a structure condemned as unfit for human habitation under the provisions of this section shall vacate said structure within thirty days after the adoption of said resolution by City Council.

(4) **Further Occupancy Restricted**. Once the occupant(s) of a structure which has been condemned and placarded as unfit for human habitation vacate said premises, no person shall again use said premises for human habitation unless approval is secured from and such placard is removed by the Building Official. The Building Official shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Provided however, that if a legal non-conforming structure is found by city council to be unfit for dwelling, it cannot be cured and the property automatically loses its legal non-conforming status.

Sec. 62.19. Enforcement.

(a) **Notice**. Any person in violation of the provisions of this article shall be given written notice thereof. Such notice shall request that corrective action be immediately taken to remedy the alleged violation.

(b) **Criminal enforcement**. A violation of any of the provisions of this article shall be unlawful and shall constitute a misdemeanor. Each day that a violation continues shall constitute a distinct and separate violation. Any person or legal entity violating any provision of this Chapter shall be fined in an amount not to exceed $2,000.00 per offense. Nothing in this section shall limit in any manner the authority of the city to seek any injunctive or other civil relief remedies available under the laws of the state.

(c) **Civil remedies**. If any building, structure, or land is used, constructed, maintained, repaired, or altered, or any development is undertaken in violation of this article, the city may institute any appropriate action to prevent, restrain, correct, or abate the violation as authorized by *Tex. Loc. Gov't Code section 54.012*, or other laws of the state.

Chapters 63 and 64 Reserved.

Chapter 65. Subdivision of Land

Article 1. General Provisions

Article II. Procedure.

Article III. Design Standards

Article IV. Improvements

Article V. Administration

CHAPTER 65 . SUBDIVISION OF LAND

ARTICLE I. GENERAL PROVISIONS

Sec. 65.1. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this Ordinance. The word "regulations" means the provisions of any applicable ordinance, rule, regulation or policy. The word "person" means any human being or legal entity and includes a corporation, a partnership, and an incorporated or unincorporated association. The words "used or occupied" as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.

Access means a way of approaching or entering a property.

Adjacent means abutting and directly connected to or bordering.

Alley means a minor right-of-way, dedicated to public use, which gives a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

Applicant means a person applying for plan approval under this Ordinance.

Approval means the final approval in a series of required actions. For instance, the approval date of a plat requiring approval of the Commission and then the Council is the date of Council approval.

Arterial Street means a street designed to provide a connection between major arterial streets.

Block means a parcel of land, intended to be used for urban purposes, which is entirely surrounded by public streets, highways, railroad right-of-way, public walks, parks or green strips, rural land, drainage channels, or a combination thereof.

Bond means any form of security including a cash deposit, surety bond, collateral, property, or instrument of credit in an amount and form satisfactory to the City Council.

Building or Setback Line means a line or lines designating the interior limit of the area of a lot within which structures may be erected. The building lines generally provide the boundaries of the buildable area of any given lot and no structure or building may be erected between a building and the corresponding lot line. ·

Building Permit means a permit issued by the City of Lexington which is required prior to commencing construction or reconstruction of any structure.

Buffer means a barrier constructed of wood, masonry, vegetation, and/or other landscape material in such a manner that adjacent uses will be separated to such a degree that objectionable noise, heat, glare, visual clutter, dust, loss of privacy, air circulation, and other negative externalities shall be abated.

Centerline, when referring to a waterway or drainage, means the centerline of the waterway and refers to existing topographically defined channels. If not readily discernible, the centerline shall be determined by (first) the low flow line, or (second) the center of the two (2) year flood plain.

City means the City of Lexington, Texas.

City Administrator means the chief administrative officer of the City of Lexington, Texas or his/her/her designated representative.

City Council or Council means the Lexington City Council.

City Engineer means the City Engineer for the City or his/her designated representative.

City Limits means within the incorporated boundaries of the City.

City Staff means the officers, employees and agents of the City assigned and designated from time to time by the City Administrator and/or Council, including but not limited to the City Engineer, to review and/or comment and report on development plans.

City Standard Details and Specifications means a library of City approved drawings and technical data representing typical drainage, transportation, erosion & sedimentation control, and utility appurtenances to be constructed for City acceptance.

Collector Street means a street that collects traffic from local streets and serves as the most direct route to a major or minor arterial street.

Commission means the Planning and Zoning Commission of the City, or the City Council if a Planning and Zoning Commission is not operational.

Concept Plan means a generalized plan that meets the requirements of this Ordinance and that indicates the boundaries of a tract or tracts under common ownership, identifies the purpose of the

proposed development and the proposed land use, general lot or parcel layout, community use or public areas, and street alignments.

Construction Plans means the maps, drawings, plans and specifications indicating the proposed location and design of improvements to be installed as part of a development.

Contiguous means adjacent property whose property lines are shared or are separated by only a street, alley, easement or right-of-way.

Corner Lot means a lot located at the intersection of and abutting on two (2) or more streets.

County means Lee County, Texas.

County Appraisal District means the Lee County Appraisal District.

Crossfall means the transverse slope as related to a given longitudinal slope and measured by the rise to run ratio.

Crosswalk means a strip of land dedicated for public use and which is reserved across a lot or block for the purpose of providing pedestrian access to adjacent areas.

Cul-de-Sac means a minor street having one (1) end open to vehicular traffic and having one (I) closed end terminated by a permanent turnaround.

Dedication means the grant of an interest in property for public use.

Design Storm means a probable rainfall event the frequency of which is specified in periods of years and which is used to design drainage facilities and determine flood elevations.

Developer means the legal owner of land to be improved and/or subdivided or his/her/her authorized representative.

Developed Area means that portion of a lot, easement, or parcel upon which a building, structure, pavement or other improvements have been placed.

Development means a subdivision of land as defined herein or the construction or placement of any buildings, utilities, access, roads or other structures, excavation, mining, dredging, grading, filling, clearing or removing vegetation, and the deposit of refuse, waste or fill. Lawn and yard care, including mowing of tall weeds and grass, gardening, tree care and maintenance, removal of trees or other vegetation damaged by natural forces, and ranching and farming shall not constitute development. Utility, drainage, and street repair, and any construction maintenance and installation which does not require land disturbance or result in additional impervious cover shall also not constitute development.

Development Plan means a scaled drawing representing an area of land to be improved/developed and indicating the legal boundary of said property and the nature and extent of all existing and proposed improvements to said project.

Double Frontage Lot means a lot which runs through a block from street to street and which abuts two (2) or more streets.

Drainageway see Waterway.

Drainfield means private sewage facility, disposal area, trench or bed utilized for final wastewater disposal.

Drive Approach means a paved surface connecting the street to a front lot line.

Driveway means the surface connecting a drive approach with a parking space, parking lot, loading dock or garage.

Dwelling Unit means a residential unit designed to accommodate one (1) household

Easement means a grant by the property owner of the use of a strip of land for stated purposes.

Environment means the aggregate of social and physical conditions that influence the life of the individual and/or community.

Escrow Funds means a deposit of cash or other approved security with the local government or approved bank or other financial institution in-lieu of a performance or maintenance bond.

ETJ Limits means the limits of the City's extra-territorial jurisdiction as granted under Chapter 43, Local Government Code.

Filing Date means, with respect to plats and plans, the date of their first public hearing before the Commission regarding such plat or plan; provided that, with respect to the required Council approval of Concept Plans, the Filing Date for such Council approval shall be the date of the first public hearing by the Council.

Final Plat means a map of a land subdivision prepared in a form suitable for filing of record with necessary affidavits, dedications and acceptances, and with complete bearings and dimensions of all lines defining lots and blocks, streets, alleys, public areas and other dimensions of land.

Flood Plain means channel of a waterway and the adjacent land area subject to inundation during the design storm.

Floodway means channel of a waterway and the adjacent land areas that must be reserved in order to discharge the design storm without cumulatively increasing the water surface elevation.

Front Yard means a space extending the full width of the lot between any building set back line and the front lot line, and measured perpendicular to the building at the closest point to the front lot line.

Frontage means that side of a lot, parcel or tract of land abutting a street right-of-way and ordinarily regarded as the frontal orientation of the lot.

Governing Body means the City Council of the City of Lexington, Texas.

Grade means the slope of a road, street, other public way or utility line specified in terms of percent (%); the topographic relief of a parcel of land; the average elevation at ground level of the buildable area of a lot or parcel of land.

Grading means any stripping, cutting, filling or stockpiling of earth or land, including the land in its cut or filled condition.

Improvements means any street, alley, roadway, barricade, sidewalk, bikeway, pedestrian way, water line system, wastewater system, storm drainage network, public park land, landscaping, or other facility or portion thereof for which the local government may ultimately assume responsibility for maintenance and operation or which may affect an improvement for which local government responsibility is established.

Individual On-Site Wastewater System or Private Sewage Facility means all systems and methods used for the disposal of sewage, other than organized sewage disposal systems. Private sewage facilities are usually composed of three (3) units: the generating unit (the residence, institution, etc.), treatment unit, and the disposal unit (the drainfield that may be an absorption trench or bed, or an evapotranspiration bed). A Private Sewage Facility includes a septic tank, seepage tile sewage disposal system or any other on-lot sewage treatment device approved and installed in accordance with all local, state and federal laws and regulations. **See***: Sec. 110.21*.

Industrial means non-residential use of any site involved in manufacturing and/or external storage of goods; any site generating significant negative externalities, such as noise, dust, glare, etc. and/or any site where hazardous materials are stored and/or generated.

Interior Lot means a lot other than a corner lot and, bounded by a street on only one (1) side.

Landscape Development means trees, shrubs, ground cover, vines or grass installed in planting areas.

Legal Lot means either a lot recorded in the Official County Records pursuant to and in compliance with the subdivision regulations in effect at the time of its creation, or a tract of land having existed in its present configuration prior to October 1, 1927.

Legally Platted Lot a lot which is part of a subdivision approved by the City and recorded in the Official County Records.

Letter of Credit means a letter from a bank or other reputable creditor acceptable to the City that guarantees to the City that upon failure of the subdivider to fulfill any improvement requirements that at the City's request, funds will be provided to the City to complete the specified improvements.

Local Health District means the Lee County Health District.

Local Street means a street designed for the sole purpose of providing access.

Lot means a subdivision of a block or other parcel intended as a unit for transfer of ownership, or for development, or for occupancy and/or use.

Master Plan means an overall development plan for the community which has been officially adopted to provide long-range development policies including all specified individual elements thereof among which are the plans for means land intensities; land subdivision; circulation; and community facilities, utilities and services; and, if none, means professional urban planning and engineering practices.

Minor Street means a local street designed primarily for access to abutting residential properties. A minor street does not include a street designed or required to be designed for through traffic..

Multifamily Residence means a single structure designed to accommodate four (4) or more households.

Natural Channel means the topography of a waterway prior to construction, installation of improvements or any regrading.

Natural Drainage means a stormwater runoff conveyance system not altered by development.

Neighborhood means the area of the City characterized by residential land uses which is bounded by physical (such as river, major street, back of access) and/or political features (such as voting districts, subdivision boundaries).

Neighborhood Park means a privately owned parcel of land, within a subdivision, dedicated solely for recreational uses and maintained by the residents of said subdivision.

Official County Records means the Official Records of Lee County, Texas.

Off-Site Improvements means any required improvement which lies outside of the property being developed.

One Hundred (100) Year Flood Plain means that flood which has a probability of occurring once in a one hundred (100) year period or a one percent (1%) chance in any given year.

Overland Drainage means stormwater runoff which is not confined by any natural or man-made channel such as a creek, drainage ditch, storm sewer, or the like.

Parent Tract means tract or lot as described by deed or plat, which includes one (1) or more lots that are being subdivided.

Park Fund means a special fund established by the City to retain monies paid by developers in accordance with the payment in-lieu of park land dedication provisions of these regulations and to be used for the purchase of park land or improvements in the vicinity of the subdivided property for which funds have been collected.

Planned Unit Development (PUD) means a subdivision, at least 250 acres in size and in the City's extra-territorial jurisdiction.

Planning and Zoning Commission means the City of Lexington Planning and Zoning Commission, or, absent a Planning and Zoning Commission, the City Council.

Playscape means any structure permanently anchored to the ground that is designed for recreational purposes. Sports courts such as basketball or tennis courts are not considered playscapes.

Preliminary Plan means a map of a proposed land subdivision showing the character and proposed layout of the property in sufficient detail to indicate the suitability of the proposed subdivision of land.

Primary Structure means a structure in which the principal use of the lot is conducted. For example, for single family residential lots, the house is the primary structure.

Privacy Fence means an opaque fence or screen at least six (6) feet in height. A fence shall be considered opaque if it is made of opaque materials and constructed so that gaps in the fence do not exceed one-half (1/2) inch. Fences using boards placed on alternating sides of fence runners shall be considered opaque if the boards overlap at least one-half (l/2) inch.

Public means, with respect to land and interests in land within the City limits, the City; and, with respect to land and interests in land within the ETJ limits, the general public.

Public Use means places of non-commercial public assembly or administrative functions where the primary activity is contained within a building(s), including but not limited to churches, schools and government buildings.

Rear Yard means a space extending across the full width of the lot between the principal building and the rear lot line, and measured perpendicular to the building to the closest point of the rear lot line.

Required Yard means the open space between a lot line and the buildable area within which no structure shall be located except as provided for herein.

Reserve Strip means a narrow strip of property usually separating a parcel of land from a roadway or utility line easement, that is characterized by limited depth which will not support development and

which is intended to prevent access to the roadway or utility easement from adjacent property and which are prohibited by these regulations unless their control is given to the City.

Reverse Frontage Lot means a double frontage lot which is to be developed with the rear yard abutting a major street and with the primary means of ingress and egress provided on a minor street.

Right-of-Way means a strip of land occupied or intended to be occupied by street, crosswalk, railroad, road, electric transmission line, or oil or gas pipe line, water main, sanitary or storm sewer main, or for other similar purpose or use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way hereinafter established and shown on the Final Plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Right-of-way intended for streets, crosswalks, water mains, wastewater lines, storm drains, or any other use involving maintenance by a public agency shall be dedicated to the public by the maker of the plat where such right-of-way is established.

Same Ownership means ownership by the same person, corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations in which a stock holder, partner, or associate or a member of his/her/her family owns an interest in each corporation, firm, partnership, entity, or unincorporated association.

Secondary Structure means any structure that is subordinate and incidental to the primary structure; and is subordinate in area, extent and purpose to the primary structure; and contributes to the comfort, convenience or necessity of the occupants, business or industry in the primary structure, and is located on the same lot as the primary structure.

Setback or Building Line means a line or lines designating the interior limit of the area of a lot between said line and the corresponding line within which area structures may not be erected. The building lines generally provide the boundaries of the buildable area of any given lot.

Side Yard means a space extending from the front yard to. the rear yard between the setback line and the side lot line measured perpendicular from the side lot line to the closest point of the setback line.

Slope means the vertical change in grade divided by the horizontal distance over which that vertical change occurred. The slope is usually given as a percentage.

Street means any public or private right-of-way which affords the primary means of vehicular access to abutting property.

Street Line means that line limiting the right-of-way of the street and being identical with the property line of persons owning property fronting on the streets.

Street Side Yard means the side yard of a corner lot abutting the street right-of-way.

Street Yard means a space extending across the length and/or width of a lot between the street right-of-way and the closest faces of the buildings on the lot.

Structure means anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, telecommunications towers, sheds, parking lots that are the primary use of a parcel and permanent signs. Sidewalks and paving shall not be considered structures unless located within a public utility or drainage easement.

Structural Integrity means the ability of a structure to maintain stability against normal forces experienced by said structure.

Subdivider means any person, developer, firm, partnership, corporation or other entity, acting as a unit subdividing or proposing to subdivide land as herein defined.

Subdivision means the division or redivision of land into two (2) or more lots, tracts, sites or parcels for the purpose of development, laying out any addition to the City, or for laying out any subdivision or building lots, or any lot, street, alley, access easement, public utility easement, park or other portion intended for use by the public, or for the use of any owner, purchaser, renter, occupant, person or entity.

Traffic Impact Analysis (I'IA) means a study of the impacts of a development on the City's transportation system.

Urbanization means the process of constructing public improvements required to support suburban or urban land use.

Variances means a grant of relief to a person from the requirements of this Ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Ordinance.

Watershed means area from which stormwater drains into a given basin, river or creek.

Waterway means any natural or man-made channel conducting storm water from a two (2) year storm event at a depth of eight (8) inches or more and at a rate of fifteen (15) cubic feet per second or more. Street pavement shall in no instance be considered a waterway.

Working Days means Monday through Friday exclusive of City recognized holidays.

Yard means an open space that lies between the principal or accessory building or buildings and the nearest lot line.

Yard Depth means the shortest distance between a lot line and a yard line.

Yard Line means a line drawn parallel to a lot line at a distance therefrom equal to the depth of the required yard.

Zoning Ordinance means an ordinance adopted by the City Council pursuant to *Chapt. 211, Tex. Loc. Gov't. Code,* regulating the use and occupancy of land or, if none, any ordinance adopted pursuant to the general police powers of the City regulating the use and occupancy of land within the City.

Sec. 65.2. Purpose.

(a) The purpose of this ordinance is to provide for orderly, safe and healthful development to promote the health, safety, morals and general welfare of the community. From and after the passage of this Ordinance, all plats and subdivisions of land within the corporate limits of the City, and all plats and subdivisions of land outside the corporate limits of the City that the Council may be petitioned to include within the corporate limits of the City by an extension of said corporate limits, and all tracts within the City's extraterritorial jurisdiction, shall conform to the following rules and regulations.

(b) The system of improvements for thoroughfares, water and wastewater services, other utilities, drainage, public facilities and community amenities determine in large measure the quality of life enjoyed by the residents of the community. Health, safety, economy, amenities, environmental sensitivity and convenience are all factors which influence and determine a community's quality of life and character. A community's quality of life is of public interest. Consequently, the development of land, as it affects a community's quality of life, is an activity whose regulation is a valid function of municipal government.

(c) The provisions contained herein are designed and intended to encourage the development of a quality urban environment by establishing standards for the provision of open space, storm water drainage, transportation, public utilities and facilities, and other needs necessary for insuring the creation and continuance of a healthy, attractive, safe and efficient community that provides for the conservation, enhancement and protection of its human and natural resources. Through the application of this Ordinance, the interests of the public as well as those public and private parties, both present and future, having interest in property affected by these regulations are protected by the granting of certain rights and privileges.

(d) This Ordinance is designed and intended to achieve the following purposes, and shall be administered so as to:

(1) Assist orderly, efficient and coordinated development of land within the City's jurisdiction.

(2) Provide neighborhood conservation and prevent the development of slums and blight.

(3) Harmoniously relate the development of the various tracts of land to the existing community and facilitate the future development of adjoining tracts.

(4) Provide that the cost of improvements to minimum standards which primarily benefit the tract of land being developed be borne by the owner or developers of the tract, and that the

cost of improvements to minimum standards which primarily benefit the whole community be borne by the whole community.

(5) Provide the most appropriate design for each tract being subdivided.

(6) Provide an attractive relationship between the land as developed and the circulation of traffic throughout the municipality, having particular regard to the avoidance of congestion in the streets and highways, and the pedestrian traffic movements appropriate to the proposed development, and to provide for the proper location and width of streets and building lines.

(7) Prevent pollution of the air, streams, and ponds; to assure the adequacy of drainage facilities; to safeguard both surface and groundwater supplies; and to encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability, and beauty of the community and the value of the land.

(8) Preserve the natural beauty and topography of the municipality and ensure appropriate development with regard to these natural features.

(9) As appropriate, reconcile any differences of interest among the developer, other property owners and the City.

(10) Establish adequate and accurate records of land subdivision.

(11) Ensure that public or private facilities are available and will have a sufficient capacity to serve proposed subdivisions and developments within the City's jurisdiction.

(12) Standardize the procedure and requirements for developing property and submitting plans for review and approval.

(13) Protect and provide for the public health, safety, morals and general welfare of the community.

(14) Provide a healthy environment for the present and future citizens; an environment designed to reasonably secure safety from fire, flood and other dangers; and to provide that land be subdivided in a manner to attain such goals and benefits for the community.

(15) Protect the character and the social and economic stability of all parts of the community and encourage the orderly and beneficial development of all parts of the community.

(16) Protect and conserve the value of land throughout the community and the value of buildings and improvements upon the land.

(17) Guide public and private policy and action in providing adequate and efficient transportation systems, water and wastewater systems, public utilities, and other public amenities and facilities.

(18) Encourage the development of a stable, prospering economic environment.

(e) Certain minimum standards for land use, construction and development within the City limits may be contained in the City's Zoning Ordinance, applicable building and plumbing codes, City Standard Details and Specifications, and this Ordinance. If only the minimum standards are followed, as expressed by the various ordinances regulating land development, a standardization of development will occur. This will produce a monotonous urban setting. Subdivision design within both the City and its extraterritorial jurisdiction should be of a quality to carry out the purpose and spirit of the policies expressed in the Master Plan and in this Ordinance, rather than be limited to the minimum standards required herein.

Sec. 65.3. Authority.

(a) This ordinance is adopted pursuant to the police powers of general law cities, and under authority of the Constitution and general laws of the State of Texas, including, but not limited to, *Chapt. 212, Tex. Loc. Gov't. Code.*

(b) In accordance with the City's police powers and authority, and as specifically authorized by *Chapt. 212, Tex. Loc. Gov't. Code,* and other applicable laws, the Planning and Zoning Commission and the City Council, as a condition of subdivision plat or replat approval, shall require the owners and developers of land who desire to subdivide, plat or replat, or lay out any land for development within the City or its extraterritorial jurisdiction, for urban development or other purpose, to provide for building setback lines, to dedicate streets, alleys, parks, easements or other public places or facilities of adequate width and size and to coordinate street layouts and street planning with the City's Master Plan, with other municipalities, and with county, state and federally designated highways, as they may deem best in the interest of the general public, in order to provide for the orderly development of the areas and to secure adequate provision for traffic, light, air, recreation, transportation, water, drainage, sewage and other facilities.

Sec. 65.4. Jurisdiction. Except as specifically provided otherwise herein, this Ordinance shall apply to all subdivisions and all related land development activities, as they are both defined herein, and all land, any part of which is located within the jurisdiction of the City. The jurisdiction of the City shall be defined as follows:

(a) The corporate limits of the City of Lexington, Texas; and

(b) The extraterritorial jurisdiction of the City of Lexington, Texas; and

(c) Any additional area outside (1) and (2) above as permitted by law and which has been approved by the Council.

Sec. 65.5. Policy. In order to carry out the purposes hereinabove stated, it is hereby declared to be the policy of the City to consider the subdivision and/or development of land as subject to the control of the municipality, pursuant to the Master Plan, if any, as adopted or amended from time to time, for the orderly, planned, efficient and economical development of the City and its jurisdiction. This Section shall be administered such that:

(a) Land to be subdivided and/or developed shall be of such nature, shape and location that with proper and careful design and development it can be safely used for building purposes without danger to health or risk of fire, flood, erosion, landslide or other menace to the general welfare.

(b) A Final Plat shall not be recorded until the necessary public utilities and facilities and other required improvements exist or arrangements are made for their provision.

(c) Buildings, lots, blocks and streets shall be arranged so as to provide for an attractive and healthful environment and to facilitate fire protection, and provide ample access to buildings for emergency equipment.

(d) Land shall be subdivided and developed with due regard to topography and existing vegetation with the object being that the natural beauty and natural resources of the land shall be preserved to the maximum extent possible.

(e) Existing features which would add value to development or to the City as a whole, such as scenic and special features, both natural and man-made, historic sites, and similar assets shall be preserved in the design of the subdivision whenever possible.

Sec. 65.6. Application.

(a) The provisions of this Ordinance, including design standards and improvement requirements, shall, except as specifically provided otherwise in this Ordinance, apply to all subdivisions of land within the jurisdiction of the City, including but not limited to the following forms of land subdivision and development activity:

(1) The division of land into two (2) or more -tracts, lots, sites or parcels, any part of which shall contain less than five (5) acres in area when subdivided;

(2) The division of land into two (2) or more tracts, lots, sites or parcels, any part of which when subdivided shall contain five (5) acres or more in area and will require the dedication or conveyance of any access, public right-of-way, easement, or any public improvement;

(3) Land previously subdivided or platted into tracts, lots, sites or parcels, which subdivision was subject to, but not in accordance with, City or County Ordinances in effect at the time of such subdividing or platting;

(4) The combining of two (2) or more contiguous tracts, lots, sites or parcels for the purpose of creating one (1) or more legal lots in order to achieve a more developable site, except as otherwise provided herein;

(5) Any Planned Unit Development for which two (2) or more lots, tracts, or parcels are designed, established or created for occupancy, use or a building site, or for which a building permit, plumbing permit, electrical permit, flood plain permit, utility tap, or certificate of acceptance for required public improvements is required by the City;

(6) The platting of any existing legal deed-divided unplatted lot, parcel site or tract;

(7) The voluntary platting and recording of a subdivision plat dividing any land within the jurisdiction of the City into lots, parcels, sites or tracts;

(8) Any plat having received approval from the Commission or the Council for which said approval has expired; or,

(9) The dedication of any street or alley through any tract of land, regardless of the area involved.

(b) There may be occasions when the City Council deems it appropriate to allow a delay in the implementation of certain elements of this Ordinance. On those occasions, a development agreement shall be used in accordance with the City policy.

Sec. 65.7. Exemptions.

(a) The provisions of this Ordinance shall not apply to:

(1) Sales of land by metes and bounds in tracts of five (5) acres or more in area and not requiring the dedication of any easements, land or roadways for use the any purchaser or member of the public, except as otherwise specifically provided in this Ordinance;

(2) Cemeteries complying with all State and local laws and regulations;

(3) Divisions of land created by order of a court of competent jurisdiction;

(4) Any subdivision of land for which a Concept Plan, Preliminary Plan or Final Plat has been filed with the City on or before the effective date of this Ordinance, excluding any such plan or plat for which approval has expired or hereafter expires; or

(5) The combination of two (2) platted lots for the creation of a more developable site and the Planning and Zoning Commission finds that:

(i) The proposed use is the same as that for which the subdivision was platted by the subdivider; and

(ii) No increase is anticipated in the estimated traffic generation or utility demands; and

(iii) Offsite stormwater runoff is neither increased nor concentrated.

(b) The provisions of this Ordinance shall not apply to the division of an existing legal lot, said division being caused by the City's acquisition of a part of said legal lot, when the Council finds that the acquisition by the City is in the best interest of the public health, safety and welfare of the citizens of Lexington and/or its extra-territorial jurisdiction. Upon the Council so finding, the resulting parcels shall be deemed to constitute legal lots for the purposes of developing under the requirements of this ordinance and other applicable City regulations. In creating said division, the Council is empowered to attach to the resulting parcels acquired by the City, and the remainder parcels not acquired by the City upon agreement with the owner, such conditions as it finds reasonable and necessary to offset any adverse effects resulting from the City's acquisition as a part of the original legal lot, in so far as any such condition is not contrary to the spirit and intent of the ordinance.

(c) The provisions of this Ordinance shall not be construed, interpreted or applied to land located within the extraterritorial jurisdiction of the City in a manner to regulate:

(1) the use of any building or property for any lawful purpose;

(2) the bulk, density or number of buildings on a tract or parcel of land;

(3) the floor to area ratio of any building to be constructed on any lot; or

(4) the number of residential units that can be built on an acre of land.

Sec. 65.8. Enforcement of Regulations.

(a) No subdivision of land within the City or its extraterritorial jurisdiction may be recorded until a Final Plat, accurately describing the property to be subdivided and platted, has been approved by the City in accordance with this Ordinance and applicable laws, signed and dated by the Chair of the Planning and Zoning Commission and/or other designated officers of the City, and filed in the Official County Records.

(b) No building permit, certificate of occupancy, plumbing permit, electrical permit, flood plain permit, utility tap or certificate of acceptance for required public improvements shall be issued by the City for or with respect to any land within the City limits; and no flood plain permit, utility tap or certificate of acceptance for required public improvements shall be issued by the City for or with respect to land within the ETJ Limits:

(1) For any parcel or plat of land which was developed after the effective date of, and not in conformity with, the provisions of this Ordinance; and/or

(2) Until, (i) all improvements required by this Ordinance, have been constructed and accepted by the City, or (ii) assurances for the completion of improvements have been provided in accordance with this Ordinance.

(c) No excavation or clearing of land, or construction of any public or private improvements shall take place or commence, within six (6) months preceding the date of application for the approval of any development or subdivision; and no such excavation, clearing of land or construction shall begin within any proposed subdivision until such time as the City Engineer approves the plans and specifications for such subdivision.

(d) This ordinance may be further enforced by injunction and other judicial proceedings, either at law or in equity; and, in lieu of or in addition to any other authorized enforcement or action taken, any person who violates any term or provision of this ordinance, with respect to any land or development within the City, by fine and penalties as provided herein.

Sections 65.9 through 65.19 Reserved.

ARTICLE II. PROCEDURE

Sec. 65.20. General Procedure.

(a) Plans for the development of land within the scope of this Ordinance shall be drawn and submitted to the Commission and Council for their approval or disapproval, as provided in herein.

(b) Notwithstanding any provision of this Ordinance to the contrary, a developer shall not commence construction activities within the City's jurisdiction, including clearing and/or rough grading, before first obtaining all the City approvals required by this Ordinance.

(c) Generally, the subdivision process is comprised of four (4) individual steps, including the Concept Plan, the Preliminary Plat, Construction Plans, and the Final Plat. Each step of the development process has established deadlines and expirations that must be met in order for the application and any approval(s) granted to remain valid, in effect and eligible to continue to the next step of, or to complete, the development process. Compliance with each such established deadline constitutes a separate required performance and approval.

Sec. 65.21. Concept Plan.

(a) **Purpose**. The purpose of the Concept Plan is to demonstrate conformance with the Master Plan, compatibility of the proposed development with this and other applicable City ordinances, and the coordination of improvements within and among individually platted parcels, sections, or phases of a development, prior to the consideration of a Preliminary Plat.

(1) A Concept Plan shall be required for all subdivisions of land, except as otherwise provided for in this Ordinance for Short Form Final Plats.

(2) The Concept Plan shall include all adjacent and contiguous land, owned or controlled by the developer or the person, firm or corporation that sold the tract being developed.

(3) It shall not be necessary to submit a Concept Plan on any land more than once, unless the concept substantially or materially changes, or approval of the precedent Concept Plan has expired, as defined in this Ordinance.

(b) **Format**. It is recommended that a Concept Plan be drawn on twenty-four by thirty-six inch (24"x36") sheet(s) at a scale of one (1) inch equals one (1) hundred feet (1"=100) or one (1) inch equals two (2) hundred feet (l"=200') with all dimensions measured accurately to the nearest foot.

(c) **Content**. The Concept Plan shall contain or have attached thereto:

(1) Name, address and phone numbers of the developer, record owner, and authorized agents (engineer, surveyor, land planner, etc.)

(2) Proposed name of the development; date revised and/or prepared; north indicator; scale.

(3) Location map drawn at a scale of two thousand (2,000) feet per inch showing the area within a one (1) mile radius of the proposed subdivision. Use of the latest USGS 7.5 minute quadrangle map is recommended.

(4) A layout of the entire tract and its relationship to adjacent property, existing development and recorded plats.

(5) The owner's name, deed or plat reference and property lines of property within three hundred (300) feet of the development boundaries, as determined by current tax rolls.

(6) Topographic contours at ten (10) foot intervals, or less, unless otherwise approved by the City.

(7) Proposed major categories of land use by acreage showing compatibility of land use with, or proposed variance from, the Master Plan.

(8) Proposed number of residential and non-residential lots, tracts or parcels of together with the estimated:

(i) number of LUEs required for each category of lots; and

(ii) traffic volume to be generated by all proposed development other than single family residential.

(9) Proposed and existing arterial and collector streets to serve the general area;

(10) Location of sites for parks, schools and other public uses, and all areas of common ownership;

(11) Significant drainage features and structures including any regulatory one hundred (100) year flood plains;

(12) Significant existing features on or within 200 feet of the property, such as railroads, roads, buildings, utilities and drainage structures;

(13) Approximate boundaries and anticipated timing of proposed phases of development;

(14) Identification of known exceptional topographical, cultural, historical, archaeological, hydrological and other physical conditions of the property to be developed, or existing within two hundred (200) feet of the property, which will require the establishment of reasonable design standards in excess of the established minimum standards or require a variance from those established minimum standards as defined in this Ordinance;

(15) Location of City limit lines and/or outer border of the City's extra-territorial jurisdiction, as depicted on the City's most recent base map, if either such line traverses the development or is contiguous to the development's boundary;

(16) A proposed phasing plan for the development of future sections.

(d) **Procedure**. A Concept Plan shall be submitted to the City for approval by .both the Commission and the Council.

(1) Legible prints, as indicated on the application form, shall be submitted at least thirty (30) days prior to the regular meeting of the Commission along with the completed application forms, and payment of all applicable fees and any attendant documents needed to supplement the information provided on the plan.

(2) City staff shall review all Concept Plan submittals for completeness at the time of application. If in the judgment of City staff, the Concept Plan submittal substantially fails to meet the minimal informational requirements as outlined above, it will not be accepted for review.

(3) Prior to the Commission meeting at which the Concept Plan is to be heard, City staff shall review the plan for consistency with City codes, policies and plans.

(4) City staff shall prepare a report analyzing the Concept Plan submittal, as well as any comments received concerning the Concept Plan, and recommending either approval or disapproval of the Concept Plan. This report shall be available at least five (5) working days prior to the Commission meeting.

(5) If the developer chooses to withdraw the Concept Plan, he/she may do so in writing delivered by noon of the third working day preceding the Commission meeting., A withdrawn Concept Plan may be resubmitted and appear on the next Commission agenda after repayment of the applicable fees.

(e) **Notification**. All owners of property (as determined by the most recent tax rolls from the County Appraisal District), any part of which is located within three hundred (300) feet of the perimeter of the land to be developed, shall be notified by mail.

(1) The developer shall post signs along contiguous rights-of-way at each corner of the development and at intervals that do not exceed three hundred (300) feet between said corners. Signs must be in accordance with the City Standard Details and Specifications.

(2) The City shall publish a public notice at least once in a newspaper of general circulation in the City not fewer than fifteen (15) or more than thirty (30) days prior to said public hearing.

(3) The City shall mail public notification forms, postmarked no fewer than fifteen (15) days prior to the appropriate Commission hearing, to the owners of all property, any part of which is located within three hundred (300) feet of the perimeter of the property included within the Concept Plan.

(f) **Approval**. The Commission and Council, after holding public hearings in accordance with City ordinances and codes, shall approve or disapprove the Concept Plan.

(1) The failure of either the Commission or the Council to act within thirty (30) days of the Concept Plan's respective filing date with the Commission or Council shall be deemed an approval of the plan by the respective body, except as otherwise agreed to by the developer.

(2) The Council, within thirty (30) days of the filing date, shall either confirm the action of the Commission, disapprove the Concept Plan or request that the Commission consider the Council's recommendation at the next regularly scheduled Commission meeting. Plans that are disapproved as submitted maybe resubmitted without charge within sixty (60) days of disapproval with correction.

(3) The Council may delete or amend conditions established by the Commission and may attach additional conditions; provided that pursuant to its authority, the Council may, as to any subdivision, grant variances to, or waive any term or provision of this ordinance.

(4) If the Concept Plan is resubmitted to the Commission for consideration of the Council's recommendation, then the subsequent action of the Commission shall be returned to the Council promptly for final action by Council.

(5) If applicable, zoning of the tract shall permit the uses proposed by the Concept Plan, or a zoning amendment necessary to permit the proposed uses shall be required prior to approval of the Concept Plan.

(6) Approval of a Concept Plan constitutes acceptance of the general development and arrangement of lots indicated on the plan; the classification and arrangement of streets indicated; the proposed phasing plan; and the nature of utility service proposed. Subsequent zoning approvals cannot be guaranteed.

(7) Concept Plan approval does not ensure approval of a Preliminary Plat failing to meet specific requirements of this Ordinance, and approval does not comprise any vesting of development rights or any assurance that permits of any kind will be issued.

(8) Upon approval of the Concept Plan, the developer shall submit one (1) mylar copy of the approved Concept Plan to be kept on file as a public record in the office of the City.

(g) **Expiration**. The approval of a Concept Plan shall expire one (1) year after the filing date unless:

(1) a Preliminary Plat on all, or a portion of, the land is filed prior to such expiration date, or

(2) an extension is granted by the City Council in accordance with this Ordinance; or

(3) the development proceeds in accordance with an approved phasing plan. At such time as the development lags one (1) year behind the approved phasing plan, the approval shall expire if the developer does not, prior to the expiration date, submit and obtain approval of a written request for the extension and continuance of the Concept Plan prior to expiration.

(4) If a Concept Plan expires, it may be reinstated only upon resubmittal of the unaltered, approved plan to the Council and if it receives reinstatement from the Council. All fees shall be repaid as if the plan were initially being submitted.

(h) **Extension**. The developer may apply for an extension, in writing, prior to the end of the initial twelve (12) month period, stating reasons for needing the extension and demonstrating subsequent development activity in accordance with this Ordinance. Upon receipt of this written request, the Commission may, at its discretion, grant an additional six (6) month extension so long as the Concept Plan remains consistent with the Master Plan and/or ordinances of the City.

(i) **Revision**. If a revision to a previously approved Concept Plan is required, all changes must be completed on the one (1) mylar copy on file in the office of the City, and resubmitted to the Commission and Council for approval. All fees shall be repaid as if the Concept Plan was initially being submitted.

Sec. 65.22. Preliminary Plat.

(a) **Purpose**. The Preliminary Plat provides detailed graphic information and associated text indicating property boundaries, easements, land use, streets, utilities, drainage, and other information required to evaluate proposed subdivisions of land. A Preliminary Plat shall be required for any subdivision of land, except as otherwise provided for in this Ordinance, subsequent to Concept Plan approval.

(b) **Format**. It is recommended that the Preliminary Plat be drawn on twenty-four by thirty six inch (24"x36") sheet(s) at a scale of one (1) inch equals one hundred feet (1"=100') with all dimensions labeled accurately to the nearest foot. When more than one (1) sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at a scale of one (1) inch equals four hundred feet (1"=400') shall be attached to the plat.

(c) **Content**. The Preliminary Plat shall include all of the tract intended to be developed at one (1) time, and any off-site improvements required to accommodate the project. The Preliminary Plat shall contain or have attached thereto:

(1) General Information.

(i) Name, address and phone numbers of the developer, record owner, and authorized agents (engineer, land planner, etc.).

(ii) The proposed name of the subdivision, which shall not have the same spelling or be pronounced similarly to the name of any other subdivision located within the City or within the extraterritorial jurisdiction of the City, provided however that use of the same base names for different sections or phases is required when the units are contiguous with their namesakes and individually identified by a section or phase number.

(iii) The date, scale, and north indicator.

(iv) A location map showing the relation of the subdivision to streets and other prominent features in all directions for a radius of at least one (1) mile using a scale of one (1) inch equals two thousand feet (1" = 2,000'). The latest edition of the USGS 7.5 minute quadrangle map is recommended.

(v) The owner's name, deed or plat reference and property lines of property within three hundred (300) feet of the subdivision boundaries as determined by the most recent tax rolls. .

(vi) Certification and signature blocks as required by the City and the County.

(vii) The total acreage of the property to be subdivided and the subtotals by land use.

(2) Existing Conditions.

(i) The existing property lines, including bearings and distances, of the land being subdivided. Property lines shall be drawn sufficiently wide to provide easy identification.

(ii) The location of existing water courses, dry creek beds, wells, sinkholes and other similar topographic features.

(iii) Significant Trees, within the boundaries of the subdivision and of 8-inch caliper and larger, shall be shown accurately to the nearest one (1) foot, Critical Root Zones of these trees shall also be shown.

(iv) Centerline of water courses, creeks, existing drainage structures and other pertinent data shall be shown.

(v) Areas subject to flooding shall be shown, delineating the regulatory one hundred (100) year floodplain, and any other floodplains identified in the City's Master Drainage Plan.

(vi) Topographic data indicating one (1) foot contour intervals for slopes less than 5%, two foot contour intervals for slopes between 5% and 10%, and five (5) foot contour intervals for slopes exceeding 10%. The contoured area shall extend outward from the property boundary for a distance equal to twenty-five percent (25%) of the distance across the tract, but not fewer than fifty (50) feet or more than two hundred (200) feet.

(vii) The locations, sizes and descriptions of all existing utilities, including but not limited to wastewater lines, lift stations, wastewater and storm sewer manholes, water lines, water storage tanks, and wells within the subdivision, and/or adjacent thereto.

(viii) The location, dimensions, names and descriptions of all existing or recorded streets, alleys, reservations, railroads, easements or other public rights-of-way within the subdivision, intersecting or contiguous with its boundaries or forming such boundaries, as determined from existing deed and plat records. The existing right-of-way width of any boundary street to the proposed subdivision shall also be shown.

(ix) The location of City limit lines and/or outer border of the City's extra-territorial jurisdiction, as depicted on the City's most recent base map, if either traverses the subdivision or is contiguous to the subdivision boundary.

(3) Improvements.

(i) The location, size and description of any proposed drainage appurtenances, including storm sewers, detention ponds and other drainage structures proposed to be constructed on and off the site, and designed in accordance with the requirements of this Ordinance.

(ii) The developer shall include a copy of the complete application for flood plain map amendment or revision, as required by the Federal Emergency Management Agency (FEMA), if applicable.

(iii) The location, dimensions, names and descriptions of all proposed streets, alleys, parks, open spaces, blocks, Jots, reservations, easements and rights-of-way; and areas within the subdivision indicating the connection to or continuation of other improvements in adjacent subdivisions.

(iv) The location of building setback lines indicated by dashed lines on the plat

(v) Numbers to identify each Jot and letters or numbers to identify each block.

(vi) The lengths of each proposed property line of all Jots. The area of each non-rectangular lot shall be provided.

(vii) Significant Trees to remain during construction showing the Critical Root Zones as solid circles, and Significant Trees designated to be removed showing the Critical Root Zones as dashed circles.

(viii) Replacement Trees shall be shown on the Preliminary Plat based on a replacement ratio (inches removed to inches planted) of

(A) 1:2 for Significant Trees eighteen (18) inches in caliper and larger, and

(B) 1:1 for Significant Trees between eight (8) and eighteen (18) in caliper.

(ix) Replacement Trees shall not be required for the removal of trees smaller than eight (8) inches in caliper. The removal of Significant Trees larger that eighteen inches in caliper require Council approval.

(4) Support Documents.

(i) A drainage study, consisting of a Drainage Area Map with contours, location and capacities of existing and proposed drainage features, and calculations in accordance with this Ordinance and good engineering practices, shall be provided to ensure the property will be developed in accordance with City drainage policies.

(ii) Utility demand data, consistent with the proposed uses indicated on the Preliminary Plat, to determine the adequacy and the consistency of proposed utility improvements.

(iii) A letter of certification, when applicable, that the plat has been submitted to the County Health District for review (applicable to all projects proposing septic systems and/or containing any portion of the regulatory one hundred (100) year floodplain outside of the City limits).

(5) Accuracy of Data. The applicant shall be responsible for verifying the accuracy of all data submitted, including that which might be obtained from the City, excepting that data which can only be obtained from the City.

(d) **Procedure**. A Preliminary Plat for any proposed subdivision of land, shall be submitted to the City for Commission and Council review and approval.

(1) Legible prints, as indicated on the application form, shall be submitted at least thirty (30) days prior to the regular meeting of the Commission at which the Preliminary Plat is to be heard, along with the following:

(i) Completed application forms and the payment of all applicable fees.

(ii) A summary letter stating briefly the type of street surfacing, drainage, water and wastewater facilities proposed, and declaring the intent to either dedicate park land or pay fees-in-lieu of said dedication if such dedication or fees apply.

(iii) A petition requesting annexation, if applicable.

(iv) A letter requesting any variances from the provisions of this Ordinance.

(v) Any attendant documents needed to supplement the information provided on the Preliminary Plat.

(2) For projects located within the City's extra-territorial jurisdiction, one (1) extra copy of the above referenced items must be provided to the County for review and approval. The applicant shall be responsible for any additional information required by the County for Preliminary Plan approval.

(3) City staff shall review all Preliminary Plat submittals for completeness at the time of application. If, in the judgment of City staff, the Preliminary Plat submittal substantially fails to meet the minimal informational requirements as outlined above, it will not be accepted for review.

(4) Prior to the Commission meeting at which the Preliminary Plat is presented, City staff shall review the plat for consistency with City ordinances, codes, policies and plans.

(5) City staff shall prepare a report analyzing the Preliminary Plat submittal, as well as any comments received concerning the Concept Plan, and recommending either the approval or disapproval of the Preliminary Plat. This report shall be available at least five (5) working days prior to the Commission meeting.

(6) If the developer chooses to withdraw the Preliminary Plat, in writing, by noon of the third working day preceding the meeting Commission, the submittal may appear on the next Commission agenda after repayment of the applicable fees.

(e) **Notification**. Public notification for a Preliminary Plat shall be the same as the notification procedures for the Concept Plan.

(1) Approval. The Commission, after holding public hearings in accordance with City ordinances and codes, shall act on the request for Preliminary Plat approval and forward its recommendations to the City Council.

(2) The failure of the Commission to act within thirty (30) days of the Preliminary Plat filing date for which the City staff has reported compliance with this ordinance shall be deemed a recommendation of approval of the plat, except as otherwise agreed to by the developer.

(3) Zoning of the tract, if applicable, that shall permit the uses proposed by the Preliminary Plat, or any pending zoning amendment necessary to permit the proposed uses shall have been adopted by the Council prior to approval of the Preliminary Plat.

(4) Approval of the Preliminary Plat by the Commission and Council shall not constitute approval of the Final Plat, but shall constitute a vesting of the right to develop under City ordinances, codes and policies in effect on the date of the approval provided that neither the Preliminary Plat nor any subsequent plat or permit has been, or is, allowed to expire.

(5) The developer should be aware that specific approvals from other agencies may be required.

(6) Upon approval of the Preliminary Plat, the developer shall furnish one (1) mylar reproducible copy of the approved Plat to be kept on file at the City as public record.

(f) **Expiration**.

(1) The approval of the Preliminary Plat shall expire twelve (12) months after the filing date, unless

(i) a corresponding Final Plat on all, or a portion of, the land approved on the Preliminary Plat is filed, or

(ii) an extension is granted by the Commission in accordance with this Ordinance.

(2) If a Preliminary Plat expires, it may be reinstated only upon resubmittal of the unaltered, approved plat to the Council and if it receives reinstatement from the Council. All fees shall be repaid as if the plat were initially being submitted.

(g) **Extension**. The developer may apply for an extension, in writing, prior to the end of the initial twelve (12) month period, stating reasons for needing the extension and demonstrating pursuit of approvals for Construction Plans and/or Final Plat in accordance with this Ordinance. Upon receipt of this written request, the Council may, at its discretion, grant up to a two (2) year extension so long as the Preliminary Plat remains consistent with the Master Plan and/or ordinances of the City.

(h) **Revision**. If a revision to a previously approved Preliminary Plat is required, then no application for Final Plat shall be accepted until the revised Preliminary Plat has been submitted and approved by the Commission and Council. This signed, approved document shall be kept on file as public record in the offices of the City.

(i) **Responsibility**. Notwithstanding the approval of any Preliminary Plat by the Council, Commission or the City Engineer, the developer and the engineer that prepares and submits such plats shall be and remain responsible for the adequacy of the design and nothing in this Ordinance shall be deemed or construed to relieve or waive the responsibility of the developer or his/her engineer for or with respect to any plat submitted.

Sec. 65.23. Construction Plans.

(a) **Purpose**. Construction plans, based upon the approved Preliminary Plat, and consisting of detailed specifications and diagrams illustrating the location, design, and composition of all improvements identified in the Preliminary Plat phase and required by this Ordinance and other applicable City ordinances, codes and policies, shall be submitted to the City for approval. In addition, any project that necessitates the construction, reconstruction or modification of existing City infrastructure shall also be submitted to the City for approval. The plans shall be kept by the City as a permanent record of required improvements in order to:

(1) Provide better records that facilitate the operation and maintenance o and any future modifications to existing City infrastructure.

(2) Provide data for evaluation of materials, methods of construction and design.

(3) Provide documentation of approved public improvements to ensure that all such improvements are built to City standards and specifications.

(4) No Final Plat shall be certified by the City, and no construction activities shall commence, until such time as Construction Plans completely describing the on-site and off-site improvements required by this Ordinance and other applicable City ordinances and codes, have been approved by the City Engineer.

(b) **Format**. Drawings shall be on twenty-four inch by thirty-six inch (24"x36") sheets at generally accepted horizontal and vertical engineering scales.

(c) **Content**. Construction plans shall include all on and off-site improvements required to serve the proposed development as indicated on the approved Preliminary Plat and in compliance with applicable ordinances, codes, standards and policies of the City, and other applicable governmental entities. All Construction Plans shall be signed and sealed by a registered professional engineer, licensed to practice in the State of Texas, and shall contain or have attached thereto:

(1) Cover Sheet.

(i) the appropriate project name, date, and the name, addresses and phone numbers of the developer, engineer and surveyor, etc.

(ii) a location map showing the relation of the subdivision to streets and other prominent features in all directions for a radius of at least one (I) mile using a scale of one inch equals two thousand feet (I" = 2,000'). The latest edition of the USGS 7.5 minute quadrangle map is recommended.

(2) Street and Roadway Systems.

(i) The horizontal layouts and alignments showing geometric data and other pertinent design details. The horizontal layout shall also show the direction of storm water flow and the location of manholes, inlets and special structures;

(ii) Vertical layouts and alignments showing existing and proposed center line, right and left right-of-way line elevations along each proposed roadway.

(iii) Typical right-of-way cross sections showing pertinent design details and elevations as prescribed in the City Standard Details and Specifications;

(iv) Typical paving sections showing right-of-way width, lane widths, median widths, shoulder widths, and pavement recommendations;

(v) Attendant documents containing any additional information required to evaluate the proposed roadway improvements, including geotechnical information; and

(3) Drainage Improvements:

(i) Detailed design of all drainage facilities as indicated in the Preliminary Plat phase, including typical channel or paving section, storm sewers and other storm water control facilities.

(ii) Typical channel cross-sections, plan and profile drawings of every conduit/channel shall be shown.

(iii) Existing and proposed topographic conditions indicating one (I) foot contour intervals for slopes less than 5%, two (2) foot contour intervals for slopes between 5% and 10%, and five (5) foot contour intervals for slopes exceeding 10%, and referenced to a United States Geological Survey or Coastal and Geodetic Survey bench mark or monument.

(iv) Attendant documents containing design computations in accordance with this Ordinance, and any additional information required to evaluate the proposed drainage improvements.

(v) A copy of the complete application for flood plain map amendment or revision, as required by the Federal Emergency Management Agency (FEMA), if applicable.

(4) Erosion and Sedimentation Controls:

(i) Proposed fill or other structure elevating techniques, levees, channel modifications and detention facilities.

(ii) Existing and proposed topographic conditions with vertical intervals not greater than one (1) foot referenced to a United States Geological Survey or Coastal and Geodetic Survey bench mark or monument.

(iii) The location, size, and character of all temporary and permanent erosion and sediment control facilities with specifications detailing all on-site erosion control measures which will be established and maintained during all periods of development and construction.

(iv) Contractor staging areas, vehicle access areas, temporary and permanent spoils storage areas.

(v) A plan for restoration for the mitigation of erosion in all areas disturbed during construction.

(5) Water Distribution Systems:

(i) The layout, size and specific location of the existing and proposed water mains, pump stations, storage tanks and other related structures sufficient to serve the proposed land uses and development as identified in the Preliminary Plat phase and in accordance with the City Standard Details and Specifications.

(ii) The existing and proposed location of fire hydrants, valves, meters and other fittings.

(iii) Design details showing the connection with the existing City water system.

(iv) The specific location and size of all water service connections for each individual lot.

(v) Attendant documents containing any additional information required to evaluate the proposed water distribution system.

(6) Wastewater Collection Systems:

(i) The layout, size and specific location of the existing and proposed wastewater lines, manholes, lift stations, and other related structures sufficient to serve the land uses and development as identified in the Preliminary Plat phase, in accordance with all current City standards, specifications, and criteria for construction of wastewater systems.

(ii) Plan and profile drawings for each line in public right-of-ways or public utility easements, showing existing ground level elevation at center line of pipe, pipe size and flow line elevation at all bends, drops, turns, and station numbers at fifty (50) foot intervals.

(iii) Design details for manholes and special structures. Flow line elevations shall be shown at every point where the line enters or leaves the manholes.

(iv) Detailed design for lift stations, package plants or other special wastewater structures.

(v) Attendant documents containing any additional information required to evaluate the proposed wastewater system, and complete an application for State Health Department approval.

(7) Street Lights. The location, size, type and description of street lights according to City Standard Details and Specifications.

(8) 8) Street Signs. The location, size, type and description of street signs according to City Standard Details and Specifications.

(9) Sidewalks. The location, size and type of sidewalks and pedestrian ramps according to City Standard Details and Specification.

(10) Improvements for Parks and other Public and Common Areas - as identified and/or approved on the Preliminary Plat.

(11) The location, size and description of all Significant Trees (to remain and to be removed), and Replacement Trees to meet the requirements of this Ordinance.

(12) Landscaping and Screening. The location, size and description of all landscaping and screening materials as required by this Ordinance.

(13) Design Criteria. Final design criteria, reports, calculations, and all other related computations, if not previously submitted with the Preliminary Plat.

(14) Cost Estimates. A cost estimate of each required improvement, prepared, signed and sealed by a professional engineer licensed to practice in the State of Texas.

(d) **Procedure**. After all necessary approvals of the Preliminary Plat have been granted, Construction Plans, together with a completed application form and review fee, shall be submitted to the City Engineer for approval.

(1) Construction Plans may be submitted for review and approval simultaneously with a Final Plat, provided however that the Final Plat shall not be approved until the Construction Plans have been approved. If the Construction Plans and the Final Plat are to be reviewed simultaneously, a complete application for Construction Plans and a complete application for Final Plat must be submitted to the City simultaneously.

(2) City staff shall review all Construction Plan submittals for completeness at the time of application. If in the judgment of the City, the Construction Plan submittal substantially fails to meet the minimal informational requirements as outlined above, it will not be accepted for review.

(3) The City Engineer shall review the Construction Plans to insure compliance with this Ordinance, and other applicable City ordinances, codes, standards and specifications, and good engineering practices.

(4) For projects located within the City's extraterritorial jurisdiction, the Construction Plans and attendant documents shall be provided to the County for review and approval. The applicant shall be responsible for any additional information required by the County for Construction Plan approval.

(e) **Approval**. Within thirty (30) days of the date on which all required information has been accepted for review, the City Engineer shall either approve or disapprove the Construction Plans.

(1) If the Construction Plans are disapproved, the City Engineer shall notify the applicant, in writing, of disapproval and indicate the requirements for bringing the Construction Plans into compliance.

(2) If Construction Plans are approved, then the City Engineer shall sign the cover sheet of the Construction Plans, returning one (1) signed copy to the applicant and retaining the other signed copy for City records.

(3) The developer should be aware that specific approvals from other agencies may be required.

(4) All improvements shown in the approved Construction Plans shall be constructed pursuant to and incompliance with the approved plans, except as otherwise specifically approved.

(f) **Revision**. Where it becomes necessary, due to unforeseen circumstances, or corrections to be made to Construction Plans for which approval has already been obtained, the City Engineer shall have the authority to approve such corrections when, in his/her opinion, such changes are warranted and also in conformance with City requirements. Approval of such changes agreed to between the developer and City Engineer shall be noted by initialing and dating by both parties on the two (2) original signed copies of the Construction Plans.

(g) **Responsibility**. Notwithstanding the approval of any Construction Plans by the Council, Commission or the City Engineer, the developer and the engineer that prepares and submits such plans and specifications shall be and remain responsible for the adequacy of the design of all such improvements; and nothing in this Ordinance shall be deemed or construed to relieve or waive the responsibility of the developer or his/her engineer for or with respect to any design, plans and specifications submitted.

Sec. 65.24. Final Plat.

(a) **Purpose**. The Final Plat provides detailed graphic information and associated text indicating property boundaries, easements, streets, utilities, drainage, and other information required for the maintenance of public records of the subdivision of land.

(1) A Final Plat shall be required for all subdivisions of land.

(2) The Final Plat shall conform to the approved Construction Plans and approved Preliminary Plat.

(b) **Format**. The Final Plat shall be drawn on eighteen inch by twenty-four inch (18"x24") mylar sheets at a scale of one (1) inch equals one hundred feet (1"=100') with all dimensions labeled accurately to the nearest one tenth (1/10) of a foot. When more than one (1) sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at a scale of one (1) inch equals four hundred feet (1" = 400') shall be attached to the plat.

(c) **Content**. The Final Plat shall include all of the tract intended to be developed at one (1) time, and shall contain or have attached thereto:

(1) General Information.

(i) The proposed name of the subdivision, which shall not have the same spelling or be pronounced similarly to the name of any other subdivision located within the City or within the extra-territorial jurisdiction of the City; provided however, that use of the same base names for different sections or phases is required when the units are contiguous with their namesakes and individually identified by a section number.

(ii) The date, scale, north point, addresses of the owner of record, developer, registered public surveyor, and registered professional engineer if required, platting the tract. The engineer and surveyor shall affix their seals to the plat in conjunction with the signing of the certification requirements.

(iii) A location map showing the relation of the subdivision to streets and other prominent features in all directions for a radius of at least one (1) mile using a scale of one (1) inch equals two thousand feet (1" = 2,000} The latest edition of the USGS 7.5 minute quadrangle map is recommended.

(iv) Identification and location of proposed uses and reservations for all lots within the subdivision.

(v) The owner's names and the property lines of property within three hundred (300) feet of the subdivision boundary, together with the respective plat or deed references as determined by the most recent tax rolls.

(2) Certification, signature and revision blocks as required by the City and County, including but not limited to the following:

(i) Certification from a registered professional engineer and approval by the State Health Department (if applicable) that water satisfactory for human consumption is available in adequate supply at the time of submission, except that such certification is not required if the property will be served by the City water system.

(ii) Certification from the County Health District that a subdivision is located in an area which cannot reasonably be served by an organized wastewater collection system and that the use of septic tank or other means of disposal has been approved by the County Health District. Said certificate shall show the limitations, if any, of such approval.

(3) Lot area, width and depth, public utility and drainage easements, and setbacks shall conform to the requirements as established for the designated land use as set forth in this Ordinance.

(4) Existing Conditions.

(i) The existing property lines, including bearings and distances, of the land being subdivided. Property lines shall be drawn sufficiently wide to provide easy identification.

(ii) Areas delineating the regulatory one hundred (100) year floodplain, if applicable. This information must be certified by a registered professional engineer.

(iii) The location, dimensions, names and descriptions of all existing and recorded streets, alleys, reservations, railroads, easements or other public rights-of-way within the subdivision, intersecting or contiguous with its boundaries or forming such boundaries, as determined from current deed and plat records. The existing right-of-way width of any boundary street to the proposed subdivision shall also be shown.

(iv) Location of City limit lines and/or outer border of the City's extra-territorial jurisdiction, as depicted on the City's most recent base map, if either such line traverses the subdivision or is contiguous to the subdivision boundary.

(5) Survey Control Information.

(i) True bearings and distances to the nearest established street lines, official monuments, or existing subdivision corner which shall be accurately described on the plat and rotated to the state plane coordinate system. Using said system, X and Y coordinates shall be identified for four (4) property corners.

(ii) The description and location of all permanent monuments or benchmarks, standard monuments, survey control points and lot pins.

(iii) Suitable primary control points to which all dimensions, bearings and similar data shall be referenced. At least one (1) corner of the subdivision shall be located with respect to a corner of the original survey of which it is a part.

(iv) Sufficient data shall be shown on the plat for each lot to prove mathematical closure.

(6) Improvements.

(i) The location, bearings, distances, widths, purposes and approved names of proposed streets, alleys, easements and rights-of-way to be dedicated to public use.

(ii) Streets. Provide complete curve data (delta, arc length, radius, tangent, point of curve, point of reverse curve, point of tangent, long chord with bearing) between all lot comer pins.

(iii) Water Courses and Easements. Provide distances to be provided along the side lot lines from the right-of-way line or the high bank of a stream. Traverse line to be provided along the edge of all major waterways in a convenient location, preferably along a utility easement if paralleling the drainage easement or stream.

(iv) The property lines and number designations of all proposed lots and blocks, with complete bearings, distances and dimensions for front, rear and side lot lines. The surveyor shall certify that all lots meet the City's minimum requirements set forth herein.

(v) The use, property dimensions, names and boundary lines of all special reservations to be dedicated for public use, including sites for schools, churches, parks and open spaces; common ownership; or subsequent development.

(vi) The location of building setback lines, as required by the City's Zoning Ordinance and indicated by dashed lines on the plat, and the location, dimensions, and descriptions of all required easements within the subdivision, intersecting, or contiguous with its boundaries or forming such boundaries.

(vii) The proposed location of sidewalks for each street, to be shown as a dotted line inside the proposed right-of-way lines.

(7) Support Documents. The following supporting documents must accompany the Final Plat:

(i) Developer shall include a copy of the approved application for flood plain map amendment or revision, as required by the Federal Emergency Management Agency (FEMA), if applicable.

(ii) If a subdivision is located in an area served by any utility other than the City, the developer shall furnish a letter from such utility certifying their approval of the location of the utility easements shown on the plat and indicating the utility's intent to serve the property.

(iii) If the construction of all improvements needed to serve the subdivision is not completed prior to the filing of the plat for recordation then the developer must provide financial assurance for the completion of the remainder of those improvements in accordance with this Ordinance.

(8) The applicant shall be responsible for verifying the accuracy of all data submitted.

(d) **Procedure**. After approval of the Preliminary Plat and Construction Plans for a proposed subdivision, a Final Plat for that subdivision shall be submitted to the Commission and City for Council approval before recordation.

(1) A Final Plat may be submitted for review and approval simultaneously with Construction Plans, provided however that the Final Plat shall not be approved until the Construction Plans have been approved. If the Final Plat and Construction Plans are to be reviewed simultaneously, a complete application for Final Plat and a complete application for Construction Plans must be submitted to the City simultaneously.

(2) Legible prints, as indicated on the application form, shall be submitted at least thirty (30) days prior to the regular meeting of the Commission at which the Final Plat is to be heard, along with the following:

(i) Completed application forms and the payment of all applicable fees.

(ii) Any materials or documents required by the Commission and/or Council as a condition of Preliminary Plat approval.

(iii) A letter requesting any variances from the provisions of this Ordinance, if not previously approved as part of the Preliminary Plat, and posted pursuant to the requirements this Ordinance.

(iv) Two (2) copies of the deed restrictions or covenants, if such documents are to be used. These shall be filed for record in conjunction with the filing of the Final Plat.

(v) Certification from all applicable taxing authorities that all taxes due on the property have been paid.

(vi) Performance and maintenance guarantees as required by the City.

(vii) Any attendant documents needed to supplement the information provided on the Final Plat.

(3) For projects located within the City's extra-territorial jurisdiction, one (1) extra copy of the above referenced items must be provided to the County for review and approval. The

applicant shall be responsible for any additional information required by the County for Final Plat. approval.

(4) City staff shall review all Final Plat submittals for completeness at the time of application. If, in the judgment of City staff, the Final Plat submittal substantially fails to meet the minimal informational requirements as outlined above, it will not be accepted for review.

(5) Prior to the Commission meeting at which the Final Plat is presented, City staff shall review the plat for consistency with City codes, policies and plans.

(6) City staff shall prepare a report analyzing the Final Plat submittal, as well as any comments received concerning the Preliminary Plat, and recommending the either approval or disapproval of the Final Plat. This report shall be available at least five (5) working days prior to the Commission meeting.

(7) If the developer chooses to withdraw the Final Plat, in writing, by noon of the third working day preceding the meeting Commission, the submittal may appear on the next Commission . agenda after repayment of the applicable fees.

(e) **Notification**. Public notification of Final Plats filed as part of an approved Preliminary Plat shall not be required.

(f) **Approval. The Commission**, after holding a public hearing, shall act on the request for Final Plat approval and forward its recommendations to the Council. Final approval shall be made only by the Council.

(1) The failure of the Commission to act within thirty (30) days of the Final Plat filing date shall be deemed a recommendation of approval of the plat, if the plat is in full compliance with this ordinance, except as otherwise agreed to by the developer.

(2) For fully compliant Final Plats submitted simultaneously with a Construction Plan, the failure of the Commission to act within thirty (30) days of the later of the filing date or the Construction Plan approval date shall be deemed a recommendation of approval of the Final Plat, except as otherwise agreed to by the developer.

(3) The developer shall begin construction of the required public improvements or file a financial surety instrument for the improvements within six (6) months after Final Plat approval by the Commission and the City Council, or such approval of the Final Plat shall be void.

(4) Unless the Final Plat is recorded in the Official County Records within twelve (12) months after approval by the Council, such approval of the Final Plat shall be void, except that the developer may apply in writing to allow extension of approval prior to the end of such

twelve (12) month period, stating just cause therefore, and the Council may grant an extension not to exceed one year.

(5) Zoning of the tract, if applicable, that shall permit the proposed use, or any pending zoning amendment necessary to permit the proposed use shall, have been adopted by the Council prior to approval of the Final Plat.

(6) The developer should be aware that specific approvals from other agencies may be required.

(7) The City engineer and developer's engineer must certify that the design standards of Article III have been complied with and that the development and improvements meet sound engineering practices.

(g) **Revision**. If revision of the Final Plat is recommended by the Commission, then the Final Plat shall not be recorded until the revised Final Plat has been resubmitted and approved by the Council after review by the City staff for compliance with the Commission's and Council's requirements, if any, established by the Council during its consideration of the Concept Plan.

(h) **Recordation**.

(1) Prior to the recordation of the Final Plat, one (1) original copy of the Final Plat shall be submitted to the City for signatures, and

(2) The Final Plat shall have been approved by the Council pursuant to the provisions of this Ordinance.

(3) All conditions of Final Plat approval established by the Council shall have been determined to be complete by City staff.

(4) Construction plans for all required improvements shall have been approved by the City Engineer.

(5) Fees-in-lieu of parkland dedication as required by this Ordinance, if applicable, shall have been paid.

(6) Performance and maintenance guarantees for all required improvements shall have been established pursuant to this Ordinance.

(7) Copies of any agreements required providing for the proper and continuous operation, maintenance, and supervision of any facilities that are of common use or benefit which cannot be satisfactorily maintained, or which have been rejected for operation and/or maintenance, by an existing public agency shall be executed.

(8) Written acceptance of all improvements required by this Ordinance by the City Engineer or, in lieu of acceptance, assurance of completion of said improvements pursuant to this Ordinance, shall be received by the City.

(9) Applicable fees pursuant to City ordinance shall be paid, including, but not limited to, all professional fees, engineer, and attorney fees incurred by the City for or with respect to the review, processing and approval of the application for the approval of the subdivision plat.

(10) Notes shall be added to the plat describing any variances approved by the Council.

(11) City staff shall, upon determination that all provisions of this Ordinance have been satisfied, and all the above conditions have been met, obtain signatures certifying Final Plat approval by the Chairperson of the Commission, and the Mayor, as attested to by the City Secretary.

(12) Once the original Final Plat has been certified by the Chairperson of the Commission and the Mayor, City staff shall notify the developer that the original Final Plat is ready for reproduction.

(13) The developer, at his/her own expense, shall make two (2) photographic mylar copies of the original, signed Final Plat, and return the photographic mylar copies and the original Final Plat to the City Engineer for recordation.

(14) If the land area represented by the subdivision is located outside the corporate limits of the City on the date of its filing for recordation with the Official County Records, then it must be approved by the Commissioners Court of the County prior to recordation. It shall be the responsibility of the developer to be familiar with the process, procedures, and requirements necessary to secure County approval. Such approval shall be evidenced by the signature of the statement of certification by the County Judge.

(15) City staff shall, after the photographic mylar copies and the original Final Plat have been duly recorded in the Official County Records, return the original Final Plat to the developer within five (5) working days by notifying the developer that the original Final Plat is available for pick-up at the office of the City Engineer.

(16) The City shall keep one (1) photographic mylar copy of the original approved Final Plat on file as public record.

(i) **Responsibility**. Notwithstanding the approval of any Final Plat by the Council, Commission or the City Engineer, the developer and the engineer that prepares and submits such plats shall be and remain responsible for the adequacy of the design and nothing in this Ordinance shall be deemed or construed to relieve or waive the responsibility of the developer or his/her engineer for or with respect to any plat submitted.

Sec. 65.25. Amended Plats.

(a) **Purpose**. An Amended Plat that meets all of the informational requirements set forth in this Ordinance may be approved and recorded by the City without vacation of the preceding plat, without a public hearing, and without approval of other lot owners within the platted subdivision provided that any persons with a vested interest affected by the plat amendment signs the plat and application; and that the purpose of the Amended Plat is:

(1) To correct an error in any course or distance shown on the preceding plat; or

(2) To add any course or distance that was omitted on the preceding plat; or

(3) To correct an error in the description of the real property shown on the preceding plat; or

(4) To indicate monuments set after death, disability, or retirement from practice of the engineer or surveyor charged with responsibilities for setting monuments; or

(5) To show the proper location or character of any monument which has been changed in location, character, or shown incorrectly on the preceding plat; or

(6) To correct any other type of scrivener or clerical error or omission as previously approved by the Commission and Council; such errors and omissions may include, but are not limited to: lot numbers, acreage, street names, and identification of adjacent recorded plats; or

(7) To correct an error in courses and distances of lot lines between two (2) adjacent lots where lot owners join in the application for an Amended Plat and neither lot is abolished, provided that such amendment does not attempt to remove recorded covenants or restrictions and does not have a material adverse effect on the property rights of the other owners in the plat; or

(8) To relocate a lot line in order to cure an inadvertent encroachment of a building or improvement on a lot line or on an easement; or

(9) To relocate one (1) or more lot lines between one (1) or more adjacent lots where the owner or owners of all such lots join in the application for the Amended Plat, provided that such amendment does not attempt to remove recorded covenants or restrictions, or Increase the number of lots.

(b) **Format**. The format of an Amended Plat shall be the same as the format for a Final Plat.
Content. The content of an Amended Plat shall be the same as the content requirements for a Short Form Final Plat.

(c) **Procedure**.

(1) The Amended Plat may be submitted without re-approval of a Preliminary Plat or Construction Plans. The Amended Plat, prepared by a surveyor, and engineer if required, and bearing their seals shall be submitted to the City for approval before recordation of the plat.

(2) Legible prints, as indicated on the application form shall be submitted to the City along with the following:

(3) Completed application forms and the payment of all applicable fees.

(4) Certification from all applicable taxing authorities that all taxes due on the property have been paid.

(5) Any attendant documents needed to supplement the information provided on the plat.

(6) The City shall require the following note on the Amended Plat: This subdivision is subject to all general notes and restrictions appearing on the plat of _____, Lot(s) ____, recorded at Cabinet _, Slide __ of the Plat Records of _____County, Texas.

(7) Notification. Public notification and public hearings shall not be required for an Amended Plat.

(f) **Approval**. The City Engineer shall approve any Amended Plat meeting the requirements of this Ordinance within thirty (30) days of receipt of a complete submittal. However, if in the City Engineer's determination, the Amended Plat does not satisfy this Ordinance, the City Engineer may require the plat to be processed in accordance with the Final Plat procedures of this Ordinance.

(g) **Expiration**. Approval of an Amended Plat shall expire if said plat is not recorded in the plat records of the County within six (6) months of City approval.

(h) **Recordation**. Recordation of an Amended Plat shall follow the same recordation provisions of a Final Plat.

(i) **Responsibility**. Notwithstanding the approval of any Amended Plat by the City Engineer, the developer and the engineer that prepares and submits such plats shall be and remain responsible for the adequacy of the design and nothing in this Ordinance shall be deemed or construed to relieve or waive the responsibility of the developer or his/her engineer for or with respect to any plat submitted.

Sec. 65.26. Short Form Final Plats.

(a) **Purpose**. The provision of adequate data concerning land use, utility requirements, traffic impact, streets, easements and dedications is vital to ensure the continued health, safety and welfare of the City's residents. Recognizing that the significance of this data is reduced for the small scale projects that are most heavily impacted by the burden of producing this data, the City allows alternate

procedures for simple resubdivisions, lot splits, and the platting of existing development and of land proposed for site development where public improvements are not required.

(1) Applicants for subdivisions or resubdivisions creating no more than four (4) new lots may follow the procedure set forth below provided that the subdivision meets all of the following criteria:

(2) The City shall certify that the proposed subdivision meets all the requirements of the Short Form Final Plat.

(3) No new public street shall be necessary for each lot to access a public street.

(4) Each of the lots is contiguous with at least one (1) of the other lots in the subdivision for a distance of at least fifty (50) feet.

(5) No off-site improvements to the City's infrastructure are determined to be necessary by the City Engineer.

(6) No off-site drainage improvements are determined to be necessary by the City Engineer.

(7) The Commission may require the standard Final Plat procedures outlined this Ordinance, if the City determines that the plat is inconsistent with any element of the Master Plan, or any established City ordinances, codes or policies.

(b) **Format**. The format of the Short Form Final Plat shall correspond with the format for Final Plats as required by this Ordinance.

(c) **Content**. The content of the Short Form Final Plat shall correspond with the content for Final Plats as required by this Ordinance, except that:

(1) Construction plans may not be required.

(2) The City may permit omission of any informational requirements that are determined by the City to place an excessive burden on the applicant, including, but not limited to contours, centerlines of existing watercourses, etc.

(3) The City shall require .the following note on the Final Plat: This subdivision is subject to all general notes and restrictions appearing on the plat of _____ Lot(s), recorded at Cabinet _____, Slide _____ of the Plat Records of _____ County, Texas.

(4) Procedure. The procedure for review and approval of a Short Form Final Plat shall follow the procedure for Final Plats, except that:

(5) The Short Form Final Plat may be submitted without approval of a Preliminary Plat or Construction Plans. The plat, prepared by a surveyor, and engineer if required, and bearing their seals shall be submitted to the Council for approval before recordation of the plat.

(6) Legible prints, as indicated on the application form shall be submitted at least fifteen (15) days prior to the regular meeting of the Commission along with the following:

(i) Completed application forms and the payment of all required fees.

(ii) Two (2) copies of the deed restrictions or covenants, if such documents are to be used. These shall be filed for record in conjunction with the filing of the plat.

(iii) Certification from all applicable taxing authorities that all taxes due on the property have been paid.

(iv) Notification materials as required herein.

(v) A petition requesting annexation, if applicable.

(vi) Any attendant documents needed to supplement the information provided on the plat.

(7) For projects located within the City's extra-territorial jurisdiction, one (1) extra copy of the above referenced items must be provided to the County for review and approval. The applicant shall be responsible for any additional information required by the County for Short Form Final Plat approval.

(8) Notification. Notification procedures for a Short Form Final Plat shall be the same as those identified for Concept Plan.

(9) Approval. The approval process of a Short Form Final Plat shall be the same as the approval of a Final Plat.

(d) **Revision**. The revision process of a Short Form Final Plat shall be the same as the revision process described for a Final Plat.

(e) **Recordation**. The recordation procedures of a Short Form Final Plat shall be the same as the procedures for a Final Plat.

(f) **Responsibility**. Notwithstanding the approval of any Short Form Final Plat by the Commission, Council or City Engineer, the developer and the engineer that prepares and submits such plats shall be and remain responsible for the adequacy of the design and nothing in this Ordinance shall be deemed or construed to relieve or waive the responsibility of the developer or his/her engineer for or with respect to any plat submitted.

Sec. 65.27. Vacation of Undeveloped Subdivision. When no lots on a plat of subdivision have been sold, the developer may request the vacation of the plat prior to the time that the improvements covered by the guarantees are installed, and when such plat is vacated, all fiscal sureties shall be returned to the developer.

Sections 65.28 through 65.39. Reserved.

ARTICLE III. DESIGN STANDARDS.

Sec. 65.40. Generally.

(a) **Additional Regulations**. In addition to the requirements established by this Ordinance, all development within the City limits shall be designed so as to comply with the intent and provisions of the Zoning Ordinance, building and housing codes, Master Plan, regulations of the Texas Department of Transportation and the Texas Department of Health, and any other applicable law or regulation adopted by a unit of federal, state or local government; and all development within the extraterritorial jurisdiction of the City shall comply with this Ordinance and all other applicable laws and regulations adopted by a unit of federal, state or local government.

(b) **Standards In General**. The minimum design standards as contained herein shall provide the basic criteria for evaluating proposed concept plans, preliminary plats, construction plans, final plats, amended plats, short form final plats, and other development or improvements subject to this ordinance. The City may, however, establish reasonable design requirements in excess of these established minimum standards, or grant variances from those established minimum standards, where by reason of exceptional topographic, cultural, historic, archaeological, hydrologic, or other physical conditions of the property to be developed or of an adjacent tract, the strict adherence to these standards will result in an inappropriate subdivision design or cause unnecessary hardship.

(c) **Coordinated Design**. The quality of life and the community in the Lexington urban area is dependent on the quality of design of the individual developments in which people live and work. Good community design requires the coordination of the efforts of each developer of land within the urban area. It is intended that the urban area shall be designed as a group of integrated residential neighborhoods and appropriate commercial, industrial and public facilities. Therefore, the design of each development shall be prepared in accordance with the applicable principles established by the Master Plan for land use, circulation, community facilities and public utility services and in accordance with the following general principles:

(1) The neighborhood, as a planning unit, is intended as an area principally for residential use, and of a size that can be served by one (1) elementary school. Space for recreational, educational and shopping facilities to serve the residents of the neighborhood should be provided and designed as an integral part of each neighborhood. The size of lots and blocks should be designed to provide for adequate water and wastewater service, traffic circulation, light, air, open space, landscaping and off-street parking. The arrangement of lots and blocks and the street system should be designed to make the most

advantageous use of topography and natural physical features. Tree masses and large individual trees should be preserved to the greatest extent possible. The system of sidewalks and roadways and the lot layout should be designed to take advantage of the visual qualities of the area.

(2) The components of the street system should in different degrees serve the separate purposes of access to property and safe, efficient movement of traffic. Land use types should be served by roadways whose capacity increases in proportion to the traffic generation of the land use. Design and location of points of access to property should be appropriate to the volume and speed characteristics of traffic utilizing the intersection.

(3) An open space system throughout the urban area should provide a range of active and passive recreation opportunities. Park, open space and recreation facilities should be located with sensitivity to user population, natural features, traffic generation, and nearby land use.

(4) Land use arrangement and design should minimize the difference in intensity between adjacent uses in order to provide for the provision of water, wastewater and roadways sufficient to serve the proposed densities and provide for compatible neighboring developments. Step-down patterns of use surrounding major activity centers, combined with buffering techniques, should ensure that residential densities are compatible with each other, and that residential development is not adversely impacted by higher intensity uses.

(5) Public utilities and infrastructure should be provided within all subdivisions in order to ensure the health, safety and well-being of the public. Utility capacity should be sufficient to meet accepted standards of service to reasonably anticipated development. Where excess capacity in utility lines or facilities within a subdivision will further the efficient and desirable extension of utilities to adjacent property, equitable provision of such capacity is essential to the orderly growth of the urban area.

(6) Construction of water, wastewater, drainage, gas, electric, telephone and cable television utilities that require utility cuts of a public street shall be repaired pursuant to applicable City ordinances.

Sec. 65.41. Drainage Improvements.

(a) **General**. 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, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare. These flood losses are caused by: (a) The cumulative effect of obstructions in flood plains causing increases in flood hazard areas by uses vulnerable to floods, or hazardous to other lands, which are inadequately elevated or otherwise protected from flood damages. This section is based upon a reasonable method of analyzing flood hazards, to-wit: Lee County Flood Control Data.

(b) **Purpose**. It is the purpose of this section to promote the public health, safety and welfare, and to minimize the losses attributable to water flows and flood hazards. The drainage improvement provisions contained herein are deemed necessary for the following reasons:

(1) Waterways and their associated watersheds within the City's territorial jurisdiction represent significant and irreplaceable recreational and aesthetic resources and contribute directly to the City's public health.

(2) The continued economic growth of the City is dependent on an adequate quality and quantity of stormwater runoff, a pleasing natural environment, recreational opportunities in close proximity to the City as well as the protection of people and property from the hazards of flooding.

(3) All watersheds within the City's jurisdiction, and especially those with abrupt topography, sparse vegetation, and thin and easily disturbed soil, are vulnerable to flooding due to unregulated development activities.

(4) All watersheds within the City's jurisdiction are undergoing development or are facing development pressure.

(5) If watersheds within the City's jurisdiction are not developed in a sensitive and innovative manner, their water resources, natural environment, and recreational characteristics may be irreparably damaged.

(6) The City should regulate all drainage within the City's jurisdiction for the public benefit and safety, including both the existing and future generations of citizens of the City, as well as for downstream users of the each waterway within the City's territorial jurisdiction.

(7) Restrict or prohibit subdivision of lands for uses which are dangerous to health, safety or property in times of flood or which, with reasonably anticipated improvements, will cause excessive increases in flood heights or velocities.

(8) Require that each subdivision lot in an area vulnerable to floods be provided with a safe building site with adequate access and that public facilities which serve such uses be installed with protection against flood damage at the time of initial construction.

(9) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazards by prohibiting the subdivision of unprotected flood hazard lands, requiring that flood hazard areas be delineated on the final plat, and reserving through deed restrictions areas not suitable for development.

(c) **Policy**.

(1) All drainage improvements within the City's jurisdiction shall be designed in accordance with good engineering practices and this Ordinance. A drainage plan for each subdivision shall be prepared by the Developer and approved. by the City Engineer. Such plan shall adequately provide and assume both upstream and downstream buildout within the watershed in which the property is located. The plan and improvements shall include improved drainage channels and systems, culverts, retention and detention ponds, as are reasonably necessary to prevent flooding within the subdivision and, to the extent consistent with good engineering practices to not increase the volume or flow of water from the subdivision onto adjoining property, during a 100 year storm event (unless a higher or more restrictive standard is otherwise required by this Ordinance or other applicable law). In the event the City Engineer and the Developer are unable to agree on the requirements for the drainage plan and improvements in the foregoing manner, the drainage plan and improvements shall be prepared and constructed in conformance with the requirements of the City of Austin's Drainage Criteria Manual, as currently amended, save and except the following: (i) Preface; (ii) Paragraph 1.2.2.E; (iii) Paragraph 1.2.4.E.2, and 1.2.4.E.ll; (iv) Paragraph 1.2.7; (v) Paragraph 1.4.0; (vi) Paragraph 1.5.0.3, 1.5.0.4, 1.5.0.5, and 1.5.0.6; (vii) Paragraph 8.2; (viii) Appendix D,; and (ix) all references to the City of Austin, including its departments, boards or divisions shall be the same departments, boards or divisions within the City of Lexington. Where such departments, boards or divisions do not exist within the City of Lexington, such references shall be construed to mean the Council, the City Engineer or other representative authorized to perform such functions on the City's behalf.

(2) The Commission shall not recommend for approval any plat or plan which does not meet the minimum requirements of this Ordinance in making adequate provisions for control of the quantity of stormwater runoff to protect the public health, safety and property, and benefit the present and future owners of property within the development, other lands within the City and neighboring areas.

(3) It shall be the responsibility of the developer to design and construct a system for the collection and transport of all stormwater runoff flowing into, and generated within the development, in accordance with:

(i) The requirements of this Ordinance.

(ii) Good engineering practices.

(iii) The City of Austin Drainage Criteria Manual, in the event the City Engineer and the Developer are unable to agree upon the requirements for the plan and work.

(iv) Approved engineering plans for construction.

(v) Regulations and principles of law established pursuant to the Texas Water Code.

(4) In general, drainage improvements shall be designed and constructed in a manner which promotes the development of a network of both natural and built drainageways throughout the community and so as to:

(i) Retain natural flood plains in a condition that minimizes interference with flood water conveyance, flood water storage, aquatic and terrestrial ecosystems, and ground and surface water.

(ii) Reduce exposure of people and property to the flood hazards and the nuisances associated with inadequate control of stormwater runoff.

(iii) Systematically reduce the existing level of flood damages.

(iv) Ensure that corrective works are consistent with the overall goals of the City.

(v) Minimize erosion and sedimentation problems and enhance water quality.

(vi) Protect environmental quality, social well-being and economic stability.

(vii) Plan for both the large flooding events and the smaller, more frequent flooding events by providing both major and minor drainage systems.

(viii) Minimize future operational and maintenance expenses.

(ix) Reduce exposure of public investment in utilities, streets and other public facilities (infrastructure).

(x) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public.

(xi) Acquire and maintain a combination of recreational and open space systems utilizing flood plain lands.

(5) **Warning and Disclaimer of Liability**. The degree of flood protection required under this section is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside the delineated flood hazard areas or land uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(6) **Land Suitability**. No land shall be subdivided which is held unsuitable for its intended use for reasons of flooding, inadequate drainage, soil and rock formations with severe

limitations for development, susceptibility to mudslides or earthslides, severe erosion potential, unfavorable topography, inadequate water supply or sewage disposal capabilities, or any other feature harmful to the health, safety or welfare of the future residents or property owners of the proposed subdivision or the Community at large. However, the Council may approve preliminary and final plats if subdividers improve lands consistent with the standards of this and other applicable ordinances to make subdivision area, in the opinion of the Council, suitable for their intended uses. The Council may also approve the preliminary and final plats if subdividers agree to make suitable improvements and place a sum in escrow pursuant to this ordinance to guarantee performance. In determining the appropriateness of land subdivision at a site, the Council shall consider the objectives of this section, and

(i) The danger of life and property due to the increased flood heights or velocities caused by subdivision fill, roads, and intended uses.

(ii) The danger that intended uses may be swept on to other lands or downstream to the injury of others.

(iii) The adequacy of proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions under flood conditions.

(iv) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(v) The importance of the services provided by the proposed facility to the community.

(vi) The availability of alternative locations not subject to flooding for the proposed subdivision and land uses.

(vii) The compatibility of the proposed uses with existing development and development anticipated in the foreseeable future.

(viii) The relationship of the proposed subdivision to the comprehensive plan and flood plain management program for the area.

(ix) The safety of access to the property for emergency vehicles in times of flood.

(x) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

(xi) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(7) **Building Site Improvements**.

(i) No subdivision or part thereof shall be approved if proposed subdivision levees, fills, structures or other features will individually or collectively significantly increase flood flows, heights, or damages.

(ii) Building sites for residences, motels, resorts, or other dwelling accommodation uses shall not be permitted in floodway areas. Sites for these uses may be permitted outside the floodway if the sites are elevated or filled to a height at least 1 foot above the elevation of the regulatory flood or if other provisions are made for elevating or adapting structures to achieve the same result. Required fill areas must extend S feet beyond the limits of intended structures and, if the subdivision is not to be sewered, must include areas for onsite waste disposal.

(iii) Building sites for structures not included in (g)(2) shall similarly not be permitted in floodway areas. Such sites located outside floodway shall ordinarily be protected as herein provided. However, the Council may allow subdivision of areas for commercial and industrial use at a lower elevation if the subdivider protects the areas to a height of 1 foot above the regulatory flood protection elevation by levees, seawalls, channel modifications, or other protective techniques; or if the subdivider assures that uses will be protected through structural flood- proofing, flood warning systems or other techniques specified in this Ordinance.

(iv) If the Council determines that only part of a proposed plat can be safely developed, it shall limit development to that part and shall require that development proceed consistent with this determination.

(v) When the subdivider does not intend to develop the plat himself and the Council determines that additional use controls are required to insure safe development, it may require the subdivider to impose appropriate deed restrictions on the land. Such deed restrictions shall be inserted in every deed and noted on the face of the final recorded plat.

(8) **Drainage Facilities**. Storm drainage facilities shall be designed to store and convey the flow of surface waters from a 100 year frequency storm without damage to persons or property. The system shall insure drainage at all points along streets, and provide positive drainage away from buildings and onsite waste disposal sites. Plans shall be subject to review by the Planning Commission and approval by the Council. The Council may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate less frequent floods. Drainage plans shall be consistent with local and regional drainage plans.

(9) **Roads**. The finished elevation of proposed streets shall be no more than 0 feet below the regulatory flood protection elevation. The Council may require, where necessary, profiles and elevation of streets to determine compliance with this requirement. Drainage openings shall be sufficient to discharge flood flows without unduly increasing flood heights.

Sec. 65.42. Transportation Improvements.

(a) **Purpose**. The planning for a thoroughfare system is essential for the continued efficient movement of people and goods, and the Master Plan shall serve as a guide for the location and scale of future collector and arterial streets. The precise alignment of thoroughfares included in the Plan may be varied to allow adjustments that increase the compatibility of the right-of-way with natural or man made features such as steep slopes, waterways, wildlife habitats, neighborhoods, historic structures or existing roadways.

(b) **Policy**. All transportation improvements including streets, driveways, sidewalks, bikeways, traffic control, and parking areas within the City's jurisdiction shall be designed in accordance with this Ordinance.

(1) **Street layout**. Adequate streets shall be provided by the subdivider and the arrangement, character, extent, width, grade, and location of each shall conform to the comprehensive plan of the City and professional urban planning and shall be considered in their relation to existing and planned streets, to topographical conditions, to public safety and convenience, and in their appropriate relationship to the proposed uses of land to be served by such streets. The street layout shall be devised for the most advantageous development of the entire neighborhood.

(2) **Relation to adjoining street system**. Where necessary to the neighborhood pattern, existing streets in adjoining areas shall be continued, and shall be at least as wide as such existing streets and in alignment therewith.

(3) **Projection of streets**. Where adjoining areas are not subdivided the arrangements of streets in the subdivision shall make provision for the proper projection of streets into such unsubdivided areas.

(4) **Street jogs**. Whenever possible, street jogs with center line offsets of less than 125 feet shall be avoided.

(5) **Street intersection**s. Street intersections shall be as nearly at right angles as practicable, giving due regard to terrain and topography.

(6) **Dead-end Streets**. Dead end streets shall be prohibited except as short stubs to permit future expansion.

(7) **Cul-de-sacs**. In general, cul-de-sacs shall not exceed 600 feet in length, and shall have a turnaround of not less than 100 feet in diameter in residential areas, and not less than 100 feet in diameter in commercial and industrial areas.

(8) **Marginal access streets**. Where a subdivision has frontage on an arterial street, there shall be provided a marginal access street on both sides or on the subdivision side of the arterial street, if the arterial street borders the subdivision, unless the adjacent lots back up to the arterial street, or unless the Commission determines that such marginal access streets are not desirable under the facts of a particular case for adequate protection of the lots and separation of through and local traffic.

(9) **Streets on comprehensive plan**. Where a subdivision embraces a street as shown on a comprehensive plan of the City, such street shall be platted in the location and of the width indicated by the comprehensive plan.

(10) **Minor Street**. Minor streets shall be laid out so as to discourage their use by through traffic.

(11) **Pavement widths and rights-of-way**. Pavement widths, which shall be curb back to curb back, and rights-of-way shall be as follows:

(i) **Arterial Streets**. Arterial streets shall have a right-of-way width of at least 80 feet, with a pavement width of at least 60 feet.

(ii) **Collector Streets**. Collector streets shall have a right-of-way of at least 70 feet and a pavement width of at least 44 feet.

(iii) **Intermediate Streets**. Intermediate streets shall have a right-of-way of at least 60 feet sand a pavement width of at least 36 feet.

(iv) **Minor Streets**. Minor streets shall have a right-of-way of at least 50 feet with a pavement width of at least 31 feet.

(v) **Nonresidential marginal access streets.** Nonresidential marginal access streets shall have a right-of-way width of at least 60 feet and a pavement width of at least 36 feet.

(vi) **Residential marginal access streets**. Residential marginal access streets shall have a right-of-way width of at least 50 feet and a pavement width of at least 31 feet.

(12) **Pavement and rights-of-way width for adjacent streets**:

(i) The subdivider shall dedicate a right-of-way of 80 feet in width for new adjacent arterial streets, and 36 feet of such right-of-way shall be paved.

(ii) New adjacent collector, minor or marginal access streets shall conform to Paragraph (b) (12) of this Section.

(iii) Where the proposed subdivision abuts upon an existing street or half-street that does not conform to Paragraph b (12) of this section, the subdivider shall dedicate right-of way sufficient to make the full right-of-way width conform to paragraph b (12), and there shall be paved so much of such right-of-way as to make the full pavement width comply with Paragraph b (12). Before any pavement is laid to widen existing pavement, the existing pavement shall be cut back 2 feet to assure an adequate sub base and pavement joint.

(13) **Curbs**. Curbs shall be installed by the subdivider on both sides of all interior streets, and on the subdivision side of all streets forming part of the boundary of the subdivision.

(14) **Street Lighting**. Street lighting shall be installed by the developer for all new streets within the jurisdiction of the City, and shall be designed and constructed in accordance with City Standard Details and Specifications.

(10) **Street Signage**. Street signs shall be installed by the developer at all intersections within and immediately adjacent to a proposed development, and shall be designed and constructed in accordance with City Standard Details and Specifications.

(11) **Sidewalks**. Sidewalks shall be installed by the developer on both sides of all streets within and immediately adjacent to a proposed development, and shall be designed and constructed in accordance with City Standard Details and Specifications.

Sec. 65.43. Water Utility Improvements.

(a) **Policy**. Developers shall be responsible for providing an approved public water supply system consistent with the Master Plan, this Ordinance and the rules and regulations of the City and TNRCC applicable to the water system.

(1) Where an approved public water supply or distribution main is within reasonable distance of the subdivision as determined by the Council, but in no case less than one-half (1/2) mile away and connection to the system is both possible and permissible, the developer shall be required to connect to the system and to bear the cost of connecting the development to such existing water supply. In some instances, the City may request that the main water connection be oversized or rerouted to suit future water system improvements in that area.

(2) The developer shall, consistent with all existing ordinances, make a pro-rata contribution to funding of needed storage facilities, treatment facilities, and specific distribution lines as determined necessary by the City. Under extraordinary circumstances, these provisions may be varied with the approval of the Council.

(b) **Design**.

(1) The design and construction of a public water system shall:

(i) comply with regulations covering extension of public water systems adopted by the Texas Natural Resources Conservation Commission;

(ii) be of sufficient size to furnish adequate domestic water supply and fire protection services to all lots, and to conform with the requirements of the City and the TNRCC;

(iii) be located where maintenance can be accomplished with the least interference with traffic, structures and other utilities;

(iv) be designed in an effort to eliminate the need for booster pumps or other similar devices;

(v) not propose water mains less than eight (8) inches in diameter, with consideration for four (4) and six (6) inch pipe in cul-de-sacs and looped streets;

(vi) be acceptable, without penalty, to the State Fire Insurance Commission. To that end, the following fire flows shall be required, subject to the resources of the City:

(A) Principal mercantile and industrial areas	3,000 gpm
(B) Light mercantile areas	1,500 gpm
(C) Congested residential areas	750 gpm
(D) Scattered residential areas	500 gpm

(vii) include fire hydrants:

(A) at a minimum spacing of 600 feet for residential developments;
(B) within 300 feet of all sides of a non-residential development.
(C) at the end of all cul-de-sac streets, or similar dead-end water distribution lines; and
(D) for fire flows calculated with twenty (20) pound residual pressure.

(viii) include valves on each fire hydrant lead, at each intersection of two (2) or more mains, and valve spacing so that no more than 30 customers will be without water during a shutoff;

(ix) be designed and constructed in accordance with City Standard Details and Specifications; and,

(x) be designed and constructed to comply with all applicable rules, regulations and policies of the entity that will provide water service to the development.

(2) The design of private water systems, if authorized, shall include backflow prevention assemblies for domestic and fire protection systems that are directly or indirectly connected to the City's potable water distribution system.

Sec. 65.44. Wastewater Utility Improvements.

(a) **Policy**. Developers shall be responsible for providing an approved wastewater system, consistent with the Master Plan, this Ordinance and the rules and regulations of the entity providing or to provide wastewater service to the development, throughout the development, such that all lots, parcels, or tracts of land will be capable of connecting to the wastewater system except as otherwise provided herein.

(1) Where an approved public wastewater collection main is within reasonable distance of the subdivision as determined by the Council , but in no case less than one-half (1/2) mile away and connection to the system is both possible and permissible, the developer shall be required to connect to the system and to bear the cost of connecting his development to such existing wastewater system. In some instances, the City may request that the main wastewater connection be oversized or rerouted to suit future wastewater system improvements in that area.

(2) The developer shall, consistent with all existing ordinances, make a pro-rata contribution to funding of needed lift station facilities, treatment facilities, and specific collection lines as determined necessary by the City. Under extraordinary circumstances, these provisions may be varied with the approval of the Council and Commission.

(b) **Design**. The design and construction of wastewater collection systems, lift stations, inverted siphons and septic systems shall comply with regulations covering extension of public wastewater systems, and other applicable regulations, adopted by the Texas Natural Resources Conservation Commission and the Texas Department of Health. Under extraordinary circumstances, these provisions may be varied with the approval of the Council.

(1) All new public wastewater systems shall be designed and constructed to operate on a gravity flow basis by taking advantage of natural topographic conditions and thereby reducing the need for lift stations and force mains.

(2) Flow determinations should include generally accepted criteria for average daily flow, inflow and infiltration, peaking factors, minimum slopes and minimum flow velocities.

(3) The minimum size of any public wastewater line will be six (6) inches in diameter.

(4) Public wastewater lines shall be located where maintenance can be accomplished with the least interference with traffic, structures and other utilities. Minimum separation distance from water utilities shall be in accordance with the rules adopted by the Texas Natural Resource Conservation Commission.

(5) Manholes shall be located so as to facilitate inspection and maintenance, including intersections, horizontal alignment changes, vertical grade changes, change in pipe size or material, and force main discharge points.

(6) All wastewater appurtenances shall be designed and constructed in accordance with City Standard Details and Specifications.

(7) All wastewater systems shall be designed and constructed to comply with all applicable rules, regulations and policies of the entity that will provide wastewater service to the development.

Sec. 65.45. Blocks and Lots. Except as provided otherwise in this Ordinance, the terms and provisions of the Zoning Ordinance establishing the minimum lot area, width, setback line, side yard and rear yard requirements for each zoning or use category are incorporated herein by reference. Such regulations and standards shall be applied to property within the City limits based upon the zoning of the property and to property within the extraterritorial jurisdiction based on agreement of, and the land use proposed by, the developer.

(a) **Blocks**.

(1) The length, width, and shape of blocks shall meet the following standards:

(i) Provide adequate building sites (lots) suitable to the special needs of the type of use designated on the plat;

(ii) Accommodate lots of the size and dimensions required by this Section;

(iii) Provide for convenient access, circulation, control, and safety of street traffic;

(iv) Minimize reductions in the capacity of adjacent streets in so far as possible by reducing the number of turning movement conflicts;

(v) Provide an appropriate response to the limitations and opportunities of topography; and,

(vi) Increase the ability of building sites (lots) to receive or to be protected from solar gain as the season requires in order to improve utility efficiency and increase the livability of each lot.

(2) Residential blocks shall not exceed one thousand three hundred (1,300) feet nor be less than five hundred (500) feet in length, except as otherwise provided for herein.

(3) Blocks along arterial streets shall not be less than one thousand six hundred (1,600) feet.

(4) The width of blocks shall be sufficient to accommodate two (2) tiers of lots with minimum depth as required by this Section, exceptions to this width shall be permitted in blocks adjacent to major streets, railroads, waterways, or other topographical features prohibiting a second lot tier.

(5) The Commission may, at the Preliminary Plat phase, require the dedication of an easement or right-of-way not less than ten (10) feet wide bisecting the center of any block in excess of eight hundred (800) feet in length to accommodate utilities, drainage facilities, and/or pedestrian access to greenbelts or park areas.

(6) Blocks shall be identified on each plat by consecutive adjacent numbers within each subdivision and portion thereof Blocks forming a continuation of a previous subdivision block shall continue the block number.

(b) **Lots**. All land area within the boundaries of the subdivision or resubdivision except that area specifically dedicated as public right-of-way for any purpose shall be designated as a lot.

(1) The required lot area, width, building setback line, front, side, street side and rear yard requirements for each lot within the corporate limits of the City are as established in the Zoning Ordinance, if any, incorporated herein by reference; provided that, in the event, a Zoning Ordinance does not provide the same, the following minimums shall be applicable: building setback lines (i) front 25 feet; (ii) side lot 10 feet; (iii) street side 15 feet; and (iv) rear yard 25 feet; and

(i) Within the City limits the minimum lot size shall be 7,200 square feet.

(ii) Within the extraterritorial jurisdiction, such requirements and standards shall be as above provided, or based on the agreement of, and land use proposed by, the developer.

(iii) The minimum lot size for all lots shall further be dependent upon the availability of central sewage disposal system service.

(iv) Lots to be served by the central sewage system shall have a minimum area and size of 7,200 square feet, except as specifically permitted or required for certain uses authorized by a Zoning Ordinance adopted after the date of this Ordinance.

(2) Lots to be served by septic systems shall be a minimum of one-half acre in size, or larger dependent on soils and percolation tests, and shall conform to the County regulations based on percolation tests.

(3) Each lot shown on a plat shall be clearly designated by a number located within the boundaries of the lot. The boundaries of each lot shall be shown by bearing and distance in relation to the monuments found or established on the ground in conformance with this Ordinance.

(4) For developments within the corporate limits of the City, the proposed use for each lot shall be indicated on the plat, and in accordance with the City's Zoning Ordinance (if any), as currently amended.

(5) For developments outside the corporate limits of the City, but within the City's extra-territorial jurisdiction, the proposed use for each lot shall be indicated on the plat, and consistent with similar uses as defined in City's Zoning Ordinance, as currently amended.

(6) All lots shall be rectangular, except when the street alignment is curved, in order to conform with other provisions of this Ordinance.

(7) No lot shall have a corner intersection of less than forty-five (45) degrees.

(8) The ratio of average depth to average width shall not exceed two and one-half to one (2.5:1) nor be less than one and one-half to one (1.5:1) unless the lot is at least one and one-half (1.5) times the required lot size, unless both the depth and width of the lot exceed the minimums required in this Ordinance, and the City finds that the proposed lot dimensions are consistent with surrounding development and the Master Plan.

(9) All lots shall face and have contiguous frontage on a usable, dedicated public road right-of-way except lots within a PUD which may have similar frontage on a private street under common ownership. The extent of this frontage (front line) shall conform to the minimum lot width requirements set forth in the City's Zoning Ordinance.

(10) Except as otherwise approved through the granting of a variance, all lots shall face a similar lot across the street.

(11) Lot lines common to the street right-of-way line shall be the front line. Side lot lines shall project away from the front line at approximately at right angles to street lines and radial to curved street lines. The rear line shall be opposite and approximately parallel to the front line.

(12) The length and bearing of all lot lines shall be indicated on the plat; and

(i) Wherever feasible, lots arranged such that the rear line of a lot or lots is also the side line of an adjacent lot shall be avoided. When this occurs, ten (10) feet shall be added to the minimum lot width and the side building line adjacent to the rear yard of another lot.

(ii) Lot area, width, and depth shall conform to the requirements as established in the Zoning Ordinance. For developments outside the corporate limits of the City, but within the City's extraterritorial jurisdiction, lot size shall be consistent with similar uses as defined in the Zoning Ordinance.

(13) Double Frontage Lots.

(i) Residential lots shall not take access on two (2) non-intersecting local and/or collector streets; and,

(ii) Residential lots adjacent to an arterial street shall also have frontage on a local street. Vehicular access to these lots shall be from the local street only. Non-residential lots with double frontage shall have off-set access points to inhibit cut-through traffic.

(14) Reverse Frontage Lots. Residential lots with rear yards facing highways, access roads, and major or minor arterial streets should be at least 130 feet in depth so as to provide adequate rear yard area for screening and buffering of the rear of the structure, as required by this Ordinance.

(15) Corner Lots. Lots having frontage on two (2) or more intersecting streets shall be classified as corner lots;

(i) Corner lots adjacent to streets of equal classification shall have only one (1) access driveway on either of the intersecting streets, except as otherwise approved by the Council;

(ii) Corner lots adjacent to streets of unequal classification shall access the .lower classification street only and only one (I) drive approach shall be allowed, except as otherwise approved by the Council;

(iii) Corner lots shall contain at least one (1) street side building setback line; and.

(iv) Corner residential lots shall be ten (10) feet wider than the average interior lot on the same block.

(16) Building Setback Lines.

(i) Each lot shall have a building setback line, which runs parallel to the property line.

(ii) The front and rear building setback lines shall run between the side lot lines.

(iii) The side building setback lines, and street side building setback lines for comer lots, shall extend from the front building setback line to the rear building setback line.

(iv) The building setback line for each designated lot shall conform to the City's Zoning Ordinance, as currently amended. For developments outside the corporate limits of the City, but within the City's extra-territorial jurisdiction, building setback lines shall be consistent with similar uses as defined in the Zoning Ordinance.

(v) All building setback lines shall be indicated on the subdivision plat. For non-residential developments, a note stating that "all building setback lines shall be in accordance with the City's current Zoning Ordinance shall be placed on the subdivision plat.

(12) Yard Areas. The area between the property line and the front, side or rear building setback line shall be the required front, side and rear yard areas, respectively.

(i) No structure or impervious construction shall be allowed in the front yard area except for fences, driveways, sidewalks, utility distribution lines and appurtenances within dedicated easements and rights-of-way, and/or drainage structures; and,

(ii) No structures or impervious construction shall be allowed in required side or rear building setback areas except for the following accessory structures on one (1), two (2) or three (3) family residential lots:

(A) Swimming pools located at least three (3) feet from the property line and screened by a six (6) foot tall privacy fence;

(B) Playscapes not taller than nine (9) feet above mean grade, located at least three feet from the property line and screened by a six (6) foot tall privacy fence;

(C) Satellite dishes or telecommunications devices not taller than nine (9) feet above mean grade, located at least three (3) feet from the property line and screened by a six (6) foot tall privacy fence; and/or,

(D) Driveways to side entry garages.

(18) Lot Access.

(i) A minimum of one (1) all-weather access area (either individually, or common to more than one lot) or driveway shall be provided for lot connecting the lot to an existing or proposed dedicated public street. An exception may be made for

lots within a Planned Unit Development which may have similar access to a private street. Each lot shall front upon a public street or, in the case of a Planned Unit Development, have access by way of access easement sufficient to meet the requirements of the Standard Fire Prevention Code.

(ii) All driveway approaches shall be constructed to conform with the provisions of this Ordinance, and the City Standard Details and Specifications.

(19) Lot Numbering.

(i) All lots are to be numbered consecutively within each block. Lot numbering may be cumulative throughout the subdivision if the numbering continues from block to block in a uniform manner that has been approved on an overall preliminary plat.

(ii) Any lot(s) being resubdivided shall be renumbered utilizing the original lot number, followed by a letter designation starting with A.

(20) Lot Easements. Public utility easements on side and rear lot lines shall be required as needed to accommodate public utility and drainage appurtenances, and as specified in this Ordinance.

(21) Lot Drainage. Lot drainage shall be in conformance with the requirements of this Ordinance.

Sec. 65.46. Easements.

(a) All existing and proposed easements, safety lanes, and rights-of-way shall be clearly indicated on the plat or plan, as well as an indication to the use of each easement or right-of-way.

(1) No permanent structure may be placed in or over any easement or right-of-way except a structure whose use and location are necessary to the designated use of the right-of-way or easement or which otherwise will not affect the use, maintenance or repair of such easement.

(2) The width and alignment of all easements or rights-of-way to be dedicated shall be determined by the City Engineer, any applicable utility provider and the Council, and approved by the Commission and Council, and shall be accompanied by a notarized statement of dedication on the plat.

(3) Easements shall be established and dedicated for all public utility and drainage appurtenances, including common access areas, and other public uses requiring dedication of property rights.

(b) In so far as practicable, easements shall not be centered on a property line, but shall be located entirely on one (1) side of a lot.

Sec. 65.47. Landscaping and Screening.

(a) **Purpose**. For the purpose of providing for the orderly, safe, attractive and healthful development of land located within the community and promoting the health, safety and general welfare of the community, it is deemed necessary to require the installation and maintenance of landscaping elements and other means of site improvements in developed properties.

(b) **Requirements**. A minimum percentage of the total lot area of property on which development occurs after the effective date of this Ordinance, shall be devoted to landscape development in accordance with the following schedule.

(1) Single-family, 20%

(2) Multifamily Structures, 20%

(3) Office and Professional Uses, 15%

(4) Commercial Uses, 15%

(5) Industrial or manufacturing, 10%

(c) **Areas Landscaped**. The landscaping shall be placed upon that portion of a tract or lot that is being developed. Fifty percent (50%) of the required landscaped area and plantings shall be installed between the front property lines and the building being constructed. Undeveloped portions of a tract or lot shall not be considered landscaped, except as specifically approved by the Commission. Landscaping placed within public right-of-ways shall not fulfill the minimum landscape requirements by this Section.

(d) **Screening Requirements**.

(1) In addition to the landscaping requirements of this Section, the screening of off-street parking, loading spaces and docks, refuse and outside storage areas, satellite dishes larger than 18 inches in diameter, antennas, mechanical equipment, and the rear of structures on reverse frontage lots must be screened from view from the street or public right-of-ways.

(2) Approved screening techniques include privacy fences, evergreen vegetative screens, landscape berms, existing vegetation or any combination thereof

(3) Privacy Fences.

(i) All fences along a common property boundary shall be less than or equal to six (6) feet in height.

(ii) Fences less than or equal to eight (8) feet in height shall be allowed for impeding access to hazardous facilities including, but not limited to, electrical substations, swimming pools and chemical or equipment storage yards; where the slope of a line drawn perpendicular to the fence line averages twenty percent (20%) or more on either side of the fence over a distance no less than fifteen (15) feet; or where the fence forms a continuous perimeter around a subdivision and the design of said perimeter fence is approved by the Commission.

(iii) Fences less than or equal to three (3) feet in height shall be allowed in front yards for lots one (1) acre in size, or less, or as otherwise approved by the Council.

(iv) No fence or other structure more than thirty percent (30%) solid or more than three (3) feet high shall be located within twenty-five (25) feet of the intersection of any rights of-way.

(v) All fences shall be constructed to maintain structural integrity against natural forces such as wind, rain and temperature variations.

(vi) The finished side of all fences built to comply with these regulations shall face away from the screened object.

(4) Evergreen Vegetative Screens. Evergreen plant materials shall be shrubs, at least thirty (30) inches in height and at a minimum spacing of 48 inches at the time of installation, in combination with landscape trees fulfilling the requirements of this Section.

(i) Landscape Berms, in combination with trees, shall fulfill the screening requirements of this Section if the berms are at least three (3) feet in height and have maximum side slopes of four (4) feet of horizontal run for every one (1) foot in vertical rise.

(ii) Existing vegetation, demonstrating significant visual screening capabilities and as approved by the Commission, shall fulfill the requirements of this Section.

Sec. 65.48. Park Land Dedication.

(a) **Dedication of Public Park Land Required**. It shall be required that a developer of any residential subdivision within the City's territorial jurisdiction set aside and dedicate to the public sufficient and suitable lands for the purpose of public park land or make an in-lieu financial contribution for the acquisition of such park land and/or improvements and amenities in accordance with the provisions of this Ordinance.

(1) All plats receiving Final Plat approval based on this Ordinance shall conform to the requirements of this section.

(2) The Council and developer may negotiate the combination of public park land dedication and/or payment of fees-in-lieu of required park land to satisfy the provisions of this Ordinance.

(3) In the event the subdivider offers to dedicate land for a public park classification that is defined in the Master Plan, that meets the design standards of this Ordinance, and that is three (3) or more acres in size, the City shall be obligated to accept the park land dedication; provided that the Council may waive such requirement, or may designate a different tract or parcel to be dedicated.

(4) Where a subdivider proposes to pay an in-lieu-fee as provided for in this Section, the Council may accept such payment as satisfying the park land dedication requirements of this Ordinance, except that the City reserves the right to require the dedication of land for public park purposes in accordance with this Section when one (1) or more acres of land would be required to satisfy the park land dedication requirements of this Ordinance.

(5) Formula for Calculating Area of Park Land. The acreage of park land to be contributed prior to final approval by the Council of any residential subdivision shall be equal to one (1) acre for each one hundred (100) new dwelling units projected to occupy the fully developed subdivision, or 5% of the total project area, whichever is greater.

(b) **Fee Payment In-lieu of Park Land Dedication**. When the amount of land required to be contributed is less than three (3) acres, the Council may require the developer to pay a fee-in-lieu of park land dedication.

(1) Where the payment of a fee-in-lieu of park land dedication is required or acceptable to the Council as provided for in this Ordinance, such fee shall be in an amount equal to two hundred fifty dollars ($250) per new dwelling unit projected to occupy the fully developed subdivision.

(2) The developer shall tender and pay over to the City said fee prior to recordation of the Final Plat.

(c) **Subdivision Changes**. In the event a developer obtains Commission and Council approval to deviate from the approved Preliminary Plat thereby increasing the number of dwelling units projected, or where the use of property is changed from a non-residential use to a residential use, the owner or developer shall be obligated to provide additional land or fee provide the park land or amenities required for the additional dwellings prior to the City approving the Final Plat for recordation.

(d) **Final Platting of a Portion of an Approved Preliminary Plat**. Whenever a developer applies for approval of a Final Plat which contains only a portion of the land encompassed in the approved

Preliminary Plat, the developer's park land contribution shall be based on the ultimate number of dwelling units shown on the approved Preliminary Plat, and shall be satisfied prior to City approval of the first Final Plat.

(e) **Design Standards for Park Land**. Any land to be dedicated as park land shall be reasonably located near the geographic center of the development, adaptable for use as a public park and recreation facility as defined by the Master Plan, and designed and located so as to satisfy the following general requirements:

(1) The dedicated land should form a single parcel or tract of land at least three (3) acres in size unless it is determined that a smaller tract would be in the public interest, or that additional contiguous land will be reasonably available for dedication to or purchase by the City.

(2) Public access to public park land delineated on a Preliminary Plat shall be ensured by provision of at least fifty (50) feet of street frontage, in a manner satisfactory to the City. Likewise, adequate space for public parking should also be considered.

(3) At the time the land abutting the delineated areas is developed, the developer of such abutting land shall construct streets along all abutting street frontage, and shall provide water and wastewater utilities to the boundary of one (1) side of the delineated area to meet minimum requirements of this Ordinance.

(4) The land to be dedicated to meet the requirements of this Ordinance should be suitable for public parks and recreation activities. In that regard, fifty percent (50%) of the dedicated land area should not exceed five percent (5%) grade. The Master Plan for the City shall be considered when evaluating land proposals for dedication.

(5) Any disturbed park land shall be restored and the soil stabilized by vegetative cover by the developer.

(6) Areas within the regulatory one hundred (100) year flood plain may be utilized to partially meet the parkland dedication requirements. Areas in the one hundred (100) year flood plain may constitute up to fifty percent (50%) of the requirement of land dedication; provided that credit may not be obtained for such land that is also dedicated for another public purpose.

(7) The location of park land may be required at the edge of a subdivision so that additional land may be added at such time as adjacent land is subdivided or acquired for public use. Otherwise a centralized location is preferred.

(8) City staff shall make recommendations based upon the park land design standards and the provisions contained herein, concerning the amount and location of park land, credit for private park land and/or facilities, credit for land in the one hundred (100) year flood plain, and fees-in lieu of park land dedication.

(9) All park areas and playground equipment shall be in accordance with the U.S Consumer Products Safety Commission, Publication 325, as currently amended.

(f) **Neighborhood Park Land Credit**. Where park areas and recreational facilities are to be provided in a proposed subdivision, and where such areas and facilities are to be privately owned and maintained by the future residents of the subdivision, these areas and facilities shall satisfy the requirements of park land dedication if the following standards are met:

(1) That the private ownership and maintenance of such areas and facilities are adequately provided for by recorded written agreement, conveyance, or restrictions.

(2) That the use of such areas and facilities are restricted for park and recreational purposes by a recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the City Council.

(3) That such areas and facilities are reasonably similar to what would be required to meet public park and recreational needs, taking into consideration such factors as size, shape, topography, geology, access, and location.

(4) That such areas and facilities for which credit is given shall include improvements for the basic needs of a local park. These improvements shall include one (1) or more of the following: children's play areas, picnic areas, game court areas, turf play fields, swimming pools, recreational buildings, trails (sidewalks, walkways or bike trails), and landscaped sitting areas.

(g) **Park Fund Established**. A separate fund to be entitled "Park Fund" shall be and is hereby created and the money paid by developers at Final Plat approval in-lieu of the dedication of land and interest thereon, shall be held in said fund in trust to be used solely and exclusively for the purpose of purchasing and/or equipping public park and recreational land. Such fund shall be invested or held in an interest bearing account and all earnings and interest shall accrue to the Park Fund.

(1) At such time as the City Council, based upon the recommendations of the Commission and/or City staff determines that there are sufficient funds derived from a certain area in the Park Fund to purchase usable park land, the Council shall cause negotiations to be undertaken to purchase the site by mutual agreement or by condemnation proceedings. In making such determination for the purchase of said site, the conditions of this Ordinance shall be taken into consideration.

(2) The principal and interest deposited and kept in the Park Fund shall be used solely for the purpose of purchasing and/or equipping or improving land for public park and recreation uses, and shall never be used for maintaining or operating public park facilities, or for any other purpose.

(h) **Method of Dedication**. Land accepted for dedication under the requirements of this Ordinance shall be conveyed by either of the following methods:

(1) By dedication within the plat to be filed for record in Official County Records.

(2) By warranty deed transferring the property in fee simple to the City.

(3) In any event, land must be free and clear of any mortgages or liens at the time of such dedication or conveyance.

Sections 65.49 through 65.59. Reserved.

ARTICLE IV. IMPROVEMENTS

Section 65.60. Standards for Acceptance

(a) **Purpose.** The provisions of this Ordinance, as set forth in this Section, are designed and intended to insure that, for all subdivisions of land within the jurisdiction of the City, all improvements as required herein are installed in a timely manner in order that:

(1) The City can provide for the orderly and economical extension of public facilities and services.

(2) All purchasers of property within the subdivision shall have a usable, buildable parcel of land.

(3) All required improvements are constructed in accordance with the City Standard Details and Specifications.

(b) **General Policy**.

(1) Upon approval of a Final Plat, Amended Plat or Short Form Plat by the Commission, and prior to it being signed by the Chairperson of the Commission and the Mayor of the City, and before said Final Plat, Amended Plat or Short Form Plat shall be allowed to be recorded in the Plat Records of the County, the applicant requesting plat approval shall, within the time period for which the Plat has been conditionally approved by the City:

(i) Construct all improvements as required by this Ordinance, and provide a surety instrument guaranteeing their maintenance as required herein; or

(ii) Provide a surety instrument guaranteeing construction of all improvements required by this Ordinance, and as provided for herein.

(2) In all instances, the original copy of the Final Plat, Amended Plat or Short Form Plat, without benefit of required signatures of City Officials, shall be held in escrow by the City

and shall not be released for any purpose until such time as the conditions of this Section are complied with.

(3) Upon the requirements of this Section being satisfied, the Final Plat, Amended Plat or Short Form Plat shall be considered fully approved, except as otherwise provided for in this Ordinance, and the original copy of the Plat shall be signed by the appropriate City officials and City staff shall file said Plat in the Plat Records of the County.

(4) All improvements shall be designed and installed so as to provide for a logical system of utilities, drainage and streets and to create continuity of improvements for the development of adjacent properties. Water, wastewater, transportation and drainage improvements shall be extended to the perimeter of the development, except that the Council is authorized to vary or modify the requirement for extending water, wastewater, transportation and drainage improvements to the perimeter of a subdivision in accordance with the procedural requirements contained in this Ordinance.

(c) **Completion of Improvements**. Prior to the signing of the approved Final Plat, Amended Plat or Short Form Plat by the Chairman of the Commission and Mayor of the City of Lexington, the developer shall:

(1) Complete all improvements required by this Ordinance in accordance with the approved Construction Plans and subject to the approval of the City Engineer and acceptance by the City, except as otherwise provided for in this Ordinance.

(2) Construct all sidewalks as shown on the approved Construction Plans and according to the City Standard Details and Specifications. Sidewalks must be constructed and approved for each lot prior to issuance of a certificate of occupancy.

(d) **Alternative to Completing Improvements**. The City may waive the requirement that the developer complete all improvements required by this Ordinance prior to the signing of the approved Plat, contingent upon securing from the developer a guarantee, as provided for by this Section, for completion of all required improvements, including the City's cost for collecting the guaranteed funds and administering the completion of improvements, in the event the developer defaults. The Commission and Council must be notified that this waiver was granted at the time of Preliminary Plat approval or in the case of Amended Plats or Short Form Plats upon notice and approval. Such guarantee shall take one (1) of the following forms:

(1) **Performance Bond**. The developer shall post a performance bond with the City, as set forth herein, in an amount equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements, using the standard City form.

(2) **Escrow Account**. The developer shall deposit cash, or other instrument readily convertible into cash at face value, either with the City, or in escrow with a bank or savings and loan institution. The use of any instrument other than cash shall be subject to the approval of

the City. The amount of the deposit shall equal one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements. In the case of any escrow account, the developer shall file with the City an agreement between the financial institution and the developer guaranteeing the following:

(i) That the funds of said escrow account shall be held in trust until released by the City and may not be used or pledged by the developer as security in any other matter during that period.

(ii) That in the case of a failure on the part of the developer to complete said improvements, the financial institution shall immediately make the funds in said account available to the City for use in the completion of those improvements.

(iii) Such escrow account agreement shall be prepared using the standard City form

(3) **Letter of Credit**. The developer shall provide a letter of credit from a bank or other reputable institution or individual. This letter shall be submitted to the City and shall certify the following:

(i) That the creditor does guarantee funds equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements.

(ii) That, in the case of failure on the part of the developer to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.

(iii) That this letter of credit may not be withdrawn, or reduced in amount, until approved by the City according to provisions of this Ordinance.

(iv) Such Letter of Credit shall be prepared using the standard City form.

(4) **Cost Estimates**. A registered professional engineer licensed to practice in the State of Texas shall furnish estimates of the costs of all required improvements to the City Engineer who shall review the estimates in order to determine the adequacy of the guarantee instrument for insuring the construction of the required facilities.

(5) **Surety Acceptance**. The bank, financial institution, insurer, person or entity providing any letter of credit, bond or holding any escrow account, pursuant to this Ordinance, shall meet or exceed the minimum requirements established by City ordinance and shall be subject to approval by the City as provided in the ordinances of the City.

(6) **Sufficiency**. Such surety shall comply with all statutory requirements and shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution as set forth in this Ordinance. All such surety instruments shall be both a payment and performance guarantee.

(7) If the project is located in the extraterritorial jurisdiction of the City, and is subject to the bonding requirements of the County for the construction of roadways, then that amount of money shall be reduced from the amount required to be posted with the City, provided that the instrument is transferable from the County to the City upon annexation.

(e) **Time Limit for Completing Improvements**. The period within which required improvements must be completed shall be incorporated in the surety instrument and shall not in any event, without prior approval of the City, exceed one (1) year from date of Final, Amended or Short Form Plat approval.

(1) The Commission may, upon application of the developer and upon proof of hardship, recommend to the Council extension of the completion date set forth in such bond or other instrument for a maximum period of one (1) additional year. Such hardship may include delays imposed due to City projects. An application for extension shall be accompanied by an updated estimate of construction costs prepared by a registered professional engineer, licensed to practice in the State of Texas. A surety instrument for guaranteeing completion of remaining required improvements must be filed in an amount equal to one hundred ten percent (110%) of the updated estimate of construction costs as approved by the City Engineer.

(2) The Council may at any time during the period of such surety instrument accept a substitution of principal sureties upon recommendation of the Commission.

(f) **Failure to Complete Improvements**. Approval of all plats shall be deemed to have expired in subdivisions for which no assurances for completion have been posted or the improvements have not been completed within one (1) year of plat approval, unless otherwise approved by the City. In those cases where a surety instrument has been required and improvements have not been completed within the terms of said surety instrument, the City may declare the developer and/or surety to be in default and require that all the improvements be installed.

(g) **Inspection and Acceptance of Improvements**. The City Engineer shall inspect all required improvements, to insure compliance with City requirements and approved Construction Plans.

(1) When all required improvements have been satisfactorily completed, the City Engineer shall either:

(i) accept, in writing, the improvements as having been satisfactorily completed, or

(ii) issue a punch list to the developer denoting items remaining to be completed.

(2) The City Engineer shall have ten (10) working days to complete this inspection upon notification by the developer.

(2) The City Engineer shall issue the report within ten (10) working days of the date of inspection.

(4) The City shall not accept dedications of required improvements nor release or-reduce a performance bond or other assurance, until such time as it determines that:

(i) All improvements have been satisfactorily completed.

(ii) Two (2) copies of as-built plans have been submitted to and approved by the City Engineer, along with a statement prepared'by a licensed professional engineer that all improvements have been installed and constructed in accordance with the submitted as built plans.

(iii) Copies of all inspection reports, shop drawings and certified test results of construction materials have been submitted to and approved by the City Engineer.

(iv) Diskette(s) containing computed generated drawings of all public improvements shown on the Construction Plans have been submitted to the City Engineer to update City record drawings.

(v) The required maintenance guarantee has been provided.

(vi) Any and all other requirements identified in the platting process have been satisfied.

(h) **Reduction or Release of Improvement Surety Instrument**.

(1) **Surety Instrument**. A surety instrument may be reduced with the approval of the City Engineer, and the Treasurer/Director of Finance, upon actual construction of required improvements by a ratio that the improvement bears to the total public improvements required for the subdivision, as determined by the City Engineer.

(i) Before the City shall reduce said surety instrument, the developer shall provide a new surety instrument in an amount equal to one hundred ten percent (110%) of the estimated cost of the remaining required improvements, and such new surety instrument shall comply with this Ordinance.

(ii) The substitution of a new surety instrument· shall in no way change or modify the terms and conditions of the performance surety instrument or the obligation of the developer as specified in the performance surety instrument.

(iii) In no event shall a surety instrument be reduced below ten percent (10%) of the principal amount of the original estimated total costs of improvements for which surety was given, prior to completion of all required improvements.

(iv) The City shall not release a surety instrument unless and until all the conditions of this Ordinance have been met.

(2) **Warranty and Maintenance Bond**. Before the release of any surety instrument guaranteeing the construction of required subdivision improvements or the signing of the Final, Amended or Short Form Plat where subdivision improvements were made prior to the filing of the plat for recordation, the developer shall furnish the City with a guarantee and maintenance bond or other surety instrument to assure the quality of materials and workmanship, and maintenance of all required improvements including the City's costs for invoking the surety instrument and administering the correction and/or replacement of covered improvements in the event the developer defaults.

(i) The warranty and maintenance bond or other surety instrument shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution.

(ii) Said warranty or other instrument shall be in an amount equal to one hundred percent (100%) of the cost of improvements verified by the City Engineer and shall run for a period of one (1) calendar year measured from the date of release of the performance surety instrument, or signing and recording of the Final Plat, whichever is later.

(iii) Said maintenance bond or other instrument shall be in an amount equal to one hundred percent (100%) of the cost of improvements verified by the City Engineer and shall run for a period of one (1) calendar year measured from the date of release of the warranty bond.

(iv) In an instance where a warranty or maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the City will require performance under bond or surety instrument.

(i) **Plans for Improvements**. Plans for the improvements required by this Ordinance shall be prepared, reviewed and approved in accordance with the provisions set forth in this Ordinance.

(j) **Acceptance of Improvements**.

(1) During the course of installation and construction of the required improvements, the City Engineer or his/her designated representative shall make periodic inspections of the work to insure that all improvements comply with City requirements.

(2) Upon completion of all required improvements, the developer may seek acceptance of all public improvements by the City by following the procedures set forth in the applicable sections of this Ordinance.

(k) **Maintenance of Improvements**. Where a subdivision contains drainage, transportation, water or wastewater improvements, parks and grounds held in common, or other physical facilities necessary or desirable for the welfare of the area, or that are of common use or benefit which will not be, or cannot be, satisfactorily maintained by an existing public agency, provision shall be made which is acceptable to the City Council for the proper and continuous operation, maintenance, and supervision of such facilities. A copy of the agreements providing for the proper and continuous operation, maintenance and supervision of such facilities shall be presented to and approved by the Council, and approved as to form by the City Attorney, at the time of Final Platting and shall be filed of record with the plat thereof

Sec. 65.61 through 65.69. Reserved.

ARTICLE V. ADMINISTRATION

Sec. 65.70. General. For all development of land within the scope of this Ordinance, a plan of the development shall be prepared and submitted to the City for approval or disapproval, as provided for in this Ordinance.

(a) **City Responsibilities**. The City shall administer the provisions of this Ordinance and in furtherance of such authority, the City shall:

(1) Maintain permanent and current records with respect to this Ordinance, including amendments thereto.

(2) Receive and file all Concept Plans, Preliminary Plats, Construction Plans, and Final Plats together with applications therefore.

(3) Forward copies of the Preliminary Plat, Construction Plans, and Final Plat to the County, when the development is located within the City's extraterritorial jurisdiction.

(4) Review all Concept Plans, Preliminary Plats, Construction Plans, Amended Plats, Short Form Plats and Final Plats to determine whether such plats comply with this Ordinance, the Master Plan, applicable laws, and the Zoning Ordinance, where applicable.

(5) Forward plans and plats to the Commission as required by this Ordinance, together with its recommendations thereon.

(6) If required, forward plans and plats to the Council, together with the recommendations of the Commission and City staff.

(7) Make such other determinations and decisions as may be required of the City by this Ordinance, the Commission or the Council.

(b) **Interpretation of Provisions**. In the interpretation and application of the provisions of this Ordinance, the following regulations shall govern:

(1) In the City's interpretation and application, the provisions of this Ordinance shall be regarded as minimum requirements for the protection of the public health, safety, comfort, convenience, prosperity and welfare. This Ordinance shall be regarded as remedial and shall be liberally construed to further its underlying purposes.

(2) Whenever both a provision of this Ordinance and any other provision of this Ordinance, or any provision in any other law, ordinance, resolution, rule or regulation of any kind contains any restrictions covering any of the same subject matter, whichever restrictions are more restrictive or impose higher standards or requirements shall govern.

(3) Where there arises a question concerning the meaning or intent of a provision of this Ordinance, the City is hereby implored to render a written decision setting forth the exact manner in which said provision shall be interpreted and administered. In the event exception is taken by any interested party to such a decision the matter shall be appealed to the Commission, and, as appropriate, to the City Council, whose decision shall be final.

(4) Any written decision shall be attached to and made a part of this Ordinance, until rescinded by amendment of this Ordinance as provided for herein.

(5) The terms, provisions and conditions of this Ordinance shall be interpreted and applied in a manner consistent with *Chapt. 212, Tex. Loc. Gov't. Code*, and, particularly as to property within the extraterritorial jurisdiction of the City, Section 7(c).

Sec. 65.71. Reserved

Sec. 65.72. Variances. A variance to the provisions of this Ordinance shall be considered an exception to the regulations, rather than a right. Whenever a tract to be developed is of such unusual size or shape or is surrounded by development of such unusual conditions that the strict application of the requirements contained in this Ordinance would result in substantial hardship or inequity, the Commission may vary or modify, except as otherwise indicated, such requirement of design as provided for herein, but not of procedure or improvements, so that the developer may improve his/her property in a reasonable manner, but so that, at the same time, the public welfare and interests of the City are protected and the general intent and spirit of this Ordinance, the Master Plan and Zoning Ordinance (or, if none, ordinances regulating land uses and providing for regulations under the City's general police powers) are preserved in accordance with the following provisions:

(a) **Jurisdiction**. When a written request for a variance from the design requirements of this Ordinance is filed:

(1) The Commission may recommend approval or denial of such written request for variances to the design standards and such variance(s), if granted by the Council, shall also be considered to be a modification of the regulations, but not the zoning districts, applicable to the specified property within such development within the City limits; or

(2) would constitute a major departure from the applicable provisions of this Ordinance for such features as: lot size, setback lines, etc., such variance request shall be considered by the Council in accordance with its powers and procedures as set forth in the Zoning Ordinance, and their decision shall be final; and

(3) after giving notice of such requested variances, the Commission may consider each such variance request during the course and process of considering the application for subdivision plat approval given or granted

(b) **Notification**. The notification procedures for variance requests shall be the same as the notification procedures described for a Concept Plan.

(c) **Approval**. In granting approval of a request for variance, the Commission and Council shall conclude that the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this Ordinance would result in unnecessary hardship, and so that the variance observes the spirit of this Ordinance and concludes that substantial justice is done. The Commission and Council shall meet these requirements by making findings that:

(1) The public convenience and welfare will be substantially served;

(2) The appropriate use of surrounding property will not be substantially or permanently impaired or diminished;

(3) The applicant has not created the hardship from which relief is sought;

(4) The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property;

(5) The hardship from which relief is sought is not solely of an economic nature;

(6) The variance is not contrary to the public interest;

(7) Due to special conditions, the literal enforcement of the ordinance would result in an unnecessary hardship; and

(8) In granting the variance the spirit of the ordinance is observed and substantial justice is done.

Sec. 65.73. Conditions for Issuing a Building Permit. No building permit shall be issued for any new structure or change, improvement or alteration of any existing structure, on any lot or tract of land and no municipal utility service will be furnished to such lot or tract which does not comply with the provisions of this Ordinance and all applicable elements of the Master Plan, except as herein exempted or upon the written application and approval of a variance.

Sec. 65.74. Fees. To defray the costs of administering this Ordinance, the applicant seeking plat approvals shall pay to the City, at the time of submittal, the prescribed fees as set forth in the current administrative fee schedule approved by the Council, and on file in the office of the City, together with all engineering and other professional fees and expenses incurred by the City for and with respect to such application and plat.

Sec. 65.75. Amendments. The Council may, from time to time, adopt, amend and make public rules and regulations for the administration of this Ordinance. This Ordinance may be enlarged or amended by the Council after public hearing, due notice of which shall be given as required by law.

Sec. 65.76. Violations. Except as otherwise provided for in this Ordinance, it shall be unlawful for any person, firm or corporation to develop, improve or sell any lot, parcel, tract or block of land within the City's territorial jurisdiction for other than agricultural purposes, regardless of the size or shape of said lot, parcel, tract or block, unless such lot, parcel, tract or block of land conforms with this Ordinance.

Sec. 65.77. Enforcement. Penalty. Any person who shall violate .any of the provisions of this Ordinance, or shall fail to comply therewith, or with any of the requirements thereat; within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars ($2000.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein

(1) **Administrative Action**. The City Engineer and/or the City Administrator shall enforce this Ordinance by appropriate administrative action, including but not limited to the rejection of plans, maps, plats and specifications not found to be in compliance with this Ordinance and good engineering practices, and the issuance of stop work orders.

(2) **Court Proceedings**. Upon the request of the City Council the City Attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this Ordinance, or to obtain declaratory judgment, and to seek and recover court costs and attorney fees, and/or to recover damages in an amount sufficient for the City to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the property and established pursuant to this Ordinance.

(3) **Approval, Waiver and Variances**. Notwithstanding any other term or provision of this Ordinance or the recommendation of the Planning Commission, the final approval of all subdivision plats, plans and specifications shall be made by the City Council and the action of the Council shall be final for all purposes. The City Council may waive any

provision of this Ordinance, and may grant a variance to the requirements of this Ordinance, for and with respect to any term, provision or condition applicable to any subdivision. In addition to the power to waiver ordinance provisions or grant variances therefrom, as is also authorized by state law the City Council may suspend the application of any term or provision of this Ordinance at any time and as to any issue or matter.

Chapter 66. Natural Resources

Article I. In General

Article II. Private Water Wells

Chapter 66. NATURAL RESOURCES

ARTICLE I. IN GENERAL

Sec. 66.1. Water wells; application of state law. In any case where the state laws pertaining to water wells are in conflict with this chapter, such state laws shall apply.

Sec. 66.2. Mining; well drilling.

(a) **Definitions**. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Mine means a pit or excavation in the earth, from which coal, metallic ores, or other mineral substances are taken by digging.

Mineral means a substance obtained by mining; any of a class of substances occurring in nature, usually comprising inorganic substances, as quartz or feldspar, of definite chemical composition, but sometimes including aggregation of such substances; certain natural products of organic origin, as asphalt or coal; ore; and any substance neither animal nor plant.

Well means a hole, pit, or shaft sunk in the ground by digging or boring to obtain a supply of water, brine, petroleum, natural gas, or any other type of liquid or gas.

(b) **Mining**. It shall be unlawful for any person to start or operate a mine within the city limits for any reason.

(c) **Well drilling**. It shall be unlawful for any person to drill a well within the city limits except a well for private water use is allowed as per Article II of this chapter. Well drilling for minerals is strictly prohibited. **State law reference-** Minerals, *Tex. Natural Resources Code ch. 53*.

Sec. 66.3 - 66.25. Reserved.

ARTICLE II. PRIVATE WATER WELLS

Sec. 66.26. Permits.

(a) Permits shall be obtained for all water wells and shall be obtained by the licensed water well driller. No permit shall be issued in conflict with any other city ordinance.

(b) The permit fee for private water wells shall be $100.00. **State law references-** Water wells, *Tex. Water Code, ch. 28*; drillers, *Tex. Water Code ch. 32*.

Sec. 66.27. License requirements. All water well drillers that work in the city shall have a state license and provide proof of such license to the city.

Sec. 66.28. Location.

(a) Water wells shall be located a minimum horizontal distance of 50 feet from any watertight sewage and liquid waste collection facility.

(b) Water wells shall be located a minimum horizontal distance of 150 feet from any concentrated source of contamination, such as existing or proposed livestock or poultry yards, privies and septic system absorption fields.

(c) Water wells shall be located at a site not subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal and steel casing extending a minimum of 24 inches above the known flood level.

Sec. 66.29. Standards of completion.

(a) The annular space between the borehole and the casing shall be filled from ground level to a depth of not less than ten feet below the land surface or well head with cement slurry. the distances given in section 66.28(a) and (b) may be decreased, provided the total depth of cement slurry is increased by twice the horizontal reduction. In areas of shallow, unconfined groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined ground water aquifers having artesian head, the cement need not be placed below the top of the water bearing strata.

(b) In all wells where plastic casing is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface. The slab or block shall extend at least two feet from the well in all directions and have a minimum thickness of four inches and shall be

separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of slab to casing. The surface of the slab shall be sloped to drain away from the well. The top of the casing shall extend a minimum of one foot above the top of the slab.

(c) In wells where steel casing is used, the casing shall extend a minimum of one foot above the original ground surface. A slab or block is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells, provided that: (1)The adapter is welded to the casing or fitted with another suitably effective seal; and (2) The annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter.

(d) All wells, including those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

(e) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

Sec. 66.30. Interconnection.

(a) No connection shall be made between private wells and the city public water works system.

(b) All private wells shall be for outside yard use only.

(c) Private wells shall not be used for potable water.

Sec. 66.31. Backflow and siphonage. All water wells shall have an approved check valve or backflow prevention valve installed in order to prevent backflow into the well.

Sec. 66.32. Inspection. Inspection shall be made while the well is being drilled, casing being set and upon final construction of the well. These inspections will be made by the city building official or his representative for the city.

Chapters 67 through 69 Reserved

CHAPTER 70. Offences and Miscellaneous Provisions[S]

Article I. In General

Article II. Minors

Division 1. Generally

Sec. 70.26-70.35. Reserved.

Division 2. Curfew

Article III. Regulation of Sex Offender's Residency

Division 1. Findings and Intent; Definitions

Division 2. Sex Offender Residency Prohibition

Division 3. Renting Real Property to Sexual Offenders

Chapter 70. OFFENSES AND MISCELLANEOUS PROVISIONS[30]

ARTICLE I. IN GENERAL

Sec. 70.1. Tampering with city facilities. It shall be unlawful for any person to do, commit, or assist in committing any of the following things or acts in the city:

(a) Open or close any fire hydrant or stopcock connected with the waterworks system of the city, or to lift or remove the covers of any gate valves or shutoffs thereof, without the permission of the mayor or his designee, except in case of fire, and then under the direction of the officers of the fire department.

(b) Interfere with, destroy, deface, impair, injure, or wantonly force open any gate or door, or in any way whatsoever destroy, injure, or deface any part of the engine house, reservoir, standpipe, elevated tank, buildings or appurtenances, fences, trees, shrubs, fixtures or property appertaining to the waterworks system.

(c) Go upon or ascend the stairway or steps on any elevated water storage tank or standpipes of the waterworks system, except by the permission of the waterworks superintendent.

(d) Place any telegraph, telephone, electric light poles, or any obstruction whatsoever with three feet of any fire hydrant.

(e) Interfere with any reservoir, tank, fountain, hydrant, pipe, cock valve, or other apparatus pertaining to the waterworks system, or to turn off or on without the authority, the water in any hydrant or water fixture, or to hitch or tie any animal thereto.

(f) Tamper with an electric meter in any way.

Sec. 70.2. Entry of fire station without permission. It shall be unlawful for any person to enter the fire station or any building used to house firefighting apparatus that is subject to the current use in fighting fires without the permission of a duly authorized city official or member of the city fire department, providing that this shall not apply to any employee of the city when acting in their official capacity. It shall be unlawful for anyone to tamper with, deface, or in any way do anything whatsoever that will impair or interfere with efficient use of any apparatus used in fighting fires, or for the prevention of fires. **Cross reference** - Prevention and protection, ch. 46.

Sec. 70.3. Entry of emergency medical station without permission. It shall be unlawful for any person to enter the emergency medical services ("EMS") station or any building used to house EMS apparatus that is subject to the current use by EMS without the permission of a duly

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[30] **Cross reference**- Civil emergencies, ch. 38. **State law references**-Suit to abate prostitution, gambling, etc. *Tex. Civ. Prac. & Rem. Code, Sec. 125.001 et seq*.; preemption of criminal offenses, *Tex. Pen. Code, Sec. 108*; municipal public health powers, *Health & Safety Code, Sec. 122.005*; abatement of health nuisances, *Health & Safety Code, Sec. 341.011 et seq.*

authorized city official or member of the EMS department, providing that this shall not apply to any employee of the city when acting in their official capacity. It shall be unlawful for anyone to tamper with, deface, or in any way do anything whatsoever that will impair or interfere with efficient use of any apparatus used by the EMS in providing emergency services.

Secs. 70.4 - 70.25. Reserved.

ARTICLE II. MINORS

DIVISION 1. GENERALLY

Secs. 70.26 - 70.35. Reserved

DIVISION 2. CURFEW

Sec. 70.36. Short title. This division shall be known and may be cited as the "Curfew Hours for Minors Ordinance."

Sec. 70.37. Definitions. For the purposes of this division the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely director.

***Curfew hour**s means:*

(1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and

(2) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

Guardian means:

(1) A person who, under court order, is the guardian of a minor; or

(2) A public or private agency with whom a minor has been placed by a court.

Minor means any person less than 17 years of age.

Operator means any individual, firm, association, partnership or corporation, operating, managing or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is: (1) A natural parent, adoptive parent or step-parent or another person; or (2) At least 18 years of age and authorized by a parent or guardian in writing to have the care and custody of a minor.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

Remain means to: (1) Linger or stay; or (2) Fail to leave premises when requested to do so by a police officer or the owner, operator or other person in control of the premises.

Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Sec. 70.38. Curfew related offenses.

(a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.

(b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.

(c) The owner, operator or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

Sec. 70.39. Exceptions and defenses.

(a) It is a defense to prosecution under section 70.38 that the minor was:

(1) Accompanied by the minor's parent or guardian;

(2) On a lawful errand at the direction of the minor's parent or guardian, without any detour or stop;

(3) In a motor vehicle involved in interstate travel;

(4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

(5) Involved in an emergency;

(6) On the sidewalk abutting the minor's residence of a new-door neighbor if the neighbor did not complain to the police department about the minor's presence;

(7) Attending an official school, religious or other recreational activity supervised by adults and sponsored by the city, a civic organization or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the city, a civic organization; or another similar entity that takes responsibility for the minor;

(8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly; or

(9) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(b) It is a defense to prosecution under subsection 70.38(c) that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

Sec. 70.40. Enforcement. Before taking any enforcement action under this division, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this division unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 70.39 is present.

Sec. 70.41. Penalties.

(a) A person who violates a provision of this section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense, upon conviction, is punishable by a fine not to exceed $500.00

(b) When required by *V.T.C.A, Family Code § 51.08*, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection 70.38(a) of this division and shall refer the minor to juvenile court.

ARTICLE III. REGULATION OF SEX OFFENDER'S RESIDENCY

DIVISION 1. FINDINGS AND INTENT; DEFINITIONS

Sec. 70.42. Finding and Intent.

(a) The City Council of the City of Lexington finds that sex offenders are likely to repeat an offense, have many more victims than are ever reported, are prosecuted for only a fraction of their actual sexual offenses, and children not only lack the ability to protect themselves but additional measures should be taken to keep known sex offenders from having access to children in areas where children generally feel safe.

(b) It is the intent of this article to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain registered sex offenders and sexual predators are prohibited from establishing temporary or permanent residency.

Sec. 70.43. Definitions. When used in this article, the following words, terms and phrases and their derivations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Premises where children commonly gather means, but is not limited to, playgrounds, public parks, all Property Owners' Association campgrounds or amenities, private and public schools, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or private youth centers, crisis centers or shelters, skate parks, youth athletic fields, all non-single family residential swimming pools, resort or motel pools, and child day care centers. For purposes of this article, planted street medians are not public parks.

Minor means a person younger than seventeen (17) years of age.

Residence means the place within the City:

(1) where a person registers or verifies under Article 62.152, Texas Code of Criminal Procedure, as the person's residence;

(2) where a person abides, lodges or resides for more than seven (7) consecutive days;

(3) where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent residence; or

(4) where a person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent residence.

DIVISION 2. SEX OFFENDER RESIDENCY PROHIBITION

Sec. 70.44. Sex Offender Residency Prohibition.

(a) It is unlawful for a person who is required to register on the Texas Department of Public Safety's Sex Offender Database pursuant to V.T.C.A, Texas Code of Criminal Procedure, Ch. 62 because of a violation involving a victim who was less than seventeen (17) years of age, to establish or maintain a permanent or temporary residence within one thousand (1,000) feet of any premises where children commonly gather. It shall be prima facie evidence that this article applies to such a person if the person's record appears on the database and the database indicates that the victim was less than seventeen (17) years of age.

(b) For the purpose of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather, as described herein, or in the case of multiple residences on one (1) property, measuring from the nearest wall of the building or structure occupied or the parking lot/driveway, whichever is closer to the nearest property line of the premises where children commonly gather, as described herein. A map generally depicting the prohibited areas shall be available at the Lexington Police Department.

(c) Nothing in this article shall be interpreted to modify or reduce the state’s child safety zone ban.

Sec. 70.45. Penalties.

(a) Criminal prosecution: Any person, firm or corporation violating Sec. 70.44 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five hundred dollars and no/100 ($500.00) per violation. Each day that any violation of Sec. 70.44 continues shall constitute a separate offense.

(b) Civil remedies: Nothing in this division shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this division and to seek remedies as allowed by law including, but not limited to, the following:

(1) injunctive relief to prevent specific conduct that violates this division or to require specific conduct that is necessary for compliance with this division;

(2) a civil penalty up to one hundred dollars and no/100 ($100.00) per day when it is shown that the defendant was actually notified of the provisions of this division and after receiving notice committed acts in violation of this division or failed to take action necessary for compliance with this division; or

(3) other available relief.

(c) Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by Sec. 70.44.

Sec. 70.46. Affirmative Defense. It is an affirmative defense to prosecution for an offense under this division that:

(a) the person is not required to comply with Chapter 62 of the Texas Code of Criminal Procedure;

(b) the person was a minor when he/she committed the offense and was not convicted as an adult;

(c) the person is a minor;

(d) the premises where children commonly gather, as specified herein, within one thousand (1,000) feet of the person's residence was opened after the person established the permanent or temporary residence and the person complied with all sex offender registration laws of the State of Texas;

(e) the person proves to the Texas Department of Public Safety that the information on the database is incorrect and that, if corrected, this article would not apply to the person erroneously listed on the database; or

(f) the person established permanent or temporary residency prior to October 14, 2015 by owning the property in fee simple and said person is in compliance with all sex offender registration laws of the State of Texas.

Sec. 70.47. Grandfather Clause. This division shall not apply to persons who are renting, leasing, or residing without ownership of the property for a time period being the later of (i) six (6) months after October 14, 2015; or (ii) the expiration of a current lease agreement in effect on October 14, 2015.

DIVISION 3. RENTING REAL PROPERTY TO SEXUAL OFFENDERS

Sec. 70.48. Property Owners Prohibited From Renting Real Property to Sexual Offenders.

(a) It is unlawful to knowingly rent any dwelling, home, building, place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing such permanent or temporary residence pursuant to the terms of this article, if such dwelling, home, building, place, structure or part thereof, manufactured home, trailer, or other conveyance is located within one thousand (1,000) feet, as determined pursuant to Sec. 70.44(b), of any premises where children commonly gather.

Sec. 70.49. Penalties

(a) Criminal Prosecution: Any person, firm or corporation violating Sec. 70.48 shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five hundred dollars and no/100 ($500.00) per violation. Each day that any violation of Sec. 70.48 continues shall constitute a separate offense.

(b) Civil Remedies: Nothing in this division shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this division and to seek remedies as allowed by law, including, but not limited to the following:

(1) injunctive relief to prevent specific conduct that violates this division or to require specific conduct that is necessary for compliance with this division;

(2) a civil penalty up to one hundred dollars and no/100 ($100.00) per day when it is shown that the defendant was actually notified of the provisions of this division and after receiving notice committed acts in violation of this division or failed to take action necessary for compliance with this division; or

(3) other available relief.

Sec. 70.50. Affirmative Defense. It is an affirmative defense to prosecution for an offense under this division that on or prior to the date of the alleged offense, the property owner conducted a criminal history check with the Texas Department of Public Safety and reviewed the department of public safety's sexual predator registration database, and that at the time the property owner conducted the criminal history check and reviewed the sexual predator database the sexual offender's criminal history did not include a record of a sexual offense and the offender's name did not appear in the database.

Chapters 71 through 73 Reserved

Chapter 74. Parks and Recreation[31]

Article I. Camping in City Parks

Article II. Park Hours

Chapter 74. PARKS AND RECREATION

ARTICLE I. CAMPING IN CITY PARKS

Sec. 74.1. Camping in city parks.

(a) ***Prohibited***. It is unlawful for anyone to erect, maintain, or use a tent, temporary structure, camp house or any other type or kind of camp within any park, commons, street or area-way under the jurisdiction and control of the city.

(b) Temporary camps may be placed and used in the city park by tourists or others not maintaining such camps for a period of more than five (5) days at one time, upon obtaining a written permit from the mayor.

Sec. 74.2 to Sec. 74.10 Reserved.

ARTICLE II. PARK HOURS

Sec. 74.10. Park Hours of Use. The hours of use for the piped barrier portion of the Lexington Memorial Park shall be daily from 5:00 a.m. until 12:00 midnight.

Chapters 75 through 77 Reserved

[31] **Cross reference**-Administration, ch. 2; amusements and entertainment, ch. 10; health and sanitation, ch. 54; streets, sidewalks and other public places, ch. 94; traffic and vehicles, ch. 106. **State law references**- Municipal parks and recreation, *Tex. Rev. Civ. Stat. art 1015c*; public improvements, bonds, occupancy tax, *Tex. Rev. Civ. Stat. art 1269j-4.1*; city parks, *Tex. Rev. Civ. Stat. art 6081h et. seq*.; local parks and other recreational and cultural resources, *Tex. Loc. Gov't. Code chs. 315, 331, et. seq*.; lease of land from state parks and wildlife department, *Tex. Pks. & Wildlife Code § 31.092.*

Chapter 78. Peddlers and Solicitors[32]

Article I. In General

Secs. 78.1-78-25. Reserved.

Article II. Peddlers

Division 1. Generally

Division 2. Permit or License

Chapter 78. PEDDLERS AND SOLICITORS

ARTICLE I. IN GENERAL

[32] **Cross references-** Businesses, ch. 26; health and sanitation, ch. 54; secondhand goods, ch. 86; streets, sidewalks and other public places, ch. 94; traffic and vehicles, ch. 106; zoning, ch. 188. **State law references-** Home solicitation *Tex. Rev. Civ. St. art. 5069-13.01 et seq*.; solicitations for certain organization, *Tex. Rev. Civ. St. art. 9023 et seq*.; criminal trespass, *Tex. Penal Code § 30.05*; persons regarded as retailers under sales tax law. *Tex. Tax Code § 151.024.*

Secs. 78.1-78.25. Reserved.

ARTICLE II. PEDDLERS

DIVISION 1. GENERALLY

Sec. 78.26. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Peddler means any person, whether a resident of this city or not, traveling from house to house or from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state; and shall also mean and include any person transacting a temporary business within the city at an established place of business. The word "peddler" shall include the terms "solicitor," "transient, itinerant merchant or vendor," or "transient or itinerant photographer."

Sec. 78.27. Exceptions. The provisions of this article shall not apply to the following:

(a) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business;

(b) Sheriff's constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law;

(c) Bona fide residents of the state selling fruits, vegetables, dressed meats, fowl or farm products which were produced on land within the state, owned or controlled by such vendor; and

(d) Solicitations, sales or distributions made by charitable, educational or religious organizations which have their principal place of activity within this city.

Sec. 78.28. Refusing to leave. Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises, after having been notified by the owner or occupant of such premises, shall be deemed guilty of a misdemeanor.

Sec. 78.29. Use of public places. It shall be unlawful for any peddler to sell or solicit or take orders for or offer to sell or take orders for or display any goods, wares, merchandise, photographs, newspapers or magazines on any public square, park, street, road, highway or alley within the limits of the city without having first obtained a special events permit as provided in section 78.58.

Sec. 78.30. Entrance to premises restricted. It shall be unlawful for any peddler to enter upon any private premises when such premises are posted with a sign stating "no peddlers allowed" or "no solicitations allowed" or other words to such effect.

Sec. 78.31. Hours of operation. It shall be unlawful for any peddler to engage in the business of peddling within the city between the hours of 9:00 p.m. and 8:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

Sec. 78.32. Soliciting at intersections.

(a) ***Prohibited generally***. It shall be unlawful for any person to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at any intersection or crossing of streets within the city limits, where, in the opinion of the police chief, such solicitation or distribution would cause the blocking of traffic so as to create a traffic hazard.

(b) ***Authorized Permit***. If, in the opinion of the police chief, it would not create a traffic hazard for solicitation of funds and advertising at an intersection of streets within the city, the person desiring to solicit funds or to advertise, or to distribute any item at such intersections, shall first make an application for permission to do so by making the application at the city hall. The application shall set forth the name of the organization, the location of the intersection where such solicitation shall transpire and the length of time the proposed solicitation shall take place. If the solicitation is to be done by a person under the age of 18, no such permit shall be issued unless such person shall have proper adult supervision as to be determined by the police chief. Any permit for the solicitation of funds shall be acquired prior to any actual solicitation, and any such permit shall be good for one such solicitation period only. Any further solicitation shall require an additional permit. Such permit should be signed by the police chief.

Sec. 78.33. Misrepresentation. It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same. **State law reference**-Deceptive business practices, *Tex. Penal Code § 32.42*

Secs. 78.34 - 78.45 Reserved.

DIVISION 2. PERMIT OR LICENSE

Sec. 78.46. Required; information needed prior to issuance. It shall be unlawful to engage in business as a peddler within this city without first obtaining a permit, unless such person is lawfully engaged in interstate commerce, in which case such peddler shall obtain a license prior to engaging in business as a peddler within this city. Such license shall be obtained by registering with the building official and providing information under oath to the city secretary. Prior to the issuance of the license to the peddler engaged in interstate commerce, the building official shall obtain all of the following information and any other information deemed pertinent and necessary. The information to be obtained shall be as follows;

(a) Date of registration;

(b) Name of registrant;

(c) Driver's license number;

(d) Date of birth;

(e) Home address;

(f) Local address, if any;

(g) Name of person represented, or through which orders are to be solicited are cleared;

(h) Nature of items or services to be sold or solicited;

(i) Will payment or deposit be received in advance of final deliver;

(j) Has registrant ever been convicted of a felony of any nature or any other crime of moral turpitude in this state or any other state; if so, give place, date, and crime of which convicted; and

(k) Facts showing explicitly that the registrant is engaged in interstate commerce.

Sec. 78.47. Application Contents. The application for a permit required by this article shall state or contain the following:

(a) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed therefor; if previously convicted; and the place of conviction.

(b) All food vendors shall comply with the state food handlers regulations.

(c) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final deliver.

(d) The period of time the applicant wishes to engage in business within this city.

(e) The applicant's local and permanent address and the driver's license number or other state identification of the applicant; in the absence of such identification, the date of birth.

(f) The local and permanent address and the name of the person, if any, that the applicant represents; the applicant's tax identification number, if any.

(g) The kind of goods, wares, merchandise or services in which the applicant wishes to engage in such business within the city.

(h) The last five cities or towns wherein the applicant worked before coming to this city.
State law reference-Food service employees, Tex. Health and Safety Code § 438.031 et seq.

Sec. 78.48. False information. It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit or a license required by this article.

Sec. 78.49. Fingerprints; photographs. At the time of making application for a permit required by this article, the applicant shall submit to fingerprinting and photographing by the building official.

Sec. 78.50. Bond required. The application for a permit required by this article shall be accompanied by a bond in the penal sum of $1,000.00, signed by the applicant and by some surety company authorized to do business in this state, conditioned for the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 30 days after delivery. Such bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of such principal.

Sec. 78.51. Fee. Before any permit shall be issued under the provisions of this article, the applicant therefor shall pay a fee, based upon the time period he desires to engage in business in the city, as follows:

(a)	Per day	$5.00
(b)	Per week	10.00
(c)	Per month	25.00
(d)	Per three months	50.00
(e)	Per six months	75.00
(f)	Per 12 months	100.00

Sec. 78.52. Issuance. No permit or license shall be issued under the provisions of this article until the applicant shall have complied with all the provisions and requirements of this article.

Sec. 78.53. Issuance to individuals only. No peddler's permit or license shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit or license, whether acting for himself or as an agent or representative of another.

Sec. 78.54. Contents. Each permit or license issued under the provisions of this article shall be signed by the building official; be dated as of the date of its issuance; and state the duration or term of such permit or license on the face thereof. Any permit or license not dated and signed as provided in this section, or which was issued in violation of this section shall be void.

Sec. 78.55. Display. Every peddler having a permit or license issued under the provisions of this article and doing business within the city shall display his permit or license upon the request of any person, and failure to do so shall be deemed a misdemeanor.

Sec. 78.56. Duration. Every permit or license issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit or license be issued for a period of time in excess of 12 months.

Sec. 78.57. Revocation. Any permit or license issued under the provisions of this article may be revoked for the violation by the permittee or licensee of any provision of this Code, state law or city ordinance that directly relates to the duties and responsibilities of the permitted or licensed occupation. Upon such revocation, such permit or license shall immediately be surrendered to the building official, and failure to do so shall be deemed a misdemeanor. **State law reference**- Eligibility of persons with criminal backgrounds for certain occupations, professions and licenses, *Tex. Rev. Civ. St. arts. 6252-13c, 6252-13d*.

Sec. 78.58. Special event permit.

(a) ***Special event defined***. Special event means an activity which makes a significant contribution to the cultural, economic, or social welfare of the city.

(b) ***For sale or distribution of services or goods on public property***. Notwithstanding other provisions of this Code, the building official may issue a special event permit to enable the holder to sell or distribute services or goods on public property during special events.

(c) ***Issued for particular time and location***. A special event permit shall be required for each event. The time and location for which the permit is valid shall be shown on the permit.

(d) ***Application***. An applicant for a special event permit shall file with the building official a written application upon a form provided for that purpose.

(e) ***Fee***. An applicant for, or the holder of, a special event permit shall pay a fee of $25.00/event for the permit, which fee shall be a rental for the use of public property.

(f) ***Inspection or investigation; approval or denial***. After inspection or investigation, the building official shall approve or deny an application for a special event permit. If such application is approved, the building official shall issue a special event permit which shall state on its face the name of the person to whom it is granted and the expiration date. The building official shall designate on such permit the location at which the special event is permitted.

(g) ***Revocation***. The holder of a special event permit who fails to comply with the ordinances of the city or who violates any laws, ordinances, or regulations of the city that directly relate to the duties and responsibilities of the permitted occupation shall have the special event permit immediately revoked and such holder shall immediately return said special event permit to the building official.

(h) ***Compliance of permit holder with article provisions***. Except for the permitting requirements, the applicant for a special event permit and/or the holder of a special event permit shall comply with all of the sections of this article.

Chapters 79 through 81 Reserved

Chapter 82. Personnel[33]

Article I. In General

Article II. Retirement

Division 1. Generally

Division 2. Social Security

Division 3. Texas Municipal Retirement System

Chapter 82. PERSONNEL

[33] **Cross references--**Administration, ch. 2; courts, ch. 42; fire prevention and protection, ch. 46**. State law references**--Social security coverage for employees of political subdivisions, *V.T.C.A., Government Code 606.021 et seq*.; Texas Municipal Retirement System, *V.T.C.A., Government Code ch. 851 et seq*.; workers' compensation, *V.T.C.A., Labor Code cs. 401 et seq., 504.*

ARTICLE I. IN GENERAL

Sec. 82.1. Personnel policies adopted. The following policies rules and procedures heretofore approved and adopted are hereby ratified:

(a) Personnel policies and procedures of the city.

(b) Classification and pay plan of the city.

(c) City class descriptions.

(d) Affirmative action plan of the city.

Secs. 82.2 - 82.25. Reserved.

ARTICLE II. RETIREMENT

DIVISION 1. GENERALLY

Secs. 82.26 - 82.35. Reserved.

DIVISION 2. SOCIAL SECURITY

Sec. 82.36. Council to act on behalf of city. The council acting for and on behalf of the city shall enter into all necessary agreements with the Employees Retirement System of Texas for the purpose of carrying out the provisions of the federal old-age and survivors insurance program. **State law references**--"Retirement system" defined, *Tex. Gov't. Code § 606.001(4)*; agreements with political subdivisions, *Tex. Gov't. Code 606.022*.

Sec. 82.37. Mayor appointed agent. The mayor is hereby appointed as agent of the council and of the city to execute all necessary agreements and instruments for and in behalf of the council and city.

Sec. 82.38. City secretary to make collections and payments. The city secretary is hereby directed to be the person responsible for making assessments, collections, payments, and reports as required by the Employees Retirement System of Texas.

Sec. 82.39. Sufficient sum of money to be allocated. A sufficient sum of money shall be allocated and set aside from available funds for the purpose of carrying out the provisions of the acts mentioned in this division. Such money so allocated and set aside shall be known as the city social security fund, which fund shall be set aside and maintained in the regular city depository.

Secs. 82.40 - 82.50. Reserved.

DIVISION 3. TEXAS MUNICIPAL RETIREMENT SYSTEM

Sec. 82.51. Definitions. The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

System means the Texas Municipal Retirement System.

TMRS Act means *Tex. Gov't. Code ch. 851 et seq.*

Cross reference-Definitions generally § 1.2.

Sec. 82.52. City to participate; exception. The council hereby exercises its option and elects to have the city and all of the employees of all departments now existing or hereafter established, excepting the fire department and emergency medical services, participate in the Texas Municipal Retirement System effective June 1, 1976, as provided in *Tex. Gov't. Code ch. 851 et seq.*, as amended from time to time, and all of the benefits and obligations of such system are hereby accepted as to such employees.

Sec. 82.53. Membership a condition of employment. Each person who becomes an employee of any participating department on or after the effective date of participation of such department shall become a member of the Texas Municipal Retirement System as a condition of his employment. The city may in the future refuse to add new departments or new employees to such system, but shall never discontinue as to any participants.

Sec. 82.54. Deposit rate. In accordance with the provisions of the TMRS Act, the deposits to be made to the Texas Municipal Retirement System on account of current service of the employees of the several participating departments are hereby fixed at the rate of five percent of the earnings of each employee of such departments. **State law reference**-Member contributions, Tex. Gov't. Code § 855.401.

Sec. 82.55. City secretary to remit city's contributions. The city secretary is hereby directed to remit to the board of trustees of the Texas municipal Retirement System, at its office in Austin, Texas, the city's contributions to the system and the amounts which shall be deducted from the compensation or payroll of employees, all as required by the board under the provisions of *Tex. Gov't. Code ch. 851 et seq*., as amended, from time to time, and the city secretary is hereby authorized and directed to ascertain and certify officially on behalf of the city, the prior service rendered to the municipality by each of the employees of the participating departments, and the average prior service compensation received by each, and to make and execute all prior service certifications and all other reports and certifications which may be required of the city under the provisions of *Tex. Gov't. Code ch. 851 et seq*., as amended from time to time, or in compliance with the rules and regulations of the board of trustees of the Texas municipal Retirement System.

Sec. 82.56. Increased city contributions. For each month of current service rendered after January 1, 1997 by each of its employees who are members of the Texas Municipal Retirement System, the city will contribute to the current service annuity reserve of each such member at the

time of his retirement, a sum that is 150 percent of such member's accumulated deposits for such month of employment. Such sum shall be contributed from the city's account in the municipality current service accumulation fund. **State law reference**-Management of assets, *Tex. Gov't. Code § 855.501 et seq.*

Sec. 82.57. Reserved.

Sec. 82.58. Adoption of provisions affecting city employees--Enumeration. Pursuant to the provisions of *Tex. Gov't. Code §§ 852.105* and *854.202*, as amended from time to time, the city adopts the following provisions affecting participation of its employees in the Texas Municipal Retirement System:

(a) Any member, after one year from the effective date of his membership in the system, shall be eligible for service retirement if he has attained the age of 50 years and has completed 25 years of creditable service with one or more municipalities that have authorized eligibility under *Tex. Gov't. Code § 854.202*, as amended from time to time, or if he has attained the age of 60 years and has completed at least ten years of creditable service with one or more municipalities that have authorized eligibility under *Tex. Gov't. Code § 854.202*, as amended from time to time.

(b) The membership of any person who has completed at least ten years of creditable service with participating municipalities that have authorized eligibility under *Tex. Gov't. Code § 854.202*, as amended from time to time, shall not terminate because of absence from service.

(c) Any person who is an employee of a participating department of this municipality on January 1, 1990, but who at the date of his or her latest employment prior to September 1, 1987, did not become a member of Texas Municipal Retirement System at that time because he or she was then above the maximum age then prescribed by law for initial membership in the system, shall be allowed prior service credit for each month of creditable service performed for this municipality subsequent to the date such person was precluded from membership and prior to September 1, 1987 such prior service credit shall be calculated as provided in *Section 853.105(e) of the TMRS Act.*

Sec. 82.59. Additional Rights, credits and benefits. The rights, credits and benefits authorized in section 82.58 shall be in addition to the plan provisions adopted and in force January 1, 1990.

Sec. 82.60. Same-Additional provisions. Pursuant to the provisions of *Tex. Gov't. Code §§ 854.202(f), 854.204, 854.405, 854.406 and 854.410*, as amended from time to time the city adopts the following provisions affecting participation of its employees in the Texas Municipal Retirement System:

(a) Any employee of this city who is a member of the system is eligible to retire and receive a service retirement annuity, if the member has at least 25 years of credited service in that system performed for one or more municipalities that have participation dates after September 1, 1987, or have adopted a like provision under *Tex. Gov't. Code § 854.202(f)*, as amended from time to time.

(b) If a member described in *Tex. Gov't. Code § 854.204(b),* as amended from time to time, shall die before becoming eligible for service retirement and leaves surviving a lawful spouse whom the member has designated as beneficiary entitled to payment of the member's accumulated contributions in the event of the member's death before retirement, the surviving spouse may by written notice filed with the system elect to leave the accumulated deposits on deposit with the system, subject to the terms and conditions of *Tex. Gov't. Code § 854.204*, as amended from time to time. If the accumulated deposits have not been withdrawn before such time as the member, if living, would have become entitled to service retirement, the surviving spouse may elect to receive, in lieu of the accumulated deposits, an annuity payable monthly thereafter during the lifetime of the surviving spouse in such amount as would have been payable to the surviving spouse had the member lived and retired at that date under an optional annuity described by *Tex. Gov't. Code § 854.104(c)(1),* as amended from time to time.

(c) At any time before payment of the first monthly benefit of an annuity, a surviving spouse to whom subsection (b) of this section applies may, upon written application filed with the system, receive payment of the accumulated contributions standing to the account of the member in lieu of any benefits otherwise payable under this section. if such a surviving spouse shall die before payment of the first monthly benefit of an annuity allowed under this section, the accumulated contributions credited to the account of the member shall be paid to the estate of such spouse.

(d) The rights, credits and benefits authorized in this section shall be in addition to the TMRS plan provisions heretofore adopted and in force January 1, 1990.

(e) Any employee of this city who is a member of the system is eligible to retire and receive a standard occupational disability retirement annuity under *Tex. Gov't. Code § 854.408*, as amended from time to time, or an optional occupational disability retirement annuity under *Tex. Gov't. Code § 854.410*, as amended from time to time, upon making application therefor upon such form and in such manner as may be prescribed by the board of trustees of the system, provided that the system's medical board has certified to the board of trustees that:

(1) The member is physically or mentally disabled for further performance of the duties of the member's employment;

(2) The disability is likely to be permanent; and

(3) The member should be retired.

Any annuity granted under this subsection shall be subject to the provisions of *Tex. Gov't. Code § 854.409*, as amended from time to time.

(f) The provisions relating to the occupational disability program, as set forth in subsection (5) of this section are in lieu of the disability program provided for under *Tex. Gov't. Code §§ 854.301-854.308*, as amended from time to time.

Sec. 82.61. Establishing credit for military service. In order to establish credit for military service, a member must deposit with the Texas Municipal Retirement System (in that member's individual account in the employees saving fund), an amount equal to the number of months for which credit is sought, multiplied by $15.00. The city agrees that its account in the municipality accumulation fund is to be charged at the time of the member's retirement with an amount equal to the accumulated amount paid by the member for military service credit, multiplied by the city's current service matching ratio in effect at the date the member applies for such military service credit.

Sec. 82.62. Authorization of updated service credits.

(a) On the terms and conditions set out in *Tex. Gov't. Code §§ 853.401* through *853.404,* as amended, (hereinafter referred to as the "TMRS Act") each member of the Texas Municipal Retirement System (hereinafter referred to as the "system") who has current service credit or prior service credit in the system in force and effect on January 1 of the calendar year preceding such allowance, by reason of service in the employment of the city, and on such date had at least 36 months of credited service with the system, shall be and is hereby allowed "updated service credit," as that term is defined in *Tex. Gov't. Code § 853.402(d) of the TMRS Act*.

(b) The updated service credit hereby allowed and provided for shall be 100 percent of the base updated service credit of the member, calculated as provided in *Tex. Gov't. Code § 853.402(c)* of the TMRS Act. If the city has previously adopted, or if it hereafter adopts an ordinance authorizing updated service credit for unforfeited credit for prior service or current service with any other participating municipality, the calculations and adjustments set forth in *Tex. Gov't. Code § 853.601* of the TMRS Act, shall apply to any such transferred service.

(c) Each updated service credit allowed under this section shall replace any updated service credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(d) In accordance with the provisions of *Tex. Gov't. Code § 853.401(c)* of the TMRS Act, the deposits required to be made to the system by employees of the several participating departments on account of current service shall be calculated from and after January 1, 1997 on the full amount of such person's compensation as an employee of the city.

Sec. 82.63. Increase in retirement annuities.

(a) On terms and conditions set out in *Tex. Gov't. Code § 854.203* of the TMRS Act, the city hereby elects to allow and to provide for payment of the increases below stated in monthly benefits payable by the system to retired employees and to beneficiaries of deceased employees of the city under current service annuities and prior service annuities arising from service by such employees to the city. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of the annuity increase under this section is computed as the sum of the prior service and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by 70 percent of the percentage change in Consumer Price Index for All Urban Consumers, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of such increases.

(c) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(d) If a computation under this section does not result in an increase in the amount of an annuity, the amount of the annuity will not be changed under this section.

(e) The amount by which an increase under this section exceeds all previously granted increases to an annuitant is an obligation of the city and of its account in the municipality accumulation fund of the system.

Sec. 82.64. Dates of allowances and increases. The initial allowance of updated service credit and increase in retirement annuities under this division shall be effective on January 1, 1997, subject to approval by the board of trustees of the system. An allowance of updated service credits and an increase in retirement annuities shall be made under this division on January 1 of each subsequent year until sections 82.62--82.64 cease to be in effect under *Tex. Gov't. Code § 853.404(e)* of the TMRS Act, provided that as to such subsequent year, the actuary for the system has made the determination set forth in *Tex. Gov't. Code § 853.404(d)*, the TMRS Act.

Chapters 83 through 85 Reserved

Chapter 86. Secondhand Goods[34]

Article I. In General

Sec. 86.1-86.25. Reserved.

Article II. Junkyards

Chapter 86. SECONDHAND GOODS

ARTICLE I. IN GENERAL

Secs. 86.1 - 86.25. Reserved.

ARTICLE II. JUNKYARDS

Sec. 86.26. Declared nuisance unless licensed. Any place used or maintained by any person as a junkyard or dumping ground; for wrecking or disassembling of automobiles, trucks, tractors, or machinery of any kind; for the storing or leaving of worn out, wrecked, or abandoned automobiles, trucks, tractors, or machinery of any kind, of any of the parts thereof; or for the maintenance or the operation of such place for the accumulation of rubbish of any description is hereby declared to be a public and common nuisance, being obnoxious and offensive to the inhabitants of the city, because of its interference with the comfortable enjoyments of life and property by such inhabitants, and is prohibited within the city limits, unless the junkyard is conducted in the manner stated in this article, following the payment of the license fee prescribed in section 86.27.

Sec. 86.27. Issuance of license; fee. Any person desiring to use or maintain any property within the city for any of the purposes mentioned in section 86.26 shall make written application to the city secretary for a license, which application shall set forth the name and address of the applicant and a legal description of the property or premises upon which the business is to be conducted. The city secretary shall have the power to grant or reject such application. If the application is granted, a license to operate such business shall be issued by the city secretary upon payment of a fee of $5.00 per annum. Any license so issued shall expire on January 1 next succeeding the date

[34] **Cross references-** Businesses, ch. 26; health and sanitation, ch. 54; peddlers and solicitors, ch. 78; zoning, ch. 188. **State law references-**Automotive wrecking and salvage yards, *Tex. Trans. Code, § 391.091 et. seq*.; control of automobile wrecking and salvage, *Tex. Trans. Code Chapt. 396*, *Tex. Loc. Gov't. Code § 50.012*; regulated consumer loans, *Title 5, Tex. Finance Code*; secondhand metal dealers, *Tex. Rev. Civ. St. art. 9009 et seq*.; certain recycling or waste separation facilities not required to have separate permit, *Tex. Health and Safety Code § 361.0861*.

of its issuance, but may be issued form year to year in the same manner as provided for in the original license.

Sec. 86.28. Screening requirements. Any person granted a license, as provided for in section 86.27, shall keep the premises used in the operation and maintenance of such business in a neat and orderly condition. The property and premises on which the business is conducted shall be enclosed by a tight board fence or any comparable screening device approved by the city council of the city at least six feet high to screen the premises from view by the public. Such fence shall be kept in a neatly painted condition, and no junk of any character, parts, or machinery of any kind shall be allowed to remain outside such fence.

Sec. 86.29. Planning and zoning commission to review applications for license. If a legally constituted planning and zoning commission is functioning for the city, the city secretary shall, before passing upon any application as provided in this article, secure the approval or disapproval of the planning and zoning commission.

Sec. 86.30. Revocation of license. The council shall have the power to revoke the license provided for in this article at any time for good cause, but only after notice has been given to the owner of the business of a hearing to be held not less than ten days after the service of such notice.

Chapter 87

JUNKED AND ABANDONED MOTOR VEHICLES

Article I. General Provisions

Article II. Abandoned Vehicles

Article III. Junk Vehicles.

JUNKED AND ABANDONED MOTOR VEHICLES

ARTICLE I. GENERAL PROVISIONS

Sec. 87-1. State Law Applicable. The Texas Transportation Code Chapter 683, as amended, is adopted by reference and the provisions of said Chapter shall control and take precedence over any conflicting provisions of this Chapter.

Sec. 87-2. Definitions. As used in this Chapter, the following terms shall have the meaning indicated below:

Abandoned Motor Vehicle means a vehicle that:

(i) is inoperative and over five years old and is left unattended on public property for more than 48 hours; or

(ii) has remained illegally on public property for a period of more than 48 hours;

(iii) has remained on private property without the consent of the owner or person in control of the property for more than 48 hours; or

(iv) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours.

Junked Vehicle means a motor vehicle, aircraft, or watercraft, that:

(1) is self-propelled; and

(2) is:

(A) wrecked, dismantled or partially dismantled, or discarded; or

(B) inoperable and has remained inoperable for more than:

(i) 72 consecutive hours, if the vehicle is on public property; or

(ii) 30 consecutive days, if the vehicle is on private property; and

(3) is:

(A) a motor vehicle that displays an expired license plate or does not display a license plate; or

(B) an aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; or

(C) a watercraft that:

(i) does not have lawfully on board an unexpired certificate of number; and

(ii) is not a watercraft described by Section 31.055, Texas Parks and Wildlife Code.

Junked Vehicle Parts means parts from a junked vehicle.

Antique Vehicle means a passenger car or truck that is at least 25 years old.

Motor Vehicle Collector means a person who: (1) owns one or more antique or special interest vehicles; and (2) acquires collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Special Interest Vehicle means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Demolisher means a person whose business is to convert a motor vehicle into proceed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

Garagekeeper means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of a motor vehicle.

Motor Vehicle means any motor vehicle subject to registration pursuant to the Certificate of Title Act, *Chapt. 501, Tex. Trans. Code.*

Outboard Motor means an outboard motor subject to registration under *Chapt. 31, Parks & Wildlife Code.*

Officer means any person designated by the City Council as authorized to investigate and enforce suspected violations of City ordinances or regulations.

Person means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

City means the City of Lexington, Texas.

City Council means the city council of the City of Lexington, Texas.

City Secretary means the City Secretary of the City of Lexington, Texas.

Sec. 87-3. Enforcement. The administration of this Ordinance shall be the responsibility of the Police Department or such department, officer or employee of the City designated by the City Council; provided that the Chief of Police, or such other salaried, full-time employee of the City

as designated by the City Administrator, is authorized to administer and supervise the procedures, sections and provisions of this Ordinance applying to abandoned and junk vehicles. Whoever is so authorized may enter upon private property for the purposes specified in the s Ordinance to examine motor vehicles or parts thereof, obtain information as to the identity of motor vehicles and to remove or cause the removal of a motor vehicle or parts thereof declared to be nuisance pursuant to this Ordinance. Upon request by the officer designated pursuant to this Section, the municipal court may issue orders necessary to the enforcement of this Ordinance.

Sec. 87-4. Effect on Other Statues of Ordinances. Nothing in this Chapter shall affect statues that permit immediate removal of vehicles left on public property that obstruct traffic or otherwise create an imminent threat to health and safety.

Sec. 87-5. Storage Fees. The Police Department shall be entitled to charge and collect reasonable storage fees for Abandoned and Junked Vehicles removed and stored pursuant to this ordinance. Such fees shall be established by the City Council and, absent the City Council having established such fees, the Police Department. Such fees may be charged beginning the day the vehicle is taken into custody as follows:

(a) For a period of up to ten (10) days prior to the date of mailing of written notice pursuant to this ordinance;

(b) Beginning on the day after written notice is mailed until the vehicle is reclaimed or disposed of pursuant to this ordinance. If any such vehicle is stored with a garagekeeper, the Police Department shall not charge an additional fee for any day that the garagekeeper charges a fee.

Sec. 87-6. Penalties. Any person convicted of violating any provision of this ordinance shall be guilty of a misdemeanor and shall be subject to a fine in an amount not to exceed Two Hundred dollars ($200.00) and each day of such violation shall be a separate violation.

Secs. 87-7—87-9. Reserved.

ARTICLE II. ABANDONED VEHICLES

Sec. 87-10 Authority to Take Possession. The police Department is authorized to take into custody any abandoned motor vehicle, watercraft or outboard motor found on public or private property. The police Department may use personnel, equipment and facilities or the Police Department or other personnel, equipment, and facilities provided by contract with the city to remove, preserve, and store an abandoned motor vehicle, watercraft, or outboard motor taken into custody of the Police Department.

Sec. 87-11 Notice of Impoundment of Abandoned Motor Vehicles.

(a) When information exists sufficient to permit notice of impoundment of abandoned motor vehicles, watercraft, or outboard motor to the owner and lien holder, notice shall be given by mail to the registered owner and lienholder as follows:

(i) The police Department shall send notice of abandonment to each registered owner and lienholder showing of record pursuant to the *Certificate of Title Act, Chapt. 501, Tex. Trans. Code*, or as applicable, *Chapt. 31, Parks & Wildlife Code.*

(ii) Such notice shall be given within (10) days after the date motor vehicle, watercraft or outboard motor is taken into custody, or the date the police department receives a report of abandonment.

(iii) The notice shall be by certified mail, return receipt requested, specifying the year, make, model and identification number of the item, set forth the location of the facility where the item is being held, inform the owner and any lienholder of the right to reclaim the item not later than the 20th day after the date of the notice, on payment of all towing, preservation, storage and/or garage keeper charges.

(iv) The notice shall state that the failure of the owner or lienholder(s) to exercise the right to reclaim the item within the time provided shall be deemed a waiver of all right, title, and interest in the item and their consent to the sail of the item at a public auction.

(b) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholder, notice by one publication in a newspaper of general circulation in the City shall be made with ten (10) days from the date the item was taken into custody, or from the date the report of abandonment was received. The published notice shall be sufficient if it contains the information otherwise required to be included in the notice by mail. A list of motor vehicles, watercraft or outboard motors may be included in the same publication.

Sec. 87-12 Use of Abandoned Motor Vehicles.

(a) Provided that a gargekeepers lien has not attended to the vehicle, if an abandoned motor vehicle has not been reclaimed as provided in Section 87.011 hereof, the Police Department may use such abandoned motor vehicle for Police Department purposes if such use is cost-effective.

(b) If the Police Department is discontinues use of the abandoned motor vehicle, the Police Department shall auction such abandoned motor vehicle as provided herein.

Sec. 87-13 Auction Sales; Disposition of Proceeds Generally.

(a) If an abandoned motor vehicle, watercraft or outboard motor has not been reclaimed within twenty (20) days after the date of notice and payment of all towing, preservation and storage charges resulting from its impoundment, the Police Department shall sell the item at a public auction. Proper notice of the public auction shall be given and, in the event a vehicle is to be sold in satisfaction of a gargekeeper's lien, the garagekeeper shall be notified of the time and place of such auction.

(b) The Police Department shall furnish a sales receipt for each vehicle to the purchaser thereof at the public auction.

(c) The proceeds shall be applied first to reimburse the Police Department for the expenses of the auction, costs of towing, preserving and storing the vehicle, and all notice and publication costs, and any remainder from the proceeds of the sale shall be held for the owner of the vehicle or entitled lienholder for ninety (90) days, and then shall be deposited in a special fund with the City Treasurer which shall remain available for the payment of auction, towing, preserving, storage and all notice and publication costs which result from placing other abandoned motor vehicles are insufficient to meet these expenses and costs. In the event the special fund on deposit with the City Treasurer accumulates to an excess of $1,000, the City Council may transfer the balance of such fund that exceeds $1,000, to the general fund for use by the Police Department as budgeted.

Sec. 87-14 Custody, Reports and Proceeds of Abandoned Motor Vehicles.

(a) The Police Department, upon receipt of a report from a garagekeeper that a motor vehicle has been deemed abandoned pursuant to *§683.031, Tex. Trans. Code*, shall follow the notification procedures set forth in Section 87.011 herein for the giving of notice to owners and lienholders of abandoned vehicles, except that custody of the vehicle shall remain with the garagekeeper until after the notification requirements have been satisfied.

(b) A fee of five dollars ($5.00) shall accompany the report of the garagekeeper and such fee shall be retained by the Police department receiving the report and used to defray the cost of notification or other costs incurred in the disposition of such vehicles, and such fee shall be deposited in the general fund of the City.

(c) Abandoned vehicles left in storage facilities, which are not reclaimed after notice is given in accordance with this subchapter, shall be taken into custody by the Police Department and sold at auction, as in the cases of other abandoned motor vehicles. The proceeds of the sale shall first be applied to the gargekeeper's charges for servicing, repair, and storage, provided the garagekeeper properly notified the Police Department within seven days of the abandonment; however the Police Department shall retain an amount of two percent (2%)of the gross proceeds of the sale for each vehicle auction, but in no event shall it retain less than ten dollars ($10.00), to be used to defray expenses of custody, auction, and storage fees accrued according to Section 87.005.

(d) The Police Department shall not take custody of a motor vehicle, watercraft, or outboard motor more than thirty-one days after the notices are sent according to Section 87.011. After the thirty first day, the storage facility having custody of the abandoned vehicle shall dispose of the vehicle pursuant to the requirements of Chapter 70, Property Code.

Sec. 87-15 Disposal of Abandoned Motor Vehicle to Demolisher. The Police Department is authorized to apply to the Texas Department of Transportation for authority to sell, give away or dispose of any abandoned motor vehicle in its possession to a demolisher in accordance with the provisions of *Chapt. 683, Tex. Trans. Code*.

Sec. 87-16—87-19 Reserved.

ARTICLE III. JUNK VEHICLES.

Sec. 87-20. Junked Vehicles a Public Nuisance. A junked vehicle, including a part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way, is detrimental to the safety and welfare of the general public; tends to reduce the value of private property; invites vandalism; creates a fire hazard; is an attractive nuisance creating a hazard to the health and safety of minors; and is detrimental to the economic welfare of the City by producing urban blight which is adverse to the maintenance and continuing development of the City. As such, these vehicles are declared to be a public nuisance.

Sec. 87-21. Nuisance Prohibited. It shall be unlawful for any person to maintain, possess, or locate a junked vehicle or parts or portions thereof, within the City of Lexington, in violation of this Article.

Sec. 87-22. Complaint and Investigation.

(a) Any person may file a complaint alleging the existence of a junked vehicle, or part thereof, as a public nuisance in the City. The complaint must:

(1) Be in writing;

(2) Provide sufficient details about the alleged nuisance so that its location can be determined;

(3) Be signed by the complainant; and

(4) Be filed with the City Secretary, Municipal Court Clerk, or other individual designated by the City Council.

(b) On his/her own knowledge or on the basis of a written complaint, an officer shall investigate the alleged existence of a junked vehicle, or part thereof, on private or public property or a public right-of-way within the City.

(c) The officer may enter private property where the alleged junked vehicle, or part thereof, is located in order to examine the public nuisance, to obtain information to identify the nuisance and to remove or direct removal of the nuisance.

Sec. 87-23. Notice and Hearing.

(a) If it is determined by the officer that a nuisance, as defined herein, exists in the City, the officer shall give notice or cause notice to be given in writing. The notice shall state: the nature of the public nuisance; that the nuisance must be removed and abated not later than the tenth (10^{th}) day after the date on which the notice was personally delivered or mailed and that a request for a hearing must be made before that ten (10) day period expires. The notice must be personally delivered, sent by certified mail with a five (5) day return requested, or delivered by the United State Postal Service with signature confirmation service to:

(1) The last known registered owner of the nuisance;

(2) Each lien holder of record of the nuisance; and

(3) The owner or occupant of:

(A) The property on which the nuisance is located; or

(B) If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(b) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance, or if the owner is located by other means, personally delivered.

(c) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of the return.

(d) A hearing must be held, prior to the removal of the junked vehicle or the part thereof as a public nuisance, before the Municipal Court Judge, when such hearing is requested by the owner or occupant of the premises on which said vehicle is located, not earlier than the eleventh (11th) day after service of notice to abate the nuisance. At the hearing, the junked vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include:

(1) for a motor vehicle, the vehicle's:

(A) description;

(B) vehicle identification number; and

(C) license plate number;

(2) for an aircraft, the aircraft's:

(A) description; and

(B) federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and

(3) for a watercraft, the watercraft's:

(A) description; and

(B) identification number as set forth in the watercraft's certificate of number.

(e) If, after written notice has been given, as described in this Article, and continuing through the hearing, the owner relocates the junked vehicle, or a part thereof, to another location in the City of Lexington, Texas the relocation has no effect on the hearing if the vehicle, or a part thereof, constitutes a public nuisance at the new location.

Sec. 87-24. Order by Judge.

(a) After the hearing is held by the Municipal Court Judge as herein provided, if the Judge finds that such a nuisance as herein defined exists, the Judge shall order the owner or occupant of the premises on which said vehicle is located to remove such junked

vehicle within ten (10) days after said order is given to such owner or occupant of the premises on which said vehicle is located.

(b) It shall be unlawful and a violation of this Article for any person to whom such order is given to fail or refuse to comply therewith and to fail to remove such junked vehicle within the time provided by said order.

Sec. 87-25. Duty of Owner or Occupant. In the event the owner or occupant of the premises does not request a hearing, as herein provided, it shall be his duty to comply with the provisions of the notice given him and to abate such nuisance within ten (10) days after the date of the receipt of such notice.

Sec. 87-26. Vehicles not to be Made Operable. After a vehicle has been removed in accordance with or under the terms and provisions of this Article, it shall not be reconstructed or made operable.

Sec. 87-27. Notice to TXDOT. Notice shall be given by the officer to the Texas Department of Transportation ("TXDOT") within five (5) days after the date of removal identifying the vehicle or part thereof.

Sec. 87-28. Affirmative Defenses. It is an affirmative defense to prosecution under this Article if a junked vehicle or junked vehicle part:

(a) Is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or

(b) Is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:

(1) maintained in an orderly manner;

(2) not a health hazard; and

(3) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

(c) Is farm machinery or equipment whose primary purpose is for agricultural or ranching activities.

Sec. 87-29. Administration. The administration of this Article shall be by regularly salaried, full-time employees of the City of Lexington, except that the removal of junked vehicles or parts thereof from property may be by any other duly authorized person.

Sec. 87-30. Removal. After ten (10) days after notice has been delivered to the owner or occupant of the premises on which a junked vehicle is located if a hearing is not requested, or if a hearing is requested, after ten (10) days after an order requiring the removal of such junked vehicle has been served upon or delivered to the owner or occupant of the premises on which said vehicle is located, the officer, if said nuisance has not been abated, may remove or cause to be removed the vehicle which was the subject of such notice to a scrap yard, a motor vehicle demolisher, or any suitable site operated by the City, for processing as scrap or salvage pursuant to authority provided in the Texas Transportation Code, § 683.078 or any successor statute for junked vehicle disposal.

Sec. 87-31. Enforcement.

(a) The City of Lexington, Texas, shall have the power to administer and enforce provisions of this Article as may be required by governing law. Any person violating any provision of this Article is subject to suit for injunctive relief as well as prosecution for criminal violations.

(b) Any person who violates any provision of this Article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not to exceed Two Hundred and No/100 Dollars ($200.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(c) No culpable mental state shall be required for a conviction under this Article.

(d) Nothing in this Article shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Article and to seek remedies as allowed by law, including but not limited to the following:

(1) Injunctive relief to prevent specific conduct that violates the Article or to require specific conduct that is necessary for compliance with the Article;

(2) A civil penalty up to one hundred dollars ($100.00) a day when it is shown that the defendant was actually notified of the provisions of this Article and after receiving notice committed acts in violation of the Article or failed to take action necessary for compliance with the Article; and

(3) Other available relief.

Chapters 88 through 89 Reserved

Chapter 90. Solid Waste[35]

Article I. In General

Article II. Containers

Article III. Collection and Disposal

Chapter 90. SOLID WASTE

ARTICLE I. IN GENERAL

[35] **Cross references-**Administration, ch. 2; fire prevention and protection, ch. 46; burning trash within fire zones, § 46.3; health and sanitation, ch. 54; utilities, ch. 110**. State law reference--**Municipal powers relating to public health, *Tex. Health and Safety Code § 122.005, Tex. Loc. Gov't. Code, § 51.012*; minimum standards of sanitation and health protection measures, *Tex. Health and Safety Code § 341.001 et seq*.; local regulation of sanitation, *Tex. Health and Safety Code § 342.001 et seq*.; Solid Waste Disposal Act, *Tex. Health and Safety Code § 361.001 et seq*.; Solid Waste Resource Recovery Financing Act, Tex. Health and *Safety Code § 362.001 et seq*.; municipal solid waste, *Tex. Health and Safety Code § 363.001 et seq*.; litter, *Tex. Health and Safety Code § 365.001 et seq.*

Sec. 90.1. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building waste and rubble means concrete, tile, plaster, rock, shingles, scrap lumber and trimmings, sawdust and shavings and like material generated as scrap and waste in the construction of a building, or unsalvageable material resulting from demolition of a building.

Garbage means all animal and vegetable matter, such as waste material and refuse from kitchens, residences, grocery stores, butcher shops, cafes, restaurants, drugstores, hotels, rooming houses, boarding houses and apartment houses, and other deleterious substances, not to include dirt, concrete, tile, plaster, rocks, and other such substances.

Person means and embraces any person, firm or corporation, their agents, servants, tenants, and employees.

Trash means rubbish, such as feathers, coffee grounds, ashes, tin cans, paper bags, boxes, glass, newspapers, magazines, and other such paper products, grass shrubs, flowers, yard cleanings, grass clippings, leaves, and tree trimmings, not to include dirt, concrete, tile, plaster, rocks and other such substances. **Cross reference-** Definitions generally, § 1.2. **State law reference-** Definitions, *Tex. Health and Safety Code § 361.003*

Sec. 90.2. Depositing garbage and wastes on streets and vacant lots. It shall be unlawful for any person to sweep, haul, throw, or deposit any garbage, handbills, trash, concrete, rocks, brick, plaster, tile, stagnant water, dead animals, building waste or rubble into, upon or along any drain, gutter, alley, sidewalk, parkway, street, in the window, on the door handle, or under the windshield wiper of an automobile, or vacant lot, or upon any public or private premises within the corporate limits of the city. If commercial handbills are distributed they must be distributed in a manner prescribed by the council and with written permission from the mayor, certifying conformity with the outlined requirements of the council. **State law reference-** Texas Litter Abatement Act, *Tex. Health and Safety Code ch. 365*.

Sec. 90.3. Duty of health officer - inspection and enforcement of chapter. In addition to the usual enforcement agencies of the city, it is hereby the duty of the city health officer or his authorized representatives to make inspection trips at regular intervals to determine whether or not garbage and trash is being properly collected, removed, and disposed of as required by the provisions of this chapter or any other applicable ordinance. If it is found that this article or any other applicable ordinance is being violated, appropriate and timely action shall be taken to ensure full compliance with its provisions.

Secs. 90.4 - 90.25. Reserved.

ARTICLE II. CONTAINERS

Sec. 90.26. Duty of owner to provide. Every owner, occupant, tenant, or lessee using or occupying any building, house or structure within the corporate limits of the city for residences,

churches, schools, colleges, universities lodges, commercial uses, industrial uses, business or other purposes shall provide and maintain garbage cans and receptacles of sufficient number and type, as specified in this article, to hold the garbage and trash that will normally accumulate on the premises; provided, however, that if bulk refuse containers for the collection and disposal of garbage and trash are provided by the city, other types of additional containers or cans shall not be required.

Sec. 90.27. Container use for garbage and trash.

(a) Each of such owners, occupants, tenants, or lessees described in section 90.26 shall provide an adequate number of suitable metal containers, or of other suitable material, approved by the director of public works and/or the mayor, for garbage and trash which must be substantially constructed, watertight, and of a solid and durable grade of metal or other material of not less than 20-gallon nor more than 32-gallon capacity, and the combined weight of the container and the contents shall not exceed 50 pounds. The container shall be provided with suitable lifting handles on the outside and a closefitting metal or other approved cover equipped with a handle. The container must not have any inside structures, such as inside bands or reinforcing angles or anything within the container to prevent the free discharge of the contents. Containers that have deteriorated, or that have been damaged to the extent of having jagged or sharp edges capable of causing injury to city collectors, or other persons whose duty is to handle the containers, or to such an extent that the covers will not fit securely, will be condemned by the city, acting through its director of public works or his duly authorized representatives. If such containers are not replaced after notice to the owner or user of their defective condition, they shall be confiscated.

(b) Plastic refuse sacks of polyethylene film of not less than two millimeter thickness or 30-gallon reinforced paper garbage bags shall be acceptable substitutes for metal or other cans.

Sec. 90.28. Lids or covers to be kept secure and fastened except when in actual use. The lids or covers of all garbage and trash containers shall at all times be kept secure and fastened so that flies and other insects may not have access to the contents. Such lids or covers shall only be removed while the containers or receptacles are being filled or emptied.

Sec. 90.29. Owner to use containers provided by the city. Every owner, occupant, tenant, or lessee using or occupying any building, house, or structure within the corporate limits of the city for residences, churches, schools, colleges, universities, lodges, commercial use, industrial use, business or other purposes, which is served for trash and garbage collection service by a build refuse container provided by the city, shall be required to use the container for such purpose; provided, however, that such persons served by a bulk refuse container furnished by the city may use additional containers if a need for such containers is shown.

Sec. 90.30. Duty of the owner to reduce size of bulky objects. Every owner, occupant, tenant, or lessee using or occupying any building, house, or structure within the corporate limits of the city for residences, churches, schools, colleges, universities, lodges, commercial use, business use, or other purposes, which is served for trash and garbage collection service by a bulk refuse container provided by the city, shall be required to first reduce the size of any bulky object before placing it in the metal container for disposal. Bulky objects shall include, but not be limited to,

cardboard boxes, paper containers, wooden boxes and crates, and other such objects larger than 18 inches in width or depth and 18 inches in height.

Secs. 90.31 - 90.55. Reserved.

ARTICLE III. COLLECTION AND DISPOSAL

Sec. 90.56. Placement of garbage and trash cans. If the house, building or premises from which the garbage and trash is to be collected and removed is adjacent to an alley, the owner, occupant, or lessee of such premises shall be required to place the containers adjacent to the alley for collection, in order that they may be easily accessible to the collector from the outside of any fence that may surround the premises. If it is not practicable to collect and remove garbage and trash from an alley, or if there is no alley adjacent to the premises, the owner, occupant, tenant, or lessee of the premises shall place the container for collection so that the collector shall not be required to go more than 20 feet beyond the collection vehicle for the purposes of collection. Nor shall the collector be required to service containers within a fence unless such containers can be easily removed by the collector without going inside of such fenced area. In no event shall the collector be required to enter buildings, garages, breezeways, carports, or other structures to make collections. No container shall be placed either for storage or collection at a point nearer the street than the front of each principal building, house, dwelling unit, or structure concerned. If it is not practical to place the containers for collection, as specified in this section, the director of public works and/or the mayor shall determine the location of the containers.

Sec. 90.57. Collection of trash not in containers. Trash of such a nature that it cannot be placed in regulation containers shall be placed for collection as provided in sections 90.62 and 90.63, as applicable, at the same location as the garbage containers. Trash volumes not exceeding one cubic yard may be placed for collection on a single day.

Sec. 90.58. Disposal of dead animals. Dogs, cats, or any other dead animals shall not be placed in garbage or trash containers. The dead animals pickup service of the city will, upon notice to do so, remove such small dead animal. **Cross reference-***Animals, ch. 14.*

Sec. 90.59. Removal of building waste and rubble at owner's expense. Rock, dirt, concrete, brick, tile, plaster, waste, scrap building materials, or other trash resulting from construction or major remodeling, resulting from a general cleanup of vacant or improved property just prior to its occupancy; or resulting from sizable amounts of trees, brush, and debris, cleared from property in preparation for construction will not be removed by the city as a regular service. The owner will have such debris removed at his expense. **Cross reference-***Buildings and building regulations, ch. 22.*

Sec. 90.60. Wastes from tree trimming operations. It shall be the duty of any person employing, engaging, or otherwise paying a contractor, student, professional tree trimmer, or any other person, to trim and prune his trees or shrubs to have the trimmings and debris removed at the owner's expense. The city will not remove trimmings and debris created by such persons as a regular service.

Sec. 90.61. Cans and receptacles emptied; report after seven days. Every owner, occupant, tenant, or lessee of a house or building used for residential, public, business, or commercial purposes is required to maintain constant supervision and surveillance over the garbage and trash cans servicing his premises. If the cans and receptacles are not emptied and the contents removed by an agent or representative of the city or other duly authorized person for a period of seven days, he must notify the mayor of this fact within three days.

Sec. 90.62. Garbage and trash to be drained, animal matter to be wrapped in paper. All garbage and trash that is mixed with water or other liquid shall be thoroughly drained before being put in garbage and trash cans or receptacles for collection. All animal matter that is subject to decomposition shall be well wrapped in paper or other combustible material before being deposited in such container or receptacle.

Sec. 90.63. Rates.

(a) ***Residential and commercial collections***. Pursuant to the City's contract for solid waste collection and disposal, rates for residential and commercial collection of garbage and trash shall be established from time to time by a separate ordinance adopted by the City Council. Residential collection shall be one pickup per week with all trash contained in containers provided by the company contracting with the City. The rates, volumes and frequencies of collection for commercial service including dumpsters and roll-off boxes, shall be established by ordinance pursuant to the contract.

(b) ***Brush pickup***. In order to have brush and tree limbs picked up by the city, the following shall be required: (1) Brush must be cut and tied in bundles four feet long, 18 inches in diameter and not to exceed 50 pounds. For up to four bundles per pickup, along with regular garbage pickup, there will be no extra charge. (2) Brush that is not cut and tied as required in subsection (b)(1) of this section will have a charge of $6.00 per cubic yard. (3) Brush pickup that requires a special trip will have an extra charge of $7.50, plus the regular $6.00 per cubic yard.

Sec. 90.64. Payment of rates. Rates for residential and commercial refuse collection, as per section 90.63 will be due and payable under the same terms and conditions as specified in sections 110.36 and 110.37.

Sec. 90.65. Discontinuance of service. Refuse collection service will be discontinued for nonpayment consistent with the discontinuance of other city utility services as per the terms of chapter 110 of this Code.

Chapters 91 through 93 Reserved

Chapter 94. Streets, Sidewalks and Other Public Places

Article I. In General

Article II. Excavations

Chapter 94. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. IN GENERAL

Sec. 94.1. Removal of materials from city property; application of section.

(a) It shall be unlawful for any person to remove any sand, soil, or other material from any of the streets, alleys, or other public property within the city limits without first obtaining the consent of the council.

(b) This section shall not apply to a person who holds an excavation permit from the city and who only takes actions that comply with that permit.

Sec. 94.2. Sidewalks.

(a) The city hereby designates the sidewalks of the City as a wheeled vehicle free area.

(b) Wheeled vehicles, for purposes of this section is defined as every device, in which, or by which, any person or property is or may be transported or drawn upon a public sidewalk, including self-propelled devices such as bicycles, skateboards, roller skates/blades, motor scooters, motorcycles; but excluding wheel chairs, baby carriages, hand drawn four wheeled wagons and grocery carts.

(c) Whoever shall operate a wheeled vehicle on the above designated sidewalks shall be guilty of a class C misdemeanor.

Sec. 94.3. Culvert installation and maintenance.

(a) Any person desiring access to any property off of a street, street right-of-way, or easement of the City is required to obtain and install a culvert.

(b) No culvert shall be placed in any public easement or right-of-way without first acquiring a culvert permit from the City. The City shall inspect and approve the installation plans for the culvert before issuing a culvert permit. The cost of said permit is twenty-five dollars and no cents ($25.00) which shall be paid to the City before a permit is issued.

(c) Maintenance, repair, and replacement of a culvert shall be the responsibility of the landowner(s) who use the culvert to access their property. Maintenance shall include removal of underbrush, rough mowing, removal of trash and debris, general upkeep of the culvert to maintain a positive flow of storm water in and through the culvert, and cleaning of the culvert to remove sediment or other hindrances to the flow of storm water. Replacement of a culvert is required if any structural failures of the culvert impede the flow of storm water.

(d) If the City provides any services and/or materials during the installation, maintenance, repair, or replacement of a culvert; including, but not limited to gravel, then the landowner(s) shall reimburse the City for the actual costs of the services and/or materials provided.

(e) The issuance of a culvert permit by the City does not grant any right, claim, title, or easement in or upon the public easement or right-of-way on which a culvert is being installed. If for any reason the City should need to work on, improve, relocate, widen, increase, decrease, or in any manner change the public easement, right-of-way, or street upon which the culvert is located then the culvert, if affected, will be relocated at the sole expense of the landowner(s).

(f) Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed five hundred and no/100 dollars ($500.00). Each day in which a violation shall occur or continue shall constitute a separate offense.

Secs. 94.4 - 94.25. Reserved

ARTICLE II. EXCAVATIONS[36]

Sec. 94.26. Permit required to excavate on public property. No person shall cut, trench, excavate, dig or bury pipes, cables, conduit, distribution mains, storm sewers, or in any way otherwise disturb the surface of any street, alley, parkway or other public land belonging to or dedicated to the public use of the city, unless such person shall first obtain from the city a franchise, or a permit as provided in this article.

Sec. 94.27. Emergency excavations. In the event of an emergency affecting the life, health, continuation of utility service or safety of property, the owners of buried lines, pipes, or cables may make cuts or excavations for the purpose of repairing breaks, leaks, or damage to such utilities, provided that a permit shall be obtained at the earliest time practical, and that no excavation shall be backfilled until such permit has been obtained.

Sec. 94.28. Permits-Forms. The permit shall be in such form as may be determined by the director of public works, but shall be suitable for posting, and shall provide space for the name, address, and emergency telephone number of the person responsible for the excavation, and shall be dated. Each excavation shall be covered by a separate permit, and any person using or attempting to use a permit that has expired or that is for a different location shall be guilty of a violation.

Sec. 94.29. Permit Application Contents. The director of public works shall prepare forms with which to apply for permits. such application shall contain the name, address of applicant, of contractors, subcontractors, and local representative of applicant, the location of excavation, the purpose therefor, the name and address of sureties and insurers, and tax identification numbers. Excavations involving the installation of pipes, conduits, cables, or structures shall be accompanied by plans and specifications for same. All applications shall state the date of starting and completion of the work, and evidence of knowledge of existing underground facilities and structures.

Sec. 94.30 Permit fee to accompany application. Each application shall be accompanied by a fee of $5.00 per each excavation, or if the excavation is a trench, for each block; or, if not in blocks, for each 100 years of trench.

Sec. 94.31. Application review and appeals.

(a) Upon receipt of an application for street or right-of-way cutting, the director of public works shall review same, and shall make such recommendations as may be appropriate, and, if necessary, require such additional information as may be necessary to determine if a permit shall be issued, and the special terms and conditions of such permit. Any ruling by the director of public works shall be subject to appeal to the council.

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[36] **State law references-** Trench excavation safety, *Tex. Health and Safety Code § 756.021 et seq.*; subsurface excavations, *Tex. Water Code ch. 31*; parking near street excavation, *Tex. Rev. Civ. Stat., art. 6701d, § 95(a)(1)(F).*

(b) The director of public works shall, acting as custodian of the streets and utilities of the city, grant or deny such application for a permit, or grant it subject to such routing and construction conditions as are necessary for the protection and convenience of the city and the citizens and residents of the city.

(c) Unless otherwise required by the director of public works, all excavations shall comply with the standards contained in this article.

Sec. 94.32. Deposit or performance bond required; exemptions.

(a) Before a permit shall be issued, the applicant shall deposit with the city secretary a cash deposit in an amount determined by the director of public works, which deposit shall be sufficient to ensure that all work is completed in accordance with this article and good construction practice. The deposit shall be placed in a separate bank account established for the purpose, requiring the signature of the applicant and of the city secretary for disbursement, and shall be used only for payment of costs of bedding, backfilling, and resurfacing of excavations to the standards provided in this article. upon completion of the project, any balance remaining in the account shall be released to the applicant.

(b) As an alternative to a cash deposit, the applicant may deposit a contractor's performance bond, payable to the city, executed by the contractor as principal and a corporate surety authorized to do business in the state as surety, in such amount as may be determined by the director of public works as necessary to ensure compliance with the provisions of this article.

(c) Utilities holding franchises from the city are exempt from the provisions of this section, except that failure to meet the standards set out in this section will be cause for the director of public works to revoke this exemption by giving notice in writing that a deposit or bond will be required.

Sec. 94.33. Certificate of general liability insurance required with application. All applicants for a permit shall include with the application a certificate of general liability insurance which shall remain in force until the completion of the excavation project, and which shall be applicable to the project. Such insurance shall provide a bodily injury limit of $100,000.00 per person, $300,000.00 per occurrence, and $25,000.00 property damage. If explosives are to be used in any excavation, the director of public works may require greater property damage limits, and the policy shall specifically ensure against damage by the use of explosives.

Sec. 94.34. Required notifications to be given by applicant for permit. Before any person shall actually commence any trenching or excavation, the director of public works shall be notified. If any streets, alleys, or rights-of-way are to be closed to traffic, notification shall be given to the city police department, the city volunteer fire department, and any property owner in the immediate vicinity of proposed construction of the times such closure is to remain in effect. The applicant shall place in a local newspaper a notice stating the area to be affected by such construction, and approximate starting and completion dates.

Sec. 94.35. Protective devices required. All excavations shall be protected by barricades, lights, flares and, if required by the director of public works, by flagmen. All such protective devices shall conform to standards for such devices provided in the Uniform Manual on Traffic Control Devices.

Sec. 94.36. Maintenance of traffic access. Where traffic must cross open trenches, appropriate bridges shall be provided. Streets, alleys, or driveways affected by work under a permit authorized by this article shall at all times be maintained in a condition which will provide easy ingress and egress to the local residents thereon.

Sec. 94.37. Certain equipment prohibited on streets. No track laying equipment or equipment with outriggers shall be used on a paved street unless the equipment is equipped with street pads to minimize surface damage.

Sec. 94.38. Trench and excavation walls. Trench and excavation walls shall be maintained as nearly vertical as is consistent with the work being done. Shoring may be required to prevent caving of excavated vertical walls, and the director of public works may require removal of wall material which may have been disturbed by the progress of work.

Sec. 94.39. Underground facilities to be located before cutting streets.

(a) Persons excavating city streets are charged with the responsibility of determining the location of previously buried lines, mains, cables, conduits, services, storm sewers, or other underground facilities, and due care will be taken to protect such facilities. Willful disregard or negligence shall be grounds for revocation of the permit.

(b) Should damage occur, it shall be the permittee's first duty to assist in restoration of disrupted service or repair of damaged facilities, and control of the excavation shall rest with the owner of the damaged facility.

(c) Upon completion of any excavation in which facilities are installed, the owner thereof shall provide the director of public works with a description thereof, and accurate as-built location information to assist in preventing damage thereto.

Sec. 94.40. Director of public works may determine construction methods. In cases of facilities that must be to grade and which might intersect, the determination of priorities, the construction method used in intersecting, and alternate locations shall be determined by the director of public works.

Sec. 94.41. Excavation and backfill standards. Excavation and backfill shall be of three classes which will be described in permits and in the standards in this section as types A, B, And C.

(a) ***Type A***. Type A excavation is that in open ground in alleys, unopened streets, or where vehicular traffic is the exception, and where there is no drainage course or street base or surfacing. Type A excavations are to be backfilled with select material from the excavation, as approved by the director of public works, or with material compatible to the surrounding soil. The backfilled

soil shall be compacted to not less than 90 percent density by tamping, rolling jetting, or flooding, as approved by the director of public works. Placement shall be in layers or lifts appropriate to the depth, width, manner of compaction and soil type. Excess material not suitable for backfill shall be removed from the site by the excavator and disposed of without liability to the city. Trenches or excavations in yards, gardens, or parks shall have sod replaced, have a minimum of one foot of top soil, and shall be mounded to provide for future settlement. It is the intent of this subsection that the surface shall be returned to as nearly as possible its original condition.

(b) ***Type B***. Type B excavation is within the right-of-way of a street open to traffic, whether in the gutter and parking, or in the traveled portion of the street, in which the street is graveled. Type B excavations shall be backfilled with select material to within 18 inches of the surface, which shall be compacted to 95 percent density by tamping or rolling. The top 18 inches shall be material meeting the specifications for flexible base, and shall be placed and compacted in not less than two layers. Excavations or trenches of type B shall be capable of sustaining vehicular traffic upon the removal of barricades.

(c) ***Type C***. Type C excavation is that through a paved street, whether asphalt, brick, or concrete. Type C excavation shall be backfilled with caliche, gravel, or crushed stone meeting specifications for flexible base, which shall be installed in layers of six inches and mechanically tamped to a 95 percent density. Material shall be brought to the level of the street surface and the cut opened to traffic. In not less than one week or more than one month, material at the top of the trench shall be removed and concrete or asphaltic concrete placed to the thickness of existing pavement or two inches, whichever is the greater. The finished surface shall be smooth and true without depressions or mounds, and shall be compacted before opening to traffic. the director of public works may require that concrete wider than the trench be placed, and that an alternate surfacing method be used. Backfilling, compaction, and finishing methods providing at least as satisfactory base and paving may be used to protect facilities installed at the option of the owner.

Sec. 94.42. Article provisions not to limit city. Nothing in this article shall be construed as requiring the city to patch or pave any street, to provide or remove any material, nor to preclude or prevent the city from entering into contracts for these purposes.

Sec. 94.43. City departments to comply with article standards. Standards and techniques provided in this article shall apply to installations made by the several departments of the city for cuts and excavations made for the installation of municipal facilities, and the department making any cuts shall be responsible for the backfilling, patching and cleaning thereof.

Chapters 95 through 105 Reserved

Chapter 106. Traffic and Vehicles[37]

Article I. In General

Article II. Traffic Control Devices

Article III. Parking

Article IV. Motorized Carts

Article V. Excessive Vehicle Noise

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[37] **Cross references**--Alcoholic beverages, ch. 6; animals, ch. 14; fire prevention and protection, ch. 46; manufactured homes and trailers, ch. 62; parks and recreation, ch. 74. **State law references**--Powers as to streets, alleys, etc., and obstructions thereon, *Tex. Trans. Code, Chapt. §311.002*; control of streets, *Tex. Loc. Gov't. Code, § 273.004*; powers in Uniform Act Regulating Traffic on Highways, franchise for railway crossing, movement of heavy and oversize equipment, movement of oversize or overweight oil well servicing and drilling machinery, removal of unauthorized vehicles from parking facilities or public highways, and traffic safety program, See *Tex. Trans. Code*; regulation of certain drivers and porters, *Tex. Loc. Gov't. Code § 215.029*; regulation of parking, *Tex. Loc. Gov't. Code § 431.001 et seq*.

Sec. 106.91 Jake Brakes.

Article VI. Speed Limits in School Crossing Zones

Chapter 106. TRAFFIC AND VEHICLES

ARTICLE I. IN GENERAL

Sec. 106.1. Traffic engineer.

(a) ***Appointed by council***. The council shall appoint a traffic engineer for the city who shall be in charge of all traffic control signs, signals and devices.

(b) ***Term of office***. The traffic engineer shall be appointed for an indefinite period and shall be subject to the discharge at the will of the city council.

(c) ***Powers and duties***. The powers and duties of the traffic engineer shall be to maintain traffic control signs, signals and devices as required under state law and may place and maintain such additional traffic control devices as he may deem necessary to regulate traffic under state law or to guide or warn traffic. it shall be the duty of the traffic engineer to supervise the installation and proper timing in maintenance of traffic control devices, and he may test traffic control devices under actual conditions of traffic.

(d) ***Compensation and bond***. The traffic engineer shall receive such compensation as the council shall fix from time to time by ordinance and shall furnish such surety bond as may be required by the council by ordinance, the premium to be paid by the city.

Sec. 106.2. Adoption of uniform act. The council hereby adopts the Uniform Act Regulating Traffic on Highways, Tex. Trans. Code, as amended from time to time, as heretofore and hereafter amended, and ordains that such act shall be in full force and effect upon all streets, roads, alleys, and thoroughfares within the city.

Sec. 106.3. Streets in residentially zoned areas restricted to certain traffic.

(a) Except as otherwise provided in this section, it shall be unlawful and in violation of this chapter for any person to park, drive, operate, or move and/or to cause or permit to be parked driven, operating, or moved on a public street other than a state or federal highway within the corporate limits of the city any motor vehicle with or without load.

(b) Exceptions to subsection (a) of this section shall be as follows:

(1) Private passenger vehicles;

(2) Trucks with a rated capacity of one ton or less;

(3) Vehicles making deliveries;

(4) Construction machinery while working in a construction site;

(5) Organized parades;

(6) Municipal or public utility vehicles while performing maintenance or inspections of their facilities of the municipality or public utility;

(7) Emergency vehicles operating in response to any emergency call or while in training; and

(8) Recreational vehicles while en-route to be parked on private property.

Sec. 106.4. Sidewalks.

(a) The city hereby designates the city's sidewalks as a wheeled vehicle free area.

(b) Wheeled vehicles, for the purposes of this section is defined as every device, in which, or by which, any person or property is or may be transported or drawn upon a public sidewalk, including self-propelled and human-propelled devices such as bicycles, skateboards, roller skates, motor scooters, motorcycles, but excluding wheelchairs, baby carriages and hand drawn four-wheeled wagons.

(c) Whoever shall operate a wheeled vehicle on such sidewalk of the courthouse square shall be guilty of a misdemeanor and shall be punished as provided in section 1.6.

Secs. 106.5 – 106.25. Reserved.

ARTICLE II. TRAFFIC CONTROL DEVICES

Sec. 106.26. State manual on uniform traffic control devices adopted. All traffic control devices including signs, signals, and markings on pavement and curbs used for the purpose of directing and controlling traffic within the city, shall conform with the Texas Manual on Uniform Traffic Control Devices for Streets and Highways, Volumes I and II. All traffic control devices so erected shall be official traffic control devices of the city and shall be established in conformance with *Tex. Trans. Code, Chapt. 544*.

Sec. 106.27. Duty to obey. The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto, placed in accordance with the provisions of this article, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle. No provision of this article for which official traffic control devices are required shall be enforced against an alleged violation, if at the time and place of the alleged violation, an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

Sec. 106.28. Ratification of existing devices. All traffic control signs, signals, devices and markings placed or erected prior to the effective date of this Code and in use for the purpose of regulating, warning or guiding traffic are hereby affirmed, ratified and declared to be official traffic control devices, provided such traffic control devices are not inconsistent with the provisions of this chapter or state law.

Secs. 106.29 – 106.50. Reserved.

ARTICLE III. PARKING

Sec. 106.51. Reserved.

Sec. 106.52. Conformance of vehicle owners with article provisions required. It shall be unlawful for any person in charge of any automobile, truck, or other motor-driven vehicle to park the vehicle in violation of the provisions of this article.

Sec. 106.53. General parking restrictions.

(a) Vehicles when parked on a public street shall be so parked that clearance shall be left at all corners such distance that moving traffic will not be impeded or endangered.

(b) No parking will be permitted within 15 feet of a fire hydrant, and the space adjacent to a fire hydrant shall be marked in such a manner as to show that the space is not intended to be used for parking vehicles.

(c) Delivery trucks, larger than one-half ton pickups, will not use the front door of business establishments for making deliveries, except in the case where a business building does not have a back door.

(d) On all streets where extra width has been provided, all vehicles shall park parallel with the curb.

(e) All trucks loading and unloading shall park parallel with the curb unless otherwise indicated and, excepting large tractors with trailers, shall not extend into the street more than seven feet, when parked.

ARTICLE IV. MOTORIZED CARTS

Sec. 106.54. Applicability. The provisions of this Article shall apply to all motorized carts operated upon a public street or public cart path within the City of Lexington except:

(a) The operation of golf carts is not subject to the provisions of this article under the following circumstances:

(1) The operation of golf carts at golf courses, private clubs or on private property, with the consent of the owner, or the use of a golf cart in connection with a parade, a festival or other special event provided the consent of the sponsor is obtained and provided

such vehicle is only used during such event.

(2) The use of golf carts by the City of Lexington on official police business or the use of golf carts by City personnel for official business on City owned property and City leased property.

Sec. 106.55. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except when the context clearly indicates a different meaning.

Cart Path means an improved path designed for the sole movement of a golf cart. A cart path shall be designed and constructed as designated by the City.

Driver means the person driving and having physical control over the motorized cart.

Driver's License means an authorization issued by a State for the operation of a motor vehicle. The term includes: (1) a temporary license or instruction permit; and (2) an occupational license.

Motorized cart means those electric and gasoline powered carts, commonly referred to as golf carts, but which must have a minimum of four wheels and which have an attainable top speed not greater than 25 miles per hour on a paved level surface and which is manufactured in compliance with those federal motor vehicle safety standards for low-speed vehicles. Specifically excluded from this definition are those motorized conveyances commonly referred to as ATVs, four-wheelers, mules, and gators.

Multi-use Cart Path a path used designed and constructed to facilitate the movement of motorized carts and pedestrian traffic. The multi-use path is designated by a sign at the entrance and exit of the path and further designated by a multi-use path signs placed at 150' intervals in each direction. The multi-use path shall be designated and constructed in accordance with generally accepted engineering practices and approved by the city engineer.

Owner means the person holding title to the motorized cart.

Parking area means those areas accessible to the public by motor vehicular traffic and which are designated for temporary parking of motor vehicles, usually in places referred to as parking lots.

Permit means a certificate/decal of authorization issued to the applicant authorizing the operation of the golf cart for which the permit was issues. The decal will display month and year of expiration.

Permit holder means the person to whom a golf cart permit has been issued.

Public Cart Path means an improved path designed for the sole movement of a golf cart which is available for use by the general public.

Sidewalk means the portion of a street that is between a curb or lateral line of a roadway and the adjacent property line and intended for pedestrian use.

Slow-Moving-Vehicle-Emblem means a triangular emblem that conforms to standards and specifications adopted by the director under *Section 547.104* and displayed in accordance with *Section 547.703 of the Texas Transportation Code*.

Street means the public roadways of the City of Lexington, Texas by whatever name, e.g. road, alley, avenue, highway, route, boulevard, etc. that (a) has a posted speed limit of 35 miles per hour or less; or (b) provides for no more than two lanes of vehicular traffic per direction; or (c) is not designated as part of either the State or Federal highway system.

Trafficway is any land open to the public as a matter of right or custom for moving persons or property from one place to another. The trafficway includes all property, both improved and unimproved, between the property lines of a roadway system.

Working Days shall mean Monday through Friday excluding city holidays.

Sec. 106.56. Electric and gasoline motorized cart required equipment.

(a) Every motorized cart required to be permitted under section 110.325 must be equipped, as mandated by the *Texas Transportation Code, H.B. 2553, Section 551.404(b)* and/or required by the City, with the following:

(1) Operational headlamps; (2 required)
(2) Operational tail lamps; (2 required)
(3) Side reflectors; (2 front: amber in color and 2 rear: red in color)
(4) Operational parking break;
(5) Rearview mirror(s); (capable of a clear unobstructed view of at least 200 feet to the rear)
(6) Slow-Moving-Vehicle Emblem and
(7) Horn (must be audible for a distance of 200 feet in compliance with *Texas Transportation Code, Section 547.501*)

(b) All required equipment shall meet Texas and Federal Motor Vehicle Safety Standards.

Sec. 106.57. Gasoline carts.

(a) Every motorized cart powered by gasoline shall at all times be equipped with an exhaust system in good working order and in constant operation and meeting the following specifications:

(b) The exhaust system shall include the piping leading from the flange of the exhaust manifold to and including the muffler and exhaust pipes or including any and all parts specified by the manufacturer.

(1) The exhaust system and its elements shall be securely fastened with brackets or hangers, which are designed for the particular purpose of fastening motorized cart exhaust systems.

(2) The engine and powered mechanism of every motorized cart shall be so equipped,

adjusted and tuned so that the exhaust is in good working order.

(3) It shall be unlawful for the owner of any motorized cart to operate or permit the operation of such cart on which any device controlling or abating atmospheric emissions which is placed on a cart by the manufacturer is rendered unserviceable by removal, alteration or which interferes with its operation.

Sec. 106.58. Operational Regulations.

(a) All drivers of motorized carts shall hold a valid driver's license and shall abide by all traffic regulations applicable to vehicular traffic when using the authorized streets and parking areas of the City.

(b) Golf carts shall not be operated on any sidewalk, pedestrian walkway, jogging path, park trail or any location normally used for pedestrian traffic except for official police business or by the city of Lexington personnel conduction a required job function directly related to their assigned duties.

(c) No person may operate a golf cart upon any portion of a street or trafficway having a posted speed greater than 35 m.p.h.

(d) All motorized carts are entitled to a full use of a lane on the authorized streets and parking areas of the City and no motor vehicle shall be driven in such a manner as to deprive any motorized cart of the full use of a lane.

(e) The driver of a motorized cart shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(f) No driver shall operate a motorized cart between lanes of traffic or between adjacent lines or rows of vehicles.

(g) The driver of a motorized cart with a current and valid Texas driver's license operating the cart on a street (as defined herein) may cross a multi- land or a federal, county or state route only at an intersection controlled by an official traffic control device which stops traffic from all directions. The driver of a motorized cart may cross a multi-lane road, other than a federal, state, or county route, if it is required to cross from one portion of a golf course to another portion of the same golf course. If a cart crossing path is provided for transition between one section of a golf course to another section of the same golf course across a multi-lane road, the operator shall cross at and within the cart crossing path.

(h) The number of occupants in a golf cart shall be limited to the number of persons for whom factory seating is installed and provided on the golf cart. The operator and all occupants shall be seated upon the seat of the golf cart and no part of the body of the operator or occupant shall extend outside the perimeter of the golf cart while the golf cart is being operated. The operator shall not permit any occupant of the cart to ride in the lap of any occupant while the cart is in motion.

(i) Children must be properly seated while a cart is in motion and may not be transported *in* a

reckless or negligent manner. No person younger than 6 years of age may be transported in a golf cart unless restrained by a safety belt restraint.

(j) Golf carts may only be parked in the same manner and at the same places designated for the parking of motor vehicles. The stopping, standing or parking of golf carts in areas where parking is not allowed or in any place that impedes the flow of traffic, pedestrian walkways or a passageway is prohibited. Golf carts shall not park within any space designated for disabled persons unless a current disabled parking placard is displayed and the person to whom the placard was issued is operating or being transported by the cart.

(k) Golf carts may not be used for the purpose of towing another cart, trailer or vehicle of any kind including a person on roller skates, skateboard or bicycle. A person employed by a golf course may tow a cart(s) for the purpose relocating the cart(s) from one portion of a golf course to another portion of the same golf course.

(l) Golf carts shall not be operated during inclement weather or when visibility is impaired by weather, smoke, fog, or other condition, or at any time when there is insufficient light to clearly see persons or vehicles on the roadway at a distance of five hundred (500) feet.

Sec. 106.59. Liability.

(a) Nothing in this section shall be construed as an assumption of liability by the City of Lexington for any injuries to persons, pets or property which may result from the operation of a motorized cart by an authorized driver.

(b) Owners are fully liable and accountable for the actions of any individual that they provide permission to operate and drive said motorized cart, both on personal and/or city and public properties. This described liability responsibility especially applies to personal injuries or property damage resulting from motorized cart drivers who are minors under the age of 21 with or without a current and valid Texas driver's license.

Sec. 106.60. Permit required.

(a) No person shall operate, cause to be operated, or allow the operation of a golf cart on a public roadway unless a valid permit has been issued for that golf cart or otherwise allowed by law. A permit is not required for golf carts owned or leased by the golf course and used entirely on the golf course or crossing from one section of a golf course to another section of the same course. A permit is not required for a privately owned golf cart used entirely on the golf course or crossing from one section of a golf course to another section of the same course. No golf cart exempted from permitting under this section may be operated on a public roadway for any other purpose.

(b) Application for a permit authorizing the operation of a golf cart shall be made by a person who owns, leases, or otherwise uses a golf cart. Such application shall be made in writing to the Chief of Police or his designee on a form designated for that purpose. On such application shall be set forth the following:

(i) The application shall include the name, address, telephone number and state

driver's license number, if applicable, of the permit holder.

(ii) The application shall include the street address where the golf cart is kept, including the particular suite or apartment number if applicable.

(iii) The application shall include any business name used for the premises where the golf cart is kept.

(iv) The application shall include year, make, model, color, vehicle identification number or serial number if no VIN has been issued to the golf cart, and whether the golf cart is electric or gasoline powered.

(v) The motorized cart shall be inspected by a person(s) and at a location designated by the Chief of Police to ensure compliance with requirements of this ordinance before the issuance of a permit.

(vi) The permit shall be permanently affixed on the left side of the cart in such a manner that it is clearly visible from 50 feet. The permit must not be damaged, altered, obstructed, or otherwise made illegible. The permit holder shall apply for replacement permit and pay all applicable costs associated with the issuance and inspection of the cart.

(vii) The permit shall only be placed upon the cart for which it was issued.

(c) A permit issues to a motorized cart shall become invalid if the motorized cart is altered in any manner that fails to comply with any requirement of this ordinance.

(d) Permits/Stickers are valid for a period of (2) two years. The following fees shall apply:

(i) Inspection by Police Department $50.00 (includes Permit/Stickers); and

(ii) Re-inspection by Police Department $10.00 (if cart fails the initial inspection).

(e) The permit holder shall notify the Lexington City Police Department within ten (10) working days if the motorized cart transfers ownership, or the address of the normal storage location has change. The information shall be submitted on a form designated by the Chief of Police.

(f) Lost or Stolen Permit/Stickers are the responsibly of the owner. A police report must be filed in the event of a Lost or Stolen Permit/Sticker. If no record can be found of a previous application, or the receipt of a Permit/Sticker, the Chief of Police may direct the applicant to reapply, and also resubmit any and all fees necessary, before a replacement Permit/Sticker is issued.

(g) Any person who operates a cart and fails to receive and properly display a City of Lexington Permit/Sticker will be subject to all applicable state laws, in addition to being in violation of the ordinance.

(h) A permit may be revoked at any time by the Chief of Police or designee if there is evidence

that the permit holder cannot safely operate a motorized golf cart on the roadway of streets within the City of Lexington or the motorized cart fails to comply with the requirement of this ordinance. For purpose of this section, the commission of any of the violations described in this Article constitutes evidence that the permit holder cannot safely operate a motorized golf cart on the street within the City of Lexington, Texas.

Sec. 106.61. Penalties. Any person who violates the terms of this section shall be penalized as follows:

(a) The maximum penalty allowed by law for such misdemeanor, and in addition to traffic violations the driver of the motorized cart may be subject to penalties pursuant to Texas Law for other violations, and the owner of the motorized cart shall be subject to the following civil penalties:

(1) For the first offense, a fine of not less than $25.00;

(2) For the second and any subsequent offense, a fine of not less than $50.00.

Article V. EXCESSIVE VEHICLE NOISE

Sec. 106.91. Jake Brakes. No person shall operate an engine of any motor vehicle as defined by the Texas Transportation Code so as to "brake" or slow the same through the use of gears (commonly known as "jake braking") or by any other method on any public right of way in the City which produces any noise in addition to the normal operating engine noise. The maximum penalty for any violation of this provision shall be by fine not to exceed $200.00, punishable as a Class C misdemeanor. *[Ord. No. 07-0820-9, August 20, 2007] [Moved from Sec. 70-61 in 2015 Recodification]*

Article VI. SPEED LIMITS IN SCHOOL CROSSING ZONES

The following school crossing zones are hereby designated and it shall be unlawful for any vehicle to travel within any designated school crossing zone in excess of the posted speed limit during active school crossing zone times on days when school is in session. The school crossing zone times shall be posted with the speed limit for those times. Active school crossing zonetimes shall be determined by both the start of the school day and the dismissal of the school day. Therefore, all active school crossing zones on the City streets at the locations designated herein shall be from 7:00 a.m. to 8:00 a.m. and from 3:00 p.m. to 4:00 p.m. on days that school is in session.

(1) Twenty (20) miles per hour during the aforementioned times:
   a) On Third Street from a point one hundred forty feet (140') east of its intersection with N. Rockdale Street to the east terminus of Third Street at State Highway 77; and
   b) On Fifth Street from a point one hundred forty feet (140') east of its intersection with N. Rockdale Street to the east terminus of Fifth Street at State Highway 77.

The City Council of the City of Lexington declares and affixes the above maximum speed limits for the designated school crossing zones on the City streets as described herein. The department

of public works is hereby authorized to erect the appropriate signage and make any necessary markings to provide notice to the public of the school crossing zones.

Chapters 107 through 109 Reserved

Chapter 110. Utilities

[Ord. No. 04-0714-18, adopted July 14, 2004]

Article I. In General

Article II. Water

Article III. Sewage

Division 1. Generally

Division 2. Sewer Charges

Division 2A. Repair of Sanitary Sewer Leaks

Division 3. Industrial Wastes

Article IV. Electricity

Chapter 110. UTILITIES[38]

ARTICLE I. IN GENERAL

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[38] **Cross references**--Administration, ch. 2; buildings and building regulations, ch. 22; cable communications, ch. 30; fire prevention and protection, ch. 46; health and sanitation, ch. 54; manufactured homes and trailers, ch. 62; natural resources, ch. 66; solid waste, ch. 90. **State law references**--Plumbing and sewers, Tex. Loc. Gov't. § 214.011 et seq.; municipal utilities, *Tex. Rev. Civ. Stat. art. 1106,* Tex. Loc. Gov't. Code, Chapts. 251 and 402; water, *Tex. Water Code, Sec. 1.001, et seq*; public utilities, *Tex. Rev. Civ. St. art. 1416 et seq.*; *Public Utility Regulatory Act, Tex. Rev. Civ. Stat. art. 1446c*; municipal water and utilities, *Tex. Loc. Gov't. Code § 401.001 et seq.;* water quality control, *Tex. Water Code § 26.1 et seq.*

Chapter 110. UTILITIES

ARTICLE I. IN GENERAL

Sec. 110.1. Connection With City Sewer And Water Systems.

(a) ***Connection to city sewage system required where feasible***. The use of any premises in the city in such a manner as to create sewage thereon not discharged into the sewage system of the city, when and where available, is hereby declared to be a nuisance, except to the extent such discharge is from an approved graywater system constructed and operated in compliance with Section 110.22 of this Code. Every water closet or privy connected and used in any building, not connected with the sewage system, when and where available, is hereby declared a nuisance, provided that this subsection shall be inapplicable to: 1) premises where connection to the city sewage system is not feasible; and 2) an approved graywater system constructed and operated in compliance with Section 110.22 of this Code. Such connection with the city sewage system is hereby declared to be feasible as to any premises abutting any street, alley, or other public way or sewer right-of-way in which any line of the sewage system of the city sufficient to handle the sewage exists. It shall be such person's duty to provide for the safe removal or satisfactory destruction of discontinued tanks or containers previously used for the collection of sanitary sewage or other waste materials in that they may constitute a present or future health or safety hazard.

(b) ***Connection to city water system required where feasible***. It shall be the duty of any person owning or occupying improved property within the corporate limits of the city which can be feasibly connected to the city sewage system as set out in subsection (a) of this section, to also connect such property and the improvements thereon with the city water services if the same exist in the street, alley or other public way or water right-of-way abutting the premises or otherwise available thereto. It shall be such person's duty to provide for the safe removal or satisfactory destruction of discontinued water wells, cisterns, tanks or containers previously

used for the provision of water, in that they may constitute a present or future health or safety hazard.

(c) ***City services not available; subsequently become available***. Where such city services are not available in the abutting streets, alleys, other public ways or other utility rights of-way, but subsequently are installed or laid therein, it shall be the duty of the owner or occupant of such property within 60 days after the same becomes available, to connect therewith. Such connections must be made subject to the applicable charges provided by the then current ordinances of the city.

(d) ***Owner responsible for discontinued septic tanks***. Within 90 days after improved property has been connected to city sewer lines, it shall be the responsibility of the owner or occupant to dispose of the contents of any discontinued septic tanks and remove the tank, or to fill the tank cavity with solid soil, sand, or similar compacted material. The city official will then be notified and an inspection made before the top of the tank is covered with topsoil.

Sec. 110.2. Assessments On City Utilities. Assessments of five percent of the gross receipts of each city-operated utility shall be transferred to the general fund of the city each year.

Sec. 110.3. Security Deposits And Utility Accounts. This section shall apply to any utility services provided by the City.

(a) ***Deposit Required***.

(1) All new and existing customers of the City utilities shall be required to pay and maintain a security deposit in the amount provided herein at all times that services are provided in the customer's name.

(2) All customers shall be required to pay and maintain a $300.00 deposit for home owners and $500.00 for renters, provided, however, that the City reserves the right to require a deposit equal to 1/6 of the customer's estimated annual billing for any customers whose City utility service has been involuntarily disconnected in the past 48 month period. Further, in the event a customer requesting utility service failed to fully pay all charges and/or fees for any prior utility service provided to the customer under a different account, or in the event a customer's utility service has been involuntarily disconnected two (2) or more times in the past 12 month period, the customer will be required to pay and maintain a $1,000.00 deposit for connection or reinstatement of utility services.

(3) All customers requesting utility service shall personally sign the application for services and provide verification of name and current address for billing.

(4) In the event any utility customer's service is disconnected for late payment, the City will apply the deposit to the deficiency and require full payment of any delinquent utility account, in addition to any reconnection fees and reinstatement of the full security deposit prior to reinstatement and reconnection of utility services.

(5) Security deposits shall remain with the City until termination of services. *[Ord. No. 07-1023-5, adopted October 23, 2007]*

(b) ***Application of utility deposits.***

(1) All utility deposits held with the City shall, in addition to securing the payment for utility services received, also secure and may be applied to any other debt or obligation owed the City by the person or entity having made the utility deposit. The remaining balance of any and all utility deposits collected by the City for water, sewer or solid waste disposal shall be returned to the individual who secured the deposit in his or her name, at such time as such person terminates such utility service with the City. The deposit will first be applied to any outstanding utility or solid waste disposal bills, then to any additional outstanding debts to the City and the remainder will be returned upon proper request and application. Additional outstanding debts of the individual seeking return of a utility deposit include but are not limited to:

(i) other utility services which have been provided under said person's name and that have an outstanding balance due and owing to the City;

(ii) any Ambulance, EMS, fire or other such services operated within the City which have bills outstanding in such persons name;

(iii) liens placed by the City upon any property owned by such person; and

(iv) any outstanding fees, charges, court costs, fines or warrants payable by such person by virtue of any record, action or proceeding in the Municipal Court.

(2) No interest shall accrue or be due for any security deposits held by the City.

(3) A charge and fee in the amount of $25.00 annually, not to exceed the balance of the unclaimed utility deposit, is hereby established for each account that is required to be maintained by the City for and with respect to services, accounts and service addresses for which a customer abandoned or terminated utility service without contacting the City and closing such account or terminating service, or otherwise providing the City with a forwarding address to which the balance of such utility deposit should be mailed. Upon any such customer entitled to receive a refund of any such utility deposit balance contacting the City and obtaining the refund, or the depletion of such remaining deposit balance, the account shall be closed.

(4) Whenever the Utility Department applies a deposit to any outstanding debt or refuses to return a deposit, the individual seeking return of a deposit held in their name may, if not satisfied with the decision of the Director of the Utility

Department, appeal the decision to the Mayor within ten (10) days from the date of the decision.

(c) ***Transfer of services***.

(1) Any existing customer requesting a transfer of any utilities must maintain the appropriate deposit for the utility services being transferred. Any existing deposit, less deficiencies on the existing account, will be transferred directly to the new account. Any deficiencies in the prior utility account will also be transferred to the new utility account.

(2) No customer will be allowed to transfer and maintain services without paying all deficiencies on existing or prior utility accounts in full and having the full deposit for utility services on deposit with the City at the time of transfer, but not later than the next complete billing cycle at the transfer location.

(d) ***Minors***. No account may be held in the name of a person who is under the age of eighteen (18) years unless the minor requesting services provides adequate evidence that the minor has been emancipated through marriage or other legal means.

Sec. 110.4. Line Extension and Street Cutting Fees. Water and sewer taps will be made for the base tap fee provided the tap is made to a water or wastewater line abutting or adjacent to the lot or parcel to be served ("standard location"). For the purposes of this Chapter, a tap made on a water or wastewater line located between the boundary line of the property to be served and the right-of-way line of the street or alley abutting such lot, or a line located within the right-of-way of such street between the property boundary line and the traveled, paved portions of the street, shall also constitute a tap made at a "standard location". A tap made at a "standard location" shall be a "standard connection". A "non-standard location" is any location for a tap to serve any lot, tract or parcel of land other than at a standard location. A "non-standard connection" is any tap that requires work, construction or extensions to be made for the tap, or that is made at other than a standard location. Additional charges and fees will be assessed and collected as herein detailed for costs associated with line extensions and taps made to a non-standard location.

(a) ***Availability of service***. The existence of mains, trunk lines or other lines, near a property will not constitute an obligation for the City to limit the tap fee or charge for making a water or sewer service tap to such line, where such lines must be tapped at other than a standard location, are inaccessible due to necessary crossings of streets, highways, drainage channels and similar barriers, or when cost must be incurred over and above the cost for making a tap at a standard location. Taps at non-standard locations must be arranged for with the director of public works in advance of the desired service date, to permit necessary extensions, crossings or similar construction.

(b) ***Installation of non-standard connection***. Upon the approval of the City Council, the owner or developer of a subdivision or single tract of land requiring a non-standard connection may contract with a qualified contractor for the installation, construction and extension of any water or sewer line, lift station deemed necessary by the City at its sole discretion, or other components

of an alternative collection system necessary to make a non-standard connection or as necessary for the location for the tap to become a standard location and, in such event, such owner or developer shall pay the reasonable costs and charges therefor directly to the contractor and obtain a receipt and release from said contractor. The City shall otherwise, at the expense of the applicant for the tap, construct all line extensions and perform all construction required to make a water or sewer tap at a non-standard location. Construction by the City of a lift station or other alternative collection system on private property shall not constitute ownership of said improvements and the owner of the property shall have a duty to maintain the improvements in accordance with the City's rules and regulations. The City engineer or department of public works shall inspect such construction and work to assure it is completed in compliance with the applicable rules and regulations of the City and the Texas Commission on Environmental Quality.

(c) ***Costs***. The reasonable costs and expenses for installing, constructing and extending any water or sewer line of the City to provide a tap at a non-standard location, or to extend such lines to a standard location, shall be charged and collected by the City, if such costs are not paid directly by an owner/developer pursuant to (b) above. Such additional costs and expenses shall be equal to the difference between the cost of making the tap at a standard location and the cost of making the tap at the non-standard location, or, as the case may be, the difference between the cost of making the tap at a standard location and the costs incurred for the work and construction to extend the lines to a point or location that is a standard location for the tap.

(d) ***Payment of line extension fee***. When a water or sewer line extension charge is required, the City may at its option require the owner being furnished the line to:

(1) deposit, in advance, the estimated costs for construction of the water or sewer line that is estimated to be costs additional to a standard connection;

(2) post a bond sufficient to cover the total estimated costs of line extension; or

(3) provide a letter of credit sufficient to cover the total estimated costs of the line extension.

(e) ***Line Extension Fees Outside City limits.*** The costs set out in this section shall apply for connections to property both inside and outside the City limits.

Sec. 110.5. Termination Of Service And Charges For Disconnection And Reconnection.

a) ***Termination for delinquency***. The City shall have the right to and may terminate any City Utility Service to any customer, including disconnecting the supply of water, sewage, and electricity, at any time after the delinquent date.

(b) ***Discontinuance of Services Procedures***. It is the policy of the City to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. Prior to discontinuing service, the city shall notify the customer by first class mail that service will be disconnected if the bill is not paid by 5:00

p.m. on the 10th day of the month. Such notice shall be a separate written notice mailed after payment has not been received by 5:00 p.m. on the 4th day of the month. In addition to the foregoing, the disconnection process shall include the following:

(1) All bills are payable on or before the date set forth on the bill.

(2) If any bill is not paid by or before that date, a second bill will be mailed containing notice that, if the bill is not paid by 5:00 p.m. on the 10th day of the month utility service will be cut-off and discontinued for nonpayment.

(3) Any customer disputing the correctness of his bill shall have a right to a hearing to present orally or in writing a complaint or contention to the utility review committee that a utility bill is erroneous. In this instance, the only issue is a question of proper or correct billing. This committee shall be authorized to order that the customer's service not be discontinued and shall have the final authority to make a final determination of the customer's complaint.

(c) ***Disconnection/Reconnection Charges***. A charge will be assessed as a service fee for each occurrence requiring city personnel to approach the city utility customer to disconnect utility services whether or not utility services are actually terminated. Such fee shall include the fee for reconnection and all disconnect fees and must be paid at the time past due monies are tendered, and prior to any reconnection or additional services being provided. If an account is processed to be or is disconnected for reasons of nonpayment of a dully rendered billing, the amount due must be paid in full plus a service fee of $50.00 will be charged for reconnections made during the hours of 8:00 a.m. and 5:00 p.m., on normal business days, or a service fee of $65.00 which will be charged for reconnects made at any other times other than the times designated hereinabove.

(d) ***Termination at owner's request***. Whenever a customer who is not delinquent in the payment of any utility bill requests that utility services be discontinued, he or she shall notify the City at least two business days prior to the date he or she desires service discontinued. There will be a reconnect fee payable at the time the customer desires the service to continue.

(e) ***Delinquent accounts***. Any residence or property where utility services are requested to be provided where a delinquent account is still outstanding from a previous customer, shall not be reconnected in a different name than the account was previously connected under unless the person requesting utility services demonstrates that the person whose name the account was previously billed to is no longer a resident of the property or in control of the property without paying the deficiencies on the account.

(1) New owners of property or new residents of a leasehold shall not be responsible for the delinquent utility accounts of a prior owner or lessee who has vacated the premises.

(2) No customer may establish a new utility account in his or her name who has an outstanding deficiency from any previous utility account held by the city and such

account has been delinquent for less than four (4) years without paying all deficiencies in addition to the deposit for the new utility account.

(f) ***Termination for cause***. The City reserves the right to disconnect any property from the utility services in violation of the Lexington Code of Ordinances that constitute a threat to the health, safety, or public welfare as provided in Section 110.8.

Sec. 110.6. Damage or Injury to Waterworks or Electrical System.

(a) ***Damage or injury.*** It shall be unlawful for any person, in any way, to intentionally or carelessly break, deface or in any manner damage, injure or destroy any hydrant, standpipe, lock box or other property belonging to the City or belonging to others, and used in connection with the waterworks or electrical system of the City. No person other than a duly authorized agent of the City shall remove, repair, or tamper with or in any way interfere with the City's meter boxes, meters, lock boxes, water service lines, sewer service lines, electrical lines or other water, sewer or electrical system appurtenances. The City reserves the right to immediately and without notice remove the meter or disconnect services to any customer whose meter has been tampered with and to assess actual repair charges to the customer plus a damage fee of $50.00.

(b) ***Repair of damages***. All meters, fittings, boxes, valves and appurtenances thereto installed by City personnel shall remain the property of the City. The City reserves the right on 24 hours' notice and no appeal being filed, to remove the meter or disconnect water, sewer or electrical service to any customer whose meter or lock box has been tampered with and to assess actual repair charges to the customer plus a damage fee of $50.00. As necessary or advisable to protect the public health or the operation and function of the City's water, sewer or electrical system, the City further reserves the right and authority to proceed immediately and without notice to disconnect, or to repair when and as necessary and appropriate, any meter, pipe, line, lift station, or other appurtenance connected to the City water, sewer or electrical system, and if such repair is made to any such line, pipe, lift station or appurtenance owned by any private property owner to assess the actual repair charges to the customer who owns, rents, or controls such property. Failure to repair or failure to pay for repairs performed by the City shall constitute cause for the City to terminate services to the customer charged with the repairs. Repair or maintenance by the City of any privately owned meter, pipe, line, lift station, or other appurtenance connected to the City water, sewer or electrical system shall not be construed as ownership of the meter, pipe, line, lift station, or other appurtenance by the City. The City requires each customer to "CALL BEFORE YOU DIG" so the water department will be able to locate lines for the customer. Repair charges will be assessed to the customer if NO attempt is made to contact the proper City department before digging and damage occurs. Repair charges are due within 10 days from the date of invoice and are as follows: (a) Labor Charges- Regular time for repairs needed during normal business hours. After 5:00 p.m. and weekends - Time and one/half (b) Equipment Rental - Actual cost to City. If not paid within 10 days from date of invoice, the City reserves the right to immediately and without notice remove the meter or disconnect water, sewer or electrical service until all repair charges are paid in full.

(c) ***Access to Meters***. The City of Lexington requires reasonable and safe access to its utility meters both inside and outside the City. For the purpose of this ordinance, reasonable and safe access will be defined as the ability to walk to a meter without climbing a fence and without being threatened.

(1) The City requires that gates be installed in fences that obstruct access and that the gates be unlocked when City staff member comes to read the meter.

(2) The City staff reserves the right to determine whether a threat has been made or not.

Any property that has a "no trespassing" sign in the yard, must sign an authorization with City staff stating that the sign does not apply to staff when reading utility meters.

Sec. 110.7. No Service Guarantee. Customers are not guaranteed a specific quantity or pressure of water, or any specific level of any sewer, electricity or other service, for any purpose whatever; in no instance shall the City be liable for failure or refusal to furnish water or any particular amount or pressure of water, sewer, electricity or any other service under this Chapter.

Sec. 110.8. Violations and Notices.

(a) If an officer charged with the enforcement of this Chapter shall determine that a person has violated any provision of the Lexington Code of Ordinances with regard to the utility services, such officer may issue a citation.

(b) If an officer charged with the enforcement of the Lexington Code of Ordinances shall determine that a situation exists affecting the utility services which immediately affects or threatens the health, safety and well-being of the general public, and that immediate action is necessary, such officer may take such action as shall be necessary, including issuing citations for violations of the terms and provisions hereof to the owner and/or occupant of the property upon which such condition exists, as may be deemed appropriate and necessary.

(c) If an officer charged with enforcement of the Lexington Code of Ordinances determines a situation affecting the utility services constitutes an immediate threat to the public health, safety and welfare, and the owner or occupant of the property is absent or fails to immediately remedy the violation, the City Council may, at a regular session or at an emergency session called for the purpose of considering the issue, upon evidence heard, determine that an emergency exists and order such action as may be required to protect the public health, safety and welfare.

(d) If any owner or occupant shall fail or refuse to remedy any of the conditions prohibited by the Lexington Code of Ordinances affecting the utility services within seven (7) days after notice to do so, the City may terminate services or do such work or cause the same to be done, and pay therefor, and charge the expenses in doing or having such work done or improvements made to the owner(s) of the property, and such charge shall be a personal liability of such owner to the City.

(e) Notices required pursuant to this Chapter shall be in writing. Such notices may be served upon such owner and/or occupant as follows: in person by an officer or employee of the City; by letter addressed to such owner or occupant at his/her post office address; or, if personal service may not be had, or the owner or occupant's address be not known, then notice may be given by publishing a brief summary of such order at least once in the official newspaper of the City or by posting a notice on or near the front door of each building on the property upon which the violation relates, or, if no building exists, by posting notice on a placard attached to a stake driven into the ground on the property to which the violation relates. Notices of termination of services for non-payment shall be mailed regular first class mail to the address designated on the account for receipt of bill and shall be deemed served within three (3) days of deposit in the regular mail. The notice may state "Sanitary Improvements", "To Whom It May Concern" and a brief statement of the violation(s) or delinquency. If the notice is for delinquency, the notice shall include a termination date and location for payment for services. Service of the notice by any one of the above methods, or by a combination thereof, shall be deemed sufficient notice.

(f) If an owner is mailed a notice in accordance with subsection (e) and the United States Postal Service returns the notice as "refused" or "unclaimed" the validity of the notice is not affected, and the notice is considered as delivered.

(g) Notices of nuisances provided by mail or by posting as set forth in subsection (e) may provide for year round abatement of the nuisance and inform the owner that should the owner commit any other violation of the same kind that pose a danger to the public health and safety on or before the first anniversary of the date of the notice, the City without further notice may abate the violation at the owner's expense and assess the costs against the property.

(h) Persons in violation of this Chapter or causing or creating a prohibited nuisance affecting the utility system in the presence of a person authorized to enforce this Ordinance may be cited or a complaint filed for such violation without notice of the violation, or warning, and such citation or complaint shall be filed in the Municipal Court of the City of Lexington.

Sec. 110.9. Costs and Appeals. In addition to any other remedy provided in this Chapter and cumulative thereto, the Code Enforcement Officer, after giving to the owner of the property seven (7) days notice in writing, as provided in Section 110.8 above, may cause any of the work or improvements mentioned in this Chapter or necessary to protect the health, safety and public welfare to be done at the expense of the City, and charge the utility bill of the property on which such work or improvements are done, and cause all of the actual cost to the City to be assessed on the real estate or lot on which such expenses occurred; provided, that the owner of any such real estate may appeal to the City Council from the order of the Code Enforcement Officer by filing a written statement with the Code Enforcement Officer within seven (7) days after receipt of the notice provided for above, stating that such real estate complied with the provision of the Lexington Code of Ordinances and this Chapter before the expiration of a seven (7) day period. The City Council shall set a date, within thirty (30) days from the date of the appeal, for hearing the appeal to determine whether the real estate complied with the provisions of the Lexington Code of Ordinances and this Chapter before the expiration of such seven (7) day period. The authority of the Code Enforcement Officer to proceed to cause such work to be done shall not be suspended while an appeal from the order is pending. If it shall be determined by

the City Council that the premises complied with the provisions of the Lexington Code of Ordinances and this Chapter before the expiration of the seven (7) day period, then no personal liability of the owner shall arise nor shall any lien be created against the premises upon which such work was done.

Sec, 110.10. Cost of Abatement Constitutes Lien. Cumulative of the City's remedy by fine, as set forth herein, the City may do such work or cause the same to be done to remedy such condition to remove such matter from such owner's premises at the City's expense and charge the same to the utility bill of such property and assess the same against the real estate or lot or lots upon which such expense is incurred.

(a) Expenditures plus ten (10) percent per annum interest on the expenditures from the date of such payment by the City shall be added to the next billing cycle for utility bills for the real estate or lot or lots, if not already paid. Payment shall be due and payable in full by the owner or occupant at the time of payment of such utility bill. If the property is unoccupied, no utilities shall be furnished to the property where the work occurred until such obligation, as herein set out, payable to the City for abatement of any nuisance described herein is paid in full.

(b) Upon filing with the county clerk of Lee County, Texas, of a statement by the City Secretary or designee of such expenses, the City shall have a privileged lien upon said real estate or lot or lots, second only to tax liens and liens for street improvements, to secure the expenditure so made and ten (10) percent per annum interest on the amount from the date of such payment so made by the City.

(c) The City may, additionally, institute suit and recover such expenses and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the county clerk or a certified copy thereof shall be prima facie proof of the amount expended in any such work or improvements to remedy such condition or remove any such matter.

Sec. 110.11. Enforcement. The civil and criminal provisions of this Chapter shall be enforced by the persons or agencies designated by the City, including, but not limited to, the City of Lexington Law Enforcement Agency, the Building Official, and the Code Enforcement Officer. It shall be a violation of this Chapter to interfere with a Code Enforcement Officer, or other person authorized to enforce this Chapter, in the performance of his or her duties.

Sec. 110.12. Penalty. Any person who shall violate any of the provisions of this Chapter, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars ($2,000.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

Sec. 110.13. Payment of Costs. The reasonable costs and expenses for installing, constructing and extending the water, sewer and electric service lines of the City to serve or provide additional service to any property within the City shall be paid to the City in advance by the owner, agent or person making application for the line extension, as provided in this ordinance.

Sec. 110.14. Extensions by the City. The City shall install, construct and extend any City water, sewer or electric service line for a distance of up to fifty feet (50') as necessary to make any water or sewer tap or electrical service connection. The applicable water or sewer tap fee or electrical connection fee shall include the cost and expense, if any, for extending any such line for a distance of up to 50' feet and no additional fee shall be charged by the City for any such line extension of 50' or less. The City Manager is authorized to approve extensions by the City up to 100 feet when he/she determines it is in the public interest to do so, taking into consideration the potential revenue to be derived from the service line extension, the costs involved, and the desirability of encouraging growth and development to the service location.

Sec. 110.15. Standards for Line Extensions. Each and every water and sewer line constructed or extended within the City shall be designed and constructed in compliance with the standards, requirements and specifications established by the City. The plans and specifications for water and sewer lines shall be approved by the City in advance and any such line constructed by a qualified contractor shall be inspected by the City and shall not be connected to the City utility system unless accepted as in compliance with the approved plans and specifications and all applicable standards, codes and regulations. Electric service line extensions shall only be performed by city personnel, or contractors authorized by the city to perform this service.

Sec. 110.16. Payment for Extensions. Save and except as provided in Section 110.14, the reasonable costs and expenses for designing, constructing, installing and extending any water or sewer line or electric service line shall be paid by the person, firm or entity seeking said extension, as follows: (a) the City shall collect, in advance, the estimated cost for constructing that part of any line extension exceeding 50' and required for the installation of a water or sewer tap or electric service connection; (b) any person contracting with a qualified contractor for the installation, construction and extension of any water or sewer line shall pay the reasonable costs and charges therefore directly to the contractor and obtain a receipt.

Sec. 110.17. Penalties for Return Checks. Any customer who has tendered two or more checks for payment of municipal utility services which have been returned for insufficient funds shall be prohibited from paying subsequent municipal utility bills by check and shall pay all subsequent municipal utility bills by cash or money order.

Section 110.18. Time and Place of Payments. The net amount of all utility accounts shall be payable by 5:00 p.m. on the fourth day of each month after the bill is rendered ("due date") at the city offices.

Section 110.19. Penalties for Late Payment. Any customer whose account is not paid by 5:00 p.m. on the fourth day of the month after the bill is rendered shall be considered late. In the event that such billing and charges are not paid in full and received at the City offices by the due date, a penalty of 10% of the amount due and payable shall be added to the billing and charges. All accounts not received by 5:00 p.m. on the 10th day of the month after the bill was initially rendered shall be considered delinquent by the utilities department and shall be disconnected from utility service. If an account is processed to be or is disconnected for reasons of nonpayment of a dully rendered billing, the amount due must be paid in full plus a service

fee of $50.00 will be charged for reconnections made during the hours of 8:00 a.m. and 5:00 p.m., on normal business days, or a service fee of $65.00 which will be charged for reconnects made at any other times other than the times designated hereinabove.

Sec. 110.20. Review committee, Extensions for Payment, application, review by utility. It is the policy of the City to discontinue utility service to customers by reason of nonpayment of bills. The City shall not accept partial payment of any utility bill. Requests for delays or waivers of utility payments due will not generally be entertained provided, however, a customer may apply to the utility review committee to consider hardship circumstances under the following guidelines:

(a) The utility review committee shall be comprised of two members of the City council. The council may appoint two members and one alternate member of this committee.

(b) Two committee members are required to consider any request. A unanimous vote of the committee is required for any extension agreement.

(c) Hardship requests shall be filed with the City on or before the original due date on the bill. Requests shall be in writing. Requests shall be considered by the utility review committee on or before the 4th day of each month. It shall be the duty of the utility review committee to cause the applicant to be notified of its decision, and to instruct the mayor accordingly.

(d) Extensions shall only be granted on the basis of unusual hardships.

(e) No more than three extensions shall be granted in any twelve month period.

(f) The utility review committee shall only have the authority to extend the date beyond which a bill must be paid beyond the last day of the month without a vote of the city council. The utility review committee shall not have the authority to waive late fees due on any bill.

(g) Except as set forth in subsection 110.20(f), the decision of the utility review committee is final

Sec. 110.21. Private Sewage Disposal Systems. The "International Private Sewage Disposal Code", 2012 edition, is adopted and applicable to all Individual On-Site Wastewater Systems, Private Sewage Facilities and Septic Tanks within the City and the extraterritorial jurisdiction of the City. A copy of the International Private Sewage Disposal Code is on file in the office of the city secretary and available for public inspection. *[Ord. No. 15-0211.6, adopted February 11, 2015]*

Secs. 110.22 through 110.25. Reserved.

ARTICLE II. WATER

Sec. 110.26. Monthly Charge-Inside City

Sec. 110.26. Monthly Charge-Inside City. There is hereby established the following charges for all consumers and users of the municipal water system within the city limits, except those more specifically provided for in this article, upon the number of gallons of water used per month as determined by the meter of the system:

For the first 3,000 gallons	$26.50 minimum charge
3,001 to 5,000 gallons	$1.30 per thousand gallons
5,001 to 10,000	$1.70 per thousand gallons
10,001 to 20,000	$1.90 per thousand gallons
20,001 to 40,000	$2.60 per thousand gallons
40,001 to 60,000	$2.80 per thousand gallons
60,001 to 80,000	$3.00 per thousand gallons
80,001 to 100,000	$3.20 per thousand gallons
100,001 to 120,000	$3.40 per thousand gallons
120,001 and over	$3.60 per thousand gallons

Sec. 110.27. Monthly Charge-Outside City. There is hereby established the following charges for all consumers and users of the municipal water system outside the city limits, except those more specifically provided for in this article, upon the number of gallons of water used per month as determined by the meter of the system:

For the first 3,000 gallons	$31.50 minimum charge
3,001 to 5,000 gallons	$1.60 per thousand gallons
5,001 to 10,000	$2.00 per thousand gallons
10,001 to 20,000	$2.20 per thousand gallons
20,001 to 40,000	$2.90 per thousand gallons
40,001 to 60,000	$3.10 per thousand gallons
60,001 to 80,000	$3.30 per thousand gallons
80,001 to 100,000	$3.50 per thousand gallons

100,001 to 120,000	$3.70 per thousand gallons
120,001 and over	$3.90 per thousand gallons

Sec. 110.28. City Water Sold At Premises With Water Meters. Water from the city water system shall be sold and delivered by the city through its mains only to persons at whose premises water meters are installed. Water meters, water meter readings, and water meter computations shall be subject to the following:

(a) ***Each meter constitutes a separate service.*** Each meter installed at any premises shall constitute a separate service and must be paid for as such, except as provided in subsection (c) of this section.

(b) ***Separate meter for each residence or building in new service.*** For any water service installed after May 1, 2019, each single family residence or building making connection with the city water system shall have a separate meter, and no new connections shall be made by the city unless such single family residence or building is separately metered, except as provided in subsection (c) of this section.

(c) ***Multiple use of meter in existing building.*** In existing cases where more than one building is served by a single meter, the entire amount of water consumed and registered through such meter shall be billed to the building nearest the meter. Such procedure shall continue until such buildings are separately metered.

(d) ***Tourist courts and trailer parks.*** Any number of houses on one plot of ground owned by one person and constituting a bona fide tourist court shall be entitled to water service from one meter. All trailer and mobile home parks will meter each and every unit separately, and all individual mobile homes will be on separate meters.

(e) ***Single family residences.*** For any water service installed after May 1, 2019, only one single family residence per parcel, plot, tract, or lot shall receive a water meter. If an owner intends to construct multiple single family residences on a single parcel, plot, tract, or lot then said premises must be subdivided so that each single family residence is on a distinct parcel, plot, tract, or lot.

(f) ***One meter for two or more houses presently so connected.*** In all cases where two or more houses or buildings are served by one meter, separate charges shall be made for each house and building, and no allowance shall be made for a vacancy of either house or building unless the owner shall furnish satisfactory proof to the council that water service to such house or building has been disconnected; and at the same time by written application agrees that in the event of a reconnection, the same separate charge be paid therefor.

(g) ***Two or more connections; master metered.*** Upon the approval of the mayor, two or more units may be served through a master meter under the following conditions: For each and every unit so served, a minimum rate will be charged in accordance with the current rate structure. For each unit being charged a minimum, there will be an allowance of 3,000 gallons per unit. Example: If there are ten units, there will be an allowance of 30,000 gallons. Additional

water usage will be charged in accordance with the current rate structure. The provisions for minimum charges set out in section 110.27 shall not apply when such units are master metered.

Sec. 110.29. Water Tap Charges.

(a) ***Schedule***. It is hereby provided that the following schedule of charges will be made for providing connections with the municipal water works system for the purpose of securing use of the facilities, service and products of such water system:

Water Tap Charge: $1,000.00

Each building or residence will be classified as a separate connection, and an additional charge will be added equal to the difference in the cost of the pipe for taps that are larger than the standard residential tap.

(b) ***Description of service***. The above schedule includes the cost of tapping the water main, furnishing and installing water meter and curb cock at the consumer's property line and extending the water service line to the property line or within 50 feet of the property, whichever is nearest to the city main.

(c) ***Payment made prior to connection***. Thereafter, the municipal waterworks system shall maintain meter and service line from meter to the main as long as the service connection is active. The payment or an estimated amount of cost shall be paid or deposited before the connection will be made.

Sec. 110.30. Service Outside City Limits. The rates as set forth in sections 110.26—110.29 shall have 20 percent added to the bills of all consumers outside the city limits, and the property served shall be the determining factor.

Sec. 110.31. Shutoff Valves. In all new water service connections made after the adoption of this section, and in all cases where house service line is repaired or replaced, there shall be one or more approved shutoff valves attached to every supply line on the customer side of the meter.

Sec. 110.32. Curb Cock Required In Every Service Line. There shall be a curb cock in every service line placed between the meter and the water main. The curb cock shall be for the exclusive use of the municipal waterworks employees.

Sec. 110.33. Testing Meters; Costs. The city shall from time to time check and test all meters for accuracy, and, if at any time the consumer desires to have the meter tested for accuracy, the testing shall be done by the city. When the test is made at the request of the consumer, a fee based on the actual cost shall be charged therefor to the consumer if the meter tests 97 percent or more accurate. If the meter registers less than 97 percent accurate, it shall be replaced and repaired before installation on another service, and no charge shall be made.

Sec. 110.34. Computation Of Water Bills. All charges for water consumption to any user under any of the rate schedules, as set forth in sections 110.26 and 110.27, where the amount of water consumed or used exceeds the minimum provided, the bill shall be figured upon the amount of water actually used, and where a fractional portion of 1,000 gallons is used, the charge shall be figured in brackets of 100 gallons to the closest 100 gallon reading on a proportionate scale of rates.

Sec. 110.35. No Free Service. It is hereby declared illegal and unlawful for anyone to obtain the services of or to consume any products of the municipal waterworks system free of charge. All water connections shall be metered, and the consumer shall make payments according to the reading of the meter at the rates prescribed in this article.

Sec. 110.36 Reserved. See: Sec. 110.18.

Sec. 110.37. Reserved. See: Sec 110.19.

Sec. 110.38. Reserved. See: Sec. 110.50.

Sec. 110.39. Deposits. Each subscriber requesting water service only, before connecting with the water system, shall deposit with the city treasurer a minimum of $100.00, or such larger amount as may be determined by the mayor, as part or all of the required deposit for city utilities, with such amount in excess of $100.00 to be reasonable amount in proportion to the estimated consumption of the premises. The deposit shall be retained by the city treasurer as security for the due and prompt payment of the water account of the consumer, and is to be returned to the depositor upon discontinuance of service connection, if all charges due the waterworks system have been paid. In the event of an unpaid balance, then such deposit may be used in whole or in part, as necessary, to liquidate the unpaid bill, and the deposit by the consumer shall be prima facie evidence of his consent for such use of the deposit. All such deposits shall be retained in a separate account by the city treasurer to be accounted for at the termination of service, except in the case of a subscriber becoming in arrears in charges at which time the deposit may be withdrawn from the special account and applied to the payment of the delinquent charges.

Sec. 110.40. Water Conservation.

(a) ***Water Conservation Measures and Schedules***. When it appears that the City's system-wide water demand or water supply levels warrant the implementation of conservation measures, such measures shall be ordered. The voluntary or mandatory conservation program to be implemented will be determined by a Resolution of the City Council, or a directive by the Mayor or City Administrator which shall be effective until the City Council convenes at a subsequent meeting for which agenda notice of the directive can be given as required by law. The water conservation measure will take effect when public notice of the conservation program, measure and schedule is given. The water conservation program may, at the City Council's option, or pending the convening of the next meeting of the City Council at the discretion of the Mayor or the City Administrator, include one of the following plans:

(b) **Voluntary or Mandatory Odd-Even Outside Watering**. An odd-even program may be initiated permitting properties with an odd number address to water on odd-numbered calendar days and those properties with an even number address to water on even calendar days. Such program, at the discretion of the City Council, Mayor or City Administrator, may be mandatory or voluntary.

(1) **Three-Day Per Week Outside Watering Plan**. A three-day per week outside watering plan may be initiated eliminating outside watering, including car washing, on Mondays, Wednesdays and Fridays, but permitting outside watering on Sundays, Tuesdays, Thursdays and Saturdays.

(2) **Five-Day And Seven-Day Outside Watering Plan**. A five-day or seven day watering plan may be initiated. Outside watering under this subsection shall be allowed within the City between the hours of 7 a.m. to 11 a.m. and 6 p.m. to 10 p.m. utilizing either of the following methods as ordered:

(i) **Five Day Plan.** Using the LAST number of the property address, the owner of such property may water outside only on the calendar day(s) set forth below:

* 1 or 2.....1st day of the month
* 3 or 4..... 2nd day of the month
* 5 or 6.....3rd day of the month
* 7 or 8.....4th day of the month
* 9 or 0..... ...5th day of the month

* The schedule is computed beginning with the first day of the month or as announced upon implementation. The foregoing schedule shall repeat itself for days following the fifth day of each month, or as otherwise announced by the City upon implementation of the conservation program.

OR

ii. **Seven Day Plan.** Using the LAST number of the property address the owner of such property may outside water only on the calendar day(s) set forth below with NO OUTSIDE WATERING allowed on Saturdays or Sundays:

* 9 or 0..... ..... MONDAY
* 1 or 2..... TUESDAY
* 3 or 4.....…… WEDNESDAY
* 5 or 6.....…… THURSDAY
* 7 or 8..... …… .... FRIDAY

* The schedule shall repeat itself the following week or as otherwise announced by the City Council, Mayor or City Administrator, upon implementation of the conservation program.

(2) No Outside Watering. In cases of extreme emergency, a no outside watering plan may be initiated. Under such plan there shall be NO OUTSIDE WATERING, save and except as may be necessary for pets and livestock. Water use shall be further limited to household necessities only. Commercial business usage of water may be further restricted at the direction of the City Council, Mayor or City Administrator.

(3) Exceptions and Variances. The following shall be exceptions and permitted variances to the plans and schedules set forth above:

(i) Watering with buckets of five gallons or less or use of a drip irrigation system is allowed on any day at any time.

(ii) Car washing is allowed on the same day and during the same hours as outside watering, and at no other time.

(ii) Commercial users are subject to the same outdoor watering and car wash restrictions and may be subject to additional restrictions as deemed necessary and as set forth in the directive, or amended directive ordering conservation.

(b) ***Other Conservation Measures***. Nothing in this subsection shall be construed as a limitation on the City Council's ability to impose other conservation measures, including measures more restrictive in nature, should such measures be necessary to retain sufficient water for fire protection to preserve the public health and safety of the City's residents.

(c) ***Implementation of Mandatory Conservation***. Mandatory conservation measures and requirements and the measure, plan and schedule set forth in Section 110.40 (a) that is specified in the directive ordering mandatory conservation shall take effect and upon public notice being given by the City Council, the Mayor or the City Administrator that mandatory conservation and the specified measure, plan and schedule is in effect. Such mandatory conservation, measure, plan and schedule shall, after being ordered, continue and remain in effect until further ordered by the City Council, the Mayor or the City Administrator. After the issuance of a directive or order placing mandatory conservation in effect and the public announcement of such directive or order, it shall be unlawful for any person to water outside or to use water in any manner that is not authorized and permitted by the measure, plan and scheduled ordered to be in effect. A measure, plan or schedule set forth in Section 110.40 (a) above being ordered to be in effect, it shall be unlawful for any person to fail or refuse to comply with such order or directive.

Sec. 110.41 Conservation Fee. For all water customers of the City, there shall be a Water Conservation Fee per billing cycle based on water usage billed. The Water Conservation Fee for City water customers shall be equal to the per 1000/gallons pumping fee assessed to the

City of Lexington by the Lost Pines Groundwater Conservation District plus $0.01 (one cent) for each 1000 gallons of water billed to the water customer. The Water Conservation Fee shall be charged per billing cycle to each customer as part of the City's monthly utility billing to City water customers based on each customer's metered water use. *[Added by Ord. No. 08-0910-7, adopted September 10,2008]*

Secs. 110.42 through 110.60. Reserved.

ARTICLE III. SEWAGE DIVISION

Division 1. GENERALLY

Secs. 110.61-110.70. Reserved.

DIVISION 2. SEWER CHARGES

Sec. 110.71. Definitions. The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment house means a collection of dwellings for housing a number of people grouped in four or more families, assigned to different sections in the same structure.

Boardinghouse means a place where one obtains food or lodging, or both, in another's house for a stipulated price.

Family means any number of individuals living together as a single housekeeping unit.

Industrial wastes means the liquid or other character of waste resulting from any commercial manufacturing or industrial operations or processes, other than sanitary sewage.

One-family residence means a building used exclusively as living quarters for a family and occupied by only one family.

Roominghouse means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodging to such persons he shall choose, for which he receives compensation for such rooms.

Sanitary sewage means the waste from water closets, urinals, lavatories, sinks, bathtubs, showers, household laundries, cellar floor drains, garage floor drains, storerooms, soda fountains, cuspidors, refrigerator drips, drinking fountains and stable drains.

Three-family residence means a building used exclusively as living quarters for three families and occupied by not more than three families.

Two-family residence means a building used exclusively as living quarters for two families and occupied by not more than two families.

Cross reference--Definitions generally, § 1.2.

Sec. 110.72. Applicability Of Division. The provisions of this division shall not apply to or be made available to any incorporated city, town or village outside the city limits of the City, and the sanitary sewer system and lines of the City, shall not he used by any other incorporated city, town, or village outside of the city limits of the City. The facilities of the sanitary sewer system of the City shall not be sold or made available to any persons, firms or corporations, private or municipal, within the limits of any incorporated city, town or village outside of the city limits of the City.

Sec. 110.73. Monthly Sewer Charges and Schedules.

(a) ***Levy and collection of charges for use of System***. It is hereby determined and declared to be necessary for the city to levy and collect charges from all persons, firms and corporations that are using the sanitary sewer system and the lines of the city. These charges shall he in accordance with the user charge system developed under EPA Grant project C-48-1638-03. The charges shall be based upon actual sewer use as measured by the average monthly water usage during the winter months of December, January and February. Sewer charges shall be calculated once each year and remain fixed throughout a 12-month period.

(b) ***Amendment of sewer user charge system; minimum billing.*** The sewer user charge system developed under EPA Grant Project C-48-1638-03 shall be amended to provide for a minimum billing based upon a basic level of service required by all sewer customers including, but not limited to, costs for meter reading, monthly billing, overhead administration services, and wastewater collection and treatment of 1,000 gallons per month.

(c) ***Schedules***. The schedule of sewer charges shall be as follows: The base rate shall be $18.35 which shall include the first 3,000 gallons of water metered. Flows in excess of 3,000 gallons shall be billed the following additional charges based on the average of water usage for the months of December, January and February. As an example:

December water usage	8,000 gallons
January water usage	10,000 gallons
February water usage	12,600 gallons
Total water usage	30,600 gallons divided by 3 = $32.35

Number of Gallons	Additional Charge
3001 -4001	$1.70
4001 -5000	$1.80
5001 -6000	$1.90
6001 -7000	$2.00
7001 -8000	$2.10
8001 -9000	$2.20
9001 - 10,000	$2.30
10,001 - 11,000	$2.40
11,001 - 12,000	$2.50
12,001 - 13,000	$2.60
13,001 - 14,000	$2.70
14,001 - 15,000	$2.80
15,001 - 20,000	$3.00 per 1,000 gallons
20,001 and up	$3.20 per 1,000 gallons over 20,001 gallons

(i)	Sewer Tap Charge:	$900.00
(ii)	Relocation of Sewer Tap:	$100.00

Sec. 110.74. Reserved.

Sec. 110.75. Reserved.

Sec. 110.76. Charges To Be Paid Together With Water Bill. The charges established in section 110.73 shall be due and payable monthly to the city, and such charges shall be paid along and together with water bills at the city hall in accordance with sections 110.36 and 110.37.

Sec. 110.77. Discontinuance of Service. Sections 110.5, 110.18, and 110.19 apply to sewer service provided to utility customers of the City. Any person who shall fail to pay in full City assessed utility charges shall be subject to having their sewer service disconnected from the city's sewer system and the lines and their water supply disconnected. Thereafter, no sewer connection shall which has been disconnected or water supply which has been disconnected for the nonpayment of charges shall be again reconnected for the same user until all costs incurred in the actual physical disconnect and reconnect have been paid in full and all delinquent utility charges have been paid to the city. *[As amended by Ord. No. 07-1023-5, adopted October 23, 2007]*

Sec. 110.78. Charges; To Whom Assessed. The charges assessed in this article shall be assessed against the person on whose name the water meter is assessed, whether or not the meter is owned by the water department of the city. If any person is connected to or is using the sanitary sewer system of the city and is not connected to the water of the city, then in that event the charges

in this article shall be assessed in the name of the person connected to and using the city's municipal sewer system.

Division 2A REPAIR OF SANITARY SEWER LEAKS

Sec. 110.79 Responsibility and Application.

(a) Maintaining the integrity of the sanitary sewer system shall be the responsibility of the Mayor or his or her designee for the City.

(b) The provisions of this Division apply to all customer sewer service lines on private property which flow into public lines in the City's streets, alleys, and easements, including but not limited to single-family or multi-family residential units, manufactured homes and/or trailer parks, apartments, places of business, schools, governmental buildings, structures of any kind, vacant buildings, or vacant land.

(c) The City shall provide a sewer stub for a City property owner to extend public sanitary sewer facilities to a building or proposed building at the City's expense. The property owner bears all other responsibility, including, but not limited to, the responsibility to construct and maintain all sewer lines and facilities, including any lift stations deemed necessary by the City at its sole discretion, from the City's sewer stub to the building or structure. Every property owner shall maintain its sewer lines and facilities, including any lift stations, in a sanitary and safe operating condition and in accordance with all Texas Commission on Environmental Quality regulations.

Sec. 110.80 Definitions. For the purpose of this Division, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Infiltration. The water entering a sewer system and service connections from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls.

Inflow. The water discharged into a sewer system and service connections from such sources as, but not limited to roof leaders, cellars, swimming pool and/or spa drains, yard and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface runoff and street wash waters or drainage.

Sanitary Sewer. A public sewer that conveys domestic waste water or industrial waste or a combination of both, and into which storm water, surface water, ground water and other unpolluted waste are not intentionally passed.

Storm Sewer. A public sewer which carries storm and surface waters and drainage and into which domestic waste water or industrial wastes are not intentionally passed.

Sec. 110.81. Inspection.

(a) Prior to original connection, reconnection or transfer of water and/or sewer service to a tenant or property owner, the city at its option, shall inspect the customer's private sanitary sewer service line and verify the integrity thereof. Any defect discovered in the private line shall be repaired or connected by the property owner or the owner's agent prior to obtaining original connection, reconnection or transfer of city water and/or sewer service. Sewer and water service shall not be connected, reconnected, or transferred unless and until all defects are corrected.

(b) The city shall from time to time as necessary for the public health and safety of the citizens of Lexington and for the integrity of the City's sewer system, survey, inspect, and identify existing infiltration and inflow from private sanitary sewer lines or facilities. Any defect or source causing or suspecting to cause infiltration or inflow into the City's sanitary sewer system discovered in the private facilities shall be repaired by the property owner or his or her agent at the property owner's expense.

Sec. 110.82. Notification.

(a) In instances not involving a new connection, reconnection, or transfer of existing sewer services, the City will notify, in writing, by regular mail and certified mail, return receipt requested, each property owner on whose property a source of inflow or infiltration of water into the city's sanitary sewer systems exists, including in the notice the nature and location of the infiltration or inflow source and the required repairs. The property owner shall have ninety days following the date of notification to repair the defects at the owner's expense. Notice mailed to the owner as listed on the certified tax roll for Lee County for that address shall be sufficient notice under this provision. Ifthe listed owner for that property is different than the person or entity identified as being the City's utility customer for that address, a copy of the notice sent to the owner shall also be sent by regular mail to the address to which the City sends the utility billing for utility service to that property.

(b) A reminder notice will be sent if the repairs have not been satisfactorily completed after the ninety day period.

(c) A cutoff notice will be sent after 120 days following the initial notification if the repairs have not been satisfactorily completed. City utility services to the premises will be terminated in accordance with the cutoff notice in the event that the required repairs are not performed prior to the cutoff date. In the event that City sewer and water service is discontinued at the property as a result of a violation of this ordinance, City sewer and water service shall not be

reinstated to the property in question until the required repairs are made and the surcharge, if any, as provided for herein has been paid.

Sec. 110.83. Repairs.

(a) If the customer's line in question is vitreous clay pipe and cannot be satisfactorily repaired at the sole determination of the City, the property owner may be required to replace the entire private clay sewer service line with PVC pipe Schedule 40.

(b) All repairs must be made by a plumber licensed by the state of Texas, except that a) persons permitted to make plumbing repairs pursuant to Section 22.130 of this Code shall be authorized to make repairs hereunder, but b) only a plumber licensed by the state of Texas shall be authorized to make connection from the customer's service line to the City's sewer line. Either the plumber or owner must have a valid city plumbing permit for these specific repairs prior to work commencing and nothing herein conveys the right to violate any provision of this code nor is it to be construed as exempting any property owner from obtaining a permit and paying any required fees therefore.

(c) After the repairs have been completed and before the line has been covered, the customer shall arrange for the City to inspect and approve the adequacy and workmanship of the repairs. The plumber or owner may cover the line after approval by the City inspector of a satisfactory repair.

(d) If the City's inspector does not approve the repairs, the owner or plumber shall correct the repairs as specified and notify the City to re-inspect the corrected repairs. No cover may be placed over the repaired lines until approved by the City. The customer shall be responsible to excavate any improperly covered lines for the City's re-inspection.

(e) Permit fees for permits issued to make repairs required pursuant to this section shall be refunded to the property owner in the event that the repairs required are satisfactorily completed within ninety days after initial notice from the City. Refunds shall be made by the City within thirty (30) days of the completed repairs.

Sec. 110.84. Violations; Appeal

(a) Should the property owner fail to make the repairs within the ninety day period as set forth herein, the City shall have the following options:

(1) Making the repairs as set forth in section (B) below and assessing a surcharge fee to the owner's monthly wastewater charge based on the City's cost to repair the line.

(2) Terminating water and/or sewer service to the property.

(b) If, after exercising reasonable diligence, the City is unable to locate the property owner or the property owner refuses or fails to make the necessary repairs, the City or its agent has the right to go on the property owner's land from which the source of inflow or infiltration exists and

make the repairs and inspection as provided for herein. The owner shall be liable to the City for the cost of the work upon demand, which said cost may be included upon the property owner's next monthly waste water charge with a reasonable service charge added for each month the bill remains unpaid. In the event that the property owner defaults in the payment of the surcharge, the City may cut off the water and/or sewer service upon 30 days written notice owner.

(c) Within 30 days after notification that the water and/or sewer will be cut off, the owner may:

(1) Arrange with the City to extend the payout period without interest up to 36 months with the monthly payments added to the owner's regular water/sewer bill.

(2) Appeal to the City Council for a hardship variance. The appeal shall be submitted in writing to the Mayor's office for hearing at a regular scheduled Council meeting.

(d) If the property owner is unknown or does not pay the charge, the city may in addition to terminating service to the building or structure, file a lien upon the property for the cost of the repairs.

Secs. 110.79—110.90. Reserved.

DIVISION 3. INDUSTRIAL WASTES

Sec. 110.114. Notice
Sec. 110.115. Continuing Prohibited Discharges
Sec. 110.116-110.134 Reserved

Sec. 110.91. Definitions. The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approving authority means the mayor or his duly authorized representative.

BOD (biochemical oxygen demand) means the quantity of oxygen by weight, expressed in mg/I, utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at a temperature of 20 degrees Celsius.

Building sewer means the extension from the building drain to the public sewer or other place of disposal, also called the house lateral and house connection.

City means the City of Lexington, Texas, or any authorized person acting in its behalf.

COD (chemical oxygen demand) means measure of the oxygen consuming capacity of inorganic and organic matter present in the water or wastewater, expressed in mg/I as the amount of oxygen consumed from a chemical oxidant in a specific test, but not differentiating between stable and unstable organic matter and thus not necessarily correlating with biochemical oxygen demand.

Control manhole means a manhole giving access to a building sewer at some point before the building sewer discharge mixes with other discharges in the public sewer.

Control point means the point of access to a course of discharge before the discharge mixes with other discharges in the public sewer.

Garbage means animal and vegetable wastes and residue from preparation, cooking and dispensing of food, and from the handling, processing, storage and sale of food products and produce.

Industrial waste means waste resulting from any process of industry, manufacturing, trade, or business from the development of any natural resource, or any mixture of the waste water or normal wastewater, or distinct from normal wastewater.

Milligrams per liter (mg/I) means the same as parts per million and is a weight-to-volume ratio. The milligram-per-liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

Natural outlet means any outlet into a watercourse, ditch, lake, or other body of surface water or groundwater.

Normal domestic wastewater means wastewater excluding industrial wastewater discharged by a person into sanitary sewers and in which the average concentration of total suspended solids is not more than 200 mg/I and the BOD is not more than 200 mg/I.

Overload means the imposition of organic or hydraulic loading on a treatment facility in excess of its engineered design capacity.

Person means any individual and includes any corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership association, or other legal entity.

pH means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration.

Public sewer means pipe or conduit carrying wastewater or unpolluted drainage in which owners of abutting properties shall have the use, subject to control by the city.

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

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

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

Storm sewer means a public sewer which carries stormwater, surface water and drainage and into which domestic wastewater or industrial wastes are not intentionally passed.

Stormwater means rainfall or any other forms of precipitation.

Superintendent means the mayor or his designee.

Suspended solids (SS) means solids measured in mg/I that either float on the surface of, or are in suspension in, water, wastewater, or other liquids, and which are largely removable by a laboratory filtration device.

To discharge means to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

Trap means a device designed to skim, settle, or otherwise remove grease, oil, sand, flammable wastes or other harmful substances.

Unpolluted wastewater means water containing: (1) No free or emulsified grease or oil; (2) No acids or alkalis; (3) No phenols or other substances producing taste or odor in receiving water; (4) No toxic or poisonous substances in suspension, colloidal state, or solution; (5) No noxious or otherwise obnoxious or odorous gases; (6) Not more than an insignificant amount in mg/I each of suspended solids and BOD, as determined by the State Department Of Water Resources; and (7) Color not exceeding 50 units, as measured by the platinum-cobalt method of determination, as specified in standard methods.

Waste means rejected, unutilized or superfluous substances in liquid, gaseous, or solid form resulting from domestic, agricultural, or industrial activities.

Wastewater means a combination of the water-carried waste from residences, business buildings, institutions, and industrial establishments, together with any groundwater, surface water, and stormwater that may be present.

Wastewater facilities means all facilities for collection, pumping, treating, and disposing of wastewater and industrial wastes.

Wastewater service charge means the charge on all users of the public sewer system whose wastes do not exceed in strength the concentration values established as representative of normal wastewater.

Wastewater treatment plant means any city owned facilities, devices, and structures used for receiving, processing and treating wastewater, industrial waste, and sludge from the sanitary sewers.

Watercourse means a natural or manmade channel in which a flow of water occurs, either continuously or intermittently.

Cross reference--Definitions generally, § 1.2.

Sec. 110.92. Penalty For Violation Of Division.

(a) A person who continues prohibited discharges is guilty of a misdemeanor and, upon conviction, is punishable as provided in section 1.6, Lexington Code of Ordinances for each act of violation and for each day of violation.

(b) In addition to proceeding under the authority of subsection (a) of this section, the city is entitled to pursue all other criminal and civil remedies to which it is entitled under authority of statutes or other ordinances against a person continuing prohibited discharges.

Sec. 110.93. Failure To Pay. In addition to sanctions provided for by this division, the city is entitled to exercise sanctions provided for by the other ordinances of the city for failure to pay the bill for water and sanitary sewer service when due.

Sec. 110.94. Penalty For Criminal Mischief. The city may pursue all criminal and civil remedies to which it is entitled under authority of statutes and ordinances against a person negligently, willfully or maliciously causing loss by tampering with or destroying public sewers or treatment facilities.

Sec. 110.95. Prohibited Discharges.

(a) No person may discharge to public sewers any waste which by itself or by interaction with other wastes may:

(1) Injure or interfere with wastewater treatment processes or facilities;

(2) Constitute a hazard to humans or animals; or

(3) Create a hazard in receiving waters of the wastewater treatment plant effluent.

(b) All discharges shall conform to the requirements of this division.

Sec. 110.96. Chemical Discharges.

(a) No discharge to public sewers may contain:

(1) Cyanide greater than 1.0 mg/I;

(2) Fluoride other than that contained in the public water supply;

(3) Chlorides in concentrations greater than 250 mg/I;

(4) Gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas; or

(5) Substances causing an excessive chemical oxygen demand (COD).

(b) No waste or wastewater discharged to public waters may contain:

(1) Strong acid, iron pickling wastes, or concentrated plating solutions whether neutralized or not.

(2) Fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg/I or containing substances which may solidify or become viscous at temperature between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius).

(3) Objectionable or toxic substances exerting an excessive chlorine requirement to such a degree that any such material received in the composite wastewater treatment works exceeds the limits established by the approving authority for such materials.

(4) Obnoxious, toxic or poisonous solids, liquids or gases in quantities sufficient to violate the provisions of section 110.95(a).

(c) No waste, wastewater, or other substance may be discharged into public sewers which has a pH lower than 5.5 or higher than 9.5, or any other corrosive property capable of causing damage or hazard to structures, equipment and/or personnel at the wastewater facilities.

(d) All waste, wastewater or other substance containing phenols, hydrogen sulfide or other taste- and odor-producing substances shall conform to concentration limits established by the approving authority. After treatment of the composite wastewater, concentration limits may not exceed the requirements established by state, federal or other agencies with jurisdiction over discharges to receiving waters.

Sec. 110.97. Hazardous Metals And Toxic Materials.

(a) No discharges may contain concentrations of hazardous metals other than amounts specified in subsection (b) of this section.

(b) The allowable concentrations of hazardous metals, in terms of milligrams per liter (mg/I), for discharge to inland waters, and determined on the basis of individual sampling in accordance with standard methods are:

Metal		Average	Not to Exceed Daily Composite	Grab Sample
(1)	Arsenic	0.1	0.2	0.3
(2)	Barium	1.0	2.0	4.0
(3)	Cadmium	0.05	0.1	0.2
(4)	Chromium	0.5	1.0	5.0
(5)	Copper	0.5	1.0	2.0
(6)	Lead	0.5	1.0	1.5
(7)	Manganese	1.0	2.0	3.0
(8)	Mercury	0.005	0.005	0.01
(9)	Nickel	1.0	2.0	3.0

(10)	Selenium	0.05	0.1	0.2
(11)	Silver	0.05	0.1	0.2
(12)	Zinc	1.0	2.0	6.0

These concentration parameters and rules governing same are promulgated under the authority of *Tex. Water Code §§ 5.103 and 5.105*, as amended from time to time, with respect to hazardous metals and in accordance with the *State Department Of Water Resources, rule 156.19.*

(c) No other hazardous metals or toxic materials may be discharged into public sewers without a permit from the approving authority specifying conditions of pretreatment, concentrations, volumes and other applicable provisions.

(d) Prohibited hazardous materials include, but are not limited to: (1) Antimony; (2) Beryllium; (3) Bismuth; (4) Cobalt; (S) Molybdenum; (6) Uranium; (7) Rhenium; (8) Strontium; (9) Tellurium; (10) Herbicides; (11) Fungicides; and (12) Pesticides.

Sec. 110.98. Particulate Size.

(a) No person may discharge garbage or other solids into public sewers unless it is shredded to a degree that all particles can be carried freely under the flow conditions normally prevailing in public sewers. Particles greater than one-half inch in any dimension are prohibited.

(b) The approving authority is entitled to review and approve the installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater.

Sec. 110.99. Stormwater And Other Unpolluted Drainage.

(a) No person may discharge to public sanitary sewers:

(1) Unpolluted stormwater, surface water, groundwater, roof runoff or subsurface drainage;

(2) Unpolluted cooling water;

(3) Unpolluted industrial process waters;

(4) Other unpolluted drainage; or

(5) Make any new connections from inflow sources.

(b) In compliance with the Texas Water Quality Act (*V.T.C.A., Water Code § 26.001* et seq., as amended from time to time), and other statutes, the approving authority may designate

storm sewers and other watercourses into which unpolluted drainage described in subsection (a) of this section may be discharged.

Sec. 110.100. Temperature. No person may discharge liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius), or any substance which causes the temperature of the total wastewater treatment plant influent to increase at a rate of ten degrees Fahrenheit or more per hour, or a combined total increase of plant influent to 110 degrees Fahrenheit.

Sec. 110.101. Radioactive wastes.

(a) No person may discharge radioactive wastes or isotopes into public sewers without the permission of the approving authority.

(b) The approving authority may establish, in compliance with applicable state and federal regulations, regulations for discharge of radioactive wastes into public sewers.

Sec. 110.102. Impairment Of Facilities.

(a) No person may discharge into public sewers any substance capable of causing:

(1) Obstruction to the flow in sewers;

(2) Interference with the operation of treatment processes of facilities; or

(3) Excessive loading of treatment facilities.

(b) Discharges prohibited by section 110.102(a) include, but are not limited to, materials which exert or cause concentration of:

(1) Inert suspended solids greater than 250 mg/I including, but not limited to:

(i) Fuller's earth;

(ii) Lime slurries; and

(iii) Lime residues.

(2) Dissolved solids greater than 1,300 mg/I including, but not limited to:

(i) Sodium chloride; and

(ii) Sodium sulfate.

(3) Excessive discoloration including, but not limited to:

(i) Dye wastes; and

(ii) Vegetable tanning solutions.

(4) BOD, COD, or chlorine demand in excess of normal plant capacity.

(c) No person may discharge into public sewers any substance that may: (1) Deposit grease or oil in the sewer lines in such a manner as to clog the sewers; (2) Overload skimming and grease handling equipment; (3) Pass to the receiving waters without being effectively treated by normal wastewater treatment processes due to the non-amenability of the substance to bacterial action; or (4) Deleteriously affect the treatment process due to excessive quantities.

(d) No person may discharge any substance into public sewers which: (1) Is not amenable to treatment or reduction by the processes and facilities employed; or (2) Is amenable to treatment only to such a degree that the treatment plant *effluent* cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(e) The approving authority shall regulate the flow and concentration of slugs when they: (1) Impair the treatment process; (2) Cause damage to collection facilities; (3) Incur treatment costs exceeding those for normal wastewater; or (4) Render the effluent unfit for stream disposal or industrial use.

(f) No person may discharge into public sewers solid or viscous substances which may violate subsection (a) of this section if present in sufficient quantity or size including, but not limited to: (1) Ashes; (2) Cinders; (3) Sand; (4) Mud; (5) Straw; (6) Shavings; (7) Metal; (8) Glass; (9) Rags; (10) Feathers; (11) Tar; (12) Plastics; (13) Wood; (14) Unground garbage; (15) Whole blood; (16) Paunch manure; (17) Hair and fleshings; (18) Entrails; (19) Paper products, either whole or ground by garbage grinders; (20) Slops; (21) Chemical residues; (22) Paint residues; or (23) Bulk solids.

Sec. 110.103. Compliance With Existing Authority.

(a) Unless an exception is granted by the approving authority, the public sanitary sewer system shall be used by all persons discharging: (1) Wastewater; (2) Industrial waste; (3) Polluted liquids.

(b) Unless authorized by the State Department Of Water Resources, no person may deposit or discharge any waste included in subsection (a) of this section on public or private property or into or adjacent to any: (1) Natural outlet; (2) Watercourse; (3) Storm sewer; and (4) Other area within the jurisdiction of the city.

(c) The approving authority shall verify prior to discharge that wastes authorized to be discharged will receive suitable treatment within the provisions of laws, regulations, ordinances, rules and orders of federal, state and local governments.

Sec. 110.104. Approving Authority--Requirements.

(a) If discharges or proposed discharges to public sewers may: (1) Deleteriously affect wastewater facilities, processes, equipment, or receiving waters; (2) Create a hazard to life or health; or (3) Create a public nuisance; the approving authority shall require pretreatment to an acceptable condition for discharge to the public sewers, control over the quantities and rates of discharge, and payment to cover the cost of handling and treating the wastes.

(b) The approving authority is entitled to determine whether a discharge or proposed discharge is included under subsection (a) of this section.

(c) The approving authority shall reject wastes when it determines that a discharge or proposed discharge does not meet the requirements of subsection (a) of this section.

Sec. 110.105. Same--Review And Approval.

(a) Ifpretreatment or control is required, the approving authority shall review and approve design and installation of equipment and processes.

(b) The design and installation of equipment and processes must conform to all applicable statutes, codes, ordinances and other laws.

(c) Any person responsible for discharges requiring pretreatment, flow equalizing or other facilities shall provide and maintain the facilities in effective operating condition at his own expense.

Sec. 110.106. Requirements For Traps.

(a) Discharges requiring a trap include: (1) Grease or waste containing grease in amounts that will impede or stop the flow in the public sewers; (2) Oil; (3) Sand; (4) Flammable wastes; and (5) Other harmful ingredients.

(b) Any person responsible for discharges requiring a trap shall, at his own expense and as required by the approving authority: (1) Provide equipment and facilities of a type and capacity approved by the approving authority; (2) Locate the trap in a manner that provides ready and easy accessibility for cleaning and inspection; and (3) Maintain the trap in effective operating condition.

Sec. 110.107. Requirements For Building Sewers. Any person responsible for discharges through a building sewer carrying industrial wastes shall, at his own expense and as required by the approving authority:

(a) Install an accessible control manhole;

(b) Install meters and other appurtenances to facilitate observation, sampling and measurement of the waste;

(c) Install safety equipment and facilities (ventilation and steps) where needed; and

(d) Maintain the equipment and facilities.

Sec. 110.108. Sampling And Testing.

(a) Sampling shall be conducted according to customarily accepted methods, reflecting the effect of constituents upon the sewage works and determining the existence of hazards to health, life, limb, and property. The particular analysis involved will determine whether a 24-hour composite sample from all outfalls of a premises is appropriate or whether a grab sample should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls. Where applicable, 16-hour, eight-hour or some other period may be required. Periodic grab samples are used to determine pH, oil and grease.

(b) Examination and analyses of the characteristics of waters and wastes required by this division shall be: (1) Conducted in accordance with the latest edition of standard methods; and (2) Determined from suitable samples taken at the control manhole provided or other control point authorized by the approving authority.

(c) BOD and suspended solids shall be determined from composite sampling, except to detect unauthorized discharges.

(d) The approving authority shall determine which users or classes of users may contribute wastewater which is of greater strength than normal domestic wastewater. All users or classes of users so identified shall be sampled for flow BOD, TSS and pH at least annually.

(e) The city may select an independent firm or laboratory to determine flow, BOD, and suspended solids, if necessary. Flow may alternately be determined by water meter measurements if no other flow device is available and no other source of raw water is used.

Sec. 110.109. User Charge System.

(a) Persons making discharges of industrial waste into the city system shall pay a charge to cover all costs of collection and treatment.

(b) When discharges of any waste into the city system are approved by the approving authority, the city or its authorized representative shall enter into an agreement or arrangement providing: (1) Terms of acceptance by the city; (2) Payment by the person making the discharge, in accordance with the user charge system, as established in subsection (e) of this section; (3) Sewer connection procedures and requirements shall be in accordance with the Uniform Plumbing Code, as promulgated by the International Association of Plumbing and Mechanical Officials; (4) A sewer application approved with connection fee paid; and (5) Construction of sewer connections shall be approved by city inspectors prior to sewer use.

(c) Each user of the wastewater treatment system will be notified, at least annually, in conjunction with a regular sewer bill, of the rate and that portion of user charges or ad valorem taxes which are attributable to the operation and maintenance of the wastewater treatment system.

(d) The city will apply excess revenues collected from a class of users to the cost of operation and maintenance attributable to that class for the next year and adjust the rates accordingly.

(e) The user charge system is developed under *appendix B to 40 CFR 35*. It is a separate municipal document, and it is incorporated in its entirety by reference in this division.

Sec. 110.110. Savings Clause. A person discharging wastes into public sewers prior to the effective date of this Ordinance may continue without penalty so long as he:

(a) Does not increase the quantity or decrease the quality of discharge without permission of the approving authority;

(b) Has discharged the waste at least six months prior to the effective date of this Ordinance; and

(c) Applies for and is granted a permit no later than 150 days after the effective date of this Ordinance.

Sec. 110.111. Permit Conditions.

(a) The city may grant a permit to discharge to persons meeting all requirements of the savings clause, provided that the person:

(1) Submits an application within 120 days after the effective date of *Ordinance No. 85-34* on forms supplied by the approving authority;

(2) Secures approval by the approving authority of plans and specifications for the facilities when required;

(3) Has complied with all requirements for agreements or arrangements including, but not limited to, provisions for:

(i) Payment of charges;

(ii) Installation and operation of the facilities and of pretreatment facilities, if required; and

(iii) Sampling and analysis to determine quantity and strength when directed by the city; and

(4) Provides a sampling point, when requested by the city, subject to the provisions of this division and approval of the approving authority.

(b) A person applying for a new discharge shall:

(1) Meet all conditions of subsection (a) of this section; and

(2) Secure a permit prior to discharging any waste.

Sec, 110.112. Right of Entry.

(a) The superintendent and other duly authorized employees of the city bearing proper credentials and identification are entitled to enter any public or private property at any reasonable time for the purpose of enforcing this division.

(b) Anyone acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security and fire protection.

(c) Except when caused by negligence or failure of persons to maintain safe conditions, the city shall indemnify the persons against loss or damage to their property by city employees and against liability claims and demands for personal injury or property damage asserted against the persons and growing out of the sampling operation.

(d) The superintendent and other duly authorized employees of the city bearing proper credentials and identification are entitled to enter all private properties through which the city holds a negotiated easement for the purposes of:

(1) Inspection, observation, measurement, sampling or repair;

(2) Maintenance of any portion of the sewer system lying within the easements; and

(3) Conducting any other authorized activity. All activities shall be conducted in full accordance with the terms of the negotiated easement pertaining to the private property involved.

(e) No person acting under authority of this section may inquire into any processes including metallurgical, chemical, oil refining, ceramic, paper or other industries beyond that point having a direct bearing on the kind and source of discharge to the public sewers.

Sec. 110.113. Authority To Disconnect Service.

(a) The city may terminate water and wastewater disposal service and disconnect a customer from the system when: (I) Acids or chemicals which may damage the sewer lines or treatment process are released to the sewer potentially causing accelerated deterioration of these structures or interfering with proper conveyance and treatment of wastewater. (2) A governmental agency informs the city that the effluent from the wastewater treatment plant is no longer of a quality permitted for discharge to a watercourse, and it is found that the customer is delivering wastewater to the city's system that cannot be sufficiently treated or requires treatment that is not provided by the city as normal domestic treatment. (3) The customer: (i) Discharges waste or wastewater that is in violation of the permit issued by the approving authority; (ii) Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an imbalance in the wastewater

treatment system; (iii) Fails to pay bills for water and sanitary sewer services when due; or (iv) Repeats a discharge of prohibited wastes to public sewers in violation of this Chapter.

(b) If service is discontinued pursuant to subsection (a)(2) of this section, the city shall: (1) Disconnect the customer; (2) Supply the customer with the governmental agency's report and provide the customer with all pertinent information; and (3) Continue disconnection until such time as the customer provides pretreatment/additional pretreatment or other facilities designed to remove the objectionable characteristics from his wastes.

Sec. 110.114. Notice. The city shall serve persons discharging in violation of this division with written notice stating the nature of the violation and providing a reasonable time limit for satisfactory compliance.

Sec. 110.115. Continuing Prohibited Discharges. No person may continue discharging in violation of this division beyond the time limit provided in the notice.

Secs. 110.116 – 110.134. Reserved.

ARTICLE IV. ELECTRICITY

Sec. 110.135. One Electric Meter per Dwelling or Business. No electric meter connected by the city shall serve more than one single-family residential dwelling, as defined in the zoning ordinance, or one business building. The electrical inspector shall determine if an accessory building is an incidental part of the one single-family residential dwelling or one business building located on the same tract of land. If it is determined that it is an incidental part of the one single-family residential dwelling or one business building, no additional meter shall be required. *[Added by Ord. No. 12-0222-7, adopted February 22, 2012] [Renumbered Re-codification 2015]*

Sec. 110.136. (a) Residential.

(a) *Rate schedule R.* The minimum monthly rate for rate schedule R is $5.00. Effective February 1,2004, the charge for all additional usage shall be as follows: Distribution Charge of $0.0302 per KWH plus the Power Cost Charge.

(b) ***Fees and special conditions***. The residential tap fee within the city is $1,000 per single service; and the tap fee for service outside the city is $1,000 per single service. The fee for relocating existing service is $100.00. Special conditions are as follows: (1) Bills calculated under the rates of this subsection are subject to the application of the fuel cost adjustment clause. (2) Bills are due and payable as set forth in Section 110.18 herein. (3) Service rendered under this schedule is subject to the City's rules and regulations in effect from time to time. (4) A residence which is also used for business purposes will be served under the appropriate general service rate schedule and not under this rate schedule. [As amended by *Ord. No. 07-1023-5, adopted October 23, 2007*]

(c) ***Applicability of residential rates and fees.*** The rates of this schedule shall be for service for domestic purposes in individually metered residences and apartments. Such rates shall be applicable to all residential customers served from the local alternating current distribution system. Service under this schedule shall apply only to electric service in a single private dwelling and its appurtenances, the major use of which is for lighting and household appliances and for the personal comfort and convenience of those residing therein. Private dwellings in which space is occasionally used for the conduct of business by a person residing therein will be served under this rate schedule. Where a portion of a dwelling is used regularly for the conduct of business, the electricity consumed in that portion so used will be separately metered and billed under the appropriate commercial rate. Ifseparate circuits are not provided by the customer, the entire premises shall be classified as nonresidential and billed accordingly. This schedule shall not apply to service to institutions such as clubs, fraternities, orphanages, or homes; recognized roominghouses or boardinghouses; or the space in an apartment or other residential building primarily devoted to use as an office or studio for professional or other gainful purposes.

(d) ***Character of service***. The character of service shall be alternating current service at approximately 60 cycles, 110 or 220 volts, either single phase, two-wire or three-wire; or three phase three-wire or four-wire, as may be required by distributor. Service to water heaters shall be subject to installation by the consumer of off-peak control of an approved type.

(e) ***City Electricity Sold at Premises with electrical supply hook-up/meter***. Electricity from the City system shall be sold and delivered by the City only to persons at whose premises meters are installed, and electric meter readings and computations shall be only as follows:

(1) Each meter constitutes a separate service. Each meter installed at any premises shall constitute a separate service and must be paid for as such, except as provided in subsection (iii) of this section.

(2) Separate meter for each residence or building in new service or not previously approved by the City for multiple uses. For any electrical service installed after the adoption of this section, each individual residence or building making connection with the city electrical system shall have a separate meter, and no new connections

shall be made by the City unless such individual residence or building is separately metered, except as provided in subsection (iii) of this section.

(i) Multiple use of meter in existing building. In existing cases where more than one building is served by a single meter (with approval of the City), the entire amount of electricity consumed and registered through such meter shall be billed to the building nearest the meter and shall include an additional minimum for each and every other building served by such meter. Such procedure shall continue until such buildings are separately metered. *[Sec. 110.36(e) Added by Ord. No. 13-0513-13, adopted March 13, 2013]*

Sec. 110.137. Commercial.

(a) ***Rate schedule C.*** The minimum monthly rate for rate schedule C is $5.00. Effective February 1, 2004, the charge for additional usage shall be as follows:

(1) Small Commercial Rate: Distribution Charge of $0.0423 per KWH plus the Power Cost Charge.

(2) Large Commercial Rate: Distribution Charge of $0.0302 per KWH plus the Power Cost Charge.

(3) The Large Commercial Rate shall apply to non-residential customers using a total aggregate business consumption of 45,000 KWH per billing cycle. The Small Commercial Rate shall apply to all non-residential customers using less than a total aggregate business consumption of 45,000 KWH per billing cycle.

(b) ***Fees and special conditions***. The minimum monthly bill is $5.00 plus the sum of all applicable rate adjustments. The commercial tap fee within the city is $1,000 per single service; and the tap fee for service outside the city is $1,000 per single service. The fee for relocating existing service is $100.00. Special conditions are as follows: (1) Bills calculated under the rates of this subsection are subject to the application of the fuel cost adjustment clause. (2) Bills are due and payable as set forth in Section 110.18 herein. (3) Service rendered under this schedule is subject to the City's rules and regulations in effect from time to time. [Amended *Ord. No. 07-1023-5, adopted October 23, 2007*]

(c) ***Applicability of rate schedule* C**. This rate schedule shall be applicable to all uses other than residential, including school use.

Sec. 110.138. Reserved.

Sec. 110.139. Calculation of Power Cost Charge. The Power Cost Charge, which is the actual cost of generation and distribution of electricity for a billing cycle, shall be calculated as follows:

LCRA total billing to the City for wholesale power costs for one billing cycle divided by actual retail kilowatt hours billed during said billing cycle.

Sec. 110.140. Mercury Vapor Lighting Service.

(a) ***Rate schedule MV; monthly rate***. When billed along with other metered electric service, the rate shall be $35.00 for installation of the light. The monthly use charge shall be $10.25 per light, plus the sum of all applicable rate adjustments. Special conditions shall be as follows: (I) The city will furnish, operate, and maintain the lighting system. Service at locations where existing city-owned poles and facilities are not available will be made at the discretion of the city. (2) The cost of repairing facilities damaged by acts of vandalism shall be billed to the customer. (3) The city shall, at the request of the customer, relocate or change existing equipment. The customer shall reimburse the city for such changes at the actual cost, including appropriate overheads. (4) Extensions of lighting facilities will be made by the city only where, in the opinion of the city, the annual revenue justifies the cost of such extensions. (5) Customers taking service under this schedule may be required to execute contracts with a minimum term. (6) Bills calculated under such rates are subject to the application of the fuel adjustment clause. (7) For purposes of applying those portions of the adjustment clauses which are based on kilowatt-hours, the consumption rate of 175 watt mercury vapor lamps shall be established as 75 kwh per month. (8) The due date of the bill shall be ten days after issuance, and payment must be received in the city's office by 5:00 p.m. on the due date to avoid penalty. (9) Amounts remaining unpaid after the tenth day shall be assessed a one-time ten percent penalty. (10) Service rendered under this schedule is subject to the city's rules and regulations in effect from time to time.

(b) ***Applicability mercury vapor lighting service rates***. Mercury vapor lighting service rates shall apply to single phase service, to mercury vapor lighting fixtures with 175 watt lamps and related wiring for outdoor lighting of parks, driveways, yards and other areas. Service shall extend from one-half hour after sunset until one-half hour before sunrise, each night of the year, approximately 4,000 hours service per year.

Sec. 110.141. Municipal Service.

(a) ***Rate schedule MS; monthly rate***. The monthly rate for rate schedule MS shall change each month in direct relation to the charge for purchased power. The minimum monthly bill shall be the monthly rate, plus the sum of all applicable rate adjustments. Special conditions shall be as follows: (I) Bills calculated under such rates are subject to the application of the fuel cost adjustment clause. (2) The bills rendered under this schedule shall be settled between funds not later than the month first succeeding the month in which service was rendered. (3) Any bill rendered for service under this section shall be based on metered consumption or calculated on the basis of valid assumptions. (4) Service rendered under this schedule is subject to the city's rules and regulations in effect from time to time.

(b) ***Applicability of municipal service rates***. Municipal service rates shall be for service for municipal purposes which are essential services rendered city-wide and which are financed wholly from city funds. Examples are water pumping, sewage pumping, municipal building

lighting and power, street lighting, etc. This rate is not available for any purpose for which the city receives specific reimbursement, either partial or total.

Sec. 110-142. Fuel Cost Adjustment Clause.

(a) The energy charge per kilowatt-hour (kwh) shall be adjusted upward or downward each month by fuel cost factors determined in accordance with the provisions set forth as follows: (1) A preliminary estimate of the cost of fuel per kwh of sales based on the best information available shall be calculated on or about the 20th of each month and shall be applied to the number of kwh billed for the billing cycle of such month. Total kilowatt-hours sold during the month will be adjusted for appropriate line losses for use in the fuel cost adjustment clause. It is anticipated that an adjustment will follow later as set forth in subsection (a)(2) of this section. (2) The adjustment to the estimate will be calculated for each month when the information is available and will reflect variances in the estimated and actual costs of all fuel used by the city's wholesale supplier in its generating plants and variances in the estimated and actual fuel cost components of power and energy purchased by the city.

(b) The fuel cost adjustment as defined in subsection (a) of this section shall be made on the next bill rendered to each customer following determination of the amount of the adjustment. The dollar amount billed will be calculated by multiplying the adjustment per kwh after consideration of the preliminary estimated adjustment made in accordance with subsection (a)(l) of this section by the number of kwh sold to the customer during the period to which the adjustment applies.

(c) The purpose of this section is to reflect accurately changes in the cost of fuel. Therefore, each month the total amount which was to have been recovered will be compared with the amount actually recovered in the prior period for which adjustments of preliminary estimates have been completed. Any difference will be added to or subtracted from the amounts to be recovered in the next month. However, the total amount of this adjustment may, in the city's discretion, be spread over more than one month in order to avoid major fluctuations in the amount of the adjustment.

Sec. 110.143. Single Point Delivery. All the rates of this article are based upon the supply of service to the entire premises through a single delivery and meeting point. Separate supply for the same customer at other points of delivery shall be separately metered and billed.

Sec. 110.144. Payment And Penalties For Nonpayment. Unless otherwise stated in this article, all rates, charges and penalties for electrical service will be due and payable under the same terms as for other city utilities, as stated in this chapter.

Sec. 110.145. Discontinuance Of Service. Discontinuance of service shall be enacted under the following provisions: *[Sec. 110.145 as amended by Ord. No. 07-1023-5, adopted October 23, 2007]*

(a) ***Terms and conditions***. Electrical service will be discontinued as set forth in Sec. 110.5.

(b) ***Time extensions for payment:*** See: Sec. 110.20

(c) ***Reconnection; fees***. See: Sec. 110.05

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Sec. 110-146. Nuisance Poles.

(a) ***Definitions***. "Nuisance pole" means a pole that is erected by a person other than an employee, agent, or contractor of the City, bears a meter loop and:

(1) Is in a state of disrepair, such that the pole is not standing erect, is leaning, or is not secured in the ground, or

(2) The meter loop is not securely attached to the pole or is not attached in compliance with the National Electric Code adopted by the City.

(b) ***Determination of nuisance; notice; remediation of nuisance pole; time for remediation.*** The Building Inspector shall determine whether a utility pole is a nuisance pole. If the Building Inspector determines that a utility pole is a nuisance pole, notice shall be given to the utility customer that the Building Inspector has determined that the utility pole is a nuisance pole. The notice shall also set out the remedial requirements that the customer must comply with. The customer shall have 15 business days to perform remediation unless the pole is an immediate threat to the public health or safety.

(c) ***Failure to remediate; erection of new pole by City; fee***. If the customer fails to remediate the nuisance pole or if the nuisance pole is an immediate threat the public health or safety, the City shall erect a new utility pole. The customer shall pay the cost of erecting the new utility pole. The cost of erecting the new utility pole shall be added as a charge to the customer's utility bill. The customer may request a payment plan not to exceed twelve months.

(d) ***Request for reconnection of service***. The Building Inspector may require a nuisance pole be replaced prior to reconnecting electric service disconnected for any reason

Ordinances Not Codified

Ordinance No. 03-0910-20, adopted September 10, 2003, providing for dismissal of TXU Gas Company's requested rate increase, and providing for related matters.

Ordinance No. 03-0924-03, adopted September 24, 2003, adopting the City Budget for Fiscal Year 2001-2002.

Ordinance No. 03-0929-03, adopted September 29, 2003, levying ad valorem taxes for 2003.

Ordinance No. 03-1008-14, adopted October 8, 2003, adopting a Drought Contingency Plan and providing for related matters.

Ordinance No. 04-02__-__, adopted February __, 2004, annexing an 18.2 acre tract of land.

Ordinance No. 04-0915-5, adopted September 15, 2004, granting Bluebonnet Electric Cooperative a franchise for constructing, maintaining and operating a transmission and distribution system within the City.

Ordinance No. 05-0112-7, adopted January 12, 2005, closing, vacating and abandoning a thirty foot wide strip of the right-of-way, platted but not opened and used, of Yegua Street, and authorizing conveyance of to the abutting property owner.

Ordinance No. 05-0209-14, adopted February 9, 2005, approving and accepting a bid from State Development Corporation.

Ordinance No. 05-0511-7, adopted May 11, 2005, denying ATMOS Energy Corporation's request for an annual gas reliability infrastructure program adjustment, and providing for related matters.

Ordinance No. 05-0906-6, adopted September 6, 2005, adopting the National Incident Management System as the standard for incident management within the City.

Ordinance No. 06-0614-7, dated June 14, 2006, denying ATMOS Energy Corporation's rate increase request.

Ordinance No. 07-0711-6, adopted July 11, 2007, denying ATMOS Energy Corporation's request for an annual gas reliability infrastructure program adjustment, and providing for related matters.

Ordinance No. 08-0128-05, adopted January 28, 2008, approving a settlement agreement with ATMOS Energy Corporation regarding rates to be charged by ATMOS Energy.

Ordinance, adopted July 29, 2009, authorizing certain restricted prior service credit in the Texas Municipal Retirement System.

Ordinance No. 10-0908-18, adopted September 8, 2010, levying ad valorem taxes for 2010.

Formal Resolutions[i]

Resolution No. 03-1120-3, accepting the petition for annexation of sparsely populated property from Garry C. Brown and other related matters.

Resolution No. 04-0422-9, supporting the opening of a library in the City by Donald Webb, Amy Romoser, and Karla Dussetschleger.

Resolution No. 04-0714-8, authorizing submission of a Texas Community Development Program Application to the Office of Rural Community Affairs

Resolution, regarding defraying City's cost of collection of delinquent property taxes between Lee County as agent for the City and a private law firm.

Resolution No. 06-0126-4, adopting a privacy policy regarding disclosure of Social Security Numbers when applying for City Utility Services.

Resolution No. 06-0216-10, resolves that the City will provide AccuPoll Voting System 2.5 in each polling place in every polling location used to conduct any election as authorized or required by the Texas Election Code.

Resolution No. 07-1010-7, suspending proposed effective date of proposed rate schedules of the Mid-Tex Division of ATMOS Energy Corp., providing that the rate schedules remain unchanged during the suspension of said company and related matters.

Resolution designating certain officials as being responsible for acting for, and on behalf of the applicant in dealing with the Texas Parks & Wildlife Dept. regarding small community grant program and related matters.

Resolution No. 09-0211-12, regarding the authorization for the Mayor of the City to borrow funds.

Resolution No. 10-0609-9, regarding the ability to connect real property and improvements not located in the city limits of the City to City's Water Utilities.

Resolution No. 12-0111-13, authorizing publication of Notice of Intention to issue combination tax and revenue certificates of obligation.

Resolution No. 12-0222-4, suspending proposed effective date of the proposed rate schedules of the Mid-Tex Div. of ATMOS Energy Corp. and providing that rate schedules

shall remain unchanged during the period of suspension and providing for related matters.

Resolution No. 12-0613-8, denying the Mid-Tex Div. of ATMOS Energy Corporation's statement of intent to change utility rates.

Resolution No. 13-0612-16, approving and adopting rate schedule for ATMOS Energy Corp., Mid-Tex Div. and providing for related matters.