

**LEGAL MEMO**

To: Planning and Zoning Chair and Commission, City of Johnson City  
 Cc: Rick Schroder, Chief Administrative Officer  
 From: Elizabeth Elleson, City Attorney  
 Re: Revised Zoning Ordinance  
 Date: May 28, 2023

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Enclosed for your review is a draft of the revised zoning ordinance for the City.

Background

The current Zoning Ordinance was adopted in February 2016. It has been amended several times with the most recent being in 2021. The Ordinance is overdue for updates and revisions. In addition, the Ordinance is due for a rewrite. Some sections are ambiguous and cumbersome to follow.

Revisions

The revised draft does not change the substance of provisions in the original ordinance. Rather, the revisions update the regulations in the current ordinance, and add new ones to bring the ordinance into compliance with state law. The revised draft also reorganizes sections and reformats the original ordinance for efficiency and streamlining. (For convenience, the table of contents contains the control-click feature for quick access to a section within the document.)

Please note the highlighted yellow text. Some question text in the original ordinance which was confusing and, as such, needs clarification. Others present a question on whether to include a new suggested requirement or change a current requirement. From the context, these questions are self-explanatory.

The following chart explains where the sections of the current ordinance are in the revised draft.

<b>CURRENT ORDINANCE SECTION</b>	<b>NEW AND/OR RENUMBERED SECTION IN REVISED DRAFT</b>
1-1. Purpose and intent.	1-1 Adoption; Purpose.
1-2. Conflicting ordinances.	1-2(b) Interpretation.
1-3. Definitions.	This is new Article VI. Definitions. Several definitions in the current ordinance have been deleted; others added and others reworded for clarification.
1-4. Zoning upon annexation.	3-3 Zoning Upon Annexation.
2-1. Purpose and intent.	1-1 Adoption; Purpose.
2-2. Prior approvals.	1-2(d) Interpretation.
2-3. Administration and enforcement.	1-5 Violation; Enforcement.
2-4. Certificates of use and occupancy.	5-3 Certificate of Use and Occupancy

2-5. Zoning districts.	4-1 Zoning District Classifications.
2-6. Interpretation of zoning district boundaries.	1-3(b) Official Zoning Map
2-7. Interpretation of district regulations.	The subsections have been restated in related and applicable sections.
2-8. Accessory uses and structures. 2-9. Accessory dwellings. 2-10. Walls and fences. 2-11. Outside storage and display. 2-12. Telecommunication towers. 2-13. Home occupations. 2-14. Group homes.	5-4 Accessory Structures 5-5 Accessory Dwelling 5-6 Walls; Fences 5-7 Outside Storage and Display 5-11 Telecommunication Tower 5-8 Home Occupation 5-9 Group Home
2-15. Signs.	5-2 Ordinance Regulations
2-16 Effect of Interpretation.	1-2(b) Interpretation.
2-17 Present uses.	1-2(d) Interpretation.
2-18 Stop work orders. 2-19. Permit revocation. 2-20. Denial of approvals and permits. 2-21. Penalties and injunctive relief. 2-22. Administrative penalties.	These sections are included in 1-5 Violation; Enforcement.
3-1. Single-Family Residential - Restricted (SFR). 3-2. Mixed Residential District (MR). 3-3. Single Family Residential (SF). 3-4. Manufactured Home District (M). 3-5. Commercial District (CD). 3-6. Highway Commercial Corridor District (HC). 3-7. Industrial Park District (IP). 3-8. Downtown District Overlay (DO). 3-10. Micro Housing District (MHD). 3-11. Garden Housing District (GHD). 3-12. Public Facilities District (PFD).	4-3 Single-Family Residential - Restricted - SFR 4-5 Mixed Residential District - MR 4-4 Single Family Residential - SF 4-6 Manufactured Home District - M 4-9 Commercial District - CD 4-10 Highway Commercial Corridor District - HC 4-11 Industrial Park District - IP 4-12 Downtown District Overlay - DD 4-8 Micro Housing District - MHD 4-7 Garden Housing District - GHD 4-13 Public Facilities District - PFD
3-9. Planned Unit Development District (PUD).	4-15 Planned Unit Development District – PUD This section has been expanded. It is classified as a Specific Use. Requires BOA approval.
4-1. Initiation of zoning amendments and changes.	3-1 General (b) Types
4-2. Requirements for zoning amendment application	The subsections in this section have been restated in 3-2 Application Process

4-3 Conditional use permits.	4-15 Conditional Use Permit, also Special Exception -- CUP A CUP is redefined as a special exception (as provided by law). This section has been restated and expanded. It is classified as a Specific Use. Requires BOA approval.
4-4 Nonconforming uses. 5-15 Special exceptions for nonconforming uses.	4-17 Nonconforming Use. This section has been restated and expanded. It is classified as a Specific Use. Requires BOA approval.
Article V Planning and Zoning Commission and Board of Adjustment. 5-1 through 5-11.	This Article separates the 2 and places them in new sections. Article II. Zoning Authority Division 1. Planning and Zoning Commission Division 2. Board of Adjustment
5-12 Special exceptions, also Variances. 5-13 Conditions for special exception. 5-14 Burden on applicant. 5-16 Special exception hearing procedures.	4-18 Variance Special Exception is redefined as a CUP. A variance is distinguished from a special exception. These sections have been restated and expanded. It is classified as a Specific Use. Requires BOA approval.
5-17 Appeals to the Board of Adjustment. 5-18 Judicial review.	These sections are included in Division 2. Board of Adjustment.
Article VI Parking Requirements Article VII Landscaping Requirements	These articles have been deleted. These ordinances are referenced in 5-2 Ordinance Regulations.
Article VIII. Schedule of Uses	1-4 Schedule of Uses The schedule is referenced as Exhibit B.
Exhibit A Official Zoning Map	1-3 Official Zoning Map The map is referenced as Exhibit A.

### Next Steps

State law requires that changes to the zoning ordinance be approved by the P&Z and City Council after a public hearing. It is recommended that a public workshop on the revised draft be conducted followed later by the required public hearings.



**City of Johnson City**

**ARTICLE 14.02**  
**ZONING ORDINANCE**

Adopted February 2016

Amended May 2019

Revised \_\_\_\_\_ 2023

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## ARTICLE I. GENERAL

### Section 1-1 Adoption; Purpose

- (a) Purpose. The purpose of this Zoning Ordinance is to establish zoning districts in the City of Johnson City and regulations applicable to each district.
- (b) Adoption and Approval. The City Council hereby approves and adopts this Zoning Ordinance and amendments as authorized by and pursuant to Texas Local Government Code Chapter 211, as amended. The City Council finds that adoption and approval of this Zoning Ordinance is in the public's interest as it provides for and promotes the health, safety, and general welfare of the public by promoting and encouraging quality development both within the city for orderly, harmonious, and systematic growth in accordance with the City's Comprehensive Plan.
- (c) Zoning Required. No land or structure can be used or arranged for any purpose or manner other than that permitted as a use in that zoning district. A new building or structure shall not be erected nor shall an existing building or structure be moved, altered, added to, or enlarged except as permitted under this Ordinance.
- (d) Uses Allowed. A use not permitted in the Schedule of Uses for a district, or not permitted as a specific use as provided in this Ordinance is prohibited.

### Section 1-2 Interpretation

- (a) Interpretation. This Ordinance shall be the minimum requirements for the zoning of land tracts in the city. These regulations shall be construed broadly to promote the purposes for which they are adopted.
- (b) Conflict with Other Laws. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law except as provided in this ordinance. To the extent that this Ordinance promulgates standards or imposes restrictions or duties that differ from those imposed by other city ordinances, rules or regulations, the regulations contained within this Ordinance shall supersede such other provisions to the extent of any conflict or inconsistency.
- (c) Severability. If any part or provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered, and it shall not affect or impair the validity of the remainder of these regulations or the application of them to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of these regulations even without any such part, provision, or application that is judged to be invalid.
- (d) Prior Approvals and Present Use. Zoning districts approved under regulations in effect prior to the effective date and subsequent amendments of and revisions to this Ordinance are governed by those previous regulations. This Ordinance does not require any change to the plans, plats, lots, or buildings previously approved prior to the effective date of this Ordinance. By the passage of this Ordinance and/or amendments, a presently nonconforming shall not be deemed legalized, but remain as a nonconforming use.



### Section 1-3 Official Zoning Map

- (a) Official Map. The map, attached to Ordinance 22-0104 adopted 1/4/21 and marked and labeled “City of Johnson City Zoning Map”, is hereby adopted as the official zoning map of the city. The map is attached by reference, as Exhibit A to this Ordinance, and is incorporated fully herein. The zoning districts and boundaries indicated upon said map are hereby declared to be the official zoning districts and boundaries for the city. All properties shown on the map as within a particular zoning category are hereby declared to be within the zoning district and zoned accordingly to comply with the requirements of this Ordinance. All zoning maps prior to the adoption date are hereby repealed. The map may be amended and corrected from time-to-time by the city council. The city secretary shall keep the official zoning map among the permanent records of the city available for inspection and review during regular business hours.
- (b) Interpretation of District Boundaries. Where uncertainty exists as to the boundaries of zoning and overlay districts as shown on the Official Zoning Map, the following shall apply:
- (1) Where zoning district boundaries of the city appear to follow streets, alleys, railroads or highways, such boundaries shall be construed as the centerlines of those streets, alleys, railroads, or highways.
  - (2) Where zoning district boundaries appear to follow lines of lots or parcels of record, such lot or acre lines shall be construed to be such boundary.
  - (3) Where a zoning district divides a parcel of land, the location of such boundary shall be determined using the zoning map scale as measured to the nearest foot unless such line can be more accurately determined by geometric or land surveying computations.
  - (4) Where indicated district boundaries are approximately following city boundaries, such boundaries shall be construed to be the district boundaries.
  - (5) Where district boundaries are indicated as approximately following a creek, stream, or marsh, the centerline of the creek, stream or marsh shall be construed to be the district boundary.
  - (6) All areas of the city which are under water are within a zoning district and controlled by applicable district regulations.
- (c) Zoning Map Changes. All zoning changes after the effective date of this Ordinance shall be reflected on the official zoning map upon amendment. Annotations shall indicate:
- (1) The date of the zoning change;
  - (2) The number of the ordinance or resolution, if any, by which the change was made; and
  - (3) A reference to the minutes, ordinances, or resolutions records in which the ordinance or resolution is recorded in full.

Commented [L1]: 2022 ???

### Section 1-4 Schedule of Uses

- (a) Schedule of Uses. The City Council hereby approves and adopts the Schedule of Uses chart attached to this Ordinance as Exhibit B and incorporated fully herein.
- (b) Purpose. The purpose of this chart is to list the types of land uses permitted and allowed within each of the zoning districts outlined in this Ordinance. A building or land shall not be used, and a building shall not be erected, except for the use specified in the Schedule.
- (c) Legend. Land and/or a building in a district may be used for the purpose denoted by the following abbreviations:
- (1) X: A permitted use; land and/or buildings in this district may be used by right;
  - (2) CUP: A conditional use permit; land and/or buildings are subject to review and permitting in accordance with this ordinance.



(3) Blank: Not permitted; a blank cell indicates that a use is not permitted within the zoning district.

(d) Similar Land Use. Since every potential and conceivable land use cannot be addressed and anticipated, the list in the Schedule of Uses is not exhaustive nor exclusive. Other uses not listed may be permitted provided the proposed use is similar and related to the standards and regulations of the zoning district in which the use is to be located, and which use is compatible with adjacent land uses. Application for a similar land use may be made in accordance with the application procedures of this ordinance.

#### Section 1-5 Violation; Enforcement

(a) Violation Declared. It shall be unlawful for any person to violate any term or provision of this Ordinance. Violation of any provision of this Ordinance, which provision is intended for the protection of the public health, safety, or general welfare, constitutes a public nuisance. A person violating any provision of this ordinance is subject to suit for injunctive relief and civil penalties, as well as prosecution for a criminal violation.

(b) Misrepresentation of Facts. It shall be a violation of this Ordinance for any person to knowingly or willfully misrepresent or fail to include any information required by this Ordinance in any zoning application or during any public hearing or meeting of the Planning and Zoning Commission (P&Z), City Council, or with the Chief Administrative Officer (CAO)/Zoning Administrator. Such a violation shall constitute grounds for denial of the zoning request.

(c) Authority. The CAO/Zoning Administrator or designee shall have the authority to administer and enforce the provisions of this ordinance.

(d) Right of Entry. The CAO/Zoning Administrator or designee shall have the authority to enter upon a property for the purpose of enforcing the provisions of this Ordinance. Entry for this purpose shall not be considered trespass.

(e) Administrative Enforcement.

- (1) The City shall not issue a building or repair permit for any structure on a lot not properly zoned.
- (2) A permit issued may be revoked for violation of this Ordinance. A new permit may issue upon cure of the violation.
- (3) The CAO/Zoning Administrator or designee may issue a Stop Work Order on a person(s) engaged in conducting work or an activity on a site in violation of this Ordinance. The Order shall be posted adjacent to the work or activity in question. A person shall cease the work or activity until authorized by the city to proceed.
- (4) A person may appeal an administrative order to the Board of Adjustment in accordance with the appeal provisions of this Ordinance.

(f) Penalties and Remedies.

(1) Criminal Offense.

- (i) A violation under this Ordinance is a misdemeanor.
- (ii) A fine for a violation may not exceed \$2,000.00.
- (iii) Each day of the violation shall constitute a separate offense.

(2) Civil Remedies. Nothing in this Ordinance shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this Ordinance, and to seek remedies as allowed by law, including, but not limited to, the following:

- (i) Injunction. The City may file suit to enjoin the violation or to prevent threatened violation of this Ordinance by a person; and

(ii) Damages and Penalties.

(A) The City may seek to recover damages from the violator in an amount adequate for the City to undertake activity necessary to bring compliance with this Ordinance.

(B) A violator is subject to a civil penalty up to \$1,000.00 and not less than \$100.00 a day, with each day constituting a separate offense and separate violation, when it is shown that the defendant was notified of the violation, and after receiving notice, failed to comply.

(g) Legal Fees and Costs. The City shall be entitled to recover from the defendant reasonable attorney's fees, costs of suit, and any other costs of enforcement in a civil and/or criminal action.

(h) Cumulative. The penalties and remedies in this section shall be cumulative, and are not exclusive of any other rights or remedies the City may have or pursue.

## ARTICLE II. ZONING AUTHORITY

### Division 1. Planning and Zoning Commission

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Commented [L3]: Separate article for BOA.

#### Section 2-1 Authorized

A Planning and Zoning Commission, "P&Z", is established in accordance with Chapter 211 of the Texas Local Government Code, as amended.

#### Section 2-2 Powers and Duties

- (a) Advisory Body. The P&Z shall serve as an advisory body to the City Council for zoning amendments and applications. The P&Z shall have all the rights, powers, privileges, and authority authorized and granted by the City Council, this Ordinance, and Chapters 211 and 212 of the Texas Local Government Code, as amended.
- (b) Authority. The P&Z is authorized to:
  - (1) issue recommendations regarding amendments to the comprehensive plan, zoning changes, zoning ordinance amendments, and zoning for newly annexed areas;
  - (2) issue recommendations regarding subdivision plat regulation and approval submitted to it for review, and other related planning matters delegated to the P&Z by the City Council; and
  - (3) serve as the Historic Review Board, and perform the duties and functions contained in the Historic Preservation section of this Ordinance.

#### Section 2-3 Composition; Governance

- (a) Number. The P&Z shall consist of five members. Each shall be appointed by a simple majority vote of the City Council for a term of two years. Each may be removed from office by the City Council at any time for cause by a simple majority vote of the full City Council. P&Z members shall serve on a voluntary basis.
- (b) Terms; Absences. Expiration of terms shall be staggered. Members may be reappointed. Term limits do not apply to the P&Z. A P&Z position is automatically considered vacant if the member is absent for three consecutive, regular meetings, or four regular meetings (cumulative) during the preceding 12-month period. Absences may be excused by the P&Z chair.
- (c) Governance; Officers. The P&Z shall have the power to make rules, regulations, and bylaws for its own governance, subject to approval by the City Council. The P&Z shall appoint a chairperson, a vice-chairperson, and a secretary from among the commission for a one-year term. Appointments shall be made annually at the first P&Z meeting in April.
- (d) Meetings; Conduct.
  - (1) Meetings shall be held in accordance with the Texas Open Meetings Act, Government Code Chapter 551.
  - (2) Meetings shall be conducted pursuant to the parliamentary procedures of the City Council.
  - (3) The City Council and the P&Z are authorized to conduct a joint public meeting and/or hearing in a matter pertaining to planning, zoning, or subdividing property where required by state law. A quorum shall consist of a majority of members of the P&Z.
  - (4) A motion shall carry with a simple majority vote. Each P&Z member, including the chairperson,

is entitled to one vote upon any question.

- (e) Conflict of Interest. A P&Z member shall not vote or participate in any deliberations of a matter if the member has any substantial interest in any tract within 200 feet of the property in question. A "substantial interest" exists if the member is related within the first degree of consanguinity (blood or adoption) or affinity (marriage) to a person whose matter is under consideration before the commission. The chairperson shall determine a question of substantial interest. A substantial interest exists where:
- (1) A member has an equitable or legal ownership interest in a tract with a fair market value of \$2,500.00 or more;
  - (2) A member acts as a developer of the tract;
  - (3) A member receives in a calendar year funds exceeding ten percent of the member's gross annual income for the previous year from a business whose matter is under consideration before the commission; or
  - (4) A member has an ownership interest in a business entity which has an equitable or legal ownership interest in the tract with a fair market value of \$2,500.00, or acts as a developer of the tract. Ownership is deemed where a member:
    - (i) Owns ten percent or more of the voting stock or shares in the business entity; or
    - (ii) Owns ten percent or more, or \$5,000.00 or more, of the fair market value of the business entity.

## Division 2. Board of Adjustment

### Section 2-4 Creation; Authority

There is hereby created a Board of Adjustment, "BOA". The City Council is granted the authority to act as the BOA.

### Section 2-5 Powers and Duties

- (a) Authority. The BOA shall have the authority to:
- (1) Administrative Appeals. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance;
  - (2) Conditional Use Permits-Special Exceptions. Hear and decide a conditional use permit, *i.e.*, special exceptions, to the terms of this zoning ordinance where authorized;
  - (3) Variances. Authorize, in specific cases, a variance from the terms of this ordinance if the variance is not contrary to the public interest, and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of this ordinance is observed, and substantial justice is done;
  - (4) Nonconforming Uses. Hear and decide a request for a change to a nonconforming use; and
  - (5) Planned Unit Development District. Hear and decide on an application for a planned unit development district.
- (b) Appeals.
- (1) An appeal of an administrative decision must be filed within 10 business days after the decision has been rendered and shall be processed in accordance with Local Government Code Section 211.010, as amended. An appeal shall be heard within 60 days of receipt of the notice of appeal. A request shall be automatically approved if no formal action is taken. The BOA may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken.
  - (2) The decision of the BOA on a matter other than administrative decision may be appealed to a court of record within 10 days after the date the decision is filed in the board's office and processed

under the procedures outlined in Section 211.011 of the Local Government Code, as amended. Judicial review shall be conducted in accordance with that statutory section.

**Section 2-6 Composition; Governance**

- (a) **Officers.** The BOA shall appoint a chairperson, vice-chairperson, and secretary for one-year terms starting each January.
- (b) **Meetings; Conduct.**
  - (1) Meetings shall be held in accordance with the Texas Open Meetings Act, Government Code Chapter 551.
  - (2) BOA and City Council meetings shall not be held concurrently. While BOA meetings or hearings may be held on the same day as City Council meetings, BOA meetings or hearings shall be clearly identified separately.
  - (3) Meetings shall be conducted pursuant to the parliamentary procedures of the City Council.
- (c) **Conflict of Interest.** A BOA member shall not vote nor participate in any deliberations of a matter before the BOA if a conflict of interest exists as described and defined for the P&Z. Such conflicts shall be determined and resolved in the same manner as for P&Z.

## ARTICLE III. ZONING PROCEDURE

### Section 3-1 General

- (a) Amendments. The City Council or BOA may amend the text of this Ordinance, the zoning district boundaries of the official zoning map, or the zoning district classification of a property. An amendment is implemented by ordinance only.
- (b) Types. An amendment may be initiated by:
  - (1) City Council on its own motion;
  - (2) Planning and Zoning Commission on recommendation to the City Council; or
  - (3) The owner of the property proposed for a zoning classification change via a zoning application.
- (c) Types of Applications. An owner or person may apply to amend or request a:
  - (1) Change in a zoning classification, *i.e.*, rezoning, for determination by the City Council;
  - (2) Similar land use designation for determination by the City Council; or
  - (3) Conditional use permit, *i.e.*, special exception, for determination by the BOA;
  - (4) Planned unit development designation for determination by the BOA;
  - (5) Variance for determination by the BOA; and
  - (6) Nonconforming use change for determination by the BOA.
- (d) Zoning Administrator. The Chief Administrative Officer of the City is designated as the zoning administrator for purposes of handling administrative matters and enforcement of this ordinance.
- (e) Fee Authorized. The City shall adopt and impose a nonrefundable application fee to defray the costs of processing a zoning application. The fee schedule shall be included in the City's Master Fee Schedule. At the time of submittal, an application shall include the required fees.

### Section 3-2 Application Process

- (a) Application Requirements. A zoning application shall be submitted in accordance with these requirements:
  - (1) Authority. An application to zone or rezone property shall be submitted to the zoning administrator by the owner or person with legal authority of a property.
  - (2) Fee. A nonrefundable fee is required and shall accompany an application.
  - (3) Information Required. A zoning application shall contain sufficient information, documents, or other material relative to the zoning requested, including, but not limited to, the following:
    - (A) A description of the proposed use and, where applicable, the hours of operation, and the proposed number of employees/patrons;
    - (B) A written statement of the compatibility uses with the following:
      - (i) The comprehensive plan;
      - (ii) The applicable zoning district;
      - (iii) The surrounding properties;
      - (iv) Current and future neighborhood conditions;
      - (v) Pedestrian and vehicular traffic patterns, on-site and off-site;
      - (vi) Adequate public facilities;
      - (vii) Upon request by the City:
        - (a) A site plan, if applicable;
        - (b) The architectural elevations and floor plans of proposed building(s);
        - (c) Parking and site circulation analysis;



(d) Photographs of the property and surrounding area; and  
(C) Additional information to evaluate and analyze the application.

- (4) **Completeness.** An application must be complete prior to processing by the zoning administrator. An application shall be deemed complete upon receipt by the zoning administrator of all required and requested information. A determination of completeness does not constitute a determination of compliance with the requirements of this Ordinance.
- (5) **Vested Rights.** Vested rights accrue on receipt of a complete application.
- (6) **Withdrawal of Application.** An applicant may withdraw an application at any time prior to the public hearing on an application. An applicant may resubmit a withdrawn application which shall be treated as a new application.
- (7) **Concurrent Rezoning.** An application for rezoning may be considered concurrently with the review of a plat application.

(b) **Public Hearing and Notice.**

- (1) **Public Hearing.** A zoning application shall be set for public hearings before the P&Z and the City Council, or BOA as applicable.
- (2) **Notice of Hearing.** Written notice of the application and public hearing dates shall be sent by U.S. mail to each property owner of real property within 200 feet of the property proposed for amendment, as indicated by the most recently approved municipal tax roll.
- (3) **Issuance.** Notice shall be mailed to each property owner at least ten days before the date of the public hearing before the P&Z. Notice shall be published in the City's official newspaper before the 15<sup>th</sup> day of the hearing.
- (4) **School Notice.** Notice of an application affecting a residential or multifamily zoning district shall also be sent to the Johnson City Independent School District.
- (5) **Joint hearing.** If warranted, a joint hearing by the P&Z and the City Council on an application may be held.
- (6) **Notice for Ordinance Text Amendment.** Regarding an amendment relating solely to a change in a zoning regulation or to the general text of this ordinance, notice of a public hearing shall be given by publication in the City's official newspaper before the 15th day before the date of the hearing without the necessity of notifying an individual property owner in the city by mail. The notice shall state the time and place of the hearing and the nature of the subject to be considered. The review and approval process shall be that as outlined in the application process.

(c) **Signs.** Weather resistant signs shall be erected on the property to advertise the zoning request.

- (1) The signs shall be provided by the city.
- (2) Signs must be placed on the property within ten feet of any property line paralleling any established or proposed street, and must be visible from that street.
- (3) A required sign shall remain on the property until final disposition of the zoning request.

(d) **P&Z Hearing and Review.**

- (1) **Hearing.** A zoning application shall be submitted to the P&Z for review and a public hearing.
- (2) **Recommendation.** The P&Z may establish conditions and restrictions on a zoning request. After the hearing, the P&Z may recommend approval, approval with amendments and conditions, or denial with reasons for the denial.
- (3) **Forwarding.** The recommendation shall be issued and forwarded to the City Council, or BOA as applicable, for final action.

(e) **City Council Hearing and Action.**

- (1) **Applications Considered.** A P&Z recommendation on an application for a change in zoning classification, *i.e.*, rezoning, or similar land use designation, shall be forwarded to and heard by the

City Council.

- (2) Hearing. The City Council shall conduct a public hearing on an application.
- (3) Vote and Action.
  - (i) After the hearing, the City Council shall approve, approve with conditions, or deny an application.
  - (ii) If the P&Z recommended denial, or if an application is protested, an affirmative vote of three-fourths (4 out of 5) of all members of the City Council is required for a requested change to take effect.
    - (A) A protest must be in writing and signed by the owners of at least 20% of either:
      - (a) the area of the lots or land covered by the proposed change; or
      - (b) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.
    - (B) In computing the 20% land area, streets and alleys shall be included.
- (4) Finality. Approval of an application shall be issued in an ordinance by the City Council. A decision is final.

(f) BOA Hearing and Action.

- (1) Applications Considered. A P&Z recommendation on an application for a conditional use permit –special exception, planned unit development, variance, or a nonconforming use shall be forwarded to and heard by the BOA.
- (2) Hearing. The BOA shall conduct a public hearing on an application but not before final disposition of the application by the P&Z.
- (3) Vote and Action. After the hearing, the BOA shall approve, approve with conditions, or deny an application. The concurring vote of 75% (4 out of 5) of the full BOA is necessary to:
  - (i) Reverse an order, requirement, decision, or determination of an administrative official;
  - (ii) Decide in favor of an applicant on a matter on which the BOA is required to pass under this zoning ordinance; or
  - (iii) Authorize a variance from the terms of this ordinance.
- (4) Finality. A decision of the BOA is final and binding. Approval of an application shall be issued in an ordinance by the BOA.
- (5) Appeal. The decision of the BOA may be appealed in accordance with the appeal procedures outlined in this ordinance.

### Section 3-3 Zoning Upon Annexation

- (a) Annexed Property. Property annexed into the city shall be classified automatically by default as Single-Family Residential upon annexation.
- (b) A property owner of land to be annexed may apply to rezone the property from the default Single-Family Residential classification. The application can be submitted concurrently with the petition for annexation. Approval of annexation by the City Council must occur prior to approval of rezoning. An annexation may not be made contingent upon the approval of any particular zoning classification.
- (c) An application shall be considered and reviewed in accordance with the general application process for City Council review of this article.

### Section 3-4 Successive Applications

- (a) Limitations on Successive Applications. No application on the same request shall be permitted within one (1) year of an application denial unless extenuating circumstances exist.

(b) Reapplication. No application for rezoning shall be considered within 90 days of denial of a request for the same classification on the same property.

## ARTICLE IV. ZONING DISTRICTS

### Division 1. General

#### Section 4-1 Zoning District Classifications

The city shall be divided into classes of residential, office, commercial, industrial, and special zoning districts, as specified herein. The location and boundaries of the zoning districts are indicated on the Official Zoning Map.

#### Section 4-2 Application of Zoning District Regulations

- (a) Applicability. The regulations established for each zoning district shall be minimum regulations and shall apply uniformly to each zoning class, structure, or land within that district.
- (b) Vacated Areas. When a street, alley, or other public way is vacated by governmental action, and when the land within the boundaries of such a facility are attached to and become a part of the land adjoining the vacated street, alley, or public way, the land formerly within the boundaries of the facility shall be subject to the same zoning regulations as apply to the adjoining land.

### Division 2. Zoning Districts

#### Section 4-3 Single-Family Residential - Restricted - SFR

- (a) The purpose of the Single-Family Residential-Restricted District is to stabilize and protect the owner-occupied housing characteristics of the district and to promote and encourage a suitable environment for living. Manufactured housing is not permitted in the SFR district.
- (b) See Schedule of Uses for permitted and conditional uses.
- (c) General regulations of SFR are as follows:

Maximum dwelling units	Five dwelling units per acre
Minimum lot width (street frontage)	50 feet
Minimum lot size (area)	7,500 square feet
Minimum front yard	15 feet
Minimum side yard	10 feet
Minimum side yard, adjacent to street	10 feet
Minimum rear yard	10 feet
Minimum dwelling unit size	1,000 square feet

Maximum lot coverage (all)	50 percent (50%)
Maximum structure height (stories)	2 stories
Maximum structure height (feet)	35 feet

**Section 4-4 Single-Family Residential – SF**

- (a) The purpose of the Single-Family Residential District is to stabilize and protect owner-occupied housing characteristics of the district. The SF district includes manufactured housing with design standards to create pleasing appearances, and sufficient open space for light, air, and recreation. Only double-wide manufactured homes are permitted in SF District.
- (b) See Schedule of Uses for permitted and conditional uses.
- (c) General regulations of SF zone are as follows:

Maximum dwelling units	Five dwelling units per acre
Minimum lot width (street frontage)	50 feet
Minimum lot size (area)	7,500 square feet
Minimum front yard	15 feet
Minimum side yard	10 feet
Minimum side yard, adjacent to street	10 feet
Minimum rear yard	10 feet
Minimum dwelling unit size	1,000 square feet
Maximum lot coverage (all)	50 percent (50%)
Maximum structure height (stories)	2 stories
Maximum structure height (feet)	35 feet

Manufactured Houses in SF District

Maximum lot area	Six dwelling units per acre
Minimum lot width (street frontage)	50 feet
Minimum lot size (area)	4,400 square feet

Minimum front yard	15 feet
Minimum side yard	10 feet
Minimum side yard, adjacent to street	10 feet
Minimum rear yard	10 feet
Minimum dwelling unit size	750 square feet
Maximum lot coverage	60 percent (60%)
Maximum structure height	1 story

**Section 4-5 Mixed Residential District – MR**

(a) The purpose of the Mixed Residential District is to provide for owner-occupied single-family housing, duplex, triplex, quadplex, or small multifamily apartment buildings and for development at higher densities with smaller minimum lot sizes.

(b) See Schedule of Uses for permitted and conditional uses.

(c) General regulations of MR are as follows:

Maximum dwelling units	None
Minimum lot width (street frontage)	50 feet
Minimum lot size (area)	8,000 square feet
Minimum front yard	5 feet
Minimum side yard	10 feet
Minimum side yard, adjacent to street	10 feet
Minimum rear yard	15 feet
Minimum dwelling unit size	500 square feet for single-bedroom; 750 for two-bedroom unit
Maximum lot coverage (all structures)	80%
Maximum structure height (stories)	2 stories
Maximum structure height (feet)	35 feet



**Section 4-6 Manufactured Home District - M**

(a) The purpose of the Manufactured Home District is to provide for the most appropriate use of land for manufactured housing development purposes, and to encourage design standards to create pleasing appearances, and sufficient open space for light, air, and recreation. Both double-wide and single-wide manufactured homes are permitted in the M District.

(b) See Schedule of Uses for permitted and conditional uses.

(c) General regulations of M are as follows:

Maximum lot area	Six dwelling units per acre
Minimum lot width (street frontage)	50 feet
Minimum lot size (area)	4,400 square feet
Minimum front yard	20 feet
Minimum side yard	10 Feet
Minimum side yard, adjacent to street	10 Feet
Minimum rear yard	20 feet
Minimum dwelling unit size	750 square feet
Maximum lot coverage	60 percent (60%)
Maximum structure height	1 story

**Section 4-7 Garden Housing District - GHD**

(a) The purpose of the Garden Housing District is to allow for zero-lot line single-family, detached dwellings.

(b) See Schedule of Uses for permitted and conditional uses.

(c) General regulations of GHD are as follows:

Minimum lot size (area)	None
Lot width	40-50 feet
Minimum lot depth	None
Minimum front yard	None

Minimum side yard	5 feet
Minimum rear yard	15 feet from rear lot line to nearest building line
Maximum lot coverage	60 percent (60%)
Maximum structure height	35 feet

**Section 4-8 Micro Housing District - MHD**

- (a) The purpose of the Micro Housing District is to allow for a mix of affordable, smaller-scale housing units. The MHD district fosters a sense of community by allowing small lot sizes and incorporating community amenities, and recreational facilities and open space.
- (b) The minimum size of a micro housing dwelling unit shall be 300 square feet. The maximum size will be 750 square feet.
- (c) The permitted use is a micro single-family dwelling, and an accessory structure that is incidental to the primary structure on the lot.
- (d) MHD design and evaluation criteria shall be the same, as applicable, as the design and evaluation criteria set forth in PUD district regulations. An approved site development plan is required.
- (e) The zoning of a MHD district shall be that shown on the approved development site plan, and any special conditions.

**Section 4-9 Commercial District - CD**

- (a) The purpose of the Commercial District is to provide for a mix of retail uses that support the surrounding residential neighborhood.
- (b) See Schedule of Uses for permitted and conditional uses.
- (c) General regulations of CD are as follows:

Minimum lot size (area)	None
Minimum lot width (street frontage)	50 feet
Minimum lot depth	80 feet
Minimum front yard	10 feet
Minimum side yard	10 feet
Minimum side yard, adjacent to street	10 feet
Maximum lot coverage	60 percent (60%)

Maximum structure height

3 stories

- (d) Additional requirements for C include, but are not limited to, the following:
- (1) Uses within this district shall be of a retail, service, or office character;
  - (2) Business activity shall be conducted entirely within a building. Outside storage and/or display of any type shall be prohibited unless in accordance with the outdoor storage section of this Ordinance;
  - (3) Outdoor trash receptacles shall be at the side or rear of the site, and shall be screened on at least three sides by fence, planting or another suitable visual barrier;
  - (4) Exterior lighting designed for security, illumination, parking lot illumination, or advertising shall be placed in accordance with the City's Lighting Ordinance, and designed for lighting not to illuminate into adjacent residential zoned properties; and
  - (5) A privacy fence shall be erected between residential and commercial lots.

**Section 4-10 Highway Commercial Corridor District - HC**

(a) The purpose of the Highway Commercial Corridor District is to provide for centers of activity, *e.g.*, shopping, services, recreation, employment, public uses, and institutional facilities supported by and serving an entire region. The HC handles a mixture of commercial and office uses along highway corridors, primarily U.S. Highways 281 and 290. The unique characteristics of this development are its high concentration of activity requiring extensive planning and engineering, ingress and egress to the development site, and extensive on-site or off-street parking, loading, and maneuvering areas.

(b) See Schedule of Uses for permitted and conditional uses.

(c) General regulations of HC are as follows:

Minimum lot area	None
Minimum lot width	None
Minimum lot depth	200 feet
Minimum front yard	5 feet
Minimum side yard	15 feet
Minimum side yard, adjacent to SF, MR, MH districts	15 feet plus one additional foot for each additional one foot in height above 15 feet
Minimum rear yard	10 feet
Minimum rear yard, adjacent to SF, MR, MH districts	25 feet
Maximum lot coverage	75 percent (75%)
Maximum structure height	2 stories

- (d) Additional requirements for HC include, but are not limited to, the following:
  - (1) Uses within this district shall be of a retail, service, or office character. A mixture of uses may be permitted within a planned unified development project;
  - (2) Business activity shall be conducted entirely within a building, except for outdoor seating for a restaurant. Outside storage and/or display of any type shall be prohibited unless in accordance with the outdoor storage section of this ordinance;
  - (3) Exterior lighting designed for security, illumination, parking lot illumination, or advertising shall be placed in accordance with the City’s Lighting Ordinance and designed for lighting not to illuminate into adjacent residential zoned properties;
  - (4) Outdoor trash receptacles shall be at the side or rear of the site, and shall be screened on three sides by fence, planting, or another suitable visual barrier; and
  - (5) If development is configured as a pedestrian mall, either indoor or outdoor, sales from small stand-alone booths, kiosks, sidewalk-type cafes, stands, carts, or other display devices shall be permitted within the pedestrian walking areas of the mall. This is intended to encourage the aggregation of a wide array of retail marketing activities.

**Section 4-11 Industrial Park District - IP**

(a) The purpose of the Industrial Part District is to provide for a range of light industrial uses, *e.g.*, assembly, research and development, warehousing, and distribution. The IP accommodates support services for industrial development such as office, commercial and professional services. Requirements herein are designed to ensure compatibility among the various uses in the IP district, and to protect adjacent nonindustrial development from incompatible uses and conditions.

(b) See Schedule of Uses for permitted and conditional uses.

(c) General regulations of IP district are as follows:

Minimum lot area	None
Minimum lot width	None
Minimum lot depth	None
Minimum front yard	30 feet
Minimum side yard	20 feet
Minimum rear yard	Ten feet
Minimum side yard, adjacent to SF, MR, MH districts	50 feet
Maximum lot coverage	60 percent (60%)
Maximum structure height	65 feet

- (d) Additional requirements for IP include, but are not limited to, the following:
  - (1) Exterior lighting designed for security, illumination, parking lot illumination, or advertising shall

be placed in accordance with the City's Lighting Ordinance, and designed for lighting not to illuminate into adjacent residential zoned properties;

- (2) Outdoor trash receptacles shall be at the side or rear of the site, and shall be totally encircled or screened by fence, planting or another suitable visual barrier; and
- (3) Every use shall be conducted and operated in a way that it is not obnoxious or dangerous by reason of heat, glare, fumes, odors, dust, noise, or vibration beyond the parcel on which the use is located.

**Section 4-12 Downtown District Overlay - DD**

- (a) The purpose of the Downtown District Overlay is to recognize the historical, cultural and aesthetic importance of certain buildings, structures or districts within the city, and to protect and preserve such landmarks of historical and cultural significance as well as importance to the city's economic well-being. This district does not replace the requirements set forth in the Historic District outlined herein.
- (b) A mix of land uses, such as retail, professional services, public, and institutional uses, are permitted. Pedestrian-friendly design through the incorporation of architectural elements such as awnings, porches, and sidewalk displays are encouraged.
- (c) Any structural renovation, maintenance, enhancement, tear-down, or new construction performed in the DD shall be in harmony with the characteristics of the district.
- (d) General regulations of DD are as follows:

Minimum lot size (area)	None
Minimum lot width	None
Minimum lot depth	None
Minimum front yard	None
Minimum side yard	-
Minimum rear yard	-
Minimum side yard, adjacent to SF, MR, M districts	-
Maximum lot coverage	80 percent (80%)
Maximum structure height	35 feet

- (e) Architectural standards for DD include, but are not limited to, the following:
  - (1) Use of brick/masonry, solid wood planking, and fiber cement siding are permitted. Materials used shall be compatible to those materials in the district to maintain the historic character of the downtown area;
  - (2) Permitted building elements include a gallery, awning, porch, stoop, or a balcony; and
  - (3) A minimum 30% transparency is required for the building façade.

#### **Section 4-13 Public Facilities District - PFD**

- (a) The purpose of the Public Facilities District is to provide for the siting of public parks and recreational facilities to preserve open space and unique cultural and historic features, and to provide for the siting of governmental buildings of the City, County, State, or Federal governments. This district provides also for other public and institutional uses, regardless of public or private ownership, such as EMS and fire stations, health care facilities, schools, and churches. With City Council approval, this zoning classification may be applied to a property within a district in the city limits.
- (b) As it is a federal operation, the Lyndon B. Johnson National Historic Park, located in the City's corporate limits and in its extraterritorial jurisdiction, is exempt from, and accordingly not subject to, the city's zoning regulations, including rezoning. The park area shall be described as a public facility district for City map classification purposes only.
- (c) See Schedule of Uses for permitted and conditional uses.

#### **Division 3. Specific Uses**

#### **Section 4-14 Conditional Use Permit, also Special Exception - CUP**

- (a) **Definition.** A conditional use permit, "CUP", provides for a use that is compatible with the land use in a zoning district and with conditions governing the use. A CUP is also described as a special exception at Section 211.009(a)(2) of the Texas Local Government Code, as amended.
- (b) **Purpose.** The purpose of a CUP is to allow a use to be located or expanded within a designated zoning district under specific standards, controls, limitations, performance criteria, restrictions, and other regulations. A CUP allows a use which, if not specially regulated, could have an undue impact on, or be incompatible with other uses of land within the zoning district or adjacent to a zoning district.
- (c) **Applicability.** A use that requires a CUP is prohibited in the city unless a CUP is permitted under the Schedule of Uses, and a permit is issued by the BOA for such use in accordance with this Ordinance. See Schedule of Uses for permitted CUPs in specific zoning districts.
- (d) **Preapplication Meeting.** An applicant for a CUP shall meet with the zoning administrator in a preapplication conference to discuss the process, requirements, and potential conditions for a CUP. Action taken and statements made at a preapplication meeting shall not be considered binding commitments or an approval of an application.
- (e) **Application and Review.** An application for a CUP shall be submitted for review by the P&Z and the BOA in accordance with the application procedures, including notice and public hearing, of this Ordinance.
- (f) **Considerations for Review.** In reviewing a CUP application, the P&Z/BOA shall consider the CUP's:
  - (1) Conformance with applicable regulations and standards of the zoning district in which located;
  - (2) Compatibility with existing or permitted uses on abutting sites in terms of building height, bulk, scale, setbacks, open spaces, landscaping and site development, and access and circulation capacity;
  - (3) Potentially unfavorable effects or impacts on existing or permitted uses on adjacent sites, to the extent such impacts exceed those that reasonably may result from use of the site by a permitted use, including without limitation:



- (i) Location, lighting and type of signs, and the relation of signs to adjacent properties;
  - (ii) Noise producing elements;
  - (iii) Glare of vehicular and stationary lights and effect of such lights on the established character of the neighborhood;
  - (iv) Safety from fire hazard, and measures for fire control; and
  - (v) Protection of adjacent property from drainage, floods, erosion, or other water damage.
- (4) Safety and convenience of vehicular and pedestrian circulation on the premises and in the area immediately surrounding the site, and the effect of traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and proposed land uses in the area and the ability of the city's existing transportation network to handle the traffic; and
- (5) Compliance with the Comprehensive Plan and whether the proposed use is compatible with existing and planned development of surrounding properties and will promote economic growth.
- (g) Conditions for CUP. In granting a CUP, the P&Z/BOA may impose any conditions necessary to assure that the proposed use will, as reasonably practical, conform to the zoning requirements of the zoning district in which it is located. Conditions include, but are not limited to:
- (1) More restrictive sign standards;
  - (2) Additional open space, landscaping, or screening requirements;
  - (3) Additional yard requirements;
  - (4) Special lighting requirements;
  - (5) Time limitations on hours of operation;
  - (6) Additional off-street parking and loading requirements;
  - (7) Additional utility, drainage, and public facility requirements;
  - (8) Additional right-of-way and public access requirements;
  - (9) Additional requirements to ensure compatibility with the comprehensive plan;
  - (10) Time limits or expiration dates;
  - (11) Provisions for periodic review and renewal or extension; and
  - (12) Conditions for expiration and/or revocation of the CUP.
- (h) Action by the BOA. Final determination on a CUP application shall be issued by the BOA in accordance with the BOA hearing and action procedures of this Ordinance.
- (i) Resubmission on denial. A CUP application which has been denied shall not be resubmitted in substantially the same form within one year of the date of denial.
- (j) Validity and Extension.
- (1) Validity. Unless a time limit is specified, a CUP shall be valid for an indefinite period.
  - (2) Lapse. If the conditional use, or construction has not commenced or been diligently pursued within **one year** from the CUP approval date, the CUP shall lapse.
  - (3) Extension. A CUP permit holder may request prior to the one-year expiration term an extension of time for the implementation and/or completion of improvements required as a condition.
    - (i) An extension request shall be in writing and include payment of required fees along with a written description of the reasons for the applicant's inability to comply with the specified deadlines.
    - (ii) Upon review and satisfactory findings for compliance with the approved CUP, the zoning administrator may extend a CUP for up to one year.
    - (iii) An extension may be denied for noncompliance or failure by the permit holder to correct the noncompliance within a specified time.
    - (iv) On denial of an extension request, a CUP shall terminate and the applicant may resubmit a

new CUP application in accordance with the application requirements of this Ordinance.

- (k) Expiration. A CUP shall automatically expire without notice, and shall be null and void in the following cases:
  - (1) Lapse of approval time as described above;
  - (2) There is a change in use on the property;
  - (3) The use is relocated; or
  - (4) The use ceases for a period of six consecutive months from the date of approval.
- (l) Revocation. After notice and hearing, a CUP is revocable by written order of the BOA upon a determination of noncompliance with the requirements and conditions of the CUP. A revoked CUP shall be null and void.
- (m) Renewal.
  - (1) A CUP with an established time period that is not renewed prior to its expiration shall expire without notice, and be null and void.
  - (2) A renewal may issue for a new time period provided that the use is allowed in the zoning district in which the CUP is located.
  - (3) An application for renewal shall be processed as a new application, and shall be reviewed for compliance with original conditions, and to determine if the use still satisfies the provisions of this ordinance.
  - (4) The BOA shall issue by ordinance a final determination on a renewal application.
- (n) Reinstatement. A new application and subsequent approval are required to reinstate a CUP which has expired, terminated, or been revoked.
- (o) Amendments. A request to modify, expand, or otherwise change an approved CUP not in substantial conformance with the approved permit shall be processed as a new application.

#### **Section 4-15 Planned Unit Development District - PUD**

- (a) Definition. A planned unit development district, "PUD", is a zoning designation for a large or complex single or multi-use development developed as a single contiguous project and under unified control. A PUD allows flexibility in development standards, and accommodates multiple uses as one integrated land use which could not have been attained through conventional zoning. A variety and number of residential and commercial uses on one multi-acre tract of land is an example of a PUD.
- (b) Purpose. The purpose of the PUD is to preserve the natural environment, encourage high quality development and innovative design, and ensure adequate public facilities and services for development within a land tract. A PUD development:
  - (1) Provides flexibility in the planning and construction of development projects by allowing a combination of uses developed in accordance with an approved plan that protects adjacent properties;
  - (2) Provides for a more efficient layout of land uses, buildings, circulation systems, and infrastructure;
  - (3) Encourages infill projects and the development of sites difficult for conventional development because of shape, size, abutting development, poor accessibility, or topography;
  - (4) Provides an environment that contributes to a sense of community and a coherent living style;
  - (5) Encourages the preservation and enhancement of natural amenities and cultural resources;
  - (6) Protects the natural features of a site, topography, shape, and size and provides for open space; and
  - (7) Is compatible with adjacent land uses.

- (c) **Applicability.** A PUD is prohibited in the city unless it is approved by the BOA for such use in accordance with this ordinance. A PUD shall not be sought to avoid the standards and requirements of other zoning districts.
- (d) **Qualifying PUD Standards.**
- (1) **Minimum Acreage.** A PUD shall contain a minimum of ten 10 acres of land, unless the property is characterized by special circumstances, including unique topographic constraints.
  - (2) **Unified Control.** A PUD development shall be under the control of one owner or one group of owners, and shall be planned and developed as one integral unit.
  - (3) **Comprehensive Plan.** A PUD shall be consistent with the City's Comprehensive Plan.
- (e) **Permitted Use Requirements.**
- (1) **Uses.** Any permitted use, special exception, or conditional use allowed within a base zoning district of this Ordinance may be permitted in a PUD provided standards and requirements as outlined in this Ordinance for that use are met also within the PUD.
  - (2) **Mixed Use.** Residential and non-residential uses are allowed in combination in a PUD to create an integrated, mixed-use development. Each portion of the PUD with that particular use shall meet the requirements of the zoning district that corresponds to each element of the proposed development.
  - (3) **Variations from the base zoning requirements shall be identified in writing by the applicant. Adjustments shall be reviewed and approved by the P&Z and BOA.**
- (f) **Preapplication Meeting.** An applicant for a PUD shall meet with the zoning administrator in a preapplication conference to discuss the process, requirements, and potential conditions for a PUD. Action taken and statements made at a preapplication meeting shall not be considered binding commitments or an approval of an application. **PREAPPLICATION CONFERENCE WITH COUNCIL????**
- (g) **Application and Review.** An application for a PUD zoning shall include a general land use map and a proposed master site development plan. A PUD application shall be submitted for review by the P&Z and the BOA in accordance with the application procedures, including notice and public hearing, of this Ordinance.
- (h) **Site Design Criteria.** A PUD master site development plan shall contain at least **six** of the following site design elements, as applicable:
- (1) Mixed-use development with residential and non-residential uses, or a variety of housing types;
  - (2) Pedestrian/transit-oriented design with buildings oriented to the sidewalk and parking to the side or rear of the site;
  - (3) High quality architectural design beyond the site plan requirements of this section;
  - (4) Extensive landscaping beyond the site plan requirements of this section;
  - (5) Preservation, enhancement, or restoration of natural resources, e.g. trees, slopes, wetland areas, views, etc.;
  - (6) Preservation or restoration of significant or historic resources;
  - (7) Provision of a minimum of twenty (20) per cent of gross platted area for open space/parkland or public plazas or features. Open space shall not include areas designated or used as parking lots, garages, streets, or driveways;
  - (8) Efficient consolidation of poorly dimensioned parcels or property with difficult site conditions such as topography, shape, etc.;
  - (9) Effective transition between higher and lower density uses, and/or between nonresidential and

residential uses;

- (10) Use of incompatible adjacent land uses developed in a manner that is not possible using a conventional approach;
  - (11) Shared vehicular and pedestrian access between properties or uses;
  - (12) Mitigation to offset impacts on public facilities, *e.g.*, street improvements, utility lines, etc.; or
  - (13) Significant use of sustainable building and site design features such as water use reduction, water efficient landscaping, innovative wastewater technologies, low impact stormwater management, optimize energy performance, on-site renewable energy, passive solar heating, reuse/recycled/renewable materials, indoor air quality, or other elements identified as sustainable by established groups such as the US Green Building Council (LEED) or ANSI National Green Building Standards.
- (i) Site Plan Criteria. A PUD master site plan shall contain the following:
- (1) Insofar as practicable, the landscape shall be preserved in its natural state by minimizing tree and soil removal;
  - (2) Proposed buildings shall be sited harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings;
  - (3) In regards to vehicular and pedestrian circulation and parking, special attention shall be given to the location and number of access points to public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and the arrangement of parking areas that are safe and convenient, and do not detract from the design of the proposed structures and neighboring properties;
  - (4) Private streets and gates may be approved as part of the application but are not required;
  - (5) The maximum height of structures shall be as prescribed for each land-use category;
  - (6) Setbacks shall be governed by the PUD site plan;
  - (7) A minimum of twenty (20) percent of gross platted area shall be open green space/parkland. This shall include community recreational areas that are continuously maintained. Open space shall not include areas specifically designated or used as parking lots, garages, streets, or driveways;
  - (8) Outdoor lighting shall be shielded to limit impacts on residential units and reduce light pollution; and
  - (9) Utilities and infrastructure shall meet the standards of the City's subdivision regulations, and most recently adopted International Codes.
- (j) Criteria for PUD Review. The following factors shall be considered for issuance of a PUD, including but not limited to:
- (1) The relation of the proposed use to the City's comprehensive plan;
  - (2) The zoning district in which the use is to be located;
  - (3) The character of adjacent properties, surrounding neighborhoods, and existing and proposed development;
  - (4) Whether the use is to be adequately served by essential public services such as streets, drainage facilities, fire protection, and public water and sewer facilities;
  - (5) Whether the use results in the destruction, loss or damage of any feature determined to be of significant ecological, scenic, or historic importance; and
  - (6) That the use shall be designated, sited, and landscaped so that the use will not hinder or discourage the appropriate development or use of adjacent properties and surrounding neighborhoods.
- (k) **Action by the BOA.** Final determination on a PUD shall be issued by the BOA in accordance with the BOA hearing and action procedures of this ordinance.
- (l) Approval. An ordinance approving a PUD zoning shall include the development site plan, specific



uses permitted, and conditions for the PUD as well as a statement as to the purpose and intent of the PUD. Only those uses approved shall be permitted and shall operate in accordance with the stipulated approved conditions.

- (m) Final Site Plan Submittal and Approval. Following zoning approval, the final site plan for the PUD shall be submitted for review and approval in accordance with the site plan review process outlined in the Subdivision Ordinance.
- (n) Lapse of PUD Approval. In accordance with Texas Local Government Code Section 245.005(b), a PUD permit shall expire at two years following the approval date, and projects shall expire at five years following the approval date unless progress is made toward the completion of the project, including any of the following:
- (1) An application for a final plan is submitted to the city;
  - (2) A good-faith attempt is made to file with the city an application for a permit necessary to begin or continue toward the completion of the project;
  - (3) Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
  - (4) Fiscal security is posted with the city to ensure performance of an obligation required by the city; or
  - (5) Utility connection fees or impact fees for the project have been paid to the city.

#### Section 4-16 Similar Land Use

- (a) Purpose. The purpose of this section is to provide for consideration and accommodation of a proposed land use which had not been anticipated at the time of adoption of this ordinance, and consequently is not addressed in the Schedule of Uses of this ordinance.
- (b) Preapplication Meeting. An applicant for a similar land use zoning shall meet with the zoning administrator in a preapplication conference to discuss the process, requirements, and potential conditions for the zoning.
- (c) Determination. Before proceeding forward with an application, the zoning administrator shall determine whether the proposed use:
- (1) Is not listed as a permitted, special exception, or conditional land use in any other zoning district;
  - (2) Is consistent with the district purpose;
  - (3) Is similar to other allowed uses relative to its character, scale, and overall compatibility;
  - (4) Is not expected to create objectionable impacts to public health, safety, and welfare if it were established in the applicable zoning district; and
  - (5) Would not be more appropriate within a different zoning district.
- (d) Compliance. If a proposed use is determined to be similar to other uses listed within the district the proposed use is to be located, the use shall comply with all the standards or requirements of that district. The determination shall be considered an interpretation of the use regulations, and is not to be considered as a variance. Once a use has been determined to be similar, it shall be deemed included in the Schedule of Uses, as regulated.
- (e) Application and Review. An application for a similar land use zoning shall be submitted for review by the P&Z in accordance with the application procedures, including notice and public hearing, of this

ordinance.

- (f) Action by the City Council. Final determination on a similar land use application shall be issued by the City Council in accordance with the hearing and action procedures of this ordinance.

#### Section 4-17 Nonconforming Use

- (a) Definition. A nonconforming use is that land use, structure, or lot which does not conform to the requirements of this ordinance because such use had been established, and has been in existence prior to and after the effective date of adoption of this ordinance. Nonconforming use also includes a land use, structure, or lot which does not conform to the requirements of this ordinance as a result of the adoption or amendment of this ordinance or of any subsequent reclassification of a zoning district.
- (b) Purpose. The purpose of this section is to regulate and limit nonconforming uses. The intent of this section is not to eliminate a nonconforming use outright, but to eventually improve its status to conformance to preserve the integrity of this ordinance and the desired character of the city.
- (c) Reversion. Where a nonconforming use has been changed to a more restrictive use or to a conforming use, such use shall not thereafter revert to a nonconforming use. If no structural alterations are made to a nonconforming use, a nonconforming use may be changed to another nonconforming use of the same classification.
- (d) Expansion. A nonconforming use shall not be expanded or extended beyond its established floor or lot area without approval by the BOA as provided in this section.
- (e) Applicability. An application for a change to a nonconforming use may be made:
- (1) to reconstruct a nonconforming structure that has been destroyed;
  - (2) to expand or expand a nonconforming use of a structure beyond its established floor or lot area because of exigent circumstances; or
  - (3) to resume a nonconforming use previously abandoned upon a showing that abandonment deprives the property owner of substantially all use or economic value of the land.
- (f) Application and Review. An application for a nonconforming use change shall be submitted for review by the P&Z in accordance with the application procedures, including notice and public hearing, of this ordinance.
- (g) Criteria for Review. Reconstruction, extension, or enlargement of a nonconforming structure on a conforming lot or tract may be permitted provided such:
- (1) Does not prevent the reversion of such property to a conforming use;
  - (2) Does not exceed 25% of the ground area of the existing building;
  - (3) Complies with side yard requirements and existing setback;
  - (4) For a nonconforming residential use, the expansion does not increase the number of dwelling units to more than the number existing when the use became nonconforming; and
  - (5) Does not allow such building to be used for a use which would be restricted to a more restrictive classification.
- (h) Conditions. A time limit may be imposed specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of the zoning ordinance for the district in which the nonconforming use is located. The P&Z/BOA may prescribe additional conditions for a nonconforming use such as those listed in this ordinance for a CUP.



- (i) Action by the BOA. Final determination on a nonconforming use application shall be issued by the BOA in accordance with the BOA hearing and action procedures of this Ordinance.
- (j) Discontinuation; Abandonment. A nonconforming use shall be deemed abandoned if the use has been discontinued for a period of more than two years, which calculation includes that time period prior to the effective date of this ordinance. Upon abandonment, such nonconforming use shall not be renewed or reestablished. Subsequent use of the land, lot, or structure shall conform to and be in accordance with the regulations of this ordinance for that district in which the nonconforming use was located.
- (k) Special Exceptions. The section does not apply to modifications or conditions granted in a conditional use permit or in a variance as provided in this Ordinance.

**Section 4-18 Variance**

- (a) Definition. A variance is a change from the application of a specific requirement of this Ordinance to a land use or structure. Reducing a minimum setback requirement is an example of a variance.
- (b) Purpose. The purpose of this section is to allow an adjustment of a specific regulation of this Ordinance to a parcel of land or a structure because of an extraordinary condition or a circumstance of hardship peculiar to the parcel, and which is necessary to prevent the property from being deprived of rights and privileges enjoyed in other parcels in the same vicinity and zoning district. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on a property owner in general. Rather, it is intended to provide relief where the zoning requirements render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested. State and/or federal laws or requirements may not be varied by the city.
- (c) Applicability.
  - (1) Presumption. There shall be a presumption against variances. Grant of a variance is not automatic.
  - (2) No Special Issuance. A variance shall not be granted if it would provide the applicant with special privileges not enjoyed by owners of other similarly situated property with similar timed development.
  - (3) Findings Required for Variance Approval. No variance shall be granted by the BOA unless the BOA finds that all of the following conditions are met:
    - (i) There are special circumstances or conditions affecting the land such that the literal enforcement of the provisions of this ordinance would result in unnecessary hardship, and deprive the applicant of the reasonable use of the land;
    - (ii) The subject circumstances or conditions giving rise to the alleged hardship are not self-imposed, are not based solely on economic gain or loss, and do not generally affect most properties in the vicinity of the property;
    - (iii) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
    - (iv) The variance is not contrary to the public interest and is not detrimental to the public health, safety, or welfare, or injurious to other property within the area;
    - (v) The variance constitutes a minimal departure from this ordinance; and
    - (vi) The variance is in conformity with the spirit, general purpose, and intent of this ordinance so that:
      - (A) The public health, safety and welfare may be secured; and
      - (B) That substantial justice may be done.

- (d) Criteria Required for Hardship Showing. Undue hardship results where:
- (1) A special individual reason makes the strict application of a provision of this ordinance impractical;
  - (2) There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his land; and
  - (3) The applicant will incur specific hardships should the variance not be granted.
  - (4) Pecuniary hardship to the applicant, standing alone, shall not be deemed sufficient to constitute undue hardship.
- (e) Hardship Considerations for a Structure. In determining a variance request for a structure, the P&Z/BOA may consider the following, outlined in Section 211.009 B-1 of the Texas Local Government Code, as grounds to determine whether compliance with the ordinance as applied to a structure would result in unnecessary hardship:
- (1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent property appraisal roll for the City;
  - (2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
  - (3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (5) the City considers the structure to be a nonconforming structure.
- (f) Application and Review. An application for a variance shall be submitted for review by the P&Z in accordance with the application procedures, including notice and public hearing, of this Ordinance. If an application is submitted at the same time as a plat submittal, it shall be considered concurrently with the plat application.
- (g) Burden on Applicant. The applicant bears the burden of proof in establishing the facts that may justify a variance.
- (h) Conditions. The P&Z/BOA may prescribe conditions such as those listed in this ordinance for a CUP.
- (i) Action by the BOA. Final determination on a variance application shall be issued by the BOA in accordance with the BOA hearing and action procedures of this Ordinance.
- (j) Findings Required on Approval.
- (1) On approval of a variance, the BOA shall issue findings stating that:
    - (i) Granting the variance will not be detrimental to the public safety, health, or general welfare, will not be injurious to other property or to the owners of other property, and will not prevent the orderly subdivision of other property in the vicinity;
    - (ii) The condition(s) upon which the request for a variance is based is unique to the property for which the variance is sought and is not applicable generally to other property;
    - (iii) Because of the particular physical surroundings, shape, and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
    - (iv) The variance will not in any manner vary the provisions of this Ordinance, the Comprehensive Land Use Plan, or any other adopted land plan(s) or ordinance(s) of the City;
    - (v) The alternate design will generally achieve the same result or intent of the standards and

- regulations prescribed herein; and
- (vi) If applicable, the variance will enable the applicant to preserve more native trees, provide more open space, or ensure more wildlife preservation than would be possible complying with the strict mandates of the Ordinance.
- (2) Such findings, and the specific facts in support, shall be included in the BOA minutes of the meeting at which the variance is granted, and in the ordinance of approval.

#### **Division 4. Historic Preservation**

##### **Section 4-19 Definitions**

The following words and terms used in this Division shall have the following meanings, unless the context clearly indicates otherwise:

*Historic overlay district - H* An area which has outstanding historical and cultural significance in the State, region, or City, within which the buildings, structures, accessory buildings, fences, or other appurtenances are of basic and vital importance for the development of culture and tourism because of their association with history, including:

- (1) Historic structures, sites, or areas within which the buildings, structures, appurtenances, and places exemplify the cultural, political, economic, or social history of the State, region, or City;
- (2) Historic structures, sites, or areas that are identified with the lives of historic personages or with important events in State, regional, or local history; and
- (3) Structures or areas that embody the distinguishing characteristics of an architectural type specimen as to color, proportion, form, and architectural details.

*Historic landmark - HL* A place which has outstanding historical and cultural significance in the nation, region, or City. The designation "historic landmark" recognizes that the historic place or the building(s), structure(s), accessory building(s), fences, or other appurtenances at the place, are of basic and vital importance for the preservation of culture and the development of tourism.

##### **Section 4-20 Authorities**

- (a) Historic Review Board. The P&Z shall serve as the Historic Review Board, the "Board". The Board shall act in an advisory capacity only, and shall have no power to bind the city by contract or otherwise. It shall be the function of the Board to advise the city council on a proposed designation of a historic landmark or property, and on an application for a certificate of review as provided herein.
- (b) City Council. The City Council shall be the exclusive authority to approve the designation of a property as a local historic landmark and the inclusion of a property in a local historic district. In addition, the City Council shall have final authority on an application for a certificate of review.

##### **Section 4-21 Designations**

- (a) Current Designation. The city council designates the area notated on the Official Zoning Map as the "Historic Overlay District."
- (b) Identification. A zoning map shall reflect the Historic Overlay District by the letter "H", and a historic landmark by the designation "HL", in addition to any other zoning district designation established in this ordinance.

- (c) **New Designation.** Designation of a property as a local historic landmark, or of a property for inclusion within the boundaries of a historic overlay district shall be conducted in accordance with the requirements contained in Section 211.0162 of the Texas Local Government Code, as amended, including owner's consent, and the provision of an impact statement to the owner.
- (d) **Application and Review.** An application for a historic designation or landmark shall be reviewed and processed in accordance with the application process for City Council Hearing and Action outlined in this Ordinance.
- (e) **Designation Criteria.** In designating an area as a historic district or a place as a historic landmark, the following criteria shall be considered:
  - (1) Character, interest, or value as part of the development, heritage, or cultural characteristics of the city;
  - (2) Location as the site of a historical event;
  - (3) Embodiment of distinguishing characteristics of an architectural type or specimen;
  - (4) Relationship to other distinctive buildings, sites, districts, or structures which are historically significant and preserved, or which are eligible for preservation;
  - (5) Unique location of singular physical characteristics represents an established and familiar visual feature of a neighborhood, community, or the city;
  - (6) Value as an aspect of community sentiment of public pride; and
  - (7) Identification with a person or persons who significantly contributed to the development or culture of the city.

#### **Section 4-22 Violation; Penalty**

- (a) **Misdemeanor declared.** It shall be unlawful to construct, reconstruct, structurally alter, remodel, renovate, relocate, restore, demolish, raze, or maintain any building, structure, accessory building, fence or other appurtenance in a Historic Overlay District or Historic Landmark in violation of the provisions of this division. Violation of any provision of this division is a misdemeanor.
- (b) **Enforcement and Penalty.** A violation of this division shall be processed in accordance with the Violation and Enforcement provisions of this Ordinance. Each day such violation continues shall constitute a separate violation.

## ARTICLE V. GENERAL REGULATIONS

### Division 1. General

#### Section 5-1 Purpose

This purpose of this article is to provide regulations, in addition to those regulations for and requirements of each zoning district, applicable to a building, structure, and land use within the City limits regardless of the zoning district designation.

#### Section 5-2 Ordinance Regulations

In addition to regulations listed in this Ordinance for each district, regulations contained in the following city ordinances of the City's Code of Ordinances shall also apply to each zoning district:

- (1) Article 3.06 Signs
- (2) Article 3.09 Outdoor Lighting
- (3) Article 3.11 Tree Preservation
- (4) Article 15.01 Tree Preservation and Landscaping

#### Section 5-3 Certificate of Use and Occupancy

- (a) Certificate Required. No building erected or structurally altered shall be used, occupied, or changed in use until a certificate of occupancy has been issued by the City stating that the building or proposed use of a building complies with the building code and the provisions of this ordinance. A change in use shall mean any change in the occupancy of a business.
- (b) Violation. A certificate of use and occupancy shall become null and void upon violation of this ordinance. On remediation, a new certificate shall be required.

### Division 2. Site Requirements

#### Section 5-4 Accessory Structures

- (a) An accessory use is permitted in any zoning district, but only in connection with, incidental to, and on the same lot as, a principal structure which is in use and permitted in such district.
- (b) Except as necessary for ongoing construction activity, the storage or overnight parking of a commercial vehicle rated over one ton is prohibited in any residential zoning district.
- (c) In residential districts, no motor homes, recreational vehicles, trailers, or boats shall be parked on the street right-of-way. Such a vehicle may be used for any form of habitation on a residential lot for 30 days with a renewable permit and may connect to utilities if 1) the vehicle has a backflow prevention device for water, and 2) the vehicle owner applies for and receives a permit from the City.
- (d) No accessory structure shall be placed in a front yard, except fences and walls.
- (e) No accessory building may be placed within the limits of an alley or required fire lane.
- (f) No permanent accessory building can be placed within the boundaries of a recorded easement.

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Zoning Districts

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Zoning Districts

Commented [L6]: Section 2-7 moved to Article \_\_\_\_\_  
Zoning Districts

- (g) No accessory structure, other than garages, barns, and agricultural structures, shall exceed 16 feet in height. A garage may be as tall as 30 feet in height, provided that the garage meets the primary structure side yard setback requirement on all lot lines, and that the height of the garage does not exceed the height of the primary residential structure. A barn and other agricultural structures cannot exceed the district height requirements.
- (h) An accessory building which is not a part of the principal structure (including a structure that is connected to the principal building by an open breezeway) may be constructed in a rear yard, provided such accessory building does not occupy more than 20 percent of the area of the required rear yard, and provided it is not located closer than five feet to any lot line.
- (i) Swimming pools may be located within a required rear or side yard, provided that such pools are not located closer than ten feet to a rear lot line or ten feet to a side lot line. Swimming pools are not permitted in the front yard. A pedestrian space of at least three (3) feet in width shall be provided between pool walls and the protective fence or barrier wall of the pool. A swimming pool shall be fenced.

#### **Section 5-5 Accessory Dwelling**

One accessory dwelling may be maintained within a single-family detached dwelling in a Single-Family Zoning District with a temporary conditional use permit for a limited time period, and subject to the following:

- (1) The principal dwelling shall be occupied by the permit holder;
- (2) The floor area of an accessory dwelling shall not exceed 25 percent of the existing floor area of the main building;
- (3) The accessory dwelling shall have a bathroom;
- (4) The permitted accessory dwelling shall be exclusively occupied by not more than four persons;
- (5) Off-street parking shall be as required by the parking ordinance of the city; and
- (6) The accessory dwelling shall be compatible with the aesthetics of the primary residence and surrounding neighborhood.

#### **Section 5-6 Walls; Fences**

A wall, fence, berm, and similar items restricting passage or vision or simply enhancing private property may be located within a required yard as defined by building setbacks, except as follows:

- (1) A wall or fence located within the front yard shall not exceed a height of 48 inches as measured from the grade at the point of placement. A wall, fence or similar item, other than landscaping, shall not exceed a maximum height of eight (8) feet within a rear yard. A rear yard fence that is higher than 48 inches may be extended to the front corner of the primary structure. A fence in the rear yard on a corner lot shall meet the side yard setback adjacent to the right-of-way line in the zoning district;
- (2) In the Industrial and Highway Commercial Corridor Districts, a wall or fence which is clearly used for safety or security purposes must comply with the administrative rules and statutory regulations of the Texas Department of Transportation;
- (3) A wall, fence, hedgerow, or other dense landscaping on a corner lot shall not exceed 24 inches in height. Items over 24 inches shall be located at least 20 feet from the intersection of a street right-of-way line;
- (4) A wall or fence that adjoins property lines in a residential district shall not be electrified, barbed, or otherwise secured in a manner inappropriate or dangerous to the neighborhood. Such restrictions are waived for agricultural uses;



- (5) A fence, shrub, or wall may be installed in an easement, subject to the City's or a utility company's ability to remove the structure at the Owner's expense if access is deemed necessary; and
- (6) These provisions shall not be interpreted to prohibit the erection of an open-mesh type fence enclosing any school or playground site or business or industrial activity for security purposes.

#### **Section 5-7 Outside Storage and Display**

- (a) Outside storage, display or sale of goods, products, merchandise, or equipment is permitted in a nonresidential zoning district, including the Industrial and Highway Commercial Corridor Districts, provided such goods, products or merchandise do not encroach into the right-of-way and are not more than five (5) feet in height.
- (b) Storage and display of rental trailers and trucks are not allowed except in districts where such uses are indicated as permitted in the Schedule of Uses.
- (c) Outside storage limitations shall not apply to:
  - (1) Merchandise dispensing units (not more than three) placed adjacent to a building for any one business establishment when such merchandise dispensing units are being used in connection with the operation of a convenience food store, service station, grocery, supermarket, or combination thereof;
  - (2) Storage, display, and sale of newspapers in newspaper racks;
  - (3) Outside display of greenhouse merchandise; or
  - (4) Temporary outdoor services such as mobile blood banks, health screening, and veterinary care.
- (d) Temporary outdoor sale of merchandise is permitted, provided it is conducted:
  - (1) For a period not exceeding five consecutive days once a month;
  - (2) By a building tenant holding the current certificate of occupancy;
  - (3) For merchandise ordinarily sold on the premises by the building tenant;
  - (4) Does not encroach the right-of-way from all property lines;
  - (5) Is displayed no more than eight feet in height; and
  - (6) With a permit issued by the City not more than 90 days prior to each event.
- (e) A display of garage sale items in a residential district is permitted for a maximum of four days within a 30-day period. No garage sale sign can be placed on a city or state right-of-way, and must be removed within 24 hours after the conclusion of the sale.

#### **Section 5-8 Home Occupation**

- (a) A home occupation is permitted in a residential district and shall be conducted as follows:
  - (1) Only by a person(s) residing on premises;
  - (2) Shall not alter the appearance of the residential dwelling unit or the lot on which it is located;
  - (3) Not display outside storage or goods;
  - (4) Be conducted within the dwelling;
  - (5) Not involve equipment which conflicts with the intent of the residential nature of the community;
  - (6) Not involve the use or storage of explosives, flammable or hazardous materials;
  - (7) Not involve any process that produces smoke, dust, odor, noise or vibration which is harmful to surrounding properties;
  - (8) Not involve the delivery and storage of materials at a frequency beyond that which is reasonable to the residential use of the property;
  - (9) Not generate traffic to and from the home in excess of what is normally associated with a single-



family dwelling;

- (10) Shall not consist of group instruction, assembly or activity;
- (11) Shall not have an outside display indicating that the dwelling is being utilized in part for any purpose other than that of a residential dwelling. There shall be no advertising on the sign or the premises; and
- (12) Shall not consist of an activity incompatible with the adjacent land uses.

(b) Home occupation uses include, but are not limited to, the following:

- (1) Artist, sculptor, or photographer;
- (2) Author or composer;
- (3) Computer programmer or Internet service provider;
- (4) Licensed massage therapist;
- (5) Child care provider, licensed in accordance with State regulations;
- (6) Tailor or seamstress;
- (7) Professional office;
- (8) Tutoring;
- (9) Salesperson;
- (10) Telephone answering service;
- (11) Music teacher;
- (12) Caterer;
- (13) Baker; or
- (14) Beauty parlors and barbershops, provided that a hair salon permit in addition to a license to cut hair has been obtained.

(c) The following uses are prohibited as home occupation uses:

- (1) Auto repair or auto paint shop;
- (2) Adult entertainment businesses;
- (3) Medical and dental clinics;
- (4) Nursing homes, convalescent homes, and adult care facilities with occupancy over two (2) persons;
- (5) Restaurants;
- (6) Wrecking and towing service;
- (7) Welding and machine shops;
- (8) Lawn equipment repair; or
- (9) A use deemed incompatible with adjacent or surrounding land uses.

#### Section 5-9 Group Home

- (a) A group home shall be located not less than 1,000 linear feet from any other group home or child care facility as measured from the nearest boundary of the site on which the other group home or child care facility is located.
- (b) No structural alterations shall be made to a building to cause the group home to be substantially distinguishable from other surrounding residential properties.
- (c) A group home shall meet every state statutory licensing requirement.
- (d) Parking shall be in accordance with the City's development regulations for parking.
- (e) No signs are allowed on a group home site.

- (f) Exterior lighting shall be placed in accordance with the City's lighting ordinance and shall not extend into adjacent residentially zoned properties.

**Section 5-10 Manufactured Home**

Regulations for manufactured home housing include, but are not limited to, the following:

- (1) A manufactured housing development shall occupy a site of not less than two acres in size;
- (2) A manufactured housing unit shall meet all standards set by the U.S. Department of Housing and Urban Development, and shall meet requirement[s] set by the City of Johnson City Building Code;
- (3) A manufactured housing unit shall provide proper skirting around the base of the home within 30 days of placement on property. No plywood or lattice is permitted;
- (4) All subdivision standards must be met as specified in the city's subdivision regulations;
- (5) A manufactured housing unit shall be installed per Chapter 1201 of the Texas Occupations Code; and Title 10, Chapter 80 of the Texas Administrative Code, as amended; and
- (6) A manufactured home within the city limits may be replaced with a manufactured home no older than **five (5) years**.

**Section 5-11 Telecommunication Tower**

Telecommunication towers include radio, wireless telephone, television, microwave, short wave radio and/or any other tower used exclusively for communication purposes. **A telecommunication tower is regulated by the City's Code of Ordinances????**

## ARTICLE VI. DEFINITIONS

### Section 6-1 Construction of Language

- (a) Words, Terms and Phrases. The following words and terms, when used in this Ordinance, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined herein shall have the meaning customarily assigned to them.
- (b) Rules of Construction. The following rules of construction apply:
- (1) The particular shall control the general and the use of a general term shall not be taken to have the same meaning as another specific term. For example, a "recreational facility, commercial indoor" shall not be interpreted to be the same as a "recreational facility, commercial indoor- pool or billiards hall," if each term is listed as a separate and distinct use.
  - (2) In case of any difference of meaning or implication between the text of this article and any caption or illustration, the text shall control.
  - (3) A building or structure includes any and all of its parts.
  - (4) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for."
  - (5) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
  - (6) The word "person" or "applicant" includes any individual, corporation, partnership, incorporated association, limited liability company, or any other similar entity.
  - (7) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunctions "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:
    - (i) "And" indicates that the connected items, conditions, provisions or events apply.
    - (ii) "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
    - (iii) "Either . . . or" indicates that the connected items, conditions, provisions, or events apply singly but not in combination.
  - (8) When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number, and vice versa; and words in the masculine gender shall include the feminine gender, and vice versa.

### Section 6-2 General Definitions.

*Accessory building or structure* A structure on the same lots with, and of a size and nature customarily incidental and subordinate to, the principal structure. Examples of accessory structures include, but are not limited to, the following: detached garages and/or carports; storage structures and/or barns; freestanding greenhouses, pool houses, tennis courts, gazebos, and workshops.

*Accessory use* A use incidental or secondary to the principal use of a lot, building or structure and located on the same lot as the principal use.

*Adjacent* Layout of a site in which the borders are touching, adjoining, contiguous or abutting.

*Alley* Land dedicated to public use and devoted to secondary access to lots.

*Alterations* Any change, addition, or modification in construction, [or] any change in the structural members of a building, such as walls or partitions, columns or beams or girders.

*Applicant; Person* An individual, association, firm, corporation, governmental agency, political subdivision, or partnership, incorporated association, limited liability company, or any other similar entity of any kind.

*Barn* A structure intended for the purpose of storing farming and ranching related equipment or housing livestock; such a structure shall conform with the regulations of the lot, and shall conform to all construction and design standards of the district in which it is constructed. This term also includes agricultural structure(s).

*Bed and breakfast* A detached dwelling or grouping of dwellings in which rooms are rented to transient guest[s] on an overnight basis and breakfast is served.

*Board; "BOA"* The Board of Adjustment of the City. The City Council of the City makes up the BOA.

*Building* A structure intended for shelter, occupancy, housing or enclosure for persons, animals, or chattel. When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building.

*Church* A structure owned and/or used by a religious organization or congregation that provides regular organized religious worship, religious training, or education of its members. The term also includes a rectory, convent, meeting hall, or offices for administration of the institution. A church may include dwelling units for religious organization personnel located within an accessory structure.

*City* The City of Johnson City, Texas.

*City Council; Council* The governing body of the City of Johnson City, Texas.

*City limits* The incorporated boundary limits of the City of Johnson City, Texas.

*Comprehensive plan* A periodically updated document that unifies all elements and aspects of city planning. This plan serves as a policy guide to zoning and subdivision decisions reflecting the best judgment of the staff, planning commission and the City Council.

*Conditional use permit; also a Special Exception* A use which is not automatically permitted by right, but which may be permitted within a zoning district subject to meeting specific conditions. Such permitted use with conditions is that which is compatible with the land use in a zone. An example of a conditional use or special use would be an allowance of a home business such as a tax service, hair salon, or daycare in a residential zone. A conditional use permit is approved and granted by the Board of Adjustment.

*Coverage, lot* The total area of all structures, paved driveways, or other soil disturbances that will not allow normal water infiltration. The coverage is expressed as a percentage of such area in relation to the total gross area of the lot or site. Landscaping shall not be deemed part of the lot coverage.

*Density* The quantity of an item per unit area, for example, the number of dwelling units per acre.

*District* A classification applied to any certain land area within the city stipulating the regulations of land usage and development.

*Dwelling* A structure or portion which is designed or used exclusively for residential purposes, including single-family, two-family, attached dwellings, multifamily dwellings and manufactured homes.

*Dwelling, accessory* A detached or attached residential unit, other than a manufactured home, designed for and occupied by one family only. The structure shall only be accessory to a single-family dwelling.

*Dwelling unit* A building or portion of a building that is arranged, occupied, or intended to be occupied as living quarters and that includes facilities for food preparation, bathing, use of the toilet and sleeping.

*Extraterritorial jurisdiction; ETJ* The unincorporated area outside of and contiguous to the corporate boundaries of the city.

*Family* One or more persons related by blood, marriage or adoption occupying an individual dwelling unit. **No more than four unrelated individuals shall reside in a single dwelling unit.**

*Garage* An accessory building or a portion of a main building for storage of motor vehicles or parking as may be required in connection with the permitted use of the main building.

*Garage (shop)* An establishment providing major or minor automobile repair services to all motor vehicles except heavy load vehicles; may include installation of minor automobile accessories such as car alarms, radio and stereo equipment, window tinting, pin striping, cellular telephones, and similar accessories.

*Garage sale* The sale of tangible personal property at retail by a person who is not in the business or does not hold himself or herself out to be in the business of selling tangible personal property at retail.

*Garden housing* A residential structure which is separated by a shared common wall.

*Greenhouse* A facility for the growing and commercial distribution of plant materials.

*Grocery; supermarket* An establishment for the display, preparation, and retail sale of foods and associated items.

*Group home* A commercial enterprise **commonly carried on within a home by a member of the occupant's family occupying the dwelling.** The use of the home for commercial enterprise purposes shall be incidental and subordinate to the use of the home as a dwelling.

*Hospital* An institution licensed by the state as a hospital where humans are given medical treatment.

*Hotel* A building or facility in which the public may obtain sleeping accommodations in exchange for compensation for a period of less than 30 consecutive days. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast, short-term rental unit, and any accommodation as described under State law.

*Loading and unloading space, off-street* An open, hard-surfaced area of land other than a street or public right-of-way, the principal use of which is for the standing, loading, and unloading of motor vehicles, tractors, and trailers, to avoid undue interference with public streets and alleys.

*Lot* A designated parcel, tract or area of land established by a plat or otherwise permitted by law to be used, developed, or built upon as a unit.

*Lot area* The net area of a lot exclusive of any portion of streets, alleys, or rights-of-way.



*Lot depth* The average horizontal distance between the front and rear lot lines.

*Lot line* A boundary of a lot.

*Lot line, front* The lot line adjacent to street right-of-way. In the case of a corner lot, only one lot line shall be designated as the front lot line.

*Lot line, rear* The lot line opposite the front lot line of said lot not intersecting with the front lot line.

*Lot line, side* A lot line which intersects the front lot line of said lot.

*Lot width* The straight-line distance between the side lot lines, measured at the two points where the front building line intersects the side lot lines.

*Manufactured home, housing; manufactured housing unit* A structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on-site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems. This term does not include a recreational vehicle.

*Micro housing* An efficient single-family dwelling unit that has a minimum of 300 square feet and a maximum of 750 square feet. For the purposes of this ordinance, micro housing shall be located within planned and approved micro housing districts.

*Motor freight terminal* Premises where cargo is stored and where trucks, including tractor and trailer units, load, and unload cargo on a regular basis. This definition shall also include facilities for the temporary storage of loads and cargo prior to shipment.

*Multifamily dwelling* A building that contains more than two dwelling units.

*Nonconforming; nonconforming use* Use of land, structure, or a lot which does not conform to the requirements of this ordinance because such use had been established, and has been in existence prior to and after the effective date of adoption of this ordinance; a land use, structure or lot which does not conform with the regulations of this ordinance as a result of the adoption or amendment of this ordinance or of any subsequent reclassification of a zoning district.

*Nursing home* A home for the aged, chronically ill, or incurable persons who are unable to care for themselves, and in which three or more persons **not of the immediate family** reside or are provided with food and shelter or care for compensation. This does not include hospitals, clinics or other similar institutions devoted primarily to the diagnosis and treatment of the sick or injured.

*Off-street parking* An enclosed or unenclosed area, not on a public street or alley, established for or used for the parking of a motor vehicle.

*On-site parking* An area used for the storage of motor vehicles located wholly within a single lot whose use is dedicated to that lot.

*Outdoor storage* The storage of large quantities of materials or products associated with an industry or

business. Such storage requires a structure designed for and/or devoted to the containment of the item or items, such as an oil storage tank or grain elevator.

*Parking lot* An area not within a building designed and used for the storage of motor vehicles.

*Person; Applicant* An individual, association, firm, corporation, governmental agency, political subdivision, or partnership, incorporated association, limited liability company, or any other similar entity of any kind.

*Permitted use* Use of a lot which is among the uses allowed as a matter of right, subject to the restrictions of the zoning district in which the lot is located.

*Property owner; owner* A person or firm, association, syndicate, general or limited partnership, corporation, trust or other legal entity, or any agent or representative thereof, that has sufficient proprietary interest in the land to be zoned. An owner shall be restricted to include only the owner(s) or authorized agent(s) of such owner(s), such as a developer.

*Planning and Zoning Commission; P&Z* The Planning and Zoning Commission of the City of Johnson City, Texas.

*Recreational vehicle* A motorized vehicle or non-motorized trailer designed and/or maintained for use as a temporary dwelling or sleeping place for travel or recreation purposes exclusively, having no foundation other than wheels or jacks.

*Restaurant* A structure that prepares and serves food to customers, including sit-down, fast-food, drive-through and drive-in facilities. At least 51% of the gross income shall be derived from the sale of prepared food.

*Retail sales and service* A business established for the sale of goods or services to consumers, usually in small quantities as opposed to wholesale.

*Right-of-way* The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement.

*School* A facility that provides curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools.

*Screening* The establishment of an opaque fence or barrier for the purpose of obscuring a particular land use, structure, or activity from sight.

*Setback* The minimum distance between by which any building or structure must be separated from a street right-of-way or lot line.

*Single-family dwelling* A building that contains only one living unit.

*Special Exception; also, conditional use permit* A use that is not permitted by ordinance, but which may be permitted within a zoning district subject to meeting specific conditions. Such permitted use with conditions is that which is compatible with the land use in a zone. Examples include a church, school, tax service, or daycare in a residential zone. A special exception is approved and granted by the Board of Adjustment.



*State* The State of Texas.

*Story* That portion of a structure included between the surface of any floor and the surface of the floor directly above it, or if there is no floor above it, the space between the floor and the ceiling above it; provided that a room, suite, or story with more than one-half of its height below grade shall not be considered a story for the purposes of height regulations.

*Street* A public or private thoroughfare right-of-way which affords the principal means of access to abutting property. The term "street" shall include avenue, drive, circle, road, boulevard, highway, or any other similar term.

*Subdivision* The division or redivision of land into two or more lots, tracts, sites, or parcels.

*Telecommunication tower* Radio, wireless telephone, television, microwave, short wave radio and/or any other tower used exclusively for communication purposes.

*Variance* An adjustment of a specific regulation of this ordinance to a parcel of land or a structure because of an extraordinary condition or a circumstance of hardship peculiar to the parcel, and which is necessary to prevent the property from being deprived of rights and privileges enjoyed in other parcels in the same vicinity and zoning district. A variance is granted and approved by the BOA.

*Warehousing* The storage in an enclosed building of materials and goods. This definition also includes all office, distribution, and sales space but not motor freight terminals or railroad freight terminals.

*Yard, front* An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the front building line.

*Yard, rear* An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the rear building.

*Yard, side* An open space extending from the required front yard to the required rear yard, the width of which is the minimum horizontal distance between the side lot line and the side building line.

*Zoning* The power of local governments to regulate zoning or districting of property for various uses for the regulation of development within the City in accordance with the Comprehensive Plan and the Land Use Map which outlines zones or districts within the City.

*Zoning administrator* The person designated by the City Council to administer this Zoning Ordinance. The Chief Administrative Officer of the City is the person designated.

*Zoning district* A classification applied to a certain land area within the city stipulating the limitations and requirements of land usage and development.

*Zoning map* The official zoning map of the City upon which the boundaries of the various zoning districts are drawn.

**EXHIBIT A OFFICIAL ZONING MAP**

*Large-Scale Map is on file and available for review at City Records.*

## EXHIBIT B SCHEDULE OF USES

The City Council hereby approves and adopts the following chart as the City's permitted Schedule of Uses. The chart lists the types of land uses allowed within each of the zoning districts outlined in this Ordinance. The list is not exhaustive nor exclusive. Other uses not listed may be permitted provided the proposed use is related to the standards and regulations of the zoning district in which the use is to be located, and which is compatible with adjacent land uses.

### Districts Legend

CD:	Commercial District
DD:	Downtown Overlay District
GHD:	Garden Housing District
HC:	Highway Commercial Corridor District
H:	Historic Overlay District
IP:	Industrial Park District
M:	Manufactured Home District
MHD:	Micro Housing District
MR:	Mixed Residential District
PFD:	Public Facilities District
SF:	Single-Family Residential District
SFR:	Single-Family Residential District - Restricted

### Uses Legend

CUP:	Conditional Use Permit
X:	Permitted use by right
Blank:	Use not permitted in that district



## City of Johnson City

# ARTICLE 14.02 ZONING ORDINANCE

Adopted February 2016

Amended May 2019

Revised \_\_\_\_\_, 2023

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**Section 1-3 Official Zoning Map**

(a) Official Map. The map, attached to Ordinance 22-0104 adopted 1.1.21 and marked and labeled "City of Johnson City Zoning Map", is hereby adopted as the official zoning map of the city. The map is attached by reference, as Exhibit A to this Ordinance, and is incorporated fully herein. The zoning districts and boundaries indicated upon said map are hereby declared to be the official zoning districts and boundaries for the city. All properties shown on the map as within a particular zoning category are hereby declared to be within the zoning district and zoned accordingly to comply with the requirements of this Ordinance. All zoning maps prior to the adoption date are hereby repealed. The map may be amended and corrected from time-to-time by the city council. The city secretary shall keep the official zoning map among the permanent records of the city available for inspection and review during regular business hours.

(b) Interpretation of District Boundaries. Where uncertainty exists as to the boundaries of zoning and overlay districts as shown on the Official Zoning Map, the following shall apply:

- (1) Where zoning district boundaries of the city appear to follow streets, alleys, railroads or highways, such boundaries shall be construed as the centerlines of those streets, alleys, railroads, or highways.
- (2) Where zoning district boundaries appear to follow lines of lots or parcels of record, such lot or acre lines shall be construed to be such boundary.
- (3) Where a zoning district divides a parcel of land, the location of such boundary shall be determined using the zoning map scale as measured to the nearest foot unless such line can be more accurately determined by geometric or land surveying computations.
- (4) Where indicated district boundaries are approximately following city boundaries, such boundaries shall be construed to be the district boundaries.
- (5) Where district boundaries are indicated as approximately following a creek, stream, or marsh, the centerline of the creek, stream or marsh shall be construed to be the district boundary.
- (6) All areas of the city which are under water are within a zoning district and controlled by applicable district regulations.

(c) Zoning Map Changes. All zoning changes after the effective date of this Ordinance shall be reflected on the official zoning map upon amendment. Annotations shall indicate:

- (1) The date of the zoning change;
- (2) The number of the ordinance or resolution, if any, by which the change was made; and
- (3) A reference to the minutes, ordinances, or resolutions records in which the ordinance or resolution is recorded in full.

**Section 1-4 Schedule of Uses**

(a) Schedule of Uses. The City Council hereby approves and adopts the Schedule of Uses chart attached to this Ordinance as Exhibit B and incorporated fully herein.

(b) Purpose. The purpose of this chart is to list the types of land uses permitted and allowed within each of the zoning districts outlined in this Ordinance. A building or land shall not be used, and a building shall not be erected, except for the use specified in the Schedule.

(c) Legend. Land and/or a building in a district may be used for the purpose denoted by the following abbreviations:

- (1) X: A permitted use; land and/or buildings in this district may be used by right;
- (2) CUP: A conditional use permit; land and/or buildings are subject to review and permitting in accordance with this ordinance.

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(ii) Damages and Penalties.

(A) The City may seek to recover damages from the violator in an amount adequate for the City to undertake activity necessary to bring compliance with this Ordinance.

(B) A violator is subject to a civil penalty up to \$1,000.00 and not less than \$100.00 a day, with each day constituting a separate offense and separate violation, when it is shown that the defendant was notified of the violation, and after receiving notice, failed to comply.

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(g) Legal Fees and Costs. The City shall be entitled to recover from the defendant reasonable attorney's fees, costs of suit, and any other costs of enforcement in a civil and/or criminal action.

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(h) Cumulative. The penalties and remedies in this section shall be cumulative, and are not exclusive of any other rights or remedies the City may have or pursue.

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is entitled to one vote upon any question.

- (e) Conflict of Interest. A P&Z member shall not vote or participate in any deliberations of a matter if the member has any substantial interest in any tract within 200 feet of the property in question. A "substantial interest" exists if the member is related within the first degree of consanguinity (blood or adoption) or affinity (marriage) to a person whose matter is under consideration before the commission. The chairperson shall determine a question of substantial interest. A substantial interest exists where:
  - (1) A member has an equitable or legal ownership interest in a tract with a fair market value of \$2,500.00 or more;
  - (2) A member acts as a developer of the tract;
  - (3) A member receives in a calendar year funds exceeding ten percent of the member's gross annual income for the previous year from a business whose matter is under consideration before the commission; or
  - (4) A member has an ownership interest in a business entity which has an equitable or legal ownership interest in the tract with a fair market value of \$2,500.00, or acts as a developer of the tract. Ownership is deemed where a member:
    - (i) Owns ten percent or more of the voting stock or shares in the business entity; or
    - (ii) Owns ten percent or more, or \$5,000.00 or more, of the fair market value of the business entity.

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## Division 2. Board of Adjustment

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### Section 2-4 Creation; Authority

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There is hereby created a Board of Adjustment, "BOA". The City Council is granted the authority to act as the BOA.

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### Section 2-5 Powers and Duties

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(a) Authority. The BOA shall have the authority to:

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- (1) Administrative Appeals. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance;
- (2) Conditional Use Permits-Special Exceptions. Hear and decide a conditional use permit, i.e., special exceptions, to the terms of this zoning ordinance where authorized;
- (3) Variances. Authorize, in specific cases, a variance from the terms of this ordinance if the variance is not contrary to the public interest, and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of this ordinance is observed, and substantial justice is done;
- (4) Nonconforming Uses. Hear and decide a request for a change to a nonconforming use; and
- (5) Planned Unit Development District. Hear and decide on an application for a planned unit development district.

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(b) Appeals.

- (1) An appeal of an administrative decision must be filed within 10 business days after the decision has been rendered and shall be processed in accordance with Local Government Code Section 211.010, as amended. An appeal shall be heard within 60 days of receipt of the notice of appeal. A request shall be automatically approved if no formal action is taken. The BOA may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken.
- (2) The decision of the BOA on a matter other than administrative decision may be appealed to a court of record within 10 days after the date the decision is filed in the board's office and processed

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## ARTICLE III. ZONING PROCEDURE

### Section 3-1 General

(a) Amendments. The City Council or BOA may amend the text of this Ordinance, the zoning district boundaries of the official zoning map, or the zoning district classification of a property. An amendment is implemented by ordinance only.

(b) Types. An amendment may be initiated by:

- (1) City Council on its own motion;
- (2) Planning and Zoning Commission on recommendation to the City Council; or
- (3) The owner of the property proposed for a zoning classification change via a zoning application.

(c) Types of Applications. An owner or person may apply to amend or request a:

- (1) Change in a zoning classification, i.e., rezoning, for determination by the City Council;
- (2) Similar land use designation for determination by the City Council; or
- (3) Conditional use permit, i.e., special exception, for determination by the BOA;
- (4) Planned unit development designation for determination by the BOA;
- (5) Variance for determination by the BOA; and,
- (6) Nonconforming use change for determination by the BOA.

(d) Zoning Administrator. The Chief Administrative Officer of the City is designated as the zoning administrator for purposes of handling administrative matters and enforcement of this ordinance.

(e) Fee Authorized. The City shall adopt and impose a nonrefundable application fee to defray the costs of processing a zoning application. The fee schedule shall be included in the City's Master Fee Schedule. At the time of submittal, an application shall include the required fees.

### Section 3-2 Application Process

(a) Application Requirements. A zoning application shall be submitted in accordance with these requirements:

- (1) Authority. An application to zone or rezone property shall be submitted to the zoning administrator by the owner or person with legal authority of a property.
- (2) Fee. A nonrefundable fee is required and shall accompany an application.
- (3) Information Required. A zoning application shall contain sufficient information, documents, or other material relative to the zoning requested, including, but not limited to, the following:
  - (A) A description of the proposed use and, where applicable, the hours of operation, and the proposed number of employees/patrons;
  - (B) A written statement of the compatibility uses with the following:
    - (i) The comprehensive plan;
    - (ii) The applicable zoning district;
    - (iii) The surrounding properties;
    - (iv) Current and future neighborhood conditions;
    - (v) Pedestrian and vehicular traffic patterns, on-site and off-site;
    - (vi) Adequate public facilities;
    - (vii) Upon request by the City:
      - (a) A site plan, if applicable;
      - (b) The architectural elevations and floor plans of proposed building(s);
      - (c) Parking and site circulation analysis;

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City Council.

(2) Hearing. The City Council shall conduct a public hearing on an application.

(3) Vote and Action.

(i) After the hearing, the City Council shall approve, approve with conditions, or deny an application.

(ii) If the P&Z recommended denial, or if an application is protested, an affirmative vote of three-fourths (4 out of 5) of all members of the City Council is required for a requested change to take effect.

(A) A protest must be in writing and signed by the owners of at least 20% of either:

(a) the area of the lots or land covered by the proposed change; or

(b) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(B) In computing the 20% land area, streets and alleys shall be included.

(4) Finality. Approval of an application shall be issued in an ordinance by the City Council. A decision is final.

(f) BOA Hearing and Action.

(1) Applications Considered. A P&Z recommendation on an application for a conditional use permit, special exception, planned unit development, variance, or a nonconforming use shall be forwarded to and heard by the BOA.

(2) Hearing. The BOA shall conduct a public hearing on an application but not before final disposition of the application by the P&Z.

(3) Vote and Action. After the hearing, the BOA shall approve, approve with conditions, or deny an application. The concurring vote of 75% (4 out of 5) of the full BOA is necessary to:

(i) Reverse an order, requirement, decision, or determination of an administrative official;

(ii) Decide in favor of an applicant on a matter on which the BOA is required to pass under this zoning ordinance; or

(iii) Authorize a variance from the terms of this ordinance.

(4) Finality. A decision of the BOA is final and binding. Approval of an application shall be issued in an ordinance by the BOA.

(5) Appeal. The decision of the BOA may be appealed in accordance with the appeal procedures outlined in this ordinance.

**Section 3-3 Zoning Upon Annexation**

(a) Annexed Property. Property annexed into the city shall be classified automatically by default as Single-Family Residential upon annexation.

(b) A property owner of land to be annexed may apply to rezone the property from the default Single-Family Residential classification. The application can be submitted concurrently with the petition for annexation. Approval of annexation by the City Council must occur prior to approval of rezoning. An annexation may not be made contingent upon the approval of any particular zoning classification.

(c) An application shall be considered and reviewed in accordance with the general application process for City Council review of this article.

**Section 3-4 Successive Applications**

(a) Limitations on Successive Applications. No application on the same request shall be permitted within one (1) year of an application denial unless extenuating circumstances exist.

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# ARTICLE IV. ZONING DISTRICTS

## Division 1. General

### Section 4-1 Zoning District Classifications

The city shall be divided into classes of residential, office, commercial, industrial, and special zoning districts, as specified herein. The location and boundaries of the zoning districts are indicated on the Official Zoning Map.

### Section 4-2 Application of Zoning District Regulations

- (a) Applicability. The regulations established for each zoning district shall be minimum regulations and shall apply uniformly to each zoning class, structure, or land within that district.
- (b) Vacated Areas. When a street, alley, or other public way is vacated by governmental action, and when the land within the boundaries of such a facility are attached to and become a part of the land adjoining the vacated street, alley, or public way, the land formerly within the boundaries of the facility shall be subject to the same zoning regulations as apply to the adjoining land.

## Division 2. Zoning Districts

### Section 4-3 Single-Family Residential - Restricted - SFR,

- (a) The purpose of the Single-Family Residential-Restricted District is to stabilize and protect the owner-occupied housing characteristics of the district and to promote and encourage a suitable environment for living. Manufactured housing is not permitted in the SFR district.
- (b) See Schedule of Uses for permitted and conditional uses.
- (c) General regulations of SFR are as follows:

Maximum dwelling units	Five dwelling units per acre
Minimum lot width (street frontage)	50 feet
Minimum lot size (area)	7,500 square feet
Minimum front yard	15 feet
Minimum side yard	10 feet
Minimum side yard, adjacent to street	10 feet
Minimum rear yard	10 feet
Minimum dwelling unit size	1,000 square feet

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<u>Minimum front yard</u>	<u>15 feet</u>
<u>Minimum side yard</u>	<u>10 feet</u>
<u>Minimum side yard, adjacent to street</u>	<u>10 feet</u>
<u>Minimum rear yard</u>	<u>10 feet</u>
<u>Minimum dwelling unit size</u>	<u>750 square feet</u>
<u>Maximum lot coverage</u>	<u>60 percent (60%)</u>
<u>Maximum structure height</u>	<u>1 story</u>

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**Section 4-5 Mixed Residential District – MR**

(a) The purpose of the Mixed Residential District is to provide for owner-occupied single-family housing, duplex, triplex, quadplex, or small multifamily apartment buildings and for development at higher densities with smaller minimum lot sizes.

(b) See Schedule of Uses for permitted and conditional uses.

(c) General regulations of MR are as follows:

<u>Maximum dwelling units</u>	<u>None</u>
<u>Minimum lot width (street frontage)</u>	<u>50 feet</u>
<u>Minimum lot size (area)</u>	<u>8,000 square feet</u>
<u>Minimum front yard</u>	<u>5 feet</u>
<u>Minimum side yard</u>	<u>10 feet</u>
<u>Minimum side yard, adjacent to street</u>	<u>10 feet</u>
<u>Minimum rear yard</u>	<u>15 feet</u>
<u>Minimum dwelling unit size</u>	<u>500 square feet for single-bedroom;</u> <u>750 for two-bedroom unit</u>
<u>Maximum lot coverage (all structures)</u>	<u>80%</u>
<u>Maximum structure height (stories)</u>	<u>2 stories</u>
<u>Maximum structure height (feet)</u>	<u>35 feet</u>

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<u>Minimum side yard</u>	<u>5 feet</u>
<u>Minimum rear yard</u>	<u>15 feet from rear lot line to nearest building line</u>
<u>Maximum lot coverage</u>	<u>60 percent (60%)</u>
<u>Maximum structure height</u>	<u>35 feet</u>

**Section 4-8 Micro Housing District - MHD**

- (a) The purpose of the Micro Housing District is to allow for a mix of affordable, smaller-scale housing units. The MHD district fosters a sense of community by allowing small lot sizes and incorporating community amenities, and recreational facilities and open space.
- (b) The minimum size of a micro housing dwelling unit shall be 300 square feet. The maximum size will be 750 square feet.
- (c) The permitted use is a micro single-family dwelling, and an accessory structure that is incidental to the primary structure on the lot.
- (d) MHD design and evaluation criteria shall be the same, as applicable, as the design and evaluation criteria set forth in PUD district regulations. An approved site development plan is required.
- (e) The zoning of a MHD district shall be that shown on the approved development site plan, and any special conditions.

**Section 4-9 Commercial District - CD**

- (a) The purpose of the Commercial District is to provide for a mix of retail uses that support the surrounding residential neighborhood.
- (b) See Schedule of Uses for permitted and conditional uses.
- (c) General regulations of CD are as follows:

<u>Minimum lot size (area)</u>	<u>None</u>
<u>Minimum lot width (street frontage)</u>	<u>50 feet</u>
<u>Minimum lot depth</u>	<u>80 feet</u>
<u>Minimum front yard</u>	<u>10 feet</u>
<u>Minimum side yard</u>	<u>10 feet</u>
<u>Minimum side yard, adjacent to street</u>	<u>10 feet</u>
<u>Maximum lot coverage</u>	<u>60 percent (60%)</u>

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(2) Manufactured housing units shall meet all standards set by the U.S. Department of Housing and Urban Development and shall meet requirement[s] set by the City of Johnson City Building Code. ¶

(3) All manufactured housing units shall provide proper skirting around the base of the home within 30 days of placement on property (no plywood or lattice permitted). ¶

(4) All subdivision standards must be met as specified in the city's subdivision regulations. ¶

(5) All manufactured housing units shall be inst... [126]

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- (d) Additional requirements for HC include, but are not limited to, the following:
  - (1) Uses within this district shall be of a retail, service, or office character. A mixture of uses may be permitted within a planned unified development project.
  - (2) Business activity shall be conducted entirely within a building, except for outdoor seating for a restaurant. Outside storage and/or display of any type shall be prohibited unless in accordance with the outdoor storage section of this ordinance.
  - (3) Exterior lighting designed for security, illumination, parking lot illumination, or advertising shall be placed in accordance with the City's Lighting Ordinance and designed for lighting not to illuminate into adjacent residential zoned properties.
  - (4) Outdoor trash receptacles shall be at the side or rear of the site, and shall be screened on three sides by fence, planting, or another suitable visual barrier; and
  - (5) If development is configured as a pedestrian mall, either indoor or outdoor, sales from small stand-alone booths, kiosks, sidewalk-type cafes, stands, carts, or other display devices shall be permitted within the pedestrian walking areas of the mall. This is intended to encourage the aggregation of a wide array of retail marketing activities.

Section 4-11 Industrial Park District - IP

- (a) The purpose of the Industrial Park District is to provide for a range of light industrial uses, e.g., assembly, research and development, warehousing, and distribution. The IP accommodates support services for industrial development such as office, commercial and professional services. Requirements herein are designed to ensure compatibility among the various uses in the IP district and to protect adjacent nonindustrial development from incompatible uses and conditions.
- (b) See Schedule of Uses for permitted and conditional uses.
- (c) General regulations of IP district are as follows:

Minimum lot area	None
Minimum lot width	None
Minimum lot depth	None
Minimum front yard	30 feet
Minimum side yard	20 feet
Minimum rear yard	Ten feet
Minimum side yard, adjacent to SF, MR, MH districts	50 feet
Maximum lot coverage	60 percent (60%)
Maximum structure height	65 feet

- (d) Additional requirements for IP include, but are not limited to, the following:
  - (1) Exterior lighting designed for security, illumination, parking lot illumination, or advertising shall

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**Section 4-13 Public Facilities District - PFD**

- (a) The purpose of the Public Facilities District is to provide for the siting of public parks and recreational facilities to preserve open space and unique cultural and historic features, and to provide for the siting of governmental buildings of the City, County, State, or Federal governments. This district provides also for other public and institutional uses, regardless of public or private ownership, such as EMS and fire stations, health care facilities, schools, and churches. With City Council approval, this zoning classification may be applied to a property within a district in the city limits.
- (b) As it is a federal operation, the Lyndon B. Johnson National Historic Park, located in the City's corporate limits and in its extraterritorial jurisdiction, is exempt from, and accordingly not subject to, the city's zoning regulations, including rezoning. The park area shall be described as a public facility district for City map classification purposes only.
- (c) See Schedule of Uses for permitted and conditional uses.

**Division 3. Specific Uses**

**Section 4-14 Conditional Use Permit, also Special Exception - CUP**

- (a) Definition. A conditional use permit, "CUP", provides for a use that is compatible with the land use in a zoning district and with conditions governing the use. A CUP is also described as a special exception at Section 211.009(a)(2) of the Texas Local Government Code, as amended.
- (b) Purpose. The purpose of a CUP is to allow a use to be located or expanded within a designated zoning district under specific standards, controls, limitations, performance criteria, restrictions, and other regulations. A CUP allows a use which, if not specially regulated, could have an undue impact on, or be incompatible with other uses of land within the zoning district or adjacent to a zoning district.
- (c) Applicability. A use that requires a CUP is prohibited in the city unless a CUP is permitted under the Schedule of Uses, and a permit is issued by the BOA for such use in accordance with this Ordinance. See Schedule of Uses for permitted CUPs in specific zoning districts.
- (d) Preapplication Meeting. An applicant for a CUP shall meet with the zoning administrator in a preapplication conference to discuss the process, requirements, and potential conditions for a CUP. Action taken and statements made at a preapplication meeting shall not be considered binding commitments or an approval of an application.
- (e) Application and Review. An application for a CUP shall be submitted for review by the P&Z and the BOA in accordance with the application procedures, including notice and public hearing, of this Ordinance.
- (f) Considerations for Review. In reviewing a CUP application, the P&Z/BOA shall consider the CUP's:
  - (1) Conformance with applicable regulations and standards of the zoning district in which located;
  - (2) Compatibility with existing or permitted uses on abutting sites in terms of building height, bulk, scale, setbacks, open spaces, landscaping and site development, and access and circulation capacity;
  - (3) Potentially unfavorable effects or impacts on existing or permitted uses on adjacent sites, to the extent such impacts exceed those that reasonably may result from use of the site by a permitted

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(iv) On denial of an extension request, a CUP shall terminate and the applicant may resubmit a new CUP application in accordance with the application requirements of this Ordinance.

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(k) Expiration. A CUP shall automatically expire without notice, and shall be null and void in the following cases:

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(1) Lapse of approval time as described above;

(2) There is a change in use on the property;

(3) The use is relocated; or

(4) The use ceases for a period of six consecutive months from the date of approval.

(l) Revocation. After notice and hearing, a CUP is revocable by written order of the BOA upon a determination of noncompliance with the requirements and conditions of the CUP. A revoked CUP shall be null and void.

(m) Renewal.

(1) A CUP with an established time period that is not renewed prior to its expiration shall expire without notice, and be null and void.

(2) A renewal may issue for a new time period provided that the use is allowed in the zoning district in which the CUP is located.

(3) An application for renewal shall be processed as a new application, and shall be reviewed for compliance with original conditions, and to determine if the use still satisfies the provisions of this ordinance.

(4) The BOA shall issue by ordinance a final determination on a renewal application.

(n) Reinstatement. A new application and subsequent approval are required to reinstate a CUP which has expired, terminated, or been revoked.

(o) Amendments. A request to modify, expand, or otherwise change an approved CUP not in substantial conformance with the approved permit shall be processed as a new application.

#### Section 4-15 Planned Unit Development District - PUD

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(a) Definition. A planned unit development district, "PUD", is a zoning designation for a large or complex single or multi-use development developed as a single contiguous project and under unified control. A PUD allows flexibility in development standards, and accommodates multiple uses as one integrated land use which could not have been attained through conventional zoning. A variety and number of residential and commercial uses on one multi-acre tract of land is an example of a PUD.

(b) Purpose. The purpose of the PUD is to preserve the natural environment, encourage high quality development and innovative design, and ensure adequate public facilities and services for development within a land tract. A PUD development:

(1) Provides flexibility in the planning and construction of development projects by allowing a combination of uses developed in accordance with an approved plan that protects adjacent properties;

(2) Provides for a more efficient layout of land uses, buildings, circulation systems, and infrastructure;

(3) Encourages infill projects and the development of sites difficult for conventional development because of shape, size, abutting development, poor accessibility, or topography;

(4) Provides an environment that contributes to a sense of community and a coherent living style;

(5) Encourages the preservation and enhancement of natural amenities and cultural resources;

(6) Protects the natural features of a site, topography, shape, and size and provides for open space; and

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- (9) Effective transition between higher and lower density uses, and/or between nonresidential and residential uses;
- (10) Use of incompatible adjacent land uses developed in a manner that is not possible using a conventional approach;
- (11) Shared vehicular and pedestrian access between properties or uses;
- (12) Mitigation to offset impacts on public facilities, e.g., street improvements, utility lines, etc.; or
- (13) Significant use of sustainable building and site design features such as water use reduction, water efficient landscaping, innovative wastewater technologies, low impact stormwater management, optimize energy performance, on-site renewable energy, passive solar heating, reuse/recycled/renewable materials, indoor air quality, or other elements identified as sustainable by established groups such as the US Green Building Council (LEED) or ANSI National Green Building Standards.

(i) Site Plan Criteria. A PUD master site plan shall contain the following:

- (1) Insofar as practicable, the landscape shall be preserved in its natural state by minimizing tree and soil removal;
- (2) Proposed buildings shall be sited harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings;
- (3) In regards to vehicular and pedestrian circulation and parking, special attention shall be given to the location and number of access points to public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and the arrangement of parking areas that are safe and convenient, and do not detract from the design of the proposed structures and neighboring properties;
- (4) Private streets and gates may be approved as part of the application but are not required;
- (5) The maximum height of structures shall be as prescribed for each land-use category;
- (6) Setbacks shall be governed by the PUD site plan;
- (7) A minimum of twenty (20) percent of gross platted area shall be open green space/parkland. This shall include community recreational areas that are continuously maintained. Open space shall not include areas specifically designated or used as parking lots, garages, streets, or driveways;
- (8) Outdoor lighting shall be shielded to limit impacts on residential units and reduce light pollution; and
- (9) Utilities and infrastructure shall meet the standards of the City's subdivision regulations, and most recently adopted International Codes.

(j) Criteria for PUD Review. The following factors shall be considered for issuance of a PUD, including but not limited to:

- (1) The relation of the proposed use to the City's comprehensive plan;
- (2) The zoning district in which the use is to be located;
- (3) The character of adjacent properties, surrounding neighborhoods, and existing and proposed development;
- (4) Whether the use is to be adequately served by essential public services such as streets, drainage facilities, fire protection, and public water and sewer facilities;
- (5) Whether the use results in the destruction, loss or damage of any feature determined to be of significant ecological, scenic, or historic importance; and
- (6) That the use shall be designated, sited, and landscaped so that the use will not hinder or discourage the appropriate development or use of adjacent properties and surrounding neighborhoods.

(k) Action by the BOA. Final determination on a PUD shall be issued by the BOA in accordance with the BOA hearing and action procedures of this ordinance.

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by the P&Z in accordance with the application procedures, including notice and public hearing, of this ordinance.

(f) Action by the City Council. Final determination on a similar land use application shall be issued by the City Council in accordance with the hearing and action procedures of this ordinance.

#### Section 4-17 Nonconforming Use

(a) Definition. A nonconforming use is that land use, structure, or lot which does not conform to the requirements of this ordinance because such use had been established, and has been in existence prior to and after the effective date of adoption of this ordinance. Nonconforming use also includes a land use, structure, or lot which does not conform to the requirements of this ordinance as a result of the adoption or amendment of this ordinance or of any subsequent reclassification of a zoning district.

(b) Purpose. The purpose of this section is to regulate and limit nonconforming uses. The intent of this section is not to eliminate a nonconforming use outright, but to eventually improve its status to conformance to preserve the integrity of this ordinance and the desired character of the city.

(c) Reversion. Where a nonconforming use has been changed to a more restrictive use or to a conforming use, such use shall not thereafter revert to a nonconforming use. If no structural alterations are made to a nonconforming use, a nonconforming use may be changed to another nonconforming use of the same classification.

(d) Expansion. A nonconforming use shall not be expanded or extended beyond its established floor or lot area without approval by the BOA as provided in this section.

(e) Applicability. An application for a change to a nonconforming use may be made:  
(1) to reconstruct a nonconforming structure that has been destroyed;  
(2) to expand or expand a nonconforming use of a structure beyond its established floor or lot area because of exigent circumstances; or  
(3) to resume a nonconforming use previously abandoned upon a showing that abandonment deprives the property owner of substantially all use or economic value of the land.

(f) Application and Review. An application for a nonconforming use change shall be submitted for review by the P&Z in accordance with the application procedures, including notice and public hearing, of this ordinance.

(g) Criteria for Review. Reconstruction, extension, or enlargement of a nonconforming structure on a conforming lot or tract may be permitted provided such:

- (1) Does not prevent the reversion of such property to a conforming use;
- (2) Does not exceed 25% of the ground area of the existing building;
- (3) Complies with side yard requirements and existing setback;
- (4) For a nonconforming residential use, the expansion does not increase the number of dwelling units to more than the number existing when the use became nonconforming; and
- (5) Does not allow such building to be used for a use which would be restricted to a more restrictive classification.

(h) Conditions. A time limit may be imposed specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of the zoning ordinance for the district in which the nonconforming use is located. The P&Z/BOA may prescribe additional

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(d) Landscaping requirements are contained in the City's landscaping ordinance. ¶

(e) Parking requirements are contained in the City's parking ordinance. ¶

(Ordinance 19-0401, att. A, sec. A, adopted 5/3/19) ¶

§ 3-13 through § 3-15. (Reserved) ¶

Division 2

Historic Preservation ¶

§ 3-16 Definitions. ¶

Historic overlay district; "H." ¶

An area which has outstanding historical and cultural significance in the State, region, or City, within which the buildings, structures, accessory buildings, fences, or other appurtenances are of basic and vital importance for the development of culture and tourism because of their association with history, including, ¶

(1) Historic structures, sites, or areas within which the buildings, structures, appurtenances, and places exemplify the cultural, political, economic, or social history of the State, region, or City. ¶

(2) Historic structures, sites, or areas that are identified with the lives of historic personages or with important events in State, regional, or local history. ¶

(3) Structures or areas that embody the distinguishing characteristics of an architectural type specimen as ... [188]

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(B) That substantial justice may be done.

(d) Criteria Required for Hardship Showing. Undue hardship results where:

- (1) A special individual reason makes the strict application of a provision of this ordinance impractical;
- (2) There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his land; and
- (3) The applicant will incur specific hardships should the variance not be granted.
- (4) Pecuniary hardship to the applicant, standing alone, shall not be deemed sufficient to constitute undue hardship.

(e) Hardship Considerations for a Structure. In determining a variance request for a structure, the P&Z/BOA may consider the following, outlined in Section 211.009 B-1 of the Texas Local Government Code, as grounds to determine whether compliance with the ordinance as applied to a structure would result in unnecessary hardship:

- (1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent property appraisal roll for the City;
- (2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
- (3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (4) compliance would result in the unreasonable encroachment on an adjacent property or easement;  
or
- (5) the City considers the structure to be a nonconforming structure.

(f) Application and Review. An application for a variance shall be submitted for review by the P&Z in accordance with the application procedures, including notice and public hearing, of this Ordinance. If an application is submitted at the same time as a plat submittal, it shall be considered concurrently with the plat application.

(g) Burden on Applicant. The applicant bears the burden of proof in establishing the facts that may justify a variance.

(h) Conditions. The P&Z/BOA may prescribe conditions such as those listed in this ordinance for a CUP.

(i) Action by the BOA. Final determination on a variance application shall be issued by the BOA in accordance with the BOA hearing and action procedures of this Ordinance.

(j) Findings Required on Approval.

(1) On approval of a variance, the BOA shall issue findings stating that:

- (i) Granting the variance will not be detrimental to the public safety, health, or general welfare, will not be injurious to other property or to the owners of other property, and will not prevent the orderly subdivision of other property in the vicinity;
- (ii) The condition(s) upon which the request for a variance is based is unique to the property for which the variance is sought and is not applicable generally to other property;
- (iii) Because of the particular physical surroundings, shape, and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
- (iv) The variance will not in any manner vary the provisions of this Ordinance, the Comprehensive Land Use Plan, or any other adopted land plan(s) or ordinance(s) of the City;

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(c) New Designation. Designation of a property as a local historic landmark, or of a property for inclusion within the boundaries of a historic overlay district shall be conducted in accordance with the requirements contained in Section 211.0162 of the Texas Local Government Code, as amended, including owner's consent, and the provision of an impact statement to the owner.

(d) Application and Review. An application for a historic designation or landmark shall be reviewed and processed in accordance with the application process for City Council Hearing and Action outlined in this Ordinance.

(c) Designation Criteria. In designating an area as a historic district or a place as a historic landmark, the following criteria shall be considered:

- (1) Character, interest, or value as part of the development, heritage, or cultural characteristics of the city;
- (2) Location as the site of a historical event;
- (3) Embodiment of distinguishing characteristics of an architectural type or specimen;
- (4) Relationship to other distinctive buildings, sites, districts, or structures which are historically significant and preserved, or which are eligible for preservation;
- (5) Unique location of singular physical characteristics represents an established and familiar visual feature of a neighborhood, community, or the city;
- (6) Value as an aspect of community sentiment of public pride; and
- (7) Identification with a person or persons who significantly contributed to the development or culture of the city.

**Section 4-22 Violation: Penalty**

(a) Misdemeanor declared. It shall be unlawful to construct, reconstruct, structurally alter, remodel, renovate, relocate, restore, demolish, raze, or maintain any building, structure, accessory building, fence or other appurtenance in a Historic Overlay District or Historic Landmark in violation of the provisions of this division. Violation of any provision of this division is a misdemeanor.

(b) Enforcement and Penalty. A violation of this division shall be processed in accordance with the Violation and Enforcement provisions of this Ordinance. Each day such violation continues shall constitute a separate violation.

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(g) No accessory structure, other than garages, barns, and agricultural structures, shall exceed 16 feet in height. A garage may be as tall as 30 feet in height, provided that the garage meets the primary structure side yard setback requirement on all lot lines, and that the height of the garage does not exceed the height of the primary residential structure. A barn and other agricultural structures cannot exceed the district height requirements.

(h) An accessory building which is not a part of the principal structure (including a structure that is connected to the principal building by an open breezeway) may be constructed in a rear yard, provided such accessory building does not occupy more than 20 percent of the area of the required rear yard, and provided it is not located closer than five feet to any lot line.

(i) Swimming pools may be located within a required rear or side yard, provided that such pools are not located closer than ten feet to a rear lot line or ten feet to a side lot line. Swimming pools are not permitted in the front yard. A pedestrian space of at least three (3) feet in width shall be provided between pool walls and the protective fence or barrier wall of the pool. A swimming pool shall be fenced.

#### Section 5-5 Accessory Dwelling

One accessory dwelling may be maintained within a single-family detached dwelling in a Single-Family Zoning District with a temporary conditional use permit for a limited time period, and subject to the following:

- (1) The principal dwelling shall be occupied by the permit holder;
- (2) The floor area of an accessory dwelling shall not exceed 25 percent of the existing floor area of the main building;
- (3) The accessory dwelling shall have a bathroom;
- (4) The permitted accessory dwelling shall be exclusively occupied by not more than four persons;
- (5) Off-street parking shall be as required by the parking ordinance of the city; and
- (6) The accessory dwelling shall be compatible with the aesthetics of the primary residence and surrounding neighborhood.

#### Section 5-6 Walls; Fences

A wall, fence, berm, and similar items restricting passage or vision or simply enhancing private property, may be located within a required yard as defined by building setbacks, except as follows:

- (1) A wall or fence located within the front yard shall not exceed a height of 48 inches as measured from the grade at the point of placement. A wall, fence or similar item, other than landscaping, shall not exceed a maximum height of eight (8) feet within a rear yard. A rear yard fence that is higher than 48 inches may be extended to the front corner of the primary structure. A fence in the rear yard on a corner lot shall meet the side yard setback adjacent to the right-of-way line in the zoning district;
- (2) In the Industrial and Highway Commercial Corridor Districts, a wall or fence which is clearly used for safety or security purposes must comply with the administrative rules and statutory regulations of the Texas Department of Transportation;
- (3) A wall, fence, hedgerow, or other dense landscaping on a corner lot shall not exceed 24 inches in height. Items over 24 inches shall be located at least 20 feet from the intersection of a street right-of-way line;
- (4) A wall or fence that adjoins property lines in a residential district shall not be electrified, barbed, or otherwise secured in a manner inappropriate or dangerous to the neighborhood. Such restrictions are waived for agricultural uses;

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family dwelling;

(10) Shall not consist of group instruction, assembly or activity;

(11) Shall not have an outside display indicating that the dwelling is being utilized in part for any purpose other than that of a residential dwelling. There shall be no advertising on the sign or the premises; and

(12) Shall not consist of an activity incompatible with the adjacent land uses.

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(b) Home occupation uses include, but are not limited to, the following:

(1) Artist, sculptor, or photographer;

(2) Author or composer;

(3) Computer programmer or Internet service provider;

(4) Licensed massage therapist;

(5) Child care provider, licensed in accordance with State regulations;

(6) Tailor or seamstress;

(7) Professional office;

(8) Tutoring;

(9) Salesperson;

(10) Telephone answering service;

(11) Music teacher;

(12) Caterer;

(13) Baker; or

(14) Beauty parlors and barbershops, provided that a hair salon permit in addition to a license to cut hair has been obtained.

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(c) The following uses are prohibited as home occupation uses:

(1) Auto repair or auto paint shop;

(2) Adult entertainment businesses;

(3) Medical and dental clinics;

(4) Nursing homes, convalescent homes, and adult care facilities with occupancy over two (2) persons;

(5) Restaurants;

(6) Wrecking and towing service;

(7) Welding and machine shops;

(8) Lawn equipment repair; or

(9) A use deemed incompatible with adjacent or surrounding land uses.

### Section 5-9 Group Home

(a) A group home shall be located not less than 1,000 linear feet from any other group home or child care facility as measured from the nearest boundary of the site on which the other group home or child care facility is located.

(b) No structural alterations shall be made to a building to cause the group home to be substantially distinguishable from other surrounding residential properties.

(c) A group home shall meet every state statutory licensing requirement.

(d) Parking shall be in accordance with the City's development regulations for parking.

(e) No signs are allowed on a group home site.

## ARTICLE VI. DEFINITIONS

### Section 6-1 Construction of Language

(a) Words, Terms and Phrases. The following words and terms, when used in this Ordinance, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined herein shall have the meaning customarily assigned to them.

(b) Rules of Construction. The following rules of construction apply:

- (1) The particular shall control the general and the use of a general term shall not be taken to have the same meaning as another specific term. For example, a "recreational facility, commercial indoor" shall not be interpreted to be the same as a "recreational facility, commercial indoor- pool or billiards hall," if each term is listed as a separate and distinct use.
- (2) In case of any difference of meaning or implication between the text of this article and any caption or illustration, the text shall control.
- (3) A building or structure includes any and all of its parts.
- (4) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for."
- (5) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- (6) The word "person" or "applicant" includes any individual, corporation, partnership, incorporated association, limited liability company, or any other similar entity.
- (7) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunctions "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:
  - (i) "And" indicates that the connected items, conditions, provisions or events apply.
  - (ii) "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
  - (iii) "Either . . . or" indicates that the connected items, conditions, provisions, or events apply singly but not in combination.
- (8) When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number, and vice versa; and words in the masculine gender shall include the feminine gender, and vice versa.

### Section 6-2 General Definitions.

Accessory building or structure. A structure on the same lots with, and of a size and nature customarily incidental and subordinate to, the principal structure. Examples of accessory structures include, but are not limited to, the following: detached garages and/or carports; storage structures and/or barns; freestanding greenhouses, pool houses, tennis courts, gazebos, and workshops.

Accessory use. A use incidental or secondary to the principal use of a lot, building or structure and located on the same lot as the principal use.

Adjacent. Layout of a site in which the borders are touching, adjoining, contiguous or abutting.

Alley. Land dedicated to public use and devoted to secondary access to lots.

Alterations. Any change, addition, or modification in construction, [or] any change in the structural members of a building, such as walls or partitions, columns or beams or girders.

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single-family, two-family, attached dwellings, multifamily dwellings and manufactured homes.

Dwelling, accessory. A detached or attached residential unit, other than a manufactured home, designed for and occupied by one family only. The structure shall only be accessory to a single-family dwelling.

Dwelling unit. A building or portion of a building that is arranged, occupied, or intended to be occupied as living quarters and that includes facilities for food preparation, bathing, use of the toilet and sleeping.

Extraterritorial jurisdiction; ETJ. The unincorporated area outside of and contiguous to the corporate boundaries of the city.

Family. One or more persons related by blood, marriage or adoption occupying an individual dwelling unit. No more than four unrelated individuals shall reside in a single dwelling unit.

Garage. An accessory building or a portion of a main building for storage of motor vehicles or parking as may be required in connection with the permitted use of the main building.

Garage (shop). An establishment providing major or minor automobile repair services to all motor vehicles except heavy load vehicles; may include installation of minor automobile accessories such as car alarms, radio and stereo equipment, window tinting, pin striping, cellular telephones, and similar accessories.

Garage sale. The sale of tangible personal property at retail by a person who is not in the business or does not hold himself or herself out to be in the business of selling tangible personal property at retail.

Garden housing. A residential structure which is separated by a shared common wall.

Greenhouse. A facility for the growing and commercial distribution of plant materials.

Grocery supermarket. An establishment for the display, preparation, and retail sale of foods and associated items.

Group home. A commercial enterprise commonly carried on within a home by a member of the occupant's family occupying the dwelling. The use of the home for commercial enterprise purposes shall be incidental and subordinate to the use of the home as a dwelling.

Hospital. An institution licensed by the state as a hospital where humans are given medical treatment.

Hotel. A building or facility in which the public may obtain sleeping accommodations in exchange for compensation for a period of less than 30 consecutive days. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast, short-term rental unit, and any accommodation as described under State law.

Loading and unloading space, off-street. An open, hard-surfaced area of land other than a street or public right-of-way, the principal use of which is for the standing, loading, and unloading of motor vehicles, tractors, and trailers, to avoid undue interference with public streets and alleys.

Lot. A designated parcel, tract or area of land established by a plat or otherwise permitted by law to be used, developed, or built upon as a unit.

Lot area. The net area of a lot exclusive of any portion of streets, alleys, or rights-of-way.

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Outdoor storage. The storage of large quantities of materials or products associated with an industry or business. Such storage requires a structure designed for and/or devoted to the containment of the item or items, such as an oil storage tank or grain elevator.

Parking lot. An area not within a building designed and used for the storage of motor vehicles.

Person, Applicant. An individual, association, firm, corporation, governmental agency, political subdivision, or partnership, incorporated association, limited liability company, or any other similar entity of any kind.

Permitted use. Use of a lot which is among the uses allowed as a matter of right, subject to the restrictions of the zoning district in which the lot is located.

Property owner; owner. A person or firm, association, syndicate, general or limited partnership, corporation, trust or other legal entity, or any agent or representative thereof, that has sufficient proprietary interest in the land to be zoned. An owner shall be restricted to include only the owner(s) or authorized agent(s) of such owner(s), such as a developer.

Planning and Zoning Commission, P&Z. The Planning and Zoning Commission of the City of Johnson City, Texas.

Recreational vehicle. A motorized vehicle or non-motorized trailer designed and/or maintained for use as a temporary dwelling or sleeping place for travel or recreation purposes exclusively, having no foundation other than wheels or jacks.

Restaurant. A structure that prepares and serves food to customers, including sit-down, fast-food, drive-through and drive-in facilities. At least 51% of the gross income shall be derived from the sale of prepared food.

Retail sales and service. A business established for the sale of goods or services to consumers, usually in small quantities as opposed to wholesale.

Right-of-way. The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement.

School. A facility that provides curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools.

Screening. The establishment of an opaque fence or barrier for the purpose of obscuring a particular land use, structure, or activity from sight.

Setback. The minimum distance between by which any building or structure must be separated from a street right-of-way or lot line.

Single-family dwelling. A building that contains only one living unit.

Special Exception; also, conditional use permit. A use that is not permitted by ordinance, but which may be permitted within a zoning district subject to meeting specific conditions. Such permitted use with conditions is that which is compatible with the land use in a zone. Examples include a church, school, tax service, or daycare in a residential zone. A special exception is approved and granted by the Board of

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**EXHIBIT A OFFICIAL ZONING MAP**

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*Large-Scale Map is on file and available for review at City Records.*

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