

Print

Heath, TX Code of Ordinances

TITLE XV: LAND USAGE

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CHAPTER 150: GENERAL PROVISIONS

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CAPITAL IMPROVEMENTS PLAN

§ 150.01 IN GENERAL; PURPOSE; POLICY.

This subchapter is adopted pursuant to the provisions of Tex. Local Gov't. Code, Ch. 395. This subchapter implements a policy of the city to impose fees upon each new development project to pay the costs of constructing capital improvements and facility expansions necessary to serve new development.

(2005 Code, § 7-1-1) (Ord. 900904, passed 9-4-1990)

§ 150.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVISORY COMMITTEE. The Planning and Zoning Commission and other members as appointed by the City Council.

ASSESSMENT. The determination of the amount of the maximum impact fees per service unit which can be imposed on new development pursuant to this subchapter.

CAPITAL IMPROVEMENT. Any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of the city: water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities; whether or not they are located within the service area.

CAPITAL IMPROVEMENTS PLAN. A plan contemplated by this subchapter that identifies capital improvements or facility expansions for which impact fees may be assessed.

CITY. The City of Heath, Texas.

CREDIT. The amount of the reduction of an impact fee for fees, payments or charges for or construction of the same type of facility.

FACILITY EXPANSION. The expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. This term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

FINAL PLAT APPROVAL or **APPROVAL OF A FINAL PLAT.** The point at which the applicant has complied with all conditions of approval and the plat has been released for filing with the County Clerk.

IMPACT FEE. A charge or assessment imposed as set forth in this subchapter against new development. The term does not include:

- (1) Required dedications of land for public parks or payments in lieu thereof;
- (2) Dedication of rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;
- (3) Construction of, contributions to or dedications of off-site roadway facilities agreed to or required by a valid city ordinance as a condition of development approval pursuant to Tex. Local Gov't. Code, § 395.023; or
- (4) Lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines.

LAND USE ASSUMPTIONS. A description of the service area and the projections of changes in land uses, densities, intensities and population in the service area over at least a ten-year period which has been adopted by the city and upon which the capital improvements plan is based.

NEW DEVELOPMENT. The subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of a structure; or any use or extension of the use of land; any of which increases the number of service units.

OFF-SITE. Located entirely on property which is not included within the bounds of the plat being considered for impact fee assessment.

ON-SITE. Located at least partially on the plat which is being considered for impact fee assessment.

ROADWAY FACILITIES. Arterial or collector streets or roads that have been designated on the city's officially adopted roadway plan, together with all necessary appurtenances. The term does not include any roadways or associated improvements designated on the federal or Texas Highway system. The term includes but is not limited to interests in land, traffic lanes, curbs, gutters, intersection improvements, traffic control devices, turn lanes, drainage facilities associated with the roadway or street lighting.

SERVICE AREA. For water supply, treatment and distribution facilities, wastewater collection and treatment: the entire area within the corporate limits of the city and that portion of the city's extraterritorial jurisdiction only upon its annexation by the city.

SERVICE UNIT. For the purpose of impact fee assessment is a single-family living unit equivalent.

SANITARY SEWER FACILITY. An improvement for providing wastewater collection and treatment, including, but not limited to, land or easements, treatment facilities, lift stations or interceptor mains. **SANITARY SEWER FACILITY** excludes sanitary sewer lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by developers or owners of property in other subdivisions as a condition of connection to or use of the facility.

WATER FACILITY. An improvement for providing water supply, treatment and distribution service, including, but not limited to, land or easements, water treatment facilities, water supply facilities or water distribution lines. **WATER FACILITY** excludes water lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by developers or owners of property in other subdivisions as a condition of connection to or use of such facility.

(2005 Code, § 7-1-2) (Ord. 900904, passed 9-4-1990)

§ 150.03 ADVISORY COMMITTEE.

(A) The Advisory Committee shall consist of the Planning and Zoning Commission and one member of the development community. If the Committee does not include at least one representative of the real estate, development or building industry who is not an employee or official of a political subdivision or governmental entity, the City Council shall appoint at least one such representative as an ad hoc voting member of the Advisory Committee. If in the future, it is determined by the Council that impact fees are to be applied in the extraterritorial jurisdiction of the city, a representative from that area shall be appointed by the City Council.

(B) The Advisory Committee serves in an advisory capacity and is established to:

- (1) Advise and assist the adoption of land use assumptions;
- (2) Review the capital improvements plan and file written comments;
- (3) Monitor and evaluate implementation of the capital improvements plan;
- (4) File semi-annual reports with respect to the progress of the capital improvements plan and report to the City Council any perceived inequities in implementing the plan or imposing the impact fee; and
- (5) Advise the city staff and Council of the need to update or revise the land use assumptions, capital improvements plan and impact fee.

(C) All professional reports concerning the development and implementation of the capital improvements plan shall be made available to the Advisory Committee.

(D) The Advisory Committee shall elect a Chairperson to preside at its meetings and a Vice-Chairperson to serve in his or her absence. All meetings of the committee shall be open to the public and posted at least 72 hours in advance. A majority of the membership of the Committee shall constitute a quorum.

(2005 Code, § 7-1-3) (Ord. 900904, passed 9-4-1990)

§ 150.04 PERIODIC UPDATES REQUIRED.

(A) The land use assumptions and capital improvements plan upon which impact fees are based shall be updated at least every three years, beginning with the first such update to be on or before August 2, 1990.

(B) Alternatively, the City Council may, pursuant to the provisions of the Tex. Local Gov't. Code, § 395.0575 make a determination that no such update is required.

(2005 Code, § 7-1-4) (Ord. 900904, passed 9-4-1990)

§ 150.05 IMPACT FEE REQUIRED; EXCEPTIONS.

(A) No building permit shall be granted for new construction of any property nor shall any original water or sewer service connection be made or service commenced unless and until impact fees required by this subchapter are assessed and collected or a contract providing for payment as approved by the city is entered into.

(B) For new development located on property which was platted under the procedures of the city's procedures prior to adoption of an impact fee, impact fees shall not be due on any service unit for which a valid building permit is issued prior to August 2, 1991.

(C) For new development located on property located in subdivisions where all streets, sewers and water lines were constructed by the developer prior to August 2, 1991, no impact fee shall be done.

(D) Other governmental entities within the city shall be subject to the provisions of this subchapter unless the City Council determines that the fee should not apply in accordance with § 150.11 below.

(2005 Code, § 7-1-5) (Ord. 900904, passed 9-4-1990)

§ 150.06 ASSESSMENT AND COLLECTION OF IMPACT FEES.

Impact fees authorized by this subchapter shall be assessed and calculated at the time application is made for a building permit.

(2005 Code, § 7-1-6) (Ord. 900904, passed 9-4-1990; Ord. 010823B, passed - -)

§ 150.07 CALCULATION OF IMPACT FEES.

(A) That the fees provided for herein are based upon an engineering analysis according to Tex. Local Gov't. Code, § 395.014.

<i>Service</i>	<i>Proposed Fee Five-Eighths-Inch Water Meter</i>	<i>Proposed Fee One-Inch Water Meter</i>
Roadway	\$2,500	\$2,500
Wastewater	\$2,100	\$5,200
Water	\$3,900	\$9,700

(B) Any person violating the provisions of this section shall upon conviction, be subject to a fine not to exceed the sum of \$500 and that each day in violation shall constitute a separate offence.

(2005 Code, § 7-1-7) (Ord. 900904, passed 9-4-1990; Ord. 941103C, passed - -; Ord. 010405B, passed - -; Ord. 010823B, passed - -; Ord. 020516A, passed - -; Ord. 060406C, passed 4-6-2006)

§ 150.08 CREDITS.

(A) Any construction of, contributions to, or dedications of any facility appearing on the capital improvements plan which is required to be constructed by the city as a condition of development shall be credited against the impact fees otherwise due for the same category of impact fees otherwise due from the development.

(B) The amount of each credit for required construction of a facility on the capital improvements plan shall be determined at the time of plat approval by the city and shall be established by written agreement between the city and the developer.

(C) Additionally, the city and the owner may enter into an agreement providing that in addition to the credit, the owner will be reimbursed for all or a portion of the costs of the facilities from impact fees or from pro rata fees as received from other new developments that will use the capital improvements or facility expansions.

(D) An owner shall be entitled to a credit against any category of impact fee as provided in any written agreement between the city and the owner.

(E) No credit for construction of any facility shall exceed the total amount of impact fees due from the development for the same category of improvements.

(2005 Code, § 7-1-8) (Ord. 900904, passed 9-4-1990)

§ 150.09 EXPENDITURE AND ACCOUNTING FOR FEES AND INTEREST.

(A) All impact fees collected shall be deposited in interest bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee is adopted.

(B) Interest earned shall be credited to the account and shall be subject to the same restrictions on expenditures as the funds generating such interest.

(C) Impact fees and the interest earned thereon may be spent only for the purposes for which the fees were imposed as shown in the capital improvements plan.

(D) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

(2005 Code, § 7-1-9) (Ord. 900904, passed 9-4-1990)

§ 150.10 APPEALS.

(A) The property owner or applicant for new development may appeal the following decisions to the City Council:

- (1) The applicability of an impact fee to the development;
- (2) The amount of the impact fee due;
- (3) The availability or the amount of an offset or credit;
- (4) The application of an offset or credit against an impact fee due; and
- (5) The amount of a refund due, if any.

(B) The burden of proof shall be on the applicant to demonstrate that the amount of the fee or the amount of the offset or credit was not calculated according to the applicable schedule of impact fees or the guidelines established for determining offsets and credits, or that such fee should not apply, in whole or in part, to the development.

(C) If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal is pending.

(2005 Code, § 7-1-10) (Ord. 900904, passed 9-4-1990)

§ 150.11 REFUNDS.

(A) On the request of an owner of property on which an impact fee has been paid, impact fees shall be refunded if existing facilities are available and service is denied or if the city failed to commence construction of facilities required for service within two years of payment of the fee or if the construction is not completed within a reasonable time but not in any event in more than five years from the date of payment of the fee.

(B) Upon completion of capital improvements or facility expansions identified in the capital improvements plan, the impact fee shall be recalculated utilizing actual costs. If the impact fee based on actual cost is less than the impact fee paid, the city shall, upon request, refund the difference if the difference exceeds the impact fee paid by more than 10%.

(C) Any impact fee funds not expended within ten years after payment shall be refunded upon request.

(D) Refunds shall bear interest calculated from the date of collection to the date of refund at the statutory rate set forth in Tex. Local Gov't. Code, § 392.025 or its successor statute.

(E) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(F) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

(2005 Code, § 7-1-11) (Ord. 900904, passed 9-4-1990)

MOBILE HOME PARKS

§ 150.25 PARKING OR STORAGE OF MOBILE HOMES; UNLAWFUL USE.

It shall be unlawful for any person, firm or corporation to use any area for the parking or storage of one or more trailers (mobile homes) which are occupied or intended for occupancy within the corporate limits of the City of Heath, Texas.

(2005 Code, § 9-4-1) (Ord. 20, passed 3-13-1968) Penalty, see § 10.99

§ 150.26 UNLAWFUL TO SELL LAND TO PARK MOBILE HOMES.

It shall be unlawful for any person, firm or corporation to subdivide property and sell or offer for sale tracts or parcels of land on which is intended to park trailers or mobile homes within the corporate limits of the City of Heath, Texas.

(2005 Code, § 9-4-2) Penalty, see § 10.99

SWIMMING POOL ENCLOSURES

§ 150.40 FENCE OR ENCLOSURE REQUIRED.

(A) Every person in possession of land within the corporate city limits, whether as tenant or licensee, lessee, owner or purchaser under contract of sale, upon which is situated an outdoor swimming pool with a minimum depth exceeding 18 inches, shall maintain in good repair a fence, wall or other solid structure completely surrounding such swimming pool.

(B) The fence or other structure shall not be less than four feet in height, and shall be so constructed as not to have any openings, holes or gaps larger than four inches in any dimension, except for doors and gates; but in the case of a picket fence, the measure shall be the horizontal distance between members.

(C) A dwelling house or accessory building may be used as part of the enclosure.

(2005 Code, § 9-5-1) (Ord. 88, passed 9-7-1978)

§ 150.41 GATES OR DOORS TO BE EQUIPPED WITH SELF-LATCHING DEVICE.

All gates or doors opening through each enclosure shall be equipped with a self-closing and self-latching device for keeping the gate or doors securely closed at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.

(2005 Code, § 9-5-2)

§ 150.42 EFFECTIVE DATE.

All swimming pools subject to this chapter shall be fenced in accordance with the requirements of this section from September 7, 1978, and thereafter it shall be unlawful to maintain any swimming pool constructed from this date within the corporate limits of the city which is not fenced in accordance with the requirements of this section.

(2005 Code, § 9-5-3) Penalty, see § 10.99

SEPTIC TANKS**§ 150.55 UNLAWFUL TO BUILD ON LOTS LESS THAN ONE ACRE.**

(A) It shall be unlawful for any person, firm or corporation to build or construct any house or structure on any lot less than one acre in area with a septic tank system.

(B) Owners of lots less than one acre in area will be required, prior to the issuance of any building permit, to furnish detailed plans to the Building Official of the city showing the plumbing and sewer system on the lot and giving evidence of plans to tie on to the closest available sanitary sewer line to the property.

(2005 Code, § 9-6-1) (Ord. 99, passed 7-3-1980) Penalty, see § 10.99

§ 150.56 UNLAWFUL TO FURNISH UTILITIES TO STRUCTURE VIOLATING PROVISIONS OF CHAPTER.

It shall be unlawful and an offense for any public utility company to furnish utilities to a lot less than one acre in size if a house or structure has been constructed thereon with a septic tank system serving such house or structure in violation of the provisions of this chapter.

(2005 Code, § 9-6-2) (Ord. 131, passed 9-6-1984) Penalty, see § 10.99

§ 150.57 EXCEPTION; LOTS FILED OF RECORD ON EFFECTIVE DATE.

The provisions of this chapter shall not apply to those tracts less than one acre in size which were lots of record, that is lots described and drawn on a subdivision plat which has been filed of record in the plat records of Rockwall County, as of the effective date of this chapter.

(2005 Code, § 9-6-3) (Ord. 131, passed 9-6-1984)

§ 150.58 BUILDING PERMIT REQUIREMENTS.

It shall be unlawful for the Building Official of the City of Heath to issue any building permit for the construction of any house or structure on any tract of land which does not contain, prior to the effective date of this chapter, and existing house or structure of the same type of which the permit is applied.

(2005 Code, § 9-6-4) (Ord. 131, passed 9-6-1984) Penalty, see § 10.99

§ 150.59 NEW RESIDENTIAL HOME REQUIREMENTS.

It shall be unlawful for any person, firm or corporation to build or construct septic tanks and lateral lines for new residential homes that do not meet the following physical specifications and standards:

- (A) The capacity of the holding tank(s) shall be a minimum of 900 gallons;
- (B) Lateral ditches shall be a minimum of 300 feet in length, and 24 inches in width;
- (C) Washed rock shall be installed 12 inches in depth throughout the ditch;
- (D) Lateral lines shall be installed of a minimum of 300 feet in length;
- (E) If clothes and/or dish washing machine(s) are to be installed, the capacity of the holding tank(s) shall be a minimum of 1,200 gallons;
- (F) If clothes and/or dish washing machine(s) are to be installed, lateral ditches shall be a minimum of 350 feet in length, and 24 inches in width;
- (G) If clothes and/or dish washing machine(s) are to be installed, washed rock shall be installed 12 inches in depth throughout the ditch; and
- (H) If clothes and/or dish washing machine(s) are to be installed, lateral lines shall be installed of a minimum of 350 feet in length.

(2005 Code, § 9-6-5) (Ord. 99, passed 7-3-1980) Penalty, see § 10.99

§ 150.60 UNLAWFUL; LATERAL LINES WITHIN EIGHT FEET OF PROPERTY LINE.

It shall be unlawful to place or construct lateral lines within eight feet of a property line.

(2005 Code, § 9-6-6) (Ord. 99, passed 7-3-1980) Penalty, see § 10.99

DRILLING AND MINING; HAZARDOUS MATERIALS**§ 150.70 REGULATION OF DRILLING AND MINING ACTIVITIES.**

Drilling and/or mining for oil, gas or other minerals on public park property is hereby prohibited.

(2005 Code, § 9-16-1) (Ord. 990304, passed - -) Penalty, see § 10.99

§ 150.71 RELEASE OF HAZARDOUS MATERIALS PROHIBITED.

(A) Any party who accidentally, negligently or intentionally causes or is responsible for an unauthorized release of any hazardous materials, as defined in the Uniform Fire Code, within the City of Heath, Texas, shall be liable for the payment of all costs incurred by the city for the abatement of the hazard.

(B) The remedy provided by this section shall be in addition to any other remedies provided by law. The City of Heath and its staff will respond to any unauthorized release of hazardous materials and will try to identify, contain and mitigate the hazard.

(C) The City of Heath will hire a third party to handle all clean up activities and disposal of the hazardous materials.

(D) Payment of the cost for such clean-up will be the responsibility of the party causing the unauthorized release, and as more specifically set forth below.

(E) Costs by the city shall include, but shall not be limited to, all out-of-pocket expenses attributable to the abatement or clean-up of the hazardous material(s), including cost of equipment operations, cost of materials utilized, cost of third party specialist, experts or contract labor not in the full-time employment of the city, overhead cost, overtime cost, and any other cost incurred by the City of Heath, Texas.

(F) Basic cost associated with City of Heath Department of Public Safety services shall be \$400 per hour for each engine or truck company and \$200 per hour for each medical unit.

(2005 Code, § 9-17-1) (Ord. 990617A, passed - -)

CHAPTER 151: SIGN CODE

Section

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GENERAL SIGN PROVISIONS

§ 151.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATIVE OFFICIAL. The City Manager or his or her designated representative(s).

ALTER. To change the size, shape or outline, or type of sign or to change the electrical lighting, except for the replacement of lamps not brighter than the original or the replacement of a surface panel.

ATTACH. To stick, tack, nail or otherwise affix a sign to any object; to paint, stencil, write or otherwise mark on an object.

BUILDING. A structure which has a roof supported by walls for the shelter, support or enclosure of persons, animals or chattel.

CIVIC ORGANIZATION. An organization which offers community programs to citizen, city or civil affairs groups.

COMMENCEMENT OF WORK. For construction of a sign shall be the point in time when the sign has been delivered to the site and attachment to a building has begun or holes are excavated for ground installation.

DILAPIDATED OR DETERIORATED CONDITION. Any sign which in the opinion of the Administrative Official has any of the following characteristics:

- (1) Where elements of the surface or background can be seen, as viewed from the normal viewing distance, to have portions of the finished material or paint flaked, broken off or missing, or otherwise not in harmony with the rest of the surface;
- (2) Where the structural support or frame members are visibly bent, broken, dented or torn;
- (3) Where the panel is visibly cracked, or in the case of wood and similar products, splintered in such a way as to constitute an unsightly or harmful condition;

(4) Where the sign or its elements are twisted or leaning or at angles other than those at which it was originally erected (such as may result from being blown or the failure of a structural support); or

(5) Where the message or wording can no longer be clearly read by a person with normal eyesight under normal viewing condition

DISTANCE. Distance of signs from R.O.W. shall mean the shortest horizontal distance from the nearest R.O.W. to a vertical line to the ground from the nearest element of the sign or the shortest horizontal distance in a straight line between the nearest elements of signs.

DONATION BIN. A bin or similar structure used for the collection of clothes or non-perishable food items.

ERECT. To build, construct, attach, hang, place, suspend or affix. This shall also include the painting of signs on the exterior surface of a building or structure.

FACADE. Any separate face of a building, including parapet walls and omitted wall lines, or any part of a building which encloses or covers usable space. Where separate faces are oriented in the same direction, or in the directions within 45 degrees of one another, they are to be considered as part of a single facade.

FUNDRAISER. An activity that takes place for the sole purpose of raising funds to support community service organizations, public charities or non-profit organizations.

GROSS SURFACE AREA or ***AREA OF A SIGN.*** Methods of area measurement shall be in accordance with Appendix A.

HEIGHT. As applied to a sign, height shall be measured as the vertical distance between the highest part of the sign or its supporting structure, whichever is higher, and natural grade at the center of the base of the sign (see Appendix A for clarification).

ILLUMINATION. The enhancement of a sign utilizing electric lights, luminous tubes or other similar means.

LEASE SPACE. An area of a building separated internally and intended for use by an individual tenant.

LOGO. Any registered trademark of an organization, individual, company or product which is commonly used in advertising to identify that organization, individual, company or product.

OBSOLETE. Any sign:

(1) Which for at least 180 continuous days does not identify or advertise a bona fide business, lessor, service, owner, product or activity on the premises on which the sign is located;

(2) Which, if the premises is leased, relates to a tenant and at least one year has elapsed since the date the most recent tenant ceased to operate on the premises; or

(3) For which no legal owner can be found and relates to a use or purpose that is no longer in existence.

OUTDOOR SALES OR SERVICES. The offer or display for sale of any goods, wares, merchandise or services on private property separate and apart from the main building or at a location where there is no preexisting principal use. The goods, wares, merchandise or services offered for sale as outdoor sales or services are normally not offered for sale in the main building on the lot or in association with the principal use.

PAD SITE. A tract, lot or land lease intended for the single use of a freestanding building typically adjacent to street R.O.W. and may also be a portion of a tract or lot.

PUBLIC PROPERTY. Any property which is owned by a governmental entity. It shall also include property for which the primary use is for the operations of a governmental entity.

SCULPTED ALUMINUM PANEL. An aluminum sign panel with text or graphic depictions cut out from the panel, typically with a translucent material covering the cut-out from the inner side of the panel.

SETBACK. The distance from the closest portion, whether the support or edge of the sign, to the right-of-way.

SIGHT TRIANGLE. There shall be two different sight triangles as depicted in the Subdivision Ordinance. One shall be for public and/or private street intersections and the other for the intersection of private non-single family driveways with public or private streets.

SIGN. Every name, number, identification, description and announcement, declaration, demonstration, device, display, flag, banner, pennant, illustration, logo, balloon, streamer, valance, advertising display, poster, beacon, light or insignia, and structure supporting any of the same, affixed directly or indirectly to or upon any building or outdoor structure, or erected or maintained upon a piece of land, which directs attention to any object, project, service, place, activity, person, institution, organization or business.

SIGN, ATTACHED. Any sign attached to, applied on, or supported by any part of a building (including canopy fascia, walls and awnings) which encloses or covers usable space.

SIGN, BANNER. A temporary sign made of cloth, flexible plastic or canvas material.

SIGN, BUILDER. A temporary on-site sign identifying the builder or general contractor of a residential construction site.

SIGN, BULLETIN BOARD. A permanent on-site sign providing public information to the residential subdivision within which it is located.

SIGN, BUSINESS. A permanent on-site sign that is used to identify a business, profession, organization, institution, service, activity or other nonresidential use conducted, sold or offered on the site where the sign is located. This sign may also identify the name of the site or development or may identify the occupants within the site or development.

SIGN, DEVELOPMENT. A temporary on-site sign providing identification or information pertaining to a residential or commercial development to include the builder, property owner, architect, contractor, engineer, landscape architect, decorator or mortgagee, within that development, but shall not include a subdivision marketing sign.

SIGN, DIRECTIONAL. A permanent on-site sign intended to aid in vehicular movement on the site.

SIGN, DIRECTORY. A permanent on-site sign providing direction to or identifying the buildings in the development.

SIGN FACE. The surface of one side of a sign. For a monument sign, the sign face shall include the sign structure (excluding base).

SIGN, GARAGE/YARD SALE. A temporary sign intended to advertise garage sales or yard sales.

SIGN, GASOLINE PRICING. A permanent on-site sign which displays the price per gallon of fuel sold by that business, and which may be periodically changed to reflect changes in fuel prices.

SIGN, GOVERNMENT. A sign erected by or on behalf of a federal, state or local government or an agency thereof.

SIGN, GROUND. Any sign connected to the ground by legs, poles or other supports and which is not an attached, portable, monument or vehicular sign.

SIGN, INSTITUTIONAL. A permanent on-site sign used to identify governmental and municipal agencies, public schools, churches or similar public institutions, and used to communicate messages of public importance to the general public.

SIGN, MENUBOARD. A permanent on-site sign which displays a menu and pricing for food services and may include an audible speaker and microphone integral to the sign.

SIGN, MODEL HOME. A temporary real estate sign identifying a homebuilder's model home open for inspection.

SIGN, MONUMENT. Any sign which is connected to the ground and which has no clear space between the bottom of the sign and the surface of the ground.

SIGN, OFF-SITE. A sign which directs attention to a business, commodity, service, good, product or entertainment not related to the site upon which such sign is located or to which it is affixed.

SIGN, ON-SITE. Any sign, the content of which relates to the site on which it is located, referring exclusively to businesses, commodities, services, products, goods or entertainment on the site, or the sale, lease or construction of those sites.

SIGN, POLITICAL. A type of off-site sign which refers only to the candidates or issues involved in a political election.

SIGN, PORTABLE. Any sign which is not attached or affixed to the ground, a building, vehicle, or other fixed structure or object. Portable signs include those signs installed on wheels, trailers, skids and similar mobile structures.

SIGN, READERBOARD (ELECTRONIC). A sign that utilizes alternating electronic data control components.

SIGN, READERBOARD (MANUAL). A sign comprised of non-permanent letters, numerals or symbols, which allows a change of sign copy by adding, removing or rearranging those letters, symbols or numerals.

SIGN, REAL ESTATE. A temporary sign intended to advertise real estate for sale or lease.

SIGN, SPECIAL PURPOSE. A temporary sign that is either on-site or off-site that provides identification or information pertaining to a special event or occurrence sponsored by a non-profit or civic organization.

SIGN, SUBDIVISION ENTRY. Any permanent on-site sign identifying a residential subdivision.

SIGN, SUBDIVISION MARKETING. A temporary sign used to market or advertise residential subdivisions within the city and to direct interested persons to the subdivision location.

SIGN, TEMPORARY. Any sign constructed of cloth, canvas, light fabric, cardboard, wallboard or other like materials, with or without frames, and any type sign not permanently attached to the ground, wall, or building, intended to be displayed for a short period of time only.

SIGN, VEHICULAR. Any sign which is affixed to a vehicle.

SIGN, WINDOW. Any sign located on the internal and/or external surface of the window, or is located within two feet of the window, of any establishment.

SITE. A lot, tract or pad site.

TEMPORARY STRUCTURE. A structure without any foundation or footings.

(Ord. 060518D, passed 6-18-2006)

§ 151.02 RESPONSIBILITY; ENFORCEMENT.

It is the responsibility of the City Manager or his or her designee Administrative Official to interpret and administer the requirements of this chapter.

(Ord. 060518D, passed 6-18-2006)

§ 151.03 SIGN PERMIT REQUIRED.

(A) No person shall erect, alter or display any sign nor shall any person allow the erection, alteration or display of any sign upon any property within the city owned or controlled by him or her without first obtaining a permit to do so from the City of Heath, except as hereinafter provided.

(B) No sign permit shall be released until after the building permit for the principal building on the site has been issued, except as hereinafter provided.

(Ord. 060518D, passed 6-18-2006)

§ 151.04 EXTRATERRITORIAL JURISDICTION.

The terms and conditions of this chapter shall apply to signs located within the City of Heath and its extraterritorial jurisdiction.

(Ord. 060518D, passed 6-18-2006)

§ 151.05 FEES.

The fee for sign permits shall be as contained in the city's fee schedule.

(Ord. 060518D, passed 6-18-2006)

§ 151.06 REGISTRATION REQUIRED.

(A) No person shall install, erect or maintain any sign, or contract for such service, until that person has applied to the Administrative Official for a license to install, erect and/or maintain signs, and until such license has been approved and issued.

(B) The license of any sign contractor may be canceled by the Administrative Official, when such contractor repeatedly violates the requirements of this chapter. Conviction in court, whether appealed

or not, on two violations over a period of 12 months, shall constitute evidence of repeated violation. Any license thus canceled shall not be renewed for such contractor or anyone operating in concert with such contractor until all such violations have been corrected. Upon correction of violations, the contractor's license may be renewed upon furnishing the bond required in § 151.07 below.

(Ord. 060518D, passed 6-18-2006)

§ 151.07 SIGN CONTRACTOR BOND REQUIRED.

(A) No license for the installation, erection and/or maintenance of signs shall be issued to any person nor shall any person install, erect or maintain any sign or medium of display or advertising, electric or otherwise, until that person has provided proof of general liability insurance in the amount of \$100,000 to the Administrative Official or filed with the City of Heath's Secretary a surety bond in the sum of \$5,000. The bond shall be approved by the City of Heath's Director of Finance and shall be conditioned for the installation and erection of signs in accordance with the ordinances of the city and the laws of the state, and shall provide for the indemnification of the city for any and all damages or liability which may accrue against it by reason of faulty installation, erection, demolition, repair, removal or defects in, or collapse of, any sign for a period of one year after erection and for such period of time that the sign is maintained or serviced by or under the direction of the maker of the bond. The bond shall further provide for the indemnification of any person who shall, while upon public property or in any public place, incur damage for which the principle name in the bond is legally liable.

(B) When any sign contractor's license has been canceled, the license shall not be renewed until the contractor furnishes an additional bond in the amount of \$5,000 guaranteeing compliance with the provisions of this chapter, which bond shall be for a period of two years following renewal of the license.

(Ord. 060518D, passed 6-18-2006)

§ 151.08 REVOCATION OF PERMITS.

(A) The Administrative Official may suspend or revoke any permit issued under the provisions of this chapter whenever it is determined that the permit is issued in error or on the basis of incorrect or false information supplied, or whenever such permit is issued in violation of any of the provisions of this chapter or any other ordinance of this city or laws of this state or the federal government.

(B) The suspension or revocation shall be effective when communicated in writing to the person to whom the permit is issued, the owner of the sign, or the owner of the site upon which the sign is located. Upon revocation, all construction related to the revoked permit shall cease.

(C) A person may appeal the revocation of the sign permit to the City Council by filing an appeal in accordance with this chapter. The City Council shall affirm, reverse or modify the suspension or revocation and that decision shall be final.

(D) Upon final determination that the permit is properly revoked, any portion of the sign in place as a result of the permit shall be removed within ten days by the owner of the sign or the owner of the site on which the sign is located. Failure to remove the sign shall be deemed a violation of this chapter.

(Ord. 060518D, passed 6-18-2006)

§ 151.09 INSPECTION.

The Administrative Official shall periodically inspect each sign regulated by this chapter for the purpose of ascertaining whether the same is obsolete and whether it is in need of removal or repair.

(Ord. 060518D, passed 6-18-2006)

§ 151.10 PERMIT VALID FOR 180 DAYS.

If the work authorized by a permit issued under this chapter has not been commenced within 180 days after the date of issuance, the permit shall become null and void.

(Ord. 060518D, passed 6-18-2006)

§ 151.11 APPEALS.

(A) Any decision rendered by the Administrative Official under this chapter may be appealed to the City Council by any person, agent or representative affected by the decision.

(B) The appeal must be received within ten days after the placement of a letter in the U.S. mail addressed to the address on the permit or the address of the current owner of record in the county tax records which states the written decision which has been rendered by the Administrative Official.

(C) The appeal shall be filed in writing with the Administrative Official specifying the grounds on which the appeal is based.

(D) The Administrative Official shall forthwith transmit to the City Council all documents pertaining to the appealed action.

(E) The City Council shall hear the appeal at a City Council meeting as soon as practicable thereafter to determine whether the decision of the Administrative Official was in accordance with all ordinances and regulations.

(F) The decision of the City Council shall be final.

(Ord. 060518D, passed 6-18-2006)

§ 151.12 VARIANCES.

(A) The City Council may authorize variances to any restriction set forth in this chapter, including but not limited to the number, type, area, height or setback of signs, or any other aspect involved in the sign permitting process.

(B) In granting any variance, the City Council shall determine that a literal enforcement of the sign regulations will create an unnecessary hardship or a practical difficulty on the applicant, that the situation causing the unnecessary hardship or practical difficulty is unique to the affected property and is not self-imposed, that the variance will not injure and will be wholly compatible with the use and permitted development of adjacent properties, and that the granting of the variance will be in harmony with the spirit and purpose of this Sign Ordinance.

(C) A person may request a variance from the Sign Ordinance by filing the request with the Administrative Official.

(D) Any request for variance shall be accompanied by a completed application and a non-refundable filing fee in the amount specified in the current fee schedule adopted by the City Council.

(Ord. 060518D, passed 6-18-2006)

SPECIFIC SIGN REGULATIONS

§ 151.25 WIND PRESSURE; DEAD LOAD REQUIREMENTS.

(A) All signs shall be designed and constructed to withstand a wind pressure of not less than 30 pounds per square foot of area and shall be constructed to receive dead loads as required by the applicable city codes.

(B) The sign permit application must include a statement signed by the applicant which states compliance with this requirement

(Ord. 060518D, passed 6-18-2006)

§ 151.26 PERMITTED SIGN STRUCTURES.

(A) *Attached sign.*

(1) *General.*

(a) Unless otherwise specifically provided, the regulations set forth in this division shall be applicable to all attached signs which are allowed under this chapter.

(b) Signs may not be attached to light fixtures, poles, curbs, sidewalks, gutters, streets, utility poles, public buildings, fences, railings, public telephone poles or trees.

(c) The direct painting of signs on buildings shall be prohibited except for signs less than a three square foot area used for building identification.

(2) *Minimum/maximum letter/logo height.*

(a) The minimum height allowed for letters or logos shall be six inches.

(b) The maximum height allowed for letters or logos shall be based on the following criteria:

<i>Distance From R.O.W.*</i>	<i>Maximum Letter/Logo Height</i>
Less than 100 feet	12 inches
101 to 150 feet	18 inches
151 to 200 feet	24 inches
201 to 250 feet	30 inches
251 to 300 feet	36 inches
301 and greater	42 inches
* For any space which does not front on a street, the maximum letter/logo height shall be based on the distance from the vehicular driveway access (see Appendix B for further clarification).	

(c) *Exception.* The minimum/maximum letter/logo height limits shall not apply to buildings located within the Towne Center Overlay District.

(3) *Maximum area.* Three-quarters square foot for every one foot of width of building or lease space not to exceed 400 square feet (see Appendix A for further clarification).

(4) *Number of signs.* Only one attached sign per lease space shall be allowed along each street frontage on any site, unless otherwise specifically provided in this chapter. A secondary sign may be permitted at a public entrance, provided the entrance is on another side of the building, but shall be limited to 25% of the primary or permitted sign size, whichever is more restrictive. The six-inch minimum letter/logo height will not apply to these secondary signs. No more than two attached signs shall be allowed per lease space. Attached signs shall be located within the first story of the main exterior entrance for a building or lease space (see Appendix B for further clarification).

(5) *Sign width.* Attached signs shall be limited in width to the middle 75% of the width of any building or lease space. In the event the lease space facade is horizontally articulated, the 75% rule shall apply to the allowed sign to be located on any single plane facade (see Appendix B for further clarification).

(6) *Roof line limitations.* In no case shall an attached sign project above the roof line of any building, except those attached to parapet walls and the sign may not extend above the parapet wall. Signs shall be no closer than vertically to the eave of the roof line or overhang than the predominant letter height (see Appendix B for further clarification). Signs may be attached to a continuous plane fascia, if the sign does not extend above or below the projection of the fascia. Signs attached to fascia are only allowed when attached to structural canopy supported to the ground by columns constructed of similar masonry material as the primary structure (see Appendix B for further clarification).

(7) *Illumination.* Attached signs may only be illuminated utilizing internal lighting. Exterior letters with exposed neon lighting are not allowed.

(8) *Protrusions.* Attached signs may not protrude farther than 18 inches from the building, excluding signs attached to canopies.

(9) *Residential adjacency.* Attached signs shall not be allowed on any facade (other than the main front of the building) which faces property zoned for single-family residential uses if the sign is within 150 feet of the property line of the residential property.

(B) *Monument sign.*

(1) *General.* Unless otherwise specifically provided, the regulations set forth in this division shall be applicable to all monument signs which are allowed under this chapter.

(2) *Minimum letter/logo height.* The minimum height allowed for letters or logos shall be six inches.

(3) *Maximum height.* Five feet, excluding monument base. The monument base may be an additional 18 inches in height measured from ground level at the center of the base to the top of the base. The overall height of the sign including the base shall not exceed six feet.

(4) *Maximum area.* One hundred square feet per sign with a maximum area per sign face of 50 square feet. The maximum area for the sign structure shall not exceed 70 square feet per side (see Appendix A for measurement criteria).

(5) *Number of signs.* Only one monument sign, excluding menu board signs, shall be allowed along each street frontage on any site, unless otherwise specifically provided in this chapter. Monument signs may be no closer than 500 feet on any one site.

(6) *Minimum setback.* Fifteen feet from any property line.

(7) *Material requirements.* All monument sign bases shall be constructed of the same masonry material as the front building facade on the same site or shall be stone or brick. The sign structure must be constructed or covered with the same masonry material as the principal building, or stone, or brick. Sculpted aluminum sign panels will be allowed. All sign text and graphic elements shall be limited to a minimum of six inches from the outer limits of the sign structure.

(8) *Illumination.* Monument signs may only be illuminated utilizing internal lighting for sculpted aluminum panels or a ground lighting source where the light itself and supporting structure are not visible from public R.O.W.

(C) *Ground sign.*

(1) *General.* Unless otherwise specifically provided, the regulations set forth in this division shall be applicable to all ground signs.

(2) *Minimum setback.* Fifteen feet from any property line.

(3) *Maximum height.* Three feet.

(4) *Maximum area.* Eight square feet with a maximum of four square feet per sign face.

(5) *Number of signs.* One sign per site.

(Ord. 060518D, passed 6-18-2006; Ord. 140211B, passed 2-25-2014)

§ 151.27 PROHIBITED SIGNS.

(A) *General.* Any sign which is not specifically permitted in §§ 151.30 through 151.35 below shall be prohibited. Billboards shall not be allowed.

(B) *Obstructing doors, windows or fire escapes.* No person shall erect or display on any site any sign which prevents free ingress to or egress from any door, window or fire escape.

(C) *Obstructing vision/sight triangle.* No person shall erect or display on any site any sign in such a manner as to obstruct free and clear vision at any location, street, intersection or driveway.

(D) *Interference with traffic.* No person shall erect or display on any site any sign which interferes with vehicular or pedestrian traffic as a result of the position, size, shape, movement, color, fashion, manner or intensity of illumination or any other characteristics causing such interference. Nor shall any person erect or allow to be displayed any sign in such a manner as to interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device, including, without limitation, signs making use of the words “stop,” “go,” “look,” “slow,” “danger” or any other similar word, phrase, symbol or character, or employ any red, yellow, green or other colored lamp or light in such a manner as to cause confusion or otherwise interfere with vehicular or pedestrian traffic.

(E) *Portable signs.* No person shall erect or display on any site any portable sign.

(F) *Certain illuminated signs.*

(1) No sign shall be illuminated to such an intensity or in such a manner as to cause a glare or brightness to a degree that it constitutes a hazard or nuisance to traffic. Moving, flashing, intermittent lighted, changing color, revolving or similarly constructed signs shall not be allowed.

(2) No lighted sign shall be erected or displayed within 150 feet of residentially zoned property unless the lighting is shielded from view of the residential zoned property and indirect light does not exceed one-half lumen measured from any property line of the residentially zoned property.

(G) *Signs projecting on/over public property or public right-of-way.* It shall be prohibited to erect or display any type of sign on or over public right-of-way (R.O.W.) or other public property, unless the same be erected by the city, county, state or other authorized governmental agency, or with the permission of the city, for public purposes.

(H) *Roof signs.*

(1) Any sign erected on a vertical framework supported by and located immediately and entirely over the roof of a building is prohibited.

(2) Any sign attached to a fascia extending above the projection of the fascia shall be prohibited.

(3) The painting or otherwise affixing of signs on a roof is prohibited.

(I) *Signs on utility poles.* No person shall erect or display any sign on any utility pole located upon any public right-of-way or utility easement.

(J) *Political signs on private property.* A person commits an offense if the person displays a political sign on private property unless the person has the permission of the property owner and the sign:

(1) Is not more than eight feet high;

(2) Has an effective area less than 36 feet;

(3) Is not illuminated;

(4) Does not have any moving elements; and

(5) Is not generally available for rent or purchase and/or designed to carry commercial advertising or other messages that are not primarily political.

(Ord. 060518D, passed 6-18-2006) Penalty, see § 10.99

§ 151.28 REMOVAL/IMPOUNDMENT OF PROHIBITED SIGNS.

(A) (1) All signs listed in § 151.27 above shall be considered a public nuisance and are prohibited by this chapter.

(2) Upon identification of any sign listed in § 151.27 above, the Administrative Official shall notify the owner of the property on which the sign is located of the violation.

(3) The notification shall state that the offending sign shall be removed by the owner, agent or person having beneficial use of the land, building or structure upon which the sign is located within the time period prescribed after written notification to do so by the Administrative Official.

(4) The notification shall further state that if the sign is not removed within a specific time frame (not to exceed ten days) a citation may be issued and the City of Heath may resort to any civil remedy available up to and including impoundment.

(B) It shall be unlawful for any person, firm or corporation receiving such written notice to fail to comply with the direction of the notice. In the event failure to comply with the notice, the Administrative Official is hereby authorized to cause the removal and impoundment of the sign. Any expenses incident thereto shall be the responsibility of the owner, agent or person having beneficial use of the land, building or structure upon which the sign was located.

(C) If a sign is placed within the public right-of-way in violation of this chapter, the sign may be immediately removed and impounded.

(Ord. 060518D, passed 6-18-2006) Penalty, see § 10.99

§ 151.29 RECOVERY OF IMPOUNDED SIGNS.

(A) Impounded signs may be recovered by the owner within 15 days after written notification of impoundment by paying a fee as follows:

- (1) A fee of \$200 for signs, which are under six square feet in area; and
- (2) A fee of \$400 for signs which are larger than six square feet in area.

(B) Signs not recovered within 15 days of impoundment may be disposed of by the city.

(Ord. 060518D, passed 6-18-2006)

§ 151.30 PERMANENT SIGNS REQUIRING PERMIT.

This subchapter regulates the type of sign structure allowed for each type of sign permitted by this chapter. Each of the signs identified in this chapter is subject to the general sign provisions set forth in §§ 151.25 through 151.29 above except where modifications to the general regulations are noted. Unless otherwise specifically provided, the regulations set forth in this chapter shall be applicable to all of the following signs.

(A) *Business sign.*

- (1) *Permitted sign structure.* Attached and/or monument.
- (2) *Modifications to general regulations.* None.

(B) *Menu sign.*

- (1) *Permitted sign structure.* Attached and/or monument.
- (2) *Modifications to general regulations:*
 - (a) *Minimum letter/logo height.* Not applicable.
 - (b) *Maximum height.* Six feet.
 - (c) *Maximum area.* Twenty-four square feet. Only one face will be allowed per sign.
 - (d) *Maximum number of signs.* No more than two signs per site.

(e) *Location limitations.* All menu signs must be located at the side or rear of the principal building. If two signs are erected, signs must be at least 18 feet apart.

(f) *Illumination.* Internal lighting may be utilized for sign panel.

(3) *Bulletin board:*

(a) *Permitted sign structure.* Attached, monument and/or ground.

(b) *Modifications to general regulations:*

1. *Minimum letter/logo height.* Not applicable.

2. *Maximum area.* Six square feet.

3. *Maximum number of signs.* One per subdivision entrance, not to exceed two per subdivision.

4. *Minimum setback.* Not applicable.

5. *Material requirements.* Bulletin board must have a lockable covering. Masonry requirement shall not apply.

(C) *Subdivision entry sign.* See subdivision regulations.

(D) *Directory sign.*

(1) *Permitted sign structure.* Attached and/or monument.

(2) *Modifications to general regulations:*

(a) *Minimum setback.* Seventy-five feet from drive entrance at right-of-way.

(b) *Maximum number of signs.* One sign per street entrance.

(c) *Residential adjacency.* Not applicable.

(d) *Locations where allowed.* Only distance measurements shall apply.

(E) *Institutional sign.*

(1) *Permitted sign structure.* Attached and/or monument.

(2) *Modifications to general regulations:*

(a) *General:*

1. Sign must be integral to the permitted sign for the site.

2. Manual readerboard signs using alphabetical lettering must have a lockable covering.

(b) *Maximum area.* Readerboard display cannot exceed two-thirds of the permitted gross surface area per face of the sign, excluding monument sign border.

(c) *Illumination.* Internal illumination may be utilized for sign panel.

(F) *Gasoline pricing sign.*

(1) *Permitted sign structure.* Monument.

(2) *Modifications to general regulations:*

(a) *General:*

1. Sign must be integral to the permitted sign for the site; and
2. Price-per-gallon display, whether electronic or manual, may not scroll or flash.

(b) *Minimum letter height.* Not applicable for the fuel classification (i.e. Unleaded, diesel and the like) and the price-per-gallon display.

(c) *Maximum area.* Price-per-gallon display cannot exceed two-thirds of the permitted gross surface area per face of the sign, excluding monument sign border.

(d) *Number of signs.* One per site.

(e) *Illumination.* Internal illumination may be utilized for fuel classification and price-per-gallon panels only.

(G) *Directional sign.*

(1) *Permitted sign structure.* Monument.

(2) *Modifications to general regulations:*

(a) *Maximum height.* Three feet.

(b) *Maximum area.* Eight square feet with a maximum of four square feet per sign face.

(c) *Number of signs.* Maximum of two signs per site.

(Ord. 060518D, passed 6-18-2006)

§ 151.31 TEMPORARY SIGNS REQUIRING PERMIT.

A permit shall be required for the following signs.

(A) *Banner.*

(1) *Permitted sign structure.* Attached.

(2) *Modifications to general regulations:*

(a) *Maximum area.* Half of a square feet for every one foot of width of building or lease space not to exceed 50 square feet.

(b) *Maximum number of signs.* One per site.

(c) *Duration.* Maximum 15 days, twice per calendar year with a 60-day separation between permits.

(B) *Model home sign.*

(1) *Permitted sign structure.* Monument and/or ground.

(2) *Modifications to general regulations:*

(a) *Maximum height.* Five feet for ground signs.

(b) *Maximum area.* Sixty-four square feet with a maximum of 32 square feet per sign face.

(c) *Maximum number of signs.* One sign per builder per subdivision.

(d) *Material requirements.* Not applicable.

(C) *Special purpose sign.*

(1) *Permitted sign structure.* Attached and/or ground.

(2) *Modifications to general regulations:*

(a) *Maximum height.* Nine feet for ground signs.

(b) *Maximum area.* Sixty-four square feet with a maximum of 32 square feet per sign face.

(c) *Maximum number of signs.* Six total per event or occasion, not to exceed five off-site signs and one on-site sign.

(d) *Placement time.* Twenty-one days, must be removed within three days after termination of the event. No more than twice a year.

(e) *Material requirements.* Not applicable.

(f) *Residential adjacency.* Not applicable.

(D) *Development sign.*

(1) *Permitted sign structure.* Monument and/or ground.

(2) *Modifications to general regulations:*

(a) *Maximum height.* Five feet.

(b) *Maximum area.* Sixty-four square feet with a maximum of 32 square feet per sign face.

(c) *Maximum number of signs.* One per site.

(d) *Duration.*

1. Sign may be installed at any time after the issuance of the building permit for a commercial development or approval of the developer's agreement for a residential subdivision.

2. The sign must be removed within one year or upon the issuance of a certificate of occupancy for a commercial development and upon the issuance of a certificate of occupancy on 75% of the lots within the subdivision for a residential subdivision.

(e) *Material requirements.* Not applicable.

(Ord. 060518D, passed 6-18-2006)

§ 151.32 TEMPORARY SIGNS EXEMPT FROM PERMIT.

A permit shall not be required for the following signs:

(A) *Subdivision marketing sign.*

(1) *Permitted sign structure.* Ground.

(2) *Modifications to general regulations:*

(a) *Maximum number of signs.* One sign for every 20 platted and unoccupied lots, not to exceed a total of four signs

(b) *Location of signs.* No sign may be placed closer than 50 feet from an intersecting R.O.W.

(c) *Minimum setback.* Not applicable.

(d) *Placement time.* Placement time is 12:00 noon Friday to 5:00 a.m. Monday, prohibiting placement between 4:00 p.m. and 8:00 p.m. Friday and prohibiting pickup prior to 7:00 p.m. Sunday.

(e) *Duration.* Signs may be placed upon subdivision approval. The signs shall be valid for one year from subdivision approval or upon issuance of a certificate of occupancy on 75% of the lots.

(B) *Builder sign.*

(1) *Permitted sign structure.* Ground.

(2) *Modifications to general regulations:*

(a) *Duration.* Signs may only be placed after issuance of a building permit and must be removed upon the issuance of a certificate of occupancy.

(b) *Minimum setback.* Not applicable.

(C) *Real estate sign.*

(1) *Permitted sign structure.* Attached, monument and/or ground.

(2) *Modifications to general regulations:*

(a) *Minimum letter/logo height.* Not applicable.

(b) *Maximum height.* Five feet above grade for ground signs; below roof line for attached.

(c) *Maximum area.* Sixty-four square feet with a maximum of 32 square feet per sign face.

(d) *Maximum number of signs.* One per site.

(e) *Minimum setback.* Not applicable for ground signs four square feet or less per face in area.

(D) *Garage/yard sale sign.* Garage or yard sale signs erected on private property with the permission of the property owner provided the surface area of the sign does not exceed six square feet and erected for no longer than 72 hours. Date sign is placed must be on sign. No permit is required.

(E) *Window sign.*

(1) Window signs may not obscure more than 15% of the window area per facade measured and located within ten vertical feet from the at-grade exterior entrance to the unit.

(2) The area of the sign shall be measured by the smallest box that could be drawn around the continuity of the sign (see Appendix B).

(3) No illuminated window signs shall be allowed within two feet of the window glazing except for open/closed signs.

(Ord. 060518D, passed 6-18-2006)

§ 151.33 EXEMPT SIGNS.

The following signs are exempted from the requirements of this chapter.

(A) *Vehicular signs.*

- (1) Vehicular signs, unless the sign is used or intended to be used as an on-site or off-site sign.
- (2) It shall be prima facie evidence that a sign is used as an on-site or off-site sign if a vehicle is parked at the same location for a continuous period exceeding 72 hours.
- (3) No person shall attach any sign to a trailer, skid or similar mobile structure, where the primary use of such structure is to provide a base for such sign or to constitute the sign itself.
- (4) This provision shall not be interpreted to prohibit identification signs on vehicles used for business purposes, nor shall it be interpreted to prohibit bumper stickers.

(B) *Warning and security signs.*

(C) *Government signs and signs for non-profit organizations.* Government signs and signs for non-profit organizations sponsored by government including flags, insignia, legal notices, informational, directional and traffic signs which are legally required or necessary to the essential functions of government agencies.

(D) *“No Dumping” and “No Trespassing” signs.*

(E) *Signs in public parks.* Signs in public parks placed inside ballfield fencing by the city, which are intended for advertising to raise funds for recreation programs which have copy on only one face with the copy facing toward the interior of the field.

(F) *Signs attached to a temporary structure.* Signs attached to a temporary structure utilized specifically for outdoor sales or services or any other signs which are approved in a specific use permit authorizing the outdoor sales or services.

(G) *Signs attached to a donation bin.*

(Ord. 060518D, passed 6-18-2006)

§ 151.34 NONCONFORMING EXISTING SIGNS.

(A) All signs that are lawfully in existence on the date of adoption of this chapter may exist in their present form, but no such signs shall be altered or moved unless a permit is issued pursuant to the provisions of this chapter.

(B) Permits granted prior to the passage of this chapter shall be renewed only if the applicant complies with all provisions of this chapter.

(C) Any legal, non-conforming sign which has been substantially destroyed or dismantled for any purpose other than maintenance shall be deemed as completely destroyed if the cost of repairing the sign is more than 60% of the cost of erecting a new sign of the same type at the same location.

(D) Under this provision, the sign shall be removed and a permit shall be required to erect a new sign.

(Ord. 060518D, passed 6-18-2006)

§ 151.35 SIGN COPY.

Notwithstanding anything contained herein to the contrary, any sign authorized in this chapter is allowed to contain non-commercial (ideological) copy in lieu of any other copy.

(Ord. 060518D, passed 6-18-2006)

APPENDIX A: METHODS OF AREA MEASUREMENT

Section

1. Attached sign
2. Attached signs
3. Ground sign
4. Monument sign; attached lettering
5. Monument sign; sculpted aluminum panel
6. Monument sign; masonry panel

§ 1 ATTACHED SIGN.

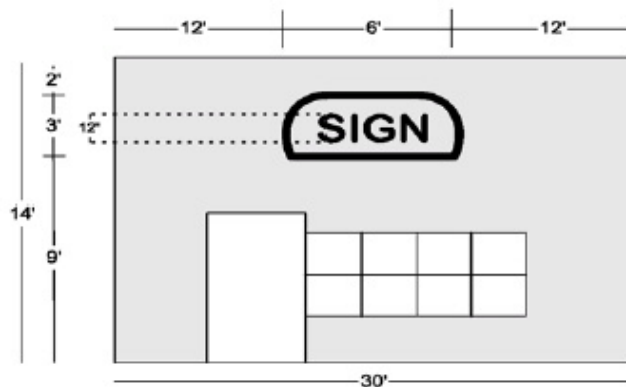
(A) Height: three feet.

(B) Letter height: 12 inches.

(C) Maximum allowed area: 22.5 square feet (0.75 by 30).

(D) Measured area shown: 18 square feet (three feet by six feet).

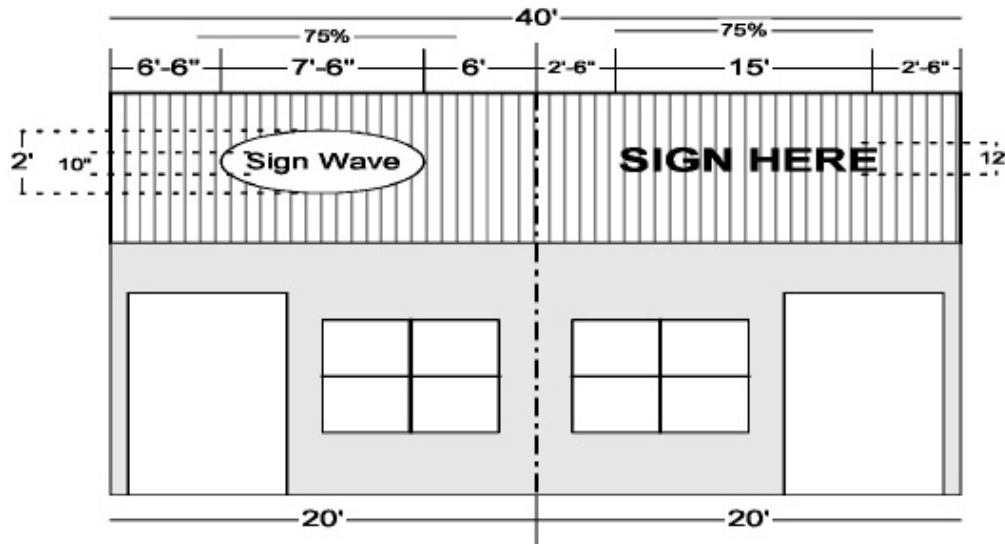
(E) Notes: area limited to 0.75 square feet for every one foot of width of building or lease space not to exceed 400 square feet; signs shall be limited in width to the middle 75% of the width of any single plane facade for any building or lease space.



(Ord. 060518D, passed 6-18-2006)

§ 2 ATTACHED SIGNS.

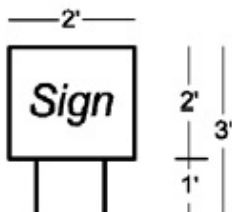
- (A) Height: two feet and one foot.
- (B) Letter height: ten inches and 12 inches.
- (C) Maximum allowed areas: 15 square feet (0.75 by 20) and 15 square feet (0.75 by 20).
- (D) Measured areas shown: 15 square feet (two feet by seven and one-half feet) and 15 square feet (one foot by 15 feet).
- (E) Notes: Area limited to 0.75 square feet for every one foot of width of building or lease space not to exceed 400 square feet; signs shall be limited in width to the middle 75% of the width of any single plane facade for any building or lease space.



(Ord. 060518D, passed 6-18-2006)

§ 3 GROUND SIGN.

- (A) Height: three feet.
- (B) Maximum area allowed: four square feet per sign face.



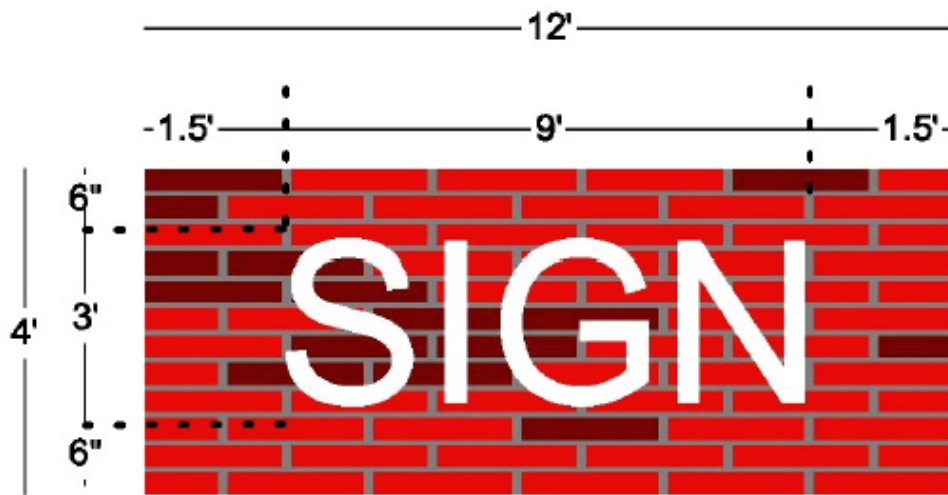
- (C) Measured area shown: four square feet (two feet by two feet).

(Ord. 060518D, passed 6-18-2006)

§ 4 MONUMENT SIGN; ATTACHED LETTERING.

- (A) Height: three feet.
- (B) Maximum allowed sign area: 50 square feet per face.
- (C) Measured sign area shown: 27 square feet (three feet by nine feet).
- (D) Maximum allowed structure area: 70 square feet per face.
- (E) Measured structure area shown: 48 square feet (four feet by 12 feet).

(F) Notes: The sign structure must be constructed or covered with the same masonry material as the principal building, or stone, or brick. All sign text and graphic elements shall be limited to a minimum of six inches from the outer limits of the sign structure. Sign may be illuminated utilizing a ground lighting source, where the light itself and supporting structure may not be visible from public R.O.W.

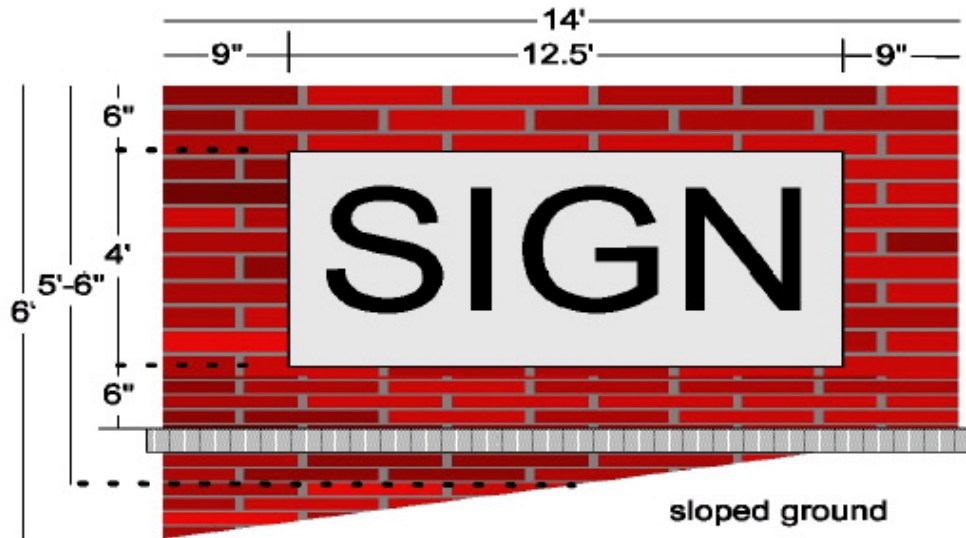


(Ord. 060518D, passed 6-18-2006)

§ 5 MONUMENT SIGN; SCULPTED ALUMINUM PANEL.

- (A) Height: four feet.
- (B) Maximum allowed sign area: 50 square feet per face.
- (C) Measured sign area shown: 50 square feet (four feet by 12.5 feet).
- (D) Maximum allowed structure area: 70 square feet per face.
- (E) Measured structure area shown: 70 square feet (five feet by 14 feet).

(F) Notes: The sign base and/or structure must be constructed or covered with the same masonry material as the principal building, or stone, or brick. All sign text and graphic elements shall be limited to a minimum of six inches from the outer limits of the sign structure. Sculpted aluminum sign panels may be illuminated utilizing internal lighting.

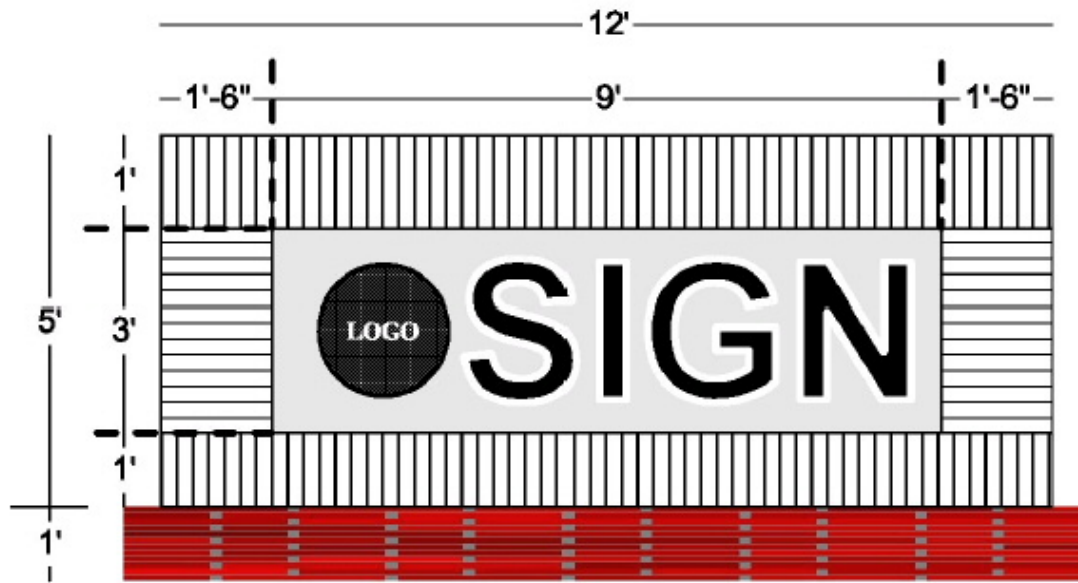


(Ord. 060518D, passed 6-18-2006)

§ 6 MONUMENT SIGN; MASONRY PANEL.

- (A) Height: three feet.
- (B) Maximum allowed sign area: 50 square feet per face.
- (C) Measured sign area shown: 27 square feet (three feet by nine feet).
- (D) Maximum allowed structure area: 70 square feet per face.
- (E) Measured structure area shown: 60 square feet (five feet by 12 feet).

(F) Notes: the sign base and/or structure must be constructed or covered with the same masonry material as the principal building, or stone, or brick. All sign text and graphic elements shall be limited to a minimum of six inches from the outer limits of the sign structure. Sign may be illuminated utilizing a ground lighting source, where the light itself and supporting structure may not be visible from public R.O.W.



(Ord. 060518D, passed 6-18-2006)

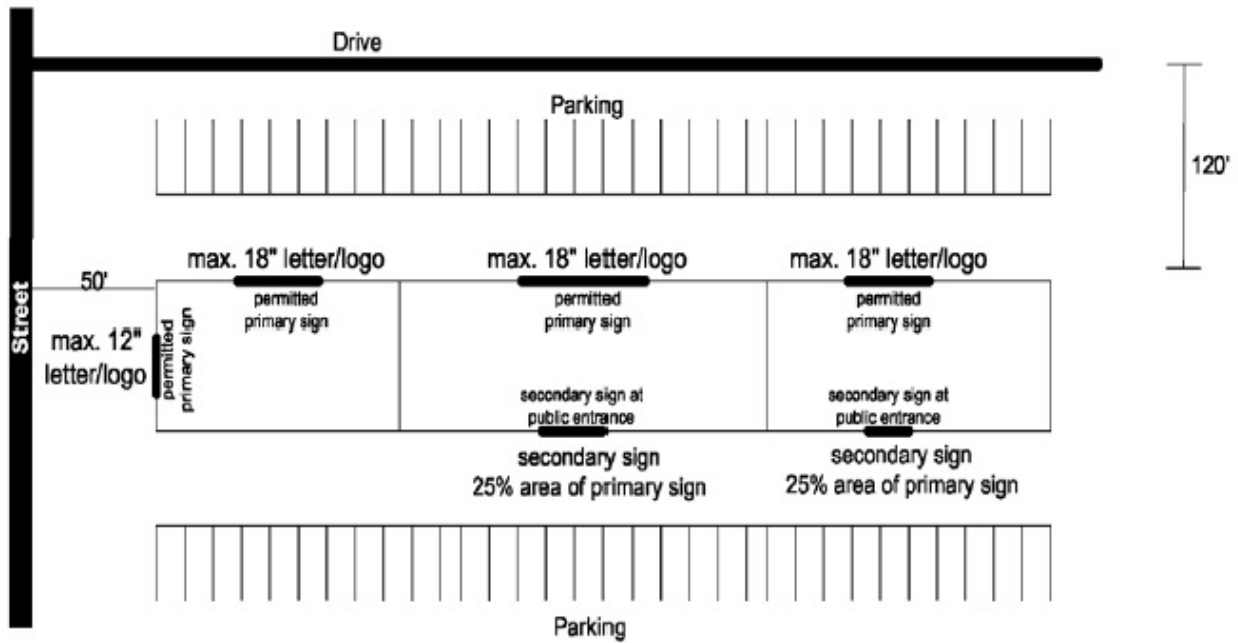
APPENDIX B: SELECTED GRAPHIC CLARIFICATIONS

Section

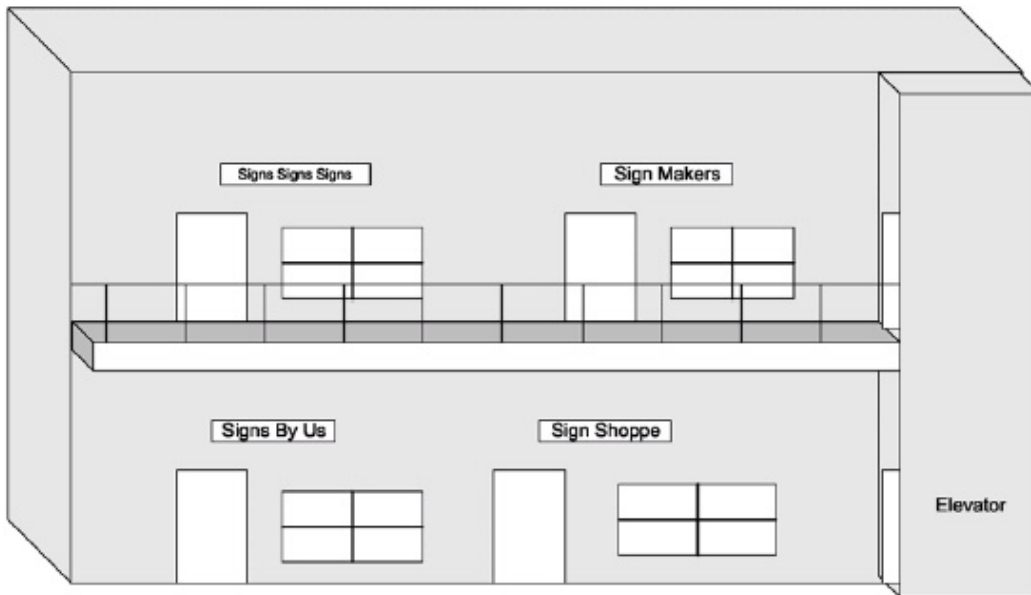
1. Lease space which does not front on a street
2. Attached signs limited in width
3. Signs; vertically
4. Attached to a continuous plane fascia
5. Window signs

§ 1 LEASE SPACE WHICH DOES NOT FRONT ON A STREET.

(A) For any lease space which does not front on a street, the maximum letter/logo height shall be based on the distance from the vehicular driveway access. Only one attached sign per street frontage shall be allowed on any site along the street frontage, unless otherwise specifically provided. A secondary sign may be permitted at a public entrance, provided the entrance is on another side of the building, but shall be limited to 25% of the primary or permitted sign size, whichever is more restrictive. The six-inch minimum letter/logo height will not apply to these secondary signs. No more than two attached signs shall be allowed per lease space.



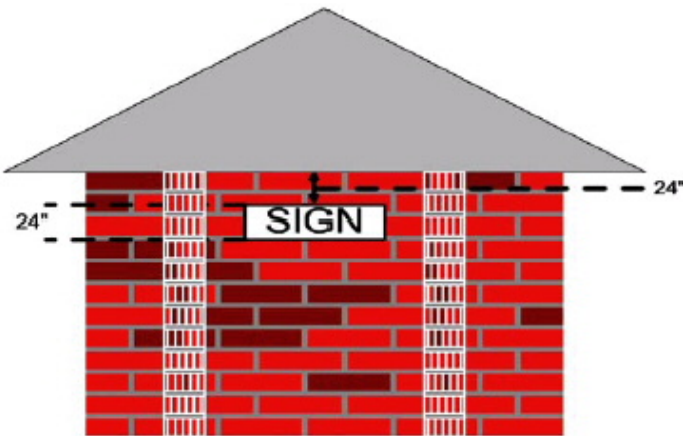
(B) Attached signs shall be limited to within the first story of the main exterior for a building or lease space.



(Ord. 060518D, passed 6-18-2006)

§ 2 ATTACHED SIGNS LIMITED IN WIDTH.

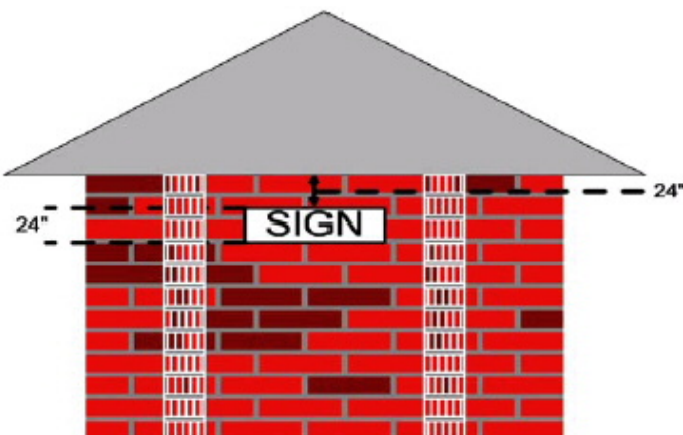
Attached signs shall be limited in width to the middle 75% of the width of any building or lease space or single plane facade.



(Ord. 060518D, passed 6-18-2006)

§ 3 SIGNS; VERTICALLY.

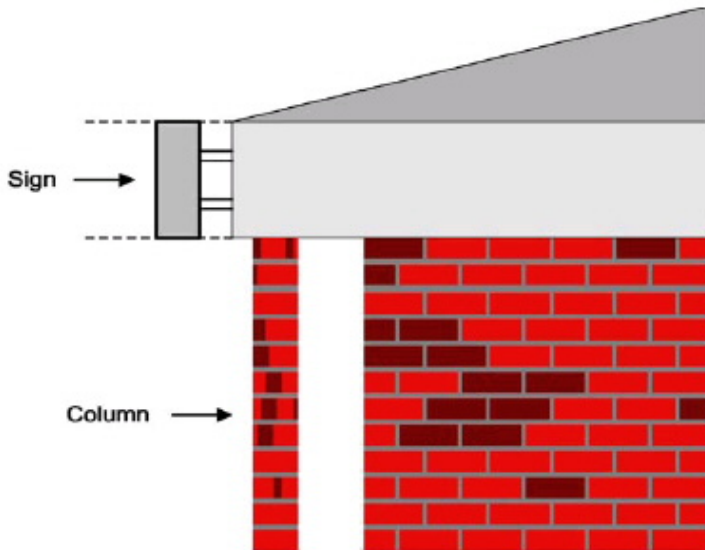
Signs shall be no closer vertically to the eave of the roofline or overhang than the permitted letter height.



(Ord. 060518D, passed 6-18-2006)

§ 4 ATTACHED TO A CONTINUOUS PLANE FASCIA.

Signs may be attached to a continuous plane fascia provided the sign does not extend above or below the projection of the fascia. Such signs are only allowed when attached to structural canopy supported to the ground by columns constructed of similar masonry material as the primary structure.



(Ord. 060518D, passed 6-18-2006)

§ 5 WINDOW SIGNS.

(A) Window signs may not obscure more than 15% of the window area per facade, measured and located within ten vertical feet from the at-grade exterior entrance to the lease space.

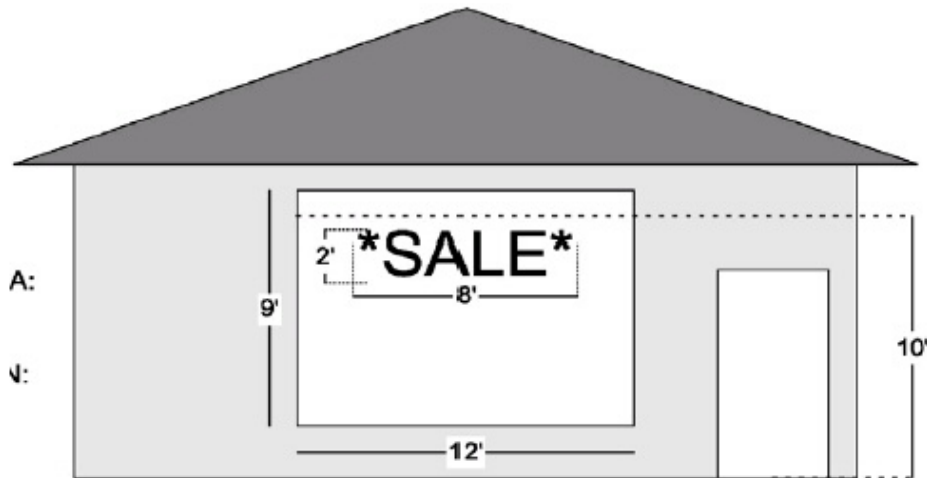
(B) The area of the sign shall be measured by the smallest box that could be drawn around the continuity of the sign.

(C) No illuminated window signs shall be allowed within two feet of the window glazing except for open/closed signs.

(D) Window area: 108 square feet (nine feet by 12 feet).

(E) Maximum allowed window sign area: 16.2 square feet (15% of 108 square feet).

(F) Measured window sign area shown: 16 square feet (two feet by eight feet).



(Ord. 060518D, passed 6-18-2006)

CHAPTER 152: CONSTRUCTION AND STANDARD DETAILS

Section

- 152.01 Adoption of standards
- 152.02 Standards for telecommunications antennas and towers
- 152.03 Cable customer service standards

§ 152.01 ADOPTION OF STANDARDS.

That the City Council hereby adopts the standards of design, standard specifications for construction and standard details as minimum requirements for engineering design, a copy of which standards are on file with the office of the City Building Inspector.

(2005 Code, § 14-6-1) (Ord. 910109A, passed 1-9-1991)

§ 152.02 STANDARDS FOR TELECOMMUNICATIONS ANTENNAS AND TOWERS.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALTERNATIVE TOWER STRUCTURE. Human-made trees, clock towers; bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA. Any exterior apparatus designed for telephonic, radio or television communications through the sending and/or receiving of electromagnetic waves.

FAA. The Federal Aviation Administration.

FCC. The Federal Communications Commission.

GOVERNING AUTHORITY. The governing authority of the county/city.

HEIGHT. When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if the highest point is an antenna.

PREEXISTING TOWERS AND ANTENNAS. The meaning set forth in division (B)(4) below.

PUBLIC OFFICER. The Building Official of the governing authority.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like.

(B) *Applicability.*

(1) *District height limitations.* The requirements set forth in this chapter shall govern the location of towers that exceed, and antennas that are installed at a height in excess of, the height limitations specified for each zoning district. The height limitations applicable to buildings and structures shall not apply to towers and antennas.

(2) *Public property.* Antennas or towers located on property owned, leased or otherwise controlled by the governing authority, shall be exempt from the requirements of this chapter, provided a license or lease authorizing such antenna or tower has been approved by the governing authority.

(3) *Amateur radio; receive-only antennas.* This chapter shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.

(4) *Pre-existing towers and antennas.* Any tower or antenna on for which a permit has been properly issued prior to the effective date of this chapter shall not be required to meet the requirements of this chapter, other than the requirements of divisions (C)(5) and (6) below. Any such towers or antennas shall be referred to in this chapter as pre-existing towers or pre-existing antennas.

(C) *General guidelines and requirements.*

(1) *Purpose; goals.* The purpose of this chapter is to establish general guidelines for the siting of towers and antennas. The goals of this chapter are to:

(a) Encourage the location of towers in non-residential areas and minimize the total number of towers throughout the community;

(b) Encourage strongly the joint use of new and existing tower sites;

(c) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(d) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas; and

(e) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.

(2) *Principal or accessory use.*

(a) Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on the lot.

(b) For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots.

(c) Towers that are constructed, and antennas that are installed, in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

(3) *Inventory of existing sites.*

(a) Each applicant for an antenna and or tower shall provide to the Planning and Zoning Commission an inventory of its existing towers that are either within the jurisdiction of the governing authority or within one-quarter mile of the border thereof, including specific information about the location, height, and design of each tower.

(b) The Planning and Zoning Commission may share such information with other applicants applying for administrative approvals or special use permits under this chapter or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Planning and Zoning Commission is not, by sharing the information, in any way representing or warranting that the sites are available or suitable.

(4) *Aesthetics; lighting.* The guidelines set forth in this division shall govern the location of all towers, and the installation of all antennas, governed by this chapter; provided, however, that the governing authority may waive these requirements if it determines that the goals of this chapter are better served thereby.

(a) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.

(b) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities to the natural setting and built environment.

(c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(d) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

(5) *Federal requirements.*

(a) All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas.

(b) If the standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring the towers and antennas into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.

(c) Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owners expense.

(6) *Building codes; safety standards.*

(a) To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronics Industries Association, as amended from time to time.

(b) If, upon inspection, the governing authority concludes that a tower fails to comply with the codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring the tower into compliance with the standards.

(c) If the owner fails to bring the tower into compliance within the 30 days, the governing authority may remove the tower at the owner's expense.

(D) *Permitted uses.*

(1) *General.* The uses listed in this section are deemed to be permitted uses and shall not require administrative review or a special use permit. Nevertheless, all the uses shall comply with divisions (C)(4), (5) and (6) above and all other applicable ordinances.

(2) *Specific permitted uses.* The following uses are specifically permitted:

(a) Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with the tower or antenna, in any industrial or heavy commercial zoning district; provided, however, that the tower shall be set back from any existing off-site residence a distance equal to the height of the tower;

(b) Installing an antenna on an existing structure other than a tower (such as a building, sign, light pole, water tower, or other free-standing nonresidential structure) that is 50 feet in height or greater, so long as the additional antenna adds no more than 20 feet to the height of the existing structure; and

(c) Installing an antenna on any existing tower of any height, so long as the addition of the antenna adds no more than 20 feet to the height of the existing tower and the existing tower is not a pre-existing tower; provided, however, that the specific permitted use shall not include the placement of additional buildings or other supporting equipment used in connection with the antenna.

(E) *Administrative approvals.*

(1) *General.*

(a) The Planning and Zoning Commission may administratively approve the uses listed in this division.

(b) Each applicant for administrative approval shall apply to the Planning and Zoning Commission, providing the information set forth in divisions (F)(2) and (4) below.

(c) The Planning and Zoning Commission shall respond to each such application within 30 days after receiving it by either approving or denying the application. If the Planning and Zoning Commission fails to respond to the applicant within the 30 days, then the application shall be deemed to be approved.

(d) In connection with any such administrative approval, the Planning and Zoning Commission may, in order to encourage shared use, administratively waive any zoning district setback requirements by up to 50%.

(e) If an administrative approval is denied, the applicant may appeal the denial in accordance with the provisions of the zoning ordinance concerning appeals of administrative decisions.

(2) *Specific administratively approved uses.* The following uses may be approved by the Planning and Zoning Commission after conducting an administrative review:

(a) Installing an antenna on an existing structure other than a tower (such as a building, sign, light pole, water tower or other free standing nonresidential structure) that is less than 50 feet in height, so long as the addition does not add more than 20 feet to the height of the existing structure;

(b) Installing an antenna on an existing tower of any height, including a pre-existing tower and further including the placement of additional buildings or other supporting equipment used in connection with the antenna, so long as the addition of the antenna adds no more than 20 feet to the height of the existing structure;

(c) Locating any alternative tower structure in a zoning district other than industrial or heavy commercial that in the judgment of the Planning and Zoning Commission is in conformity with the goals set forth in division (C)(1) above;

(d) Locating any tower in a zoning district other than industrial or heavy commercial, provided a licensed professional engineer certifies, the tower can structurally accommodate the number of shared users proposed by the applicant; the Planning and Zoning Commission concludes the tower is in conformity with the goals set forth in division (C)(1) above, and the requirements of divisions (C) (4), (5) and (6) above; the tower is to be set back from any existing off-site residence a distance equal to the height of the tower; and that the tower meets the following height and usage criteria:

1. For a single user, up to 90 feet in height;
2. For two users, up to 120 feet in height; and
3. For three or more users, up to 150 feet in height.

(F) *Special use permits.*

(1) *General.* The following provisions shall govern the issuance of special use permits:

(a) If the tower or antenna is not a permitted use under division (D) above, or permitted to be approved administratively pursuant to division (E) above, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.

(b) In granting a special use permit, the governing authority may impose conditions to the extent the governing authority concludes the conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

(c) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.

(2) *Information required.* Each applicant requesting a special use permit under this chapter shall provide a scaled site plan and a scaled elevation view and other supporting drawings, calculations and other documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses

and other information deemed by the governing authority to be necessary to assess compliance with this chapter.

(3) *Factors considered in granting special use permits.* The governing authority shall consider the following factors in determining whether to issue a special use permit, although the governing authority may waive or reduce the burden on the applicant of one or more of these criteria, if the governing authority concludes that the goals of this chapter are better served thereby:

- (a) Height of the proposed tower;
- (b) Proximity of the tower to residential structures and residential district boundaries;
- (c) Nature of uses on adjacent and nearby properties;
- (d) Surrounding topography;
- (e) Surrounding tree coverage and foliage;
- (f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (g) Proposed ingress and egress; and
- (h) Availability of suitable existing towers and other structures as discussed in division (F)(4) below.

(4) *Availability of suitable existing towers or other structures.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the governing authority that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:

- (a) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements;
- (b) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements;
- (c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
- (d) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna;
- (e) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable; and/or
- (f) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(5) *Setbacks and separation.* The following setbacks and separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the governing authority may, reduce the standard setbacks and separation requirements if the goals of this chapter would be better served thereby:

- (a) Towers must be set back a distance equal to the height of the tower from any off-site residential structure;
- (b) Towers, guys and accessory facilities must satisfy the minimum zoning district setback requirements; and
- (c) In zoning districts other than industrial or heavy commercial zoning districts, towers over 90 feet in height shall not be located within one-quarter mile from any existing tower that is over 90 feet in height.

(6) *Security fencing.* Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the governing authority may waive the requirements. as it deems appropriate.

(7) *Landscaping.* The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the governing authority may waive the requirements if the goals of this chapter would be better served thereby:

(a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound;

(b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether; and

(c) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

(G) *Removal of abandoned antennas and towers.*

(1) Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of the antenna or tower shall remove same within 90 days of receipt of notice from the governing authority notifying the owner of the abandonment.

(2) If the antenna or tower is not removed within the 90 days, the governing authority may remove the antenna or tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

(2005 Code, § 14-6-2) (Ord. 97-02-20, passed - -)

§ 152.03 CABLE CUSTOMER SERVICE STANDARDS.

(A) Effective 90 days from the date that each cable provided is notified of the adoption of this chapter, each cable operator shall be subject to the following customer service standards.

(1) *Cable system office hours and telephone availability.*

(a) Cable providers will maintain a local, toll-free or collect call telephone access line, which will be available to its subscribers 24 hours a day, seven days a week.

1. Trained company representatives will be available to respond to customer telephone inquiries during normal businesses hours.

2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(b) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions, measured on a quarterly basis.

(c) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless there is a historical record of complaints, measured on a quarterly basis.

(d) Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.

(e) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) *Installations, outages and service calls.* Under normal operating conditions, each of the following four standards will be met no less than 95% of the time measured on a quarterly basis.

(a) Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system.

(b) Excluding conditions beyond the control of the operator, the cable operator will begin working on service interruptions promptly and in no event later than 24 hours after interruption becomes known. The cable operator must begin action to correct other service problems the next business day after notification of the service problem.

(c) The appointment window alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(d) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(e) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time, which is convenient for the customer.

(3) *Communications between cable operators and cable subscribers.*

(a) *Refunds.* Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of their request or 30 days, whichever is earlier; or

2. The return of the equipment supplied by the cable operator if service is terminated.

(b) *Credits.* Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NORMAL BUSINESS HOURS. Those hours during which most similar businesses in the community are open to serve customers. In all cases, ***NORMAL BUSINESS HOURS*** must include some evening hours at least one night per week and/or some weekend hours.

NORMAL OPERATING CONDITIONS. Those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those ***CONDITIONS*** which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

SERVICE INTERRUPTION. The loss of picture or sound on one or more cable channels.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of 30 days in advance of the changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by these regulations.

(C) In addition to the requirement of division (B) above regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. The notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/ deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain day parts.

(D) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(E) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide the notice using any reasonable written means at its sole discretion.

(F) Notwithstanding any other provision of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, state or franchising authority on the transaction between the operator and the subscriber.

(G) Products and services offered:

(1) Prices and options for programming services and conditions of subscription to programming and other services;

(2) Installation and service maintenance policies;

(3) Instructions on how to use the cable service;

(4) Channel positions of programming carried on the system; and

(5) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(H) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the televisions signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

(2005 Code, § 14-6-3)

CHAPTER 153: CODES ADOPTED

Section

International Building Code

153.001 International Building Code adopted

153.002 Adoption of the NCTCOG recommended amendments to the 2009 International Building Code

National Electric Code

153.010 National Electric Code adopted

153.011 Adoption of the NCTCOG recommended amendments to the 2008 National Electric Code

International Energy Conservation Code

153.025 International Energy Conservation Code adopted

153.026 Adoption of the NCTCOG recommended amendments to the 2009 International Energy Conservation Code

International Fire Code

153.035 International Fire Code adopted

153.036 Adoption of the NCTCOG recommended amendments to the International Fire Code, Option B

153.037 Local amendments

International Fuel Gas Code

153.050 International Fuel Gas Code adopted

153.051 Adoption of the NCTCOG recommended amendments to the 2009 International Fuel Gas Code

Appearance Code

153.065 Building permits

153.066 Characteristics; dwelling units

153.067 Regulations waived

153.068 Request for waiver

Renewable Energy

153.070 Renewable energy

International Residential Code

153.080 International Residential Code Adopted

153.081 Adoption of the NCTCOG recommended amendments to the 2009 International Residential Code

International Mechanical Code

153.095 International Mechanical Code adopted

153.096 Adoption of the NCTCOG recommended amendments to the 2009 International Mechanical Code

International Plumbing Code

153.120 International Plumbing Code adopted

153.121 Adoption of the NCTCOG recommended amendments to the 2009 International Plumbing Code

International Existing Building Code

153.130 Sections 113, 115, 116 and 117 of the 2009 International Building Code adopted

General Provisions

153.135 Conflicts

Uniform Code for Abatement of Dangerous Buildings

153.145 Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted

153.146 Local amendments

153.999 Penalty

INTERNATIONAL BUILDING CODE

§ 153.001 INTERNATIONAL BUILDING CODE ADOPTED.

The 2009 International Building Code (Option B) which is on file in the office of the Building Official is hereby adopted and designated as the Building Code of the City of Heath, to the same extent as if the code was copied verbatim, subject to the deletions, amendments and additions prescribed by this subchapter.

(Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

§ 153.002 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE 2009 INTERNATIONAL BUILDING CODE.

That the 2009 International Building Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) as specified in Exhibit A to Ord. 131210A, which is incorporated herein by reference as if appearing in total and is on file in the office of the Building Official.

(Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

NATIONAL ELECTRIC CODE

§ 153.010 NATIONAL ELECTRIC CODE ADOPTED.

The 2008 National Electric Code which is on file in the office of the Building Official is hereby adopted and designated as the Electric Code of the City of Heath, to the same extent as if the code was copied verbatim, subject to the deletions, amendments and additions prescribed by this subchapter.

(2005 Code, §§ 14-3-1, 14-3-2) (Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

§ 153.011 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE 2008 NATIONAL ELECTRIC CODE.

That the 2008 National Electric Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) as specified in Exhibit B of Ord. 131210A, which is incorporated herein by reference and is on file in the office of the Building Official.

(2005 Code, § 14-3-3) (Ord. 981119B, passed - -; Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

INTERNATIONAL ENERGY CONSERVATION CODE

§ 153.025 INTERNATIONAL ENERGY CONSERVATION CODE ADOPTED.

The 2009 International Energy Conservation Code which is on file in the office of the Building Official is hereby adopted and designated as the Energy Conservation Code of the City of Heath, to the same extent as if the code was copied verbatim, subject to the deletions amendments and additions prescribed by this subchapter.

(2005 Code, § 14-9-1) (Ord. 020815A, passed - -; Ord. 060323A, passed 3-23-2006; Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

§ 153.026 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE 2009 INTERNATIONAL ENERGY CONSERVATION CODE.

That the 2009 International Energy Conservation Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) as specified in Exhibit C of Ord. 131210A, which is incorporated herein by reference as if appearing in total and is on file in the office of the Building Official.

(2005 Code, § 14-9-2) (Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

INTERNATIONAL FIRE CODE

§ 153.035 INTERNATIONAL FIRE ADOPTED.

The 2009 International Fire Code which is on file in the office of the Building Official is hereby adopted and designated as the Fire Code of the City of Heath, to the same extent as if the code was copied verbatim, subject to the deletions, amendments and additions prescribed by this subchapter.

(2005 Code, § 14-2-1) (Ord. 060323A, passed 3-23-2006; Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 120821, passed 8-21-2012)

§ 153.036 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE INTERNATIONAL FIRE CODE, OPTION B.

That the 2009 International Fire Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) Option B Amendments to the 2009 International Fire Code as specified in Exhibit A of Ord. 120821, which is incorporated herein by reference as if appearing in total and is on file in the office of the Building Official.

(2005 Code, § 14-2-2) (Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 120821, passed 8-21-2012)

§ 153.037 LOCAL AMENDMENTS.

The 2006 International Fire Code is further amended in Section 903 to read as follows:

“An Automated Sprinkler system shall be installed in Group R Occupancies in which living area exceeds 6,000 square feet.”

(Ord. 080506B, passed 5-6-2008B ; Ord. 081021B, passed 10-21-2008)

INTERNATIONAL FUEL GAS CODE

§ 153.050 INTERNATIONAL FUEL GAS CODE ADOPTED.

The 2009 International Fuel Gas Code which is on file in the office of the Building Official is hereby adopted and designated as the Fuel Gas Code of the City of Heath, to the same extent as if the code was copied verbatim, subject to the deletions, amendments, and additions prescribed by this subchapter.

(Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

§ 153.051 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE 2009 INTERNATIONAL FUEL GAS CODE.

That the 2009 International Fuel Gas Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) as specified in Exhibit D of Ord. 131210A, which is incorporated herein by reference and is on file in the office of the Building Official.

(Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

APPEARANCE CODE

§ 153.065 BUILDING PERMITS.

(A) The City of Heath shall not issue a building permit for any new single family dwelling unit which is similar in appearance to any dwelling within:

- (1) Four hundred feet from the nearest property line of the dwelling on the same street; or
- (2) Two hundred forty feet from the nearest property line of the dwelling in any direction other than the same street.

(B) All measurements shall be from property line to property line.

(2005 Code, § 14-7-1) (Ord. 990408A, passed - -)

§ 153.066 CHARACTERISTICS; DWELLING UNITS.

(A) In order to be deemed dissimilar for purposes of § 153.065 above the following characteristics as to any dwelling unit shall apply:

- (1) One-story/two-story;
- (2) Variations in roof design; or
- (3) The addition or deletion of design elements such as dormers, gables or cupolas and the like; and

(B) Any two of the following characteristics:

- (1) Exterior material type and color;
- (2) Window and entry design;

- (3) Color and style of roof material;
- (4) Reversal of plan orientation from right to left or left to right; and/or
- (5) Variation in architectural styles.

(2005 Code, § 14-7-2) (Ord. 990408A, passed - -)

§ 153.067 REGULATIONS WAIVED.

The regulations as contained in §§ 153.065 and 153.066 above may be waived in cases where the applicant for a building permit could not be expected to anticipate the design of a neighboring dwelling for which a building permit has already been issued, but is not yet built, particularly where the high quality of building materials and/or building plans overcome the presumed deficiencies of similarity, or where the city has entered into a developers agreement that addresses similar in appearance issues.

(2005 Code, § 14-7-3) (Ord. 990408A, passed - -)

§ 153.068 REQUEST FOR WAIVER.

Any request for a waiver under the provisions of this subchapter shall be heard by the City Council upon receiving a recommendation from the City Manager or his or her designee.

(2005 Code, § 14-7-4) (Ord. 990408A, passed - -)

RENEWABLE ENERGY

§ 153.070 RENEWABLE ENERGY.

See § 159.50 for technical requirements pertaining to wind energy.

(Ord. 090421B, passed 4-21-2009) Penalty, see § 153.999

INTERNATIONAL RESIDENTIAL CODE

§ 153.080 INTERNATIONAL RESIDENTIAL CODE ADOPTED.

The 2009 International Residential Code which is on file in the office of the Building Official is hereby adopted and designated as the Residential Code of the City of Heath, to the same extent as if the code was copied verbatim, subject to the deletions, amendments and additions prescribed by this subchapter.

(2005 Code, § 14-8-1) (Ord. 020404A, passed - -; Ord. 020815B, passed - -; Ord. 051117A, passed - - 2005; Ord. 060323A, passed 3-23-2006; Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

§ 153.081 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE 2009 INTERNATIONAL RESIDENTIAL CODE.

That the 2009 International Residential Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) and specified in Exhibit E of Ord. 131210A, which is incorporated herein by reference and is on file in the office of the Building Official.

(Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

INTERNATIONAL MECHANICAL CODE**§ 153.095 INTERNATIONAL MECHANICAL CODE ADOPTED.**

That the 2009 International Residential Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) and specified in Exhibit E of Ord. 131210A, which is incorporated herein by reference and is on file in the office of the Building Official.

(Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

§ 153.096 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE 2009 INTERNATIONAL MECHANICAL CODE.

That the 2009 International Mechanical Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) and specified in Exhibit F of Ord. 131210A, which is incorporated herein by reference and is on file in the office of the Building Official.

(2005 Code, § 14-4-3) (Ord. 981119B, passed - -; Ord. 031113B, passed 11-13-2003; Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

INTERNATIONAL PLUMBING CODE**§ 153.120 INTERNATIONAL PLUMBING CODE ADOPTED.**

The 2009 International Plumbing Code which is on file in the office of the Building Official is hereby adopted and designated as the Plumbing Code of the City of Heath, to the same extent as if the code was copied verbatim, subject to the deletions, amendments and additions prescribed by this subchapter.

(2005 Code, §§ 14-5-1, 14-5-2) (Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013)

§ 153.121 ADOPTION OF THE NCTCOG RECOMMENDED AMENDMENTS TO THE 2009 INTERNATIONAL PLUMBING CODE.

That the 2009 International Plumbing Code is hereby amended as recommended by the North Central Texas Council of Governments (NCTCOG) as specified in Exhibit G of Ord. 131210A and in Ord. 140422A, which are incorporated herein by reference as if appearing in total and are on file in the office of the Building Official.

(2005 Code, § 14-5-3) (Ord. 981119B, passed - -; Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 131210A, passed 12-10-2013; Ord. 140422A, passed 4-22-2014)

INTERNATIONAL EXISTING BUILDING CODE

§ 153.130 SECTIONS 113, 115, 116 AND 117 OF THE 2009 INTERNATIONAL BUILDING CODE ADOPTED.

Sections 113, 115, 116 and 117 of the 2009 International Building Code, as amended, are hereby adopted as specified in Exhibit A of Ord. 120717C, to the same extent as if such sections of the code were copied verbatim, subject to the deletions, amendments and additions prescribed by this subchapter.

(Ord. 120717C, passed 7-17-2012)

GENERAL PROVISIONS

§ 153.135 CONFLICTS.

(A) Where a provision of the approved codes conflicts with a provision of the City of Heath Engineering Standards of Designs, the provisions of the Engineering Standards for Designs shall control

(B) Where a provision of the approved codes conflict with the city code of ordinances, the city code of ordinances shall control.

(Ord. 080506B, passed 5-6-2008)

UNIFORM CODE FOR ABATEMENT OF DANGEROUS BUILDINGS

§ 153.145 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 1997 EDITION, ADOPTED.

The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, copyrighted by the International Conference of Building Officials, is hereby adopted as the dangerous building code for the City of Heath. One copy of the 1997 Uniform Code for the Abatement of Dangerous Buildings is on file in the office of the City Secretary being marked and designated as the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, copyrighted by the International Conference of Building Officials to the same extent as if such code was copied verbatim, subject to the deletions, amendments, and additions prescribed by this subchapter.

(Ord. 050602B, passed 6-2-2005) Penalty, see § 153.999

§ 153.146 LOCAL AMENDMENTS.

Section 205 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, is amended as follows:

“The Board of Adjustment of the City of Heath shall also serve as Board of Appeals to hear and decide appeals of orders, decisions and determinations made by the building official relative to the application of this code.”

(Ord. 050602B, passed 6-2-2005) Penalty, see § 153.999

§ 153.999 PENALTY.

(A) Any person, firm, or corporation violating any of the provisions of § 153.070 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a penalty of fine not to exceed the sum of \$2,000 for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

(B) A violation of any provision of § 153.121 shall be deemed a misdemeanor punishable as provided by the Code of Ordinances of the city. Additionally, a violation of any provision of § 153.121 shall be deemed to be a nuisance. Notwithstanding the above, in the event a violation results in an imminent risk to human health, safety or welfare, the city may immediately discontinue water service to the subject facility without notice. Notwithstanding the right to immediately discontinue water service without notice, as described herein, the city will attempt to provide notice as is reasonably practical under the circumstances presented. The city will provide customer with necessary information to properly reinstate service.

(C) Any person, firm, corporation or business entity violating any of the provisions of § 153.145 or 153.146 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500, unless the violation relates to fire safety, zoning or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000. Each day's continuing violation under § 153.145 or 153.146 shall constitute a separate offense. The penal provisions imposed under this division (B) shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

(D) Any person violating any other provisions of this chapter shall upon conviction, be subject to a fine in accordance with general provisions of the code and each day in violation shall constitute a separate offense.

(Ord. 080506B, passed 5-6-2008; Ord. 081021B, passed 10-21-2008; Ord. 050602B, passed 6-2-2005; Ord. 090421B, passed 4-21-2009; Ord. 120717C, passed 7-17-2012; Ord. 120821, passed 8-21-2012; Ord. 131210A, passed 12-10-2013; Ord. 140422A, passed 4-22-2014) Penalty, see § 10.99

CHAPTER 154: BUILDINGS

Section

- 154.01 Building permit required for non-agricultural development
- 154.02 Certification of compliance with deed restrictions on application
- 154.03 Certification under oath
- 154.04 [Reserved]
- 154.05 Final plat approval required prior to issuance of building permit
- 154.06 Section does not replace or amend building permits required in other chapters
- 154.07 Quiet hours

- 154.99 Penalty

§ 154.01 BUILDING PERMIT REQUIRED FOR NON-AGRICULTURAL DEVELOPMENT.

A building permit is required prior to any clearing, excavation or construction on any property for the purpose of non-agricultural development.

(2005 Code, § 9-11-1) (Ord. 850905-1, passed 9-5-1985)

§ 154.02 CERTIFICATION OF COMPLIANCE WITH DEED RESTRICTIONS ON APPLICATION.

(A) In addition to other requirements of the Building Code or other ordinances of the City of Heath, any person making application for a building permit within the city shall certify that he or she has made an examination of the title to the property upon which the building or other structure for which the permit is sought to be constructed, and that the building or structure complies in each and every respect with any and all applicable deed restrictions or other covenants or encumbrances of record.

(B) The certification shall be incorporated within the building permit application and shall be in substantially the following language, to-wit:

“I certify that I have made an examination of the title to the property upon which the building or structure, for which this permit is sought, is to be constructed, and the proposed building or structure complies in each and every respect with any and all applicable covenants, deed restrictions and encumbrances of such property.”

(2005 Code, § 9-11-2) (Ord. 120, passed 7-7-1983)

§ 154.03 CERTIFICATION UNDER OATH.

The certification set out in § 154.02 above and incorporated within the building permit application shall be made under oath before a Notary Public of the State of Texas.

(2005 Code, § 9-11-3)

§ 154.04 [RESERVED].**§ 154.05 FINAL PLAT APPROVAL REQUIRED PRIOR TO ISSUANCE OF BUILDING PERMIT.**

A building permit shall not be issued if the final plats have not been approved and duly recorded with the County of Rockwall, and on file with the City of Heath.

(2005 Code, § 9-11-5)

§ 154.06 SECTION DOES NOT REPLACE OR AMEND BUILDING PERMITS REQUIRED IN OTHER CHAPTERS.

This section does not replace or amend in any form the building permits required in other chapters.

(2005 Code, § 9-11-6)

§ 154.07 QUIET HOURS.

(A) No work or activity on a residential or commercial construction site which generates excessively disturbing noise to a person of ordinary sensibilities in the vicinity shall occur between the hours of 8:00 p.m. to 7:00 a.m. of the following morning, Monday through Saturday and all day on Sunday.

(B) Upon good cause being shown, the City Manager or his or her designee may grant a temporary variance to division (A) above.

(2005 Code, § 9-11-7)

(C) An application for a temporary variance shall be submitted in writing, shall be considered a variance request and shall be accompanied by a fee as identified in the fee schedule adopted by separate action by the City Council. Such fee shall be paid at the time of the application.

(Ord. 110503, passed 5-3-2011) Penalty, see § 154.99

§ 154.99 PENALTY.

(A) A person commits an offense if he or she violates by commission or omission any provision of this chapter that imposes upon him or her a duty or responsibility.

(B) (1) A person who violates a provision of this chapter is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or permitted, and each violation is punishable by a fine not to exceed \$500, in accordance with the general provisions of the Code of Ordinances.

(2) In addition to prohibiting or requiring certain conduct of individuals, it is the intent of this chapter to hold a corporation, partnership, or other association criminally responsible for acts or omissions performed by an agent acting on behalf of the corporation, partnership, or other association, and within the scope of his or her employment.

(Ord. 110503, passed 5-3-2011)

CHAPTER 155: FLOOD PROTECTION

Section

General Provisions

- 155.01 Statutory authorization
- 155.02 Findings of fact
- 155.03 Statement of purpose
- 155.04 Methods of reducing flood losses
- 155.05 Definitions
- 155.06 Lands to which this chapter applies
- 155.07 Basis for establishing the areas of special flood hazard
- 155.08 Establishment of development permit
- 155.09 Compliance
- 155.10 Abrogation and greater restrictions
- 155.11 Interpretation
- 155.12 Warning and disclaimer of liability
- 155.13 through 155.25 Reserved

Administration and Enforcement

- 155.26 Designation of the Floodplain Administrator
- 155.27 Duties and responsibilities of the Floodplain Administrator
- 155.28 Permit procedures
- 155.29 Variance procedures
- 155.30 through 155.50 Reserved

Provisions for Flood Hazard Reduction

- 155.51 General standards
- 155.52 Specific standards
- 155.53 Standards for subdivision proposals
- 155.54 Standards for areas of shallow flooding (AO/AH Zones)
- 155.55 Floodways

GENERAL PROVISIONS

§ 155.01 STATUTORY AUTHORIZATION.

The Legislature of the State of Texas has in the Flood Control Insurance Act, Tex. Water Code, § 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City of Heath, Texas does ordain the following.

(Ord. 080902A, passed 9-2-2008)

§ 155.02 FINDINGS OF FACT.

(A) The flood hazard areas of Heath, Texas are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(Ord. 080902A, passed 9-2-2008)

§ 155.03 STATEMENT OF PURPOSE.

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

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

(Ord. 080902A, passed 9-2-2008)

§ 155.04 METHODS OF REDUCING FLOOD LOSSES.

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

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

(Ord. 080902A, passed 9-2-2008)

§ 155.05 DEFINITIONS.

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

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

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

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

AREA OF FUTURE CONDITIONS FLOOD HAZARD. The land area that would be inundated by the 1% annual chance (100 year) flood based on future conditions hydrology.

AREA OF SHALLOW FLOODING. A designated AO, AH, AR/A0, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD. Is the land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V 1-30, VE or V.

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE). The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year, also called the Base Flood.

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

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

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

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

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

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

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

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

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

FLOOD ELEVATION STUDY. An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (such as mudflow) and/or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS). See Flood Elevation Study.

FLOODPLAIN OR FLOOD-PRONE AREA. Any land area susceptible to being inundated by water from any source (see definition of flooding).

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

FLOODPLAIN MANAGEMENT REGULATIONS. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading

ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

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

FLOODWAY. See Regulatory Floodway.

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

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

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

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

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

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such

enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

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

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL. For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

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

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

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

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

RIVERINE. Relating to, formed by, or resembling a river (including tributaries), stream, brook and the like.

SPECIAL FLOOD HAZARD AREA. See Area of Special Flood Hazard.

START OF CONSTRUCTION. (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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

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

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

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

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

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

(Ord. 080902A, passed 9-2-2008)

§ 155.06 LANDS TO WHICH THIS CHAPTER APPLIES.

The chapter shall apply to all areas of special flood hazard with the jurisdiction of Heath, Texas.

(Ord. 080902A, passed 9-2-2008)

§ 155.07 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, “The Flood Insurance Study (FIS) for Rockwall County, Texas and Incorporated areas,” dated September 26, 2008, with accompanying Flood Insurance Rate Maps (FIRM) dated September 26, 2008, and Kaufman County, Texas and Incorporated Areas dated July 3, 2012, with accompanying Flood Insurance Rate Maps (FIRM) dated July 3, 2012, and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.

(Ord. 120619, passed 6-19-2009)

§ 155.08 ESTABLISHMENT OF DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this chapter.

(Ord. 080902A, passed 9-2-2008)

§ 155.09 COMPLIANCE.

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

(Ord. 080902A, passed 9-2-2008)

§ 155.10 ABROGATION AND GREATER RESTRICTIONS.

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

(Ord. 080902A, passed 9-2-2008)

§ 155.11 INTERPRETATION.

In the interpretation and application of this chapter, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 080902A, passed 9-2-2008)

§ 155.12 WARNING AND DISCLAIMER OF LIABILITY.

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

(Ord. 080902A, passed 9-2-2008)

§§ 155.13 THROUGH 155.25 RESERVED.**ADMINISTRATION AND ENFORCEMENT**

§ 155.26 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.

The City Engineer or his/her designee is hereby appointed the Floodplain Administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

(Ord. 080902A, passed 9-2-2008)

§ 155.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(A) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter.

(B) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

(C) Review, approve or deny all applications for development permits required by adoption of this chapter.

(D) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 1334) from which prior approval is required.

(E) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(F) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(G) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(H) When base flood elevation data has not been provided in accordance with § 155.07, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of §§ 155.51 through 155.55.

(I) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(J) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the

community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first completes all of the provisions required by Section 65.12.

(Ord. 080902A, passed 9-2-2008)

§ 155.28 PERMIT PROCEDURES.

(A) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of § 155.52(B);

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

(5) Maintain a record of all such information in accordance with § 155.27(A);

(B) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable;

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Ord. 080902A, passed 9-2-2008)

§ 155.29 VARIANCE PROCEDURES.

(A) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this chapter.

(B) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(C) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

(D) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(E) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.

(F) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in § 155.58(B) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(G) Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (§ 155.03).

(H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(I) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(J) Prerequisites for granting variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon: (a) showing a good and sufficient cause; (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(K) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (1) the criteria outlined in § 155.29(A) - (I) are met, and (2) the structure or other development is

protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. 080902A, passed 9-2-2008)

§§ 155.30 THROUGH 155.50 RESERVED.

PROVISIONS FOR FLOOD HAZARD REDUCTION

§ 155.51 GENERAL STANDARDS.

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

(A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(C) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and

(G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. 080902A, passed 9-2-2008)

§ 155.52 SPECIFIC STANDARDS.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (1) § 155.07, (2) § 155.27(H) or (3) § 155.53(C) the following provisions are required:

(A) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to two feet above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this section as proposed in § 155.28 (A)(1) is satisfied.

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

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

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

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

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

(D) *Manufactured homes.*

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

(2) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (a) outside of a manufactured home park or subdivision, (b) in a new manufactured home park or subdivision, (c) in an expansion to an existing manufactured home park or subdivision, or (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(3) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of division (D) of this section be elevated so that either:

(a) The lowest floor of the manufactured home is at two feet above the base flood elevation; or

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

(E) *Recreational vehicles.* Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (a) be on the site for fewer than 180 consecutive days, or (b) be fully licensed and ready for highway use, or (c) meet the permit requirements of § 155.28(A), and the elevation and anchoring requirements for "manufactured homes" in division (D) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Ord. 080902A, passed 9-2-2008)

§ 155.53 STANDARDS FOR SUBDIVISION PROPOSALS.

(A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with §§ 155.02 through 155.04.

(B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of § 155.08; § 155.28; and the provisions of §§ 155.51 through 155.55.

(C) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to § 155.07 or § 155.27(H).

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

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

(Ord. 080902A, passed 9-2-2008)

§ 155.54 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES).

Located within the areas of special flood hazard established in § 155.07, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(A) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to two feet above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(B) All new construction and substantial improvements of non-residential structures;

(1) Have the lowest floor (including basement) elevated to two feet above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or

(2) Together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(C) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in § 155.28 are satisfied.

(D) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(Ord. 080902A, passed 9-2-2008)

§ 155.55 FLOODWAYS.

Floodways located within areas of special flood hazard established in § 155.07, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(A) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(B) If § 155.55(A) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 155.51 through 155.55.

(C) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

(Ord. 080902A, passed 9-2-2008)

CHAPTER 156: MOVING STRUCTURES

Section

- 156.01 License and bond for moving structures into and across city
- 156.02 Permits for moving of structures
- 156.03 Moving permit
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§ 156.01 LICENSE AND BOND FOR MOVING STRUCTURES INTO AND ACROSS CITY.

(A) No person, firm or corporation, except a licensed mover, hereinafter referred to as mover, shall move any building or structure across, over, along or through any sidewalk, street or alley or highway, public way or public place within the corporate limits of the City of Heath, except as hereinafter specifically provided in this chapter, and every such mover, before engaging in such moving, shall have made application to the Building Inspector of the City of Heath for a license, and the license shall have been approved and issued for the current year.

(1) The fee for the license shall be \$50 per annum, payable on January 1 of each successive year.

(2) An original license obtained after January 1 shall be prorated to the nearest month.

(3) Before the license is issued, the applicant shall file with the City Secretary a surety bond in a form approved by the City of Heath in the sum of not less than \$5,000, saving and keeping the City of Heath harmless from any and all costs, damages and suits that the mover may incur or become liable for in consequence of the injury to any person, private or public property in any manner occasioned in or about the moving of buildings or structures within the city, and to pay for any and all damages to the property that might arise from the use of any of the streets, alleys, boulevards or other public places or ways in the city in the moving of the buildings or structures, and the bonds shall contain a provision for a ten-day written notice to the city of cancellation by the surety; and provided, further, that the surety shall be a licensed insurance company in the State of Texas which is authorized to issue surety bonds and to act as surety or insurer for the mover; and provided, further, that the applicant shall also file with the City Secretary a public liability and property damage insurance policy certificate naming the applicant as the assured and providing for payment of any liability imposed by law upon such applicant to the extent of \$10,000 for each person for bodily injury liability and \$20,000 for bodily injury liability for each accident, and \$5,000 for each accident for property damage liability.

(B) Upon execution of the bond and certificates of insurance, and their approval by the City of Heath, the Building Inspector shall inspect, or cause to be inspected, the equipment and facilities to be used by the mover, and shall determine that the size, design, safety features and equipment of the vehicle and appurtenances are such that their operation on public property shall not cause damage to the pavement or other public improvements, and that the knowledge and experience of the operators is such that the operation of the equipment shall not create a hazard or inconvenience to the public, and upon approval by the city of the equipment and facilities and payment of the license fee, the license shall be issued to the mover.

(1) The license and policy shall run concurrently with the bond, and all such licenses shall expire on December 31 of the year next-following their issuance.

(2) It shall be unlawful for any mover to lend, rent or transfer his or her license, or any right therein contained, to any person, firm or corporation, or for any person to make use of such rights that are not actually his or her own.

(3) Moving subcontractors shall be licensed and bonded as herein provided.

(3) No licensed mover shall allow his or her, or their names to be used by any person, directly or indirectly, to obtain moving permits except as herein provided.

(C) Nothing herein shall require a license for the movement of super-heavy or over-sized equipment for the transportation of commodities over any state or federal highway within the limits of the City of Heath when the movement is within the limits of a valid permit from the State Highway Department, as required by Tex. Trans. Code, § 623.071, and when evidence of the permit is presented to the Building Inspector.

(2005 Code, § 9-7-1) (Ord. 67, passed 5-6-1976) Penalty, see § 10.99

§ 156.02 PERMITS FOR MOVING OF STRUCTURES.

No building or structure shall be moved over, across, along or through any street, public way or private place within the City of Heath until the mover has first obtained a moving permit and, if the structure is to be moved to a place within the city, a building permit must be obtained.

(2005 Code, § 9-7-2)

§ 156.03 MOVING PERMIT.

(A) Moving permit shall be issued only to licensed movers, and shall be issued by the Building Inspector.

(B) Where the structure is to be moved to a location within the city, a moving permit may not be issued unless and until the issuance of a building permit.

(C) The Building Inspector shall collect from the mover, in connection with the issuance of the moving permit, an inspection fee of \$50 where the structure is to be moved to a location within the corporate limits of the city, and \$10 where the structure is to be moved in such a manner that it will pass over or through any part of the city, but will be located and finally placed at a point outside the corporate limits of the city.

(D) School districts and all churches in the City of Heath shall be exempt from all inspection and moving fees.

(E) However, the exemption does not relieve the school district and/or churches from posting the necessary bond and taking out the necessary insurance and permits to do such moving, nor shall the exclusion be construed as to allow the moving into the city of any building precluded by any other applicable chapter of the city.

(2005 Code, § 9-7-3)

§ 156.04 BUILDING PERMITS; STRUCTURES MOVED WITHIN THE CITY.

(A) (1) Where a structure is to be moved to a location within the city, the Building Inspector shall collect, in addition to the fees set forth above, \$150 if the structure which is to be moved is located within ten miles of the corporate limits of the City of Heath, the fee shall be \$150, plus \$.25 per mile for the distance which exceeds ten miles from the corporate limits of the city.

(2) To move a building from one place in the city to another place in the city, the additional inspection fee shall be \$50 in the event the fee provided for herein has been paid and inspection reveals that the building does not comply with the requirements of the city and may not be brought into or through the city, no refund shall be made of the above inspection fee and the entire amount shall be retained by the city to cover the cost of the inspection; however, in such situation, the fee provided for in § 156.03 above shall not be collected and, if the same has been previously collected, it shall be refunded to the applicant.

(B) (1) Before any building permit may be issued as set out herein, the owner of the building and/or the owner of the land upon which the building is to be finally situated shall be present to the Building Inspector complete plans of the improvements to be made upon the building prior to its occupancy or use.

(2) The plans shall provide for improvement of the structure, if necessary, to bring it within the standards of all building codes and other codes and chapters of the city, and of the requirements of this chapter.

(3) The improvements provided for in the plans, if approved, and a building permit issued, shall be completed by the owner and/or builder or contractor improving the structure or building within 120 days of the day of issuance of the building permit.

(4) It shall be unlawful for any owner, contractor or builder making improvements to a building or structure described herein in accordance with the plans presented for building permit to fail to complete the improvements within 120 days, and each and every day the improvements are not completed in accordance with the plans and in accordance with all building codes and other chapters of the city shall constitute a separate offense, and be subject to the fines provided for herein.

(2005 Code, § 9-7-4) Penalty, see § 10.99

§ 156.05 APPLICATIONS FOR MOVING PERMITS.

(A) Any mover desiring to move a building or structure shall file with the Building Inspector a written application setting forth:

- (1) The type and kind of building to be moved;
- (2) The original cost of the building;
- (3) The extreme dimensions of the length, height and width of the building;
- (4) Its present location and the proposed new location by lot, block, subdivision and street number;
- (5) The approximate time the building will be upon the streets of the city and the contemplated route that will be taken from the present to the new location; and
- (6) Other information as may be requested by the Building Inspector.

(B) Before the application for permit is made, the mover shall make arrangements with the public utilities, railroads and other persons, firms or corporations whose facilities are involved in the movement, for the removal, relocation and replacement of wires, poles or other improvements to enable the building or structure to be moved with proper clearance as provided for herein.

(C) The application and other information furnished by the applicant shall be examined and the building or structure sought to be moved inspected, as provided for herein, by the Building Inspector and, if found to be in conformity with the requirements of this code and all other laws and chapters applicable thereto, the Building Inspector shall issue a permit to the mover upon receipt of the required fees as provided herein.

(D) Upon issuance of the permit, the Building Inspector shall cause notice to be given to the Department of Public Safety of the city, and the mover shall notify the railroads and any others who may be affected by the temporary obstruction of the streets and/or right-of-way.

(2005 Code, § 9-7-5)

§ 156.06 ADDITIONAL BUILDING REQUIREMENTS.

(A) In addition to the other requirements of the Building Code and/or chapters of the city, all buildings moved to any place within the city shall be completely painted on the outside surfaces and adequately provided with window screens and screen doors attached to the building.

(B) However, the painting requirement herein shall be waived if the building, when located, is veneered with brick or other building stone, or is covered with asbestos or other finished siding and all trim has been painted.

(C) The painting or veneering shall be done within 120 days after moving the building into place within the city.

(2005 Code, § 9-7-6)

§ 156.07 ESCORT.

No person, firm or corporation shall move or cause to be moved any building or structure across or along any street, public way or private place within the city, unless accompanied or escorted by a police officer or other officer or employee of the city as may be designated by the Director of the Department of Public Safety.

(2005 Code, § 9-7-7)

§ 156.08 PUBLIC SAFETY REQUIREMENTS.

(A) Every building which occupies any portion of public property after sundown during moving, shall have sufficient lights continuously burning in an adequate number and intensity to protect the public and to be clearly seen by traffic.

(B) There shall be a minimum of five red lights placed on each street side of the building being moved, and the red lights shall be attached to the building in such a fashion as to indicate the extreme width, height and size of the building.

(C) If not accompanied in front and in the back of the building by a police or other city vehicle equipped with red flashing lights, there shall be placed, in addition to the red lights on the building, flares at regular intervals for a distance of 200 feet up the street on each side of the building.

(D) When more than 50% of the street measured between the curbs is occupied at night by the building, or when, in the opinion of the Building Inspector, flagmen are necessary to divert or caution traffic, the owner or person moving the building shall employ, at his or her expense, two flagmen, one at each street intersection beyond the building; the flagmen shall remain at these intersections, diverting or cautioning traffic of the approach of the building. The flagmen shall use red lights in flagging traffic at night.

(2005 Code, § 9-7-8)

§ 156.09 COMPLIANCE WITH CODES.

(A) Any residence or other building brought into the city and/or moved to a location within the city shall comply with all the requirements of the Electrical Code, Plumbing Code, Building Code and Zoning Chapter of the city, and it shall be illegal and an offense to bring into the city and locate on real property in the city any building which does not comply with the requirements of the codes and chapters.

(B) Violation of the Comprehensive Zoning Chapter of the City of Heath shall constitute an immediate offense when and if the building or structure is placed upon its final location upon real property, and which building or structure does not comply with the use requirements of the Zoning Ordinance.

(C) However, other code requirements may be complied with in accordance with the plans required herein and such compliance may be made by the completion of the improvements within the 120-day period required herein.

(D) Any code violations other than the zoning chapter violation described shall not be an offense within the 120-day period, but in no event shall any use be made of the building or structure as a residence, business, accessory or any other use if not in full compliance with all codes.

(2005 Code, § 9-7-9)

§ 156.10 CLEARANCE.

(A) It shall be unlawful to operate or attempt to operate any vehicle over, along or across any street, public way or public place in the city unless the length, width and height of the vehicle, including the building or structure, is less than the clearance of any structure, facility, appurtenance, power communication line, warning, instructive or protective device, mailbox or other improvement on public or private property, the location and condition of which complies with all legal requirements of the state statutes or city chapters.

(B) No mover shall cut or handle power or communication lines in any way.

(2005 Code, § 9-7-10) Penalty, see § 10.99

§ 156.11 CLEANUP.

Whenever a building or structure is moved within the city, the premises left shall be left free from unsafe, unsanitary or hazardous conditions, and the lot vacated within the city shall be restored to the established grade of the property, including the filling of basements or cellars, and the leveling of the lot, and, if required otherwise, necessary walls and fences shall be erected.

(2005 Code, § 9-7-11)

§ 156.12 EMERGENCY.

(A) No building or other structure for which a permit has been granted shall be allowed to remain, park or stand upon the public streets or other public property of the city except in cases of emergency, in which event the building or other structure must be removed from the public streets or other public property within 48 hours after the emergency has arisen.

(B) In those cases, there shall be paid to the City of Heath a fee of the cost of moving the structure for each day that the building or other structure remains upon the public streets or public property within the corporate limits of the city.

(2005 Code, § 9-7-12)

§ 156.13 SEWER AND WATER CONNECTIONS.

After any residence or other building or structure has been moved into the city, it shall be illegal and an offense for any person, firm or corporation to use or occupy the residence or other building or structure until the residence, building or structure has been connected to the sanitary sewer and water system of the City of Heath, if available, or to a septic tank or water-supply system approved by the city.

(2005 Code, § 9-7-13)

§ 156.14 VIOLATIONS.

It shall be illegal and an offense for any person to move or cause to be moved any residence, building or structure into or within the City of Heath which does not comply with the requirements of this chapter and without having paid the fees and obtained the permits provided for herein.

(2005 Code, § 9-7-14) Penalty, see § 10.99

§ 156.15 REVOCATION OR SUSPENSION OF LICENSE.

(A) In addition to any other penalties herein provided for, should any person, firm or corporation violate any of the provision of this chapter, the City Council may either revoke or suspend any license issued to such person, firm or corporation under the provisions of this chapter, for such length of time as it in its discretion shall deem necessary, and its decision shall be final.

(B) Notification of the revocation and suspension shall be given in writing by the Mayor to the person holding the license.

(2005 Code, § 9-7-15)

CHAPTER 157: FENCES

Section

- 157.01 Definitions
- 157.02 Fences in residential areas
- 157.03 Fences in agricultural areas
- 157.04 Fences for non-residential areas
- 157.05 Perimeter fences for development/subdivisions and estate lots
- 157.06 Miscellaneous
- 157.07 Permit required
- 157.08 Variances
- 157.09 Exceptions
- 157.10 Nonconforming fences

§ 157.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGRICULTURAL AREA. Property located in the Agricultural District (A) as defined in Chapter 159 of the Code of Ordinances and used for agricultural purposes.

ELECTRIC FENCE. A fence designed and constructed to continuously conduct electrical current.

ESTATE LOT. A residential lot with an area of five acres or greater.

FENCE. Any man-made barrier or any structure of any material, the purpose of which is to provide protection from intrusion (both physical and visual), to mark a boundary, enclose, screen, restrict access, decorate or provide right-of-way edge treatment for any lot, building, structure, swimming pool, spa or development. A gate is considered part of the **FENCE**.

FENCE HEIGHT. **FENCE HEIGHT** shall be measured from grade. Fences situated on a retaining wall shall be measured from the top of the highest ground elevation adjacent to the retaining wall.

FRONT BUILDING LINE. A line adjacent to the front-most portion of a structure containing the main front entrance and generally parallel to the street right-of-way line which the structure faces; not a building setback line.

FRONT BUILDING SETBACK LINE. A line parallel to the street right-of-way line, which the building faces and takes primary access from.

FRONT YARD. An open, unoccupied space on a lot facing a street extending across the front of the lot between the side lot lines and from the front of the main building to the front property or street line.

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

LOT. An undivided tract or parcel of property which is designated as a distinct and separate tract.

NON-RESIDENTIAL AREA. Property that is not zoned residential or agricultural and is primarily commercial, retail or industrial in nature.

PARALLEL FENCE. A fence that runs in the same general direction of, and is located within five feet of, an existing fence. To be considered a **PARALLEL FENCE**, the fence does not necessarily have to maintain a precise constant distance from the other fence.

REAR YARD. An open, unoccupied space on a lot, except for accessory building/structure as herein permitted, extending between the side lot lines and from the rear of the main building to the rear lot line. The **REAR YARD** shall be at the opposite end of the lot from the front yard.

RESIDENTIAL AREA. An area within a platted subdivision or used primarily for residential uses.

SIDE YARD. An open, unoccupied space on a single lot, except for accessory building/structure as herein permitted, on one or two sides of a main building, on the same lot with the building, extending from the main building to a side lot line and from the front of the main building to the rear of the main building.

SIGHT TRIANGLE. The portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and an adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 35 feet from the intersection.

SUBDIVISION/DEVELOPMENT. A platted subdivision or development. For purposes of this chapter, a **SUBDIVISION** or **DEVELOPMENT** consisting of a single lot shall be regulated as a lot and not as a **SUBDIVISION** or **DEVELOPMENT**.

(2005 Code, § 9-15-1) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.02 FENCES IN RESIDENTIAL AREAS.

(A) No fence, guy wire, brace, light standard, sign, vee-arm barbed wire base and arm, or any structure attached to a fence shall protrude over a property line.

(B) No fence is permitted with the sight triangle nor shall any fence obstruct or cause sight restrictions at or near any street, roadway or alley in the city and so as to promote safety for vehicles and pedestrians.

(C) Fences in the front yard and side or rear yards abutting a street may have a maximum height of four feet.

(D) On any property line that is shared with another residential property, the fence shall be located either on the property line or not less than five feet from the property line.

(E) Fences in front of the front building line of the residence or structure on the subject lot shall be ornamental wrought iron or tubular steel and shall have at least 75% open area per linear foot.

(F) Fences on or behind the front building line, except side and rear yards abutting a street, may have a maximum height of eight feet.

(G) Fences on lake front properties shall be ornamental wrought iron or tubular steel with at least 75% open area per linear foot to maintain surrounding lake views. Fences located more than 35 feet

from the rear property line of a lake front lot and constructed entirely behind the main residential structure may be privacy fences constructed in accordance with the provisions of this chapter.

(H) Fences shall be constructed of and repaired with new material of good quality including natural, decay-resistant wood, stained or unstained, for privacy fences, powder coated for metal fences, natural, decay-resistant wood, stained or unstained, for rail fences.

(I) Privacy fences shall be constructed with metal or galvanized steel posts set in concrete at a minimum depth of 18 inches and a distance of no more than eight feet apart. Fences shall be required to be constructed so that the fence posts face the interior side of the fence and, with the exception of the top cap, are not visible from the public way.

(J) Front gates for fences shall be no taller than seven feet, except on estate lots which shall have a maximum front gate height of ten feet.

(K) Masonry or stone columns shall match the main residential structure.

(2005 Code, § 9-15-2) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.03 FENCES IN AGRICULTURAL AREAS.

(A) No privacy fences shall be permitted in Agricultural Areas.

(B) Fences constructed of barbed wire of any type or dimension shall only be permitted for the fencing of livestock. Field fencing and pipe fencing are permitted for any Agricultural Area.

(C) Split rail fences are permitted in Agricultural Areas and may be constructed with wood posts.

(D) Fences may have a maximum height of five feet and shall provide for an open atmosphere.

(E) Electric fences are permitted except adjacent to a residential lot where electric fences shall be prohibited.

(F) The use of razor wire shall be prohibited.

(G) Fences in front of the front building line of the residence or structure on the subject lot shall have at least 75% open area per linear foot.

(H) No fence shall be permitted within the sight triangle.

(2005 Code, § 9-15-3) (Ord 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.04 FENCES FOR NON-RESIDENTIAL AREAS.

When required by the Zoning Ordinance, fences and screening walls shall comply with the following requirements:

(A) Fences in Non-Residential Areas shall be masonry or ornamental wrought iron and shall be have least 75% open area per linear foot in front of the front building line of the structure. All other fencing shall be considered in conjunction with the site plan.

(B) No fence shall be permitted within the sight triangle.

(2005 Code, § 9-15-3) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.05 PERIMETER FENCES FOR DEVELOPMENT/SUBDIVISIONS AND ESTATE LOTS.

(A) Perimeter fences for development/subdivisions and estate lots should provide an open atmosphere.

(B) *Fence design.*

(1) No more than 10% of the total length shall be masonry columns.

(2) The height of the masonry columns shall not exceed ten feet.

(3) The remainder of the fence shall be of ornamental or wrought iron type with a maximum height of eight feet, with a maximum of 12 inches and a minimum of four inches minimum between the vertical bars.

(4) Posts are to be no more than eight feet apart.

(C) No fence shall be permitted within the sight triangle.

(D) No fence shall be constructed that will obscure existing view corridors from any street, roadway, or alleyway in the city.

(2005 Code, § 9-15-4) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.06 MISCELLANEOUS.

These provisions shall apply to all fences.

(A) Fences shall be maintained in good repair by the owner. **GOOD REPAIR** shall mean that:

(1) The fence shall not be out of vertical alignment more than one foot from the vertical height measured at the top of the fence for fences greater than four feet in height; except, however, for fencing four feet or less in height, the fence shall not be out of vertical alignment more than six inches from the vertical height measured at the top of the fence; and

(2) Any and all broken, loose, damaged, insect damaged, or missing parts (i.e., slats, posts, wood rails, bricks, panels) shall be replaced or repaired.

(B) Unless otherwise allowed within this chapter, fences constructed of chained link, wire fencing including chicken wire, barbed wire or razor wire shall not be permitted.

(C) Electric fences are prohibited except in Agricultural Areas as provided in § 157.03 (E).

(D) All structural elements of a fence shall remain in sound condition as determined by the Building Official.

(E) When a fence is to be located on a key lot, the regulations regarding height, location and materials applicable to the front yard or front building line shall apply regardless of where the fence is situated.

(F) Key lot fences shall have at least 75% open area per linear foot and may be located up to five feet from the property line of the side of the house. A fence that has at least 75% open area per linear foot may be located in the front yard building line of a key lot.

(G) All fences that include an access entry gate must meet all requirements of the approved International Fire Code.

(H) Fences may not be constructed in the 100-year floodplain, except as approved by the City Engineer.

(I) No fence shall be permitted within a sight triangle.

(J) Fences enclosing a permitted sports court may be constructed of chain link materials but must be vinyl coated.

(K) If a fence has stone or masonry columns, the column height may exceed the permitted height of the fence by up to six inches except as provided in § 157.05 . All stone or masonry columns four feet or greater in height shall have a footing approved by the Building Official.

(L) Parallel fences are prohibited.

(M) Should regulations in this chapter conflict with each other, the most restrictive regulation shall apply.

(2005 Code, § 9-15-5) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.07 PERMIT REQUIRED.

A permit is required for construction of a new fence, alteration or repair of an existing fence if the repair exceeds 25% of the total fence area. A fence permit fee shall be established by the City Council.

(Ord. 140722A, passed 7-22-2014)

§ 157.08 VARIANCES.

(A) The City Council may allow a variance to the provisions of this chapter after a public hearing if it determines that the enforcement of a provision in a particular instance:

- (1) Is not in the best interests of the public;
- (2) Constitutes waste or inefficient use of land or other resources;
- (3) Creates an undue hardship on the applicant for a permit; or
- (4) Does not serve its intended purpose, is not effective or necessary.

(B) Before the tenth day prior to the public hearing on the variance, the city shall send notice via regular mail to all property owners, as indicated by the most recent tax appraisal roll, within 200 feet of the property on which the variance is requested.

2005 Code, § 9-15-6) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.09 EXCEPTIONS.

(A) Fences existing and in place at the time of the enactment of this chapter shall be excused from permit provisions. Any such fence or any fence in the area annexed by the city after the effective date hereof shall be subject to this chapter in the event of reconstruction modification, enlargement, extension, alteration or any construction thereto other than normal maintenance.

(B) City of Health municipal properties shall be excepted from the requirements of this chapter.
(2005 Code, § 9-15-7) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.10 NONCONFORMING FENCES.

(A) An existing fence that was lawfully permitted and constructed, and does not conform to the provisions of this chapter on the date of adoption, may be maintained in accordance with the maintenance provisions contained herein.

(B) If the repair area of an existing fence that does not conform to the provisions of this chapter, does not exceed 50% of the total area aggregated on a rolling 12-month basis, the fence may be repaired with new material of like design and color.

(C) If the repair area of an existing fence that does not conform to the provisions of this chapter, exceeds 50% of the total area aggregated on a rolling 12-month basis, the fence must be removed or replaced and the new fence must conform to the provisions of this chapter.

(Ord. 140722A, passed 7-22-2014)

CHAPTER 158: SUBDIVISIONS

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SUBDIVISION REGULATIONS

§ 158.01 JURISDICTION.

All plats and subdivisions of land, including development plats, within the corporate limits of the city, and all plats and subdivisions of land, including development plats, outside the corporate limits of the city and within the extraterritorial jurisdiction of the of the city, and all land outside the corporate limits of the city that the City Council may annex, by petition or otherwise, shall conform to the rules and regulations of this chapter.

(2005 Code, § 13-1-1) (Ord. 900706A, passed 6-7-1990; Ord. passed 4-21-2005; Ord. 070607A, passed 6-7-2007)

§ 158.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALLEY. A minor public right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular and utility service access to the back or sides of properties otherwise abutting on a street.

BUILDING SETBACK LINE. The line on a plat delineating the nearest point to which buildings may be located to a street line, alley line or building lot line.

CITY MANAGER. The City Secretary, Administrator or other administrative officer who may be designated by the City Council to perform such functions.

COMMISSION. The Planning and Zoning Commission of the city.

DEAD END STREET. A street, other than a cul-de-sac, with only one outlet.

DEVELOPMENT PLAT. The map, drawings or chart pursuant to Tex. Local Gov't. Code, § 212.045, as may be amended, where a plat under Tex. Local Gov't. Code, § 212.004 may not be required. A **DEVELOPMENT PLAT** is required of any person who proposes the development of a tract of land that does not otherwise require a plat and shall be submitted for approval in accordance with the procedures established for final plat approval.

ENGINEER. A person duly authorized under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering, and when reference is made to City Engineer, the designation means either an engineer directly employed by the city or the city's engineering consultants, as the case may be.

INSPECTOR. A person duly authorized by the City Manager who may be employed by the city or by the city's engineering consultants, as the case may be, and designated to inspect any portion or all of the construction performed in the subdivision either on a part-time or full-time basis. His or her duties shall consist of inspecting all work during construction and/or after completion to determine compliance with the plans, specifications and subdivision regulations, with authority to stop the work during construction for non-completion, if the work is defective.

LOCAL RESIDENTIAL or MINOR STREET. A public thoroughfare which is intended primarily to serve as access to residential property within a neighborhood interior or limited residential district and is not aligned or located to attract other than limited local traffic movements.

LOT. An undivided tract or parcel of land having frontage on a public street and which is, or in the future, may be offered for sale, conveyance, transfer or improvement as a building site; which is designated as a distinct and separate tract.

MAJOR STREET. A principal traffic artery, more or less continuous across a major portion of the city, which is intended to connect remote parts of the city, or areas adjacent thereto, and which is designated on the major thoroughfare plan of the city as a major thoroughfare.

PLAT. The map, drawings or chart on which a subdivider's plan is presented and which he submits for approval and intends to record in final form.

PROTECTED FLOOD PLAIN. Also referenced as the 100-year floodplain with fully developed conditions for the entire watershed. The area that is certified by a professional engineer to be within the 100-year floodplain, assuming build-out or fully developed conditions for the entire area within the relevant watershed.

REPLATTING (RESUBDIVISION). Replatting is the rearranging of any part of a block, street or alley of a previously platted subdivision.

SECONDARY STREET. A secondary street is one which is continuous through several districts and is intended as a connecting street between residential districts and a collector street providing access to major streets, business districts or places of employment.

STREET WIDTH. Street width is the shortest distance between the lines which delineate the right-of-way of the street.

SUBDIVIDER. Any person or agent thereof, dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term **SUBDIVIDER** shall be restricted to include only the owner, equitable owner or authorized agent of the owner, of the land sought to be subdivided.

SUBDIVISION. A division of any tract of land situated within the corporate limits, or within the extraterritorial jurisdiction of the city, into two or more parts of the purpose of laying out any subdivision of any tracts of land or any addition of any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys or parts or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto for the purpose, whether immediate or future, of creating building sites. **SUBDIVISION** includes resubdivision, but it does not include the division of land for agriculture purposes in parcels or tracts of five acres or more which do not involve the creation of any new street, alley or easement of access.

SURVEYOR. A licensed state land surveyor or a registered public surveyor as authorized by the state statutes to practice the profession of surveying.

(2005 Code, § 13-1-2) (Ord. 040701D, passed - -; Ord. passed 4-21-2005; Ord. 070607A, passed 6-7-2007)

§ 158.03 POLICY.

(A) *Approval required.* It shall be unlawful for any owner of land to lay out, subdivide, plat, amend a plat or replat any land into lots, blocks and streets within the city, or within the extraterritorial jurisdiction of the city without approval as provided herein. It shall be unlawful for any such owner or agent to offer for sale or sell property therein or thereby, which has not been laid out, subdivided, platted or replatted with approval as provided herein.

(B) *City improvements to be withheld until approval.* The city hereby defines its policy to be that the city will withhold all city improvements of whatever nature, including the maintenance of streets and furnishing of sewerage facilities and water service from all additions and subdivisions, the platting of which has not been approved as provided herein.

(C) *Street numbers and building permits to be withheld until approval.* No street number and no building permit shall be issued for the erection of any building in the city on any piece of property other than the original or re-subdivided lot on a duly approved and recorded subdivision without the written approval as provided herein.

(2005 Code, § 13-1-3) (Ord. passed 4-21-2005; Ord. 070607A, passed 6-7-2007; Ord. 090901A, passed 9-1-2009) Penalty, see § 10.99

§ 158.04 PRE-APPLICATION CONFERENCE.

(A) The applicant is encouraged to schedule an appointment and meet with the city staff to discuss the procedures for approval of a proposed plat and the requirements for a general layout of streets and/or reservations of land, street improvements, drainage, sewerage, fire protection and similar matters, as well as the general availability of existing services.

(B) A request for a pre-application conference shall be accompanied by a written statement that any proposed development concept discussed at the pre-application conference or submittal in accordance with § 158.05 below herein is not intended as a plan of development or application for plat approval.

(C) No other applications or plans for development will be presented, reviewed or accepted at the pre-application conference. A pre-application conference is optional and shall not be required as a standard of approval of the development application.

(2005 Code, § 13-1-4) (Ord. passed 4-21-2005; Ord. 050818, passed - -)

§ 158.05 CONCEPT PLAN.

(A) It may be determined at the pre-application conference that an area development concept plan will be required prior to consideration of a preliminary plat. An area development concept plan may be required if the development of the subject area will affect the development pattern of adjacent land or if the subject area will be platted in stages. The approved area development concept plan shall be used as a guide in approving future subdivisions in the defined area.

(B) The area development concept plan, when required, shall be submitted along with a completed application/check list form. Eight copies of the plan drawn at scale of not less than 400 feet to the inch will be required. If more detailed contour information is not available, the USGS map contours may be used for concept planning purposes in most cases. The area development concept plan shall include all land determined to be affected by the development pattern of the subject area. The area development concept plan shall contain or have attached thereto:

- (1) Names and addresses of the subdividers, record owner, land planer, engineer and/or surveyor;
- (2) Proposed name of the subdivision;
- (3) Location in relation to rest of the city and boundaries of proposed subdivision;
- (4) A schematic layout of the entire tract and its relationship to adjacent property and existing adjoining development;

- (5) Proposed major categories of land use showing existing and proposed zoning;
- (6) Proposed number of dwelling units and population densities;
- (7) Proposed and existing arterials and collector streets to serve general area;
- (8) Location of sites for parks, schools and other public uses as shown in the comprehensive plan;
and
- (9) Significant natural drainage features including drainage courses and wooded areas, as delineated on USGS topographic maps or any other topographic maps showing equivalent information.

(2005 Code, § 13-1-5) (Ord. passed 4-21-2005)

§ 158.06 PRELIMINARY PLAT.

(A) An application in writing for tentative approval of a preliminary plat along with eight prints of the proposed subdivision shall be filed with the City Secretary at least 14 days prior to the meeting of the Planning and Zoning Commission at which time approval is asked.

(B) The preliminary plat shall be submitted on standard 24-inch by 36-inch paper at a scale of one inch equals 100 feet by the subdivider or his or her agent prior to the sale, offering for sale of any lots, tract or building site and prior to completion of final surveys of streets or lots prior to the grading or construction work on any streets and before any map of the subdivision is prepared in form for recording.

(C) Every application for plat approval shall be subject to a determination of completeness by the city staff.

(D) No application shall be accepted for filing or processing unless the request is accompanied by the following in accordance with the manual of standard design, manual of water distribution, and manual of street and drainage.

(1) *Location map.*

(a) A vicinity sketch or key map at scale of not more than 400 feet to the inch for all subdivisions exceeding five acres in size or containing ten or more lots.

(b) The sketch or map shall show existing subdivision, streets, property lines and recorded names of the owners of the adjoining parcels.

(c) It shall also show how the streets and alleys of the proposed subdivisions or undeveloped property and the relationship of the development to existing or proposed major and secondary thoroughfares.

(2) *Names of owner and the like.* The preliminary plat shall show the name or names of the owner and/or subdivider and the name of the engineer, land planner or surveyor responsible for the preparation of the plat.

(3) *Identification.* The proposed name of the subdivision (which must not be so similar to that of an existing subdivision as to cause confusion) and names of adjacent subdivisions and landowners shall be shown on the plat.

(4) *Boundary lines and the like.*

(a) Location of boundary lines and width and location of platted streets and alleys within, or adjacent to, the property; physical features of the property, including location of any existing utilities with the size of sewer and water mains.

(b) The outlines of wooded areas or the location of important individual trees is required. For all plats, the boundaries and acreage of the protected floodplain must be shown.

(c) Additionally, contours must be shown at intervals of two feet. All elevations shown shall be referred to sea-level datum. The acreage of the property is to be indicated.

(5) *Location and width of proposed streets and other features.*

(a) The location and width of the proposed streets, roads, lots, alleys, easements, widening of existing thoroughfares, and other features, and their location in relation to platted streets, alleys and easements in adjacent subdivisions shall be shown.

(b) The street layout shall be in conformity with a plan for the most advantageous development of the entire neighborhood areas.

(c) Whenever the proposed subdivision contains or is adjacent, or parallel to a railroad right-of-way or a major thoroughfare or freeway or expressway standards, provision shall be made for a street approximately parallel to and on each side of the right-of-way to provide reasonable use of the intervening land.

(d) Proposed streets shall be adjusted to the contour of the land so as to produce useable lots and streets of reasonable gradient.

(6) *Plat contents.* The horizontal scale of the preliminary plat shall not be less than 100 feet to the inch and the plat shall also show:

(a) North point, scale and date;

(b) The boundary line, accurate in scale, of the tract to be submitted;

(c) The names of all proposed streets;

(d) The layout, number and approximate dimension of all proposed lots or building tracts and the square feet of each;

(e) All parcels of land intended to be dedicated to public use or reserved for the common use of owners of lots or sites in the subdivision, and the acreage; and

(f) Any and all arrangement of lots, building lines or streets proposed.

(7) *Profiles and cross sections.* Profiles and cross sections may be required sufficient to ascertain that the preliminary plat proposals will function in accordance with the standard of the city.

(8) *Zoning information.*

(a) A designation shall be shown of the proposed uses of land within the subdivision; that is, the classified type of residential use by zoning ordinance, location of retail classification of industrial sites by zoning ordinance classification, and sites for churches, schools, parks or other special uses, and their acreage.

(b) A master plan may be required to show the proposed development and densities.

(9) *Certificates.* The following certificates shall be placed on the preliminary plat.

(a) Reviewed for preliminary approval.

Planning and Zoning Commission Chairperson Date

(b) Approved for Preparation of Final Plat:

Mayor, City of Heath Date

(10) *Subdivider's statement.* A preliminary plat application shall be accompanied by a written statement, signed by the subdivider stating that the developer will comply with all the city requirements in the proposed subdivision and all the proposals shall conform to or exceed the standards for the improvements prescribed by the city. The statement shall also acknowledge that a final plat must be filed within one year of preliminary plat approval, unless extension is granted by the Planning and Zoning Commission.

(11) *Application processed.* The processing of an application by any city official or employee prior to the time the application is determined to be complete shall not be binding on the city as the official acceptance of the application for filing, and the incompleteness of the application shall be grounds for denial or revocation of the application. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of these subdivision regulations.

(12) *Submission.* Following submission of a plan of development or plat application, the director shall make a determination in writing whether the plan or application constitutes a complete application for a master plat, preliminary plat or final plat not later than the tenth business day after the date the application is submitted. The determination shall specify the documents or other information needed to complete the application and shall state the date the application will expire if the documents or other information is not provided.

(13) *Filing.* An application for approval of a master or a preliminary plat that is filed on or after April 27, 2005, or any subsequent preliminary or final plat application filed after approval of such master plat or preliminary plat, shall be deemed complete on the eleventh business day after the application has been received, if the applicant has not otherwise been notified that the application is incomplete.

(14) *Completion.* If an application for plat approval is not completed on or before the forty-fifth day after the application is submitted to the director for processing the application in accordance with his or her written notification, the application will be deemed to have expired, and it will be returned to the applicant together with any accompanying documents. Thereafter, a new application for approval of the master plat, preliminary plat or final plat must be submitted. The city may retain any fee paid for reviewing the application for completeness.

(15) *Time period.* The time period established by state law or subdivision regulations for processing or deciding an application shall commence on the date that a complete application has been accepted for filing, which date shall be deemed the official filing date.

(16) *Decision.*

(a) All plat applications shall be decided within 30 days from the official filing date.

(b) An applicant may request in writing a waiver of the decision time.

(c) The waiver request shall contain a statement of the reasons for the waiver and the time for which a waiver is sought.

(d) No waiver shall be granted for a period less than the Planning and Zoning Commission's next regularly scheduled meeting.

(e) Waiver requests which have not been received by the director on or before the Friday prior to the Planning and Zoning Commission meeting at which action is to be taken on the plat application shall be deemed denied and action shall be taken on the plat application at the meeting as scheduled.

(17) *Subject to interlocal agreement.* Where the land to be platted lies within the extraterritorial jurisdiction of the city and is subject to an interlocal agreement under Tex. Local Gov't. Code, Ch. 242, no plat application shall be accepted as complete for filing by the city staff unless the application is accompanied by verification that a copy has been delivered to the county, in which the land subject to the application is located. In the absence of a waiver request, if the city has not received a decision form the county on matters which are to be determined by the county under the interlocal agreement, the application for plat approval shall be denied.

(18) *Land inside city limits.*

(a) For land inside city limits, no plat application shall be determined to be complete where the intended use or intensity of use of the land is not authorized in the zoning district in which the property is located, unless the application is accompanied by a copy of the zoning ordinance or other certification verifying that the proposed use for which the application is submitted is authorized by the zoning district in which the property is located.

(b) If a request to change the zoning for the land to be platted to allow the development proposed in the plat is pending, the zoning application shall be decided before a determination is made whether the plat application is complete.

(c) If the zoning application is denied, the plat application shall be deemed incomplete. For newly annexed land, no plat application will be accepted for any use or intensity of use not authorized in the Agricultural Zoning District until the property has been permanently classified on the zoning district map.

(19) For purposes of determining a vested rights petition pursuant to § 158.23 below, no vested rights accrue solely from the filing of an application that has expired pursuant to this section, or from the filing of a complete application that is subsequently denied.

(2005 Code, § 13-1-6) (Ord. 040701D, passed - -; Ord. 041021E, passed 10-21-2004; Ord. passed 4-21-2005; Ord. 050818, passed - -2005)

§ 158.07 FINAL PLAT.

(A) After the preliminary plat has been tentatively approved, a final plat, in the form of a record plat, shall be prepared in accordance with the conditions of approval and submitted to the city's engineer and the City Inspector for review and transmission to the City Planning and Zoning Commission. A letter shall be required from any private water supply company prior to final plat approval stating that they have reviewed the water plans and that sufficient volume and pressure for domestic use and fire protection will be provided. Eight prints of the plat and one mylar shall be filed in the office of the City Secretary at least 14 days prior to the meeting at which time final approval is asked. The mylar plat shall be submitted on a scale of 100 feet to one inch and one reduced print shall be of a size which will fit on an 18-inch by 24-inch sheet for filing with the county. The final plat shall show, or be accompanied by the following information:

(1) The names of the owner and/or subdivider and of the licensed state and land surveyor responsible for the plat;

(2) The name of the subdivision and adjacent subdivisions, the name of streets (to conform whenever possible to existing street names) and numbers of lots and blocks in accordance with

alphabetical block arrangement and numerical lot arrangement. In case of branching streets, the lines of departure shall be indicated. (See general requirements);

(3) An accurate boundary survey and description of the property, with bearings and distances referenced to survey lines and established subdivisions, and showing the lines of adjacent lands and the lines of adjacent streets and alleys, with their width and names. Street, alley and lot lines in adjacent subdivisions shall be shown in dashed lines. North point, scale and date shall be shown;

(4) Locations of proposed lots, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and decimal fractions of feet, with the length of radii and of arcs of all curves, all angles, and with all other engineering information necessary to reproduce the plat on the ground. Dimensions shall be shown from all angle points. For all plats, the boundaries and acreage of the protected floodplain must be shown. All elevations shown shall be referred to sea level datum. All lots or building sites shall conform to the standards prescribed by the zoning ordinance for the district or districts in which the subdivision is located. All streets, alleys, drainage and public utilities shall conform to the specifications of the city;

(5) The locations of building lines on front and side streets and the location of utility easements;

(6) An instrument of dedication, signed and acknowledged by the owner or owners and by all other parties who have a mortgage or lien interest in the property, showing all restrictions, reservations and/or easements, if any, to be imposed and reserved in connection with the addition. The restrictions shall contain the following provisions, along with any other restrictions which may be imposed: No house, dwelling or unit or other structure shall be constructed on any lot in this addition by the owner or any other person until:

(a) Such time as the developer and/or owner has complied with all requirements of the Platting Ordinance of the City of Heath regarding improvements with respect to the entire block on the street and/or streets on which the property abuts (a corner lot shall be regarded as abutting on both intersecting streets adjacent to the lot), including the actual installation of streets, water, sewer, drainage structures, and storm sewers and alleys, all according to the specifications of the City of Heath;

(b) Until an escrow deposit, sufficient to pay for the cost of such improvements, as determined by the city's engineer and/or other designated person, computed on a private commercial rate basis, has been made with the City Secretary, accompanied by an agreement signed by the developer and/or owner, authorizing the city to make such improvements at prevailing private commercial rates, or have the same made by a contractor and pay for the same out of the escrow deposit, should the developer and/or owner fail or refuse to install the required improvements within the time stated in such written agreement, but in no case shall the city be obligated to make such improvements itself. The deposit may be used by the owner and/or developer as progress payments as the work progresses in making such improvements by making certified requisitions to the City Secretary, supported by evidence of work done; or

(c) Until the developer and/or owner files a corporate surety bond with the City Secretary in a sum equal to the cost of the improvements for the designated area, guaranteeing the installation thereof within the time stated in the bond, which time shall be fixed by the City Council of the City of Heath.

(7) These restrictions with respect to required improvements, are made to insure the installation of the required improvements and to give notice to each owner and to each prospective owner of lots in the subdivision until said required improvements are actually made or provided for on the entire block on the street and/or streets on which the property abuts as described herein and in compliance with the City of Heath specifications;

utilities needed to service the subdivision and should accompany the final plat and be approved by the City Engineer and be in compliance with the city standards;

(14) Typical cross sections shall be shown of the type and width of paving proposed for the streets. Curbs and gutters, pavement types and drainage structure design standards of the city, in effect at the time of submission of the plat, shall be used, subject to the approval of the city's engineer and/or Planning and Zoning Commission; and

(15) Subdivider's certificate: The plat shall be accompanied by the following certificate:

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT does hereby adopt this plat designating the hereinabove described property as Rockwall County, Texas, an addition to the City of Heath, Texas, and hereby dedicates to the public use forever the streets shown thereon, and hereby reserves the easement strips shown on this plat for the purposes stated and for the mutual accommodation and use of all utilities desiring or using same. The City of Heath and public utilities shall, at all times, have the full right of ingress and egress to or from their respective easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, reading meters, and adding to or removing all or parts of their respective systems without the necessity of procuring permission from anyone. The City of Heath or Rockwall County will not be responsible for any claims of any nature resulting from or occasioned by the establishment of grades on streets in this subdivision.

Witness my hand this _____ day of _____ 2 _____,

(Subdivider)"

(B) After approval of the plat, a copy of the original shall be furnished to the city, complete with all necessary signatures. All figures and letters shown must be plain, distinct and of sufficient size to be easily read, and must be of sufficient density to make a lasting and permanent record.

(C) When more than one sheet is used for a plat, a key map showing the entire subdivision at smaller scale with block numbers and street names, shall be shown on one of the sheets or on a separate sheet of the same size.

(D) After the final plat has been approved by the Planning and Zoning Commission, the plat shall be submitted to the City Council for approval.

(E) (1) The engineer or surveyor responsible for the plat shall place permanent monuments at each corner of the boundary survey of the subdivision and at the center line intersection point of all streets. These monuments shall be a concrete post, six inches in diameter and two feet long, or other such type of monuments as shall be approved by the City's Engineer and/or City Manager. The precise point of intersection is to be indented on the top of the monument. Block corners shall be in reference to these monuments and the bearing and distances of the reference lines filed in written form with the city's engineer and/or City Manager. Top of monuments shall be set to pavement grade in permanent type pavement, two inches below grade in non-permanent type pavements and flush with existing ground level in non-pavement areas. Locations of monuments shall be shown on the final plat.

(2) The accurate location, material and size of all monuments shall be approved by the city's engineer. For all subdivision or developments, global positioning systems (GPS) shall be used to establish the location of a minimum of two corners of the subdivision. The establishing of the location of one additional monument by GPS may be required for each additional 20 acres or fraction thereof for developments that are larger than 20 acres. These monuments shall be tied vertically and horizontally to the city's existing GPS coordinate system. All GPS coordinates shall be determined

such that the maximum error does not exceed 0.05 feet. Elevations and the location of all other subdivision corner monuments shall be established to at least third order accuracy.

(3) GPS monuments shall be constructed of a four-inch diameter reinforced concrete monument at least six feet deep set flush with the ground. A brass or aluminum disc shall be set in the top of the monument and shall have the monument number, elevation and registration number of the surveyor stamped in the disc. The surveyor shall determine the Texas State Plan Coordinates and elevation of the monument and file a survey report with the city showing this information.

(F) An owner and/or developer can with justifiable reason obtain approval of a section of an addition for which tentative or conditional approval was obtained on a preliminary plat provided he or she meets all the requirements of this chapter with reference to the section in the same manner as is required for a complete addition. In the event a subdivision and the final plat thereof is approved by the City Council in sections, each final plat of each section is to carry the name of the entire subdivision, but is to be distinguished from each other section by a distinguishing subtitle. Block number shall run consecutively throughout the entire subdivision, even though the subdivision may be finally approved in sections. All costs which the city may incur because of this development may be recovered by the city from the developer with the approval of the City Council.

(G) The owner shall record the approved final plat within 365 days of the date of approval by the City Council. If the property owner fails to record the approved final plat within the period as contained in division (A)(13) above, approval of the final plat shall lapse, as well as any preliminary plat or master plat for the same land. Thereafter, the subdivider or property owner shall be required to submit a new master plat or preliminary plat application, as required by this chapter, subject to all zoning and subdivision standards then in effect, for the land subject to the expired final plat.

(1) Thirty days prior to the lapse of approval for a final plat, the property owner may petition the City Council to extend or reinstate the approval. The petition shall be considered at a public meeting of the Council.

(2) In determining whether to grant such request, the Council shall take into account the reasons for lapse, the ability of the property owner to comply with any conditions attached to the original approval, the extent to which the property owner agrees to abide by newly adopted subdivision regulations, and any changed conditions in the surrounding area which would make an extension undesirable. The Council shall extend its approval of the plat, or deny the request.

(3) The Council shall not extend the period that a final plat approval is valid to more than one year from the date of its original approval by the Council.

(4) At any time following the lapse of approval of a final plat, a property may request, and the Council may approve, at its discretion, a reinstatement of the final plat. The Council shall reinstate a final plat only when it determines that it would be in the public interest do to so to avoid unnecessary review of a new plat application, and when the pattern of development proposed by the plat would not be the detriment of any nearby area or the general development of the city.

(H) A final plat approved after May 11, 2000 and prior to the effective date of this section, that has not been recorded by the effective date of this section, and to which any other expiration provision does not apply, shall expire the later of two years from the date the plat was approved by the Planning and Zoning Commission or at 5:00 p.m. on September 1, 2005, unless the property owner can demonstrate that:

(1) Costs for development of the land subject to the final plat, including but not limited to the costs associated with roadway, utility and other infrastructure facilities designed to serve the land in whole or in part, but exclusive of land acquisition costs, were incurred in the aggregate amount of 5% of the most recent appraised market value of the land subject to the final plat;

(2) Fiscal security was posted after approval of the final plat to ensure performance of an obligation required for all or a part of the land subject to the approved final plat; or utility connection fees or impact fees for all or part of the land subject to the approved final plat were paid;

(3) Expiration of a final plat pursuant to this section results in automatic termination of any approved master plat or preliminary plat for the same land; and

(4) The City Council may grant an extension of the time for expiration of the approved final plat for a period not to exceed one year from the date of approval of the application, provided that a request for extension is made in writing at least 30 days before the final plat expires. Every request for extension shall include a statement of the reasons why the expiration date should be extended. The Council may grant a request for an extension taking into account the reasons for the requested extension, the ability of the applicant to comply with any conditions attached to approval of the final plat, whether extension is likely to result in timely completion of the project, and the extent to which any newly adopted regulations should be applied to the proposed subdivision.

(I) Notwithstanding the printed requirements of for submission of plats, all documents shall be submitted in an electronic version as follows:

(1) Electronic formats for maps and plats shall be one of the following:

- (a) AutoCAD drawing files; DWG format;
- (b) AutoCAD data exchange; DXF format;
- (c) Bitmapped; BMP format at a resolution of not less than 600 dpi;
- (d) JPEG; at a resolution of not less than 600 dpi;
- (e) Encapsulated PostScript; EPS format; or
- (f) TIFF; a resolution of not less than 600 dpi.

(2) Electronic formats for text and photographic documents shall be one of the following:

- (a) Microsoft Word;
- (b) Microsoft PowerPoint; or
- (c) Electronic formats listed above except AutoCAD.

(3) Electronic copies may be submitted on a CD.

(2005 Code, § 13-1-7) (Ord. 040701D, passed - -; Ord. 041021E, passed 10-21-2004; Ord. passed 4-21-2005; Ord. 050818, passed - -2005)

§ 158.071 AMENDED PLATS.

(A) Pursuant to Tex. Local Gov't Code § 212.0065, the City Engineer or designee is delegated the authority to review and approve amended plats as described in Tex. Local Gov't Code § 212.016(a)(1) - (9).

(B) (1) Any amending of any existing subdivision or any part thereof shall meet the requirements provided for herein for a new subdivision, with the exception of certificates.

(2) The following certificates shall be placed on the amending plat, in a manner that will allow the filling-in of the certificates by the proper party.

(a) Approved:

City Engineer or designee Date

City of Heath, Texas

(b) I hereby certify that the above and foregoing Amending Plat of _____ Addition to the City of Heath, Texas, was approved by the City Engineer or designee of the City of Heath on the ____ day of _____, _____.

(c) This approval shall be invalid unless the approved Amending Plat for the Addition is recorded in the office of the County Clerk of _____, Texas, within 365 days from the date of final approval. An extension may be granted by the City Engineer or designee.

(d) The Amending Plat shall be subject to all the requirements of the Subdivision Ordinance of the City of Heath.

Witness my hand this the ____ day of _____, _____.

City Secretary

City of Heath, Texas

(Ord. 090901A, passed 9-1-2009; Ord. 130924C, passed 9-24-2013)

§ 158.08 PROCEDURE FOR SHORT FORM DIVISIONS.

(A) Any subdivision or replat thereof which may be determined to fall within the following criteria may be termed a short form subdivision and may be approved following the abbreviated procedures set forth herein.

(1) The land in question shall be bounded by legally dedicated streets, railroads and alleys or by legally subdivided land and shall not exceed five acres.

(2) The subdivision or use of the land subdivided shall not necessitate any appreciable alteration of utility installations, streets, alleys or building setback lines.

(3) The tracts so subdivided shall conform in size and shape to the lots in the vicinity.

(B) All design, engineering, improvements and drawing information standards provided in these regulations applicable to all subdivisions shall be applicable to the short form subdivisions.

(C) The short form subdivision shall be submitted for approval in accordance with the procedure established for a final plat approval.

(2005 Code, § 13-1-8) (Ord. passed 4-21-2005)

§ 158.09 MISCELLANEOUS REQUIREMENTS.

(A) *Water and sewer and other utilities.*

(1) The owner and/or developer of the subdivision or addition shall complete a written agreement with the city, covering the installation of necessary water and sewer facilities to properly serve the immediate development proposed in accordance with the existing water and sewer extension ordinance.

(2) No water and/or sewer connection shall be made by the city or other entity until the requirements as to the installation of water and sewer mains have been complied with in the block facing the street on which the property is situated and accepted by the city.

(3) As built plans will be required at the end of the job showing the actual location of all improvements. All power and telephone service shall be underground. No overhead service will be allowed without special permission being given by the City Council.

(B) *Approach water main.*

(1) In a proposed subdivision where city water is not available but is accessible, the subdivider shall provide at his or her expense an approach water main of size sufficient to serve his or her subdivision or of a size shown in the water distribution plan, whichever is larger.

(2) The plans, specifications and all constructions shall be subject to the approval of the city's engineer, and the entire distribution system shall be adequate for service when the city water supply is available.

(C) *Approach sewer line.*

(1) In a proposed subdivision where public sanitary sewers are not available but are accessible, the subdivider shall provide at his or her expense an approach sewer line of sufficient size to serve his or her subdivision including any necessary lift stations, or of the size shown in the sewer collection plan or required by the city engineer for future expansion, whichever is larger.

(2) If public sanitary sewers are not accessible, the subdivider may be required to install the complete sanitary sewer system to conform with future plans for connection with the public sanitary sewer in which case he or she shall install the necessary sewage treatment facilities for use until such time when the connection is made in the city sanitary sewer system.

(3) Where the installation of sanitary sewers is not required the size of the subdivided lots shall be a minimum of one acre in size for individual disposal facilities, including the necessary lateral lines and builder shall install individual disposal devices for each lot at the same time improvements are erected thereon.

(4) Any such individual sewage disposal system shall be constructed in accordance with the state health department specifications and subject to the approval of the City Engineer and the City Council.

(D) *Guarantee for construction or maintenance of streets.* Approval of the plat shall not impose any duty upon the city concerning the maintenance of improvements of any such dedicated parts until the proper authorities of the city shall have made acceptance by letter and maintenance bond provided to the city for one year with an option of two years if the city feels the need to protect the city from undue hardship.

(E) *Replating.* Any replating of any existing subdivision or any part thereof shall meet the requirements provided for herein for a new subdivision.

(F) *Reserve strips controlling access to public ways or adjoining properties not permitted.* No subdivision or addition showing reserve strips of land controlling the access to public ways or adjoining properties will be approved.

(G) *Owner's duty to provide pro rata portion of boundary streets.* Where plats are presented for approval which adjoin unplatted property, the owner or developer of the proposed subdivision shall provide his or her pro rata part of the boundary streets.

(H) *Recording required.* The final approval of a final plat of a subdivision shall be invalid unless the approved plat of the subdivision is recorded in the office of the County Clerk within 120 days after the date of its final approval by the Planning and Zoning Commission.

(I) *Building permits; utility connections.* No building permit nor any water, sewer, plumbing or electrical connections shall be issued by the city to the owner or any other person with respect to any property in any subdivision covered by this chapter until:

(1) Such time as the developer and/or owner has complied with the requirements of this chapter and the final plat regarding improvements with respect to the block facing the street and/or streets on which the property abuts, including the installation of streets with proper base and paving, curb and gutter, alleys, water and sewer services and drain facilities where necessary, all according to the specifications of the city; or

(2) Until the developer and/or owner files a corporate surety bond with the city in a sum equal to the cost of the improvements for the designated area guaranteeing the installation thereof within the time stated in the bond, which time shall be fixed by the city.

(J) *Lot markers.* Lot markers shall be one-half-inch reinforcing bar, 18 inches long, or approved equal, and shall be placed at all corners flush with the ground, or countersunk if necessary to avoid being disturbed.

(2005 Code, § 13-1-9) (Ord. passed 4-21-2005)

§ 158.10 LOCAL RETAIL SUBDIVISIONS.

(A) All local retail subdivisions shall be processed for approval in the same manner as provided for a residential subdivision, except that no individual lots need to be shown on the plat and only streets, blocks, easements and minimum building lines need be indicated.

(B) The minimum right-of-way width of a minor street in a local retail subdivision shall be 60 feet, and all other streets shall conform to the standards for major and secondary streets prescribed by the major thoroughfare plan.

(C) Overhead power and telephone service will not be allowed in this type of subdivision.

(2005 Code, § 13-1-10) (Ord. passed 4-21-2005)

§ 158.11 ADEQUATE WATER FOR PERSONAL USE; FIRE PROTECTION REQUIRED.

(A) It shall be the policy of the city to ensure that all future subdivisions within the city shall be provided with water in sufficient volume and pressure for domestic use and fire protection.

(B) It shall be the policy of the city to withhold issuing building permits until all streets, water, sewer and storm drainage systems have been accepted by the city.

(C) The approval of a plat by the city does not constitute any representation, assurance or guarantee that any building within the plat shall be approved, authorized or permit therefor issued, nor shall the

approval constitute any representation, assurance or guarantee by the city of the adequacy and availability of water for personal use and fire protection within the plat.

(2005 Code, § 13-1-11) (Ord. passed 4-21-2005)

§ 158.12 SEWER AVAILABILITY CHARGE; SANITARY SEWER CONSTRUCTION.

(A) (1) Prior to the issuance of any permit for the construction of on-site improvements in any development, there shall be paid by the developer a sewer availability charge for each family dwelling unit to be constructed on the tract of land to be developed. This excludes developments where each lot requires its own septic or similar system.

(2) Prior to the issuance of any building permit, in any residential development, there shall be paid by the developer, or builder, a sewer availability charge for each family dwelling unit to be constructed.

(3) The amount of such charges shall from time to time be established by resolution of the City Council.

(B) (1) Sanitary sewer mains and services shall be constructed in accordance with city standards and specifications at the time the property is developed regardless of sewer availability.

(2) If, at the time the property is platted, it is determined not to be feasible to design said sewage collection system as required by this division (B), the developer and the city shall enter into a developer's agreement to provide for payment into escrow or by other appropriate means, of the estimated cost of the sanitary sewer collection system, plus engineering design costs.

(2005 Code, § 13-1-12) (Ord. 950504A, passed - -; Ord. passed 4-21-2005)

§ 158.13 WATER AVAILABILITY CHARGE.

(A) Prior to the issuance of any permit for the construction of on-site improvement in any develop, there shall be paid by the developer a water availability charge for each family dwelling unit to be constructed on the tract of land to be developed. This excludes areas where water is furnished by a private carrier.

(B) The amount of the charges shall from time to time be established by resolution of the City Council.

(2005 Code, § 13-1-13) (Ord. passed 4-21-2005)

§ 158.14 RIGHT-OF-WAY DEDICATION.

In platting the subdivision, the developer shall provide additional right-of-way required for existing or future streets as shown in the thoroughfare plan or other plan approved by the City Council.

(2005 Code, § 13-1-14) (Ord. passed 4-21-2005)

§ 158.15 STREET IMPROVEMENTS AND OVERSIZING.

(A) (1) When a proposed subdivision of land abuts on both sides of an existing substandard road, or on one side of the road, being substandard according to the then existing current City of Heath standard specifications, the developer shall be required to improve the existing road, including sidewalks, to bring the same to City of Heath standards, or to replace it with a standard city street at no cost to the City of Heath other than as set out in the cost sharing policy of the city in effect at the time of approval of the final plat. If the proposed subdivision is located along only one side of a substandard road, and when in the City Council's judgment, it is not feasible to reconstruct the substandard road at the time of development of the subdivision, the City Council (Planning and Zoning Commission) may permit the developer to pay into escrow an amount equal to 115% of the developer's share of the cost of said improvements as a condition of the approval of the final plat of the subdivision. If the proposed subdivision is located along a state road, as herein designated, which is considered substandard, the developer shall be required to escrow funds for the cost of improvements for curb and gutter, sidewalks and storm drainage on nonresidential subdivisions.

(2) Developers of residential subdivisions along state roads shall be required to escrow funds for 50% of the estimated cost of the required road improvements applicable to that subdivision. State roads shall include FM 740, FM 549, FM 550, FM 1140 and FM 3097. The amount of escrow shall be as determined by the City Engineer or his or her designated representative and shall be payable prior to construction of the subdivision streets and utilities. When funds have been provided and placed in escrow with the City of Heath for the development of a substandard road, the road is reconstructed by a party other than the escrowing developer and at no cost to the City of Heath, the escrowed funds and accrued interest, if any, shall be refunded to the developer after completion and acceptance of the improvements. Where in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, upon recommendation by the City Planning and Zoning Commission, the City Council may, in specific cases, at a regular meeting of the City Council, and subject to appropriate conditions and safeguards, authorize special exceptions to these regulations in order to permit reasonable changes to these regulations in order to permit reasonable development and improvement of property where the literal enforcement of these regulations would result in an unnecessary hardship.

(3) Notwithstanding the provisions of divisions (A)(1) and (2) above, if a proposed subdivision contains five acres or less but at least one acre and only one single-family residence is to be located on the tract, the City Council may consider a reduction in the street and drainage fee otherwise due by dividing the proposed fees by the land area in the proposed subdivision. Tracts of land greater than five acres may be considered for reduction in fees when, at the determination of the Council, the land is not suitable or subject to being further subdivided.

(B) All new roads within proposed subdivisions shall, at a minimum be built to a width and design which will adequately serve that subdivision. In addition, when required by the city in the interest of the community, the developer may be required to build larger streets to the width shown on the Thoroughfare Plan. If more than 48 feet (back of curb to back of curb) is constructed the city will reimburse the developer for the excess width when funds become available, unless the additional width was required by the City Engineer or traffic planner to adequately serve the needs of that subdivision. Streets which dead-end at power lines, railroads or similar right-of-way, shall be constructed in right-of-way for half the distance across the rights-of-way. Where streets are adjacent to undeveloped land and the property line is normally the centerline of the street, the developer shall provide right-of-way of sufficient width and shall construct paving a minimum width of 31-street width feet, if deemed necessary by the City Engineer or traffic planner. If the city in the interest of the community, requires the subdivider to construct more than 31-street width feet, the city will reimburse the cost of the excess width to the developer who installed the paving, at the actual cost of construction, with no reimbursement for additional right-of-way which required to construct the additional paving in excess of 31-street width feet as funds are available. No reimbursement will be made, however, when the City Engineer or traffic planner determines that the excess width is required

to serve that subdivision. When, in the City Council's judgment, it is not feasible to construct the street and/or railroad crossing at the time of the development of the subdivision, escrow for the development of the subdivision, escrow for the developer's portion of the cost may be provided in accordance with this section. In the event the street and/or railroad crossing has been constructed or is being constructed by others, the developer shall pay his or her pro-rata share of the improvements. Escrow or pro-rata shall be payable prior to construction of streets and utilities.

(C) When reimbursing the developer for oversize development costs, the City of Heath shall pay for a maximum engineering fee of 6% of the construction reimbursement.

(D) If the improvements of the road or street do not occur within 20 years from the date the money is so placed on deposit with the city, the money, including any earned interest thereon, shall be returned to the property owner of record at that time.

(E) Should the city establish an assessment program for street improvements on any road within the city, any funds already placed in escrow for road improvements to the street as required by this section shall be credited toward the property owner of record at the time of assessment.

(2005 Code, § 13-1-15) (Ord. 030320B, passed - -; Ord. passed 4-21-2005; Ord. 140513C, passed 5-13-2014)

§ 158.16 OFF-SITE ACCESS ROADWAYS.

(A) Dependent upon the circumstances of a particular subdivision where access is not deemed adequate by the City Council, the Council may require the developer to provide and construct off-site access roadways which conform to the street layout standards as provided for in § 158.06 above. If the access is provided, the developer and city shall enter into a facilities agreement prior to final plat approval, for the construction of the access roadway. The agreement shall contain engineering cost estimates, the number of square feet in the proposed roadway, any pro rata scheduled plus any other matter deemed appropriate by the parties.

(B) For any subsequent subdivision utilizing such facilities, a facilities agreement shall be required between the city and any subsequent developer. Any costs due prior developers as determined by the city's engineer, consistent with the city's policies on thoroughfare improvements shall be prorated as the use by the new subdivision bears to the amount due. The prorated amounts will be made a part of any subsequent facilities agreement, collected by the city, and repaid to the original developer making the improvements. All the reimbursements or prorations shall be based on the actual cost of the improvements at the time of their construction. The original developer shall provide the city with the acceptable documentation of actual construction cost from which calculation of reimbursable amounts will be made for inclusion in the facilities agreement.

(2005 Code, § 13-1-16) (Ord. passed 4-21-2005)

§ 158.17 SIDEWALK CONSTRUCTION.

(A) *Sidewalks; general requirements.*

(1) Sidewalks shall be provided on all streets in areas zoned for one- or two-family residential development and on all streets designated on the adopted master thoroughfare plan. The city may require sidewalks in other locations. All required sidewalks shall be constructed by the builder at the time the lot is developed.

(2) Sidewalks along streets that are adjacent to common areas shall be built by the developer during development of the subdivision. If the sidewalk is adjacent to a drainage facility or creek, the developer shall install a barrier as prescribed by the Building Official or City Engineer.

(3) If, at the time the property is developed, it is determined to be unfeasible to construct the sidewalks as required, the builder shall pay into escrow the estimated cost of the sidewalks. The amount of escrow shall be as determined by the City Engineer or his or her designated representative, and shall be payable prior to construction of any buildings or other improvements. Where in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, upon recommendation by the City Planning and Zoning Commission, the City Council may, in specific cases, at a regular meeting of the City Council, and subject to appropriate conditions and safeguards, authorize special exceptions to these regulations in order to permit reasonable development and improvement of property where the literal enforcement of these regulations would result in an unnecessary hardship.

(4) In the event that an existing subdivision has been substantially developed (50% completion) without the construction of sidewalks, an owner of property constructing a residence in that subdivision may petition the Building Official for a waiver of the requirements of division (A)(1) above. The Building Official shall grant the waiver unless the Building Official deems that a waiver would endanger the safety of the general public or would otherwise be inconsistent with future development in or around that subdivision.

(B) *Sidewalk construction.*

(1) *Size and location.* All sidewalks shall be at least four feet wide or in conformance with the Pathways Plan, whichever is greater, and shall be located between the curb or grade line of the street and the right of way line, no closer than two feet to the curb or grade line. The City Engineer or Building Official may approve an alteration of the alignment so that the sidewalk meanders within the area between the curb and right of way line.

(2) *Concrete required.* Sidewalks shall be constructed of concrete and shall be reinforced with bars. Construction specifications for sidewalks shall be maintained in the engineering standards of the city.

(3) *Fire hydrant location.* Where a sidewalk is to be constructed and a fire hydrant would be located within the forms, the forms shall curve around the fire hydrant so that the walk misses the fire hydrant by a minimum distance of one foot. A transition of ten feet is required in and out of curved areas.

(4) *Drainage.* All sidewalks shall be built at an elevation that will not impede or be otherwise detrimental to proper lot drainage, with natural grade preferred.

(C) *Wheel-chair access ramps.*

(1) *Location.* A wheel-chair access ramp must be constructed at any point where a proposed sidewalk intersects a city street with the exception of walks leading from the street to the door of a residence. Access ramps must be constructed with a maximum one-inch wide expansion material between the street and ramp flush with the finish grade.

(2) *Grade.* Care shall be taken to ensure a uniform grade meeting ADA requirements on the ramp, free of sags and short grades. Access ramps shall be built to grades no greater than one foot of fall per 12 feet in length.

(3) *Surface finish.* Surface texture of the ramp shall be obtained by coarse brooming, perpendicular to the slope of the ramp.

(4) *Curb and gutter.* The normal gutter line shall be maintained through the area of the ramp. Curb cuts for ramps shall be located as shown on street plans or as approved by the City Engineer.

(D) *Maintenance.*

(1) *Responsibility for sidewalk maintenance.*

(a) *Duties.* It shall be the duty and obligation of all owners and occupants of real property, who have sidewalks located in the right-of-way adjacent to their property, at their own cost and expense, to maintain and keep the sidewalks level and free of depressions, excavations, elevations, inconsistencies, obstacles, obstructions or encroachments, natural or artificial, above or below ground level or which overlap or impinge upon, or appropriate any part of the sidewalk areas or areas within eight feet of the sidewalk.

(b) *Exceptions.*

1. Unless otherwise specified herein or by maintenance or development agreement, the requirements for trail maintenance shall not apply to trails designated on the city's approved comprehensive trail plan, as may be amended from time to time.

2. If reported within six months of the occurrence, any damage done to a sidewalk by the city or a contractor of the city shall be repaired by the city or the contractor. Any damage done to a sidewalk by a franchised utility shall be repaired by the franchised utility.

(2) *Provisions for adequate maintenance of sidewalks.*

(a) *Inspection and notification.* When the city determines that any section of sidewalk requires repairs or maintenance, a letter describing the necessary repairs shall be sent to the adjacent property owner of record. The letter shall be personally delivered to the property owner or mailed by regular or certified mail. If the letter cannot be delivered by personal service or by regular or certified mail, notification shall be given by publication in the official newspaper at least twice within 16 consecutive days.

(b) *Time of response.* The property owner shall have 30 days from receipt of the notice described in the preceding division to make the necessary repairs. If weather conditions or other extenuating circumstances dictate, the 30-day period may be extended by the Director of Public Works, provided that the property owner has contacted the Director of Public Works prior to the expiration of the 30-day period.

(c) *Failure to repair.* Any repairs that are not performed by the adjacent property owner, and which are determined to be hazardous to pedestrians or other users of the sidewalk, may be performed by the city or a city contractor. Upon completion of the repairs, the city shall, in the same manner as set forth in division (D)(2)(a) above, provide the property owner with a notice that shall include:

1. The identification of the property;
2. A description of the violation;
3. A statement that the city has made the necessary repairs;
4. An explanation of the property owners right to request a hearing within ten days of receipt of the notice; and
5. A statement that if the property owner refuses to pay the expenses within 30 days from receipt of the notice, the Mayor or his or her designee shall obtain a lien against the property by filing with the County Clerk a notice of lien and statement of expenses incurred.

(d) *Request for hearing.* The property owner may file a written request for a hearing with the City Council in order to contest the amount or validity of the charges. Upon receipt of a timely request, a hearing shall be set before the City Council.

(e) *Filing of lien.* If no hearing is requested, if a hearing is not timely requested, or if a hearing is held and the charges are determined to be valid, and the property owner fails or refuses to pay the charges within 30 days from receipt of the notice to pay, the City Council may assess the costs incurred against the adjacent property owner, whereupon the Mayor or his or her designee shall file a notice of lien and statement with the County Clerk of the costs incurred for the repair of the sidewalk and the city shall have a privileged lien on the property second only to tax liens and liens filed by the city for street or utility improvements. The notice of lien shall state the name of the property owner of record and the legal description of the property. The lien shall bear interest at the rate of 10% per annum from the date the work was performed or payment therefore was made by the city.

(2005 Code, § 13-1-17) (Ord. passed 4-21-2005; Ord. 060323B, passed 3-23-2006; Ord. 070816A, passed 8-16-2007; Ord. 130709A, passed 7-9-2013)

§ 158.18 FACILITIES AGREEMENT.

(A) The subdivider shall be required to enter into an agreement with the city which will govern his or her subdivision if there are no pro rata payments, city participation and cost, escrow deposits or other future considerations, variances granted to this section or other nonstandard development regulation. This agreement shall be based upon the requirements of this section and shall provide the city with specific authority to complete the improvements required in the agreement in the event of failure by the developer and to recover the full legal cost of the measures. The city may subordinate the facilities agreement to the prime lender if provided for in the agreement.

(B) The facilities agreement shall be a legally binding agreement between the city and the developer specifying the individual and joint responsibilities of both the city and the developer. Unusual circumstances relating to the subdivision shall be considered in the facilities agreement such that the purpose of this section best served for each particular subdivision. The facilities agreement may stipulate pro rata payments, city participation in unusual facilities, escrow deposits or other payments for future facilities, variances granted to this section and other particular aspects of the development. The developer shall include in the agreement a hold harmless indemnity clause agreeing to hold the city harmless against any claim arising out of this developer's subdivision or any actions taken therein.

(2005 Code, § 13-1-18) (Ord. passed 4-21-2005)

§ 158.19 ADOPTION OF STANDARDS FOR DESIGN DEVELOPMENT.

(A) *Adoption.* There is hereby adopted by the City of Heath, Texas for the purpose of prescribing standards for development, the standards for design of development within subdivisions, and it is hereby incorporated herein as if fully set out in length herein and from the date on which this section shall take effect the provisions thereof shall be controlling within the corporate limits of the City of Heath. A copy of the standards shall be kept on file in the office of the City Secretary.

(B) *Enforcement.* The enforcement of this code shall be by the mayor of the City of Heath, Texas, or through any person whom he may designate provided that such person is employed as an employee or under a contract with the city.

(2005 Code, § 13-1-19) (Ord. passed 4-21-2005)

§ 158.20 STREET LIGHTING.

(A) Street lights will be required in all new subdivisions. Lights will be the equivalent of 175-watt mercury vapor street lights located in block corners or spaced a maximum distance of 400 feet, with exceptions to be approved by the Planning and Zoning Commission.

(B) Initial cost of installation and cost of operation and maintenance for the first three years shall be paid to the local governing body. Maintenance and operation costs after this shall be under separate contract.

(2005 Code, § 13-1-20) (Ord. passed 4-21-2005)

§ 158.21 STREET SIGNS.

The developer of a subdivision shall at his or her expense install street signs to the City of Heath specifications prior to any building permits being issued for this subdivision.

(2005 Code, § 13-1-21) (Ord. passed 4-21-2005)

§ 158.22 ACCESS; DOUBLE FRONTAGE LOTS.

With respect to double frontage lots, dual access shall be prohibited except by approval of the City Council and a permit so issued under the terms and conditions as established by the Council.

(2005 Code, § 13-1-22) (Ord. 940804A, passed - -; Ord. passed 4-21-2005)

§ 158.23 CONVERSION OF PRIVATE STREETS TO PUBLIC STREETS.

(A) The City of Heath may, but is not obligated to, accept private streets into the public street and roadway system of the city upon conformance to the following provisions:

(1) A petition, signed by property owners representing at least 66-2/3% of the lots abutting a private street, must be submitted to the City Secretary. The petition shall be submitted on forms obtained from the City Secretary. In the alternative, the Board of Directors of the Homeowners Association (HOA) for the affected subdivision may submit a notice procedure to the affected property owners. The procedure must be submitted to the City Secretary and approved by the City Council prior to any acceptance;

(2) All of the infrastructure must be in a condition that is acceptable to the city;

(3) All security stations and other structures not consistent with a public street development must be removed or disabled;

(4) The City Council may require that monies in a Homeowner Association fund, designated for street maintenance, be delivered to the city. In the absence of a Homeowners Association and/or the fund, the Council may require the property owners to reimburse the city for any street maintenance provided during a period of time specified by the Council;

(5) The subdivision plat must be submitted as a re-plat dedicating the rights of way and other easement to the city; and

(6) Any and all homeowner association documents must be modified and re-filed to remove any specific reference to any private streets converted to public streets.

(B) Upon certification of the requisite number of signatures on the petition by the City Secretary, if such is presented in accordance with division (A)(1) above, the City Council shall consider the petition at its first available meeting upon due notice being given to the HOA.

(2005 Code, § 13-1-23) (Ord. passed 4-21-2005; Ord. 050421C, passed - -2005; Ord. 050818, passed - -2005; Ord. 060302, passed 3-2-2006)

TREE PRESERVATION

§ 158.35 PURPOSE AND INTENT.

(A) The purpose of this subchapter is to encourage the preservation of mature trees which once removed can be replaced only after generations, to preserve protected trees during construction and to control the removal of protected trees when necessary.

(B) It is the intent of this subchapter to achieve the following:

- (1) Prohibit the indiscriminate clearing of property;
- (2) Protect and increase the value of residential and commercial properties within the city;
- (3) Maintain and enhance a positive image for the attraction of new business enterprises to the city;
- (4) Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the city; and
- (5) Help provide needed shaded areas in order to provide relief from the heat by reducing the ambient temperature

(2005 Code, § 13-2-1)

§ 158.36 SCOPE.

(A) This subchapter shall apply to all real property within the city limits of the City of Heath except as provided for in § 158.43 below.

(B) The provisions of this subchapter shall be administered and enforced by the City Manager or his or her designee

(2005 Code, § 13-2-2)

§ 158.37 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DRIP LINE. A vertical line run through the outermost portion of the crown of a tree and extending to the ground.

TREE. A self-supporting woody perennial plant which has a trunk caliper of three inches or more when measured at a point of 12 inches above ground level and which normally attains a height of at least 20 feet at maturity, usually with one main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of oaks.

TREE, PROTECTED. A tree which has a diameter of nine inches or greater measured at a point 12 inches above ground level.

TREESCAPE PLAN. A graphic representation drawn to the largest scale practical showing the exact location, size (trunk diameter and height) and common name of all protected trees and indication of which trees are to be removed or replaced. The treescape plan requirements are more fully described § 158.38 below.

(2005 Code, § 13-2-3)

§ 158.38 TREESCAPE PLAN.

(A) No person, directly or indirectly, shall cut down, destroy, remove or move or effectively destroy through damaging, any protected tree situated on property regulated by this subchapter without first receiving a permit or approval of a treescape plan, unless otherwise specified in this subchapter.

(B) The treescape plan shall include:

(1) Location of all existing and/or proposed structures as shown on the grading plan and all improvements properly dimensioned and referenced to property lines;

(2) Setback and yard requirements;

(3) Existing and proposed site elevations and grades;

(4) Location of existing or proposed utilities and easements; and

(5) Title block stating street address, lot and block, subdivision name, date and name, address, and phone number of person preparing the plan

(2005 Code, § 13-2-4) Penalty, see § 10.99

§ 158.39 TREESCAPE PLAN PROCESS.

(A) *Review and approval.* The Building Official or his or her designee will review the treescape plan, and report and make recommendations to the Planning and Zoning Commission. The Planning and Zoning Commission will approve or disapprove the treescape plan. The action of the Planning and Zoning Commission may be appealed to the City Council.

(B) *Plan requirements and application.*

(1) Consideration of a treescape plan shall be obtained by making application to the Building Official or his or her designee.

(2) A treescape plan shall accompany all preliminary plats and final plats. Fees for the review of a treescape plan, when submitted in conjunction with a preliminary or final plat shall be included as a part of the platting fees. The platting fees shall be determined and set by the City Council.

(3) If a property owner determines that no protected trees exist on the property being platted, the property owner may submit a letter certifying that no protected trees exist on the property. This letter will be submitted with the understanding that if it is determined that protected trees do exist on the property, the violation provisions and fines of this subchapter will be in full force and effect.

(4) As part of the review process, the city may request changes or adjustments in the layout or design of the development to save protected trees.

(5) The application and treescape plan shall be accompanied by a written explanation indicating the reasons for removal of any protected trees.

(6) A treescape plan shall be submitted to the Planning and Zoning Commission at any time three or more trees are to be removed. The fee for review of treescape plans shall be determined and set by the City Council.

(C) *Identification.* At the time of submission of a treescape plan, the applicant shall clearly flag all protected trees with bright red fluorescent vinyl tape at least four feet above the ground.

(2005 Code, § 13-2-5)

§ 158.40 TREE REMOVAL PERMIT.

(A) No person shall remove or cause to be removed any protected tree without a tree removal permit.

(B) The Building Official or his or her designee may issue a tree removal permit for no more than two protected trees on any given tract of land, parcel of land, or lot.

(C) The fee for the permit shall be determined and set by the City Council except that no fee shall be required for the removal of dead or diseased trees.

(D) If subsequent to the treescape plan approval, it is determined that a protected tree whose removal was not previously approved must be removed, a tree removal permit must be obtained.

(E) Tree removal permits will be approved and issued administratively by the Building Official or his or her designee.

(F) Protected trees approved for removal with a permit will be replaced in compliance with the tree replacement conditions of this subchapter

(2005 Code, § 13-2-6) Penalty, see § 10.99

§ 158.41 TREE REPLACEMENT.

(A) In the event that it is necessary to remove protected trees the developer, as a condition of the approval of the treescape plan or tree removal permit, may be required to replace the trees being removed with comparable trees somewhere on the property.

(B) Replacement trees will be equal in diameter inches to the diameter of the protected tree that was removed.

(C) For example, if a nine-inch protected tree is removed, it may be replaced by three trees of three-inch calipers or one 4-inch and one 5-inch tree, or a single nine-inch tree.

(D) Replacement trees will be at least three-inch caliper, 12 inches above the ground and seven feet in height when planted. Replacement trees shall be selected from a qualified tree list.

(E) The qualified tree list shall be maintained by the city.

(F) Replacement trees shall be maintained in healthy growing conditions after planting.

(G) Replacement trees shall not be planted within an area where:

- (1) The mature root system may interfere with underground public utility lines;
- (2) The mature canopy of the tree may interfere with overhead utility lines; or
- (3) Within five feet of a fire hydrant, water or sewer line.

(2005 Code, § 13-2-7)

§ 158.42 TREE PROTECTION.

(A) Prior to any construction or development, the developer shall clearly mark with bright fluorescent red vinyl tape all protected trees in such a manner that the tape is clearly visible during construction.

(B) The developer or site supervisor shall not allow any cleaning or storage of equipment or material within the drip line of a protected tree.

(C) Those materials include, but are not limited to oils, solvents, paint, mortar, asphalt and concrete.

(D) No attachments or wires of any kind other than those of a protective nature shall be attached to any protected tree.

(2005 Code, § 13-2-8) Penalty, see § 10.99

§ 158.43 EXEMPTIONS AND EXCEPTIONS.

(A) *Exemptions.* The tree protection and replacement provisions of this subchapter shall not apply to:

(1) *Final plats.* Any development that has received final plat approval prior to the effective date of this subchapter;

(2) *Homeowners.* The owner of property containing a single-family residence or duplex which has qualified for the homestead exemption;

(3) *Public property.* All rights-of-way, easements or similar types of public property maintained by the city; and

(4) *Utility property.* All rights-of-way, easements or similar types of public property maintained by a public utility franchised by the city. Utility companies may prune trees as necessary to reestablish disrupted service or maintain existing service.

(B) *Exceptions.* In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and require immediate removal without delay, authorization may be given by the Building Official or his or her designee and the tree may then be removed without obtaining approval as herein required. Exceptions may include, but are not limited to:

(1) *Damaged/diseased trees.* The tree is dead, diseased or damaged beyond the point of recovery, or is in danger of falling;

(2) *Public safety.* The tree creates unsafe vision clearance or conflicts with other ordinances or regulations, or the tree is determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety; and

(3) *Utility service interruption.* When a tree has disrupted a public utility service as a result of a tornado, flood or other act of God, the tree may be removed as needed; however, removal shall be limited to the part of the tree which is found necessary to be removed to reestablish and maintain utility service.

(2005 Code, § 13-2-9)

PARK LAND DEDICATION

§ 158.55 PURPOSE.

Public parks, defined as: parks, trails, open spaces and recreational areas, are necessary for the public health and general welfare of the citizens of the City of Heath. The necessity to provide for public parks is generated by the development of residential property or subdivisions in the city and as such will be regulated in the process for planning and development of property within the city.

(2005 Code, § 13-3-1) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

§ 158.56 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DWELLING UNIT. Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family.

PUBLIC PARK. Includes a variety of parks, trails, open spaces and recreational opportunities that are open to the general public and are located within a convenient distance of the residences to be served thereby.

(2005 Code, § 13-3-2) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

§ 158.57 REQUIREMENTS.

Parks will comply with the general location shown on the Master Park Plan and the Pathways Implementation Plan in the City of Heath's Comprehensive Plan, which is hereby adopted by reference and incorporated herein for all purposes.

(A) *General requirements; residentially zoned property.*

(1) The area dedicated for park land shall be no less than one acre for each 60 proposed dwelling units. The required dedication may be met by payment of cash in lieu of land when permitted or required by other provisions of this subchapter.

(2) Any proposed plat submitted to the city for approval shall identify the proposed public park land to be dedicated. In accordance with the Master Park Plan and Pathways Implementation Plan, trails shall be designated as trail or pathway right-of-way. A trail easement may be accepted if the subject dedication is adjacent to a drainage easement or bisecting a piece of property. Trails may not be placed in floodways.

(3) The final plat will contain a clear fee simple dedication of the land to the City of Heath for public park use.

(4) The obligation of an applicant/developer to dedicate park land or make payments or improvements in lieu thereof shall be in addition to and independent of the requirements of the applicant/developer to provide open space in accordance with a Planned Development (PD) zoning application. If the open space in the proposed Planned Development (PD) exceeds 20% of the project area and is dedicated and accepted by the city as public park land, the required dedication or payment may be reduced in proportion to the excess acreage.

(5) Cash dedicated in lieu of land may be used only for the acquisition or development/improvement of a public park located within the city's parks and trails system or in the same general area as the development.

(B) *General requirements; non-residentially zoned property.*

(1) On non-residentially zoned property, in instances where land is required for trail construction in accordance with the Master Park Plan or the Pathways Implementation Plan in the city's Comprehensive Plan, the city shall have the right to require the land dedication for approval on the final plat or refuse the same.

(2) Land dedicated for trails shall be developed in accordance with the provisions herein.

(C) *Land dedication for trail development.*

(1) In instances where land dedication for trail development is required, the City Council shall have the right to require construction of a trail in accordance with the Pathways Implementation Plan and the city's Engineering and Design Guidelines.

(2) Construction of a trail must be completed in conjunction with all other public improvements/infrastructure and approved by the city prior to release of a building permit or as a part of the building improvement as approved by the City Council. All improvements or construction on or within the dedicated area to be installed by the applicant/developer shall be completed in accordance with the approved construction plans. Finished projects shall be maintainable and acceptable as determined by the City Engineer.

(3) In instances where a sidewalk and trail are in the same location, the trail will replace the sidewalk. Park development fees will only be credited for the difference of the required width between a sidewalk and the trail. The applicant/developer may receive a credit of park development fees equal

to the cost of construction up to the amount of the fees required. Reimbursement will not be made to the applicant/developer for any amount of construction costs in excess of the required fees credited.

(D) *Land dedication - area less than five acres.* The City Council has determined that the development of an area less than five acres for public park purposes is impractical. Therefore, if fewer than 300 dwelling units are proposed by a plat filed for approval, the developer/landowner shall pay the applicable cash in lieu of land dedication. An exception may be considered if the dedication is voluntarily greater than five acres or will increase the size of an existing park adjacent to the proposed plat or will provide a trail connection or right-of-way.

(E) *Land dedication; area greater than five acres.*

(1) Proposed park areas shall be presented as part of the preliminary plat. The Park Board and Planning and Zoning Commission will review and comment on each park dedication prior to presentation to the City Council.

(2) The City Council can accept or reject the land offered by the developer/landowner and require payment of cash in lieu of land. Considerations are as follows:

(a) Land is unusable or not compatible with the Comprehensive Plan, Master Park Plan or Pathways Implementation Plan.

(b) Sufficient park area is already dedicated in the development area.

(c) The area would be better served by expanding or improving existing parks.

(3) The land for park development shall be dedicated in the final plat or simultaneously by separate instrument.

(4) If the developer/landowner exceeds the number of dwelling units/lots upon which the original dedication was based, then additional dedication or payment of cash in lieu of land dedication shall be required at the discretion of the City Council.

(2005 Code, § 13-3-3) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

§ 158.58 PRIOR DEDICATION; ABSENCE OF PRIOR DEDICATION.

At the discretion of the City Council, any former gift of land or cash to the city may be credited toward eventual land dedication requirements imposed on the owner of the land. The City Council shall consider recommendations of the Planning and Zoning Commission and Park Board in exercising its discretion under this section. Subdivisions in the platting system shall be controlled by the Park Land Dedication Ordinance in effect at the time the application arose, except additional dedication shall be required only for the increase in density and may be either land or money in lieu of land at the discretion of the City Council.

(2005 Code, § 13-3-4) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

§ 158.59 CASH IN LIEU OF LAND DEDICATION.

The dedication requirement may be met, in whole or in part, by a payment of cash in lieu of land at a per-dwelling unit fee set by the City Council, sufficient to acquire land and provide for adjacent streets and utilities for a public park and/or trail to serve the area. As adopted by the City Council, the per-unit price shall be computed on the basis of \$1,000 per dwelling unit. Such payment in lieu of land

shall be made prior to plat recording with the county, prior to issuance of a building permit, or as specified in an executed development agreement.

(2005 Code, § 13-3-5) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

§ 158.60 COMPREHENSIVE PLAN CONSIDERATIONS.

The City of Heath Comprehensive Plan, including the Master Park Plan and the Pathways Implementation Plan, will be used for guidance concerning the desired location and type of public parks to be dedicated.

(2005 Code, § 13-3-6) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

§ 158.61 SPECIAL FUND.

(A) The City of Heath shall establish a special fund for the deposit of all sums paid in lieu of land dedication, which shall be known as the Park Land Dedication Fund. Any interest earned with these funds shall remain in this account and be used for the Fund's intent.

(B) The City of Heath shall account for money paid in lieu of land dedication with reference to individual plats. Any funds, including accrued interest, for such services shall be expended by the city within ten years from the date received by the city for acquisition and/or development of a public park as defined herein. The funds shall be considered spent on a first-in/first-out basis. The developer or landowner of the property on the last day of the ten-year period shall be entitled to a pro rata refund, that includes the original contribution and accrued interest, computed on a per dwelling unit basis. The property owner of the property must request the refund in writing within one year of entitlement, or the right shall be permanently barred.

(2005 Code, § 13-3-7) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

§ 158.62 LAND CONSIDERATIONS.

(A) Any land dedicated to the City of Heath under this subchapter must be suitable for park and recreation uses. Land with the following characteristics is generally unsuitable and the existence of such may be grounds for refusal:

(1) Any area primarily located within the storm detention ponds, 100-year floodplain or floodways.

(2) Any areas of unusual topography or slope or other characteristics that render same unusable for reasonable park construction;

(3) Any area encumbered by overhead utility lines or easements of any type which would limit the opportunity for recreational and park development.

(B) Drainage areas may be accepted as part of a park if no significant area of the park is cut off by access by such channel. If land dedicated is in the floodplain or floodway and is required to be dedicated for drainage easements, then it may not be credited for the required park land dedication.

(C) Each park must have ready access to public streets.

(D) All rubbish, trash, junk and other offensive materials shall be removed from all dedicated lands and the property returned to its natural condition except as to approved construction and improvement thereon.

(E) For dedications of more than five acres of land or upon the request of the City Engineer, a developer-funded environmental study, audit or assessment may be required demonstrating that the property is: in a condition that would allow the city to utilize the property for public park purposes without expenditures to remove environmental or hazardous materials; suitable and safe for use as a public park; and free from environmentally-related problems.

(F) Unless provided otherwise herein, action by the city shall be by the City Council after consideration by the Planning and Zoning Commission and the Park Board. Any proposal considered by the Planning and Zoning Commission under this subchapter shall have been reviewed by the Park Board and its recommendation given to the Commission.

(G) The City of Heath shall consider the need to regularly update the Master Park Plan and Pathways Implementation Plan to ensure that the plan remains current and provides an equitable, effective framework from which to pursue the acquisition and development of public parks throughout the city.

(2005 Code, § 13-3-8) (Ord. 990520A, passed - - ; Ord. 060817, passed 8-17-2006)

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USE DISTRICTS; GENERAL

§ 159.01 DIVISION OF CITY INTO DISTRICTS.

(A) For the purpose of regulating and restricting the use of land and the erection, construction, reconstruction, alterations, moving or use of buildings, structures or land, all lands within the corporate limits of Heath are hereby divided into the following districts:

- (1) District (A) Agricultural District;
- (2) District (SF-43) Single-Family Residential District; minimum lot size 43,560 square feet (one acre);
- (3) District (SF-22) Single-Family Residential District; minimum lot size 22,000 square feet (one-half acre);
- (4) District (SF-15) Single-Family Residential District; minimum lot size 15,000 square feet;
- (5) District (TH) Townhouse Residential District;
- (6) District (D) Duplex Residential District;
- (7) District (MF-8) Medium Density Multi-Family District; maximum density eight units per acre; and
- (8) District (LR) Local Retail District.

(B) Any use not listed herein may be placed in a suitable district classification by the governing body, after recommendation of the Planning and Zoning Commission as specified in § 159.82.

(2005 Code, § 12-1-1)

§ 159.02 OFFICIAL ZONING MAP.

The city is hereby divided into the above zones, or districts, as shown on the official zoning map, which, together with all explanatory matters thereon, is hereby adopted by reference and declared to be a part of this chapter.

(2005 Code, § 12-1-2)

§ 159.03 LAND AND STRUCTURES TO BE USED AS REQUIRED BY DISTRICT REGULATIONS.

(A) The regulations set by this chapter within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

(B) No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

(C) No part of a yard, or other space, or off-street parking or loading space required about or in connection with any building or use for the purpose of complying with this chapter, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building or use.

(D) Every building hereafter erected or altered shall be located on a lot as herein defined.

(E) An accessory building/structure must be incidental to the main building and must comply with all use regulations applicable to the main building except as stated herein.

(1) An accessory building/structure may not be used for commercial purposes except as permitted per the use district and within the definition of home occupation.

(2) An accessory building/structure may not be rented separately from the residence.

(3) A detached accessory building/structure may not be used for living quarters which is comprised of rooms and/or areas that are normally associated with residential accommodations, e.g.: kitchens, kitchenettes, dining rooms, sleeping rooms, living areas, bathrooms and the like, except for guest houses and servants quarters where permitted or granted by conditional use permit.

(4) Accessory building/structures shall not be located in any front yard.

(5) No accessory building/structure shall be constructed upon a lot until the construction on the principal building has commenced with the permanent foundation and framing in place.

(6) No accessory building/structure shall be put in use unless the principal building is completed and occupied.

(7) With respect to accessory building/structure as defined in § 159.42, the city's Building Official or a representative designated by him or her must also determine, based upon the following criteria, if the structure is an attached accessory building/structure to the main building:

(a) That the required roof extension is a structural member of the roof of the main building;

(b) That the roof extension does not exceed 24 feet in length, excluding overhangs, and the ridgeline of the roof extension is not higher than the roof over the main building;

(c) That the attached accessory use building/structure is no larger than 900 square feet and is built of like material and design in generally the same proportions (exclusive of glass) as the main building; and

(d) Does not contain attributes such as plumbing for a kitchen or bathroom, which may cause the city's Building Official or his or her designated representative to determine that such accessory building/structure should not be allowed without the applicant obtaining a conditional use permit.

(8) If the city's Building Official or his or her designated representative determines that an accessory building/structure is not an attached, integral part of the main building under the foregoing

criteria, and that otherwise the accessory building/structure is not allowed under the provisions herein relating to stand alone, detached accessory buildings/structures without a conditional use permit; then the City Building Official or his or her designated representative shall advise the applicant that he or she must obtain a conditional use permit for applicant's proposed accessory building/structure. Each accessory building/structure used for non-residential or multi-family residential purpose shall be considered a principal building/structure. The regulations detailed in this section shall govern the location of swimming pools and spas accessory to non-residential and multi-family residential uses.

(9) Distance between single-family and non residential/multi-family residential swimming pools and spas: when property occupied by non-residential and/or multi-family residential uses abuts a single-family district, swimming pools and spas accessory to the non-residential and multi-family residential uses shall be located no closer than 50 feet to the single-family district, as measured from the outside of the pool liner.

(2005 Code, § 12-1-3) (Ord. 960502, passed - -; Ord. 000615, passed - -)

§ 159.04 NEWLY ANNEXED TERRITORY.

(A) All territory hereinafter annexed to the City of Heath shall assume an interim classification of (A) Agricultural District, pending determination of the property's initial permanent zoning in accordance with the provisions of state law and this chapter unless application for permanent zoning is submitted by the property owner at the time of annexation. The City Planning and Zoning Commission shall, as soon as practical after annexation of any territory to the city, institute proceedings on its own motion, to give the newly annexed territory a permanent zoning, following the same procedures as is provided by law for the adoption of original zoning procedures. The interim zoning prior to the permanent zoning shall not be considered a rezoning for legal purposes. The procedure for establishing initial zoning other than on annexed territory shall conform to the procedure established by law for the adoption of normal zoning classifications and regulations.

(B) In an area classified (A), no person shall erect, excavate, construct or proceed or continue with the erection or construction of any building or structure or add to, enlarge, move, improve, alter, repair, convert or extend or demolish any building or structure or cause the same to be done in any newly annexed territory to the city without first applying for and obtaining a building permit therefor from the building official as may be required in applicable city ordinances.

(2005 Code, § 12-1-4)

§ 159.05 PURPOSE OF THE USE DISTRICTS.

The purpose of the use districts described herein is to group together into districts those uses that are reasonably compatible with one another according to their normal characteristics of operation:

(A) To permit, in connection with these uses, those customary and necessary accessory activities which are incidental to the principal use;

(B) To permit certain other uses which may be established in some situations and subject to specific conditions so that the special uses will also be compatible with the uses allowed as a matter of right;

(C) To promote orderly, timely, economical growth and to recognize current land-use conditions;

(D) To provide sufficient space in appropriate locations for development to meet the present and future growth needs of the city, with allowance for adversity of sites;

(E) To protect use areas, as far as possible, against heavy and unnecessary through traffic;

(F) To protect use areas against pollution, environmental hazards and other objectionable influences;

(G) To protect use areas against congestion, as far as possible, by managing the density of population in and around them; by providing for proper off-street parking spaces; and by providing open areas for rest and recreation and to break the monotony of continuous building bulk, thus providing a more desirable environment;

(H) To provide for privacy and access of light and air to windows and to all devices that are powered or heated by the sun, as far as possible, through controls over the spacing and height of buildings and other structures;

(I) To promote the most appropriate use of land and direction of building development which is not in conflict with the Comprehensive Plan or the adopted policies of the city; to promote stability of development; to protect the character of the districts; to conserve the value of land and buildings; and to protect the city's tax base;

(J) To promote the most efficient use of city facilities and services;

(K) To protect against fire and explosions and other safety hazards, and to provide for fire protection and access by fire equipment and vehicles;

(L) To accommodate use activities and operations whose external physical effects are restricted to the area of the district, and in no manner affect in a detrimental way any of the surroundings districts; and

(M) To preserve and protect the favorable and unique quality of life enjoyed by the citizens of Heath.

(2005 Code, § 12-1-5)

§ 159.06 PRESERVATION OF FLOODPLAIN AREAS.

(A) In accordance with the Comprehensive Plan, land that is classified within the protected floodplain, also referenced, as the 100-year floodplain with fully developed conditions for the entire watershed, shall not be reclaimed.

(B) The protected floodplain or 100-year floodplain with fully developed conditions for the entire watershed is defined as the area that is certified by a professional engineer to be within the 100-year floodplain, assuming build-out or fully developed conditions for the entire area within the relevant watershed.

(C) No excavation, filling, grading or any other type of altering the protected floodplain elevation shall occur until, and unless, the excavation, filling, grading or alteration has been approved by the City Council, who may ascertain, based upon a recommendation from the City's Engineer, that such alteration is not subject to flood damage and would not constitute an encroachment, hazard or obstacle to the movement of flood waters and that the value and safety of other property or the public health and welfare would not be endangered.

(2005 Code, § 12-1-6) (Ord. 040617B, passed - -)

§ 159.07 EXTERIOR MASONRY CONSTRUCTION REQUIREMENTS.

(A) *Definitions.* For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MASONRY MATERIALS. Brick, stucco, plaster, cement, concrete tilt wall, stone, glass block unit, or other masonry material of equal characteristics as determined by the City of Heath Building Official or his or her designee. Stucco and plaster shall only be considered masonry material when applied using a three-step process over diamond metal lath mesh to a minimum of seven-eighths of an inch thickness or by other process producing comparable cement stucco finish with equal or greater strength and durability specifications. Concrete tilt wall must have a natural stone, brick or equivalent veneer. No form liners permitted. Synthetic products (exterior insulation and finish systems, cementitious, or other materials of similar characteristics) shall not be considered a masonry material.

VENEER MATERIALS. A single external layer of non-structural masonry material as described above and shall be installed in a manner compliant with the most current Residential and Non-Residential Building Code adopted by the city.

(B) *Exterior masonry construction requirements.*

(1) Buildings requiring a building permit in Residential Zoning Districts shall be required to have exterior walls constructed using a masonry material covering at least 80% of each wall, exclusive of all windows, doors, or roofs.

(2) Buildings requiring a building permit in Local Retail Districts shall be required to have exterior walls constructed using a masonry material covering at least 90% of each wall, exclusive of all windows, doors, or roofs.

(3) Buildings requiring a building permit in Planned Development Districts shall be required to comply with the masonry standards applicable to the most restrictive district in which the use is permitted.

(4) Buildings requiring a building permit in Mixed-Use Zoning Districts shall be required to comply with the masonry standards applicable to the most restrictive district in which the use is permitted.

(5) Buildings requiring a building permit that lie within the Towne Center Overlay District are exempt from this section providing plans are approved by the Planning and Zoning Commission and City Council as required by § 160.01.

(C) *Special exceptions for new construction.*

(1) The Board of Adjustment, pursuant to Tex. Local Gov't Code § 211.009, upon application duly filed by the applicant and deemed administratively complete by staff, may grant a special exception from the terms of this section and the requirements set forth herein for residential masonry requirements upon an affirmative vote of a majority of the Board members present and voting on such exception. The Board of Adjustment may consider any of the following criteria for establishing reasonable grounds for a special exception:

(a) Promotion of public safety through establishment of high-quality construction standards.

(b) Encouragement of high-quality development resulting in longevity, durability, and sustainability that ultimately strengthens the local tax base.

(c) Encouragement of visually appealing construction consistent with a community of excellence and livability as specified in the Comprehensive Plan.

(2) The application for a special exception shall set forth the grounds or reasons upon which as special exception request is being made as authorized by the Texas Local Government Code.

(D) *Exemptions for non-conforming structures.* Any non-conforming building existing as of March 15, 2011 is exempt from this section subject to the following provisions:

(1) The exterior walls of such non-conforming buildings may not be modified, altered, or enlarged in a way which increases its nonconformity unless the modification, alteration, or enlargement is in conformity with the provisions of this section.

(2) Should a non-conforming building be moved for any reason or for any distance it shall thereafter conform to the regulations of the district in which it is located after it is moved.

(3) The Board of Adjustment may authorize a special exception from division (D)(1) and (2) above so long as the exception is consistent with the provisions of § 159.49 , Nonconforming Uses.

(E) *Non-conforming structures destroyed by natural occurrence, disaster, or accident.*

(1) A non-conforming building destroyed by natural occurrence, disaster, or accident, to an extent of more than 50% of its replacement cost at the time of destruction as determined by the Building Official or his or her designee, shall be reconstructed in conformity with the provisions of this section.

(2) The Board of Adjustment, pursuant to Tex. Local Gov't Code § 211.009, upon application duly filed by the applicant and deemed administratively complete by staff, may grant a special exception from the requirement of division (E)(1) provided that a property owner demonstrates a hardship in complying with the above requirement.

(F) *Application fee required.* At the time the special exception or application is filed, the applicant shall pay a variance fee as determined by the fee schedule.

(Ord. 110315A, passed 3-15-2011)

USE DISTRICTS

§ 159.20 (A) AGRICULTURAL DISTRICT.

(A) *Purpose.*

(1) The Agricultural District is to be used to promote orderly, timely, economical growth and to recognize current land-use conditions. The district is a reserved area in which the future growth of the city might occur. It is the intent of this district that agricultural land be held in that use for as long as is practical and reasonable. This zoning is suitable for areas where development is premature because of a lack of utilities, capacity or service, or where the ultimate land use has not been determined.

(2) The zone is also to be used:

(a) To protect those areas that are unsuitable for development because of physical problems or potential health or safety hazards such as flooding. The usage of the land would be permanently restricted to low intensity agricultural uses until such time as the property is proven to be suitable for development and is rezoned; and

(b) To provide a permanent greenbelt to preserve natural areas or open space buffer around uses that might otherwise be objectionable or pose environmental or health hazards.

(B) *Permitted uses.*

(1) Farming, ranching, related activities, owner's single family dwelling and one accessory building not larger than 900 square feet of floor area and not taller than 20 feet in height and on ten acres or more. Agriculture district accessory building/structures shall have no sleeping areas, bathroom or kitchen plumbing (except for one hand sink) or kitchen facilities;

(2) Home occupations;

(3) Municipality owned or controlled facilities, utilities and uses;

(4) Temporary concrete batching plants limited to the period of construction, upon approval of location and operation by the Building Official;

(5) For a guest house, the maximum size may not exceed 900 square feet in area on parcels of land under two acres in size or 1,742 square feet on parcels of land two acres or greater in size. It must comply with all area requirements of the district and may not be made available or used for lease, rent or hire, and the owner of the use may not receive remuneration for the use of one of the above. In addition, the uses shall not be sold or conveyed separately without the meeting the requirements of the subdivision ordinance;

(6) For servant's quarters, the quarters may be a portion of the main building or, if the parcel of land exceeds two acres in size, the quarters may be a separate building not exceeding 1,742 square feet in total floor area. The quarters must comply with all area requirements of the district and may not be made available or used for lease, rent or hire, and the owner of the use may not receive remuneration for the use of one of the above. In addition, such uses shall not be sold or conveyed separately without meeting the requirements of the subdivision ordinance; and

(7) Wind energy systems on lots greater than ten acres in size subject to all terms and conditions of § 159.50 .

(C) *Conditional uses (require use permits, see § 159.43).*

(1) Facilities for the raising of animals in accordance with all applicable City of Heath ordinances;

(2) Single-family dwelling and one or more accessory building uses on property of less than ten acres that has not been subdivided or sold off in pieces since the effective date of this chapter or the date of annexation, whichever is later.

(3) More than one accessory building on more than ten acres or an accessory building that does not conform to the requirements of division (B)(1) above.

(4) Wholesale nursery for the growing of plants not for retail sale on the premises;

(5) Facilities for railroads or those utilities holding a franchise under the City of Heath;

(6) Institutional uses including sanitary landfill, water treatment and supply facilities, wastewater treatment facilities;

(7) Wind energy systems that do not conform to requirements in division (B)(7) above. (See also § 159.50 .); and

(8) Other uses which, as determined by the Planning and Zoning Commission, are not contrary to the purposes established for this district.

(D) *Prohibited uses.*

(1) Any building erected or land used for other than one or more of the preceding specified uses; and

(2) Any use of property that does not meet the required minimum lot size; front, side and rear yard dimension; and/or lot width; or exceeds the maximum height, building coverage or density per gross acre as required.

(E) *Area requirements.*

- (1) Minimum lot area: 43,560 square feet (one acre);
- (2) Minimum lot frontage on a public street: 100 feet;
- (3) Minimum lot depth: 200 feet;
- (4) Minimum depth of front setback: 40 feet plus one foot for each foot in height over 25 feet;
- (5) Minimum depth of rear setback: 25 feet;
- (6) Minimum width of side setback:
 - (a) Internal lot: ten feet;
 - (b) Sideyard setback abutting street: 20 feet; and
 - (c) Abutting an arterial: 30 feet.
- (7) Minimum distance between buildings on the same lot or parcel of land: 15 feet;
- (8) Minimum length of driveway pavement from the public right-of-way on a side or rear yard: 25 feet;
- (9) Maximum building coverage as a percentage of lot area: N/A;
- (10) Maximum height of structures: 35 feet;
- (11) Minimum number of off-street parking spaces required for one single-dwelling unit: two.
 - (a) An enclosed garage shall not be considered in meeting the off-street parking requirements.
 - (b) All other uses: see §§ 159.60 through 159.68.

(2005 Code, § 12-2-1) (Ord. 960502, passed - - ; Ord. 000615, passed - - ; Ord. 010419D, passed - - ; Ord. 101221A, passed 12-21-2010)

§ 159.21 (SF-43) SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose.*

(1) This district is considered to be the proper zoning classification for one-acre lot developments for single-family dwelling use. This district is intended to be composed of single-family dwellings.

(2) Areas that are zoned for this use shall have or provide for water, wastewater, drainage and access to paved streets based on single-family usage required by the allowed density.

(3) It is intended for areas that are properly buffered from nonresidential uses, and protected from pollution and/or environmental hazards or from high volume of non-single family traffic.

(4) Developers wishing to restrict their subdivision to lot sizes in excess of what this chapter requires shall use restrictive covenants.

(B) *Permitted uses.*

- (1) Agricultural uses on unplatted land, in accordance with all other adopted ordinances;
- (2) One detached single-family dwelling per lot;
- (3) A single one-story detached building used as a tool or storage shed, playhouse or similar use, provided the floor area does not exceed 120 square feet and the height does not exceed ten feet (no building permit required);
- (4) A single detached accessory building, built of like materials and design as the main building, that does not exceed 2% of the total square footage of the lot or parcel of land (e.g., 43,560 square feet x .02 = 871.2 square feet) and 15 feet in height or 50% of the area of the main building. The maximum size may not exceed 900 square feet in area or 15 feet in height;
- (5) Temporary real estate sales offices located on property being sold, limited to the period of sale of the lots with a two-year initial period and one-year extensions being authorized by the Planning and Zoning Commission, the sales offices to be maintained at all times;
- (6) Temporary on-site construction offices, limited to the period of construction, with a two-year initial period and one-year extensions being authorized by the Planning and Zoning Commission, such offices to be maintained at all times;
- (7) Home occupations;
- (8) Paved automobile parking areas which are necessary to the uses permitted in this district;
- (9) All municipality owned or controlled facilities, utilities and uses;
- (10) Private residential swimming pools as an accessory to a residential use;
- (11) Private unlighted residential tennis courts on the same lot as an accessory to a residential use;
- (12) Temporary concrete batching plants limited to the period of construction, upon approval of location and operation by the Building Official;
- (13) Public, denominational and private schools, churches and public parks essential to create basic neighborhood units;
- (14) Guest house. The maximum size may not exceed 900 square feet in area on parcels of land under two acres in size or 1,742 square feet on parcels of land two acres or greater in size. It must comply with all area requirements of the district and may not be made available or used for lease, rent or hire, and the owner of such use may not receive remuneration for the use of one of the above. In addition, the uses shall not be sold or conveyed separately without the meeting the requirements of the Subdivision Ordinance;
- (15) Servant's quarters. The quarters may be a portion of the main building or, if the parcel of land exceeds two acres in size, the quarters may be a separate building not exceeding 1,742 square feet in total floor area. The quarters must comply with all area requirements of the district and may not be made available or used for lease, rent or hire, and the owner of the use may not receive remuneration for the use of one of the above. In addition, such uses shall not be sold or conveyed separately without meeting the requirements of the Subdivision Ordinance; and

(16) Wind energy systems on lots greater than ten acres in size subject to all terms and conditions of § 159.50 .

(C) *Conditional uses (require use permits, see § 159.43).*

- (1) Associated recreation and/or community clubs;
- (2) Accessory buildings that do not conform to the requirements specified in division (B)(4) above;
- (3) Facilities for railroads or those utilities holding a franchise in the City of Heath;
- (4) Paved parking facilities for nonresidential uses that are not allowed in this district if properly screened, buffered and landscaped;
- (5) A private residential tennis court used as an accessory to a residential use if not located on the same lot or utilizing lights;
- (6) A driveway or crosswalk, as distinct from a dedicated street, to provide access to premises in a commercial or industrial district;
- (7) Agricultural use; and
- (8) Wind energy systems that do not conform to requirements listed in division (B)(16) above. (See also § 159.50).

(D) *Prohibited uses.*

- (1) Any building erected or land used for other than one or more of the preceding specified uses;
- (2) The storage of equipment, materials or vehicles, including abandoned vehicles which are not necessary to the uses permitted in this district;
- (3) Any use of property that does not meet the required minimum lot size; front side and rear yard dimension; and/or lot width; or exceeds the maximum height, building coverage or density per gross acre as required; and
- (4) Day care centers.

(E) *Area requirements.*

- (1) Minimum lot area: one acre (43,560 square feet);
- (2) Maximum number of single-family detached dwelling units per lot: one;
- (3) Minimum square footage per dwelling unit: 1,500 square feet;
- (4) Minimum lot width: 100 feet at front building line;
- (5) Minimum lot depth: 175 feet;
- (6) Minimum depth of front setback: 30 feet;
- (7) Minimum depth of rear setback: 25 feet for main building and ten feet for accessory building or other structure;
- (8) Minimum width of side set back:
 - (a) Internal lot: 15 feet; and

- (b) Side yard setback abutting street: 30 feet.
- (9) Minimum distance between separate buildings on the same lot or parcel of land: 15 feet;
- (10) Minimum length of driveway pavement: from public right-of-way to the building line or 30 feet whichever is greater;
- (11) Maximum building coverage as a percentage of lot area: 35%;
- (12) Maximum height of structures: 35 feet; and
- (13) Minimum number of paved off-street parking spaces required for:
 - (a) One single-family dwelling unit: two. (An enclosed garage shall not be considered in meeting the off-street parking requirements); and
 - (b) All other uses: see §§ 159.60 through 159.68.

(2005 Code, § 12-2-2) (Ord. 000615, passed - - ; Ord. 010419D, passed - - ; Ord. 101221A, passed 12-21-2010)

§ 159.22 (SF-22) SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) Purpose.

- (1) This district is considered to be the proper zoning classification for one-half-acre lot developments for single-family dwelling use. This district is intended to be composed of single-family dwellings.
- (2) Areas that are zoned for this use shall have or provide for water, wastewater, drainage and access to paved streets based on single-family usage required by the allowed density.
- (3) It is intended for areas that are properly buffered from nonresidential uses, and protected from pollution and/or environmental hazards or from high volume of non single-family traffic.
- (4) Developers wishing to restrict their subdivision to lot sizes in excess of what this chapter requires shall use restrictive covenants.

(B) Permitted uses.

- (1) Agricultural uses on unplatted land, in accordance with all other adopted ordinances;
- (2) One detached single-family dwelling per lot;
- (3) A single one-story detached building used as a tool or storage shed, playhouse or similar use, provided the floor area does not exceed 120 square feet and the height does not exceed ten feet (no building permit required);
- (4) A single detached accessory building, built of like materials and design as the main building, that does not exceed 2% of the total square footage of the lot or parcel of land (e.g., 22,000 square feet x .02 = 440 square feet) and 15 feet in height or 50% of the area of the main building. The maximum size may not exceed 900 square feet in area or 15 feet in height;
- (5) Temporary real estate sales offices located on property being sold, limited to the period of sale of the lots with a two-year initial period and one-year extensions being authorized by the Planning and Zoning Commission, such sales offices to be maintained at all times;

(6) Temporary on-site construction offices, limited to the period of construction with a two-year initial period and one-year extensions being authorized by the Planning and Zoning Commission, such offices to be maintained at all times;

(7) Home occupations;

(8) Paved automobile parking areas which are necessary to the uses permitted in this district;

(9) All municipality owned or controlled facilities, utilities and uses;

(10) Private residential swimming pools as an accessory to a residential use;

(11) Private unlighted residential tennis courts on the same lot as an accessory to a residential use;

(12) Temporary concrete batching plants limited to the period of construction, upon approval of location and operation by the Building Official;

(13) Public, denominational and private schools, churches and public parks essential to create basic neighborhood units;

(14) For a guest house, the maximum size may not exceed 900 square feet in area on parcels of land under two acres in size or 1,742 square feet on parcels of land two acres or greater in size. It must comply with all area requirements of the district and may not be made available or used for lease, rent or hire, and the owner of the use may not receive remuneration for the use of one of the above. In addition, the uses shall not be sold or conveyed separately without the meeting the requirements of the Subdivision Ordinance; and

(15) For servant's quarters, the quarters may be a portion of the main building or, if the parcel of land exceeds two acres in size, the quarters may be a separate building not exceeding 1,742 square feet in total floor area. The quarters must comply with all area requirements of the district and may not be made available or used for lease, rent or hire, and the owner of the use may not receive remuneration for the use of one of the above. In addition, the uses shall not be sold or conveyed separately without meeting the requirements of the Subdivision Ordinance.

(C) *Conditional uses (require use permits, see § 159.43).*

(1) Associated recreation and/or community clubs;

(2) Guest houses, or separate servant quarters;

(3) Accessory buildings that do not conform to the requirements specified in division (B)(4) above;

(4) Facilities for railroads or those utilities holding a franchise in the City of Heath;

(5) Paved parking facilities for nonresidential uses that are not allowed in this district if properly screened, buffered and landscaped;

(6) A private residential tennis court used as an accessory to a residential use if not located on the same lot or utilizing lights;

(7) A driveway or crosswalk, as distinct from a dedicated street, to provide access to premises in a commercial or industrial district; and

(8) Agricultural use.

(D) *Prohibited uses.*

- (1) Any building erected or land used for other than one or more of the preceding specified uses;
 - (2) The storage of equipment, material or vehicles, including abandoned vehicles which are not necessary to the uses permitted in this district;
 - (3) Any use of property that does not meet the required minimum lot size; front side and rear yard dimension; and/or lot width; or exceeds the maximum height, building coverage or density per gross acre as required; and
 - (4) Day care centers.
- (E) *Area requirements.*
- (1) Minimum lot area: one-half acre (22,000 square feet);
 - (2) Maximum number of single-family detached dwellings per lot: one;
 - (3) Minimum square footage per dwelling unit: 1,500 square feet;
 - (4) Minimum lot frontage width: 90 feet at the front building line;
 - (5) Minimum lot depth: 175 feet;
 - (6) Minimum depth of front setback: 30 feet;
 - (7) Minimum depth of rear setback: 25 feet for main building and ten feet for accessory building or other structure;
 - (8) Minimum width of side setback:
 - (a) Internal lot: 15 feet; and
 - (b) Site yard setback abutting street: 30 feet.
 - (9) Minimum distance between separate buildings on the same lot or parcel of land: 15 feet;
 - (10) Minimum length of driveway pavement: From public right-of-way building line or 30 feet whichever is greater;
 - (11) Maximum building coverage as a percentage of lot area: 35%;
 - (12) Maximum height of structures: 35 feet; and
 - (13) Minimum number of paved off-street parking spaces required for:
 - (a) One single-family dwelling unit: two. An enclosed garage shall not be considered in meeting the off-street parking requirements.
 - (b) All other uses: see §§ 159.60 through 159.68.

(2005 Code, § 12-2-3) (Ord. 000615, passed - -; Ord. 010419D, passed - -)

§ 159.23 (SF-15) SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose.*

- (1) This district is considered to be the proper zoning classification for 15,000 square feet lot developments for single-family dwelling use. This district is intended to be composed of single-family dwellings.

(2) Areas that are zoned for this use shall have or provide for water, wastewater, drainage and access to paved streets based on single-family usage required by the allowed density.

(3) It is intended for areas that are properly buffered from nonresidential uses, and protected from pollution and/or environmental hazards or from high volume of non-single-family traffic.

(4) Developers wishing to restrict their subdivision to lot sizes in excess of what this chapter requires shall use restrictive covenants.

(B) *Permitted uses.*

(1) Agricultural uses on unplatted land, in accordance with all other adopted ordinances;

(2) One detached single-family dwelling per lot;

(3) A single one-story detached building used as a tool or storage shed, playhouse or similar use, provided the floor area does not exceed 120 square feet and the height does not exceed ten feet (no building permit required);

(4) A single detached accessory building, built of like materials and design as the main building, that does not exceed 2% of the total square footage of the lot or parcel of land (e.g., 15,000 square feet \times .02 = 300 square feet) and 15 feet in height or 50% of the area of the main building. The maximum size may not exceed 900 square feet in area or 15 feet in height;

(5) Temporary real estate sales offices located on property being sold, limited to the period of sale of the lots with a two-year initial period and one-year extensions being authorized by the Planning and Zoning Commission, such sales offices to be maintained at all times;

(6) Temporary on-site construction offices, limited to the period of construction, with a two-year initial period and one-year extensions being authorized by the Planning and Zoning Commission, such offices to be maintained at all times;

(7) Home occupations;

(8) Paved automobile parking areas which are necessary to the uses permitted in this district;

(9) All municipality owned or controlled facilities, utilities and uses;

(10) Private residential swimming pools as an accessory to a residential use;

(11) Temporary concrete batching plants limited to the period of construction, upon approval of location and operation by the Building Official; and

(12) Public, denominational and private schools, churches and public parks essential to create basic neighborhood units.

(C) *Conditional uses (require use permits, see § 159.43).*

(1) Associated recreation and/or community clubs;

(2) Accessory buildings that do not conform to the requirements specified in division (B)(4) above;

(3) Facilities for railroads or those utilities holding a franchise in the City of Heath;

(4) Paved parking facilities for temporary nonresidential uses that are not allowed in this district if properly screened, buffered and landscaped;

(5) A private residential tennis court used as an accessory to a residential use if not located on the same lot or utilizing lights;

(6) A driveway or crosswalk, as distinct from a dedicated street, to provide access to premises in a commercial or industrial district; and

(7) Agricultural use.

(D) *Prohibited uses.*

(1) Any building erected or land used for other than one or more of the preceding specified uses;

(2) The storage of equipment, material or vehicles, including abandoned vehicles which are not necessary to the uses permitted in this district;

(3) Any use of property that does not meet the required minimum lot size; front side and rear yard dimension; and/or lot width; or exceeds the maximum height, building coverage or density per gross acre as required; and

(4) Day care centers.

(E) *Area requirements.*

(1) Minimum lot area: 15,000 square feet;

(2) Maximum number of single-family detached dwelling units per lot: one;

(3) Minimum square footage per dwelling unit: 1,500 square feet;

(4) Minimum lot width: 80 feet at the front building line;

(5) Minimum lot depth: 125 feet;

(6) Minimum depth of front setback: 30 feet;

(7) Minimum depth of rear setback: 25 feet for main building and ten feet for accessory building or other structure;

(8) Minimum width of side setback:

(a) Internal lot: ten feet; and

(b) Side yard setback abutting street: 30 feet.

(9) Minimum distance between separate buildings on the same lot or parcel of land: 15 feet;

(10) Minimum length of driveway pavement: From public right-of-way to building line or 30 feet whichever is greater;

(11) Maximum building coverage as a percentage of lot area: 35%;

(12) Maximum height of structures: 35 feet; and

(13) Minimum number of paved off-street parking spaces required for:

(a) One single-family dwelling unit: two. An enclosed garage shall not be considered in meeting the off-street parking requirements; and

(b) All other uses: see §§ 159.60 through 159.68.

(2005 Code, § 12-2-4) (Ord. No. 000615, passed - -)

§ 159.24 (D) DUPLEX RESIDENTIAL DISTRICT.*(A) Purpose.*

(1) The Duplex Residential District is established to provide adequate space and site diversification, duplex type residential development with two dwelling units per lot, and almost twice and density of a typical single-family development, and to adjust the area requirements accordingly.

(2) Duplex type development is a low to medium density use, and additional requirements for streets, water and fire protection, wastewater, drainage and adequate open space shall be met before development to such use.

(3) Duplex developments are not necessarily a buffer between single-family and commercial uses, and should be properly buffered from nonresidential traffic, or from pollution and/or environmental hazards.

(B) Permitted uses.

- (1) Agricultural uses on unplatted land in accordance with other adopted ordinances;
- (2) One single-family detached dwelling must meet the requirements of the SF-15 District;
- (3) One duplex on a lot with fire retardant walls, separate utility meters and separate sewer lines;
- (4) One accessory building not larger than 120 square feet of floor area nor taller than ten feet in height, used as an accessory to a residential use on the same lot;
- (5) Accessory buildings not larger than 100 square feet of floor area nor taller than ten feet in height, used as an accessory to a residential use on the same lot;
- (6) Temporary real estate sales offices located on property being sold, limited to the period of sale with a two-year initial period and one-year extension being authorized by the Planning and Zoning Commission, such offices to be maintained at all times;
- (7) Temporary on-site construction offices, limited to the period of construction, with a two-year initial period and one-year extension being authorized by the Planning and Zoning Commission, such offices to be maintained at all times;
- (8) Paved automobile parking areas which are necessary to the uses permitted in this district;
- (9) All municipality owned or controlled facilities, utilities and uses;
- (10) Private residential swimming pool as an accessory to a residential use;
- (11) Home occupations;
- (12) Private unlighted residential tennis courts on the same lot as an accessory to a residential use;
- (13) Temporary concentrate batching plants limited to the period of construction, upon approval of location and operation by the Building Official; and
- (14) Public, denominational and private schools, churches and public parks essential to create basic neighborhood units.

(C) Conditional uses: (require use permits, see § 159.43).

- (1) Associated recreation and/or community clubs;

- (2) Facilities for those utilities holding a franchise in the city;
 - (3) Private residential tennis court used as an accessory to a residential use if not located on the same lot or utilizing lights;
 - (4) A driveway or crosswalk way, as distinct from a dedicated street, to provide access to premises in a commercial or industrial district; and
 - (5) Agricultural use.
- (D) *Prohibited uses.*
- (1) Any building erected or land used for other than one or more of the preceding specified uses;
 - (2) The storage of equipment, material or vehicles, including abandoned vehicles, which are not necessary to the uses permitted in this district;
 - (3) Any use of property that does not meet the required minimum lot sizes; front, side and rear yard dimension; and/or lot width; or exceeds the maximum height, building coverage, or density per gross acre as required; and
 - (4) Day care centers.
- (E) *Area requirements.*
- (1) Single-family detached units shall meet the area requirements of the SF-15 District;
 - (2) Minimum lot area: 15,000 square feet;
 - (3) Maximum number of single-family attached dwelling units per lot: two;
 - (4) Minimum square footage per each attached dwelling unit: 1,200 square feet;
 - (5) Minimum lot width: 90 feet at front building line;
 - (6) Minimum lot depth: 175 feet;
 - (7) Minimum depth of front setback: 30 feet;
 - (8) Minimum depth of rear setback: 25 feet;
 - (9) Minimum width of side setback:
 - (a) Abutting structures: separated by fire retardant walls: 0 feet;
 - (b) Internal lot: ten feet; and
 - (c) Side yard setback abutting street: 20 feet.
 - (10) Minimum distance between buildings on the same lot or parcel of land: 15 feet;
 - (11) Minimum length of driveway pavement from the public right-of-way on a side or rear yard: 20 feet;
 - (12) Maximum height of structures: 35 feet;
 - (13) Maximum building coverage as a percentage of lot area: 45% of lot area; and
 - (14) Minimum number of paved parking spaces required for:

(a) Each attached residential dwelling unit: two spaces. An enclosed garage shall not be considered in meeting the off-street parking requirements; and

(b) All other uses: see §§ 159.60 through 159.68.

(2005 Code, § 12-2-5) (Ord. 000615, passed - -)

§ 159.25 (TH) TOWNHOUSE RESIDENTIAL DISTRICT.

(A) Purpose.

(1) The Townhouse Residential District is established to provide adequate space and site diversification for residential development that is single-family, on separate lots, and typically owner occupied.

(2) The zone recognizes the difference between single-family detached and single-family attached dwelling units, and has adjusted the area requirements accordingly.

(3) Areas zoned for this use shall have or provide for water and fire protection, wastewater, drainage, access to paved streets, and adequate open space should be met or provided for before zoning to this district.

(4) Townhouse developments must be properly buffered from nonresidential usage and protected from high volumes of non-single family traffic, or from pollution and/or environmental hazards.

(B) Permitted uses.

(1) Agricultural uses on unplatted land, in accordance with all other adopted ordinances;

(2) One single-family detached dwelling (other than zero lot line detached dwellings) shall meet the area requirements of division (E) below; and one single-family detached zero-lot line dwelling shall meet the area requirements of division (F) below;

(3) Townhouses, attached; or patio homes, detached, with fire walls and zero-lot line;

(4) Temporary real estate sale offices located on property being sold, limited to the period of sale of the lots with a two-year initial period and a one-year extension being authorized by the Planning and Zoning Commission, such sales offices to be maintained at all times; and

(5) One accessory building not larger than 120 square feet of floor area nor taller than ten feet in height, used as an accessory to a residential use on the same lot.

(C) Conditional uses (require use permits, see § 159.43).

(1) Associated recreation and/or community clubs;

(2) Facilities for those utilities holding a franchise in the city;

(3) Paved parking facility for nonresidential uses that are not allowed in this district provided they are properly screened, buffered and landscaped;

(4) Mobile construction offices;

(5) Private residential tennis court used as an accessory to a residential use if not located on the same lot or utilizing lights;

(6) A driveway or crosswalk way, as distinct from a dedicated street, to provide access to premises in a commercial or industrial district;

(7) Agricultural use; and

(8) Day care center and day nursery.

(D) *Prohibited uses.*

(1) Any building erected or land used for other than one or more of the preceding specified uses;

(2) The storage of equipment, material or vehicles, including abandoned vehicles, which are not necessary to the uses permitted in this district; and

(3) Any use of property that does not meet the required minimum lot size; front, side and rear yard dimension; and/or lot width.

(E) *Area requirements.*

(1) Single-family dwellings (other than zero-lot line detached dwellings) and duplexes shall meet the area requirements of this division (E);

(2) Minimum lot area: 10,000 square feet;

(3) Maximum number of single-family attached dwelling units per lot: four;

(4) Minimum square footage per dwelling unit: The first floor of each attached dwelling unit shall contain at least 1,200 square feet of enclosed living space;

(5) Minimum lot frontage on a public street: 80 feet;

(6) Minimum lot depth: 100 feet;

(7) Minimum depth of front setback: 30 feet;

(8) Minimum depth of rear setback: 25 feet;

(9) Minimum width of side setback:

(a) Abutting structures: separated by fire retardant walls: 0 feet;

(b) Internal lot: 20 feet; and

(c) Side yard setback abutting street and arterial: 30 feet.

(10) Minimum separation between attached buildings: every 250 feet there shall be a minimum of 20 feet between buildings;

(11) Minimum distance between buildings on the same lot or parcel of land: 20 feet;

(12) Minimum length of driveway pavement from the public right-of-way from R.O.W. line to building line or 20 feet whichever is greater;

(13) Maximum height of structures: 35 feet;

(14) Maximum building coverage as a percentage of lot area: 45%;

(15) Minimum amount of permanent, landscaped open space: 10% of total lot;

(16) Minimum number of off-street parking spaces required for:

(a) One single-family attached or detached dwelling unit:

1. Rear or side entry garage: two spaces; and
2. Front entry garage: two spaces. An enclosed garage shall not be considered in meeting the off-street parking requirements.

(b) All other uses: see §§ 159.60 through 159.68.

(17) All common walls shall be constructed of masonry or other fireproof material of ten-inch minimum thickness and extended from the finished floor level to two feet above the roof line.

(F) *Area requirements; zero-lot line.*

(1) Single-family zero-lot line detached dwellings shall meet the area requirements of this division (F);

(2) Lot area and density:

- (a) Minimum lot area: 6,000 square feet; and
- (b) Maximum density: no more than five dwelling units per acre.

(3) Minimum square footage per dwelling unit: The floor of each dwelling unit shall contain at least 1,500 square feet of enclosed living space;

(4) Minimum lot frontage on a public street, as measured at the platted front building line: 50 feet;

(5) Minimum lot depth as measured perpendicularly to the center point of the platted front building line: 90 feet;

(6) Minimum depth of front setback: 20 feet;

(7) Minimum depth of rear setback:

- (a) Main building: 15 feet; and
- (b) Accessory use: five feet. For a swimming pool: an additional one foot for every one foot of pool depth in excess of five feet.

(8) Minimum width of side setback:

- (a) Zero lot line abutting adjacent side yard:
 1. Main building, one side: zero feet; and
 2. Accessory use: five feet. For a swimming pool: an additional one foot for every one foot of pool depth in excess of five feet.

(b) Internal lot:

1. Main building: side opposite zero setback: ten feet; and
2. Accessory use: five feet. For a swimming pool: an additional one foot for every one foot of pool depth in excess of five feet.

(c) Abutting street and arterial: 20 feet.

(9) Minimum length of driveway pavement from the public right-of-way or rear alley right-of-way: 20 feet;

(10) Maximum building coverage as a percentage of lot area: 50%;

(11) Maximum height of structure: 36 feet; and

(12) Minimum number of off street parking spaces:

(a) Rear or side entry: two spaces;

(b) Front entry garage: two spaces. An enclosed garage shall not be considered in meeting the off-street parking requirement; and

(c) All other uses: see §§ 159.60 through 159.68.

(2005 Code, § 12-2-6) (Ord. 941006A, passed - -; Ord. 000323C, passed - -; Ord. 000615, passed - -; Ord. 010419, passed - -; Ord. 010419D, passed - -)

§ 159.26 (MF-8) MEDIUM DENSITY MULTI-FAMILY RESIDENTIAL DISTRICT.

(A) Purpose.

(1) The (MF-8) Medium Density Multi-Family District is established to provide adequate space and site diversification for medium density areas.

(2) This zone allows medium density developments, and should be located where additional requirements for streets, water and fire protection, wastewater, drainage and adequate open space are met. MF-8 uses should not run traffic over long distances of single-family neighborhoods, and should be located close to arterials or collectors capable of carrying the additional traffic.

(3) Multi-family developments are not necessarily a buffer between single-family and commercial uses, and should be properly buffered from nonresidential land uses and traffic, or from pollution and/or environmental hazards.

(B) Permitted uses.

(1) Agricultural uses on unplatted land in accordance with other adopted ordinances;

(2) One single-family detached dwelling must meet the requirements of the SF-15 District;

(3) Duplexes meeting the requirements of the (DP) Duplex Residential District;

(4) For one townhouse, or patio home per lot, structures must meet the area requirements of TH District;

(5) Multiple-family dwelling units;

(6) Temporary real estate sales offices located on property being sold, limited to the period of sale of the lots with a two-year initial period and one-year extensions being authorized by the Planning and Zoning Commission, such office to be maintained at all times;

(7) Temporary on-site construction offices limited to the period of construction, with a two-year initial period and one-year extension being authorized by the Planning and Zoning Commission, such office to be maintained at all times;

(8) Paved automobile parking areas which are necessary to the uses permitted in this district;

(9) Home occupations;

(10) Municipally owned or controlled facilities, utilities and uses;

(11) Accessory recreational uses such as tennis courts, swimming pools, designed for use by residents of a specific project. Lighting for such uses shall be designed so as not to glare across property lines, nor glare into residential areas on the same property;

(12) Temporary concrete batching plants limited to the period of construction, upon approval of location and operation by the Building Official; and

(13) Public, denominational and private schools, churches and public parks essential to create basic neighborhood units.

(C) *Conditional uses (require use permits, see § 159.43).*

(1) For associated recreation and/or community clubs, the uses shall be included in calculating the coverage requirements of this district;

(2) Facilities for those utilities holding a franchise in the City of Heath;

(3) Portable buildings on the same lot;

(4) Paved parking facilities for nonresidential uses not allowed in this district, if properly screened, buffered and landscaped;

(5) A driveway or crosswalk way, as distinct from a dedicated street, to provide access to premises in a commercial or industrial district;

(6) Day care centers;

(7) Agricultural use; and

(8) One storage building used as an accessory to a residential use on the same lot.

(D) *Prohibited uses.*

(1) Any building erected or land used for other than one or more of the preceding specified uses;

(2) The storage of equipment, material or vehicles, including abandoned vehicles, which are not necessary to the uses permitted in this district; and

(3) Any use of the property that does not meet the required minimum lot size; front, side and rear yard dimension; and/or lot width; or exceeds the maximum height, building coverage or density per gross acre is required.

(E) *Area requirements.*

(1) Townhouses shall meet the requirements of the TH District;

(2) Duplexes shall meet the requirements of the DP District;

(3) Minimum site area: one acre;

(4) Minimum living area: 1,000 square feet;

(5) Maximum density per each acre: eight units/acre;

(6) Minimum lot frontage on a public street: 100 feet;

- (7) Minimum lot depth: 100 feet;
- (8) Minimum depth of front setback: 30 feet;
- (9) Minimum depth of rear setback:
 - (a) One-story structure: 25 feet; and
 - (b) Two-story structure: 50 feet.
- (10) Minimum width of side setback:
 - (a) Abutting a single-family, townhouse or duplex district:
 1. One-story structure: 25 feet; and
 2. Two-story structure: 50 feet.
 - (b) Internal lot: 20 feet; and
 - (c) Side yard setback abutting street or arterial: 30 feet.
- (11) Minimum distance between buildings on the same lot or parcel of land:
 - (a) Ten feet from main to accessory buildings;
 - (b) Twenty feet for two main buildings with doors or windows in facing walls; and
 - (c) Fifteen feet for two main buildings without doors or windows in facing walls.
- (12) Maximum building coverage as a percentage of lot area: 45%;
- (13) Maximum height of structures: 36 feet;
- (14) Minimum amount of permanent, landscaped open space: 20% of total lot area, with 30% of total requirement located in the required front yard as defined. All required landscaped areas shall be permanently maintained and shall have an irrigation system installed meeting all applicable city codes, and approved by the Building Official;
- (15) Maximum number of stories: two stories;
- (16) Minimum requirements for construction materials. Exterior facade: a minimum of 75% of each building face shall consist of masonry material. Doors and windows are included in the 25% non-masonry material;
- (17) Minimum number of paved, striped, off-street parking spaces required for:
 - (a) Zero-bedroom or efficiency dwelling unit: one and one-half spaces per unit;
 - (b) One-bedroom dwelling unit: one and one-half spaces per unit;
 - (c) Two-bedroom dwelling units: two spaces per unit;
 - (d) Three or more bedroom dwelling units: two and one-half spaces per unit;
 - (e) The average number of parking spaces for the total development shall not be less than two spaces per unit; and
 - (f) All other uses: see §§ 159.60 through 159.68.

(18) Lots with more than five dwelling units that have a side or rear contiguous to an SF or DP district must be separated by a buffer as defined and approved by the Planning and Zoning Commission; and

(19) All common walls shall be constructed of masonry or other fireproof material of ten-inch minimum thickness and extended from the finished floor to two feet above the roof line.

(F) *Required conditions.*

(1) Any owner, builder or developer of a multiple-family dwelling complex or single-family townhouse attached unit shall submit to the Planning and Zoning Commission for review and approval, the site and building plan for the proposed development at the time the zoning request is made. In any case, a site plan shall be submitted and approved prior to an application for a building permit. The contents of this site plan shall contain drawings to scale to indicate as needed:

(a) Location of all structures proposed and existing on the subject property and within 20 feet on adjoining property;

(b) Landscaping and/or fencing of yards and setback areas and proposed changes;

(c) Design of ingress and egress;

(d) Location of adjacent zoning districts;

(e) Off-street parking and loading facilities;

(f) Height of all structures;

(g) Proposed uses;

(h) Location and types of all signs, including lighting and heights;

(i) Location and type of lighting;

(j) Fire lanes;

(k) Solid waste facilities; and

(l) Utility service locations.

(2) The purpose of the site plan review is:

(a) To insure compliance with the Zoning Ordinance, while allowing for design flexibility;

(b) To assist in the orderly and harmonious development of the city;

(c) To protect adjacent uses from obstructions to light, air and visibility;

(d) To provide protection from fire;

(e) To avoid undue concentrations of population and overcrowding of land; and

(f) To facilitate the adequate provision of transportation, water, sewage, drainage and other public requirements.

(3) The Planning and Zoning Commission may approve an application for a multiple-family dwelling complex if the proposed development meets all the minimum standards established in this chapter and other applicable ordinances, and if the Commission finds that the proposed development will not be detrimental to the health, safety or welfare of the surrounding neighborhood or its occupants, or be substantially or permanently injurious to the neighboring property. It shall disapprove

or conditionally approve any application which fails to meet the above criteria or is in conflict with the Comprehensive Plan or the adopted growth policies of the city; and

(4) The site plan shall be submitted to the City Secretary two weeks prior to the regularly scheduled Planning and Zoning meeting for review as established by the Planning and Zoning Commission.

(2005 Code, § 12-2-7) (Ord. 000615, passed - -)

§ 159.27 (LR) LOCAL RETAIL DISTRICT REGULATIONS.

(A) *Purpose.* This chapter is intended to preserve the health, safety, morale and promote the general welfare of the residents of the City of Heath by creating regulations and construction standards for the establishment of local retail districts within the City of Heath. Particular consideration is given to the necessity of septic sewage systems, the regulation of density developments, the preservation of the rural environment, establishment of noise and site buffer zones, and promotion of quality development likely to hold its value and provide fire protection and safety.

(B) *Permitted uses.*

(1) Buildings within this district shall be restricted to the following uses: Retail stores, offices, photographic studios, financial institutions, restaurants, gasoline service stations, municipal buildings, grocery stores, medical and dental offices and clinics, dry cleaning establishments or pickup stations (excluding central dry cleaning plants), barber shops, beauty shops, drug stores, day care and mortuary or funeral chapel. Any high noise or industrial use is not permitted. All other uses are prohibited.

(2) Retail establishments may sell beer and wine for off-premise consumption pursuant to state law and Chapter 116 of the Code of Ordinances by right if they are located on property that was within the city limits as of May 12, 2012;

(3) Alcoholic beverage sales - see Chapter 116 , Sale and Distribution of Alcoholic Beverages, of the city's Code of Ordinances.

(C) *Conditional uses (require use permits, see § 159.43).* Any form of drive-in or drive-through, including a service window for pick-up, associated with a retail establishment.

(D) *Required conditions.*

(1) All business operations including storage shall be conducted within a completely enclosed building (except for off-street parking or loading). Sales displays shall be confined to the structures authorized in this chapter. Sales displays outside of the structures authorized in this chapter are prohibited, except by special temporary permit; and

(2) Any owner, builder or developer of a tract or parcel of land located within this district shall submit, prior to the issuance of a building permit, to the Planning and Zoning Commission for review and approval, a site building plan for the proposed development. The contents of this site and building plan shall comply with the requirements as specified in § 159.40 below. Upon approval, the development shall comply with approved site plan.

(E) *Area requirements.*

- (1) Minimum site size: one acre;
- (2) Minimum site frontage on a public street: 100 feet;

- (3) Minimum site depth: 200 feet;
 - (4) Minimum depth of front setback: 50 feet, without parking. First 20 feet shall be landscaped buffer with a minimum two and one-half-foot earthen berm;
 - (5) Minimum width of side setback: 20 feet;
 - (6) Minimum depth of rear setback: 20 feet;
 - (7) Minimum distance between detached buildings on the same lot or parcel of land: 20 feet;
 - (8) Minimum requirement for construction:
 - (a) Structures: buildings shall have a concrete foundation and floor. Weight-bearing walls shall be of masonry material. Non-weight-bearing walls shall be constructed with metal studs;
 - (b) Roofing: shall be 100% noncombustible. Wooden shingles are prohibited;
 - (c) Exterior building facing: each building facing shall consist of 75% masonry materials; and
 - (d) Septic tank and lines shall not be under paved areas.
 - (9) Minimum square footage of building: 1,200 square feet;
 - (10) Maximum building coverage as a percentage of lot area: 40%;
 - (11) Maximum amount of impervious coverage as a percentage of lot area: 90%;
 - (12) Minimum amount of landscaped areas as a percentage of total lot area: 10%, with 20% of the total requirement located in the required front yard. All required landscaped areas shall be permanently maintained and shall have an irrigation system installed meeting all applicable city codes and approved by the Building Official;
 - (13) Minimum distance between landscaping berm and entrance: ten feet;
 - (14) Maximum height of structures: 25 feet. Any structure over 25 feet shall require a conditional use permit. If building height exceeds 25 feet, the building shall be set back an additional amount of one-half the height of the building which exceeds 25 feet from all lot lines abutting residentially zoned property measured along a line equal to the median grade level;
 - (15) Minimum number of paved off-street parking spaces required: See §§ 159.60 through 159.68 ;
 - (16) Entrance and/or exit requirements: Minimum of two;
 - (17) Lots with nonresidential uses that have a side or rear contiguous or separated only by an alley, or easement, from any residential district must be separated from such residential district by a masonry wall with a minimum height of six feet permanently maintained by the owner;
 - (18) Sidewalks shall be required along all streets with a minimum four-foot width. Access ramps to sidewalks for wheelchairs will be required; and
 - (19) The Building Code may impose more restrictive area requirements depending on the size, use and construction of the structures.
- (2005 Code, § 12-2-8) (Ord. 050915D, passed 9-15-2005; Ord. 120417D, passed 4-17-2012)

§ 159.28 (PD) PLANNED DEVELOPMENT DISTRICT.

(A) *Purpose.*

(1) The city has adopted a Comprehensive Plan which provides for: the maintaining of the current overall density in the city of one dwelling unit per acre of land; rezoning of the current agricultural and one-acre zoned areas allowing smaller lot sizes only on an exception basis; and generally maintaining the open, rural atmosphere of the city.

(2) This district is being adopted primarily to facilitate the goals of the Comprehensive Plan by providing the city a zoning district which allows the confirmation of developments proposed by applicants that have varying lot sizes within a given tract(s) of land and which fall between existing zoning categories (for example, between SF 43 and SF 22 zoning).

(3) A planned development (PD) is generally on tracts of land of ten acres or more (but may be considered on smaller tracts) and may include a combination of different dwelling types and/or a variety of land uses which creatively complement each other and harmonize with existing and proposed land uses in the vicinity.

(4) The minimum required amount of acreage in a proposed project for which application for a Planned Development District is made shall be given consideration by the Planning and Zoning Commission with recommendations forwarded to the City Council. Other purposes of the district are to maintain conformity with the Comprehensive Plan, encourage creative development of the land, preserve the natural amenities of land, provide locations for well planned comprehensive developments, and allow for variety and flexibility in the development patterns of the city.

(5) Although this district permits the flexibility of having different densities in different portions of the district, this district is not intended to allow clusters of dense residential development but instead to facilitate maintenance of current overall density of one dwelling unit per acre as described in the Comprehensive Plan.

(6) The City Council is empowered to grant permits for planned developments only after review and recommendation by the Planning and Zoning Commission under the procedure established herein.

(B) *Uses permitted.* A Planned Development District may only be approved for a use or combination of uses provided for in the Zoning Ordinance including special use permits. The uses permitted in any specific Planned Development District shall be enumerated in the ordinance establishing the districts.

(C) *Density and open space regulations.*

(1) In accordance with the Comprehensive Plan, land that is classified within the protected floodplain, also referenced as the 100-year floodplain with fully developed conditions for the entire watershed, shall not be reclaimed. In a planned development, up to 75% of land classified within the protected floodplain may be considered in the land/residence planning ratio. For example, for a tract of land in which ten acres is classified as protected floodplain, consideration may be given to increase the allowable density on the remainder of land outside of the protected floodplain by 7.5 (75%) units.

(2) To comply with the goals of the Comprehensive Plan, higher percentages of open space should be required as the density is increased or the lot sizes decreased.

(3) The designation of open space as improved, partially improved or unimproved shall be subject to the approval of the Planning and Zoning Commission. The designations shall be determined in consultation with the developer, preferably with on-site inspections and the Planning and Zoning Commission may divide a given area into two or more designations. In making this determination the Planning and Zoning Commission shall be guided by the following factors:

(a) The size and location of these areas in relation to the overall area of the Planned Development District;

(b) The degree to which these areas contribute to the quality, livability and amenity of the Planned Development District; and

(c) The degree to which the developer agrees to improve the land for active or passive recreational purposes.

(D) *Area and other requirements.*

(1) Except as otherwise provided in this section, area requirements for each use shall be within the maximum and minimum standards applicable to such use as if the use was situated in the zoning district to which it is most similar as determined by the Planning and Zoning Commission, or demonstrate that the intent of the standards has been met in accordance with good planning practices. The zoning district most similar to each use shall be stated in the granting ordinance. Also, in the Planned Development District, each use shall conform to the regulations of the zoning district to which it is most similar as determined by the Planning and Zoning Commission, and the Planned Development District shall conform to all other sections of the Zoning Ordinance, unless specifically excluded in the granting ordinance. All applications to the city shall list all requested differences, if any, from the standard requirements set forth throughout the Zoning Ordinance (applications without this list will be considered incomplete).

(2) Modification of the area requirements contained in this section may be allowed by the Planning and Zoning Commission and the City Council when all of the following circumstances are met:

(a) The proposed modifications substantially meet the intent of the Zoning and Subdivision Ordinances;

(b) The proposed modifications provide for better project design, help preserve the natural amenities of the land and/or are justified by unusual or unique characteristics of the subject property or the surrounding property;

(c) The combination of different dwelling types and/or the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity; and

(d) The proposed modifications shall not be granted to relieve a self-created or personal hardship, nor for financial reason only.

(3) In approving the planned development ordinance and concept plan and/or development plan, the City Council shall, after recommendations by the Planning and Zoning Commission, specify the land uses, maximum height, floor area ratios (for commercial zoning), density, minimum off-street parking and loading standards, setbacks, site coverage, building spacing, access, screening walls or landscaping, building area, open space, pedestrian ways, streets, alleys and other development and protective requirements considered necessary to protect the health, safety and general welfare, and to create a reasonable transition to and protection from property adjacent to the Planned Development District. The standards shall be specified in the ordinance establishing the district, and in the concept plan and the development plan. The specifications may be made by specifically describing the standards or, to the extent appropriate, by making reference to the zoning district which is most similar to each use in the Planned Development District, as determined by the Planning and Zoning Commission.

(E) *Application process.* An application for a Planned Development District shall be made to the Planning and Zoning Commission in the same manner that an application for a zoning change is made.

An application shall include and be accompanied by a concept plan as required by this section, which when finalized shall become a part of the amending ordinance. A complete development plan as set out in division (E)(2)(e) below, may be substituted for a concept plan, and will constitute both the concept plan and the development plan. In addition to the requirements outlined in divisions (E)(1)(b) and (2)(f) below, the Planning and Zoning Commission and City Council may require additional information or special plans related to specific elements of the Planned Development and may require information described in division (E)(2)(f) below with the concept plan. Upon receipt of the application and concept plan, the City Secretary or designated representative shall follow notification requirements for a public hearing as specified in this chapter.

(1) *Concept plan.*

(a) An applicant may submit a concept plan with the application for a Planned Development District if the applicant is not ready to begin development of part or all of the site. The concept plan shall contain all information that may be necessary to insure that the development complies with all applicable regulations and requirements. The application shall contain a disclosure and representation indicating whether or not any contiguous or other neighboring properties are owned, under contract or otherwise controlled by the applicant or related parties in the form and substance from time to time prescribed by the City Attorney. Although an applicant may not include such a neighboring property in its application, the city should be aware that it on its own motion may initiate a zoning case on any property within the city.

(b) The concept plan shall be prepared on a topography base map at a scale of one inch=100 feet, or at a scale to be specified by the city staff, along with an eight and one-half-inch by 11-inch reduction, with no less than five-foot contour intervals, unless the City Manager or Planning and Zoning Commission agrees to greater intervals, and shall include all items in § 158.05 above, concept plan of the Subdivision Ordinance and the following information, unless the City Manager or Planning and Zoning Commission waives any of such items (and other items which are required in the development plan or otherwise deemed necessary by the Building Official, the City Manager, the Planning and Zoning Commission or the City Council):

1. A metes and bounds description of the entire planned development tract;
2. A drawing generally locating floodplain areas, specifically protected floodplain areas, water bodies, creeks, drainage areas and significant natural features such as major tree groups and important view corridors. The acreage of the area of protected floodplain shall be identified on the plan;
3. Sufficient evidence to establish that the applicants are in fact all of the owners or have control of all of the outstanding interests in the land and structures thereon;
4. A drawing locating all land use areas, providing a preliminary layout of the lots and interior streets in each area, showing proposed gross acreage of each use, open space, maximum lot coverage's, maximum height, minimum setbacks, residential densities, approximate gross floor area and floor area ratios for all commercial and office uses;
5. Location of all major access points, thoroughfares and collectors within the development;
6. Identification of all major land use classifications and the approximate acreage within the development as related to current zoning district designations or the specific purpose. The designated usage will not be assumed to establish area requirements as established within the zoning district, but these requirements shall be used as guidelines in the final determination of area requirements;
7. Indication of each phase of development if the proposed planned development is to be in separate phases;

8. Indication by acreage or percentage of total development all major areas planned for public and private open space;

9. Land area included within the site and the land area of all abutting sites with the zoning classifications thereon, and dimensions and locations of all public and private rights-of-way and easements bounding and intersecting the site;

10. The location and height of each wall, fence and screen planting used as a buffer between the uses and from adjacent property owners;

11. All landscaped areas, including any reserved open space to be retained. Detailed landscaping plans may be required when necessary;

12. Estimates of traffic volumes and turning movements may be required;

13. The concept plan shall be signed by the applicant's engineer and planner, if any. A location map shall accompany the concept plan, showing the relationship of the planned development to adjacent properties (noting the zoning classifications of such properties) and thoroughfares;

14. If the project is to be developed in phases, a proposed phasing plan that identifies the sequence of development and a time schedule for installation of major capital improvements to serve the developments;

15. A chart depicting the following information by phase:

- a. Acreage of each proposed phase;
- b. Total number of dwelling units by type and lot size; and
- c. Minimum dwelling unit sizes.

16. A general description of any homeowners association requirements and covenants to be imposed on the property; and

17. A written description of all requested deviations from the base zoning district in each phase and any other special development standards.

(c) The application by the owner or owners to the Planning and Zoning Commission for approval of the concept plan shall be handled in the same manner as any zoning change under the Zoning Ordinance. The applicant shall submit copies of the concept plan to the City Secretary. After receiving the completed plan from the City Secretary and having the required public hearing, the Planning and Zoning Commission shall make a recommendation to the City Council to either approve or deny the rezoning to planned development, and to either approve, modify or deny the concept plan and any conditions to such recommendation. Upon appeal and hearing before the City Council, the City Council may approve or deny the rezoning request and may approve, deny or modify the concept plan as submitted to the Planning and Zoning Commission and City Council.

(2) *Development plan.*

(a) *Development plan, submission of.* To begin development on all or part of a site, an applicant must submit a final development plan which after approval shall be recorded and kept on file by the city, together with a preliminary plat. The development plan must conform to the approved concept plan, either for the total Planned Development District, or for each phase. Consideration of a development plan which does not include major changes from the approved concept plan as determined jointly by the Building Official and City Manager and will not require additional public hearings.

(b) *Submission to City Secretary.* The development plan shall be submitted to the City Secretary in such a manner as prescribed herein and by any adopted policies of the Planning and Zoning Commission and shall include a checklist of items to be included on the development plan as submitted to the Planning and Zoning Commission and City Council.

(c) *Major changes are same as amendments to Zoning Ordinance.* Major changes in the development plan shall be considered the same as amendments to the Zoning Ordinance and the concept plan and shall be processed as required. The following changes are not considered major changes:

1. Changes that do not alter the basic relationship of the proposed development to adjacent property;
2. Changes that retain the character of the development;
3. Changes that do not significantly alter the uses permitted, or significantly increase the density, setbacks, height or coverage of the site; and
4. Changes that do not significantly increase the problems of traffic circulation, safety or utility requirements.

(d) *Changes that are not major changes.* Changes that meet the criteria in subsection (c) above as determined jointly by the Building Official and City Manager or otherwise determined by such officials not to be major changes, may be approved by the Planning and Zoning Commission and the City Council without public hearing.

(e) *New application, filing fee and public hearing required if plan disapproved.* If the development plan contains major changes from the approved concept plan and ordinance, the Planning and Zoning Commission and/or City Council shall reject and disapprove such a plan and require a new application, filing fee (optional) and advertised public hearing.

(f) *Concept plan requirements.* The development plan, in addition to those items included in the concept plan, shall include or show:

1. The development plan of the entire planned development or of the proposed phase at a scale of one inch = 100 feet, or as specified by city staff, and an 8 1/2 inches by 11 inches reduction showing the proposed finished grade of the area at two-foot intervals;
2. In addition to data and drawings prescribed, the application shall be accompanied by a tabulation of the area proposed to be devoted to each land use and a tabulation of the average population density per net acre and per gross acre in the area or areas proposed to be devoted to residential use;
3. A description of the proposed lot or lots and the boundaries thereof, proposed setbacks on the lots and proposed minimum dwelling unit sizes;
4. With the exception of single family dwellings, the location of each existing and each proposed structure in the development, the use or uses to be contained therein, the number of stories, the gross floor area and the location of entrances and loading points thereof. If a particular type structure is to be built a number of times, a typical lot layout may be substituted;
5. All public rights-of-way, curb cuts, driving lanes, parking areas, loading areas, public transportation areas and illumination facilities for the same, including existing facilities to be relocated. Design criteria for illumination facilities may be required;
6. All pedestrian walks, malls and open areas for use by tenants or visitors;

7. All reservations for public uses, including parks, playgrounds, schools and other open spaces;
8. The location, size, height and orientation of each sign, except signs that are flat on building facades and that do not directly face property in a residential district, or directional signs;
9. Facilities for waste disposal for other than single-family uses;
10. Proposed street names for all public roads;
11. Elevations and/or perspective drawings may be required in order that the relationship of the buildings to adjacent property, open spaces and to other features of the development plan may be determined. This division does not apply to single family, duplex and townhouse lots, unless required by the Planning and Zoning Commission;
12. Any and all of the required features may be incorporated on a single drawing if such drawing is clear and suitable for evaluation by city officials;
13. A legal instrument establishing a plan for permanent care and maintenance of any common areas or communally owned facility and any privately owned open spaces (including permanent access rights to such private space) must be submitted before the development plan will be approved. All such instruments shall be approved by the City Attorney as to legal form, and by the Planning and Zoning Commission and City Council as to suitability for the proposed use of the common area;
14. The title page of each application and set of plans shall be signed by the applicant's architect, planner, landscape architect, engineer and/or land surveyor if these services are required. In addition to an engineer and a planner (if any), the applicant's submittal may be required to contain the professional services of at least two of the remaining three professionals involved in the design and construction of the environment;
15. A list of any changes from the concept plan which are contained in the development plan;
16. Phases of development, including delineation of areas, building sites (where applicable), land use and improvements to be constructed in independent phases and the scheduled timing and sequencing of development;
17. If standards or deviations approved with the concept plan are different from the base zoning district, such as lot sizes, building setbacks and similar requirements which are not uniformly applied to the development depicted in the plan, such standards and deviations shall be illustrated on the development plan; and
18. The full text of any homeowners or owners association requirements and covenants to be imposed on the property.

(g) *Phase developments.*

1. The concept plan shall be divided into sections of proposed development so that after a final development plan is approved for any section, there will be definitely established lines showing the resulting boundaries of the remaining PD District. Such division should be made in order that the unused portion of the site area could be rezoned to its previous or another classification and so that no more than a minimum amount of damage would result to the unused portion of the site from an usability standpoint if it were rezoned.
2. In reviewing and approving applications for a phased PD the city should seek to ensure that each phase (or each phase considered collectively with phases to be completed prior to such phase) conforms with the density and other requirements of the Comprehensive Plan, in order to avoid

circumstances in which a phase is permitted to be completed which is not in conformity and in which subsequent phases are delayed for inordinate periods of time or are not completed.

3. Development plans for each phase may be submitted separately as the phases are ready for development.

(h) *Effects of recording.* All final development plans approved hereunder shall be binding upon the applicant, their successors and assignees, shall limit and control the issuance and validity of all permits, and shall restrict and limit the construction, locations, use and operation of all land and structures included within such plans to all conditions and limitations set forth in such plans.

(i) *Issuance of permit.*

1. Upon, but not before, the approval, of the development plan as herein set forth, and completion of platting requirements as set forth in the Subdivision Ordinance, the applicant(s) for said plan shall be entitled to apply for the permits and certificates as are necessary to proceed with the accomplishment of such plan.

2. Upon the approval of the concept plan and rezoning of a land parcel to PD, Planned Development District, and upon the approval of the development plan, the applicant shall proceed with the accomplishment of said development plan in accordance with all other ordinances of the City of Heath.

(j) *Compliance with development plan.* The Building Official shall ensure compliance with this chapter, the concept plan and the development plan. He or she shall:

1. Make inspections to determine compliance with the provisions of this chapter and the concept plan and development plan, and initiate appropriate action in accordance with the Comprehensive Zoning Ordinance;

2. Investigate thoroughly any complaints of noncompliance concerning the development plan and keep a record of all complaints, indicating any action taken; and

3. Upon determination of noncompliance with the development plan, the Building Official shall take action as follows:

a. Give written notice to the property owner of the nature of the violation, the necessary action to remedy the violation, and the time period, not less than ten days nor more than 30 days after the date of notification, within which to comply.

b. Notify the Planning and Zoning Commission of the noncompliance if the violations have not been corrected within the prescribed time period.

(k) *Effect of development plan approval.*

1. If development of a lot or tract with an approved development plan has not been completed within three years of its final approval by completing all of the streets and other improvements contemplated by such development plan and the related plat, the development plan and related plat shall be deemed to have expired and a new review and approval of a development plan and plat for development of the property shall be undertaken by the Planning and Zoning Commission and City Council upon application by the owner, and such new approval shall be required before a building permit may be issued for development. The review and approval shall be evaluated according to the standards of this chapter and the Comprehensive Plan, taking into account all changes to the ordinance and the Comprehensive Plan which have occurred subsequent to the prior development plan approval.

2. If the development plan is submitted in conjunction with an approved phasing plan for development of the lot or tract, the development plan shall be deemed to have expired if any phase is

not completed within the time period approved for such phase. No development plan phase may be planned to exceed three years unless specifically authorized by the Planning and Zoning Commission and City Council when demonstrated that due to the size or complexity of the development the three-year time period would create a hardship. If any phase is not completed within the time period approved, the entire remaining uncompleted development plan and plat shall be deemed to have expired and the provisions of this division shall be followed.

3. Extension of an approved development plan may be granted by the Planning and Zoning Commission and City Council upon submission of a request for such extension by the property owner at least 90 days prior to the expiration of the plan. The Planning and Zoning Commission and City Council shall take into consideration any changes that have occurred in this chapter and the Comprehensive Plan subsequent to original approval of the plan and the property owner may be required to bring the plan into compliance with the current requirements. The period of time approved for any such extension shall be indicated in any approval but in no case shall the period of extension exceed three years.

(F) *Development schedule.*

(1) In addition to or in lieu of the requirements of division (E)(2)(k) above, an application for a Planned Development District shall, if the applicant desires or the Planning and Zoning Commission or City Council requires, be accompanied by a development schedule indicating the approximate date on which construction is expected to begin and the rate of anticipated development to completion. The development schedule, if adopted and approved by the City Council, shall become part of the development plan and shall be adhered to by the owner, developer and their successors in interest. The City Council, in the ordinance approving the development schedule, may authorize the Planning and Zoning Commission to extend the development schedule or adopt a new development schedule without additional public hearings.

(2) Annually, where a development schedule has been required the Building Official shall report to the City Council the actual development accomplished in the various Planned Development Districts as compared with the development schedules.

(3) The Planning and Zoning Commission may, if in its opinion the owner or owners of the property are failing or have failed to meet the approved scheduled, initiate proceedings to rezone the Planned Development District by removing all or part of the Planned Development District from the zoning district map and recommending that the area involved be placed in another appropriate zoning district. This recommendation shall be passed to the City Council as are other amendments to the Zoning Ordinance.

(4) The owner or owners may, at any time, apply to the Planning and Zoning Commission for an extension of the development schedule. The application shall be acted upon by the Planning and Zoning Commission and the City Council, or if the ordinance setting out the development schedules gives the authority to the Planning and Zoning Commission to extend the development time, the action of the Planning and Zoning Commission making extension shall be final. In the event the Planning and Zoning Commission denies the extension, the owner or owners of the property shall have a right of appeal to the City Council.

(G) *Assuring completion of certain improvements.*

(1) In addition to the requirements of division (C)(7) above, the Planning and Zoning Commission and City Council may specify in approving a Planned Development District more restrictive requirements and more accelerated completion schedules than those in that division for the completion of improvements to open space and may specify similar or more restrictive requirements

and completion schedules for landscaping, screening walls and other improvements to be made in a Planned Development District.

(2) These requirements may include, but are not limited to, completion of certain improvements prior to the issuing of building permits or certificates of occupancy and the requirement of bonds or other financial support to guarantee completion.

(H) *Coordination with Subdivision Regulation Ordinance.*

(1) Processing under the Subdivision Ordinance shall be carried out simultaneously with the review of the development plan under this section.

(2) The development plan submitted under division (E) above shall be accompanied by a preliminary plat which meets the requirements of the Subdivision Ordinance. The preliminary plat shall be reviewed and approved by the Planning and Zoning Commission prior to the granting of any building permits.

(3) Every Planned Development District approved under the provisions of this section shall be considered as an amendment to the Zoning Ordinance as applicable to the property involved. In carrying out the development of a Planned Development District, the development conditions and the development schedule, if required, shall be complied with and such conditions as are specified for the development of a Planned Development District shall be construed as conditions precedent to the granting of a certificate of occupancy.

(I) *Continuation of existing planned developments.* All Planned Development Districts approved in accordance with the provisions of this section or by subsequent amendments thereto shall be referenced on the zoning district map, and a list of the Planned Development Districts together with the category of uses permitted therein shall be maintained in the Appendix of this chapter.

(2005 Code, § 12-2-9) (Ord. 961212A, passed - -; Ord. 040617B, passed - -)

§ 159.29 TOWNE CENTER OVERLAY DISTRICT.

(A) The Towne Center Overlay District, the boundaries, permitted land uses, street standards, building location, design and materials, site design and signs of which are all contained in Exhibit A of Ord. 040108, which is on file in the City Secretary's office.

(B) That where the provisions of the Towne Center Overlay District conflict with the provisions of the underlying zoning district, the provisions of the Towne Center Overlay District shall control. However, the regulation of the sale of alcoholic beverages for off-premise consumption in the Towne Center Overlay District shall be controlled by the underlying zoning of the property, by Chapter 116 of the Code of Ordinances and by applicable state law.

(2005 Code, § 12-2-10) (Ord. 040108, passed - - ; Ord. 120417E, passed 4-17-2012)

§ 159.30 LAKE EDGE ZONING DISTRICT.

(A) This subchapter is hereby amended by the addition of this section as set out in its entirety in the document prepared by HNTB, Dallas, Texas, and attached hereto and incorporated herein and labeled Exhibit A.

(B) This zoning district has its basis in and is intended to serve as implementation criteria for the Lake Ray Hubbard Master Plan, as adopted by the City of Dallas; the interlocal agreement approved

by the Lake Cities Coalition and the City of Dallas; and the Comprehensive Plan for the City of Heath. This district is intended to provide a means for the protection of water quality, supply and the preservation of the natural environment, and to enhance the quality of life along the shoreline through regulation of manmade facilities.

(C) The Lake Edge Zoning District includes all property that is located between the City of Dallas Take Line as shown on the boundary map of Lake Ray Hubbard on file at the City of Dallas and the meanders of the contour line 435.5 mean sea level elevation.

(D) Any requested exception with respect to Exhibit A that pertain to architectural controls or standards shall be determined by the Building Official. An appeal of the Building Official's decision may be made to the Board of Adjustment, upon application being made by the applicant within ten days of the Building Official's decision. Any requested exception to the area requirements of Exhibit A, including setbacks, minimum lengths or widths, or other exception, shall determined by the Planning and Zoning Commission and City Council.

(Ord. 061019A, passed 10-19-2006; Ord. passed 8-16-2007; Ord. 090721B, passed 7-21-2009)

GENERAL PROVISIONS

§ 159.40 SITE PLAN APPROVALS.

(A) *Purpose.* The purpose of the site plan is to ensure compliance with the Zoning Ordinance and to assist in the orderly and harmonious development of the city, to protect and enhance the general welfare, and to help prevent the impairment or depreciation of land values and development by the erection of structures, additions or alteration thereto without proper attention to site planning. The purpose of the site plan review is:

- (1) To ensure compliance with the zoning ordinance, while allowing for design flexibility;
- (2) To assist in the orderly and harmonious development of the city;
- (3) To protect adjacent uses from obstructions to light, air and visibility;
- (4) To provide protection from fire;
- (5) To avoid undue concentrations of population and over crowding of land; and
- (6) To facilitate the adequate provision of transportation, water, sewage, drainage and other public requirements.

(B) *When required.* If, in the determination of the planning and Zoning Commission or City Council, a site plan is deemed necessary in order to elevate a proposed use, or as required under any other provision of this section, such site plan shall be submitted in the form and number as required by the Planning and Zoning Commission.

(C) *Contents.* The site plan shall contain drawings to scale to indicate as needed:

- (1) The location of all existing and planned structures on the subject property and approximate locations of structures on adjoining property within 100 feet;
- (2) Landscaping lighting and/or fencing and/or screening of yards and setback areas;
- (3) Design of ingress and egress;

- (4) Off-street parking and loading facilities;
- (5) Location of fire lanes;
- (6) Location of solid waste collection facilities;
- (7) Height of all structures;
- (8) Proposed uses;
- (9) The location and types of all signs, including lighting and heights;
- (10) Elevation drawings citing proposed exterior finish materials;
- (11) Street names on proposed streets; and
- (12) Additional information and detail as the Zoning Administrator deems necessary.

(D) *Approval.* The City Council, after review and recommendation by the Planning and Zoning Commission may approve a site plan if the proposed development meets all the minimum standards established in this subchapter and other applicable ordinances, and if the City Council finds that the proposed development will not be detrimental to the health, safety or welfare of the surrounding neighborhood or its occupants, or be substantially or permanently injurious to neighboring property. It shall disapprove or conditionally approve any application which fails to meet the above criteria or is in conflict with the Comprehensive Plan or the adopted growth policies of the city.

(E) *Submission to Planning and Zoning Commission for review.* The site plan shall be submitted to the City Secretary two weeks prior to the regularly scheduled Planning and Zoning Commission for review. The Building Official or his designee shall review these plans as quickly as possible, but in no case shall he or she delay submission beyond one Planning and Zoning Commission meeting.

(2005 Code, § 12-3-1)

§ 159.41 INTERPRETATION, PURPOSE AND CONFLICT.

(A) In interpreting and applying the provisions of this section, they shall be held to be minimum requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity and general welfare.

(B) It is not intended by this section to interfere with or abrogate or annul any easements, covenants or other agreements between parties, or any statute, local ordinance or regulations, except that if this ordinance imposes a greater restriction, or higher standard, this section shall control.

(2005 Code, Art. 12-13)

§ 159.42 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the present tense include the future; words in the singular number include the plural; and words in the plural number include the singular; the word "structure" includes the word "structure" includes the word "building"; the word "shall" or the word "must" is mandatory; the term "used for" includes the meaning "designed for" or "intended for;" the word "lot" includes the word "plot."

ACCESSORY BUILDING or USE. A subordinate building/structure having a use customarily incident to and located on the same lot occupied by a main building; or a use customarily incident to the main use of the property. A building/structure housing an **ACCESSORY USE** is considered an attached, integral part of the main building when it has been designed to be structurally a part of and has any significant part of a wall in common with the main building or is under an extension of the roof and designed as an integral part of the main building as determined by the city's Building Official or his or her designated representative. All other accessory buildings/structures not meeting the criteria set forth above will be considered to be detached.

ADOPTED POLICIES. A written administrative directive discussed at a public meeting and officially adopted by a majority vote of the City Council.

AGRICULTURAL USE. The planting, cultivating, harvesting and storage of grains, hay or plants, or vineyards, commonly grown in Rockwall County.

ALLEY. A minor way which is used primarily for vehicular service access to the back or side of properties otherwise abutting on a street; it is also public space or way, 20 feet or less in width, which has been dedicated or deeded for public use.

ALTERATION. Any addition, removal, extension or change in the location of any exterior wall of a main building or accessory building, or change or modification in construction or occupancy.

APARTMENT. A room or suite of rooms within an apartment house arranged, intended or designed for a place of residence of a single family or group of individuals living together as a single housekeeping unit and who do their cooking therein. (See **DWELLING UNIT**.)

APARTMENT HOTEL. An apartment house which furnishes for the use of its tenants services ordinarily furnished by hotels, but the privileges of which are not primarily available to the public.

APARTMENT HOUSE or BUILDING. A building arranged, intended or designed for more than two families (See **DWELLING UNIT, MULTIPLE**.)

ASSOCIATED RECREATION. Recreational uses which are an integral part of a common ownership or associated with high-density residential development (example: Homeowners Association with a private club, swimming pool and tennis courts).

AUTHORIZED AGENT. An architect, builder, developer or other person empowered to act on behalf of other persons.

BAR, COCKTAIL LOUNGE, TAVERN, SALOON, CANTINA. An establishment where alcoholic beverages are sold for on-premises consumption, other than a restaurant as defined in this section.

BASEMENT or CELLAR. A store having more than one-half of its height below the average level of the adjoining ground. A cellar shall not be counted as a store for the purposes of height measurement.

BLOCK. A piece or parcel of land entirely surrounded by public highways or streets, other than alleys. In cases where the platting is incomplete or disconnected, the Building Official shall determine the outline of the block.

BOARD. The Board of Adjustment of the city.

BOARDING HOUSE or LODGING HOUSE. A building other than a hotel, occupied as a single housekeeping unit, where lodging or meals are provided for five or more persons for compensation, pursuant to previous arrangements, but not for the public or transients.

BUFFER.

(1) A visual screen constructed of wood, concrete block, masonry or landscape material including earthen berms in such a manner that adjacent property will be screened from the use contemplated, so noise, solid waste or other objectionable influences will be avoided.

(2) The **BUFFER** shall be horizontal, opaque and a minimum of six feet in height.

BUILDABLE AREA. Of the lot, the maximum amount of allowable space upon which a structure or building may be erected, after meeting the coverage, yard and other requirements of this chapter.

BUILDING. Any structure built for the support and shelter of persons, animals, possessions or movable property of any kind. When subdivided in a manner sufficient to impede the spread of fire, each portion so subdivided may be deemed a separate **BUILDING**.

BUILDING AREA. The building area of the lot is the gross area covered by the structures when placed on the lot.

BUILDING COVERAGE. Percentage of the lot that is occupied by the building area. Parking structures shall not be included in the calculations for coverage requirements.

BUILDING HEIGHT. The height of the building shall be measured from the average elevation of the finished grade along the front of the building to the highest point of the roof of the building.

BUILDING OFFICIAL. The duly authorized employee or representative of the city charged with implementation, inspection and enforcement of the building codes.

BUILDING, PRINCIPAL. A principal building is one in which a main use of the lot on which it is located is conducted.

BUILDING SETBACK LINE.

(1) A line defining an area on the building lot between the street right-of-way and all other property lines and the building line within which no building or structure shall be constructed, encroach or project except:

- (a) Sidewalks;
- (b) All fences that meet the City of Heath Fence Ordinance;
- (c) Driveways;
- (d) Retaining walls;
- (e) Fountains and other landscaping elements;
- (f) Light poles if fed from underground utilities;
- (g) Flag poles;
- (h) Mail boxes; and
- (i) All signs that meet City of Heath Sign Ordinance regulations.

(2) In the LR districts, underground parking garages shall not be required to meet side or rear setback requirements, but may be constructed from lot line to lot line.

FRONT BUILDING SETBACK LINE. A parallel to the street right-of-way line, which the building faces and takes its primary access from.

REAR BUILDING SETBACK LINE. A line parallel to an adjacent lot, alley or street in the case of double frontage lots, which the building backs up to and has its rear or secondary access from.

SIDE BUILDING SETBACK LINE. A line parallel to an adjacent lot or street right-of-way on a corner lot, which the building sides up to.

CARPORT. A structure which is at least 95% open on a minimum of three sides designed or used to shelter vehicles. A **CARPORT** shall be an integral part of the main building. A **CARPORT** will be considered an integral part of the main building when it has been designed to be structurally a part of and has any significant part of a wall in common with the main building or is under an extension of the roof and designed as an integral part of the main building as determined by the city's Building Official or his or her representative. A **CARPORT** shall shelter not more than three vehicles and shall not exceed 24 feet on its longest dimension. A conditional use permit is required for detached carports, both permanent or portable. All parts of a **CARPORT** shall meet the setback requirements of this regulation.

CERTIFICATE OF OCCUPANCY. A certificate issued by the City Secretary or his or her authorized representative stating that the proposed use of the land and/or building conforms to the requirements of this chapter.

CITY. The City of Heath, Texas.

CLINIC. An institution, public or private, or a station for the examination and treatment of outpatients by a group of doctors, dentists, opticians, ophthalmologists, orthopedists or other similar professional physicians.

CLUSTER DEVELOPMENT. A method of development of land that permits variation in lot sizes without an increase in overall density of population or development. The use of permanent, open space may be one method used to offer the increased density of smaller residential lots.

COLD STORAGE PLANT. A commercial establishment where foods are stored either in lockers, rented or leased, or in vaults in bulk for distribution to the home or other commercial businesses. There is no slaughtering of animals on the premises.

COMMERCIAL AMUSEMENT. Any enterprise whose main purpose is to provide the general public with a variety of amusing or entertaining activities, where tickets are sold or fees collected at the gates of the various rides, contests, games exhibits or other similar activities within the confines of the area or structure by such activities. **COMMERCIAL AMUSEMENTS** include zoos, exhibitions, expositions, athletic contests, rodeos, tent shows, ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, traveling shows, bowling alleys, pool parlors, video arcades and similar enterprises but does not include theaters and auditoriums.

COMMISSION. The Planning and Zoning Commission of the City of Heath, Texas.

COMPREHENSIVE PLAN. The Comprehensive Plan of the City of Heath and includes any unit or part of such unit separately adopted and any amendment to such plan or parts thereof.

CONDITIONAL USE. A use which may be suitable in certain locations in a zoning district if developed and operated under specific conditions and/or for a limited period of time.

CONDITIONAL USE PERMIT. A non-transferable permit issued by the governing body, allowing a specified conditional use in a district at a specific location and under certain conditions and/or for a limited period of time.

CONDOMINIUM. A multi-family dwelling unit within which designated dwelling units are conveyed fee simple title, with an undivided interest in the building's common elements, to include,

but not be limited to, halls, stairs, elevators, roof, parking space and the land when the building is not constructed on leased land.

COURT. An open unoccupied space, other than a yard, on the same lot with a building and which is bounded on two or more sides by the building.

CURB LEVEL. The level of the established curb in front of the building measured at the center of such front, or in the case of a corner lot, along the abutting street where the mean curb level is the highest. Where no curb has been established, the city engineer shall establish such curb or its equivalent for the purpose of this chapter.

DAY CARE CENTER and DAY NURSERY. A place for the care of children. Services usually include a staff nurse and a hot meal is normally served.

DENSITY. The ratio of dwelling units per gross acre of platted area being developed.

DISTRICT. A zone or geographic area within the municipality within which certain zoning or development regulations apply.

DRIVE-IN EATING ESTABLISHMENT. Any structure and premises specifically designed for the preparation and dispensing of food and meals for consumption either indoors or in a vehicle parked on the premises or taken away for consumption in the home of other places.

DWELLING UNIT.

(1) Any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boarding houses or mobile homes, trailers, motor coaches or other recreational vehicles.

(2) The determination of whether one family is living independently of another is based on one or more of the following criteria:

- (a) Separate sanitary facilities;
- (b) Separate kitchen facilities;
- (c) Separate entrances; and/or
- (d) Separate utilities.

DUPLEX. A building designed and/or occupied exclusively by two families living independently of each other.

MULTIPLE. A building designed for and/or occupied exclusively by three or more families living independently of each other.

SINGLE-FAMILY. A building designed for and/or occupied exclusively by one family as a separate dwelling unit.

FAMILY. One or more persons who are related by blood, adoption or marriage, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit, cost-sharing basis.

FILLING, RETAIL SERVICE STATION. An establishment where gasoline, oil and grease, or automobile accessories are sold, supplied or dispensed to the vehicle trade or where motor vehicles receive limited repair, are equipped for service, or where electric storage batteries are recharged and cared for, or a place where any two or more such activities are carried on or conducted as the principal

use of the establishment. (The storage, sale, lease or rental of more than one boat or mobile home, or more than five hauling trailers is prohibited.)

FLOOR AREA RATIO. The relationship of the gross floor area of all buildings on a lot to the total lot area. Parking structures shall be excluded in the calculation of the **FLOOR AREA RATIO**.

FRONTAGE. All the property abutting on one side of a street between two intersecting streets, measured along the street line.

GARAGE APARTMENT. A dwelling unit attached to a private garage.

GARAGE, COMMUNITY. A building or portion thereof, other than a public, private or storage garage as defined below, providing storage for motor vehicles with facilities for washing, but no other services, such garage to be in lieu of private garages within a block or portion of a block.

GARAGE, COMMERCIAL. A commercial garage is any premises and structures used for housing more than three motor driven vehicles or where any vehicles are kept for remuneration, hire or sale and where a retail service station may be maintained as a secondary use.

GARAGE, DETACHED OR PRIVATE. An accessory building for storage only of motor vehicles and home laundry.

GARAGE, PUBLIC. A building or portion thereof, designed or used for the storage, sale, hiring, care or repair of motor vehicles, which is operated for commercial purposes.

GARAGE, STORAGE. A building or portion thereof, except those defined as a private, a public, or a community garage providing storage for more than four motor vehicles, with facilities for washing but no other services.

GROUP HOUSING PROJECT. A dwelling project consisting of three or more buildings, to be constructed on a plot of ground which is not subdivided into customary streets or lots, or where the existing or contemplated street or streets, or lot layouts make it impractical to apply the requirements of this chapter to the individual building units in such housing project.

GUEST HOUSE. An accessory building designed for the temporary occupancy of guests of the primary dwelling. The **GUEST HOUSE** may contain a kitchen, living/dining area, sleeping room and a bath. There will be no remuneration for the use of the house and it will not be rented or otherwise used as a separate domicile.

HEIGHT OF YARD OR COURT. The vertical distance from the lowest level of the yard or court to the highest point of any boundary wall.

HOME OCCUPATIONS. A commercial use customarily carried on in the home by members of the occupant family without structural alterations in the principal building or any of its rooms, without offering any commodity or service for sale on premises, without the installations of machinery or additional equipment other than that customary to normal household operations, without the employment of additional persons, without the use of a sign to advertise the occupations, and which does not cause the generation of other than normal noise, and pedestrian and vehicular traffic.

HOSPITAL, SANITARIUM, NURSING OR CONVALESCENT HOMES. A building or any portion thereof, used or designed for the housing or treatment of the sick, mentally ill, injured, convalescent or infirm persons; provided that this definition shall not include rooms in any residential dwelling, hotel, apartment hotel not ordinarily intended to be occupied by those persons.

HOTEL. A building occupied or used as a more or less temporary abiding place of individuals or groups of individuals who are lodged, with or without meals, and in which there are more than 12 sleeping rooms, and no provisions for cooking in individual rooms.

IMPERVIOUS COVER. Roads, parking areas, buildings and other impermeable construction covering the natural land surface that prevent absorption of the water. Water quality basins, swales and other conveyances for overland drainage shall not be calculated as **IMPERVIOUS COVER**.

INSTITUTIONAL USE. A nonprofit organization or building, public or private, for the benefit of the public including YMCA, YWCA, Boys Clubs, Scouts; educational facilities and schools, including day care centers and kindergartens; churches, temples, cemeteries, mausoleums or crematories for the deposit of the human dead; hospitals, civic clubs, private parks, private libraries, museums and the like.

KINDERGARTEN. A school for more than five children of preschool age, in which constructive endeavors, object lessons or educational games are prominent features of the curriculum.

LANDSCAPING. Trees, shrubs, ground cover, earthen berms, vines or grass for the purpose of fulfilling the requirements of this chapter.

LEGISLATIVE or GOVERNING BODY. The City Council of the City of Heath, Texas.

LOADING SPACE. A space within the main building or on the same lot therewith, providing for the standing, loading or unloading of trucks and having a minimum dimension of 12 by 35 feet and a vertical clearance of at least 14 feet.

LOT. An undivided tract or parcel of land having a frontage on a public street, or upon an approved open space, having direct street access, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct separate trace, and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record.

LOT AREA, MINIMUM. Includes internal sidewalks, recreation areas, floor space, parking area, open space and utility easements, but does not include any public right-of-way street easements, or alley easements.

LOT, CORNER. A lot abutting upon two or more streets at their intersection. A **CORNER LOT** shall be deemed to front on that street on which it has its least dimension, unless otherwise specified by the Building Official, or as specified on an approved plat.

LOT DEPTH. The length of a line connecting the midpoints of the front and rear lot lines.

LOT DOUBLE FRONTAGE OR THROUGH LOT. A lot abutting on two non-intersecting public streets as distinguished from a corner lot.

LOT, FRONTAGE. The length of street frontage between property lines.

LOT, INTERIOR. A lot whose side lot lines do not abut upon any street.

LOT, IRREGULAR. Any lot not having equal front and rear lot lines, or equal side lot lines, a lot, the opposite lot lines of which vary in dimension and the corners of which have an angle of either more or less than 90 degrees. A lot fronting on a sharp curve or a cul-de-sac.

LOT LINES. The lines bounding a lot as defined herein.

FRONT LOT LINE. The property line between the front yard and the contiguous street right-of-way boundary.

REAR LOT LINE. The boundary line which is opposite and most distant from the front street line; except that in the case of uncertainty the Building Inspector shall determine the rear line.

REVERSE CORNER LOT. The corner lot whose front line faces at right angles to the front lot lines of the interior lots or whose rear lot line abuts the side lot lines of the interior lots.

SIDE LOT LINE. The property line between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots.

LOT WIDTH. The horizontal distance between side property lines, measured at the front setback line.

LOT OF RECORD. A parcel of land which is part of a subdivision, the map or plat of which has been recorded in the office of the County Clerk of Rockwall County; or a parcel of land not a part of an urban or town lot subdivision, the deed of which has been recorded in the office of the County Clerk of Rockwall County prior to the adoption date of this chapter, which has not been divided since recording.

LOTS IN SEPARATE OWNERSHIP AT THE TIME OF THE PASSAGE OF THIS SUBCHAPTER. A lot whose boundary lines, along their entire length touched lands under other ownership as shown by plat or deed recorded in the office of the County Clerk of Rockwall County on or before the date of the adoption of this chapter.

MASONRY. May include brick, stone, granite, marble, concrete block, tilt wall and other concrete materials. Stucco shall not be considered as masonry material in determining masonry requirements for any district classifications.

MANEUVERING SPACE. The space entirely on private property required for maneuvering vehicles in such a manner as to preclude the backing of any vehicle into any street right-of-way.

MINIWAREHOUSES. Small individual storage units for rent or lease, restricted to the storage of items that are not for sale on the premises.

MOBILE HOME. A movable or portable dwelling which is constructed on a chassis, and which is designed to be towed over Texas roads and highways under special permit, designed for year-round occupancy, designed primarily to be used without a permanent foundation, but which may sit on a permanent foundation, and designed to be connected to utilities. It may consist of one or more units that can be telescoped when transported and expanded later for additional capacity, or of two or more units, separately transportable, but designed to be joined together into one integral unit. The following shall not be included in this definition:

(1) Travel trailers, pickup coaches, motor homes, camping trailers or other recreational vehicles; and

(2) Manufactured modular housing which is designed to be set on a permanent foundation, and which uses standard sheathing, roofing, siding and electrical plumbing, and heating systems which comply with health ordinances and codes.

MODULAR HOMES. Any permanent, single-family dwelling unit which has been prefabricated or factory constructed as a single unit or in sections or modules, and assembled at the factory or construction site and moved to a permanent location as a unit or in sections or modules, as a permanent single-family dwelling unit placed on a permanent foundation at such site and connected with all required utility services.

MOTEL. A building or a group of two or more detached, semi-detached or attached buildings containing guest rooms or apartments with automobile storage space provided in connection therewith, which building or group is designed, intended or used primarily for the accommodation of automobile travelers; including groups designated as auto cabins, motor courts, motels and similar designations.

MUNICIPAL USES. Facilities owned or controlled by the City of Heath including but not limited to: office buildings, maintenance shops, treatment plants, community centers.

NIGHTCLUB, DISCOTHEQUE, DISCO or DANCE HALL. An establishment whose primary activity is the provision of facilities for dancing, including a dance floor and live entertainment or amplified music. The establishment may or may not provide on-premises consumption of alcoholic beverages. Schools of dance are exempted from this definition.

NONCONFORMING USE, BUILDING or YARD. A use, building or yard, which does not, by reason of design, use or dimensions, conform to the regulations of the district in which it is situated. It is a legal nonconforming use if established prior to the passage of this chapter.

PARKING AREA. Space used exclusively for the parking of vehicles, and where no other business is conducted, paved to city specifications.

PARKING SPACE. An area, not closer than six feet from the back edge of the curb, the width and length of which shall exceed by a minimum of two feet the dimensions of the type of vehicle normally to be parked in the space, and connected to a street or alley by a driveway affording satisfactory ingress and egress. The minimum dimension of a **PARKING SPACE** shall be in accordance with the adopted ordinances of the City of Heath regarding off-street parking. An enclosed garage meeting, the required dimensions shall not be utilized in meeting off-street parking requirements.

PATIO HOME. A single-family, detached, residential dwelling unit that is most often a one-store L-shaped or U-shaped home utilizing the entire lot with an enclosed garden court for open space area. Fire retardant walls are utilized and additional open space is often provided by clustering the units.

PAVING. Material which provides an all-weather surface for the parking of vehicles. All required paving shall meet the standards specified by applicable city specifications.

PERMITTED USE. A use specifically allowed in one or more of the various districts without the necessity of obtaining a use permit.

PERSON. Any individual, association, firm, corporation, governmental agency or political subdivision.

PERSONAL SERVICE SHOP. An establishment for the purpose of supplying limited personal services such as, but not limited to, barber, shoe, boot, saddle and shine shop.

PLACE. An open, unoccupied space other than a street or alley permanently established or dedicated as the principal means of access to property abutting thereon.

PLANNED DEVELOPMENT (PD). This type of district is not permitted in Heath, Texas. Individual specific zoning provides any needed classification and provides the City of Heath better control over the planning of the city and thereby more adequately achieves the goals of the city.

PLANNED SHOPPING CENTER. A group of architecturally unified commercial establishments built on a site which is planned, developed, owned and managed as one operating unit related in its location, size and type of shops to the trade area that the unit serves. The unit provides on-site parking in definite relationship to the types and total size of the stores.

PLANNING CONSULTANT. A private practitioner in planning, as planning is defined by the American Planning Association.

PLAT. A map of a subdivision or site plan that represents a tract of land, showing the boundaries and location of individual properties and streets.

PORTABLE BUILDING. A temporary building that does not have a foundation and is transportable.

PROHIBITED USE. A use not specifically allowed as permitted use or conditional use in one or more of the various districts.

PROTECTED FLOODPLAIN. Also referenced as the 100-year floodplain with fully developed conditions for the entire watershed. The area that is certified by a professional engineer to be within the 100-year floodplain, assuming build-out or fully developed conditions for the entire area within the relevant watershed.

RECREATIONAL VEHICLE or TRAVEL TRAILER. A vehicular, portable structure built in a chassis, designed to be used as a temporary dwelling for travel trailer by the manufacturer of the trailer and, when factory equipped for the road, it shall have a body width not exceeding eight feet and a body length not exceeding state maximums.

RESTAURANT or CAFÉ. A building or portion of a building, where the primary business is the on-premises sale of prepared food, with adequate facilities for the preparation of the food to be sold, the adequacy of the kitchen facilities to be based upon the seating capacity of the restaurant and the type of menu offered.

RETAIL. The sale of goods directly to a consumer. Engaged in, pertaining to, or relating to the sale of merchandise at retail. To sell by individual items or by the piece, directly to a consumer.

RETAIL FOOD STORE. A retail establishment selling meats, fruits, vegetables, bakery products, light hardware and other similar items which are purchased for use and consumption off the premises (may be drive-in or supermarket type).

RIGHT-OF-WAY LINE. A dividing line between a lot, tract or parcel of land and the public right-of-way.

SEMI-PUBLIC USES. Public facilities including sanitary landfills, water treatment and supply facilities, and wastewater treatment facilities, but not including facilities owned or controlled by the city.

SERVANT'S QUARTERS. An accessory building or portion of a main building located on the same lot as the main building and used as living quarters for servants employed on the premises and not rented or otherwise used as a separate domicile.

SETBACK. See **BUILDING SETBACK LINE.**

SIGN. A name, identification, image, description, display or illustration which is affixed to, painted, or represented directly or indirectly upon a building, structure or piece of land, and which directs attention to an object, product, place, activity, facility, service, event attraction, person institution, organization or business which is visible from any street, right-of-way, sidewalk, alley, park or other public property. Customary displays of merchandise or objects and material without lettering placed behind a store window are not **SIGNS**.

SITE. A combination of continuous lots, that may or may not be owned separately, that will be developed under one unified plan, as if it were a single parcel of land.

SITE PLAN. The development plan for one or more lots on which is shown the existing and proposed conditions of the lot including: topography, vegetation, drainage, floodplains, marshes and waterways; open spaces, walkways, means of ingress and egress, utility services, landscaping, structures and signs, lighting and screening devices; and any other information that reasonably may be required in order than an informed decision can be made by the approving authority.

SPACE. A plot of ground within a mobile home or recreational vehicle park designated for the accommodation of one mobile home or one recreational vehicle, together with such open space as required by this chapter.

STORAGE. The accumulation, stocking or depositing of materials or items. These may include materials for the eventual use of sale in a commercial enterprise; but does not include the storing of a single car or truck on an individual residential lot.

STORAGE BUILDING. Any building either portable or constructed on site, utilized for storage purposes, and not requiring plumbing and electrical wiring, and not used for residential purposes.

STORY. That part of a building included between the surface of one floor and the surface of the floor next above, or, if there be no floor above, that part of the building which is above the surface of a floor and the ceiling next above. A top story attic is a half-story, when the main line of the eaves is not above the middle of the interior height of such story. The first story is full story when over 50% of its exterior walls are exposed to outside light and air entirely above grade and which exterior walls contain windows or doors permitting entrance of day light and outside air.

STREET. A public or approved private thoroughfare which affords the principal means of access to abutting property, excluding alleys, and including.

STREET, ARTERIAL. A thoroughfare designated as a freeway, expressway, major arterial, or minor arterial in the most recently adopted city thoroughfare plan. The primary function of an arterial is to carry traffic through the city, and is designed for as high a speed as possible, to carry as much traffic as possible. Also known as a **MAJOR THOROUGHFARE**.

STREET, COLLECTOR. A street that primarily carries traffic from local or residential streets to major thoroughfares and highways, including the principal entrance streets for circulation to schools, parks and other community facilities within such a development, and also including all streets which carry traffic through or adjacent to commercial or industrial areas.

STREET, FRONTAGE. A local street lying parallel to and adjoining a major street right-of-way, which provides access to abutting properties.

STREET LINE. The dividing line between the street and the abutting property.

STREET, LOCAL or RESIDENTIAL. A street that is used primarily for access to abutting residential property and circulation of traffic within residential neighborhoods. It is of a width and design to discourage through traffic, thereby protecting the residential area. A **LOCAL STREET** serves the same purpose in a commercial or industrial district.

STRUCTURAL ALTERATIONS. Any alteration involving a change in or addition to the supporting members of a building, such as bearing walls, columns, beams or girders.

STRUCTURE. Something built or constructed.

SUBDIVISION. The division of a lot, tract or parcel or land into two or more lots, tracts, parcels or other divisions of land for sale, development or lease.

TOWNHOUSE. A single-family dwelling unit constructed in a series, or a group of units having common walls, each on a separate lot.

TRAVEL TRAILERS. Any vehicular, portable structure designed as a temporary dwelling for travel, recreational and vacation uses, and includes folding, hardtop campers transported behind a motor vehicle, truck mounted campers attached to and transported behind a motor vehicle or pickup, camper, converted bus, tent trailer, tent or similar device used for temporary, portable housing or a similar type of temporary dwelling intended for short term occupancy, travel and/or recreation.

VARIANCE. Relief from or variation of the provisions of these regulations, other than use regulations, as applied to a specific piece of property, as distinct from rezoning, as further set out hereinafter in powers and duties of the board of adjustment.

WHOLESALE. The sale of commodities for the purpose of resale, as to retailers or jobbers rather than to consumers directly; opposed to retail. Of, pertaining to, or engaged in sale at wholesale.

YARD, FRONT. An open, unoccupied space on a lot facing a street extending across the front of the lot between the side lot lines and from the front of the main building to the front property or street line.

YARD, REAR. An open, unoccupied space on a lot, except for accessory building/structure as herein permitted, extending between the side lot lines and from the rear of the main building to the rear lot line. The **REAR YARD** shall be at the opposite end of the lot from the front yard.

YARD, SIDE. An open, unoccupied space on a single lot, except for accessory building/structure as herein permitted, on one or two sides of a main building, on the same lot with the building, extending from the main building to a side lot line and from the front of the main building to the rear of the main building.

(2005 Code, § 12-12-1) (Ord. 960502, passed - -; Ord. 000615, passed - -; Ord. 010419D, passed - -; Ord. 040617B, passed - -)

§ 159.43 CONDITIONAL USE PERMITS; PERMIT REQUIREMENTS.

The purpose of the regulations described by this subchapter is to allow the compatible and orderly development, within the city, of uses which may be suitable only in certain locations in a zoning district, if developed in a specific way or only for a limited period of time.

(A) *Permit required.* A use permit is required for all conditional uses as set forth in the conditional use paragraph of each zoning district. At no time may a structure or property be adapted to a conditional use without first obtaining a conditional use permit. A permit may not be issued for any conditional uses not specified in the zoning district without first amending the Zoning Ordinance to permit the conditional use.

(B) *Approval, procedure, responsibility and appeals.* Conditional use permits shall be considered for approval as an amendment to the Zoning Ordinance and shall be approved as provided in division (D) below.

(C) *Application, filing procedures and fees.* Requirements for application of conditional use permit:

(1) Applicant for conditional use permit must be the property owner, as recorded with the Rockwall County Appraisal District, or the property owner's designated representative;

(2) A conditional use permit may be used only by the applicant/property owner. A change in property ownership prior to completion requires a new application by the new property owner;

(3) Plot plan of lot or parcel of land showing the main building, proposed accessory building/structure, decks, patios, driveways, sidewalks, any and all existing or proposed improvements to the lot on a scale of one inch equals 20 feet (one inch = 20 feet scale);

(4) Floor plan on a scale of one-quarter inch equals one foot (one-quarter inch = one foot scale) of proposed accessory building/structure;

(5) Elevations on a scale of one-quarter inch equals one foot of proposed accessory building/structure;

(6) Photographs or elevation drawings of the main building (if available);

(7) Complete description of all materials to be used including foundation; and

(8) Any other documentation required by the Planning and Zoning Commission or City Council necessary for their decision regarding the issuance of a conditional use permit.

(D) *Requirements for approval.* The City Council may permit a conditional use after review and recommendation by the Planning and Zoning Commission subject to appropriate conditions and safeguards when the Council finds:

(1) That the proposed use meets all the minimum standards established in this subchapter and other applicable ordinances;

(2) That the proposed use meets the intent of the district in which it is located, and is in accordance with the comprehensive plan; and

(3) That the proposed use will not be detrimental to the health, welfare and safety of the surrounding neighborhood or its occupants, nor by substantially or permanently injurious to the neighboring property.

(E) *Development, revocation and/or automatic cancellation of permit.* If a conditional use permit has not been used within six months after the date granted, the City Council reserves the right to institute public hearings to revert to the original zoning.

(F) *Period of conditional use and renewal.* The City Council may attach a term limit to a conditional use permit. If an application for a building permit is not made within one year from the date of the approved conditional use permit, the conditional use permit shall be null and void. If the conditional use permit does have a time limitation attached, the expiration date shall be set forth. Any permittee wishing a renewal of such permit for successive time periods shall make application for renewal to the City Secretary or his or her designated representative, not less than 20 days before the permit expires. If, after proper inspection, the city finds that the conditions of the original permit are being met, and there have not been any complaints of noncompliance, the permit may be renewed by the Planning and Zoning Commission for the same time period as approved by the City Council originally. If there is evidence of, or complaints of noncompliance, then renewal of the permit must follow the same procedures and notification as the issuance of a new permit, and may be renewed by the Planning and Zoning Commission and City Council.

(G) *Conditions of conditional use.*

(1) Existing railroads and private utilities, including telephone service, may continue to be operated and maintained in residential and commercial districts but no new railroad or utility structure other than the usual poles, wires, underground utilities and lift stations shall be established in the district without a conditional use permit.

(2) Churches, schools, railroads and other conditional uses automatically allowed in each district by state law, but required within a district to obtain a conditional use permit, must be issued a conditional use permit subject to the use meeting reasonable requirements imposed under this section.

(3) Private club conditions shall be determined by City Council by separate ordinance.

(4) Bed and breakfasts not permitted.

(5) The Planning and Zoning Commission and City Council may impose additional restrictions or conditions to carry out the spirit and intent of this section and to mitigate adverse effects of the proposed use. These requirements may include, but are not limited to, increased open space, loading and parking requirements, suitable landscaping, and additional improvements such as curbing and sidewalks.

(6) Wind energy systems and appeal for such systems subject to regulations in § 159.50 .

(H) *Prior ordinances, effectiveness of.* Prior to the passage of the ordinance, the City Council had established various specific use permits which are to be continued in full force and effect until such time of expiration as may be set forth in each such ordinance granting the specific use permit. The ordinances, or applicable parts of ordinances listed in the Appendix, which is on file in the City Secretary's office, are carried forth in full force and effect as specific use permits and are the conditions and regulations which apply to the respective specific use permits indicated on the zoning map at the date of passage of this chapter.

(2005 Code, § 12-4-1) (Ord. 000615, passed - - ; Ord. 010419D, passed - - ; Ord. 020905B, passed - - ; Ord. 101221A, passed 12-21-2010)

§ 159.44 LANDSCAPING AND BUFFERING.

(A) Any retail use or parking lot that has a side or rear contiguous to any residential district and any multi-family use or parking lot with more than five dwelling units that has a side or rear contiguous to any single family, townhouse or duplex district, shall be buffered as defined herein or as approved by the City Council. Where the contiguous use is separated by only a street, alley or easement, and such contiguous uses side-up to or face the use for which the buffer is required, a fence or landscape berm six feet in height is required unless otherwise approved by the City Council. The screen shall be located no closer to the street than the property line. Any ordinances concerning sight obstructions of intersections shall be applicable to the screen where it is intersected by a street or throughway.

(B) Prior to construction of buffers, as defined, complete plans showing type of material, depth of beam, and structural support shall be submitted to the building permit office for analysis to determine whether or not:

- (1) The screen will withstand the pressures of time and nature; and
- (2) The screen adequately accomplishes the purpose for which it was intended.

(C) All required landscape or buffered areas in the MF-8, LR shall be maintained at all times and shall have irrigation systems installed meeting all applicable city codes and approved by the Building Official.

(2005 Code, § 12-6-1)

§ 159.45 UNPLATTED PROPERTY.

(A) The City Planning and Zoning Commission of the City of Heath shall not approve any plat of any subdivision within the city limits of the City of Heath until the area covered by the proposed plat shall have been permanently zoned by the City Council of the City of Heath.

(B) The City Planning and Zoning Commission of the City of Heath shall not approve any plat of any subdivision within any area where a petition or ordinance for annexation or a recommendation for annexation to the City of Heath is pending before the City Council.

(C) In the event the City Planning and Zoning Commission holds a hearing on proposed annexation, it may, at its discretion, at the same time hold a hearing upon the permanent zoning that is to be given to the area or tract to be annexed, and make a recommendation on both matters to the City Council so that the City Council can, if it desires, act on the matter of permanent zoning and annexation at the same time.

(2005 Code, § 12-7-1)

§ 159.46 BOARD OF ADJUSTMENT; PLANNING AND ZONING COMMISSION.

(A) A Board of Adjustment is hereby created in accordance with the provisions of Tex. Local Gov't. Code, § 211.008. The Board of Adjustment shall consist of five members who are residents and taxpayers of the city, each to be appointed by the City Council for two years removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose place becomes vacant for any cause, in the same manner as the original appointment was made. In addition, the City Council shall provide for the appointment of two alternate members of the Board who shall serve in the absence of one or more of the regular members. All cases to be heard by the Board of Adjustment shall be heard by the minimum number of four members. Alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two years, and any vacancy shall be filled in the same manner and they shall be subject to removal the same as the regular members.

(B) The Chairperson of the Planning and Zoning Commission, or his or her authorized representative shall be an ex-officio member of the Zoning Board of Adjustment without power of vote and as an ex-officio member of the Board shall act as Secretary of the Zoning Board of Adjustment and shall set up and maintain a separate file for each application for appeal, special exception and variance received and shall record therein the names and addresses of all persons, firms and corporations to whom notices are mailed, including the date of mailing and the person by whom the notices were delivered to the mailing clerk, post office or mail box and further keep a record of all notices published as required herein. All records and files herein provided for shall be permanent and official files and records of the city.

(C) The Secretary of the Board shall forthwith notify in writing the City Council, the Planning and Zoning Commission and the City Building Inspector of each decision, interpretation, special exception and variance granted under the provisions of this chapter.

(D) The Board of Adjustment shall annually select one of its members to be the Chairperson, and the Vice Chairperson to act in the absence of the Chairperson.

(2005 Code, § 12-8-1)

§ 159.47 ORGANIZATION AND DUTIES OF THE PLANNING AND ZONING COMMISSION.

(A) *Created; composition.* There is hereby created a city Planning and Zoning Commission which shall function by making plans and acting as a Zoning Commission. The Commission shall be composed of seven members to be appointed by the City Council.

(B) *Duration of terms of office; transition procedure; filing of vacancies; reappointment.* The members of the Planning and Zoning Commission shall be appointed for a term of two years on a rotating basis and removable for cause by the City Council. The terms of office shall expire on the last day of July or until their successor has been appointed. In the event that a vacancy occurs on the

Planning and Zoning Commission prior to the expiration of a full term, the City Council shall appoint a new member to complete the unexpired term. Any member of the Commission may be reappointed by the City Council upon completion of a full term.

(C) *Quorum*. Any four members shall constitute a quorum for the transaction of the business. The affirmative vote of a majority of those attending any meeting at which there is a quorum present shall be necessary to pass any motion, recommendation or resolution of the Planning and Zoning Commission.

(D) *Duties generally*. The Planning and Zoning Commission shall, from time to time, either at its discretion or as requested by the City Council submit its reports, plans and recommendations for the orderly growth, development and welfare of the city in accordance with Tex. Local Gov't. Code, §§ 211.001 *et seq.*. The Commission shall also perform other duties as may be prescribed by ordinance or state law; or as follows:

(1) To recommend the boundaries of the various districts and appropriate regulations to be enforced therein under this chapter, the ordinances of the City of Heath or the laws of the State of Texas, to the City Council or the City of Heath and to recommend approval or denial of zoning changes and regulations under this chapter, the ordinances of the City of Heath or the laws of the State of Texas;

(2) To hear, recommend or determine any matter relating to zoning, planning or subdivision control as may be specified or required under this chapter, the ordinances of the City of Heath, or the laws of the State of Texas; and

(3) To exercise those duties and powers as may be now or hereafter conferred by this chapter, the ordinances of the City of Heath, or applicable laws of the State of Texas.

(E) *Citizen of Heath*. Each member of the Planning and Zoning Commission shall be a resident citizen of the City of Heath at the time of his or her appointment. A member of the Planning and Zoning Commission ceasing to reside in the city during his or her term of office shall immediately forfeit his or her office.

(F) *Removal*. Any member of the Planning and Zoning Commission may be removed from office for any cause deemed by the City Council to be sufficient for removal of the member. If a vacancy should exist in the Planning and Zoning Commission membership due to removal from office, resignation, death, refusal or inability to serve, the City Council shall appoint a new member to fill the vacancy for the unexpired term.

(G) *Attendance*. Three consecutive absences that are not excused by the Planning and Zoning Commission, or the absence of a regular member from more than 50% of the meetings in any calendar year, will automatically remove a member from the Planning and Zoning Commission.

(H) *Officers*. The Planning and Zoning Commission shall elect a Chairperson, Vice-Chairperson and Secretary at the first meeting in July for a term of one year. The Vice-Chairperson is to preside in the absence of the Chairperson. Both the Chairperson and the Vice-Chairperson shall vote on every item unless prohibited by law.

(I) *Meetings*.

(1) All meetings of the Planning and Zoning Commission shall be open to the public. The Commission shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep record of its examinations and other official actions, all of which shall be filed in the office of the Commission and shall be a public record. The City Secretary of the City of Heath shall be the custodian and possessor of the records and minutes of the Planning and Zoning Commission.

(2) Meetings of the Planning and Zoning Commission may be held as often as necessary to conduct the business coming before the Commission at the call of the Chairperson and at such other times as the Commission may determine.

(J) *Rules of procedure.* Whenever a public hearing is closed, it shall be proper for the Commission to take the matter under advisement and announce its decision at some subsequent meeting which is open to the public. No hearing, however, will be continued without setting a definite date when the hearing will be resumed where a matter is taken under advisement.

(2005 Code, § 12-8-2)

§ 159.48 PERFORMANCE STANDARDS.

(A) The following performance standards apply to all uses permitted.

(B) Performance standards:

(1) *Smoke.* The requirements of the Texas Air Control Board.

(2) *Particular matter.* The requirements of the Texas Air Control Board.

(3) *Odor.* No operation shall permit odors to be released which are detectable at the property line in Local Retail Districts and which offensively affect the sense of smell.

(4) *Toxic material.* The requirements of the Texas Air Control Board.

(5) *Glare.* All artificial light sources shall be shielded so as to prevent direct rays of light from crossing a zoning district boundary line.

(6) *Vibration.*

(a) Any local retail operation or activity which property shall cause at any time and at any point along the nearest adjacent property line, earthborne vibrations in excess of the limits set forth in Column I (below) are prohibited.

(b) In addition, any local retail operation or activity which shall cause at any time and at any point along a zone boundary line, earthborne vibrations in excess of the limits set forth in Column II are prohibited. Vibrations shall be expressed as resultant displacement in inches.

<i>Frequency (cycles per second)</i>	<i>Displacement Inches I</i>	<i>Displacement Inches II</i>
Below 10	.0008	.0004
10 to 20	.0005	.0002
20 to 30	.0002	.0001
30 to 40	.0002	.0001
40 and over	.0001	.0001
This tabulation is for steady state vibration; this is defined as continuous vibration in contrast to discrete pulses. Impact vibration, that is, discrete pulses which do not exceed 100 pulses per minute, shall not produce in excess of twice (two times) the displacement stipulated above.		

(7) *Noise.* At no point either on boundary of the zone or at 125 feet from the property line of the local retail operation, whichever distance is greater, shall the sound pressure level of any operation of the facility (other than background noises produced by sources not under control of these covenants, such as the operation of motor vehicles) exceed the decibel limits in the octave bands designated below.

<i>Octave Band Frequency (Cycles per Second)</i>	<i>Maximum Permitted Sound Level in Decibels Along Residence District Boundaries of 125 Feet from Plant or Operation Lot Line</i>	<i>Maximum Permitted Sound Level in Decibels Along Residence District Boundaries or 125 Feet from Plant or Operation Lot Line</i>
0 to 75	67	73
75 to 150	62	68
150 to 300	58	64
300 to 600	54	60
600 to 1200	49	55
1200 to 2400	45	51
2400 to 4800	41	47
Above 4800	37	43
Sound levels shall be measured with a sound-level meter and associated octave band filter, manufactured and calibrated according to standards prescribed by the American Standards Association. Measurements shall be made using the flat or C network of the sound level meter and the fact meter movement of the octave band analyzer. Impulsive type noises shall be subject to the performance standards hereinafter prescribed provided that the noises shall be capable of being accurately measured with the equipment. Noises capable of being so measured, shall be those noises which cause rapid fluctuations of the needle of the sound-level meter with a variation of no more than plus or minus two decibels. Noises incapable of being so measured, such as those of an irregular and intermittent nature, shall be controlled so as not to become a nuisance to adjacent users.		

(8) *Fire hazards.* The storage or utilization of solid materials or products ranging from incombustible to moderate burning is permitted in accordance with applicable city codes and ordinances. The storage or utilization of solid materials or products permitted in accordance with applicable city codes and ordinances provided the following condition is met: the materials or products shall be stored or utilized within complete enclosed buildings having incombustible exterior walls and protected throughout by an automatic fire extinguishing system. The storage or utilization of flammable liquids or gases which produce flammable or explosive vapors, shall be permitted in accordance with the table below (exclusive of storage of finished products in original sealed containers) and the city's fire prevention code as interpreted by the City Fire Marshal.

<i>Industries Engaged in Storage and Distribution of Such Maters</i>	<i>Prohibited Above-Ground</i>	<i>100,000 Gallons Underground</i>
Materials having a flash point above 190°F	Prohibited	100,000 gallons
From and including 105°F to and including 190°F	Prohibited	40,000 gallons

Materials having a flash point below 105°F	Prohibited	20,000 gallons
<i>Industries Engaged in Utilization of Such Materials</i>	<i>Prohibited Above-Ground</i>	<i>100,000 Gallons Underground</i>
Materials having a flash point above 190°F	10,000 gallons	50,000 gallons
From and including 105°F to and including 190°F	1,000 gallons	20,000 gallons
Materials having a flash point below 105°F	500 gallons	10,000 gallons

(9) *Water pollution.* No operation or activity shall discharge or cause to be discharged, liquid or solid waste into public waters unless in conformance with the provisions of the Texas Water Quality Board.

(10) *Liquid or solid waste.* No discharge at any point will be allowed into any public sewer, private sewer disposal system, or stream or into the ground, except in accordance with standards approved by the State Health Department or standards equivalent to those approved by such department, for similar uses, of any materials of such nature or temperature as can contaminate any water supply, interfere with bacterial processes in sewage treatment or otherwise cause the emission of dangerous or offensive elements. All discharge shall comply with all applicable city ordinances.

(2005 Code, § 12-9-1)

Statutory reference:

Sanitation and environmental quality, see Tex. Health and Safety Code, Title 5

§ 159.49 NONCONFORMING USES.

The general public, the City Council and the Planning and Zoning Commission are directed to take note that nonconformities in the use and development of land and buildings are to be avoided, or eliminated where now existing, wherever and whenever possible, except: when necessary to preserve property rights established prior to the date these regulations become effective as to the property in question; and when necessary to promote the general welfare and to protect the character of the surrounding property. Except as hereinafter specified, any use, building or structure lawfully existing at the time of the enactment of this chapter or lawfully existing at the time of annexation into the city may be continued with the provisions of this chapter for the district in which it is located.

(A) *Nonconforming uses continued or changed.* The right to continue such nonconforming uses shall be subject to regulations prohibiting the creation of a nuisance and regulations reasonably protecting adjacent property.

(B) *Conditional uses.*

(1) Any use existing on the effective date of this chapter which is listed as a conditional use in the district where it is located shall be and shall remain a nonconforming use until a conditional use permit is obtained as provided in this chapter.

(2) If the use is discontinued or abandoned for 180 days during any three-year period, the use shall meet the requirements of this chapter and shall obtain a use permit before it is continued.

(C) *Alteration of nonconforming uses.*

(1) No existing building or premises devoted to a use that is not permitted by this chapter in the district in which such building or premises is located shall be enlarged or altered in a way which increases its nonconformity, except when required to do so by law or order, unless the use thereof is changed to a use that is permitted in the district in which such building or premises is located, and except as follows:

(2) If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of a more restrictive classification when authorized by the Board of Adjustment in accordance with the provisions of §§ 159.46 or 159.47, or to a conforming use.

(3) Whenever a nonconforming use has been changed to a conforming use, the use shall not thereafter be changed to a nonconforming use.

(4) When authorized by the Board of Adjustment in accordance with the provisions of §§ 159.46 or 159.47, enlargement or completion of a building devoted to a nonconforming use may be made upon the lot occupied by the building, where the extension is necessary and incidental to the existing use of the building and does not exceed 25% of its area of nonconformity.

(5) When authorized by the Board of Adjustment in accordance with the provisions of §§ 159.46 or 159.47, a nonconforming use may be extended throughout those parts of a building which were manifestly designed or arranged for the use prior to the date on which the use of the building became nonconforming, if no structural alterations, except those required by law, are made therein.

(6) The provisions of this chapter shall not apply to prevent the extension of any building existing in any district at the time of the adoption of this chapter, to the height to which the walls, foundation and frame work of the existing building originally were intended, designed and constructed to carry; provided, however, that the actual construction of the extensions in height permitted by this division (C)(6) shall have been duly commenced within two years from the date of the adoption of this chapter.

(D) *Cessation of use of building or land.* For the purposes of the succeeding divisions, a use shall be deemed to have ceased when it has been discontinued for six months during any three-year period whether with the intent to abandon the use or not.

(1) No building or structure which was originally designed for or used as a nonconforming use shall again be put to a nonconforming use, where the use has ceased for six months or more during any three-year period.

(2) The use of land, structures and/or buildings involving individual structures with a replacement cost of \$1,000 or less, which does not conform to the provisions of this chapter shall be discontinued within six months from the enactment of this chapter. The nonconforming use of land and/or buildings involving individual structures with a replacement cost of \$1,000 or less, which becomes nonconforming by reason of subsequent amendments to this chapter shall be discontinued within six months from the date of the amendment.

(3) All lots used for storage that do not require a building and the use of the lot is made nonconforming by this chapter or amendments thereto shall cease to be used for the storage within six months of the date of adoption of this chapter or amendments.

(E) *Construction approved prior to ordinance.* Nothing herein shall be construed to require any change in the overall plans, construction or designated use of any development, structure or part thereof, where official approval and the required building permits were granted before the enactment of this chapter, or any amendment thereto where construction thereof, conforming with the plans, shall have been started prior to the effective date of this chapter or the amendment, and where the construction shall have been completed in a normal manner within the subsequent 12-month period, with no interruption, except for reasons beyond the builder's control.

(F) *Unsafe buildings, repair of.* Nothing in this chapter shall be construed to prohibit the strengthening or repair of any part of any building or structure declared unsafe by proper authority, unless the repairs exceed 50% of the replacement cost of the building.

(G) *Damage or destruction.* Any nonconforming structure which is damaged more than 75% of its then appraised tax value above the foundation, by fire, flood, explosion, wind, earthquake, war, riot or other calamity or act of God, shall not be restored or reconstructed and used as it was before such happening. If the structure is damaged less than 75% of its then appraised tax value above the foundation, it may be restored, reconstructed or used as before, provided that the restoration or reconstruction is completed within 12 months of the damaging event, the 12-month period not including any necessary litigation.

(H) *Repairs and maintenance.*

(1) On any nonconforming structure or portion of a structure containing a nonconforming use, no work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-loadbearing walls, fixture, wiring or plumbing to an extent exceeding 10% of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be.

(2) If 50% or more of a nonconforming structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and is declared by a duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

(I) *Moving of nonconforming structure or building.* No conforming building or structure shall be moved in whole or in part to any other location on the lot, or on any other lot, unless every portion of such building or structure is made to conform to all the regulations of the district.

(J) *Nonconforming lot sizes.* Nothing in this chapter shall be construed to prohibit the use of a lot that does not meet the minimum lot area of the district it is located in, provided that the lot was previously, zoned for similar type uses, that the lot was a lot of record prior to the adoption of this chapter and that the lot has not been rezoned to a different use since the adoption of this chapter.

(2005 Code, § 12-10-1)

§ 159.50 WIND ENERGY SYSTEMS.

(A) *Purpose.* The purpose of this section is to regulate and to allow in appropriate zoning districts the safe, effective and efficient use of small wind energy systems installed to reduce the on-site production and consumption of utility supplied electricity while respecting the individual rights of all property owners. It is in the public interest to regulate the use of small wind energy systems in appropriate zoning districts consistent with the regulations hereinafter adopted.

(B) *Findings.*

(1) The City of Heath recognizes that wind energy is an abundant, renewable and environmentally friendly resource, and that its conversion to electrical power reduces dependence on non-renewable energy sources and decreases air and water pollution resulting from conventional energy sources. While the city supports the use of non-polluting resources, the city understands that wind energy production and effectiveness is limited in North Texas due to inconsistent and insufficient winds which lack continuous presence and velocity.

(2) Therefore, wind energy systems shall be permitted on tracts of ten acres or more with a maximum tower height of 55 feet. Any proposed variance to permitted systems, including proposal of a system on tracts less than ten acres, must obtain a conditional use permit.

(C) *Definitions.* For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

dB/A. The sound pressure level in decibels.

DECIBEL. The unit of measure used to express the magnitude of sound pressure and sound intensity.

SOUND PRESSURE. The average rate at which sound energy is transmitted through a unit area in a specified direction.

SOUND PRESSURE LEVEL. The sound pressure mapped to a logarithmic scale and reported in decibels.

SYSTEM. A wind energy conversion system that converts wind energy into electricity that has a rated capacity of not more than ten kilowatts and is intended for on-site production and consumption of electricity to serve the needs of the consumer. ***SYSTEM*** includes a freestanding tower or a single device attached to a building.

TOWER HEIGHT. The overall height above grade of the tower including the wind turbine, and all related accessories, but excluding blades.

TURBINE. The parts of a wind energy system including the blades, generator and tail.

UTILITY GRID SYSTEM. A wind energy system designed and built to provide electricity to the electric utility grid.

YARD, FRONT. An open, unoccupied space, on a lot facing a street extending across the front of the lot between the side lot lines and from the front of the main building to the front property or street line.

(d) *General regulations.* The following general regulations must be demonstrated and apply to all wind energy systems within any district for which a permit, including a conditional use permit, is under consideration and/or granted.

(1) The proposed site of a wind energy system shall have sufficient access to unimpeded air flow for adequate operation of the wind energy system in accordance with the manufacturer's recommendations.

(2) Wind energy system generators which are electrically interconnected to the local utility grid shall comply with all relevant Public Utility Commission and local Transmission and Distribution Service Provider (TDSP) rules and regulations governing the interconnected generation equipment. These include completing an interconnection application and obtaining an approved interconnection agreement as required by the TDSP.

(3) Wind energy systems must satisfy requirements of the most recently adopted editions of the International Building Code, International Residential Code, and the National Electric Code.

(4) A building permit must be obtained prior to the construction or installation of a wind energy system and property must be platted in accordance with city ordinances. The contracting installer must be registered with the City of Heath and provide a certificate of liability insurance.

(5) The tower height (excluding blades) may not exceed 55 feet. However, variances to height may be considered as part of a conditional use permit due to the unique nature of property or other special circumstances.

(6) Tower blades must be located at a minimum of 20 feet above ground level.

(7) Only freestanding towers are allowed to be placed on the ground. No guy or other supports are allowed. Towers must not be climbable.

(8) No part of a system may be placed in the front yard.

(9) Any paint or finish other than what is recommended by the manufacturer requires a conditional use permit.

(10) Setback requirement is a minimum of one and one-half times the height of the tower as measured perpendicularly from any property line and all existing and proposed structures including overhead utility lines.

(11) A system may be allowed on a lot only after a primary structure has been constructed.

(12) One wind energy system is allowed per lot. (Wind farms are not permitted in any district.)

(13) Sound pressure levels shall not exceed 50 decibels between the hours of 7:00 a.m. and 10:00 p.m. and 35 decibels between the hours of 10:00 p.m. and 7:00 a.m., as measured from the property line closest to the system.

(14) All lighting not required by the Federal Aviation Administration (FAA) is prohibited. When required by the FAA, such lighting shall not exceed the minimum FAA requirements and must be shielded as required to avoid objections by surrounding property owners. Furthermore, the wind energy system shall comply with all state and federal law, including those of the State Public Utility Commission, Federal Aviation Administration and the Federal Communication Commission or any other state or federal agency with the authority to regulate wind energy systems.

(15) No advertising signs shall be allowed on any wind energy system.

(16) A new and separate conditional use permit is required for any addition to an existing wind energy system. This includes but is not limited to satellite receivers, radio or communications antennae.

(17) No part of the system shall be placed in any easement without the written approval of the easement holder.

(E) *Rooftop wind energy systems.* Rooftop systems require a conditional use permit. Rooftop systems may only be placed in the rear exterior of a building away from public view as much as possible. The system must conform to all other regulations including height restrictions. However, minimum acreage requirements do not apply to rooftop systems.

(F) *Application requirements.* The following information and supporting documentation must accompany every application for a wind energy building permit and/or conditional use application for a wind energy system or variance thereof:

(1) A plan view layout, submitted under the seal of a professional engineer licensed in the State of Texas, of the proposed wind energy system clearly illustrating the following: elevation drawings illustrating:

(a) The design and height of the proposed wind energy system.

(b) Detailed drawings of all system components.

(c) A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

(d) Systems are required to have a lockable disconnect switch (emergency shutdown device) located at the tower base and primary structure receiving power.

(e) Standard installation drawings of the wind turbine structure, including the tower base and footings. An engineering analysis of the tower in compliance with all applicable Building Codes and certified by a licensed professional engineer registered in the State of Texas shall also be submitted. This analysis is frequently supplied by the manufacturer as a manufacturer's data sheet.

(2) A site plan clearly illustrating a plan layout in accordance with the requirements for a site plan as contained in the City of Heath Code of Ordinances including a survey illustrating: contours at two-foot intervals, detailed plans illustrating all components of the system, distances to property lines, required setbacks, adjacent land uses and zoning designation, existing and proposed structures on the site, existing easements, necessary consent to any encroachments, natural features and fencing. A tree survey may be required as deemed necessary following a review by the Department of Public Works.

(3) Rooftop systems may not require submission of a full site plan. Other general regulations, technical requirements, and application procedures will apply as deemed appropriate by the Building Official.

(4) The appropriate building permit fee as determined by the city's fee schedule is due at the time of issuance of a building permit.

(5) A deposit in the amount of \$1,000, in addition to the building permit fee, is due at the time of application to cover the costs of administrative review of the application by an outside source if necessary. Administrative review includes but is not limited to engineering review, field visits, and the confirmation that a checklist of items is complete prior to being permitted or scheduled for consideration for a conditional use permit. Review by the City Engineer or Building Official may result in additional fees to be determined as needed including but not limited to frequent and final inspections. The deposit or unused portion thereof will be refunded after a final inspection or after termination of the application process.

(6) A conditional use permit application fee of \$550 is required at the time of submission of an application for conditional use in addition to the required deposit.

(G) *Maintenance.*

(1) A system must be properly maintained at all times. Systems that have become unstable or pose a danger of collapse must be removed or repaired in accordance with notice from the Building Official. Such repair or removal shall occur within 30 days from the date of the notice. If the removal or repair is not completed within the specified time, the city may remove the system and place a lien against the property for the costs of removal in accordance with state law.

(2) If, for any reason, the system is abandoned or discontinued for a continuous period of 90 days, written notice shall be given to the owner to remove the system within 30 days of the date of the notice. Notice shall also be placed on the property. If the system is not removed within 30 days, the city may remove the system and place a lien against the property for the costs of removal in accordance with state law.

(3) A decision of the Building Official may be appealed to the Board of Adjustment sitting as the Appeals Board for matters pertaining to the abatement of dangerous buildings pursuant to the adopted Code for the Abatement of Dangerous Buildings.

(H) *Further subdivision may necessitate removal of wind energy system.* Any permitted wind energy systems shall be removed by the lot owner of record should any subdivision of land occur which reduces a lot size to less than ten acres in size unless a conditional use permit for the existing wind energy system is granted by the Planning and Zoning Commission and City Council. All conditional use permit applications and deposit fees will apply.

(I) *Inspection required.* A system must be inspected once every 36 months by a third party inspector to assure that the system is working properly and does not pose any adverse public safety issues. Inspections shall be at the expense of the lot owner of record. Third party inspectors must be registered with the City of Heath. The inspector, with the property owner's endorsement, shall file a report with the city which shall be kept on file in accordance with City of Heath records retention policy.

(J) *Conditional use permit.*

(1) Any variation from regulations hereinafter adopted regarding wind energy systems will be considered by the Planning and Zoning Commission and must be finally approved by City Council. Any decision by the City Council regarding a request for a wind energy system, or variation thereof, is final.

(2) Compliance with technical requirements set forth in division (D) above does not guarantee or necessitate approval of a request for a conditional use permit by the Planning and Zoning Commission or City Council. Unique characteristics of wind energy systems including their movement, size and noise generation, potential for adverse impact on neighboring property owners as well as all relevant provisions of the Code of Ordinances will be considered in conjunction with a request for a conditional use permit.

(3) Following an administratively complete submission of an application for a conditional use permit requesting a wind energy system, notices shall be sent to all property owners of record within 200 feet of the boundaries in accordance with state law except that a courtesy notice may be sent to additional property owners within 500 feet or more of the property as deemed necessary. A public hearing on the matter shall be held prior to any action regarding a conditional use permit.

(K) *Exception due to state or federal laws.* Exceptions to all of the above regulations are limited and subject to current and newly enacted state or federal laws.

(Ord. 101221A, passed 12-21-2010)

MINIMUM OFF-STREET REQUIREMENTS

§ 159.60 PURPOSE.

It is the purpose of this section to state the guidelines for providing off-street parking space consistent with the proposed land use in order to:

- (A) Eliminate occurrence of nonresident on-street parking in adjoining neighborhoods;
- (B) Avoid the traffic congestion and public safety hazards caused by a failure to provide such parking space; and
- (C) Expedite the movement of traffic on public thoroughfares by prohibiting curb parking.

(2005 Code, § 12-5-1)

§ 159.61 OFF-STREET PARKING SPACES REQUIRED.

In all districts, for every use, there shall be provided at the time any building or structure is erected or enlarged or increased in capacity, or at the time any other use is established, off-street parking spaces for automobiles in accordance with the requirements specified herein.

(2005 Code, § 12-5-2)

§ 159.62 NUMBER OF OFF-STREET PARKING SPACES REQUIRED.

(A) The number of off-street parking spaces required shall be determined in the requirements of the individual district, and as follows.

(B) The classification of uses referred to shall be deemed to include and apply to all uses.

(C) If for any reason the classification of any use, for the purpose of determining the amount of off-street parking space to be provided by the use, is not readily determinable hereunder, and the classification and requirements for the use shall be determined by the Planning and Zoning Commission.

(2005 Code, § 12-5-3)

§ 159.63 RESIDENTIAL PARKING REQUIRED.

(A) Two paved parking spaces per dwelling unit shall be provided for the following, with the parking area located on the same lot as the main building or buildings, except as otherwise provided:

- (1) Single-family dwellings, including townhouses; and
- (2) Two-family (duplex) dwellings.

(B) Two and one-half paved parking spaces per dwelling unit shall be provided for townhouse dwellings with front entry garages.

(C) An enclosed garage shall not be considered toward meeting the off-street parking requirements.

(D) The minimum number of paved, striped off-street parking spaces per dwelling unit required for multi-family dwelling units or condominiums:

- (1) Zero bedroom or efficiency dwelling unit: one and one-half spaces per unit;
- (2) One bedroom dwelling units: one and one-half spaces per unit;
- (3) Two bedroom dwelling units: two spaces per unit;
- (4) Three or more bedroom dwelling units: two and one-half spaces per unit; and

(5) The average number of parking spaces for the total development shall not be less than two spaces per unit.

(2005 Code, § 12-5-4)

§ 159.64 NONRESIDENTIAL PARKING REQUIREMENTS.

(A) Commercial uses, office and professional buildings outside of the central business district, unless otherwise mentioned in this section, shall be required to have three paved parking spaces for up to 300 square feet of floor area, plus one space for each additional 300 square feet of floor area.

(B) Restaurant, private club, café or similar recreation or amusement establishment: one parking space for each 100 square feet of floor area, or one space for each four seats, whichever is greater.

(C) Churches, temples, assembly halls: one space for each three seats in the main auditorium or seating area.

(D) Medical or dental clinic: one space for each 150 square feet.

(E) Day nurseries, day care centers and kindergartens with over four children: one parking space for each 300 square feet of floor area, plus an off-street drive and loading space for a minimum of four cars for the transferring of passengers.

(F) Accessory or associated recreational or community buildings: one space for each 100 square feet of area.

(G) Schools (except high school or college): one and one-half spaces for each classroom.

(H) High schools: one parking space for each three students.

(I) Technical or junior college: three-tenths of a space per each seven square feet of seating area.

(J) College: four-tenths of a space per each seven square feet of seating area.

(K) Exceptions: groups of uses requiring vehicles parking space may join in establishing group parking areas with capacity aggregating that required for each particular use. Where it can be established before the Building Inspector that parking for two specific uses occurs at alternating periods, the parking space requirements of the use requiring the greater number of spaces may be applied to both uses in a combined parking area. The parking shall be within 100 feet from lot to lot of all uses to be served by the parking. Example: church and professional office building.

(2005 Code, § 12-5-5)

§ 159.65 OFF-PREMISES LOCATION OF PARKING.

For any new use, building or structure where the required off-street parking cannot be provided on the premises because of the size or other location of the lot, such parking may be provided on other property under the same ownership not more than 200 feet distant from the building lot and provided the proposed parking area is located in a district where parking lots are permitted.

(2005 Code, § 12-5-6)

§ 159.66 CLARIFICATION, EXCEPTION AND MODIFICATION OF OFF-STREET PARKING REQUIREMENTS.

(A) No parking space located on a public street or alley may be included in the calculation of off-street parking requirements.

(B) Parking spaces used for the parking of trucks or buses shall not be counted towards meeting the requirements of this section.

(C) When the computation for the number of parking spaces required under this subchapter results in the requirement of a fractional space, the fractional space requirement shall be satisfied by adding one additional space to the whole-space total.

(D) When a lot is used for a combination of uses, the off-street parking requirements are the sum of the requirements for each use, and no off-street parking space for one use is included in the calculation of off-street parking requirements for any other use, except as provided in §§ 159.60 to 1259.68.

(E) Except for single-family, duplex and townhouse uses, head-in parking adjacent to a public street where the maneuvering of the vehicle in parking or leaving the parking space is done on a public street is prohibited, and on all existing uses is excluded in computing off-street parking requirements.

(F) The parking space required for a use not specifically mentioned herein shall be the same as required for a use of similar nature.

(G) After the effective date of this subchapter, whenever a property is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise, to create a need for an increase of 10% or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. Whenever a building or use existing prior to the effective date of this subchapter is enlarged to the extent of 50% or more in floor area used, the building or use shall then and thereafter comply with the parking requirements set forth herein.

(H) Parking and storage of vehicles shall be in accordance with the city's abandoned and junk vehicle ordinance.

(I) For purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers and the like and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No major recreational equipment shall be parked or stored in a residential district except in a carport or enclosed building or behind the portion of a building nearest to a street, provided, however, that the equipment may be parked anywhere on residential premises for not to exceed 24 hours during loading or unloading. No such equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for the use, except as specified in this subchapter.

(2005 Code, § 12-5-7)

§ 159.67 OFF-STREET LOADING REQUIREMENTS.

(A) All retail structures shall provide and maintain off-street facilities for the loading of merchandise and goods within the building or on the lot adjacent to a public alley or private service drive in accordance with the following requirements.

(B) Any department store or retail establishment which has an aggregate gross floor area of 10,000 square feet or more, arranged, intended or designed for the use shall be provided with off-street truck loading or unloading berths at least 12 feet wide, 14 feet high, and 35 feet long in accordance with the following table. There shall be sufficient space to insure that all maneuvering required to utilize the loading space will not include street right-of-way.

<i>Square feet of aggregate gross floor area</i>	<i>Required number of berths</i>
10,000 to 40,000	1

40,001 to 100,000	2
100,001 to 160,000	3
160,001 to 240,000	4
240,001 to 320,000	5
320,001 to 400,000	6
400,001 to 409,000	7
For each additional 90,000 over 490,000	1 additional

(2005 Code, § 12-5-8)

§ 159.68 DESIGN AND CONSTRUCTION STANDARDS OF OFF-STREET PARKING.

All parking areas and spaces shall be designed and constructed in accordance with the following requirements.

(A) All parking areas and spaces shall be designed and constructed so as to have free ingress and egress at all times.

(B) No parking space or parking area shall be designed so as to require a vehicle to back into a public street or across a public sidewalk, except in the case of one and two-family dwelling units.

(C) Minimum dimensions for off-street parking:

(1) Ninety-degree angle parking: each parking space shall not be less than nine feet in width and 18 in length. Maneuvering shall be not less than 24 feet. Designed small car parking spaces shall not be less than eight feet in width and 16 feet in length;

(2) Sixty-degree angle parking: each parking space shall be not less than nine feet wide perpendicular to the parking angle nor less than 20 feet in length when measured at right angles to the building or parking line. Maneuvering space shall be not less than 16 feet perpendicular to the building or parking line. Designated small car parking spaces shall not be less than eight feet in width and 18 feet in length;

(3) Forty-five-degree angle parking: each parking space shall be not less than nine feet wide perpendicular to the parking angle nor less than 18-1/2 feet in length when measured at right angles to the building or parking line. Maneuvering space shall be not less than 12 feet perpendicular to the building or parking line. Designed small car parking spaces shall not be less than eight feet in width and ten feet in length;

(4) When off-street parking facilities are located adjacent to a public alley, the width of the alley may be utilized as a portion of the maneuvering space requirement, provided the alley is paved. Twenty percent of the total parking requirements may be used as small car parking with 80% of that total being grouped and designed for that use; and

(5) When off-street parking facilities are provided in excess of minimum amounts herein specified, or when off-street parking facilities are provided, but not required by this chapter, the off-street parking facilities shall comply with the minimum requirements for parking and maneuvering space herein specified.

(D) Pavement standards: unless otherwise approved by the City Council, all parking lots shall be paved according to city standards and specifications. The parking lanes must be clearly marked by

approved paint, buttons or other material. All driveway approaches shall be constructed of concrete and shall be curbed to city standards.

(E) No parking area shall be designed or constructed which ends in a dead end, unless adequate turnaround space is provided.

(F) All entrances or exits in a parking lot shall be a minimum of 30 feet from the beginning point of any corner radius.

(G) All entrances or exits in a parking lot shall be a minimum of 24 feet and a maximum of 45 feet in width, unless one-way, in which case they shall both be a minimum of 12 feet.

(H) The driveway approach angle to any parking area shall be a maximum of 16 degrees, the departure angle a maximum of ten degrees, the ramp angle a maximum of 11 degrees, or otherwise shall be approved by the City Engineer.

(I) No parking areas or parking spaces shall be allowed to pave over or utilize public right-of-way, with the exception of approved entrances and exits, unless an exception is granted by the Planning and Zoning Commission.

(J) Any lighting used to illuminate any off-street parking area shall be so designed and constructed as to direct the light to the property and away from any adjoining property or street.

(K) All multi-family and commercial parking areas and parking spaces shall be designed and constructed to protect adjacent residences from the direct glare of headlights of vehicles using the parking area. In accordance, all off-street parking areas shall be effectively screened on each side by a buffer as herein defined, from any adjoining property zoned single-family, townhouse or duplex.

(L) No occupancy permit shall be issued by the Building Inspector of the city until the terms and conditions of this subchapter have been met.

(2005 Code, § 12-5-9)

ADMINISTRATIVE PROVISIONS

§ 159.80 PROCEDURE FOR AMENDING THIS CHAPTER.

(A) *General.* The regulations, restrictions and boundaries set forth in this subchapter may from time to time be amended, supplemented, changed, modified or repealed upon initiation by the Planning and Zoning Commission, the City Council or by a petition of a property owner or of their authorized agents, provided however, that no such action may be taken until:

(1) Application has been made and duly filed upon the forms prescribed by the City Council and the filing fee as prescribed from time to time by the City Council has been submitted to the City Secretary;

(2) The question has been referred to the Planning and Zoning Commission for consideration and public hearing on the question and their recommendations received; and

(3) A public hearing has been held in relation thereto, before the City Council at which parties in interest and citizens shall have an opportunity to be heard.

(B) *Hearing before the Zoning Commission.*

(1) Written notice of all public hearings on proposed changes in district boundaries shall be sent to all owners of property within a distance of at least 200 feet from the boundaries of the subject property at least ten days prior to the hearing date. The notice shall be served by using the last known address as listed on the last approved city tax roll and depositing the notice postage paid, in the United States mail. In addition, notice of which hearing shall be published one time in a newspaper of general circulation in the city, not less than ten days prior to the date of the hearing, and signs giving notice of a proposed zone change shall be placed on the subject property at least ten days prior to the public hearing. Minimum sign size shall be 24 inches by 24 inches with a minimum distance of 35 inches above ground. Notice of hearings on proposed changes in the text of the Zoning Ordinance shall be accomplished by one publication not less than 15 days prior thereto in the official newspaper of the city.

(2) Any hearing may be continued for good cause at the request of the applicant, or at the discretion of the Planning and Zoning Commission noted in writing in its minutes. In the event any hearing is continued or recessed or a matter tabled for any reason other than lack of proper notice, further notice to surrounding property owners shall not be required. The continuation date and time shall be set at that meeting.

(3) The same procedure for notifying adjacent property owners shall be followed by the Commission for hearings on rezoning petitions and for conditional use permit applications, unless otherwise provided.

(4) Upon the final hearing of the application, the Commission shall recommend approval or denial of the same and report of the action, shall be made by the Commission to the City Council.

(C) *Hearing before the City Council.*

(1) Before acting upon any application for amendment, the City Council shall hold a public hearing, notice of which hearing shall be published at least one time in a newspaper of general circulation in the city, not less than 15 days prior to the date of the hearing.

(2) Recommendations for revision or amendment of the ordinance, including the zoning district map, may also be made by the Planning and Zoning Commission upon its own motion, for final determination by the City Council. Likewise, the City Council may revise, modify or amend the ordinance, including the zoning district map, upon its own motion, provided however, the proposed changes shall first be submitted to the Planning and Zoning Commission for recommendation and report. In either case, final action thereon shall be taken only upon notice and hearing, as provided herein.

(3) In case of a written protest against the change, signed by the owners of 20% or more, either of the area of the lots or land included in the proposed change, or of the lots or land immediately adjoining the same and extending 200 feet therefrom, or if the change is denied by the Planning and Zoning Commission, the change shall not become effective except by the favorable vote of three-fourths of all members of the City Council of Health.

(4) The City Council shall, unless otherwise stated in the motion, make all denials of zone changes with prejudice. If the request is denied with prejudice, no additional application shall be accepted which involves all or any part of the property within a period of 12 months except:

(a) At the request of the City Council; and

(b) On written request by the applicant to the City Council, with pertinent facts which the City Council may deem sufficient to warrant a new hearing. The request shall not be set for public hearing unless approved by a majority vote of the City Council. If a rehearing is granted by the City Council,

then the procedure thereon will be the same as that given an original application for zoning change filed with the Commission.

(5) For joint hearings, the City Council may hold a public hearing, after publishing the required notice, jointly and with any public hearing required to be held by the Planning and Zoning Commission, but the City Council shall not take action until it has received a final report from the Planning and Zoning Commission.

(2005 Code, § 12-11-1)

§ 159.81 FORMAT OF ZONING MAP AND PROCEDURES FOR AMENDING.

(A) *Zoning map.*

(1) The official zoning map shall be identified by the signature of the Mayor, attested by the City Secretary and bearing the seal of the city under the following words:

“This is to certify that this is the Official Zoning Map referred to in Section 1.3 of the Ordinance Number 890316A of the City of Heath, Texas, (together with the date of the adoption of this subchapter). If, in accordance with the provisions of this subchapter and Tex. Local Gov’t. Code, Ch. 211, as amended, changes are made in district boundaries or other matter portrayed on the official zoning map, such changes shall be entered on the official zoning map promptly after the amendment has been approved by the City Council.”

(2) All changes made in the official zoning map will also note on the map the ordinance number and date of final passage of the ordinance authorizing the map change. No amendment to this subchapter which involves matter portrayed on the official zoning map shall become effective until after the change and entry has been made on the map.

(3) No changes of any nature shall be made in the official zoning map or matter shown thereon except in conformity with the procedures set forth in this subchapter. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this subchapter and punishable as provided for hereafter.

(4) Regardless of the existence of copies of the official zoning map which may from time to time be made or published, the official zoning map, which shall be located in the office of the City Secretary shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the city.

(5) In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature and/or number of changes and additions, the City Council may, by resolution, adopt a new official zoning map, which shall supersede the prior official zoning map, but no such correction shall have the effect of amending the original official zoning map or any subsequent amendment thereof. The new official zoning map shall be identified by the signature of the Mayor, attested by the City Secretary, and bearing the seal of the city and date under the following words:

“This is to certify that this Official Zoning Map supersedes and replaces the original official zoning map referred to Section 1.3 of Ordinance No. 890316A of the City of Heath, Texas.”

(6) Unless the prior official zoning map has been lost or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved, together with all available records pertaining to its adoption or amendment.

(B) *Rules of interpretation of district boundaries.* Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

(1) Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed following the lot lines;

(3) Boundaries indicated as approximately following city limits shall be construed as following such city limits;

(4) Boundaries indicated as following railroad lines shall be construed to be midway between the rails of the main tracks;

(5) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline. Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines;

(6) Boundaries indicated as parallel to or extensions of features indicated in divisions (B)(1) through (5) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;

(7) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by divisions (B)(1) through (6) above, the Board of Adjustments shall interpret the district boundaries;

(8) When streets or alleys on the ground differ from the streets or alleys shown on the zoning district map, the Planning and Zoning Commission may apply the district designations on the map to the streets or alleys on the ground in such a manner as to conform to the intent and purpose of this subchapter; and

(9) Whenever any street or alley is vacated, the particular district in which the adjacent property lies shall be automatically extended to the center line of any such street or alley.

(2005 Code, § 12-11-2)

§ 159.82 CLASSIFICATION OF NEW AND UNLISTED USES.

It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in the City of Heath. In order to provide for the changes and contingencies a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

(A) Any question concerning any new or unlisted use shall be referred to the Planning and Zoning Commission requesting an interpretation as the zoning classification into which the use should be placed. The referral of the use interpretation question shall be accompanied by a statement of facts listing the nature of the use and whether it involves dwelling activity, sales processing, type of product, storage, and amount or nature thereof, enclosed or open storage, anticipated employment, transportation requirements, the amount of noise, odor, fumes, dust, toxic material and vibration likely to be generated and the general requirements for public utilities such as water and sanitary sewer;

(B) The Planning and Zoning Commission shall consider the nature and described performance of the proposed use and its compatibility with the purpose of and the uses permitted in the various districts within which the use should be permitted;

(C) The Planning and Zoning Commission shall transmit its findings and recommendations to the City Council as to the classification proposed for any new or unlisted use. The City Council shall by resolution approve the recommendation of the Planning and Zoning Commission or make such determination concerning the classification of the use as is determined appropriate; and

(D) The City Council may provide for temporary uses in any zoning district deemed appropriate for those uses under conditions, regulations or restrictions as required by Council.

(2005 Code, § 12-11-3) (Ord. 050915D, passed 9-15-2005)

§ 159.83 ADMINISTRATION AND ENFORCEMENT; PENALTY; BUILDING PERMITS; CERTIFICATES OF ZONING COMPLIANCE; OCCUPANCY AND USE PERMITS.

(A) *Administration and enforcement.* The Building Inspector or another administrative official of the city shall be designated by the Mayor to administer the provisions of this subchapter.

(1) *Complaint.* If the Building Inspector or his or her authorized representative shall find, or if any person files with him or her a complaint in writing alleging that any of the provisions of this subchapter are being violated, he or she shall immediately investigate and when necessary give written notice of the person responsible to cease those violations, forthwith.

(2) *Right to enter.* The Building Inspector or any duly authorized person shall have the right to enter upon any premises at any reasonable time for the purpose of making inspection of buildings or premises necessary to carry out the duties in the enforcement of this subchapter.

(3) *Notice.* Notice may be delivered in person or by certified mail to the violator or to any person owning or leasing a property where violation is occurring.

(B) *Penalty for violation.*

(1) Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(2) Whenever any building work is being done contrary to the provisions of this subchapter, the City Building Inspector or his or her duly authorized representative may order the work stopped by notice in writing served on the owner or contractor doing the work or causing the work to be done, and any such person shall forthwith stop the work until authorized to proceed with the work.

(C) *Occupancy, building and use permits.*

(1) *Building permits required.*

(a) No building or other structure shall be erected, moved, added to or structurally altered without a permit issued by the Building Official.

(b) A building permit shall not be issued except in conformity with the provisions of this subchapter, unless otherwise authorized by the Board of Adjustments in the form of a variance as provided by this subchapter.

(c) All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale, showing the actual dimensions of the lot to build upon, the size of the building to be erected, the

use of the property and other information as may be necessary to provide for the enforcement of these regulations.

(d) A careful record of the plats shall be kept in the office of the City Secretary, or such other person as may be designated by the City Council.

(2) *Certificates of occupancy for new, altered or nonconforming uses.*

(a) It shall be unlawful to use, occupy or permit the use or occupancy of any building or premises or both, or part thereof, hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure nor will permanent utility connections to serve the premises be made until a certificate of occupancy shall have been issued therefore by the City Secretary or his or her authorized representative stating that the proposed use of the land conforms to the requirements of this subchapter.

(b) Failure to obtain a certificate of occupancy shall be a violation of this subchapter, and punishable under the provisions of this subchapter.

(c) A certificate of occupancy shall be issued within ten days after the erection or structural alteration of the building shall have been completed in conformity with the provisions of this and other applicable ordinances.

(d) A temporary certificate of occupancy may be issued by the City Secretary or his or her authorized representative for a period not exceeding six months during alterations or partial occupancy of a building pending its completion, provided that the temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public. The temporary certificates shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the city relating to the use or occupancy of the premises, or any other matter covered by this subchapter.

(3) *Construction and use to be as provided in applications, plans and permits.*

(a) A building permit may be revoked by the Building Official at any time prior to the completion of the building or structure for which the same is issued, when it shall appear that there is a departure from the plans, specifications or conditions as required under the terms of the permit, that the same was procured by false representation, or was issued by mistake, or that any of the provisions of the zoning ordinance are being violated.

(b) Upon the failure, refusal or neglect of any owner, his or her agent, contractor or duly authorized representative to secure the permit and pay the prescribed fee therefore, as herein provided, the Building Inspector may issue a stop order served upon the owner, his or her agent or contractor, or upon any person employed upon the building or structure for which the permit was issued, and thereafter no such construction shall proceed.

(2005 Code, § 12-11-4) Penalty, see § 10.99

§ 159.84 COMPLETION OF BUILDINGS.

(A) Nothing herein contained shall require any change in the plans, construction or designated use of a building, the foundation for which has been completed constructed at the time of the adoption of this subchapter, and the remaining construction of which shall have been completed within one year of the date of the adoption of this subchapter.

(B) In addition, any commercial or industrial building or structure, for which a building permit has been approved by the city not more than 12 months prior to the adoption of this subchapter may be constructed according to the terms of that building permit.

(2005 Code, § 12-11-5)

§ 159.85 EFFECT UPON EXISTING PERMITS, AGREEMENTS, RIGHTS AND THE LIKE.

(A) *Existing permits and private agreements.* This subchapter is not intended to abrogate or annul:

- (1) Any permits issued before the effective date of this subchapter; or
- (2) Any easement, covenant or any other private agreement.

(B) *Preserving rights in pending litigation and violations under existing ordinances.*

(1) By the passage of this subchapter, no presently illegal use shall be deemed to have been legalized unless the use falls specifically within a use district where the actual use is a conforming use. Otherwise, the uses shall remain nonconforming uses where recognized, or an illegal use, as the case may be.

(2) It is further the intent and declared purpose of this subchapter that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, shall be discharged or affected by the adoption of this subchapter; but prosecution and suits for such offenses, liabilities, penalties or forfeitures may be instituted, or causes presently pending be proceeded within all respects as if the prior ordinance had not been repealed.

(2005 Code, § 12-11-6)

§ 159.86 SCHEDULE OF FEES, CHARGES AND EXPENSES.

(A) Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

(B) The Planning and Zoning Commission, with the concurrence and approval of the City Council shall determine and set forth a fee schedule for the purpose of recovering the administrative cost of processing zoning and subdivision requests and the public hearings called for by this subchapter. The fee shall be paid by the applicant and shall not be designed for restricting an applicant's ability to seek a hearing and/or to generate revenue for other than recovery of actual administrative cost incurred by the city. Immediately upon receipt of the application and fee, the City Secretary shall note thereon the date of filing, and make a permanent record thereof.

(2005 Code, § 12-11-7)

§ 159.87 SIDE AND REAR YARD EXCEPTIONS.

(A) The following shall only be exempt from side yard setbacks not abutting a street and rear yard setbacks:

- (1) Structures used by children, such as but not limited to:
 - (a) Playhouses, not to exceed 120 square feet;

- (b) Swing sets; and
 - (c) Basketball goals.
 - (2) Patios and decks not over 30 inches above the ground;
 - (3) Swimming pool decks;
 - (4) Air conditioning equipment;
 - (5) Pool equipment;
 - (6) Portions of a house or structure cantilevered beyond the foundation but not exceeding three feet;
 - (7) Barbeque grills;
 - (8) Trellises, open gazebos and other decorative structures not exceeding 120 square feet; and
 - (9) Accessory buildings no larger than 120 square feet and no taller than ten feet.
- (B) A special exception to side and rear yard setbacks abutting the City of Dallas take-line may be granted by the Board of Adjustments for any structure.
- (2005 Code, § 12-11-8) (Ord. 030717F, passed - -)

§ 159.99 PENALTY.

Any person, firm, or corporation violating any of the provisions of § 159.20, 159.21, 159.43 or 159.50 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a penalty of a fine not to exceed the sum of \$2,000 for each offense and each day such offense continues shall be deemed to constitute a separate offense.

(Ord. 101221A, passed 12-21-2010)

CHAPTER 160: HEATH TOWNE CENTER ZONING

Section

160.01 Adopted by reference

§ 160.01 ADOPTED BY REFERENCE.

The Heath Towne Center Zoning is adopted by reference and made a part hereof as if appearing in total.

(Ord. passed 6-2003)