

Chapter 1: General Provisions*

Effective: June 1, 2010

Article 1 - Authority of Decision-Makers

Division 1 - General Provisions

Section 1.1.1.1 Source of Authority

(a) Authority. Authority under this Land Development Code shall be vested in and delegated to the officials and decision-makers designated in this [Article 1](#) under the City's charter, the constitution and laws of the state of Texas, and the City Code. This authority shall be deemed supplemental to any other authority lawfully conferred upon the officials and decision-makers. The omission of a citation in this Land Development Code to any authority conferred upon the officials and decision-makers under the City's charter, the constitution or laws of the state of Texas, or the City Code, or the failure to identify in this article authority conferred by other provisions of this Land Development Code, shall not be construed as limiting the actions of such officials and decision-makers taken in accordance with and in reliance upon such authority. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.1.2 Implied Authority

(a) Authority. The officials and decision-makers shall have all implied authority necessary to carry out the duties and responsibilities expressly delegated by this Land Development Code to the extent the implied authority is not in conflict with the expressly delegated authority. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.1.3 Limitation on Authority

(a) City Policy. It is the policy of the City that the standards and procedures applicable to development of property within the City limits and within the City's extraterritorial jurisdiction are as stated in this Land Development Code, notwithstanding any representation by any City official summarizing, paraphrasing or otherwise interpreting such standards to the contrary, whether generally or as applied to development of specific property.

(b) Representations Concerning Future Action on Application or Legislative Action. No City official, whether an employee of the City or a member of an appointed board or commission, or a member of the City Council, shall have the authority to make representations to a property owner concerning the likelihood of an outcome of that official's decision or the decision of an appointed board or commission or the City Council, on any application or legislative action that has yet to be filed or is pending before the City for decision. An official may, however, upon request of a person, convey information concerning that official's position on a pending application in accordance with procedures established in this [Chapter 1](#). No person is entitled to rely upon any representation made by an official in breach of this Subsection, and each and every such representation shall be deemed in violation of the policy of the City, and is not binding on the City in any respect. No subsequent decision of the City shall be deemed a ratification of any representation made in contravention of this Subsection.

(c) Representations Concerning Future Amendments. No City official, whether an employee of the City or a member of an appointed board or commission, or a member of the City Council, shall have the authority to make binding representations to any person concerning the likelihood that a change in any legislative classification or a change in the text of this Land Development Code as applied to a specific tract of land will be granted, or that an existing legislative classification or text provision will remain in effect, or that any petition for relief will be granted. No person is entitled to rely upon any representation made by an official in contravention of this Subsection, and each and every such representation shall be deemed in violation of the policy of the City, and is not binding on the City in any respect.

No subsequent decision of the City shall be deemed a ratification of any representation made in contravention of this Subsection.

(d) Effect of Comprehensive Plan, Ordinance or Development Standard on Liability Claims. The City's approval of an application under the standards and procedures of this Land Development Code does not guarantee or assure that development of the property in accordance with the standards will prevent, minimize or mitigate harm to adjoining property. A person who undertakes development activities shall not rely on the City's approval of an application as ensuring that the development activities will not result in harm to adjoining property. The regulations contained in this Land Development Code constitute an exercise of the City's governmental authority, and approval of an application shall not give rise to any liability on the part of the City or its officers, agents and employees, nor will an approval release the applicant from any liability for harm arising out of development of the property under applicable law.

(e) No Waivers. Except as expressly provided for in this Land Development Code, no official, board, commission of the City, or the City Council, shall have authority to waive any requirement or standard for an application. Any attempted waiver of a requirement or standard for an application in contravention of this Subsection shall hereby be deemed null and void, and, upon discovery, shall be grounds for revocation of a permit or approval, or reconsideration of a legislative decision.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.1.4 Conflict in Authority

(a) Internal Inconsistency. Whenever one or more provisions of this Land Development Code are in apparent conflict, the provisions shall be construed, if possible, so that effect is given to each. If the conflict is between a general provision and a specific provision, and the conflict is irreconcilable, the specific provision shall prevail as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision should prevail.

(b) Incomplete Provisions. Whenever a specific standard or procedure of this Land Development Code is incomplete when applied in isolation to an application or development activity, such standard shall be supplemented by any general or specific provision of this Code, the City Code, or the City Charter in order to give effect to the incomplete provision.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 2 - City Staff

Section 1.1.2.1 Responsible Official Designated

(a) Responsible Official. The responsible official shall be the Director of a designated City department who is assigned responsibility under this Land Development Code for taking the following actions with regard to a particular type of application or relief petition authorized under this [Chapter 1](#):

- (1) Accepting the application or petition for filing and processing the application;
- (2) Reviewing and making recommendations concerning the application or petition;
- (3) Seeking advice of other City departments and coordinating any recommendations from such departments concerning the application or petition;
- (4) Initially deciding the application or petition, where so authorized;
- (5) Determining a request for exemption;

- (6) Preparing reports to and advising any board, commission or the City Council that has responsibility for making recommendations on or deciding the application or petition;
- (7) Promulgating additional or modified policies, standards and administrative rules for adoption by the City Council that apply to the application or petition;
- (8) Initiating enforcement actions concerning compliance with the standards applicable to the application or petition and the conditions imposed thereon; and
- (9) Taking all other actions necessary for administration of the provisions of this Land Development Code with respect to the application or petition.

(b) Specific Duties. The specific duties of the responsible official shall include those authorized under the universal procedures applicable to all types of applications pursuant to [Article 2](#) of this [Chapter 1](#), those authorized under the provisions governing procedures for deciding particular applications under this [Article 1](#) of this [Chapter 1](#), and those authorized under relief procedures pursuant to [Article 3](#) of this [Chapter 1](#).

(c) Delegation. The responsible official may delegate the official's authority under this Code to subordinate officials, who shall thereupon be deemed the responsible official for purposes of carrying out the delegated duties.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.2.2 Director of Planning

(a) Responsible Official. The Director of Planning is the responsible official for the following types of applications and relief petitions:

- (1) Petition for amending the Comprehensive Plan;
- (2) Petition for a zoning map amendment, including a petition for creation of an overlay district, or Planned Development (PD) district;
- (3) Application for a Conditional Use Permit (CUP);
- (4) Application for a special exception;
- (5) Application for change in status of nonconformity;
- (6) Application for a Site Plan;
- (7) Application for a Preliminary Plat, Final Plat, Minor Plat, Amending Plat and replat;
- (8) Application for a sign permit, with joint responsibility with the Building Official;
- (9) Appeal of a decision on any application for which the Director is the responsible official;
- (10) Variance petition for any application for which the Director is the responsible official;
- (11) Vested rights petition for any decision where the Director is the responsible official for the application for which the vested rights petition is filed;
- (12) Application for thoroughfare closure;

- (13) Application for street name change;
- (14) Application for easement release

(b) Initial Decision-Maker. The Director of Planning is the initial decision-maker for the following types of applications and relief petitions, subject to appeal as provided in this [Chapter 1](#):

- (1) Application for a Minor Plat or qualifying Amending Plat;
- (2) Application for a Site Plan;
- (3) Application for a sign permit, with joint responsibility with the Building Official;
- (4) Vested rights petition for any decision for which the Director is the initial decision-maker.

(c) Simultaneous Submittals and Approvals. A Site Plan and a plat application may be simultaneously submitted if the property being developed is properly zoned for the proposed use. The Director of Planning may approve a Site Plan and may cause a plat to be acted on by the Planning & Zoning Commission simultaneously if proper zoning for the development application is in place.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.2.3 City Engineer

(a) Responsible Official. The City Engineer is the responsible official for the following types of applications and relief petitions (except as provided):

- (1) Application for approval of construction and engineering plans, and all related construction management tasks, including without limitation, approval of contracts for public improvements;
- (2) Application for a Site Preparation Permit;
- (3) Application for a Floodway Development Permit;
- (4) Application for a Driveway Permit;
- (5) Appeal of a decision on any application for which the Director is the responsible official;
- (6) Variance petition for any application for which the Director is the responsible official;
- (7) Vested rights petition for any decision where the Director is the responsible official for the application for which the vested rights petition is filed; and
- (8) Petition for relief from a dedication or construction requirement in accordance with [Article 3, Division 2](#) of this [Chapter 1](#).

(b) Initial Decision-Maker. The City Engineer is the initial decision-maker for the following types of applications and relief petitions, subject to appeal as provided in this [Chapter 1](#):

- (1) Application for approval of construction plans, and all related construction management tasks, including without limitation approval of a contract for public improvements;

- (2) Application for a Site Preparation Permit; and
- (3) Vested rights petition for any decision for which the Director is the initial decision-maker.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.2.4 Building Official

(a) Responsible Official and Initial Decision-Maker. The building official is the responsible official for and shall initially decide the following types of applications:

- (1) Application for a Building Permit;
- (2) Application for a Certificate of Occupancy; and
- (3) Application for a sign permit;

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.2.5 Parks Director

(a) Responsible Official and Initial Decision-Maker. The Parks Director is the responsible official for and shall initially decide the following types of applications:

- (1) Park fee decision.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.2.6 City Manager

(a) Initial Decision-Maker on Appeals. The City Manager is the initial decision-maker for any appeal for which a City staff person is the initial decision-maker, subject to further appeal as provided for in this [Chapter 1](#):

- (1) Application for a Site Preparation Permit.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.2.7 Floodplain Administrator

(c) [(a)] Responsible Official and Initial Decision-Maker. The Floodplain Administrator is the responsible official for and shall initially decide the following types of applications:

- (1) Floodway Development Permit;
- (2) A Drainage Plan.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.2.8 Other City Officials

(a) The City Manager, City Attorney and any other official delegated responsibilities under this Land Development Code are authorized to take all actions necessary to carry out their responsibilities in accordance with the requirements and limitations prescribed herein. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 3 - Planning and Zoning Commission

Section 1.1.3.1 Reference to City Charter

(a) Reference. A Planning and Zoning Commission shall be organized, and it shall have the powers and duties as provided for in the Charter of the City of Abilene, Texas and as authorized by Chapter 211 of the Texas Local Government Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.3.2 Structure of Planning and Zoning Commission

(a) General. The members of the Planning and Zoning Commission (also referred to as the Commission) are appointed by the City Council. In making appointments to the Commission, the City Council shall seek to ensure broad representation and expertise among the membership.

(b) Organization & Membership. There shall be established a Planning and Zoning Commission which shall consist of seven (7) citizens of the City.

(1) The City Manager, the Planning Director, the City Engineer, and others as the City Council may provide by ordinance or resolution, shall serve as City staff liaisons. City staff members shall not have the power to vote.

(2) The voting members of said Commission shall be appointed by the Mayor with the approval of the City Council for a term of three (3) years, which term shall be deemed extended until a successor is appointed and qualified to serve on such Commission. Such appointees shall elect a chair, vice-chair and secretary from among its official members. A vacancy in an unexpired term shall be filled by the Mayor with the approval of the City Council for the remainder of the term.

(c) Removal from Office, Vacancies. Any member of the Commission may be removed from office for just cause and on written charges by a two-thirds (2/3) vote of the entire City Council, but such member shall be entitled to a public hearing before such vote is taken.

(1) Failure of any regular member to attend three (3) of any seven (7) consecutive regular meetings without just cause, shall be considered sufficient reason for the Chair to ask for the resignation of the member from Commission.

(2) When vacancies occur, it shall be the duty of the Chair of the Commission to notify the Mayor promptly of any vacancies occurring in membership, and the City Council shall fill such vacancies within ninety (90) business days for the unexpired term of the original appointment.

(d) Rules. The Planning and Zoning Commission shall adopt its own rules of order and procedure to regulate both the actual meetings of the Commission and the activities directly related thereto. The rules shall deal only with procedural matters and shall be available to the public and kept on file with the Planning Director. If no rules are adopted, the latest version of Robert's Rules of Order shall be used until the Commission adopts rules of its own.

(e) Quorum & Voting. A quorum shall consist of no less than four (4) voting members. Affirmative vote of four (4) members shall be necessary for approval of motions before the Commission. Members must be present to vote at the meeting.

(f) Meetings. All meetings of the Planning and Zoning Commission shall be open to the public, except that the Commission may hold closed meetings as permitted under state law. The Commission shall meet not less than once each month in a publicly accessible location.

(g) Records/Minutes. 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 a record of its examination and other official actions, all of which shall be filed with the Planning Director and shall be a public record.

(h) Duties of Planning Director. The Planning Director (or designee) shall act as the staff liaison to the Commission and secretary of the Commission and shall set up and maintain a separate file for each application received. The Director shall record in each file the names and addresses of all persons to whom notices are mailed, including the date of mailing, and shall keep a record of all notices published as required in this chapter. All records and files provided for in this Subsection shall be permanent and official files and records of the City.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.3.3 Powers and Duties

(a) Powers & Duties. The Planning and Zoning Commission shall:

(1) Make recommendations on a Comprehensive Plan or amendments thereto related to the physical development, growth, improvement, and beautification of the City.

(2) Make recommendations on other types of City plans that are related to the physical development, growth, improvement, and beautification of the City, including Neighborhood Plans and Corridor Plans.

(3) Recommend to the City Council approval or denial of proposed changes in the zoning districts and/or ordinance.

(4) Approve or disapprove the platting or subdividing of land within the corporate limits of the City and within adjacent areas as permitted by law.

(5) Recommend to the City Council approval or disapproval of requests for street name changes and street closures within the corporate limits of the City.

(6) Submit annually to the City Manager, not less than ninety (90) business days prior to the beginning of the budget year, a list of recommended capital improvements, if any, which in the opinion of the Commission, are necessary or desirable during the forthcoming five (5) year period.

(7) Recommend to the City Council approval or disapproval of plans for housing clearance, public housing, and urban redevelopment and renewal projects.

(8) Perform such additional duties and exercise such additional powers as may be prescribed by ordinance not inconsistent with the provisions of the City Charter.

(9) Advise the City Council on applications and petitions for legislative decisions as authorized by this Land Development Code, such as:

a. Petition for amending the Comprehensive Plan;

b. Petition for a zoning map amendment, including a petition for creation of an overlay district, Conditional Use Permit (CUP), or Planned Development (PD) district;

- c. Amendments to the text of the Land Development Code (LDC) as authorized by City Charter; and
- d. Others as assigned by City Council.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.3.4 Authority for Deciding Applications

(a) Final Decision-Maker for Applications. The Planning and Zoning Commission shall finally decide the following types of applications:

- (1) An application for a Preliminary Plat;
- (2) An application for a Final Plat;
- (3) An application for a replat;
- (4) An application for an Amending Plat not approved by the Planning Director;
- (5) An application for a Minor Plat; and
- (6) An application for a Development Plat.

(b) Timing of Plat Approval. A Preliminary Plat or Final Plat may be approved by the Planning & Zoning Commission while a Site Plan for the same development is being reviewed by the DRC and considered for approval by the Planning Director if the property being developed is properly zoned for the proposed use.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.3.5 Authority for Deciding Appeals and Relief Petitions

(a) Appellate Authority. The Planning and Zoning Commission shall finally decide appeals filed in accordance with [Article 3](#) of this chapter (Relief Procedures)

(b) Petitions for Relief. The Planning and Zoning Commission shall finally decide the following petitions for relief:

- (1) The Planning and Zoning Commission shall finally decide any variance petition on an application for a Preliminary Plat, Final Plat or replat, except when such variance is for relief from a dedication or construction requirement, in which case [Section 1.1.4.3](#) shall apply; and
- (2) The Planning and Zoning Commission shall initially decide any vested rights petition for any decision for which it is the initial decision-maker.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 4 - City Council

Section 1.1.4.1 Authority for Amendments to the Land Development Code (LDC)

(a) Authority. The City Council may from time to time amend, supplement or change by ordinance the text of this Land Development Code on its own initiative or upon petition for a text amendment. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.4.2 Authority for Deciding Legislative Applications

(a) Final Decision on Legislative Actions. The City Council shall finally decide all types of legislative applications, such as zoning amendments, authorized under this Land Development Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.4.3 Authority for Deciding Appeals and Relief Petitions

(a) Appellate Authority. The City Council shall finally decide appeals on the following applications and relief petitions:

- (1) A vested rights petition filed in conjunction with an application for which the City Council is the final decision-maker;
 - (2) A vested rights petition that has been previously denied by a City official or City board/commission;
 - (3) A sign permit or an interpretation of sign regulations related to development outside the City limits and within the ETJ (refer to [Chapter 4](#), [Article 2](#), [Division 8](#));
 - (4) A Conditional Use Permit appeal following Planning & Zoning Commission denial (refer to [Section 1.4.3.7](#)); and,
 - (5) A waiver of the sidewalk requirements as outlined in [Chapter 3](#), Article 3 [[Article 2](#)], [Division 13](#).
 - (6) A waiver of plat requirements as outlined in [Chapter 1](#), [Article 3](#), [Division 4](#).
 - (7) Those item's recommended by the Planning and Zoning Commission.
 - (8) A zoning change appeal following P&Z Commission denial.
- (b) Petitions for Relief. The City Council shall finally decide the following petitions for relief:
- (1) Petition for relief from a dedication or construction requirement in accordance with [Article 3](#), [Division 2](#) of this [Chapter 1](#).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 5 - Board of Adjustment (BOA)

Section 1.1.5.1 References

(a) References. The Board of Adjustment shall be organized and have all the powers and authority as set forth in the Charter of the City of Abilene, Texas, and as authorized by Chapter 211 of the Texas Local Government Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.5.2 Structure of the Board of Adjustment

(a) Composition and Term. There shall be established a Board of Adjustment which shall consist of five (5) citizens of the City. The Board shall be appointed by the Mayor with the approval of City Council for a term of two (2) years, which term shall be deemed extended until a successor is appointed and qualified to serve on such board. The Mayor, with the approval of City Council, shall have the power to appoint by resolution four (4) alternate members of the Board of Adjustment who shall serve in the absence of one or more regular members when requested to do so by the Planning Director. These alternate members, when appointed, shall serve for the same period as the regular members and any vacancies shall be filled in the same manner and shall be subject to removal as the regular members. Such appointees shall serve without compensation and may not hold an elective office of the State of Texas or any political subdivision thereof. The Board shall elect a Chair from among its official members.

(b) Removal from Office, Vacancies. A vacancy in an unexpired term shall be filled by the Mayor, with the approval of the City Council, for the remainder of the term.

(1) Unexcused absences from two (2) consecutive meetings without reasonable cause shall constitute just cause for the removal of an official member, as set forth within this Subsection (b).

(2) Any member or alternate member of the Board may be removed from office for just cause and on written charges by a two-thirds vote of the entire City Council, but such member shall be entitled to public hearing before such vote is taken.

(3) It shall be the duty of the Chair of the Board to notify the Mayor promptly of any vacancies occurring in membership, and the City Council shall fill such vacancies within thirty (30) business days for the unexpired term of the original appointment.

(c) Rules. The Board of Adjustment shall adopt its own rules of order and procedure to regulate both the actual meetings of the Board and the activities directly related thereto. The rules shall deal only with procedural matters and shall be available to the public and kept on file with the Planning Director. If no rules are adopted, the latest version of Robert's Rules of Order shall be used until the BOA adopts rules of its own.

(d) Quorum & Voting.

(1) All cases to be heard by the Board of Adjustment will be heard by a minimum of four (4) members or alternate members.

(2) The concurring vote of four (4) members of the BOA is necessary to reverse an order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on a matter upon which the BOA is required to pass under this Land Development Code, or to authorize a variance from the terms of a provision of this Land Development Code.

(e) Meetings. All meetings of the Board of Adjustment shall be open to the public, except that the BOA may hold closed meetings as permitted under state law. The Board shall meet not less than once each month or as necessary.

(f) Minutes. The Board [of] Adjustment 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 a record of its examination and other official actions, all of which shall be filed with the Planning Director and shall be a public record.

(g) Duties of Planning Director. The Planning Director (or designee) shall act as the staff liaison to the BOA and secretary of the BOA and shall set up and maintain a separate file for each application received. The Director shall record in each file the names and addresses of all persons to whom notices are mailed, including the date of mailing, and shall keep a record of all notices published as required in this chapter. All records and files provided for in this Subsection shall be permanent and official files and records of the City.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.5.3 Authority for Deciding Applications

(a) Authority for Applications. The Board of Adjustment shall finally decide the following types of applications:

- (1) An application for a special exception pursuant to [Section 1.4.4.1](#);
- (2) An application for a variance pursuant to [Section 1.4.4.2](#);
- (3) A sign permit or an interpretation of sign regulations related to development within the City limits (refer to [Chapter 4, Article 1, Division 3, Section 4.1.3.6](#) or [Chapter 4, Article 2, Division 8](#), respectively); and,
- (4) An application for a change in the status of a nonconformity pursuant to [Section 1.4.4.3](#);

(b) Authority for Appeals. The Board of Adjustment shall finally decide appeals on the following matters:

- (1) An appeal of any official's interpretation of the requirements of [Chapters 2](#) or [4](#) of this LDC in which the requirement applies to development within the City limits of Abilene, unless a separate appeals process is otherwise defined within this LDC.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.5.4 Authority and Decision Timing

(a) Limitation on Authority. The authority delegated to the Board of Adjustment under this Land Development Code shall not be construed to affect any of the following:

- (1) Approval of a petition for a zoning map amendment;
- (2) Approval of a Conditional Use Permit;
- (3) Authorization of a use not authorized in the zoning district in which the applicant's property is located, except to the extent necessary to decide a special exception or a petition for a change in status of a nonconformity.

(b) Timing of Decision. The Board of Adjustment shall not render any decision on an application, appeal or relief petition while a petition for a zoning amendment, application for a Conditional Use Permit, or plat application for the same land is pending and until such petition or application has been finally decided pursuant to procedures in this [Chapter 1](#).

(c) Notice and Hearing. Any public hearing shall be preceded by posted notice in the manner provided in [Article 2, Division 2](#) of this [Chapter 1](#). Public hearings shall be conducted in the manner provided in [Article 2, Division 3](#) of this [Chapter 1](#).

(d) Appeals of Board Decisions. Appeals of any decision of the BOA may be taken to a state district court, county court, or county court-at-law by filing a verified petition stating that the decision of the BOA is illegal in whole or in part and specifying the grounds of the illegality. The petition must be filed within ten (10) business days after the date the decision is made by the BOA.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 6 - Development Review Committee (DRC)

Section 1.1.6.1 Structure of the Development Review Committee

(a) General. The City hereby establishes a Development Review Committee. The DRC shall be organized to generally ensure that certain applications are in compliance with this LDC and other codes of the City, and to coordinate preliminary examination of such applications to ensure that all City departmental requirements, established by resolution or ordinance, have been met without conflict.

(b) Organization and Structure. The DRC may generally consist of the following members or their duly authorized representatives. All members may or may not be present at any meeting, and shall attend on an as-needed basis.

- (1) The Director of Planning, or designee, who shall serve as the Chair of the DRC;
- (2) One additionally authorized Planning representative appointed by the Director of Planning;
- (3) The City Engineer;
- (4) The Floodplain Administrator;
- (5) The Director of Traffic and Transportation;
- (6) The Fire Chief;
- (7) The Director of Water Utilities;
- (8) The Building Official;
- (9) Solid Waste Division Manager;
- (10) Public Health Engineer;
- (11) Representative from telephone utility company.
- (12) Representative from cable television company.
- (13) Representative from gas utility company.
- (14) Representative from electric utility company providing service to specific application(s) under consideration.
- (15) Representative from State Department of Highways and Public Transportation.
- (16) Representative of 911.
- (17) Representative of applicable County.
- (18) Representative of the Metropolitan Planning Organization.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.6.2 Procedures of the Development Review Committee

(a) Rules. The DRC shall be empowered to adopt its own rules of order and procedure to regulate both the actual meetings of the DRC and the activities directly related thereto.

(b) Meetings. All meetings of the DRC shall be open to any applicant who submitted an application that is being considered at that DRC meeting. The DRC shall meet on a weekly basis, unless no applications have been submitted that need to be considered. The DRC shall meet within five (5) to thirteen (13) business days after submission of a complete application.

(c) Types of Applications Reviewed. The DRC shall review all of the following applications:

- (1) An application for a Site Plan;
- (2) An application for a Concept Plan and/or Site Development Plan for a Planned Development District;
- (3) An application for a Preliminary or Final Plat or Plat Revision;
- (4) An application for the abandonment of a thoroughfare or alley (refer to [Section 3.2.7.4](#) in [Chapter 3](#) of this LDC);
- (5) An application for a street name change; and
- (6) Any other application deemed appropriate for DRC review by the Planning Director.

(d) Procedures for Filing an Application. The applicant shall file with the Planning Director or his designee an appropriate number of copies of any application which is to be reviewed by the DRC, depending on the number of DRC members anticipated to be present at the review. The applicant shall be notified of the meeting time and place at which his/her application shall be reviewed.

(e) Records. The DRC shall not be required to keep minutes of its proceedings, but shall keep a record showing the meeting time, date, people present, and the comments made on each application. Such record shall be filed with the Director of Planning and shall be a public record.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.6.3 Authority for Reviewing Applications

(a) Authority. The DRC shall serve in a review capacity for various types of development applications. The DRC shall make no final decisions on any type of development applications.

(b) Authority for Recommendations. The DRC shall make recommendations to the Responsible Official, Planning and Zoning Committee, and/or City Council, as appropriate, on any development applications it reviews.

(c) Timing of Decision.

- (1) The DRC shall not render any recommendation on any application while a petition for a zoning amendment or application for a Conditional Use Permit until such petition or application has been finally decided pursuant to procedures in this [Chapter 1](#).
- (2) The DRC may make a recommendation for approval or denial of a Site Plan prior to or as a plat application is considered by the Planning & Zoning Commission if the development is properly zoned for the proposed use.

- (3) The DRC may request another review of the initial application if deemed insufficient.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 7 - Landmarks Commission

Section 1.1.7.1 Structure of the Landmarks Commission

(a) General. The City hereby establishes a Landmarks Commission. The Landmarks Commission shall administer the provisions of this LDC appropriate for the protection and preservation of structures and lands deemed by the community to be of unique historical, architectural, and cultural value. The Landmarks Commission shall have all the powers and duties specifically provided for herein this Division 7.

(b) Composition and Term.

(1) Regular Members. The seven (7) voting members of the Landmarks Commission shall be appointed by the Mayor with the approval of City Council for a term of three (3) years. Said term shall be deemed extended until a successor is appointed to serve on the Landmarks Commission. Appointees shall serve without compensation. The Landmarks Commission shall elect a chair, a vice-chair, secretary, and sergeant-at-arms from among its official members, who shall consist of the following:

- a. Two residents, managers or owners of historic properties
- b. A member of the Abilene Preservation League
- c. A member of the Taylor County Historical Commission
- d. One licensed architect
- e. A representative of the Abilene Board of Realtors
- f. A representative of the construction industry

(2) Alternate Members. The Mayor, with the approval of City Council, shall also have the power to appoint two (2) alternate members at-large to the Landmarks Commission who shall serve in the absence of one or more regular members when requested to do so by the Planning Director. The composition of this at-large alternate membership shall be similar to the composition of the regular Commission membership. They shall be residents of the City of Abilene with interest, background, or expertise in the area of preservation of significant structures or lands. Each alternate member shall serve for a term of three (3) years. Any vacancies shall be filled in the same manner and shall be subject to removal as the regular members. The purpose of alternates is to ensure a quorum of Landmarks Commission membership at official meetings.

(3) Ex-Officio Members. In addition to the members from the community as stated above, the following persons or their designees shall sit on the Landmarks Commission as ex-officio members. These include the City Manager, the City Attorney, the Planning Director, the Building Official, and the Director of Economic Development. None of the ex-officio members shall have voting power, but shall assist the Landmarks Commission in its various functions.

(c) Removal from Office, Vacancies. Members of the Landmarks Commission serve at the pleasure of City Council. The term of each member and alternate member shall be deemed extended until a successor is appointed to the Landmarks Commission.

(d) Rules. The Landmarks Commission shall adopt its own rules of order and procedure to regulate meetings and activities directly related thereto. The rules shall deal only with procedural matters and shall be available to the public and kept on file with the Planning Director. If no rules are adopted, the latest version of Robert's Rules of Order shall be used until the Landmarks Commission adopts rules of its own.

(e) Quorum & Voting.

(1) A quorum shall consist of no less than four (4) members.

(2) Affirmative vote of four (4) members shall be necessary for approval of motions before the Commission, except as specifically set forth within Section [2.3.4.4](#) (Historic Overlay District regulations) concerning designation of a Historic Overlay District. Members must be present at the meeting to vote.

(f) Meetings. All meetings of the Landmarks Commission shall be open to the public. Regular meetings shall be scheduled at least once a month, and the Planning Director shall call together the Landmarks Commission to consider official business. Additional meetings may be held upon the call of the chair or the vice-chair, in the absence of the chair, or upon petition of a simple majority of Landmarks Commission members.

(g) Records. The Landmarks Commission shall keep minutes of its proceedings, showing the vote upon each question. Such minutes shall be a public record, filed with the Planning Director.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.7.2 Powers and Duties

(a) The Landmarks Commission shall review all completed applications for designation of a Historic Overlay District and forward its recommendations to the Planning and Zoning Commission.

(b) The Landmarks Commission shall review and approve or deny all completed applications for Certificates of Appropriateness and District Standards, as provided for in this subsection and Section 2.4.4.4 [\[2.3.4.4\]](#) concerning the Historic Overlay District, and Neighborhood Conservation Districts as provided for in Section 2.4.4.3 [\[2.3.4.3\]](#).

(c) It shall further be the responsibility of the Commission to perform the following duties:

(1) Review and periodically update the Historic Preservation Plan and the comprehensive survey of structures and lands felt by the community to be of historical, cultural, or architectural significance.

(2) Maintain current and accurate records of all Historic Overlay District designations and other historic properties. As a part of this recordkeeping, the Landmarks Commission will maintain an Abilene Register of Historic Properties.

a. The Abilene Register of Historic Properties is compiled using official survey data.

b. The Abilene Register of Historic Properties is used to make decisions regarding the approval of Historic Overlay Districts.

(3) Provide information to owners of historic properties.

(4) Actively pursue and formulate a program for private and public action to promote and encourage the preservation of historic landmarks.

- (5) Appoint a District Standards Committee for each Historic Overlay District.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 45-2018, pt. 1(Exh. A), 8-9-18)

Section 1.1.7.3 Authority for Deciding Applications

(a) Initial Authority for Applications. The Landmarks Commission shall initially decide the following types of applications:

- (1) An application for District Standards submitted in association with a Historic Overlay District designation application (refer to Section 2.4.4.4 [2.3.4.4] of this LDC), prior to final action on such application by the Planning and Zoning Commission, and if applicable City Council, when action is taken on the Historic Overlay District application.

(b) Final Authority for Applications. The Landmarks Commission shall finally decide the following types of applications:

- (1) An application for a Certificate of Appropriateness for a Neighborhood Conservation District pursuant to Section 2.4.4.3 [2.3.4.3];
- (2) An application for a Certificate of Appropriateness for a Historic Overlay District pursuant to Section 2.4.4.4 [2.3.4.4].

(c) Specific Procedures. The specific procedures for decisions of the Landmarks Commission are outlined within Section 2.4.4.3 [2.3.4.3] for applications related to Neighborhood Conservation Districts, and within Section 2.4.4.4 [2.3.4.4] for applications related to Historic Overlay Districts.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.1.7.4 District Standards Committee, Subcommittee of the Landmarks Commission

(a) Purpose. The purpose of this subcommittee of the Landmarks Commission is to review all district standards and to preview all Certificates of Appropriateness in a historic district before they are reviewed and voted upon by the Landmarks Commission.

(b) Composition. The Landmarks Commission chairperson shall appoint a member of the Landmarks Commission to serve as chairperson of the District Standards Committee. Committee membership shall be as follows:

- (1) One member of the Landmarks Commission.
- (2) One (1) member of the Abilene Preservation League
- (3) Three property owners who own property within the district.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Article 2 - Universal Procedures

Division 1 - Application Processing

Section 1.2.1.1 Initiation of Application

(a) Initiation by Owner. Unless otherwise expressly provided by this Land Development Code, a petition for legislative action affecting land, other than a petition for a text amendment or a zoning amendment, or an application for a development permit, may be initiated only by the owner of an interest in the land subject to the application, or the owner's designated agent. If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf. The responsible official may establish the type of documents needed to determine ownership or agency.

(b) Initiation by City. An agent of the City acting as a representative of the City can initiate any application authorized under this LDC.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.2 Complete Application and Expiration

(a) Applicability. The following procedures shall apply to any application that is required by the City and is submitted in accordance with this LDC.

(b) Determination of Completeness. Every required application shall be subject to a determination of completeness by the responsible official for processing the application.

(1) No required application shall be accepted by the responsible official for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this LDC.

(2) A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this LDC.

(3) A determination of completeness shall be made by the responsible official no later than the fifth (5th) business day after the official filing date that the required application is submitted to the responsible official.

a. The applicant shall be notified in writing within five (5) business days if the submitted application is incomplete.

b. If the required application is determined to be complete, the application shall be processed as prescribed by this LDC.

c. If the required application is determined to be incomplete, the notification shall specify the documents or other information needed to complete the application and shall state the date the application will expire (see Subsection (d) below) if the documents or other information are not provided.

d. A required application shall be deemed complete on the sixth (6th) business day after the application has been received if the applicant has not been notified that the application is incomplete in accordance with this section.

(c) Resubmittal After Notification of Incompleteness. If the required application is resubmitted after a notification of incompleteness within the time allotted in subsection (d), the application shall be processed upon receipt of the resubmittal. No additional determination of completeness shall be made thereafter; however, to the extent that the information or documents submitted is not sufficient to enable the decision-maker to apply the criteria for approval, the application may be denied on such grounds.

(d) Expiration of Application.

(1) The required application shall expire on the forty-fifth (45th) day after the date the application is received if:

- a. The applicant fails to provide documents or other information necessary to comply with the City's requirements relating to the required application;
- b. The City provides to the applicant, not later than the tenth (10th) business day after the date the application is filed, written notice that specifies the necessary documents or other information, and the date the application will expire if the documents or other information is not provided; and
- c. The applicant fails to provide the specified documents or other information within the time provided in the notification.

(2) If the required application is not completed by the forty-fifth (45th) day after the application is submitted to the responsible official, the required application will be deemed to have expired and it will be returned to the applicant together with any accompanying applications.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.3 Waiver

(a) Notwithstanding the requirements of [Section 1.2.1.2](#), the responsible official may initially waive the submission of any information in the application and accompanying materials that is not necessary due to the scope and nature of the proposed activity. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.4 Official Filing Date

(a) The time period established by State law or this Land Development Code for processing or deciding a complete application shall commence on the official filing date. The official filing date is the date the application is deemed complete by the responsible official in the manner prescribed by [Section 1.2.1.2](#). (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.5 Universal Application Contents

(a) Application Forms Generally. The City is hereby authorized to prepare application forms that include information requirements, checklists, architectural or engineering drawing sizes, applicant contact information, and any other information necessary to show compliance with City Codes.

(b) Information for All Applications. All applications shall contain the following information:

- (1) Identification of property owner and authorized agent;
- (2) Description of the property and the nature of the development that is the subject of the application;
- (3) Identification of all zoning classifications (inside the City only) for the property;
- (4) Identification of all pending legislative applications for the property;
- (5) Identification of decisions on all quasi-judicial or administrative applications for the property that remain in effect;
- (6) Identification of all accompanying applications;

- (7) Identification of all pending or accompanying requests for relief;
- (8) Demonstration of compliance with prior approved permits.

(c) All application forms are available in the City's Planning and Development Services office and on the City's website.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.6 Application Fees

(a) Every application shall be accompanied by the prescribed fees set forth in the fee schedule prepared and adopted as an appendix to this Code. The prescribed fee shall not be refundable, except when the City Council waives the application fee for resubmission of an approval that was denied. The fee schedule may be amended from time to time per procedures established by the City Council. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.7 Modification of Applications

(a) The applicant may modify any complete application following its filing and prior to the expiration of the period during which the City is required to act on the application.

(1) If the modification is for revisions requested by the City, and the modification is received at least five (5) business days prior to the time scheduled for decision on the application, the application shall be decided within the period for decision prescribed by this Land Development Code.

(2) In all other instances (e.g., when the applicant chooses to submit a revised application on his own accord because of a change in development decisions), submittal of a modified application shall extend the time for deciding the application for a period equal to the time specified in this Land Development Code to decide the original application, commencing on the date the modified application is officially filed, unless a waiver of the time for decision is first required (refer to [Chapter 3, Section 3.1.1.4](#) for plat application time waivers), in which case the terms of the approved waiver shall govern the period within which the City must act on the application.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.8 Action by Responsible Official

(a) Circulate & Compile Comments. Following the determination that an application is complete ([Section 1.2.1.2](#)), the responsible official shall circulate the application to all other administrative officials and departments whose review is required for a decision on the application and shall compile the comments and recommendations of the officials.

(b) Decision Rendered, If Applicable. The responsible official shall render a decision in the time prescribed for the applicable application, if the official is the decision-maker for the application.

(c) Forward Application & Provide Notification. In cases where the responsible official is not the decision-maker, the responsible official shall forward the application for review to any advisory board/commission and the final decision-maker, and shall prepare a report to such board or commission, or to the City Council, as the case may be, including the compilation of any comments and recommendations by other administrative officials. The responsible official also shall prepare required notices and schedule the application for decision within the time and in the manner required by this Land Development Code.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.9 Exemption Determination

(a) For any application for a development permit for which exemptions are listed, an exemption from the requirement to apply for such permit shall be determined in the following manner:

(1) The application for exemption must be filed on a form supplied by the responsible official, must be accompanied by the review fee set by the City Council, and must include all of the following information:

- a. Name, address, and telephone number of the property owner and the applicant.
- b. A brief description of the activity or development for which exemption is sought;
- c. A scale drawing depicting the boundaries of the site, the location of existing improvements on the site, and the location of the proposed development activities on the site.
- d. Information establishing the basis for the exemption.

(2) The responsible official shall notify the applicant of the decision. If the responsible official denies the application for exemption, the official shall require that an application for the development permit be prepared in accordance with this Code.

(b) An exemption is a separate and distinct consideration that is differentiated from a special exception (refer to [Section 1.4.4.1](#)) and/or a variance (refer to [Section 1.4.4.2](#)).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.10 Action by Advisory Board/Commission

(a) In the absence of a recommendation from an advisory board/commission by a majority vote on a proposed application, the advisory board/commission shall be presumed conclusively to have recommended that the application be considered by the City Council with a recommendation for denial from the advisory board/commission. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.11 Decision

(a) The decision-maker for the application shall approve, approve with conditions or deny the application within the time prescribed by this Land Development Code. Unless otherwise prescribed by law or City Charter, where the decision-maker is a board, commission or the City Council, the application shall be decided by majority vote of a quorum of the members of the board, commission or the City Council, provided that a super-majority vote or other decision rule on the application has not been invoked in accordance with the provisions of law, charter, or this Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.1.12 Conditions

(a) The initial or final decision-maker may attach such conditions to the approval of an application as are reasonably necessary to assure compliance with applicable requirements of this Land Development Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 2 - Notice Requirements

Section 1.2.2.1 Published Notice

(a) Whenever published notice of a public hearing before a board or commission or the City Council is required under state law, the City Charter, or this Land Development Code, the responsible official shall cause notice to be published in a newspaper of general circulation in the City before the fifteenth (15th) calendar day before the date set for the required hearing. The notice shall set forth the date, time, place and purpose of the hearing, and identification of the subject property, where the decision concerns an individual tract or parcel of land. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.2.2 Personal Notice

(a) Whenever personal notice of a public hearing is required by state law, the City Charter, or this Land Development Code before a board or commission or the City Council, the responsible official shall cause notice to be sent by regular mail before the tenth (10th) calendar day before the hearing date to the following:

- (1) Each owner of real property located within two hundred feet (200') of the exterior boundary of the property in question,
- (2) The applicant and/or property owner, and
- (3) If the matter to be considered is an appeal, to the appellant.

(b) The notice shall set forth the name of the applicant, the time, place and purpose of the hearing, identification of the subject property, and if the matter to be considered is an appeal, the name of the appellant.

- (1) Notice shall be sent to each owner indicated on the most recently approved municipal tax roll for land inside the City limits, and, when required by state law, on the most recently approved county tax roll for land in the extraterritorial jurisdiction. For recently annexed land that is not included on the most recently approved municipal or county tax roll, notice may be given by publication.
- (2) Notice may be served by depositing the notice, properly addressed and first class postage prepaid, in the United States mail.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.2.3 Posting Notice on Property for Zoning Amendments

(a) When any person, firm or corporation requests a zoning change, a sign(s) shall be erected and maintained upon the property for which a zoning change has been requested. Such sign(s) shall be located as follows:

- (1) One (1) sign per street frontage shall be located within thirty feet (30') of the abutting street, or as determined by the Planning Director or designee.
- (2) So as to be clearly visible and readable from the public right-of-way and not obstructed in any manner.
- (3) So as not to create a hazard to traffic on the public rights-of-way abutting the property.
- (4) On the subject property at least ten (10) days prior to the hearing of such zoning change request by the Planning and Zoning Commission, and to remain continuously on the property until final action by the City Council or withdrawal of the case by the applicant. Removal of the sign by the applicant prior to a recommendation by the Planning and Zoning Commission and/or a final decision by the City Council shall constitute a withdrawal of the request.

(b) The sign shall be installed by the City, and shall advise that a zoning change has been requested and shall list the telephone number of the Planning Department for more information. The Planning Director is hereby authorized to establish size, type and message requirements for such signs.

(c) Upon making an application for a zoning change, the City shall place sign(s) as required by this section. The City shall install such sign(s) in compliance as required by this section.

(d) After the zoning change request is approved by the City Council, denied by the City Council, or withdrawn by the applicant, the City shall remove the sign from the area of the request within ten (10) days of such event.

(e) It shall be unlawful for anyone to remove, destroy, deface or obstruct the view of a sign which gives notice that a zoning change has been requested.

(f) In the event the City shall fail to erect signs in accordance with this section, then the public hearing before the appropriate body shall be postponed to a date in the future which would allow time for compliance.

(g) The erection of any sign required by this section shall not require a permit under [Chapter 4, Article 1, Division 2](#) of this LDC.

(h) The Planning and Zoning Commission shall have the power to decide whether or not there has been substantial compliance with the posting requirements in the case of lost, stolen or vandalized signs.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 12-2010, pt. A (Exh. A), 6-10-10)

Section 1.2.2.4 Notification Following Decision

(a) The minutes of the meeting shall be deemed to be the record for notification purposes. Record of this notification shall be filed with the secretary of the board or commission or City Council on the date of notification. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 12-2010, pt. A (Exh. A), 6-10-10)

Section 1.2.2.5 Notification of Appeal or Revocation

(a) Whenever appeal is taken from a final decision on an application following a public hearing, or whenever the City is to consider revocation of a development permit which was obtained following a public hearing, personal notice of the appeal or revocation proceeding shall be provided to the holder of the permit. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 12-2010, pt. A (Exh. A), 6-10-10)

Division 3 - Public Hearings

Section 1.2.3.1 Setting of the Hearing

(a) When the responsible official determines that an application is complete and that a public hearing is required by this Land Development Code, the official shall cause notice of such hearing to be prepared and made in accordance with [Article 2, Division 2](#) of this [Chapter 1](#). The time set for the hearing shall conform to the time periods required by this Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.3.2 Conduct of Hearing

(a) Any person may appear at the public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing shall state his or her name, and if appearing on behalf of an organization, state the name of the organization for the record.

(b) The public hearing shall be conducted in accordance with State law.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.3.3 Record of Proceedings

(a) The board/commission conducting the hearing shall record the proceedings by any appropriate means. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.3.4 Continuance of Proceedings

(a) The board/commission conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time and place. No notice shall be required if a hearing is continued. If a public hearing is closed, no further public testimony shall be taken. When an item is continued to a future meeting, the public hearing is presumed to remain open, unless specifically closed as part of the motion continuing consideration to the future meeting. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.3.5 Additional Rules

(a) The board/commission conducting the hearing may adopt rules of procedure to limit the number of applications for development approval which may be considered per meeting and the time for each presentation, and may apply such additional rules to govern the public hearing which are not inconsistent with this section. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.3.6 Joint Public Hearing

(a) Unless otherwise prescribed in this Land Development Code, whenever a petition for a legislative decision or a development application must be preceded by a public hearing both before Planning and Zoning Commission and the City Council, the Commission and the Council may conduct a joint public hearing (in accordance with Chapter 211.007(d) of the Texas Local Government Code) and take action on the petition or application in the following manner:

- (1) The Council shall establish the date of the joint public hearing by motion at a regular or special meeting;
- (2) The Council shall cause notice of the joint public hearing to be provided as required by this Land Development Code, or, by a vote of two-thirds (2/3) of its members, may prescribe a different type of notice for the joint public hearing;
- (3) The Commission and the Council shall be convened for the hearing and for any action to be taken on the petition or application;
- (4) The Commission and the Council may take action on the petition or application at the same meeting, provided that the Council shall not take action until the recommendation of the Commission has been received.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 4 - Post-Decision Procedures

Section 1.2.4.1 Zoning Request Reapplication Following Denial

(a) A zoning request which has been denied by the responsible official, the Planning and Zoning Commission, and/or the City Council may not be resubmitted to the City for one (1) year from the original date of denial, unless the request is substantially different from the original request. This shall include a zoning change request for a Planned Development District. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.4.2 Amendments and Revisions to Approval

(a) Unless another method is expressly provided by this Land Development Code, any request to amend or revise an approved application shall be considered a new application, which must be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the City. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 5 - Expiration, Extension, and Reinstatement

Section 1.2.5.1 Time of Expiration

(a) Unless otherwise expressly provided by this Land Development Code, an approved application shall automatically expire on the second (2nd) anniversary (i.e., in two (2) years) of the approval date of the application, and shall become null and void, and all activities under the permit thereafter shall be deemed in violation of this Code, if:

- (1) The applicant fails to satisfy any condition that was imposed by this Code or as part of the approval of the application or that was made under the terms of any development agreement, within the time limits established for satisfaction of such condition or term, or
- (2) The applicant fails to submit a subsequent complete application required by this Land Development Code within the time so required.
- (3) If no time limit for satisfaction of conditions is specified in the decision on the application, the time shall be presumed to be two (2) years from the date the application was approved, except as provided in [Section 1.2.5.6](#).

(b) Except as provided in [Section 1.2.5.6](#) or a different date is determined pursuant to a vested rights petition, an application approved prior to the effective date of this Land Development Code shall expire in accordance with the terms of the regulations in effect at the time the application was filed.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.5.2 Effect of Expiration

(a) Upon the expiration of an approved application, all previously approved applications for the same land shall also expire on the expiration date prescribed in [Section 1.2.5.1](#) above if the filing of an application was required to avoid expiration for the previously approved application(s), except as provided in [Section 1.2.5.6](#). Thereafter, a new application for each application that has been deemed to have expired under this section must be approved subject to regulations in effect at the time the new application is filed. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.5.3 Extension Procedures

(a) Unless a different time is expressly provided for a specific procedure by this Land Development Code, the responsible official or the board, commission or the City Council that finally approves an application may grant an initial extension of the time for expiration of the application for a period not to exceed one (1) year from the date of the expiration of the application, provided that a request for extension is made in writing at least thirty (30) business days before the approved application expires. Every request for extension shall include a statement of the reasons why

the expiration date should be extended. The decision-maker may grant a request for an initial extension upon demonstration that circumstances beyond the control of the applicant have resulted in the permit holder's inability to perform the tasks necessary to prevent the permit from expiring before the expiration date.

(b) A second (2nd) extension of the expiration date of an officially filed, complete application may be granted for a period not to exceed one (1) additional year. The extension application must be in writing. Such an extension may be granted only by the City Council. In determining whether to grant a request, the City Council shall take into account the reasons for the requested extension, the ability of the applicant to comply with any conditions attached to the original approval, 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 development.

(c) In granting an extension, the official or board/commission deciding the request may impose such conditions as are needed to assure that the land will be developed in a timely fashion and that the public interest is served. In granting a subsequent extension request, the City Council may require that one or more newly adopted development standards be applied to the proposed development.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.5.4 Reinstatement

(a) Unless otherwise provided by this Land Development Code, an applicant may request reinstatement of an expired application by filing a written request with the responsible official within thirty (30) business days of the date of expiration. The request for reinstatement shall include a statement of the reasons why the application should be reinstated and extended. A request for reinstatement shall be processed and decided in the manner provided for an extension of an expiration period for more than one (1) year. The expiration date shall not be extended for more than two (2) years from the date a complete application was officially filed. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.5.5 Effect of Decision on Extension or Reinstatement

(a) The granting of an extension or reinstatement request for a permit also extends or reinstates any other permits otherwise deemed expired under [Section 1.2.5.2](#). The denial of an extension or reinstatement results in the immediate lapse of the permit and any other permits deemed expired under [Section 1.2.5.2](#). Thereafter, the applicant shall file a new application for a permit or permits before undertaking any activity authorized by the lapsed permit. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.5.6 Expiration for Projects Commenced On or After September 1, 2005

(a) Notwithstanding any other provision of this Land Development Code, for any approved application for which no expiration date was in effect on September 1, 2005, an expiration date two (2) years following the date of approval of the permit shall apply, unless the holder of the permit files a petition before such date for a vested rights determination pursuant to [Article 3, Division 3](#) of this [Chapter 1](#), alleging that progress has been made toward completion of the project for which the application subject to expiration was filed. If a vested rights petition is timely filed, the City Council shall determine the expiration date of the permit in deciding the petition.

(b) Notwithstanding any other provision of this Land Development Code, once a permit has expired under subsection (a), all previously approved applications for the same land also shall expire no later than five (5) years from the date of filing of the first application for the project for which the expired application was filed, unless the holder of such permit(s) files a petition before such date for a vested rights determination pursuant to [Article 3, Division 3](#) of this [Chapter 1](#), alleging that progress has been made toward completion of the project for which the applications subject to expiration were filed. If a vested rights petition is timely filed, the City Council shall determine the expiration date of the previously approved permits in deciding the petition.

(c) Progress toward completion of a project shall mean that any of the following events have occurred within relevant time periods:

- (1) An application for a final plat or plan has been filed with the city, and remains in effect at the time the vested rights petition was filed;
- (2) A good faith attempt is made to file an application with the City to continue the project;
- (3) Costs have been incurred for developing the project, including without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- (4) Fiscal security is posted with the city to ensure performance of an obligation, and remains in effect at the time the vested rights petition was filed; or
- (5) Utility connection fees or impact fees for the project have been paid, but have not been refunded.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 6 - Enforcement and Revocation of Permits

Section 1.2.6.1 Enforcement Activities

(a) Employees of the Planning and Development Services Department, Community Enhancement Division (Code Enforcement Officers), Public Works Department, Water Department, and Fire Department are authorized to issue municipal court citations for violations of this article. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.6.2 Right to Enter

(a) The authorized official shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this Land Development Code. Submittal of any application that authorizes construction of structures or improvements shall be construed as a grant of authority to the responsible official to enter on land subject to the application for purposes of enforcing the approved permit. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.6.3 General Remedies

(a) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used or developed in violation of this Land Development Code or any application approved thereunder, in addition to other remedies, the City may institute any appropriate action or proceedings to prevent or abate such activity. Appropriate action or proceedings include termination of utility services (water, gas, electric); revocation of permits, licenses, or bonds; and institution of legal action in a court of competent jurisdiction. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.6.4 Stop Work Orders

(a) Whenever any construction or development activity is being done contrary to any term, condition or requirements of an approved application or this Land Development Code, the City Building Official or Code Enforcement Officer may order the work stopped by notice in writing, served on the property owner or authorized agent. Notice shall be given before the order shall be effective, except when the order should be effective immediately to protect and preserve the public health, safety, or general welfare. Any person thereafter shall cease and desist from further development or construction material to the alleged noncompliance, until corrected by compliance and

authorized by the City Building Official or Code Enforcement Officer to proceed with the work. This prohibition shall extend throughout any appeal period.

(b) The owner or authorized agent may appeal the stop work order to the authorized official by giving written notice. The City Building Official or Code Enforcement Officer shall hear the appeal no later than 5 p.m. the next business day after receiving the notice. A decision shall be made on the appeal no later than 5 p.m. the next business day following the hearing of the appeal.

(c) The appellant may appeal a negative ruling by the City Building Official or Code Enforcement Officer in writing to the City Manager, or designee, who shall hear the appeal no later than 5 p.m. the next business day after receipt of the notice of appeal. A decision shall be made on the appeal no later than 5 p.m. the next business day following the hearing of the appeal.

(d) The decision-maker on the appeal may require the placement of temporary erosion control, drainage protection or other measures by the owner or appellant in order to protect the site and the community resources during the appeal period.

(e) The decision-maker shall decide the appeal and make such order as is necessary to assure compliance with the terms of this Land Development Code and all approved applications.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.6.5 Municipal Court Actions

(a) The City Attorney is authorized to prosecute violations of this Land Development Code in the municipal court where jurisdiction lies for the action.

(b) In prosecutions for violations of this Land Development Code, it shall not be necessary to allege or prove a culpable mental state, as said requirement is hereby waived.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.6.6 Civil Court Actions

(a) The City Attorney is authorized to file and prosecute an action at law or in equity, where permitted under the laws of Texas, in a court of competent jurisdiction to enforce the provisions of this Land Development Code. The initiation of one form of enforcement action by the City Attorney will not preclude the City Attorney from initiating any other form of enforcement action. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.6.7 Revocation Proceedings

(a) If an authorized official determines, based on inspection or investigation by the City, that there are reasonable grounds for revocation of an approved application, the official shall set a hearing before the City Council to which appeal may be taken from such decision under this Land Development Code. The City Council may refer the proposed revocation to the Planning and Zoning Commission for its report and recommendation prior to such hearing. Circumstances that warrant revocation of an approved application shall include the following:

- (1) A material mistake was made in approving the application;
- (2) Approval of the application was procured on the basis of material misrepresentations or fraud on the part of the applicant;

(3) Development activities being undertaken on the land subject to the development permit are not in conformity with terms of the approved application;

(4) The use authorized by the permit is in violation of a condition of approval of the approved application;

(b) The applicant and any interested parties shall be given notice of the hearing in the manner provided in [Chapter 1, Article 2, Division 2](#). The public hearing shall be conducted in accordance with the procedures described in [Chapter 1, Article 2, Division 3](#).

(c) In rendering its decision whether to revoke the approved application, the decision-maker shall determine whether the activity authorized under the original approved application complies with the terms, conditions and requirements of such approval. The decision-maker may revoke the application, affirm it, or affirm it with attached conditions that assure that the terms; conditions and requirements of the application shall be met.

(d) Following revocation and pending any appeal, it shall be unlawful to undertake or perform any activity that was previously authorized by the approved application without applying for and obtaining approval of a new application for the activity. Appeal from the decision to revoke the approved application shall be to the City Council, unless the decision to revoke was made by the City Council, in which case revocation is final.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.6.8 Exemption

(a) This division does not apply to building permits issued under separate ordinance or provision of the City Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 7 - Text Amendments

Section 1.2.7.1 Amendments to the Land Development Code (LDC)

(a) The City Council may from time to time amend, supplement, or change the text of this Land Development Code by a majority vote of its members, unless a different vote is otherwise required by this Land Development Code, the City Charter, or other law. A request for an amendment to this Code shall not be considered an application for a permit. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.7.2 Hearing and Notice

(a) The City Council shall conduct a public hearing on a proposed text amendment in accordance with [Chapter 1, Article 2, Division 3](#). No personal notice for such amendments shall be required. Published notice of the amendment shall be in accordance with [Section 1.2.2.1](#) for amendments to the provisions of this Land Development Code.

(b) The hearing and notice requirements of this section do not apply to an action of the City Council imposing a moratorium on the acceptance, processing, or issuance of development permits or petitions for legislative actions.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.7.3 Recommendation of Advisory Board/Commission

(a) Where required by this Land Development Code, the City Charter, or other law, the City Council shall first consider the recommendation of the Planning and Zoning Commission, together with the recommendations of any other advisory board/commission prescribed by this Code, concerning the proposed text amendment. Where action is

required of the Planning and Zoning Commission or other advisory board/commission on a proposed text amendment, the Planning and Zoning Commission or other advisory board/commission also shall conduct a public hearing. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.2.7.4 Initiation of Text Amendments

(a) Unless otherwise limited by this Land Development Code, a petition for amending the text of the Land Development Code may be initiated by the City Council; the Planning and Zoning Commission; a board, commission or advisory board/commission described in [Chapter 1, Article 1](#); a responsible official designated in this Code.

(1) Except for amendments initiated by the City Council, the petition to amend the text of this Land Development Code shall state with particularity the nature of the amendment and the reason for the amendment.

(2) A petition for a text amendment may be submitted in conjunction with an application, approval of which depends on approval of the amendment, but shall in every such instance be decided prior to any action by the City on the application.

(3) The City Council may establish rules governing times for submission and consideration of text amendments.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 8 - Fines, Penalties, Offenses

Section 1.2.8.1 Fines, Penalties, Offenses

(a) Violations of provisions of this LDC or failure to comply with any of its requirements (including violations of and [any] safeguards established in connection with approval of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this LDC or fails to comply with any of its requirements shall upon conviction thereof be fined in accordance with [Section 1-9](#) "General Penalty" of the City Code.

(b) Each calendar day such violation continues shall be considered a separate offense.

(c) The owner or occupant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

(d) Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

(e) It is further the intent and declared purpose of this LDC that no offense committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time that the previous regulations were repealed and this LDC adopted shall be discharged or affected by such repeal, but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures may be instituted, and causes presently in process may be prosecuted in all respects as if such previous regulations had not been repealed.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Article 3 - Relief Procedures

Division 1 - Appeals

Section 1.3.1.1 Purpose, Applicability and Effect

(a) Purpose. The purpose of an appeal is to contest an initial decision on an application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this Code that apply to the application.

(b) Applicability. Unless otherwise provided by this Code, any final administrative decision on an application by a City official, including a determination by the responsible official that a proposed development is exempt from one or more applications, may be appealed to the board or commission designated in the regulations establishing the procedure by which the decision was made. For administrative decisions on applications authorized in [Chapter 4](#), appeal shall be to the Board of Adjustment, except sign permits related to development outside the City limits within the ETJ, which shall be appealed to the City Council (refer to [Chapter 4, Article 1, Division 3, Section 4.1.3.6](#)). Final decisions on an application by a board or commission may be appealed to the City Council only if expressly provided for in the regulations establishing the procedure by which the decision was made.

(c) Effect. The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the application for which approval was sought.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.1.2 Appeal Requirements

(a) Who May Appeal. The applicant or any interested person may appeal a final decision on an application to the appellate authority designated by this Code, if any.

(b) Form of Appeal. The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by the fee established by the City Council. An appeal by an applicant shall be accompanied by a copy of the application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant.

(c) Time for Filing Appeal. A written appeal must be filed with the responsible official within ten (10) business days from the date of notification of the final decision on the application.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.1.3 Processing of Appeal and Decision

(a) Responsible Official. The responsible official for an appeal is the responsible official designated by this Code for processing of the application at issue in the appeal. Upon receipt of a written appeal, the responsible official shall compile all documents constituting the record of the decision on appeal and transmit the record to the appellate authority.

(b) Stay of Proceedings. Receipt of a written appeal of a decision on an application stays all proceedings of the City in furtherance of the decision from which appeal is taken, including without limitation acceptance, processing or issuance of any applications that are dependent on the application being appealed, and any development activities authorized by initial approval of the application.

(1) The stay shall be lifted only if the responsible official certifies in writing to the appellate authority that a stay would cause imminent peril to life or property.

(2) Thereafter, the stay may be reinstated only by order of the appellate authority or a court of record, on application, after notice to the responsible official, for due cause shown.

(c) Hearing and Notice. Notification of the appeal and conduct of the public hearing thereon shall be in accordance with [Article 2, Division 2](#) and [Division 3](#) of this [Chapter 1](#). The initial public hearing on the appeal shall be held within twenty-five (25) business days after the filing of the appeal with the responsible official, unless a different time is prescribed by the provisions of this chapter.

(d) Decision on Appeal. The appellate authority shall decide the appeal within thirty (30) business days of the close of the public hearing. The appellate authority shall affirm, reverse or modify the decision from which the appeal was taken.

(e) Notification of Decision on Appeal. The appellant and the applicant for the development permit shall be notified of the decision on appeal in the manner provided in Section 1.2.2.4 [[1.2.2.5](#)].

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.1.4 Criteria

(a) In deciding the appeal, the appellate authority shall apply the same criteria that govern the initial decision on the application under the provisions of this Code. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.1.5 Expiration and Extension

(a) For purposes of determining expiration or extension periods under this Code, the date of the appellate authority's granting of relief on an appeal is the date on which the application is deemed approved. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 2 - Proportionality Appeal: Petition for Relief from Dedication or Construction Requirement

Section 1.3.2.1 Policy Established

(a) Adequate Public Facilities Policy.

(1) Adequate Service for Areas Proposed for Development.

a. Land proposed for development in the City and the City's Extraterritorial Jurisdiction must be served adequately by essential public facilities and services, including water, wastewater, roadway, and drainage facilities.

b. Land shall not be approved for platting or development unless and until adequate public facilities necessary to serve the development exist or provision has been made for the facilities, whether the facilities are to be located within the property being developed or off-site.

(2) Responsibilities of the Developer to Provide Adequate Facilities. The developer shall be responsible for the following to ensure the facilities provided are adequate:

a. Phasing of development or improvements in order to ensure the provision of adequate public facilities;

b. Extensions of public facilities and roadways (including any necessary on-site and off-site facilities) to connect to existing public facilities or roadways;

- c. Providing and/or procuring all necessary property interests, including rights-of-way and easements, for the facilities (whether on-site or off-site);
 - d. Providing proof to the City of adequate public facilities;
 - e. Making provisions for future expansion of the public facilities as needed to serve future developments, subject to the City's oversize participation regulations (i.e., when the City will provide for the cost of oversizing facilities), if applicable;
 - f. Providing for all operations and maintenance of the public facilities, or if the City is not the provider, providing proof that a separate entity will be responsible for the operations and maintenance of the facilities;
 - g. Providing all fiscal security required for the construction of the public facilities;
 - h. Obtaining approvals from any applicable utility providers other than the City; and
 - i. Complying with all requirements of utility providers, including the City or other applicable providers.
- (3) **Responsibilities of the Developer to Conform to Adopted Plans.** The developer shall ensure that facilities provided are in conformance with the City's adopted plans.
- a. Proposed facilities serving new development shall conform to and be properly related to the public facility elements of the City's adopted Comprehensive Plan, other adopted master plans for public facilities and services, and applicable capital improvements plans, and shall meet the service levels specified in such plans.
 - b. The design and construction of all water and wastewater facilities to serve the subdivision shall be in conformance with the City's master plans for water and wastewater facilities and with the City's technical specifications.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.2.2 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of a petition for relief from a dedication or construction requirement is to assure that the application of uniform dedication and construction standards to a proposed plat does not result in a disproportionate burden on the property owner, taking into consideration the nature and extent of the demands created by the proposed plat on the City's public facilities systems relative to what is normal and reasonable for other similar subdivisions of property. In most instances where a favorable determination is warranted, a reduction of the requirements would likely be most appropriate, rather than a complete waiver of dedication or construction requirements.
- (b) **Applicability.** A petition for relief under this section may be filed by a property owner or applicant to contest any requirement to dedicate land or to construct public improvements for dedication to the public that is imposed under the City's public facilities standards in any ordinance or regulation to a plat application or to any related development application authorized by the City, whether the requirement is under uniform standards, or attached as a condition to approval of the petition or permit. A petition under this section shall not be used to waive standards on grounds applicable to any petition for a waiver as found in other sections of this LDC.
- (c) **Effect.** If the relief requested under the petition is granted in whole or in part by the City Council, the dedication or construction requirement initially imposed shall be modified accordingly, and the standards applied or the conditions attached to initial approval of the development application shall be thereafter applied in accordance with

the relief granted. In the event the original application was denied by the decision-maker based upon the property owner's failure to incorporate the dedication or construction requirement in the proposed permit, the application shall be remanded to the original decision-maker for a decision consistent with the relief granted by the Council.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.2.3 Petition Requirements

(a) Who May Apply. A property owner or applicant may petition for relief from a dedication or construction requirement when a dedication or construction requirement has been applied to a plat, or is the basis for denying the plat application.

(b) Form of Petition. The petition for relief from a dedication or construction requirement shall allege that application of the standard relating to the dedication or construction requirement is not roughly proportional to the nature and extent of the impacts created by the proposed development on the City's water, wastewater, stormwater, parks, or roadway system, as the case may be, or does not reasonably benefit the proposed development.

(c) Study Required. The petitioner shall provide a study in support of the petition for relief that includes the following information:

(1) Total capacity of the City's water, wastewater, stormwater, parks, or roadway system to be utilized by the proposed development, employing standard measures of capacity and equivalency tables relating the type of development proposed to the quantity of system capacity to be consumed by the development. If the proposed development is to be developed in phases, such information also shall be provided for the entire development proposed, including any phases already developed.

(2) Total capacity to be supplied to the City's water, wastewater, stormwater, parks, or roadway system by the proposed dedication of an interest in land or construction of capital improvements. If the development application is part of a phased development, the information shall include any capacity supplied by prior dedications or construction of capital improvements.

(3) Comparison of the capacity of the City's public facilities system(s) to be consumed by the proposed development with the capacity to be supplied to such system(s) by the proposed dedication of an interest in land or construction of capital improvements. In making this comparison, the impacts on the City's public facilities system(s) from the entire development shall be considered.

(4) The effect of any City participation in the costs of oversizing the capital improvement to be constructed in accordance with the City's requirements.

(5) Any other information that shows the alleged disproportionality between the impacts created by the proposed development and the dedication or construction requirement imposed by the City.

(6) This proportionality analysis should not only be based on any immediate plans for the property, but should be based on the size of the property, existing use of the property, the existing zoning, and what impacts the highest and best use of the property could have on the City's infrastructure system.

(7) Only costs directly related to the dedication or construction requirement should be included in the analysis. Indirect costs, such as applications, permits, and fees, shall not be included.

(d) Time for Filing Petition and Study. A petition for relief from a dedication or construction requirement shall be filed with the responsible official within ten (10) business days of the Planning and Zoning Commission's decision to conditionally approve or deny an application for approval of a Preliminary Plat, or where no Preliminary Plat application has been submitted, an application for approval of a Final Plat. The study in support of the petition shall

be filed within sixty (60) business days of the initial decision, unless the petitioner seeks an extension in writing. The responsible official may extend the time for submitting the study for a period not to exceed an additional thirty (30) business days for good cause shown.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 12-2010, pt. A (Exh. A), 6-10-10)

Section 1.3.2.4 Land in Extraterritorial Jurisdiction

(a) Where land or facilities to be dedicated are located in the extraterritorial jurisdiction of the City and are to be dedicated to a county under an interlocal agreement under Tex. Loc. Gov't Code Chapter 242, a petition for relief or study in support of the petition shall not be accepted as complete for review by the responsible official unless the petition or study is accompanied by verification that a copy has been delivered to the county in which the facilities are to be located. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.2.5 Processing of Petitions and Decision

(a) Responsible Official. The Public Works Director is the responsible official for a petition for relief from a dedication or construction requirement. Where the petition is for relief from dedication of rights-of-way for or construction of a facility in the City's extraterritorial jurisdiction that is to be dedicated to a county under an interlocal agreement under Texas Local Government Code, Chapter 242, the Public Works Director shall coordinate a recommendation with the county official responsible for reviewing plats in the county.

(b) Evaluation, Recommendation. The Development Review Committee shall make an initial review of the petition and supporting study and shall provide comments to the Public Works Director. The Public Works Director shall evaluate the petition, the supporting study, and the Development Review Committee comments and shall make a recommendation to the City Council based upon the information contained in the study, any comments received from the county and Development Review Committee, and the Director's analysis.

(c) Decision-Maker. The City Council shall decide the petition for relief from a dedication or construction requirement.

(d) Public Hearing. The City Council shall conduct a public hearing in accordance with [Article 2, Division 3](#) of this [Chapter 1](#), within sixty (60) business days after the study supporting the petition is filed with the Public Works Director.

(e) Burden of Proof. The petitioner bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the petitioner.

(f) Decision. The City Council shall consider the petition for relief from a dedication or construction requirement based upon the following criteria:

(1) The City Council shall determine whether the application of the standard or condition requiring dedication of an interest in land for public improvements or construction of capital improvements is roughly proportional to the nature and extent of the impacts created by the proposed development on such City's water, wastewater, stormwater, parks, or roadway system, and reasonably benefits the development.

(2) In making such determination, the Council shall consider the evidence submitted by the petitioner, the Public Works Director's report and recommendation and, where the property is located within the City's extraterritorial jurisdiction, any recommendations from the county.

(g) Action. Based on the criteria in (e) [(f)] above, the City Council shall take one of the following actions:

(1) Deny the petition for relief, and impose the standard or condition in accordance with the initial decision; or

(2) Deny the petition for relief, upon finding that the proposed dedication or construction requirements are inadequate to offset the impacts of the development on community City's [sic] water, wastewater, stormwater, parks, or roadway system, and either deny the development application or require that additional dedications of rights-of-way for or improvements to such systems be made as a condition of approval of the application; or

(3) Grant the petition for relief, and waive any dedication or construction requirement to the extent necessary to achieve proportionality; or

(4) Grant the petition for relief, and direct that the City participate in the costs of acquiring land for or constructing the capital improvement under standard participation policies.

(h) Notification of Decision on Petition. The petitioner shall be notified of the decision on the petition for relief in the manner provided in [Article 2, Division 2](#) of [Chapter 1](#), within ten (10) business days of the decision.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.2.6 Expiration; Effect of Relief

(a) Expiration or Failure to File Application. Where a plat application or related application was denied based upon the imposition of the standard requiring dedication of land or construction of a capital improvement, the petitioner shall resubmit the application within ninety (90) business days of the date the petition for relief is granted, in whole or in part, showing conformity with the City Council's decision on the petition.

(1) If such resubmittal of the application is not made within the ninety-day (90-day) period, the relief granted by the City Council on the petition shall expire.

(2) If the application is modified to increase the number of residential units or the intensity of nonresidential uses, the responsible official may require a new study to validate the relief granted by the City Council.

(3) If the application for which relief was granted is denied on other grounds, a new petition for relief may be required.

(b) Effect. The relief granted on the petition shall remain in effect for the period the plat or related approved development application is in effect, and shall expire upon expiration of the plat or related application.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 3 - Vested Rights Petition

Section 1.3.3.1 Purpose, Applicability and Effect

(a) Purpose. The purpose of a vested rights petition is to determine whether one or more standards of this Land Development Code should not be applied to an application as defined by State law, or whether certain permits are subject to expiration.

(b) Applicability. A vested rights petition may be filed for an application, permit, plan or plat authorized under [Chapters 2, 3](#) and/or [4](#) of this Land Development Code, filed in accordance with the Texas Local Government Code, Chapter 245 or successor statute.

(1) A vested rights petition also may be filed prior to expiration of certain permits pursuant to [Section 1.2.5.6](#).

(2) A vested rights petition may not be filed with a petition for a text amendment, a zoning map amendment or any other request for a legislative decision by the City Council.

(c) Effect. Upon granting of a vested rights petition in whole or in part, the responsible official shall process the application and the decision-maker shall decide the application in accordance with the standards specified in the relief order based on prior ordinance requirements or development standards, or extend the permit that would otherwise be subject to application pursuant to [Section 1.2.5.6](#).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.3.2 Petition Requirements

(a) Who May Petition. A vested rights petition may be filed by a property owner or the owner's authorized agents, including the applicant, with any application identified in [Chapters 2, 3](#) and/or [4](#), or by the holder of a permit subject to expiration pursuant to [Section 1.2.5.6](#).

(b) Form of Petition. The vested rights petition shall allege that the petitioner has a vested right for some or all of the land subject to the application under Texas Local Government Code, Chapter 245 or successor statute, or pursuant to Texas Local Government Code, Section 43.002 or successor statute, that requires the City to review and decide the application under standards in effect prior to the effective date of the currently applicable standards. The petition shall include the following information and documents:

(1) A narrative description of the grounds for the petition, including a statement as to whether the petition asserts a vested right related to a specific standard or to an entire project;

(2) A copy of each approved or pending application which is the basis for the contention that the City may not apply current standards to the application which is the subject of the petition;

(3) The date of submittal of the application for the permit, or of a development plan pursuant to which the permit was subsequently filed, if different from the official filing date.

(4) The date the project for which the application for the permit was submitted was commenced.

(5) Identification of all standards otherwise applicable to the application from which relief is sought;

(6) Identification of any current standards which petitioner agrees can be applied to the application at issue;

(7) A narrative description of how the application of current standards affect proposed use of the land, landscaping or tree preservation, open space, or park dedication, lot size, lot dimensions, lot coverage or building size shown on the application for which the petition is filed; and

(8) A copy of any prior vested rights determination involving the same land.

(9) Whenever the petitioner alleges that a permit subject to expiration under [Section 1.2.5.6](#) should not be terminated, a description of the events constituting progress toward completion of the project for which the permit subject to expiration was approved.

(c) Time for Filing Petition. A vested rights petition shall be filed with an application for which a vested right is claimed, except that the petition may be filed before the date of expiration of any permit when filed pursuant to [Section 1.2.5.6](#). Where more than one application is authorized to be filed by this Land Development Code, the petition may be filed simultaneously for each application.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.3.3 Processing of Petitions and Decision

(a) Responsible Official.

(1) The responsible official for a vested rights petition is the Planning Director for processing the application with which the petition is associated.

(2) The responsible official shall promptly forward a copy of the vested rights petition to the City Attorney following acceptance.

(b) Initial Decision. The Planning Director shall determine whether the relief requested in the vested rights petition should be granted in whole or in part, and shall formulate a written report summarizing the official's reasoning and setting forth the decision on the petition, which shall be delivered to the applicant within ten (10) business days of the date the vested rights petition is accepted for filing.

(c) Appeal of Decision on a Petition. The petitioner may appeal the Planning Director's decision on the vested rights petition within ten (10) business days of the date of such decision to the City Council in accordance with the procedures in [Division 1](#) of this [Article 3](#). The City Council shall decide the petition within thirty (30) business days of receipt of the notice of appeal.

(d) Effect on Related Applications. A final decision on the vested rights petition or appeal under this Section is an application requirement for any related application. No related application shall be deemed complete without such decision having been made.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.3.4 Action on Petition and Order

(a) Action on the Petition. The decision-maker on the vested rights petition may take any of the following actions:

(1) Deny the relief requested in the petition, and direct that the application shall be reviewed and decided under currently applicable standards;

(2) Grant the relief requested in the petition, and direct that the application be reviewed and decided in accordance with the standards contained in identified prior regulations; or

(3) Grant the relief requested in part, and direct that certain identified current standards be applied to the application, while standards contained in identified prior regulations also shall be applied; or

(4) For petitions filed pursuant to [Section 1.2.5.6](#), specify the expiration date or the conditions of expiration for the permit(s).

(b) Order on Petition. The responsible official's report and each decision on the vested rights petition shall be recorded in writing in an order identifying the following:

- (1) The nature of the relief granted, if any;
- (2) The approved or filed application(s) upon which relief is premised under the petition;
- (3) Current standards which shall apply to the application for which relief is sought;
- (4) Prior standards which shall apply to the application for which relief is sought, including any procedural standards;
- (5) The statutory exception or other grounds upon which relief is denied in whole or in part on the petition;
- (6) To the extent feasible, subordinate applications that are subject to the same relief granted on the petition; and
- (7) For petitions filed pursuant to [Section 1.2.5.6](#), the date of expiration of the permit or permits.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.3.5 Criteria for Approval

(a) Factors. The decision-maker shall decide the vested rights petition based upon the following factors:

- (1) The nature and extent of prior applications filed for the land subject to the petition;
- (2) Whether any prior vested rights determinations have been made with respect to the property subject to the petition;
- (3) Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
- (4) Whether current standards adopted after commencement of the project affect proposed use of the land, landscaping or tree preservation, open space, or park dedication, lot size, lot dimensions, lot coverage or building size based upon the proposed application;
- (5) Whether any statutory exception applies to the standards in the current Land Development Code from which the applicant seeks relief;
- (6) Whether any prior approved applications relied upon by the petitioner have expired;
- (7) For petitions filed pursuant to [Section 1.2.5.6](#), whether any of the events in [Section 1.3.3.8\(c\)\(1\)](#) or [Section 1.3.3.8\(c\)\(2\)](#) have occurred;
- (8) Any other provisions outlined in the Texas Local Government Code Chapter 245 or successor statute.

(b) Conditions. If the claim of vested rights under a petition is based upon a pending application subject to standards that have been superseded by current standards under this Land Development Code, the decision-maker may condition any relief granted on the petition on the approval of the application under such prior standards.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.3.6 Application Following Final Decision on Petition

- (a) Following the City's final decision on the vested rights petition, the property owner shall conform to the application for which relief is sought to such decision.
- (b) The decision-maker on the application shall consider any application revised under this Subsection in accordance with the procedures for deciding the initial application under this Land Development Code and in conformity with the relief granted on the petition.
- (c) If the relief granted on the vested rights petition is consistent with the application on file, no revisions are necessary.
- (d) If proceedings have been stayed on the application pending referral of the vested rights petition to the City Council, proceedings on the application shall resume after the City Council's decision on the vested rights petition.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.3.7 Expiration and Extension

- (a) Expiration. Relief granted on a vested rights petition shall expire on occurrence of one of the following events:
 - (1) The petitioner or property owner fails to submit a required revised application consistent with the relief granted within forty-five (45) business days of the final decision on the petition;
 - (2) The application for which relief was granted on the vested rights petition is denied; or
 - (3) The application for which relief was granted on the vested rights petition expires.
- (b) Extension. Extension of the date of expiration for the application for which relief was granted on a vested rights petition shall result in extension of the relief granted on petition for a like period.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.3.8 Dormant Projects

- (a) Definitions. For purposes of this section only:
 - (1) Initial permit means any of the following types of approvals granted under the Abilene Zoning Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development-related ordinance that was in effect prior to the adoption of this LDC, including: site plans, conditional use provisions, sign permits, plats, variances, or any other application that was approved subject to a schematic drawing illustrating the location, arrangement, orientation or design of land uses, lots or improvements on a site intended for development
 - (2) Final permit means a building permit, certificate of occupancy, or final plat approved under the Abilene Zoning Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development-related ordinance that was in effect prior to the adoption of this LDC.
- (b) Expiration of Permits. Any application for an initial permit that was approved or filed before, but that was not subject to an expiration date, two (2) years prior to the adoption date of this LDC, and that was under the Abilene

Zoning Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development-related ordinance, shall expire on the effective date of this Land Development Code.

(c) Reinstatement. The owner of the land subject to an initial permit that expires under Subsection (b) above may petition the City Council to reinstate such permit by filing a written petition within sixty (60) calendar days of the effective date of this Land Development Code. The petition shall clearly state the grounds for reinstatement, and shall be accompanied by documentation of one of the following:

(1) As of two (2) years prior to the adoption date of this LDC one of the following events had occurred:

a. A final permit for all or part of the land subject to the approved initial permit was approved, or was filed and was subsequently approved;

b. An application for a final permit was submitted for all or part of the land subject to the expired initial permit, but such application was rejected on grounds of incompleteness (consistent with Texas Local Government Code, Chapter 245.005(c)(2));

c. Costs for development of the land subject to the initial permit, including but not limited to 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 five percent (5%) of the most recent appraised market value of the land;

d. Fiscal security was posted to ensure performance of an obligation required for all or a part of the land subject to the approved initial permit; or

e. Utility connection fees or other fees for all or part of the land subject to the approved initial permit were paid.

(2) After two (2) years prior to the adoption date of this LDC but before the expiration date specified in Subsection (b) above, one of the following events had occurred:

a. A final permit was approved for all or part of the land subject to the approved zoning permit, and remained in effect for such land on such expiration date; or

b. A complete application for approval of a final permit for all or part of the land subject to the approved initial permit was pending for decision on such expiration date.

(d) City Council Action on Reinstatement. The City Council may take one of the following actions:

(1) Reinstate the expired initial permit without an expiration date, if it finds that the petitioner has met any one of the criteria listed in Subsection (c)(1) above;

(2) Reinstate the initial permit for all or part of the land subject thereto, if it finds that the petitioner has met any one of the criteria listed in Subsection (c)(2) above, subject to such expiration dates or other conditions that assure that the remaining land that is not subject to an approved or pending final permit application will be developed in a timely fashion. In granting relief under this provision, the City Council may require that development of such remaining land is subject to standards enacted after approval of the initial permit;

(3) Deny the petition, if it finds that the petitioner has failed to meet any of the criteria in Subsection (c); or

(4) Reinstatement of the permit for only that part of the land subject to a pending final permit application, if it finds that the petitioner has met the criteria in Subsection (c)(2)(b) and the pending application subsequently was approved, and deny the petition for the remaining land subject to the expired initial permit.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 4 - Petition for Waivers

Section 1.3.4.1 Purpose, Applicability and Effect

(a) Purpose. The purpose of a petition for a waiver is to determine whether one or more standards of [sic] applicable to plats within this Land Development Code should not be applied to an application by operation of State law.

(b) Applicability. The applicant may file a petition for waiver of one or more standards applicable to a Preliminary Plat, or where no Preliminary Plat application has been submitted for approval, to the standards applicable to a Final Plat in accordance with [Chapter 3, Article 1, Division 4](#).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.4.2 Application and Decision-Maker

(a) The waiver petition shall be decided by the City Council after recommendation by the Planning and Zoning Commission in conjunction with the application for approval of a Plat or replat. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.4.3 Criteria for Approval

(a) The following criteria shall be applied in deciding a waiver:

(1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land such that the strict application of the provisions of this Chapter to the proposed use would create an unnecessary hardship or inequity upon or for the applicant, as distinguished from a mere inconvenience, in developing the land or deprive the applicant of the reasonable and beneficial use of the land;

(2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;

(3) The waiver is necessary for the preservation and enjoyment of a substantial property right of the petitioner;

(4) Granting the waiver will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;

(5) Granting the waiver will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;

(6) The hardship or inequity is not caused wholly or in substantial part by the petitioner;

- (7) The request for a waiver is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
 - (8) The degree of variation requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.
 - (9) Granting the waiver shall not violate a Council approved master plan.
 - (10) The requested waiver shall not be considered where an alternative appeal process already exists.
- (b) **Burden of Proof.** The petitioner bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the petitioner.
- (c) **Decision.** The City Council, upon a recommendation by the Planning & Zoning Commission, shall consider the waiver petition and, based upon the criteria set forth in Subsection (a) above, shall take one of the following actions:
- (1) Deny the petition, and impose the standard or requirement as it is stated in this LDC; or
 - (2) Grant the petition, and waive in whole or in part the standard or requirement as it is stated in this LDC.
- (d) **Notification of Decision on Petition.** The petitioner shall be notified of the decision on the waiver petition in the manner provided in Section 1.2.2.4 [\[1.2.2.5\]](#).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.3.4.4 Effect of Approval

- (a) **Effect.** The waiver granted shall remain in effect for the period the plat or related approved application is in effect, and shall expire upon expiration of the plat or related application. Extension of the plat also shall result in extension of the relief granted on the petition. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Article 4 - Zoning Procedures

Division 1 - Zoning Map Amendment

Section 1.4.1.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of an application for a zoning map amendment is to establish the initial zoning district classification of land, to authorize a use of land, or in the case of overlay zoning districts, to authorize uses or a set of zoning standards for the land that are not currently authorized under the regulations for the zoning district in which the property is located.
- (b) **Applicability.** Where a property owner seeks to establish an initial zoning district classification for land, or to establish a use of land or through an overlay district to apply standards to a proposed use that are not currently authorized by the zoning district regulations currently in effect, the property owner must submit a petition for a zoning map amendment before seeking approval of any development application for such land.

- (1) The requirements of this division do not apply to land outside of the City limits.
- (2) The requirements of this division do apply to land annexed to the City upon the effective date of the annexation.

(c) Effect. Enactment of an ordinance approving an application for a zoning map amendment results in an initial or a change in zoning district classification for the property, and the use of the land thereafter is subject to all requirements of the new zoning district.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.1.2 Application

(a) Responsible Official. The Planning Director shall be the responsible official for processing an application for a zoning map amendment.

(b) Application Requirements. The City shall provide application forms which state any application requirements other than what is stated within this LDC. Such requirements may include the applicant's name, address and other contact information, submittal requirements such as drawing size, scale and similar relevant information. Applications shall only be made on forms provided by the City.

(c) Initiation of Zoning Map Amendment. Only the property owner or the owner's authorized agent, the Director, the Landmarks Commission, the Planning and Zoning Commission, or the City Council on its own motion, may initiate an application for a zoning map amendment. If the applicant is not the owner of record (by the appraisal district), a statement from the property owner giving authorization to the applicant to file the request for rezoning shall be required as part of the rezoning application.

(d) Accompanying Application. An application for a zoning map amendment may be accompanied by an application for amendment of the City's Comprehensive Plan, upon which the application for the zoning map amendment is dependent, or an application for a Preliminary Plat.

(1) The Comprehensive Plan amendment shall be adopted in conformance with State law and in a manner consistent with the way in which the Comprehensive Plan is generally adopted.

(2) The Comprehensive Plan amendment and the zoning map amendment may be processed concurrently as long as the recommendation and decision on the Comprehensive Plan amendment is made first;

(3) The application for the zoning map amendment shall be decided prior to any accompanying application for any type of plat (e.g., Preliminary Plat, Final Plat) that is dependent on the map amendment. No plat application shall be accepted by the City unless the property has been zoned to the appropriate use first. If the property is not zoned properly and a plat application is submitted, a Waiver of Right to 30-Day Action shall be required to accompany the plat application.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.1.3 Processing of Zoning Application and Decision

(a) Published and Personal Notice. The Director shall cause personal notice of public hearings on the zoning map amendment before the Planning and Zoning Commission and City Council. These public hearings may be conducted separately by each body, or a single, joint public hearing may be held. Such personal notice shall be given in accordance with [Section 1.2.2.2](#) of this Land Development Code. In addition to the requirements in [Section 1.2.2.2](#), the following notice shall also be given for zoning map amendments:

(1) In every instance, at least all property owners adjacent to the property in question, regardless of the two-hundred-foot (200') distance.

(b) Posted Notice. Posted notice for rezoning requests shall be in conformance with [Section 1.2.2.3](#) of this Chapter.

(c) Special Notice. The City Council, by a two-thirds vote, may prescribe a different form of notice for the joint public hearing on a zoning amendment, in which case the notice requirements of [Chapter 1, Article 2, Division 2](#) of this LDC shall not apply.

(d) Public Hearing.

(1) The City Council and the Planning and Zoning Commission may convene separate public hearings before each body on the zoning amendment.

(2) The City Council and the Planning and Zoning Commission may convene a joint public hearing on the zoning amendment. In such case, the Mayor shall be the presiding officer.

(3) Information on the time and place designated for the public hearing shall be contained in the notice of public hearing.

(4) The hearing shall be conducted in accordance with [Chapter 1, Article 2, Division 3](#).

(e) Action by Commission.

(1) Following the public hearing, the Planning and Zoning Commission shall

a. Vote to recommend approval or denial of the proposed zoning amendment to the City Council.

b. Vote to recommend approval of rezoning to a more restrictive zoning district than the district proposed by the zoning amendment application. If a more restrictive district is recommended, such district must provide for land uses that are similar in nature to the district proposed by the zoning amendment.

c. Table the zoning amendment request for further deliberation at a later date.

(2) If the Planning and Zoning Commission recommends approval of the amendment or recommends rezoning to a more restrictive zoning district, such amendment shall be forwarded to the City Council for a final decision on approval or denial (see Subsection (g) below).

(3) If the Planning and Zoning Commission recommends denial of the amendment, such amendment shall not be forwarded to the City Council unless the recommendation is appealed by the applicant.

(4) The Planning and Zoning Commission may initiate studies to substantiate its recommendation for approval or denial, and may forward such studies along with its recommendation to the City Council for action.

(f) Appeal of a Commission [Recommendation] for Denial. The applicant or the City Council shall be empowered to file an appeal of a recommendation for denial (by the Commission) to the City Council, so that the City Council may hear and vote on the proposed zoning amendment.

(1) In the case of an appeal by the City Council, the City Manager shall be the City Council representative for the appeal process.

(2) A written appeal to the City Council for further consideration of the zoning amendment shall be filed with the City Secretary.

(3) Such appeal must be filed within ten (10) days after a recommendation for denial by the Commission. If such an appeal is not filed within ten (10) days, the recommendation for denial by the Commission shall be considered a final action on the proposed amendment, and no further action shall be taken by the Commission or the City Council.

(4) When such an appeal is filed, the request for the zoning amendment, the action of the Commission, and the appeal shall be presented to the City Council.

(g) Action by City Council.

(1) The City Council may direct the Planning and Zoning Commission to formulate recommendations regarding the amendment, and to make studies and hold public hearings as the Council deems desirable in order to substantiate the Commission's recommendation for approval or denial of the proposed zoning amendment. In addition, the Planning Director make such requests at any meeting during which the zoning amendment is considered.

(2) Following the public hearing, the City Council shall consider the action of the Planning and Zoning Commission along with the application for the zoning amendment.

(3) The City Council shall:

a. Vote to approve or deny the proposed zoning amendment.

b. Vote to approve a rezoning to a more restrictive zoning district than the district proposed by the zoning amendment application. If a more restrictive district is recommended, such district must provide for land uses that are similar in nature to the district proposed by the zoning amendment.

c. Table the zoning amendment request for further deliberation at a later date.

(4) The City Council's decision on approval or denial shall be final.

(h) Ordinance. Approval of the Council of the zoning amendment shall be in the form of an ordinance that amends the City's official Zoning Map. The Planning Director shall identify each zoning map amendment on the Zoning Map in accordance with the change approved by the Council. Any unauthorized change of the official Zoning Map hereby is deemed to be null and void.

(i) Super-Majority Vote. In each of the following circumstances, a zoning amendment shall not become effective except by the favorable vote of three-fourths of all members of the City Council:

(1) When a written protest against the amendment is signed by the owners of twenty percent (20%) or more of either the area of the lots or land covered by the proposed change, or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred feet (200') from that area. In computing the percentage of land area, the area of streets and alleys shall be included in the computation. For purposes of this subsection, the following shall apply:

a. The written protest of any one (1) owner of land owned by two (2) or more persons shall be presumed to be the protest of all such owners.

b. The written protest must be submitted to the City Secretary at least five (5) business days before the date of the meeting at which the proposed change is to be considered.

c. A person who wishes to withdraw a signature from a written protest must submit a signed, written request for the withdrawal to the City Secretary by the deadline for submitting a written protest. A signature may not be otherwise withdrawn.

(i) [(i.1)] Joint Public Hearing for Text Amendment. The City Council may convene a joint public hearing with the Planning and Zoning Commission to consider any zoning text amendment in accordance with the procedures for a zoning map amendment (Section 2.2.1.3(d) [sic]).

(j) Consideration of Previously Denied Amendments. A request to change the zoning district designation for a tract of land, including an application for rezoning to a Planned Development District, shall not be considered by the Planning and Zoning Commission or the City Council within one (1) year of the Council's decision to deny the same requested change for all or any portion of the parcel.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.1.4 Criteria for Approval

(a) In making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

- (1) Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land Use and Development Plan map, as amended;
- (2) Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified;
- (3) Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area; and
- (4) Any other factors which will substantially affect the public health, safety, morals, or general welfare.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 2 - Planned Development (PD) District Procedures

Section 1.4.2.1 Development Standards

(a) Steps for Approval: The review process for a PD District application may include the following steps:

- (1) Pre-Application conference (refer to [Section 1.2.1.5](#));
- (2) Concept Plan (required, refer to [Section 1.4.2.3](#));
- (3) Site Development Plan (may be required, refer to Section 1.4.2.7 [sic]);
- (4) Construction of project (after City approval of all required plans and plats).

(b) Completeness of Application & Official Filing Date: Refer to [Section 1.2.1.2](#) and [Section 1.2.1.4](#) of [Chapter 1](#).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.2.2 Application Requirements

(a) Specific Items Required. No application for a PD shall be accepted by the City until the following items have been submitted to the City by the applicant.

- (1) A completed City application form, including all requirements as stated on the application form;
- (2) If the applicant is not the owner of record (by the appraisal district), a statement from the property owner giving authorization to the applicant to file the request for rezoning shall be required as part of the rezoning application;
- (3) A legal description of the property under consideration, which also shows that such property includes the minimum acreage required for a PD.
- (4) A Concept Plan, prepared in accordance with [Section 1.4.2.3](#) of this LDC;
- (5) A description of any development standards or requirements that are different from those in the base zoning district;
- (6) A description of how the proposed Planned Development fulfills the ideals, goals, objectives, and/or concepts of the City's adopted Comprehensive Plan or any other formally adopted City planning document, such as the Parks Plan or public facility plan.
- (7) A description that lists and fully explains the specific modifications of the provisions of the base zoning district which are desired, as well as the purposes of the modifications (i.e., why they are necessary).
- (8) A description of how any development standards or requirements that are different from those in the base district fulfill the items listed in (1) through (7) of [Section 1.4.2.5](#).
- (9) A development schedule outlining a timetable for completion of the entire project.
- (10) A copy of all agreements, provisions, or covenants which govern the use, maintenance, and continued protection of the PD and any of its common areas, if applicable.
- (11) The required application fee.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.2.3 Concept Plan

(a) Requirement for Concept Plan. No PD district may be established without approval of a Concept Plan. The Concept Plan shall be a fully dimensioned map(s) of the land within the proposed PD, and shall be incorporated as a component part of the PD district regulations, and shall be construed in conjunction with the authorized uses and development standards set forth in such regulations.

- (1) Other information may be required by the City for a particular proposed PD to allow the City to make an informed decision on the proposed PD.
- (2) A concept plan shall conform and be in accordance with an application form available at the office of Planning and Development Services and on the City's website.

(b) Consistency Required. All development applications within the PD district shall be consistent with the incorporated Concept Plan. Failure of a subsequent development application to conform to the approved Concept Plan for the PD district shall result in denial of the application, unless the PD district regulations are first amended through incorporation of a Concept Plan with which the development application is consistent. The degree of conformity required between the Concept Plan and subsequent development applications shall be set forth in the adopting ordinance. (Also see [Section 1.4.2.4](#) below for Concept Plan modifications.)

(c) A site plan, prepared in accordance with Section 4.1.2 [\[4.1.2.2\]](#) may be submitted in lieu of a concept plan and shall qualify as a concept plan.

(d) The Planning Director may waive concept plan requirements in cases where the nature of the PD is such that a concept plan is not appropriate.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.2.4 Subsequent Development Applications

(a) Development Applications Authorized. The development standards for a PD district shall be applied to the authorized uses through a plat, Site Development Plan (Section 1.4.2.7 [sic]), general Site Plan, or other development applications as set forth in the adopting ordinance.

(b) Minor Deviations from Approved Concept Plan. In determining whether development applications are consistent with the Concept Plan, minor deviations from the Concept Plan may be approved by the Planning Director. Unless otherwise specified in the adopting ordinance, minor deviations are limited to the following:

- (1) Corrections in spelling, distances, and other labeling that does not affect the overall development concept.
- (2) Change in building layout, when shown, that is less than a ten percent (10%) increase in size.
- (3) Changes in the proposed property lines internal to the PD as long as the originally approved district boundaries are not altered.
- (4) Changes in parking layouts as long as the number of required spaces and general original design is maintained.

(c) Major Deviations from Approved Concept Plan. All major deviations from the Concept Plan shall be submitted to the Planning and Zoning Commission and City Council for approval as an amendment to the PD district.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.2.5 Approval Criteria for a Planned Development District

(a) Factors. The following criteria will be used by the City in deciding whether to approve, approve with modifications, or deny a petition for a PD district:

- (1) The extent to which the land covered by the proposed PD district fits one or more of the special circumstances in Section 2.4.4.5 [\[2.3.4.5\]](#) ([Chapter 2](#)) warranting a PD district classification.
- (2) The extent to which the proposed PD district furthers the policies of the City's adopted Comprehensive Plan (as amended) and other formally adopted City planning documents, such as the Parks Plan.

- (3) The extent to which the proposed PD district will result in a superior development than could be achieved through conventional zoning classifications.
- (4) The extent to which the proposed PD district will resolve or mitigate any compatibility issues with surrounding development.
- (5) The extent to which proposed uses and the configuration of uses depicted in the Concept Plan are compatible with existing and planned adjoining uses;
- (6) The extent to which the proposed development is consistent with adopted public facilities plans, including those related to water, wastewater, transportation, drainage and other public facilities; and
- (7) The extent to which the proposed open space and recreational amenities within the development provide a superior living environment and enhanced recreational opportunities for residents of the district and for the public generally.

(b) Conditions. The City Council may impose such conditions to the PD district regulations and Concept Plan as are necessary to assure that the purpose of the PD district is implemented.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.2.6 Adopting Ordinance

(a) Items Specific to the Ordinance. The ordinance establishing a PD district shall incorporate the approved Concept Plan as part of the district regulations and shall set forth the following:

- (1) The base zoning district(s) to be overlaid, together with the boundaries of the district(s);
- (2) A statement as to the purpose and intent of the PD district established therein;
- (3) The permitted, conditional and accessory uses authorized in the district, the location of such uses, the residential densities or other measurements of development intensity associated with base districts or phases of the development in conformance with the approved Concept Plan;
- (4) The general standards applicable to development within the district, with or without reference to the base district, including:
 - a. Density,
 - b. Lot area,
 - c. Lot width,
 - d. Lot depth,
 - e. Yard depths and widths,
 - f. Building height,
 - g. Building elevations,
 - h. Coverage,

- i. Floor area ratio,
- j. Parking,
- k. Access,
- l. Accessory buildings,
- m. Signs,
- n. Lighting,
- o. Usable open space,
- p. Adjacency,
- q. Hours of operation,
- r. Project phasing or scheduling,
- s. Management associations,
- t. Such other requirements as the City Council may deem necessary in order to implement the Comprehensive Plan, and the purposes of the PD District, and
- u. Sidewalks and bicycle facilities;

(5) Provisions stating that all zoning standards not expressly set forth for the district in the adopting ordinance shall be as provided in the base zoning district(s), and that any standard in this LDC that has not been expressly varied in the adopting ordinance shall be applicable to subsequent development permits for land within the PD district;

(6) Design standards applicable to the development;

(7) A specific list of deviations from standards in the base zoning district(s), together with any standards in the ordinance which are to be varied for development within the PD district;

(8) Required dedications of land or public improvements;

(9) A phasing schedule for the project, where applicable, setting forth the dates for submittal of site development plans and the timing of performance by the developer for dedications of land or public improvements and satisfaction of any conditions in relation to the phasing of development, where applicable; and

(10) Identification of the levels of the deviation allowed between the Concept Plan and subsequent development applications that may be approved by the Planning Director (if any, other than permitted under [Section 1.4.2.4](#));

(11) Specification of whether a Site Development Plan(s) is required to implement the district regulations;

- (12) Such additional conditions as are established by the Council to assure that the PD District and Concept Plan are consistent with the stated purposes of the district.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.2.7 Documentation of PD Districts

(a) Planned Development Ordinances Approved Prior to the Adoption of the LDC. Prior to adoption of this LDC, the City Council previously established certain Planned Development districts (which may be referred to as Planned Development Districts (PDD)), which may be continued in full force and effect. The PDD ordinances or parts thereof approved prior to this LDC, specified on the Official Zoning Map are carried forth in full force and effect. Each prior PDD ordinance shall retain its previously assigned unique identification number with a PDD prefix (e.g., PDD-1, PDD-2, PDD-3, and so on) as shown on the map and subsequent PD ordinances adopted after the effective date of this LDC shall be sequentially numbered for identification purposes.

(b) Planned Development Ordinances Approved After Adoption of the LDC. All Planned Development zoning districts approved after adoption of this LDC, as may be amended, shall be prefixed by a “PD” designation and assigned a unique identification number (e.g., PD-1, PD-2, PD-3, and so on), and shall also be shown on the Zoning Map

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.2.8 Reapplication Following Denial

(a) Reapplication Time Period. Following denial of a zoning change request, another zoning change request for a Planned Development District may be resubmitted within twelve (12) months of the date upon which the previous application was denied. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 3 - Conditional Use Permit (CUP)

Section 1.4.3.1 Purpose, Applicability, and Effect

(a) Purpose. The purpose of a Conditional Use Permit is to allow the establishment of uses which may be suitable only in certain locations in a zoning district or only when subject to standards and conditions that assure compatibility with adjoining uses.

(1) Conditional uses are those uses which are generally compatible with the permitted land uses in a given zoning district, but which require individual review of their proposed location, design and configuration, and the imposition of conditions in order to ensure the appropriateness of the use at a particular location within a given zoning district.

(2) Only those uses enumerated as conditional uses in a particular zoning district, or those nonconforming uses which are damaged or destroyed, and which are permitted to be reestablished under this Land Development Code, shall be authorized as conditional uses.

(b) Applicability. A Conditional Use Permit is required to use or develop property within the City limits for any use designated as a conditional use in the Land Use Matrix in [Chapter 2](#), Article 5 [[Article 4](#)], [Division 2](#) of this Land Development Code for the zoning district in which the property is located. The Conditional Use Permit application must be accompanied by a Site Plan prepared in accordance with [Chapter 4](#); such Site Plan shall be approved or denied along with the CUP application in accordance with [Section 1.4.3.4](#).

(c) Effect.

- (1) Approval of a Conditional Use Permit authorizes the use or development of the property in accordance with the conditions of the permit.
- (2) Approval of a Conditional Use Permit shall be deemed to authorize only the particular use for which the permit is issued and shall apply only to the property for which the permit is issued.
- (3) No conditionally permitted use shall be enlarged, extended, increased in intensity or relocated unless an application is made for a new Conditional Use Permit in accordance with the procedures set forth in this section.
- (4) Initiation or development of the use shall not be authorized until the applicant has secured all the permits and approvals required by this Land Development Code.

(d) Characteristic of the Land: A Conditional Use Permit is considered to be a characteristic of the land rather than a characteristic of the landowner. A CUP itself cannot be bought, sold, or transferred to another property.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.3.2 Documentation of Conditional Use Permits (CUPs)

(a) Conditional Use Provisions Approved Prior to the Adoption of the LDC. Prior to adoption of this LDC, the City Council previously established various Conditional Use Provisions, some of which are to be continued in full force and effect. Any and all conditions, restrictions, regulations and requirements which apply to the respective Conditional Use Provisions shall also remain in full effect after the adoption of this LDC. Each prior-approved provision may be referred to as a Conditional Use Provision. Any changes to a prior-approved Conditional Use Provisions shall result in the Conditional Use Provisions becoming a Conditional Use Permit (CUP), which shall then meet all the requirements of a CUP as outlined within this LDC.

(b) List of Conditional Use Permits (CUPs) Approved After Adoption of the LDC. All Conditional Use Permits (CUPs) approved in accordance with the provisions of this LDC, as may be amended, shall be sequentially numbered and shall be referenced on a listing maintained and available in the Planning Department.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.3.3 Application Requirements

(a) Responsible Official. The Planning Director shall be the responsible official for a Conditional Use Permit.

(b) Site Plan Required.

(1) A Site Plan in accordance with [Chapter 4, Article 1](#), Division 1 [\[Division 2\]](#) shall be required for all Conditional Use Permits. Such Site Plan shall also expire and/or be extended or reinstated in accordance with [Chapter 1, Article 2, Division 5](#). Such Site Plan shall be approved or denied along with the CUP application.

(2) The Planning Director may waive individual site plan requirements in cases where the nature of the CUP is such that those elements are not necessary for the consideration of the CUP. This authority is not intended to alter the requirements of the Site Plan process in [Chapter 4, Article 1](#), Division 1 [\[Division 2\]](#), but only for a site plan required for the CUP process.

(c) Contents. All applications and related contents, including a Site Plan application, shall be submitted consistent with a requirements checklist supplied by the Planning and Development Services Department.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.3.4 Processing of Application and Decision

(a) Hearing and Notification.

(1) The Planning Director shall schedule a public hearing before the Planning and Zoning Commission on the application for a Conditional Use Permit, and shall cause personal notice to be given in accordance with [Section 1.2.2.1](#).

(2) The Planning Director shall schedule a public hearing before the City Council, if necessary due to an appeal of the Commission's recommendation for denial.

(b) Decision. The decision on approval or denial of a CUP shall be made in the same manner as a decision on a zoning amendment. Such procedures are outlined in [Section 1.4.1.3](#).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.3.5 Criteria for Approval

(a) Factors. When considering an application for a Conditional Use Permit, the Planning and Zoning Commission shall evaluate the impact of the proposed conditional use on and its compatibility with surrounding properties and residential areas to ensure the appropriateness of the use at the particular location, and shall consider the extent to which:

(1) The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan;

(2) The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;

(3) The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development-related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods;

(4) The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood;

(5) The proposed use incorporates roadway adjustments, traffic-control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets;

(6) The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties; and

(7) The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.

(b) Conditions. The Planning and Zoning Commission or City Council may require such modifications in the proposed use and attach such conditions to the Conditional Use Permit as these bodies deem necessary to mitigate

adverse effects of the proposed use and to carry out the spirit and intent of this section. Conditions and modifications may include

- (1) Limitation of building size or height,
 - (2) Increased open space,
 - (3) Limitations on impervious surfaces,
 - (4) Enhanced loading and parking requirements,
 - (5) Additional landscaping,
 - (6) Curbing,
 - (7) Sidewalk,
 - (8) Vehicular access and parking improvements,
 - (9) Placement or orientation of buildings and entryways,
 - (10) Buffer yards,
 - (11) Landscaping and screening,
 - (12) Signage restrictions and design,
 - (13) Maintenance of buildings and outdoor areas,
 - (14) Duration of the permit and hours of operation.
- (c) No Variances. The conditions imposed on the application shall not be subject to variances that otherwise could be granted by the Board of Adjustment, nor may conditions imposed by the City Council subsequently be waived or varied by the Board of Adjustment.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.3.6 Abandonment, Expiration and Revocation

- (a) Abandonment. A Conditional Use once established, that remains vacant for a continuous period of eighteen (18) months, shall be deemed abandoned, and shall not thereafter be re-established except upon approval of a new application for a Conditional Use Permit. In determining whether a conditional use has been abandoned, the City shall apply the standards applicable to abandonment of a nonconforming use in Section 2.7.3.6 [\[2.6.3.6\]](#) ([Chapter 2](#)) of this Code.
- (b) Time of Expiration. A Conditional Use Permit shall expire if:
- (1) A building permit, if any, for the use has not been approved within two (2) years of the date of approval of the permit;
 - (2) The building permit subsequently expires;

- (3) The use has been discontinued for a period exceeding eighteen (18) months; or
- (4) A termination date attached to the permit has passed.

(c) Revocation. The City Council may revoke any Conditional Use Permit that is in violation of any condition imposed on the use in accordance with the procedures of [Article 2, Division 6](#) of [Chapter 1](#).

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.3.7 Appeals

(a) The applicant or other interested person may appeal the decision of the Planning and Zoning Commission to grant or deny a Conditional Use Permit to the City Council in accordance with [Section 1.4.1.3](#). The Council shall apply the criteria in [Section 1.4.3.5](#) in deciding whether the Commission's action should be upheld, modified or reversed. (Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Division 4 - Board of Adjustment (BOA) Procedures

Section 1.4.4.1 Special Exceptions.

(a) Purpose, Applicability and Effect.

- (1) The purpose of a special exception shall be to authorize a modification of zoning standards applicable to particular types of development within any zoning district, which is consistent with the overall intent of the zoning regulations and for which express standards are prescribed, but that requires additional review to determine whether the development with the modification is compatible with adjoining land uses and the character of the neighborhood in which the development is proposed.
- (2) An application for a special exception may be filed only for those modifications listed in (d) of this [Section 1.4.4.1](#). The special exceptions procedure shall be applicable only within the City limits.
- (3) Approval of an application for a special exception entitles the property owner to undertake the activity authorized under the exception notwithstanding any standards in the zoning district regulations to the contrary.

(b) Application Requirements.

- (1) The Planning Director shall be the responsible official for a special exception.
- (2) An application for a special exception shall be accompanied by the following:
 - a. All information required for a zoning variance;
 - b. A statement describing in detail how the proposed exception meets the applicable standards.
 - c. Completed application form and required fees.
- (3) The request shall not be accepted by the Planning Director unless the special exception requested is specifically authorized by this LDC; such authorization is described in [Section 1.4.4.1\(d\)](#). If the proposed use requiring special exception is also required to comply with conditions specified in [Section 1.4.4.1\(d\)](#), the applicant shall also indicate, by plans or other documents, that such applicable conditions will be met.

(c) Processing of Application and Decision.

- (1) The Planning Director shall schedule the request for hearing by the Board of Adjustment by placing it upon the agenda of the next regularly scheduled meeting of the BOA.
- (2) The complete application must be delivered to the Planning Director and all fees paid at least twenty-eight (28) days prior to the public hearing.
- (3) The BOA shall conduct a public hearing on the application in accordance with [Article 2, Division 3](#) of [Chapter 1](#). Personal notice shall be provided in accordance with [Chapter 1, Article 2, Division 2](#) of this LDC.
- (4) The BOA shall approve, conditionally approve, or deny the special exception.
- (5) An application for approval of a special exception shall be scheduled on an agenda within sixty (60) days of the official filing date.

(d) Special Exceptions Outlined. Upon written request of the property owner, the Board of Adjustment (BOA) may grant special exceptions to the provisions of this article, limited to and in accordance with the following:

- (1) To expand a nonconforming use within an existing structure provided that, in the case of a nonconforming residential use, such expansion does not increase the number of dwelling units to more than the number existing when the use first became nonconforming.
- (2) To expand the gross floor area of a nonconforming structure provided that such expansion meets all current regulations and does not create any new or additional nonconformities.
- (3) To permit the following, but only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land:
 - a. A change from one nonconforming use to another,
 - b. The reconstruction of a nonconforming structure that has been totally destroyed, or
 - c. The resumption of a nonconforming use previously abandoned.
- (4) To alter front, side or rear setbacks, provided that the special exception does not exceed ten percent (10%) of the minimum requirement.
- (5) To interpret the provisions of [Chapter 2](#) of this LDC by adjusting zoning districts where the street layout actually on the ground varies from the street layout as shown on the maps.
- (6) To waive or reduce the parking and loading requirements in an amount not exceeding thirty-three percent (33%) of the normal requirement in any zoning district for one or more of the following situations, whenever the character or use of the building makes unnecessary the full provision of parking or loading facilities or where the regulations would impose an unreasonable hardship upon the use of the property for the following purposes:
 - a. Housing specifically designed and intended for use by the elderly, disabled, or other occupants typically having a lower expectation of automobile ownership;
 - b. Adaptive reuse or restoration of a historically or architecturally significant structure;

- c. Expansion of a nonprofit, public or social service use on an existing site; and
- d. Conversion of a nonconforming use to what would otherwise be a conforming use, except for the parking and loading requirements.

(7) To allow the reconstruction of a nonconforming building which has been damaged to the extent of more than fifty percent (50%) of its replacement cost.

(8) To allow a change to another nonconforming use. If no structural alterations are made, any nonconforming use of a structure or structure and premises in combination may, as a special exception, be changed to another nonconforming use, provided the Board of Adjustment finds that the proposed nonconforming use is not more nonconforming in the district than the previously existing nonconforming use.

(9) To allow the City to issue a building permit for expansion of an existing nonconforming use that is not in compliance with the Future Land Use and Development Plan map and/or zoning district when the Board of Adjustment determines that this special exception will not adversely impact water, wastewater, drainage, and street transportation systems, and is in accord with all City codes and applicable Comprehensive Plan policies, including those pertaining specifically to land use compatibility.

(10) To allow for the reasonable reduction, to the minimal amount possible, of requirements related to the following improvements to allow for compliance with the City's adopted requirements for development (and their spirit and intent), but also to allow for the use and enjoyment of property within Abilene (also see Article 4, Division 3 of Chapter 4 [[Article 1](#), [Division 1](#) of [Chapter 4](#)]).

(11) To allow for a reasonable amount of time for a nonconforming use to be brought to a lesser-nonconforming status or to a conforming status by allowing an applicant to make improvements to an existing, developed property or building over a period of time, instead of requiring such improvements to be made immediately, or prior to a Certificate of Occupancy.

(12) To allow a carport in a zoning district wherein a carport would otherwise be prohibited and/or to allow a carport on a lot upon which required front, side, or rear setbacks would otherwise be violated.

(13) To allow an accessory dwelling larger than what would otherwise be allowed.

(14) Installation of a small wind energy conversion system (SWEC) not qualifying by right in conformance with Section [2.4.7.3.a](#) or installation of a large wind energy conversion system (LWEC).

(e) Criteria for Approval.

(1) In deciding whether to approve, conditionally approve or deny the application for a special exception, the Board shall apply the standards for special exceptions for nonconformities, outlined in [Section 1.4.4.1\(d\)](#), as criteria for general special exceptions. In addition, the Board shall determine that the requested special exception complies with each of the following:

- a. Will be wholly compatible with the use and permitted development of adjacent property, either as filed or subject to such requirements as the Board finds to be necessary to protect and maintain the stability of adjacent properties.
- b. Will place no undue burden on public facilities. Public facilities to be considered shall include, but are not limited to streets and alleys, water and sewer utilities, schools and parks.

c. That approval of the special exception is clearly in harmony with the general purposes and intent of this Ordinance and, furthermore, provides for substantial justice.

(2) In approving any special exception, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made part of the term[s] under which the special exception is granted, shall be deemed a violation of this LDC and punishable under [Chapter 1, Article 2, Division 8](#).

(f) Expiration. The special exception shall expire one hundred and eighty (180) days from the date upon which the Board approves or conditionally approves the application unless the applicant obtains all necessary construction permits or otherwise performs the tasks authorized by the approved special exception within such period.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 5-2011, pt. 1 (Exh. A), 2-10-11; Ord. No. 8-2012, pt. 1 (Exh. A), 1-12-12)

Section 1.4.4.2 Variances

(a) Purpose, Applicability and Effect.

(1) The purpose of a variance is to vary one or more zoning standards made applicable to a use authorized under this Chapter.

a. A variance application shall not be used as a means of amending the text of the City's zoning regulations or of changing a zoning district classification of the property for which the variance is sought.

b. A variance application cannot be used as a means to contest the applicability of a standard to a development application, an exemption determination, or a decision on a development application.

(2) A variance application is applicable only within the City limits of Abilene.

(3) The granting of a variance petition in whole or in part authorizes the petitioner to submit a development application that complies with the standard as varied or modified, and authorizes the decision-maker to evaluate the application using the varied standard, for the duration of the variance.

(b) Application Requirements.

(1) A variance application shall contain a detailed written statement of the reasons why the standards to be varied should not be applied to the use identified in the application, and shall be accompanied by the fee established by the City Council. The application also shall be accompanied by illustrations or other documents showing the effect of the requested variance on the proposed development.

(2) A variance application shall be filed with the Planning Director for action by the Board of Adjustment. No development application that is dependent upon approval of the pending variance application shall be acted upon until a final decision has been reached on the variance application.

(3) An application for a variance to a use in a zoning district for which an application for a zoning amendment is pending may not be accepted for filing until a final decision has been reached on any zoning amendment.

(4) Application shall be accompanied by a Site Plan that meets the requirements of [Chapter 4, Article 1](#), Division 1 [[Division 2](#)], and which indicates existing and proposed features, drawn to scale, on the property for which the variance is requested.

(c) Processing of Petitions and Decision.

(1) The Planning Director shall schedule the request for hearing by the Board of Adjustment by placing it upon the agenda of the next regularly scheduled meeting of the BOA.

(2) The complete application must be delivered to the Planning Director and all fees paid at least twenty-eight (28) days prior to the public hearing.

(3) The Board of Adjustment shall conduct a public hearing on the variance application in accordance with [Chapter 1, Article 2, Division 3](#). Personal notice shall be provided in accordance with [Chapter 1, Article 2, Division 2](#).

(4) The Board of Adjustment shall approve, conditionally approve, or deny the variance application.

(5) A variance application shall be decided within sixty (60) days of the official filing date, unless the application is tabled or there is a lack of quorum. In either case, the BOA shall then have an additional forty-five (45) days to decide the application.

(6) The applicant for a variance bears the burden of proof to demonstrate that a variance to the standards applicable to a particular use should be granted.

(7) The applicant shall be notified of the decision on the variance petition in the manner provided in Section 1.2.2.4 [[1.2.2.5](#)] of this LDC.

(d) Criteria for Approval. A variance is used to modify the application of this Ordinance as it applies to a specific piece of property which, because of peculiar circumstances applicable only to the property, prevent its being used on the same basis as other property in the same zoning district. In reaching a decision on the variance application, the Board shall determine and make written findings that all of the following conditions are present:

(1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land such that the strict application of the provisions of this Code to the proposed use would create an undue hardship or inequity (other than financial) upon or for the applicant in developing the land or deprive the applicant of the reasonable and beneficial use of the land;

(2) That the granting of the variance will not be contrary to the public interest and will not be injurious to neighboring properties or otherwise detrimental to the public welfare;

(3) Granting the variance is consistent with spirit and intent of this LDC and is in harmony herewith.

(4) The hardship or inequity suffered by petitioner is not caused wholly or in substantial part by the petitioner.

(e) Use Must Be Permitted By Right or CUP. Under no circumstances shall a variance be granted which permits a use not permitted by right or by Conditional Use Permit in a zoning district by the terms of this LDC.

(f) Conditions and Safeguards. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this LDC. Violation of such conditions and safeguards, when made part

of the terms under which the variance is granted, shall be deemed a violation of this LDC and punishable under [Chapter 1, Article 2, Division 8](#).

(g) Expiration and Extension.

(1) A variance to a standard applicable to a particular use shall expire within one hundred and eighty (180) days of the date the variance petition is granted, unless the property owner or applicant files a complete application for a building permit with the City within such period. The Board may extend the time for filing the building permit application for good cause shown, but in any event, the expiration date for the variance shall not be extended beyond one (1) year from the date the variance was granted.

(2) If the building permit expires, the variance also shall expire. If the building permit is extended, the variance also shall be extended.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)

Section 1.4.4.3 Appeal of Responsible Official's Decision

(a) Authority for Appeals. The Board of Adjustment shall finally decide appeals any official's interpretation of the requirements of [Chapters 2](#) or [4](#) of this LDC in which the requirement applies to development within the City limits of Abilene, unless a separate appeals process is otherwise defined within this LDC.

(b) Application. Such appeal shall be taken by filing a notice with the Responsible Official for the application, as outlined in [Chapter 1](#), and with the Board of Adjustment, within no more than fifteen (15) days' time after the decision in question has been rendered by the Responsible Official or deciding board, as applicable.

(1) Such notice shall be taken on the appropriate application form provided by the Planning Director, specifying grounds for the appeal.

(2) If an appeal is made from a determination by the Director of Planning that no special exception of the nature requested is authorized by this LDC, a request for the special exception in question shall be taken and processed concurrently with the appeal of the proponent.

(c) Application Requirements. The appeal application shall contain all information of the originally submitted application that was reviewed by the Responsible Official, along with any other information that the applicant deems necessary to meet the burden of proof for a successful appeal.

(d) Processing of Petitions and Decision.

(1) The Planning Director shall schedule the request for hearing by the Board of Adjustment by placing it upon the agenda of the next regularly scheduled meeting of the BOA. The proponent or his agent shall be present at the hearing.

(2) The responsible official shall transmit to the Board all papers constituting the records upon which the action or development application appealed was taken.

(3) The Board of Adjustment shall conduct a public hearing on the appeal application in accordance with [Chapter 1, Article 2, Division 3](#). Personal notice shall be provided in accordance with [Chapter 1, Article 2, Division 2](#).

(4) At the time of the public hearing, the Planning Director or his duly authorized representative shall present the basis for the appeal by the proponent by stating the sections of the LDC which sets forth the requirements.

(5) The applicant for an appeal bears the burden of proof to establish the necessary facts to warrant favorable action on the appeal by the BOA.

(e) Stay of Proceeding.

(1) An appeal shall stay all proceedings in furtherance of the action appealed, unless the Responsible Official certifies to the Board of Adjustment after the notice of appeal is filed with him/her, that by reason of facts stated in the certificate, a stay would in his/her opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or a court of record on application to the Responsible Official and on due cause shown.

(2) In the case of a concurrent request for a special exception or variance, where the proponent is already in violation of the terms of this LDC, proceedings shall be stayed as in the case of an appeal.

(3) In either case set forth in Subsections (1) and (2) above, if the BOA denies the appeal or application, the stay shall remain in effect for ten (10) days following the decision of the BOA.

(f) Action on the Appeal.

(1) In exercising its powers, the Board may in conformity with the laws of the State of Texas as existing or hereafter amended, reverse or affirm, wholly or partly, or modify the Responsible Official's order, requirement, decision, or determination appealed from which the appeal is taken and make the correct order, requirement, decision or determination. For these purposes, the BOA shall have the same authority as the Responsible Official.

(2) If the appeal is a result of a refusal of the Planning Director to accept a request for a special exception or a variance, and the BOA finds that the request shall have been accepted, the BOA shall then proceed to hear the request along with the appeal, after the giving of due notice.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10)