

CITY OF BOGATA, TEXAS

CODE OF ORDINANCES

Committee on Ordinances and Resolutions

Resolution # 61024

01/05/2026

WHEREAS, on June 10, 2024 the City of Bogata identified a pressing need upon the city to authorize a review, edit, and revision, of the current city ordinances, and all documents enclosed herein that have been edited, revised, or created, be approved to reflect the obligation and commitment of the City of Bogata to provide the community with the best opportunities to live, work, worship and enjoy recreational activity in an environment that provides for the health, safety and the well-being of all citizens, families, and visitors in the city; and

WHEREAS, the City leaders and City Council members are commissioned to be keenly aware of the changing needs within the city's infrastructure and services, and the need to recognize when change or improvement is necessary; and

WHEREAS, the compilation of these Ordinances stands as a testament to the city's commitment to residents, businesses, and community, as we strive to encourage unity and growth within the City of Bogata; and

WHEREAS, These municipal regulations will always be a **"work in progress"** designed to meet the expectations of the people, businesses, and community, and these documents of Ordinances consider the past desires of the citizens and businesses, in conjunction with State, local and Municipal Government Codes, and these Codes are designed to provide public health and safety, and public well-being of the community, and administrations, as well as those that will be required in the future, and will represent the current state of Municipal Government for the City of Bogata, Texas.

BE IT RESOLVED that all the current Ordinances not in use, outdated, or omitted from this document are hereby inactive, and these revised Ordinances, as written, be approved, adopted, and Ratified as the Bogata City Ordinances.

Larry Hinsley, Mayor

Approval Date: 01/05/2026

Bobbie Jatvis, City Secretary

City Seal: Date: 1/6/26



CITY OF BOGATA, TEXAS CODE OF
ORDINANCES

TABLE OF CONTENTS

A. Resolution/Approval for review, editing, improving and ratification of Bogata City Ordinances .

1. Chapter 1. General Provisions

Article 1.02

Division 1. Generally

1.02.004.1 - 1.02.004.10 Procurement Policy

1.02.005 -1.02.030 (Reserved)

Division 2. Records Management

1.02.031 - 1.02.053

2. Chapter 2. Animal Control

Article 2.01. General

2.01.001 - 2.01.018

3. Chapter 3. Building Regulations

Article 3.01. General Provisions

3.01.001 - 3.01.002

Article 3.02.02. Board of Appeals

3.02.001 - 3.02.007

Article 3.03. Technical and Construction Codes and Standards

Division 1. Generally

3.03.001 - 3.03.050

Division 2. Building Code

3.03.051 - 3.03.100

Division 3. Residential / Subdivision Code

3.03.101 - 3.03.126

3.03.127 – 3.03.150 (Reserved)

Division 4. Plumbing Code

3.03.151 - 3.03.200

Division 5. Electric Code

3.03.201 - 3.03.250 (Reserved)

Division 6. Mechanical Code

3.03.251 - 3.03.300 (Reserved)

Division 7. Gas Code

3.03.301 - 3.03.350 (Reserved)

Division 8. Housing Code

3.03.351 - 3.03.400 (Reserved)

Division 9. Existing Buildings

3.03.401 - 3.03.450 (Reserved)

Division 10. Swimming Pool Code

3.03.451 - 3.03.500 (Reserved)

Division 11. Amusement Device Code

3.03.501 - 3.03.502

Article 3.04. Substandard or Dangerous Buildings

3.04.001 - 3.04.019

Article 3.05. Flood Damage Prevention

3.05.001 - 3.05.006

Article 3.06. Signs

3.06.001 - 3.06.002

4. Chapter 4. Business Regulations

Article 4.01. General Provisions

4.01.001 Filing of state tax number. Article

4.02. (Reserved)

Article 4.03. Vendors, canvassers, door-to-door sales.

Division 1. Generally

4.03.01 Definitions

Division 2. Solicitor's Permits, Exemptions and Bonds

4.03.002 - 4.03.008

4.03.009 – 4.03.060 (Reserved)

Division 3. Regulations

4.03.061 - 4.03.064

4.03.065 – 4.03.080 (Reserved)

Division 4. Civil Remedies and Criminal Penalties

4.03.081 - 4.03.082

Article 4.04. Temporary Sales

4.04.001 - 4.04.004

Article 4.05. **Alcoholic Beverages and Adult Oriented Businesses**

Alcoholic Beverages (Prohibited)

4.05.001 Definitions

4.05.002 License or permit required; Fee.

4.05.003 Sale near church, School, Hospital, Day-Care or Child-Care facility.

4.05.004 Sale prohibited in residential areas.

4.05.005 Consumption and sale on city-owned property; extended hours.

(from Ord 12-84)

Adult Oriented Businesses (Prohibited)

§ 4.05.008 – 4.05.037

§ 4.05.008 Purpose and Intent

§ 4.05.009 Definitions

§ 4.05.010 Classifications

§ 4.05.011 License Required ; Identification Card Required and Issuance
and Display of Such Card.

§ 4.05.012 Issuance of License

§ 4.05.013 Fees

§ 4.05.014 Inspection

§ 4.05.015 Expiration of license

§ 4.05.016 Suspension

§ 4.05.017 Revocation

§ 4.05.018 Appeal

- § 4.05.019 Transfer of License
- § 4.05.020 Location of Sexually Oriented Businesses
- § 4.05.021 Exemption from Location Restrictions
- § 4.05.022 Additional Regulations for Escort Agencies
- § 4.05.023 Additional Regulations for Nude Studio or Modeling Studio
- § 4.05.024 Additional Regulations for Adult Theaters and Adult Motion Picture Theaters
- § 4.05.025 Additional Regulations for Adult Motels
- § 4.05.026 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos
- § 4.05.027 Additional Regulations Pertaining to Visibility, Continuous Walls, and Illumination at All Sexually Oriented Businesses
- § 4.05.028 Additional Regulations Pertaining to Adult Cabarets
- § 4.05.029 Additional Regulations Where Alcoholic Beverages are Served, Consumed or Offered for Sale
- § 4.05.030 Display of Sexually Explicit Material to Minors
- § 4.05.031 Hours of Operation
- § 4.05.032 Exterior Portions of Sexually Oriented Businesses
- § 4.05.033 Sign Requirements
- § 4.05.034 Enforcement
- § 4.05.035 Injunction
- § 4.05.036 Amendment of this Article
- § 4.05.037 Providing for Governmental Immunity

5. Chapter 5. Fire Prevention and Protection

Article 5.01. General Provisions

5.01.01 Arson Reward Ordinance

Article 5.02. Fire Code

5.02.001 - 5.02.002

Article 5.03 Fireworks

5.03.001 - 5.03.006

Article 5.04 Temporary Bans on Outdoor Burning

5.04.001 - 5.04.003

6. Chapter 6. Health and Sanitation

Article 6.01 General Provisions (Reserved)

Article 6.02. Weeds, Rubbish, Junk, and Other Unsanitary or Objectionable Matter

6.02.001 - 6.02.014

7. Chapter 7. Municipal Court

Article 7.01. General Provisions

7.01.001 - 7.01.007

Article 7.02. Fees, Costs, and Special Expenses

7.02.001 - 7.02.006

8. Chapter 8. Offences and Nuisances

Article 8.03 Junked Vehicles

8.03.001 - 8.03.007

Article 8.04 Sex Offender Residency

8.04.001 - 8.04.008

9. Chapter 9. Attachments: Recovered / Miscellaneous Ordinances

Article 9.01 Recovered Ordinances:

9.01.001 Ordinance No. 00-10 Appointment and Qualifications of a Municipal Judge

9.01.002 Ordinance No. 01-23 Amendment of municipal Court Technology Fund

9.01.003 Ordinance No. 01-24 Creation of Municipal Court Building Fee for security measures.

9.01.004 Ordinance No. 00-23 Noise Control

9.01.005 Ordinance No. 05-06 Building Permit Fee

9.01.006 Ordinance N0. 98-03 Loitering Ordinance

9.01.007 Ordinance No. 06-21 Manufactured and Mobil Home Ordinance

9.01.008 Ordinance No. 11-02 Prohibiting the use, possession, sale, ingestion or smoking of illegal products or synthetic drugs, or devices.

9.01.009 Ordinance No. 91-05 Arson Reward for the arrest and conviction for Arson.

Article 9.02 Miscellaneous Ordinances

9.02.001 Streets, Traffic and Vehicles

9.02.001.1 Ordinance # 02-14 Parking Spaces for Disabled Persons.

9.02.001.2 Ordinance # 00-15 Operation of Commercial Trucks on Residential Streets.

9.02.001.3 Ordinance # 11-78 Parking of Heavy Commercial Trucks on Residential St.

9.02.001.4 Ordinance # 98-12 Parking on the Shoulder on either side of Hwy 271.

9.02.001.5 Ordinance # 03-84 No Parking, Stopping or Standing in designated areas.

9.02.001.6 Ordinance # 11-75 Prohibits U-Turns in Designated Areas in the City.

9.02.001.7 Ordinance # 08-16 Amendment to Ordinance # 03-84.

9.02.001.8 Ordinance # 08-01 Amendment to Ordinances # 98-01 and # 92-04, Max.

Speed Limits on certain Streets and Highways within the City of Bogata.

9.02.001.9 Ordinance # 25-02 Operation of Golf Carts, Off-Road Vehicles, and
Utility Vehicles within the City of Bogata.

Chapter 1. General Provisions

ARTICLE 1.02. ADMINISTRATION

DIVISION 1. GENERALLY

§ 1.02.001. OFFICIAL NEWSPAPER.

- (a) The city council designates The Paris News as the official city newspaper.
- (b) All ordinances imposing penalties shall be published in the newspaper known as The Paris News, according to sections 52.004 and 52.011 of the Local Government Code.

§ 1.02.002. FISCAL YEAR.

The fiscal year is designated as October 1st through September 30th of each year.

§ 1.02.003. SIGNATORY AGENTS FOR CITY ACCOUNTS.

- (a) All city accounts and banking records will be required to have two (2) of three (3) signatures.
- (b) The mayor, mayor pro tem, city secretary, will be authorized to sign checks on behalf of the city.

§ 1.02.004. City of Bogata Procurement Policy.

§ 1.02.004.1 INTRODUCTION

The City of Bogata is committed to conducting procurement activities in a transparent, ethical, and efficient manner. This Procurement Policy outlines the principles, guidelines, and procedures for all procurement processes within our organization.

§ 1.02.004.2 PROCUREMENT PRINCIPLES

- **Transparency:** The City of Bogata will ensure that all procurement activities are conducted openly and fairly. Information about procurement opportunities and processes will be readily available to potential vendors.
- **Fair Competition:** Procurement activities will promote fair competition among vendors, ensuring equal opportunities for all qualified suppliers.
- **Ethical Conduct:** The City of Bogata expects all procurement staff to maintain the highest ethical standards, acting in the best interests of the organization and avoiding conflicts of interest.

§ 1.02.004.3 PROCUREMENT PROCEDURES

- **Needs Assessment:** Procurement activities will be initiated based on a comprehensive needs assessment, ensuring that purchases are aligned with the organization's requirements.
- **Vendor Selection:** Vendors will be selected through a competitive and transparent process, which may include requests for proposals (RFPs), requests for quotations (RFQs), and invitations to bid (ITBs).

- **Vendor Evaluation:** Vendor performance will be evaluated based on predefined criteria, including quality, cost, delivery, and compliance with contractual terms.

§ 1.02.004.4 CONTRACT MANAGEMENT

- **Contractual Agreements:** All procurement activities will be governed by written contracts or agreements, clearly specifying terms, conditions, deliverables, and expectations. Bid proposals will be considered in accordance with Chapter 252 of the Texas Local Government Codes and City Council approved limits imposed for all procurement staff.
- **Compliance:** Vendors are expected to comply with the terms and conditions outlined in the contracts, as well as all applicable laws and regulations.

§ 1.02.004.5 COST EFFECTIVENESS

- **Cost Analysis:** The City of Bogata Selection Committee will conduct a cost analyses for procurement and service decisions and present its findings to the full Council. This involves a detailed examination of not only the initial purchase price but also the total cost of ownership. This analysis may include factors such as maintenance costs, operational costs, and the lifespan of the procured items, as well as the experience of the vendors, the ability to provide the necessary services, qualification of staff, and any conflict of interests. By conducting such analyses, the organization ensures that the procurement decisions represent the best overall value for the organization.
- **Savings:** Procurement staff play an active role in seeking cost savings opportunities. This includes negotiation with vendors to secure favorable pricing, terms, and conditions. The goal is to maximize the organization's financial resources and to make fiscally responsible procurement decisions. Savings achieved through negotiation can lead to increased profitability or budget optimization.

§ 1.02.004.6 SUSTAINABILITY AND ENVIRONMENTAL RESPONSIBILITY

Sustainable Practices: The City of Bogata is committed to incorporating sustainability and environmental considerations into the procurement process. This involves evaluating the environmental impact of products and services being procured. Sustainable practices may include favoring environmentally friendly products, responsible sourcing, and reducing the carbon footprint. The aim is to contribute to environmental conservation and adhere to corporate social responsibility values by making environmentally conscious procurement choices.

§ 1.02.004.7 CONFIDENTIALITY

Data Protection: The City of Bogata recognizes the importance of safeguarding sensitive procurement information and vendor data. To ensure compliance with data protection laws and regulations, the organization will implement robust data protection measures. This involves secure data storage, controlled access, and encryption of sensitive procurement-related information to protect both the organization and its vendors.

§ 1.02.004.8 RECORD KEEPING

Documentation: The organization will maintain detailed records of procurement activities, including vendor selection processes, contractual agreements, and performance evaluations. These records serve several purposes: they provide a clear audit trail for transparency and accountability, they support decision-making by referencing past procurement activities, and they facilitate vendor performance assessments. This commitment to documentation ensures that procurement processes are transparent, and that the organization can learn from its past experiences and improve future decisions.

§ 1.02.004.9 TRAINING AND AWARENESS

Training: The City of Bogata is committed to enhancing the skills and knowledge of procurement staff. Training programs are designed to educate employees about this Policy and associated procurement procedures. By investing in training and raising awareness, the organization ensures that procurement staff understand and comply with the Policy's guidelines. This leads to more ethical conduct, increased efficiency, and better compliance with procurement standards and regulations.

§ 1.0.004.10 POLICY REVIEW

This Policy will undergo regular reviews to ensure its ongoing relevance and effectiveness in guiding procurement activities. During these reviews, the organization will assess whether the Policy aligns with best practices and evolving regulations in the procurement field. Any necessary updates or modifications will be made based on feedback and changes in the business environment to ensure that procurement activities are conducted in the most efficient and compliant manner possible.

Division 2. Records Management

§ 1.02.031. Definition of city records.

All papers, correspondence, memoranda, accounts, reports, maps, plans, photographs, sound and video recordings, files, microfilm, magnetic or paper tape, punch cards, computer files, digital recordings, and any other documents recorded in any other media regardless of any other physical form and/or characteristics, which have been or shall be created, received, filed or recorded by any city, city department, or its lawful successor, or officials thereof in pursuance of law or ordinance or in the conduct, transaction, or performance of any business, duty, or function of public business, whether or not confidential or restricted in use, are hereby declared to be records of the city, and shall be created, maintained, and disposed of in accordance with the provisions of this division or procedures authorized by it, or by the applicable provisions of state or federal law, but in no event can records be disposed of in any other manner. Library and museum materials acquired solely for reference, exhibit, or display and stocks of publications shall not constitute records for purposes of this division.

§ 1.02.032. CITY RECORDS DECLARED PUBLIC PROPERTY.

All city records as defined in section 1.02.031 of this division are hereby declared to be the property of the city. No city official or employee has, by virtue of that relationship with the city, any personal or property right to such records even though that official has developed or compiled the records. Unauthorized destruction, removal or use of files or such records is prohibited.

§ 1.02.033. POLICY.

It is declared by this division to be the policy of the city to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use and disposition of all city records through a comprehensive system of integrated procedures for the management of records from creation to the ultimate disposition and/or destruction of those records.

§ 1.02.034. CITY SECRETARY DESIGNATED AS RESPONSIBLE PERSON.

The city secretary shall serve as official recordkeeper for the city. The city council will oversee the records management system for the city. The mayor, mayor pro-tem and an "at large" member from the serving city council (elected by the council) will serve as the records management committee and assist the city secretary to coordinate records management operations among city offices and departments. The person responsible and each successive person responsible appointed by the city shall file his or her name with the state library within 30 days as required by statute.

§ 1.02.035. RECORDS MANAGEMENT COMMITTEE; DUTIES.

The records management committee shall:

- (1) Assist the records management officer in the development of policies and procedures governing the records management program.
- (2) Review the performance of the program on a regular basis and propose changes and improvements if needed.
- (3) Review and approve records control schedules submitted by the records management officer.
- (4) Give final approval to the destruction of records in accordance with approved records control schedules; and
- (5) Actively support and promote the records management program throughout the city.

§ 1.02.036. CITY SECRETARY DESIGNATED RECORDS MANAGER.

The city secretary, as designated records manager for the city, with the rank of department head, shall administer the records management system and be responsible for citywide files management and the direction and control of the city records disposition program. The city secretary shall report to and be responsible to the records management committee.

§ 1.02.037. DUTIES OF RECORDS MANAGER.

The records manager shall have the following duties and other duties as assigned by the mayor:

- (1) Coordinate the citywide files management and records disposition programs and report annually to the mayor of the program effectiveness in each city department.
- (2) Provide records management advice and assistance to all city offices and departments by preparation of manuals, procedures, and policies and by on-site consultations.
- (3) Develop, disseminate, and coordinate files maintenance and records disposition procedures, including, but not limited to, those prescribed by this division and the laws of the state to meet the current and long-term information needs of the city.
- (4) Train departmental records officers and other personnel in the fundamentals of record management and their duties in the records management program.
- (5) Carry out at the proper time, actions such as microphotography, computer scanning, file storage, digital recording, or other methods of computer storage of data; destruction or other disposition of files consistent with records management system; and transfers that are required by records schedules.
- (6) Design and maintain the operations of a records center for the low-cost storage of application of record schedules within the office or department.

§ 1.02.038. RESPONSIBILITIES OF CITY DEPARTMENT HEADS.

All city office and department heads are responsible for the implementation and operation of effective file operations, records transfers and dispositions, and other activities in accordance with the provisions of this division within their areas of responsibility. They shall designate record officers within their offices and provide the records manager with the names of such designees and of all file stations and file custodians under their supervision. Persons designated as record officers shall report directly to the department heads of their department on matters relating to the records management program and should have access to all files in their department.

§ 1.02.039. RESPONSIBILITIES OF CITY RECORDS OFFICER.

The records officer in each office and department is responsible for providing coordination between the records manager and personnel in his or her office to ensure that provisions of this division are complied with. This responsibility shall include overseeing the application of records schedules within the office or department.

§ 1.02.040. CITY OFFICES TO USE RECORDS CONTROL SCHEDULE;

All city offices and departments shall comply with minimum requirements established on records retention schedules issued by the state library and archives commission or department.

§ 1.02.041. Records control schedules to be developed; approval; filing with state.

- (a) The city shall comply with the minimum requirements established by the state library and archives commission, as amended.
- (b) Each records control schedule shall be monitored and amended as needed by the records management officer on a regular basis to ensure that it is following records retention schedules issued by the state and that it continues to reflect the recordkeeping procedures and needs of the department and the records management program of the city.
- (c) Before its adoption, a records control schedule or amended schedule for a department, must be approved by the department head(s) and the city attorney.
- (d) Before its adoption, a records control schedule must be submitted to and accepted for filing by the director and librarian as provided by state **law**. If a schedule is not accepted for filing, the schedule shall be amended to make it acceptable for filing. The record management officer shall submit the records control schedules to the director and librarian.

§ 1.02.042. IMPLEMENTATION OF RECORDS CONTROL SCHEDULES; DESTRUCTION OF RECORDS UNDER SCHEDULE.

- (a) The records control schedule established by the state library and archives commission as amended shall be implemented by department heads and records liaison officers according to minimum requirements.
- (b) A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending lawsuit, or the department head requests in writing to the records management committee that the record be retained for an additional period.
- (c) Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained from the records management officer.

§ 1.02.043. ONE-TIME DESTRUCTION OF OBSOLETE RECORDS.

Prior to adoption of records schedules for an office, one-time destruction of accumulated obsolete records of that office may be made by or under the supervision of the records manager. Prior to such destruction the records manager shall submit lists of records to be destroyed to the city attorney, who shall give notice within ten (10) working days of any records the city attorney believes should not be destroyed, and such records shall be retained for a period suggested by the city attorney. The records manager shall also submit notice as required by law to the state librarian. Obsolete records shall include those no longer created by the office or department and no longer needed for administrative, legal, fiscal, or other research purposes.

§ 1.02.044. RECORDS CENTER

THE RECORDS CENTER OPERATION SHALL UTILIZE ONE (1) OR MORE BUILDINGS OR LOCATIONS TO STORE INACTIVE RECORDS; TO INSURE THE SECURITY OF SUCH RECORDS FROM DETERIORATION, THEFT, OR DAMAGE DURING THE PERIOD OF STORAGE; TO PERMIT FAST, EFFICIENT RETRIEVAL OF INFORMATION FROM STORED RECORDS; AND TO PROVIDE FACILITIES FOR A CENTRALIZED MICROGRAPHICS PROGRAM. THE RECORDS MANAGER SHALL DESIGNATE AND APPROPRIATELY MARK SUCH CENTERS AND ENSURE THAT EACH APPROPRIATELY PROTECTS THE RECORDS STORED THEREIN..

§ 1.02.045. PRESERVATION OF PERMANENT RECORDS.

The records manager shall develop procedures to ensure the permanent preservation of the historically valuable records of the city. The records manager shall provide housing under archival conditions for such records in the records center or in another municipal facility and in such manner that the records, unless law or regulation restricts their use, are open to the public for research purposes. If city-owned facilities are not available, the records manager shall arrange for the transfer of the records to the state library for perpetual care and preservation in one of its nearby regional historical resource depositories or shall make other arrangements for their permanent preservation not contrary to law or regulation. In no circumstances shall the permanent records of the city be transferred to private individuals, to private historical societies or museums, or to private colleges or universities.

§ 1.02.046. NONCURRENT RECORDS ARE NOT TO BE MAINTAINED IN OFFICE FILES.

Records no longer required in the conduct of current business by any office of the city shall be promptly transferred to the records center or archives or the state library or be destroyed at the time such action is designated on an approved records schedule. Such records shall not be maintained in current office files or equipment.

§ 1.02.047. Charges for copies of public information.

- (a) All charges for copies of public information shall be in accordance with V.T.C.A., Government Code, chapter 552, all other applicable laws of the state, and as prescribed by the rules of the general services commission, as they may, from time to time, be amended.
- (b) The city shall post the charges for copies of public information and the procedure for obtaining the same on the official bulletin board of the city and in the office of the city secretary.

§ 1.02.048. Penalty.

The purpose of this article is to place the city in compliance with the requirements of the Local Government Code, section 203.026, and to provide guidance to city officials for establishing and maintaining a system of document and records management consistent with the Local Government Code and the schedules and guidelines of the state library and archives commission. Therefore, an employee violation of this article does not give rise to a cause of action for the filing of criminal sanctions, as a class C ordinance violation. Instead, the intent is that infractions or violations of this article by employees be addressed through the employee and disciplinary policies of the city.

Chapter 2. Animal Control

ARTICLE 2.01. GENERAL PROVISIONS

§ 2.01.001. DEFINITIONS.

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

Animal. *Any living creature, including, but not limited to, dogs, cats, cows, horses, birds, fish, mammals, reptiles, insects, fowl, and livestock, but specifically excluding human beings.*

Animal control officer. *A person designated by the public safety director to represent and act for the city in the impounding of animals, controlling of animals running at large and as otherwise required in this chapter.*

Animal shelter. *A facility operated by the city, or at its direction, for the purpose of impounding or caring for animals held under the authority of this chapter or state law.*

Bite. *Any abrasion, scratch, puncture, tear or piercing of skin actually or suspected of being caused by an animal in an attack.*

Cat. *All domestic species or varieties of *Felis catus*, male or female, alive or dead.*

Certificate. *A certificate issued at the time of the vaccination, [including] the registration number, the name, color, breed and sex of the dog or cat, the name and address of the owner, the date of the vaccination, and the type of vaccination administered.*

Confined or confinement of an animal. *Confined within a building or home, or within a fenced yard or premises, so that the animal cannot escape from said building, house or fenced yard or premises without human assistance.*

Dangerous animal. *An animal that:*

- (1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the animal was being kept; or*
- (2) Commits unprovoked acts in a place other than an enclosure in which the animal was being kept, and those acts caused a person to believe that the animal will attack and cause bodily injury to that person.*

Dangerous animal location.

- (1) Dangerous animal location means any venue, structure, enclosure, house, or location where animals stay, reside, or are brought, and while there make unprovoked attacks on persons outside the enclosure which contains the animal, or in which the animals are encouraged to fight each other.*

(2) *An attack under this definition does not have to result in bodily injury; rather, it is sufficient if the person attacked believes that the animal attacking will cause or is about to cause injury.*

(3) A venue, place, structure, house, shelter, or other location which is overcrowded with animals (see section **2.03.001**), or wherein the animals are diseased, neglected, and/or underfed, is a dangerous animal location.

Dog. All domesticated members of *Canis familiaris*, male or female.

Domestic animal. Dog(s) and/or cat(s) residing with their owner(s).

Exposed to rabies. Any animal, whether it has been vaccinated for rabies or not, which has been bitten, been fighting with, or has consorted with an animal known or suspected to have rabies or showing objective symptoms of rabies.

Humane manner. The care of an animal includes, but not be limited to, adequate heat, space, ventilation, and sanitary shelter, wholesome food, and water, consistent with the normal requirements of the animal's size, species, and breed.

Impound. The apprehending, catching, trapping, netting, tranquilizing, confining, or, if necessary, destruction of any animal-by-animal control officers.

Impounding facility Any premises designated by the city for the purpose of impounding and caring for all animals found in violation of this chapter.

Isolation. Kept separated and protected from all other animals or humans.

Kennel. Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs and cats.

Livestock. All domesticated animals, other than dogs and cats, including but not limited to horses, cows, mules, goats, sheep, and pigs, other than potbellied pigs as defined herein.

Owner. Any person, partnership, or corporation who owns, harbors, shelters, keeps, controls, manages, possesses, or has part interest in any animal. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) consecutive days or more.

Person. Any individual, partnership, firm, public or private corporation, association, trust, or estate. Efil. Any animal that is kept for pleasure rather than utility.

Prior consistent act. A behavior involving similar facts and circumstances from which knowledge, intent, or motive may be inferred.

Public nuisance. Shall describe an animal if it damages, soils, defiles, or defecates on private property other than the owners or on public walks and recreation areas unless such waste is immediately removed and properly disposed of by the owner; causes unsanitary, dangerous, or offensive conditions; causes a disturbance by excessive barking or other noise making; chases vehicles; or interferes with persons or other domestic animals. In addition, the term public nuisance shall include any person, place, firm, business, or corporation that keeps, houses, harbors any combination of dogs and/or cats more than ten (10) in number, if any one of the combinations of ten (10) is more than 120 days old.

Dog. All domesticated members of *Canis familiaris*, male or female.

Domestic animal. Dog(s) and/or cat(s) residing with their owner(s).

Exposed to rabies. Any animal, whether it has been vaccinated for rabies or not, which has been bitten, been fighting with, or has consorted with an animal known or suspected to have rabies or showing objective symptoms of rabies.

Humane manner. The care of an animal includes, but not be limited to, adequate heat, space, ventilation, and sanitary shelter, wholesome food, and water, consistent with the normal requirements of the animal's size, species, and breed.

Impound. The apprehending, catching, trapping, netting, tranquilizing, confining, or, if necessary, destruction of any animal-by-animal control officers.

Impounding facility Any premises designated by the city for the purpose of impounding and caring for all animals found in violation of this chapter.

Isolation. Kept separated and protected from all other animals or humans.

Kennel. Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs and cats.

Livestock. All domesticated animals, other than dogs and cats, including but not limited to horses, cows, mules, goats, sheep, and pigs, other than potbellied pigs as defined herein.

Owner. Any person, partnership, or corporation who owns, harbors, shelters, keeps, controls, manages, possesses, or has part interest in any animal. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) consecutive days or more.

Person. Any individual, partnership, firm, public or private corporation, association, trust, or estate. Efil. Any animal that is kept for pleasure rather than utility.

Prior consistent act. A behavior involving similar facts and circumstances from which knowledge, intent, or motive may be inferred.

Public nuisance. Shall describe an animal if it damages, soils, defiles, or defecates on private property other than the owners or on public walks and recreation areas unless such waste is immediately removed and properly disposed of by the owner; causes unsanitary, dangerous, or offensive conditions; causes a disturbance by excessive barking or other noise making; chases vehicles; or interferes with persons or other domestic animals. In addition, the term public nuisance shall include any person, place, firm, business, or corporation that keeps, houses, harbors any combination of dogs and/or cats more than ten (10) in number, if any one of the combinations of ten (10) is more than 120 days old.

Vaccination. Department of Agriculture licensed for use in that species by the United States Department of Agriculture, properly vaccinated or as prescribed by the state board of health, which injection has been administered only by or under the direct supervision of a veterinarian who is licensed to practice in this state.

Veterinary. *A Doctor of Veterinary Medicine who holds a valid license to practice his profession in the State.*

Veterinary hospital/clinic Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment [of] diseases and injuries of animals.

Vicious animal. Any individual animal that has on two (2) previous occasions, without provocation, attacked or bitten any person or other animal, or any individual animal which the police department or animal control has reason to believe has a dangerous disposition likely to be harmful to humans or other animals.

Zoonotic diseases. Those diseases that may be transmitted from animals to man under normal conditions.

§ 2.01.002. PENALTY; INJUNCTIVE RELIEF.

- (a) For any section of this chapter wherein a violation or infraction is specified but no specific penalty or remedy is set out, then the general provisions of this section shall apply.
- (b) Any conduct, violation or behavior prohibited or restricted by this chapter, but which has no specific penalty or remedy shall be punished by a fine not to exceed two hundred fifty dollars (\$250.00) per event or conduct. Each day that either a violation of this chapter exists or that a violation of this chapter is committed is considered separate for purposes of the fine imposed.
- (c) Ongoing conduct or conduct that is a nuisance or that may affect public health or safety that is described in this chapter entitles the city to seek injunctive relief in addition to any fines or penalties.
- (d) Prior to seeking injunctive relief, the city may, but is not obligated to, conduct an administrative hearing in municipal court, on 14 days' notice to all interested parties, to show cause why the city should not proceed with injunctive remedies. Costs, including attorney's fees, may be assessed against the owner, regardless of outcome, at the close of the administrative hearing.
- (e) Failure to obey any order of the municipal court issued under or pursuant to the provisions of this chapter is civil contempt of court and is punishable by a fine not to exceed one thousand dollars (\$1,000.00) for each occurrence.

§ 2.01.003. ENFORCEMENT.

- (a) Enforcement of this chapter shall be the responsibility of the supervisor of animal control or any animal control officer or police officer.
- (b) Any such officer shall have the authority to issue citations for any violation of this chapter. If the person being cited is not present, the enforcement officer may send the citation to the alleged offender by certified mail, return receipt requested. If the citation is unclaimed, a substitute service may be requested. An unclaimed notice under this chapter may be introduced as evidence of intent or knowledge at any trial under this chapter.
- (c) It shall be unlawful for any person to interfere with any enforcement officer in the performance of his duties. The penalty for such interference shall be consistent with section 2.01.002 of this chapter.
- (d) (d} Animal control officers have the right to pursue animals running at large onto private property while enforcing the provisions of this chapter.

§ 2.01.004. Time deadlines.

All time deadlines referenced in this chapter expire (end) at 5:00 p.m. on the date mentioned or referenced in the individual sections. Calculations for beginning time periods include the date or any portion of a date that a notice was received, or a procedure or behavior was observed.

§ 2.01.005. Payment of fees and fines.

The police department shall be responsible for collecting all fees established and levied in accordance with this chapter. Under no circumstances will there be refunds of any fees. Fines under this chapter will be paid through the court clerk of the city municipal court.

§ 2.01.006. Rabies vaccination.

- (a) This chapter recognizes the provisions of the Rabies Control Act, chapter 826 of the Texas Health and Safety Code. In the event any provisions of this chapter conflict with that act, then the provisions of that act shall control.*
- (b) Every owner of a domestic animal four (4) months of age or older shall have such animal vaccinated against rabies. All domestic animals vaccinated at four (4) months of age or older shall be revaccinated at one (1) year of age and annually thereafter. Any person moving into the city from a location outside the city shall comply with this section within five (5) days after having moved into the city. If the domestic animal has inflicted a bite on any person, or another animal, within the last ten (10) days, the owner of said domestic animal shall report such fact to the police department immediately, and no rabies vaccine shall be administered until after the ten (10) day observation period. See also section 2.01.018 for limitations on numbers of dog and cats more than 120 days old. All animals capable of transmitting rabies must be vaccinated as prescribed by the state board of health against rabies with a vaccine approved by the United States Department of Agriculture and administered by a licensed veterinarian who shall issue to the owner of the animal a vaccination certificate. The owner shall retain such certificate until the vaccination is renewed. At the time of vaccination, a metal tag shall be issued by the veterinarian showing the name of the veterinary clinic, the tag number, and the year of issuance.*
- (c) The city may quarantine animals not vaccinated or those without proof of vaccination which would otherwise satisfy this section. Under such a quarantine, the owner shall be responsible for all shelter fees (see subsection (f) below), vaccination fees and, in addition, a civil penalty of up to \$500.00 per animal. The animal control officer or any police officer may impound any animal reported as a public nuisance and that is found to be in violation of this chapter. In lieu of impoundment the animal control officer may cite the owner for violation if the owner, keeper, or harbinger of such animal is known, or can be readily ascertained. If the animal is impounded the animal control officer shall notify the owner by telephone, certified mail, or personal service after the owner is located or identified.*
- (d) All impounded animals not redeemed after the officer's notification may, within 72 hours excluding day of impoundment, be destroyed in a humane manner.*
- (e) Any impounded animal which has been seriously injured or is seriously ill or is incapable of feeding itself may be submitted to euthanasia immediately to prevent suffering. The animal shall not be responsible for providing veterinary medical care for any sick or injured animal. High-risk animals such as skunks may be destroyed in the field.*
- (f) The owner, keeper, or harbinger of any animal impounded under this section may redeem some by payment of the impounding fee and boarding fee as follows:*

(1) For every impounded domestic animal, a shelter fee of twenty-five dollars (\$25.00), plus for each day of impoundment.

(2) For large or dangerous animal, a shelter fee of one hundred twenty dollars (\$120.00) for each day of impoundment, will be charged. In the event outside help is required, the cost of contracted help will be in addition to the above cost. A fraction of a twenty-four-hour period shall be computed at a full day's rate for the purpose of the daily charges set above.

(3) No animal impounded within the animal shelter under the provisions of this section shall be released to its owner, keeper, or harborer until the animal has been vaccinated in accordance with this chapter.

§ 2.01.007. BITES BY ANIMALS.

- (a) The police department shall investigate reports in which animals have bitten people. It shall be the responsibility of animal control to obtain details on the bite cases, and to conduct a follow-up investigation of the biting animal to determine if it is suffering from rabies. An animal owner who receives information or discovers that a domestic animal has inflicted a bite on another animal or person must report the information within 24 hours to the police department, unless the owner received the information from the police department, and then the owner must cooperate in the investigation as a matter of public health. Failure to cooperate with an investigation under this section by an animal owner is admissible in any trial under this chapter. A show cause order may issue for the owner requiring appearance before the municipal court to address the issue of "failure to cooperate," and the court may fashion appropriate orders after hearing to protect the community and to provide for public safety.
- (b) Any domestic dog, cat or ferret suspected of biting a person or animal shall be placed under a quarantine watch to determine if the animal is infected with rabies. This quarantine shall be for a period not less than ten (10) days after the biting of such person or animal. The investigating animal control officer shall determine the length of the quarantine. For animals other than domestic dogs, cats or ferrets, the quarantine shall be for a period of not less than thirty (30) days.
- (c) The owner of the animal shall surrender the animal(s) to the animal control officer immediately or make other arrangements for the animal control officer to pick up and retain such animal in a separate kennel at the animal shelter for the period of the quarantine. After the animal has been released from quarantine, the owner may redeem the animal from the animal shelter by payment of the fees prescribed in this chapter.
- (d) In lieu of animal quarantine at the animal shelter, the animal control officer may authorize the animal to be retained on the owner's premises.
- (e) When quarantined at home the animal must be restrained and removed to an area where it will not encounter any people or animals outside of the household.
 - (1) The animal must be made available to the animal control officer for periodic inspection.
 - (2) The owner will observe the animal for any signs of illness or personality changes and report such changes to the animal control officer.

- (3) The animal may not be removed from the known quarantine location without prior notification and approval of the animal control officer.
- (4) The animal will remain under quarantine until the owner is notified that the final health inspection has been made, and the animal has been cleared by the animal control officer. Contact will be made by phone, personal service, or certified mail.
- (5) The animal may not receive a vaccination for rabies during the quarantine period.
- (6) Failure to comply with all conditions of residence quarantine will result in the animal being impounded at the animal shelter for the duration of the quarantine period. The owner of an animal that is required to be quarantined who fails to maintain the conditions of a quarantine may be fined as set out in section **2.01.002** of this chapter.
- (f) After the animal has been released from quarantine, the owner shall have the animal vaccinated the following business day and present the vaccination certificate on that same business day to the animal control officer or police department. Failure to present a vaccination certificate timely is a misdemeanor and the owner may be fined for each 24-hour period that such certificate is not
- (g) presented, consistent with section **2.01.002** of this chapter.
- (h) It shall be unlawful for any person to interfere with the enforcement of this section or to fail or refuse to surrender to an animal control officer or other member of the police department any animal involved or suspected of being involved in a bite case, or to otherwise fail or refuse to provide for the quarantining of animals as may be authorized by this chapter. Such interference shall be a misdemeanor and shall be punishable by a fine not to exceed \$500.00.

§ 2.01.008. Vicious animals.

- (a) A vicious animal cannot be kept or housed in the city limits. Any vicious animal found in the city shall be removed immediately by order of the animal control officer or police officer. If the owner or person having control of the vicious animal fails to remove such animal, then the animal may be impounded immediately by the animal control officer or police officer if an issue of community safety is presented. Otherwise, impounding of a vicious animal must follow an application to the municipal judge.
- (b) Once impounded, the owner of a suspected vicious animal may, within three (3) business days, file a written request with the Municipal Court, attention Court Clerk, Reno Municipal Court, 160 Blackburn Street, Reno, Texas, 75462, requesting an administrative hearing on the issue of "vicious animal." A hearing before the municipal judge shall be scheduled immediately consistent with the schedule of the parties. No jury trial is available under this subsection (b).
- (c) At the hearing, any relevant evidence may be considered, including prior consistent acts. Following the hearing the judge shall:
 - (1) Find the animal is a vicious animal and order the owner to pay the hearing costs, including court costs, pay costs of impoundment according to the schedule in article 2.02, and post a bond in the amount of at least \$500.00 conditioned that the owner remove the animal from the city; OR

- (2) Find the animal is not vicious and order the animal returned to the owner. Costs of the impoundment and cost of court may be assessed against the owner. In the interest of public safety, the court may order an animal confined in a secure enclosure without a finding that the animal is vicious.
- (c) The owner may appeal a ruling of a vicious animal in municipal court in the same manner as appeal from any other municipal court case. However, to perfect such appeal, in addition to an appeal bond, the owner must:
- (1) Post an impoundment bond, cash, or surety only, with the municipal court clerk, in an amount sufficient to pay cost of impoundment for six (6) months, according to the schedule in article 2.02, payable to the city and,
- (2) Sign an agreement to expedite the appeal, wherein the owner demands a speedy hearing on the appeal in the county court or reviewing court, file the agreement to expedite with the appeal bond and present proof of the filing of the agreement to expedite to the municipal court clerk within five (5) days of the administrative hearing.
- Failure to file an appeal bond, an impoundment bond, and an agreement to expedite appeal (speedy trial) within five (5) days of the administrative hearing is a failure to perfect appeal and the judgment of the administrative (municipal court) becomes final.
- (d) Following a finding of vicious animal under this section, when no appeal is taken and the animal is impounded, then the impounded animal destruction procedure of section **2.02.004** shall be followed. The owner is not entitled to an additional hearing nor is the owner entitled to redeem a vicious animal under article 2.02.
- (e) Maintaining a vicious animal within the city limits in violation of this section concerning viciousness is a misdemeanor punishable by a fine of not less than \$250.00 nor more than \$1,000.00. It is a separate offense for each calendar day an animal is maintained within the city limits in violation of this section.

§ 2.01.009. Kennels.

Kennels shall only be allowed as authorized by the comprehensive zoning ordinance and shall comply with all other applicable ordinances.

§ 2.01.010. Keeping livestock.

- (a) It shall be unlawful for any person to maintain, own or control any premises within the city limits where more than an aggregate of two (2) head of livestock are kept or harbored in one (1) enclosure. Provided, however, that, in cases where one (1) enclosure embraces an aggregate of more than one-half (1/2) acre of land, for each additional one-half (1/2) acre embraced in such enclosure (more than one-half (1/2) acre), one (1) additional head of livestock may be kept or harbored in such enclosure.
- (b) Every head of livestock shall be kept within a suitable pen or enclosure. No part of the enclosure shall be situated less than fifty (50) feet from any inhabited dwelling, provided that this distance requirement shall not apply to the dwelling of the owner of such livestock.
- (c) "One (1) enclosure," as that term is used in this section, shall be held to mean any and/or all connected buildings, whether under one (1) roof or otherwise, and buildings and sheds which may have entrances to the same or adjoining lot or lots, or lots with a gateway or other opening between them.

- (d) The provisions of this section shall not be construed to prohibit any person engaged in operating any packinghouse, auction or commission sale barn or other similar institution, located within a properly zoned area as designated and defined by the comprehensive zoning ordinance and zoning map of the city, from keeping, on the premises of such place of business or other institution, any number of livestock for temporary periods of time, not to exceed seven (7) days, awaiting their use in connection with the operation and maintenance of such packinghouse or similar institution or their sale at such auction or commission sale barn; nor shall such provisions be construed to prohibit any person from keeping more than two (2) head of livestock at such place of business or institution, for a temporary period of time, not to exceed a maximum of thirty (30) days, for experimental, demonstration or exhibition [purposes, but] harboring such livestock for such temporary periods of time for the purposes mentioned in this subsection shall and must strictly comply with the provisions of subsection **(b)** of this section.

§ 2.01.011. ANIMAL WASTE; OFFENSIVE ODORS.

- (a) It shall be unlawful and considered a public nuisance for any person to allow any pen, enclosure, yard, or similar place used for keeping of animals to become unsanitary, offensive by reason of odor, or disagreeable to persons of ordinary sensibilities residing in the vicinity thereof because of flies or other insects. Any condition injurious to public health caused by improper waste disposal will be considered a violation of this section.
- (b) The owner of every animal shall be responsible for the removal of any excreta deposited by his/her animal on public walks, recreation areas, or private property.
- (c) It shall be the duty of every person raising, owning, or keeping any animal to keep such animal and its abode in a sanitary condition so that such animal, or the place where such animal is kept, shall not emit foul and offensive odors of sufficient strength to be detected on any adjoining property.
- (d) It is hereby declared to be a nuisance for any person to maintain any place mentioned in subsection (c) of this section in such a manner that such place is not free from foul and offensive odors of sufficient strength to be detected on any adjoining property.
- (e) The failure to remove or dispose of animal waste or excreta deposited by an animal on public walks, in recreational areas, or on private property is a misdemeanor punishable by a fine not to exceed \$250.00.
- (f) An odor is presumed to be offensive when the odor can be detected by a person of ordinary sensibilities at a distance of one hundred feet (100') unaided by wind or breeze.
- (g) Remedies for violations of subsection **(a)** of this section will be consistent with section **2.01.002** of this chapter.

§ 2.01.012. NOISY ANIMALS.

- (a) It shall be unlawful and considered a public nuisance to keep any animal or group of animals which by causing frequent or long-continued barking or noise, or which by generating loud and obnoxious noises by whatever method, disturb any person of ordinary sensibilities in the vicinity and thereby disturb the peace of the neighborhood or disturb the occupants of adjacent premises.
- (b) A person shall be deemed to have intentionally and knowingly violated this section if the person within 24 hours of receipt of a notice of an animal noise violation fails to correct the circumstances to prevent a recurrence.

§ 2.01.013. TRAPS.

Humane traps may be used for capturing animals roaming unrestrained in the city. The use of steel jaw traps to apprehend animals is illegal.

§ 2.01.014. ANIMALS PROHIBITED IN FOOD ESTABLISHMENTS.

No owner of any domestic animal or other animal, and no manager, clerk, owner, or operator of any place where food is exposed or offered for sale, served, or sold for human consumption, shall permit any domestic animal or other animal to enter, be, or remain within any store, restaurant, shop, building, or place where food is offered or exposed for sale, displayed, or handled for human consumption within the corporate limits of the city. A violation of this section is a misdemeanor punishable by a fine not to exceed \$1,000.00. It is a defense under this section that the animal was a trained domestic animal of a type or breed commonly used to assist persons with disabilities and was in the food establishment for that purpose.

§ 2.01.015. ANIMAL CARE.

The following are established for pet and animal care and are not intended to contravene the provisions for animal cruelty contained in the Texas Penal Code:

- (1) Provision of food, shelter and care No person shall fail to provide his/her animals with sufficient good and wholesome food and water, proper shelter, and protection from the weather, and veterinary care when needed to prevent suffering, and with humane care and treatment.
- (2) Abuse of animal: No person shall beat, cruelly ill-treat, overload, overwork, or otherwise abuse an animal, or cause, instigate or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans.
- (3) Abandonment. No owner of an animal shall abandon an animal.

§ 2.01.016. TYING DOGS.

It shall be unlawful for any person to tie or tether a dog to a stationary object for any period of time or in a location so as to create an unhealthy situation for the animal or a potentially dangerous situation for a pedestrian as determined by the supervisor of animal control.

§ 2.01.017. KEEPING RABBITS.

Rabbits shall be kept in a secure pen or enclosure that is at least thirty (30) feet from an inhabited dwelling, other than that of the owner, and such enclosure shall be of such construction and strength to keep said rabbits from running at large.

§ 2.01.018. LIMITATIONS ON THE NUMBER OF CATS AND DOGS.

- (a) It shall be unlawful for any person, firm, business, or corporation to own, keep house, or harbor more than a combined total of ten (10) cats or dogs that are more than 120 days old.
- (b) This provision shall not apply to proprietors of animal hospitals, pet stores, or when such animals are kept on a premises used by the animal hospitals, pet stores, or veterinarians in the normal course of business.
- (c) The presence of dogs or cats on premises more than the number permitted by this section shall be prima facie evidence of a violation of this section.
- (d) It is the burden of any person, firm, business, or corporation to prove the ages of the dogs and cats in any proceeding under this section

Chapter 3. Building Regulations

ARTICLE 3.01. GENERAL PROVISIONS

§ 3.01.001. House numbering.

All residences, either new or existing, shall be visibly numbered. This will include large 4" numbers on the front of each house in contrasting color to the exterior so that they can clearly be seen from the road, and, in areas where it is necessary, the mailbox should also be numbered.

§ 3.01.002. Filing of license and bond by electricians and plumbers.

- (a) A copy of the license for each individual or company who performs electrical and/or plumbing service within the city must be on file in the city hall.*
- (b) A bond on each individual or company who performs electrical or plumbing service within the city must be on file in the city hall.*
- (c) This license and bond must be renewed with city hall annually.*
- (d) The failure of an individual or company to comply with this section can result in a fine of up to \$500.00*

ARTICLE 3.02. BOARD OF APPEALS

§ 3.02.001. Established, purpose.

- (a) There is hereby established a board of appeals, whose purpose shall be to hear and decide the appeal of orders, decisions or determinations made by city code official{s} relative to the application and interpretation of the following codes as adopted by the city:*

- (1) International Building Code.*
- (2) Residential Code for One-and Two-Family Dwellings.*
- (2) International Code Council Electrical Code.*
- (3) International Fire Code.*
- (4) International Plumbing Code.*
- (5) International Mechanical Code.*

board of appeals shall consist of three regular members. In addition, the city code official responsible for enforcement and/or inspection of said codes shall serve as an ex officio member but shall not have a vote on matters before the board.

§ 3.02.002. Qualifications of members.

- (a) Members of the board of appeals shall consist of individuals who are qualified by experience and training to hear and to pass on matters pertaining to the variety of codes (adopted for the public and personal safety of the city's citizens) and may not be employees of the city or employees of the city within the first degree.*
- (b) The city council may from time to time impose additional qualifications for membership on the board of appeals.*

§ 3.02.003. Composition; term of members.

- (a) The board of appeals shall be composed of three regular members appointed by the city council. All members shall serve without compensation.*
- (b) All members of the board of appeals shall serve a term of two years. All members of the board of appeals shall serve until they are removed, disqualified, or their successors are appointed and qualified.*

§ 3.02.004. Meetings.

- (a) The board of appeals shall adopt procedures for meetings including the selection of presiding officers and the provision for the keeping of minutes at the first needed meeting and/or in January of each year following.*
- (b) A quorum shall be necessary for the board of appeals to conduct business. A quorum shall consist of at least two (2) members of the board being present.*
- (c) All meetings and hearings of the board of appeals shall be conducted on an as-needed basis. All meetings and hearings of the board of appeals shall be open to the public consistent with the provisions, limitations, and exceptions of the Texas Government Code, section 551.001 et seq. (Open Meetings).*

§ 3.02.005. Limited authority.

An appeal to the board of appeals must be in writing as hereinafter provided and may only be based on one of the following claims:

- (1) To hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by a city code official in the enforcement and/or inspection of the various codes adopted by the city, or the rules, as adopted, have been incorrectly interpreted.*
- (2) The provision(s) of a code, as adopted, do not fully apply to the circumstances; to authorize, upon appeal in specific cases, a variance or variances from the terms of the code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of a code will result in unnecessary hardship and so that the spirit of the code shall be observed and substantial justice done;*

- (3) An equivalent method of protection or safety has been proposed; or*
- (4) To adopt rules and procedures which would not conflict with the provisions of a code.*

§ 3.02.006. Appeal procedure.

- (a) Any person may appeal to the board of appeals a decision made by a city code official. This includes a person or entity grieved by a decision of the city code official.*
- (b) The appeal must be filed with the board of appeals and the city code official from whom the appeal is taken in writing specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board of appeals. On receiving the notice, the city code official from whom the appeal is taken shall immediately transmit to the board of appeals all the papers constituting the record of the action that is appealed.*
- (c) The board of appeals shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to parties of interest. A party may appear at the appeal hearing in person or by an agent or by attorney. The board of appeals shall decide the appeal within a reasonable time.*
- (d) Rulings on appeal issues decided by the board of appeals are not intended to serve as a precedent for any subsequent interpretations, which shall be made on a case-by-case basis.*
- (e) An appeal against the decision by the board of appeals must be filed with a court of competent jurisdiction within twenty (20) days after the date the decision is rendered by the board, or such different period, if any, as provided by state law.*

§ 3.02.007. Decisions.

- (a) The decision(s)/finding(s) of the board of appeals must be reduced to written form and dated and signed by the presiding officer with a copy forwarded to the individual or entity bringing the appeal and a duplicate copy to the appropriate city code official.*
- (b) The board shall have no authority to waive the requirements of any code.*

ARTICLE 3.03. TECHNICAL AND CONSTRUCTION CODES AND STANDARDS

DIVISION 1. GENERALLY

§ 3.03.001. (see Ordinance No. 05-06) Building Permit Required

- (a) A building Permit is required for projects over \$10,000.*

§ 3.03.002. through § 3.03.050. (Reserved)

DIVISION 2. BUILDING CODE

§ 3.03.051. Adopted.

The International Building Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.052. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code are concerned.

§ 3.03.053. (See Ordinance No. 06-21) Manufactured and Mobil Homes in Chapter 9 of this document.

§ 3.03.054. through § 3.03.100. (Reserved)

Division 3. Residential Code

§ 3.03.101. Adopted.

The International Residential Code for One-and Two-Family Dwellings, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.102. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.103. Subdivision Code

§ DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the meanings herein ascribed to them;

- A) City - The term "city" shall mean the City of Bogata, Texas.
- B) Council - The term "council" shall mean the City Council of the City of Bogata, Texas.
- C) Commission - The term "commission" shall mean the Planning and Zoning Commission of the City of Bogata, Texas.
- D) Plat - The term "plat" shall include the plural as well as the singular, and shall mean a plat, or replat.
- E) Subdivision - The term "subdivision" shall mean the division of a parcel of land into two (2) or more lots or parcels for the purpose of transfer of ownership or development. The term includes re-subdivision and, when appropriate to context, shall relate to the process of subdividing or to the land subdivided.
- F) Secretary - The term "secretary" shall mean the City Secretary.
- G) City Engineer - The term "City Engineer" shall mean any Texas licensed professional engineering firm or person.

§ 3.03.104. DEVELOPER TO OBTAIN COPY OF RULES.

All persons desiring to subdivide or re-subdivide a tract of land within the City limits or within a distance of one-half (1/2) mile from the City limits shall first procure from the City a copy of the rules regulating the subdivision or re-subdivision of property.

Before a plat can be submitted the developer/owner shall obtain from the County Clerk's office information concerning previously filed plats of the property. If a plat has been filed, the plat must be vacated according to Section 212.013 of the Local Government Code before a new or revised plat can be submitted.

§ 3.03.105. EXTENSION OF SUBDIVISION ORDINANCE WITHIN THE EXTRATERRITORIAL JURISDICTION.

The provisions of this Ordinance governing plats and subdivision of land shall be extended to all of the area now or hereafter under the extraterritorial jurisdiction of the City, as authorized by Chapter 212 of the Local Government Code.

§ 3.03.106. PLATS REQUIRED.

Every owner of any tract of land situated within the corporate limits of the City, or within one-half (1/2) mile of the said corporate limits, who may hereafter divide the same into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to the said City, or for laying out suburban lots or building lots, or any lots, and street[s], alleys or parks or other portions intended for public use, or for the use of purchaser[s] or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made thereof by licensed surveyor. This plat shall accurately describe all of the said subdivision or addition by metes and bounds, locate the same with respect to any original corner of the original survey of which it is a part, and give the dimensions thereof of said subdivision or addition and dimensions of all streets, alleys, squares, parks, easements or other portions intended to be dedicated to public uses or for the use of purchasers or owners of lots fronting thereon or adjacent thereto. The said plat shall be submitted to the commission for recommendation to the council for approval or disapproval in accordance with this Ordinance and with Chapter 212 of the Local Government Code.

Any such plat or replat of land which is situated within either the corporate limits or within one-half (1/2) mile of the corporate limits of the City shall conform to the general plan of the City and its streets, alleys, parks, playgrounds and public facilities, including those which have been or may be laid out, and to the general plan for the extension of the City and of its roads, streets, and public highways, as set forth in this chapter and in other Ordinances of the City. If the same shall conform to this and other applicable Ordinances and statutes governing plats and subdivisions of land as enacted by the legislature of the State of Texas and the City Council to promote the health, safety, morals or general welfare and the safe, orderly and helpful development of the community, the commission shall recommend its approval and the council shall approve the plan, plat, or replat submitted to it.

§ 3.03.107. SUBMISSION OF PLAT.

Any property owner desiring to subdivide or re-subdivide a tract of land shall submit to the City five (5) copies of the plat; a letter requesting approval of the plat; and the review fee outlined herein. Within thirty (30) days of the receipt of the filing letter, fee, and copies of the plat(s), by the City, the commission shall act upon the plat(s) for their recommendation to the council. However, no subdivision preliminary or final plat within the City limits shall be considered for approval until the zoning of the property for which the plat is submitted is approved by the City.

Where any of the area to be re-subdivided or re-plated was, within the immediately preceding five (5) years, limited by an interim or permanent zoning classification to residential use for not more than two dwelling units per lot, or if any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot, then the following additional procedures shall apply:

- (1) Notice of the public hearing shall be published at least fifteen (15) days prior to the hearing, in a newspaper of general circulation in the county.
- (2) If the proposed replat is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the planning commission and/or city council, as applicable. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the municipal authority responsible for approving the replat, prior to the close of the public hearing. In computing this percentage of land area, the area of streets and alleys shall be included within the adjacent lots.
- (3) Compliance with subsection (3) above is not required for approval of a replat of part of a preceding plat, if the area to be re-plated was designated or reserved for other than single or two-family residential use, by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.
- (4) A subdivision of property may be a "minor subdivision," or a "major subdivision." A subdivision is considered minor when the existing parcel is divided into not more than three (3) lots, all lots front on an existing street, no extension of street or other public facilities is required to service the lots to the standards set forth herein, and no part of the proposal is in conflict with any master plans, Ordinances, or regulations of the City. For a minor subdivision, the preliminary plat and construction plan requirements herein are waived, and the Owner may proceed directly to the final plat presentation. All subdivisions which are not "minor" shall be considered "major" and shall be subject to all provisions herein.

In order to have the plat(s) approved or disapproved by the commission at its regularly scheduled monthly meeting, the filing letter and plat(s) shall be submitted to the City Administrator no less than fourteen (14) days prior to the regularly scheduled monthly meeting of the commission. The preliminary plat and construction plans may be submitted together for consideration of the commission in accordance with this Section. All construction required under provisions of this Ordinance shall be the sole responsibility of developer, including but not limited to water and sewer service, storm drainage, fire protection, grading, streets, etc.

- (5) Written notice of the public hearing shall be mailed to the owners {according to the most recently approved ad valorem tax roll) of all lots that are within the original subdivision and that are within 200 feet of the lots to be re-plated, together with a copy of Section 212.015(c) in the Local Government Code for the State of Texas.

§ 3.03.108. PRELIMINARY PLAT GENERALLY.

Any person desiring to subdivide or re-subdivide a tract of land within the City or within a distance of one-half {1/2} mile from the City limits shall file with the City five (5) copies of a preliminary plat. This preliminary plat shall be drawn on a scale of two hundred {200} feet to an inch or larger, on sheets no larger than 24" x 36", and shall show the following:

- (1) The title or name under which the proposed subdivision is to be recorded, with the name and address of the owner or owners of the land shown thereon. The name or title of the subdivision shall not duplicate or be similar to the name of an existing subdivision or property. Also provide the name of the surveyor preparing the plat.
- (2) The meridian or north point, the scale of the map, and a location map.
- (3) The outline and dimensions (metes and bounds) of the tract proposed to be subdivided.
- (4) The location of existing streets, roads, alleys, blocks, lots, easements, building lines, parks, watercourses, water bodies, bridges, culverts, railroads, cemeteries and present structures with principal dimensions, and all significant information in regard to the property immediately adjacent on all sides.
- (5) The names or designations of existing streets or roads.
- (6) The names or designations of all adjoining subdivision(s) and properties, and the names of adjoining property owners.
- (7) The proposed plat of subdivision or re-subdivision, showing streets, alleys, blocks, lots, easements, building lines, parks, watercourses, ravines, bridges, and culverts with principal dimensions. The plat shall show how the streets, alleys, highways, and easements in the subdivision or re-subdivision, and the water and sewer lines, will connect with those in surrounding subdivisions or properties. Show the zoning classification for each portion of the subdivision.
- (8) The name of proposed new streets. These names shall not duplicate nor be overly similar to the names of other existing streets in the City of Reno or the City of Paris.
- (9) The locations and sizes of any existing sewer, water, or drainage facilities.
- (10) The proposed general plan for street improvements, drainage improvements, and water and sewer improvements.
- (11) Contour lines at not more than two (2) feet intervals.
- (12) Location on the property of any designated base flood hazard area as defined elsewhere in the city code or a certification by the surveyor preparing the plat that the property does not lie within a flood hazard area.
- (13) Separate preliminary and final plat filing fees shall be paid by the subdivider at the time of filing. For each subsequent review, which is necessary because the initially submitted plat does not meet the requirements of this Ordinance, an additional review fee will be charged, equal to 60% of the filing fee. Filing fees are:

SIZE OF SUBDIVISION	FILING FEE
Up to 15 Lots	\$200.00
16 to 30 Lots	\$300.00
31 to 100 Lots	\$450.00
Over 100 Lots	\$450.00 plus \$5.00 per lot over 100 lots

(14) The preliminary plat shall remain in effect for one year following approval. If construction plans have not been approved at the end of the one-year period then the preliminary plat must be resubmitted for approval.

(15) A Preliminary Plat Checklist (Appendix B) will be completed by developer and city staff at the time the plat is submitted.

§ 3.03.109. CONSTRUCTION PLANS.

Before the beginning of any construction on the proposed streets, drainage, or public utilities pertaining to the subdivision, plans of such construction shall be filed with the City. These shall show such features as street cross-sections and longitudinal slope; drainage structure shape and slope; full description of proposed pavement, drainage, or street improvement dimensions including specifications; complete design and specification data concerning public utilities to be installed, showing the proposed position on the ground, specifications for materials and construction, plan-profile maps of all sanitary and stormwater sewers showing both ground surface and flow-line, and any other pertinent information. If any part of the proposed construction is considered unsatisfactory by the City Engineer and below the standard required under the circumstances, construction operations shall not be started on the affected portion until alterations are made which will insure that the completed work will conform to the requirements of the City. The plans submitted shall be on 24" x 36" sheets, at a scale of 1" equals 40' horizontal and 1" equals 5' vertical. In congested areas the City may require 1" equals 20' horizontally for clarity. Submit three (3) blue-line copies. Include calculations to show the design loading for each drainage structure and for water and sewer lines. The plans shall bear the seal of a professional engineer, licensed to practice in Texas in accordance with the Texas Engineering Practice Act.

§ 3.03.110. STREET LIGHTS.

The developer of any subdivision shall make suitable arrangements with the responsible electric utility company to provide adequate electric power service facilities to the location(s) of proposed streetlight(s). Adequate electric power service is defined as a secondary power service line from a transformer to the point within the street right-of-way designated as an approved streetlight location(s). Actual installation and operation of streetlight fixtures and appurtenances within the City will be under its working agreements with the electric utility company. In general, a streetlight will be required at all intersections.

§ 3.03.111. HOUSE NUMBERS AND STREET SIGNS.

House numbers shall be allocated to lots in subdivisions by the City. Identification during the construction phase is necessary to assist utility companies and City personnel to locate the correct site to perform needed service(s).

Street signs will be erected at all intersections by the developer. Developer will provide an 11' - 2-5/8" diameter galvanized steel post and install it consistent with City guidelines. City will provide sign and mounting hardware, and developer will reimburse City cost of same.

§ 3.03.112. FINAL PLAT GENERALLY.

The subdivider shall file one (sepia or mylar) original and five (5) copies of the final plat with the City. This plat shall be made with an accurate survey (1/7500 accuracy) and shall be neat and in all respects proper for filing for record in the office of the County Clerk. Patching and the pasting of paper attachments is not acceptable. All figures and lettering shall be neat and easily legible. The final plat shall be drawn on a scale of two hundred (200) feet to the inch or larger. The final plat shall show the following:

1. The title or name by which the subdivision is to be identified; the meridian or north point; the scale of the map; a location map; and the name and seal of the surveyor responsible for the plat.
2. A definite legal description and identification of the tract being subdivided or re-subdivided, sufficient for the requirements of the title examination. This may be embodied in the title or shown elsewhere on the plat.
3. The external boundary of the subdivided property shall be indicated on the map in a distinctive manner with complete and accurate field notes of the boundaries. All corner points, angle points and points of curve along the external boundary of the subdivision as shown on the final plat shall be marked on the ground and descriptive data as to the type of marker placed shall be included on said plat.
4. The location and designation of all streets, alleys, easements, and other areas, with proper dimensions, within the subdivision intended to be dedicated to public use.
5. The location of all adjacent dedicated streets, alleys, and easements with their names or designations, and the names of adjoining subdivisions and properties.
6. All block, lot, and street boundary lines. Blocks shall be lettered, and lots shall be numbered. Building lines and easements shall be shown, measured at right angles or radially, where curved.
7. All necessary dimensions, including linear, sub-linear, and angular, shall be shown. The linear and curvilinear dimensions shall be expressed in feet and decimals of a foot and shall be accurate to the hundredths place. The angular dimensions may be shown by bearings, and the angles shall be accurate to the second. Curved boundaries must be fully described, and all essential information given, including the length of arcs of curve. Block corners, angle points, points of curve, and points of intersection of tangents shall be shown. Complete dimensional data shall be given on fractional lots or tracts.
8. A certificate of ownership in fee of all the land embraced in the subdivision, and of authenticity of the plat and dedication, including all properties intended for public use; signed and acknowledged by all owners of any interest in the form required in the conveyance of real estate. Approval and acceptance by all lienholders shall be included.
9. A certificate by the surveyor responsible, duly authenticated, showing that the plat is true and correct and in accordance with the determinations of surveys actually made on the ground.
10. Location on the property of any designated base flood hazard area as defined elsewhere in the City code or a certification by the surveyor preparing the plat that the property does not lie within a flood hazard area.
11. Separate preliminary and final plat filing fees shall be paid by the subdivider at the time of filing. For each subsequent review, which is necessary because the initially submitted plat does not meet the requirements of this Ordinance, an additional review fee will be charged, equal to 60% of the filing fee. Filing fees are:

12. The final plat shall include a signed statement by the owner guaranteeing the workmanship and materials of construction for all required facilities (streets, lines, drainage, etc.) for a period of one year following acceptance of the final plat by the City.

- (1) A Final Plat Checklist (Appendix C) will be completed by developer and city staff at the time the plat is submitted.

§ 3.03.113. GENERAL ARRANGEMENT OF STREETS.

The arrangement of streets in a new subdivision shall make provision for the continuation of the principal existing streets in adjoining areas, or of their extensions, where adjoining property is not subdivided, as far as they may be necessary for public requirements. The street, alley, and utility easement arrangements must be such as to provide opportunity for access and use by adjoining property owners. Dead-end streets will not be approved. Cul-de-sacs may be permitted where the shape or contour of the land makes it difficult to plat with connecting streets. Such cul-de-sacs shall provide proper access to all lots and shall not exceed six hundred (600) feet in length, except that a greater length may be approved by the council where conditions justify such lengths. Each such cul-de-sac shall provide a turnaround at the closed end with an outside pavement radius of at least thirty-nine (39) feet and a right-of-way radius of 50 feet. Where a temporary dead-end street is necessary due to phased construction, a 6" thick crushed-rock cul-de-sac with 39' outside pavement radius will be provided. The developer will be responsible for maintenance of the temporary cul-de-sac. If repairs are not made within 30 days of a request by the City, the City will make the repairs at developer's expense. Streets shall be laid out so as to intersect as much as possible at right angles. A proposed intersection of two streets at an angle of less than 60 degrees shall not be acceptable. No more than two streets shall intersect at any one point. Street jogs with centerline offsets less than 150 feet will not be accepted. Blocks shall be not less than 400 feet in length, and not greater than 1500 feet in length.

Residential streets shall have a centerline radius of not less than 150 feet, and collector streets shall have a minimum centerline radius of 500 feet.

§ 3.03.114. RIGHT-OF-WAY WIDTHS OF STREETS AND ALLEYS.

- A) **Arterial or Collector Streets** -The right-of-way width for arterial streets shall conform to the widths assigned to such arterial streets by action of the City Council. In no case shall arterial streets be less than sixty (60) feet in right-of-way width. Collector streets shall have a minimum right-of-way width of sixty (60) feet.

For purposes of this Ordinance, **Arterial streets** include all of US 37, all of US 271 and, all of FM Highway 909. **Collector streets** include all of Loop 38, 271 Bus., Halesboro, Mt. Vernon Dr., 7th Street SW, Rozell Street, Lee Street, 2nd Street, N Howison, N Sulphur, N Main, s Main, Gable Street, s Bryson, CR 1442, CR 1440, S Howison, s Patterson, Hudson Street, N Bryson, N St. John, N Douglas, Grayson Street, and N Lawson.

§ 3.03.114. RIGHT-OF-WAY WIDTHS OF STREETS AND ALLEYS.

- B) **Residential Streets** -The minimum right-of-way width for residential streets shall be fifty (50) feet.
- C) **Alley**- The minimum right-of-way width of any alley shall be twenty (20) feet.

§ 3.03.115. UTILITY AND DRAINAGE EASEMENTS.

Utility and drainage easements of sufficient width and proper location shall be provided to permit the construction and maintenance of facilities to serve the subdivision. Where easements are to be located along side and/or rear lot lines, they shall be a minimum of seven and a half (7.5) feet in width on each side of the lot line, or, where only one side of the lot line is being developed, 15 feet on the developed side. Where utilities are to be located adjacent to a street right-of-way, easements shall be a minimum of five (5) feet in width. Easements of greater width than specified in this Section may be required where necessary for construction and maintenance of large water lines, large sewer lines, or drainage facilities.

§ 3.03.116. SIDE LINES, SIZE AND CUT-OFF FOR LOTS.

- A) **Side Lines** -In all rectangular lots and, as far as possible, all other lots, the side lines shall be at right angles to the street on which the lot faces or radial to curved street lines. Lots with double frontage on streets are undesirable. Such double frontage lots shall only be permissible if approved by the council.

- B) **Size Generally.** -Unless otherwise approved by the council, the minimum size of lots shall be as permitted by the Comprehensive Zoning

Ordinance. Lots should have equal street frontage as far as possible.

- C) **Extra Width For Corner Lots** -Corner lots shall have extra width, sufficient to permit the maintenance of adequate building lines on both front and side streets.

- D) **Cut-Off** - Lots on intersections with collector or arterial streets, and at all other points likely to be dangerous, shall have a fifteen (15) foot cut-off at the street corner.

- E) **Minimum yard requirements** - shall be as outlined in the Comprehensive Zoning Ordinance.

§ 3.03.117. FINAL PLAT FOR RECORDING NOT TO SHOW CONSTRUCTION FEATURES.

The final subdivision plat to be placed on record with the County Clerk shall not show construction features such as curblines or public utility lines or other structures not involved in the title covenant. It shall, however, show minimum finished floor elevations for each lot.

3.03.118. APPROVAL OR DISAPPROVAL OF PLAT.

The commission shall recommend approval or disapproval of a preliminary plat within thirty (30) days from the filing date, and the City Council shall act on the plat within 30 days after receiving the recommendation of the commission. No improvements or any contracts shall be made until the preliminary plat has been approved by the council.

A final subdivision plat, in its final form, after construction and after the owner's and surveyor's certificate have been signed and executed, shall be transmitted by the administrator to the commission with a report in writing, prepared by the City Engineer, giving recommendations in the matter. Such plat shall be approved or disapproved by the commission. No action shall be taken upon such plat until all improvements - water, sewer, drainage, streets, etc. - are completed, including testing, and recommended for acceptance by the City Engineer. If the preliminary plat or final plat is approved, the commission shall indicate such approval by certificate endorsed thereon, signed by the chairman of the commission, the Mayor, and attested by the City Secretary.

The council shall keep a record of applications for plat approval and the action thereon, and upon the demand of the owner of any land affected, shall certify its reasons for such actions.

§ 3.03.119. MUNICIPAL SERVICES MAY NOT BE FURNISHED UNTIL FINAL PLAT APPROVED AND RECORDED.

Unless and until the final subdivision plat is approved as provided in this chapter and is recorded by the County Clerk of Red River County, Texas, it shall be unlawful within the area covered by the plat for any official of the City to serve or connect the platted land, or any part thereof, or for the use of the owner or purchasers of the said land, or any part thereof, with any public utilities such as water, sewer, light, gas, etc., which may be owned, controlled, or distributed by the City. City- owned utilities shall not be furnished to any property outside the City limits without the approval of the City Council.

§ 3.03.120. DEVELOPMENT OF SUBDIVISION IN SECTIONS.

The subdivider may request recommendation from the commission and approval from the council to develop the subdivision in two (2) or more Sections. In order for a subdivision to be developed in Sections, the streets, drainage facilities, and utility lines within a Section must be capable of functioning independently of those facilities in other Sections that will be constructed at a later date. The streets within a Section must be capable of providing adequate circulation for emergency (police, fire, and ambulance} vehicles.

§ 3.03.121. BOND OR LETTER OF CREDIT.

If the subdivider sells any lots prior to final plat approval and elects not to construct streets, drainage facilities, and utility lines prior to construction of buildings, the subdivider shall provide bonds or a letter of credit. The subdivider shall furnish a performance bond and a payment bond to ensure that such streets, drainage facilities, and utility lines shall be constructed by the subdivider or by the bonding company if the subdivider should default or fail to construct those facilities. If the subdivider elects not to furnish bonds, the subdivider shall submit to the City an irrevocable letter of credit from a national bank, state bank, or savings and loan association located in Texas, in an amount equal to an estimated cost of the streets, drainage facilities, and utility lines in the entire subdivision or in an approved Section of the subdivision. The subdivider's engineer, who has designed the streets, drainage facilities, and utility lines, shall estimate the cost of construction for those facilities. The City Engineer shall approve this estimated cost. The letter of credit shall have an expiration date of one (1}

year after the date of its execution. The subdivider will be required to construct the facilities covered by the letter of credit within the one (1} year period or to justify the need for and be approved by the City for an extension to the expiration date. Such extension shall not be granted unless a letter of credit or bonds are furnished for such period. If the developer constructs the required facilities in accordance with this chapter prior to the expiration date of the letter of credit, the City will terminate the letter of credit. If the developer fails to construct the facilities covered by the letter of credit, the financial institution will provide funds to the City in order for those facilities to be constructed.

§ 3.03.122. OVERSIZING AND OFF-SITE FACILITIES.

The developer shall be responsible for construction of all on-site facilities to whatever size is necessary to serve the entire development. If adequate facilities do not exist to the site, the developer shall be responsible for the construction of facilities from the site to the nearest point at which adequate service may be obtained, as determined by the City Engineer.

In certain instances, the City may require facilities larger than required solely for the proposed development, in order to provide for future growth in the area. In this case, the developer will be responsible for the cost up to the following limits, and the City may participate in costs over these limits, subject to current policy and availability of funds.

Streets	Collector level design
Water	8" Diameter
Sewer	8" Diameter
Drainage	8" Diameter
	125% of the flow is necessary for conditions immediately after development.

§ 3.03.123. MINIMUM DRAINAGE CRITERIA.

- A) All drainage shall be designed on a five (5) year frequency interval for drainage areas less than or equal to 30 acres and on a ten (10) year frequency interval for areas over 30 acres. Provide adequate overflow routes for storms up to and including the 50-year frequency.
- B) Storm sewer shall be required when the depth of water flowing in the street gutter has reached the top of the curb.
- C) Unless otherwise approved by the Building Inspector or the City Engineer, no house slab elevation shall be placed less than six (6) inches above the top of the street curb directly in front of the house. Where no curb is provided the slab shall be at least 12 inches above the centerline of the street fronting the property.
- D) Where drainage ditches are required, the design frequency interval will be as outlined above. In no case shall the side slopes be greater than 3:1 for grass-lined or 1:1 for concrete-lined. For grass-lined ditches, the design velocity shall be less than six feet per second. All lots shall be graded to drain to the City right-of-way or a drainage easement. No lot shall be allowed to drain across another lot, except by way of drainage easements.
- E) Drainage pipe shall be reinforced concrete pipe meeting TxDOT 1993 specifications, Class III, or other material with City Engineer approval. Culverts may be CGMP, provided that the exposed ends are adequately protected against crushing under traffic. Ditch liner shall be 4" minimum thickness, 3000 psi concrete, with #3 grade 60 rebar on 18" centers each way. Storm inlets may be precast, or cast-in-place.
- F) All drainage shall be designed on a five (5) year frequency interval for drainage areas less than or equal to 30 acres and on a ten (10) year frequency interval for areas over 30 acres. Provide adequate overflow routes for storms up to and including the 50-year frequency.
- G) Storm sewer shall be required when the depth of water flowing in the street gutter has reached the top of the curb.
- H) Unless otherwise approved by the Building Inspector or the City Engineer, no house slab elevation shall be placed less than six (6) inches above the top of the street curb directly in front of the house. Where no curb is provided the slab shall be at least 12 inches above the centerline of the street fronting the property.
- I) Where drainage ditches are required, the design frequency interval will be as outlined above. In no case shall the side slopes be greater than 3:1 for grass-lined or 1:1 for concrete-lined. For grass-lined ditches, the design velocity shall be less than six feet per second. All lots shall be graded to drain to the City right-of-way or a drainage easement. No lot shall be allowed to drain across another lot, except by way of drainage easements.
- J) Drainage pipe shall be reinforced concrete pipe meeting TxDOT 1993 specifications, Class III, or other material with City Engineer approval. Culverts may be CGMP, provided that the exposed ends are adequately protected against crushing under traffic. Ditch liner shall be 4" minimum thickness, 3000 psi concrete, with #3 grade 60 rebar on 18" centers each way. Storm inlets may be precast, or cast-in-place.
- K) Any building constructed in a floodplain area shall have its lower floor slab set to conform to HUD regulations, and at least one foot above the 100-year flood elevation. No construction including fill, will be allowed in the floodway, without prior approval of the City Council.
- L) All existing drainageways within and adjacent to and/or bordering the subdivision will be cleared of brush or timber and shaped to conform to the approved drainage plan. Ditches may be grass-lined channels, and the developer will be responsible for installation of the grass and maintenance until 85% coverage is obtained, or they may be concrete-lined.
- M) Developer is responsible for obtaining and providing both on-site and off-site drainage easements necessary for construction of the proposed drainage facilities. Easements must extend to an existing drainage system, or a defined natural channel.

§ 3.03.124. MINIMUM SPECIFICATIONS FOR STREETS AND UTILITIES.

Construction plans and specifications for streets and utilities shall be submitted to the City Engineer for approval prior to the beginning of construction and shall meet the following design requirements. The developer must contact the City as construction proceeds to arrange for periodic inspections.

STREETS:

A. Residential

- 1) **Width** -28 feet minimum back-to-back of curb.
- 2) **Type** - reinforced concrete with monolithic curbs (upright). Transverse heavy broom finish.
- 3) **Thickness** -6 inches minimum.
- 4) **Reinforcement** - **#3** Rebar, grade 60, at 18" centers transversely and #4 rebar, grade 60, at 12" centers longitudinally. Place reinforcement at middle of section and support on approved chairs.
- 5) **Joints** -sawed 1-1/2" deep at 20 ft. intervals within 24 hours of pouring, expansion joints at 150' intervals. All joints to have bituminous or rubber sealant before final plat is approved by City Engineer.
- 6) **Curb** - shall be 6" tall with one No. 3 reinforcing bar placed horizontally in the upright portion.
- 7) **Drive Culverts** -where culverts are necessary, they shall be equal to width of drive plus at least a minimum of six (6) feet. The City Engineer or City Inspector must approve the diameter. Approved end sections (See Section 25-21 E) are required.

B. Collectors

- 1) **Width** -36 feet minimum back-to-back of curb.
- 2) **Type** - same as residential
- 3) **Thickness** -7-1/2" thick, all other requirements the same as residential.

- C. Arterial
- 1) As established by the City Council.
- D. Concrete
- 1) 5-1/2 sack concrete mix. Type 1 Portland cement. No fly ash. TxDOT coarse aggregate grade no. 2.
 - 2) 3500 psi at 28 days, 5" maximum slump. Vibrate thoroughly.
 - 3) Air entrained with 3-6% air.
 - 4) Fine and coarse aggregate to comply with TxDOT 1993 specification, Item 421.
 - 5) Do not pour if rain is imminent, or if air temperature is less than 35° F or greater than 95° F.
- E. Subgrade
- 1) Remove and dispose of grass, roots, and unstable surficial soils.
 - 2) Scarify and re-compact top 6" to 95% standard proctor density, at +5% optimum moisture. Extend subgrade 12" past back of curb on both sides of street. Proof-roll finished subgrade in presence of City Inspector.
 - 3) Test for P.I. before construction. If P.I. in the top 12" of subgrade is greater than 15, provide 48# per square yard of lime for stabilization to a depth of 8", or remove and replace top 8"¹¹ with select material having a P.I. less than 15.
- F. Grade
- 1) Minimum centerline grade 0.5% Maximum centerline grade 8%.
Minimum crown 4".
- G. Testing
- 1) Required by City Engineer - paid for by the Developer. Minimum of one
(1) density per 500 SY and one (1) set of four (4) cylinders per 75 CY or part thereof. One (1) set per pour, minimum. Lab will send a copy of each report to the City and City Engineer.

UTILITIES:

- All items incorporated into the work shall be new, and of a quality equal to or better than specified herein.
- The proper spacing distance between water and sewer utilities, as established by the Texas Commission on Environmental Quality
{TCEQ}, must be compiled within the design of the system.
- In unstable foundation areas, the City may require the use of concrete embedment of the pipe for support.
- 6" and larger PVC water piping and all ductile iron piping shall have mechanical joint ductile iron fittings meeting AWWA C-110. PVC sewers shall have PVC fittings. Water fittings shall be rated for a minimum of 350 psi working pressure and shall be cement-lined, with an asphaltic seal coat-Fittings shall be blocked with a minimum of 3 c.f. concrete. Concrete must not cover M.J. bolts.

- Mark the location of each water and sewer service by placing a City-approved plastic marker in the curb.
- Concrete for encasement, blocking, or similar purposes shall be Class B, 4-sack, and develop a compressive strength of 2,000 psi at 28 days. Reinforcing steel shall meet Texas Department of Transportation (TxDOT) 2004 specifications, Item 440.
- There must be a City inspection before covering any utilities.

A. Water

- 1) **Service Lines** - Single services shall be a minimum of 3/4". Double services shall be a minimum of 1". Water service lines must include a 3/4" corporation stop, meter box, lid, and

meter stop per City standard. For a double connection, install a 1" corporation stop and a meter box, lid and 3/4" meter stop at each extension. The meter boxes must sit on the property in which the service will be utilized and be located near the right-of-way line on City right-of-way.
- 2) **Type of Material** - Pipe for potable water service shall be 6" diameter minimum. Where the City's master plan indicates larger sizes, the City may require the installation of said larger diameter. The pipe shall be PVC, meeting AWWA standard C- 900, DR 18, Class 150. It shall be cast iron O.D., 20' lengths, rubber gasket joint, listed by U.L. and NSF.
- 3) **Size and Location** - approved by City Engineer. Provide 36"¹¹ minimum bury. Developer's engineer shall provide

calculations sizing all water lines for City Engineer approval. Pressure at subdivision point of connection may be measured or may be assumed as 40 psi. Each fire hydrant in the subdivision must deliver 500 gpm with a residual pressure of 20 psi or greater. No new lines will be approved less than 6" in diameter.
- 4) **Construction** -Trench bottom, for water, shall be smooth and firm, and the pipe shall rest along its entire length on the bottom of the trench. Embedment material shall be native sand or fine granular material. Trench tailings may be utilized provided that they have an average diameter of less than 1/2", and are dry, unfrozen, and readily compacted. This embedment shall surround the pipe and extend to a depth of 4" above the top of the pipe. Above this, backfill material may be the native soil removed from the trench.
- 5) **Fire Hydrant Type and Spacing** -Hydrants will be "Mueller," "Waterous," or approved equal, and shall be spaced at 800 feet maximum and to provide a hydrant within 500 feet of the center of all lots. All fire hydrants shall meet AWWA C-502 for dry barrel hydrants, 5-1/4" main valve, 150 psi working pressure, with one pumper and two 2-1/2" hose connections. Hydrants shall be blocked with Class B concrete, and a 3 cubic foot washed rock sump shall be provided around the weep holes. The hydrants shall have a bury equal to the connecting main, and extensions shall be provided as necessary to provide 18" clearance between the nozzle and the ground surface. Each hydrant will have a mechanical joint gate valve installed on the hydrant lead, with an adjustable cast-iron valve box. Minimum bury should be 3'6" unless approved by City Engineer.

- 6) **Valves** -Valves shall be non-rising stem gate valves with operating nut, designed to take full pressure on either face. All valves shall open by turning to the left. Valves up to and including twelve (12) inches in diameter shall be housed in cast- iron valve boxes. For valves over 12-inch, the City Engineer shall approve housing. C-900 PVC pipe will be acceptable for valve box risers, PVC pipe must be topped with an approved cast-iron box and lid. Gate valves shall be mechanical joint where buried and flanged above ground. A gate valve shall be used to isolate each branch line. Gate valves shall comply with AWWA specifications, resilient seat, iron body, bronze-mounted, designed for 200 psi working pressure. Valves shall have a square operating nut and shall be installed with an adjustable cast-iron valve box. All M.J. fittings will be blocked with concrete.
 - 7) **Testing** – All line segments shall be pressure tested for 4 hours at 150 psi, or as required by TCEQ regulations. The allowable leakage shall not exceed 10 gallons per diameter inch mile per day. The line being tested shall be repressurized every hour if the pressure drops below 140 psi, and at the end of the 4-hour period. The amount of water needed to repressurize shall be read from a totalizing water meter. Tests shall include all service lines to the meter stop and shall be observed by a City representative. The new water line shall also be sterilized per AWWA C-651. After construction, the line shall be flushed and then chlorinated. Bacteriological samples shall be taken with City staff present after the chlorine residual has reached 2 ppm. The City will arrange and pay for bacteriological sampling per TCEQ requirements. If the initial tests fail to pass, the developer will pay subsequent testing.
 - 8) **Compliance** -In addition to the above, all line sizes and construction must comply with applicable standards of the Texas Commission on Environmental Quality (TCEQ) or successor agency.
- B. Sanitary Sewer
- 1) **Clean-outs** -Sewer clean-outs shall be plugged with a screw-in plug to prevent inflow. A cast-iron clean-out boot will be provided, set in concrete.
 - 2) **For sewer services**, a 1/8" bend and wye will be required, installed as the main is laid. Saddles will not be allowed. Taps for Sewer services must be capped at the end of the service line.
 - 3) **Size and Materials** -Pipe for sanitary sewer mains shall be at least 6" diameter, and 4" diameter for service laterals on City right-of-way. It shall be SDR 35, gasket-joint PVC, meeting ASTM D-1784, and gaskets shall meet ASTM F-477. For exposed creek crossings, or sewer with less than 24" cover, or for use in bores, sewer pipe shall be encased in schedule 40 steel pipe.

- 4) **Construction** -Trench bottom, for sewer, shall be smooth and firm.

Provide 3¹¹ thickness of 3/4" or smaller crushed gravel for bedding. The pipe shall rest along its entire length on the bedding. Embedment material shall be the same as the bedding material. This embedment shall surround the pipe and extend to a depth of 4" above the top of the pipe. Above this, backfill material may be the native soil removed from the trench.

Sewer lines shall be observed by a city representative prior to backfill.

- 5) **Manholes:** Manholes shall be circular, constructed over the centerline of the sewer. The nominal clear opening in the concrete cone shall be 24", and the minimum inside diameter of the manhole barrel shall be 48". The manhole shall rest on a Class A reinforced concrete base, 12" larger all around than the outside wall of the manhole. The base shall be 8" thick, with a mat of #4 reinforcing steel at 12" centers both ways. The manhole may be poured-in-place, in which case it shall be poured of six (6) sack 3500 psi, non-reinforced, formed concrete, 6" thick. The manhole may also be precast, meeting ASTM C-478. Joints between the precast sections, and any penetrations, shall be watertight. Manhole castings shall have recessed pick bars or pick inserts - pick holes will not be permissible. The contact surface between the cover and ring shall be machined smoothly. The manhole cover will have a 24" nominal diameter, and a weight of no less than 300# for ring and cover. Where the manhole is subject to flooding, the cover shall be bolt-down, complete with gasket and at least two bolts. Manhole top shall be flush in streets and protrude 2" above ground in other areas. Where the incoming and outgoing sewers in a manhole have a difference in elevations of over 30", a drop structure will be required.
- 6) **Testina** -All sewers shall be air-tested per ASTM C-828-80 and tested or deflection by drawing a 95% sized mandrel through the line. The engineer for the developer and the City Inspector shall observe tests and provide written results to the City. Manholes shall be vacuum, or exfiltration tested per TCEQ requirements.
- 7) **Compliance** - In addition to the above, all line sizes and construction must comply with applicable standards of Texas Commission on Environmental Quality (TCEQ) or successor agency, including 30-day mandrel testing and air testing. Minimum sewer grades shall be no less than specified by the TCEQ regulations. A registered professional engineer shall design the pipe diameter, grades, and appurtenances, in accordance with recognized standards. Manholes must be provided at all changes in direction or grade and must be no farther apart than 500 ft. Clean-outs or manholes must be provided at the end of each line. Should a lift station be necessary, the City reserves the right to accept or decline the lift station for operation and maintenance purposes. The design of the lift station, if permitted, must comply with the TCEQ regulations, and must be approved by the City Engineer.

§ 3.03.125. COUNCIL'S DECISIONS ARE FINAL.

The Council's decision shall be final in all questions regarding the application of the provisions of this Ordinance.

§ 3.03.126. PENALTY CLAUSE.

Any violation of this Ordinance shall constitute a misdemeanor, which shall be punishable by the Municipal Court of the City of Bogata, Texas, by fine not to exceed One Thousand Dollars (\$1,000.00) per violation. Each day that a violation continues shall constitute a separate violation hereunder.

Any violation of this Ordinance outside of the corporate limits of the City of Bogata, Texas, but within the extraterritorial jurisdiction, shall not constitute a crime, but the City may institute such actions in the District Court of Red River County, Texas, as is necessary to enjoin such violation and to seek other appropriate injunctive relief.

In addition to the above remedies, an individual, entity or organization who violates this Ordinance or who aids, assists, or encourages another to violate this Ordinance shall be liable to the City in the form of a civil penalty not to exceed Two Thousand Dollars (\$2000.00) a day per occurrence to be enforced administratively in the Municipal Court of the City of Bogata.

§ 3.03.127 through 3.03.150 (reserved)

Division 4. Plumbing Code

§ 3.03.151. Adopted.

The International Plumbing Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.152. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.153. through § 3.03.200. (Reserved)

Division 5. Electrical Code

§ 3.03.201. Adopted.

The International Code Council Electrical Code - National Electrical Code shall mean the 2015 National Electrical Code published by the National Fire Protection Association is hereby adopted by reference as though it **were** copied herein fully.

§ 3.03.202. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.203. through § 3.03.250. (Reserved)

Division 6. Mechanical Code

§ 3.03.251. Adopted.

The International Mechanical Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.252. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.253. through § 3.03.300. (Reserved)

Division 7. Gas Code

§ 3.03.301. Adopted.

The International Fuel Gas Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.302. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.303. through § 3.03.350. (Reserved)

Division 8. Housing Code

§ 3.03.351. Adopted.

The Standard Housing Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.352. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.353. through § 3.03.400. (Reserved)

Division 9. Existing Buildings Code

§ 3.03.401. Adopted.

The Standard Existing Buildings Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.402. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.403. through § 3.03.450. (Reserved)

Division 10. Swimming Pool Code

§ 3.03.451. Adopted.

The Standard Swimming Pool Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.452. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

§ 3.03.453. through § 3.03.500. (Reserved)

Division 11. Amusement Device Code

§ 3.03.501. Adopted.

The Standard Amusement Device Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 3.03.502. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

ARTICLE 3.04. SUBSTANDARD OR DANGEROUS BUILDINGS

§ 3.04.001. Statutory authority.

This article, known as the substandard and dangerous building code (hereafter, "the code") is intended to adopt and implement in the broadest possible terms the powers, duties, and authorities set out in subchapters Band C of chapter 54 of the Local Government Code of the state, as said statutes apply to the subject matter of this article, and as otherwise stated herein, and other powers granted to a type A general-law municipality under the laws of the state. The provisions of this article shall not be narrowly construed but shall be applied to accomplish the stated purposes of this article.

§ 3.04.002. Definitions.

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

Building and standards commission. That building and standards commission were duly appointed and created as set out in this code.

Building code. The Uniform Building Code promulgated by the International Conference of Building Officials as adopted by this jurisdiction; it is also known as the International Building Code as amended or updated.

Code inspectors and code enforcement officers. The code inspectors/code enforcement officers of the city, as the same shall be designated by the city council.

Dangerous building or structure. All buildings or structures which have any of the following defects or lack of facilities shall be deemed dangerous buildings or structures:

- (1) Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (2) Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, or torn, or otherwise unsafe, as to not provide safe and adequate means of exit in case of fire or panic.
- (3) Whenever the stress in any materials, member, or portion thereof due to all dead and live loads is more than one and one-half times the working stress or stresses allowed in the building code for new buildings of similar structure, purpose, or location.
- (4) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or any other cause to such extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the building code for new buildings of similar structure, purpose, or location.
- (5) Whenever any portion, member, or appurtenance thereof appears likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (6) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof, is not of sufficient strength or stability, or is not so anchored, attached or fastened in place, so as to be capable of resisting a wind pressure of one-half of that specified in the building code for a new building of similar structure, purpose, or location without exceeding the work stresses permitted in the building code for such buildings.
- (7) Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

- (8) Whenever the building or structure or any portion thereof, because of (i) dilapidation, deterioration, or decay, (ii) faulty construction, (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building, (iv) the deterioration, decay, or inadequacy of its foundation, or (v) any other cause, is likely to collapse partially or completely.
- (9) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- (10) Whenever the exterior walls or vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- (11) Whenever the building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
- (12) Whenever the building or structure has been damaged by natural causes, including but not limited to fire, wind, earthquake or flood, or damaged by exposure to the elements, particularly wind, hail, or rain, or has become so dilapidated or deteriorated, as to become an attractive nuisance to children, or a harbor for vagrants, criminals or immoral persons, or as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
- (13) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirements or prohibitions applicable to such building or structure provided by the building regulations of this city, as specified in the building code or housing code, or of any law or ordinance of this state or city relating to the condition, location, or structure of buildings.
- (14) Whenever any building or structure, whether erected in accordance with all applicable laws [and] ordinances, has in any non-supporting part, member or portion less than fifty percent (50%), or in any supporting part, member or portion less than sixty-six percent (66%), of the strength, fire-resisting qualities or characteristics, or weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
- (15) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air, or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- (16) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal (public safety official) to be a fire hazard.

- (17) Whenever any building or structure is in such a condition as to constitute a public nuisance, as known to the common law or in equity jurisprudence.
- (18) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period more than six (6) months to constitute an attractive nuisance or hazard to the public.
- (19) Any minimum standard provided by the housing code, the building code, or the fire, mechanical, plumbing, or electrical code, as amended, and as adopted by the city council.
- (20) All buildings or structures that have become deteriorated through natural causes or by damage through exposure to the elements, especially wind, hail, or rain, or damage through fire to the extent that the roof, windows, or doors, or portions of the house, building, or structure which protect the interior from the weather, would no longer reasonably protect from the weather.
- (21) All buildings or structures of which the floors, walls, ceilings, and all supporting members are not capable of bearing imposed loads safely.
- (22) All buildings or structures that are not wired to provide in operating condition electrical circuits sufficient to safely carry a load imposed by normal use of appliances and fixtures.
- (23) All buildings or structures so deteriorated or constructed or permitted to be constructed as to constitute a menace to health or safety, including all conditions conducive to the harboring of rats or mice or other disease-carrying animals or insects, calculated to spread disease, including such conditions hazardous to safety as inadequate bracing or use of deteriorated materials.
- (24) All buildings or structures that are so dilapidated or substandard as to be unfit for human habitation and a hazard to the public health, safety, and welfare.

(25) All buildings or structures, regardless of their structural condition, which are unoccupied by their owners, lessees, or other invitees and are unsecured from unauthorized entry to the extent they could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.

(26) For purposes of this article, additions, appendages, or attachments to buildings, such as awnings, poles, signs, gutters, or overhangs, shall be deemed structure

Vacate or order the vacation of a building or structure. To require or cause individuals other than the owner, the owner's lessee, or other invitees of the owner or lessee to leave or quit the premises of said building or structure

§ 3.04.003. Declaration of nuisance.

All dangerous buildings or structures which shall constitute a menace to the health, morals, safety, or general welfare of their occupants or of the public are declared to be public nuisances and shall be ordered to be vacated, repaired, secured, or demolished as provided by this code.

§ 3.04.004. Building and standards commission created.

There is hereby created a building and standards commission of the city, whose members shall be appointed by the city council to hear and determine cases concerning alleged violations of this code.

§ 3.04.005. Membership of building and standards commission.

Generally: appointment, removal, and term of members. The building and standards commission created hereunder shall consist of five (5) members appointed by the city council, each of whom shall be a resident of the city. The members of said commission shall hold their offices for a period of two years, or until their successors are appointed, provided that three (3) of the five (5) initially appointed hereafter, shall serve for a term of one year, unless reappointed, such that all members shall serve a staggered term of two years. As practical, the members of said commission shall be qualified in one or more of the fields of fire prevention, building construction, sanitation, health, and public safety, and as practical shall be selected one (1) each by each city council person. The city council may remove a commission member for cause on a written charge. Before a decision regarding removal is made, the city council must hold a public hearing on the matter if requested by the commission member subject to the removal action. At the first meeting of the planning and zoning commission (if the commission also serves as the building and standards commission) following August 1st of each year, or at the first meeting following the seating of newly appointed members to the planning and zoning commission (except members appointed to fill unexpired terms), the planning and zoning commission, if serving as the building and standards commission shall nominate one person to serve as alternate building and standards commissioner for the next year. The nominated commissioner must meet the residence requirements set forth herein, and unless good cause is shown, the alternate selected for the building and standards commission should be the same as the alternate member for the planning and zoning commission. The nominated alternate must be approved by majority vote of the city council. An appointed alternate commissioner may attend and participate in meetings of the building and standards commission but may vote only when the minutes reflect that a regular commission member is absent. *Any vacancy on the commission shall be filled by appointment by the city council for the unexpired term. A vacancy for alternate members shall be filled in the same manner as a vacancy among the regular members. The city's code inspectors/code enforcement officers shall also be ex officio and nonvoting members of the building and standards commission.*

(a) Alternative membership. *The planning and zoning committee may, at the discretion of the city council, serve as the city's building and standards commission.*

§ 3.04.006. Proceedings of building and standards commission.

- (a) The building and standards commission shall upon due notice as set out herein conduct public hearings and other proceedings to implement and enforce the provisions of this code. In any event, public hearings as set out herein shall be conducted as otherwise provided herein and shall be a precedent to the issuance of any orders by said commission.*
- (b) The commission shall by majority approval of the entire commission adopt rules and establish procedures for use in said hearings, providing many opportunities for presentation of evidence and testimony by respondents or persons opposing charges brought by the city or its code inspectors/code enforcement officers relating to alleged violations of this article.*
- (c) Meetings of the commission shall be held at the call of the chairperson and at other times as determined by the commission. All meetings of the commission shall be open to the public. Members of the commission shall choose by their own ballot a chairperson and a vice-chairperson to serve in the absence of the chairperson. The chairperson, or, in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. A quorum of four (4) members of the commission shall be necessary to conduct all the business of the commission. All cases to be heard by the commission must be heard by at least four (4) members. The concurring vote of four (4) members of the commission shall be necessary to take any action under this article.*
- (d) The code inspectors/code enforcement officers of the city shall present all cases before the commission. The city attorney shall participate in the presentation of such cases or in any other matters to come before the commission.*
- (e) The commission shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. The commission shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the office of the city secretary as public records.*
- (f) In any public hearing or other proceeding conducted by the commission to determine whether a building or other structure complies with the requirements of the code, the owner, lienholder, or mortgagee shall have the burden of proof, by clear and convincing evidence, to demonstrate the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work. The filing of a report by the code inspector/code enforcement officer raises a presumption of the existence of a substandard or dangerous building for purposes of a commission hearing.*

§ 3.04.007. Notices and orders.

- (a) Unless other requirements are specified herein, notice of all public hearings and other proceedings before the commission must be given:*
 - (1) By personal delivery, by certified mail with return receipt requested, or by delivery by the United States Postal Service using signature confirmation service, to the record owners of the affected property, and each holder of a recorded lien against the affected property, as shown, by the records in the office of the county clerk of the county in which the affected property is located if the address of the lienholder can be ascertained from the deed of trust establishing the lien or other applicable instruments on file in the office of the county clerk; and*

- (1) *To all unknown owners, post a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable.*
- (b) *In ascertaining the identity and addresses of any property owners or lienholders of the affected property, the code inspectors/code enforcement officers shall search the following records:*
 - (1) *Real property records of the county in which the property is located.*
 - (2) *Appraisal district records of the appraisal district in which the property is located.*
 - (3) *Records of the secretary of state, if the property owner or lienholder is a corporation, partnership, or other business association.*
 - (4) *Assumed name records of the county in which the property is located.*
 - (5) *City tax records; and*
 - (6) *City utility records.*
- (c) *The notice must be posted and either personally delivered or mailed on or before the 10th calendar day before the date of the hearing, and must state the date, time, and place of the hearing. In addition, the notice must be published in a newspaper of general circulation in the city on one occasion on or before the 10th calendar day before the date fixed for the hearing.*
- (d) *In addition to the requirements of subsection (a) of this section, all notices sent by mail contain as a minimum the following:*
 - (1) *An identification, which is not required to be a legal description, of the building and the property on which it is located.*
 - (2) *A description of the violation of city codes or substandard conditions that exist at the building (a copy of the code inspector/code enforcement officer's report is sufficient).*
 - (3) *A statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to bring the structure into compliance with the requirements of this article along with proof of the time it will take to perform the work.*
 - (4) *A statement that the city will vacate, secure, remove, or demolish the building if any ordered action is not taken within 30 calendar days unless additional time is granted by the commission as set forth herein; and*
 - (5) *Language equivalent with or consistent with section 54.005 of the Local Government Code directing that the recipients of the notice, if they are not the owner, execute an affidavit returnable immediately to the city on a form provided, providing information concerning ownership, note holders, liens, or titles.*
- (e) *The commission shall file notice of a proceeding before the commission in the official public records of real property in the county in which the property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the records as set forth in subsection (b) of this section, a legal description of the affected property, and a description of the proceeding. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the proceeding on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice*

- (t) When notice is mailed in accordance with this section to a property owner or lienholder and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
- (g) After a hearing on an affected property, the commission shall reduce any order it issues to writing. Each such order shall specify the action to be taken as part of the notice and shall order the owner, lienholder, or mortgagee of the building to, within 30 calendar days, secure the building from unauthorized entry or repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot be performed within 30 calendar days. If the commission allows the owner, lienholder, or mortgagee more than 30 calendar days to repair, remove, or demolish the building, the commission shall set forth specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed.
- (h) The commission shall not allow the owner, lienholder, or mortgagee more than ninety (90) calendar days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, lienholder, or mortgagee submits a detailed plan and time schedule for the work at the hearing and establishes at the hearing that the work cannot reasonably be completed within ninety (90) calendar days because of the scope and complexity of the work. In such case, the commission shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the commission and the code inspector to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the commission or the commission's designee to demonstrate compliance with the time schedules.
- (i) If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the county that exceeds \$100,000.00 in total value, the commission may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building under this code. In lieu of a bond, the municipality may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the municipality. The bond must be posted, or the letter of credit or third-party guaranty provided, not later than the 30th calendar day after the date the commission enters the order.
- (j) (j) Once the commission has reduced its order to writing, it shall promptly mail, by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building at the address ascertained as provided in subsection (b) of this section.
- (k) Within 10 calendar days after the date of issuing any order, the commission shall:
 - (1) File a copy of the order with the city secretary.
 - (2) Publish one time in a newspaper of general circulation in the city a notice and abbreviated copy of the order containing:
 - (A) The street address or legal description of the property
 - (B) (8) The date of the hearing.
 - (C) (C) A brief statement indicating the results of the order.
 - (D) (D) Instructions stating where a complete copy of the order may be obtained.

- (l) If, after the hearing, the owner does not take the ordered action within the allotted time, the municipality shall personally deliver or send by certified mail, return receipt requested, to each identified mortgagee and lienholder a notice containing:

- (1) An identification, which is not required to be a legal description, of the building and the property on which the building is located.
- (2) A description of the violation of municipal standards that is present at the building; and
- (3) A statement that the municipality will vacate, secure, remove or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time.

§ 3.04.008. Authority of building and standards commission; assessment of civil penalty.

Following notice and public hearing, the commission may undertake any of the following actions, or a combination of such actions:

- (1) Declare a building or structure dangerous or substandard in accordance with the standards set out in this code.
- (2) Order the securing, within a fixed period, of buildings or structures found to be in violation of this code.
- (3) Order the demolition or removal, within a fixed period, of buildings or structures found to be in violation of this code.
- (4) Order the repair, within a fixed period, of buildings or structures found to be in violation of this code.
- (5) Order, in an appropriate case, the immediate vacation of persons or the immediate removal of property found on private property, enter on private property to secure the vacation or removal if it is determined that conditions exist on the property that constitute a violation of this code, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building or structure found to exist.
- (6) Issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the city, to enforce and carry out the lawful orders or directives of the commission; and
- (7) Upon a finding that the owner was actually notified of the provisions of this article and any other applicable city building standards, and a further finding that after the owner received notice of the code's provisions the owner committed acts in violation of this code or failed to take the action necessary for compliance with this article, the commission then may determine the amount and duration of a civil penalty which the city may be entitled to recover for such violation, not to exceed \$1000.00 per day for each violation of this article for non-homestead property, or \$10.00 per day for homestead property. Any civil penalty assessed shall accrue interest at a rate of 10 percent a year from the date of assessment until paid.

§ 3.04.009. STANDARDS FOR ORDERING REPAIR, VACATION, DEMOLITION OR SECURING.

The following standards shall be applied by the building and standards commission in determining whether to order a building or structure repaired, vacated, demolished, or secured, or a combination of such remedies:

- (1) If the dangerous building or structure can be repaired so that it will no longer be in a condition which is in violation of this code, it shall be ordered repaired consistent with the standards of the fire code, electrical code, plumbing code, building code, or other codes of the city.
- (2) If the dangerous building or structure is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants or of the public, it shall be ordered to be vacated.
- (3) In any case where a dangerous building or structure is so damaged or destroyed that it cannot be repaired so that its existence will no longer be in violation of the terms of this code, it shall be ordered demolished and removed.
- (4) If open to the public such as to constitute a threat to public health or safety, the commission may order such building secured by such means as the commission shall deem appropriate.
- (5) If the dangerous building or structure is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants or of the public, it shall be ordered to be vacated.
- (6) In any case where a dangerous building or structure is so damaged or destroyed that it cannot be repaired so that its existence will no longer be in violation of the terms of this code, it shall be ordered demolished and removed.
- (7) If open to the public such as to constitute a threat to public health or safety, the commission may order such building secured by such means as the commission shall deem appropriate.
- (8) If the dangerous building or structure is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants or of the public, it shall be ordered to be vacated.
- (9) In any case where a dangerous building or structure is so damaged or destroyed that it cannot be repaired so that its existence will no longer be in violation of the terms of this code, it shall be ordered demolished and removed.
- (10) If open to the public such as to constitute a threat to public health or safety, the commission may order such building secured by such means as the commission shall deem appropriate.
- (11) If, after the expiration of time for removal, repair, vacation, or securing of a dangerous or substandard building as allowed, the owner, lienholder or other person or entity at interest fails to comply, the city may do or cause to be done the repairs necessary to bring the building into compliance with applicable codes of the city, only if the building is a residential building; however, the repairs made may not improve the building to the extent that the building exceeds the minimum standards as defined by this code. All expenses may be assessed and collected as provided in this code, chapter 54 of the Local Government Code as adopted herein, and/or the laws of the state.

§ 3.04.010. EVIDENCE OF CIVIL PENALTY.

- (a) An assessment of a civil penalty by the commission as provided in this article is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the city for final judgment as provided elsewhere herein.
- (b) To enforce any civil penalty as assessed hereunder, the city secretary shall file with the district clerk of the county a certified copy of the commission's order establishing the amount and duration of the civil penalty. No other proof is required for a district court to enter final judgment on said penalty.

§ 3.04.011. JUDICIAL REVIEW.

- (a) Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any order or decision of the commission may present a petition to a district court, duly verified, setting forth that the order or decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 calendar days after the date a copy of the final order or decision of the commission is personally delivered or mailed by first class mail, certified return receipt requested, to all persons to whom notice is required to be sent by this article.
- (b) On presentation of the petition, the court may allow a writ of certiorari directed to the commission to review the decision of the commission and shall prescribe in the writ the time, which may not be less than 10 calendar days, within which a return on the writ must be made and served on the realtor (petitioner] or the realtor's (petitioner's) attorney.
- (c) The commission may not be required to return the original papers acted on by it. It is sufficient for the commission to return certified or sworn copies of the papers or parts of the papers as may be called for by the writ.
- (d) The return must concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.
- (e) The allowance of the writ does not stay proceedings on the decision appealed from.
- (f) The district court's review shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.
- (g) Costs may not be allowed against the commission.
- (h) If the decision of the commission is affirmed or not substantially reversed but only modified, the district court shall allow the city all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners as well as all persons found to be in possession of the property subject to the proceedings before the commission.

§ 3.04.012. Abstract of judgment, appeal by lienholder.

- (a) An abstract of judgment shall be issued against all parties found to be the owners of the subject property or in possession of that property.
- (b) A lienholder does not have standing to bring a proceeding as provided in section 3.04.011 herein on the grounds that the lienholder was not notified of the proceedings before the commission or was unaware of the condition of the property unless the lienholder had first

appeared before the commission panel and entered an appearance in opposition to the proceedings.

§ 3.04.013. Finality of decisions.

If no appeals are taken pursuant to section 3.04.011 herein from the decision of the commission within the required period, the decision of the commission is, in all things, final and binding.

d) The return must concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.

(e) The allowance of the writ does not stay proceedings on the decision appealed from.

(f) The district court's review shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

(g) Costs may not be allowed against the commission.

(h) If the decision of the commission is affirmed or not substantially reversed but only modified, the district court shall allow the city all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners as well as all persons found to be in possession of the property subject to the proceedings before the commission.

§ 3.04.014. Performance of work by city; a lien for the city's expenses.

(a) If a building or structure is not vacated, secured, repaired, removed, or demolished in accordance with an order of the building and standards commission, the city may vacate, secure, remove, or demolish the building on its own initiative. This provision shall not be interpreted to limit the ability of the city to collect on a bond or other financial guaranty required under section 3.04.007(i).

(b) If the city incurs expenses under this section, the city may assess the expenses on, and the city has a lien against (unless it is a homestead as protected by the state constitution) the property on which the building or structure was or is located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of the expenses incurred by the city, and the balance due.

(c) *If the notice is given and the opportunity to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized herein, the lien is a privileged lien subordinate only to tax liens.*

§ 3.04.015. Duties of code inspectors.

(a) *The code inspectors/code enforcement officers of the city are hereby authorized to:*

(1) *Inspect or cause to be inspected any building or structure situated within the city where the code inspector has reason to believe conditions exist which render such building or structure a dangerous building or structure as that term is defined herein.*

(2) *If, upon inspection and investigation, the code inspector finds that the building or structure is a dangerous building or structure as that term is defined herein, the code inspector shall refer*

said building or structure to the commission for consideration as provided in sections 3.04.004 through 3.04.010 herein.

- (3) *Place a notice on said dangerous building or structure to read as follows:*

NOTICE-DANGEROUS BUILDING. This building is unsafe, further use of this building is prohibited by order of the city code inspector. Do not remove this notice. Violation of this notice is punishable by fines or penalties.

- (4) *Upon the finding of immediate risk and danger to the public health and safety, and upon the order of the city administrator, secure the exterior doors and all first-level windows of any dangerous building or structure, and provide such other security measures necessary to protect the public health and safety.*

- (5) *Appear at all hearings conducted by the building and standards commission, testify as to the condition of dangerous or substandard buildings at such hearings, and perform all other staff-related functions in support of the activities of the building and standards commission.*

- (b) *It shall be unlawful for any person to use any building or structure after the code inspector has placed a notice thereon as provided for in this section.*

§ 3.04.016. DUTIES OF CITY ATTORNEY.

The city attorney is hereby authorized and it shall be the duty of the office of the city attorney, without further authorization of the city council, to undertake, by all legal means appropriate or necessary, the enforcement of the orders of the building and standards commission, including, but not limited to, enforcement in municipal court, filing of appropriate civil actions in courts of appropriate jurisdiction to seek compliance with said orders, or defending the city from suit if suit is taken to appeal any action of the building and standards commission.

§ 3.04.017. REMEDIES AND ENFORCEMENT.

(a) Remedies are nonexclusive. The remedies and penalties set out herein are intended to be nonexclusive; that is, they shall not be construed to exclude the city from seeking all remedies at law or equity to which the city may be entitled under state law or otherwise, and the remedies as set out herein shall be considered in addition to and cumulative of such remedies as set out under state law.

Municipal court remedies preserved. Remedies set out in this article shall not affect or be construed to affect the ability of the city to proceed under the jurisdiction of the municipal court.

- (a) Penalties in municipal court penalties.

- (1) The owner, occupant, lessee, agent, or any other person subject to any notice and order issued by the building and standards commission under this article who shall fail to comply with said notice or order to repair, demolish, or secure such building or structure, or any person who shall willfully refuse or fail to leave a building or structure that has been ordered vacated under the terms of this article or who shall enter an area around such building or structure that has been declared to be dangerous, shall be deemed guilty of a misdemeanor and shall be subject to a fine as provided in section 54.001 of the Local Government Code as adopted herein (and any amendments thereto). Each day's violation shall constitute a separate and distinct offense.

- (2) If the owner of any dangerous building or structure ordered vacated, repaired, demolished, or secured under the terms of this article shall be a corporation and shall violate any of the provisions of this article, the president, vice-president, secretary, or treasurer of such corporation or any manager or agent of such corporation shall be jointly and severally liable for the penalties herein provided.
 - (3) Any person removing the notice provided for in this article from the building or structure shall be deemed guilty of a misdemeanor and subject to the penalties set forth in section 3.04.008(7) of this article.
 - (4) The municipal court retains its contempt power for violation of an order of the court.
- (b) Civil action authorized.
- (1) Authority. of city attorney the city attorney is hereby authorized to bring a civil action for the enforcement of any order issued by the building and standards commission in accordance with this article.
 - (2) Jurisdiction, venue, and preferential ssetting in the jurisdiction and venue of any such action shall be as established in accordance with subchapter B, section 54.013, of the Texas Local Government Code. The city attorney shall be authorized to seek a preferential setting for said action in accordance with section 54.014 of the Local Government Code.
 - (3) Remedies authorized: The city attorney may in his discretion seek all remedies authorized under state law, including the provisions of chapters 54 and 214 of the Texas Local Government Code. Such remedies may include, but may not be limited to, injunctive relief pursuant to section 54.016 of the Texas Local Government Code, enforcement and collection of civil penalties authorized under this article, an action to compel the repair, demolition, or securing of any building or structure, recovery of all costs and attorney's fees, appointment of a receiver to administer any noncompliant property in accordance with section 214.003 of the Texas Local Government Code, and any and all other remedies actionable to the city under law or equity.
 - (4) Lis pendans authorized. The city attorney may file a notice of Lis pendens in the office of the county clerk regarding such action. If the city files such notice, a subsequent purchaser or mortgagee who acquires an interest in the noncompliant property takes the property subject to the enforcement proceedings of the city and subsequent orders of the court.
 - (5) Buildings or structures secured by the city. For any building or structure which the city itself secures in accordance with this article, following such securing of said building or structure, the city shall undertake the following procedure;
 - (a) Before the 11th calendar day after the date the building is secured, the city shall give notice to the owner of said property by:
 - (1) Personally, serving the owner with written notice.
 - (2) Depositing the notice in the U.S. mail addressed to the owner at the owner's post Office address.
 - (3) Publishing the notice at least twice within a ten-calendar day period in a newspaper of general circulation in the county in which the building or structure is located if personal service cannot be obtained and the owner's post office address is unknown; or

(4) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(5) The notice must contain:

(6) An identification, which is not required to be a legal description, of the building or structure and the property on which it is located.

(7) A description of the violation of this article that is present on the premises.

(8) A statement that the city will secure or has secured the building or other structure.

(9) An explanation of the owner's entitlement to request a hearing before the building and standards commission about any matter relating to the city's securing of the building; and

(10) Section 54.005 of the Local Government Code, which provides that the recipient of the notice, if he is not the owner, execute an affidavit returnable immediately to the city, on a form provided, providing information concerning ownership, note holders, liens, or titles.

(11) The city shall conduct a hearing before the building and standards commission at which the owner may testify or present witnesses or written information about any matter relating to the city's securing of the building if, within 30 calendar days after the date the city secures the building, the owner files with the city secretary a written request for the hearing. The city shall conduct a hearing within 20 calendar days after the date the request is filed.

(12) The city has the same authority to assess expenses under this section as it has to assess expenses under section **3.04.014** herein. A lien in the amount of such expenses is created under this section in the same manner that a lien is created under section **3.04.014** and is subject to the same conditions as a lien created under said section.

§ 3.04.018. PROOF OF PROPER DISPOSAL OF MATERIALS FROM DEMOLITION.

(a) A property owner or a lienholder of property shall furnish written proof to a city code inspector of the proper and legal disposal at a landfill of all materials from a substandard, dangerous, or hazardous building or structure demolished pursuant to this article.

(b) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not to exceed two thousand dollars (\$2,000.00), and each day's continuance of any violation of this section shall constitute and be deemed a separate offense.

(1) The building shall be structurally sound, including sound structural supports and support members and a structurally sound roof such that the property is not in danger of collapse, does not experience deterioration from the weather or elements, and does not constitute an immediate or long-term threat or menace to health or safety. The building official, or on proper appeal, the building and standards commission of the city, shall determine the standards for and shall adjudge the structural soundness of a particular building or structure for which a secured building permit is sought.

(2) *At the time of the application, and during the entire term of the permit, the building shall remain vacant.*

(3) *At the time of the application, and during the entire term of the permit, the utilities shall be disconnected from the premises.*

(4) At the time of the application, and during the entire term of the permit, the building shall be secured. For purposes of this article, a building shall be considered secured if all windows are covered if broken, all open access doorways are covered securely, and all other openings or access to the building is secured from entry from the outside. In securing said building, the permittee shall be required to comply with any plan for securing the building specified by the building official. In securing said premises, the owner may use plywood or other material acceptable to the building official and stencil thereon a notice to read as follows:

“SECURED BUILDING MATERIALS: REMOVAL, SALE, OR PURCHASE OF THIS MATERIAL WITHOUT CONSENT OF THE OWNER SHALL CONSTITUTE A VIOLATION OF ORDINANCE NO. 705 OF THE CITY OF BOGATA, RED RIVER COUNTY, AND SHALL SUBJECT THE VIOLATOR TO FINES OR PENALTIES.”

(5) During the term of the permit, the structure shall otherwise comply with all city ordinances or regulations dealing with the control of weeds, vectors, abandoned vehicles, or abandoned junk, or other ordinances as the same shall apply to the external condition of the premises.

(6)The owner of the building, as part of the permitting process, shall agree in writing that the police department, fire department, building inspection department, or any other applicable department of the city shall always have access to the premises while on official business. The building owner shall likewise agree in writing that, save and except for officials of the city as specified herein, only the building owner or the owner's lawfully authorized agent shall have access to and enter the building during the time that such building is governed by a secured building permit.

(7) No enforcement action is currently pending against the property or its owner before the city's building and standards commission or under any other city ordinance; provided, however, that a secured building permit may be issued upon a finding by the building and standards commission in an enforcement proceeding, and in response to a request by the owner, that a property the subject of such proceeding is otherwise qualified for such a permit. In the event of such a finding, the property owner shall comply with all the terms and conditions for the issuance of said permit as set out herein, and upon issuance such permit the enforcement action then pending before the building and standards commission shall be abated but not dismissed. For so long as a valid secured building permit is maintained for the property, the pending enforcement action shall remain in abated status, but at such time as the property is no longer governed by a valid secured building permit the abated enforcement action shall be placed upon an ensuing agenda of the building and standards commission for review and subsequent action.

(c) Effect of issuance. For such time as any building is governed by a valid, unexpired secured building permit, and all conditions for the original issuance of said permit shall continue to be satisfied, including proper security of the building and all utilities remaining disconnected, the building shall be exempted from complying with all internal nonstructural requirements of the city building code, or other applicable codes of the city, save and except the city fire code, which shall continue to apply as to any condition of the building which constitutes an immediate fire hazard. In addition, while such building continues to be governed by a valid, unexpired permit for which all conditions continue to be met as specified in this article, no enforcement action shall be taken by the city pursuant to this article, referred to as the dangerous buildings' ordinance.

(d) Maintenance of building. The building owner shall be responsible for always keeping the building in full compliance with the terms and conditions of the secured building permit. If the building becomes noncompliant with the terms and provisions of this article, as found by the building official or as found by the building and standards commission on appeal from a decision of the building official, then any outstanding secured building permit shall be revoked.

(e) Fee. The fee for the issuance of a secure building permit shall be \$100.00.

(f) Duration. A secured building permit issued in accordance with the terms and provisions of this article and provided said building governed by said permit continues to be in all things compliant with this article, shall be valid for a period of one year from the date of issuance.

(g) Reoccupation of secured building. Before a building governed by a secured building permit can be reoccupied, the building owner must satisfy the following conditions:

(1) The building must be returned to full compliance with all applicable city codes, including but not limited to the city building code, fire code, electrical code, plumbing code, air conditioning code, and all other similar codes as said codes are constituted at the time that reoccupation of the building is sought.

(2) The owner shall pay an appropriate fee for reinspection of the building by the city building inspection department and the building shall be certified by said department as compliant with all outstanding building codes.

(3) The owner shall apply for and receive a new occupancy permit, including payment of any applicable occupancy fee.

(4) No utilities shall be turned on in the building until full compliance with all outstanding city ordinances and compliance with this article; however, temporary drops in service may be established.

(h) Renewal. A secured building permit as authorized herein shall be subject to annual renewals provided the building owner files proper application on such forms as shall be established by the chief building official for such permit renewal and satisfies all the following requirements:

(1) A showing that all the original requirements for issuance of the permit continue to be satisfied, including a showing that the condition of the building is structurally sound and that the building will meet or exceed the standards for issuance of a permit set out in subsection (b) of this section.

(2) Payment of the appropriate permit issuance fee as set out in subsection (e) of this section.

(3) An inspection shall be performed by an inspector of the owner's choosing, provided such inspector shall meet all the requirements of state law as set out in title 7, subtitle A, chapter 1102 of the Texas Occupations Code, regarding licensed real estate inspectors. The inspector shall document in writing the results of the inspection, such documentation to be in such form as the building official shall

specify. Any inspector who intentionally or repeatedly falsifies or provides incomplete permitted information necessary for construction work to bring the building back into compliance with all applicable codes.

(i) Violations: Penalty.

- (1) It shall be unlawful to enter a building for which a secured building permit has been issued unless such person is the owner or the owner's duly authorized agent.
- (2) It shall be unlawful to remove secure material from a building for which a secured building permit has been issued.
- (3) It shall be unlawful to sell secure material, properly or appropriately stenciled or marked as such, which has been removed from a building for which a secure building permit has been issued and is currently in effect.
- (1) It shall be unlawful to purchase secure material which has been appropriately stenciled or marked, and which has been removed from a building for which a secured building permit has been issued and is currently in effect.
- (2) It shall be unlawful to seek the issuance of a secured building permit under false pretenses.
- (3) Any person who shall violate the terms and provisions of this code, including those activities specifically prohibited under this section, shall be deemed guilty of a misdemeanor and shall be subject to a fine as provided in section 3.04.008 of this article.

ARTICLE 3.05. FLOOD DAMAGE PREVENTION

§ 3.05.001. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND METHODS.

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

{b) Findings of facts.

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

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

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

(b) Methods of reducing flood losses. To accomplish its purposes, this article uses the following methods:

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

§ 3.05.002. Definitions.

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

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

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

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

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

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

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

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

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

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

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

the elevated portion of the building or supporting foundation system.

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

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

Elevated building. For insurance purposes, a no basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed

(including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured-home, park, or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed

(including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

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

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

Flood hazard boundary map. An official map of a community, issued by the administrator, where the boundaries of the flood, mudslides (i.e., mudflow) related erosion areas having special hazards have been designated as zones A, M, and/or E.

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

Flood insurance study. See flood elevation study..

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

Flood plain or flood prone area. Any land area susceptible to being inundated by water from any source (see definition of flooding).

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

Flood plains management regulations. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading

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

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

Flood way. See regulatory floodway. [sic]

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

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

Historic structure. Any structure that is:

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

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

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

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

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

Manufactured home, park, or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

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

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

Recreational vehicle. A vehicle which is:

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

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

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

Start of construction. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 9.348), includes substantial improvement and the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the

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

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

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

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred

"substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

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

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

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

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

§ 3.05.003. Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations. Violation of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$2,000.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

§ 3.05.004. General provisions.

- (a) Lands to which this article applies. The article shall apply to all areas of special flood hazard within the jurisdiction of the city.
- (b) Basis for establishing the areas of special flood hazard. The area of special floodplain hazard identified in exhibit A "City of Bogata, Red River County, Texas Floodplain mapping" map adopted by the city council on May 12, 2014, is hereby adopted by reference as a portion of the regulations of the city designed to minimize flood losses.
- (c) Establishment of Development Permit. A floodplain development permit shall be required to ensure conformance with the provisions of this article.
- (d) Compliance. No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this article and other applicable regulations.
- (e) Abrogation and greater restrictions. This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (f) In the interpretation and application of this article, all provisions shall be:
 - (1) Considered as minimum requirements.
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (g) Warning and disclaimer of liability. The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare

occasions greater floods can and will occur and heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damage. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this article, or any administrative decision lawfully made hereunder.

§ 3.05.005. ADMINISTRATION.

- (a) Designation of the floodplain administrator. The city secretary has hereby appointed the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program regulations) pertaining to floodplain management.
- (b) Duties and responsibilities of the floodplain administrator. Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:
 - (1) Maintain and hold open for public inspection all records pertaining to the provisions of this article.
 - (2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be safe from flooding. Development permits required by adoption of this article.
 - (3) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (4) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the floodplain administrator shall make the necessary interpretation.
- (5) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Water Development Board (TWDB) and the Texas Commission of Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (6) Assure that the flood carrying capacity within the altered or Relocated portion of any watercourse that is maintained.

(c) Permit procedures.

- (1) Application for a floodplain development permit shall be presented to the floodplain administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:*
- (2) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and improved structures.*
- (3) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed.*
- (4) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of section 3.05.006{b}{2}.*
- (5) Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development.*
- (6) Maintain a record of all such information in accordance with subsection {b}(1) of this section.*
- (7) When base flood elevation has not been provided in accordance with section **3.05.004(b)**, the floodplain administrator shall obtain, review, and utilize any base flood elevation data and floodway data available from a federal, state, or other source, in order to administer the provisions of section 3.05.006.*
- (8) Approval or denial of a floodplain development permit by the floodplain administrator shall be based on all the provisions of this article and the following relevant factors:*
 - (A) The danger to life and property is due to flooding or erosion damage.*
 - (B) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.*
 - (C) The danger that materials may be swept onto other lands to the injury of others.*
 - (D) The compatibility of the proposed use with existing and anticipated development.*
 - (E) The safety of access to the property in times of flood for ordinary and emergency vehicles.*
 - (F) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems.*
 - (G) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.*
 - (H) The necessity to the facility of a waterfront location, where applicable.*
 - (I) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.*

(3) Variance Procedures.

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

- (1) The appeal board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this article.
- (2) The appeal board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this article.
- (3) Any person or persons aggrieved by the decision of the appeal board may appeal such decision in the courts of competent authority.
- (4) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this article.
- (5) Variances may be issued for new construction and substantial improvements to be erected on a lot or one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection (c)(2) of this section have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors noted above and the intent of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article (section 3.05.001(c)).
- (7) Variances shall not be issued within any designated floodway if there is any increase in flood levels during the base flood discharge would result.
- (8) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (9) Prerequisites for granting variances:
 - (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon:
 - (i) Showing a good and sufficient cause.
 - (ii) A determination that failure to grant the variance would result in exceptional Hardship to the applicant, and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinance.
 - (c) The appeal board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this article. The appeal board shall

hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this provision. The structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

§ 3.05.006. Provisions for flood hazard reduction.

(a) General standards. *In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:*

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

(b) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection as proposed in section 3.05.005(c)(1)(A), is satisfied.

(1) Residential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to 2 feet above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(2) A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design methods of construction are in accordance with accepted standard of practice outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the floodplain administrator.

(3) Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(4) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.*
- (b) The bottom of all openings shall be no higher than 1-foot above grade.*
- (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices if they permit the automatic entry and exit of floodwaters.*

(5) Manufactured homes.

- (a) Require that all manufactured homes to be placed within zone A on a community's FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (b) Require that manufactured homes that are placed or improved within zones A1-30,
 - (i) Outside of a manufactured home park or subdivision.
 - (ii) In a newly manufactured home park or subdivision.
 - (iii) In an expansion to an existing manufactured home park or subdivision; or
 - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" because of a flood.
 - (v) Must be elevated on a permanent foundation such that the lowest floor of the manufactured home and is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (c) Require that manufactured homes be placed or improved on sites in an existing manufactured home park or subdivision with zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of subsection (b)(4) of this section be elevated so that either:
 - (i) The lowest floor of the manufactured home is at or above the base flood elevation; or
 - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches grade and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(6) Standards for subdivision proposals.

(a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with sections 3.05.001 (b), (c), and (d) of this article.

(b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet the floodplain development permit requirements of sections 3.05.004(c) and 3.05.005(c) and the provisions of this section.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not provided pursuant to section 3.05.004(b) or section 3.05.005(b)(S) of this article.

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

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

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

ARTICLE 3.06. SIGNS

§ 3.06.001. BILLBOARDS.

(a) Definitions.

Outdoor billboard advertising. A large sign, supported by a metal frame and consisting of a single sign or two parallel or parallel sign faces oriented in opposite directions, used for the display of posters or printed or painted advertisements that direct attention to goods, merchandise, entertainment, or services conducted, sold, or offered at a location other than the premises on which the sign is located.

- (b) Prohibition. No billboards as defined herein shall be constructed, created, positioned, installed, or maintained within the territorial limits of the city from the effective date of this section forward. (Excepted from this section are those billboards which have received licenses or permits and are currently in place as of the effective date of this section.)

(c) Penalty.

- (1) Any person, individual, or entity who knowingly or intentionally installs, erects, or maintains a billboard in the territorial limits of the city may, upon conviction, be fined not less than \$200.00 or more than \$1,000.00 per day per occurrence. A person, individual, or entity is presumed to act intentionally for purposes of this section if the billboard is constructed, purchased, designed, installed, or maintained at the direction of the person, individual or entity or if the person, individual, or entity contributed money in any manner to the billboard project.
- (2) The law of parties shall apply to this section, and any person, individual, or entity who solicits, aids, or encourages outdoor billboards or outdoor billboard advertising in violation of this section may be prosecuted under this section.

§ 3.06.002. POLITICAL SIGNAGE.

- (a) General regulations. This policy of the city is in addition to the guidelines and regulations established by the Texas Election Code, other applicable laws of the state, and any city ordinances regarding signage contained in this code.
- (b) Political sign. Parameters. If city hall has been designated as an early polling location and/or a polling location on election day, each candidate/proposition may erect one political sign no larger than 18" x 24" on wire stakes only, staked no deeper than six inches nor raised no higher than five feet above the natural grade. The signs must be unlighted with no moving parts and utilize wire stakes only (wooden stakes or steel stakes are not permitted). One sign in support for or against each proposition on the ballot may also be erected consistent with these parameters.
- (c) Location and Placement of sign. Signs may be placed in an area designated by the election official or the city secretary which customarily will be the grassy island adjacent Blackburn Street, at the northeast corner of the city hall parking lot. Political signs may not be placed outside this designated area, on any other city-owned property.
- (d) During early voting and/or on Election Day, signs may be placed two days prior to the beginning of early voting and may remain throughout Election Day. If city hall has been designated as a polling location on Election Day only, political signs may go up 24 hours prior to election. All political signs must be removed from city property within three days of Election Day.

- (e) During early voting and/or on Election Day, signs may be placed two days prior to the beginning of early voting and may remain throughout Election Day. If city hall has been designated as a polling location on Election Day only, political signs may go up 24 hours prior to election. All political signs must be removed from city property within three days of Election Day.
- (f) Timetable for sign placement for run-off elections. If city hall has been designated as a polling location during early voting for run-off election, signs may be placed two days prior to the start of the voting period. If city hall has been designated as a polling location for Election Day in a run-off election, signs may be placed 24 hours before run-off election day. All signs must be removed within three days following the run-off election day.
- (g) Prohibited. At all other times and on any other city-owned property which has not been designated as a polling location for either early voting, election day, or run-off election, the posting of political signs is prohibited.
- (h) Signs Placed in violation. Signs placed in violation of the above guidelines will be removed by staff of the city and held until after the election or until retrieved by the candidate, whichever is sooner. Signs not retrieved under these guidelines will be destroyed.

Chapter 4. Business Regulations

ARTICLE 4.01. GENERAL PROVISIONS

§ 4.01.001. Filing of state sales tax number.

- (a) *The city council has received notice that some businesses operating in the city had obtained water services of the city and had never reported to the city that they were collecting sales tax and failed to report to the state that said business was within the city limits, thereby depriving the city of some sales tax to which it is entitled.*
- (b) *Each applicant to the city for water services shall identify themselves by name and address and the purpose for which the water service is to be used. and those who are obtaining water service for commercial purposes shall furnish to the city their sales tax number issued by the state, and all of such information shall be furnished prior to the customer being permitted to use the city's water service. However, in the event of a proposed commercial establishment that does not yet have a sales tax number, thirty (30) days will be given to the city to furnish such sales tax number to the city after the water service is furnished, and in the event, it fails to furnish such number the water service will be forthwith discontinued.*

§ 4.01.002. (See Ordinance No. 98-13) Loitering in Chapter 9 of this document.

- (a) Posting of a "No Loitering" sign at public and private buildings.

§ 4.01.003. (See Ordinance No. 11-02) Use, possession or sale, of illegal smoking , or ingestion devices or products, or synthetic drugs in Chapter 9 of this document.

ARTICLE 4.03

VENDORS, CANVASSERS, DOOR-TO-DOOR SALES

DIVISION I

§ 4.03.001. Definitions.

In this article the following definitions apply.

Canvasser. A person who engages in canvassing activities.

Canvassing. The act of traveling either by foot or vehicle, going door-to-door, house-to-house, building-to-building; or occupying space in or traveling on or through any public place in the city; While personally contacting persons to communicate in any manner, whether orally, by written or printed materials including, but not limited to, handbills, leaflets, hand signing or by any other method, direct or implied, for any purpose other than selling or taking orders for goods, wares, merchandise, or services or collecting money.

Chief of police. The duly appointed chief of the city police department or designee.

City. The City of Bogata, Red River County, Texas.

City secretary. The city secretary or designee.

City-sponsored event. A special event for which the city has issued a permit other than a solicitor's permit or has otherwise authorized an event, and for which the city pays all or a portion of the costs of the event.

Curb. The line adjacent to the edge of the roadway which may be either a raised or lowered or a marked or unmarked surface.

Dark. The time of day identified by the United States Naval Observatory as being after the end of civil twilight on a particular day in the city.

Handbill. Any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any manner.

Itinerant vendor event. A planned, organized, and approved collection of what would otherwise be itinerant vendors sponsored by one single organization or approved by the city for a city-sponsored event which, in either case, last no more than 72 hours. This definition includes events sponsored or organized by a single organization (including a property owner in a retail business district) that involves one or more licensed mobile food service vendors commonly referred to as "food trucks" so long as the event sponsor has obtained a temporary vendor's permit with the city.

Minor. A person under the age of 18.

Nonprofit organization. An organization or entity that is exempt from the payment of tax pursuant to section 501(c)(3) of the Internal Revenue Code.

Permanent established business location. An established place of business at a definite address. operating in a permanent structure on a continuous basis. A post office box or similar designation is not a business location.

Permanent structure. A structure for which a certificate of occupancy has been issued, or which is otherwise occupied consistent with the ordinances and regulations of the city.

Public place. Any area to which the public is invited or in which the public is permitted. and includes. but is not limited to the parking lot of any commercial establishment. the right-of-way of any street or highway but does not include the offices or work areas of workplaces not entered by the public in the normal course of business.

Roadway. That portion of a street or highway designed, improved, or ordinarily used for vehicular travel, typically delineated by curbs, edge lines or the edge of the pavement.

Selling. To sell, dispense, peddle, hawk, display, offer to sell or solicit for sale by offering or exposing for sale any goods, wares, merchandise, or services.

Sidewalk. The portion of a street or highway that is between a curb or lateral line of a roadway and the adjacent property line and intended for pedestrian use.

Solicitation:

1. The act of:
 - (A) Traveling either by foot or vehicle, going door-to-door, house-to-house, building-to-building; or
 - (B) (B) Occupying space in or traveling on or through any public place in the city.
2. While personally contacting persons to ask, barter or communicate in any other manner, whether orally, by written or printed materials including but not limited to handbills or leaflets, hand signing or by any other method, direct or implied, for the purpose of:
 - (C) Selling or taking orders for goods, wares, merchandise, or services; or
 - (D) Collecting money for any purpose.
3. Does not include:
 - (A) Activity of salespersons with an appointment calling upon or dealing with manufacturers, wholesalers, distributors, brokers, or retailers at their place of business or homes and in the usual course of business.
 - (B) Activity approved in conjunction with a city-sponsored event.
 - (C) Activity conducted in conjunction with a residential yard or garage sale.
 - (D) Activity of a business conducted at the permanent established location of that business.
 - (E) Activity conducted on property not owned or under control of the city, with the consent of the owner or person in control of the property, and the activity is not conducted while traveling either by foot or vehicle from door-to-door, house-to-house, or building-to-building.

- (F) Activity for which an exclusive use permit has been issued pursuant to the city's zoning ordinance.
- (G) Activity conducted in connection with a mass gathering event consistent with the city's permit and/or zoning under ordinance; or
- (H) Activity conducted at a city park consistent with an agreement or permit with the city or in accordance with applicable park ordinances and policies.

Solicitor. Any person, whether a resident of the city or not, traveling by foot, wagon, motor vehicle or any type of convenience, from house to house or from street to street, or operating from a fixed location on or near a street or house not owned by that person, taking, or attempting to take orders for the sale of goods, wares or merchandise, subscriptions, or individual property of any nature whatsoever for future delivery, or services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of such merchandise, or whether the person is collecting advanced payments on sales or not; or whether the person is soliciting money or anything of value on behalf of the person, another person, or an entity, whether or not an exchange for goods, wares, merchandise, or services. Solicitors are classified as follows:

- (1) Itinerant. Any person, firm, or corporation who or which attempts to engage or engages in any temporary or transient business transaction in the city, either in one locality or location or while traveling in or from place to place conducting the sale of goods, wares, or merchandise. Itinerant vendors include those who conduct activities from leased or rented premises, building or other structures, motor vehicles, tents, cars, boats, public rooms, or any part thereof including but not limited to rooms and hotels, lodging houses, or homes of private individuals as well as those who transact business in any public road in the city for a period for less than one year, for the exhibition or sale of goods, wares, or merchandise. This definition includes principals, their agents, employees, and persons who are in partnerships. No person shall be exempt from the provisions of this article by reason of temporary association with the local dealer, trade, or merchant, or by reason of conducting a temporary or transient business in connection with or as a part of a local dealer or business in the name of that local dealer, trader, or merchant including an auctioneer.
- (2) Peddler. Any person who shall carry from place to place any goods, wares, or merchandise and offer to sell or barter the same or sell or barter the same, and includes all persons who do not keep a regular place of business, whether it be a house, vacant lot, or structure open always and regular business house. In addition, all persons who always keep a regular place of business open during regular business hours at the same location, but who shall elsewhere other than at the regular place of business personally or by agent offer to sell or sale goods, wares, and merchandise shall also be deemed a peddler for purposes of this article. This article shall not include any peddler who sells to licensed dealers or retailers only but only applies to persons who solicit orders as a separate transaction.

Solicitor's permit or permit. A permit issued by the chief of police allows a person to conduct solicitation activities within the city.

Street or highway. The width between the boundary lines of a publicly maintained way, any part of which is open to the public for vehicular traffic.

Structure. That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Youth projects. Involve an organization where the majority of memberships are minors, the organization is sponsored or representative of a recognized youth program within a 50-mile radius of the city; the solicitation efforts involve fundraising for nonprofit purposes, educational purposes, religious purposes, civic purposes, or charitable purposes, all proceeds collected from solicitation efforts including sales or delivery of product, are turned into the sponsoring youth organization; and the solicitation for the youth project is limited in time to not greater than sixty (60) days.

DIVISION 2

Solicitor's Permits, Exemptions and Bonds

§ 4.03.002. Permit required for solicitation.

- (a) A solicitor's permit is required for all solicitation activities defined in this article and shall be valid for one (1) year following the date of issuance unless a shorter period is requested by the applicant or designated by the city.
- (b) An applicant for a solicitor's permit shall pay a permit fee at the time the application is submitted. and if required, shall submit a bond. The amount of the solicitor's permit fee shall be set forth in the city's schedule of fees as approved by the city council.
- (c) A person commits an offense if the person engages in solicitation activities in the city without first obtaining a solicitor's permit from the chief of police.
- (d) Exceptions: The following activities are exceptions from the provisions of this article:
 - (1) Persons. including fanners or farmers· cooperative associations that sell, offer to sell. or solicit orders for items grown or produced by them and not purchased by them for sale or resale including but not limited to newspapers, firewood, vegetables. fruits.
 - (2) Persons participating in an itinerant vendor event where the sponsor of the event has obtained a permit consistent with this article, other applicable ordinances, and regulations of the city.
 - (3) Person soliciting on behalf of a candidate for public office or on behalf of political party.
 - (4) Agents for wholesale houses or firms who solicit orders from or sale to retail dealers in the city for resale or other commercial purposes to manufacture, build, repair structures or buildings.
 - (5) Yard sales conducted on residential zones property consistent with city rules and ordinances.
 - (6) Persons selling or offering goods for sale. or merchandise: or soliciting orders for the sale of goods or merchandise who qualify as a registered nonprofit organization under section 501c of the Internal Revenue Code; or which are organized and operated exclusively for nonprofit religious charitable education or civic purpose: or
 - (7) Verified youth projects.

§ 4.03.003. Solicitor's permit application.

- (a) A person or organization desiring to conduct solicitation activities within the city shall make a written application on a form provided by the city for a solicitor's permit. The application shall contain at a minimum the following information:
 - (1) The name. driver's license or state issued identification. date of birth. phone number and address of each person/organization applying for a permit.
 - (2) A valid state driver's license number or a state-approved identification card number with a photograph (the chief of police will make a photocopy and attach it to the application):
 - (3) A description of all vehicles to be utilized in the solicitation or canvassing. together with the license number and the vehicle identification number.

- (4) Except as provided by section 3(c), two photographs of the applicant, measuring at least 1.5" x 1.5" and showing the head and shoulders of the applicant in a clear and distinguishing manner, which shall have been taken within the preceding 60 days before filing the application.
- (5) Proof of possession of any license or permit which, under federal, state, or local laws or regulations, the applicant is required to have to conduct the proposed solicitation. Copies of all such licenses and permits shall be attached to the application.
- (6) **If** the applicant is:
 - (A) Employed by another, the name and physical street address (not a post office box) of the employer.
 - (B) Acting as an agent, the name, the physical street address (not a post office box), and telephone number of the principal being represented, with credentials in written form establishing the relationship and authority of the employees or agent to act for the employer or principal; or
 - (C) Acting as a volunteer, the name and physical street address (not a post office box) of the business or organization being represented must be provided.
- (7) The nature of solicitation activity (i.e.), the merchandise to be sold or offered for sale; or the nature of the services to be furnished; or the type of pamphlets or handbills to be distributed);
- (8) The approximate period within which the solicitation is to be made, stating the date of the beginning of the solicitation activity, its projected conclusion and the proposed dates and times of solicitation.
- (9) The names of all other cities in which the applicant has conducted solicitation activities in the past six months.
- (10) Whether the applicant, upon any sales or order obtained, will demand, accept, or receive payment or the deposit of money in advance of final delivery. and if so, the bond hereinafter described will be required.
- (11) If the applicant has plead guilty, or nolo contendere to, or has been convicted of a felony or misdemeanor involving fraud, deceit, misrepresentation, a sex offense, trafficking a controlled substance, or any act of violence against persons or property within five years preceding the date of application, a description of each such conviction or plea and the date of the offense.
- (12) **If** the applicant claims that the solicitation activity is to be conducted on behalf of a nonprofit organization, proof of such status shall be attached to the application.
- (13) If the applicant is an entity that sponsors or employs minors as solicitors and is submitting one application, the information is set forth in section 4.03.003(6).

§ 4.03.004. Solicitation by minors; applications.

- (a) A minor who conducts solicitation activities shall be sponsored or employed by a person over the age of 18, a corporation, company, or organization. The person, company, corporation, or organization that is sponsoring or employing the minor(s) is responsible for controlling the conduct of the minors.

- (b) Except as provided by subsection (d), a person, company, or organization that sponsors or employs one or more minors as solicitors may submit one solicitor's permit application and pay one permit fee for the registration of the minors regardless of the number of minors who conduct solicitation activities. The sponsor or employer shall provide the city the name(s), date(s) of birth, address(es) and driver's license number(s) (if applicable) of all minors that will be conducting solicitation activities.
- (c) A minor not required to apply must carry on their person while conducting solicitation activities:
 - (1) A copy of the approved solicitor's permit application obtained consistent with this article; and
 - (2) Identification that contains the name of the minor, the name of the sponsor or employer of the minor and phone contact information regarding the person, company or organization that is sponsoring the minor for solicitation purposes.
- (d) A minor 16 years of age or older that is sponsored or employed by another person, company, corporation, or organization consistent with this section, other than a nonprofit organization or youth project, shall submit an individual application to obtain a solicitation permit and pay an individual registration fee.

§ 4.03.005. Bond.

- (a) Solicitors who require cash deposits or advance payments for future delivery or who require an agreement to finance the sale of goods or services for future delivery, or for services to be performed in the future, shall furnish to the city a bond with the application in the amount determined in subsection (c) below, signed by the applicant and a surety company authorized to do business in the state, conditioned:
 - (1) Upon the final delivery of goods or services in accordance with the terms of any order obtained.
 - (2) To indemnify purchasers for defects in material or workmanship that may exist in the goods sold and that are discovered within 30 days after delivery; and
 - (3) For the use and benefit of persons, firms, or corporations that may make a purchase or give an order to the principal of the bond or to the agent or employee of the principal of the bond.
- (b) If the applicant is a person, firm, or corporation engaging in solicitation activities through one or more agents or employees, only one bond is required for the activities of all the agent or employee solicitors.
- (c) The amount of the bond is determined by the number of solicitors acting as agents or employees of the same person, firm, or corporation as follows:
 - (1) 1-3 solicitors: \$500.00.
 - (2) 4-6 solicitors: \$750.00.

(3) 7 or more solicitors: \$1,000.00.

§ 4.03.006. Issuance of solicitor's permit

- (a) The chief of police shall approve or deny the issuance of a permit upon an application and then provide a notice of this decision to the applicant either in person or by certified mail sent to the address shown on the application within 30 days following the receipt of the application. The permit shall be approved unless the chief of police finds one or more of the following to be true:
 - (1) The application for a solicitor's permit does not contain the information required by section 4.03.003.
 - (2) False or misleading statements are found to be included in the application for a solicitor's permit.
 - (3) The applicant, employer or principal is a person against whom a civil judgment based upon fraud, deceit, or misrepresentation has been entered within five years.
 - (4) Within five years preceding the date of the application, the applicant, employer, or principal has pleaded guilty or nolo contendere to, or has been convicted of, a felony, misdemeanor, or ordinance violation involving fraud, deceit, misrepresentation, a sex offense, trafficking a controlled substance, or any act of violence against persons or property.
 - (5) The applicant is a registered sex offender.
 - (6) Within the six months preceding the date of the application, the applicant has failed to comply with any rule, regulation or ordinance of another city or state concerning solicitation activity.
 - (7) The applicant has an outstanding warrant of arrest for any offense described in section 4.03.003(a)(1); or
 - (8) The type of solicitation activity requires a bond, and the applicant has not complied with the bond requirements in section 4.03.005.
- (b) If an application is denied, the reasons for denial shall be noted on the application.
- (c) Except as otherwise provided in this chapter, the chief of police shall issue to each approved permit holder a photo identification (ID) tag(s) consistent with article. The photo ID shall be worn constantly in a conspicuous place by the permit holder or other salesperson soliciting under a permit, while conducting solicitation activities in the city, and returned immediately to the chief of police upon cessation of solicitation.
- (d) A person commits an offense if:
 - (1) A person wears or displays a photo ID issued to another person.
 - (2) A person displays an expired photo ID or displays a photo ID of a person that has been revoked.
 - (3) Fails to return a photo ID to the chief of police within 24 hours of permit expiration or revocation.
 - (4) Uses or displays a forged, copied, photo ID tag, or a photo ID not issued by the chief of police.

An offense prosecuted under this section does not require proof of a culpable mental state.

§ 4.03.007. Revocation or suspension of solicitor's permit.

- (a) A permit may be revoked or suspended by the chief of police for any of the following reasons:
 - (1) The chief of police finds that any fact or event in section 4.03.035 has become true or apparent or has become true since the application was completed; or
 - (2) The solicitor conducts solicitation activities in violation of any provision of this article
- (b) Upon revocation, the chief of police shall immediately deliver written notice to the permit holder stating the action and the reasons supporting such action. A written notice shall be delivered in person or mailed by certified mail to the solicitor's address as shown on the application.
- (c) The chief of police shall have the authority to seize all permits, or photo identification tags possessed by persons conducting business as a solicitor while official notification process is underway. All solicitation activities being conducted consistent with the permit are suspended upon a decision to revoke the permit and all such activities under the authority of the revoked permit must cease.

§ 4.03.008. Appeals.

- (a) A person who is denied a solicitor's permit or whose permit is revoked or suspended by the chief of police may appeal the decision to the city secretary by filing a written notice of appeal with the chief of police within 15 days after the notice of revocation or suspension of a solicitation permit is delivered.
- (b) Within ten days of the receipt of the notice of appeal, the city secretary shall set a time and place for a hearing on the appeal which shall be not later than 30 days from the date of receipt of the notice of appeal.
- (c) Notice of the time and place of the hearing shall be delivered to the person by certified mail, sent to the address indicated on the application. Notice shall be sent within ten days of the receipt of the notice of appeal.
- (d) The decision of the city secretary on the appeal is final. There are no other administrative procedures provided by the city.

§ 4.03.009. through § 4.03.060. (Reserved)

DIVISION 3

Regulations

§ 4.03.061. Regulation of solicitors; generally.

- (a) A solicitor shall identify him or herself as a solicitor upon approaching a person at a residence or at any other location in the city and explain the purpose of the contact, including but not limited to direct sales, solicitation of orders or services, or the demonstration of merchandise, or any combination of such purposes. Failure to identify as a solicitor and/or to explain the purpose of the solicitation contact is an offense.
- (b) A person who utilizes any vehicle in conjunction of solicitation activities, shall post a sign located in a conspicuous place on the vehicle, in a position so that the sign may be read from bystanders who are located adjacent to the vehicle, identifying the name of the person, company or organization that the person represents. If the vehicle is being utilized by an individual person, the name of that individual followed by the word "solicitor" must appear on the sign. The lettering on the sign must be at least two and one-half inches in height. This provision, however, is satisfied if the vehicle being utilized by the solicitor (as reflected in the permit application) is painted/covered/wrapped, or otherwise contains signage indicating the company, solicitor, and a telephone contact number.
- (c) A solicitor who is permitted to solicit edible merchandise shall keep all articles for sale to the public in a clean and sanitary condition, as well as the wagons, vehicles, or other conveyances used in the transportation of such merchandise and shall meet all applicable federal, state, and local regulations.
- (d) A person commits an offense if that person sells or offers to sell any unsound or unwholesome merchandise or gives a false weight of measure to such offered for sale.

§ 4.03.062. Solicitation and canvassing in public right-of-way.

- (a) A person commits an offense if the person engages in solicitation or canvassing activity within the roadway, or on any median or traffic island within the right-of-way of any street or highway within the city.
- (b) A person commits an offense if the person engages in solicitation activity by a direct transaction or exchange with the occupant of any vehicle stopped or traveling on any public roadway, any street, any highway within the city. An offense in this section occurs when the offer, solicitation, or distribution is made regardless of whether or not the transaction is completed.
- (c) A person commits an offense if the person engages in solicitation or canvassing activity on a sidewalk within the city in a manner that impedes the flow of pedestrian traffic.
- (d) It is a defense to prosecution under subsections (a) or (b) above if the person engages in solicitation activity to operate a taxicab, mail carrier, vehicle for hire such as commercial servicing or repair of any disabled motor vehicle.

§ 4.03.063. Solicitation from a vehicle.

A person commits an offense if the person conducts solicitation activities from a vehicle and:

- (1) The solicitation is conducted at a location within the right-of-way of any street or highway within the city; or
- (2) The solicitor stops the vehicle within a roadway to conduct business before the vehicle has been approached, called, or waived down by a prospective customer.
- (3) A person commits an offense if the person operates a vehicle from which solicitation activities are conducted upon any street or highway within the city and the vehicle is not equipped with warning lights that are in actual operation, whether the vehicle is stopped or moving.
- (4) A person commits an offense if the person operates a vehicle from which solicitation activities are conducted upon any street or highway within the city in a manner that blocks or impedes access to or from any alley, street, or driveway, or impedes the flow of traffic on any public street or highway.

§ 4.03.064. Regulation of solicitors and canvassers.

- (a) A person commits an offense if the person engages in solicitation or canvassing activity at a residence:
 - (1) Before 9:00 a.m.; or
 - (2) After dark or 9:00 p.m., whichever is earlier on a given day.
- (b) A person commits an offense if the person engages in solicitation or canvassing activity at a premises with a posted notice that such activity is not welcomed or invited. It shall be presumed that there is notice that solicitation and canvassing activity is not welcomed or invited when there is exhibited in a conspicuous place on or near the main entrance of a premises, a sign, not less than one inch by three inches in size, containing the words "no solicitors," "no trespassing," or words of similar meaning.
- (c) A person commits an offense if the person engages in solicitation or canvassing activities in an aggressive or intimidating manner. The term "aggressive or intimidating manner" means:
 - (1) Blocking the path of a person who is the object of the activity.
 - (2) Following behind, ahead or alongside a person who walks away from the solicitor or canvasser after being solicited, approached, accosted, or offered a handbill, leaflet, or any other item; or
 - (3) Shouting, making any outcry, blowing a horn or whistle, or using any sound device, including any loudspeaker or sound amplifying system in violation of the city's noise ordinance for the purpose of attracting attention to one's location.

§ 4.03.065. through § 4.03.080. (Reserved)

DIVISION 4

Civil Remedies and Criminal Penalties

§ 4.03.081. Criminal.

Any person violating any provision of this article shall be guilty of a class C misdemeanor and may be punished upon conviction of a fine not to exceed \$500.00 per occurrence. A culpable mental state need not be alleged or proved in criminal prosecutions under this section. Each act in violation of this section is a separate offense and may be charged and prosecuted separately. Each act in violation of this section that occurs at separate locations, even though it was on the same date, is a separate offense and may be charged and prosecuted separately.

§ 4.03.082. Civil and injunctive.

In addition to any criminal penalties that may be imposed, the city may also seek remedies including injunctive relief, and restraining orders.

ARTICLE 4.04

TEMPORARY SALES

§ 4.04.001. Definitions.

Temporary sales. A sale or offer for sale, an exchange, or a barter of miscellaneous items to the general public in a garage or upon the driveway, patio, yard or in a residence upon residential property not otherwise being used for commercial purposes. At least 95% of the merchandise must have been previously owned and used by the person, firm or corporation holding the sale and should not include any items bought, exchanged, or bartered for resale at the sale. Sometimes it is also referred to as "garage sale," "backyard sale," "yard sale," or "porch sale."

§ 4.04.002. Offenses; penalty for violation.

- (a) A person commits an offense under this article if he fails to comply with any of the requirements of this article or other ordinances or laws of the city or the state.
- (b) A culpable mental state is not required for the commission of an offense under this article.
- (c) Any person found to be violating any term or provision of this article shall be subject to a fine as provided in section 1.01.009 of this code for each offense. Each day a violation continues shall constitute a separate offense.

§ 4.04.003. Limitations.

- (a) It shall be unlawful for any person, firm or corporation owning or occupying residentially zoned property within the city to hold or permit to be held on the same property more than four (4) temporary sales in any calendar year.
- (b) It shall likewise be unlawful for any person, firm, or corporation to hold or permit a temporary sale to be held for a duration more than three (3) consecutive calendar days.

§ 4.04.004. Signs.

Signs not exceeding four (4) square feet may be posted a maximum of two (2) days prior to the temporary sale being held. No signs shall be permitted on utility poles or public property, including street rights-of-way and easements. Signs shall be removed within twenty-four (24) hours following the last day of the sale.

ARTICLE 4.05. ALCOHOLIC BEVERAGES

(THE SALE OF ALCOHOLIC BEVERAGES IS PROHIBITED WITHIN THE CITY LIMITS AND THE "ETJ" {EXTRATERRITORIAL JURISDICTION} LIMITS OF THE CITY)

§ 4.05.001 DEFINITIONS

UNLESS OTHERWISE PROVIDED HEREIN, THE WORDS AND PHRASES USED IN THIS ARTICLE SHALL HAVE THE SAME MEANINGS AS ASCRIBED TO THEM BY THE TEXAS ALCOHOLIC BEVERAGE CODE.

§ 4.05.002. License or permit required; fee.

- (a) It shall be unlawful for any person to manufacture, brew, distill, sell, or distribute any wine, beer, liquor, or other alcoholic beverage within the city, or the ETJ, or engage in any other activity for which a license or permit is required by the Texas Alcoholic Beverage Code, without first obtaining a license or permit to do so from the city. The annual fee for each such license or permit shall be as set forth in the fee schedule assigned by the city. The fee shall be paid at the time of application and on the date such permit or license is renewed with the state thereafter.
- (b) It shall be unlawful for any person licensed to sell alcoholic beverages at retail, other than a manufacturer or distributor, to use or display a license or to exercise any privilege granted by a license except at the place, address, premises, and location for which the license is granted.

§ 4.05.003. Sale near church, school, hospital, day-care center, or child-care facility.

- (a) Definitions. For the purposes of this section, the following terms, phrases, words, and their derivations shall have the meaning prescribed to them in this section:

Alcoholic beverage means alcohol and any beverage containing more than one-half of one (1) percent of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted.

Child-care facility means a facility licensed, certified, or registered by the state department of family and protective services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the twenty-four-hour day, whether or not the facility is operated for profit or charges for the services it offers.

Day-care center means a child-care facility that provides [care] for more than twelve (12) children under fourteen (14) years of age for less than twenty-four (24) hours a day.

Dealer means any natural person or association of natural persons, trustee, receiver, partnership, corporation, or other organization holding a permit for the sale of alcoholic beverages or mixed beverages under the state Alcoholic Beverage Code and any manager, agent, servant, or employee of any of them.

Mixed beverage means one (1) or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, or the holder of a private club registration permit.

Private school means a private school, including a parochial school, that:

- (1) Offers a course of instruction for students in one (1) or more grades from kindergarten through grade twelve (12); and
 - (2) Has more than one hundred (100) students enrolled and attending courses at a specific location.
- (b) Prohibited locations. It shall be unlawful and an offense for any dealer within the corporate limits of the city to sell from a place of business an alcoholic beverage or mixed beverage within:
- (1) Three hundred (300) feet of any church, public or private school, public hospital, day-care center, or child-care facility; or
 - (2) One thousand (1,000) feet of a public or private school if the city council receives a request from the governing body of the public or private school.
- (c) Exceptions relating to day.-care centers and child-care facilities. The restrictions contained herein with respect to day-care centers and child-care facilities apply only to a permit or license holder under Texas Alcoholic Beverage Code, chapter 25 (wine and beer retailer's off-premises permit), chapter 28 (mixed beverage permit), chapter 32 (private club registration permit), chapter 69 (retail dealer's on-premises permit), or chapter 74 (brewpub license) who does not hold a food and beverage certificate. Said restrictions with respect to day-care centers and child-care facilities do not apply to a family home, specialized child-care home, or agency foster home as those terms are defined by section 42.002, Texas Human Resources Code. The restrictions herein with respect to day-care centers and child-care facilities do not apply to a permit or license holder under the Texas Alcoholic Beverage Code who sells alcoholic beverages if:
- (1) The permit or license holder and the day-care center or child-care facility are located on different stories of a multi-story building; or
 - (2) The permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multi-story building.
- (d) Distance measurements The measurement of the distance between such place of business where alcoholic beverages are sold and any church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections. The measurement of distance between such place of business where alcoholic beverages are sold and a public or private school, day-care or child-care facility shall be:
- (1) In a direct line from the property line of the public or private school or child-care facility to the property line of the place of business, and in a direct line across intersections; or

- (2) If the place of business where alcoholic beverages are sold is located on or above the fifth story of a multi-story building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the place of business where alcoholic beverages are sold is located.
- (e) Variances. The city council may allow variances to the distance regulations as stated herein if the city council determines that enforcement of such regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the city council, after consideration of the health, safety and welfare of the public and the equities of the situation, determines is in the best interest of the community.
- (f) Other exceptions.
- (1) Subsection **(b)(2)** does not apply to the holder of the following permits or licenses issued under the Texas Alcoholic Beverage Code:
- (A) A retail on-premises consumption permit or license if less than fifty (50) percent of the gross receipts for the premises is from the sale or service of alcoholic beverages;
 - (B) A retail off-premises consumption permit or license if less than fifty (50) percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages;
 - (C) A wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used or understood;
 - (D) A license or permit issued under chapter 27 (temporary and special wine and beer retailer's permits), chapter 31 (caterer's permit), or chapter 72 (temporary licenses) of the Alcoholic Beverage Code who is operating on the premises of a private school; or
 - (E) A license or permit covering premises where minors are prohibited from entering under section 109.53 of the Alcoholic Beverage Code and that are located within one thousand (1,000) feet of a private school.
- (2) Subsection **(b)(1)** does not apply to the holder of the following permits or licenses issued under the Texas Alcoholic Beverage Code:
- (A) A licensee or permittee who also holds a food and beverage certificate covering premises that are located within three hundred (300) feet of a private school; or
 - (B) A license or permit covering premises where minors are prohibited from entering under section 109.53 of the Alcoholic Beverage Code and that are located within three hundred (300) feet of a private school.
- (C) Applicability to existing businesses. Application to businesses in existence at the time of the effective date of this section which are holders of the following permits or licenses issued under the Texas Alcoholic Beverage Code:
- (3) A premises which has a valid alcoholic beverage permit or license as of the effective date of this section shall be deemed to satisfy the distance requirements set forth herein and for all subsequent renewals of the license or permit as well.
- (4) On the sale or transfer of the premises or the business on the premises in which a new original license or permit is required for the premises, the premises shall be deemed to

satisfy any distance requirements as if the issuance of the new original permit or license were a renewal of a previously held permit or license.

§ 4.05.004. Sale prohibited in residential areas.

The sale of alcoholic beverages is prohibited at any location that is within a residential zoning district, or an identified portion of a planned development district exclusively restricted to residential uses.

§ 4.05.005. Consumption and sale on city-owned property; extended hours.

- (a) As permitted in V.T.C.A., Alcoholic Beverage Code section 105.06, extended hours are hereby established within the corporate limits of the city.
- (b) The sale and consumption of any alcoholic beverage in any city-owned park, sports complex, recreational center, or other city-owned property within the corporate limits of the city is unlawful and is prohibited.

§ 4.05.006 Adult / Sexually Oriented Businesses

(PROHIBITED WITHIN THE CITY LIMITS / "ETJ" LIMITS OF THE CITY)

§ 4.05.007 Content

§ 4.05.008 Purpose and Intent

§ 4.05.009 Definitions

§ 4.05.010 Classifications

§ 4.05.011 License Required ; Identification Card Required and Issuance and Display
Of Such Card.

§ 4.05.012 Issuance of License

§ 4.05.013 Fees

§ 4.05.014 Inspection

§ 4.05.015 Expiration of license

§ 4.05.016 Suspension

§ 4.05.017 Revocation

§ 4.05.018 Appeal

§ 4.05.019 Transfer of License

§ 4.05.020 Location of Sexually Oriented Businesses

§ 4.05.021 Exemption from Location Restrictions

§ 4.05.022 Additional Regulations for Escort Agencies

§ 4.05.023 Additional Regulations for Nude Studio or Modeling Studio

§ 4.05.024 Additional Regulations for Adult Theaters and Adult Motion Picture Theaters

- § 4.05.025 Additional Regulations for Adult Motels
- § 4.05.026 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos
- § 4.05.027 Additional Regulations Pertaining to Visibility, Continuous Walls, and Illumination at All Sexually Oriented Businesses
- § 4.05.028 Additional Regulations Pertaining to Adult Cabarets
- § 4.05.029 Additional Regulations Where Alcoholic Beverages are Served, Consumed or Offered for Sale
- § 4.05.030 Display of Sexually Explicit Material to Minors
- § 4.05.031 Hours of Operation
- § 4.05.032 Exterior Portions of Sexually Oriented Businesses
- § 4.05.033 Sign Requirements
- § 4.05.034 Enforcement
- § 4.05.035 Injunction
- § 4.05.036 Amendment of this Article
- § 4.05.037 Providing for Governmental Immunity

§ 4.05.008 Purpose and Intent

1. The Texas Legislature has found that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public, health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this article to regulate sexually oriented businesses is to promote the health, safety, morals, and general welfare of the citizens of the city, to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city, to deter sexually related criminal activity occurring in and around sexually oriented businesses and to protect the health of patrons and employees of such businesses from sexually transmitted diseases. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
2. It is the Intent of the City Council that the locational regulations of Section 13 of this article are promulgated pursuant to V.T.C.A. Local Government Code Chapter 243 as they apply to a sex parlor, nude studio, modeling studio, lover parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other similar commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.
3. It is the intent of the City Council to protect and preserve the health, safety, and welfare of the patrons of "adult oriented establishments," as well as the health, safety, and welfare of the town's citizens. Statistics and studies performed by a substantial number of cities and towns in the United States and research reviewed by the Planning and Zoning Board and City Council indicate the following:
 - a. Large numbers of persons, primarily male, frequent such "adult oriented establishments", especially those which provide closed booths, cubicles, studios, and rooms for the private viewing of so-called "adult" motion pictures and/or video tapes and/or live entertainment; and
 - b. Such closed booths, cubicles, studios, and rooms have been used by patrons, clients, or customers of such "adult oriented establishments" for the purpose of engaging in certain sexual acts; and
 - c. Male and female prostitutes have been known to frequent such establishments in order to provide sex for hire to the patrons, clients, or customers of such establishments within such booths, cubicles and rooms; and
 - d. Doors, curtains, blinds and/or other closures installed in or on the entrances and/or exits are in use encourage patrons using such booths, cubicles, studios and rooms to engage in sexual acts therein with prostitutes and/or with other members of the same sex, thereby promoting and encouraging prostitution and the commission of sexual acts which cause blood, semen and urine to be deposited on the floor and/or walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits; and

e. Communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non-A Non-B amebiasis, salmonella infections and shigella infections; and

f. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by HIV in the United States; and

g. The U.S. Surgeon General in his October 22, 1986, report advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn; and

h. According to the best scientific evidence, AIDS, and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts; and

i. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities; and

j. A reasonable licensing scheme is an appropriate mechanism to know the true identity of the owners, operators and employees, their criminal background (since someone convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this article or other laws). identifies potential witnesses or suspects and by preventing minors from working in such establishments; and

k. That there is an increasing commercial exploitation of human sexuality by owners and operators of commercial establishments where alcoholic beverages are served or offered for sale or consumption on the premises, or where alcoholic beverages are permitted to be consumed;

l. That such exploitation takes place in the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other persons as an inducement to such other persons to purchase alcoholic beverages or to consume alcoholic beverages while on the premises;

m. Such exploitation is further often accompanied by serious and dangerous criminal activity, such as the possession or use of controlled substances, the proliferation of drug-related activity, prostitution, disorderly conduct, assaults, and the like;

n. That the direct result of such exploitation in the context of the location where *it* is permitted (i.e., where alcohol is served or consumed) threatens the preservation of property values of adjoining and adjacent properties and neighborhoods;

o. Communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non-A Non-B amebiasis, salmonella infections and shigella infections; and

p. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by HIV in the United States; and

q. The U.S. Surgeon General in his October 22, 1986, report advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn; and

r. According to the best scientific evidence, AIDS, and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts; and

s. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities; and

t. A reasonable licensing scheme is an appropriate mechanism to know the true identity of the owners, operators and employees, their criminal background (since someone convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this article or other laws). identifies potential witnesses or suspects and by preventing minors from working in such establishments; and

u. That there is an increasing commercial exploitation of human sexuality by owners and operators of commercial establishments where alcoholic beverages are served or offered for sale or consumption on the premises, or where alcoholic beverages are permitted to be consumed;

v. That such exploitation takes place in the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other persons as an inducement to such other persons to purchase alcoholic beverages or to consume alcoholic beverages while on the premises;

m. Such exploitation is further often accompanied by serious and dangerous criminal activity, such as the possession or use of controlled substances, the proliferation of drug-related activity, prostitution, disorderly conduct, assaults, and the like;

x. That the direct result of such exploitation in the context of the location where *it* is permitted (i.e., where alcohol is served or consumed) threatens the preservation of property values of adjoining and adjacent properties and neighborhoods;

y. That the direct result of such exploitation is the moral degradation and disturbances of the peace and good order of the community; and

z. Such commercial exploitation of such nude and semi-nude acts are adverse to the public's interest and the quality of life, tone of commerce, and total community environment in the city; and

aa. The hour restrictions on private clubs in Texas under the current Alcoholic Beverage Commission

were originally adopted to "safeguard the welfare, safety, and temperance of the people of Texas," and we hereby find that such hours when applied to sexually oriented businesses equally safeguard the welfare and safety of the citizens of the city; and

- bb. The important governmental interests of the prevention of crime and prevention of disease (such as the City of Chattanooga presented evidence of high crime and health risks which supported that city's adoption of City Code Section 11-435(d) as outlined in *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997)) are furthered by the prohibition of touching between the sexually oriented business employees and customers and when a six-foot buffer zone is established;
- cc. The reasonable regulation and supervision of such adult oriented establishments tends to discourage such sexual acts and prostitution, and thereby promotes the health, safety and welfare of the patrons, clients, and customers of such establishments.
- dd. The continued unregulated operation of adult oriented establishments including, without limitation, those specifically cited in this provision, is and would be detrimental to the general welfare, health, and safety of the citizens of the city.
- ee. The above findings raise substantial governmental concerns; and
- ff. Such reasonable regulations are within the powers granted to the city by the Constitution and Laws of the state in order to protect the public health, safety and welfare and have been enacted by this article without any intention of limiting or restricting the contents of any communicative materials or of denying or restricting the rights of any adult to obtain, view, distribute, exhibit, or sell any sexually oriented materials protected by the United States and/or State Constitution.
- gg. The place restrictions hereinafter in accordance with powers granted to the city by the Constitution and laws of the state including V.T.C.A. Local Government Code Chapter 243; such regulations will provide needed protection to the community from the adverse effects of sexually oriented businesses without depriving such businesses of adequate opportunities to locate within the city for this article satisfies City of Renton, Woodall and other case law for this article translates into 14.7% of the city being available to such businesses as reasonable alternative avenues of communication.
- hh. In order to reduce the secondary effects of sexually oriented businesses, regulation of signage is necessary to protect the health, safety, and welfare of the public.

§ 4.05.009 Definitions

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

(A.) ACHROMATIC means colorless or lacking in saturation or hue. The term includes, but is not limited to, grays, tans, and light earth tones. The term does not include white, black, or any bold coloration that attracts attention.

(B) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are

distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(C) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(D) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) Persons who appear in a state of *nudity*; or

(b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(5.) ADULT ENTERTAINMENT ENTERPRISE means a sexually oriented business. (6.)

ADULT MOTEL means a hotel, motel, or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(b) Offers a sleeping room for rent for a period of time that is less than 10 hours: or

(c) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

(7.) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(8.) ADULT TANNING SALONS means a business or commercial enterprise that, as one of its primary business purposes, furnishes, offers to furnish, or advertises to furnish anyone who appears in a state of nudity or displays "specified anatomical areas" for a fee, tip, or other consideration.

(9.) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

(10.) CHURCH means a facility, including all structures and grounds, at which persons regularly assemble for worship, intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

(11.) CUSTOMER means any person who: (a) is allowed to enter a sexually oriented businesses in return for the payment of an admission fee or any other form of consideration or gratuity; or (b) enters a sexually oriented businesses and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other **services** offered therein; or (c) is a member of and on the premises of a sexually oriented business operating as a private club.

(12.) EMPLOYEE means any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage, or other compensation by the operator of said business or who receives or has the expectation of receiving any compensation from the operator or customers of the business. By the way, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, and cashiers. It is expressly intended that these definitions cover not only conventional employer-employee relationships but also independent contractor relationships, agency relationships, and any other scheme or systems whereby the 'employee' has an expectation of receiving compensation, tips, or other benefits from the business or its customers in exchange for services performed. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for delivery of goods to the premises.

(13.) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie, garments, apparel, devices, or other such items or who agrees or offers to privately perform a striptease for another person.

(14.) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

(15.) ESTABLISHMENT means and includes any of the following:

(a) BUSINESS; The opening or commencement of any sexually oriented business as a new business;

- (b) The conversion of an existing business, whether or not a sexually oriented business, to
Any sexually oriented business;
- (c) The addition of sexually oriented business to any other existing sexually
oriented business;
- (d) The relocation of any sexually oriented business; or
- (e) A location and place of business.

(16.) HISTORIC DISTRICT means a historic overlay-zoning district as defined in the City of Bogata Code of Ordinances, as amended.

(17.) LICENSED DAY-CARE CENTER means a facility licensed by the state that provides care, training, education, custody, treatment, or supervision for children under 14 years of age, regardless of whether or not the facility is operated for a profit or charges for the service it offers.

(18.) LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

(19.) NUDE STUDIO or MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(20.) NUDITY or a STATE OF NUDITY means:

- (a) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
- (b) A state of dress which fails to cover a human buttock, anus, male genitals, female genitals, or areola of the female breast completely and opaquely.
- (c) This includes material that is painted or applied to the body, such as paint, liquid latex or employment of any device or covering intended to give the appearance of or simulate the parts of the body listed in (a) or (b).
- (d) This definition shall not include a mother in the act of nursing her child.

(21.) OPERATES OR CAUSES TO BE OPERATED means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

(22.) PARK means publicly owned or publicly leased tracts of land, designated, dedicated, controlled, maintained, and operated for use by the general public for active or passive recreational or leisure purposes by the city or any political subdivision of the state and containing improvements, pathways, access, or facilities intended for public recreational use. The term "public park" shall not include parkways, public roads, rights-of-ways, esplanades, traffic units, easements, or traffic

triangles unless such tracts or areas contain and provide improvements or access to a recreational or leisure use by the public.

(23.) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(24.) POLICE CHIEF means the Police Chief of the City of Bogata or his designated agent.

(25.) RESIDENTIAL DISTRICT means a Single Family, Patio Home Dwelling, Two Family, Multi-Family, Modular Dwelling, Mobile Home, or HUD Code Manufactured Home, Family Care Home, or Accessory Apartments zoning district as defined in the City of Bogata Code of Ordinances.

(26.) RESIDENTIAL USE means any use permitted by the City of Bogata Code of Ordinances in a residential district and shall include premises which contain habitable rooms for non-transient occupancy, and which are designed primarily for living, sleeping, cooking, and eating therein. A premises which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes.

(27.) SCHOOL means a facility, including but not limited to all playgrounds, dormitories, stadiums, grounds, structures, and other appurtenances that are part of the facility used for the primary purpose of instruction or education, including but not limited to public or private kindergarten, primary or secondary schools, colleges and universities, special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or grades one (1) through twelve (12) classes.

(28.) SEMI-NUDE means a state of dress in which clothing or other matter opaquely covers no more than buttocks, anus, male or female genitalia or areola of a female breast, as well as portions of the body covered by supporting straps or devices.

(29.) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude

(30.) SEXUALLY ORIENTED BUSINESS means an adult entertainment enterprise, adult theater, sexual encounter center, sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, adult cabaret, escort agency or other commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. The enterprises or activities described above shall be subject to regulation under this order at any location at which they may occur, whether conducted within a building, a temporary enclosure or outdoors. Under this definition, a "sexually oriented business" does not include:

(a) A business operated by and employing or contracting with a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under a state license; or,

(b) A business operated by and employing or contracting with a licensed tattooist or tanning shop operator engaged in performing functions authorized under a state license for a tattoo parlor or tanning salon; or,

(c) A business operated by and employing or contracting with a state licensed physician or licensed chiropractor engaged in practicing the healing arts; or,

(d) A business operated by and employing or contracting with a state licensed massage therapist who practices or offers massage engaged in performing the functions authorized by the license; or,

(e) A school, which is accredited or certified by a national academic accreditation organization, and which maintains an educational program training persons the necessary skills and knowledge to obtain a state issued license as a psychologist, physical therapist, athletic trainer, cosmetologist, tattooist, artist, barber, physician, chiropractor, or massage therapist.

(f) A person appearing nude in a modeling class, (i) in operated by a proprietary school licensed by the state a college, junior college, or university supported entirely or partly by taxation; or by a private college or university or junior college which maintains and operates educational programs in which credits earned are transferable to a college, junior college, or university supported entirely or partly by taxation; (ii) in a structure which has no sign visible from the exterior of the structure advertising that a nude person is available for viewing; and (iii) in order to participate in the class a student must enroll at least three days prior to the class; and (iv) where there is no more than one nude model on the premises at any one time.

(g) Any activity, business, presentation, expression, material, film, video tape, photographic slide, CD-ROM disk, floppy diskette, book, or device, which when taken as a whole has or contains serious literary, artistic, political, or scientific value. For the purposes of determining whether a commercial activity is a "sexually oriented business" under this chapter, the relevant inquiry shall be as to the nature of the primary business at the premises. Therefore it is immaterial and irrelevant that: some ancillary activity may occur as an incident to the otherwise adult activity, such as but not limited to, tanning, garment modeling, exercise, massage, or other simultaneously or in conjunction with one of the activities expressly identified hereinabove as constituting an "Sexually Oriented Business" if, the activity taken as a whole appeals to the prurient interest in sex and is intended to sexually stimulate or sexually gratify any person, notwithstanding the presence of the ancillary activity; or, any particular word or term is or is not associated with or utilized in the name or description of an enterprise or establishment, including but not limited to the words: spa, sauna, center, studio, parlor, theater, cabaret, club, review, shop, gymnasium, pool hall, salon, store, lounge, arcade, service, agency, or company.

(31.) SPECIFIED ANATOMICAL AREAS means human genitals in a state of sexual arousal, whether clothed or nude.

(32.) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether clothed or nude;

(b) Sex acts, normal or perverted, actual, or simulated, including intercourse, oral copulation, or sodomy;

(c) Masturbation, actual or simulated; or

(d) Excretory functions as part of or in connection with any activities set forth in

(a) through (c) above.

(33.) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means an increase in floor area occupied by the business by more than 25 percent.

(34.) TOPLESS means a female clothed in a manner that simulates, or leaves uncovered or visible through less than fully opaque clothing any portion of the breasts or areola.

(35.)• TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, gift, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

- (d) The sale, lease, or sublease of the business;
- (e) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, gift, or similar means; or
- (f) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 4.05.010 Classifications

Sexually oriented businesses are classified as follows:

1. Adult arcades or adult movie arcades;
2. Adult bookstores, adult video stores, or adult paraphernalia stores;
3. Adult cabarets;
4. Adult motels
5. Adult motion picture theaters;
6. Adult theaters;
7. Escort agencies and escorts;
8. Nude studios, nude modeling studios, or sexually oriented modeling studios, or
9. Sexual encounter centers.

§ 4.05.011 License Required; Identification Card Required and Issuance and Display of Such Card

1. A person commits an offense if he operates a sexually oriented business without a valid license, issued by the city for the particular type of business. A separate application and permit shall be required for each such business.
2. An application for a license must be made on a form provided by the Police Chief. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 20 of this chapter shall submit a diagram meeting the requirements of Section 20.
3. The applicant must be qualified according to the provisions of this article, and the premises must be in compliance with the law by the building official.

4. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

5. An applicant shall be required to give the following information on the application form:

(a) The legal name and any other names {including all aliases and "stage names"} used by the intended operator{s} and the owners; street address and mailing address {if different} and driver's license number of the intended operator(s) and the owners;

(b) and name under which the enterprise is to be operated and a general description of the services to provided;

(c) The telephone number of the sexually oriented business;

(d). The address and legal description of the tract of land on which the sexually oriented business. is to be located;

(e) If the sexually oriented business is in operation, the date on which the owner(s) acquired the sexually oriented business for which the permit is sought, and the date on which the sexually oriented business began operations as *ai* sexually oriented business at the location for which the permit is sought,

(f) If the sexually oriented business is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten (10} days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the unexpected delay and a statement of the owner's time schedule and plan for accomplishing the same;

(c) The application shall be accompanied bythe following:

i. Each of the applicant's residential addresses for the three (3) years immediately preceding the date of the application, indicating the dates of each residence, and including the present address and telephone number of the applicant;

(ii) The applicant's business, occupation, and employment history for the three (3) years immediately preceding the date of application, indicating the applicable dates and addresses;

(iii) Documentation that the applicant is at least eighteen (1 8) years of age;

(iv) The applicant's height, eye color and natural hair color;

(v) Two photographs of the applicant taken at the time ofthe application;

(vi) The applicant's criminal history, which shall consist of a statement of any and all criminal convictions. The term criminal convictions encompasses a defendant adjudged guilty of the offense charged. The term also encompasses a defendant

who has entered a plea of guilty or nolo contendere to the offense in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated. The term shall not include Class C misdemeanor traffic violations.

vii. Fingerprints of the applicant taken and maintained by the Police Department for the purpose of establishing identification;

viii. A copy of the applicant's valid driver's license or Texas Department of Transportation identification card.

ix. Other Identification and information as determined by the Police Chief to be necessary in order to confirm the validity of information provided in the application;

x. A mailing address where the applicant can be reliably contacted.

xi. A certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Revised Civil Statutes, Annotated, Business and Commerce Code, Chapter 36) if the sexually oriented business is to be operated under an assumed name;

xii. If the sexually oriented business is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto, and residential addresses of all current officers and directors;

xiii. If the sexually oriented business is a foreign corporation, a certified copy of the articles of incorporation, together with all amendments thereto, and residential addresses of all current officers and directors;

xiv. If the sexually oriented business is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed with the Secretary of State, and residential addresses of all general and limited partners;

xv. If the sexually oriented business is a general partnership, the names, and residential addresses of each of the partners.

xvi. A joint venture or other similar entity shall provide the names and residential addresses of the participants and their valid driver's license numbers or Texas Department of Transportation identification card numbers, if any participant is a corporation or partnership, the applicable information required above shall be provided.

xvii. Proof of the current fee ownership of the tract of land on which the sexually oriented business is to be situated in the form of the recorded deed;

xviii. If the person identified as the fee owner(s) of the tract of land in subsection (d) above are not also the owners of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business for the purpose of the operation of the sexually oriented business;

xix. A Department of Public Safety (DPS) background check on the applicant. A statement under oath that the applicant has personal knowledge of information contained in the application and that the information contained therein and furnished therewith is true and correct and that the applicant has read and understands the provisions of this article and that the applicant authorizes the Police Chief to seek such information from any third party or entity required to confirm any statement set forth in the application.

6. The applicant must state on the application for a license which single type of sexually oriented business, as listed in Section 3, the applicant will be operating. Operating any other type of Sexually Oriented Business at this location is a violation according to the provisions of this chapter.

7. A person who operates a sexually oriented business, as listed in Section 3, or his agent or employee, commits an offense if he operates this business without maintaining on site at the sexually oriented business, a current roster of all employees along with a copy of a completed, updated identification card application for each employee; each application must have been approved by the Police Chief and on file with the city. Said roster shall be kept in a bound book of pages; the binding may be of glue, cloth, staples, wire spiral, or loose-leaf pages in a ring binder. The roster shall be available for inspection by representatives of the health, fire, police, and code

maintain an accurate roster, or to fail or refuse to produce it for inspection upon verbal request by one authorized to inspect the premises.

8. A person who operates a sexually oriented business, as listed in Section 3, or his agent or employee, commits an offense if he operates this business without maintaining on site at the sexually oriented .business, a current roster of all employees along with a copy of a completed, updated identification card application for each employee; each application must have been approved by the Police Chief and on file with the city. Said roster shall be kept in a bound book of pages; the binding may be of glue, cloth, staples, wire spiral, or loose-leaf pages in a ring binder. The roster shall be available for inspection by representatives of the health, fire, police, and code or building inspections department in the course of any inspection of the premises. It is an offense to fail or refuse to have and maintain an accurate roster, or to fail or refuse to produce it for inspection upon verbal request by one authorized to inspect the premises.

(a) The employee's full legal name (including all aliases and "stage names"}. Each of the employee's residential addresses for the three (3) years immediately preceding the date of the identification card application, indicating the dates of each residence, and including the present address and telephone number of the employee;

{b} The employee's business, occupation, and employment history for the three (3) years immediately preceding the date of the identification card application, indicating the applicable dates and addresses;

{c} Documentation that the employee is at least eighteen (18) years of age;

{d} The employee's height, eye color and natural hair color;

{e} Two photographs of the employee taken at the time of the application;

{f} The employee's criminal history, which shall consist of a statement of any and all criminal convictions. The term criminal convictions encompasses a defendant adjudged guilty of the offense charged. The term also encompasses a defendant who has entered a plea of guilty or nolo contendere to the offense in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated. The term shall not include Class C misdemeanor traffic violations.

{g} Fingerprints of the employee taken and maintained by the Police Department for the purpose of establishing identification;

{h} A copy of the employee's valid driver's license or Texas Department of Transportation identification card;

{i} Other identification and information as determined by the Police Chief to be necessary in order to confirm the validity of Information provided in the application;

{j} A mailing address where the employee can be reliably contacted.

(k) A Department of Public Safety (DPS) background check on the employee.

9. Any potential employee who has been convicted of the offenses listed under Subsection 5(1)(i) below, and for which the requisite period of time as provided under Subsection 5(2.) below has not been met, shall not be issued an identification card to work at a sexually oriented business.

10. Application forms will be provided by the Police Chief, and the determination of compliance must be made by the Police Chief within thirty (30) days from the date the application was filed with the city. The identification card will be issued, and the application is placed on file with the city unless the Police Chief finds the potential employee is in violation of any applicable provisions contained in this article. The Police Chief, upon approving issuance of an identification card, shall send to the applicant, by certified mail, return receipt requested. written notice of that action and state where the applicant must pay the fee and obtain the identification card. The Police Chiefs approval of the issuance of an identification card does not authorize the applicant to work as an employee at a sexually oriented business until the applicant has paid all fees required by this article, obtained possession of the identification card, and delivered a true and correct copy of the applicant's identification card application to each sexually oriented business at which the applicant is an employee. The identification card, if granted, must state on its face the name and age of the person to whom it is granted, the expiration date, and include a photo identification of the person to whom it is granted. An identification card shall expire one (1) year from the date of issuance and may be renewed only by filing an application in compliance with this subsection. The request for renewal must be made at least thirty (30) days before the expiration of the identification card. When made less than thirty (30) days before the expiration date, the expiration of the identification card will not be stayed. An identification card may be suspended, revoked, and appealed in accordance with the procedures and standards of Subsections 9, 10, and 11.

11. No person may work for any sexually oriented business without having on his or her person at all times while at work an identification card issued by the Police Chief in Section 4(8) showing that he or she is currently licensed. Such identification card shall be available at all times for inspection and shall be worn on the left breast of said employee during working periods. An employee shall not transfer his or her identification card to another person. While on the premises of a sexually oriented business, no one is allowed to wear another employee's identification card.

§ 4.05.012 Issuance of License

1. The Police Chief shall approve the issuance of a license by the Mayor to an applicant within 30 days after receipt of an application unless the chief of police finds one or more of the following to be true:

- (a) An applicant is under 18 years of age;
- (b) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon an applicant's spouse in relation to a sexually oriented business;
- (c) An applicant has failed to provide information necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (d) An applicant or an applicant's spouse has been convicted of a violation of a provision of this chapter, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application;
- (e) No fee required by this chapter has been paid;
- (f) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;
- (g) An applicant or the proposed establishment is in violation of or is not in compliance with any section of this article;
- (h) The premises to be used for the sexually oriented business have not been approved by the building official as being in compliance with applicable laws and ordinances;
- (i) An applicant or an applicant's spouse has been convicted of a crime:
 - 1. involving any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i.) prostitution;
 - (ii.) promotion of prostitution;
 - (iii.) aggravated promotion of prostitution;
 - (iv.) compelling prostitution;
 - (v.) obscenity;
 - (vi.) sale, distribution, or display of harmful material to minors,
 - (vii.) sexual performance by a child;
 - (viii.) possession or promotion of child pornography.

2. Any of the following offenses as described in Chapter 21 of the Texas Penal Code.
 - (i) public lewdness;
 - (ii) indecent exposure;
 - (iii) indecency with a child;
3. Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
4. Prohibited sexual conduct, enticing of a child, harboring a runaway child, or sale or purchase of a child as in Chapter 25 of the Texas Penal Code;
5. Harboring a runaway child, or sale or purchase of a
6. Kidnapping or aggravated kidnapping as described in Chapter 20 of the Texas Penal Code;
7. Robbery or aggravated robbery as described in Chapter 29 of the Texas Penal Code;
8. A bribery or retaliation as described in Chapter 36 of the Texas Penal Code;
9. A violation of the Texas Controlled Substances Act or Dangerous Drugs Act punishable as a felony, Class A misdemeanor, or Class B misdemeanor;
10. Engaging in organized criminal activity as described in Chapter 71 of the Texas Penal Code;
11. Gambling as described in Chapter 47 of the Texas Penal Code.
12. Forgery as described in Chapter 32 of the Texas Penal Code;
13. Money Laundering as described in Chapter 34 of the Texas Penal Code;
14. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

for which:

- A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- B. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- C. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

1. The fact that a conviction is being appealed has no effect on the disqualification of the applicant or applicant's spouse under Section 5(1).

2. An applicant who has been convicted or whose spouse has been convicted of an offense listed in Section 5(1)(h)(1) may qualify for a sexually oriented business license only when the time period required by Section E(1)(h)(2) has elapsed.

3. The Police Chief, upon approving issuance of a sexually oriented business license, shall send to the applicant, by certified mail, return receipt requested, written notice of that action and state where the applicant must pay the license fee and obtain the license. The Police Chiefs approval of the issuance of a license does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this chapter and obtained possession of the license.

4. The license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license must be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

5. The license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license must be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

6. Next to the license a sign at least twenty-four (24) inches square bearing red letters a minimum of two (2) inches high on a white background shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time providing the following notice: "Indecent exposure, prostitution, public lewdness, and other such acts are illegal on these premises. These laws are strictly enforced, and violators will be prosecuted to the full extent of the law."

§ 4.05.013 Fees

1. The annual fee for a sexually oriented business license is \$5,000.00, which shall be divided into quarterly payments. A quarter shall be a calendar quarter, dividing the year into three (3) month increments, beginning with

January, February, and March as the first quarter. Each quarterly payment shall be for one thousand two hundred and fifty dollars (\$1,250.00), and this payment shall be made with the application submitted prior to operating the sexually oriented business for that quarter. For subsequent quarters, the applicant must resubmit the abbreviated application form, to be provided by the city, at least thirty (30) days before the expiration date of the quarter in which the business is operating. An application shall not be considered to have been filed until the fee is paid and all information required by the application form has been submitted. An inspection under Section 7 shall occur after the filing of the abbreviated application form. The fee of one thousand two hundred and fifty dollars (\$1,250.00) shall be due regardless of the time of commencement of operations within a given quarter. There shall be no prorating of the required fee for a sexually oriented business that begins operations within a quarterly period.

2. In addition to the fees required by Section (1) above, an applicant for an initial sexually oriented business license shall, at the time of making application, pay a non-refundable fee of

\$250.00 for the city to conduct a survey to ensure that the proposed sexually oriented business is in compliance with the locational restrictions set out under Section 13 of this chapter.

3. The annual fee for an identification card is one-hundred dollars (\$100.00) and shall be paid upon issuance of the identification card under Section 4(8).

§ 4.05.014 Inspection

1. An application or licensee shall permit representatives of the Police Department, Health Department, Fire Department, and Building Inspection Division to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

2. A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the Police Department, Health Department, Fire Department, or Building Inspection Division at any time it is occupied or open for business.

3. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as permanent or temporary habitation.

§ 4.05.015 Expiration of License

Each License expires (1) year from the date of issuance, unless suspended or revoked pursuant to this article, except that a license issued pursuant to a locational restriction exemption expires on the date the exemption expires. A license may be renewed only by making application as provided in Section 4 and compliance with Section 6. Application for renewal should be made at least 30 days before the expiration date. The expiration of the License will not be affected by the pendency of the application.

§ 4.05.016 Suspension

The Police Chief shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

1. Violated or is not in compliance with any section of this article;
2. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
3. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;
4. Knowingly permitted gambling by any person on the sexually oriented business premises;
5. Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by a law enforcement officer.

§ 4.05.017 Revocation

1. The Police Chief shall revoke a license if a cause of suspension in Section 9 occurs, and the license has been suspended within the preceding 12 months.
2. The Police Chief shall revoke a license if the Police Chief determines that:

3. A licensee gave false or misleading information in the material submitted to the Police Chief during the application process;

(a) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(b) A licensee or an employee has knowingly allowed prostitution on the premises;

(c) A licensee or an employee operated the sexually oriented business during a period of time when the licensee's license was suspended;

(d) A licensee has been convicted of an offense listed in Section 5(l)(h)(1) for which the time period required in Section 5(1)(h)(2) has not elapsed;

(e) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in front of the licensed premises of a crime listed in Section 5(1)(h)(1) for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

(f) A licensee or any employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in § 21.01, Texas Penal Code; or

(g) A licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.

4. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

5. Subsection (2)(g) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

6. When the Police Chief revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the Police Chief finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (2)(e), an applicant may not be granted another license until the appropriate number of years required under Section 50(h)(2) has elapsed.

§ 4.05.018 Appeal

If the Police Chief denies the issuance or renewal of a license, or suspends or revokes a license, the Police Chief shall send to the applicant or licensee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or licensee whose application for a license or license renewal has been denied

or whose license has been suspended or revoked has the right to appeal to the state district court. An appeal to the state district court must be filed within 30 days after the receipt of notice of the decision of the Police Chief. The applicant or licensee shall bear the burden of proof in court.

§ 4.05.019 Transfer of License

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application

§ 4.05.020 Location of Sexually Oriented Businesses

1. A person commits an offense if he operates or causes a sexually oriented business to be operated within 2,000 feet of:
 - a. a church;
 - b. a school;
 - c. a boundary of a residential or historic district as defined in this chapter;
 - d. a public park;
 - e. the property line of a lot devoted to a residential use as defined in this chapter;
 - f. a hospital; or
 - g. licensed day-care.
2. A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or if he causes or permits the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

§ 4.05.021 Exemption from Location Restrictions

1. If the Police Chief denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 13 of this chapter, then the applicant may, not later than 10 calendar days after receiving notice of the denial, file with the city secretary a written request for an exemption from the locational restrictions of Section 13.
2. If the written request is filed with the city secretary within the 10-day limit, a permit and license appeal board, selected pursuant to ordinance by the City Council, shall consider the request. The city secretary shall set a date for the hearing within 60 days from the date the written request is received.
3. A hearing by the board may proceed if at least two of the board members are present. The Board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.
4. The permit and license appeal board may, in its discretion, grant an exemption from the locational restrictions of Section 13 if it makes the following findings:
 - (a) That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

(b) That the granting of the exemption will not violate the spirit and intent of this chapter of the city code;

(c) That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(d) That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation, nor will it interfere with any effort of urban renewal or restoration; and

(e) That all other applicable provisions of this chapter will be observed.

5. The Board shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the Board is final.

6. If the Board grants the exemption, the exemption is valid for one year from the date of the Board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 13 until the applicant applies for and receives another exemption.

7. If the Board denies the exemption, the applicant may not re-apply for an exemption until at least 12 months have elapsed since the date of the Board's action.
8. The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Section 13.

§ 4.05.022 Additional Regulations for Escort Agencies

1. An escort agency shall not employ any person under the age of 18 years.
2. A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of 18 years.

§ 4.05.023 Additional Regulations for Nude Studio or Modeling Studio

1. A nude studio or modeling studio shall not employ any person under the age of 18 years.
 2. A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude studio or modeling studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.
 3. A person commits an offense if he/she appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude studio or modeling studio premises which can be viewed from the public right of way.
 4. An employee of a nude studio or modeling studio, while exposing any specified anatomical areas, commits an offense if the employee touches a customer or the clothing of a customer.
 5. A customer at a nude studio or modeling studio commits an offense if he touches an employee who is exposing any specified anatomical areas or touches the clothing of the employee.
 6. A licensee or an employee of a nude studio or modeling studio commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk-through of the premises without entering a closed area, excluding a restroom.
 7. A nude studio or modeling studio shall not place or permit a bed, sofa, mattress, or futon in any room on the premises, except that a sofa may be placed in a reception room open to the public.
1. A licensee or an employee of a nude studio or modeling studio commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk-through of the premises without entering a closed area, excluding a restroom.

2. A nude studio or modeling studio shall not place or permit a bed, sofa, mattress, or futon in any room on the premises, except that a sofa may be placed in a reception room open to the public.

§ 4.05.024 Additional Regulations for Adult Theaters and Adult Motion Picture Theaters

1. A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
2. A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
3. It is a defense to prosecution under subsections (1.) and (2.) of this section if the person under 18 years was in a restroom not open to public view or persons of a different sex.

§ 4.05.025 Additional Regulations for Adult Motels

1. Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
2. A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or sub rents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents, or sub rents the same sleeping room again.
3. For purposes of division (2.) of this section, the terms "rent" or "sub rent" mean the act of permitting a room to be occupied for any form of consideration.

§ 4.05.026 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos

1. A person who operates or causes a sexually oriented business to be operated as a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
 - a. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted.

A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Police Chief may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. It is the duty of the owners / operators to ensure that at least one employee is on duty in each managers station at all times that any patron is present inside the premises.
3. The application shall be sworn to be true and correct by the applicant.
4. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Police Chief or his designee.
 - a. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
 - b. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in subsection (e.) above remains unobstructed by any doors, walls, curtains, partitions or any other opaque coverings, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection {a.} above.
 - c. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than (5.0) foot candle as measured at the floor level.
 - d. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
 - e. A person having a duty under Subsections {a.} through (h.) of division (1.) above commits an offense if he knowingly fails to fulfill that duty.

§ 4.05.027 Additional Regulations Pertaining to Visibility, Continuous Walls, and Illumination at All Sexually Oriented Businesses

1. Every sexually oriented business shall be physically arranged in a manner that the entire interior portion of any areas into which patrons are permitted access (including all booths, cubicles, rooms and stalls except adult motel rooms and toilet facilities) shall be clearly visible from the common areas of the premises and the visibility into such areas shall not be blocked or obscured by doors, screens, curtains, partitions, drapes, merchandise, display racks, other materials, or any other opaque obstruction whatsoever.
2. All interior walls, partitions, or other dividers of any areas into which patrons are allowed access (including all booths, cubicles, rooms and stalls except adult motel rooms and toilet facilities) shall be continuous from the floor to four (4) feet high with no apertures, holes, or other openings. This provision shall not apply to conduits for plumbing, heating, air conditioning, ventilation, or electrical service, provided that conduits shall be so screened or otherwise configured as to prevent their use as openings that would permit any portion of a human body to penetrate the wall or barrier separating viewing areas.
3. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of all interior walls, partitions, or other dividers of any areas into which patrons are allowed access and designating any area into which patrons will not be permitted. A professionally prepared diagram in the nature of an engineer architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Police Chief may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. The application shall be sworn to be true and correct by the applicant. No alteration in the configuration or location of an interior wall, partition or other divider may be made without the prior approval of the Police Chief or his designee
4. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in subsection (1.) remains unobstructed by any doors, walls, curtains, partitions, any other opaque coverings, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (3.) above. It shall be the duty of the operators and owners, and it shall also be the duty of any agents and employees present to ensure that the premises is monitored to assure that no openings are allowed to exist in violation of subsection (2.), above, and to ensure that no patron is allowed access to any portion of the premises where any opening exists in violation of subsection (2.), above, until the opening has been repaired.

It shall be unlawful for any owner, operator or manager of any enterprise to permit any employee to provide any entertainment to any customer in any separate area (any portion of the interior of a sexually oriented business which is separated from any other portion of the same business by any wall, partition or other divider) within an enterprise to which entry or access is blocked or obscured by any door, curtain or other barrier, regardless of whether entry to such separate area is by invitation, admission fee, club membership fee or any form of gratuity or consideration. The premises of the view area specified in subsection (1.) shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candle as measured at the floor level. The parking lot of every sexually oriented business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candle as measured at the ground level.

5. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

6. A person having a duty under subsections (1.) through (6.) of this provision commits an offense if he/she knowingly fails to fulfill that duty.

7. Every act or omission by an employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

8. An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this article.

§ 4.05.028 Additional Regulations Pertaining to Adult Cabarets

1. An employee of an adult cabaret, while appearing in a state of nudity, commits an offense if he touches a customer or the clothing of a customer.

2. A customer at an adult cabaret commits an offense if he touches an employee who is appearing in a state of nudity or clothing of the employee.

3. Any dance, performance, exhibition or show by an employee of an adult cabaret, while appearing in a state of nudity or seminude, shall occur on a platform which is raised at least two (2) feet from the level of the floor and the employee, while in the state of nudity or seminude, shall be at least six (6) feet from any customer.

4. A licensee or an employee of an adult cabaret commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk-through of the premises without entering a closed area, excluding a restroom.

5. An employee of an adult cabaret, while appearing in a state of nudity, commits an offense if he touches a customer or the clothing of a customer.
6. A customer at an adult cabaret commits an offense if he touches an employee who is appearing in a state of nudity or clothing of the employee.
7. Any dance, performance, exhibition or show by an employee of an adult cabaret, while appearing in a state of nudity or seminude, shall occur on a platform which is raised at least two (2) feet from the level of the floor and the employee, while in the state of nudity or seminude, shall be at least six (6) feet from any customer.
8. A licensee or an employee of an adult cabaret commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk-through of the premises without entering a closed area, excluding a restroom.

§ 4.05.029 Additional Regulations Where Alcoholic Beverages are Served, Consumed or Offered for Sale

1. It shall be unlawful for any person maintaining, owning, or operating a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed
 - (a) To suffer or permit any female person, while on the premises of said commercial establishment, to expose that area of the human female breast at or below the top of the areola thereof.
 - (b) To suffer or permit any female person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate such portions of the human female breasts as described In subsection (1.)(a) hereof.
 - (c) To suffer or permit any person, while on the premises of said commercial establishment, to expose his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage.
 - (d) To suffer or permit any person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus, anal cleft, or cleavage.
 - (e) (e)To suffer or permit any female person, while on the premises of said commercial establishment, to expose that area of the human female breast at or below the top of the areola thereof.
 - (f) (f)To suffer or permit any female person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate such portions of the human female breasts as described In subsection (1.)(a) hereof.
 - (g) (g)To suffer or permit any person, while on the premises of said commercial establishment, to expose his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage.
 - (h) (h)To suffer or permit any person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus, anal cleft, or cleavage.

2. It shall be unlawful for any female person, while on the premises of a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to

be consumed, to expose that area of the human female breast at or below the top of the areola thereof, or to use any device or covering which is intended to give the appearance or simulate such areas of the female breast as described herein.

It shall be unlawful for any person, while on the premises of a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to expose his or her genitals, pubic area, buttocks, anus, or anal cleft or cleavage, or to use any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus or anal cleft or cleavage.

§ 4.05.030 Display of Sexually Explicit Material to Minors

1. A person commits an offense if, in a business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse the sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- Human sexual intercourse;
- Fondling or other erotic touching of human genitals, pubic region, buttocks, breasts, or of completely or opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- Human male genitals in a discernibly turgid state, whether covered or uncovered.

2. In this section “display” means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment.

(a) It is available to the general public for handling and inspection, or

(b) The cover or outside packaging on the item is visible to members of the general public.

3. It shall be unlawful for any female person, while on the premises of a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to expose that area of the human female breast at or below the top of the areola thereof, or to use any device or covering which is intended to give the appearance or simulate such areas of the female breast as described herein.

It shall be unlawful for any person, while on the premises of a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for

sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to expose his or her genitals, pubic area, buttocks, anus, or anal cleft or cleavage, or to use any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus or anal cleft or cleavage.

§ 4.05.030 Display of Sexually Explicit Material to Minors

1. A person commits an offense if, in a business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse the sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- Human sexual intercourse;
- Fondling or other erotic touching of human genitals, pubic region, buttocks, breasts, or of completely or opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- Human male genitals in a discernibly turgid state, whether covered or uncovered.

2. In this section “display” means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment.

(a) It is available to the general public for handling and inspection, or

(b) The cover or outside packaging on the item is visible to members of the general public

§ 4.05.031 Hours of Operation

No sexually oriented business, except for an adult motel, may remain open at any time on Sunday between the hours of 1:15 A.M. and 1:00 P.M. or any other day at any time between the hours of 12:15 A.M. and 7:00 A.M.

§ 4.05.032 Exterior Portions of Sexually Oriented Businesses

1. An owner or operator of a sexually oriented business commits an offense if he allows:

(a) The merchandise or activities of the establishment to be visible from any point outside the establishment;

(b) The merchandise or activities of the establishment to be visible from any point outside the establishment;

(c) The exterior portions of the establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by this chapter;

(d) The exterior portions of the establishment to be painted any color other than a single achromatic color, except that this paragraph does not apply to an establishment if the following conditions are met:

- i. The establishment is a part of a commercial multi-unit center; and
 - ii. The exterior portions of each individual unit in the commercial multi-unit center including the exterior portions of the establishment, are painted the same color as one another or are painted in such a **way as** to be a component of the overall architectural style or pattern of the commercial multi-unit center.
- 2. Nothing in this section requires the painting of an otherwise unpainted exterior portion of a sexually oriented business.
 - a. not exceed five feet in height or four feet in width; and
 - b. be affixed or attached to a wall or door of the establishment.
- 2. A primary or secondary sign must contain no photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:
 - a. the name of the establishment; and/or
 - b. one or more of the following phrases:
 - (A) "Adult arcade."
 - (B) "Adult bookstore or adult video store."
 - (C) "Adult cabaret."
 - (D) "Adult motel."
 - (E) "Adult motion picture theater."
 - (F) "Adult theater."
 - (G) "Escort agency."
 - (H) "Nude model studio."
 - (I) "Sexual encounter center."
 - (c) The exterior portions of the establishment to be painted any color other than a single achromatic color, except that this paragraph does not apply to an establishment if the following conditions are met:
 - i. The establishment is a part of a commercial multi-unit center; and
 - ii. The exterior portions of each individual unit in the commercial multi-unit center including the exterior portions of the establishment, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center.
 - iii. Nothing in this section requires the painting of an otherwise unpainted exterior portion of a sexually oriented business.

§ 4.05.033 Sign Requirements

- 1. Notwithstanding any provision of the City of Bogata Code of Ordinances or any other code or regulation to the contrary, the owner or operator of any sexually oriented business or any other person commits an offense if he erects, constructs, or maintains any sign for the establishment other than one primary sign and one secondary sign, as provided in this section.

1. A primary sign may have no more than two display surfaces. Each display surface must:
 - a. not contain any flashing lights;
 - b. be a flat plane, rectangular in shape;
 - c. not exceed 75 square feet in area;
 - d. not exceed 10 feet in height or 10 feet in length.
2. A secondary sign may have only one display surface. The display surface must:
 - a. not contain any flashing lights;
 - b. be a flat plane, rectangular in shape;
 - c. not exceed 20 square feet in area;
 - d. not exceed five feet in height or four feet in width; and
 - e. be affixed or attached to a wall or door of the establishment.
3. A primary or secondary sign must contain no photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:
 - a. the name of the establishment; and/or
 - b. one or more of the following phrases:
 - (A) "Adult arcade."
 - (B) "Adult bookstore or adult video store."
 - (C) "Adult cabaret."
 - (D) "Adult motel."
 - (E) "Adult motion picture theater."
5. A primary sign for an adult motion picture theater may contain the phrase, "Movie Titles Posted on Premises," in addition to the phrases listed in Subsection (4.)(i) of this section.
6. Each letter forming a word on a primary or secondary sign must be of a solid color, and each letter must be the same print-type, size, and color. The background behind the lettering on the display surface of a primary or secondary sign must be of a uniform and solid color.

§ 4.05.034 Enforcement

1. Any person violating Section 13 of this article, upon conviction, is punishable by a fine not to exceed \$2,000.00 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.
2. Any person violating a provision of this article other than Section 13, upon conviction, is punishable as a Class A misdemeanor for each offense and a separate offense shall be deemed committed upon each day during or on which the violation *occurs*: A Class A misdemeanor is defined by and carries the penalties described by the Texas Penal Code.
3. It is a defense to prosecution under Section 4(1), 13, or 16(4) that a person appearing in a state of nudity did so in a modeling class operated:
 - a. By a proprietary school licensed by the state; a college, junior college, or university supported entirely or partly by taxation;
 - b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
 - c. In a structure:
 - (i) which is not visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (ii) where in order to participate in a class a student must enroll at least three days in advance of the class; and
 - (iii) where no more than one nude model is on the premises at any one time.
4. It is a defense to prosecution under Section 4(1) or Section 13 that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.
5. For a period of six (6) months after passage of this article, it is a defense to prosecution under Section 19 if the sexually oriented business was in operation at its present location on the date of passage of this article and that the business is working toward compliance with Section 19 such that the business is projected to be in compliance by the end of six (6) months after passage of this article.
6. For a period of six (6) months after passage of this article, it is a defense to prosecution under Section 20 if the sexually oriented business was in operation at its present location on the date of passage of this article and that the business is working toward compliance with Section 20 such that the business is projected to be in compliance by the end of six (6) months after passage of this article.

7. Any sexually oriented business in operation on the date of passage of this article will be entitled to thirty (30) days to fully complete an application for a license. During such thirty (30) days, said business will be granted a grace period regarding enforcement of this chapter. Moreover, if the application is completed in full during said 30-day period, then this period shall be extended to said business until the licensing decision is made under Section 5 by the Police Chief.

8. The revocation or suspension of any license shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.

§ 4.05.035 Injunction

A person who operates or causes a sexually oriented business to be operated without a valid license or in violation of this chapter is subject to a suit for injunction as well as prosecution for criminal violations. •

§ 4.05.036 Amendment of this Article

Sections 13 and 14 of this article may be amended only after compliance with the procedure required to amend a zoning ordinance. Other sections of this chapter may be amended by vote of the City Council.

§ 4.05.037 Providing for Governmental Immunity

All of the regulations provided in this article are hereby declared to be governmental and for the health, safety, and welfare of the general public. Any member of the City Council or any city official or employee charged with the enforcement of this article, acting for the city in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his duties.

SECTION 2. That if any section, provision, subsection, paragraph, sentence, clause, phrase or word in this Ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Bogata, Texas hereby declares it would have enacted such remaining portions, despite such Invalidity.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby expressly repealed.

SECTION 4. This Ordinance shall be in full force and effect thirty (30) days after its publication in the official newspaper of the City of Bogata.

Chapter 5. Fire Prevention and Protection

ARTICLE 5.01. GENERAL PROVISIONS

§ 5.01.01 Arson Reward Ordinance (see Ordinance 91-03 in Chapter 9 of this document).

ARTICLE 5.02. FIRE CODE

§ 5.02.001. Adopted.

The International Fire Code, 2015 edition, is hereby adopted by reference as though it were copied herein fully.

§ 5.02.002. Enforcement officers.

Within said code, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official as far as enforcing the provisions of said code is concerned.

ARTICLE 5.03. FIREWORKS

§ 5.03.001. Purpose.

The purpose of this article is to regulate the sale and discharge of fireworks within the city and its extraterritorial jurisdiction and is designated to safeguard the health, safety, and welfare of the citizens and protect property in such areas.

§ 5.03.002. Applicability.

This article shall apply to all persons within the city and its extraterritorial jurisdiction.

§ 5.03.003. Definitions.

As used in this article, the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

City: The City of Bogata and its extraterritorial jurisdiction.

Fireworks. Any combustible or explosive composition or any substance or combination of substances or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation.

Person: Any individual, firm, organization, partnership, unincorporated association, or corporation.

Sell or display. Selling, offering to sell, exhibiting, or possessing with the intent to give away or to sell within the city and its extraterritorial jurisdiction.

§ 5.03.004. Penalty.

Penalty for discharging or setting off fireworks other than during permitted time periods and types: Any person discharging or setting off fireworks at any time other than permitted by this article shall be subject to a fine of not less than \$100.00 or more than \$500.00.

§ 5.03.005. Sale.

The sale of fireworks within the city and its extraterritorial jurisdiction shall be in strict compliance with all statutes, laws, codes, rules, and regulations enacted or promulgated by the state or its regulatory agencies, including but not limited to those statutes, laws, codes, rules and regulations and any amendments attached to the ordinance codified in this article and incorporated herein by reference. The sale of fireworks within the city is also governed by and shall follow all city ordinances and building codes of the city. (See Chapter 2154 of the Texas Occupation Code, Title 28, Part 1 of the Texas Administrative Code and Chapter 34, Subchapter H of the State Fire Marshal Rules.)

§ 5.03.006. Discharge.

- (a) Permitted time periods. Fireworks, as limited and restricted herein, may be exploded, or be discharged only from July 1st through July 4th between the hours of 11:00 a.m. and 11:00 p.m., and from December 31st between the hours of 11:00 a.m. until no later than 1:00 a.m. on January 1st, and from 11:00 a.m. until 11:00 p.m. on the evening of January 1st. During these dates and times, consistent with the regulations contained herein, citizens may discharge, or explode fireworks within the city and its extraterritorial jurisdiction, and on Sunday, during the designated dates and times, fireworks, as restricted, are permitted from 1:00p.m. to 10 :00 p.m.
- (b) Prohibited fireworks. Fireworks meeting these definitions cannot be exploded or discharged in the city or the extraterritorial jurisdiction of the city:
 - (1) Any missile with fins or attached guidance devices which is designed to explode at apex and emit noise or lights in conjunction with the explosion. This definition shall not include model rocketry so long as:
 - (A) The model is not designed to or altered to explode at apex; and
 - (B) The model has a recovery system.
 - (2) Stick rockets with a stick measuring less than 16 inches.

ARTICLE 5.04. TEMPORARY BANS ON OUTDOOR BURNING

§ 5.04.001. FIRE HAZARDS, DRY AND DROUGHT CONDITIONS, PUBLIC HEALTH, AND SAFETY.

Occasionally, dry or drought conditions create environmental circumstances where outdoor burning is hazardous. These hazards create health and safety concerns for citizens and property because of the increased risk in uncontrolled grass, vegetation fires, or fire in areas of accumulated trash. Dry and drought conditions increase fire risk by providing dry vegetation as fuel for fires. Therefore, on occasion, consistent with the existing environmental circumstances, the city may:

- (1) Issue a temporary emergency burn ban through the office of the mayor, after consultation with city staff, and based on exigent circumstances that require immediate action at a speed greater than can be obtained by the city council through called or regular meetings of the council. Such emergency temporary bans may not exceed seven (7) days in length; and/or
- (2) The city council may issue a temporary burn ban for up to ninety (90) days which may be renewed or shortened by the council based upon changing circumstances.

§ 5.04.002. Regulated conditions and activities.

- (a) The city, to provide for the health and safety of citizens in drought or dry conditions, may temporarily regulate outdoor burning, including fireworks. Outdoor burning for purposes of this article shall be defined as knowingly or recklessly burning, exploding, igniting, or causing to combust any material outside a structure or under circumstances which run a risk of igniting uncontrolled grass, vegetation, or structure fires. In addition, outdoor activities such as welding, grinding, or cutting which produce sparks may be regulated by requiring designated fire watchers, fire suppression equipment, and the presence of mobile or cellular phones on site. Management of fire hazard risk may also include limitations on outdoor fires and outdoor burning when wind conditions have exceeded fifteen (15) miles per hour.
- (b) The council may authorize the city staff in the form of the city secretary, fire chief, and chief of police to grant limited emergency exceptions to a temporary burn ban. These exceptions must be based on emergency circumstances, and we must consider viable alternatives to outdoor burning. If, after consultation, the city secretary and the chief of police agree that there is no viable option and emergency circumstances exists; a specific limited written exception may be granted by the city secretary which specifies the time and location of the burn and must include fire suppression and fire prevention requirements.

§ 5.04.003. TEMPORARY BURN BANS.

Temporary burn ban ordinances are not permanently maintained in the city code hardcopy, because they are temporary. These temporary burn ban ordinances are removed from the city code annually in December, except for any burn ban that is current or in place in December of that year. The temporary ordinances are stored electronically consistent with the records retention policy of the city.

Chapter 6. Health and Sanitation

ARTICLE 6.01. GENERAL PROVISIONS (RESERVED)

ARTICLE 6.02. WEEDS, RUBBISH, JUNK AND OTHER UNSANITARY OR OBJECTIONABLE MATTER

§ 6.02.001. DEFINITIONS.

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

Brush. Scrub vegetation or dense undergrowth.

Carrion. The dead and putrefying flesh of any animal, fowl, or fish.

Cultivated. Vegetation that is deliberately grown and currently and continuously maintained by the owner, occupant, or agent of the property.

Filth. Any matter in a putrescent state.

Garbage. All decayable waste.

Impure or unwholesome matter. Any putrescible or no putrescible condition, object, or matter which tends to, may or could produce injury, death, or disease to human beings.

Junk. All worn-out, useless, worthless, discarded, or scrap material, including, but not limited to, miscellaneous items, old metal, scrap lumber, building debris or old building materials, used tires, vehicle parts, and other items no longer used in the way they were intended, including but not limited to furniture, working and nonworking appliances, and machinery and parts thereof.

Maintained. When referring to vegetation, it should mean watered, pruned, trimmed, treated, and controlled in such a manner as to enhance the use or enjoyment of one's property, without interfering with the enjoyment or use of neighboring property or public access.

Nuisance. Anything which is injurious to the health or morals, or indecent [or] offensive to the senses, or an

obstruction to the free use of property to interfere with the comfortable enjoyment of life or property. Nuisance shall include but is not limited to failure to maintain vegetation, accumulation of junk, filth, or garbage, or the presence of rubbish or unsightly or unsanitary matter as those terms are defined herein.

Objectionable, unsightly, or unsanitary matter. Any matter, condition, or object which is or should be objectionable, unsightly, or unsanitary to a person of ordinary sensitivities.

Occupant. A person other than an owner with a possessory interest in real property, such as a tenant, renter, or lessee.

Owner. A person having some interest in title to real property.

Person. Shall include a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

Refuse. A heterogeneous accumulation of worn-out, used, broken, rejected, or worthless materials includes garbage, rubbish, paper, or litter and other decayable or non-decayable waste.

Rubbish. Shall mean both garbage and trash, and shall include all animal, vegetable and inorganic matter subject to discard which is generated from within a household, residence, or business, such as, but not limited to, coffee grounds, tin cans, bottles, paper bags, plastic items, boxes, glass and food articles, and, additionally, shall include all animal, vegetable, and inorganic matter subject to discard which is not typically generated from within a household, residence, or business such as shrubbery, grass clippings, brush, yard cleaning materials, leaves, tree trimmings, stoves, refrigerators, old iceboxes, pieces of metal scrap, feathers, furniture, dead animals, rocks, shingles, building materials, junk, trash, refuse and other worn-out, wrecked, or dismantled machinery, tractors, automobiles, and other similar wastes.

Trash. All non-decayable waste.

Undeveloped property. Tracts of land or lots upon which no structure exists.

Vegetation or vegetative. Any grass, weeds, shrubs, trees, brush, bushes, or vines.

Weeds. Vegetation that, because of its height, is objectionable, unsightly, or unsanitary, but excluding cultivated crops, shrubs, bushes, trees, flowers, and vines.

§ 6.02.002. PROHIBITED CONDITIONS.

It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved, or unimproved, developed, or undeveloped, within the corporate limits of the city, to suffer, permit, or allow:

- (1) Uncultivated grass, weeds, or brush to grow to a greater height than twelve (12) inches on any lot, tract, or parcel of land within the corporate limits of the city, five (5) acres in size or less (including any right-of-way, easement, or drainage ditch); for purposes of this provision, the city may rely upon the acreage of any lot as shown in the official records of the appraisal district for the county where the property is located;
- (2) On tracts of land more than five (5) acres (including any right-of-way, easement, or drainage ditch), uncultivated grass, weeds, or brush to grow to a greater height than twelve (12) inches within one hundred (100) feet adjacent to or along any dedicated public street within the corporate limits of the city, or within one hundred (100) feet on any side of the

boundary line of any lot upon which a structure that is used for a residence, business, or public or private facility is located; for purposes of this provision, the city may rely upon the acreage of any lot as shown in the official records of the appraisal district for the county where the property is located;

- (3) Refuse, rubbish, junk, litter, trash, debris (vegetative, building, or other), garbage, discarded items, carrion, filth, animal, or human feces, or any other unsightly or unsanitary matter to accumulate or remain on any lot or tract of land within the corporate limits of the city, regardless of the size of said lot or tract of land, whether developed or undeveloped, commercial or residential, occupied or unoccupied.
- (4) Any holes, places, objects, or matter on any lot, tract, or parcel of land where water accumulates and becomes stagnant, or to permit same to remain; or
- (5) Any condition to exist that constitutes any threat to the public health or safety or constitutes a nuisance.

§ 6.02.002.1. PROHIBITED DISCHARGES INTO THE CITY STORMWATER/SEWER SYSTEM.

(A) NO PERSON, OWNER, OR OCCUPANT (INCLUDING AGENTS) MAY INTENTIONALLY DISCHARGE INTO THE MUNICIPAL STORM SEWER SYSTEM (MS4) GRASS CLIPPINGS, LEAF LITTER AND ANIMAL WASTES IN MASSED QUANTITIES, INCLUDING BUT NOT LIMITED TO DUMPING COLLECTED LEAVES AND GRASS CLIPPINGS IN THE SYSTEM. INTENTIONALLY SWEEPING OR BLOWING GRASS CLIPPINGS INTO THE STREETS OR GUTTERS IS PROHIBITED.

(B) It shall be a defense to prosecution to subsection (a), that the prohibited materials occurred naturally or from normal landscape maintenance such as leaves falling from trees, or grass clippings left on lawns. intentionally sweeping or blowing grass clippings into the streets or gutters is prohibited.

(C) Swimming pool water shall not be a prohibited discharge; provided that the discharge has been tested using a method approved by the director of public health to assure that it will not contain a harmful level of chlorine or other pollutants when it reaches streams, lakes, or bays.

(D) Over spray and lesser amounts of runoff from irrigation of vegetation that pools in a gutter or on a road surface but does not flow in a steady stream into any manhole or catch basin, is not considered an illicit discharge into the MS4.

(E) It shall be a defense to prosecution to subsection (a), that the prohibited materials occurred naturally or from normal landscape maintenance such as leaves falling from trees, or grass clippings left on lawns. Intentionally sweeping or blowing grass clippings into the streets or gutters is prohibited.

(F) Swimming pool water shall not be a prohibited discharge; provided that the discharge has been tested using a method approved by the director of public health to assure that it will not contain a harmful level of chlorine or other pollutants when it reaches streams, lakes, or bays.

(G) Over spray and lesser amounts of runoff from irrigation of vegetation that pools in a gutter or on a road surface but does not flow in a steady stream into any manhole or catch basin, is not considered an illicit discharge into the MS4.

(H) Nothing in this article prevents the placement of solid waste scheduled for pickup at a location designated by the public utilities' director.

(I) Runoff from any effort to remove graffiti from buildings or other structures is not considered an illicit discharge into the MS4.

(J) Nothing in this section prohibits any activities relating to the construction, maintenance, or operation of the municipal separate storm sewage system.

(K) Except as provided above, no person, owner, or occupant (including agents) may discharge the following into the MS4:

- (1) Rubbish or vegetation (see definition section **6.02.001**)
- (2) Illicit water or liquids, which include water mixed, combined, or treated with herbicides, poisons, detergents, fertilizers; or artesian well water, cooling water (including contact and noncontact cooling water and treated and untreated cooling water), ground water, subsurface drainage, industrial wastewater, water from a well.
- (3) Any substance that is prohibited from discharge into the waters of the United States, the State of Texas, or a tributary to those waters, by any federal or state law.
- (4) The direct discharge of pesticide or fertilizer.
- (5) Solid wastes, including animal wastes (animal carcass, animal parts or scrap, excrement, grease of animal origin, offal, paunch manure and urine), ashes or clinkers, construction/demolition materials, dirt or other fill material, debris, floatable, garbage, heavy brush, household appliance, household hazardous waste (any hazardous waste
- (6) from chemicals or other substances utilized for residential or housekeeping purposes, including, but not be limited to, bleaches, drain cleaners, paint, paint thinners, and solvents), industrial or commercial wastes, medical wastes refuse, sewage, used motor vehicle fluids (including motor oils, anti-freeze and solutions containing anti-freeze, brake fluids, transmission fluids, and other lubricants that have been drained from or any excess materials remaining after servicing a vehicle or piece of equipment), yard waste (including grass clippings, weeds, leaves, mulch, trees and shrub limbs, or other plant material pursuant to valid (NP DES) permit; any condition to exist that constitutes any threat to the public health or safety or constitutes a nuisance.
- (7) *A discharge resulting from firefighting activities; a discharge resulting from washing an automobile at a residence or at a charitable car wash; a discharge of potable water; a discharge of any surface waters (including water from diverted stream flows, uncontaminated rising ground water, water from foundation drains, crawl space pumps and footing drains, water from springs, and flows from riparian habitats and wetlands); a discharge resulting from flushing a water supply line; a discharge of street wash water, a nonpoint source discharge from agricultural activities (including return flows from irrigated agriculture), or condensate from cooling systems; or an otherwise illicit discharge was uncontaminated. An illicit discharge is considered uncontaminated if the quality of the water is equal to or better than the quality of the first natural body of water into which a portion of the MS4 (receiving waters) flow, including but is not limited to the Sulphur River, N. Sulphur River, and Red River (including all connecting creeks and tributaries by whatever name is known). The results of the last water quality test of the*

receiving waters published by the TCEQ will constitute prima facie evidence of the quality of the receiving waters.

§ 6.02.002.2. Removal of improper discharges from and repair of damage to MS4.

(a) Any person, owner, or occupant (or agent} who discharges any substance or article into the MS4 in violation of section 6.02.002.1 of this article shall promptly remove the substance or article from the MS4,

take all measures necessary to reduce or eliminate any harmful effects for any substance or article that cannot be removed, repair any damages caused to the MS4 by the substance or article, and compensate the city for any additional expenses incurred as a result of the illegal or illicit discharge.

(b) If the person who discharged the substance or article into the MS4 fails to remove the substance or article within ten (10) days after receiving notice as provided in section 342.006(b} of the Health and Safety Code, the superintendent may have the substance or article removed from the MS4 and any damages to the MS4 repaired at the expense of the person who discharged the substance or article.

(c) The superintendent may remove any substance or article from the MS4 without notice to person who discharged the substance or article into the MS4, when directed to do so by the federal or state on scene coordinator, under the act; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; the Oil Spill Prevention and Response Act; or Texas Oil and Hazardous Substances Spill Prevention and Control Act. The person who discharged the substance or article is liable for all costs incurred by the city because of the discharge.

(d) A person is presumed to have discharged a substance or thing into the MS4 if the substance or article contains any writing or other marking indicating that the person is the owner of the thing or has had possession of the thing. However, a person who manufactured or offered the item for sale to the public, which is marked with a trade name, is not presumed to have discharged the item if found in the MS4.

(e) Notwithstanding to any other provision of this article, the superintendent may temporarily disconnect any connection with the MS4, to prevent the continuing discharge of oil, a hazardous substance, sewage, or any other substance that poses an imminent health safety threat to the community into the MS4. The person who discharged the substance is liable for all costs incurred by the city under this subsection.

§ 6.02.002.3. Prohibited connections with MS4.

- (a) No person may construct, maintain, or use, or cause or allow to be constructed, maintained, or used, any drain from private property into a public street or any drain that connects with the MS4, unless the person has obtained a permit for the connection.*
- (b) Any person in apparent control of any property in the city, who is maintaining any connection, or causing or allowing any connection to be maintained that does not conform with the provisions of this section or any other applicable provision of the city's code shall be deemed to be maintaining a prohibited connection and, upon notice in writing from the city, must remove the drain, or obtain the required permits and make any modifications necessary for the drain to conform to the requirements of this section and any other applicable provisions of the city's code.*
- (c) A violation of the schedule constitutes a violation of this article, and each day beyond the scheduled time of removal or repair constitutes a separate violation of this article. The city has*

the remedies to this chapter available, including but not limited to criminal complaints, for failure to comply with the schedule.

The city may proceed with all remedies contained in sections **6.02.005** through **6.02.013**.

(1) The city may also seek injunctive relief, abatement, or damages in addition to administrative and criminal prosecution.

(2) In the event the prohibited connection is deemed a health problem by the director of public health, under section 342.007 of the Health and Safety Code, the city may attach a lien on the property from which the prohibited connection originates

(3) Upon receipt of written notice, the person in apparent control of any property in the city has five working days to request a timely meeting with the city. The purpose of the meeting will be to establish a schedule, setting out when the drain will be removed or made to conform with the provisions of this section. In no event may the schedule allow for a period greater than six (6) months to remove the drain or bring the drain into conformance with this section.

(4) The schedule must be reduced to writing and signed by the participant.

§ 6.02.002.4. Presumptions and remedies.

(A) For purposes of this article, any person, in whose name a water meter connection is registered for servicing the private property, is presumed to be the person in apparent control of the property for purposes of discharges into the MS4 and improper connections to MS4. Proof that the property in question has a water meter connection registered in the name of the defendant named in a criminal complaint filed under this article constitutes prima facie evidence to support the presumption that the person in whose name such water connection is registered is the person who permitted or allowed a prohibited connection under this section, or who permitted or allowed the prohibited discharge.

(B) The prohibitions set forth in sections **6.02.002.1** and **6.02.002.2** are declared to be a public nuisance.

§ 6.02.003. Compliance.

- (a) *It shall be the duty of any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved, or unimproved, developed, or undeveloped, within the corporate limits of the city to maintain that property in full compliance with this article.*
- (b) *It shall be presumed upon any trial under the provision(s) of this article that a person living in a structure on the premises, a premises owner, or a premises occupant have {has} the obligations as set out in this article to maintain that premises consistent with the terms and conditions set out in this article.*

§ 6.02.004. Declaration of nuisance.

All grass, weeds, or vegetation or brush not regularly cultivated, and which exceeds twelve (12) inches in height as prohibited herein, and all rubbish, junk, filth, garbage, refuse, trash, and stagnant water, shall be presumed to be objectionable, unsightly, and unsanitary, and are hereby declared a public nuisance.

§ 6.02.005. Notice of violation

- (a) Notice required. *Except as provided by section 6.02.006 of this article, in the event that any occupant or any person owning any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped, within the corporate limits of the city fails or refuses to comply with the provisions of this article, the city shall give seven (7) days' notice of the violation to the owner prior to abating the violation, as provided herein.*
- (b) Manner of notice. *The term "owner" as used below shall also be understood to include persons in possession and occupants. The notice shall be given:*
 - (1) *Personally, to the owner in writing.*
 - (2) *By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or*
 - (3) *If personal service cannot be obtained or the owner's address is unknown:*
 - (A) *By publication at least twice within ten (10) consecutive days.*
 - (B) *By posting notice on or near the front door of each building on the property to which the violation relates; or*

- (C) *By posting notice on a placard attached to a stake driven into the ground on the property to which the violation relates if the property contains no buildings. (Any notice forwarded to the owner by mail as provided in subsection (2) above and returned by the United States Postal Service as "refused" or "unclaimed" shall not affect the validity of the notice, and the notice shall be considered as delivered.*
- (D) Contents of notice. *The notice shall contain:*
- (E) *The name and address of the record owner.*
- (F) *An identification, which is not required to be a legal description, of the property upon which the violation is located.*
- (G) *A statement describing the violation and the work necessary to correct the violation*
- (H) *A statement advising the owner that, if the work is not completed within seven (7) days, the city will perform the work and assess the cost of the work to the owner.*
- (I) *A statement that, if the city performs the work and the owner fails to pay the cost, a priority lien may be placed on the property.*
- (J) *A statement that the city may, at any time, file a criminal misdemeanor complaint in municipal court with a maximum fine of \$200.00 for each day the violation exists, in addition to or in lieu of any other remedy provided by law.*

(4) Annual notice. After a property owner has been given one (1) notice of violation on a lot, tract, or parcel of land, annual notice may be given to the property owner. If the city opts to provide annual notice, such notice shall be mailed to the owner at the address recorded with the appraisal district and posted on the property. Once the city has given such annual notice, no further notice shall be required prior to abatement for that lot, tract, or parcel of land for a one-year period. If the city does not receive notice in a change of ownership, the city may abate any nuisance contained on the property covered by this article without further notice and assess expenses to the owner.

§ 6.02.006. ADDITIONAL AUTHORITY TO ABATE DANGEROUS WEEDS WITHOUT PRIOR NOTICE.

- (a) Authority. The city may abate, without prior notice, weeds that:
 - (1) Have grown higher than forty-eight (48) inches; and
 - (2) Are an immediate danger to health, life, or safety of any person.
- (b) Notice of abatement. Not later than the tenth day after the date the city abates weeds under this section, the city shall give notice to the property owner in the manner required by section **6.02.00S(b)** of this article. The notice shall contain the items specified in section **6.02.00S(a)** of this article.
- (c) Hearing. The city shall conduct an administrative hearing under this section if, not later than the 30th day after the date of the abatement of the weeds, the property owner files with the city a written request for a hearing. If a hearing is requested, it shall be conducted according to section **6.02.00S(c)** of this article, except that the municipal court judge shall conduct the hearing not later than the 20th day after the date a request for hearing is filed.

§ 6.02.007. ABATEMENT BY CITY.

If such person fails or refuses to comply with the provisions of this article within seven (7) days after the date of notification as provided in section **6.02.005** of this article, or if the weeds are dangerous according to section **6.02.006** of this article, the city may go upon such property, or authorize another to go upon such property, and do or cause to be done the work necessary to obtain compliance with this article, and may charge the expenses incurred in having same done to the owner of such property as provided hereafter. The remedy provided in this section is in addition to the remedy provided for in section **6.02.012** of this article.

§ 6.02.008. NOTICE OF CITY'S COSTS, HEARING ON ASSESSMENT OF COSTS.

- (a) Notice. After the city abates a violation of this article, the city shall give notice to the property owner in the manner required by section **6.02.00S(b)** of this article. The notice shall contain:
- (1) The name and address of the owner.
 - (2) An identification, which is not required to be a legal description of the property.
 - (3) A description of the violations that occurred on the property.
 - (4) A statement that the city abated the violation(s).
 - (5) The amount of the expenses incurred by the city and owed by the property owner.
 - (6) A statement that, if the owner fails to pay the expenses within (30) days of receipt of the notice or fails to timely request a hearing as authorized herein, a priority lien may be placed on the property to secure payment; and
 - (7) An explanation of the property owner's right to request in writing an administrative hearing about the city's abatement of the violation and the time in which his written request must be submitted to the city.
- (b) Right to hearing. The city shall conduct an administrative hearing on the abatement of a nuisance under this article if, not later than the tenth day after the date the notice, the property owner files with the city a written request for a hearing.
- (c) Conduct of hearing. The following shall apply to the conduct of the hearing:
- (1) The municipal court judge shall conduct an administrative hearing not later than the 45th day after the date a request for a hearing is filed.
 - (2) The owner and the city may testify, or present witnesses or written information related to the city's abatement of the nuisance.
 - (3) The city has the burden to show, based on a preponderance of the evidence, that a violation of this article existed, notice was given in substantial compliance with this article, and costs incurred to abate the violation were reasonable.
 - (4) At the close of the hearing, the municipal court judge shall approve the assessment, deny the assessment, or adjust the amount of the assessment and approve it as adjusted. Court costs and attorney's fees may be assessed as a part of the assessment following the administrative hearing.

§ 6.02.009. Filing of lien.

(a) The charges provided for in this article shall be levied, assessed, and collected by the city. In the event the owner of said premises upon which the work was done, and charges were incurred fails or refuses to pay such charges and expenses within thirty (30) days after the written notification to pay, there shall be assessed the charges and expenses incurred against the real estate on which the work was done. After such time, or after an administrative hearing if one is requested by the owner, whichever is later, the mayor, the city administrator, city attorney, city secretary, or police chief as the mayor's designee, or other municipal official designated by the mayor shall file a statement with the county clerk of the expenses incurred in the abatement of the above-described condition, and the city shall have a privileged lien on any lot or lots upon which such expenses were incurred, second only to tax liens and liens for street improvements. The lien statement shall state the name of the owner, if known, and the legal description of the property. A copy of the lien statement filed with the county clerk shall be mailed to the owner if the owner is known. Said privileged lien shall bear interest at the rate of ten percent (10%) per annum from the date payment was made by the city (for the work performed by a contractor retained by the city). For any such expenditures and interest as aforesaid, suit may be instituted and foreclosure had in the name of the city and the statement so made as aforesaid, or a certified copy thereof, shall be prima facie proof of the amounts expended for any such work or improvement.

§ 6.02.010. Release of lien.

Upon the payment of the charges described in section 6.02.007 and the interest accrued thereon, or such lesser amount as the mayor and city council shall deem appropriate and in the best interest of the city, the city administrator is authorized to execute on behalf of the city a release of lien in the form approved by the city attorney.

§ 6.02.011. Proof of proper disposal of materials.

A property owner or a lienholder of property shall furnish written proof to a city code inspector of the proper and legal disposal at a landfill of all materials from a substandard, dangerous, or hazardous building or structure demolished pursuant to this article. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not to exceed two thousand dollars (\$2,000.00), and each day's continuance of any violation of this section shall constitute and be deemed a separate offense.

§ 6.02.012. Penalty.

Each individual violation of this article is hereby declared a misdemeanor and, upon adjudication of guilt thereof, any person who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this article shall be assessed a fine of \$200.00 per day for each subsequent day that a violation continues. Each day that a violation is permitted to exist shall be deemed a separate offense for which a separate fine may be assessed.

§ 6.02.013. Forfeiture of right to receive water and sewer service.

Any person, entity, owner, agent, or occupant or anyone having supervision or control over any lot, tract, parcel of land, or a portion thereof, occupied, or unoccupied, within the city limits described herein found violating this article shall forfeit the right to receive water and sewer service from the city to any property owned or leased by them in the city.

§ 6.02.014. Limited exemption for undeveloped land.

The vegetation maintenance portions of this article do not apply to undeveloped land which is not in a residential subdivision of the city; however, the prohibitions contained herein concerning refuse, rubbish, junk, trash, debris, garbage, discarded items, carrion, filth, animal or human feces, or any other unsightly or unsanitary matter which accumulates, or which constitutes a public health or safety matter do apply to undeveloped land which is not inside a residential subdivision of the city.

7. Municipal Court: ARTICLE 7.01. GENERAL PROVISION

§ 7.01.001. Established.

There is hereby created, re-created, established, and designated a municipal court for the city to be known as the city municipal court, said court to operate under the following guidelines.

§ 7.01.002. JURISDICTION.

The municipal court shall be for the trial of misdemeanor offenses arising within the city and for trial of such other offenses as may be provided by the ordinances of the city or the laws of the state. Said court shall have and exercise such jurisdiction as is now, or hereafter be, conferred upon all municipal courts by the special and general laws of the state.

§ 7.01.003. JUDGE.

There is hereby created and re-created the office of judge of the municipal court, who shall be appointed by and meet the qualifications specified by the city council per a signed contract..

§ 7.01.003.1. (See Ordinance No. 00-10 in Chapter 9 in this document.)

(a) Authorization to appoint and qualifications of Municipal Judge.

§ 7.01.004. PROSECUTOR.

The city attorney shall have the authority to prescribe rules and procedures of the trial of cases in the municipal court and shall be the official prosecutor of the court.

§ 7.01.005. Court term.

The court shall convene on a monthly or bi-monthly basis depending on the number of cases and the municipal judge's discretion.

§ 7.01.006. ADMINISTRATOR.

There is hereby created the office of administrator of the municipal court, which office shall be held by the city administrator unless the city council by majority vote shall designate otherwise. The city council shall appoint administrator. The administrator shall ensure that all recordkeeping and other duties required by state laws concerning a municipal court are adhered to.

§ 7.01.007. Clerk.

There is hereby created the office of clerk of the municipal court, which office shall be held by the city secretary unless the city council by majority vote shall designate otherwise, and then the city council shall appoint the clerk. The clerk shall keep the minutes of the court, prepare the docket, and perform such other duties as may be necessary for the efficient administration of the municipal court. The clerk shall have the power to administer such oaths as may be necessary in connection with the discharge of the duties of the office and shall preserve all court papers, complaints, and other official papers of the office. The docket of the court shall show the style of the action, the nature of the offense charged, the date the warrant was issued and the return made thereon, the time when the examination or trial was had, and, if a trial, whether it was with or without the aid of a jury; the verdict of the jury, if any; the judgment, order or decree of the court; whether appeal was taken; and the date of the judgment and the manner in which same was taken. The clerk of the municipal court shall preserve the records of the court for the period of one (1) year following final disposition of all causes.

ARTICLE 7.02. FEES, COSTS AND SPECIAL EXPENSES

§ 7.02.001. Court costs.

Except for the collection of any costs assessed by the statutes of the state, no court costs shall be assessed in or charged against any cause pending in the municipal court except as follows:

- (1) Failure to appear. In cases where the defendant fails to appear in answer to the ticket or summons issued to him/her and is adjudged guilty, the judge, in his discretion, may assess, as part of his judgment, court costs for all or any items incurred for costs in amounts fixed by state statutes for related items incurred in the justice court of the state.
- (2) Jury fee. In all cases where the defendant calls for a jury trial and then is adjudged guilty, the judgment, in the discretion of the judge, may include a jury fee no more than that provided by the statutes of the state for justice courts.
- (3) Appeals returned to municipal court. In the event a case is appealed from the municipal court and the judgment of the court is, by virtue of dismissal of the appeal or otherwise, thereafter enforceable as the judgment of the municipal court, there shall be assessed as items of court costs which have accrued at the time the case thus appealed is returned to the municipal court for enforcement of the judgment an amount not to exceed \$15.00; provided, however, that if this amount shall be greater than the amount of court costs authorized to be assessed under state statutes for similar costs in justice courts, then no more than the amount authorized to be charged by such statutes shall be assessed.

§ 7.02.002. Driver's safety course fee.

The city municipal court is hereby authorized to collect a special expense, not to exceed the actual expenses incurred or ten dollars (\$10.00), whichever is less, for services performed in cases in which the laws of this state require that the case be dismissed under the provisions of Texas Code of Criminal Procedure, article 45.0511, which provides that the court defer proceedings and allow a person ninety(90) days to present evidence that, after the alleged act, the person has successfully completed a driver's safety course approved by the state department of public safety or other driving course that has been approved by the court. Such special expenses should be paid into the city treasury for the use and benefit of the city.

§ 7.02.003. Time payment fee.

(a) The city municipal court is authorized to collect a special expense fee, not to exceed Twenty-five dollars(\$25.00), under VTCA, Government Code, section 133.103, as adopted by legislative action effective September 1, 1997, designated "time payment fee", from persons who:

- (1) Have been convicted of a felony or misdemeanor.
- (2) Have been ordered to pay a fine, court cost or restitution by a Municipal court, and

- (3) Seek to pay the fine, court cost or restitution over a period, rather than immediately.

(b) This special fee shall be deposited into the city's general fund and distributed as follows:

Fifty percent (50%) or \$12.50 is to be paid to the State comptroller monthly, ten percent (10%) or \$2.50 is to be used for the purpose of improving the efficiency of the administration of justice in the city, and the remaining forty percent (40%) or \$10.00 is to be deposited in the general fund for use by the city.

§ 7.02.004. Warrant fee.

The city municipal court is hereby authorized to collect a special expense, not to exceed thirty-five dollars (\$35.00), for issuance and service of a warrant of arrest for an offense under section 38.10, Texas Penal Code (failure to appear in accordance with the term of a person's release from custody) or under V.T.C.A., Transportation Code, section 543.009 (violation of promise to appear), and such special expense shall be paid into the general fund for the use and benefit of the city.

§ 7.02.005. Security fee.

The city municipal court is hereby authorized to collect a three-dollar (\$3.00) security fee adopted by legislative action effective September 1, 1995, which is to be deposited into a municipal court building security fund.

§ 7.02.006. Arrest fee.

The city municipal court is hereby authorized to collect a special expense, not to exceed five dollars (\$5.00), for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law or for making an arrest without a warrant. Such special expenses shall be paid into the general fund for the use and benefit of the city.

§ 7.02.007. (See Ordinance No. 01-23) Municipal Court Technology Fund Amendment in Chapter 9 of this document.

- (a) Amend Ordinance 99-09 to change fee from \$2.00 to \$4.00

§ 7.02.008. (See Ordinance No. 01-24) Building Security Fee in Chapter 9 of this document.

- (a) Assess a \$3.00 building security fee for buildings housing a municipal court.

chapter 8. Offenses and Nuisances

ARTICLE 8.03. JUNKED VEHICLES

§ 8.03.001. Definitions.

Antique auto. A passenger car or truck that was manufactured in 1925 or before or a passenger car or truck that is at least thirty-five (35) years old.

Collector. The owner of one (1) or more antique or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Demolisher. Any person whose business is to convert a motor vehicle into processed scrap or scrap metal or otherwise wreck or dismantle a motor vehicle.

Garage keeper. An owner or operator of a parking place or establishment, motor vehicle storage facility or establishment for the servicing, repair, or maintenance of a motor vehicle.

Junked motor vehicle. A vehicle that is self-propelled and:

(1) Does not have lawfully attached to it:

(A) An unexpired license plate; and

(B) A valid motor vehicle inspection certificate; and **(on Jan. 1, 2025, this stipulation was voided for our area within the State of Texas. The Texas Legislature changed the rules.)**

(2) Is;

(A) Wrecked, dismantled, or partially dismantled, or discarded; or

(B) Inoperable and has remained inoperable for more than:

(1.) Seventy-two (72) consecutive hours, if the vehicle is on public property; or

(2.) Thirty (30) consecutive days, if the vehicle is on private property.

Person. Any individual, firm, partnership, association, corporation, company, or organization of any kind.

special interest vehicle. A motor vehicle of any age that has not been altered or modified from the original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

Storage facility. A garage, parking lot or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

§ 8.03.002. Declaration of nuisance; exceptions

The location or presence of any junked vehicle or junked vehicles on any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, private property, public property or public right-of-way within the city is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors,

and is detrimental to the economic welfare of the state by producing urban blight adverse to the maintenance and continuing development of the city and is a public nuisance. It shall be unlawful for any person or persons to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, abandoning, or discarding his or their vehicle or vehicles on the property of another or to suffer or allow the same to be placed, located, maintained, or exist upon his or their own real property, provided that this section shall not apply to:

- (1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property.
- (2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer; or
- (3) An inoperable antique or special interest vehicle stored by a collector on a collector's property, **if** the vehicle and the outdoor storage area are maintained in a manner so that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

§ 8.03.003. NOTICE TO ABATE, HEARING.

- (a) Whenever any public nuisance as provided in section **8.03.002** exists in the city in violation hereof, the chief of police, his duly authorized agent, or any police officer of the city who shall administer this article shall send written notice, by certified mail with a five-day return requested, to the last known registered owner of the motor vehicle and all lienholders of record and to the owner or occupant of the private, quasi-public or public premises, [and] to the owner or occupant of the premises adjacent to the public right-of-way on which the public nuisance exists. Such notice shall specify the nature of the public nuisance, specify that it must be removed and abated within ten (10) days after the delivery date of the certified mail receipt of such notice and specify that a request for a public hearing under subsection {b} hereof must be made before expiration of such ten-day period. If the notice is returned undelivered by the United States post office, official action by the city to abate such nuisance shall be continued to a date not less than ten (10) days from the date of such return.
- (b) A public hearing prior to the removal of the vehicle or part thereof as a public nuisance shall be held before the governing body of the city or any other board, commission or official of the city, as designated by the governing body, when such hearing is requested by the owner or occupant of the premises on which said vehicle is located within ten (10) days after the delivery date of the certified mail receipt of the notice to abate the nuisance. The hearing provided for shall be conducted by the chief of police, who is hereby designated by the city council to conduct such hearing. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle and the correct identification number and license number of the vehicle, if available at the site. If such owner or occupant fails to comply with said resolution or order, he/she shall be subject to prosecution for a misdemeanor and a penalty not exceeding two hundred dollars (\$200.00).

§ 8.03.004. REMOVAL WITH PERMISSION OF OWNER OR OCCUPANT.

If, within ten (10) days after receipt of notice from the chief of police, or his duly authorized agent, to abate a nuisance, as provided in section **8.03.003**, the owner or occupant of the premises shall give his/her written permission to the chief of police, or his duty authorized agent, for removal of the junked motor vehicle, at the owner's or occupant's expense, from

the premises, the giving of such permission shall be considered compliance with the provisions of this article.

§ 8.03.005. Removal by city; disposal.

- (a) If a public nuisance, as described in section **8.03.002**, is not abated by the owner or occupant after notice is given in accordance with this article, official action shall be taken by the city to abate such nuisance. Junked vehicles or parts thereof may be disposed of by removal to a scrap yard, demolisher, or any suitable site operated by the city for processing as scrap or salvage, which removal or process shall be consistent with subsection **(b)** of this section. A junked vehicle disposed of to a demolisher in accordance with this article must be transferred to such demolisher by a form acceptable to the state department of transportation. The transfer receipt must be listed on the demolisher's inventory list and surrendered to the state department of transportation in lieu of the certificate of title under the provisions of section 501.096 of the Transportation Code.
- (b) After a vehicle has been removed pursuant to this article, it shall not be reconstructed or made operable by any person.
- (c) Notice shall be given to the state department of transportation within five (5) days after the date of removal to identify the vehicle or parts thereof.

§ 8.03.006. Enforcement.

The chief of police, his agent or any police officer of the city may enter upon private property for the purposes specified in this article to examine vehicles or parts thereof, to obtain information as to the identify of vehicles and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article. The municipal court of the city shall have the authority to issue all orders necessary to enforce the provisions of this article.

§ 8.03.007. Immediate removal of vehicles obstructing traffic.

Nothing in this article shall affect ordinances that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

ARTICLE 8.04. SEX OFFENDER RESIDENCY

§ 8.04.001. Definitions.

For the purposes of this article, the following terms, words, and the derivations thereof shall have the meanings given below.

Child safety zone. Any premises where children commonly gather and includes public parks, private and public schools, public library, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public or commercial and semi-private swimming pools, child-care facility, child-care institution, public or private youth soccer, football or baseball field, crisis center or shelter, skate park or rink, public or private youth center, scouting facilities, offices for child protective services, or any facility that regularly hosts events primarily for children. The term does not include a church, as defined in section 544.251 of the Texas Insurance Code.

Daycare facility. A "child-care institution," a "daycare center," and/or a "group daycare home" as those terms are defined in section 42.002, Human Resource Code.

Minor. A person younger than seventeen (17) years of age.

Public Use Property. Any land, including improvements to the land, administered, operated, or managed by the city for the use of the public as a recreation area.

Permanent residence. A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

Playground. Any outdoor facility that is not on the premises of a school and that:

- (1) It is intended for recreation.
- (2) It is open to the public; and
- (3) Contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards. (See section 481.134, TX Health and Safety Code.)

Premises. Real property and all buildings and appurtenances pertaining to the real property.

Public way. Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops, and similar areas that are open to the use of the public.

Registered sex offender. An individual who has been convicted or placed on deferred adjudication for a sexual offense involving a child for which the individual is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure.

School. A private or public elementary or secondary school or a daycare center, as defined as section 42.002 of the Human Resources Code.

Temporary residence. A place where a person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where a person routinely abides, resides, or lodges for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Video arcade facility Any facility that is open to the public, including persons who are 17 years of age or younger; is intended primarily for the use of pinball or video games; and contains at least three pinball or video stations.

Youth center. Any recreational facility or gymnasium that is intended primarily for use by persons who are 17 years of age or younger; and regularly provides athletic, civic, or cultural activities.

Youth group activity Any gathering of 2 (two) or more minors to participate in structured activities, primarily for youth, and including but not limited to Boy and Girl Scouts, 4-H, bands, and school UIL events.

§ 8.04.002. Offenses.

General regulations. For each person required to register on the Texas Department of Public Safety's Sex Offender Database, or who otherwise is required by court order to register annually as a sex offender, because that individual committed a sexual violation involving a victim who was less than seventeen (17) years of age; it is unlawful for such person to establish a permanent residence or temporary residence within one thousand (1,000) feet of any premises where children commonly gather, which includes but is not limited to child safety zones, daycare facilities, parks, play grounds, schools, video arcade facilities, or youth centers, public swimming pools, homeowner associations swimming pools, apartment swimming pools where multiple families have access, commercial amusement center primarily designed or marketed for minors. If any term used herein is not defined in this article, the term(s) shall have the common ordinary meaning or the meaning appearing in section 481.134, Texas Health, and Safety Code, as it exists or may be amended. For the purposes of this article, planted street medians are not public parks.

(a) Prohibited participation.

- (1) A sexual offender as described in subsection (a) *above*, may not participate in youth group activities wearing a costume or mask that covers or distorts identifying facial characteristics. In addition, a sexual offender as described in subsection (a) *above* may not participate in "Halloween" on October 30th or 31st of each year between the hours of 4:00 p.m. and midnight by leaving on an exterior porch light or other lights at his or her residence or otherwise inviting/soliciting trick-or-treaters onto the offender's premises.
- (2) A registered sex offender as defined herein may not enter a child safety zone.
- (3) A registered sex offender may not participate in youth group activities unless the sex offender has disclosed in writing to the sponsor of the youth group, the nature, date, and location of the sexual offense.

§ 8.04.003. Measurements.

(a) Distance determinations. A determination of the minimum distance (separation) for the distance barrier set out in this article shall be measured by a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where child either resides, attends school, engages in gaming activities or otherwise where children are commonly gathered. In the case multiple residences on one property, the measurement shall be from the *nearest property line of the premises to the nearest property line of the protected location as set out herein.*

(b) Affirmative defense. *It is an affirmative defense to prosecution that the measured distances is less than the distance barriers set forth in this article.*

§ 8.04.004. Culpable mental state is not required.

A culpable mental state is not required to be alleged nor is evidence of a culpable mental state required for the proof of an offense as defined by this article.

§ 8.04.005. Exceptions.

A person does not commit an offense under section 8.04.002 if the person:

- (1) Is in or is traveling immediately to or from a parole office, a probation office, or a premises at which the person is participating in a program or activity required as a condition of release; a residential facility in which the person is required to reside as a condition of release; a private residence in which the person is required to reside as a condition of release; or any other premises, facility or location that is designed to rehabilitate or reform the individual; or the individual is authorized by the parole division or the probation office to be on the premises or location at which the person has legitimate business including a church, synagogue, or other established place of religious worship, workplace, a healthcare facility, or a location of a funeral.*
- (2) The person required to register as a sex offender, established a permanent or a temporary residence, and complied with all sex offender registration laws of the state prior to the date of the adoption of this article (or predecessor article); provided, however, such person shall be required to continuously comply with all sex offender registration laws of the state, as they exist or may be amended, after the adoption of this article. Failure to maintain compliance with registration laws forfeits this exception.*
- (3) The person required to register on the database or otherwise, was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.*
- (4) The person required to register on the database or otherwise is a minor.*
- (5) The person required to register is less than eighteen (18) years of age or a ward under guardianship, who resides with a parent or the guardian.*

- (6) *The person required to register has been exempted by a court order from registration as a sex offender under chapter 62, Texas Code of Criminal Procedure.*
- (7) *The person required to register has had the offense for which the sex offender registration was required, reversed on appeal, or pardoned.*
- (8) *The premises where children commonly gather, as specified herein is within one thousand (1,000) feet of the permanent or temporary residence of the person required to register on the database; however, the youth premises was established after the person established the permanent or temporary residence and complied with all sex offender registrations laws of the state, as they exist or may be amended. Such person shall be required to continuously maintain compliance with all the sex offender registration laws of the state, as they exist or may be amended. Failure to maintain compliance with registration laws forfeits this exception.*
- (9) *The information on the database is incorrect, and, if corrected, this article would not apply to the person.* Nothing in this article shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.
- (1) Nothing in this article shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

§ 8.04.006. Affirmative defenses.

It is an additional affirmative defense to prosecution to an offense under this article that the registered sex offender was in, on, or within a specified distance of a child safety zone or other safety zone or other places where children generally gather, for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with; or transportation directly to and from the sex offender's work, and other work-related purposes.

§ 8.04.007. Variance. (Application for exemption):

- (1) Required. A registered sex offender who is otherwise covered by this article may seek an exemption from this article, and any amendments thereto, by filing an application for exemption with the city.
- (2) Procedure.
 - (A) The city shall prepare and maintain in the city secretary's office an official application form; however, a specific form is not required to apply for an exemption.
 - (B) A registered sex offender must formally apply for exemption, in writing, to the city secretary.
 - (C) The city secretary may review the application for completeness of information. If incomplete the application will be returned along with either:

- (i) The official form; or
- (ii) Indications addressing needed information to proceed.
- (D) Once accepted by the city secretary, the application for exemption shall be forwarded to the mayor, who after review, will schedule an agenda item not less than 90 (ninety days) from the date of the submission of the application. The agenda item must include a public hearing and permit a vote on the application. The city will provide written notice of the application and the hearing date to organizations, sponsors, and/or residents of child safety zones which are addressed explicitly or by implication in the application. The applicant shall also receive notice of the hearing date.
- (E) The city council will conduct a public hearing, during which time the city may review all pertinent or relevant information and may accept oral or written statements from any person.
- (F) Following the public hearing, the city council will decide, by majority vote, whether to grant or deny any such application for exemption.
- (G) The decision on whether or not to grant an exemption may be based on all state, federal, municipal, or any other governmental agency regulations, and in addition any laws, conditions, terms or factors, including but not limited to, whether the sex offender has shown remorse, has rehabilitated, recidivism, and other habits, and/or any other factors related to the city's interest in promoting, protecting and improving health, safety, and welfare for the community.
- (H) An exemption may be conditional or limited as to any term or conditions under this article, and in relation to address and/or time.
- (I) A written copy of the acceptance or the denial of the application must be provided to the applicant within a reasonable time.

(3) Appeal.

- (A) If a registered sex offender objects to the decision made by the city council on the application for exemption, that individual may appeal to a court of competent jurisdiction no later than twenty (20) days from the date of the decision.

- The determination of the city council is final if there is no timely appeal.

§ 8.04.008. Penalty; injunctive relief.

- (a) Penalty provision. Any person, firm, corporation, or entity violating this article, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of five hundred dollars (\$500.00). Each continuing day's violation under this article shall constitute a separate offense and shall be punishable as such.
- (b) Injunctive relief is also available. The city may also pursue any civil, injunctive remedies, including restraining order, in addition to or in conjunction with the penalty provision set forth above.

Chapter 9. Attachments: Recovered / Miscellaneous Ordinances:

§ 9.01 Recovered Ordinances

§ 9.01.001 (Ord # 05-06) Construction: Building Permit and Fees.

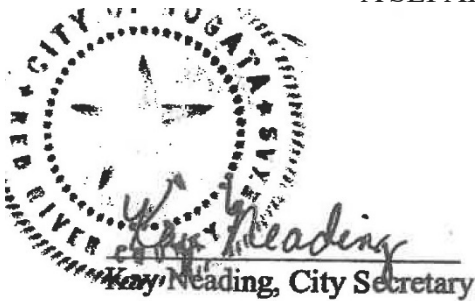
ORDINANCE 05-06

An ordinance amending Building Ordinance of 1985.

AN ORDINANCE OF THE CITY OF BOGATA, TEXAS, REQUIRING A Building PERMIT AND FEE FOR CONSTRUCTION IN THE AMOUNT OF \$10,000.00 OR MORE: AND PROVIDING FOR A PENALTY FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA:

1. ANY CONSTRUCTION OF A BUILDING OR BUILDINGS OR ANY IMPROVEMENTS THEREOF, WHICH ARE IN THE AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00) OR MORE, SHALL REQUIRE A BUILDING PERMIT, WHICH SHALL BE ISSUED BY THE CITY OF BOGATA. - .
2. BUILDING PERMITS SHALL BE ISSUED BY THE CITY OF BOGATA FOR A FLAT FEE OF ONE HUNDRED DOLLARS (\$100.00).
3. BUILDING PERMITS WILL BE ISSUED FOR ONE SPECIFIC ADDRESS AND GOOD FOR TWELVE (12) CALENDAR MONTHS.
4. ANY PERSON WHO VIOLATES ANY PROVISION OF THIS ORDINANCE, OR WHO DOES ANY BUILDING OR IMPROVEMENTS THEREON IN THE AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00) OR MORE; OR WHO ALLOWS ANY PERSON TO DO THE THINGS PROHIBITED BY THIS ORDINANCE, SHALL BE GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, SHALL BE FINED IN ANY SUM NOT TO EXCEED ONE THOUSAND (\$1,000.00). EACH DAY SUCH VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE.




Andy Kennedy, Mayor
City of Bogata

PASSED THIS THE 8th DAY OF AUGUST 2005

ORDINANCE NO. _06-21

AN ORDINANCE OF THE CITY OF BOGATA, TEXAS, REGULATING THE INSTALLATION OF MANUFACTURED HOMES NOT IN MANUFACTURED HOME PARK(S) WITHIN THE CITY OF BOGATA; PRESCRIBING REGULATIONS FOR MANUFACTURED HOMES “NOT” IN MANUFACTURED HOME PARK(S); REQUIRING AN APPLICATION FOR MANUFACTURED HOMES; PRESCRIBING OTHER PREREQUISITES TO THE APPROVAL OF APPLICATIONS; PROVIDING DEFINITIONS; REQUIRING EXISTING MANUFACTURED HOMES TO BE BROUGHT TO SAME STANDARDS AND PROVIDING A DEADLINE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND SETTING AN EFFECTIVE DATE.

WHEREAS, it is deemed in the best interest of the City of Bogata for the health, safety and welfare of its citizens that an ordinance be established to regulate manufactured homes within the City of Bogata, Texas; and

WHEREAS, this Ordinance shall be known and cited as the "Manufactured Home Ordinance" of the City of Bogata, Texas. The provisions of this Ordinance shall apply to manufactured homes not in manufactured home parks.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA:

SECTION 1. PURPOSE The purpose of this ordinance is to establish clear and unambiguous regulations pertaining to manufactured homes not in manufactured home parks in the City of Bogata and to promote thereby an attractive community.

SECTION 2. DEFINITIONS For the purpose of this Ordinance only, the following terms shall apply unless the context clearly indicates or requires a different meaning.

CITY. City of Bogata, Red River County, Texas.

MAYOR. The legally designated head of the City, or his authorized representative when acting in an official capacity, including but not limited to building inspector.

MANUFACTURED HOME or MANUFACTURED HOUSING or HUD-CODE
MANUFACTURED HOME. A structure constructed on or after June 15, 1976, according to the rules of the U.S. Department of Housing and Urban Development, transportable in one or more sections, which in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and including the plumbing, heating, air conditioning, and electrical systems. This term does not include a recreational vehicle as that term is defined by 24 CFR 3282.8(g).

MOBILE HOME. A structure constructed before June 15, 1976, transportable in one or more sections, which in the traveling mode, is eight

(8) body feet or more in width or forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and including the plumbing, heating, air conditioning, and-electrical systems.

For purposes of this Ordinance, the terms "manufactured home" and "mobile home" shall be interchangeable.

TRAVEL TRAILER or RECREATIONAL VEHICLE. A portable vehicle built on a chassis and designed as a temporary dwelling for travel, recreation and vacation use and which has been permanently identified by the manufacturer, when such a vehicle has been equipped by the manufacturer for use on public streets and highways. The terms "travel trailer" and "recreational vehicle" shall also be deemed to include all other portable contrivances other than mobile homes used or intended to be used generally for living and sleeping quarters and which may be moved under its own power, towed, or transported by another vehicle.

SITE PLAN. Graphic representation, drawn to scale, in a horizontal plan delineating the outlines of the land included in the plan and all proposed use locations, accurately dimensioned, the dimensions also indicating the relation of each use to that adjoining and to the boundary of the property.

REPLACEMENT. The act of moving one manufactured home from its existing stand and replacing it with another manufactured home.

SECTION 3. APPLICATION AND PERMIT All applications shall be made upon standard forms provided by the Mayor and shall contain the following:

1. Name, address, and telephone numbers (both home and work) of the applicant.
2. The size, year, serial number, and manufacturer of the manufactured home and whether the home is gas, electric, or both.
3. Location and legal description of lot for manufactured home placement.
4. To the application shall be attached a picture of the mobile home, both front and back, and a copy of a site plan showing the location and orientation of the manufactured home, the required setbacks, and any other information specifically required herein.

All applications shall be submitted with a \$25.00 non-refundable processing fee.

When upon review of the Application, the Mayor is satisfied that the proposed plan meets the requirements of this Ordinance, a permit shall be issued.

Any person whose Application under this Ordinance has been denied may request a hearing on the matter.

SECTION 4. INSPECTIONS The Mayor is hereby authorized and directed to make such inspections as are necessary to determine compliance with this Ordinance. The Mayor shall have the power to enter at reasonable times upon any private or public property

for the purpose of inspecting and investigating conditions relating to the enforcement of this Ordinance.

SECTION 5. NOTICES, HEARINGS, AND ORDERS Whenever it is determined that there are grounds to believe that there has been a violation of any provision of this Ordinance, the Mayor shall give notice of such alleged violation to the owner as hereinafter provided. Such notice shall be:

1. in writing;
2. include a statement of the reasons for its issuance;
3. allow a reasonable time for the performance of the act it requires;
4. be served upon the owner, provided that the notice of order shall be deemed to have been properly served upon such owner when a copy thereof has been sent by certified mail to his last known address, or when he has been served with the notice by any method authorized or required by the laws of this state; and
5. contain an outline of remedial action which, taken, will affect compliance with the provisions of this Ordinance and the time necessary to effect compliance.

Any person affected by the refusal of the Mayor to issue a permit under the provisions of this Ordinance, may request and shall be granted a hearing on the matter before the City Council, provided that such person shall file within thirty (30) days after the permit was refused, in the office of the Mayor, a written petition requesting the hearing and setting forth a brief statement of the grounds therefor. Upon receipt of the petition, the Mayor shall place the request on the next regularly scheduled council agenda allowing for proper notice to be sent to all property owners within a two hundred (200) foot radius of the property where appeal is requested.

After an appeal hearing before the City Council, the Mayor shall issue an order in writing sustaining, modifying or withdrawing the refusal. Upon failure to comply with an order by the Mayor sustaining or modifying a decision thereof, the occupancy affected by the order shall be revoked. The City shall then be entitled to seek all remedies provided by law to remedy the violation.

Whenever the Mayor finds that an emergency exists which requires immediate action to protect the public health or safety, he may without notice or hearing issue an order reciting the existence of such an emergency and requiring that action be taken as he may deem necessary to meet the emergency. Notwithstanding any other provisions of this Ordinance, the order shall be effective immediately. Any person to whom an order is directed shall comply therewith immediately, but upon written petition to the Mayor shall be afforded a hearing as soon as possible.

SECTION 6. SITE PLAN AND REQUIREMENTS The site plan shall be filed as required and shall address the information that is required by this Ordinance. In no event shall a site plan be approved if:

1. more than one manufactured home is located on the lot; or
2. manufactured home is located on a lot upon which another structure is occupied, or which could be occupied as a residential dwelling.

Plans for the foundation and anchoring system_ shall be sealed by a State of Texas Registered Engineer or clearly demonstrate that the submitted system meets or exceeds all the applicable standards set forth by the Texas Department of Housing and Community Affairs and the City of Bogata.

The site shall be located on a well-drained, properly graded lot with an elevated pad where the home is to be located, to insure rapid drainage and freedom from stagnant pools of water.

The site shall be of adequate size to include two off-street parking spaces. All residences shall display an address so as to be readable from the street.

SECTION 7. PLUMBING AND GAS SYSTEMS The installation of plumbing and gas systems that connect the home to utilities and replacement of an existing system or additions to the system shall comply with City's code requirements.

SECTION 8. ELECTRICAL The installation of electrical systems that connect the home to utilities and replacement of an existing system or additions to the system shall comply with City's code requirements.

SECTION 9. MECHANICAL SYSTEMS

The installation of mechanical systems that connect the home to utilities and replacement of an existing system or additions to the system shall comply with City's code requirements.

SECTION 10. ANCHORAGE REQUIREMENTS Anchoring systems shall be sealed by a State of Texas Registered Engineer or clearly demonstrate that the-submitted system meets or exceeds all the applicable standards set forth by the Texas Department of Housing and Community Affairs.

SECTION 11. MISCELLANEOUS REQUIREMENTS Each manufactured home shall be required to install view obstruction skirting with the necessary vents, screens, and/or openings around the base before utilities are released for connection. All manufactured homes shall be securely tied down, blocked and completely skirted thirty (30) days after occupancy. Exception: If a copy of the contract can be provided showing that skirting is part of an installation package or that it has already been paid for with a reasonable completion date stated on the receipt.

The occupant shall comply with all requirements of this Ordinance and shall maintain the manufactured home, its facilities and its equipment in good repair and in a clean and sanitary condition. There shall be no visible rust, no broken windows or doors, and no hanging or loose insulation or flooring. Each manufactured home shall have safe and adequate stairs at both front and back doors.

The occupant shall be responsible for proper placement of the manufactured home in its stand and proper installation of all utility connection in accordance with this Ordinance and regulations pertaining thereto and the appropriate City officials.

Skirting, porches, awnings and other additions, when installed, shall be maintained in good repair. The use of space immediately underneath a manufactured home for storage shall be permitted only under the following conditions:

1. the storage area shall have a base of impervious material, and
2. stored items shall not interfere with the underneath inspection of the manufactured home.

Only one manufactured home shall be located on a lot and a manufactured home shall not be located on any lot having another dwelling occupied or which could be occupied as a residence. Exceptions are to be brought before the City Council.

All manufactured homes located on lots in the City shall comply with yard setbacks as follows: ten feet (10') clearance, plus any easements, on all sides. A front lot line shall be deemed the lot line located on a public right-of-way. In the event a manufactured home is located on a corner lot, the front lot line shall be the lot line facing the main entrance of the manufactured home.

All travel trailers used for permanent occupancy must comply with all provisions of this Ordinance. Travel trailers used for temporary occupancy (three months or less) are exempt from the provisions of this Ordinance. Anything not designed to be a permanent structure cannot be replaced.

All manufactured homes, if unoccupied or if utility services to them are disconnected for six (6) months or more, shall require City inspection to determine compliance with City Code and City ordinances before occupation or utility restoration.

SECTION 12. OCCUPANCY No more than one (1) family unit shall occupy any manufactured home and shall not be used as multi-family dwellings.

SECTION 13. EXISTING MOBILE HOMES Manufactured homes installed prior to the effective date of this Ordinance and in compliance with City Code and the provisions of this Ordinance may remain in place and continue to be used or occupied. Owners of existing manufactured homes which are not in compliance with the provisions of City Code and this Ordinance will be given 90 (ninety) days to comply or incur the penalties in Section 14 hereinbelow. City inspection shall determine compliance with City Code and City ordinances.

SECTION 14. PENALTY Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City shall be subject to a fine not to exceed Two Thousand (\$2,000.00) dollars for each offense, except however, where a different penalty has been established by the state law for such offense the penalty shall be that fixed by state law; and each and every day said violation is continued shall constitute a separate offense.

SECTION 15. REPEALING CLAUSE All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 16. SEVERABILITY CLAUSE Any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this Ordinance which shall remain in full force and effect..

SECTION 17. PUBLICATION The City Secretary is hereby authorized and directed to publish the caption of this ordinance in the manner and for the length of time prescribed by law. This Ordinance shall be in full force and effect from and after its publication in the official newspaper of the City of Bogata.

PASSED, APPROVED and ADOPTED on the 13th day of November 2006.

_____ R K L

Mayor

ATTEST:

Kay Neading
City Secretary

APPROVED AS TO FORM:

[Signature]
City Attorney

3/14/22 Reviewed and Retained As Is:

City Council Meeting

Larry Hinsley, Mayor

§ 9.01.003 (Ord # 98-03) No Loitering Signs

ORDINANCE NO. 98-03

**AN ORDINANCE TO PROHIBIT LOITERING INSIDE CITY LIMITS
AT PUBLIC OR PRIVATE BUILDINGS IF "NO LOITERING" SIGNS ARE POSTED
BY THE MERCHANTS OR OWNERS AND PROVIDING FOR A FINE OF NOT MORE THAN \$200.00.**

WHEREAS, the City Council and the Mayor of the City of Bogata, Texas, having the responsibility of the health, safety, and well-being of the citizens of the City of Bogata, Texas; and

WHEREAS, some of the public buildings and places have been damaged by juveniles and teenagers who have congregated at night and on the week-ends;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS:

It shall be unlawful for any person or group of persons to loiter at public or private buildings inside City limits if the business owners or merchants erect "NO LOITERING" signs on their premises.

All persons or groups of persons who shall willfully refuse to obey this ordinance shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$200.00 for the violation.

READ AND APPROVED on first reading this the 12th day of January 1998.

READ, APPROVED, AND ADOPTED on second reading this the 9th day of February 1998.

Mildred Eudy, Mayor

William T. Harbison, Mayor Pro-Tem

Alfred G. Puckett, Council Member

Buck B. Ramsey, Council Member

ATTEST:



a Couch, City Secretary

Anita Couch, City Secretary



§ 9.01.004 (**Ord # 11-02**) Illegal Use, Sale, Possession, Ingestion or Smoking of Drug products or devices, including synthetic drugs.

ORDINANCE NO. 11-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS, PROHIBITING THE USE, POSSESSION, SALE, INGESTION OR SMOKING OF ILLEGAL SMOKING PRODUCT OR SYNTHETIC DRUG AND INGESTION DEVICES HEREINAFTER DEFINED WITHIN THE CITY LIMITS OF THE CITY.

WHEREAS, protecting children from exploitation by those promoting the illegal consumption illegal smoking products and synthetic drugs or related products by residents and trafficking in drugs and drug-related products is a goal of highest priority within the City of Bogata;

WHEREAS, establishments that sell or display drug paraphernalia and other items promoting the use of illegal drugs constitute a threat to the health and welfare of the residents of Bogata;

WHEREAS, such restrictions promote the general welfare and temperance of residents and children and is intended to help reduce the illegal consumption and purchase of illegal smoking products or synthetic drugs and related products by residents and children by limiting their exposure to illegal smoking products, synthetic drugs and drug paraphernalia and items promoting illegal smoking product and synthetic drug use;

WHEREAS, The City is authorized and empowered to enforce ordinances necessary to protect the welfare of its inhabitants;

WHEREAS, The City Council has determined that it is necessary to enact this ordinance to protect the health and welfare of its residents.

OW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS, THAT:

SECTION 1.

- (1) **ILLEGAL SMOKING PARAPHERNALIA** means any equipment, device, or utensil that is used or intended to be used in ingesting, inhaling, or otherwise introducing into the human body an illegal smoking product, which paraphernalia includes but is not limited to:
- a. a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
 - b. a water pipe;
 - c. a carburetion tube or device;
 - d. a smoking or carburetion mask;
 - e. a chamber pipe;
 - f. a carburetor pipe;
 - g. an electric pipe;
 - h. an air-driven pipe;
 - i. a chillum;
 - j. a bong; or
 - k. an ice pipe or chiller.
- (2) **ILLEGAL SMOKING PRODUCT** means any substance, however labeled and regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following chemicals:
- (A) *Salvia divinorum* including:
 - (i) all parts of the plant, whether growing or not;
 - (ii) the seeds of the plant;
 - (iii) any extract from any part of the plant; and
 - (iv) any compound, salt, derivative, mixture, or preparation of the plant, its seeds, or its extracts, including Salvinorin A;
 - (B) 2-[(1R,3S)-3-hydroxycyclo-hexyl]-5- (2-methyloctan-2-yl)phenol (also known as CP47, 497) and homologues;
 - (C) (6aS,10aS)-9-(hydroxy-methyl)-6,6- dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a- tetrahydrobenzo[c]chromen-1-ol] (also known as HU-211 or Dexanabinol);
 - (D) 1-pentyl-3-(1-napthoyl)indole (also known as JWH-018);
 - (E) 1-butyl-3-(1-napthoyl)indole (also known as JWH-073); or
 - (F) 1-pentyl-3-(4-methoxynaph-tholy)indole (also known as JWH-081);

- (3) ILLEGAL SYNTHETIC DRUG means any substance, however labeled and regardless of whether the substance is marketed for the purpose of being ingested or consumed, which includes any one or more of the following chemicals:
- (A) Salvia divinorum or Salvinorum A; all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or extracts;
 - (B) Synthetic cannabinoids, synthetic cannabinoid mimicking compounds, substances containing the HU-210 compound, or substances having cannabinoid mimicking effects used to adulterate plant or other materials;
 - (C) Products containing any of the above substances and marketed as "K-2", "K-2 Summit", "K-2 Sex", "Genie", "Dascents", "Zohai", "Sage", "Spice", "KO Knock-Out 2", "Spice Gold", "Spice Diamond", "Spice Silver", "Yucutan Fire", "Solar Flare", "Pep Spice", "Fire 'n Ice", "Oiablo", "Spicy Green", "Skunk", "Sence" and "Salvia Divinorum", or products by any other name containing a synthetic cannabinoid, synthetic cannabinoid mimicking compound or substance containing the HU-210 compound; or
 - (D) Any substance similar to those described, which when inhaled or otherwise ingested produces intoxication, stupefaction, giddiness, paralysis, irrational behavior, or in any manner, changes, distorts or disturbs the auditory, visual or mental process and the product or substance has no other apparent legitimate purpose for consumption
- (4) A person commits an offense if, in the city, he:
- (A) possesses, buys, sells, offers for sale, delivers, or transfers any illegal smoking product; or
 - (B) causes any illegal smoking product to be sold, delivered, or transferred to another person; or
 - (C) uses, inhales, ingests, breathes, drinks or otherwise introduces into his body any illegal smoking product; or
 - (D) uses or possesses with the intent to use any illegal smoking paraphernalia to inhale, ingest, or otherwise introduce into his body any illegal smoking product; or
 - (E) uses, possesses, purchases, sales, publicly displays for sale or attempts to sell, gives or barter any one or more illegal synthetic drug substance.
- (5) It is a defense to prosecution under this section that an illegal smoking product or illegal smoking paraphernalia was:

(A) in the possession of a peace officer, or a person acting under the authority of a peace officer, acting in the performance of official duties;

(B) in the possession of or being used by a governmental entity for a health, research, education, or similar program;

(C) in the possession of or being used by a medical, educational, or research institute operating in compliance with all applicable city ordinances and state and federal laws; or

(D) possessed or used by a person under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances in the State of Texas.

(6) A person violating a provision of this section is, upon conviction, punishable by a fine not to exceed \$2,000. A person commits a separate offense for each day or part of a day during which a violation is committed, continued, or permitted.

SECTION TWO. Repeal. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION THREE. Severability. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional.

SECTION FOUR. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Capt. 551, Tx. Gov't. Code.

SECTION FIVE. Emergency Reading. Such an amendment is immediately necessary in order to permit the City of Bogata to operate with a balanced budget as required by law and such fact constitutes an emergency for the preservation of public business, health, and safety, thereby demanding that the rule which requires an ordinance be read at more than one meeting of the City Council be and the same is hereby suspended and this ordinance shall take effect immediately upon and after its passage.

This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

UPON MOTION OF COUNCILMEMBER

SECONDED BY COUNCILMEMBER

THAT THE ORDINANCE BE ADOPTED ON EMERGENCY READING.

AYES:5:NAYES:2

PASSED AND APPROVED THIS THE 14TH DAY OF MARCH 2011.


AYOR


CITY SECRETARY


EDGAR J. GARRETT, JR.
CITY ATTORNEY

APPROVED AS TO LEGALITY:

EDGAR J. GARRETT, JR.
CITY ATTORNEY

§ 9.01.005 (Ord # 91-05) Arson Award Ordinance

ARSON REWARD ORDINANCE NO. 91-05

AN ORDINANCE PROVIDING FOR A *REWARD* FOR ARREST AND CONVICTION
FOR ARSON

WHEREAS, the City Council desiring to receive a 2.5% key rate credit from the State Board of Insurance for an Arson Reward Ordinance, finds it necessary to pass the following ordinances

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA,
TEXAS: SECTION 1. REWARD

That the City of Bogata, Texas, hereby offers a reward of two hundred and fifty dollars (\$ 250.00) to anyone who furnishes information leading to the arrest and conviction of any person or persons found guilty of arson committed within the corporate limits of the City of Bogata, Texas. This reward is a standing offer and shall be paid out of the General Fund of the City of Bogata, Texas.

SECTION 2.

That placards, at least 8 by 12 inches in size and properly posted in wooden frames under glass, be prominently displayed in at least six (6) public buildings in the city.

SECTION J.

All existing arson ordinances or all ordinances or parts of ordinances in conflict herewith are hereby repealed,

SECTION 4.

That an emergency be declared and this ordinance become effective immediately.

APPROVED and PASSED this 10th day of June 1991.

Mildred F. Eudy, Mayor

ATTEST: Anita Cough, City Secretary



§ 9.01.006 (Ord # 00-10) Appointment and Qualification of a Municipal Judge

**ORDINANCE NO. 00-10
OF THE CITY OF BOGATA, TEXAS
TO AUTHORIZE THE APPOINTMENT AND
QUALIFICATIONS OF A MUNICIPAL JUDGE**

WHEREAS, the Bogata Municipal Court was active from 1984 to July 1987, with a separate Judge and then was re-activated February 1, 1996, with the Mayor serving as ex officio judge of the Municipal Court; and

WHEREAS, the Texas Government Code, Chapter 29.004 (b) provides as follows:

In a general law city, the mayor is the ex-officio judge of the municipal court unless the municipality by ordinance authorizes the election of the judge or provides for the appointment and qualifications of the judge. If the municipality authorizes an election, the judge shall be elected in the manner and for the same term as the mayor. If the municipality authorizes the appointment, the mayor ceases to be judge on the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor's term.

NOW, THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS: SECTION

1. MUNICIPAL JUDGE

There shall be a magistrate judge of the Municipal Court known as the Municipal Court Judge who shall be appointed by the City Council to serve for a term of two years to run concurrently with the Mayor's term. The Municipal Judge may be removed by the City Council at any time for incompetency, misconduct, malfeasance, or disability.

SECTION 2. COMPENSATION OF MUNICIPAL JUDGE

The Municipal Judge shall receive such salary as may be fixed by the council from time to time. In the event of failure of the Municipal Judge to act for any reason, the Mayor shall act in the place and stead of the Municipal Judge (and in the event of a vacancy, until a Municipal Judge is appointed by the council to fill the vacancy). The Mayor, while acting as Municipal Judge, shall receive no compensation.

SECTION 3. DUTIES OF MUNICIPAL JUDGE

The Municipal Judge shall preside over the municipal court of the City with the power and authority to establish municipal court rules as permitted by the laws of the state. His or her duties may include:

1. Set and take bail (article 45.12, C.C.P.);
2. Forfeit bail (articles 4.14, 45.12 and 45.231, C.C.P.);
3. Request and accept pleas of guilty, nolo contendere and not guilty (articles 27.14, 27.16, 45.34, and 45.35, C.C.P.) (Attorney General Opinion H-386);
4. Arraign defendants (article 26.02, C.C.P.);
5. Enter a plea of not guilty for a defendant who refuses to plead (article 45.35, C.C.P.);
6. Conduct pre-trial hearings (article 28.01, C.C.P.);
7. Grant continuances (chapter 29, C.C.P.);
8. Conduct trials (article 45.23, C.C.P.);
9. Administer oath to six (6) member jury panel (article 45.30, C.C.P.);
10. Rule on challenges to the array (membership) of the venire panel of prospective jurors (article 36.07, C.C.P.);
11. Enter judgments (article 45.40, C.C.P.);
12. Rule on motion for new trial (article 45.40, C.C.P.);
13. Determine how defendant pays fine and costs (time payment, extensions, community service) (article 45.50, C.C.P.);
14. Issue arrest warrants for defendants whose cases are filed in municipal court (article 45.18, C.C.P.);
15. Issue capias (pro fine) (article 45.41, C.C.P.);
16. Issue capias (article 23.04, C.C.P.);
17. Issue summonses when requested by the prosecutor (article 23.04, C.C.P.);
18. Issue summons for parents of juveniles (Sec.54.022 (e), (g), F.C.)
19. Grant deferred disposition (article 45.54, C.C.P.);
20. Grant driving safety courses (sections 543.103 and 543.104, T.C.); and
21. Dismiss cases in certain instances (judges have limited authority to dismiss) (article 32.02 and 45.03, C.C.P.)

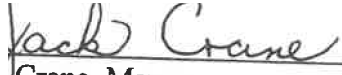
SECTION 4. TRAINING OF MUNICIPAL JUDGE

Each municipal court judge in the State of Texas who is not a licensed attorney in this state must complete successfully a 32-hour course in the performance of his duties within one (1) year from the date he is first elected or appointed. The judge must complete a minimum of twelve (12) hours each calendar year following the calendar year in which the initial course was taken.

Each municipal court judge in the State of Texas who is a licensed attorney and in good standing with the State Bar must complete successfully within one year from the date he is first elected or appointed, a 12-hour course in the performance of his duties.

The judge must complete a 12-hour course each calendar year, following the calendar year in which the initial course was taken.

READ, APPROVED AND ADOPTED on first the 12th day of June 2000.


Crane Mayor
Jaek Crane, Mayor City of
Bogata, Texas

ATTEST:

Anita Couch, City Secretary



§ 9.01.007 (Ord # 01-23) Amending Ord # 99-09 Court Technology Fund

ORDINANCE NO. 01-23

AN ORDINANCE OF THE CITY OF BOGATA, TEXAS, AMENDING ORDINANCE NO. 99-09, RAISING THE MUNICIPAL COURT TECHNOLOGY FUND FROM \$2.00 TO \$4.00 TO BE ASSESSED AND COLLECTED FROM A DEFENDANT UPON CONVICTION FOR A MISDEMEANOR OFFENSE IN THE MUNICIPAL COURT EFFECTIVE OCTOBER 1, 2001.

WHEREAS, Article 102.0172 of the Code of Criminal Procedure provides for the establishment of a Municipal Court Technology Fund; and

WHEREAS, the fee can be as much as \$4.00; and

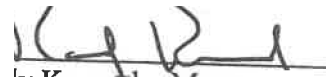
WHEREAS, Ordinance No. 99-09 was passed, approved and adopted on August 16, 1999, setting the fee at \$2.00 to be effective September I, 1999;


NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA:

1. That Section 2. A. of Ordinance 99-09 be changed to read:
 - A. The fee shall be in the amount of \$4.00.
2. That this ordinance shall become effective on October 1, 2001.

Passed, Approved, and Adopted on this the 10th day of September 2001.




City Clerk


Anita Couch, City Secretary

ORDINANCE NO. 99-09

An ordinance of the City of Bogata, Texas, establishing a Municipal Court Technology Fund; providing for the assessment and collection of a municipal court technology fee; providing for severability; providing for publication and effective date; providing for expiration date.

Whereas, Article 102.0172 of the Code of Criminal Procedure provides for the establishment of a Municipal Court Technology Fund.

Be it Ordained by the City Council of the City of **Bogata, Texas:**

Section 1. Establishment of Municipal Court Technology Fund

- A. There is hereby created and established a Municipal Court Technology Fund, here-in-now known as the Fund, pursuant to Article 102.0172 of the Code of Criminal Procedure.
- B. The Fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

Section 2. Establishment of Amount of the fee and Assessment and Collection

- 2. The fee shall be in the amount of ~~\$2.00~~ \$4.00 amended 9-10-01 eff. 10-01
- 3. The fee shall be assessed and collected from the defendant upon conviction for a misdemeanor offense in the Municipal Court as a cost of court. A defendant is considered convicted if:
 - A. a sentence is imposed on the person;
 - B. the person is placed on community supervision, including deferred adjudication community supervision; or
 - C. the court defers final disposition of the person's case.
- A. The fee shall be collected on conviction for an offense committed on or after September 1, 1999 *(or for convictions on offenses committed on or after ordinance is adopted).*
- B. The clerk of the court shall collect the fee and pay the fee to the municipal treasurer or *(other official who discharges or performs the duties of the treasurer)* of the City of Bogata, who shall deposit the fee into the Municipal Court Technology Fund.

Section 3. Designated Use of the Fund and Administration

- A. The Fund shall be used only to finance the purchase of technological enhancements for the Municipal court of the City of Bogata, Texas, including:

1. computer systems;
 2. computer networks;
 3. computer hardware;
 4. computer software;
 5. imaging systems;
 6. electronic kiosks;
 7. electronic ticket writers: or
 8. docket management systems.
- B. The Fund shall be administered by or under the direction of the City Council of the City of Bogata

Section 4. Severability

If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Bogata, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any portion or provision.

Section 5. Repealing Conflict

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

Section 6. Publishing and Effective Date

This ordinance shall be published in accordance with the requirement of publishing all ordinances and becomes effect in accordance with state law upon passage, but no earlier than September 1, 1999.

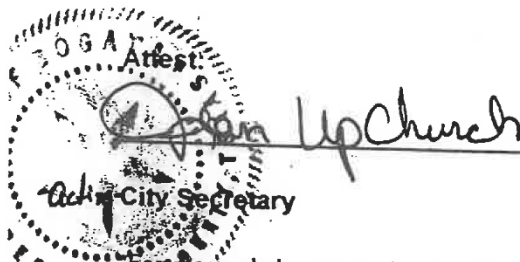
Section 7. Expiration and Administration of Fund

In accordance with Article 102.0172 of the Code of Criminal Procedure, this ordinance and the assessment and collection of the Municipal Court Technology fee expires September 1, 2005. The purpose of the use of any funds remaining in the Fund shall continue to be used and administered as required by this ordinance and for that purpose this ordinance remains in effect.

Passed, Approved and Adopted on this the 16th day of August 1999.

Michael R Garretson
Mayor

City of Bogata, Texas



Attest:
Jean Upchurch
City Secretary

Jean Upchurch
City Secretary

Fees may only be assessed and collected on offenses occurring on or after September 1, 1999. The fee may not be assessed or collected retroactively if Fund is established at a later date than September 1, 1999.

§ 9.01.008 (Ord # 01-24) Municipal Court Building Security Fee

ORDINANCE NO. 01-24

**AN ORDINANCE TO ASSESS AND COLLECT
A BUILDING SECURITY FEE OF \$3.00 FROM A DEFENDANT UPON CONVICTION
FOR A MISDEMEANOR OFFENSE,
TO BE RETAINED LOCALLY AND USED TO FINANCE ITEMS FOR THE PURPOSE OF
PROVIDING SECURITY SERVICES
FOR BUILDINGS HOUSING A MUNICIPAL COURT AND PROVIDING FOR AN
EFFECTIVE DATE OF OCTOBER 1, 2001.**

WHEREAS, Article 102.017 of the Code of Criminal Procedure provides for the establishment of a Municipal Court Building Security Fund.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS:

Section 1. Establishment of Municipal Court Building Security Fund.

- A. There is hereby created and established a Municipal Court Building Security Fund, herein now known as the Fund, pursuant to Article 102.017 of the Code of Criminal Procedure.
- B. The Fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

Section 2. Establishment of Amount of the fee and Assessment and Collection.

- A. The fee shall be in the amount of \$3.00.
- B. The fee shall be assessed and collected from the defendant upon conviction for a misdemeanor offense in the Municipal Court as a cost of court. A defendant is considered convicted if:
 - a. a sentence is imposed on the person;
 - b. the person receives community supervision, including deferred adjudication; or
 - c. the court defers final disposition of the person's case.
- C. The fee shall be collected on conviction for an offense committed on or after October 1, 2001.
- D. The clerk of the court shall collect the fee and pay the fee to the Municipal Treasurer (or other official who discharges or performs the duties of the treasurer) of the City of Bogata, who shall deposit the fee into the Municipal Court Building Security Fund.

Section 3. Designated Use of the Fund and Administration.

- A. The Fund may be used only to finance items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court, as appropriate, including:
- B. The Fund shall be administered by or under the direction of the City Council of the City of Bogata.
 - 1. The purchase or repair of X-ray machines and conveying systems;

2. Handheld metal detectors;
3. Walkthrough metal detectors;
4. Identification cards and systems;
5. Electronic locking and surveillance equipment;
6. Bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
7. Signage;
8. Confiscated weapon inventory and tracking systems;
9. Locks, chains, alarms, or similar security devices;
10. The purchase or repair of bullet-proof glass; and
11. Continuing education on security issues for court personnel and security personnel.

Section 4. The Fund shall be administered by or under the direction of the City Council of the City of Bogata.

Severability.

If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Bogata, Texas, in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any portion or provision.

Section 5. Repealing Conflict.

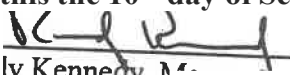
All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

ORDINANCE NO. 01-24


Section 6. Publishing and Effective Date.

This ordinance shall be published in accordance with the requirement of publishing all ordinances and becomes effective October 1, 2001.

PASSED, APPROVED AND ADOPTED on this the 10th day of September 2001.


lv Kennedy M.
Randy Kennedy, Mayor




Anita Couch, City Secretary

ORDINANCE NO. 00-23

AN ORDINANCE FOR THE CITY OF BOGATA, TEXAS, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF BOGATA, BE AMENDED; PROHIBITING UNREASONABLY LOUD, DISTURBING AND UNNECESSARY NOISES WHICH ARE DEEMED OFFENSIVE TO THE ORDINARY SENSIBILITIES OF THE INHABITANTS OF THE CITY; PROHIBITING USE OF SOUND AMPLIFICATION SYSTEMS, LOUDSPEAKERS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR A PENALTY NOT TO EXCEED \$500.00; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE OF NOVEMBER 8TH, 2000.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS:

CHAPTER 1. NOISE CONTROL

Section 1.01. Making of noises is detrimental to life or health is prohibited.

It shall be unlawful for any person to make, cause to be made, or allow noise of such character, intensity and duration as to be detrimental to the life or health of any individual in the City.

Section 1.02. Noises interfering with the enjoyment of property or public peace and comfort.

No person shall make, cause to be made, or allow any unreasonably loud, disturbing and unnecessary noise in the City, which is offensive to the ordinary sensibilities of the inhabitants of the City, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.

Section 1.03. Same-Enumerated

The following acts, among others, are declared to create loud, disturbing and unnecessary noises, and shall be deemed a violation of this Ordinance, but such enumeration shall not be deemed to be exclusive:

- (a) The continued or frequent sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, or the creating by means of any such signal device of any unreasonably loud or harsh noise for any unnecessary purpose or unreasonable period of time, except as a danger signal, or as may be required by law, if another vehicle is backing, starting or turning in such a manner as to likely cause a collision.
- (b) The playing of any radio, television, phonograph, stereo, drum, musical instrumental or other similar devices in such an unreasonable manner, or at such an unreasonable volume, as to disturb the peace, quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, apartment, hotel, or other type of residence, or any place of business in the immediate vicinity thereof.

- (c) The owning, keeping, possessing or harboring of any animal or fowl, which by making frequent or habitual unreasonable noises, disturb the comfort and repose, of persons of ordinary sensibilities in the immediate vicinity thereof.
- (d) The use of any automobile, motorcycle, bus, or other vehicle so out of repair, or so loaded, which emits or creates loud or unnecessary grating, grinding or rattling noise.
- (e) Noise from use-related loading or unloading operations that impact residential areas other than between the hours of 7:00 a.m. and 10:00 p.m.
- (f) The discharge into the open air of the exhaust from any motor vehicle except through a muffler, or other device, which will effectively and efficiently prevent unreasonable loud noises.
- (g) The use of any mechanical device operated by compressed air, unless the noise to be created thereby has been effectively muffled and reduced.
- (h) The erection, including excavation, demolition, alteration, or repair of any building in or adjacent to a residential area other than between the hours of 7:00 a.m. and 10:00 p.m., except in the case of urgent necessity in the interest of public safety.
- (i) The creation of unreasonably loud, disturbing and unnecessary noise on any street adjacent to any school or other institute of learning, place of religious worship, or court which is in session, or adjacent to any hospital.
- (j) The use of any drum, or other instrument, or sound amplifying equipment for the purpose of attracting attention, by the creation of noise, to any performance, show, sale or display of merchandise or to attract customers to any place of business or transmitting music to any person or persons or assemblages of persons in such a manner as to be offensive to the ordinary sensibilities of inhabitants of the City and as to interfere with the public peace and comfort or make the enjoyment of life or property uncomfortable.
- (k) The use of mechanical loudspeakers or sound amplifiers on trucks or other moving vehicle for the purpose of advertising any show, sale or display of merchandise in such a manner as to be offensive to the ordinary sensibilities of inhabitants of the City and as to interfere with the public peace and comfort or make the enjoyment of life or property uncomfortable.

Section 1.04. Vehicular mounted sound amplification systems.

- (a) It shall be unlawful for any person operating or controlling a motor vehicle in either a public or private place within the City to operate any sound amplifier which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player or other similar device in the motor vehicle, in such a manner that, when operated, is audible at a distance of fifty (50) feet, or, when operated, causes a person to be aware of the vibration accompanying the sound at a distance of fifty (50) feet from the source.
- (b) The provisions of the Section do not apply to vehicles operated in the performance of duty by law enforcement officer, fire department, volunteer fire departments, or ambulances.

Section 1.05. Presumption

- (a) Whenever a violation of Section 1.03 (k) or Section 1.04 (a) of this ordinance occurs, it is presumed that the registered owner of the vehicle for which the citation was issued is the person who committed the violation, either personally or through an agent or employee. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Transportation showing the name of the person to whom state license plates were issued. This proof is prima facie evidence of the ownership of the vehicle by the person to whom the certificate of registration was issued.
- (b) If noise can be heard from a distance of fifty (50) feet or more after the person making the noise receives notice from a peace officer that the noise is a public nuisance, such noise is presumed to be loud and raucous.

Section 1.06. Loudspeakers and amplifiers

1. A person commits an offense if he operates, or causes to be operated, any mechanical loudspeaker or sound amplifier in a public place or upon any public sidewalk, street, alley or highway of the City in violation of any of the following limitations and requirements:
 - (a) No mechanical loudspeaker or sound amplifier may be operated within 150 feet of the property line of the premises of a residence, except between the hours of 7:00 a.m. and 10:00 a.m.
 - (b) A mechanical loudspeaker or sound amplifier may not emit unreasonably loud, disturbing and unnecessary noises so as to interfere with the enjoyment of life or property or to interfere with public peace and comfort.
 - (c) A mechanical loudspeaker or sound amplifier must be operated so as not to cause traffic congestion or congregation of crowds that obstructs any public sidewalk, street, alley or highway.
 - (d) A mechanical loudspeaker or sound amplifier may not be operated within 150 feet of any of the following.
 - hospital;
 - school that is in session;
 - court that is in session;
 - nursing home;
 - facility that provides surgical services to patients who do not require overnight hospital care during the hours of operation of the facility;
 - place of religious worship while services are being conducted; or

- funeral home while services are being conducted.

2. In this Section:

- (a) **Residence** means a single-family, duplex or multi-family dwelling.
- (b) **Surgical services** means therapy of a mechanical or operative kind, including, but not limited to, operations involving cutting, the setting of fractures and dislocations, and similar manual forms of treatment.
- (c) If conduct that would otherwise violate this Section consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions, the person must be ordered to move, disperse or otherwise remedy the violation prior to arrest or citation.
- (d) The order required by Subsection (c) may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.
- (e) It is a defense to prosecution under Subsection (a) that:
 - in circumstances in which this Section requires an order, no order was given;
 - an order, if given, was manifestly unreasonable in scope;
 - an order, if given, was not promptly obeyed;
 - the mechanical loudspeaker or sound amplifier was operated in a public place within an enclosed structure and was not audible beyond the property line of the premises on which it was located;
 - the person operating the mechanical loud speaker or sound amplifier was a law enforcement officer or member of the fire department in the performance of official duties;
 - the mechanical loudspeaker or sound amplifier was operated for the purpose of alerting persons to the existence of an emergency or danger; or,
 - the mechanical loudspeaker or sound amplifier was operated in the performance of emergency work necessary to restore public utilities, to restore property to a safe condition, or to protect persons or property from imminent danger following a fire, accident or natural disaster.

Section 1.07. Use of bell, siren, or compression or exhaust whistle on vehicles.

No vehicle shall be equipped with, and no person shall use upon a vehicle, any bell, siren or compression or exhaust whistle, except that vehicle operated in the performance of duty by law enforcement officers, the fire department including volunteer fire departments, and ambulances may attach and use a bell, siren or compression or exhaust whistle.

Section 1.08. Use of compression or "Jake" brake by commercial vehicles.

It shall be unlawful for any commercial vehicle to have a compression or what is commonly known as a "Jake" brake activated within the City limits.

Section 1.09. Discharge of Firearms

- (a) It shall be unlawful to discharge a firearm within the City limits.
- (b) In this section:
 - 1. **Firearm** is defined as any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use; or
 - 2. Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by compressed air or compressed gas (CO-2).

Section 1.10. Fireworks unlawful within City Limits

- 1. It shall be unlawful to possess, sell or set off fireworks of any kind inside the City limits. This is to include but not limited to:
 - a. firecrackers;
 - b. bottle rockets;
 - c. whistlers;
 - d. cannons; and
 - e. noisemakers of any type

Section 1.11. Exceptions

The provisions of this Ordinance shall not apply to:

- 1. Sound caused in the performance of emergency or public service work, including police, fire, emergency medical services and public utility operations, acting in the performance of lawful duties to protect the health, safety or welfare of the community;
- 2. Any vehicle of the city, county or state while engaged in necessary public business;
- 3. The intentional sounding or permitting the sounding of any fire, burglar or civil defense alarm, siren, whistle or similar stationary or emergency device for emergency purposes or for testing;

4. The use of bells or chimes in conjunction with places of religious worship;
5. Sound generated during a special event for which a Special Events Permit has been issued under this Code;
6. The following activities, as long as they are conducted between the hours 7:00 a.m. and 10:00 p.m. as a normal function of a permitted use and equipment is maintained in proper working order:
 - Lawn maintenance;
 - Repair of personal-use vehicle; and
 - Home repair of place of residence.

Section 1.12. Enforcement; penalties.

Any private citizen may enforce compliance with this Ordinance by filing a complaint in the Municipal Court of the City of Bogata. Any person, firm, company, partnership, corporation or association violating any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not to exceed \$500.00, and each and every day's continuance of any violation of this Ordinance shall constitute and be deemed a separate offense.

Section 2.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any section, paragraph, sentence, clause, or phrase of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining section, paragraphs, sentences, clauses, and phrases of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of such unconstitutional section, paragraph, sentence, clause, or phrase.

Section 3. Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not to exceed \$500.00 and each and every day's continuance of any violation of the above enumerated sections shall constitute and be deemed a separate offense.

Section 4. repealed.

Section 5. All ordinances or parts of ordinances in conflict herewith are expressly

This ordinance shall become effective on November 8th, 2000.

Jack Crane, Mayor

ATTEST:

Anita Couch, City Secretary

§ 9.02 Miscellaneous Ordinances

§ 9.02.001 Streets, Traffic and Vehicles

§ 9.02.001.1 (Ord # 02-14) Parking Space for Disabled Persons

ORDINANCE NO. 02-14

COPY

AN ORDINANCE OF THE CITY OF BOGATA, TEXAS, ESTABLISHING PROVISIONS FOR CREATION OF PARKING SPACES FOR DISABLED PERSONS; PROVIDING DEFINITIONS FOR GENERAL WORDS AND PHRASES; PROVIDING FOR FINES UP TO \$1,000 PLUS COMMUNITY SERVICE FOR VIOLATORS; PROVIDING A SAVINGS CLAUSE; AND SETTING AN EFFECTIVE DATE.

NOW THEREFORE BE IT **ORDAINED BY** THE CITY COUNCIL OF THE CITY OF **BOGATA, TEXAS:**

PRIVILEGED PARKING

- § 1 Definitions
- § 2 Disabled Parking Placard
- § 3 Enforcement
- § 4 Offenses; Presumption
- § 5 Seizure and Revocation of Placard
- § 6 Penalty

1. Definitions

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

1. "Department" means the Texas Department of Transportation.
2. "Disability" means a condition in which a person has:
 - mobility problems that substantially impair the person's ability to ambulate;

- visual acuity of 20/200 or less in the better eye with correcting lenses; or
 - visual acuity of more than 20/200 but with a limited field of vision in which the widest diameter of the visual field subtends an angle of 20 degrees or less.
3. "Disabled parking placard" means a placard issued under Section 681.002.
 4. "International symbol of access" means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.
 5. "Mobility problem that substantially impairs a person's ability to ambulate" means that the person:
 - (a) cannot walk 200 feet without stopping to rest;
 - (b) cannot walk without the use of or assistance from an assistance device, including a brace, a cane, a crutch, another person, or a prosthetic device;
 - (c) cannot ambulate without a wheelchair or similar device;
 - (d) is restricted by lung disease to the extent that the person's forced respiratory expiratory volume for one second, measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 millimeters of mercury on room air at rest;
 - (e) uses portable oxygen;
 - (f) has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association;
 - (g) is severely limited in the ability to walk because of an arthritic, neurological, or orthopedic condition;
 - (h) has a disorder of the foot that, in the opinion of a person licensed to practice podiatry in this state or in a state adjacent to this state, limits or impairs the person's ability to walk; or
 - (i) has another debilitating condition that, in the opinion of a physician licensed to practice medicine in this state or a state adjacent to this state or authorized by applicable law to practice medicine in a hospital or other health facility of the Veterans Administration, limits or impairs the person's ability to walk.

6. "Podiatry" has the meaning assigned by Section 202.001, Occupations Code.

2. DISABLED PARKING PLACARD

- A. The department shall provide for the issuance of a disabled parking placard to a person with a disability.
- B. A disabled parking placard must be two-sided and hooked and include on each side:
 - 1. the international symbol of access, which must be at least three inches in height, be centered on the placard, and be:
 - A. white on a blue shield for a placard issued to a person with a mobility disability described by Section 1(5)(8) or {C) above; or
 - B. white on a red shield for a placard issued to a person with any other permanent or temporary disability;
 - 2. an identification number;
 - 3. an expiration date at least three inches in height; and
 - 4. the seal or other identification of the department.
 - (a) The department shall furnish the disabled parking placards to each county assessor-collector.
 - (b) A disabled parking placard must bear a hologram designed to prevent the reproduction of the placard or the production of a counterfeit placard.
 - (c) In addition to the expiration date included on a disabled parking placard under Subsection (b), the expiration date must be indicated on the placard by a month and year hole-punch system.

3. Enforcement

- (a) A peace officer or a person designated by a political subdivision to enforce parking regulations may file a charge against a person who commits an offense under this chapter at a parking space or area designated as provided by Section 681.009, Texas Transportation Code.
- (b) A security officer commissioned under Chapter 1702, Occupations Code, and employed by the owner of private property may file a charge against a person who commits an offense under this chapter at a parking space or area designated by the owner of the property as provided by Section 681.009, Texas Transportation Code.

4. Offenses; Presumption

(a) A person commits an offense if:

(1) the person parks a vehicle on which are displayed license plates issued under Section 502.253 or 502.254, Texas Transportation Code, or a disabled parking placard in a parking space or area designated specifically for persons with disabilities by:

(F) a political subdivision; or

(B) a person who owns or controls private property used for parking as to which a political subdivision has provided for the application of this section under Subsection (f); and

(2) the parking of the vehicle in that parking space or area is not authorized by Section 681.006, 681.007, or 681.008; Texas Transportation Code.

(a) A person commits an offense if the person:

(b) parks a vehicle on which license plates issued under Section 502.253 or 502.254, Texas Transportation Code, are not displayed and a disabled parking placard is not displayed in a parking space or area designated specifically for individuals with disabilities by:

1. a political subdivision; or

2. a person who owns or controls private property used for parking as to which a political subdivision has provided for the application of this section under this Subsection (f); or

3. parks a vehicle displaying a white on red shield disabled parking placard or license plates issued under Section 502.253, Texas Transportation Code, in a space designated for the exclusive use of vehicles displaying a white on blue shield disabled parking placard.

4. A person commits an offense if the person parks a vehicle so that the vehicle blocks an architectural improvement designed to aid persons with disabilities, including an access or curb ramp.

5. A person commits an offense if the person lends a disabled parking placard issued to the person to a person who uses the placard in violation of this section.

6. In a prosecution under this section, it is presumed that the registered owner of the motor vehicle is the person who parked the vehicle at the time and place the offense occurred.

7. A political subdivision may provide that this section applies to a parking space or area for persons with disabilities on private property that is designated in compliance with the identification requirements referred to in Section 681.009(b), Texas Transportation Code.

8. A person commits an offense if the person:
9. parks a vehicle on which are displayed license plates issued under Section 502.253, Texas Transportation Code, or a disabled parking placard in a parking space or area for which this chapter creates an exemption from payment of a fee or penalty imposed by a governmental unit;
- does not have a disability;
 - is not transporting a person with disability; and
 - does not pay any applicable fee related to parking in the space or area imposed by a governmental unit or exceeds a limitation on the length of time for parking in the space or area.

5. Seizure and Revocation of Placard

{a) A law enforcement officer who believes that an offense under Subsection 4 {a) or {d) hereof has occurred in the officers presence shall seize any disabled parking placard involved in the offense. Not later than 48 hours after the seizure, the officer shall determine whether probable cause existed to believe that the offense was committed. If the officer does not find that probable cause existed, the officer shall promptly return each placard to the person from whom it was seized. If the officer finds that probable cause existed, the officer, not later than the fifth day after the date of the seizure, shall submit each seized

placard to the department.

(b) On submission to the department under Subsection (a), a placard is revoked. On request of the person from whom the placard was seized, the department shall conduct a hearing and determine whether the revocation should continue, or the placard should be returned to the person and the revocation rescinded.

6. Penalty

- (a) Except as provided by Subsections (b)–(e) hereof, an offense under this ordinance is a misdemeanor punishable by a fine of not less than \$250 or more than \$500.
- (b) If it is shown on the trial of an offense under this section that the person has been previously convicted one time of an offense under this section, the offense is punishable by a fine of not less than \$300 or more than \$600.
- (c) If it is shown on the trial of an offense under this section that the person has been previously convicted two times of an offense under this section, the offense is punishable by:
1. a fine of not less than \$300 or more than \$600; and
 2. not less than 10 or more than 20 hours of community service.

(d) If it is shown on the trial of an offense under this section that the person has been previously convicted three times of an offense under this section, the offense is punishable by:

1. a fine of not less than \$500 or more than \$1,000; and
2. not less than 20 or more than 50 hours community service.

(e) If it is shown on the trial of an offense under this section that the person has been previously convicted four times of an offense under this section, the offense is punishable by a fine of \$1,000 and 50 hours of community service.

SECTION 2. That if any section, provision, subsection, paragraph, sentence, clause, phrase or word in this Ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Bogata, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith be and the same ~~be~~ hereby expressly repealed. •.

SECTION 4. This Ordinance shall be in full force and effect thirty (30) days after its publication in the official newspaper of the City of Bogata.

PASSED AND APPROVED, this the 16th day of September 2002.

Randy Kennedy, Mayor

APPROVED AS TO FORM:


Anita Couch
Anita Couch, City Secretary



Bogata City

§ 9.02.001.2 (Ord # 00-15) Operation of Commercial Trucks on Residential Streets.

ORDINANCE NO. 00-15

AN ORDINANCE PROIDBITING OPERATION OF COMMERCIAL TRUCKS ON CITY STREETS IN RESIDENTIAL AREAS AND RESTRICTING PARKING IN RESIDENTIAL AREAS WITHIN. THE CITY LIMITS OF THE CITY OF BOGATA, TEXAS; PRESCRIBING A PENALTY FOR VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE OF SEPTEMBER 16, 2000, AND PROVIDING FOR A SAVINGS CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS;

SECTION 1. It shall be unlawful for any person to operate, access, drive upon, or use any truck tractor, trailer, semi-trailer, bus, or any commercial motor vehicle with a rated capacity of one and one-half tons, or greater, on residential streets within the city limits in the City of Bogata, Texas.

This section shall not apply to the following named roadways within the city limits of Bogata, Texas:

Texas State Highway 37

U.S. Highway 271

Business Route 271 Gable Street

Mt. Vernon Drive Halesboro Street

Clarksville Street

Texas Farm to Market Road 909

This section shall not apply to a truck tractor if the trailer is disconnected and the owner/operator is in route to their residence and the vehicle is parked on private property.

This section shall not apply if the vehicle is in route to a commercial destination as described and defined in Section 2 of this ordinance.

Ordinance No. 00-15

SECTION 2. (cont'd)

This section shall not prevent the parking or standing of the above described vehicles in such areas for the purpose of expeditiously loading and unloading of passengers, freight, or merchandise; and provided this section shall not apply to street

construction, maintenance and repair equipment, trucks, trailers, and vehicles used by public service utility companies engaged in repairing or extending public utilities; and motor buses when taking on or discharging passengers at customary bus stops.

This ordinance does not negate, alter, or change any currently existing posted "NO PARKING ZONES".

SECTION 3. That any person found guilty of parking any motor vehicle or other vehicle in the above-described areas at any time shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine as allowed by the laws of the State of Texas.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

SECTION 5. The provisions of this ordinance are hereby declared to be severable and if any section, subsection, clause, phrase, or provision of this ordinance is for any reason held unconstitutional or void by a court of competent jurisdiction, such holding shall not affect any valid provision of this or other ordinances of the City of Bogata, Texas.

SECTION 6. This ordinance shall become effective the 16th day of September 2000, (30 days after publication).

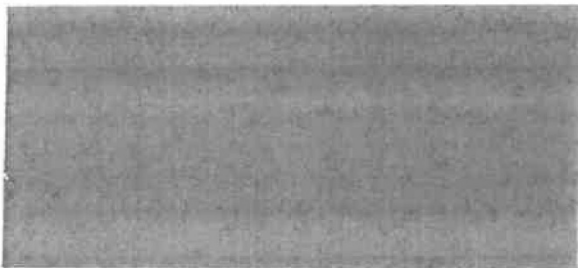
READ, APPROVED, AND ADOPTED on first reading this the 14th day of August 2000.

Jack Crane, Mayor



Anita Couch, City Secretary

§ 9.02.001.4 (Ord # 11 - 78) Parking on Either Side of the Shoulder on Highway 271



No11-14-78

PROHIBITING THE PARKING OF HEAVY TRUCKS OVER NIGHT ON THE
RESIDENTIAL STREETS IN BOGATA TEXAS

WHEREAS, there has been some parking of heavy trucks and refrigerator trucks on the residential streets of the city, and
WHEREAS, the operators of these vehicles allow the truck motors to run at night; and


WHEREAS, the noise caused by the running of these motors is a public nuisance and a disturbance of the peace in the area where the vehicles are parked;

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA:

SECTION 1. Heavy trucks and refrigerator trucks are Prohibited from parking and or operating refrigerated motors within 50 feet of an intersection or on the street or shoulder So as to block traffic view over night on the residential streets of the city of Bogata.

PASSED AND APPROVED THIS 14th DAY OF NOVEMBER, 1978



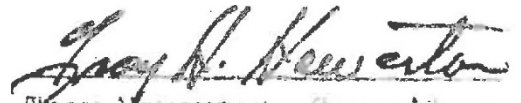
Wm. C. Barnard, Mayor



Dr. Jack Troutt, Councilman



Kenneth Brumley, Councilman



Troy Howerton, Councilman



Charley Lewis, Councilman

L. E. Bryson
L. E. Bryson, Councilman

Frances Summers
Frances Summers, City Sec.

§ 9.02.001.3 (Ord # 98 - 12) Parking of Heavy Commercial Trucks on Residential Streets.

ORDINANCE NO. 98-12

AN ORDINANCE PROHIBITING PARKING ON THE SHOULDER ON EITHER SIDE OF US 271, BEGINNING AT THE CENTER LINE OF MAIN STREET, THENCE SOUTH AND NORTH FOR A DISTANCE OF APPROXIMATELY 250 FEET, IN THE CITY OF BOGATA, TEXAS; PRESCRIBING A PENALTY FOR VIOLATION HEREOF; REPEALING

ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE OF AUGUST 10, 1998 ; AND PROVIDING FOR A FINE NOT EXCEEDING TWO HUNDRED (\$200.00) DOLLARS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS:

SECTION 1. It shall be unlawful for any person to park any motor vehicle or other vehicle in the following area described;

That parking at all times on the shoulders on both sides of US 271, beginning at the center line of Main Street, South and North, for a distance of approximately two hundred fifty(250) feet, in the City of Bogata, be, and the same is hereby prohibited.

SECTION 2. That any person found guilty of parking any motor vehicle or other vehicle in the above-described area at any time shall be deemed .guilty of a misdemeanor and upon conviction, shall be punished by a fine not exceeding two hundred (\$200.00) dollars.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

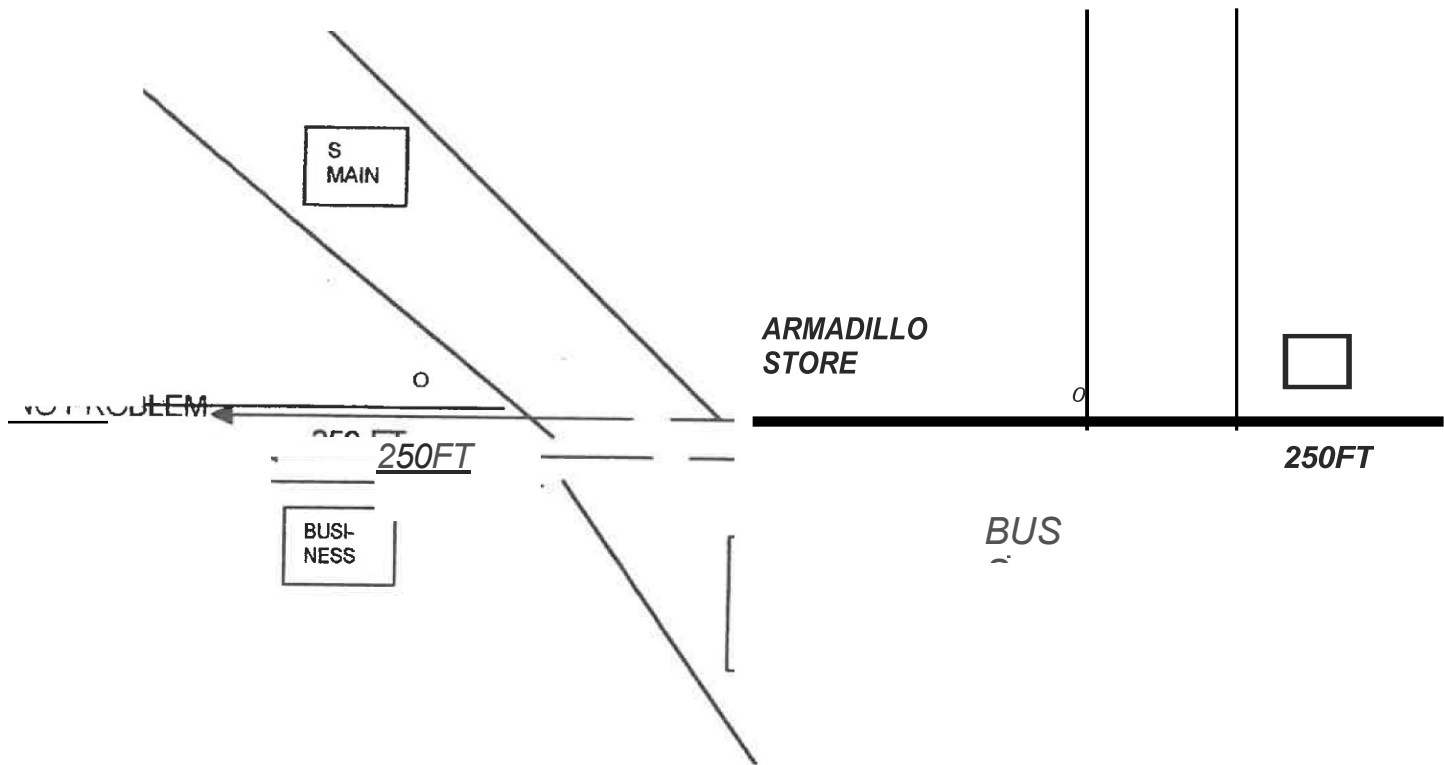
SECTION 4. This ordinance shall become effective the 10th day Of August 1998

PASSED AND ADOPTED this 10th day of August 1998 .



Michael J. Smith
yor

City Secretary



§ 9.02.001.5 (Ord # 03-84) No Parking, Stopping or Standing in Designated Areas Within the City of Bogata.

03-84

AN ORDINANCE PROHIBITING STOPPING, STANDING, AND PARKING IN SPECIFIED PLACES WITHIN THE CITY LIMITS OF THE CITY OF BOGATA, TEXAS, AND PROVIDING FOR A PENALTY FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA,

TEXAS:

a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk.
2. In front of a private or public driveway.
3. Within an intersection.
4. Within fifteen (15) feet of a fire hydrant.
5. On a crosswalk.
6. Within twenty (20) feet of a crosswalk at an intersection.

7. Within thirty (30) feet upon the approach to any stop sign, or traffic-control signal located at the side of a roadway.
 8. Within fifty (50) feet of the nearest rail of a rail- road crossing.
 9. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance.
 10. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic.
 11. On the roadway side of any vehicle stopped or parked at the edge or curb of the street.
 12. At any place where official yellow curb markings have been placed.
- b) Any person violating any of the provisions in this section shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not to exceed \$200.00.

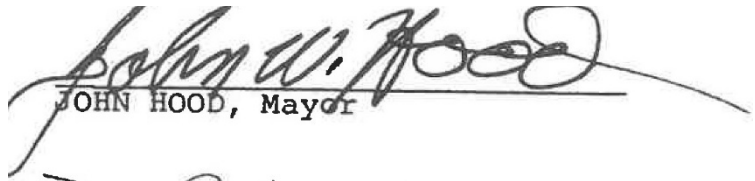
Approved this 13th day of March 1984.

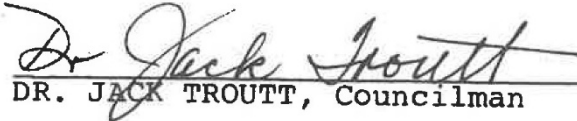
ATTEST:


MAYOR



SECRETARY

The City, acting herein by its duly constituted authorities, hereby waived the three separate meetings and hereby declares the foregoing Ordinance passed and finally effective as of the 13th day Of March 1984.

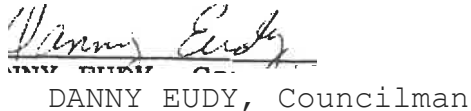

JOHN HOOD, Mayor


DR. JACK TROUTT, Councilman


ROBERT BISHOP, Councilman


MORRIS FOSTER, Councilman


TRAVIS HALE, Councilman


DANNY EUDY, Councilman

§ 9.02.001.6 (Ord # 11-75) Prohibits U-Turns in Designated Areas of the City of Bogata.

AN ORDINANCE
3.
11-75

PROHIBITING U TURN ON MAIN STREET AT 2nd STREET-.:IN THE CITY OF BOGATA.

WHEREAS, north main street is a part of Texas State Highway Loop no.38; and Business no. 271; and

WHEREAS, there have been automobile accidents at the intersection of north main street at 2nd street, because of motorist making a u turn; and

WHEREAS, the Texas State Highway Department will place a NO U TURN sign at the intersection if an ordinance is passed by the city prohibiting a U turn at the location, NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA

NO 1. AU turn at the intersection of North Main Street at 2nd Street is prohibited.

NO 2. The penalty for making a U turn at North Main and 2nd Street shall be governed by the laws of the State of Texas.

PASSED AND APPROVED TIIS 11th DAY OF NOVEMBER 1975,

Wm. C Barnard

ATTEST,
Frances Summers
City Secretary

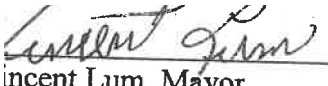
§ 9.02.001.7 (Ord # 08-16) Amendment to Ordinance # 03-84.

Ordinance No. 08-16

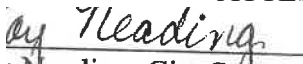
AN ORDINANCE TO AMEND ORDINANCE FROM MARCH 13, 1984, REGARDING PROIDBITING STOPPING, STANDING AND PARKING IN SPECIFIED PLACES WITIDN THE CITY LIMITS OF THE CITY OF BOGATA, TEXAS, AND PROVIDING FOR A PENALTY FOR THE VIOLATION THEREOF

WHEREAS, the City of Bogata City Council has agreed that there will be no parking within fifty (50) foot of where no parking signs are posted.

PASSED, APPROVED AND ADOPTED THIS 13TH DAY OF SEPTEMBER 2008


Vincent Lum, Mayor

ATTEST:


Frances Summers, City Secretary

§ 9.02.001.8 (Ord # 08-01) Amendment to Ordinances # 98-01 and 92-04, Maximum Speed Limit on Certain Streets and Highways within the City of Bogata.

Ordinance No. 08-01

AN ORDINANCE ESTABLISHING MAXIMUM, REASONABLE AND PRUDENT RATES OF SPEED ON CERTAIN PORTIONS OF CERTAIN STREETS AND

HIGHWAYS AND PUBLIC PLACES IN THE CITY OF BOGATA; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; FIXING PENALTIES FOR VIOLATION HEREOF; AND DECLARING AN EMERGENCY

WHEREAS, by authority and direction of the City Council of the City of Bogata, Texas, an engineering and traffic study and survey have been made by the Transportation Operations Office of the Texas Department of Transportation to determine the maximum, reasonable and prudent speeds for vehicles traveling upon the following named streets and highways and parts thereof, to facilitate the most effective use of said streets and highways and the safe and effective movement of vehicular traffic thereon; and

WHEREAS, such study and survey establishes, and it is so found by the City Council of the City of Bogata, Texas, that the following are the maximum, reasonable and prudent rates of speed for vehicular traffic upon said streets and highways and parts thereof;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS;

No person shall drive a vehicle upon a public road, street and highway in the City of Bogata, Texas, at a speed greater than is reasonable and prudent under the conditions and circumstances then existing. Except when a special hazard exists that requires lower speeds for compliance with the above requirement, the limits hereinafter set out shall be lawful but any speed in excess of the limits as hereinafter set out for the streets and highways and portions thereof to which they apply shall be prima facie evidence that the speed is not reasonable or prudent;

I.

On Highway US 271, from the North City Limit of Bogata, in a southeasterly direction a distance of approximately 0.793, a speed limit of forty-five (45) miles per hour at all times; thence southeasterly a distance of approximately 0.751 miles, a speed limit of fifty-five (55) miles per hour at all times to the South City Limit of Bogata as evidenced by the attached plan is hereby approved and made a part thereof.

II.

All ordinances and parts of ordinances in force in the City of Bogata, Texas, which conflict with the terms and provisions of this ordinance are hereby repealed insofar as they conflict with this ordinance, but all other portions of said ordinance shall remain in full force and effect.

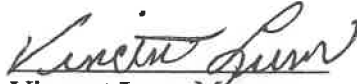
III.

Any person violating the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding TWO HUNDRED AND NO/100 (\$200.00) DOLLARS.

IV.

The fact that present traffic regulations are inadequate to control traffic in areas covered by this ordinance creates an emergency which is here and now declared, and all rules and regulations providing for the reading or ordinance is passed as an emergency measure and shall be in full force and effect from an<,i after its passage and publication and after the installation of speed limit signs.

PASSED AND APPROVED this 10th day of March 2008.


Vincent Lum, Mayor


Kay Reading, City Secretary

(seal)

SPEED LIMIT TABLE, FOR CITY ORDINANCE

DISTRICT	COUNTY (City)	HIGHWAY CONTROL SECTION	LIMITS	LENGTH (Mi.ES)	SPEED (MILES PER HOUR)
			R-REFERENCE; MARKER ST-STATION MP-MILEPOST		
			BEGIN - END		
PARIS	RED RIVER	SH 37 722-3	M.P. 3,681 - 4.263	0.582	55
PARIS	RED RIVER	SH 37 722-3	M.P. 4.263 - 4.463	0,2	45
PARIS	RED RIVER	SH 37 722-3	M.P. 4.463 - 4.820	0.357	45
PARIS	RED RIVER	SH 37 722-3	M.P. 4.820 - 4,869	0,049	55
PARIS	RED RIVER	SH 37 189-4	M.P. 4.869 - 4.148	0.279	55

§ 9.02.001.9 (Ord # 25-02) Operation of Golf carts, Off-Road Vehicles, and Utility Vehicles within the City of Bogata.

ORDINANCE NO. 2025-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS, THAT AMENDS THE CITY OF BOGATA'S CODE OF ORDINANCES BY ADDING NEW REGULATIONS TO CHAPTER 9, ARTICLE 001 FOR THE USE OF GOLF CARTS, RECREATIONAL OFF-HIGHWAY VEHICLES AND UTILITY VEHICLES ON THE STREETS WITHIN THE CITY OF BOGATA; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE AND PRESCRIBING AN EFFECTIVE DATE.

WHEREAS, it has come to the attention of the City Council of the City of Bogata that the use of golf carts, recreational off-highway vehicles and utility vehicles have become more prevalent in various Cities in the area; and

WHEREAS, this City Council has discussed with City staff the feasibility and safety involved with permitting golf carts, recreational off-highway vehicles and utility vehicles; and

WHEREAS, this City Council, after discussion and deliberation does approve the use of golf carts, recreational off-highway vehicles and utility vehicles with the City of Bogata with the following rules and regulations; and

WHEREAS, such rules and regulations are necessary in the interest of public safety; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS:

SECTION ONE: FINDINGS OF FACT. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION TWO: That Chapter 9, Traffic and Vehicles, is amended and added thereto is Article 001 entitled "**Golf Carts, Recreational Off-Highway Vehicles and Utility Vehicles**" to the City of Borgata's Code of Ordinances is amended as follows:

CHAPTER 9 TRAFFIC AND VEHICLES

ARTICLE 001 GOLF CARTS, RECREATIONAL OFF-HIGHWAY VEHICLES AND UTILITY VEHICLES

Section 001

Definitions.

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

Golf cart. A motor vehicle designed by the manufacturer primarily for use on a golf course. (**Texas Transportation Code section 551.401**)

Recreational off-highway vehicle. A motor vehicle, as described and defined under **Texas Transportation Code section 551A.001(5)** as amended, which is an motor vehicle equipped

with a seat or seats for the use of the rider and a passenger or passengers, designed by the manufacturer to transport a passenger or passengers, designed to propel itself with four or more tires in contact with the ground and designed by the manufacturer for off-highway use by the operator only and is not designed by the manufacturer primarily for farming or lawn care.

Utility vehicle. A motor vehicle, as described and defined under **Texas Transportation Code section 551A.001(6)** as amended, which is a motor vehicle that is not a golf cart or lawn mower, is equipped with side-by-side seating for the use of the operator and a passenger and is designed by the manufacturer primarily for utility work and not for recreational purposes.

- (I) Equipped with side-by-side seating for use of the operator and passenger;
- 10. Designed to propel itself with at least four tires in contact with the ground;
- 11. Designed by the manufacturer for use off a public highway; and
- 12. Designed by the manufacturer primarily for utility work and not for recreational purposes.

Parking area. Those areas that are accessible to the public by motor vehicular traffic and which are designated for temporary parking of motor vehicles, usually in places referred to as parking lots.

Public cart path. An improved path designed for the sole movement of a utility vehicle, all-terrain vehicle or golf cart which is available for use by the general public.

Public street. For the purposes of this Article, means the public roadways of the City of Bogata by whatever name, e.g. road, alley, avenue, highway, route, boulevard, etc. that:

- Has a posted speed limit of 35 miles per hour or less;
- Provides for no more than two lanes of vehicular traffic per direction; and
- Is not designated as part of either the state or federal highway system.

Sidewalk. The portion of a street that is between a curb or lateral line of a roadway and the adjacent property line and intended for pedestrian use.

Slow-moving-vehicle-emblem. A triangular emblem that conforms to standards and specifications adopted by the director under Texas Transportation Code § 547.104 and displayed in accordance with Texas Transportation Code§ 547.703.

Trafficway. Any land way open to the public as a matter of right or custom for moving persons or property from one place to another. The trafficway includes all property, both improved and unimproved, between the property lines of a roadway system.

SECTION 001 APPLICABILITY.

The provisions of this article shall apply to all golf carts, recreational off-highway vehicles and utility vehicles operated upon a public street within the city EXCEPT under the following circumstances the operation of golf carts, recreational off-highway vehicles and utility vehicles is NOT subject to the provisions of this article (although applicable State Statutory Law shall still apply):

1. Operation for transportation to or from a golf course during the daytime, and not more than two (2) miles from the location where the golf cart, recreational off-highway vehicle or utility vehicle is usually parked, on streets for which the posted speed limit is not more than 35 miles per hour;
2. On golf courses when following the policies and rules of the golf course;
3. Private clubs or on private property, with the consent of the owner;
4. Operation of golf carts, recreational off-highway vehicles and utility vehicles within gated or limited access communities unless the streets of the community are dedicated for public use and maintained by the city;
5. The use of a golf cart, recreational utility vehicle or utility vehicles in connection with a parade, a festival or other special event provided the consent of the sponsor is obtained and provided such vehicle is only used during such event; or
6. The use of golf carts, recreational off-highway vehicles and utility vehicles by the city on official police business or the use of golf carts, off-highway vehicles and utility vehicles by city personnel for official business on city- owned property and city-leased property.

SECTION 002 REQUIREMENTS FOR OPERATION OF GOLF CARTS, RECREATIONAL OFF-HIGHWAY VEHICLES AND UTILITY VEHICLES

(a) Subject to Section 001 below, the operation of golf carts, recreational off-highway vehicles and utility vehicles within the corporate limits of the city upon a public street is hereby authorized when all requirements and restrictions under this Section are met and the public street has a posted speed limit of 35 miles per hour or less; provides for no more than two lanes of vehicular traffic per direction; and is not designated as part of either the state or federal highway system.

(b) A golf cart, off-highway vehicle or utility vehicle operated under this section must have the following equipment and insurance requirements in addition to any equipment required by state statute:

1. Headlamps;
2. Tail lamps;
3. Brake Lamps;
4. Front and rear side reflectors;
5. Parking brake;
6. Rearview mirror(s);
7. Turn signal lights;
8. A "slow moving vehicle" reflective triangle affixed to the rear;
9. Seat belts;
10. Horn;
11. Insurance coverage equal to the current state requirement for motor vehicles;
12. A brake system maintained in good operating condition

(c) Recreational Off-highway vehicles and utility vehicles operated under this section must also be equipped with:

1. An adequate muffler system in good working condition; and
2. A United States Forest Service qualified spark arrester.

(d) A golf cart, recreational off-highway vehicle or utility vehicle operated under this section must have the equipment required under this section self-certified by the owner of the vehicle. The owner of the vehicle must submit the "Self-Certification" form from the RED RIVER COUNTY TAX OFFICE WITH FEE. The permit must be affixed to the center of the "Slow Moving Vehicle" triangle.

(e) The number of occupants in a golf cart, recreational off-highway vehicle or utility vehicle shall be limited to the number of persons for whom seating is installed and provided on the vehicle.

(f) In compliance with Texas Transportation Code, sections 551.402 and 551A.052 as amended, a golf cart, recreational off-highway vehicle or utility vehicle operated under this section must display a golf cart license plate or off-highway vehicle license plate issued by the Texas Department of Motor Vehicles on the rear of the vehicle. **CITIZENS CAN OBTAIN THIS LICENSE PLATE FROM THE RED RIVER COUNTY TAX OFFICE AND IT IS A ONE TIME FEE**

(g) All persons operating a golf cart, recreational off-highway vehicle or utility vehicle must possess and hold a valid driver's license and shall obey and abide by all state and local traffic laws and regulations applicable to vehicular traffic regardless of whether such is permitted or properly equipped.

(h) A golf cart, recreational off-highway vehicle, or utility vehicle operated under this section must be covered by insurance equal to the current state requirement for motor vehicles, regardless of whether the golf cart, recreational off-highway vehicle or utility vehicle is permitted or properly equipped. This coverage may be by a separate policy or covered by the owner's or operator's homeowner's insurance policy. Proof of insurance will need to be exhibited upon demand.

(i) All drivers and passengers of a golf cart, recreational off-highway vehicle and utility vehicle must be properly buckled and secured by the seat/safety belt at all times.

(j) The driver of a golf carts, recreational off-highway vehicles and utility vehicles with a current and valid state driver's license operating the cart on a street (as defined herein) may cross a multi lane or a federal, county or state route only at an intersection controlled by an official traffic control device.

SECTION PROHIBITIONS

(a) Golf carts, recreational off-highway vehicles and utility vehicles shall not be operated on any sidewalk, pedestrian walkway, jogging path, park trail or any location normally used for pedestrian traffic except for official police business or by city personnel conducting a required job function directly related to their assigned duties.

(b) Golf carts, recreational off-highway vehicles and utility vehicles are prohibited on following Highways / Roadway:

Including ALL City Streets

Us Hwy 271 North/South

US HWY 37 North/South

(c) All golf carts, recreational off-highway vehicles and utility vehicles are entitled to a full use of a lane on the authorized streets and parking areas of the city, and no motor vehicle shall be driven in such a manner as to deprive any utility vehicle, all-terrain vehicle or golf cart of the full use of a lane.

(d) The driver of a golf carts, recreational off-highway vehicles and utility vehicles shall not overtake and pass another vehicle in the same lane occupied by the vehicle being overtaken.

(e) No driver shall operate a golf carts, recreational off-highway vehicles and utility vehicles between lanes of traffic or between adjacent lines or rows of vehicles.

(f) The number of occupants in a golf carts, recreational off-highway vehicles and utility vehicles shall be limited to the number of persons for whom factory seating is installed and provided on the golf carts, recreational off-highway vehicles or utility vehicles. The operator and all occupants shall be seated upon the seat of the recreational utility vehicle, golf cart and utility vehicle and no part of the body of the operator or occupant shall extend outside the perimeter of the golf carts, recreational off-highway vehicles or utility vehicles while the golf carts, off- recreational highway vehicles or utility vehicles is being operated. The operator shall not permit any occupant of the golf cart, recreational off-highway vehicle or utility vehicle to ride in the lap of any occupant while the golf cart, recreational off-highway vehicle or utility vehicle is in motion.

(g) Children must be properly seated while a golf cart, recreational off-highway vehicle or utility vehicle is in motion and may not be transported in a reckless or negligent manner. No person younger than eight years of age may, unless the child is taller than four feet, nine inches be transported in a golf cart, recreational off-highway vehicle or utility vehicle unless restrained by a safety seat system in accordance with the instructions of the manufacturer of the safety seat system.

(h) Golf carts, recreational off-highway vehicles and utility vehicles may only be parked in the same manner and at the same places designated for the parking of motor vehicles. The stopping, standing, or parking of golf carts, recreational off-highway vehicles and utility vehicles in areas where parking is not allowed or in any place that impedes the flow of traffic, pedestrian walkways or a passageway is prohibited. Golf carts, recreational off-highway vehicles and utility vehicles shall not park within any space designated for disabled persons unless a current disabled parking placard is displayed and the person to whom the placard was issued is operating or being transported by the golf cart, recreational off- highway vehicle or utility vehicle.

(i) Golf carts, recreational off-highway vehicles and utility vehicles will not be used for the purpose of towing another cart, trailer or vehicle of any kind including a person on roller skates, skateboard, or bicycle.

(j) Golf carts, recreational off-highway vehicles and utility vehicles shall not be operated during inclement weather or when visibility is impaired by weather, smoke, fog, or other condition, or at any time when there is insufficient light to clearly see persons or vehicles on the roadway at a distance of 500 feet.

(k) Golf carts, recreational off-highway vehicles and utility vehicles shall not be left unattended, even briefly, with a key, or other starting device, remaining on or in the vehicle. Open container of alcohol, meaning a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed is prohibited when operated on authorized streets.

Section 001 Liability.

1. Nothing in this article shall be construed as an assumption of liability by the city for any injuries to persons, pets or property which may result from the operation of a golf carts, recreational off-highway vehicles or utility vehicles by an authorized driver.

2. Owners are fully liable and accountable for the actions of any individual that they provide permission to operate, and drive said golf carts, recreational off-highway vehicles and utility vehicles, both on personal or city and public properties. This described liability responsibility especially applies to personal injuries or property damage resulting from golf carts, recreational 6 off-highway vehicles and utility vehicles who are minors under the age of 21 with or without a current and valid state driver's license.

Section 001 Penalty. Any person violating any provision of this ordinance shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00).

A person may be convicted of violations of more than one provision of this ordinance for offenses occurring at the same time. Prosecution or conviction under this article shall not be a bar to other remedies or relief for violations of this ordinance or other law.

SECTION THREE: All ordinances or parts of ordinances not consistent or conflicting with, the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such inconsistency, and in all other respects, this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this ordinance. Any cause of action accruing prior to the passage of this ordinance shall continue as if this ordinance was not passed or any other ordinance had not been repealed.

SECTION FOUR: That it is hereby declared that the sections, articles, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a court of competent jurisdiction, such vividness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, articles, or sections of this ordinance since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

SECTION FIVE: The City Secretary of the City is hereby directed to engross and enroll this ordinance by copying the caption, penalty clause (if any), publication clause and effective date clause in the minutes of the City Council and filing the ordinance in the ordinance records of the City.

SECTION SIX. This ordinance shall take effect and be in full force upon the expiration often (10) days following the date of its final passage after the required two (2) readings, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of Bogata, Texas.

UPON MOTION OF COUNCILMEMBER Keith Perry. SECONDED BY COUNCILMEMBER: Teresa Allison, THAT THE ORDINANCE BE ADOPTED:

AYES: 3 NAYES: 0 A B S T E N T I O N S 2

MOTION CARRIED THIS 3RD DAY OF MARCH 2025.

UPON MOTION OF COUNCILMEMBER _____ SECONDED BY
COUNCILMEMBER _____ THAT THE ORDINANCE BE
ADOPTED: AYES: ____ NAYES: ____ MOTION CARRIED THIS ____ DAY OF
_____, 2025.

DULY PASSED AND ~~ADOPTED~~ APPROVED BY THE CITY COUNCIL OF THE CITY OF BOGATA, TEXAS,
THIS 3rd DAY OF March 2025.

ATTEST: _____

TISHA MILES CITY SECRETARY

APPROVED AS TO LEGALITY: _____

DAVID HAMILTON

LARRY HINSLEY, MAYOR