

Chapter 138 SPECIAL USE REGULATIONS

ARTICLE I. IN GENERAL

Secs. 138-1—138-18. Reserved.

ARTICLE II. RESERVED~~PRIVATE CLUBS~~

Sec. 138-19—138-53. Reserved ~~Special use permit—Required; approval; fee.~~

~~In order to protect the general health, well-being and welfare of the citizens of the city, the city council declares it to be the policy of the city, that private clubs for the consumption of alcoholic beverages shall not be permitted within the city without such establishment having first secured a special use permit approved by the city council under the terms and regulations of this article. The permit shall take the form of a letter from the city council to the applicant, receipt of which is necessary before operation of a private club. Consideration of an application for such special use permits by the city council shall follow a recommendation by the planning and zoning commission and payment of a permit fee as determined from time to time by city council.~~

~~(Code 1982, § 39-31; Ord. No. 1178, § 1, 6-17-1980; Ord. No. 2008-08-078, 8-19-2008)~~

Sec. ~~138-20~~. ~~Same—Penalty for operation without permit.~~

~~It shall be unlawful for any person to operate a private club for the sale or dispensing of alcoholic beverages without first having secured a special use permit from the city council. Operation of a private club without first securing a special use permit shall be deemed a misdemeanor and any person convicted thereof shall be fined any sum not exceeding \$200.00, and each and every day that such violation continues shall be considered a separate offense; provided, however, that such penal provision shall not preclude a suit to enjoin such violation.~~

~~(Code 1982, § 39-32; Ord. No. 1178, § 8, 6-17-1980)~~

Sec. ~~138-21~~. ~~Location.~~

- ~~(a) Service and consumption of alcoholic beverages in a planned development (PD) may be allowed subject to inclusion in and approval of the PD regulations by the city council. Such PD regulations shall control to the exclusion of this article other than compliance with the provisions of the state alcoholic beverage code.~~
- ~~(b) Establishments seeking to qualify under this article, except those in a PD, must be located in an area zoned general business, planned center, business commercial or commercial historic as those terms are defined in the comprehensive zoning ordinance. Such premises shall not be located within 300 feet of the property line of any church, public or parochial school, hospital, extended care facility or public park, except that this prohibition will not apply to property located within 300 feet of a public park if the city council affirmatively finds that the issuance of the special use permit will not be detrimental or injurious to the public health, safety or general welfare or otherwise be injurious to the inhabitants. The 300-foot distance shall be measured from the front door of the premises to the nearest property line of a public park. The measurement of the distance between the private club and the church, hospital or extended care facility shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the private club and the public or parochial school shall be from the nearest property line of the public or parochial school to the nearest doorway by which the public may enter the private club, along street lines and in direct line across intersections.~~

~~(c) Any restaurant in operation at the date of passage of this article located in an ML zone which otherwise qualifies under all other operational requirements of this article may receive a special use permit.~~

~~(Code 1982, § 39-33; Ord. No. 1178, §§ 2.1—2.4, 6-17-1980; Ord. No. 1284, § 1, 4-6-1982; Ord. No. 2003-03-031, § III, 3-18-2003)~~

~~Sec. 138-22. Operational regulations.~~

~~(a) Not less than 35 percent of the gross receipts of such establishment shall be derived from the sale of food consumed on the premises. Food service shall be available at any time alcoholic beverages are being served. The service of alcoholic beverages without food is prohibited in dining areas and is restricted to a bar or lounge area as described in this article. The holder of such permit shall provide audits at its expense as more fully set forth in this article.~~

~~(b) Such establishments shall contain a minimum of 50 dining seats with a minimum of 600 square feet of dining area. Calculation of the square feet of dining area shall exclude kitchen and storage areas, bar and lounge areas, and cashier and reception areas.~~

~~(c) Such establishments shall comply with all of the provisions of the state alcoholic beverage code and receive a private club permit from the state within six months from the date of issuance of the special use permit by the city, each such limitation in time being subject to extension by the city council.~~

~~(d) The city council may revoke a special use permit upon the finding that any of the operational requirements imposed at the time of granting the permit are not met or thereafter cease to exist. Said special use permit shall be subject to review based on recommendation from the police department that the public safety has been or is being jeopardized. The city manager and the chief of police are specifically authorized to receive, accept and investigate complaints from any source.~~

~~(e) A private club with a bar or lounge area shall be designed so that patrons can enter only from an area within the primary use, e.g., the dining or reception area of a restaurant, hotel or motel. Emergency exits direct to the outside are permitted.~~

~~(f) No signs advertising the sale of alcoholic beverages shall be permitted other than those authorized under the state alcoholic beverage code and the city sign ordinance.~~

~~(Code 1982, § 39-34; Ord. No. 1178, §§ 3.1—3.7, 6-17-1980; Ord. No. 2003-03-031, § III, 3-18-2003)~~

~~Sec. 138-23. Audit.~~

~~(a) The permittee of each private club in the city, which has been in operation for at least six months prior to a December 31 calendar year, shall select and engage a certified public accountant to conduct an annual audit of the operations of such private club during such period. For purposes of this Article, "audit" shall mean a professional report and analysis of the permittee's gross receipts and sales; however it shall not mean a financial audit or audited financials as such are required under Generally Accepted Accounting Principles (GAAP) or Generally Accepted Auditing Standards (GAAS). The year upon which such audit shall be conducted shall begin January 1 and end December 31. The purpose of this audit shall be to determine whether or not the permittee has complied with the gross receipt requirements of section 138-22(a). The audit shall clearly reflect:~~

~~(1) The total gross receipts of the permittee for the audit year from all operations on the premises for which the special use permit for a private club is issued;~~

~~(2) The percentage of such gross receipts derived from the sale of food; and~~

~~(3) The percentage of such gross receipts derived from the sale of alcoholic beverages.~~

- ~~(b) The audit shall indicate whether or not further inquiry should be made by the city into the permittee's operations to determine whether all other requirements for the operation of a private club were satisfied during the audit year.~~
- ~~(c) The audit shall be completed and a copy furnished to the city council through the city manager's office not later than April 1 of the year following the audit year. The audit shall be performed and a copy furnished to the city manager at the sole expense of the permittee.~~
- ~~(d) If not received by April 1, the city council shall have the right to select and engage a qualified accountant to perform the audit described herein. The permittee shall reimburse the city for all expenses incurred in obtaining this audit.~~

~~(Code 1982, § 39-35; Ord. No. 1178, §§ 4.1—4.4, 6-17-1980; Ord. No. 2012-05-021, § 1, 5-1-2012)~~

~~Sec. 138-24. Public hearing in cases of apparent noncompliance.~~

- ~~(a) In the event of apparent noncompliance as determined by the city manager or his designated official, a public hearing may be scheduled for a future city council meeting for the purpose of determining such compliance or noncompliance of the permittee for the audit year with the requirements of this article for the operation of a private club. The permittee shall be given at least ten days' written notice of the date, time and place of the public hearing.~~
- ~~(b) A special use permit shall remain in full force and effect pending such public hearing.~~

~~(Code 1982, § 39-36; Ord. No. 1178, § 5, 6-17-1980)~~

~~Sec. 138-25. Remedies for noncompliance.~~

- ~~(a) At such public hearing, the permittee may appear in person, or by attorney or representative, and shall further have the right to cross examine witnesses, and to offer such evidence and testimony as he desires with regard to compliance or noncompliance as described above. Upon hearing all evidence with regard to the matter, the city council shall enter an order finding compliance or noncompliance on the part of the permittee. If the order finds compliance, the matter shall be concluded for that audit year.~~
- ~~(b) If the order finds noncompliance for the audit year, the city council shall further provide for one of the following actions:
 - ~~(1) Immediate suspension of the permittee's operation of the private club on the premises and immediate implementation of procedures to revoke and delete the special use permit for a private club designation from the zoning of the permittee's property; or~~
 - ~~(2) Establishment of one or more probation period(s) the aggregate of which shall not exceed 12 months during which the permittee may continue operations under its special use permit for a private club. For overlapping reporting periods or sequential permit years of non-compliance, the probationary period(s) may run concurrently for the purposes of determining compliance for all affected periods. The purpose of the probationary period(s) is to allow the permittee to come into compliance with the requirements that were found to be noncompliant as a result of the public hearing. For any period(s) of probation ordered on or after May 1, 2012, compliance with the gross receipt requirements of Section 138-22(a) shall be established when the permittee shall have achieved the required percentage of food sales for not less than 50 percent of the months contained in the probationary period(s).~~~~
- ~~(c) At the end of the probationary period(s), if same is ordered, an additional audit shall be performed at the permittee's expense. The auditor may be internal (staff member) or external and shall be selected and engaged by the city manager. The purpose of the audit shall be to determine compliance or noncompliance of the permittee during the entire probationary period(s) with all requirements of this article.~~

- ~~(d) Upon completion of such audit, the original copy shall be furnished to the city council, with a copy to the permittee.~~
- ~~(e) Upon receipt by the city of an audit of a permittee's probationary period(s), the matter shall be scheduled for consideration at a city council meeting. Written notice shall be given to the permittee. The permittee, his representative or attorney shall have the right to appear at such meeting and to present any testimony or evidence regarding compliance or noncompliance with this article, or even the results of the audit, as may be desired. Upon hearing of all evidence and testimony, the city council shall enter an order finding compliance or noncompliance with the requirements of this article.~~
- ~~(1) If the order finds compliance, the probationary period(s) shall be ended and the permittee's operations under the special use permit may be continued.~~
- ~~(2) If the order finds noncompliance, the permittee shall immediately cease the operation of the private club on the premises. Procedures shall immediately be implemented on behalf of the city to revoke and delete the special use permit for a private club designation from the zoning for the permittee's property.~~
- ~~(f) A special use permit for the operation of a private club shall not be issued for a period of one year for an establishment that has had a special use permit revoked pursuant to section 138-22 or section 138-23.~~
- ~~(Code 1982, § 39-37; Ord. No. 1178, §§ 6.1—6.5, 6-17-1980; Ord. No. 2012-05-021, § 2, 5-1-2012)~~

~~**Secs. 138-26—138-53. Reserved.**~~

ARTICLE III. ~~MOBILE HOMES,~~ MANUFACTURED HOMES AND RECREATIONAL VEHICLES¹

DIVISION 1. GENERALLY

¹Editor's note(s)—Ord. No. 2019-12-089, § 2, adopted December 17, 2019, repealed art. II, §§ 138-80—138-89, 138-107—138-152, 138-173—138-177, 138-208—138-214, 138-237—138-242, 138-263—138-312, 138-343—138-347, and 138-368—138-375 and enacted a new art. II as set out herein. Former art. II pertained to mobile and manufactured homes and travel trailers and derived from Ord. No. 571, §§ I(A), (B), II—IV, adopted June 7, 1962; Ord. No. 731, §§ 1(1.01)—(1.20), 2—7, adopted October 6, 1969; Ord. No. 747, §§ 2, 3, adopted March 23, 1970; the Code of 1982, §§ 39-31—39-37, 39-61—39-70, 39-77—39-121, 39-131—39-135, 39-141—39-147, 39-151—39-156, 39-166—39-215, 39-226—39-230, 39-236—39-243; Ord. No. 1648, § 5, adopted May 6, 1986; Ord. No. 97-10-58, § 6, adopted Oct. 21, 1997; Ord. No. 2008-08-078, adopted Aug. 19, 2008; and Ord. No. 2009-09-063, § 2, adopted Sept. 15, 2009.

State law reference(s)—Regulation by municipality of mobile and manufactured housing, V.T.C.A., Occupations Code § 1201.008; minimum sanitation standards for mobile home developments, 25 Tex. Admin. Code § 265.82 et seq.; streets and parking facilities in mobile home developments, 25 Tex. Admin. Code § 265.82(i); water supply in mobile home development, 25 Tex. Admin. Code § 265.82(a); mobile home development standards, sewage disposal, 25 Tex. Admin. Code § 265.82(c); electrical distribution systems in mobile home developments, 25 Tex. Admin. Code § 285.82(d); solid waste disposal in mobile home developments, 25 Tex. Admin. Code § 285.82(e); insect and rodent control in mobile home developments, 25 Tex. Admin. Code § 285.82(f).

Sec. 138-54. Purpose; title.

This article is remedial and essential to public interest, safety, health and welfare. It establishes minimum standards for the continued use and occupancy of all mobile homes, manufactured homes and recreational vehicles in manufactured home parks, manufactured home park districts, and recreational vehicle parks. This article shall be known as the city's manufactured home park regulations.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-55. 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:

Accessory building means a structure, including, but not limited to, pool facilities, maintenance facilities, and any common areas housing toilet, lavatory and such other facilities as may be required by this article.

Agent means any person authorized by the licensee of a manufactured home park to operate or maintain such park under the provisions of this article.

Alter or alteration means replacing, adding, modifying, removing, or exchanging manufactured homes or other structures, moving in a new or additional manufactured home or other structure, changing or adding manufactured home park plot or lot lines, or changing manufactured home park property lines.

Building codes means the city's most recently adopted editions of the International Building Code, as amended; the International Residential Code, as amended; the International Mechanical Code, as amended; the International Plumbing Code, as amended; the International Fuel Gas Code, as amended; the International Energy Conservation Code, as amended; the National Electrical Code, as amended; and the International Fire Code, as amended, all of which have been adopted by ordinance and are currently in effect in the city. The term *building codes* also includes the federal Manufactured Home Construction and Safety Standards Act, codified in 42 U.S.C. §§ 5401, *et seq.*, as amended, and regulations adopted pursuant thereto, in 24 C.F.R. Parts 3280, 3282, 3285, 3286, as amended. The term *building codes* also includes the Texas Manufactured Housing Standards Act, codified in Chapter 1201 of the Texas Occupations Code, as amended, and regulations adopted pursuant thereto, in Title 10, Texas Administrative Code, Chapter 80, as amended. If there is a conflict between various codes referenced herein, the federal Manufactured Home Construction and Safety Standards Act, and C.F.R. regulations, shall take first precedence, and the Texas Manufactured Housing Standards Act, and Texas Administrative Code regulations, shall take second precedence.

Chief building official means the city's duly appointed chief building official or his authorized representative who performs building permit review and inspections, and the functions set forth in this article.

Day means calendar day.

Director of code services means the director of code services for the city or his authorized representative who performs code enforcement duties, licensing and registrations and the functions set forth in this article.

Driveway means a minor private way used by vehicles and pedestrians to access the mobile home, manufactured home or recreational vehicle.

HUD-code manufactured home means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is at least eight body feet in width or at least 40 body feet in length, or, when erected on site, is at least 320 square feet, and which is built on a permanent chassis and designed for use as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems of the home. The term does not include a recreational vehicle as defined by 24 C.F.R. § 3282.8(g) and this article.

License means a written license issued by the director of code services allowing a person to operate and maintain a manufactured home park under the provisions of this article and regulations issued under this article.

Licensee means any person licensed to operate and maintain a manufactured home park under the provisions of this article.

Manufactured home means a HUD-code manufactured home ~~or a mobile home and collectively means and refers to both.~~

Manufactured home park means a unified development of manufactured home spaces arranged on a large tract or area under single ownership, meeting all requirements of this article, and designed to accommodate manufactured homes on a permanent basis.

Manufactured home subdivision means a unified development of manufactured homes situated on lots platted for such purpose, which lots may be sold to the owners of manufactured homes situated thereon, meeting the area and yard requirements of the zoning ordinance, and designed to accommodate manufactured homes on a permanent basis.

Mobile home means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is at least eight body feet in width or at least 40 body feet in length, or, when erected on site, is at least 320 square feet, and which is built on a permanent chassis and designed for use as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems of the home.

Permit means a written permit of certification issued by the chief building official permitting the construction, alteration or extension of a manufactured home park under the provisions of this article and regulations issued under this article.

Park means a manufactured home park or a recreational vehicle park, as the context requires.

Person means an individual or a partnership, company, corporation, association, or other group, however organized.

Recreational vehicle means a vehicle built on a single chassis, 400 square feet or less when measured at the largest horizontal projections, which is self-propelled or permanently towable by a light duty truck or other appropriate motor vehicle, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. The term *recreational vehicle* includes campers installed on pickup trucks, travel trailers and other similar temporary living quarters.

Recreational vehicle park means a unified development of recreational vehicle and travel trailer spaces arranged on a large tract or area under single ownership and meeting all requirements of this article in the same manner as are applicable to manufactured home parks.

Refuse means garbage, rubbish, refuse, and other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from residential uses, industrial, municipal, commercial, mining and agricultural operations and from community and institutional activities, as defined in Chapter 86 of this Code. The term does not include recyclable material; however, recyclable material may become refuse at such time, if any, as it is abandoned or disposed of as other solid waste, rather than recycled, whereupon it will be refuse with respect only to the party actually abandoning or disposing of the material.

Sewer connection means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of a manufactured home and accessory building to the inlet of the corresponding sewer riser pipe of the sewage system serving the manufactured home park or manufactured home subdivision.

Sewer riser pipe means that portion of a sewer lateral which extends vertically to the ground elevation and terminates at a manufactured home space.

Space means a plot of ground within a manufactured home park or manufactured home subdivision designed for the accommodation of one manufactured home unit. This term shall also include the terms "lot," "stand" and "stall."

Travel trailer means a structure, having no foundation other than a permanent chassis with wheels, which is 12 body feet or less in width, and is less than 40 body feet in length, and is designed to be used as a dwelling with or without a permanent foundation. The term *travel trailer* includes folding hardtop campers transported behind a motor vehicle, truck-mounted campers attached to and transported behind a motor vehicle or pickup, recreational vehicles, campers, or similar types of temporary dwellings intended for short-term occupancy, travel, and/or recreation.

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

Water riser pipe means that portion of the water supply system serving a manufactured home park or manufactured home subdivision which extends vertically to the ground elevation and terminates at a designated point at a manufactured home space.

Zoning ordinance means the comprehensive zoning ordinance of the city.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Secs. 138-56—138-59. Reserved.

DIVISION 2. OPERATING LICENSE

Sec. 138-60. Required.

It shall be unlawful for any person to operate any manufactured home park within the municipal limits of the city unless the person holds a valid license issued annually by the director of code services in the name of the person for the specific park. All applications for license and annual license renewals shall be made to the director of code services who shall issue a license upon determination by the director of code services of compliance by the applicant with the provisions of this article, which determination may include an annual inspection of the manufactured home park by the director of code services, in accordance with section 138-110 of this article.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-61. Application; renewal.

- (a) Application for an original license shall be in writing, signed by the manufactured home park owner, accompanied by the affidavit of the manufactured home park owner as to the truth of the application and by the payment of the original license fee established in the city's adopted fee schedule found at appendix A to this Code. The license application shall contain:
 - (1) The name and address of the applicant;
 - (2) The location and legal description of the manufactured home park; and
 - (3) A site plan of the park showing all manufactured home spaces, structures, roads, walkways, utilities and other service facilities in accordance with the site plan requirements of this article.
- (b) Application for the renewal of a license shall be made in writing by the licensee and shall contain any change in the information submitted since the original license was issued or since the latest renewal granted, and include payment of the annual license renewal fee established in the city's adopted fee schedule found at appendix A to this Code.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-62. Transfer.

Every person holding a license shall give notice in writing to the director of code services within 30 days of the licensee transferring title to the manufactured home park to another person. Such notice shall include the name and address of the person succeeding to the ownership control of such park. Upon application in writing for transfer of the license, the license shall be transferred if the park is in compliance with all applicable provisions of this article on the date of title or interest transfer. A fee for the transfer of said license shall be paid to the city as provided for in the city's adopted fee schedule found at appendix A to this Code.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-63. Fees.

All original license applications, license renewals, and license transfers shall be accompanied by a fee as provided for in the city's adopted fee schedule found at appendix A to this Code.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-64. Violations; notice; suspension of license.

Whenever, upon inspection of any manufactured home park, the director of code services finds that conditions or practices exist which are in violation of any provision of this division, he shall give notice in writing in accordance with section 138-114 to the licensee that unless such conditions or practices are corrected within a 30 day period of time specified in the notice, the license shall be suspended. At the end of said 30 days, the director of code services shall reinspect such park and if such conditions or practices have not been corrected, shall suspend the license and give notice in writing of such suspension to the licensee. Upon receipt of notice of such suspension, the licensee shall cease operation of such park, except as provided in sections 138-115 and/or 138-116, below, as applicable.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Secs. 138-65—138-69. Reserved.***DIVISION 3. PERMIT*****Sec. 138-70. Required.**

It shall be unlawful for any person to construct, alter or extend any manufactured home park or space within the municipal limits of the city unless the person obtains a valid permit issued by the chief building official in the name of such person for the specific construction, alteration or extension proposed, in accordance with the city's development regulations and applicable nonconforming use provisions in this Code.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-71. Permit application requirements.

All applications for permits shall contain the following:

- (1) Name and address of applicant;
- (2) Location and legal description of the manufactured home park; and

- (3) A site plan of the park showing all manufactured home spaces, structures, roads, walkways, utilities and other service facilities in accordance with the site plan requirements of this article.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-72. Fee.

All permit applications shall be accompanied by the payment of a fee as provided for in the city's adopted fee schedule found at appendix A to this Code.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-73. Issuance.

When, upon review of the permit application, the chief building official is satisfied that the proposed plan meets the requirements of this article and other applicable ordinance provisions, a permit shall be issued.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Secs. 138-74—138-79. Reserved.

DIVISION 4. MANUFACTURED HOME PARKS

Sec. 138-80. Manufactured home park site requirements.

Any development, redevelopment, alteration, or expansion of a manufactured home park in the city shall be performed in compliance with the zoning ordinance and the following site and site plan requirements:

- (1) *Location.* A manufactured home park, [including manufactured homes](#), shall be located only where such use is permissible under the terms and provisions of the zoning ordinance.
- (2) *Site plan.* A site plan, as required by the zoning ordinance, shall be filed with the development services department showing the following:
 - a. The area and dimensions of the tract of land;
 - b. The number, location and size of all manufactured home spaces;
 - c. The location, width and specifications of roadways and walkways;
 - d. The location and specification of water and sewer lines and riser pipes;
 - e. The location and details of lighting and electrical systems;
 - f. The location and specifications of all buildings constructed or to be constructed within the park;
 - g. Such other information as the city may reasonably require;
 - h. Site plan and applicable planning and zoning proceedings must be adhered to in advance of any construction; and
 - i. The location and specifications of any required perimeter fencing and sidewalk construction.
- (3) *Soil and ground cover.* Exposed ground surface in all parts of every manufactured home park shall be paved, or protected with a vegetative growth that is capable of, within three months, preventing soil erosion and eliminating dust.

- (4) *Drainage.* The ground surface in all parts of a manufactured home park shall be graded and equipped to drain all surface water in a safe, efficient manner. The adequacy of drainage facilities shall be certified by a licensed professional engineer.
- (5) *Area, setback and screening requirements.* Area, setback and screening requirements shall be in accordance with the zoning ordinance.
- (6) *Open space.* Open space recreation areas shall be provided in all parks accommodating or designed to accommodate 20 or more manufactured homes. The size of such recreation areas shall be based upon a minimum of 100 square feet for each lot. No outdoor recreational area shall contain less than 2,500 square feet unless the applicant provides alternate area locations that equal a minimum of 2,500 square feet combined. Such areas shall be located so as to be free from traffic hazards, easily accessible to all park residents, and centrally located where topography permits.
- (7) *Density requirements.* Manufactured home parks shall have such density as is in accordance with the zoning ordinance.
- (8) *Fencing requirements.* The manufactured home park site shall be fenced as follows:

The entire area of the manufactured home park, including open spaces and other required improvements, shall be enclosed by a perimeter fence. This perimeter fence shall be provided regardless of abutting property uses or zones and shall be placed just within the property line. The fence shall be constructed of wood, masonry or other screen type material approved by the city during the site plan review process and shall be a minimum of six feet in height. Such fence shall be kept in good repair.
- (9) *Minimum size.* The minimum size and space limits shall be as set forth in the zoning ordinance.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-81. Manufactured home spaces.

The area of the manufactured home space shall be in compliance with the zoning ordinance and shall provide adequate foundation support for the placement of the manufactured home, thereby securing the superstructure against uplift, sliding, rotation and overturning due to frost action, inadequate drainage, vibration or other forces acting on the structure.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-82. Water supply.

- (a) *General requirements.* An accessible, adequate, safe and potable supply of water shall be provided in each manufactured home park. A public supply of water of satisfactory quantity, quality and pressure is available from the city, and a connection shall be made thereto and its supply used exclusively.
- (b) *Source of supply.* The source of water supply shall be as follows:
 - (1) The water source shall be capable of supplying a minimum of 150 gallons per day per manufactured home.
 - (2) Every line of the water supply system shall be located and constructed in such a manner that neither underground nor surface contamination will reach the water supply from any source.
- (c) *Water storage facilities.* All water storage reservoirs shall be covered, watertight and constructed of impervious material. Overflows and vents of such reservoirs shall be effectively screened. Manholes shall be constructed with overlapping covers to prevent the entrance of contaminating material. Reservoir intake pipes shall discharge through an acceptable air gap. As a minimum requirement, water storage reservoirs shall meet the requirements of the state health department.

- (d) *Water distribution system.* Water distribution shall be effected as follows:
- (1) The water supply system of the manufactured home park shall be connected by pipes to all manufactured homes, buildings and other facilities requiring water. All water lines and fire hydrants required in a manufactured home park shall meet the requirements for a commercial development as set forth in the subdivision ordinance.
 - (2) All water piping, fixtures and other equipment shall be constructed and maintained in accordance with state and local regulations and requirements and shall be of a type and in locations approved by the chief building official.
 - (3) The water supply system shall be so designed and maintained as to provide a pressure of not less than 35 pounds per square inch, under normal operating conditions, at accessory buildings and other locations requiring potable water supply.
- (e) *Individual water riser pipes and connections.* Individual water riser pipes and connections shall be installed and located as follows:
- (1) Individual water riser pipes shall be located within the confined area of the manufactured home space at a point where the water connection will approximate a vertical position.
 - (2) Water riser pipes shall extend at least four inches above the ground elevation. The pipe shall be at least three-quarters of an inch in diameter. The water outlet shall be provided with an approved shut off valve when a manufactured home does not occupy the space.
 - (3) Adequate provisions shall be made to prevent freezing of service lines, valves and riser pipes and to protect risers from the heaving and thawing actions of the ground during freezing weather. Surface drainage shall be diverted from the location of the riser pipe.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-83. Sanitary sewage disposal.

- (a) *General requirements.* An adequate and safe system shall be provided in all manufactured home parks for conveying and disposing of all sanitary sewage. Such systems shall be designed, constructed and maintained in accordance with state and local laws. The sanitary sewer system shall be connected to the existing public sanitary sewer system of the city.
- (b) *Sewer lines.* All sanitary sewer lines shall be located in trenches of sufficient depth to be free from breakage from traffic or other movements and shall be separated from the manufactured home park water supply systems at a safe distance in accordance with state health department requirements. Sanitary sewers shall be at a grade which will ensure a velocity of two feet per second when flowing full. All sanitary sewer line constructions shall meet the city's subdivision ordinance requirements and all plumbing in a manufactured home placed in the manufactured home park shall meet the city's building codes.
- (c) *Individual sewer connections.* Individual sanitary sewer connections shall be as follows:
- (1) Individual sanitary sewer connections shall comply with the city's building codes.
 - (2) The sanitary sewer riser pipe shall be capped when a manufactured home does not occupy the lot. Surface drainage shall be diverted away from the riser. The rim of the riser pipe shall extend at least four inches above ground elevation.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-84. Electrical distribution system.

- (a) *General requirements.* Every manufactured home park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with the city's building codes.
- (b) *Power distribution lines.* Power distribution lines shall be established as follows:
 - (1) All electric power lines located in the manufactured home park shall be buried below the ground.
 - (2) All direct burial conductors of cable shall be buried in compliance with the National Electric Code, as amended.
 - (3) For all existing main power lines located above ground, such lines shall be suspended at least 18 feet above ground level, and there shall be a minimum horizontal clearance of three feet between overhead wiring and any manufactured home, accessory building or other structure, provided that all horizontal and vertical power line clearances shall be in accordance with either the utility provider's requirements or the city's building codes, whichever is more restrictive.
- (c) *Individual electrical connections.* Individual electrical connections shall comply with the National Electrical Code, as amended.
- (d) *Required grounding.* All grounding shall comply with the National Electrical Code, as amended.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-85. Accessory building and other community service facilities.

- (a) *Application of section.* The requirements of this section shall apply to accessory buildings, recreation buildings, pool facilities, and other community service facilities, such as management offices, maintenance and storage areas, located in a manufactured home park.
- (b) *Structural requirements for buildings.* Structural requirements for buildings are as follows:
 - (1) Accessory building construction shall comply with the city's building codes.
 - (2) Illumination levels shall be maintained as follows:
 - a. General seeing tasks, five footcandles;
 - b. Laundry room work area, 40 footcandles; and
 - c. Toilet room, in front of mirrors, 40 footcandles.
- (c) *Barbecue pits, fireplaces and stoves.* Cooking shelter, barbecue pits and fireplaces shall be so located, constructed, maintained and used so as to minimize fire hazards and smoke nuisance, and shall be approved by the fire marshal. No open fire shall be left unattended. No fuel shall be used and no material burned which emits dense smoke or objectionable odors. No open fire shall be permitted except in approved facilities.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-86. Refuse handling.

- (a) The storage, collection and disposal of refuse in the manufactured home park shall be so conducted as to not create health hazards, rodent harborage, insect breeding, accidents, fire hazards or air pollution.

- (b) All refuse shall be stored in fly tight, watertight, rodent-proof containers, which shall be located at each manufactured home space. Containers shall be provided in sufficient number and capacity to properly store all refuse and recyclable material in accordance with the city's solid waste collection program.
 - (c) All refuse containing garbage shall be collected in accordance with the city's solid waste collection program.
- (Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-87. Garbage and vegetation control.

- (a) The storing or keeping of garbage, rubbish, brush, refuse and/or recyclable material that is unsightly or a health, fire or safety hazard or a harbor for reptiles, rodents, insects, or other animals is prohibited and shall constitute a public nuisance. Removal of all such materials is the manufacture home park's responsibility and shall be done at the manufactured home park's expense.
- (b) Manufactured home parks shall be so maintained as to prevent the growth of brush, weeds and grass determined by the director of code services to be detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-88. Fuel supply and storage.

- (a) *Natural gas system.* Installation and maintenance of a natural gas system shall be in accordance with the International Fuel Gas Code, as amended.
- (b) *Liquefied petroleum gas systems.* Liquefied petroleum gas systems shall be installed and maintained in accordance with the International Fuel Gas Code, as amended, and Texas Railroad Commission regulations, as amended.
- (c) *Conflict.* To the extent there is any conflict between the terms of this section and the International Fire Code, as amended, the International Fire Code provisions shall control.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-89. Fire protection.

- (a) Manufactured home parks shall be kept free of litter, rubbish and other flammable materials.
- (b) Portable fire extinguishers rated for classes B and C fires shall be kept in community service and accessory buildings and shall not be less than five pounds capacity.
- (c) Fire hydrants shall be installed in accordance with the city's building codes.
- (d) A fire hydrant shall be located within 500 feet of each manufactured home, accessory building or other structure in the park, in accordance with the subdivision ordinance.
- (e) To the extent there is any conflict between this section and the city's water and sanitary sewer design manual, as amended, the provisions of the city's water and sanitary sewer design manual shall control.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-90. Compliance with division; park supervision.

- (a) The licensee or his agent shall operate the manufactured home park in compliance with this division and other applicable ordinances.

- (b) The licensee or his agent shall provide adequate supervision to maintain the manufactured home park, its facilities and equipment, in good repair and in clean and sanitary condition.
- (c) The licensee or his agent shall notify park occupants of all applicable provisions of this division and inform them of their duties and responsibilities under this division.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-91. Violations declared nuisance.

Any manufactured home park in violation of the terms and provisions of this division is hereby declared to be a public nuisance, and the appropriate officers of the city are hereby authorized to institute any administrative action or legal action that may be necessary to restrain or abate such violation.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-92. Nonconforming manufactured home parks; replacement of home.

- (a) Any manufactured home park in existence at the time of passage of the ordinance from which this article derives, which does not meet the regulations as set forth in this article, shall not be thereafter expanded or increased unless the expansion or increase meets with and comes into compliance with the terms of this article.
- (b) Any nonconforming uses in a manufactured home park in existence at the time of passage of the ordinance from which this article derives shall be enforced in accordance with the city's zoning ordinance, section ~~146-40~~[201.C Legal Nonconformities](#), as amended, and section 211.018 of the Texas Local Government Code, as amended.
- (c) The owner of a manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home, is at least as large in living space as the prior manufactured home, and placement of the newer manufactured home is in compliance with the zoning for the property. Prior to replacement, the owner shall provide the city with information sufficient to establish compliance with this subsection.
- (d) Notwithstanding the provisions of the city's zoning ordinance, section [201.C Legal Nonconformities](#)~~146-40~~, as amended, and notwithstanding the provisions of subsection (c), above, the ability of the owner of a manufactured home to replace the home as a result of a fire or natural disaster is not restricted, in accordance with the terms of § 1201.008(f) of the Texas Occupations Code, as amended. Other than in the case of a fire or natural disaster, this article limits the ability of a manufactured home owner to replace his manufactured home to a single replacement, in accordance with the terms of § 1201.008(f) of the Texas Occupations Code, as amended.
- (e) Notwithstanding the provisions of subsections (c) and (d) of this section, above, the owner of a travel trailer, recreational vehicle, or mobile home who removes the travel trailer, recreational vehicle, or mobile home from its location is prohibited from replacing the travel trailer, recreational vehicle or mobile home with a replacement travel trailer, recreational vehicle, or mobile home, and may only replace the removed travel trailer, recreational vehicle or mobile home with a manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior travel trailer, recreational vehicle or mobile home. Other than in the case of a fire or natural disaster, this subsection limits the ability of an owner to replace his home under this subsection to a single replacement in accordance with the terms of § 1201.008(f) of the Texas Occupations Code, as amended.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-93. Miscellaneous requirements.

The collection of the annual license fee set forth in sections 138-61 and 138-62, above, shall provide the funds necessary to reimburse the city for the cost of inspection and investigation in order to ensure compliance with the requirements of both park and individual ownership. In addition, this fee shall reimburse the city for inspections for compliance with any other requirement found in this article, as amended. The accomplishment of these inspections in order to ensure such compliance is necessary for the health, safety and welfare of the occupants of the manufactured home park and the general public and cannot be provided for by other means.

- (1) *Responsibilities of park management.* Manufactured home park management shall have the following responsibilities:
 - a. The licensee or his agent shall operate the park in compliance with this article and other applicable ordinance and federal and state statutory provisions and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.
 - b. The licensee or agent shall supervise the placement of each manufactured home on its manufactured home stand and the installation of all utility connections.
 - c. The licensee or agent shall maintain a register of park occupancy, which register shall contain the following information:
 1. Name and address of park residents;
 2. Manufactured home registration date, including make, length, width, year of manufacture and identification number;
 3. Location of each manufactured home within the park by space or lot number; and
 4. A new register shall be initiated on January 1 of each year, and the old register may thereafter be retired but shall be retained on park premises for at least one year following its retirement. Registers shall be available for inspection by the director of code services and/or chief building official at each calendar quarter, during any annual inspection, and at all reasonable times by any official of the city whose duties may necessitate access to the information contained therein.
- (2) *Responsibilities of park occupants.* Park occupants shall have the following responsibilities:
 - a. The park occupant shall comply with all requirements of this article and shall maintain his manufactured home space, its facilities and equipment in good repair and in a clean and sanitary condition.
 - b. The park occupant shall be responsible for proper placement of his manufactured home on its manufactured home stand and proper installation of all utility connections in accordance with the instructions of the park management and this article. All manufactured homes and nonconforming recreational vehicles shall be underpinned or skirted with a solid sheet material, or other such material to adequately conceal the undercarriage. All four sides of the manufactured home shall be enclosed from the bottom of manufactured home to the concrete pad or ground, as applicable.
 - c. Skirting, porches, awnings and other additions shall be maintained in good repair. Skirting material will be consistent with the manufactured home façade and as provided by the manufactured home manufacturer or its equivalent and shall be aesthetically pleasing.
 1. Storage areas inside the skirting shall not interfere with the underneath inspection of the manufactured home.
 2. Hitch and towing apparatus covers are required and shall be of similar material as skirting.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Secs. 138-94—138-99. Reserved.

DIVISION 5. RECREATIONAL VEHICLE PARKS

Sec. 138-100. General.

- (a) A recreational vehicle park means a unified development of recreational vehicle and travel trailer spaces arranged on a large tract or area under single ownership and meeting all requirements of this article in the same manner as are applicable to manufactured home parks.
- (b) Any development, redevelopment, alteration or expansion of a recreational vehicle park in the city shall be performed in compliance with the requirements in this article as are applicable to manufactured home parks.
- (c) A recreational vehicle park shall be located only where such use is permissible under the terms and provisions of the zoning ordinance concerning manufactured home parks.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-101. Sanitary stations.

- (a) Sufficient facilities shall be provided at recreational vehicle park sanitary stations for the sole purpose of removing and disposing of wastes from all recreational vehicle holding tanks in a clean, efficient and convenient manner.
- (b) Each sanitary station shall consist of a drainage basin constructed of impervious material, containing a disposal hatch and self-closing cover, and related washing facilities. Such units shall be provided on the basis of one for each 100 self-containing units or fractional part thereof.
- (c) Sanitary stations shall be located not less than 50 feet from any space. Such facilities shall be screened from other activities by visual barriers such as fences, walls or natural growth.
- (d) The disposal hatch of sanitary station units shall be connected to the recreational vehicle park sanitary sewage disposal system. Related facilities required to wash holding tanks and the general area of the sanitary station shall be connected to the recreational vehicle park water supply system.
- (e) Sanitary stations shall be approved by the chief building official.
- (f) Required community sanitary facilities. Every recreational vehicle park shall be provided with emergency sanitary facilities consisting of not less than one flush toilet and one lavatory per sex for each 100 recreational vehicle lots, or fractional part thereof, which facilities shall be accessible to all recreational vehicles. All rooms containing sanitary facilities shall comply with the city's building codes. Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type. Sanitary rooms shall be screened to prevent direct view of the interior when the exterior doors are open.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-102. Barbecue pits; fireplaces; stoves; incinerators.

Cooking shelters, barbecue pits, fireplaces, woodburning stoves and incinerators in a recreational vehicle park shall be located, constructed, maintained, and used so as to minimize fire hazards and smoke nuisances. No

open fire shall be left unattended. No fuel shall be used and no material shall be burned which emit dense smoke or objectionable odors. No open fire shall be permitted except in facilities approved by the chief building official.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Secs. 138-103—138-109. Reserved.

DIVISION 6. ADMINISTRATION AND ENFORCEMENT

Sec. 138-110. Inspections required.

The director of code services and/or chief building official is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this article and applicable city codes.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-111. Entry on premises.

The director of code services and/or chief building official 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 article. It shall be the duty of the licensee or his agent to give the director of code services and/or chief building official free access to all lots at reasonable times for the purpose of inspection. If entry is refused, the director of code services and/or chief building official shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-112. Inspection of register.

The director of code services and/or chief building official shall have the power to inspect the register containing a record of all residents of the manufactured home park.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-113. Duty of occupants to permit access.

It shall be the duty of every occupant of a manufactured home park and a recreational vehicle park to give the licensee, his agent or authorized employee, access to any part of such park at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this article.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-114. Notice of violations; requirements of notice.

Whenever the director of code services and/or chief building official determines that there are grounds to believe that there has been a violation of any provision of this article, the director of code services and/or chief building official shall give notice of such alleged violation to the licensee or agent, as provided in this section. Such notice shall:

- (1) Be in writing;
- (2) Include a statement of the reasons for its issuance;

- (3) Allow a reasonable time for the performance of any act it requires;
- (4) Be served upon the licensee or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such licensee or agent when a copy has been sent by certified mail, return receipt requested, to his last known address, or when he has been served with such notice by any method authorized or required by the laws of this state; and
- (5) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-115. Appeal from notice; requests for variances or waivers.

Any person aggrieved by any notice of violation which has been issued in connection with the enforcement of any provision of this article may request and shall be granted a hearing on the matter before the city's building and standards commission pursuant to Chapter 126, Division 2, of this Code, as amended.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-116. Order without notice.

Whenever the director of code services and/or chief building official finds that an emergency exists which requires immediate action to protect the public health, safety or welfare, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he may deem necessary to meet the emergency, including the temporary suspension of a permit or license. Notwithstanding any other provisions of this article, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the city's building and standards commission, shall be afforded a hearing as soon as possible under the provisions of Chapter 126, Division 2 of this Code, as amended.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Sec. 138-117. Penalty.

Notwithstanding any other provision of this article, any person, firm, or corporation who violates or fails to comply with any of the provisions of this article shall be subject to the penalty provisions set forth in Section 1-18 of this Code; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

(Ord. No. 2019-12-089, § 2, 12-17-2019)

Secs. 138-118—138-119. Reserved.

DIVISION 7. MANUFACTURED HOME SUBDIVISIONS.

Sec. 138-120. Manufactured home subdivisions.

Any development of manufactured homes as a manufactured home subdivision shall be governed by the provisions of the city's zoning ordinance and the city's subdivision ordinance as applicable, and the provisions of this article.

Secs. 138-121—138-393. Reserved.

ARTICLE IV. RESERVED ~~BED AND BREAKFAST FACILITIES~~

Sec. 138-394—138-416. Reserved ~~Special use permits.~~

~~(a) Specific use permit for bed and breakfast facility.~~

- ~~(1) No individual property owner shall use his residence as a bed and breakfast facility, as that term is defined herein, without first having received a specific use permit from the city council.~~
- ~~(2) A bed and breakfast facility is defined as an owner-occupied private home, which offers lodging for paying guests, and which serves breakfast to these guests and which contains one or more guest bedrooms.~~
- ~~(3) Specific permits for bed and breakfast facilities may be granted only in the following districts:~~
 - ~~a. Agricultural;~~
 - ~~b. Residential estates, one acre per unit;~~
 - ~~c. Residential estates, two acres per unit;~~
 - ~~d. Single family residence, 12,000 square feet per unit;~~
 - ~~e. Single family residence, 8,400 square feet per unit;~~
 - ~~f. Single family residence, 6,000 square feet per unit;~~
 - ~~g. General residence, 2,500 square feet per unit;~~
 - ~~h. General residence, 1,800 square feet per unit;~~
 - ~~i. RD-30 duplex residence district;~~
 - ~~j. Neighborhood business;~~
 - ~~k. General business; and~~
 - ~~l. Planned development districts.~~

~~(b) Special regulations. The following special regulations shall apply to all specific use permits issued for bed and breakfast facilities:~~

- ~~(1) All bed and breakfast facilities must be owner-occupied and managed at all times.~~
- ~~(2) The maximum length of stay for any guest shall be 14 consecutive days in any one calendar month.~~
- ~~(3) The maximum number of bedrooms that may be rented is five, unless the city council specifically finds that the structure and tract on which it is located is of sufficient size to permit more bedrooms and that the same will not adversely impact the surrounding properties.~~
- ~~(4) Breakfast shall be the only meal served to paying overnight guests. No cooking facilities shall be permitted in any of the bedrooms.~~
- ~~(5) One attached sign shall be permitted on the premises. Such signs shall not exceed four square feet in area, and shall not include the word "hotel" or "motel."~~
- ~~(6) Off-street parking shall be provided equal to one parking space per guest bedroom and shall be screened from all streets. No parking shall be permitted in the front yard area.~~

~~(7) The facilities shall meet all of the minimum requirements of the city-county health department and shall conform in all respects to the requirements of the fire code, building code, electrical code and plumbing code.~~

~~(8) All such facilities shall be responsible for the collection of the city hotel/motel tax.~~

~~(9) All city-county health officers, building inspectors, the fire marshal and his assistants and other code enforcement officials of the city shall have the right to go on any premises for which a specific use permit for a bed and breakfast facility has been issued during normal business hours for the purpose of verifying compliance with this article and all other applicable ordinances of the city.~~

~~(Code 1982, § 39-271; Ord. No. 1270, § 4.08, 12-15-1981; Ord. No. 1643, §§ 1, 2, 5-6 1986; Ord. No. 93-10-34, § 1, 10-19-1993)~~

~~**Secs. 138-395—138-416. Reserved.**~~

ARTICLE V. SEXUALLY ORIENTED BUSINESSES²

Sec. 138-417. Purpose and intent.

- (a) It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the continued concentration of sexually oriented businesses within the city. 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 or 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.
- (b) It is the intent of the city council that the locational regulations of section 138-429 are promulgated pursuant to V.T.C.A., Local Government Code § 243.001 et seq., as they apply to nude model studios and sexual encounter centers only. It is the intent of the city council that all other provisions of this article are promulgated pursuant to the city Charter and Vernon's Ann. Civ. St. art. 1175.

(Code 1982, § 39-301; Ord. No. 1837, § 1(16-55), 8-15-1989)

Sec. 138-418. 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:

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.

Adult bookstore or adult video store means a commercial establishment that openly advertises or displays or offers for sale or rental for any form of consideration any one or more of the following:

²State law reference(s)—Municipal authority to regulate sexually oriented businesses, V.T.C.A., Local Government Code § 243.001 et seq.

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; except those films and motion pictures which have received ratings by the Motion Picture Association of America of G, PG, PG-13, or R; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

- (1) Persons who appear in a state of nudity;
- (2) Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) 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.

Adult motel means a hotel, motel or similar commercial establishment that:

- (1) 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 that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way that advertises the availability of this type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

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, except those films exempted under the definition of "adult bookstore" in this section.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Chief of police means the chief of police of the city or his designated agent.

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 or to privately perform a striptease for another person.

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.

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

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.

Nude 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.

Nudity or a state of nudity means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

Person means an individual, proprietorship, trust, partnership, corporation, association, or other legal entity.

School means any public or private nursery, preschool, day care center, learning center, elementary or secondary school, or college or university.

Seminude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that offers, for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) 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 seminudity.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

Specified anatomical areas means human genitals in a state of sexual arousal.

Specified sexual activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition.

Substantial enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than 20 percent, as the floor area exists on August 15, 1989.

Transfer of ownership or control of a sexually oriented business means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities or other ownership interest that constitutes a direct, indirect, legal, equitable or beneficial controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the direct, indirect, legal, equitable or beneficial 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 to a person meeting all of the requirements of section 138-421, who shall have notified the chief of police of the transfer and furnished all of the information required to be submitted in an application for a license, within 60 days of the transfer.

(Code 1982, § 39-302; Ord. No. 1837, § 1(16-56), 8-15-1989; Ord. No. 2016-02-009, § 1, 2-2-2016)

Sec. 138-419. Classification.

Sexually oriented business is defined and classified as any commercial establishment operating in the city, in whole or in part, as any one or more of the following:

- (1) Adult arcade;
- (2) Adult bookstore or adult video store;
- (3) Adult cabaret;
- (4) Adult motel;
- (5) Adult motion picture theater;
- (6) Adult theaters;
- (7) Escort agency;
- (8) Nude model studio; and
- (9) Sexual encounter center.

(Code 1982, § 39-303; Ord. No. 1837, § 1(16-57), 8-15-1989)

Sec. 138-420. License required; application.

- (a) 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.
- (b) An application for a license must be made on a form provided by the chief of police. The application form shall be sworn to and shall:
 - (1) Include the name and address of the applicant;
 - (2) State whether or not the applicant meets each of the requirements set forth in section 138-421;
 - (3) State the name and address of each person required to sign the application pursuant to subsection (e) of this section, and the name, address and type of entity, if any, of each person or entity owned or controlled by such person which owns or controls an interest in the business to be licensed; and
 - (4) Include such other matters, consistent with this article, as may be specified in the application form.
- (c) 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 a 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 138-435 shall submit a diagram meeting the requirements of section 138-435.
- (d) The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law by the health department, fire department, and chief building official.
- (e) If a person who wishes to operate a sexually oriented business is an individual, he must sign an 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 directly or indirectly, through one or more intermediaries, owns and controls a ten percent or greater interest in the business must sign and submit, as an applicant, a separate application containing all applicable information required by subsection (b) of this section. Each applicant must be qualified under section 138-421 and each applicant shall be considered a licensee if a license is granted.

(Code 1982, § 39-304; Ord. No. 1837, § 1(16-58), 8-15-1989)

Sec. 138-421. Issuance of license.

- (a) The chief of police shall approve the issuance of a license by the chief building official or his designee to an applicant or the transfer by an applicant of all or any part of his ownership or control of a sexually oriented

business within 30 days after receipt of an application unless he finds one or more of the following to be true:

- (1) An applicant is under 18 years of age;
- (2) An applicant or an applicant's spouse is overdue in his payment to the city in taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business;
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this article, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect;
- (5) An applicant is residing with a person who has been denied a license by the city to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months;
- (6) An applicant has been denied a license to operate or had a license revoked by another city for violations similar to those contained in this article within the preceding 90 days;
- (7) The premises to be used for the sexually oriented business is not in compliance with applicable zoning laws or have not been approved by the health department, the fire department, and the chief building official as being in compliance with applicable laws and ordinances;
- (8) The license fee required by this article has not been paid;
- (9) An applicant or the proposed establishment is in violation of or is not in compliance with section 138-423, 138-428, 138-429, 138-431, 138-432, 138-433, 138-434, 138-435 or 138-436; or
- (10) An applicant or an applicant's spouse has been convicted of a crime:
 - a. Involving:
 1. Any of the following offenses as described in V.T.C.A., Penal Code ch. 43:
 - (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 a minor;
 - (vii) Sexual performance by a child; and
 - (viii) Possession of child pornography;
 2. Any of the following offenses as described in V.T.C.A., Penal Code ch. 21:
 - (i) Public lewdness;
 - (ii) Indecent exposure; and
 - (iii) Indecency with a child;
 3. Sexual assault or aggravated sexual assault as described in V.T.C.A., Penal Code ch. 22;
 4. Incest, solicitation of a child, or harboring a runaway child as described in V.T.C.A., Penal Code ch. 25; or

5. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;
- b. For which:
1. 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;
 2. 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
 3. 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.
- (b) The license, if granted, shall 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 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.
- (c) Any transferee shall submit a new application and comply fully with this section.
- (Code 1982, § 39-305; Ord. No. 1837, § 1(16-59), 8-15-1989)

Sec. 138-422. License fee.

The annual fee for a sexually oriented business license shall be as determined from time to time by city council, and said fee shall not be applied to any transfer of ownership requiring a new license.

(Code 1982, § 39-306; Ord. No. 1837, § 1(16-60), 8-15-1989; Ord. No. 2008-08-078, 8-19-2008)

Sec. 138-423. Inspection.

- (a) An applicant 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 insuring compliance with the law, at any time it is occupied or open for business.
- (b) A person who operates a sexually oriented business or his agent or employee commits an offense if he delays access to, refuses to permit, or interferes with a lawful inspection of the premises by a representative of the above-described departments at any time it is occupied or open for business.

(Code 1982, § 39-307; Ord. No. 1837, § 1(16-61), 8-15-1989)

Sec. 138-424. Expiration of license.

- (a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 138-420. Application for renewal should be made at least 30 days before the expiration date, and, when made less than 30 days before the expiration date, the expiration of the license will not be affected.
- (b) When the chief of police denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the chief of police finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Code 1982, § 39-308; Ord. No. 1837, § 1(16-62), 8-15-1989)

Sec. 138-425. Suspension of license.

The chief of police 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 section 138-423, 138-428, 138-429, 138-431, 138-432, 138-433, 138-434, 138-435 or 138-436;
- (2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (3) Refused to allow or interfered with an inspection of the sexually oriented business premises as authorized by this article;
- (4) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (5) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

(Code 1982, § 39-309; Ord. No. 1837, § 1(16-63), 8-15-1989)

Sec. 138-426. Revocation of license.

- (a) The chief of police shall revoke a license if a cause of suspension in section 138-425 occurs and the license has been suspended within the preceding 12 months.
- (b) The chief of police shall revoke a license if he determines that:
 - (1) A licensee gave false or misleading information in the material submitted to the chief of police during the application process;
 - (2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (3) A licensee or an employee has knowingly allowed prostitution on the premises;
 - (4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (5) A licensee has been convicted of an offense listed in section 138-421(a)(10)a for which the time period required in section 138-421(a)(10)b has not elapsed;
 - (6) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in section 138-421(a)(10)a 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;
 - (7) A licensee or an 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 in V.T.C.A., Penal Code § 21.01; or
 - (8) 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.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) Subsection (b)(7) of this section does not apply to adult motels as a ground for revoking the license.
- (e) When the chief of police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became

effective. If, subsequent to revocation, the chief of police 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 (b)(5) of this section, an applicant may not be granted another license until the appropriate number of years required under section 138-421(a)(10)b has elapsed since the termination of any sentence, parole, or probation.

(Code 1982, § 39-310; Ord. No. 1837, § 1(16-64), 8-15-1989)

Sec. 138-427. Appeals.

If the chief of police denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the chief of police to the city council by filing a written notice thereof with the city secretary within ten calendar days. The filing of an appeal stays the action of the chief of police in suspending or revoking a license until the city council makes a final decision.

(Code 1982, § 39-311; Ord. No. 1837, § 1(16-65), 8-15-1989)

Sec. 138-428. Transfer of license.

A licensee, including any applicant for a license, shall not transfer his license or all or any part of his ownership or control of a sexually oriented business 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, without first obtaining a license for said transfer or location.

(Code 1982, § 39-312; Ord. No. 1837, § 1(16-66), 8-15-1989)

Sec. 138-429. Location—Generally.

- (a) A person commits an offense if he operates or causes to be operated a sexually oriented business in any zoning district other than the MH heavy manufacturing district and/or within 1,000 feet of:
 - (1) A church, rectory, convent, synagogue, monastery, or other similar institution of a nonprofit, religious or philanthropic nature;
 - (2) A school;
 - (3) A child care facility;
 - (4) A public or private park or recreation area;
 - (5) Historic sites as determined by the city historic preservation officer;
 - (6) A boundary of a residential district as defined by the zoning ordinance of the city;
 - (7) A cemetery; or
 - (8) The property line of a lot devoted to residential use.
- (b) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business located within 1,000 feet of another sexually oriented business.
- (c) 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 the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

- (d) For the purposes of subsection (a) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, child care facility, school or historic site, residential lot, or to the nearest boundary of a public or private park, or recreation area, cemetery, or residential district.
- (e) For purposes of subsection (b) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- (f) Any sexually oriented business lawfully operating on August 15, 1989, that is in violation of subsection (a), (b) or (c) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business, which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.
- (g) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, school, child care facility, public or private park or recreation area, historic site, cemetery, residential district, or residential lot within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

(Code 1982, § 39-313; Ord. No. 1837, § 1(16-67), 8-15-1989; Ord. No. 2012-11-056, § 1, 11-5-2012; Ord. No. 2013-04-033, § 3, 4-2-2013; Ord. No. 2013-12-111, § 1, 12-2-2013)

Sec. 138-430. Same—Exemption from location restrictions.

- (a) If the chief of police denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of section 138-429, then the applicant may, not later than ten 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 138-429.
- (b) If the written request is filed with the city secretary within the ten-day limit, 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.
- (c) A hearing by the council may proceed if a quorum is present. The council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.
- (d) The city council may, in its discretion, grant an exemption from the locational restrictions of section 138-429 if it makes the following findings:
 - (1) 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;
 - (2) That the granting of the exemption will not violate the spirit and intent of this article;
 - (3) 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;
 - (4) 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 efforts of urban renewal or restoration; and

- (5) That all other applicable provisions of this article will be observed.
- (e) The council 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 on the permit and license appeal to the city council is final.
 - (f) If the council grants the exemption, the exemption is valid for one year from the date of the council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of section 138-429 until the applicant applies for and receives another exemption.
 - (g) If the council denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the council's action.
 - (h) The grant of an exemption does not exempt the applicant from any other provisions of this article other than the locational restrictions of section 138-429.

(Code 1982, § 39-314; Ord. No. 1837, § 1(16-68), 8-15-1989)

Sec. 138-431. Additional regulations for escort agencies.

- (a) An escort agency shall not employ any person under the age of 18 years.
- (b) 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.

(Code 1982, § 39-315; Ord. No. 1837, § 1(16-69), 8-15-1989)

Sec. 138-432. Additional regulations for nude model studios.

- (a) A nude model studio shall not employ any person under the age of 18 years.
- (b) 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 model 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 of persons of the opposite sex.
- (c) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises, which can be viewed from the public right-of-way.
- (d) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Code 1982, § 39-316; Ord. No. 1837, § 1(16-70), 8-15-1989)

Sec. 138-433. Additional regulations for adult theaters and adult motion picture theaters.

- (a) 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.
- (b) 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.
- (c) It is a defense to prosecution under subsections (a) and (b) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(Code 1982, § 39-317; Ord. No. 1837, § 1(16-71), 8-15-1989)

Sec. 138-434. Additional regulations for adult motels.

- (a) 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 less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.
- (b) 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 subrents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or subrents the same sleeping room again.
- (c) For purposes of subsection (b) of this section, the terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Code 1982, § 39-318; Ord. No. 1837, § 1(16-72), 8-15-1989)

Sec. 138-435. Exhibition of sexually explicit films or videos.

- (a) A person who operates or causes to be operated 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:
 - (1) 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 chief of police 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) The application shall be sworn to be true and correct by the applicant.
 - (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the chief of police or his designee.
 - (4) It is the duty of the owners and operators of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
 - (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a 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 have 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.
 - (6) 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 view area specified in subsection (5) of this section remains unobstructed by any doors, walls, 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 (1) of this section.

- (7) 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 1.0 footcandle as measured at the floor level.
- (8) 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.
- (b) A person having a duty under subsections (a)(1) through (a)(8) of this section commits an offense if he knowingly fails to fulfill that duty.

(Code 1982, § 39-319; Ord. No. 1837, § 1(16-73), 8-15-1989)

Sec. 138-436. Display of sexually explicit material to minors.

- (a) 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 sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:
 - (1) Human sexual intercourse, masturbation, or sodomy;
 - (2) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;
 - (3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
 - (4) Human male genitals in a discernibly turgid state, whether covered or uncovered.
- (b) In this section the term "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:
 - (1) It is available to the general public for handling and inspection; or
 - (2) The cover, outside packaging, or contents of the item are visible to members of the general public.

(Code 1982, § 39-320; Ord. No. 1837, § 1(16-74), 8-15-1989)

Sec. 138-437. Enforcement.

- (a) Except as provided by subsection (b) of this section any person violating section 138-429, upon conviction, is punishable by a fine not to exceed \$1,000.00 for such violation of section 138-429, and a separate offense shall be deemed committed each day during or on which an offense occurs or continues.
- (b) If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of section 138-420(a) or section 138-429 is punishable as a class B misdemeanor.
- (c) Except as provided by subsection (b) of this section, any person violating a provision of this article other than section 138-429, upon conviction, is punishable by a fine not to exceed \$200.00.
- (d) It is a defense to prosecution under section 138-420(a), 138-429, or 138-432(d) that a person appearing in a state of nudity did so in a modeling class operated:
 - (1) By a proprietary school licensed by the state; a college, junior college, or university supported entirely or partly by taxation;

- (2) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;
 - b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
 - c. Where no more than one nude model is on the premises at any one time.
- (e) It is a defense to prosecution under section 138-420(a) or section 138-429 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.

(Code 1982, § 39-321; Ord. No. 1837, § 1(16-75), 8-15-1989)

Sec. 138-438. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of section 138-429 is subject to a suit for injunction as well as prosecution for criminal violations.

(Code 1982, § 39-322; Ord. No. 1837, § 1(16-76), 8-15-1989)

Sec. 138-439. Amendment of article.

Sections 138-429 and 138-430 may be amended only after compliance with the procedure required to amend a zoning ordinance. Other sections of this article may be amended by vote of the city council.

(Code 1982, § 39-323; Ord. No. 1837, § 1(16-77), 8-15-1989)

Secs. 138-440—138-459. Reserved.

ARTICLE VI. OIL AND NATURAL GAS WELL DRILLING AND OPERATIONS

Sec. 138-460. Purpose.

The exploration, development and production of oil and gas in the city are activities that necessitate reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to enjoy their property and its benefits and revenues. It is hereby declared to be the purpose of this article to establish reasonable and uniform limitations, safeguards and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil and gas and other substances produced in association with oil and gas within the city to protect the health, safety and general welfare of the public, minimize the potential impact to property and mineral rights owners, protect the quality of the environment and encourage the orderly production of available mineral, oil and gas resources.

(Ord. No. 2007-06-056, § 2(39-324), 6-5-2007)

Sec. 138-461. Definitions.

All technical industry words or phrases related to the drilling and production of gas wells not specifically defined in this article shall have the meanings customarily attributable thereto by prudent and reasonable gas industry operators. 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:

Abandonment means "abandonment" as defined by the state railroad commission and includes the plugging of the well and the restoration of any well site as required by this article.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Blowout preventer means a mechanical, hydraulic, pneumatic or other device or combination of such devices secured to the top of a well casing, including valves, fittings and control mechanisms connected therewith, which can be closed around the drill pipe, or other tubular goods which completely close the top of the casing and are designed for preventing blowouts.

Building means any structure used or intended for supporting or sheltering any use or occupancy. The term "building" shall be construed as if followed by the words "or portions thereof."

Cathodic protection means an electrochemical corrosion control technique accomplished by applying a direct current to the structure that causes the structure potential to change from the corrosion potential to a protective potential in the immunity region. The required cathodic protection current is supplied by sacrificial anode materials or by an impressed current system.

Commission means the state railroad commission.

Completion of drilling, re-drilling and re-working means the date the work is completed for the drilling, re-drilling or re-working and the crew is released by completing its work or contract or by its employer.

Derrick means any portable framework, tower, mast and/or structure that is required or used in connection with drilling or re-working a well for the production of oil and/or gas.

Drill site means the premises used during the drilling or re-working of a well or wells located there and subsequent life of a well or any associated operation.

Drilling means digging or boring a new well for the purpose of exploring for, developing or producing oil and/or gas or other hydrocarbons, or for the purpose of injecting gas, water or any other fluid or substance into the earth.

Drilling equipment means the derrick, together with all parts of and appurtenances to such structure, every piece of apparatus, machinery or equipment used or erected or maintained for use in connection with drilling.

Exploration means geologic or geophysical activities, including seismic surveys, related to the search for gas or other subsurface hydrocarbons.

Fire department means the fire department of the city.

Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas.

Gas well means any well drilled, to be drilled, or used for the intended or actual production of natural gas.

Oil and gas inspector means the public works director designated by the city manager or any other person so designated as an inspector by the city manager.

Operation site means the area used for development and production and all operational activities associated with gas after drilling activities are complete.

Operator means, for each well, the person listed on the railroad commission form W-1 or form P-4 for an oil and gas well that is, or will be actually in charge and in control of drilling, maintaining, operating, pumping or controlling any well, including, without limitation, a unit operator. If the operator, as herein defined, is not the lessee under an oil and gas lease of any premises affected by the provisions of the article, then such lessee shall also be deemed to be an operator. In the event that there is no oil and gas lease relating to any premises affected by this article, the owner of the fee mineral estate in the premises shall be deemed an operator.

Permit means any written license granted by the city for the exploration, development, and production of oil and/or gas wells issued pursuant to rules and regulations of this article. Four types of permits may be issued by the city, including an oil well permit, gas well permit, or a combined permit for the exploration, development, and production of both oil and gas wells as indicated on a single application, and a blanket permit for multiple oil or gas wells as enumerated on a single permit application.

Person means both the singular and the plural. The term also means a natural person, a corporation, association, guardian, partnership, receiver, trustee, administrator, executor, and fiduciary or representative of any kind.

Public building means all buildings used or designed to and intended to be used for the purpose of assembly of persons for such purposes as deliberation, entertainment, amusement, or health care. Public buildings include, but shall not be limited to, theaters, assembly halls, auditoriums, armories, mortuary chapels, dance halls, exhibition halls, museums, gymnasiums, bowling lanes, libraries, skating rinks, courtrooms, restaurants, or hospitals.

Public park means any land area dedicated to and/or maintained by the city for traditional parklike recreational purposes, but shall not include privately-owned amusement parks or privately-owned or privately-managed golf courses.

Re-drill means re-completion of an existing well by deepening or sidetrack operations extending more than 150 feet from the existing well bore.

Re-working means re-completion or re-entry of an existing well within the existing bore hole or by deepening or sidetrack operations, which do not extend more than 150 feet from the existing well bore or replacement of well liners or casings.

Religious institution means any building in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Residence means a house, duplex, apartment, townhouse, condominium, mobile home or other building designed for dwelling purposes, including those for which a building permit has been issued on the date the application for a gas well permit is filed with the public works director.

Right-of-way means public rights-of-way including streets, easements and other property within the city and which is dedicated to the use and benefit of the public.

School means any public and private, primary and secondary educational facilities providing education up through and including the 12th grade level and any licensed day care centers, meaning a facility licensed by the state or by the city that provides care, training, education, custody, treatment or supervision for more than six children under 14 years of age, and for less than 24 hours per day.

Street means any street, highway, sidewalk, alley, avenue, recessed parking area or other public right-of-way, including the entire right-of-way.

Well means a hole or holes, bore or bores, to any horizon, formation, or strata for the purpose of producing gas, liquid hydrocarbon, brine water or sulfur water, or for the use as an injection well for secondary recovery, disposal or production of gas, or other hydrocarbons from the earth.

(Ord. No. 2007-06-056, § 2(39-325), 6-5-2007)

Sec. 138-462. City oversight.

The oil and gas inspector shall have the authority to enter and inspect any premises covered by the provisions of this article to determine compliance with the provisions of this article and all applicable laws, rules, regulations, standards or directives of the state. Failure of any person to permit access to the public works department shall constitute a violation of this article. Additionally, the oil and gas inspector shall have the authority to issue any orders or directives required to carry the intent and purpose of this article and its provisions. The oil and gas inspector shall have the authority to request and receive any records, including any records sent to the commission, logs, reports and the like, relating to the status or condition of any permitted well necessary to establish and determine compliance with the applicable permit. Failure of any person to provide any such requested material shall be deemed a violation of this article.

(Ord. No. 2007-06-056, § 2(39-326), 6-5-2007)

Sec. 138-463. Operator's agent.

Every operator of any well shall designate an agent, who is a resident of the state, upon whom all orders and notices provided in this article may be served in person or by registered or certified mail. Every operator so designating such agent shall within ten days notify the city secretary in writing of any change in such agent or such mailing address unless operations within the city are discontinued.

(Ord. No. 2007-06-056, § 2(39-327), 6-5-2007)

Sec. 138-464. Oil and gas well permit requirements.

- (a) A person wanting to engage in and/or operate in oil and/or gas production activities shall apply for and obtain an oil, gas or combined well permit under this article and shall indicate what type of well permit is requested. It shall be unlawful for any person acting either for himself or acting as an agent, employee, independent contractor, or servant for any person to drill any well, assist in any way in the site preparation, re-working, fracturing or operation of any such well or to conduct any activity related to the production of oil and/or gas without first obtaining an oil, gas or combined well permit issued by the city in accordance with this article. Such activities include, but are not limited to, re-working, initial site preparation, drilling, operation, construction of rigs or tank batteries, fracturing and pressurizing.
 - (1) A permit shall not be required for seismic surveys. The operator conducting the seismic survey, however, shall provide notice to the oil and gas inspector in no less than seven business days prior to the commencement of any seismic survey activities on site, and therein shall provide the following information:
 - a. The operator/applicants name, phone number, address, and, if possible, email address; if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners shall be provided;
 - b. The location of seismic survey;
 - c. The date and time the seismic survey will be conducted;
 - d. A detailed explanation of the seismic survey method to be used on site; and
 - e. The date and time the seismic survey will be completed.
 - (2) Under no circumstances may explosive charges, including, but not limited to, the use of dynamite be used in any way related to the preparation and/or operation of conducting a seismic survey without the authorization of the city's fire chief.

- (b) The operator must apply for and obtain an oil, gas or combined well permit for the drilling, re-drilling, deepening, re-entering, activating or converting of each well. The operator may apply for and obtain a blanket well permit for more than one well if multiple wells are located on the same tract of land. Under a blanket permit, all proposed wells must be individually identified and in compliance with all requirements of this article.
- (c) An oil, gas or combined well permit shall not constitute authority for the re-entering and drilling of an abandoned well. An operator shall obtain a new well permit in accordance with the provisions of this article if the operator is re-entering and drilling an abandoned well.
- (d) When an oil, gas or combined well permit has been issued to the operator for the drilling, re-drilling, deepening, re-entering, activating or converting of a well, such oil, gas or combined well permit shall constitute sufficient authority for drilling, operation, production gathering or production maintenance, repair, re-working, testing, plugging and abandonment of the well and/or any other activity associated with mineral exploration at the site of such well; provided, however, that a new or amended permit shall be obtained before such well may be reworked for purposes of re-drilling, deepening or converting such well to a depth or use other than that set forth in the then current permit for such well.
- (e) Any person who intends to re-work a permitted well using a drilling rig to fracture stimulate a permitted well after initial completion or to conduct seismic surveys or other exploration activities shall give written notice to the oil and gas inspector no less than ten days before the activities begin. The notice must identify where the activities will be conducted and must describe the activities in detail, including whether explosive charges will be used, the duration of the activities and the time the activities will be conducted. The notice must also provide the address and 24-hour telephone number of the person conducting the activities. If requested by the oil and gas inspector, the person conducting the activities will post a sign on the property giving the public notice of the activities, including the name, address and 24-hour phone number of the person conducting the activities.
- (f) The following requirements shall apply to all fracture stimulation operations performed on a well:
 - (1) At least 48 hours before operations are commenced, the operator shall post a sign at the entrance of the well site advising the public of the date the operations will commence;
 - (2) Flowback operations to recover fluids used during fracture stimulation shall be performed during daylight hours only unless the oil and gas inspector approves such operations during non-daylight hours;
 - (3) A watchperson shall be required at all times during such operations; and
 - (4) At no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank.
- (g) An oil, gas or combined well permit shall automatically terminate, unless extended, if drilling is not commenced within 90 days from the date of the issuance of the permit. Drilling must commence within 90 days from the date of the issuance of the permit on at least one well under a blanket permit, as described above, in order to maintain the validity of the permit for the multiple wells. Each well covered by a blanket permit must begin within 365 days or a new permit must be obtained. A well permit may be extended by the oil and gas inspector for an additional 90 days upon request by the operator and proof that the regulatory standards of the requested permit for such location have not changed.
- (h) The oil, gas or combined well permits required by this article are in addition to and are not in lieu of any permit which may be required by any other provision of this Code or by any other governmental agency.
- (i) No additional oil, gas or combined well permit or filing fees shall be required for:
 - (1) Any wells, existing, previously permitted or approved by the city, within the corporate limits of the city on the effective date of the ordinance from which this article is derived;

- (2) Any wells that drilling has commenced on the effective date of the ordinance from which this article is derived;
 - (3) Any wells in existence or on any wells on which drilling has commenced on land annexed into the city after the effective date of the ordinance from which this article is derived; or
 - (4) Any well that was planned for the land 90 days before the effective date of its annexation and one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for such well and the completed application for the initial authorization was filed before the date the annexation proceedings were instituted. A person shall have 45 days after the enactment of the ordinance from which this article is derived or annexation into the city to designate an oil and/or gas operation as a preexisting operation by filing a site plan drawn to scale that shows the proposed location of the well with respect to survey lines and the proposed associated production facilities, if any, with the oil and gas inspector.
- (j) No oil, gas or combined well permit shall be issued for any well to be drilled within any public park without the prior consent of the city council. The city council shall review the insurance and security requirements on an individual basis prior to issuing the permit.
 - (k) No oil, gas, or combined well permit shall be issued for any well to be drilled within 750 feet of a floodplain.
 - (1) For floodplains identified by the Federal Emergency Management Agency (FEMA) on the most current Federal Insurance Rate Map (FIRM), except for zones A or X, the distance measurement from the proposed well bore shall be calculated as a straight line, without regard to intervening structures or objects, to the closest exterior point of the base flood elevation topographic contour.
 - (2) For zones A and X, or all other areas within the city's corporate limits, in which the proposed well bore is within 775 feet of any type of surface water conveyance, including, but not limited to, creeks, streams, drainage ditches, or other constructed stormwater conveyance systems, calculating distance in a straight line from the conveyance centerline, an approximate flood study shall be prepared by the applicant and approved by the city engineer or designee. Upon completion of the approximate flood study, if the city engineer or designee determines that the proposed well bore is within 100 feet of any type of surface water conveyance, or other flood hazard area, then a detailed flood study shall be prepared by the applicant and approved by the city engineer or designee. All distance measurements shall be consistent with other provisions contained in this article.
 - (l) No oil, gas, or combined well permit shall be issued for any well to be drilled that is in noncompliance with any standard, provision, procedure, and/or recommendation as described in the city's engineering design and construction standards manual.
 - (m) No oil, gas, or combined well permit shall be issued for any well to be drilled on city-owned property without the prior consent of the city council. The city council shall review the insurance and security requirements, potential environmental impacts, and threats to public health and safety, on an individual basis prior to city council issuing the permit.
 - (n) By acceptance of any permit issued pursuant to this article, the operator expressly stipulates and agrees to be bound by and comply with the provisions of this article. The terms of this article shall be deemed to be incorporated in any oil, gas or combined well permit issued pursuant to this article with the same force and effect as if this article was set forth verbatim in such permit.

(Ord. No. 2007-06-056, § 2(39-328), 6-5-2007)

Sec. 138-465. Oil and gas well permit application and filing fees.

- (a) Every application for an oil, gas or combined well permit issued pursuant to this article shall be in writing signed by the operator or some person duly authorized to sign on his behalf, and filed with the oil and gas inspector.

- (b) Every application shall be accompanied by a permit fee as determined from time to time by city council. The application shall include the following information:
- (1) The date of the application and type of permit requested;
 - (2) An accurate legal description of the lease property to be used for the oil and/or gas operation, the parcel and the production unit and name of the geologic formation as used by the commission. Property recorded by plat should reference subdivision, block and lot numbers;
 - (3) A map showing the proposed transportation route and road for equipment, chemicals or waste products used or produced by the gas operation;
 - (4) The proposed well name;
 - (5) The surface owner name, telephone number, address, and e-mail address, if known, of the lease property;
 - (6) The mineral lessee name, telephone number, address, and e-mail address, if known;
 - (7) The operator/applicant name, telephone number, address, and e-mail address, if known, and if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners;
 - (8) The name, telephone number, and address of the individual designated to receive notice, and e-mail address, if known;
 - (9) The name and address of the representative with supervisory authority over all gas operation site activities and a 24-hour telephone number;
 - (10) The location and description of all improvements and structures within 1,000 feet of the well;
 - (11) The name of the owner and the address of each parcel of property within 1,000 feet of the proposed drill site;
 - (12) A site plan of the proposed operation site showing the location of all improvements and equipment, including the location of the proposed well and other facilities, including, but not limited to, tanks, pipelines, compressors, separators and storage tanks or storage sheds. All site plans must conform to all relevant standards and requirements described in section [~~146-45203.E.1~~ Site Plan](#);
 - (13) The name, address and 24-hour phone number of the person to be notified in case of an emergency;
 - (14) The exact and correct acreage and number of wells, if applicable, included in the permit application;
 - (15) Copies of all reports required by the commission, specifically including a copy of the approved railroad commission form W-1 and/or P-4;
 - (16) A signed road maintenance agreement supplied by the city that provides that the operator shall repair, at his own expense, any damage to roads, streets, or highways caused by the use of heavy vehicles for any activity associated with the preparation, drilling, production, and operation of wells;
 - (17) A description of public utilities required during drilling and operation;
 - (18) A description of the water source to be used during drilling;
 - (19) A copy of the approved commission permit to drill, together with attachments and survey plats, which are applicable to the drill and operation sites;
 - (20) A copy of the stormwater pollution prevention plan as required by the commission, the state commission on environmental quality and/or the United States Environmental Protection Agency. A copy of the notice of intent shall be submitted to the city public works department three days prior to the commencement of any onsite activity;

- (21) A copy of the determination by the state commission on environmental quality of the depth of useable quality groundwater;
- (22) Evidence of insurance and security requirements under this article;
- (23) A statement, under oath, signed by the operator or designated representative, that the information submitted with the application is, to the best knowledge and belief of the operator or designated representative, true and correct;
- (24) All required application and permit fees;
- (25) A tree preservation plan, pursuant to section ~~146-136~~[203.E.3 Tree Preservation Plan](#); and
- (26) A copy of a hazardous materials management plan and additionally, all material safety data sheets (MSDSs) for all hazardous materials that will be located, stored, transported and/or temporarily used on the drilling site shall be provided to the oil and gas inspector and fire chief.

(Ord. No. 2007-06-056, § 2(39-329), 6-5-2007; Ord. No. 2008-08-078, 8-19-2008)

Sec. 138-466. Oil and gas well permits.

- (a) *Generally.* An oil, gas, or combined well permit shall be required for all wells related to developing or producing oil, gas, or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth.
- (b) *Required information.* An application for an oil, gas, or combined well permit shall include the following information:
 - (1) All the requirements of section 138-465.
 - (2) A detailed site plan that includes all the information required in section 138-465, but also includes specific details to the projected location of the major components of the drilling site, impacted environmentally sensitive areas, floodplains, topographic contours, creeks and other topographic features, adjacent buildings and other structures, and the measured distance from the well site to these major components of the drilling site, impacted environmentally sensitive areas, floodplains, topographic contours, creeks and other topographic features, adjacent buildings and other structures.
 - (3) All application submissions for a permit shall include at a minimum six copies of the application and all associated documentation, including plats, maps, surveys, and supporting materials, reports, and/or forms.
- (c) *Permitting procedure.*
 - (1) It is the responsibility of the oil and gas inspector to review and approve or disapprove all applications for oil, gas, or combined well drilling permits based on the criteria established by this article.
 - (2) The oil and gas inspector, within 45 days after the filing of a completed application and remittance of all fees, insurance, and security per the requirements of this article for an oil, gas, or combined well permit, shall determine whether the application complies in all respects with the provisions of this article and determine if the proposed well to be drilled or the facility to be installed is in compliance with the distance requirements for the requested permit on the date the completed application is received by the oil and gas inspector.
 - (3) The provisions of this article shall apply to any dwellings or buildings for which an application for a building permit has been submitted on the date the application for an oil, gas, or combined well permit is filed with the oil and gas inspector.
 - (4) All new and/or proposed construction of any buildings, structures, streets, roads, and/or applicable improvements to the property upon which any oil and/or gas well is located must be in compliance with all applicable setback requirements enumerated in this article.

- (5) If all the requirements of this article are met, the oil and gas inspector shall issue a permit for the drilling of the well or the installation of the facilities for which the permit application was made.
 - (6) If the oil and gas inspector denies a permit application for cause as set out in this article for the requested oil, gas, or combined well permit, the oil and gas inspector shall notify the operator in writing of such denial stating the reasons for the denial. Within 30 days of the date of the written decision of the oil and gas inspector to deny the permit, the operator may cure those conditions that caused the denial and resubmit the application to the oil and gas inspector for approval and issuance of the permit. Additionally, the operator may file an appeal to the oil and gas board of appeals under the provisions outlined in this article pursuant to section 138-476.
- (d) *Well setbacks for oil and gas well permits.*
- (1) It shall be unlawful to drill, re-drill, deepen, re-enter, activate or convert any well, the center of which, at the surface of the ground, is located:
 - a. Within 1,000 feet from any public park;
 - b. Within 1,000 feet from any residence, religious institution, public building, hospital building or school for which a building permit has been issued on the date of the application for a drilling permit is filed with the oil and gas inspector;
 - c. Within 500 feet from any building used, or designed and intended to be used, for human occupancy;
 - d. Within 500 feet from any lease line as indicated on railroad commission form W-1, or recorded property, lot or tract line;
 - e. Within 500 feet from any existing storage tank, or source of potential ignition;
 - f. Within 500 feet of any public street, road, highway, or right-of-way line;
 - g. Within 100 feet of any building accessory to, but not necessary to the operation of the well; or
 - h. Within 1,000 feet to any fresh water well.
 - (2) The measurement of all distances shall be calculated from the proposed well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the any object listed in subsections (d)(1)a. through h. of this section.
 - (3) For purposes of this section, a "building used, or designed and intended to be used, for human occupancy" means an enclosed space, other than a residence, in which individuals congregate for amusement or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation facilities.
 - (4) The distances set out in subsection (d)(1) of this section may be reduced at the discretion of the oil and gas board of appeals pursuant to section 138-476, but never less than 500 feet from any dwelling or any other building used, or designed and intended to be used for human occupancy. All distance reductions shall be documented as variances to the requested permit prior to issuance.
 - (5) Tank batteries, well facilities and equipment shall be located at least 1,000 feet from any public park, or from any residence, religious institution, public building, hospital building or school, or any other building used, or designed and intended to be used, for human occupancy for which a building permit has been issued on the date of the application for a drilling permit is filed. The distance shall be calculated from the closest tank batteries, well facilities and/or equipment, in a straight line, without regard to intervening structures or objects to the closest exterior point of the building.
- (e) *Fencing requirements for oil and gas well permits.*
- (1) A chainlink fence, a minimum of eight feet in height with 3½-inch mesh interwoven with opaque slats, shall enclose all completed wells and tanks located within a well permit area.

- (2) Gate requirements and other fencing requirements as outlined in section 138-472 shall also be required.
- (f) *Landscaping.* Screening shrubs shall be installed completely around the well site and all fences and be sufficient to screen from view the structures sought to be screened. Screening shrubs shall be a minimum of three feet in height at planting, have the potential to grow to a mature height of a maximum of five feet and, if necessary, must have an installed irrigation system that provides total water coverage to all plant materials. The vegetation or berms shall be kept in an attractive state and in good condition at all times by the applicant or operator. All landscape and irrigation plans shall be submitted to the oil and gas inspector for approval.
- (g) *Vehicle routes for oil and gas well permits.* Vehicles associated with drilling and/or production in excess of three tons shall be restricted to such streets designated as arterials, collectors or local commercial as delineated in the thoroughfare plan. The vehicles shall be operated on state arterials whenever capable of being used. Such vehicles shall be operated only on arterials, collectors and local commercial only when it is not possible to use a state arterial to fulfill the purpose for which such vehicle is then being operated.
- (h) *Work hours for oil and gas well permits.* Site development, other than drilling, shall be conducted only between 7:00 a.m. and 7:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation and other related work conducted on the well site shall be limited to and between the above same work hour restrictions except in cases of fires, blowouts, explosions, and any other emergencies or where the delivery of equipment is necessary to prevent the cessation of drilling or production. The operator may request a variance from the oil and gas board of appeals, pursuant to section 138-476.
- (i) *Noise restrictions for oil and gas well permits.*
- (1) No drilling, producing or other operations shall produce a sound level greater than 78 dBa when measured at a distance of 300 feet from the production equipment in question. The noise level shall be the average of sound level meter readings taken consecutively at any given time from four or more diametrically opposite positions, four feet above ground level, when measured at a distance of 300 feet from the production equipment. A maximum sound level of 85 dBa shall apply to formation fracturing when measured at a distance of 300 feet from the production equipment in question.
 - (2) No person shall operate or permit to operate in connection with the operation of a producing well any engine, compressor or motor-driven machinery of any type which creates a sound level greater than 65 dBa when measured at a distance of 300 feet from the well site. The noise level shall be the average of sound level meter readings taken consecutively at any given time from four or more diametrically opposite positions measured at a distance of 300 feet from the well site.
 - (3) Sound level measurements shall be made with a sound level meter conforming as a minimum, to the requirements of the American National Standards Institute.
 - (4) If sound levels exceed the dBa levels referenced in subsections (i)(1) and (2) of this section, the oil and gas inspector may require sound reducing mufflers.
- (j) *Tank specifications for oil and gas well permit.* All tanks and permanent structures shall conform to the American Petroleum Institute (API) specifications unless other specifications are approved by the fire chief. The top of the tanks shall be no higher than eight feet above the terrain surrounding the tanks.
- (k) *Building permit required.*
- (1) No building or structure regulated by the current code adopted by the city shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate permit for each building or structure has first been obtained from the building official.
 - (2) It shall be the responsibility of any person, firm, or corporation, upon submittal of an application for a building permit for work regulated by the current code adopted by the city, to register as a general contractor with the city. Work regulated includes, but is not limited to: construction of gates, fencing,

plumbing, irrigation, electricity, roadways, entrances, compressors, flow lines, pipelines, gathering lines, tank batteries, and buildings. Such registration shall be upon forms supplied by the building official and shall become null and void on December 31 of each year. An appropriate fee for registration shall be assessed in accordance with the city fee schedule.

(l) *Additional requirements.* All other provisions outlined in this article shall be required.

(Ord. No. 2007-06-056, § 2(39-330), 6-5-2007)

Sec. 138-467. Amended oil and gas well permits.

- (a) An operator may submit an application to the oil and gas inspector to amend an existing permit to commence drilling from a new drill site that is not shown on or incorporated by reference as part of the existing permit, to relocate a drill site or operation site that is shown on or incorporated by reference as part of the existing permit, or to otherwise amend the existing permit.
- (b) Applications for amended permits shall be in writing, shall be signed by the operator, and shall include the following:
 - (1) An application fee as determined from time to time by city council;
 - (2) A description of the proposed amendments;
 - (3) Any changes to the information submitted with the application for existing permit (if such information has not previously been provided to the city);
 - (4) Such additional information as is reasonably required by the oil and gas inspector to demonstrate compliance with the applicable permit; and
 - (5) Such additional information as is reasonably required by the oil and gas inspector to prevent imminent destruction of property or injury to persons.
- (c) All applications for amended permits shall be filed with the oil and gas inspector for review. Incomplete applications may be returned to the applicant, in which case the city shall provide a written explanation of the deficiencies; however, the city shall retain the application fee. The city may return any application as incomplete if there is a dispute pending before the railroad commission regarding the determination of the operator.
- (d) If the activities proposed by the amendment are not materially different from the activities covered by the existing permit, and if the proposed activities are in conformance with the applicable permit, then the oil and gas inspector shall approve the amendment within 30 days after the application is filed.
- (e) If the activities proposed by the amendment are materially different from the activities covered by the existing permit, and if the proposed activities are in conformance with the applicable permit, then the oil and gas inspector shall approve the amendment within 30 days after the application is filed. If, however, the activities proposed by the amendment are materially different and, in the judgment of the oil and gas inspector, might create a risk of imminent destruction of property or injury to persons that was not associated with the activities covered by the existing permit or that was not otherwise taken into consideration by the existing permit, the oil and gas inspector may require the amendment to be processed as a new permit application.
- (f) The failure of the oil and gas inspector to review and issue an amended permit within the time limits specified above shall not cause the application for the amended permit to be deemed approved. Further, the decision of the oil and gas inspector to deny an amendment to a permit shall be provided to the operator in writing within 30 days after the decision, including an explanation of the basis for the decision. The operator may appeal any such denial to the oil and gas board of appeals.

(Ord. No. 2007-06-056, § 2(39-331), 6-5-2007; Ord. No. 2008-08-078, 8-19-2008)

Sec. 138-468. Suspension or revocation of oil and gas well permits.

- (a) If an operator or its officers, employees, agents, contractors, or representatives fails to comply with any requirement of a permit, including any requirement incorporated by reference as part of the permit, the oil and gas inspector shall give written notice to the operator specifying the nature of the failure and giving the operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community. In no event, however, shall the cure period be less than 30 days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this article.
- (b) If the operator fails to correct the noncompliance within 30 days from the date of the notice, the oil and gas inspector may suspend or revoke the permit pursuant to the provisions of this article.
- (c) No person shall carry on any operations performed under the terms of the permit issued under this article during any period of any permit suspension or revocation or pending a review of the decision or order of the city in suspending or revoking the permit. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the permit was ordered for the safety of persons or as required by the commission.
- (d) If the operator does not cure the noncompliance within the time specified in this article, the oil and gas inspector, upon written notice to the operator, may notify the commission and request that the commission take any appropriate action.
- (e) An operator may, within 30 days of the date of the decision of the oil and gas inspector in writing to suspend or revoke a permit, file an appeal to the oil and gas board of appeals under the provisions outlined in this article.
- (f) If an application for a permit is denied by the oil and gas inspector, nothing herein contained shall prevent a new permit application from being submitted to the oil and gas inspector for the same well.

(Ord. No. 2007-06-056, § 2(39-332), 6-5-2007)

Sec. 138-469. Periodic reports.

- (a) The operator shall notify the oil and gas inspector of any changes to the following information within seven business days after the change occurs:
 - (1) The name, address, and telephone number of the operator;
 - (2) The name, address, and telephone number of the person designated to receive notices from the city (which person must be a resident of the state that can be served in person or by registered or certified mail); and
 - (3) The operator's emergency action response plan, including drive-to-maps from public rights-of-way to each drill site.
- (b) The operator shall notify the oil and gas inspector of any change to the name, address, and 24-hour phone number of the person with supervisory authority over drilling or operations activities within one business day.
- (c) The operator shall provide a copy of any incident reports or written complaints submitted to the railroad commission within 30 days after the operator has notice of the existence of such reports or complaints.
- (d) Beginning on December 31 after each well is completed, and continuing on each December 31 thereafter until the operator notifies the oil and gas inspector that the well has been abandoned and the site restored,

the operator shall submit a written report to the oil and gas inspector identifying any changes to the information that was included in the application for the applicable permit that have not been previously reported to the city.

(Ord. No. 2007-06-056, § 2(39-333), 6-5-2007)

Sec. 138-470. Bond, letters of credit, indemnity, insurance.

- (a) *Generally.* The operator shall be required to:
- (1) Comply with the terms and conditions of this article and the permit issued hereunder;
 - (2) Promptly clear drill and operation sites of all litter, trash, waste and other substances used, allowed, or occurring in the operations, and after abandonment or completion grade, level and restore such property to the same surface conditions as nearly as possible as existed before operations;
 - (3) Indemnify and hold harmless the city, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by operator under a permit:
 - a. Where such injuries, death or damages are caused by operator's sole negligence or the joint negligence of operator and any other person or entity; and
 - b. Regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of operator;
 - (4) Promptly pay all fines, penalties and other assessments imposed due to a breach of any terms of the permit; and
 - (5) Promptly restore to its former condition any public property damaged by the oil and gas operation.
- (b) *Bond, irrevocable letter of credit.* Prior to the issuance of an oil, gas or combined well permit the operator shall provide the oil and gas inspector with a security instrument in the form of a bond or an irrevocable letter of credit as follows:
- (1) A bond shall be executed by a reliable bonding or insurance institution authorized to do business in the state, acceptable to the city. The bond shall become effective on or before the date the oil, gas or combined well permit is issued and shall remain in force and effect for at least a period of six months after the expiration of the permit term or until the well is plugged and abandoned and the site is restored, whichever occurs first. The operator shall be listed as principal and the instrument shall run to the city, as obligee, and shall be conditioned that the operator will comply with the terms and regulations of this article and the city. The original bond shall be submitted to the oil and gas inspector with a copy of the same provided to the city secretary.
 - (2) A letter of credit shall be issued by a reliable bank authorized to do business in the state and shall become effective on or before the date the permit is issued. The letter of credit shall remain in force and effect for at least a period of six months after the expiration of the permit term or until the well is plugged and abandoned and the site is restored, whichever occurs first. The city shall be authorized to draw upon such letter of credit to recover any fines or penalties assessed under this article. Evidence of the execution of a letter of credit shall be submitted to the oil and gas inspector by submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the city secretary.
 - (3) The principal amount of any security instrument shall be \$50,000.00 for any single well. If, after completion of a well, the applicant/operator, who initially posted a \$50,000.00 bond, has complied with all of the provisions of this article and whose well in the producing stage and all drilling operations have ceased, he may submit a request to the oil and gas inspector to reduce the existing bond to

\$10,000.00 for the remainder of the time the well produces without reworking. During reworking operations, the amount of the bond or letter of credit shall be maintained at \$50,000.00. If at any time after no less than a 15-day written notice to the operator and a public hearing, the city council shall deem any operator's bond or letter of credit to be insufficient, it may require the operator to increase the amount of the bond or letter of credit up to a maximum of \$250,000.00 per well.

- (4) Whenever the oil and gas inspector works director finds that a default has occurred in the performance of any requirement or condition imposed by this article, a written notice shall be given to the operator. Such notice shall specify the work to be done, the estimated cost and the period of time deemed by the oil and gas inspector to be reasonably necessary for the completion of such work. After receipt of such notice, the operator shall, within the time therein specified, either cause or require the work to be performed, or failing to do so, shall pay over to the city 125 percent of the estimated cost of doing the work as set forth in the notice. In no event, however, shall the cure period be less than 30 days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this article. The city shall be authorized to draw against any irrevocable letter of credit or bond to recover such amount due from the operator. Upon receipt of such monies, the city shall proceed by such mode as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand. In the event that the well has not been properly abandoned under the regulations of the commission, such additional money may be demanded from the operator as is necessary to properly plug and abandon the well and restore the drill site in conformity with the regulations of this article.
 - (5) In the event the operator does not cause the work to be performed and fails or refuses to pay over to the city the estimated cost of the work to be done as set forth in the notice, or the issuer of the security instrument refuses to honor any draft by the city against the applicable irrevocable letter of credit or bond, the city may proceed to obtain compliance and abate the default by way of civil action against the operator, or by criminal action against the operator, or by both such methods.
 - (6) When the well covered by said irrevocable letters of credit or bond has been properly abandoned in conformity with all regulations of this article, and in conformity with all regulations of the commission and notice to that effect has been received by the city, or upon receipt of a satisfactory substitute, the irrevocable letter of credit or bond issued in compliance with these regulations shall be terminated and cancelled.
- (c) *Insurance.* In addition to the bond or letter of credit required pursuant to this article, the operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in the state. In the event such insurance policy or policies are cancelled, the permit shall be suspended on such date of cancellation and the operator's right to operate under such permit shall immediately cease until the operator files additional insurance as provided herein.
- (1) *General requirements applicable to all policies.*
 - a. The city, its officials, employees, agents and officers shall be endorsed as an additional insured to all policies except employers liability coverage under the operator's workers compensation policy.
 - b. All policies shall be written on an occurrence basis except for environmental pollution liability (seepage and pollution coverage) and excess or umbrella liability, which may be on a claims made basis.
 - c. All policies shall be written by an insurer with an A-: VIII or better rating by the most current version of the A.M. best key rating guide or with such other financially sound insurance carriers acceptable to the city.
 - d. Deductibles shall be listed on the certificate of insurance and shall be on a per occurrence basis unless otherwise stipulated herein.

- e. Certificates of insurance shall be delivered to the City of McKinney, 221 N. Tennessee, McKinney, Texas 75069, evidencing all the required coverages, including endorsements, prior to the issuance of a permit.
 - f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the city.
 - g. Any failure on part of the city to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
 - h. Each policy shall be endorsed to provide the city a minimum 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days notice shall be acceptable in the event of non-payment of premium.
 - i. During the term of the permit, the operator shall report, in a timely manner, to the public works director any known loss occurrence that could give rise to a liability claim or lawsuit or which could result in a property loss.
 - j. Upon request, certified copies of all insurance policies shall be furnished to the city.
- (2) *Standard commercial general liability policy.* This coverage must include premises, operations, blowout or explosion, products, completed operation, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability and personal injury. This coverage shall be a minimum combined single limit of \$1,000,000.00 per occurrence location for bodily injury and property damage.
 - (3) *Excess or umbrella liability.* Five million dollars excess, if the operator has a stand-alone environmental pollution liability (EPL) policy. Ten million dollars excess, if the operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If seepage and pollution coverage is written on a claims made basis, the operator must maintain continuous coverage and purchase extended coverage period insurance when necessary.
 - (4) *Environmental pollution liability coverage.* The operator shall purchase and maintain in force for the duration of the permit, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least \$1,000,000.00 per loss, with an annual aggregate of at least \$10,000,000.00.
 - a. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.
 - b. The operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the city.
 - (5) *Control of well.* The policy should cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage as first party recovery for the operator and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents. Five million dollars per occurrence/no aggregate, if available, otherwise an aggregate of \$10,000,000.00. Five hundred thousand dollars sublimit endorsement may be added for damage to property for which the operator has care, custody and control.
 - (6) *Workers compensation and employers liability insurance.* Workers compensation benefits shall be per state statutory limits. Employers' liability shall be a minimum of \$500,000.00 per accident. Such

coverage shall include a waiver of subrogation in favor of the city and provide coverage in accordance with applicable state and federal laws.

- (7) *Automobile liability insurance.* Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage. Coverage must include all owned, hired and not-owned automobiles.
- (8) *Certificates of insurance.* The company must be admitted or approved to do business in the state, unless the coverage is written by a surplus lines insurer. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the state board of insurance or ISO, or an equivalent policy form acceptable to the city, with the exception of environmental pollution liability and control of well coverage. Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT 30 DAYS ADVANCED WRITTEN NOTICE TO THE OWNER AND THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE TEN DAYS ADVANCE WRITTEN NOTICE IS REQUIRED." Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.
- (9) *Indemnification and express negligence provisions.* Each permit issued by the oil and gas inspector shall include the following language: The operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or assigns may have, or claim to have, against the city, and/or its departments, agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the performance of the work performed by the operator under a permit. The operator shall fully defend, protect, indemnify, and hold harmless the city, its departments, agents, officers, servants, employees, successors, assigns, sponsors, or volunteers from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees, and expenses incurred in defense of the city, its departments, agents, officers, servants, or employees, including, without limitation, personal injuries and death in connection therewith which may be made or asserted by operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the operator under a permit. The operator agrees to indemnify and hold harmless the city, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the city, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the city occurring on the drill site or operation site in the course and scope of inspecting and permitting the wells including, but not limited to, claims and damages arising in whole or in part from the negligence of the city occurring on the drill site or operation site in the course and scope of inspecting and permitting the oil and gas wells.

It is understood and agreed that the indemnity provided for in this section is an indemnity extended by the operator to indemnify and protect the city, and/or its departments, agents, officers, servants, or employees from the consequences of the negligence of the city, and/or its departments, agents, officers, servants, or employees, whether that negligence is the sole or contributing cause of the resultant injury, death, and/or damage.

- (10) *Notice.* The individual designated to receive notice shall be a resident of the state upon whom all orders and notices provided in this article may be served in person or by registered or certified mail. Every operator shall within ten days notify the oil and gas inspector in writing of any change in such agent or mailing address unless operations in the city are discontinued and abandonment is complete.
- (11) *Acceptance and indemnity agreement.* The operator who has a net worth of not less than \$25,000,000.00, as shown in such owner's or operator's most recent audited financial statements, may substitute an acceptance and indemnity agreement in lieu of the bond or irrevocable letter of credit

and insurance requirements set forth in this article, provided that such acceptance and indemnity agreement shall be in a form acceptable to, and approved by, the city attorney. The oil and gas inspector may request an annual review of the operator's most recent audited financial statements to assure compliance with this section.

(Ord. No. 2007-06-056, § 2(39-334), 6-5-2007)

Sec. 138-471. On-site and technical regulations.

- (a) *Abandoned wells.* All wells shall be abandoned in accordance with the rules of the railroad commission; however, all well casings shall be cut and removed to a depth of at least ten feet below the surface unless the surface owner submits a written agreement otherwise. Three feet shall be the minimum depth. No structures shall be built over an abandoned well.
- (b) *Blowout prevention.* In all cases, blowout prevention equipment shall be used on all wells being drilled, worked-over or in which tubing is being changed. Protection shall be provided to prevent blowout during gas operations as required by and in conformance with the requirements of the commission and the recommendations of the American Petroleum Institute. The operator must equip all drilling wells with adequate blowout preventors, flow lines and valves commensurate with the working pressures involved as required by the commission. The operator must conduct daily testing of the operation and pressure providing a copy to the city weekly.
- (c) *Chemical and materials storage.* All chemicals and/or hazardous materials shall be stored in such a manner as to prevent, contain, and facilitate rapid remediation and cleanup of any accidental spill, leak, or discharge of a hazardous material. Operator shall have all material safety data sheets (MSDSs) for all hazardous materials on site. All applicable federal and state regulatory requirements for the proper labeling of containers shall be followed. Appropriate pollution prevention actions shall be required and include, but are not limited to, chemical and materials raised from the ground (e.g., wooden pallets), bulk storage, installation and maintenance of secondary containment systems, and protection from stormwater and weather elements.
- (d) *Closed-loop drilling fluid systems.* Closed-loop drilling fluid systems shall be used instead of lined reserve pits.
- (e) *Compliance.* The operator shall comply at all times with all applicable federal, state and city requirements.
- (f) *Discharge.* No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including wastewater or brine from any gas operation or the contents of any container used in connection with any gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain or any body of water or any private property in the city.
- (g) *Drilling fluids.* Low toxicity glycols, synthetic hydrocarbons, polymers, and esters shall be substituted for conventional oil-based drilling fluids.
- (h) *Drilling fluid storage pit.* No drilling fluid storage pits shall be located within the city.
- (i) *Drill stem testing.* All open hole formation or drill stem testing shall be done during daylight hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate gas separator to storage tanks and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.
- (j) *Drip pans and other containment devices.* Drip pans and other containment devices shall be placed or installed underneath all tanks, containers, pumps, lubricating oil systems, engines, fuel and chemical storage tanks, system valves, connections, and any other areas or structures that could potential leak, discharge, or spill hazardous liquids, semi-liquids, or solid waste materials, including hazardous waste inseparable by simple mechanical removal processes, and is made up primarily of natural material.

- (k) *Dust, vibration, odors.* All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of gas and other hydrocarbon substances. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling or production site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.
- (l) *Electric lines.* All electric lines to production facilities shall be located in a manner compatible to those already installed in the surrounding area or subdivision.
- (m) *Electric motors.* Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the city ordinances and the appropriate national codes.
- (n) *Emergency response plan.* Prior to the commencement of any gas or other hydrocarbons production activities, operator shall submit to the oil and gas inspector an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and/or gas wells. Said plan shall use existing guidelines established by the commission, state commission on environmental quality, state department of transportation and/or the United States Environmental Protection Agency. The emergency response plan shall be kept current with any additions, modifications, and/or amendments concerning all construction-related activities, oil and/or natural gas operations and, oil and/or natural gas production. Updated plans shall be submitted to the oil and gas inspector within two business days. A copy of the emergency response plan shall be kept on site.
- (o) *Equipment painted.* All production equipment on the site shall be painted and maintained at all times, including pumping units, storage tanks, buildings and structures.
- (p) *Explosive charges.* If, during any phase of drilling, re-drilling, deepening, re-entering, activating, converting, fracturing, or completing an oil and/or gas well, explosive charges are used, the operator shall provide notice to the oil and gas inspector at least ten days prior to such activities. The notice shall identify the date that the explosive charges will be used, the date and means of transporting the explosive charges, and the transportation route to and from the drill and/or operation site that will be used for the delivery of the explosive charges.
- (q) *Fire prevention; sources of ignition.* Firefighting apparatus and supplies as approved by the fire chief and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations. The operator shall be responsible for the maintenance and upkeep of such equipment. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All well heads shall contain an emergency shut off valve to the well distribution line.
- (r) *Fresh water wells.* It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located within 1,000 feet to any fresh water well. The measurement shall be in a direct line from the closest well bore to the fresh water well bore. Within 120 days of its completion date, each well shall be equipped with a cathodic protection system to protect the production casing from external corrosion. The oil and gas inspector may approve an alternative method of protecting the production casing from external corrosion.
- (s) *Gas emission or burning restricted.* No person shall allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the commission, then such vent or open flame shall not be located closer than 500 feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in such a way as to minimize detrimental effects to adjacent property owners.

- (t) *Grass, weeds, trash.* All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of 100 feet around any gas tank or tanks or producing wells.
- (u) *Hazardous materials plan.* Hazardous materials management plan shall be on file with the fire chief and the oil and gas inspector.
- (v) *Lights.* No person shall permit any lights located on any drill or operation site to be directed in such a manner so that they shine directly on public roads, adjacent property or property in the general vicinity of the operation site. To the extent practicable, and taking into account safety considerations, site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within 500 feet.
- (w) *Muffling exhaust.* Exhaust from any internal combustion engine, stationary or mounted on wheels, used in connection with the drilling of any well or for used on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and prevent the escape of obnoxious gases, fumes or ignited carbon or soot. All formation fracturing operations shall be conducted during daylight hours unless the operator has notified the oil and gas inspector that fracturing will occur before or after daylight hours to meet safety requirements.
- (x) *Organic solvents.* Organic solvents, such as trichloroethylene and carbon tetrachloride, shall not be used for cleaning any element, structure, or component of the drilling rig, platform, and/or associated equipment, tools, or pipes. To the maximum extent practicable, high flash point Varsol shall be used.
- (y) *Pipe dope.* Lead-free, biodegradable pipe dope shall be substituted for American Petroleum Institute (API) specified pipe dope.
- (z) *Pits.* If authorized by the oil and gas board of appeals, all reserve pits, completion/workover pits, drilling fluid disposal pits, fresh makeup water pits, gas plant evaporation/retention pits, mud circulation pits, or water condensate pits shall be lined with plastic or stored above ground in tanks. Such pits and contents shall be removed from the premises and the drilling site within 40 days after completion of the well, unless otherwise authorized by the oil and gas inspector. No washout pits shall be located within the city, unless all fluid, sludge, solid waste materials, drilling fluids, waste oil, spent completion fluids, all other liquids, semi-liquids, mud, including hazardous waste inseparable by simple mechanical removal processes, and is made up primarily of natural material is immediately captured within a fully enclosed, above ground containment tank.
- (aa) *Private roads and drill sites.* Prior to the commencement of any drilling operations, all private roads used for access to the drill site and the operation site itself shall be at least ten feet wide, have an overhead clearance of 14 feet and shall be surfaced with crushed rock, gravel or ore and maintained to prevent dust and mud. In particular cases these requirements governing surfacing of private roads may be altered at the discretion of the oil and gas inspector, public works director and fire chief after consideration of all circumstances including, but not limited to, the following: distances from public streets and highways; distances from adjoining and nearby property owners whose surface rights are not leased by the operation; the purpose for which the property of such owners is or may be used; topographical features; nature of the soil; and exposure to wind.
- (bb) *Salt water wells.* No salt water disposal wells shall be located within the city.
- (cc) *Signs.*
 - (1) A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to this article. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the commission, shall have a surface area of not less than two square feet nor more than four square feet and shall be lettered with the following:
 - a. The well name and number;
 - b. The name of the operator;

- c. The emergency 911 number; and
 - d. Telephone numbers of two persons responsible for the well who may be contacted in case of emergency.
- (2) Permanent weatherproof signs reading "DANGER NO SMOKING ALLOWED" shall be posted immediately upon completion of the well site fencing at the entrance of each well site and tank battery or in any other location approved or designated by the fire chief of the city. Sign lettering shall be four inches in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the fire department and the operator, well and lease designations required by the commission.
- (dd) *Storage of equipment.* On-site storage is prohibited on the operation site. No equipment shall be stored on the drilling or production operation site, unless it is necessary to the everyday operation of the well. Lumber, pipes, tubing and casing shall not be left on the operation site except when drilling or well servicing operations are being conducted on the site. No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley or upon any operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. The fire department shall be the entity that determines whether equipment on the site shall constitute a fire hazard. No refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises. This shall not be deemed to exclude a conventional gas separator or dehydrator.
- (ee) *Storage tanks.* All tanks and permanent structures shall conform to the American Petroleum Institute (API) specifications unless other specifications are approved by the fire chief. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material. The secondary containment system shall be a minimum of three feet in height and 1½ times the contents of the largest tank in accordance with the Fire Code, and buried at least one foot below the surface. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tank. All tanks shall be set back pursuant to the standards of the commission and the National Fire Protection Association, but in all cases, shall be at least 500 feet from any public right-of-way or property line. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank. No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway or the 100-year floodplain. Tanks must be at least 1,000 feet from any residence, religious institution, public building, hospital building, school or combustible structure.
- (ff) *Tank battery facilities.* Tank battery facilities shall be equipped with a remote foam line and a lightning arrestor system.
- (gg) *Surface casing.* Surface casing shall be run and set in full compliance with the applicable rules and regulations of the commission.
- (hh) *Valves.* Each well must have a shutoff valve to terminate the well's production. The fire department shall have access to the well site to enable it to close the shut-off the valve in an emergency.
- (ii) *Waste disposal.* Unless otherwise directed by the commission, all tanks used for storage shall conform to the following provisions:
- (1) The operator must use portable closed steel storage tanks for storing liquid hydrocarbons.
 - (2) Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, flame arrester and pressure relief valve.
 - (3) All tanks must be enclosed by a fence applicable to the issued permit classification.
 - (4) No tank battery shall be within 500 feet of any dwelling or other combustible structure.

- (5) Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into an above-ground self-contained tank, or, after authorization by the oil and gas board of appeals, a lined pit.
- (6) All disposals must be in accordance with the rules of the commission and any other appropriate local, state or federal agency.
- (7) Unless otherwise directed by the commission, waste materials shall be removed from the site and transported to an off-site disposal facility not less often than every 30 days.
- (8) Water stored in on-site tanks shall be removed as necessary.
- (9) All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the state, this article and any other applicable ordinance of the city.
- (jj) *Watchperson.* The operator must keep a watchman or security personnel on site during the drilling or re-working of a well when other workmen are not on the premises.
- (kk) *Installation of pipelines on, under or across public property.* The operator shall apply to the city for a franchise agreement on, over, under, along or across the city streets, sidewalks, alleys and other city property for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines so long as production or operations may be continued under any permit issued pursuant to this article. The operator shall:
 - (1) Not interfere with or damage existing water, sewer or gas lines or the facilities of public utilities located on, under or across the course of such rights-of-way;
 - (2) Furnish to the director of public works a plat showing the location of such pipelines;
 - (3) Construct such lines out of pipe in accordance with the city codes and regulations properly cased and vented if under a street; and
 - (4) Grade, level and restore such property to the same surface condition, as nearly as practicable, as existed when operations for the drilling of the well were first commenced.
- (ll) *Prohibited.* No permit shall be issued for any well to be drilled within any of the streets or alleys of the city and/or projected streets or alleys shown by the current comprehensive plan of the city, and no street or alley shall be blocked or encumbered or closed due to any exploration, drilling or production operations unless prior consent is obtained from the public works director. Any consent from the public works director shall be temporary in nature and state the number of hours and/or days that any street or alley may be blocked, encumbered or closed.

(Ord. No. 2007-06-056, § 2(39-335), 6-5-2007)

Sec. 138-472. Fences, walls, screening.

- (a) *Fences/walls.* Fences shall be required on drill sites during initial drilling, completion or re-working operations. A secured entrance gate shall be required. All gates are to be kept locked when the operator or his employees are not within the enclosure. Within 30 days after production has been established, all operation sites shall be completely enclosed by a permanent chainlink fence, masonry wall, or other approved fencing material according to the requirements of the requested permit, as follows:
 - (1) *Chainlink fences.*
 - a. The fence fabric shall be at least six feet in height.
 - b. Support posts shall be set in concrete and shall be imbedded into the ground to a depth sufficient to maintain the stability of the fence; provided, however, so long as stability of the fence is maintained, temporary fence posts shall not be required to be set in concrete.

- c. The chainlink fabric shall be galvanized steel wire with a minimum plating of 1.2 ounces of zinc per square foot of surface area or shall be coated with vinyl or plastic material, approved by the fire chief.
 - d. The chainlink fence fabric shall have a minimum thickness of 11 gauge.
 - e. The chainlink fabric shall be two-inch mesh; provided, however, 3½-inch mesh may be used on any fence where the fabric is interwoven with artificial screening material approved by the fire chief.
 - f. Posts and rails shall be standard galvanized, welded pipe, schedule 40 or thicker; provided, however, that non-galvanized drill pipe may be used if it exceeds schedule 40 in thickness.
 - g. All pipe and other ferrous parts, except chainlink fabric and drill pipe, shall be galvanized inside and outside with a plating, which contains a minimum of 1.2 ounces of zinc per square foot of surface area.
 - h. Tension rods shall be three-eighths-inch round steel bolt stock. Adjustable tighteners shall be turnbuckle or equivalent having a six-inch minimum take-up. Tension bars shall have a minimum thickness of one-fourth inch by three-fourths inch.
 - i. All fences shall have security extension arms at the top of such fences and such security extension arms shall be strung with at least two strands of galvanized barbed wire.
- (2) *Masonry wall specifications.* All walls (either site constructed or prefabricated) shall be of masonry or other like material approved by the public works director. All walls used to enclose in whole or in part any drilling or production site shall be constructed in accordance with standard engineering practices and shall meet the following specifications:
- a. The wall shall be of a design compatible with the facilities, buildings and structures on and adjacent to the site; and
 - b. The wall shall be at least eight feet in height.
- (b) *Gate specifications.* All chainlink fences and masonry walls shall be equipped with at least one gate. The gate shall meet the following specifications:
- (1) Each gate shall be not less than 12 feet wide and be composed of two gates, each of which is not less than six feet wide, or one sliding gate not less than 12 feet wide. If two gates are used, gates shall latch and lock in the center of the span.
 - (2) The gates shall be of chainlink construction that meets the applicable specifications, or of other approved material that, for safety reasons, shall be at least as secure as a chainlink fence.
 - (3) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site.
 - (4) Operator must provide the fire chief with a Knox Padlock or Knox Box with a key to access the well site to be used only in case of an emergency.

(Ord. No. 2007-06-056, § 2(39-336), 6-5-2007)

Sec. 138-473. Cleanup and maintenance.

- (a) *Cleanup after well servicing.* After the well has been completed or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within 60 days.
- (b) *Clean-up after spills, leaks and malfunctions.* After any spill, leak or malfunction, the operator shall remove or cause to be removed to the satisfaction of the city fire chief and the oil and gas inspector all waste materials

from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. If the owner fails to begin site clean-up within 24 hours, the city shall have the right to contact the commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak or malfunction.

- (c) *Free from debris.* The property on which a well site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material within a radius of 100 feet around any separators, tanks and producing wells.
- (d) *Painting.* All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, and buildings or structures. When requiring painting of such facilities, the oil and gas inspector shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue and brown, or other neutral colors approved by the oil and gas inspector.
- (e) *Blowouts.* In the event of the loss of control of any well, the operator shall immediately take all reasonable steps to regain control regardless of any other provision of this article and shall notify the oil and gas inspector and fire chief as soon as practicable. The oil and gas inspector shall certify in writing, briefly describing the same, to the city manager. If the oil and gas inspector, in his opinion, believes that danger to persons and property exists because of such loss of well control and that the operator is not taking or is unable to take all reasonable and necessary steps to regain control of such well, the oil and gas inspector may then employ any well control expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material that the oil and gas inspector deems necessary to regain control of such well. The city shall then have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the city pursuant to such action of the oil and gas inspector in gaining control of said well.

(Ord. No. 2007-06-056, § 2(39-337), 6-5-2007)

Sec. 138-474. Plugged and abandoned wells.

- (a) *Surface requirements for plugged and abandoned well.* Whenever abandonment occurs pursuant to the requirements of the commission, the operator so abandoning shall be responsible for the restoration of the well site to its original condition as nearly as practicable, in conformity with the regulations of this article.
- (b) *Approval after restoration.* Abandonment shall be approved by the oil and gas inspector after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the oil and gas inspector:
 - (1) The derrick and all appurtenant equipment thereto shall be removed from drill site;
 - (2) All tanks, towers, and other surface installations shall be removed from the drill site;
 - (3) All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the commission;
 - (4) All holes and depressions shall be filled with clean, compactable soil;
 - (5) All waste, refuse or waste material shall be removed from the drill site; and
 - (6) During abandonment, operator shall comply with all applicable sections in this article.
- (c) *Abandoned well requirement.* The operator shall furnish the following at the discretion of the oil and gas inspector:
 - (1) A copy of the approval of the commission confirming compliance with all abandonment proceedings under the state law; and

- (2) A notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the dates so stated.
- (d) *Abandonment requirements prior to new construction.* All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

(Ord. No. 2007-06-056, § 2(39-338), 6-5-2007)

Sec. 138-475. Technical advisor.

The city may from time to time employ a technical advisor or advisors who are experienced and educated in the gas industry or the law as it pertains to oil and gas matters. The function of such advisor shall be to advise, counsel or represent the city on such matters relating to gas operations within the city as the city may want or require and the effect thereof, both present and future, on the health, welfare, comfort and safety of the citizens of the city. In the event such technical advisor is employed for the purpose of advising, counseling or representing the city relative to an operator's unique and particular set of circumstances, case or request relating to this article, then the cost for such services of such technical advisor shall be assessed against and paid for by such operator in addition to any fees or charges assessed pursuant to this article. Prior to the employment of a technical advisor, the city shall inform the operator of the intended scope of work and the estimated costs and expenses. The employment of a technical advisor shall be approved by the city council.

(Ord. No. 2007-06-056, § 2(39-339), 6-5-2007)

Sec. 138-476. Appeals.

- (a) In order to hear and decide appeals of orders, decisions, or determinations made by the oil and gas inspector relative to the application and interpretation of this article, there shall be and is hereby created an oil and gas board of appeals consisting of members who shall pass on matters pertaining to all oil and/or gas well applications and permits.
- (b) The members of the board of adjustment are hereby appointed as the oil and gas board of appeals and shall have and exercise the authority to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the issuance of an oil, gas, or combined well permit or the revocation or suspension of any permit issued hereunder, and as provided by this article. Any person or entity whose application is denied by the oil and gas inspector or whose permit is suspended or revoked or whose well or equipment is deemed by the oil and gas inspector to be abandoned may file an appeal to the oil and gas board of appeals.
- (c) The oil and gas board of appeals shall review the appeal and any other related information. The oil and gas board of appeals shall consider the following in deciding an appeal:
 - (1) There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity;
 - (2) A variance is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other properties in the vicinity, but which rights are denied to the property on which the application is made;
 - (3) The granting of the variance on the specific property will not adversely affect any other feature of the comprehensive plan of the city;
 - (4) The variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity;

- (5) Whether the operations proposed are reasonable under the circumstances and conditions prevailing in the vicinity considering the particular location and the character of the improvements located there;
 - (6) Whether the drilling of such wells would conflict with the orderly growth and development of the city;
 - (7) Whether there are other alternative well site locations;
 - (8) Whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with the oil, gas, or combined well permit conditions to be imposed;
 - (9) Whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface water and groundwater sources, of potentially impacted environmentally sensitive areas;
 - (10) Whether there is reasonable access for fire personnel and fire fighting equipment;
 - (11) Whether the impact upon the adjacent property and the general public by operations conducted in compliance with the oil, gas, or combined well permit conditions are reasonable and justified, balancing the following factors:
 - a. The reasonable use of the mineral estate by the mineral estate owner to explore, develop, and produce the minerals; and
 - b. The availability of alternative drill sites;
 - (12) The recommendations of the oil and gas inspector.
- (d) Any person or entity aggrieved by any decision of the oil and gas board of appeals may present to a court of record a petition, duly verified, setting for that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented within ten days after the date on which the decision of the oil and gas board of appeals was rendered and not thereafter, and judicial review of the petition shall be pursuant to V.T.C.A., Local Government Code § 211.011, as amended.
 - (e) The oil and gas board of appeals may reverse or affirm, in whole or in part, or modify the oil and gas inspector's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination. Any action under this subsection, including the issuance of any variance authorized by this article, shall require a three-fourths vote of the entire oil and gas board of appeals.
 - (f) Appeal fees shall be required for every appeal in the amount as determined from time to time by city council.

(Ord. No. 2007-06-056, § 2(39-340), 6-5-2007; Ord. No. 2008-08-078, 8-19-2008)

Sec. 138-477. Penalty.

- (a) It shall be unlawful and an offense for any person to do the following:
 - (1) Engage in any activity not permitted by the terms of an oil, gas, or combined well permit issued under this article;
 - (2) Fail to comply with any condition set forth in an oil, gas, or combined well permit issued under this article; or
 - (3) Violate any provision or requirement set forth under this article.
- (b) Any violation of this article shall be punished by a fine of not more than \$500.00 per violation per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.

- (c) Any violation of this article that governs fire safety, public health, and/or sanitation, including dumping, refuse, or discharge, shall be punished by a fine not exceeding \$2,000.00 per violation per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.
- (d) The penalty provided herein shall be cumulative of other remedies provided by state law, including, but not limited to, the recovery of civil penalties under V.T.C.A., Local Government Code ch. 54, subch. B. The city may institute any appropriate action or proceeding in a court of competent jurisdiction to enjoin the violation of this article. The power of injunction may be exercised in enforcing this article whether or not there has been a criminal complaint filed.

(Ord. No. 2007-06-056, § 2(39-341), 6-5-2007)

Secs. 138-478—138-499. Reserved.

ARTICLE VII. RESERVED~~DONATION COLLECTION CONTAINERS~~

Sec. 138-500 —138-549. Reserved~~Purpose.~~

~~The proliferation of donation collection containers contributes to visual clutter, blight due to graffiti and poor maintenance, and the accumulation of debris and excess items outside the collection containers. These regulations are intended to promote the health, safety, and welfare of the public, and to protect the property rights of the owners of the parcels of land on which the collection containers are located by providing minimum blight-related performance standards for the operation of collection containers, including establishing criteria to ensure that:~~

- ~~(a) Material is not allowed to accumulate outside of the collection containers;~~
- ~~(b) The collection containers remain free of graffiti and blight;~~
- ~~(c) The collection containers are maintained in sanitary conditions;~~
- ~~(d) The collection containers are not placed without the approval of property owners; and~~
- ~~(e) Contact information is readily available so that the operators can be contacted if there are any blight-related questions or concerns.~~

~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-501. Definitions.~~

- ~~(a) Collection container means a drop-off structure, box, bin, container, receptacle, trailer, mobile vehicle, or similar facility that accepts furniture, textiles, shoes, media, books (save and except residential book exchange receptacles and food/hygiene exchange receptacles) and/or other salvageable or reusable items of personal property.~~
- ~~(b) Collection container, small means a collection container that occupies less than or equal to 175 cubic feet and is no taller than seven feet above the finished grade of the area of the parcel or tract where the container is located.~~
- ~~(c) Collection container, large means a collection container that occupies more than 175 cubic feet. Large collection containers may not be taller than 14 feet above the finished grade of the area of the parcel or tract where the container is located.~~

~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-502. Conflicts.~~

~~Where a conflict exists between the regulations or requirements in this article and applicable regulations or requirements contained in other sections of the Code, the applicable regulations or requirements of this article shall prevail.~~

~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-503. Permit required and exemptions.~~

~~(a) Except as provided herein, it shall be prohibited to place, operate, maintain or allow (by either the property owner or operator) a collection container on any real property unless the property owner and operator of the collection container first obtain an annually renewable permit from the environmental health manager, or their designee.~~

~~(b) Collection containers that satisfy the following standards are exempt from the requirements of this article:~~

~~(1) Collection containers that are wholly located within an entirely enclosed and lawfully constructed and permitted building or structure, or otherwise cannot be seen from outside boundaries of the property on which the containers are located, provided that such collection containers satisfy the operational requirements contained herein;~~

~~(2) Cargo storage containers that may otherwise be allowed by this Code; and~~

~~(3) Refuse or recycling containers that comply with the provisions of chapter 146-132 (fences, walls and screening requirements) of this Code.~~

~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-504. Application requirements.~~

~~The following minimum information shall be required when applying for a permit for a collection container:~~

~~(a) A completed permit application containing the names, signatures, phone numbers, email addresses, websites (if available), and mailing addresses of the property owner and the operator of the collection container;~~

~~(b) A non-refundable application fee as outlined in appendix A (schedule of fees) of the Code, and as may be amended from time to time by ordinance;~~

~~(c) A site plan or layout exhibit sufficiently reflecting:~~

~~(1) The location and dimensions of all property boundaries;~~

~~(2) The location of all buildings or structures;~~

~~(3) The proposed collection container location;~~

~~(4) The location and dimensions of all existing and/or proposed driveways, carports, parking spaces, maneuvering, pavement and striping/markings.~~

~~(d) Four-sided color elevations showing the appearance and dimensions of the proposed collection container.~~

~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-505. Permit expiration and renewal.~~

- ~~(a) A permit issued under this section shall expire and become void on January 1 of each calendar year. An application for renewal must be submitted prior to the expiration of a permit annually and must be accompanied by the following, at a minimum:~~
- ~~(1) A completed permit renewal application containing the names, signatures, phone numbers, email addresses, websites (if available), and mailing addresses of the property owner and the operator of the collection container;~~
 - ~~(2) A non-refundable application fee as outlined in appendix A (schedule of fees) of the Code, and as may be amended from time to time by ordinance;~~
 - ~~(3) Updates to any information contained in the original permit application that is to be modified.~~
- ~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-506. Approval required.~~

- ~~(a) The environmental health manager, or their designee, shall approve or deny a permit application for collection container within ten days of the receipt of a completed submittal. If the environmental health manager fails to take action on the submittal within the required timeframe, the application shall be deemed approved.~~
- ~~(b) A permit application for a collection container shall be approved if the following is found to be true:~~
- ~~(1) The applicant has submitted a complete, fully executed and accurate application accompanied by the applicable fee;~~
 - ~~(2) The applicant is neither currently in violation of, nor has been found in violation of this article within two years prior to the submission of the application or permit renewal; and~~
 - ~~(3) The application or permit renewal will be in compliance with all applicable regulations contained herein.~~
- ~~(c) If a permit application or renewal application for a collection container is denied by the environmental health manager, or their designee, such ruling may be appealed to the executive director of development services within seven calendar days of the denial. The appeal must be made in writing and must include the reason for the appeal and the justification for why the permit application should be approved. The executive director of development services shall be the final approval authority.~~
- ~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-507. Permit revocation.~~

~~If any individual, company, corporation or association who owns, operates, exhibits, or displays any collection container in this city shall violate any provision of this article, the environmental health manager shall have the power and authority to cancel and revoke all permits issued hereunder to any of the foregoing by giving written notice, stating the reason justifying such revocation, and the same shall become void ten days from date of such notice. No permit shall be issued within a period of two years to anyone whose permit has been revoked, except at the discretion of the city council. If the permit of an individual, company, corporation, or association owning, operating, or displaying a collection container on a specific property in this city is cancelled, such individual, company, corporation or association shall not operate, display or permit to be operated or displayed such a collection container on said property until a new permit is granted.~~

~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-508. Locational requirements for collection containers.~~

- ~~(a) No collection container shall be located within 300 feet from any other collection container.~~
 - ~~(b) Collection containers are only permitted within non-residential zoning districts.~~
 - ~~(c) No collection container shall be located on or within 300 feet of a property zoned or used for residential purposes.~~
 - ~~(d) Collection containers must be located within 25 feet of an illumination source which operates from dusk until dawn that is sufficient for discouraging theft, vandalism and/or vagrancy including, but not limited to street lighting, parking lot lighting, or an illuminated building wall pack(s).~~
 - ~~(e) No collection container shall be located on or within:
 - ~~(1) A required landscaping area;~~
 - ~~(2) A parking space, loading space or driveway area that is required to satisfy the requirements of the city; or~~
 - ~~(3) The public right-of-way, except as approved by the city council as part of a license agreement.~~~~
 - ~~(f) No collection container shall be placed in a manner that blocks, limits, or impedes the function of, access to, or maintenance of any of the following:
 - ~~(1) Required parking, loading or driveway areas;~~
 - ~~(2) Pedestrian, wheelchair and/or bicycle routes or trails;~~
 - ~~(3) Building ingress and egress;~~
 - ~~(4) Required disabled access routes;~~
 - ~~(5) Required easements;~~
 - ~~(6) Refuse and/or recycling enclosures areas or access to refuse and/or recycling bins or enclosures; or~~
 - ~~(7) Exhaust, ventilation, mechanical, electrical or fire suppression systems, including, but not limited to, fire department connections or fire hydrants.~~~~
 - ~~(g) No more than one collection container shall be located on any parcel or tract of land, except as otherwise permitted herein.~~
 - ~~(h) No large collection container shall be located within any zoning district's building setback.~~
- ~~(Ord. No. 2016-11-091, § 1, 11-15-2016)~~

~~Sec. 138-509. Collection container physical attribute requirements.~~

- ~~(a) All collection containers shall:
 - ~~(1) Be fabricated of durable and waterproof materials;~~
 - ~~(2) Be placed on ground that is paved with durable cement;~~
 - ~~(3) Have a tamper-resistant locking mechanism for all collection openings;~~
 - ~~(4) Not be electrically, mechanically, or hydraulically powered or otherwise mechanized; and~~
 - ~~(5) Not be considered a fixture of the site or an improvement to real property.~~~~
- ~~(b) Small collection containers shall have the following information conspicuously displayed in at least two-inch type visible on the collection container:~~

- (1) ~~The name, mailing address, 24-hour contact telephone number, email address, and if available, the internet web address of the operator of the collection container and the agent or representative for the property owner;~~
 - (2) ~~The type of material that may be deposited into the collection container; and~~
 - (3) ~~A notice stating that no material shall be left outside the collection container.~~
 - (c) ~~Large collection containers shall have the following information conspicuously displayed in at least four-inch type visible from the front of the collection container:~~
 - (1) ~~The name, mailing address, 24-hour contact telephone number, email address, and if available, the internet web address of the operator of the collection container and the agent or representative for the property owner;~~
 - (2) ~~The type of material that may be deposited into the collection container;~~
 - (3) ~~A notice stating that no material shall be left outside the collection container; and~~
 - (4) ~~A statement that no items may be left for collection unless an attendant is on duty.~~
- (Ord. No. 2016-11-091, § 1, 11-15-2016)

~~Sec. 138-510. Maintenance and operation.~~

- (a) ~~No overflow collection items, litter, debris or dumped materials shall be allowed to accumulate within 20 feet of any collection container.~~
- (b) ~~Collection containers shall be maintained and in good working order, and free from graffiti, removed or damaged signs and notifications, peeling paint, rust, and broken collection operating mechanisms.~~
- (c) ~~Collection containers shall be serviced not less than weekly between 7:00 a.m. and 7:00 p.m. on weekdays and 10:00 a.m. and 6:00 p.m. on weekends. This servicing includes maintenance of the container, the removal of collected material and abatement of any graffiti, litter, or any nuisance conditions.~~
- (d) ~~The operator shall maintain an active email address and a 24-hour telephone service with recording capability for the public to register complaints.~~
- (e) ~~Any conditions that are in violation of this section must be remedied or abated within 48 hours of being reported to the operator or property owner.~~
- (f) ~~Collection containers cannot be used for the collection of refuse, solid waste and/or any hazardous materials.~~
- (g) ~~Large collection containers shall have an attendant present at the container at all times that items are being received.~~

(Ord. No. 2016-11-091, § 1, 11-15-2016)

~~Secs. 138-511—138-549. Reserved.~~

ARTICLE VIII. RESERVED~~FOOD TRUCKS, OPERATION SITES AND FOOD TRUCK COURTS.~~

Sec. 138-550–138-561. ReservedPurpose.

~~The purpose of this section is to establish regulations governing food trucks, operation sites and the use of property or a tract of land for use as a food truck court. These regulations are intended to promote the health, safety, and welfare of the public, and to protect the property rights of the owners of land located adjacent to and within the vicinity of properties containing a food truck, an operation site or a food truck court.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

Sec. 138-551. Definitions.

~~*Food truck* means an operational motor vehicle and/or trailer from which food and associated non-alcoholic beverages which are not typically tied to a single season of the year, are prepared, served and sold on private property for a period of time which exceeds 60 minutes or two instances of 30 minutes each day. This definition shall also apply to any seating, garbage and/or recycling containers, gear or equipment that is associated with the food truck's operation.~~

~~*Food truck court* means a property used or developed to accommodate one or more food trucks as the primary use of the property while possibly accommodating areas on the property for entertainment or recreational opportunities. Food truck courts must have a valid certificate of occupancy in addition to all other applicable permits and inspections.~~

~~*Operation site* means the geographic area, not located within a food truck court, within which the food truck will park, prepare, and sell food and/or associated non-alcoholic beverages. This also includes areas where the food truck's customers go to consume food and/or non-alcoholic beverages sold from the food truck. The sale of merchandise other than food and non-alcoholic beverages shall not be permitted. Operation sites must have a valid food truck temporary site permit in addition to all other applicable permits and inspections.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

Sec. 138-552. Required permits, plans and inspections.

~~(a) — *Certificate of occupancy (food truck courts only).* Each food truck court shall be required to receive a certificate of occupancy from the chief building official or their designee subsequent to the approval of a specific use permit and corresponding site plan. As part of the request for a certificate of occupancy, the following information, at a minimum, shall be provided:~~

~~(1) — The name and address of the owner and/or operator;~~

~~(2) — A description of the owner and/or operator;~~

~~(3) — If the applicant represents a corporation, association, partnership or any other business entity, the names and addresses of the officers, partners or principals;~~

~~(4) — The address and name under which the mobile food court will be operated; and~~

~~(5) — Any other information reasonably required by the chief building official to document the use and operation of the food truck court.~~

~~(b) — *Food truck temporary site permit (for an operation site).*~~

~~(1) — Except as part of a food truck court, the owner or the owner's authorized representative of a property containing an operation site where a food truck may be located from time to time must apply for a food truck temporary site permit from the building inspections department prior to allowing a food truck to operate on their property. The permit application, which shall be verified in the same manner as required for a deed, shall include information that details where the food truck will be located on~~

the property along with the location of any refuse receptacle(s), restroom(s), vehicle parking, dining area(s), and any other pertinent information regarding the operation of the food truck on and about the operation site. As part of the permit application, any necessary authorization letters from adjacent property owners and businesses shall be provided. Authorization letters that limit the allowance of food trucks to a specific type or style of food will not be accepted. Any additional information as may be deemed necessary by the chief building official to thoroughly review the request shall also be submitted as part of the permit application.

- (2) ~~A food truck temporary site permit for an operation site issued by the building inspections department shall only remain valid for a maximum of six months and regardless of the date of issuance shall expire on June 30 or December 31 of such calendar year, whichever date occurs first following the issuance of the initial permit and then every six months thereafter.~~
- (3) ~~A food truck temporary site permit may accommodate any licensed food truck vendor that the property owner/temporary site permit holder deems acceptable for an operation site.~~
- (4) ~~The chief building official, in approving or denying such application shall consider the nature of the use; existing uses in surrounding areas; noise, dust, light, and traffic generated; health and sanitary conditions; and compliance with other regulations of this chapter. The chief building official shall have the right, upon finding that a hazard or nuisance shall exist by continuing such use, to revoke any temporary use at any time or to deny any extension. After which revocation, such temporary use shall immediately cease and all temporary structures shall be removed within ten days of notification of such finding.~~
- (c) ~~*Food truck log.* Each food truck operator shall maintain a log that contains each date of servicing and the signature of the commissary operator certifying that servicing occurred at the commissary. In lieu of a log, receipts showing the type of purchases, date and time of purchases, and the location of the commissary where purchases were made may be accepted in lieu of a food truck log. The food truck log or receipts shall be made available to city personnel for inspection upon request.~~
- (d) ~~*Food truck vendor permit.* All food trucks shall be required to register and obtain all applicable permits from the Code Compliance Department prior to operation.~~
- (e) ~~*Health permit.* All food trucks must obtain a permit from the Code Compliance Department prior to operating at a food truck court.~~
- (f) ~~*Inspections.* Food truck courts, operation sites and food trucks may be inspected from time to time by appropriate city personnel. Food truck courts, operation sites and food trucks shall immediately be made available for inspection upon request of such city personnel.~~
- (g) ~~*Other permits required.* Food trucks shall be responsible for identifying and obtaining all applicable permits and shall be responsible for conforming to all applicable city, county, state and federal regulations. Property owners shall be responsible for ensuring that any food truck which operates as part of the food truck court or a temporary site permit for an operation site obtains all necessary permits prior to operation and conforms to all applicable city, county, state and federal regulations.~~
- (h) ~~*Safety.* The chief building official, fire marshal and/or the director of code services shall have the authority to require that additional safety measures be provided at a food truck court, operation site or food truck to ensure the health, safety, and welfare of the general public. These additional safety measures may include, but are not limited to, limitations governing the provision of utilities (water, wastewater, electricity, gas, etc.) to the food truck, providing fire extinguisher(s), and adding limitations to the use of deep fat fryers or flat top grills in specific instances.~~
- (i) ~~*Site plan required (food truck court only).* A site plan as specified in section 146-45 (site plan approval) of the Code of Ordinances shall be required to be submitted and approved prior to the issuance of any permits for a food truck court.~~

~~(j) — Specific use permit required (food truck court only). A specific use permit as specified in section 146-41 (specific use permits) of the Code of Ordinances shall be required to be submitted and approved by the city council prior to the issuance of any permits for a food truck court.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

~~Sec. 138-553. Acceptable locations.~~

~~(a) — Food truck courts.~~

~~(1) — Food truck courts shall be a permitted land use with the city council's discretionary approval of a specific use permit on property that is not located within 100 feet of any property used for single family or duplex residential purposes in the following zoning districts of the city:~~

- ~~a. — Multi-family residential zoning districts;~~
- ~~b. — Non-residential zoning districts;~~
- ~~c. — Agricultural zoning districts; or~~
- ~~d. — All character districts of the MTC — McKinney Town Center District.~~

~~(2) — A specific use permit for a food truck court may be revoked by the city council if it finds that any condition imposed at the time of granting the permit is not met, or if thereafter ceases to exist. The city council may deny a specific use permit for a food truck court if the development of said use would be detrimental or offensive to the surrounding area or otherwise be contrary to the health, safety, or general welfare of the city and its inhabitants. In approving or denying a specific use permit for a food truck court, the city council shall consider:~~

- ~~a. — The nature of the proposed use;~~
- ~~b. — Proximity to other food truck courts;~~
- ~~c. — Proximity to existing "brick and mortar" restaurants;~~
- ~~d. — The number of food trucks allowed within the food truck court at a single time;~~
- ~~e. — Existing uses in surrounding areas;~~
- ~~f. — Noise, dust, light, and traffic generated;~~
- ~~g. — Health and sanitary conditions; and~~
- ~~h. — Compliance with other regulations of the Code of Ordinances.~~

~~(b) — Food truck operation sites.~~

~~(1) — Subsequent to all permits being issued, operation sites for food trucks may be located within any multi-family residential zoning district or non-residential zoning district assuming all applicable locational criteria and the following requirements are satisfied:~~

- ~~a. — No food truck operations including, but not limited to food preparation, sales or consumption shall be permitted within 100 feet of any door, window or outdoor dining area of any existing restaurant(s) or food service establishment(s). Food trucks shall be exempted from this requirement with the express written permission of the restaurants' or food service establishments' owner or authorized representative.~~
- ~~b. — A maximum of one food truck shall be permitted for every two acres of land area. There shall be a maximum of six food trucks on an individual tract of land.~~
- ~~c. — Food trucks shall not be allowed to engage in sales operations within 100 feet of any property used for single family or duplex residential purposes. This distance may be eliminated if~~

~~unanimous written consent from each property owner located within the 100 foot buffer is provided.~~

- ~~(c) Food trucks and their customers shall be prohibited from utilizing the public rights-of-ways for food sales, preparation and/or consumption.~~
- ~~(d) Food trucks courts and operation sites shall only be permitted on private property.~~
- ~~(e) All portions of a food truck and its associated operation site shall be located within 150 feet, as determined by the fire marshal, of a dedicated fire lane easement or a public street.~~
- ~~(f) Food trucks must be parked, situated and operated in a manner that does not restrict orderly and/or safe vehicular and/or pedestrian movements.~~
- ~~(g) Food trucks and operation sites may not occupy required off-street parking or loading spaces.~~
- ~~(h) All food trucks participating in a food truck court shall remain fully mobile and operational unless a commissary is provided on site and said food trucks are authorized to utilize the on-site commissary.~~
- ~~(i) Food trucks shall report to their designated commissary at least once per day for food, supplies, cleaning and servicing.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

~~Sec. 138-554. Hours of operation.~~

~~(a) Food truck courts.~~

- ~~(1) Food truck courts shall only be allowed to engage in sales operations between the hours of 7:00 am to 12:00 am.~~

~~(b) Food truck operation sites.~~

- ~~(1) Food trucks shall only be allowed to engage in sales operations between the hours of 8:00 am and 10:00 pm.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

~~Sec. 138-555. Noise.~~

- ~~(a) Food truck courts and operation sites shall be subject to the noise requirements of chapter 70, article V (noise) of the Code of Ordinances and the maximum sound pressure levels (decibels) allowed by section 146-134 (performance standards) of the Code of Ordinances.~~

- ~~(b) No amplified sound shall be permitted after 10:00 p.m.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

~~Sec. 138-556. Refuse, recycling, litter and food preparation byproducts.~~

~~(a) Food truck courts.~~

- ~~(1) Food truck courts shall provide containers of sufficient size and number for the disposal of refuse and recyclables resulting from the food truck court's operation and sales. The containers shall be identified as being for the disposal of refuse and/or recyclables.~~

~~(b) Food truck operation sites.~~

- (2) ~~Food trucks shall provide, on or within 20 feet of the food truck, containers of sufficient size and number for the disposal of refuse and recyclables resulting from the food truck's operation and sales. The containers shall be identified as being for the disposal of refuse and/or recyclables.~~
- (c) ~~City provided refuse and recycling containers shall not be used for the food truck's or food truck court's refuse and/or recycling needs unless written authorization has first been obtained from the city for such use.~~
- (d) ~~Any refuse, recycling and/or litter on the ground at the food truck court or operation site shall be immediately picked up and discarded appropriately by the food truck operator or the food truck court's on-site manager. Refuse and/or recycling must be removed from the operation site or food truck court at least daily or more frequently as needed to remove excess refuse and/or recycling from the property thereby avoiding the creation of an unsanitary or unhealthy condition or nuisance.~~
- (e) ~~Greases, oils, vapors and other similar food preparation byproducts shall be kept inside the food truck at all times. Dumping, or the improper disposal, of food preparation byproducts onto the ground, pavement or other surface or into a stormwater collection system or other system not designed for that specific use is strictly prohibited and may result in the immediate revocation of all permits and licenses of the food truck, food truck court, and/or operation site in addition to the performance of any necessary remediation and the issuance of citations and fines.~~
- (f) ~~Sewage, liquid wastes and food preparation byproducts shall be removed from a food truck at an approved waste servicing area in such a way that a public health hazard or nuisance is not created.~~
- (Ord. No. 2017-10-099, § 1, 10-17-2017)

~~Sec. 138-557. Signage.~~

~~All signage pertaining to or advertising a food truck and/or its menu shall be attached to the food truck. There shall be no limit to the amount of signage that is allowed on a food truck while the food truck is parked at a food truck court or operation site. A food truck shall not be outfitted with a "changeable electronic variable message sign" or any manner of "prohibited signage" as defined and/or set forth in chapter 134 (signs) of the Code of Ordinances. Signage for the food truck court shall be permitted as outlined in chapter 134 (signs) of the Code of Ordinances. Signage containing profanity or lewd or obscene images shall be prohibited.~~

(Ord. No. 2017-10-099, § 1, 10-17-2017)

~~Sec. 138-558. Off-street vehicle parking.~~

~~(a) Food truck courts.~~

- (1) ~~One off-street vehicle parking space shall be required for every 150 square feet of dining area. The minimum number of required customer parking spaces may be reduced by the planning and zoning commission as part of the site plan approval process should the commission find that the full provision of required parking may not be necessary.~~

~~(b) Food truck operation sites.~~

- (1) ~~One off-street vehicle parking space shall be required for each table that is provided for use by food truck customers. If no tables are provided, no off-street vehicle parking shall be required. Parking that is provided for food truck customers may not also be used to satisfy the minimum parking requirements of another land use. Any customer parking that is provided must be finished with concrete or asphaltic surface materials.~~
- (c) ~~Required off-street vehicle parking and maneuvering shall adhere to the requirements of section 146-130 (vehicle parking) of the Code of Ordinances, except as otherwise specified herein.~~

- (d) ~~Food truck courts and operation sites must feature an area of sufficient size that is finished with a compacted gravel base, concrete or asphaltic surface materials on which any food trucks may park and operate. Customer parking must be finished with concrete or asphaltic surface materials.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

~~Sec. 138-559. Restrooms required.~~

~~(a) *Food truck courts.*~~

- ~~(1) Permanent restrooms located within a permitted building or structure must be provided on-site within the food truck court for the use of the food trucks' and the food truck court's customers, operators and employees. The minimum number and type of restrooms shall be determined based on the occupant load of the food truck court. Such restroom(s) must remain open and available for use at all times during which the food truck court is being used. No portable or temporary restrooms shall be allowed.~~

~~(b) *Food truck operation sites.*~~

- ~~(1) Restrooms for each sex, or a gender neutral restroom(s), located within a permanent building that has been issued a valid certificate of occupancy shall be provided for the use of the food truck's customers, operators and employees. Such restroom(s) must remain open and available for use at all times during which the food truck is situated on the operation site. No portable or temporary restrooms shall be allowed.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

~~Sec. 138-560. Utility services required at food truck courts.~~

~~Each site at the food truck court on which a food truck will be located and operated shall be provided hookups for electricity and potable water. Each individual food truck is not permitted to operate a generator at the site unless emergency circumstances necessitate the need for the use of a generator on a temporary basis not to exceed two hours within any given six hour period of time.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~

~~Sec. 138-561. Exceptions.~~

~~(a) These regulations shall not apply to food trucks that operate:~~

- ~~(1) At a special event that is properly licensed pursuant to a special event permit issued by the city, provided that the food truck is identified in the special event permit application as a participating concessionaire or caterer; or~~
- ~~(2) As a vendor at a properly permitted farmers' market for which the food truck has rented space from the farmers' market and/or its organizer(s); or~~
- ~~(3) On public property including, but not limited to a public park, public library, recreation or aquatics center, or performing art center at the request of and with the express written permission of the property owner.~~

~~(Ord. No. 2017-10-099, § 1, 10-17-2017)~~