



Code SMTX Think Tank Meeting

Wednesday, January 6, 2016

6:00 pm

San Marcos Activity Center RM#2, 501 E Hopkins St

AGENDA

- 1. Call to Order**
- 2. Roll Call**
- 3. 30 Minute Citizen Comment Period.** The Think Tank welcomes citizen comments. Anyone wishing to speak must sign in with the secretary before the meeting and observe a three-minute time limit.
- 4. Approval of Minutes from December 16, 2015**
- 5. Review and Discuss Think Tank Response to December 16 Issue Exploration Items**
- 6. Issue Exploration – Relief Procedures and Special Zoning Requests**
 - a. Administrative Adjustments**
 - b. Alternative Compliance**
 - c. Conditional Use Permits**
 - d. Variances**
- 7. Issue Exploration – Approval Processes for Planning Area Zoning Districts**
 - a. Approval Processes for Neighborhood Planning Areas**
 - b. Approval Processes for Character Planning Areas**
 - c. Approval Processes for Employment Planning Areas**
 - d. Approval Processes for Conservation Planning Areas**
- 8. Next Steps**
 - a. Future Agenda Items and meetings**
 - b. Virtual Open House**
- 9. Questions from the Press and Public.**
- 10. Adjourn.**

1 Chris Wood requested an amendment to lines 7 and 8 of page 2 of the November 18, 2015
2 minutes. Chris requested to delete the words ‘industrial development’ from the sentence.

3
4 Tom Wassenich made a motion to approve the minutes from November 18 and December 2,
5 2015 with the amendment proposed by Chris Wood and with the separate document provided by
6 Chair Carson. The motion was seconded by Chris Wood. The motion carried.

7 8 **Review and Discuss Think Tank Response to December 2 Issue Exploration Items**

9
10 Abby Gillfillan provided an overview of met and unmet interests identified at the December 2,
11 2015 meeting.

12
13 The Think requested the following additions to the *Environmental Standards – Intensity Zones*
14 Issue Exploration topic that was discussed at the December 2, 2015 Meeting:

- 15
16 1. The Think Tank requested to add ‘i.e. fee-in-lieu / drainage fee’ to the unmet interest of
17 *lack of definition and plan for financing.*
- 18 2. The Think Tank provided a new brainstormed solution to ‘capture the percentage of
19 public infrastructure and use as a baseline for drainage costs that the public at large is
20 responsible for’.

21 22 **Issue Exploration – Environmental Standards**

23
24 Abby Gillfillan provided an overview of the proposed environmental standards including a
25 summary of the 2014 Land Development Code revisions.

26 27 **a. Increased standards over the Edwards Aquifer and in San Marcos River Corridor**

28
29 Abby provided an overview of current and proposed Edwards Aquifer recharge
30 requirements. The Think Tank commented that viewing a map of the river buffers would
31 be beneficial to their ability to make comments on the Code SMTX proposed revisions.
32 The Think tank would like to see a map of the stream buffers as proposed by the WQPP
33 at the next meeting.

34
35 The Think Tank identified the following met interest:

- 36
37 1. The proposed Code SMTX standards create a topographically defined river
38 corridor as opposed to a corridor defined by metes and bounds. Additionally,
39 the corridor gives consideration to political boundaries.

40
41 The Think Tank identified the following unmet interests:

- 42
43 1. Consider applying higher standards to the Blanco River;
- 44 2. Need a public notice and adoption process for annual modifications; and
- 45 3. Need further details, maps, and more defined proposals for increased water
46 quality and corridor standards.

1 **b. Cluster Development in Environmentally Sensitive Areas**

2
3 The Think Tank identified the following met interest:

- 4
5 1. Cluster Development reduces disturbed area.

6
7 The Think Tank identified the following unmet interest:

- 8
9 1. Consider allowing a service center within Cluster Developments

10
11 The Think Tank provided the following Brainstormed Solutions:

- 12
13 1. Run the numbers to ensure there is a density bonus with Cluster
14 Developments; and
15 2. If CD-5 zoning is proposed within a Cluster Development, the percentage of
16 allowed CD-5 be limited to 5 percent of the total area.

17
18 **c. Tree Preservation and Mitigation**

19
20 The Think Tank identified the following met interest:

- 21
22 1. The proposed Code SMTX revisions align San Marcos with other cities in the
23 corridor.

24
25 The Think Tank identified the following unmet interest:

- 26
27 1. Concerns regarding the “developable window” on infill residential lots.

28
29 The Think Tank provided the following Brainstormed Solutions:

- 30
31 1. Suggest adding a requirement to plant a variety of tree sizes, instead of just
32 requiring a minimum of 2” in caliper trees at time of planting;
33 2. Provide an option for tree plantings to be placed in other areas of the lot;
34 3. Consider having a grandfathered plat date; and
35 4. Limit reclamation amount such as adding a cap on an existing infill lot or a
36 cap on the number of required trees.

37
38 **d. Landscaping Requirements**

39
40 The Think Tank identified the following met interests. There were no identified unmet
41 interests.

- 42
43 1. Consider using Austin or San Antonio planting lists.

44
45 The Think Tank provided the following Brainstormed Solutions:

46

- 1 1. Consider excluding invasive species or including a reference list, such as the Texas
- 2 Invasive Species List, so that the community can be educated;
- 3 2. Include these proposed landscaping standards in conventional zoning districts; and
- 4 3. Consider consolidating the tree and landscaping standards into one area within the
- 5 code.

6
7 **Next Steps**

8
9 **a. Future Agenda Items**

10
11 Abby commented that Lee Einsweiler from Code Studio will be speaking at the January

12 6, 2015 meeting. The January 20 meeting will be the last Think Tank meeting.

13
14 **b. Outreach Efforts**

15
16 Abby gave a brief overview of the website updates and Virtual Open House.

17
18 **c. Virtual Open House**

19
20 Abby encouraged the Think Tank to view the Virtual Open House and online survey.

21
22 **Questions from the press and public**

23
24 There were no questions from the press or public.

25
26 **Adjourn**

27
28 **THERE BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED AT 8:16**

29 **P.M.**

30
31 _____
32 John David Carson, Chair

31 _____
32 Betsy Robertson, Vice-Chair

33
34 _____
35 Shawn DuPont

34 _____
35 Diann McCabe

36
37 _____
38 Tom Wassenich

37 _____
38 David Singleton

39
40 _____
41 Chris Wood

42
43 **ATTEST:**

44
45 _____
46 Andrea Villalobos, Planning Technician

Environmental Standards

December 16, 2015; ISSUE EXPLORATION

Edwards Aquifer and SM River Corridor

Vision San Marcos Comprehensive Plan:

Goals:

Public and Private Sectors Working together to protect water quality and facilitating appropriate development in the San Marcos and Blanco Rivers Watersheds, and over the Edwards Aquifer using measurable and scientific methods.

Current Code Provisions

Key Environmental Standards over the Edwards Aquifer

- Requirement for a Geologic Assessment
- Impervious Cover limitations:
 - Up to and Including three acres: 40%
 - More than three acres; less than 5: 30%
 - Five acres or more: 20%
- Water Quality Requirements
 - BMP's required must limit the increase in TSS to no more than 20% above natural drainage conditions
 - BMP's must be constructed, operated and maintained in accordance with TCEQ Edwards Rules
 - Enhanced Temporary Erosion Controls that meet the standards in TCEQ Edwards Rules

Key Environmental Standards within the San Marcos River Corridor

- The Boundaries of the River Corridor are set by Metes and Bounds within the Code and are based on topographic, hydrologic and biological data.
- Water Quality, and Buffer Zone in SMRC may extend past the 100 year floodplain
- Impervious Cover is Limited as Follows:
 - <15% Slope; 30% Max Impervious
 - 15% - 25% Slope; 20% Max Impervious
 - > 25% Slope; 10% Max Impervious
- Water Quality BMPs

<p>Initial Proposed CodeSMTX Strategy</p>	<p>Edwards Aquifer Recharge Requirements CodeSMTX is proposing to maintain the following environmental standards over the Edwards Aquifer:</p> <ul style="list-style-type: none"> • Geologic Assessments Requirements • Impervious cover limitations <p>CodeSMTX is proposing to improve the Water Quality Requirements by adopting the Enhanced Standards from TCEQ pertaining to:</p> <ul style="list-style-type: none"> • Water Quality Requirements • Temporary Erosion Controls <p>San Marcos River Corridor Requirements CodeSMTX is proposing to maintain the same level of standards within the San Marcos River Corridor CodeSMTX is proposing to redefine the boundary of the San Marcos River Corridor to:</p> <ul style="list-style-type: none"> • Correspond with the Land Use Suitability Map adopted in the Comprehensive Plan • Require the boundary to be amended and republished on a regular basis with the update of the environmental criteria contained in the Land Use Suitability Map or political boundaries.
<p>TT Discussion/ Response</p>	<p>Does the Proposed CodeSMTX Strategy meet the Comprehensive Plan goals and the interests of the stakeholder groups?</p> <p>Met Interests</p> <ul style="list-style-type: none"> • The proposed Code SMTX standards create a topographically defined river corridor as opposed to a corridor defined by metes and bounds. Additionally, the corridor gives consideration to political boundaries. <p>Unmet Interests</p> <ul style="list-style-type: none"> • Consider applying higher standards to the Blanco River; • Need a public notice and adoption process for annual modifications; and • Need further details, maps, and more defined proposals for increased water quality and corridor standards.
<p>Brainstormed Solutions</p> <p>None identified.</p>	

Final Proposed CodeSMTX Strategy

Conservation Development

Vision San Marcos Comprehensive Plan:

Goals:

Public and Private Sectors Working together to protect water quality and facilitating appropriate development in the San Marcos and Blanco Rivers Watersheds, and over the Edwards Aquifer using measurable and scientific methods.

Current Code Provisions

Cluster Development Ordinance:

Currently allows deviations to minimum lot size requirements. Anticipated to be done with a PDD

Process:

- Approval of PD District and Concept Plan – City Council
- Approval of Cluster Development – Planning Commission
- Approval of Watershed I
- Approval of Plat

Density is calculated by the allowable zoning density measured with Gross Acreage X 1.25

Proposed CodeSMTX Strategy

CodeSMTX is proposing to create a new zoning district called a Conservation Planning Area with the following requirements and standards:

Process:

- Zoning Change Request before City Council
- Administrative approval of a regulating plan based on allowable percentages of CD1, CD2, CD3 and CD4.
- All Environmental standards for development over the Edwards would still apply including impervious cover limitations.
- CD1 and CD2 would be the land highest with the greatest environmental constraint on the Land Use Suitability Map

Percentage Allocation:

- CD1, CD2 – Min 50% (1unit/ 20Ac)
- CD3 – 20 – 40%
- CD4 – 10 – 30%

TT Discussion/ Response

Does the Proposed CodeSMTX Strategy meet the Comprehensive Plan goals and the interests of the stakeholder groups?

Met Interest:

- Cluster development reduces disturbed area.

Unmet Interests:

- Consider allowing a service center within Cluster Developments

Brainstormed Solutions

Run the numbers to ensure there is a density bonus with Cluster Developments; and

If CD-5 zoning is proposed within a Cluster Development, the percentage of allowed CD-5 be limited to 5 percent of the total area.

Final Proposed CodeSMTX Strategy

Tree Preservation

Vision San Marcos Comprehensive Plan:

Goals:

Develop a Coordinated Tree Preservation and Planting Program

Current Code Provisions

Tree Protection Requirements:

- Protected Trees = 9" – 23" caliper trees not located in Building Footprint, Necessary Site Access, or areas designated for Public Infrastructure
- Heritage Trees – Trees ≥ 24 " in Caliper
- May not disturb > 25% of the Drip Line Zone if the tree is considered preserved

Tree Mitigation Requirements:

- Protected Trees: 2 ½ Trees per tree Removed
- Heritage Trees: 1to1 Caliper inch replacement

Tree Credits

- Only apply to Required Landscape Trees
- Trees > 12" Caliper: Credit for 2 required Trees (4 inches)
- Trees 4-12" Caliper 1 ½ required trees (3 inches)

Proposed CodeSMTX Strategy

Tree Protection Requirements:

- Protected Trees = 9" – 23" caliper trees not located in areas designated for Public Infrastructure
- Heritage Trees = Trees ≥ 24 " in Caliper
- May not disturb > 25% of the Drip Line Zone if the tree is considered preserved

Tree Mitigation Requirements:

- Protected Trees: 1to1 Caliper inch replacement
- Heritage Trees: 2to1 Caliper inch replacement
- Fee-in-lieu is an option at \$150/ caliper inch

Tree Credits

- Can apply to mitigation or landscaping
- Protected Trees: 1.5 x caliper inches
- Heritage Trees: 2 x caliper inches

TT Discussion/ Response

Does the Proposed CodeSMTX Strategy meet the Comprehensive Plan goals and the interests of the stakeholder groups?

Met Interest:

- The proposed Code SMTX revisions align San Marcos with other cities in the corridor.

Unmet Interests:

- Concerns regarding the “developable window” on infill residential lots.

Brainstormed Solutions

Suggest adding a requirement to plant a variety of tree sizes, instead of just requiring a minimum of 2” in caliper trees at time of planting;

Provide an option for tree plantings to be placed in other areas of the lot;

Consider having a grandfathered plat date; and

Limit reclamation amount such as adding a cap on an existing infill lot or a cap on the number of required trees.

Final Proposed CodeSMTX Strategy

Landscaping

Vision San Marcos Comprehensive Plan:

Goals:

Natural Resources necessary to our community's health, well-being, and prosperity secured for future development.

Current Code Provisions

Current Landscaping standards for Multi-Family and Commercial:

- Required "Landscaped Area" = Area comprised of pervious surface. Undeveloped portions of the lot do not constitute "Landscaped Area"
- Required % of landscaped area is based on the zoning district.
- Required Number of trees and shrubs
 - Trees - 1/ 1,000 sq. ft. landscaped area
 - Shrubs - 3/ 1,000 sq. ft. landscaped area
- Location requirements:
 - Street trees required 1/ 50' of frontage within 10' of the property line or PUE
 - Requirements for trees within parking lots
 - Requirements for landscaping in street yard and for screening
- Irrigation is required for all landscaped areas and can be one of the following options:
 - Hose Bib within a certain distance
 - Sprinkler system
 - Drip irrigation
- The code encourages drought tolerant species and indicates that turf "should" be limited to 50% of total required landscaped area
- 90% of landscaping must come from the preferred plant list

Current Landscaping standards for Single Family:

- 2 large shade trees
- Three out of the Four options below:
 - 2 small ornamental trees
 - 4 large evergreen shrubs \geq 5 gallon
 - 8 Small shrubs \geq 3 gallon
 - Solid Ground Cover or Lawn
- New developments encouraged to offer low water use landscape alternatives

<p>Proposed CodeSMTX Strategy</p>	<p>CodeSMTX is proposing the following amendments to the Landscaping Standards:</p> <ul style="list-style-type: none"> • Establish separate standards for Landscaping Requirements within the Public Frontage (City ROW) <ul style="list-style-type: none"> ○ Including Installation and Maintenance Requirements for Street Trees • Include new Landscape Standards for Character Districts that are not based on Required Landscape Area • Provide a new Preferred Plant List utilizing drought tolerant and native species and consistent with Austin and San Antonio Plant Lists. • Develop technical standards and details to ensure the viability of street trees and to reduce conflicts between trees and public infrastructure.
<p>TT Discussion/ Response</p>	<p>Does the Proposed CodeSMTX Strategy meet the Comprehensive Plan goals and the interests of the stakeholder groups?</p> <p>Met Interest:</p> <ul style="list-style-type: none"> • Consider using Austin or San Antonio planting lists. <p>Unmet Interests:</p> <ul style="list-style-type: none"> • None identified.
<p>Brainstormed Solutions</p> <p>Consider excluding invasive species or including a reference list, such as the Texas Invasive Species List, so that the community can be educated;</p> <p>Include these proposed landscaping standards in conventional zoning districts; and</p> <p>Consider consolidating the tree and landscaping standards into one area within the code.</p>	

Final Proposed CodeSMTX Strategy

Environmental Standards

January 1, 2016; ISSUE EXPLORATION

Relief Procedures



Vision San Marcos Comprehensive Plan:

Goals: Direct Growth Compatible with Surrounding Uses.

Current Code Provisions

SmartCode Zoning District:

- Deviations that meet the intent of the code are called warrants and may be approved by the P&Z.
- Deviations from standards that do not meet intent are variances and are heard by the ZBOA and must meet hardship criteria.

Land Development Code:

- Administrative Adjustment: A standard can be waived by the director for up to 10%
- Conditional Use Permit: A special use permit requested through planning commission and specifically authorized through the code
- Variance: Relief from a requirement of the code and must meet some hardship criteria.

Initial Proposed CodeSMTX Strategy:
 CodeSMTX is proposing stronger design and form based standards. A process for alternative compliance has been created in order to account for alternative methods of achieving the intent of the standard.

CodeSMTX is proposing the following forms of relief procedures:

	Administrative Adjustment	Alternative Compliance Process	Variance	Conditional Use Permit
General Description	A minor adjustment to a standard in the Development Code that can be approved administratively	A request for Alternative Compliance is made by an applicant when there is an alternative design approach to meeting the requirement.	A request for relief from a provision of the code	Allows a use that may be suitable only in certain locations or under certain compatibility standards
Applicability	Applicable except where otherwise stated in the Code	Applicable when identified in the Code	Any Standard or Provision of the Code	Applicable when Planning Commission
Deciding Body	Planning or Engineering Director	Planning Commission	Zoning Board of Adjustments	Planning Commission
Criteria	A minor Adjustment may not materially affect or change the standards by more than 10%. If the director finds that the request does materially affect the standard then it can be referred for alternative compliance or a variance	General Criteria for these decisions is included in the process chapter. Intent statements specific to each section where Alternative Compliance is permitted are included at the beginning of each chapter. These are typically related to design and form elements of the code.	Based on Hardship	Criteria is based on the impact of the proposed use on the surrounding properties and compliance with general policies and intent of the provisions
Approval	Approved or Denied	Approved, Approved with conditions, or Denied	Approved, Approved with Conditions, or Denied	Approved, Approved with Conditions, or Denied

Planning Area Approvals and Administration

Vision San Marcos Comprehensive Plan:

Goals:

Neighborhoods and Housing Goal #2: "Revise development codes in Intensity Zones to allow and streamline the process for appropriate uses and densities"

Current Code Provisions

The SmartCode Zoning regulates the development of larger tracts of land through an administrative Regulating Plan Process.

Under the Land Development Code a vast majority of larger development are approved under the Planned Development District Process. A Planned Development District is an overlay zoning district that is adopted as an ordinance. Any standards within the code can be varied through the Planned Development District Process.

CodeSMTX is proposing to replace Planned Development Districts with Planning Areas. These Planning Areas will be regulated differently according to the Comprehensive Plan Area that they are located within. The process is designed to be streamlined in preferred development areas and to include more information in Existing Neighborhoods, Stability Areas, and Environmentally Sensitive Areas. The Table below represents the proposed process in CodeSMTX:

Proposed CodeSMTX Strategy

	Neighborhood Planning Area	Character Planning Area	Employment Planning Area	Conservation Planning Area
Applicable Comp Plan Area	Existing Neighborhoods	Intensity Zones/ Major Corridors/ Areas of Stability	Employment Districts/ Major Corridors/ Areas of Stability	Areas of Stability (Typically on the West)
Minimum Acreage Requirements	5 acres or 1/2 Block	- IZ = 10ac - Stability = 20ac	- EC = 10ac - Corridor = 10 ac - Stability =20 ac	40 acres
Application Requirements	- Regulating Plan - Approved Alternative Compliance - Watershed I (if applicable) - Traffic Study (if applicable)	Special District Requests	Special District Requests	- Regulating Plan - Approved Alternative Compliance - Watershed I (if applicable) - Traffic Study (if applicable)
Previous Approvals	- Alternative Compliance - Watershed - Traffic Study	None	None	- Alternative Compliance - Watershed - Traffic Study
Recommending Body	Planning Commission	Planning Commission	Planning Commission	Planning Commission
Final Decision	City Council	City Council	City Council	City Council

ARTICLE 10: RELIEF PROCEDURES

DIVISION 1: APPEALS

DIVISION 2: VARIANCES

DIVISION 3: CONDITIONAL USE PERMITS

DIVISION 4: SPECIFIC ADJUSTMENTS

DIVISION 5: ADMINISTRATIVE ADJUSTMENTS

DIVISION 6: VESTED RIGHTS APPLICATION

DIVISION 7: OMNIBUS RELIEF APPLICATION

LIST OF RELIEF PROCEDURES

The following lists the Relief Procedures available under this Development Code and the applicable authority from which the relief is to be requested.

TYPE OF RELIEF	APPELLATE BODY
Appeal of Subdivision Concept Plan Decision	CC
Appeal of Watershed Protection Plan Decision	CC
Appeal of Variance Decision	Court
Appeal of Preliminary Subdivision Plat Decision	CC
Appeal of Preliminary Development Plat Decision	CC
Appeal of Final Subdivision Plat Decision with no Preliminary Plat	CC
Appeal of Final Development Plat Decision with no Preliminary Plat	CC
Appeal of ZBOA Decision	CC
Appeal of Certificate of Appropriateness Decision	ZBOA
Appeal of Permit Revocation	CC
Appeal of Replat Decision	CC
Appeal of Change in Status of Nonconformity Decision	Court
Appeal of Establish or Expand Historic District/Historic Landmark Decision	CC
Appeal of Specific Adjustment Decision	CC
Appeal of Conditional Use Decision	CC
Appeal of Quasi-Judicial Decision	Court
Appeal of Vested Rights Decision	CC
Appeal of Site Plan Permit Decision	P&Z
Appeal of Final Subdivision Plat or Final Development Plat Decision with Preliminary Subdivision Plat or Development Plat	CC?
Appeal of Public Improvement Construction Plan Decision	Court
Appeal of Traffic Impact Analysis Decision	Court
Appeal of Minor Subdivision Plat Decision	P&Z
Appeal of Amending Plat Decision	CC
Appeal of Flood Plain Permit Decision	P&Z?
Appeal of Certificate of Occupancy Decision	P&Z?
Appeal of On-Site Sewage Disposal Permit Decision	P&Z?
Appeal of Sign Permit Decision	P&Z?
Appeal of Mobile/Manufactured Home Park Permit Decision	P&Z
Appeal of Cluster Development Plan Decision	ZBOA
Appeal of Conditional Use Permit Decision under Section 2.10.3.8	P&Z
Appeal of Administrative Adjustment Decision	P&Z
Appeal of Park Fee Calculation Decision	P&Z
Appeal of Post-Construction Elevation Certificate Decision	P&Z
Appeal of Flood Plain-/Flood Map-Related Decision	P&Z
Appeal of Any Legislative Decision not included above	Court
Appeal of Any Quasi-Judicial Decision not included above	CC
Appeal of Any Administrative Decision not included above	P&Z
Appeal of Omnibus Relief Decision	CC

DIVISION 1: APPEALS**Section 2.10.1.1 Purpose, Applicability and Effect**

- (a) *Purpose.* The purpose of an appeal is to contest a final quasi-judicial or administrative decision on a Development Application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this Development Code that apply to the Development Application.
- (b) *Applicability.* Any final administrative decision on a Development Application authorized by this Development Code, including a determination by the Responsible Official that a proposed Development is exempt from one or more Development Applications, may be appealed to the board or commission designated in the regulations establishing the procedure by which the decision was made.
- A final quasi-judicial decision on a Development Application may be appealed only if expressly provided for in the regulations establishing the procedure by which the decision was made.
- No appeal shall be taken from a legislative decision authorized under this Development Code.
- (c) *Effect.* The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the Development Application for which approval was sought.

Section 2.10.1.2 Appeal Requirements

- (a) *Who May Appeal.* The applicant and any interested person may appeal a final decision on a Development Application to the appellate body designated by this Development Code, if any.
- (b) *Form of Appeal.* The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by the fee established by the City Council. An appeal by an applicant shall be accompanied by a copy of the Development Application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant.
- (c) *Time for Filing Appeal.* A written appeal must be filed with the Responsible Official within ten working days from the date of notification of the final decision on the Development Application.

Section 2.10.1.3 Processing of Appeal and Decision

- (a) Upon receipt of a written appeal, the Responsible Official shall compile all documents constituting the record of the decision on appeal and transmit the record to the appellate body.
- (b) *Stay of Proceedings.* Receipt of a written appeal of a decision on a Development Application stays all proceedings of the City in furtherance of the decision from which appeal is taken, including without limitation acceptance, processing or issuance of any subordinate Development Applications, and any Development activities authorized by initial approval of the Development Application.
- (1) The stay shall be lifted only if the Responsible Official certifies in writing to the appellate body that a stay would cause imminent peril to life or property.
- (2) Thereafter, the stay may be reinstated only by order of the appellate body or a court of record, on application, after notice to the Responsible Official, for due cause shown.
- (c) *Hearing and Notice.* Notification of the appeal and conduct of the public hearing thereon shall be in accordance with Article 3, Divisions 2 and 3 of this Chapter 2. The initial public hearing on the appeal shall be held within 25 working days after the filing of the appeal with the Responsible Official, unless a different time is prescribed by the provisions of this Chapter.
- (d) *Decision on Appeal.* The appellate body shall decide the appeal within 30 working days of the close of the public hearing. The appellate body shall affirm, reverse or modify the decision from which the appeal was taken.
- (e) *Notification of Decision on Appeal.* The appellant and the applicant on the Development Application shall be notified of the decision on appeal in the manner provided in Article 3, Division 3 of this Chapter 2.

Section 2.10.1.4 Criteria

In deciding the appeal, other than appeals from a decision of the Historic Preservation Commission, the appellate body shall apply the same criteria that govern the decision on the Development Application under the provisions of this Chapter 2. The appellate body shall apply the criteria and standard of review set forth in Section 2.5.6.6 for appeals from a decision of the Historic Preservation Commission.

Section 2.10.1.5 Expiration and Extension

For purposes of determining expiration or extension periods under this Development Code, the date of the appellate body's granting of relief on an appeal is the date on which the Development Application is deemed approved.

DIVISION 2: VARIANCES

Section 2.10.2.1 Purpose, Applicability and Effect

- (a) *Purpose.* The purpose of a Variance application is to vary one or more standards applicable to a Development Application, subject to the limitations set forth in this Section or elsewhere in this Development Code. A Variance application shall not be used as a means of amending the text of this Development Code or of changing a zoning district, or other legislative classification, or Character Based District assignment of the property for which the Variance is sought. A Variance application shall not be used as a means to contest the applicability of a standard to a Development Application, an exemption determination, or a decision on a Development Application.
- (b) *Applicability.* A Variance application may be filed to modify any standard other than a use standard which is applicable to an administrative or quasi-judicial Development Application, unless otherwise specified by this Development Code. Variance applications shall be decided by the Zoning Board of Adjustments. A Variance application may not be used to vary standards applicable to an application for a legislative decision.
- (c) *Effect.* The granting of a Variance application in whole or in part authorizes the applicant to submit a Development Application that complies with the standard as varied or modified, and authorizes the decision-maker to evaluate the application using the varied standard, for the duration of the Variance.

Section 2.10.2.2 Application Requirements

- (a) *Who May Apply.* A Variance application may be filed by a property owner or the applicant for any administrative or quasi-judicial Development Application.
- (b) *Form of Application.* A Variance application shall be prepared in accordance with the Technical Manual. The Variance application shall contain a detailed written statement of the reasons why the standards requested to be varied should not be applied to the Development Application identified in the Variance application, and shall be accompanied by the fee established by the City Council. A Variance application shall be accompanied by illustrations or other documents showing the effect of the requested Variance on Development to be proposed in the application.
- (c) *Time for Filing Application.* A Variance application must be filed prior to filing of the Development Application for which

the Variance is requested.

Section 2.10.2.3 Processing of Applications and Decision

- (a) *Filing with Responsible Official.* An application for Variance shall be filed in writing with the Responsible Official. Upon receipt of a Variance application, the Responsible Official shall transmit the application to the Zoning Board of Adjustments for processing and determination in accordance with this Section.
- (b) *Hearing and Notice.* Personal notification of the public hearing before the Zoning Board of Adjustments shall be provided. The public hearing shall be conducted in accordance with Article 3, Division 3 of this Chapter 2, and shall be held within 25 working days after the Variance application is filed with the Responsible Official.
- (c) *Burden of Proof.* The applicant bears the burden of proof to demonstrate that a Variance to the standards applicable to a Development Application should be granted.
- (d) *Decision on Application.* The Zoning Board of Adjustments shall grant, grant subject to conditions or deny the request for one or more Variances. The Variance application shall be decided within 30 working days of the close of the public hearing.
- (e) *Notification of Decision on Application.* The applicant shall be notified of the decision on the Variance application in the manner provided in Section 2.3.3.1 of this Development Code.

Section 2.10.2.4 Criteria for Approval

- (a) In making its decision on the Variance application, the Zoning Board of Adjustments shall apply the following criteria:
 - (1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the Variance application, such that the strict application of the provisions of this Development Code to the Development Application would create an unnecessary hardship or inequity upon or for the applicant, as distinguished from a mere economic impact, an inconvenience, frustration of objectives in developing the land, not permitting the highest and best use for the land, or depriving the applicant of the reasonable and beneficial use of the land.

- (2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of or similarly classified as the applicant's land;
 - (3) The Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
 - (4) Granting the Variance application shall not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
 - (5) Granting the Variance application shall not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Development Code, or adversely affect the rights of owners or residents of surrounding property;
 - (6) Granting the Variance application is consistent with any special criteria applicable to varying particular standards, as set forth in Chapters 3 through 7 of this Development Code;
 - (7) The hardship or inequity suffered by applicant is not caused wholly or in substantial part by the applicant;
 - (8) The request for a Variance is not based exclusively on the applicant's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
 - (9) The degree of Variance requested is the minimum amount necessary to meet the needs of applicant and to satisfy the standards in this Section.
- relation to a Development Application shall remain in effect for the period the Development Permit is in effect, and shall expire upon expiration of the Development Permit. Extension of the Development Permit also shall result in extension of the Variance.
- (c) *Effect of Application Denial.* Denial of the Development Application in conjunction with which a Variance application was granted or processed shall result in expiration of the Variance.

Section 2.10.2.5 Expiration and Extension

- (a) *Expiration on Failure to File Application.* Where the decision-makers for the Variance application and the Development Application are different, a Variance to a standard applicable to the Development Application shall expire within 90 days of the date the Variance application is granted, unless the property owner or applicant files the Development Application with the City in accordance with this Development Code within such period. The decision-maker may extend the time for filing the Development Application for good cause shown, but in any event, the expiration date for the Variance shall not be extended beyond one year from the date the Variance application was granted.
- (b) *Effect of Permit Expiration or Extension.* Variances granted in

DIVISION 3: CONDITIONAL USE PERMIT

Section 2.10.3.1 Purpose, Applicability, Exceptions and Effect

- (a) *Purpose.* The purpose of a Conditional Use Permit is to allow the establishment of uses which may be suitable only in certain locations in a zoning district or Character Based District or only when subject to standards and conditions that assure Compatibility with Adjoining uses. Conditional Uses are those uses which are generally compatible with the permitted land uses in a given zoning district or Character Based District, but which require individual review of their proposed location, design and configuration, and the imposition of conditions in order to ensure the appropriateness of the use at a particular location within a given zoning district or Character Based District. Only those uses enumerated as Conditional Uses in a particular zoning district or Character Based District, or those Nonconforming Uses which are damaged or destroyed, and which are permitted to be reestablished under this Development Code, shall be authorized as Conditional Uses.
- (b) *Applicability.* A Conditional Use Permit is required to use or develop property within the City limits for any use designated as a “Conditional” use in **Table 5.3.1.2 (Land Use Matrix)** of this Development Code for the zoning district or Character Based District in which the property is located. The Conditional Use Permit application must be accompanied by a Site Plan prepared in accordance with Section 2.10.3.3 of this Chapter.
- (c) *Exceptions.* A Conditional Use Permit shall not be required to use or develop property for any use designated as a “Permitted” use in in **Table 5.3.1.2 (Land Use Matrix)** of this Development Code for the zoning district or Character Based District in which the property is located, or any permitted use authorized in a Planned Development PD district.
- (d) *Effect.* Approval of a Conditional Use Permit authorizes the use or Development of the property in accordance with the conditions of the permit. Approval of a Conditional Use Permit shall be deemed to authorize only the particular use for which the permit is issued and shall apply only to the property for which the permit is issued (i.e., it is not personal to the applicant), except for uses authorized under Section 2.10.3.8 or Section 2.10.3.9 of this Development Code. No Conditional Use shall be enlarged, extended, increased in intensity or relocated unless an application is approved for a new Conditional Use Permit in accordance with the procedures set forth in this Section. Initiation

or Development of the use shall not be authorized until the applicant has secured all the permits and approvals required by this Development Code.

Section 2.10.3.2 Sequence of Approvals

- (a) *Prior Approvals.* An application for a Conditional Use Permit shall not be approved unless the following applications or Development Permits, where applicable, have been approved and remain in effect for land to be subject to the proposed Conditional Use Permit.
- (1) All legislative applications;
 - (2) Watershed Protection Plan (Phase 2); and
 - (3) Final Subdivision Plat that includes the Lot for which the Conditional Use Permit is sought.
- (b) *Accompanying Applications.* An application for a Conditional Use Permit shall be accompanied by a Site Plan and may be accompanied by an application for a Site Plan Permit, provided that the application for the Conditional Use Permit is first decided.

Section 2.10.3.3 Application Requirements

- (a) *Responsible Official.* The Planning Director shall be the Responsible Official for a Conditional Use Permit.
- (b) *Contents.* An application for approval of a Conditional Use Permit shall be prepared in accordance with Chapter 1 of the Technical Manual.

Section 2.10.3.4 Processing of Application and Decision

- (a) *Hearing and Notification.* The Director shall schedule a public hearing before the Planning and Zoning Commission on the application for a Conditional Use Permit, and shall cause personal notice to be given in accordance with Article 3, Division 2 of this Chapter 2.
- (b) *Commission Decision.* The Planning and Zoning Commission shall conduct a public hearing on the application in accordance with Article 3, Division 3 of this Chapter 2. The Planning and Zoning Commission shall be the initial decision-maker, subject to appeal to the City Council, on whether to approve, approve with conditions or modifications, or deny the permit. The Planning and Zoning Commission may also recommend whether any requested Variances should be granted by the Zoning Board of

Adjustments.

Section 2.10.3.5 Criteria for Approval

- (a) *Factors.* When considering an application for a Conditional Use Permit, the Planning and Zoning Commission shall evaluate the impact of the proposed Conditional Use on and its Compatibility with surrounding properties and Residential areas to ensure the appropriateness of the use at the particular location, and shall consider the extent to which:
- (1) The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan;
 - (2) The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
 - (3) The proposed use is compatible with and preserves the character and integrity of Adjacent Developments and neighborhoods, and includes Improvements either on-site or within the Public Rights-of-Way to mitigate Development related adverse impacts, such as traffic, noise, odors, visual nuisances, Drainage or other similar adverse effects to Adjacent Development and neighborhoods;
 - (4) The proposed use does not generate pedestrian and vehicular traffic which shall be hazardous or conflict with the existing and anticipated traffic in the neighborhood;
 - (5) The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate Development generated traffic on neighborhood Streets;
 - (6) The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed Conditional Use on Adjacent properties; and
 - (7) The proposed use meets the standards for the applicable district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with Adjoining Development and the neighborhood.
- (b) *Conditions.* The Planning and Zoning Commission may

require such modifications in the proposed use and attach such conditions to the Conditional Use Permit as the Planning and Zoning Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the spirit and intent of this Section. Conditions and modifications may include but are not limited to limitation of Building size or height, increased Open Space, limitations on impervious surfaces, enhanced loading and parking requirements, additional landscaping, curbing, Sidewalk, vehicular access and parking Improvements, placement or orientation of Buildings and entryways, Bufferyards, landscaping and screening, Signage restrictions and design, maintenance of Buildings and outdoor areas, duration of the permit and hours of operation.

In addition to receiving a Conditional Use Permit, any Conditional Use shall require compliance with all conditions of such Conditional Use Permit, all conditions generally applicable to Conditional Uses under this Development Code, and all conditions applicable to the specific Conditional Use under this Development Code.

Section 2.10.3.6 Expiration; Revocation; Violation

- (a) *Time of Expiration.* A Conditional Use Permit shall expire if:
- (1) A Building Permit, if any, for the Conditional Use has not been approved within one year of the date of approval of the permit;
 - (2) The Building Permit subsequently expires;
 - (3) The Conditional Use has been discontinued for a period exceeding six months; or
 - (4) A termination date attached to the Conditional Use Permit has passed.
- (b) *Revocation.* The Planning and Zoning Commission may revoke any Conditional Use Permit for any Conditional Use with respect to which a Violation of any condition imposed on the Conditional Use has occurred.
- (c) *Violation.* It is unlawful for any person to violate or to cause or permit to be violated any terms or conditions of a Conditional Use Permit or upon which a Conditional Use Permit was issued or renewed. For purposes hereof, the term "person" shall include the permit Holder, the owner or a manager of the permit Holder, and any office of the permit Holder.

Section 2.10.3.7 Appeals

The applicant or other interested person may appeal the decision

of the Planning and Zoning Commission to grant or deny a permit to the City Council in accordance with Article 10, Division 1, of this Chapter 2. The Council shall apply the criteria in Section 2.10.3.5 in deciding whether the Planning and Zoning Commission's action should be upheld, modified or reversed. A three-fourths vote of all of the members of the City Council shall be necessary to reverse a decision of the Planning and Zoning Commission to deny a Conditional Use Permit.

Section 2.10.3.8 Specific as to Conditional Use Permits for On-Premises Alcoholic Beverage Consumption

(a) *Applicability.* A valid Conditional Use Permit must be obtained and held to sell or serve alcoholic beverages for on-premise consumption.

(b) *Duration.* Conditional Use Permits granted for On-Premises consumption of alcoholic beverages, unless otherwise specified by the Planning and Zoning Commission, shall remain in effect for the duration of the State TABC (Texas Alcoholic Beverage Commission) license or permit or until the license or permit is cancelled, revoked, or allowed to expire, or until one of the following occurs, after which a new Conditional Use Permit must be obtained for the dispensing of alcoholic beverages for On-Premises consumption:

- (1) The State TABC license or permit is reissued under a different license or permit Holder's name.
- (2) The Conditional Use Permit is forfeited, suspended, or revoked in accordance with Section 2.10.3.6.
- (3) There is a significant change in the name of the establishment, or any physical or operational change in the business that increases off-site impacts to surrounding properties.

(c) *Procedures.*

- (1) The applicant shall complete and submit an application to the Planning Director on a form to be provided by the City. The application shall be accompanied by the applicable Site Plan.
- (2) The Planning Director shall review the application form and Site Plan in accordance with Chapter 2 for completeness. Except as provided in Section 2.10.3.8(j), the Planning Director shall place the application on the Planning and Zoning Commission calendar for its consideration and notify all landowners within 200 feet of the Site.
- (3) The Planning and Zoning Commission shall hold

a public hearing when considering an application for a Conditional Use Permit and when considering a request for a Specific Adjustment of the distance requirements set forth in 5.3.5.4(a) (2). The Commission shall hold a public hearing to consider the request for renewal of any such Conditional Use Permit subject to a Specific Adjustment granted under this section.

(4) The Planning and Zoning Commission shall act on a completed application within 30 days of acceptance of the application, unless an application is placed on a waiting list for consideration of permits in the CBA district when the limit of 12 unrestricted Conditional Use Permits or 15 Restaurant Conditional Use Permits has been reached, or unless an application is delayed at the request of the applicant. When a permit is approved by the Planning and Zoning Commission, it shall be issued by the Planning Director only after a TABC license or permit is issued to the applicant by the state, and a copy of the license or permit is submitted to the Planning Director.

(d) *Conditions.* For a Conditional Use Permit to be initially issued or an existing permit to be renewed or allowed to continue, the applicant or permit Holder must be in compliance at all times with the use conditions of Section 5.3.5.4 for On-Premises consumption of alcoholic beverages and any other conditions established by the Planning and Zoning Commission in issuing the permit. Failure to meet the conditions indicated in **Table 2.10.3.8 (Weighted Point Value)** for Violations of On-Premises Consumption Conditional Use) shall result in the assessment of the number of points indicated.

(e) *Specific Adjustment.*

(1) *Eligibility:* Certain businesses applying for a Conditional Use Permit for On-Premises alcoholic beverage consumption may seek a Specific Adjustment from the distance requirements set forth in 5.3.5.4(a)(2), if the business meets all of the following:

- a. Bars and package stores are not eligible for this Specific Adjustment.
- b. The business seeking the Specific Adjustment is a Restaurant that agrees to limit its operation characteristics such that the Restaurant shall maintain its business in a manner to insure that its gross revenue from the sale of

alcohol shall be less than 25 percent of the total gross revenue of the business.

- c. There is a distance of a least 200 feet from the primary entrance of the applicant business to the primary entrance of the church or school measured using a straight line.
- d. The business seeking the Specific Adjustment shall comply with all aspects of the Conditional Use Permit process.
- e. All Conditional Use Permits for the on-site alcoholic beverage consumption that include a distance Specific Adjustment shall be, for the life of the permit, subject to annual renewal. Specific Adjustments are non-transferable and separate from the Conditional Use Permit. Any hearing concerning a renewal shall be conducted by the commission who shall have authority to grant or deny the renewal.

(2) Procedure:

- a. For each neighboring church or school that is within the distances of the proposed Restaurant, as described in Section 5.3.5.4(a). and as measured in accordance with Section 5.3.5.4(a) (2)c, the proposed Restaurant shall present a letter describing the operation characteristics of the Restaurant and shall obtain a statement Signed by the governing officer of board of any such church or school stating that the church or school does not oppose the granting of the distance Specific Adjustment based on the operation characteristics stated in the letter.
- b. The business must agree, in writing, to restrict its operation characteristics as set forth in the request to the church or school, as may have been set forth in the request to the church or school. These operating characteristics shall be included in the Conditional Use Permit.
- c. The business shall agree to file an annual report, due 45 days before the hearing on the annual CUP renewal,

setting forth the gross sales of the business and the gross sales derived from the sale of alcoholic beverages.

(3) Hearing.

- a. The Planning and Zoning Commission shall hold a hearing to consider the applicant's request for Specific Adjustment.
- b. All property owners within 200 feet shall be notified and, in addition, all public and private schools and churches within 300 feet shall be notified.
- c. At the conclusion of the hearing on the initial application for a Specific Adjustment the Planning and Zoning Commission shall rule on the request for Specific Adjustment. If the Planning and Zoning Commission denies the applicant's request for a Specific Adjustment they shall include findings of fact to show that the location or the Restaurant:

1. Is not in the best interest of the public;
2. Would constitute waste or inefficient use of land or other resources;
3. Creates an undue hardship on the applicant;
4. Does not serve its intended purpose;
5. Is not effective or necessary; or,
6. Any other reason the Planning and Zoning Commission finds after consideration of the health, safety, and welfare of the public and the equities of the situation.

(f) *Issuance to Holder of State Permit.* The Conditional Use Permit shall be issued only to and for the benefit of the Holder of an alcoholic beverage license or permit issued by the state for the place of business and Premises for which the Conditional Use Permit is requested.

(g) *Suspension.* In accordance with the authority granted to municipalities by the state, the City shall have the right to

immediately suspend the Conditional Use Permit for any property where the Premises are determined to be an immediate hazard to the health and safety of any person or an immediate danger to any Adjacent property. The suspension shall be for a period not to exceed 24 hours or until the danger or hazard is removed.

(h) *Revocation.*

(1) The Planning Director shall cause a revocation hearing to be scheduled before the Planning and Zoning Commission in accordance with the same procedures as for initial consideration of a Conditional Use Permit when either of the following situations occur, which provisions supersede any conflicting provisions in Section 2.10.3.6(c):

- a. An establishment having a valid Conditional Use Permit violates any provision of this Development Code, or any provision of the permit, including the conditions required to be met for the Conditional Use and any other conditions established by the Planning and Zoning Commission in issuing the permit.
- b. An establishment having a valid Conditional Use Permit accumulates at any time during an 18 consecutive month period any combination of confirmed Violations of the conditions which totals six (6) or more of the weighted values shown in **Table 2.10.3.8 (Weighted Point Value of Violations of Conditions of On-Premises Consumption Conditional Use)**. Violations of the conditions shall be investigated, documented, confirmed, and filed by the Planning Director or a City officer. The Planning Director shall notify the permit Holder by certified mail, return receipt requested, of each assessment of Violation values. If the permit Holder disagrees with the assessment, the permit Holder may file a written appeal with the Planning Director within 15 calendar days of receipt of the notice. Upon consideration of the evidence contained in the appeal, and any response by the City staff, the Planning Director may affirm, rescind,

or modify the assessment of Violation values.

TABLE 2.10.3.8 WEIGHTED POINT VALUE FOR VIOLATIONS OF CONDITIONS OF ON-PREMISES CONSUMPTION CONDITIONAL USE

VIOLATIONS	VIOLATIONS WEIGHTED POINT VALUES
Noise Level	2
Screening	7
Building Codes and Standards:	
• Maximum Occupancy	2
• Other Building Code or fine or other health, safety, electrical or plumbing standard or requirement not corrected within body of notice by City code official.	7
Lighting	1
Littering, garbage pickup and maintenance of clean and sanitary condition	2
Open beverage container for off-site consumption	2
Management’s knowingly or willingly permitting possession, display or use of weapons	7
Knowingly serving alcoholic beverages to intoxicated clients	2
Management’s knowingly or willingly allowing Violations or disorderly behavior	2
Display of required warning sign	1
Permitted establishment which also has TABC Off-Premises Consumption license with only driving or drive-through facilities as only means to serve:	
• Openly or consumption of alcoholic beverages except in designated customer seating area	1
• Failure to prominently display sign prohibiting opening or consumption of alcoholic beverages by customers On-Premises.	1
• Provision through Building or Site Alterations of additional facilities, except restrooms and running water, beyond facilities necessary for intended sale of beverages for On-Premises consumption.	2

- (2) At least ten days prior to a revocation hearing, the Planning Director shall notify the permit Holder by certified mail, return receipt requested. Any complainant whose report of a Violation resulted in the assessment of Violation values shall also be notified at that time. The notice shall state the purpose of the hearing and the alleged grounds for revocation of the permit. The City shall provide to the permit Holder, upon request, a copy of all written information of the City pertinent to the grounds for revocation.
- (3) At the revocation hearing, the City shall have the burden of producing evidence to show that the permit Holder has not been in compliance with this Chapter, and that sufficient grounds exist to justify revocation of the permit. The permit Holder may produce evidence of compliance. The Commission shall make its decision based upon the preponderance of the credible evidence before it.
- (4) If the permit is revoked, the dispensing of alcoholic beverages for On-Premises consumption at the establishment shall cease the next day after the revocation and the Director shall report the Planning and Zoning Commission's actions to State TABC officials. Subsequent dispensing of alcoholic beverages for On-Premises consumption at the establishment requires approval of a new Conditional Use Permit.
- (5) If the permit is not revoked, the dispensing of alcoholic beverages may continue at the establishment in accordance with the original permit, or the Planning and Zoning Commission may impose additional conditions on the permit which are reasonably related to the circumstances giving rise to the revocation hearing. The permit is again subject to revocation if one or more additional Violation values are assessed during any probationary period established by the Planning and Zoning Commission in its decision.
- (i) *Administrative Approval of Certain Permits.* Conditional Use Permits may be approved administratively by the Planning Director at the time a new State TABC license or permit is required for a currently licensed or permitted establishment due to a change in the name of the permit Holder, the name of the business, or the ownership of the business, or due to Remodeling which does not involve the expansion of the existing business except to improve compliance with the standards contained in Section 5.3.5.4
- (j) *Limitations in the Central Business Area.*
- (1) A business in the Central Business Area that wishes to dispense alcoholic beverages for On-Premises consumption, and does not operate a bona fide Restaurant on the Premises, must apply for, obtain and maintain an unrestricted Conditional Use Permit, to be known as an "unrestricted permit". A business in the Central Business Area district that wishes to dispense alcoholic beverages for On-Premises consumption, and does operate a bona fide Restaurant on the Premises, must apply for, obtain and maintain either an unrestricted permit, or a restricted Conditional Use Permit, to be known as a "Restaurant permit". Except as noted in Sections 2.10.3.8(i)(2) and 2.10.3.8(i)(3) below, both unrestricted permits and Restaurant permits are subject to all provisions of this chapter that apply to Conditional Use Permits, including those pertaining to revocation of permits.
- (2) The following provisions apply to unrestricted permits:
- a. The number of active unrestricted permits in the Central Business Area district shall not exceed 14.
- b. If there are 14 active unrestricted permits, any further applications for unrestricted permits in the district shall be placed on a waiting list and individually referred to the Planning and Zoning Commission for consideration within 45 days, in the same order as submitted, when the number of unrestricted permits is less than 14.
- c. If the Planning and Zoning Commission authorizes a new unrestricted permit to be issued in the district, and a waiting list exists for further applications, the applicant whose permit was authorized must obtain the permit within 180 days of the Planning and Zoning Commission decision to authorize the permit, or the authorization is void and the next application on the waiting list shall be referred to the Planning and Zoning Commission for consideration within 45 days.
- d. The following revisions to unrestricted permits in the district may be

considered and made without regard for any waiting list that may exist for new unrestricted permits in the district:

1. Administratively approved revisions under Section 2.10.3.8(j).
 2. Revisions to a current valid permit from a beer and wine permit to a mixed beverage permit, or vice-versa.
 3. Revisions due to the Remodeling of a business that is not subject to administrative approval under Section 2.10.3.8(h).
- e. An unrestricted permit shall be issued for On-Premises consumption at a particular Building. The unrestricted permit for a particular Building shall be deemed revoked if the Building remains vacant for more than six months or if no TABC permit for On-Premises consumption is in effect at that Building location for more than a six-month period. In such event, a new unrestricted permit for that Building is required and may be issued by the Planning and Zoning Commission only if there are less than 14 unrestricted permits currently in effect in the Central Business Area.
- (3) The following provisions apply to Restaurant permits:
- a. Restaurant permits are valid for three years from date of issuance. Each business holding a Restaurant permit must apply for and obtain a renewal permit every three years, no later than the expiration date of the current permit. A renewal permit for a current permit Holder may be administratively issued if the applicant has complied with all of the provisions of this Development Code, all provisions of the permit, and any other applicable statutes during the previous permit period, and has not been assessed any Violation values under this section. Otherwise, the application for the renewal permit shall be considered by the Planning and Zoning Commission after a public hearing.
 - b. A business holding a Restaurant permit must become operational and open to the public within one year of issuance, or the permit shall expire. Upon request of the permit Holder for good cause, the Planning Director may permit one six-month extension. A Restaurant permit shall be issued to an applicant for On-Premises consumption at a particular Building. The Restaurant permit for a particular Building shall be deemed revoked if the Building remains vacant for more than six months or if no TABC permit for On-Premises consumption is in effect at that Building location for more than a six-month period. In such event, a new Restaurant permit for that Building is required and may be issued by the Planning and Zoning Commission only if there are less than 15 Restaurant permits currently in effect in the Central Business Area district.
 - c. A business holding a Restaurant permit must comply at all times with all of the following standards for “bona fide Restaurants”:
1. The business must have a Kitchen and food storage facilities of sufficient size to enable food preparation. The Kitchen must be equipped with, and must utilize, a commercial grill, griddle, fryer, oven, or similar heavy food preparation equipment.
 2. The business must apply for, obtain and maintain a food establishment permit in accordance with chapter 18 of the City Code.
 3. The business must serve meals to customers during at least two meal periods each day the business is open. A meal must consist of at least one entree, such as a meat serving, a pasta dish, pizza,

- a sandwich or similar food in a serving that serves as a main course for a meal. At least three entrees must be available during each meal period. A meal period means a period of at least four hours.
4. The business must be used, maintained, advertised and held out to the public as a place where meals are prepared and served.
- d. An application for a Restaurant permit must be accompanied by all of the following:
1. A diagram of the floor layout of the business, clearly indicating areas where food is stored, where food is prepared, and where food is served to customers.
 2. A statement of the total seating capacity of the business, and a statement of the seating capacity of the areas of the business where food is served.
 3. A menu indicating all food and drink items served at the business.
- e. The Holder of a Restaurant permit must submit to the Director:
1. A complete written update of all information required under the section above each year within 30 days of the annual renewal date of the state TABC license or permit for the Holder's business;
- f. The Holder of a Restaurant permit agrees, as a condition of the permit, to allow the Planning Director or an authorized representative to enter and inspect the business Premises at any time during normal business hours to verify compliance with the requirements for Restaurant permits under this section.
- g. The number of active Restaurant permits in the Central Business Area district shall not exceed 15. If there are 15 active Restaurant permits, any further applications for Restaurant permits in the district shall be placed on a waiting list and individually referred to the commission for consideration within 45 days, in the same order as submitted, when the number of Restaurant permits is less than 15.

Section 2.10.3.9 Conditional Use Permits for Fraternity/Sorority Buildings

- (a) *Applicability.*
- (1) A Conditional Use Permit and a Certificate of Occupancy are required for initial occupancy by each organization in each location. A new Conditional Use Permit and Certificate of Occupancy are required when an organization moves to a different location or occupies a location previously occupied as a Fraternity or Sorority Building by another organization. Compliance with all applicable codes and standards shall be determined by the chief Building Official prior to issuance of the Certificate of Occupancy for the initial occupancy of the Premises by the applicant organization.
 - (2) Conditions. For a Conditional Use Permit to be issued, renewed, or allowed to continue, the applicant or permit Holder must be in compliance with this Development Code all conditions applicable to the Conditional Use set forth in Chapter 5, Article 3, and any other conditions established by the Planning and Zoning Commission in issuing the permit or otherwise applicable to the Conditional Use must be met.
- (b) *Duration.* Conditional Use Permits for Fraternity/Sorority Houses, unless otherwise specified by the Planning and Zoning Commission, shall remain in effect for **___ years** from issuance until the permit is cancelled, revoked, or allowed to expire.
- (c) *Procedures.*
- (1) Application. Applications for Fraternity/Sorority House Conditional Use Permits shall be made on a form provided by the City and Signed by an officer of the organization and by the owner of the

property. Such application shall be accompanied by the applicable approved Site Plan, and the applicant organization’s written statement explaining the organization’s proposed means of compliance with these standards, identifying the names and telephone numbers of the president and vice-president of the organization, and designating the name, address, and telephone number of a contact person who shall be an adult, nonstudent, such as the property owner, an alumnus of the organization, a member of the faculty or staff of Texas State University, a parent of a member, or any person designated by the organization’s national chapter. The contact person shall preferably have a City telephone number and, in all cases, shall reside within 75 miles of the City as measured from the city limit.

- (2) The Planning Director shall review the application for completeness. If complete, the Planning Director shall place the application on the Planning and Zoning Commission calendar and give personal notice to the applicant organization and all landowners within 200 feet of the Site.
- (3) The Planning and Zoning Commission shall hold a public hearing when considering an application for issuance or renewal of a Conditional Use Permit for a Fraternity/Sorority House.
- (d) *Suspension.* In accordance with the authority granted to municipalities by the State, the City shall have the right to immediately suspend the Conditional Use Permit for any property where the Premises are determined to be an immediate hazard to the health and safety of any person or an immediate danger to any Adjacent property. The suspension shall be for a period not to exceed 24 hours or until the danger or hazard is removed.
- (f) *Assessment of Penalty Points.*
 - (1) Failure to meet the conditions indicated in **Table 2.10.3.9 (Weighted Point Values for Violations of Conditions of Fraternity/Sorority House Conditional Use)** shall result in the assessment of the number of points indicated.

TABLE 2.10.3.9 WEIGHTED POINT VALUES FOR VIOLATIONS OF CONDITIONS OF FRATERNITY/SORORITY HOUSE CONDITIONAL USE

VIOLATIONS	VIOLATIONS WEIGHTED POINT VALUES
Failure of organization to notify Planning Director within 15 days of a change in the name of the contact person or Chapter President.	1
Non-compliance with any applicable Building Code, Fire Code, or other life safety code, subject to special rule for building and lawfully existing on June 22, 1992.	3
Failure to comply with Sign Permit requirements of Chapter 2, Article 8, Division 4 or the Sign Standards of Chapter 7 (Supplemental Development Standards)	1
Failure to post in a visible location with such Building the maximum total permitted Occupancy of an enclosed Building as determined by the Chief Building Official.	3
Failure to comply with maximum total permitted Building Occupancy as determined by the Chief Building Official.	3
Failure to comply with maximum number of persons permitted indoors and outdoors of the Premises as determined by the Planning and Zoning Commission.	2
Conduct of Social Functions outside the allowed times.	2
Failure to clean up outdoor litter	1
Guest’s vehicles blocking Adjacent driveways or restricting passing or emergency vehicles	3
Activities on Premises which result in issuance of a police citation or arrest of any person, unless reported to police by a member of representative of resident organization.	2
Activities on Premises which result in final conviction of any person for an incident which involved personal injury or death or sexual assault.	6
Failure to comply with any other condition for which Planning and Zoning Commission determines shall result in assessment of penalty points.	As determined by P&Z Commission

- (2) Confirmation. Prior to the assessment of penalty points for Violation of any of the conditions in **Table 2.10.3.9 (Weighted Point Values for Violations of Conditions of Fraternity/Sorority House Conditional Use)**, the Violation shall be confirmed in writing through personal knowledge of a City officer who investigated the incident in accordance with the officer's departmental policy. If an unconfirmed complaint is received directly by the Department of Planning and Development Services, the Director shall notify the appropriate City department for further investigation. The Planning Director shall be responsible for determining the initial assessment of penalty points.
- (3) Notification. The Planning Director shall notify the affected organization by certified mail addressed to its president at the address shown on the Conditional Use Permit each time the Planning Director makes an assessment of penalty points. A copy of the notice shall be sent to the organization's contact person. The notice shall also include the total number of accumulated points, and the number presently under appeal, if any. The organization may, within 15 calendar days of its receipt of the notification, appeal the assessment by filing an application with the municipal court judge and posting a hearing fee bond in an amount set by the judge. The municipal court judge may, after a hearing, affirm, waive, or modify the assessment of points if the judge finds an insufficient factual basis for the assessment, or if the judge finds a substantial justification or mitigating circumstances for excusing all or part of the assessment. Disputed fact issues shall be determined by a preponderance of the evidence. The bond shall be returned to the organization if its appeal is sustained in full, but shall be retained as a hearing fee if the appeal is denied in full or in part. If an appeal is pending regarding an assessment of penalty points, it shall preclude the points from forming any part of a basis for revocation under Section 2.10.3.9(f)(4).
- (4) Revocation Hearing. When any combination of penalty points assessed against an organization equals or exceeds a total of six (6) points during a consecutive period of 24 months, the Planning Director shall schedule a hearing before the Planning and Zoning Commission on revocation of the organization's Conditional Use Permit under the same procedures as for initial consideration of a Conditional Use Permit. Notification of the hearing shall be sent to the organization by certified mail addressed to its president at the address shown on the Conditional Use Permit, with copies sent by certified mail to the organization's contact person and the owner of the subject property.
- (5) Determination. The revocation hearing shall result in a decision by the Planning and Zoning Commission based upon a preponderance of the evidence before it. If the Conditional Use Permit is revoked, the use of the Building as a Fraternity or Sorority Building by the organization to which the permit was issued shall cease within 30 days of the date of the decision of the Planning and Zoning Commission. If the permit is not revoked, continued use of the Premises as a Fraternity or Sorority Building by the permitted organization may be subject to additional conditions reasonably related to the circumstances giving rise to the revocation hearing, as determined by the Planning and Zoning Commission, and the permit is again subject to revocation if one or more additional penalty points are assessed during any probationary period established by the Planning and Zoning Commission in its decision. Appeals of penalty points assessed during a probationary period may be filed as provided in Section 2.10.3.9(f)(3), prior to scheduling of another revocation hearing.

DIVISION 4: SPECIFIC ADJUSTMENTS

Section 2.10.4.1 Purpose, Applicability, Exceptions and Effect

- (a) *Purpose.* The purpose of a Specific Adjustment Permit is to allow the modification of certain dimensional Development standards which standards, as modified, shall be compatible and consistent with the character and intent of the applicable district and shall not substantially and adversely affect the Adjacent property or the use thereof. Specific Adjustments require individual review in order to ensure the appropriateness of the standard, as modified, within a given district. Additionally, a Specific Adjustment may be requested and granted for other standards and requirements under this Development Code as specifically provided herein.
- (b) *Applicability.* A Specific Adjustment may be requested and granted for the following standards and no others:
- (1) An increase in the Building Height allowed in the applicable district by up to the additional number of feet or stories set forth in the applicable district standards;
 - (2) Except as otherwise provided in Section 2.10.4.1(b)(3), an increase or decrease in any Setback or other dimensional standard by more than 10% of the otherwise applicable standard; and
 - (3) Other standards as specifically provided in this Development Code.
 - (4) Notwithstanding anything contained or implied in this Section 2.10.4.1 or elsewhere in this Development Code, no Specific Adjustment may be granted with respect to any of the following types of standards:
 - a. Private Frontage Type
 - b. Access
 - c. Thoroughfare Type
 - d. Use
 - e. Parking Requirements
 - f. Parking, Loading, Trash Disposal, or Drive-Through Location
 - g. Density

- h. Building Type
- i. Lot Width
- j. Block Perimeter
- k. Public Facilities Requirements
- l. Number of Buildings
- m. Yard Type
- n. Encroachments
- o. Landscaping
- p. Buffers or Screens

(c) *Effect.* Approval of a Specific Adjustment and all other required Development Permits authorizes the Development of the property in accordance with such Specific Adjustment and other Development Permits. Approval of a Specific Adjustment shall be deemed to authorize the requested adjustment only with respect to the particular standard, situation and circumstance for which it is granted and shall apply only to the property for which it is granted (i.e., it is not personal to the applicant). No Specific Adjustment may be enlarged, extended, increased in intensity or relocated unless a new Specific Adjustment is granted in accordance with this Section. Initiation or Development based upon any Specific Adjustment shall not be authorized until the applicant has secured all other permits and approvals required by this Development Code.

Section 2.10.4.2 Sequence of Approvals

- (a) *Prior Approvals.* An application for a Specific Adjustment shall not be approved unless the following applications or Development Permits, where applicable, have been approved and remain in effect for the property to be subject to the proposed Specific Adjustment:
- (1) All legislative applications;
 - (2) Watershed Protection Plan (Phase 2); and
 - (3) Final Subdivision Plat that includes the Lot or Lots for which the Specific Adjustment is sought.
- (b) *Accompanying Applications.* An application for a Specific Adjustment shall be accompanied by a Site Plan and may be accompanied by an application for approval of a Site Plan, provided that the application for the Specific Adjustment is first decided.

Section 2.10.4.3 Application Requirements

An application for approval of a Specific Adjustment shall be

prepared in accordance with the Technical Manual and submitted to the Planning Director.

Section 2.10.4.4 Processing of Application and Decision

- (a) *Hearing and Notification.* The Planning Director shall schedule a public hearing before the Planning and Zoning Commission on the application for a Specific Adjustment, and shall cause personal notice to be given in accordance with Article 3, Division 2 of this Chapter 2.
- (b) *Commission Decision.* The Planning and Zoning Commission shall conduct a public hearing on the application in accordance with Article 3, Division 3 of this Chapter 2. The Planning and Zoning Commission shall be the initial decision-maker, subject to appeal to the City Council, on whether to approve, approve with conditions or modifications, or deny the application. The Planning and Zoning Commission may also recommend whether any requested Variances should be granted by the Zoning Board of Adjustments.

Section 2.10.4.5 Criteria for Approval

- (a) *Factors.* When considering an application for a Specific Adjustment, the Planning and Zoning Commission shall evaluate the impact of the proposed Specific Adjustment on and its Compatibility with surrounding properties to ensure the appropriateness of the requested Specific Adjustment for the particular location, and shall consider the extent to which:
- (1) The requested Specific Adjustment is consistent with the policies embodied in the adopted Comprehensive Plan;
 - (2) The requested Specific Adjustment is consistent with the general purpose, intent and character of the Development regulations applicable to the property;
 - (3) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other features affecting the subject property;
 - (4) The requested Specific Adjustment shall not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
 - (5) The requested Specific Adjustment either (i) does not materially affect any adverse impact of the proposed Improvement or Development has upon Adjacent property or neighborhoods or the

use thereof, including but not limited to, parking, traffic, noise, odors, visual nuisances, and Drainage, or (ii) includes Improvements either on-site or within the Public Rights-of-Way to mitigate any such Development- or Improvement-related adverse impacts;

- (6) The requested Specific Adjustment shall not have the effect of preventing the orderly use and enjoyment of other property within the area in accordance with the provisions of this Development Code, or adversely affect the rights of owners or residents of Adjacent property or neighborhoods;
- (7) The requested Specific Adjustment shall not result in any incompatibility of the Development to which it relates with, or the character and integrity of, Adjacent property or neighborhoods; and
- (8) The requested proposed Specific Adjustment meets the standards for the applicable zoning district or Character Based District, or to the extent Deviations from such standards have been requested, that such Deviations are necessary to render the subject Development or Improvement compatible with Adjacent Development or the neighborhood.

- (b) *Conditions.* The Planning and Zoning Commission may require such modifications to the proposed Specific Adjustment and attach such conditions to the Specific Adjustment as the Planning and Zoning Commission deems necessary to mitigate adverse effects of the proposed Specific Adjustment and to carry out the spirit and intent of this Section. Conditions and modifications may include but are not limited to limitation of Building size or height, increased Open Space, limitations on impervious surfaces, enhanced loading and parking requirements, additional landscaping, curbing, Sidewalk, vehicular access and parking Improvements, placement or orientation of Buildings and entryways, Bufferyards, and screening, Signage restrictions and design, maintenance of Buildings and outdoor areas.

Section 2.10.4.6 Expiration and Revocation

- (a) *Time of Expiration.* A Specific Adjustment Permit shall expire if:
- (1) A Building Permit, if any, utilizing the Specific Adjustment has not been approved within one year of the date of approval of the Specific

Adjustment;

- (2) The Building Permit subsequently expires;
 - (3) The subject Development, Improvement or Construction or use thereof has been discontinued for a period exceeding six months; or
 - (4) A termination date attached to the Specific Adjustment has passed.
- (b) *Revocation.* The Planning and Zoning Commission may revoke any Specific Adjustment for failure to comply with any standard, requirement or condition thereof in accordance with the procedures of Article 3, Division 7 of this Chapter 2.

Section 2.10.4.7 Appeals

The applicant or other interested person may appeal the decision of the Planning and Zoning Commission to grant or deny a Specific Adjustment to the City Council in accordance with Article 10, Division 1, of this Chapter 2. The Council shall apply the criteria in Section 2.10.4.5 in deciding whether the Planning and Zoning Commission's action should be upheld, modified or reversed. A three-fourths vote of all of the members of the City Council shall be necessary to reverse a decision of the Planning and Zoning Commission to deny a Specific Adjustment.

DIVISION 5: ADMINISTRATIVE ADJUSTMENTS

The applicable Initial decision-maker for an Administrative Application is hereby authorized to approve Administrative Adjustments for certain standards in this Development Code as provided in this Division.

Section 2.10.5.1 Purpose, Applicability and Effect

(a) *Purpose.* The purpose of an Administrative Adjustment application is to vary one or more dimensional standards or requirements applicable to a Development Application, subject to the limitations set forth in this Section or elsewhere in this Development Code. An Administrative Adjustment application shall not be used as a means of amending the text of this Development Code or of changing a district or legislative classification of the property for which the Administrative Adjustment is sought. An Administrative Adjustment application shall not be used as a means to contest the applicability of a standard or requirement to a Development Application, an exemption determination, or a decision on a Development Application.

(b) *Applicability.*

- (1) An Administrative Adjustment application may be filed to modify any dimensional standard or requirement of this Development Code which applies to an administrative application, unless otherwise prohibited by this Development Code. An Administrative Adjustment application may not be used for use or other non-dimensional standards or requirements or for standards or requirements applicable to a legislative or quasi-judicial application.
- (2) Without limitation to Section 2.10.5.1(b)(1) above, an Administrative Adjustment may not be requested or granted for any of the following standards or requirements:
 - a. Private Frontage Type
 - b. Access
 - c. Thoroughfare Type
 - d. Use
 - e. Parking Requirements
 - f. Parking, Loading, Trash Disposal, or Drive-Through Location

- g. Density
- h. Building Type
- i. Lot Width
- j. Block Perimeter
- k. Public Facilities Requirements

(c) *Decision-Making Authority.* An Administrative Adjustment application shall be decided by the same Decision-Making Authority as that for the Development Application to which the Administrative Adjustment application relates.

(d) *Effect.* The granting of an Administrative Adjustment in whole or in part authorizes the applicant to submit a Development Application which complies with the standard as adjusted, and authorizes the decision-maker to evaluate the related Development Application using the adjusted standard, for the duration of the Administrative Adjustment.

Section 2.10.5.2 Application Requirements

(a) *Who May File Application.* An Administrative Adjustment application may be filed by a property owner or the applicant for the applicable administrative Development Application to which the Administrative Adjustment application relates.

(b) *Form of Application.* An Administrative Adjustment application shall be prepared in accordance with Chapter 1 of the Technical Manual. The Administrative Adjustment application shall contain a detailed written statement of the reasons why the standards which are requested to be modified should not be applied to the applicable Development Application, and shall be accompanied by the fee established by the City Council. An Administrative Adjustment application shall be accompanied by the Development Application to which the requested Administrative Adjustment relates, which related Development Application shall be prepared consistent with the requested Administrative Adjustment.

(c) *Time for Filing Application.* An Administrative Adjustment application must be filed with the Development Application for which an applicable standard is requested to be modified.

Section 2.10.5.3 Processing of Applications and Decision

(a) Upon receipt of an Administrative Adjustment application, the Responsible Official shall transmit the application to

the decision-maker for processing and determination in accordance with this Section.

- (b) *Hearing and Notice.* No notice or hearing is required for an Administrative Adjustment.
- (c) *Burden of Proof.* The applicant bears the burden of proof to demonstrate that an Administrative Adjustment of the standards applicable to a Development Application should be granted.
- (d) *Decision on Application.* The body deciding the Administrative Adjustment application shall grant, grant subject to conditions, or deny the request for one or more Administrative Adjustments. The decision on the Administrative Adjustment shall be made at the same time as the decision is made on the related Development Application.
- (e) *Notification of Decision on Application.* The applicant shall be notified of the decision on the Administrative Adjustment application along with the decision on the related Development Application in the manner provided in Section 2.3.3.1 of this Development Code.

Section 2.10.5.4 Criteria for Approval

- (a) *Criteria.* In deciding the Administrative Adjustment application, the decision-maker shall apply the following criteria:
 - (1) The requested Administrative Adjustment is applicable only to a dimensional standard or requirement of this Development Code and does not change such dimensional standard or requirement by more than 10 percent.
 - (2) The requested Administrative Adjustment is justified purposes and intent of this Development Code;
 - (3) The requested Administrative Adjustment is consistent with the policies embodied in the adopted Comprehensive Plan;
 - (4) The requested Administrative Adjustment is consistent with the general purpose, intent and character of the applicable Development regulations and district;
 - (5) When taken with the requested Administrative Adjustment, the related Development Application meets all other applicable standards and requirements of this Development Code; and
 - (6) The degree of adjustment requested is the

minimum amount necessary to meet the needs of applicant and to satisfy the standards in this Section.

Section 2.10.5.5 Expiration and Extension

An Administrative Adjustment shall expire simultaneously with the expiration of the Development Application to which the Administrative Adjustment relates and shall be automatically extended or vacated, as applicable, upon extension or vacation of such related Development Application.

Denial of the Development Application to which an application for Administrative Adjustment relates shall constitute denial of the requested Administrative Adjustment.

Section 2.10.5.6 Appeal

Any applicant that is denied a request for an Administrative Adjustment may appeal the denial to the Planning and Zoning Commission under Article 10, Division 1 of this Chapter 2.

DIVISION 6: VESTED RIGHTS APPLICATION**Section 2.10.6.1 Purpose, Applicability and Effect**

- (a) *Purpose.* The purpose of a Vested Rights Application is to determine whether one or more standards of this Development Code should not be applied to a Development Application by operation of state law.
- (b) *Applicability.* A Vested Rights Application may be filed with any quasi-judicial or administrative Development Application authorized under this Development Code. A Vested Rights Application may not be filed with an application for a legislative decision.
- (c) *Effect.* Upon granting of a Vested Rights Application in whole or in part, the Responsible Official shall process the Development Application and the decision-maker shall decide the application in accordance with the standards specified in the relief order based on prior ordinance requirements or Development standards.

Section 2.10.6.2 Application Requirements

- (a) *Who May Apply.* A Vested Rights Application may be filed by a property owner or the owner's authorized agents, including the applicant, for a quasi-judicial or administrative Development Application in conjunction with the filing of the application.
- (b) *Form of Application.* The Vested Rights Application shall allege that the applicant has a vested right for some or all of the land subject to the Development Application under Tex. Loc. Gov't Code Ch. 245 or successor statute, which requires the City to review and decide the application under standards in effect prior to the effective date of the currently applicable standards. The application shall include the following information and documents:
 - (1) A narrative description of the grounds for the application;
 - (2) A copy of each approved or pending Development Application which is the basis for the contention that the City may not apply current standards to the Development Application which is the subject of the application;
 - (3) Identification of all standards otherwise applicable to the Development Application from which relief is sought;

- (4) Identification of any current standards which applicant agrees can be applied to the Development Application at issue;
 - (5) A narrative description of how the application of current standards affect proposed Lot size, Lot dimensions, Lot coverage or Building size shown on the Development Application for which the application is filed; and
 - (6) A copy of any prior vested rights determination involving the same land.
- (c) *Time for Filing Application.* A Vested Rights Application shall be filed with a Development Application for which a vested right is claimed. Where more than one application is authorized to be filed by this Development Code, the application may be filed simultaneously for each application.

Section 2.10.6.3 Processing of Applications and Decision

- (a) A Vested Rights Application shall be filed with the Responsible Official. The Responsible Official shall promptly forward a copy of the Vested Rights Application to the City Attorney following acceptance.
- (b) *Initial Decision.* If the Responsible Official is the decision-maker on the application, the official shall determine whether the relief requested in the Vested Rights Application should be granted in whole or in part, and shall formulate a written report summarizing the official's reasoning and setting forth the decision on the application, which shall be delivered to the applicant within ten days of the date the Vested Rights Application is accepted for filing.
- (c) *Decision by Commission or Board on Application.* If the Development Application is to be decided by the Planning and Zoning Commission or another board or commission, the Planning Director shall submit a report in the form of a recommendation to such decision-maker. The commission or board shall render a decision on the Vested Rights Application in conjunction with its decision on the Development Application.
- (d) *Decision by City Council.* Where the City Council is the final decision-maker on the Development Application, the applicant may submit a written request that the Vested Rights Application be immediately forwarded to the Council for a determination. The request must be accompanied by a waiver of the time for decision on the application imposed under this Development Code pending decision by the Council on the application, which shall

stay further proceedings on the application. Upon receipt of the request, the Responsible Official shall prepare a recommendation and forward the matter to the Council for decision, which shall decide the application within 30 days of the applicant's request. If no written request for Council referral is filed, the Council shall decide the Vested Rights Application with its decision on the Development Application.

- (e) *Appeal of Decision on Application.* The applicant or any interested person may appeal the Responsible Official's or the commission's or board's decision on the Vested Rights Application within ten working days of the date of such decision to the City Council in accordance with the procedures in Division 1 of this Article 10. An appeal under this subsection stays acceptance of filing of any subordinate Development Applications. The Council shall decide the application within 30 days of receipt of the notice of appeal.
- (f) *Action on the Application.* The decision-maker on the Vested Rights Application may take any of the following actions:
 - (1) Deny the relief requested in the application, and direct that the associated Development Application shall be reviewed and decided under currently applicable standards;
 - (2) Grant the relief requested in the application, and direct that the associated Development Application shall be reviewed and decided in accordance with the standards contained in identified prior regulations; or
 - (3) Grant the relief requested in part, and direct that certain identified current standards shall be applied to the associated Development Application, while standards contained in identified prior regulations also shall be applied.
- (g) *Order on Application.* The Responsible Official's report and each decision on the Vested Rights Application shall be memorialized in an order identifying the following:
 - (1) The nature of the relief granted, if any;
 - (2) The approved or filed Development Application(s) upon which relief is premised under the application;
 - (3) Current standards which shall apply to the Development Application for which relief is sought;
 - (4) Prior standards which shall apply to the Development Application for which relief is

sought, including any procedural standards;

- (5) The statutory exception or other grounds upon which relief is denied in whole or in part on the application; and
 - (6) To the extent feasible, subordinate Development Applications that are subject to the same relief granted on the application.
- (h) *Application Following Final Decision on Vested Rights Application.* Following the final decision on the Vested Rights Application, the property owner shall conform the Development Application for which relief is sought to such decision. The decision-maker on the Development Application shall consider any application revised under this subsection in accordance with the procedures for deciding the initial application under this Development Code and in conformity with the relief granted on the application. If the relief granted on the Vested Rights Application is consistent with the Development Application on file, no revisions are necessary. If proceedings have been stayed on the Development Application pending referral of the Vested Rights Application to the City Council under subsection (d), proceedings on the application shall resume after the Council's decision on the Vested Rights Application.

Section 2.10.6.4 Criteria for Approval

- (a) *Factors.* The decision-maker or the City Council, on appeal, as the case may be, shall decide the Vested Rights Application based upon the following factors:
 - (1) The nature and extent of prior Development Applications filed or approved for the land subject to the application;
 - (2) Whether any prior vested rights determinations have been made with respect to the property subject to the application;
 - (3) Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
 - (4) Whether specific standards otherwise applicable affect Lot size, Lot dimensions, Lot coverage or Building size based upon the proposed Development Application;
 - (5) Whether any statutory exception applies to the standards in the current Development Code from which the applicant seeks relief;
 - (6) Whether any prior approved applications relied

upon by the applicant have expired under Section 2.10.6.5.

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

Section 2.10.6.5 Expiration and Extension

- (a) *Expiration.* Relief granted on a Vested Rights Application shall expire on occurrence of one of the following events:
- (1) The applicant or property owner fails to submit a required revised Development Application consistent with the relief granted within 30 days of the final decision on the application;
 - (2) The Development Application for which relief was granted on the Vested Rights Application is denied under the criteria made applicable through the relief granted on the application; or
 - (3) The Development Application for which relief was granted on the Vested Rights Application expires.
- (b) *Extension.* Extension of the date of expiration for the Development Application for which relief was granted on a Vested Rights Application shall result in extension of the relief granted on application for a like period.

Section 2.10.6.6 Dormant Projects

- (a) *Certain Terms.* For purposes of this Section only:
- (1) Initial permit means any of the following types of approvals granted under the San Marcos Code of Ordinances, ches. 94, 110 or 114, as amended, or any predecessor zoning, Subdivision or Development ordinance, whether or not such approvals were issued in conjunction with or as a condition of approval of any other permits: Site Plan, landscape plan, Development Parcel Plan, Concept Plan, Site Plan, special use permit, Site Development Permit, Subdivision master plan, preliminary Plat, Variances, Special Adjustment, Administrative Adjustment, or any other application that was approved subject to a schematic drawing illustrating the location, arrangement, orientation or design of land uses, Lots or Improvements on a Site intended for Development.

- (2) Final permit means a Building Permit, Certificate of Occupancy, or Final Plat approved under San Marcos City Code, ches. 94, 110 or 114, as amended, or any predecessor zoning, Subdivision or Development ordinance.

- (b) *Expiration.* Any application for an initial permit that was approved or filed before, but that was not subject to an expiration date on, May 11, 2000, under the of the San Marcos Code of Ordinances, ches. 94, 110 or 114, as amended, or any predecessor zoning, Subdivision or Development ordinance, shall expire on the effective date of this Development Code.

- (c) *Reinstatement.* The owner of the land subject to an initial permit that expires under Section 2.10.6.6(b) may apply to the City Council to reinstate such zoning permit by filing a written application within 60 calendar days of the effective date of this Development Code. The application shall clearly state the grounds for reinstatement, and shall be accompanied by documentation of one of the following:

- (1) As of May 11, 2000, one of the following events had occurred:
 - a. A final permit for all or part of the land subject to the approved initial permit was approved, or was filed and was subsequently approved;
 - b. An application for a final permit was submitted for all or part of the land subject to the expired initial permit, but such application was rejected on grounds of incompleteness;
 - c. Costs for Development of the land subject to the initial permit, including but not limited to costs associated with roadway, utility and other infrastructure facilities designed to serve the land in whole or in part, but exclusive of land acquisition costs, were incurred in the aggregate amount of five percent of the most recent appraised market value of the land;
 - d. Fiscal security was posted to ensure performance of an obligation required for all or a part of the land subject to the approved initial permit; or
 - e. Utility connection fees or impact fees for all or part of the land subject to the approved initial permit were paid.

- (2) After May 11, 2000 but before the expiration

date specified in Section 2.10.6.6(b), one of the following events had occurred:

- a. A final permit was approved for all or part of the land subject to the approved zoning permit, and remained in effect for such land on such expiration date; or
- b. A complete application for approval of a final permit for all or part of the land subject to the approved initial permit was pending for decision on such expiration date.

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

- (1) Reinstate the expired initial permit without an expiration date, if it finds that the applicant has met any one of the criteria listed in Section 2.10.6.6(c)(1);
- (2) Reinstate the initial permit for all or part of the land subject thereto, if it finds that the applicant has met any one of the criteria listed in Section 2.10.6.6(2), subject to such expiration dates or other conditions that assure that the remaining land that is not subject to an approved or pending final permit application shall be developed in a timely fashion. In granting relief under this provision, the Council may require that Development of such remaining land is subject to standards enacted after approval of the initial permit;
- (3) Deny the application, if it finds that the applicant has failed to meet any of the criteria in Section 2.10.6.6(c); or
- (4) Reinstate the zoning permit for only that part of the land subject to a pending final permit application, if it finds that the applicant has met the criteria in Section 2.10.6.6(c)(2)(b) and the pending application subsequently was approved, and deny the application for the remaining land subject to the expired initial permit.

DIVISION 7: OMNIBUS RELIEF APPLICATION

Section 2.10.7.1 Purpose, Applicability and Effect

- (a) *Purpose.* The purpose of an Omnibus Relief Application is to determine whether the application of the standards in this Development Code to a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit and related Development Applications would, if not modified or other relief granted, constitute a regulatory taking under constitutional or statutory standards.
- (b) *Applicability.* An application for relief under this Division may be filed following final decision to deny or conditionally approve an application for a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or a Floodplain Permit, and related applications.
- (c) *Effect.* Upon granting of an Omnibus Relief Application in whole or in part by the City Council, the Responsible Official shall process the application for the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit and related Development Applications, and the decision-maker shall decide the related Development Applications consistent with the relief granted on the application, including any amendments to applicable standards approved by the City Council.

Section 2.10.7.2 Application Requirements

- (a) *Who May Apply.* An Omnibus Relief Application may be filed by a property owner or the owner's authorized agent, including the applicant, for a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit following denial or conditional approval by the Engineering Director or by the Planning and Zoning Commission. For purposes of this Division, denial of any requested bonuses, mitigation plans or Variances shall be grounds for filing an Omnibus Relief Application. The Omnibus Relief Application shall be filed with the Responsible Official, shall be to the City Council, and may be accompanied by an appeal of the Planning and Zoning Commission's decision on the related Development Application.
- (b) *Form of Application.* The Omnibus Relief Application shall allege that the application of the standards of this Development Code to the proposed Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit and related Development Applications deprives the applicant of all economically viable use of the applicant's land, or, in the case of land located in the City's Extraterritorial Jurisdiction, has resulted in devaluation in

the fair market value of the land by at least 25 percent. The application shall include the following information and documents:

- (1) The Development Application(s) for which the applicant seeks relief and for which the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit has priority;
 - (2) The application for the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit that was denied or conditionally approved by the Planning and Zoning Commission;
 - (3) A copy of the record of the Planning and Zoning Commission's final decision on the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit and related applications, and a summary of any reasons given for the decision;
 - (4) A proposed Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit, if any that the applicant believes is consistent with the relief sought in the application;
 - (5) A detailed statement of the grounds for the application that addresses the approval criteria set forth in this Division; or
 - (6) In the event the application alleges that the application of the standards has resulted in at least a 25 percent devaluation of the property, the application must also be accompanied by a statement of the applicant's intent to submit an appraisal of the property by a qualified professional comparing the market value of the property as if the standards applicable to the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit were not in effect with the market value of the property with the standards in effect. This appraisal must utilize sales comparisons or other reliable method of determining fair market value, and the completed appraisal must be submitted prior to the Council's consideration of the application.
- (c) *Time for Filing Application.* An Omnibus Relief Application shall be filed within ten days of a final adverse decision on an application for a Watershed Protection Plan.

Section 2.10.7.3 Processing of Applications and Decision

- (a) *Responsible Official.* The Responsible Official shall promptly forward a copy of the Omnibus Relief Application to the City Attorney following acceptance and shall prepare a

recommendation and forward the matter to the City Council for decision.

- (b) *Decision by City Council and Time for Decision.* The City Council shall decide the application within 30 working days of the date the application is filed, unless the applicant is required to submit an appraisal, in which case the time for decision shall not commence to run until such appraisal is received. The Council may take one of the following actions on the application:
- (1) Deny the application for relief, and either uphold the decision of the Engineering Director or Planning and Zoning Commission on the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit, or require that a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit be prepared consistent with the standards of this Development Code; or
 - (2) Grant the relief sought in the application in whole or in part, reversing or modifying the decision of the Director or the Planning and Zoning Commission on the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit, and direct that related Development Applications be processed and evaluated in a manner consistent with such determination.

Section 2.10.7.4 Criteria for Approval

- (a) *Factors.* In deciding whether to grant relief to the applicant, the City Council shall consider whether there is any evidence from which it can reasonably conclude that the application of all or a part of the standards governing approval of a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit under this Development Code shall deprive the applicant of all economically viable use of the land, or for land in the Extraterritorial Jurisdiction, that the application of the standards has resulted in at least a 25 percent devaluation of the property, based upon the following factors:
- (1) The nature and intensity of the uses allowed following application of the standards in this Development Code to the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit and related Development Applications, in comparison with the nature and intensity of the uses allowed without application of the standards;
 - (2) Whether the standards of this Development Code when applied to the Watershed Protection Plan

- (Phase 1, Phase 2, or Qualified) or Floodplain Permit and related Development Applications allow an economically viable use of the land;
- (3) For applications in which it is alleged that there has been a devaluation of property located in the Extraterritorial Jurisdiction, whether the adoption or application of standards in this Article is the producing cause of any devaluation of the property;
 - (4) The total expenditures made in connection with the proposed Development in reasonable reliance on prior regulations;
 - (5) The extent to which the applicant's expectations for economically viable uses have been realized through actual or anticipated Development on land originally part of the same tract or parcel as the land for which relief is sought under the application;
 - (6) The extent to which applicant has taken advantage of any other relief measures provided by this Development Code that would result in mitigation of economic impacts resulting from application of the standards in this Development Code;
 - (7) Any fees reasonably paid in connection with the proposed Development;
 - (8) Any representations made by City officials concerning the project and reasonably relied upon to the detriment of the applicant;
 - (9) The extent to which the alleged effects of applying the standards of this Development Code from which relief is sought would occur in any event from application of standards by another regulatory agency;
 - (10) The extent to which the owner of the property had actual or constructive notice of regulations or proposed changes in the standards governing Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permits;
 - (11) Whether Development of the land in accordance with the Development Applications proposed by applicant and in the absence of applying the standards in this Development Code from which relief is sought shall constitute a public or private nuisance;
 - (12) The extent to which Development of the land in accordance with the Development Applications proposed by applicant and in the absence of applying the standards in this Development Code from which relief is sought is substantially detrimental to the public health and safety; and
 - (13) The nature and extent of prior Development Applications filed or approved for the land subject to the application.
- (b) *Modification of Standards.* In granting relief under the application, the City Council may waive or modify the standards to be applied to the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit or related Development Applications, or may impose reasonable conditions on related Development Applications in order to implement the relief granted. The Council also may initiate an application for a Zoning Map amendment in order to afford the relief granted, which shall be decided in accordance with Article 5, Division 1 of this Chapter 2. In such case, the Council's decision on the application shall not be considered final until the application for the Zoning Map amendment is decided. The action taken by the Council under this Section shall not deprive the Planning and Zoning Commission of its final approval authority over Subdivision Plats.

Section 2.10.7.5 Expiration and Extension

- (a) *Expiration.* The relief granted in response to an application under this Section shall be deemed null and void, and all claims pertaining to loss of economically viable use, or devaluation of land by 25 percent or more, shall be deemed forfeited and thereupon shall expire, if any of the following events occurs:
- (1) A Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit or related Development Application, consistent with the City Council's determination on the application, is not filed with the City within 30 days of the date of a final determination by the City Council; or
 - (2) A related Development Application is subsequently denied for failure to comply with standards governing the application, thereby resulting in expiration of the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit; or
 - (3) Approval of a related Development Application expires, thereby resulting in expiration of the Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit.

- (b) *Extension and Reinstatement.* The date for submitting a Watershed Protection Plan (Phase 1, Phase 2, or Qualified) or Floodplain Permit or related Development Application may be extended by the City Council for not more than 90 days. Reinstatement of an expired related Development Application shall result in extension of the relief granted on the Omnibus Relief Application for a like period.

Working Draft
Initial Public Review
10/23/15

DIVISION 6: PLANNED DEVELOPMENT DISTRICTS**Section 5.2.6.1 Purpose, Applicability, Nature and Size of District**

- (a) *Purpose.* The purpose of an overlay Planned Development District ("PD District") is to provide for the Development of land as an integral unit for single or mixed Use in accordance with a PD Concept Plan that may include Uses, regulations and other requirements that vary from the provisions of the underlying Base Zoning District. As with all districts, PD districts are intended to implement generally the goals and objectives of the City's Comprehensive Plan. PD Districts are also intended to encourage flexible and creative planning, to ensure the Compatibility of land Uses, to allow for the adjustment of changing demands to meet the current needs of the community, and to result in a higher quality Development for the community than would result from the use of other Conventional Zoning Districts.
- (b) *Applicability.* PD District shall be applicable to all areas so zoned as of the date this Development Code was adopted until such time as such area or areas are rezoned. PD Districts shall not be available for any other property.
- No PD District nor any amendment to a PD District shall be requested or approved after the date that this Development Code was adopted.
- (c) *Nature of District.* Each PD District shall be an Overlay District that combines with one or more Base Districts. Development in a PD District must be consistent with the Concept Plan that was incorporated as part of the district by the applicable PD District adopting ordinance.

- (2) Changes in building position or layout that are less than ten feet or ten per cent in size.
- (3) Changes in the proposed property lines as long as the original stated project acreage is not exceeded.
- (4) Changes in parking layouts as long as the number of required spaces and general original design is maintained.

Section 5.2.6.2 Subsequent Development Applications

- (a) *Development Applications Authorized.* The Development standards for a PD District shall be applied to the authorized Uses through the following types of Development Applications:
- (1) Cluster Development Plan, and
 - (2) Plat application.
- (b) *Minor Deviations from Approved Concept Plan.* Minor Deviations from the Concept Plan may be approved by Administrative Adjustment. The following are considered minor Deviations:
- (1) Corrections in spelling, distances, and other labeling that does not affect the overall Development concept.

DIVISION 7: TRANSFER OF DEVELOPMENT RIGHTS GRANTING ZONE

Section 5.2.7.1 Development Transfer (DT) District

- (a) *Purpose and Nature of District.* The purpose of the Development Transfer (DT) district shall be to allow the transfer of Residential density or Impervious Cover from a Site within the Edwards Aquifer Recharge area (granting Site) to a another Site on which the density or Impervious Cover can be utilized pursuant to an integrated Development design (receiving Site). The DT district is an Overlay District which may combine with one or and more Base Districts. The DT District comprises two subdistricts: the Development Transfer Granting (DTG) district, to be applied to the granting Site, and the Development Transfer Receiving (DTR) district, to be applied to the receiving Site.
- (b) *Application to DTG District.* The DTG District may be applied to preserve land in a Natural State, part of which is located over the Edwards Aquifer or contains watershed protection zones, Buffer Zones, Floodplain or other environmentally significant natural features. The DTG District may combine with Residential or non-Residential Base Districts and restricts the number of dwellings or the amount of square feet of Impervious Cover that can be constructed on all or part of the land. The resulting restrictions must be secured through conservation Easements or other instruments that preserve the area containing the environmentally significant resources. The gross Residential density or Impervious Cover that is limited within the DTG District shall be quantified and transferred to a designated DTR District or other receiving Site in accordance with the standards in this Division.
- (c) *Application to DTR District.* The DTR District may be applied to land that does not contain environmentally significant resources and the intensified Development of which is compatible with Adjacent land Uses and is consistent with the Comprehensive Plan. The DTR District may combine with Residential Base Districts, and authorizes a greater number of Dwelling Units to be established on the land than is allowed under the Base District density. The arrangement and design of the Residential Uses in the DTR District shall be implemented through a Cluster Development Plan. The increase in gross Residential density in the DTR District shall be quantified from the density or Impervious Cover transferred from a designated DTG District or other granting Site in accordance with the standards in this Division.

Section 5.2.7.2 Limitations on District

- (a) *Necessity of DTR District.* No DTG District may be established without a corresponding receiving Site, and no DTR District may be established without a corresponding granting Site. A DT District shall only be established through approval of an application for a Development transfer pursuant to procedures in Chapter 2, Article 5, Division 3 of this Development Code.
- (b) *Necessity of DTG District.* A DTG District may be established with a receiving Site located in the City's Extraterritorial Jurisdiction, if the receiving Site is subject to an annexation agreement or Development Agreement and the district is created through approval of an application for a Development transfer pursuant to procedures in Chapter 2, Article 5, Division 3 of this Development Code. A DTR District may be established with a granting Site located in the City's Extraterritorial Jurisdiction, if the granting Site is subject to an annexation agreement or Development Agreement and the district is created through approval of an application for a Development transfer pursuant to procedures in Chapter 2, Article 5, Division 3 of this Development Code.
- (c) *Preferred Scenario Activity Centers Ineligible.* No area designated by the Comprehensive Plan Preferred Scenario Map as a Medium Activity Center or High Activity Center, and no area of the City zoned or assigned Character Based Planning Area or Character Based District may be included in a Development Transfer District.

Section 5.2.7.3 Transfer of Residential Density

- (a) *Conversion to Dwelling Units.* The gross Residential density to be transferred from a granting Site shall be converted to a specific number of Dwelling Units, which shall be added to the total number of Dwelling Units allowed for the receiving Site under the Base District, subject to the limitations in this Section.
- (b) *Calculation of Maximum Transferrable Units from DTG Site.* The maximum number of Dwelling Units which may be transferred from the granting Site shall be computed by multiplying the density associated with the Base District for the DTG District by the number of gross acres in the DTG District, using the following conversion density:

TABLE 5.2.7.3 TRANSFER OF RESIDENTIAL DENSITY

Base Zoning District	Density transferred (units per acre)
MF-24	24
MF-18	18
MF-12	12
TH	12
D and DR	6
SF-4.5	7.5
SF-6	5.5
SF-11	3
SF-R	0.8

(c) *Calculation of Maximum Transferrable Units to DTR Site.* The maximum number of additional Dwelling Units that may be developed on the receiving Site resulting from a transfer of Residential density shall not exceed a number that equals 50% of the Residential density associated with the Base Zoning District for the DTR district multiplied by the number of gross acres included in the DTR district. For example, MF-12 DTR density maximum of [12 units per acre] + [12 units per acre x 50%] = 18 units per acre after transfer.

Section 5.2.7.4 Transfer of Impervious Cover

- (a) *Approval.* Where a property owner elects to transfer Impervious Cover allowed within the Edwards Aquifer Recharge Zone to a receiving Site inside the City limits, the owner may increase Residential density for the receiving Site upon approval of an application for Development transfer and an establishment of a DTR District for the receiving Site. If the granting Site lies within City limits, the property owner also must obtain approval of an application for establishment of a DTG District for the granting Site.
- (b) *Conversion to Residential Units.* The Impervious Cover to be transferred shall be converted to a number of Residential units in accordance with the standards in Section 6.2.8.2 of this Development Code.
- (c) *Maximum Additional Dwelling Units.* The maximum number of additional Dwelling Units that may be developed on the receiving Site resulting from a transfer of Impervious Cover shall not exceed a number that equals 50% of the Residential density associated with the Base Zoning

District for the DTR District multiplied by the number of gross acres included in the DTR District.

- (d) *Limitation.* Where both Residential density and Impervious Cover are to be transferred from a granting Site, the maximum number of Dwelling Units resulting from such conversions shall be added, but in no event shall the maximum number of additional Dwelling Units that may be developed on the receiving Site exceed the number that equals 50% of the Residential density associated with the Base Zoning District for the DTR District multiplied by the number of gross acres included in the DTR District.

Section 5.2.7.5 Transfer of Non-Residential Square Footage

- (a) *Approval.* Non-Residential square footage may be transferred from a granting Site inside the City limits to a receiving Site inside the City limits upon approval of an application for Development transfer and establishment of DTG and DTR Districts for the granting and receiving Sites. The application to establish the DTR District shall be accompanied by a Concept Plan.
- (b) *Maximum Transferable from Granting Site.* The maximum number of non-Residential square feet that may be transferred from the granting Site shall be computed by multiplying the Lot coverage standard associated with the Base Zoning District for the granting Site, using **Table 5.2.7.3 (Transfer by Residential Density)**, by the number of gross acres in the DTG district (expressed in square feet), and multiplying the resulting number by the maximum height allowed in the Base Zoning District for permitted Uses.
- (c) *Maximum Additional Square Feet Developable on Receiving Site.* The maximum additional non-Residential square feet that may be developed on the receiving Site shall not exceed a number that equals 25% of the maximum square footage that could be developed in the Base Zoning District for the DTR District.

Section 5.2.7.6 Development Standards in DTR District

- (a) *Residential Density.* Within the DTR District, the Residential density standards specified for the Base Zoning District shall apply and the minimum Lot size standards specified for the Base Zoning District shall not apply.

Section 5.2.7.7 Plan for Development in DTR District

- (a) *Concept Plan- General.* A Concept Plan for the receiving

Site may be included in the application for establishment of a DTR district. A proposed Concept Plan for the receiving Site shall be included in the application for establishment of a DTR district whenever the applicant proposes to transfer non-Residential square footage from the granting Site to the receiving Site.

- (b) *Concept Plan Requirements.* The Concept Plan shall illustrate the proposed location and arrangement of Uses, Development phasing, planned public Improvements, proposed amenities, Open Space and the overall design of the Development. Detailed requirements for the contents of a Concept Plan shall be the same as those required for a Concept Plan in a Planned Development PD District, as set forth in Chapter 5, Article 2, Division 6. Upon approval of the DTR district application, the Concept Plan shall be incorporated as a component part of the DTR District regulations, and shall be construed in conjunction with the authorized Uses and Development standards set forth in such regulations. Subsequent Development Applications in the DTR District shall be consistent with the incorporated Concept Plan.
- (c) *Substitution of Cluster Development Plan.* In lieu of including a Concept Plan with the application for establishment of the DTR District, except where mandated by subsection (a), the property owner may submit a Cluster Development Plan prepared in accordance with Chapter 2, Article 5, Division 7.
- (d) *Consistency with Approved Plans.* Subsequent Development Applications in the DTR District shall be consistent with the incorporated Concept Plan or approved Cluster Development Plan.

DIVISION 8: CHARACTER BASED DISTRICTS AND CHARACTER BASED PLANNING AREAS

Area Designation/Character Based District Allocation).

Section 5.2.8.1 General

- (a) *Purpose.* Character Based Districts provide Development standards and requirements using character based standards and requirements to create, strengthen, or protect compact, walkable, human-scaled, Mixed Use places. Character Based Planning Area zoning districts provide for future establishment of Character Based Districts. Character Based Districts may be applied (1) as zoning districts or (2) to provide standards and requirements and activate Use and Development rights within Character Based Planning Areas.
- (b) *Designation within Preferred Scenario Medium and High Activity Centers.*
- (1) All areas within Medium Activity Centers and High Activity Centers designated as such in the Comprehensive Plan Preferred Scenario Map shall be zoned as Character Based Districts (CBDs) or Character Based Planning Areas (CBPAs) pursuant to a Zoning Map Amendment initiated by the City and in accordance with Chapter 2, Article 5, Division 1; Chapter 2, Article 5, Division 6; and Section 5.2.8.1(b)(2).
 - (2) Zoning pursuant to Section 5.2.8.1(b)(1) shall be in accordance with the following:
 - a. Any Lot or Parcel which is smaller than 7 acres shall be zoned to one or more Character Based Districts.
 - b. Any Lot or Parcel which is 7 acres or larger shall be zoned either to one or more Character Based Districts (CBDs) or to Character Based Planning Area (CBPAs). Areas zoned to Character Based Planning Area (CBPA) shall be subject to subsequent further allocation and assignment of Character Based Districts (CBDs) in accordance with Section 5.2.8.1(b)(3).
 - (3) Prior to any Subdivision, re-Subdivision, Development, re-Development, Improvement, Construction, Substantial Modification, or Alteration of a Character Based Planning Area, Character Based Districts shall be allocated and assigned in accordance with **Table 5.2.8.1B (Character Based Planning Areas: Comprehensive Plan Preferred Scenario**

TABLE 5.2.8.1B CHARACTER BASED PLANNING AREAS: COMPREHENSIVE PLAN PREFERRED SCENARIO AREA DESIGNATION/CHARACTER BASED DISTRICT ALLOCATION

Preferred Scenario Designation	CBD Allocation Percentage
OPEN SPACE/AGRICULTURAL AREA	NA
NEIGHBORHOOD AREA - PROTECTED	CBD-3: 10-35% CBD-4: 30-65%
NEIGHBORHOOD AREA - REDEVELOPMENT	CBD-3: 10-35% CBD-4: 30-65%
STABILITY AREA	CBD-3: 10-35% CBD-4: 30-65%
CORRIDOR	CBD-3: 10-35% CBD-4: 30-65%
MEDIUM ACTIVITY CENTER	CBD-3: 10-35% CBD-4: 30-65%
HIGH ACTIVITY CENTER - FORMER NON-DOWNTOWN SC- SMARTCODE DISTRICTS	CBD-3: 10-35% CBD-4: 30-65%
OTHER HIGH ACTIVITY CENTER	CBD-3: 10-30% CBD-4: 30-60% CBD-5: 10-30%
EMPLOYMENT CENTERS	NA

- (c) *Designation within Former SC Smartcode Districts.*
- (1) Immediately prior to the effective date of this Development Code, the area shown on **Map 5.2.8.1 (Former SC - Smartcode Districts)** as “SC-Smartcode District (Downtown)” (referred to herein as the “Downtown Smartcode Area”) was zoned as SC-Smartcode District, with specific areas therein designated more specifically as T-Zones T-4D and T-5D by an approved Regulating Plan, and with certain additional Special Requirements and Downtown Design Standards made applicable thereto.
 - (2) Immediately prior to the effective date of this Development Code:
 - a. the areas shown on **Map 5.2.8.1 (Former SC - Smartcode Districts)**, respectively, as “SC-Smartcode District (Gas Lamp)” (referred to herein as the “Gas Lamp Smartcode Area”) and the “SC-Smartcode District (Southend)” (referred to herein as the “Southend Smartcode Area”) were zoned as SC-Smartcode District;
 - b. the Gas Lamp Smartcode Area and the Southend Smartcode Area are each designated as a New Community Planning Area;
 - c. the Southend Smartcode Area has had specific areas therein designated more specifically as T-Zones **T-3, T-4 and T-5** by an approved Regulating Plan, with certain additional Special Requirements made applicable thereto; and
 - d. specific assignment of T-Zones within the Gas Lamp Smartcode Area is pending submission and approval of a Regulating Plan, including without limitation any additional Special Requirements which may be made applicable thereto.
 - (3) From and after the effective date of this Development Code, each of the T-Zones designated within the SC - Smartcode Downtown area and the SC - Smartcode Southend area shall be renamed and converted to, and shall become the Character Based District indicated in the following **Table 5.2.8.1A (Conversion of Former**

SC - Smartcode District T-Zones to Character Based Districts), and shall be subject to the applicable standards and requirements of this Development Code as if they had originally been zoned to the applicable listed Character Based Districts.

TABLE 5.2.8.1A CONVERSION OF FORMER SC - SMARTCODE DISTRICT T-ZONES TO CHARACTER BASED DISTRICTS

IN FORMER DOWNTOWN SMARTCODE

Transect Zone	Character Based District
T4	CBD-4D
T5	CBD-5D

IN FORMER OTHER SC - SMARTCODE AREA

Transect Zone	Character Based District
T3	CBD-3
T4	CBD-4
T5	CBD-5

(d) *Additional Character Based Districts, Character Based Planning Areas.*

- (1) All areas designated by the Comprehensive Plan Preferred Scenarios as Stability Area, Neighborhood Redevelopment Area, or Corridor, and all other areas of the City except (A) those described in Sections 5.2.8.1(b) and (c) above, and (B) Open Space / Agricultural Areas and Employment Centers designated by the Comprehensive Plan Preferred Scenario, shall be eligible for zoning as one or more Character Based Districts (CBDs) or Character Based Planning Areas (CBPAs) in accordance with Chapter 2, Article 5, Division 1 and Chapter 2, Article 5, Division 6.
- (2) Any zoning pursuant to Section 5.2.8.1(d)(i) may be initiated by the City or the owner of the subject property and shall be in accordance with Section Chapter 2, Article 5, Division 1 and Chapter 2, Article 5, Division 6.

(e) *Effect of CBPA Zoning District Designation.*

- (1) Zoning of an area as Character Based Planning Area shall not confer any Use, Development or other rights upon the owner thereof other than to submit a Regulating Plan which assigns specific Character Based Districts within the Character Based Planning Area in accordance with Section 5.2.8.2(d); Chapter 2, Article 5, Division 6; and all applicable standards and requirements of this Chapter 5, including without limitation the Character Based District Allocation Percentages of Section 5.2.8.1(b).
- (2) Upon approval of a Regulating Plan as described in Chapter 2, Article 5, Division 6, the area covered thereby may be developed in accordance with all standards and requirements applicable to each respective Character Based Districts so assigned as if the property were zoned as such Character Based District.

(f) *Reflection on Official Zoning Map.* Upon zoning of an area as a Character Based District or a Character Based Planning Area in such designation shall be reflected on the Official Zoning Map as the zoning for such area. An area zoned Character Based Planning Area shall continue to be so zoned upon and after approval of one or more Regulating Plans within such area unless and until re-zoning; provided that Use and Development of each Regulating Plan so approved shall be subject to the standards and requirements of the Character Based Districts assigned by such Regulating Plan.

(g) *Effect of Change of Comprehensive Plan Preferred Scenario Designation on Existing Zoning.* Removal of an area from, or other change in the Comprehensive Plan Preferred Scenario designation of an area shall not in and of itself result in a rezoning of such area. Instead, the zoning designation of any such area shall remain unchanged unless rezoned at the determination of the City Council in accordance with this Development Code.

(h) *Overlay Districts.* No Overlay District other than the HD Historic District shall be applied within any area designated by the Comprehensive Plan Preferred Scenario Map as a Medium Activity Center or a High Activity Center or within any area zoned or designated as Character Based District (CBD) or Character Based Planning Area (CBPA).

Section 5.2.8.2 Regulating Plans

(a) *Regulating Plan Required.* No Development, re-Development, Construction, Improvement, Subdivision, re-Subdivision, Substantial Modification, Alteration, or use of or on any

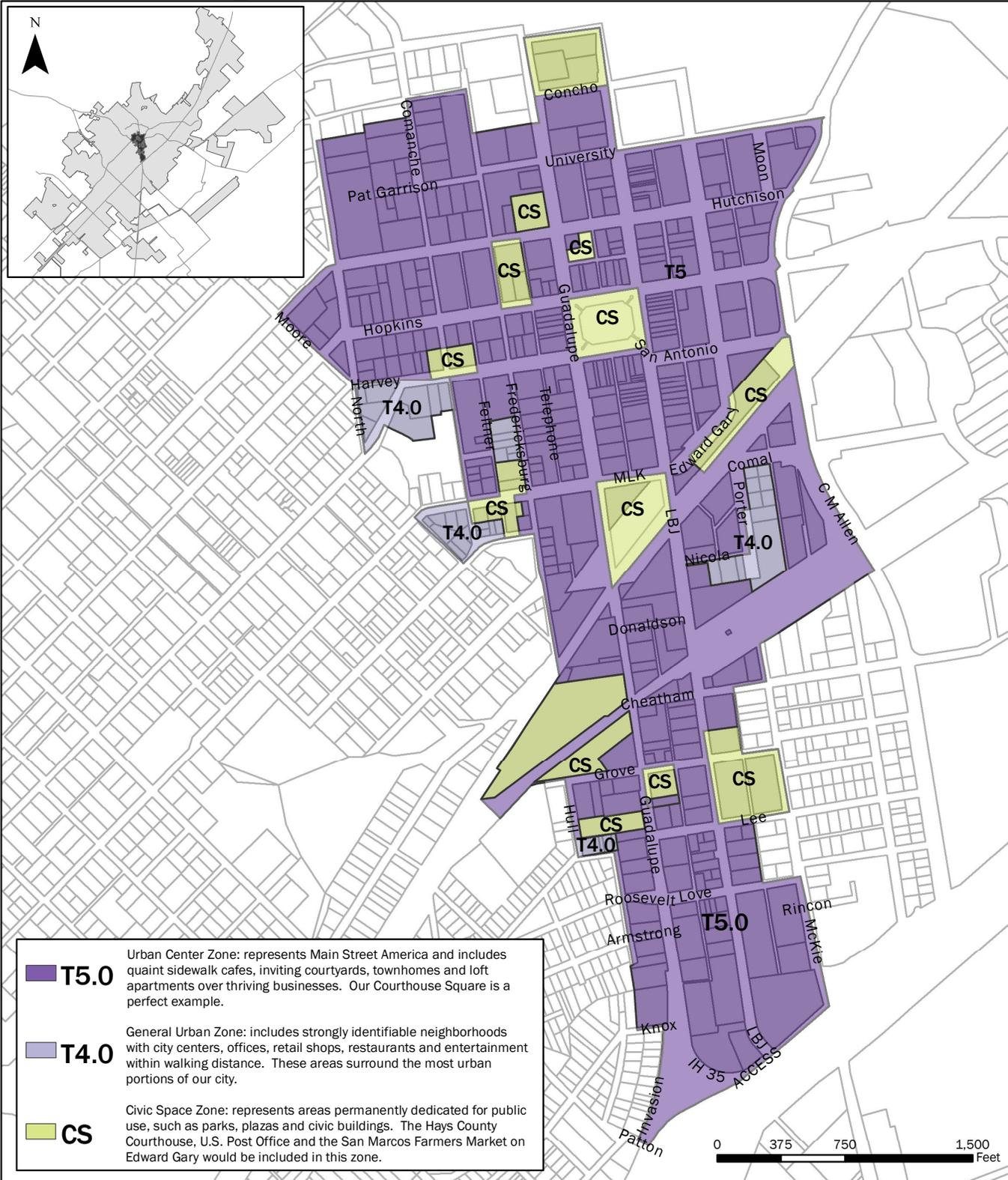
land, Building, Structure, Lot, or Improvement shall be commenced within a Character Based Planning Area or a Character Based District in the absence of a Regulating Plan prepared and approved in accordance with Chapter 2, Article 5, Division 6 and this Section 5.2.8.2 and except in accordance with such Regulating Plan, an applicable approved Subdivision Plat, an approved Site Plan of which the Regulating Plan is a part for any Character Based Planning Area, any applicable Development Parcel Plan which is part of the approved Site Plan, the applicable Building and Lot Plan submittal with the applicable Application for Building Permit, and the applicable standards and requirements of this Development Code.

- (b) *City-Initiated Regulating Plans.* A Regulating Plan prepared by or on behalf of the City in connection with a City-initiated zoning or rezoning of an area to one or more Character Based Districts (CBDs) shall be deemed conclusively to comply with the requirements of this Section 5.2.8.2.
- (c) *Former Smartcode Regulating Plans.* Zoning pursuant to the Regulating Plans approved by the City Council for the areas of the City formerly zoned SC - Smartcode District, as identified on **Map Nos. 5.2.8.1 (Former SC - Smartcode Districts)** shall continue to be the zoning for such areas and such Regulating Plans shall continue to be the Regulating Plans for such areas; provided that the T-Zones designated for such areas shall be converted to the Character Based Districts indicated on **Table 5.2.8.5L (Conversion of Former Smartcode District T-Zones to Character Based Districts)**. All standards and requirements of this Development Code shall be applicable to each such Character Based District so converted rather than those of former Subpart C of the superseded Land Development Code. The Regulating Plans for such areas as so converted, as set forth as **Map Nos. 5.2.8.2G - 5.2.8.2I (Regulating Plans for Former SC Districts)** are hereby reaffirmed, ratified and approved by the City Council as the Regulating Plans for such areas under this Development Code. Each such former Smartcode Regulating Plan shall be deemed conclusively to comply with all requirements of this Section 5.2.8.2.

MAP 5.2.8.1 FORMER SC - SMARTCODE DISTRICTS

Downtown SmartCode Area

City of San Marcos
Map Date - March 4, 2011



**RESERVED FOR MAP
5.2.8.2B(Regulating Plan for
Former SC Smartcode Dis-
tricts) [South End Plan]**

- (d) *Regulating Plans for Areas Zoned Character Based Planning Area.* Prior to commencement of any Development, re-Development, Construction, Improvement, Subdivision, re-Subdivision, Substantial Modification, Alteration, or Use of or on any land, Building, Structure, Lot, or Improvement within a Character Based Planning Area, the owner shall submit and must obtain approval of a Regulating Plan in which complies with Section 5.2.8.1(b)(2) and conforms to Chapter 2, Article 5, Division 6.
- (e) *Regulating Plan for Zoning to Character Based Districts.* A Regulating Plan is required as part of any Development application which requests zoning to or designation of one or more Character Based Districts. Such Regulating Plan shall conform to Chapter 2, Article 5, Division 6.
- (f) *Regulating Plan Submission.* Regulating Plans shall be prepared and submitted in accordance with Chapter 2, Article 5, Division 6.
- (g) *Contents of Regulating Plan.* Each Regulating Plan or any amendment thereof, shall reflect the following, all in conformance with the applicable standards and requirements set forth in this Chapter 5, Article 2, Division 8:
 - (1) all existing Streets, roads, Thoroughfares, walkways, trails, and bicycle accommodations, all planned primary and secondary Streets, roads, and all Thoroughfares shown on the City Transportation Master Plan, as amended, all other proposed Thoroughfares and the types thereof, all walkways, and all bicycle accommodations, and any proposed extensions or changes (other than merely one or more curb cuts) to any of the foregoing, the specific alignments of any such new Thoroughfares or extensions or changes being subject to adjustment pursuant to Section 5.2.8.6(b).
 - (2) Block Perimeters of each Block;
 - (3) Pedestrian Sheds and their respective Common Destinations;
 - (4) existing and any required or proposed Civic Spaces, Civic Buildings and Civic Zones;
 - (5) existing and any proposed Character Based Districts requested (i) to be the zoning within such area or (ii) to regulate Use and Development within a Character Based Planning Area;
 - (6) existing and any proposed Special Districts, if any, requested (i) to be the zoning within such area or (ii) to regulate Use and Development within a Character Based Planning Area;
- (7) existing and any proposed Special Requirements, if any requested to be an additional requirement of (i) the zoning within such area or (ii) the regulation within a Character Based Planning Area; and
- (8) all Adjacent property, the applicable zoning thereof, the applicable Comprehensive Plan Preferred Scenario designation thereof, and all roads, Streets, pedestrian walkways and trails, and bicycle accommodations existing or planned and shown on the City Transportation Master Plan.
- (h) *Special Requirements.* A Regulating Plan may designate any of the Special Requirements listed in Sections 5.2.8.2(h)(1) - (12) below. If a Regulating Plan designates any one or more of such Special Requirements, such designation indicates that the following standards shall be applied as follows:
 - (1) Retail Frontage. A Retail Frontage designation, requiring that a Building satisfy the Frontage Buildout requirement with a Shopfront Frontage at Sidewalk level along the entire length of its Private Frontage, except at any allowed Driveways or Streetscreen areas. The Shopfront Frontage shall be no less than 70% glazed in clear glass and may be shaded by an awning overlapping the Sidewalk as generally illustrated in **Table 5.2.8.11D (Private Frontage Types)**. The first floor shall be confined to Retail Use through the depth of the Second Lot Layer. See **Illustration 5.2.8.10 (Lot Layers)**.
 - (2) Terminated Vista. A Terminated Vista designation, requiring that the Building be provided with architectural articulation of a type and character, such as a cupola, chimney, entry feature or habitable tower that by intersecting the centerline axis of the view to which they respond.
 - (3) Cross Block Passage. A Cross Block Passage designation, requiring that a minimum 8-foot-wide pedestrian access be reserved between Buildings at no more than one location within a Block.
 - (4) A-Grid & B-Grid. A differentiation of the Thoroughfares as A-Grid and B-Grid. Buildings along the A-Grid shall be held to the highest standard of this Development Code in support of pedestrian activity. Buildings along the B-Grid

may be more readily considered for Specific Adjustments allowing automobile-oriented standards. The Frontages assigned to the B-Grid shall not exceed 30% of the total length of Frontages within a Pedestrian Shed.

- (5) **Gallery Frontage.** Gallery Frontage designation, requiring that a building provide a permanent cover over the Sidewalk, either cantilevered or supported by columns. The Gallery Frontage designation may be combined with a Retail Frontage designation.
 - (6) **Arcade Frontage.** Arcade Frontage designation, requiring that a Building overlap the Sidewalk such that the first floor Façade is a colonnade. The Arcade Frontage designation may be combined with a Retail Frontage designation.
 - (7) **Porch Frontage.** Mandatory and/or recommended Porch Frontage, requiring or advising that a porch be included in the Private Frontage.
 - (8) **Build-To Line.** Build-to Line, requiring the placement of the Building Façade along the line.
 - (9) **Coordinated Frontage.** Coordinated Frontage, requiring that the Public Frontage and Private Frontage be coordinated as a single, coherent landscape and paving design.
 - (10) **Buildings of Value.** Buildings of Value designation, requiring that Buildings and Structures so designated may be altered or demolished only in accordance with the requirements of this Development Code for historic districts and landmarks.
 - (11) **Building Height.** Building Height designation, requiring or allowing the Building Heights within the indicated area to be within a different Height range than that otherwise required or allowed within the applicable Character Based District.
 - (12) **Other.** Other Special Requirements as may be specifically described approved by Specific Adjustment.
- (i) *Compliance with Regulating Plan.* Except for non-conformances allowed pursuant to Chapter 1, Article 6, all Subdivision, re-Subdivision, Development, re-Development, Improvement, Construction, Substantial Modification, or Alteration of or on any land, Building, Structure, Lot, or Improvement within a Character-Based District shall comply with the applicable Regulating Plan, and shall include all elements included in such Regulating Plan.

Section 5.2.8.3 Development Parcel Plans.

- (a) *Definitions.* The terms “Development Parcel” and “Development Parcel Plan” are defined in Chapter 8.
- (b) *When Development Parcel Plan Required.* Approval of a Development Parcel Plan must be obtained as part of an applicable Site Plan before any of the following may occur with respect to a Development Parcel:
 - (1) using, Subdividing, re-Subdividing, Developing, re-Developing, or Improving a Development Parcel, or Constructing, Modifying, or Altering any Development Parcel, or any Building, Structure, Lot or Improvement on, a Development Parcel; or
 - (2) approving any Building Permit and related Building and Lot Plan on any part of a Development Parcel.
- (c) *Development Parcel Plan Compliance.* Each Development Parcel Plan shall comply with the applicable Regulating Plan and all applicable standards and requirements of this Development Code, and shall demonstrate such compliance.
- (d) *Compliance with Development Parcel Plan.* Except for non-conformances allowed pursuant to Chapter 1, Article 6, all Use, Subdivision, re-Subdivision, Development, re-Development, Improvement, or Construction, or Substantial Modification or Alteration of any Development Parcel or any land, Building, Structure, Lot, or Improvement on a Development Parcel, shall comply with the applicable approved Regulating Plan, the applicable approved Development Parcel Plan, and the applicable approved Building Permit and related Building and Lot Plan and shall provide all elements included in such plans and demonstrate such compliance.
- (e) *Development Parcel Plan Submission.* The owner or its designee shall apply for approval of any required Development Parcel Plan as part of the applicable Site Plan pursuant to Chapter 2, Article 7.
- (f) *Development Parcel Plan Requirements.* All items shown on the applicable approved Regulating Plan shall be shown on each Development Parcel Plan, each in compliance with this Development Code, the standards and requirements hereof, and the applicable Regulating Plan.

Section 5.2.8.4 Building & Lot Plans.

- (a) *Definition.* Building and Lot Plan is defined in Chapter 8 (Definitions).
- (b) *Building and Lot Plan Required.* Approval of a Building and

Lot Plan must be obtained as part of the applicable Building Permit; provided, however, that a Building and Lot Plan is not required for maintenance of an Existing Structure.

- (c) *Compliance of Building and Lot Plan.* Each Building and Lot Plan shall comply with the applicable approved Regulating Plan, any approved applicable Development Parcel Plan, and all applicable standards and requirements of this Development Code, and shall demonstrate such compliance.
- (d) *Compliance with Building and Lot Plan.* Except for non-conformances allowed pursuant to Chapter 1, Article 6, all Subdivision, re-Subdivision, Development, re-Development, Improvement, Construction, Substantial Modification, or Alteration of or on any land, Building, Structure, Lot, or Improvement shall comply with the applicable approved Regulating Plan, any applicable approved Development Parcel Plan, and the applicable approved Building Permit and related Building and Lot Plan.
- (e) *Building and Lot Plan Requirements.* The following items shall be shown on each Building and Lot Plan, each in compliance with this Development Code and the standards and requirements hereof, the applicable approved Regulating Plan, and any applicable approved Development Parcel Plan, and demonstrating compliance with the same:
 - (1) Lot Widths
 - (2) Lot Coverage
 - (3) Lot Enfrontment
 - (4) Building Placement, including without limitation Setbacks and Lot Layers
 - (5) Yard Type (Building Disposition)
 - (6) Principal Buildings, Backbuildings, and Outbuildings
 - (7) Building Form
 - (8) Building Type
 - (9) Building and Ceiling Height
 - (10) Building Floor Elevation
 - (11) Private Frontage
 - (12) Roof Type and Pitch
 - (13) Building Façades and Façade Glazing
 - (14) Accessory Units
 - (15) Streetscreens
 - (16) Building and Lot Principal Use
 - (17) Accessory Uses
 - (18) Parking Areas, Parking Lots, Parking Structures, and Driveways, Loading, Service, Waste Receptacle, and Drive-Throughs Location
 - (19) Parking / Lot Density
 - (20) Private Lot Landscaping
 - (21) Signage
 - (22) Private Lighting

- (23) Approved Subdivision Plat
- (24) All other applicable standards and requirements of Section 5.1.6.2

Section 5.2.8.5 Character Based Districts.

- (a) *Definition.* Character Based District is defined in Chapter 8 (Definitions).
- (b) *Applicability of Character Based Districts.* A Character Based District may be either (i) applied to land as the zoning thereof as approved by the City Council pursuant to a Zoning Application and related Regulating Plan or (ii) applied within an area zoned “Character Based Planning Area” to activate Use and Development rights with respect thereto and provide standards and requirements for one or more areas therein.
- (c) *Establishment and Description of Character Based Districts.* The City’s Character Based Districts as set forth in **Table 5.2.8.5A (Character Based District Descriptions)** are hereby established and are generally described in such Table:
 - (1) CBD-1. Character Based District CBD-1 (Natural)
 - (2) CBD-2. Character Based District CBD-2 (Rural)
 - (3) CBD-3. Character Based District CBD-3 (Sub-urban)
 - (4) CBD-4. Character Based District CBD-4 (General Urban)
 - (5) CBD-4C. Character Based District CBD-4C (General Urban - Corridor)
 - (6) CBD-4D. Character Based District CBD-4D (General Urban-Downtown)
 - (7) CBD-5. Character Based District CBD-5 (Urban Center)
 - (8) CBD-5C. Character Based District CBD-5C (Urban Center - Corridor)
 - (9) CBD-5D. Character Based District CBD-5D (Urban Center - Downtown)
- (d) *Compliance with Standards and Requirements.* Development Parcels, Buildings, Lots, Subdivision, re-Subdivision, and Uses, Construction, land, Improvements, Structures, within each Character Based District are regulated by and shall comply with the standards and requirements of this Development Code as applicable to such Character Based District, including without limitation the Character Based District general description thereof as described in and reflected by **Table 5.2.8.5A (Character Based District Descriptions)** and the standards and requirements applicable to such Character Based District set forth in **Tables 5.2.8.5B - 5.2.8.5J (Character Based District Standards)** and elsewhere in this Development Code.

TABLE 5.2.8.5A CHARACTER BASED DISTRICT DESCRIPTIONS

Character Based District CBD-1 (Natural)	Character Based District CBD-2 (Rural)	Character Based District CBD-3 (Sub-Urban)	Character Based District CBD-4 (General Urban)
			
DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
<p>Consists of lands approximating or reverting to a wilderness condition, including lands unsuitable for Development due to topography, hydrology or vegetation.</p>	<p>Consists of sparsely settled lands in open or cultivated states. These include woodland, agricultural land, grassland and Hill Country. Typical buildings are farmhouses, agricultural buildings, cabins and villas.</p>	<p>Consists of low density walkable residential areas, Adjacent to higher zones that have some Mixed Use. Home occupations and outbuildings are allowed. Planting is naturalistic and Setbacks are relatively deep. Blocks may be large and Thoroughfares irregular to accommodate natural conditions, and designed for slow movement.</p>	<p>Consists of a Mixed Use but primarily residential urban fabric. It may have a wide range of Residential Mixed Use building types. Setbacks and landscaping are variable. Streets with curbs and sidewalks define medium-sized Blocks.</p>
DESIRED FORM	DESIRED FORM	DESIRED FORM	DESIRED FORM
NA	Detached buildings	Detached buildings	Attached or detached buildings
NA	Small to Large footprint	Medium to large footprint	Small to medium footprint
NA	Shallow to deep front Setback	Medium to deep front Setback	Variable Setbacks, at or close to Frontage Line
NA	Medium to wide side Setback	Narrow to medium side Setback	Narrow to no side Setback
NA	1 to 2 stories	1 to 3 stories	2 to 3 stories
NA	Outbuildings common	Outbuildings common	Outbuildings common
GENERAL USE	GENERAL USE	GENERAL USE	GENERAL USE
<p>Undeveloped natural areas, perhaps some agricultural Use.</p>	<p>Primarily agricultural with some very low-density single Family residential Use.</p>	<p>Primarily low- to medium-density single Family residential.</p>	<p>Primarily residential with some Mixed Uses including Office and retail. Ideal for live-work.</p>

Character Based District CBD-4C (General Urban Corridor)	Character Based District CBD-4D (General Urban Downtown)	Character Based District CBD-5 (Urban Center)	Character Based District CBD-5C (Urban Center Corridor)	Character Based District CBD-5D (Urban Center Downtown)
				
DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Consists of a Mixed Use but primarily residential urban fabric on Lot deep along a corridor. It may have a wide range of Residential and Mixed Use building types. Setbacks and landscaping are variable. Streets with curbs and sidewalks define medium-sized Blocks.	Consists of a Mixed Use but primarily residential urban fabric. It may have a wide range of Residential and Mixed Use building types. Setbacks and landscaping are variable. Streets with curbs and sidewalks define medium-sized Blocks.	Consists of higher density Mixed Use buildings that accommodate retail, offices, rowhouses and apartments. It has a tight network of Streets, with wide sidewalks, regularly spaced Street Tree planting and buildings set close to the sidewalks.	Consists of higher density Mixed Use buildings that accommodate retail, offices, rowhouses and apartments one Lot deep along a corridor. It has wide sidewalks, regularly spaced Street Tree planting and buildings set close to the sidewalks.	Consists of higher density Mixed Use buildings that accommodate retail, offices, rowhouses and apartments. It has a tight network of Streets, with wide sidewalks, regularly spaced Street Tree planting and buildings set close to the sidewalks.
DESIRED FORM	DESIRED FORM	DESIRED FORM	DESIRED FORM	DESIRED FORM
Attached or detached buildings	Attached or detached buildings	Attached or detached buildings	Attached or detached buildings	Attached or detached buildings
Small to large footprint	Small to large footprint	Small to large footprint	Small to large footprint	Small to large footprint
Variable front Setbacks, at, close to or moderately Setback from Frontage Line	Variable Setbacks, at or close to Frontage Line	Buildings at or close to the Frontage Line	Buildings at or close to the Frontage Line	Buildings at or close to the Frontage Line
Narrow to no side Setback	Narrow to no side Setback	Very narrow to no side Setback	Very narrow to no side Setback	Very narrow to no side Setback
2 to 3 stories	2 to 3 stories	2 to 5 stories	2 to 5 stories	2 to 5 stories
Outbuildings common	Outbuildings common	Outbuildings common	Outbuildings common	Outbuildings common
GENERAL USE	GENERAL USE	GENERAL USE	GENERAL USE	GENERAL USE
Primarily residential with some Mixed Uses including Office and retail. Ideal for live-work.	Primarily residential with some Mixed Uses including Office and retail. Ideal for live-work.	Higher density vertical and horizontal Mixed Use; retail, Office, commercial, residential and light industrial functions on any floors. Ideal for live-work.	Higher density vertical and horizontal Mixed Use; retail, Office, commercial, residential and light industrial functions on any floors. Ideal for live-work.	Higher density vertical and horizontal Mixed Use; retail, Office, commercial, residential and light industrial functions on any floors. Ideal for live-work.