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Article 1: General Provisions

COMMENTARY

This article includes material that lays the overall legal foundation for the entire code, though is not often referenced by most code users. This draft contains a mix of new and existing provisions as indicated in footnotes and commentary. The biggest proposed substantive change is the addition of a new category of "compliant" uses and structures, which would be alternatives to "nonconformities" and subject to less-stringent regulations as noted below.

1.1 Title

This document is Chapter **XX**¹ of the Municipal Code of Ordinances of the City of New Braunfels, Texas. It may be cited and referred to as the "Land Development Ordinance of the City of New Braunfels, Texas," "this LDO," or "this Chapter."

1.2 Effective Date

This LDO shall become effective on **[date]**.

1.3 Purpose²

COMMENTARY

The overall LDO purpose statement underpins the entire ordinance and is referred to in approval criteria for all types of procedures. It should link to the Comprehensive Plan and be broad in scope. The updated Purpose proposed here breaks apart the large paragraph and separates out distinct ideas, to make it easier to read.

A. Pursuant to the Texas Local Government Code (TLGC), the City Council enacts this LDO to:

1. Promote the public health, safety, and general welfare;
2. Implement the policies and objectives in the Comprehensive Plan;
3. Secure safety from fire, panic, and other natural and man-made dangers;
4. Protect life and property;
5. Provide adequate light, air, and open space;
6. Lessen congestion in the streets while enhancing pedestrian and vehicular movement with the least detriment to environmental quality;
7. Ensure environmentally sensitive site planning that preserves the city's tree canopy and natural areas;
8. Prevent the overcrowding of land while achieving a varied and balanced development pattern that improves community mobility and achieves long-term fiscal sustainability;
9. Facilitate the adequate provision of transportation infrastructure, water and sewage services, schools, parks, trails, and other public requirements and to avoid transportation, public service, and facility demands that cannot be satisfied;

¹ Because Chapters 66, 106, 118, and 144 are being combined, the LDO may be assigned a new Chapter number, yet to be determined.

² 144-1.1.

10. Ensure that development and resource decisions are sustainable not only for the current residents of New Braunfels but for future residents and generations;
11. Provide a mix of land uses that provide employment opportunities, social amenities, walkability, and housing to promote economic resiliency;
12. Emphasize the importance of high-quality urban design in the built environment;
13. Consider the immediate and long-range financial impact of the application of particular land to particular kinds of development, and the relative suitability of the land for development;
14. Conserve the value of buildings and encourage the appropriate use and form of land, buildings, and structures; and
15. Establish procedures for the processing of planning and zoning actions that affect the development and use of property in New Braunfels.

B. The purpose of this LDO is not to ensure the competitive advantage of one property/business owner over another. It is applied to ensure fairness in achieving the goals of the Comprehensive Plan in accordance with state statute and federal laws.

1.4 Authority, Applicability, and Jurisdiction

1.4.1 Authority

- A. This LDO is adopted pursuant to the authority in the City Charter of the City of New Braunfels as amended and adopted in 2021, and enacted pursuant to the powers granted and limitations imposed by provisions of the State of Texas, including the statutory authority granted in Chapters 42, 43, 211, 212, and 213 of the TLGC, and all other relevant provisions of the State of Texas.
- B. Whenever any provision of this LDO refers to or cites a section of the Texas state statute and that section is later amended or superseded, this LDO shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.
- C. Whenever a provision of this LDO requires or authorizes an officer or employee of the City to take some action or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate, and authorize subordinates to perform the act or duty, unless the terms of the provision designate otherwise.

1.4.2 Applicability

A. Generally

Unless otherwise stated, this LDO applies to all land, buildings, structures, and uses located within city limits, and to the extent applicable, its extraterritorial jurisdiction (ETJ).

B. Applicability to Public Agencies

To the extent allowed by law, the provisions of this LDO shall apply to all land, buildings, structures, and uses owned, leased, or otherwise controlled by any district, county, state, city, or federal government agencies in the City of New Braunfels. Where the provisions of this LDO do not legally control such land, buildings, structures, and uses, such agencies are nevertheless encouraged to meet the provisions of this LDO.

1.4.3 Compliance Required

No structure or use of any structure or land shall be established, enlarged, extended, altered, moved, divided, or maintained, and no lot shall be created, except as authorized by and in compliance with this LDO, and all other applicable regulations, including International Building Codes, and Transportation and Capital Improvements standards.

- A.** Following approval of any application, all proper permits are required to establish the use or structure. Nothing in this LDO, including the approval of an application, shall be interpreted to replace such requirements.
- B.** Applications or requests to waive any subsection in this Article 1 are prohibited.
- C.** Applications or requests to waive procedural elements described in any Article of this LDO are prohibited.
- D.** Applications or requests to waive certain standards in this LDO are permitted, in accordance with the allowances described throughout the chapter.
- E.** Any waivers to standards within this LDO do not waive the obligation to comply with the requirements of any other chapter in the New Braunfels Code of Ordinances.

1.4.4 Permits and Fees Required³

Except as otherwise provided for in this LDO, permits shall be required as specified herein, and fees shall be collected in the amounts provided for in the schedule found in Appendix D. Any reference to fees contained in any code adopted by reference in this LDO shall be superseded by the comprehensive permit and fee schedule in Appendix D. All fees provided for in the fee schedule shall be non-refundable, unless otherwise specified in this LDO.

1.4.5 Minimum Requirements

The standards of this LDO shall be held to be minimum requirements. More restrictive standards, or standards exceeding those required, are permissible.

1.4.6 Relationship to Comprehensive Plan

The adoption of this LDO is intended to support implementation of the goals, policies, objectives, and programs of the Comprehensive Plan, as adopted and subject to amendment from time to time.

1.4.7 Development Agreements⁴

Development agreements affecting land in the city limits and the extraterritorial jurisdiction of the city may be used in accordance with Texas Local Government Code ch. 212, to do the following:

- A.** Contract for no annexation for an initial term of up to 15 years and up to two additional extensions for a maximum total term of 45 years.

³ This content was originally located in Enforcement and Penalties, but was relocated here, since it is a generally applicable requirement, and not really related to fines and penalties.

⁴ 118-4. This subsection has been relocated out of procedures at staff request.

- B.** Extend City planning authority over the land, including enforcement of land use, development, and environmental regulations, as well as specific additional regulations for the land.
- C.** Provide for infrastructure for the land including streets, roads, drainage, water, wastewater and other utility systems.
- D.** Specify the uses and development of the land.
- E.** Other lawful terms and considerations as agreed to by the parties.

1.4.8 Prior Approvals

- A.** This LDO shall not affect the validity of any legally issued building or other development permit issued prior to the effective date of this LDO, and as amended, provided the permit is active or reinstated. If any such permit expires or lapses and is not reinstated, the new permit shall only be issued in conformance with the requirements of this Chapter, and as amended.
- B.** Any condition of approval applied prior to the effective date of this LDO, and as amended, shall continue to apply. The Planning and Development Services Director may exercise discretion to nullify any such condition if the use or development complies with this LDO or the condition is no longer required to mitigate an impact.
- C.** Building permits issued prior to the effective date of this LDO, and as amended, do not require a change in the plans, construction, or designated use of any existing building if construction has been diligently pursued, with continuous progress towards completion, and no interruption of construction or inactivity of 180 days or longer.

1.4.9 Conflicts with Other Regulations or Agreements

- A.** Where the requirements of this LDO conflict with any other legally adopted rule, regulation, or ordinance, the most restrictive standard shall govern, to the extent permitted by law.
- B.** If the sections of this LDO are inconsistent with one another, or if in conflict with other adopted codes, ordinances, or regulations of the New Braunfels Code of Ordinances, the more restrictive provision will control, unless otherwise expressly stated.
- C.** Any condition imposed in conflict with federal or state regulation(s) or law(s) shall not require compliance with the condition. Where two imposed conditions conflict, any condition imposed by the City Council during a public hearing shall supersede the conflicting condition.
- D.** It is not the intent of this LDO to interfere with, abrogate, annul, or prevent the private enforcement of any easement, covenant, deed restriction, or other agreement between private parties. The regulations in this LDO are in addition to, and not in lieu of, any such arrangement between private parties including but not limited to those listed above. The City of New Braunfels is not responsible for monitoring or enforcing private agreements or restrictions.

1.5 Transition from Prior Regulations⁵

1.5.1 Continuity of Provisions

The provisions of this LDO, insofar as they are substantially the same as previously existing regulations relating to the same subject matter, shall be construed as restatements and continuations thereof and not new enactments. Any actions, proceedings, permits, or approvals commenced or issued pursuant to any previously existing ordinance and subject to TLGC Chapter 245 shall not be affected by the enactment of this LDO.

1.5.2 Approved Development

- A. Any development approved under regulations in effect prior to the effective date of this LDO may be carried out under the terms and conditions of the approval and the development standards in effect at the time of approval, provided the approval has not expired, as described in §8.2.6E, *Expiration of Approval*, and the development complies with any applicable standards of this Chapter regarding ongoing operations and maintenance. If the prior approval expires, is revoked, or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this LDO.
- B. Any permits subject to the standards of this LDO that are valid on the effective date of this LDO shall remain valid until their expiration date. Projects with valid permits may be carried out in accordance with the zoning and subdivision regulations in effect at the time of approval, provided that the permit remains valid and has not expired.
- C. No provision of this LDO shall require any change in the plans, construction, or designated use of any structure for which a building permit has been issued prior to the effective date of this LDO unless the building permit has expired.
- D. The Planning and Development Services Department may approve one extension of one year for any development proposal subject to an administrative approval that was granted prior to the effective date of this LDO, upon determining that the required findings or criteria for approval remain valid.
- E. Projects that secured non-administrative approval prior to the effective date of this LDO may be granted one extension of one year from the reviewing body that granted the original approval, provided that an extension would have been permitted under the zoning and subdivision regulations in effect at the time of approval. If those regulations are silent as to the possibility of an extension of approval, then no extension may be granted.
- F. In any case where approval or extension expires, re-application shall be required to meet the standards in effect at the time of re-application.

1.5.3 Pending Applications

A development application that has been determined to be complete pursuant to §8.2.2C, *Determination of Application Completeness*, prior to the effective date of this LDO may be

⁵ New.

decided under the regulations in effect when the application was determined to be complete, or may be reviewed and decided under this LDO at the request of the applicant. Applications shall not be processed under a combination of prior regulations and this LDO.

1.5.4 Violations Continue

- A. Any violation of the previous ordinances and regulations will continue to be a violation under this LDO and will be subject to penalties and enforcement under §1.7, *Enforcement and Penalties*, unless the use, development, construction, or other activity complies with the provisions of this LDO.
- B. The enactment of this Chapter shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of a previously existing ordinance occurring before the effective date of this LDO.

1.6 Nonconformities and Compliant Structures and Uses

COMMENTARY

Nonconformities are often long-standing uses and structures that cause no major land-use impacts, and so many communities have adopted less-stringent rules regarding their continued operation, and allow limited expansion. Based on discussions with staff, this section proposes a less-restrictive approach to the topic from what appears currently in Chapter 144-2.3, while still maintaining some measures that allow for managing nonconformities that cause nuisance or negative impact.

This section also creates the new status of "compliant" structures and uses. The intent of this classification is to provide greater flexibility than the more restrictive classification of "nonconforming" and allow the continuation, expansion, enlargement, or reconstruction of existing structures and uses that do not comply with all the applicable provisions of this LDO.

1.6.1 Purpose

- A. This section regulates land uses, buildings, structures, lots, and site features that were legally established and have remained in continuous use without being abandoned (as defined in §1.6.5D, *Abandonment*) from the time of their inception, but that do not conform with one or more requirements of this LDO as of its effective date or due to later amendments, or that have otherwise been rendered nonconforming due to circumstances that were not self-created. All such situations are collectively referred to in this LDO as "nonconformities."
- B. While nonconformities may continue, the provisions of this section aim to bring about compliance with this LDO when there are changes to the use or property over time, such that the eventual elimination of nonconformities helps to achieve the goals of this LDO and the Comprehensive Plan. This section also is intended to recognize the variety of practical issues in bringing nonconforming situations into compliance and give the City discretion to balance competing demands.
- C. This section established the classification of "compliant" uses and structures. These are certain uses and structural features that are nonconforming as a result of adoption or amendment of this LDO; however, in recognition of the benign nature of some nonconformities, the "compliant" designation subjects such uses and structures to less restrictive standards than if they were designated "nonconforming."

1.6.2 Regulations Applicable to All Nonconformities

A. Continuation of Nonconformities

Any nonconformity resulting from the initial adoption or future amendment of this LDO may be continued or maintained only in accordance with the terms of this section, and may ultimately be subject to amortization, if so required by the Board of Adjustment adjudicating a Special Exception or as the result of a Determination of Nonconforming Status. See §8.6, *Zoning: Flexibility and Relief Procedures*.

B. Determination of Nonconforming Status

The burden of documentation that establishes any nonconformity as a legal nonconformity shall, in all cases, primarily be the responsibility of the property owner, with determination of the status decided by Planning and Development Services Department staff, as described in §8.6.2.

C. Authority to Continue

1. Nonconformities may continue to be used and occupied, subject to the regulations regarding maintenance of premises and conditions of operations set forth in this LDO, unless or until the nonconformity is abandoned, as described in §1.6.5D, *Abandonment*.
2. The right to continue nonconforming uses shall be subject to regulations prohibiting the creation of a nuisance and shall terminate when inappropriate use of the premises produces a condition that constitutes a nuisance. Nonconformities shall be subject to such regulations as the Board of Adjustment deems reasonable in the effort to protect adjacent property from nuisance, up to and including amortization of the nonconformity, and shall further be subject to the specific nonconformity regulations in this LDO.⁷
3. A nonconformity shall lose its legal nonconforming status when a use, structure, or site improvement modifies a nonconformity without being lawfully authorized in accordance with the provisions of this LDO. Such use and/or structure shall therefore cease all operations until such time that the required plans and/or permits are approved.

D. Changes in Ownership, Tenancy, or Management

Changes in ownership, tenancy, or management of property (that do not include changes in occupancy or operation) with an existing nonconformity may occur, but such nonconformities shall continue to be subject to the standards of this section.

E. Maintenance and Repair

Minor repairs and maintenance of nonconformities are allowed and encouraged, provided that appropriate permits are obtained, and that the repairs and maintenance do not increase the degree of nonconformity. Minor repairs and maintenance include the following:

1. Repairs necessary to maintain and to correct any damage or deterioration to the structural soundness of, or the exterior or interior appearance of, a structure

⁷ Legal definition of nuisance has been added.

without expanding the height or footprint of the structure, unless compliant with this LDO;

2. Maintenance of land to protect against and mitigate health and environmental hazards;
3. Repairs that are required to remedy unsafe conditions; and
4. Repairs necessary to comply with current building code requirements.

F. Compliance to the Maximum Extent Practicable

Where compliance with the requirements of this LDO is precluded by a lack of sufficient developable area due to the size and disposition of the lot, the layout of existing development, or the presence of aquifer recharge areas, significant wetlands, floodplains, watercourses, hazard areas, or other significant environmental constraints, the applicant shall comply with the requirements of this section to the maximum extent practicable, as determined by the Board of Adjustment, either through the variance or special exception process. See §8.6.4 and §8.6.5.

G. Nonconformity Due to Outside Action

When government action creates noncompliance of a lawful existing use, structure, lot, or site feature, any such uses, structures, lots, or site features shall be deemed lawful despite any deficiency that results from the government action.

H. Elimination of Nonconformity

If the adoption of an updated ordinance revises restrictions so that an existing nonconforming lot, use, or structure comes into compliance with this LDO, the adoption shall have the effect of eliminating nonconforming status, rendering the use or structure conforming.

1.6.3 Nonconforming Lots⁸

A nonconforming lot is permitted any use allowed in the zoning district where it is located, provided construction on the lot meets the applicable standards of the district, along with any other applicable requirements in this LDO.

1.6.4 Nonconforming Buildings and Structures⁹**COMMENTARY**

In alignment with the general trend to take a less restrictive approach to nonconformities that cause no harm or nuisance to the surrounding properties or the community, this section proposes more permissive regulations, such as allowing building expansions that do not increase nonconformities.

The section carries forward the reconstruction allowance in the event of damage or destruction. A 75 percent replacement value threshold is higher than the 50 percent threshold found in many communities.

Any nonconforming building or structure may be occupied and maintained subject to the following standards:¹⁰

⁸ New. Nonconforming lots are not covered in 144-2.3.

⁹ This subsection does not carry forward 144-2.3.a.2.

¹⁰ Replaces 144-2.3.a.1.

A. Enlargement or Alteration

1. The nonconforming structure may not be enlarged or altered in a way that increases its nonconformity. However, the structure may be enlarged or altered if the construction does not increase the nonconformity.¹¹
2. Expansion of the gross floor area of a nonconforming structure, up to a maximum of 30 percent, may be approved by the Board of Adjustment as a special exception request, as described in §8.6.4, provided that such expansion does not decrease any existing setback and does not encroach onto adjacent property, and such expansion will bring the structure closer into compliance with this chapter, or if it will otherwise improve or enhance public health, safety or welfare.
3. In any case except destruction or damage by natural disaster as described below in provision C of this subsection, if a nonconforming building or structure is removed to be replaced or rebuilt, the replacement building or structure shall conform to all applicable regulations of the zoning district in which it is located and other applicable regulations of this LDO.

B. Relocation of Structure

A nonconforming structure may be moved to any other location on the lot where it is located if the move results in the structure being in compliance with the requirements of this LDO.¹²

C. Damage or Destruction

In the event a nonconforming building or structure is damaged or partially destroyed by fire, flood, wind, explosion, earthquake, or other calamity or act of God:

1. In the Light (LI) or Heavy (HI) Industrial districts:
 - a. A nonconforming one- to four-family dwelling in existence on or before August 26, 2019, may be repaired, altered including additions, and/or reconstructed if damaged or destroyed. The new structure shall comply with the standards of the Mixed Residential (RMX) district.¹³
 - b. A nonconforming multi-family development in existence on or before August 26, 2019, may be repaired, altered including additions, and/or reconstructed if damaged or destroyed. The new structure shall comply with the standards of the Large-Scale Multi-Family (RMF3) district and may only reconstruct the same or fewer number of dwelling units that existed in the building prior to the damage or destruction.¹⁴
2. In all other districts:
 - a. A nonconforming building or structure shall not be restored or replaced if the expense to do so is equal to or exceeds 75 percent of the replacement cost of the building or structure at the time such damage occurred.
 - b. If the replacement cost is equal to or exceeds 75 percent of the replacement cost at the time of damage, the new building or structure shall conform to the

¹¹ Replaces 144-2-3.a.3.

¹² Replaces 144-2-3.a.4.

¹³ 144-2-3.a.6, with edits including updates to reference new zoning district classifications.

¹⁴ 144-2-3.a.7, with edits including updates to reference new zoning district classifications.

regulations of the district in which it is located, and all other applicable standards of this LDO.

- c. The Board of Adjustment may authorize a special exception request, as described in §8.6.4, for reconstruction of a completely destroyed structure, and re-occupancy of a nonconforming structure, or a structure containing a nonconforming use, and/or the restoration of a building site that is nonconforming as to development standards (including, but not limited to, parking arrangement, landscaping, etc.), when a structure has been damaged by fire, flood, or other calamity to the extent of more than 75 percent of the replacement cost of the building or structure at the time of such damage.
- d. Restoration or reconstruction of any partially destroyed or damaged building or structure shall commence within 12 months of the date of partial destruction, and shall be diligently pursued in accordance with the adopted Building Codes until completion.¹⁵

D. Loss of Right to Operate Nonconforming Structure¹⁶

The right to operate and maintain any nonconforming structure shall terminate and cease to exist whenever the nonconforming structure fails to meet the standards and requirements of any applicable ordinance of the City, and the cost of bringing the structure into lawful compliance with the applicable ordinance(s) exceeds 75 percent of the replacement cost of the structure on the date that the Building Official determines the structure fails to meet applicable standards.

E. Determination of Replacement Cost

In determining the replacement cost of any nonconforming structure, the cost of the land or any factors other than the nonconforming structure itself including foundation shall not be included.

1.6.5 Nonconforming Uses**COMMENTARY**

This draft section similarly takes a more permissive approach to regulating nonconforming uses. Provision C proposes allowing for re-establishment of a use if its building is damaged or destroyed. It is written using the same 75% replacement cost threshold that is used for building replacement; however, another option allowing greater discretion could be special use approval, regardless of extent of damage.

Any nonconforming use may continue operation subject to the following standards:

A. Limits on Expansion of Nonconforming Use¹⁷

- 1. A nonconforming use may be enlarged, increased, or extended to occupy up to 30 percent more area of the structure in which it is located, provided there is no external change to the structure, and the expanded use complies with all other applicable requirements in this LDO, including landscaping, and buffering.
- 2. If the expansion of the nonconforming use requires enlarging or adding on to the structure in which the use is located, the expansion request shall be reviewed and

¹⁵ 144-2.3.a.5, with edits.

¹⁶ These changes replace use of the word "substandard," in an effort to provide greater clarity regarding what is substandard, or how a structure comes to be deemed substandard.

¹⁷ Replaces 144-2.3.c.1.

may be approved by the Board of Adjustment as a special exception, as described in §8.6.4.

3. If the nonconforming use does not occupy a structure, it shall not be increased in intensity, or expanded to occupy 30 percent or more land area, unless reviewed and approved by the Board of Adjustment as a special exception, as described in §8.6.4.

B. Change of Use

1. A nonconforming use may be changed to any use allowed in the zoning district where it is located. Once a conforming use replaces a nonconforming use, the use may not revert to the previous legal nonconforming use.
2. A nonconforming use shall not be changed to another nonconforming use, unless approved by the Board of Adjustment as a special exception, as described in §8.6.4.

C. Damage to Structure Where Nonconforming Use Operates¹⁹

If a structure where a nonconforming use operates is damaged to the extent of:

1. Less than 75 percent of its replacement cost at the time it is damaged, the structure may be repaired and the nonconforming use may be re-established in the same location, provided that a building permit shall be applied for within 12 months of the date of damage.
2. More than 75 percent of its replacement cost at the time it is damaged, the nonconforming use shall require approval of a special exception, per §8.6.4, to be re-established at the same location.

D. Abandonment

A nonconforming use that has been abandoned or discontinued shall not later be resumed or reinstated as a nonconforming use, unless approved by the Board of Adjustment as a special exception, as described in §8.6.4. A nonconforming use shall be considered abandoned when:

1. A structure with a nonconforming use becomes vacant and remains unoccupied or out of use for a continuous period of one year;
2. The characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within one year; or
3. A nonconforming use has been replaced by a conforming use.

1.6.6 Nonconforming Site Features²¹**COMMENTARY**

Communities vary in the extent to which they require nonconforming site features to come into compliance when new development is proposed on a site. This draft proposes full compliance for such features only for larger projects, or those that are noncompliant over the aquifer recharge zone.

¹⁹ New.

²¹ New.

A. Applicability

1. For purposes of this subsection, the term "nonconforming site feature" includes, but is not limited to any sign structure, driveway, required off-street loading area, landscaping, buffer or screening area, or exterior lighting element that lawfully existed in accordance with regulations in place prior to the effective date of this LDO. Site features required by this LDO that do not exist after the Effective Date are also considered nonconforming site features.
2. A nonconforming site feature may continue to exist even though it does not conform to current applicable standards of this LDO, subject to the requirements of this subsection.
3. No action shall be taken that increases the degree of the nonconformity of a site feature.

B. Compliance Required upon Expansion or Reconstruction

Prior to the issuance of a Certificate of Occupancy, nonconforming site features shall be upgraded to comply with this LDO's applicable standards for such features if any of the following development activities are proposed for the site containing the nonconforming site feature:

1. An increase in the total square footage of the vehicular use area, including parking, loading, circulation, and driveway areas;
2. A structural addition that increases the combined total gross floor area of all existing enclosed structures by more than 500 square feet or 20 percent, whichever is less;
3. Building elevation changes involving 50 percent or more of the exterior walls of an enclosed structure on the property within a two-year period, excluding minor cosmetic maintenance such as painting or replacing lighting fixtures;
4. The demolition of a building containing a principal use or the demolition of a suite or unit in a multitenant building;
5. Any request for a zoning map amendment, regardless of whether the nonconforming site feature is proposed to be changed; and/or
6. Expansion of outdoor operations, storage, or display areas on a site containing nonconforming buffers or screening that increases the gross square footage of such areas by a certain percentage shall require upgrading to offset a corresponding percentage of the buffer or screening nonconformity, as determined by the Planning and Development Services Department.

C. Exceptions**1. Nonconforming Sign Structures**

On a site with a nonconforming sign structure, any construction or expansion project for which a building permit is required shall trigger the requirement to bring the sign structure into compliance with the requirements of this LDO. This requirement applies regardless of whether the proposed construction or expansion would otherwise impact existing signage on the site or not.

2. Expansion or Reconstruction in the Aquifer Recharge Zone

Any construction or expansion project for which a building permit is required in the Aquifer Recharge Zone shall trigger requirements to bring all nonconforming site

features into compliance with the requirements of this LDO, in addition to compliance with any specific protection measures that apply to the construction site.

1.6.7 Compliant Uses and Structures

COMMENTARY

This subsection proposes a new designation of “compliant” uses and structures, which would be subject to less strict regulations than if they were “nonconforming.” While nonconforming uses would require the property owner to register the use with the City, this is not a requirement for compliant structures. The classification of a compliant building or structure would only be determined and applied if the property came in for a development permit, reducing the draw on staff resources.

Given that a new state law requires notification of nonconforming status, this new legal classification may ease some opposition to the new LDO while still allowing it to pursue the goals and objectives of Envision New Braunfels for new construction. Such classification is also intended to help avoid bank and financing issues with the sale or improvement of properties that have been designated as nonconforming.

A. Compliant Structures

1. A compliant structure or building is one that lawfully complied with all standards of this LDO prior to its effective date, but which by reason of such adoption, revision, or amendment, no longer complies with one or more of the following LDO standards:

a. Lot and Building Standards

As described in Article 2, Zoning Districts:

- i. Minimum lot size;
- ii. Building setback;
- iii. Required build-to line;
- iv. Maximum height; or
- v. Lot coverage.

b. Design or Development Standards

As described in Article 4, Development Standards, or Article 5, Subdivision Standards:

- i. Location of surface parking for vehicles;
- ii. Residential adjacency;
- iii. Street-level transparency;
- iv. Upper-story stepback;
- v. Pedestrian access and connectivity; or
- vi. Open space requirements.

2. A building or structure that does not comply with any other applicable development standard not listed above is considered a conforming structure with nonconforming site features. See §1.6.6, *Nonconforming Site Features*.
3. A compliant building or structure may operate in the same manner and subject to all the same regulations as a conforming structure, unless and until the property owner initiates any rezoning request, as described in §8.3 *Zoning: Ordinance Amendments*, or until such time as the structure is removed or replaced.

B. Compliant Uses

COMMENTARY

While the trigger for becoming a noncompliant structure is relatively straightforward, the trigger for becoming a compliant use needs more thought. This draft proposes noncompliance with use-specific standards as the trigger – but are there other triggers to add?

1. A compliant use is one that was properly permitted and allowed in the zoning district where it is located prior to the effective date of this LDO, but which by reason of such adoption, is no longer allowed.
2. Compliant uses may continue to exist and operate in the same manner and subject to the same standards and regulations as any allowed/conforming use, until such time as the use is abandoned.
3. Compliant uses may be registered with the city in the same manner as nonconforming uses. Registration ensures the city and the property owner are aware of the compliant nature of the use to facilitate more efficient permitting and to prevent inaccurate code compliance actions.
4. Special Compliant Use Provisions
 - a. In the Light (LI) or Heavy (HI) Industrial districts a one- to four-family dwelling or multi-family development permitted on or before August 26, 2019, may be continued, repaired, altered, and/or expanded in compliance with all applicable standards of this LDO, provided the use has not been abandoned.
 - b. In the Light (LI) or Heavy (HI) Industrial districts a one- to four-family dwelling or multi-family development permitted on or before August 26, 2019, may be reconstructed if damaged or destroyed, in compliance with all applicable standards of this LDO, provided the use has not been abandoned.

1.6.8 Reserved Uses

COMMENTARY

Similar to the new “compliant” designation, a “reserved use” is intended as a more flexible tool to handle some situations that might otherwise be nonconforming. The “reserved” term preserves the property rights of a property owner who would be impacted by a change to allowed/prohibited uses in the applicable zoning district. The opportunity to declare and implement a reserved use is time-limited, so that the uses and districts, as proposed by the updated ordinance, can be fully implemented over time, without the negative impacts of abrupt changes in permissions, while at the same time, avoiding the creation of nonconformities.

This section has been drafted to allow a property owner to register one reserved use. Alternative approaches might allow the registration of several reserved uses, or to preserve the right to all disallowed uses for a specified extent of time (e.g., three years). Another approach could also reserve the right to develop any disallowed use without the need for a property owner to register it, again during a specified timeframe. A final approach for how to handle reserved uses will be determined based on public feedback on the various options.

Though this concept appears here for purposes of initial review, in the consolidated draft, it might be relocated to Article 3: Land Uses.

A. Creation of Reserved Uses

1. A reserved use is one that historically was allowed by right in a given zoning district but, by virtue of the adoption of this LDO, is no longer an allowed use in that zoning district and, as of the effective date of this LDO, had not been established on the subject property.
2. For three years following the effective date of this LDO, a land use registered in the manner prescribed in this section shall be referred to as a “reserved use.” Such registration shall have the effect of preserving the property owner’s right to establish

the reserved use by-right on their property. In the event of a change of ownership, the right to develop the reserved use shall run with the land, until such time as the reserved use expires pursuant to provision D below in this subsection.

B. Registration of Reserved Uses

1. Registration of a reserved use shall be accomplished by submission of a written notice to the Planning and Development Services Department. This notice shall contain at minimum:
 - a. The legal description of the property;
 - b. The land use that is to be reserved for possible future development;
 - c. Proof of ownership of the subject property by the person submitting the reserve notice.
2. Upon the third anniversary of the effective date of this LDO, the right of a property owner to register a reserved use shall expire. Subsequently, permitted uses on the property shall only be those listed in Table X-X: *Summary Table of Allowed Uses*.
3. A use that was not permitted by right on the property by the effective date of this LDO may not be registered as a reserve use, though may be permitted pursuant to a special use approval or other rezoning. See §8.3.4.

C. Development of a Reserved Use

A reserved use, once established on a property, shall be deemed a compliant use subject to §1.6.7, *Compliant Uses and Structures*. The use shall remain compliant until such time as it permanently ceases operation, or is abandoned, as defined in §1.6.5D, *Abandonment*. Thereafter, permitted uses on the property shall only be those listed in Table X-X: *Summary Table of Allowed Uses*.

D. Expiration of a Reserved Use

Construction or implementation of a reserved use must be undertaken in a timely manner. If construction is not underway or a building permit is not secured within 5 years after the registration of the reserved use, it shall expire. A single, one-year extension may be granted by the Planning and Development Services Department, according to the procedure in §8.2.6F. Any reserved use on a property shall immediately expire if the property owner rezones their property.

1.7 Enforcement and Penalties

1.7.1 Responsibility for Enforcement²⁴

The Planning and Development Services Department shall administer and enforce this LDO, including the receipt of applications, inspection of premises, and issuance of building permits and certificates of occupancy. No building permit or certificate of occupancy shall be issued except in compliance with the provisions of this LDO, and with all applicable requirements of other pertinent adopted codes and ordinances.

²⁴ Sec. 144-2.4.

1.7.2 Violations²⁵

A. Activities Constituting a Violation

Any person who violates any provision of this LDO or assists in the commission of any violation shall be guilty of a misdemeanor and shall be subject to a fine as provided in §1.7.3, *Penalties and Remedies*. Each of the following activities constitutes a violation of this LDO:

1. Activity Inconsistent with LDO

Any construction, reconstruction, remodeling, alteration, maintenance, expansion, movement, or use of any land, building, structure, or sign that is inconsistent with this LDO.

2. Activity Inconsistent with a Permit or Approval

Any development, use, or other activity that is in any way inconsistent with the terms or conditions of any permit or approval required to engage in such activity under this LDO.

3. Illustrative Examples of Violations

Example violations of this LDO include but are not limited to:

- a. Increase the density or intensity of any use or structure except in accordance with the requirements of this LDO;
- b. Reduce or diminish the lot area, setbacks, buffers, landscaping, trees, open space, or other standards below the minimum requirements established by this LDO;
- c. Failure to install, improve, or maintain any public or private improvements required by the terms of any permit or approval;
- d. Failure to abide by conditions of any approval or agreements executed in association with an approval;
- e. Failure to comply with applicable requirements for a certificate of occupancy or building permit; or
- f. Failure to obtain any required permit.

B. Continuing Violations

Any violation of this LDO shall be considered a separate offense for each day during any portion of which any violation of this LDO is continued past the date of the issuance of notice of violation, with each violation punishable in accordance with §1.7.3, *Penalties and Remedies*.

C. Prior Violations

Violations of the prior development regulations are continued in effect and are not excused by the adoption of this LDO. If a development or activity in violation of the prior development regulations fully complies with this LDO, that development or activity shall no longer be deemed a violation.

D. Persons Liable

The owner, tenant, or occupant of any building or land, or any part thereof, and any architect, builder, contractor, agent, or other person who participates in, assists, directs,

²⁵ New.

creates, or maintains any situation that is contrary to the requirements of this LDO or a permit or approval issued pursuant to this LDO, may be held responsible for the violation and be subject to the penalties and remedies provided in this section.

1.7.3 Penalties and Remedies

A. Fines

1. Any person, firm, or corporation violating any provision of this LDO shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not less than \$500.00 and not more than \$2,000.00. The maximum applicable fine may be assessed every day or portion of a day during which each separate violation continues.
2. ople

B. Remedies²⁷

The City may use any enforcement remedies available in compliance with state law to gain compliance with the standards of this LDO. Remedies include, but are not limited to:

1. Denial, withholding, or revocation of permits or other entitlements;
2. Issuing a stop-work order;
3. Ordering repair, removal, replacement, or alteration;
4. Assessment of fines;
5. Ordering discontinuance of those features or uses found to be out of compliance with this LDO;
6. Refusal to process subdivision or development applications for sites in violation of this LDO until such time as all violations have been resolved; or
7. Turning off the property's electricity.

C. Court Action or Proceedings

1. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used, in violation of the general law or of the terms of this LDO, the City, in addition to imposing the penalty provided, may institute any appropriate action or proceedings in court to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate such violation; or to prevent the occupancy of such building, structure or land; to prevent the illegal act, conduct, business or use, in or about such land.
2. The definition of any violation of the terms of this chapter as a misdemeanor shall not preclude the city from invoking the civil remedies given it by law in such cases, but same shall be cumulative of and in addition to the penalties prescribed for such violation.

²⁷ New.

1.7.4 Building Permit²⁸

No person shall erect or construct or proceed with the erection or construction of any building or structure, nor add to, enlarge, move, improve, alter, repair, convert, extend, or demolish any building or structure or cause the same to be done in any zoning district in the City without first applying for and obtaining a building permit from the Building Official. All applications for such permits shall be in accordance with the building code for the City, and the requirements of this LDO, unless relief from LDO requirements is granted formal exception by the Board of Adjustment at a public hearing. No building permit or certificate of occupancy shall be issued for any building where construction, addition, alteration or use thereof would be in violation of any of the provisions of this LDO.

1.7.5 Certificate of Occupancy²⁹

A. Compliance

No vacant land shall be occupied or used except for agricultural purposes unless otherwise authorized by this LDO. No building erected or structurally altered after the effective date of this LDO shall be used or occupied until a certificate of occupancy has been issued by the Building Official stating that the building or proposed use thereof complies with the provisions of this LDO and all other existing building and sanitation ordinances.

B. Nonconforming Use³⁰

No nonconforming use shall be maintained, renewed, changed, or extended without a certificate of occupancy having first been issued by the Building Official.

1.8 Severability

Should any article, section, subsection, provision, paragraph, clause, word, or regulation be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this LDO as a whole, or any part thereof, other than the part declared to be unconstitutional or invalid.

²⁸ 144-2.4-2.

²⁹ 144-2.4-4.

³⁰ Would this be better relocated to the section on nonconforming uses? It seems easy to overlook here.

Article 2: Zoning Districts

[Included in Installment 1]

Article 3: Land Uses

[Included in Installment 1]

Article 4: Development Standards

[Included in Installment 2]

Article 5: Subdivision Standards

[Included in Installment 2]

Article 6: Historic Preservation

[To be included in Installment 4.]

Article 7: Signs

[To be included in Installment 4.]

Article 8: Administration & Procedures

COMMENTARY

This draft article includes the following changes, as recommended in the Assessment Report:

- Creation of a new, consolidated procedures section, which includes both a Summary Table that outlines review authority and public notice requirements, and Common Review Procedures for both development applications and subdivision requests.
- The Common Review Procedures include new information on postponements, and expiration and extension of approvals.
- Elaboration of individual application review procedures, with information specific to the given procedure, and more detailed than what is included in the Common Review Procedures, is included.
- Creation of new procedures for determination of nonconforming status, demolition of a historic landmark, and minor modification requests.

New subdivision review procedures that reflect updates to state law, and rely on administrative review for nearly all plat approvals, will accompany staff updates to subdivision standards (currently underway).

- Inclusion of a Minor Modification procedure for consideration, with the understanding that the existing Special Exception procedure may instead be adjusted to serve this purpose.

8.1 Summary Table of Review Procedures

Table 8-1: Summary Table of Review Procedures

		Decision-making bodies			Decision types						
		PDSD = Planning and Development Services Department HLC = Historic Landmark Commission B of A = Board of Adjustment			R = Review and/or Recommendation P = Decision at public hearing D = Administrative decision A = Decision-making body for appeals						
Application Type	Section	Public Notice Requirements			Review and Decision						
		Mailed	Published	Posted Sign	PDSD/Staff	HLC	B of A	Planning Commission	City Council		
ZONING PROCEDURES											
Ordinance Amendments											
LDO Text Amendment	§8.3.1		✓		R			R		P	
Rezoning ⁽¹⁾	§8.3.2	✓	✓	✓	R			R		P	
Development Review Procedures											
Site Plan Review	§8.4.1				D		A				

Table 8-1: Summary Table of Review Procedures

Decision-making bodies			Decision types							
PDSD = Planning and Development Services Department			R = Review and/or Recommendation							
HLC = Historic Landmark Commission			P = Decision at public hearing							
B of A = Board of Adjustment			D = Administrative decision							
			A = Decision-making body for appeals							
Application Type			Public Notice Requirements			Review and Decision				
Section			Mailed	Published	Posted Sign	PDSD/Staff	HLC	B of A	Planning Commission	City Council
Zoning Compliance	§8.4.2					D		A		
Historic Preservation Procedures										
Certificate of Alteration	§8.5.1					R	P			A
Designation of Historic District	§8.5.2	✓	✓	✓		R	R		R	P
Designation of Historic Landmark	§8.5.3	✓	✓	✓		R	R		R	P
Demolition of Historic Landmark	§8.5.4						P			A
Economic Hardship Procedure	§8.5.5						P			A
Flexibility and Relief Procedures										
Appeals	§8.6.1					D		A / P		
Determination of Nonconforming Status	§8.6.2	✓				D		A		
Minor Modification	§8.6.3					D				
Special Exception	§8.6.4	✓		✓		R		P		
Variance	§8.6.5	✓		✓		R		P		
Signs Procedures										
Alternative Sign Plan	§8.7.1					R		P		
Sign Variance ³¹	§8.7.2	✓		✓		R		P		

³¹ This is a change from 106-8.a, which cites the Construction Board of Appeal as the decision-making authority for this procedure.

Table 8-1: Summary Table of Review Procedures

				Decision types							
				R = Review and/or Recommendation		P = Decision at public hearing		D = Administrative decision		A = Decision-making body for appeals	
				Mailed	Published	Posted Sign	PDS/Staff	HLC	B of A	Planning Commission	City Council
Application Type	Section			Public Notice Requirements		Review and Decision					
SUBDIVISION PROCEDURES											
Master Development Plan	§8.9.1						D			A	
Preliminary Plat	§8.9.2						D			A	
Minor Plat	§8.9.3						D			A	
Final Plat	§8.9.4						D			A	
Amending Plat	§8.9.5						D			A	
Lot Combination Plat	§8.9.6										
Vacating Plat	§8.9.7						D			A	
Development Plat	§8.9.8						D			A	
Residential Replat	§8.9.9	✓	✓				R			P	A
Non-Residential Replat	§8.9.10						D			A	
Waiver	§8.9.11						R			P	A

[1] Planned Development and Special Use are both types of rezoning, and follow the same notification requirements and approval procedure. See §8.3.3 and §8.3.4.

8.2 Zoning Common Review Procedures

This section describes the standard review procedures required for all applications unless otherwise stated in this LDO. Generally, the review procedures include the steps shown below; however, not every application requires every step. Application-specific procedures are described in §§8.2 through 8.7.

8.2.1 Pre-Development Meeting

A. Purpose

The pre-development meeting provides an opportunity to meet with staff from various departments with applicable regulations and review authority over development applications. The conference allows potential applicants to discuss the proposed development plans, review procedures, submittal requirements, any impact to public facilities, infrastructure needs, and mitigation measures, if necessary.

B. When Required

1. A pre-development meeting is required for the following application types:
 - a. Special use (except for short-term rental);
 - b. Planned development;
 - c. Special district (e.g., MUD, PID, WID);
 - d. Any application that involves the submission of the Level 2 or higher Traffic Impact Analysis; or
 - e. Any application that involves the submission and consideration of a revision to flood boundary maps.
2. For any other application type, a pre-development meeting is optional but encouraged.
3. There is no fee for a pre-development meeting.

C. Procedure

1. Request

The applicant shall submit an online request for a pre-development meeting to the City.

2. Scheduling

The City will consult with the applicant to schedule a pre-development meeting, and notify appropriate staff of the time and location of the conference. Depending on the complexity of the project, the meeting can be scheduled for 30 minutes or one hour.

3. Information Submission for Required Pre-Development Meeting

At least five days prior to the scheduled pre-development meeting, the applicant shall submit the following materials at a minimum:

- a. A written description of the proposed project;
- b. Conceptual drawings showing the location, layout, and primary elements of the proposal;
- c. Uses that are proposed, and the location of proposed uses, structures, and public improvements;
- d. Whether any variance or other request for flexibility related to the proposed project is anticipated;

- e. Any questions for staff regarding the project or applicable regulations.

4. Meeting Discussions

City staff attending the pre-development meeting shall identify concerns or factors the applicant should consider related to the scope, features, and potential impacts of the project as they relate to this LDO, adopted building code, engineering standards, public safety, or other policies or regulations enforced by the City and/or other public entities. City staff shall also indicate to the extent possible what approval procedures are required for the proposed project, and if applications associated with such procedures may be processed concurrently.

D. Effect

Discussions that occur and information that is conveyed at a pre-development meeting are preliminary and advisory, and shall not be binding upon the meeting participants. Discussion of potential conditions to mitigate impacts do not reflect actions by the decision-making body until and unless a decision-making body takes formal action to attach that condition to a development approval.

E. Expiration

If an application is not submitted within 180 days following a required pre-development meeting, a new pre-development meeting shall be necessary prior to application submission. There is no expiration for optional pre-development meetings.

8.2.2 Application Submission**A. Authority to Submit an Application**

1. The following entities are authorized to initiate or submit a development application:
 - a. The property owner;
 - b. A contract purchaser, who may be an individual, firm, government entity, association, syndicate, partnership, or corporation, with specific authorization in writing by the property owner;
 - c. A person or entity specifically authorized in writing by the property owner; and
 - d. The City Council.
2. If there are multiple owners, or other people authorized to submit the application, a single representative for all such people shall sign the application or a letter or document consenting to the application.

B. Standards for Acceptance

1. When a pre-development meeting is required, rezoning application submission cannot be accepted until the pre-development meeting is complete.
2. Applications shall be submitted using the appropriate application form established by the City and accompanied by all required supporting materials.
3. When submitted, applications shall be accompanied by all required fees, as described in Appendix D of the City's Code of Ordinances. The fee schedule shall be established by the City Council, subject to periodic review and updating.
4. It is the responsibility of the applicant to demonstrate that the application meets all applicable standards and regulations set forth in the City's Code of Ordinances.

5. Simultaneous processing of multiple applications for the same project is permissible. Applications to be considered concurrently shall include all required materials for all application types at one time. Application documentation and maps or plans may be combined, if all requirements in this section are satisfied and all required information is provided.
6. All parcels of land included on a single application shall be contiguous.

C. Determination of Application Completeness

Planning and Development Services Department staff shall conduct a "Completeness Check" to determine whether the application is complete or incomplete.

1. To be deemed complete an application must include sufficient information and all required materials to be processed, including the required fee. A determination that an application is complete or incomplete does not constitute a determination as to whether the application complies with all applicable standards for approval of the application.
2. A complete application shall be processed according to the procedures in this Chapter.
3. An applicant shall be notified within five business days of the date of submission if an application is incomplete.
4. If all deficiencies in an incomplete application have not been remedied within 45 days of the date of original submission, the application shall expire.
5. An applicant wishing to resubmit an application that expired shall be required to re-initiate the application process from the beginning, including a new pre-development meeting, if required.

D. Resubmission of Applications Previously Denied³²

See §8.2.6D, *Effect of Denial*.

8.2.3 Application Analysis**A. Referral to Staff and Review Agencies**

The Planning and Development Services Department shall distribute the complete application to appropriate staff, and pertinent reviewing agencies as appropriate.

B. Staff Review and Application Revisions

1. Staff shall review the application and submit questions, recommendations, and comments to the applicant in a form established by the Planning and Development Services Department.
2. If requested by Planning and Development Services Department staff, the applicant shall attend a meeting to discuss resolutions for necessary revisions to their pending application.

³² This originally was limited to denials by City Council. However, pursuant to discussions with staff, that limitation has been removed so that this would apply to denial as the final action by any decision-making body.

3. The applicant may request a meeting with Planning and Development Services Department staff for assistance in resolving questions regarding application revisions required by staff.
4. The applicant shall make necessary revisions prior to resubmitting their application. The application will not move forward for further review until the applicant has adequately responded to the City's questions, recommendations, and comments.

C. Applications Subject to Board/Commission/Council Review or Consideration**1. Agenda Memo**

If an application is subject to review by a Board, Commission, or City Council per Table 8-1: *Summary Table of Review Procedures*, staff shall prepare a written agenda memo. The agenda memo shall state whether or not the application complies with requirements of this LDO, other relevant Chapters of the City's Code of Ordinances, and applicable standards of the Transportation and Capital Improvements Department, and include relevant commentary on the application's conformance with the Comprehensive Plan, Strategic Plan, and other adopted plans and policies of the city.

2. Distribution and Availability of Application and Agenda Memo

The Planning and Development Services Department shall transmit a copy of the agenda memo to the applicant and the advisory and/or decision-making body, and shall make the agenda memo and related materials available for public review no later than 72 hours prior to the scheduled hearing where the application is to be heard by the Board, Commission, or City Council.

D. Withdrawal

A property owner or applicant may withdraw an application at any time, by writing to the Planning and Development Services Department; however, a property owner may not withdraw an application initiated by the City Council.

1. Refund of Fees

- a. The City may refund 75 percent of the application fees if the request for withdrawal is received within ten calendar days of the application being deemed complete by Planning and Development Services Department staff.
- b. No refund is possible for a withdrawal request received 11 or more calendar days after an application has been deemed complete by Planning and Development Services Department staff.

2. Resubmission of Application

- a. An application that is withdrawn before any public hearing on it has been held may be resubmitted at any time.
- b. An application that is withdrawn after a public hearing has been held on it may not be resubmitted for 180 days from the date of withdrawal.

8.2.4 Scheduling and Notice of Public Hearings**A. Scheduling**

1. Applications subject to a public hearing per Table 8-1: *Summary Table of Review Procedures*, shall be scheduled at either a regularly scheduled or special meeting of the appropriate decision-making body.

2. The public hearing shall be scheduled to allow sufficient time for staff analysis of the development application and preparation of an agenda memo, and to satisfy public notice requirements described in this section.

B. Required Public Notice**1. Notice Requirements**

- a. All applications required by this chapter that are subject to a public hearing requirement as indicated in Table 8-1: *Summary Table of Review Procedures* shall be preceded by public notice.
- b. Planning and Development Services Department staff shall be responsible for mailing, publishing, and posting notice as described below; however, the applicant shall bear all costs incurred in connection with giving notice of the public hearing, including costs for re-notification, in the event such is required.

2. Types of Notice**a. Published Newspaper Notice**

Newspaper notice shall be published in a newspaper of general circulation before the 15th day before the date of the scheduled public hearing and, if required, once more prior to the first reading before the City Council.

b. Mailed Written Notice

When required, written notice shall be:

- i. Sent via first-class mail before the tenth day before the scheduled public hearing.
- ii. Provided to all owners whose property is wholly or partially within 200 feet of the subject property.
 - a. Property owners shall be as listed in the most recent tax records.
 - b. The notification radius shall be measured from the outer boundary of the tract subject to the application for a distance extending outward for 200 feet from the boundary, and including all properties that are in whole or in part within the notification radius distance.
- iii. At minimum, mailed notice shall include the following information:
 - a. A description of the proposed project with the application type;
 - b. A location map or description of the location of the proposed project;
 - c. The date, time, and location of the hearing being noticed; and
 - d. Instructions on how the recipient may find further information on the item being noticed.

c. Posted Sign Notice

- i. Planning and Development Services Department staff or the applicant shall post at least one notification sign at least 15 days prior to the hearing date; additional signs may be posted by the City dependent upon the size and location of the subject property.
- ii. The applicant shall be responsible for ensuring that sign(s) remain posted and in legible condition from the time of posting until the time of the final public hearing.
- iii. Once posted, the location of required signs may be adjusted to provide reasonable visibility to the public.

- iv. If a posted sign has been removed, damaged, or destroyed by the elements or other cause, the applicant shall notify the Planning and Development Services Department immediately. The applicant shall bear the cost for a replacement sign.

d. Posted Agenda Notice

The agenda of applications scheduled for a Board of Adjustment, Historic Landmark Commission, Planning Commission, and/or City Council hearing shall be posted on the [City of New Braunfels web page](#) at least 72 hours prior to the scheduled public hearing.

C. Minor Defects in Notice Shall Not Invalidate Proceedings

Minor defects in any notice shall not invalidate the public hearing proceedings if a bona fide attempt has been made to comply with applicable notice requirements.

1. Failure to Receive Notice Shall Not Invalidate City Action

The failure of any person or entity to receive notice sent as set forth in this Chapter shall not constitute grounds to invalidate the actions of the city.

2. Failure in Posted Notice Shall Not Invalidate City Action

Once posted, if a sign is removed, falls down, or becomes illegible due to effects of the elements, this does not constitute a substantial defect in notice, and shall not be sufficient cause to invalidate public hearing proceedings.

D. Action to be Consistent With Notice

The decision-making body may take any action on the application that is consistent with the notice given, including approval of the application, conditional approval (if applicable) of the application, or denial of the application.

1. Minor Amendments that Do Not Require Renotification

Minor amendments to an application or previously approved site plan may be made without requiring resubmission of the entire application. Minor amendments to an application include:

- a. Fewer dwelling units;
- b. A decrease in proposed floor area, lot coverage, or impervious surface coverage;
- c. A reduction in the extent of land area involved in the development proposal; or
- d. A reduction in the extent of deviation from standards that is part of a variance or special exception request.

2. Major Amendments that Require Renotification

Major amendments to an application or previously approved site plan shall require renotification in the same manner as was originally provided. Major amendments to an application include an increase in the:

- a. Number of proposed dwelling units;
- b. Proposed floor area, lot coverage, or impervious surface coverage;
- c. Extent of land area involved in the development proposal;
- d. Extent of deviation from standards that is part of a variance or special exception request;
- e. Addition of an overlay or change to request a special zoning district instead of a base zoning district; or

f. Development intensity allowed in a zoning district, in the event that a more intensive zoning district is requested in the process of a rezoning. Table 8-2 shows levels of zoning intensity.

Table 8-2: Zoning District Intensity Table

Current District Name	Lesser Intensity District(s) Allowed ^[1]
Open Space, Agricultural, and Residential Districts	
PO – Parks and Open Space	
AG – Agricultural/Residential District	
R12 – Residential District	AG
R8 – Residential District	AG, R12
R6.6 – Residential District	AG, R12, R8
R5.5 – Residential District	AG, R12, R8, R6.6
R4 – Residential District	AG, R12, R8, R6.6, R5.5
R2.5 – Small Lot Residential District	AG, R12, R8, R6.6, R5.5, R4
RMX – Mixed Residential District	AG, R12, R8, R6.6, R5.5, R4, R2.5
RMF1 – Small-Scale Multi-Family District	AG, R12, R8, R6.6, R5.5, R4, R2.5, RMX
RMF2 – Medium-Scale Multi-Family District	AG, R12, R8, R6.6, R5.5, R4, R2.5, RMX, RMF-1
RMF3 – Large-Scale Multi-Family District	AG, R12, R8, R6.6, R5.5, R4, R2.5, RMX, RMF-1, RMF-2
RMH – Manufactured Home	
Mixed-Use Districts	
MXT – Traditional Neighborhood	
MXC – Mixed-Use Corridor	MXT
MXR – Mixed Use Regional	MXT, MXC
Non-Residential Districts	
CBD – Central Business District	CN – Neighborhood Commercial
CN – Neighborhood Commercial	
CG – General Commercial	CN, CBD
CR – Regional Commercial	CN, CBD, CG
RC – Resort Commercial	
LI – Light Industrial	CN, CBD, CG, CR
HI – Heavy Industrial	CN, CBD, CG, CR, LI
NOTES	
[2] Grey rows indicate there is no corresponding lesser intensity district that would not require renomination.	

3. Circumstances Not Listed

In the event of situations or circumstances not described in either provision 1 or 2 above in this subsection, or if an applicant disagrees with an interpretation and determination by the Planning and Development Services Department on whether an amendment is minor or major, the applicant may appeal to the Board of Adjustment.

8.2.5 Hearing, Review, and Decision

A. Applications with No Public Hearing

1. Administrative Decisions

If an application is subject to staff review and a final decision by the Planning and Development Services Department, staff shall make a decision based on the review standards applicable to the application type. The decision shall be in writing and shall clearly state reasons for a denial or for conditions of approval.

2. Finality of Decision

- a. For any application subject to administrative review and decision, the decision is immediately final.
- b. An applicant who disputes the validity of a staff-level decision or any condition attached thereto may file an appeal with the Board of Adjustment, as described in §8.2.6B and §8.6.1.
- c. While the request for relief is submitted to the Planning and Development Services Department for processing, the decision on the appeal is rendered not by higher-level planning staff, but by the Board of Adjustment.

B. Public Hearing and Decision

1. The application shall be subject to review, recommendation(s), hearing(s), and decision(s) as indicated in Table 8-1: *Summary Table of Review Procedures*.
2. The decision-making body listed in Table 8-1: *Summary Table of Review Procedures* shall have the authority to take final action.
3. Reviewing and decision-making bodies shall consider the project application, relevant supporting materials, the staff agenda memo, and recommendations from other reviewing bodies, along with any public comments or public testimony presented at the public hearing.
4. On the basis of the information in provision 3 above, and conformity with general and application-specific criteria for approval, the decision-making body may:
 - a. Approve the application request as submitted;
 - b. Approve the application request subject to conditions of approval (where applicable);
 - c. Deny the application request based on failure to comply with the requirements of this LDO or the applicable approval criteria;
 - d. The Board of Adjustment may deny an application on the basis of an applicant failing to demonstrate sufficient physical or topographical hardship; or
 - e. The City Council may deny an application on the basis of public testimony received at a hearing, or other considerations they deem relevant to the decision at issue.
5. The reviewing or decision-making body may also continue the hearing, or postpone the item. If a reviewing body postpones an item, mailed re-notification paid for by the applicant is required to inform recipients of the new public hearing date.
6. An applicant may request postponement of an item as described in §8.2.5D below.

C. Referrals

1. The Planning and Development Services Department may refer any application on which it is normally the final decision-making authority to the Planning Commission for a final decision.
2. The Planning Commission may refer any application, including an appeal, on which it is normally the final decision-making authority to the City Council for a final decision.
3. The Planning and Development Services Department shall inform the applicant of any decision to refer the application to a higher-level decision-making authority, and shall provide re-notification according to the original notice requirements for that application type, if any were required. The cost for re-notification shall be paid for by the applicant.
4. The referred application shall be scheduled for consideration by the Planning Commission or City Council following sufficient time to allow for information to be gathered and prepared for the meeting agenda.
5. After reviewing a referred application, the decision-making body shall make a final decision.

D. Postponements**1. Applicant Request to Postpone**

- a. Requests to postpone consideration of an application to a later date may be submitted by the property owner or applicant. If a postponement request is received:
 - i. **Prior to notice being mailed:**
 - a. Staff may adjust the hearing date to the applicant's request.
 - b. The requested date must be within 180 days of the date the postponement request was accepted.
 - c. If a postponed application does not move forward to scheduling within 180 days, the application will expire. Further consideration of the application would require re-initiation of the application process.
 - ii. **After notice has been mailed:**
 - a. The postponement request shall be considered at the noticed public hearing by the respective Board, Commission, or Council.
 - b. The postponement request may be approved or denied at the discretion of the Board, Council, or Commission.
 - c. The reschedule date must be within 60 days of the originally scheduled hearing.
 - d. If the applicant delays moving their application forward for longer than 60 days with no request to reschedule, the application shall be considered expired.
- b. Postponement requests initiated by an applicant are bound to a limit of two postponements. An applicant requesting more than two postponements shall be subject to a 180-day waiting period before being permitted to re-initiate the application process. Any such re-initiation is considered a new application, that must be accompanied by payment of all applicable application and notification fees.

- c. An applicant submitting an application that is not substantially similar to the one that was withdrawn is not subject to the 180-day waiting period, but shall be required to pay all applicable application and notification fees.
- 2. Advisory or Decision-Making Body Request to Postpone**
 - a. At their discretion, an advisory or decision-making body may vote to postpone an application during a public hearing.
 - b. When an application is postponed during a public hearing, renotification shall be required, unless the respective Board, Commission, or Council postpones the application to a date-certain (specific date).
 - c. If a new hearing date is not specified by motion, or if it does not occur within 60 calendar days between the postponement and the reschedule date, renotification shall be required, with the applicant to pay the cost of renotification.
 - d. If the applicant delays moving their application forward for longer than 60 days with no request to reschedule, the application shall be considered expired.

E. General Approval Criteria**1. Generally**

- a. Unless otherwise specified in this LDO, City review and decision-making bodies shall review all development applications submitted pursuant to this article for compliance with the general review criteria stated below.
- b. The application may also be subject to additional review criteria specific to the type of application, as set forth in §8.3 through §8.7. The specific review criteria control in case of a conflict with the general review criteria in this section.

2. Compliance with LDO and Other Applicable Plans and Regulations

The proposed use and development shall comply with:

- a. The Comprehensive Plan, the Strategic Plan, and where applicable, other adopted plans and city-wide studies.
- b. All applicable provisions of this LDO, unless otherwise exempt.
- c. All applicable provisions contained in other Chapters of the City's Code of Ordinances, and any other applicable City regulations.
- d. Any applicable federal or state regulations, or those of other relevant entities with jurisdiction over the property or the current or proposed use of the property.

3. Compliance with Prior Approvals

The proposed use and development shall be consistent with the terms and conditions of any prior land use, plan, or plat approval for all or part of the property that is in effect and not proposed to be changed. This includes consistency with any approved phasing plan for development and installation of public improvements and amenities.

F. Conditions of Approval

1. Except in the case of rezonings to one of the city's base zoning districts, any decision-making body may impose conditions necessary to meet the objectives of this LDO and to mitigate potential adverse impacts of the proposed development on the surrounding properties, communities, and streets.

2. All conditions of approval shall be reasonably related to the anticipated impacts of the proposed use or development or based upon standards duly adopted by the City of New Braunfels. Such conditions may include those necessary to carry out the purpose and intent of Envision New Braunfels, other adopted plans, and this LDO.
3. The decision-making body may recommend alternative conditions to those proposed by the Planning and Development Services Department. The City Council may modify conditions recommended by staff and/or the Planning Commission prior to rendering a decision on an application.
4. Conditions of approval shall be designed and imposed to mitigate an adverse impact anticipated to result from the proposed development, even if the condition conflicts with any requirement of this Chapter, unless the condition would create a health or safety hazard (including, without limitation, clear vision area, or airport environs hazards), or the condition would violate the federal or state constitutions, statutes, or regulations, the building codes, or floodplain regulations.
5. Any condition of approval that requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts. The City shall bear the burden of determining such impacts.
6. If a prior approved application, or portion thereof, is expunged by a subsequent application approval, any prior conditions of approval shall also be considered expunged.
7. Conditions imposed on any application shall run with the land and be binding on the property owner and their successors.

8.2.6 Post-Decision Actions and Limitations

A. Notice of Decision

Within ten days after a final decision on an application, the Planning and Development Services Department shall provide written notification of the decision via email or first-class mail to the applicant, and shall make a copy of the decision available to the public in a conspicuous and easily accessible location. Such notice may be published on the City's website.

B. Appeals

1. Decisions that May BeAppealed

- a. Unless otherwise stated in this LDO, decisions regarding elements of this Chapter made by the Planning and Development Services Department, or other City administrative official, may be appealed to the Board of Adjustment.
- b. Decisions by the Planning Commission or Historic Landmark Commission may be appealed to the City Council.

2. Decisions that May Only BeAppealed in Court

- a. Pursuant to state statute, decisions made by the Board of Adjustment, a quasi-judicial body, may be appealed to District Court or County Court at Law within ten days from the date the decision is filed in the Board's office.

- b. Decisions made by the City Council may be appealed to a court of competent jurisdiction in accordance with state law.
- 3. Burden of Proof³⁸**
The applicant bears the burden of proof in establishing the facts that may justify overturning, in whole or in part, the original decision which gave rise to the appeal.
- 4. Filing an Appeal**
 - a. Appeals to the Board of Adjustment shall be filed within 20 days from the date of decision.
 - b. Appeals to the City Council shall be filed within 45 days from the date of decision.
 - c. Appeals must be placed on an agenda within 30 calendar days after the written appeal request has been received.
- 5. Stay of Proceedings³⁹**
An appeal stays all proceedings in furtherance of the action appealed, unless a City official certifies to the designated appeal body that a stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of competent jurisdiction.
- 6. Notice of Appeal**
Notice of appeal shall follow the same notice procedure required for the original application type.
- 7. Review and Decision**
 - a. The designated appeal body may reverse or affirm, in whole or in part, the decision, determination, or conditions appealed.
 - b. The designated appeal body may remand the matter to the original hearing body for consideration with a statement detailing the reason for the remand.
- 8. Petition to a Court of Record⁴⁰**
Any person or people jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, City Council, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is unlawful, in whole or in part, specifying the unlawful grounds. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the Board of Adjustment.
 - a. Writ of Certiorari**
Upon the presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application, on notice to the City Council and on due cause shown, grant a restraining order.

³⁸ 144-2.2-7.

³⁹ 144-2.2-6.a

⁴⁰ 144-2.2-9.

b. Certified or Sworn Copies

The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

c. Testimony

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a designee to take such evidence as it may direct, and report that evidence to the court, accompanied by findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

d. Costs

Costs shall not be allowed against the Board of Adjustment unless it shall appear to the court that the Board acted with gross negligence, or in bad faith, or with malice in making the decision being appealed.

e. Preference

All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

C. Effect of Approval**1. Authorized Activity**

- a. Approval of any development application in accordance with this LDO authorizes only the particular use, plan, or other specific activity approved, and not any other development requiring separate application.
- b. If one development permit or approval is a prerequisite to another permit or approval (e.g., variance approval prior to final plat approval), development may not take place until all required permits and approvals are obtained. Approval of one application does not necessarily guarantee approval of any subsequent application.
- c. The approval of an application does not waive Building, Fire, Flood, or other codes, or any other requirements imposed by County, State, or Federal regulations or law.

2. Modification or Amendment of Approval

Unless otherwise provided in this LDO, any modification of an approved plan, permit, or condition of approval shall require a new application that is submitted and reviewed in accordance with the full procedure and fee requirements applicable to the particular type of application.

D. Effect of Denial**1. Limitation on Subsequent Similar Applications⁴¹**

⁴¹ 144-2.1-5. This is a change for a variance that has been denied, which was previously subject to a 180-day waiting period.

- a. An application that is substantially similar to one that has been denied shall not be considered by any decision-making body within one year of the previous denial.
- b. If there is a question about the similarity of a newly submitted application to one that has been denied, the Planning and Development Services Department shall determine whether the new application is substantially different from the one that was denied.
- c. If an applicant disagrees with the Planning and Development Services Department determination regarding similarity, they may appeal the departmental determination to the applicable decision-making body, who shall determine if the application may proceed.

2. Exception

This one-year waiting period does not apply when:

- a. There is a substantial change to circumstances, or new information available, relevant to the issues or facts considered during the previous application review; or
- b. The new application is materially different from the previous application.

E. Expiration of Approval

1. A development application approval shall be valid as authorization for the approved activity until the end of the expiration time period specified in the application-specific review procedures described in §§8.2 through 8.7.
2. A change in ownership of the land shall not affect the established expiration time period of an approval.

F. Extension of Approval

1. When construction has not begun on an approved project within the specified timeframe, the validity of an approval may be extended for 12 additional months by the Planning and Development Services Department.
2. The request for extension shall be submitted in writing no less than 30 days prior to the expiration of the original approval.

8.3 Zoning: Ordinance Amendments

8.3.1 LDO Text Amendment

A. Purpose

This procedure provides for the review and approval of amendments to the text of this LDO.

B. Applicability

A LDO text amendment may be initiated by the Planning and Development Services Director, the Planning Commission, the City Council, or a member of the public.

C. LDO Text Amendment Procedure

Figure 8.3-1 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of LDO text amendment requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

- The application shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.2.2.
- An application initiated by the City shall be exempt from fees; however, when initiated by a member of the public, an application fee as described in Appendix D shall be submitted along with the application.

3. Application Analysis

The Planning and Development Services Department shall review the application and prepare an agenda memo in accordance with the approval criteria in §8.3.1D.

4. Scheduling and Notice of Public Hearings

The application shall be scheduled for public hearings before the Planning Commission and the City Council and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. Hearing, Review, and Decision

a. Historic Landmark Commission Review and Recommendation

The Historic Landmark Commission (HLC) shall review any application that proposes text amendments to the historic preservation provisions of this LDO, as

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REVIEW & SCHEDULING



DECISION



Figure 8.3-1: LDO Text Amendment Procedure

set forth in Article 6. The HLC shall review the application in accordance with the approval criteria in §8.3.1D and shall forward its recommendation to City Council. The HLC may recommend edits or amendments to the proposed text amendment.

b. Planning Commission Review and Recommendation

The Planning Commission shall review the application in accordance with the approval criteria in §8.3.1D and shall forward its recommendation to the City Council. The Planning Commission may recommend edits or amendments to the proposed text amendment.

c. City Council Review and Decision

The City Council may review and approve, approve with amendments to proposed text amendment, or deny the application in accordance with the approval criteria in §8.3.1D.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effective Date

Unless otherwise established in the City Charter, an approved text amendment becomes effective immediately upon City Council approval.

b. Denial

If a proposed text amendment is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

c. Expiration

Once approved, a text amendment does not expire.

D. LDO Text Amendment Approval Criteria

In reviewing a proposed LDO text amendment, the review and decision-making bodies shall consider the general approval criteria in §8.2.5E, and whether and to what extent the proposed amendment:

1. Is necessary to correct an error in the text of this LDO;
2. Is necessary to address a demonstrated community need; and
3. Is necessary to respond to substantial changes in conditions and/or policy.

8.3.2 Rezoning⁴³

A. Purpose

The rezoning (REZ) procedure provides for amendments to be considered to the Official Zoning Map of the City of New Braunfels.

B. Applicability

1. In addition to standard rezoning requests, the rezoning procedure shall also encompass requests for the creation of zoning overlay or special districts. Planned development and special use requests are also rezonings, but they are treated as separate procedures, due to the differing nature of the requests and their particular review criteria.
2. A rezoning shall not be used when another procedure or combination of procedures could be used to achieve a similar result.
3. Except as part of a planned development request, changes to the characteristics of zoning districts (such as setback requirements) and development standards (such as parking requirements) shall be processed as LDO text amendments according to §8.3.1C.1.

C. Rezoning Procedure

Figure 8.3-2 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of rezoning requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

- a. The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

b. Annexation Concurrent Review

When considering the initial zoning designation for land being annexed:

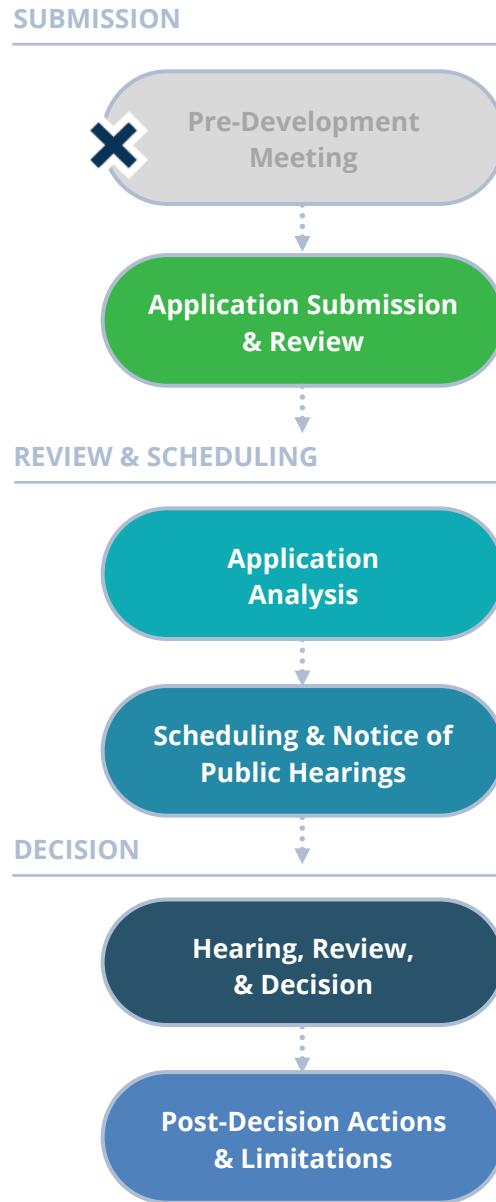


Figure 8.3-2: REZ Procedure Steps

⁴³ 144-2.1.

- i. The owner of land to be annexed shall submit an application for zoning the property simultaneously with submission of a petition for annexation.
- ii. An annexation petition may not be conditioned upon the approval of any particular zoning district.
- iii. A vote on the zoning to be applied to an annexed parcel may not be taken until annexation is approved; this vote is a separate and distinct action by the City Council but may appear on the same agenda in appropriate sequence.

3. Application Analysis

The Planning and Development Services Department shall review the rezoning application and prepare an agenda memo in accordance with the approval criteria in §0.

4. Scheduling and Notice of Public Hearings

The rezoning application shall be scheduled for public hearings before the Planning Commission and the City Council and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. Hearing, Review, and Decision

a. Planning Commission Review and Recommendation

- i. The Planning Commission shall review the rezoning application in accordance with the approval criteria in §0 and shall forward its recommendation to the City Council.
- ii. The Planning Commission may recommend an alternate zoning district to that requested by the property owner pursuant to the range of zoning intensity described for various districts in Article 2, Zoning Districts. The Planning Commission may also recommend amendments or additional requirements for the proposed zoning that will, in the judgement of and within the discretion of the Planning Commission, better protect adjacent property from negative impacts, and contribute to accomplishing the purpose and intent of the regulations of this LDO.

b. City Council Review and Decision

The City Council may review and approve or deny the rezoning request in accordance with the approval criteria in §0. The City Council may not impose conditions on rezoning requests for any of the City's standard base zoning districts described in §X.X.

c. Protest Procedure

- i. The rules governing approval of rezoning over protest are in TLGC, Chapter 211.006.
- ii. The Planning and Development Services Department may prescribe forms for submission of protest petitions.
- iii. Property owners within 200 feet of a proposed rezoning, as indicated on the most recently approved tax roll, may file a written protest against the rezoning.
- iv. In accordance with TLGC, Chapter 211.006, if the City receives written protests that have been duly signed and acknowledged by owners of 20 percent or more of the land area within 200 feet of the proposed rezoning, approval shall require three-fourths vote of the City Council for a rezoning to

become effective. In such case, a supermajority vote shall not be required by the Planning Commission.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effective Date

A rezoning becomes effective immediately upon approval by City Council, and does not expire.

b. Zoning Map Update

Following approval, the Planning and Development Services Department shall prepare a revision to the Official Zoning Map of City labeling the property with the abbreviation of the new zoning district.

c. Certificate of Occupancy

A certificate of occupancy shall not be issued until the applicant demonstrates compliance with any and all requirements of the new zoning district for the property.

d. Denial

If a proposed rezoning is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

D. Rezoning Approval Criteria

In reviewing a proposed rezoning, the Planning Commission and City Council shall consider the general approval criteria in §8.2.5E, and:

1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the city as a whole;
2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area;
3. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved; and
4. Any other factors that will substantially affect the public health, safety, morals, or general welfare.

8.3.3 Planned Development District

A. Purpose

The purpose of the planned development district (PD) procedure is to provide flexibility in the application of the regulations of this LDO by allowing a diversification of uses, structures and open spaces that could not otherwise be achieved with the existing adopted zoning districts, but does comply with the standards set forth in §**X.X**, *Planned Development District*, and is in accordance with the Comprehensive Plan and Strategic Plan.

B. Applicability

As they are zoning districts, PDs may be created only within the city limits.

C. Planned Development District Procedure

Figure 8.3-3 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of PD requests, with additions or modifications noted below.

1. Pre-Development meeting

A pre-development meeting as described in §8.2.1 is required.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application and accompanying site plan will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

a. Traffic Impact Analysis

A traffic impact analysis worksheet shall accompany the application, and may indicate the need for a full traffic impact analysis to be completed for consideration in accordance with §**X.X**, *Access and Circulation*, prior to final approval of the PD. The full traffic impact analysis, if required, shall be submitted with the plat, or building permit application, whichever comes first.

b. Site Plan

A detailed site plan shall accompany a PD application. It shall contain the details of development for the property including identifying a base zoning district, land uses, development standards, approximate road locations, project boundaries, the location of buildings, parking, landscaping, and trees, etc.

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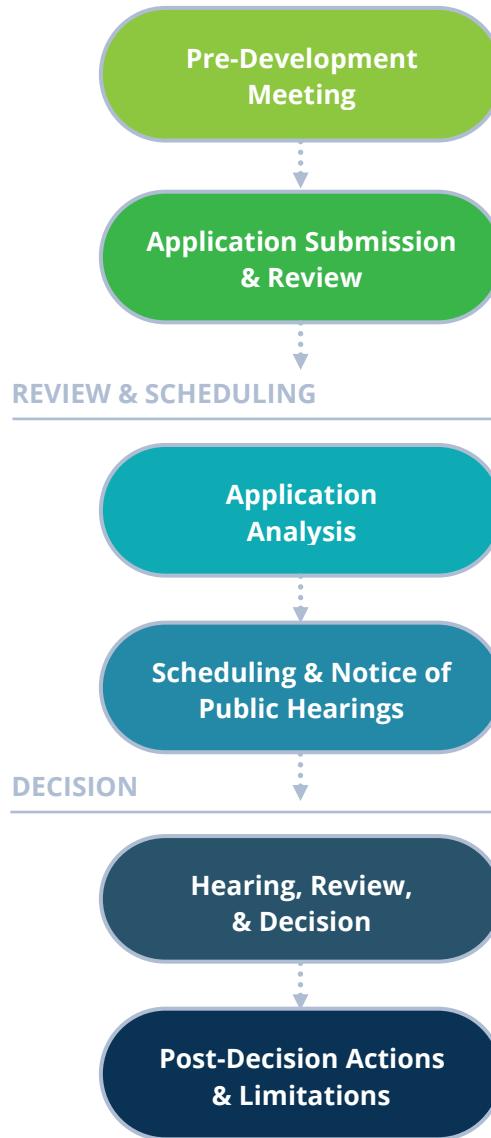


Figure 8.3-3: PD Procedure Steps

c. Phasing Plan

PD districts larger than 350 acres shall provide a phasing schedule depicting the different construction phases.

3. Application Analysis

The Planning and Development Services Department shall review the PD application and prepare an agenda memo in accordance with the approval criteria in §8.3.3D below.

4. Scheduling and Notice of Public Hearings

The PD application shall be scheduled for public hearings before the Planning Commission and the City Council and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. Hearing, Review, and Decision**a. Planning Commission Review and Recommendation**

The Planning Commission shall review the PD application in accordance with the approval criteria in §8.3.3D and shall forward its recommendation to the City Council.

b. City Council Review and Decision

- i. The City Council may review and approve, approve with conditions, and/or modifications to the site plan, or deny the PD application in accordance with the approval criteria in §8.3.3D.
- ii. The City Council may approve a PD with deviations from any provision in the Code of Ordinances. Such deviations shall be listed or shown as part of the ordinance that approves the PD rezoning.

c. Concurrent Review

- i. The review of the PD request shall be conducted concurrently with subdivision review, where applicable. See §8.8, *Subdivision Common Review Procedures*.
- ii. When conducted as concurrent review with subdivision, the site plan shall be submitted in a form that satisfies the procedural requirements for final plats. See §8.9.2, *Preliminary Plat (Optional)*.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effective Date

- i. A new PD becomes effective immediately upon approval by City Council, and does not expire
- ii. The approved PD site plan shall be an exhibit of the adopting ordinance.

b. Zoning Map Update

Following approval of a PD by City Council, the Planning and Development Services Department shall prepare a revision to the Official Zoning Map of City illustrating the zoning with "PD" as the zoning label.

c. Changes to Approved Planned Developments

Changes to approved PD districts may be accommodated by the Planning and Development Services Department using the minor modification procedures in §8.6.3. If the requested change cannot be accommodated using the minor

modification procedures, the request shall require review and recommendation by the Planning Commission and review and approval by the City Council.

d. Denial

If a PD is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

D. Planned Development Approval Criteria

In reviewing a proposed PD, the Planning Commission and City Council shall consider the general approval criteria in §8.2.5E, rezoning approval criteria in §0, and whether the proposed PD:

1. Is compatible with the surrounding area;
2. Preserves the natural amenities and environmental assets of the land through the preservation and improvement of open space;
3. Has provided adequate plans to mitigate any impacts associated with access, traffic, emergency services, utilities, parking, refuse areas, noise, glare, and odor;
4. Adversely impacts the health, safety, and welfare of the current inhabitants of the area and potential future development of the area;
5. Provides for better project design through modification of the provisions of this LDO;
6. Will avoid generating more traffic than the streets in the vicinity can carry without causing congestion, according to the traffic impact analysis, and will not overload the existing utilities. This judgment shall be based on review of the traffic impact analysis, and site plan, plus information on proposed population density, site area and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space and off-street parking and off-street loading facilities included within the development;
7. Makes adequate provisions for light, air, vehicular and pedestrian circulation, and recreational facilities equal to or better than the requirements of this chapter;
8. Harmonizes different dwelling types and/or the variety of land uses in the development to complement each other and the existing and proposed land uses in the vicinity; and
9. Is proposed to satisfy objectives other than solely financial considerations as the basis for modifying the standards of this LDO.

8.3.4 Special Use

A. Purpose

The special use (SU) procedure provides a mechanism to evaluate proposed development of a land use that is not allowed in a given zoning district, and grant special approval for that use to be established in the requested location if the City Council determines, based on individual review of locations, design, configuration, and the imposition of conditions, that the use is or can be compatible with surrounding areas, and that adequate mitigation is provided for anticipated impacts. The effect of approval of a special use request is a change in the zoning for the parcel on which the special use is approved.

B. Applicability

The SU procedure shall apply to uses identified in **Table X-X: Summary Table of Allowed Uses**, as requiring special use approval, indicated by "S" in a table cell. No such use may be established, enlarged, or altered without special use approval as described in this subsection.

C. Special Use Approval Procedure

Figure 8.3-4 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of SU requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting as described in §8.2.1 is required, except for Short Term Rental.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application and accompanying detailed site plan will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

a. Traffic Impact Analysis

A traffic impact analysis worksheet shall accompany the application and may indicate the need for a full traffic impact analysis to be completed for consideration in accordance with **§X.X, Access and Circulation**, prior to final approval of a rezoning. The full traffic impact analysis, if required, shall be submitted with the plat or building permit application, whichever comes first.

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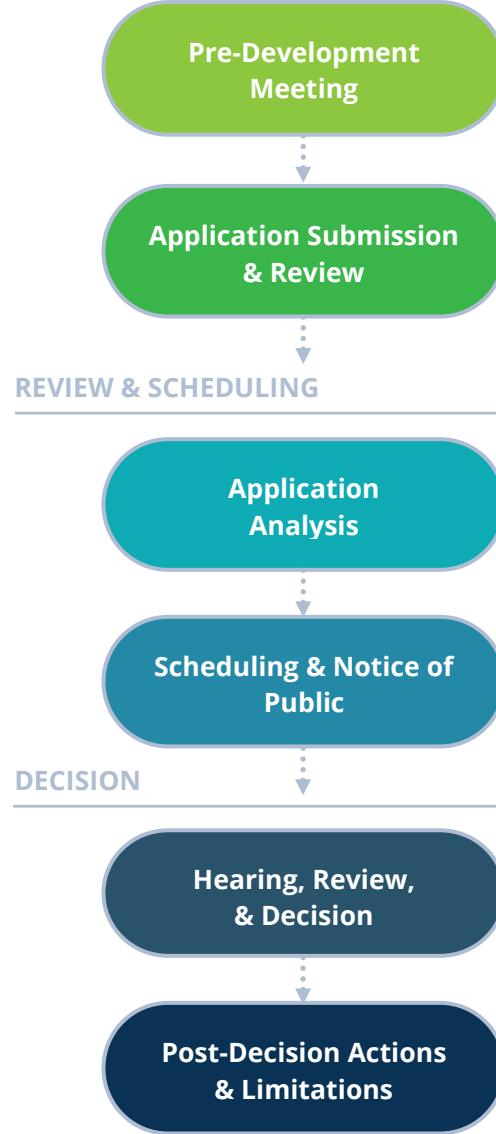


Figure 8.3-4: SU Procedure Steps

3. Application Analysis

The Planning and Development Services Department shall review the SU application and prepare an agenda memo in accordance with the approval criteria in §8.3.4D.

4. Scheduling and Notice of Public Hearings

The SU application shall be scheduled for public hearings before the Planning Commission and the City Council and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. Hearing, Review, and Decision**a. Planning Commission Review and Recommendation**

The Planning Commission shall review the SU application in accordance with the approval criteria in §8.3.4D and shall forward its recommendation to the City Council.

b. City Council Review and Decision

The City Council may review and approve, approve with conditions, or site plan modifications, or deny the SU application in accordance with the approval criteria in §8.3.4D below.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effective Date

- i. An SU rezoning becomes effective immediately upon approval by City Council, and does not expire
- ii. The approved Special Use site plan shall be an exhibit of the adopting ordinance.

b. Zoning Map Update

Following approval of a special use by City Council, the Planning and Development Services Department shall prepare a revision to the Official Zoning Map of the City illustrating the zoning with "SU" as a suffix to the underlying base zoning label.

c. Denial

If a special use is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

D. Special Use Approval Criteria

In reviewing a proposed special use request, the Planning Commission and City Council shall consider the general approval criteria in §8.2.5E, and:

1. Whether the uses permitted by the proposed change, details of the accompanying site plan, and any additional conditions of the SU will be appropriate in the immediate area concerned, and their relationship to the general area and to the city as a whole;
2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area;

Article 8: Administration & Procedures

8.3 Zoning: Ordinance Amendments

8.3.4

3. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved; and
4. Any other factors that will substantially affect the public health, safety, morals, or general welfare.



8.4 Zoning: Development Review Procedures

8.4.1 Site Plan Review⁵⁰

A. Purpose

The purpose of the site plan review (SPR) procedure is to provide a mechanism for the review of proposed development to ensure it complies with all applicable requirements of this LDO prior to issuance of a building permit.

B. Applicability

1. The SPR procedure is required when a development request requires no other formal development application review and approval.
2. The SPR procedure is optional when submitted before a building permit application in the event an applicant wants to streamline the building permit approval by having zoning requirements and development standards reviewed prior to building permit plan review.

C. Site Plan Review Procedure

Figure 8.4-1 identifies the applicable steps from the common review procedures in §8.2 that apply to SPR requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The site plan shall be submitted accompanied by the required fee specified in Appendix D. The site plan will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

a. Traffic Impact Analysis

A traffic impact analysis worksheet shall accompany the site plan, and may indicate the need for a full traffic impact analysis to be completed for

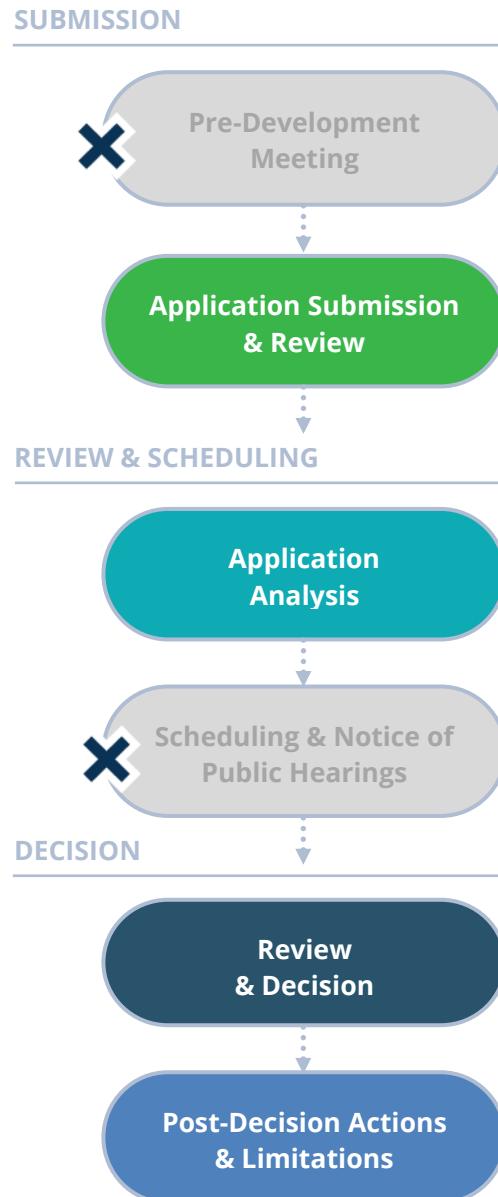


Figure 8.4-1: SPR Procedure Steps

⁵⁰ New.

consideration in accordance with §X.X, *Access and Circulation*, prior to final approval. The full traffic impact analysis, if required, shall be submitted with the plat or building permit application, whichever comes first.

3. Application Analysis

The Planning and Development Services Department shall review the site plan and:

- a. Return to the applicant written recommendations for changes or amendments to the information contained in the site plan, in the event that some element depicted or described in the site plan does not comply with the applicable requirements of this LDO; or
- b. Approve the site plan, upon finding that it conforms to all applicable requirements of this LDO.

4. Scheduling and Notice of Public Hearings

Public notice and public hearing are not required for a SPR.

5. Administrative Review and Decision

Planning and Development Services staff shall approve the site plan, upon finding that it conforms to all applicable requirements of this LDO.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Amendments to an Approved Site Plan

- i. Prior to construction, changes to approved site plans shall require resubmission, review and approval by the Planning and Development Services Department.
- ii. Post-construction, minor construction errors or deviations from approved site plans may be accommodated using the minor modification procedures in §8.6.3. If the departure from the approved site plan cannot be accommodated using the minor modification procedure, the applicant may request a variance or a special exception, as applicable.

b. Appeals

An applicant who is aggrieved by a denial of a site plan review may file an appeal, as described in §8.2.6B and §8.6.1.

c. Expiration of a Site Plan Approval

If construction of the development for which the site plan was approved is not substantially underway within 12 months after the date of SPR approval, the approval shall expire, unless an extension has been requested as described in provision d. below.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.2.6F, *Extension of Approval*.

D. Site Plan Approval Criteria

Planning and Development Services staff shall approve the site plan, upon finding that it complies with the general approval criteria described in §8.2.5E, and that it meets with all applicable requirements of this LDO.

8.4.2 Zoning Verification

A. Purpose

The purpose of the zoning verification (ZV) is to allow a property owner to receive from the City official written verification of the zoning of their property and, if requested, confirmation of compliance with this LDO.

B. Applicability

A ZV request is an optional review that is conducted by Planning and Development Services Department, initiated at the request of the property owner, often in response to lenders requiring such verification letters prior to loan authorizations.

C. Zoning Verification Review Procedure

Figure 8.4-2 identifies the applicable steps from the common review procedures in §8.2 that apply to ZV requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required.

2. Application Submission

The request for verification shall be submitted in writing by the property owner, accompanied by the required fee specified in Appendix D.

3. Application Analysis

The Planning and Development Services Department shall review the ZV request and generate a zoning verification letter based on the finding of their review.

4. Scheduling and Notice of Public Hearings

Public notice and public hearings are not required for a ZV request.

5. Administrative Review and Issuance

- The zoning verification review shall include, but is not limited to: zoning, setbacks, variances, landscaping, screening and buffering, lighting, building design, and other development standards listed in Article 4: Development Standards.
- Planning and Development Services staff shall issue the ZV letter explaining the property's conformance to LDO provisions or lack thereof.

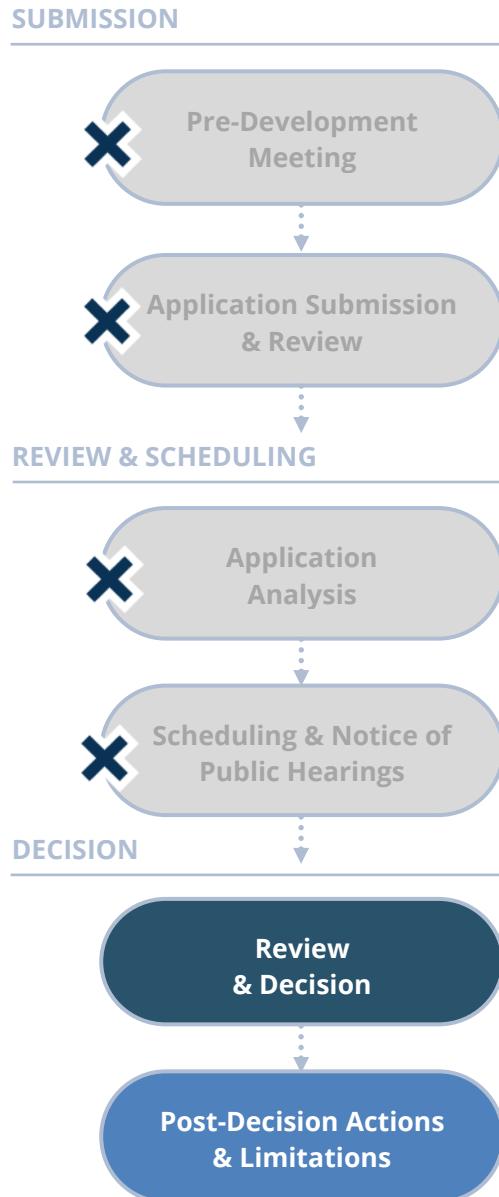


Figure 8.4-2: ZV Procedure Steps

- c. If review reveals that the building, structure, landscaping, and/or other improvements or changes to the property do not comply with the applicable provisions of this LDO, the zoning verification letter shall reference the applicable classifications described in §1.6, *Nonconformities and Compliant Structures and Uses*.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Appeals

An applicant who is aggrieved by the facts cited in a zoning verification letter may file an appeal with the Board of Adjustment, as described in §8.2.6B.

b. Validity

A zoning verification letter provides facts that are true at the time of the letter's writing. Such facts can change based on rezoning, structure modification, demolition, variance requests, etc. Therefore, a zoning verification letter is accurate at time of writing is no guarantee of on-going compliance.

8.5 Zoning: Historic Preservation Procedures

COMMENTARY

This draft incorporates the existing Historic Preservation procedures described in Chapter 66, reformatted to follow the standard procedural steps of this section; however, the content of these procedures has not yet undergone substantive review. Detailed review and updating will occur as part of the fourth installment of this LDO, which includes updating all of Chapter 66. For now, these procedures are included as "placeholders" pending further review and updating.

8.5.1 Certificate of Alteration

A. Purpose

The purpose of the certificate of alteration (COA) procedure is to provide a mechanism for the review and approval of any work on a historic structure that proposes substantial, non-cosmetic alterations to that structure.

B. Applicability

Prior to the commencement of any work requiring an alteration certificate, the owner shall file an application for such a certificate with the historic preservation office. The certificate of alteration required by this LDO shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the city.

C. Certificate of Alteration Procedure

Figure 8.5-2 identifies the applicable steps from the common review procedures in §8.2 that apply to COA requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

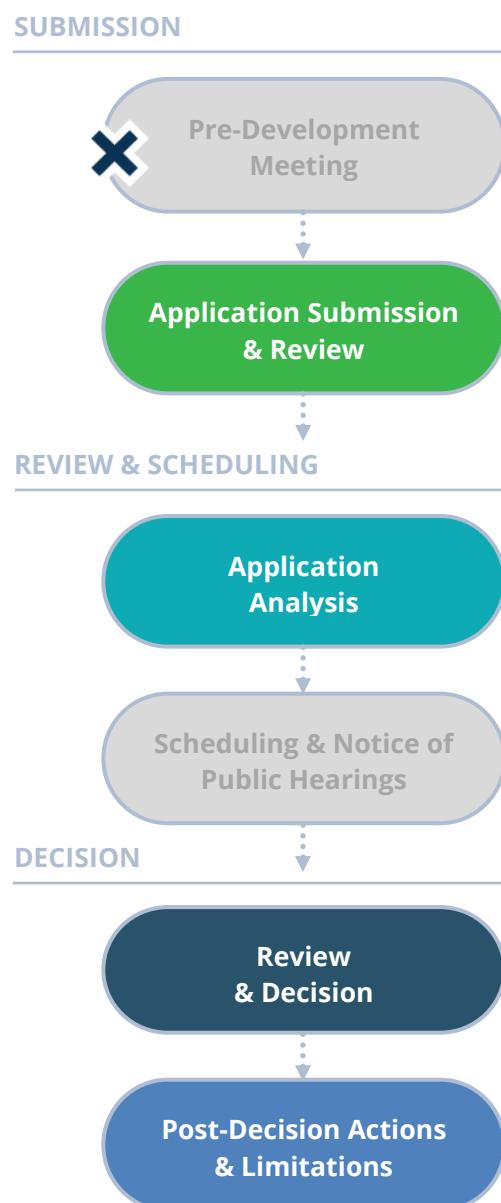


Figure 8.5-1: COA Procedure Steps

The Historic Landmark Commission⁵² shall review the COA and return to the applicant written recommendations for changes or amendments to the information contained in the COA request, in the event that some element depicted or described in the request does not comply with the applicable requirements of this LDO.

4. Scheduling and Notice of Public Hearings

- a. Public notice and public hearing are not required for a COA.
- b. At a regularly scheduled public meeting within 30 days from the date the application is received, the HLC shall review the application for the COA, at which time an opportunity will be provided for the applicant to be heard.
- c. In the event the commission does not move to consider the application within 60 days of its receipt, the application shall be granted.

5. Administrative Review and Decision

- a. Upon finding that the COA request complies with the approval criteria in §0, the HLC shall approve, or approve with modifications the COA request within 30 days after the review meeting.
- b. The HLC may deny the COA request upon finding that it does not comply with the approval criteria in §0.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Building Permit

No building permit shall be issued prior to approval of a certificate of alteration by the Commission.

b. Appeals

- i. An applicant who is aggrieved by a denial of a certificate of alteration request may file an appeal, as described in §8.2.6B.
- ii. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in §8.2.6B.

c. Denial

If a certificate of alteration request is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

D. Downtown Historic District

1. Within the downtown historic district, for projects requiring a certificate of alteration where the total construction cost is less than \$50,000, the certificate may be approved by a majority vote of the Historic Landmark Commission chair, vice chair and the Historic Preservation Officer.
2. A special meeting called by these officials at which the application will be considered shall be posted at least 72 hours before the meeting.

⁵² This draft uses the term "Historic Landmark Commission" and "HLC." Sec. 66-52 references creation of a historic preservation commission, but says it is "to be known as the New Braunfels Historic Landmark Commission." Installment 4 will seek to clarify consistent terminology to use (either HLC or HPC).

3. These officials shall meet and consider the application within ten working days of the application; however, failure to meet during this time shall not mean the certificate of alteration is approved.
4. These officials may approve the certificate, approve it with conditions, deny it, or for any reason refer it to the full HLC.
5. Denial of the certificate of alteration may be appealed to the full HLC.

E. Certificate of Alteration Approval Criteria

In considering an application for an alteration certificate, the commission shall be guided by any adopted design guidelines, and where applicable, the following from the secretary of the interior's standards for the rehabilitation of historic buildings. Any adopted design guidelines and secretary of the interior's standards shall be made available to the property owners of historic landmarks or within historic districts.

1. Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.
2. The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed when possible. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
3. All buildings, structures, objects, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object, or site shall be kept where possible.
6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material shall reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the

Article 8: Administration & Procedures

8.5 Zoning: Historic Preservation Procedures

8.5.1

size, scale, color, material, and character of the property, neighborhood, or environment.

10. Wherever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.

8.5.2 Designation of Historic District

A. Purpose

The purpose of the designation of historic district (DHD) procedure is to provide a mechanism for the review and approval of proposed historic districts within the City of New Braunfels.

B. Applicability

The request for DHD shall consist of a minimum of two contiguous properties.

C. Designation of Historic District Procedure

Figure 8.5-3 identifies the applicable steps from the common review procedures in §8.2 that apply to DHD applications, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

a. Any person, the Planning Commission, the Planning and Development Services Director, the historic preservation officer, the historic landmark commission, or the City Council may initiate an historic district designation by filing an application with the historic preservation officer.

b. A DHD application must have the concurrence of the property owners representing 51 percent of the property within the proposed district, or 51 percent of the property owners within the proposed district expressly requesting that the district be so designated.

c. The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

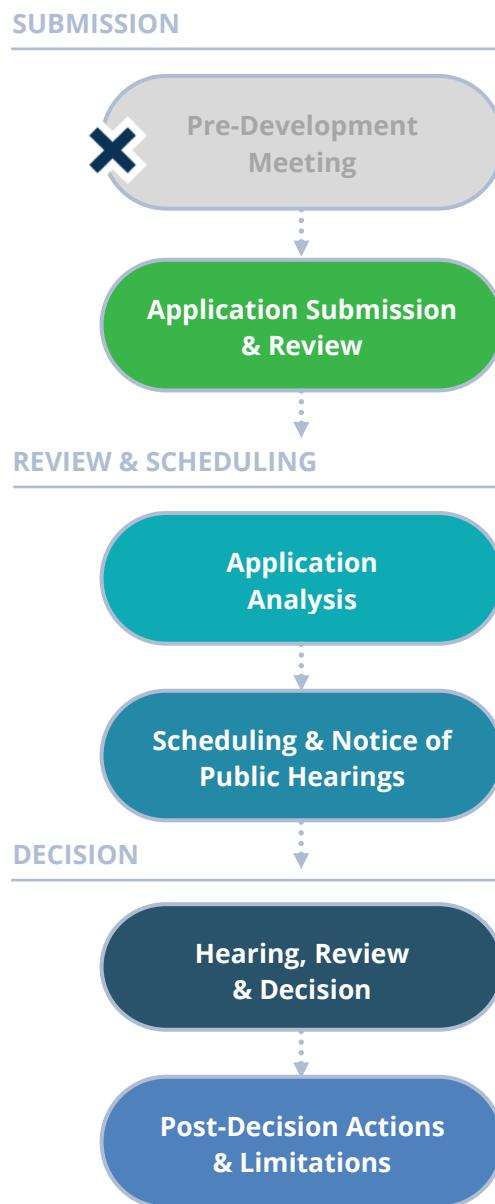


Figure 8.5-3: DHD Procedure Steps

The Planning and Development Services Department shall review the DHD application and prepare an agenda memo in accordance with the approval criteria in §8.5.2D below.

4. Scheduling and Notice of Public Hearings

- a. The DHD application shall be scheduled for public hearings before the Historic Landmark Commission, the Planning Commission and the City Council, and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.
- b. All property owners within the boundaries of the proposed historic district shall be notified prior to the public hearing on the historic district designation.

5. Hearing, Review, and Decision**a. Historic Landmark Commission Review and Recommendation**

The HLC may recommend the designation of a district if it:

- i. Contains properties and an environmental setting which meet two or more of the criteria for designation of a landmark; and
- ii. Constitutes a distinct section of the city.

b. Planning Commission Review and Recommendation

- i. Upon recommendation of the HLC, the DHD application shall be submitted for consideration on the next available regular meeting of the Planning Commission.
- ii. The Planning Commission shall review the DHD application in accordance with the approval criteria in §8.5.2D, consider the HLC recommendation on the designation, and shall forward its recommendation to the City Council.

c. City Council Review and Decision

The City Council may review and approve, approve with conditions, or deny the DHD application in accordance with the approval criteria in §8.5.2D.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

- a. Upon designation of a historic district the City Council shall cause the designated boundaries to be recorded in the Official Public Records of Real Property of Comal County, the tax records of the city and the Comal Appraisal District as well as the official zoning maps of the city.

D. Designation of Historic District Approval Criteria

A historic district may be designated if it meets at least two of the following criteria:

1. Possesses significance in history, architecture, archeology, or culture.
2. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
3. Is associated with the life of a person or people significant in our past.
4. Embodies the distinctive characteristics of a type, period, or method of construction.
5. Represents the work of a master designer, builder, or craftsman.
6. Represents an established and familiar visual feature of the neighborhood or city.

8.5.3 Designation of Historic Landmark⁵⁶

A. Purpose

The purpose of the designation of historic landmark (DHL) procedure is to provide a mechanism for the review and approval of proposed historic landmarks within the City of New Braunfels.

B. Applicability

Properties with historical or architectural significance of 50 years or older may be considered for designation as a landmark. The request for DHL shall only be considered upon the written application of the property owner expressly requesting that the property be so designated.

C. Designation of Historic Landmark Procedure

Figure 8.5-4 identifies the applicable steps from the common review procedures in §8.2 that apply to DHL applications, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

The HPO shall review the DHL application and prepare an agenda memo in accordance with the approval criteria in §8.5.3D.

4. Scheduling and Notice of Public Hearings

The DHL application shall be scheduled for public hearings before the Historic Landmark Commission, the Planning Commission, and the City Council, and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

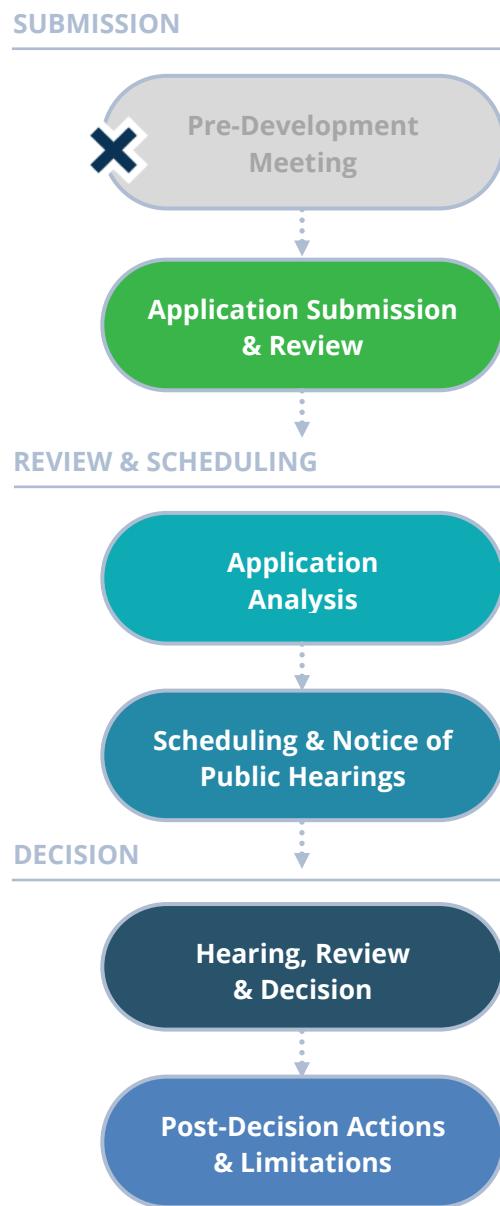


Figure 8.5-4: DHL Procedure Steps

⁵⁶ 66-54(b) through (e).

5. Hearing, Review, and Decision**a. Historic Landmark Commission Review and Recommendation**

The HLC may recommend the designation of a landmark if it complies with the approval criteria described in §8.5.3D.

b. Planning Commission Review and Recommendation

- i. Upon recommendation of the HLC, the DHL application shall be scheduled on the next available regular meeting of the Planning Commission.
- ii. The Planning Commission shall review the DHL application in accordance with the approval criteria in §8.5.3D, consider the HLC recommendation on the designation, and shall forward its recommendation to the City Council.

c. City Council Review and Decision

The City Council may review and approve, approve with conditions, or deny the DHL application in accordance with the approval criteria in §8.5.3D.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

- a. Upon designation of a building, object, site, or structure as a historic landmark, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of Comal County, the tax records of the city and the Comal Appraisal District as well as the official zoning maps of the city.

D. Designation of Historic Landmark Approval Criteria

A historic landmark may be designated if it meets at least two of the following criteria:

1. Possesses significance in history, architecture, archeology, or culture.
2. Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
3. Is associated with the life of a significant person or people in our past.
4. Embodies the distinctive characteristics of a type, period, or method of construction.
5. Represents the work of a master designer, builder, or craftsman.
6. Represents an established and familiar visual feature of the neighborhood or city.

8.5.4 Demolition of Historic Landmark⁵⁷

A. Purpose

[RESERVED]

B. Applicability

A demolition request must be approved prior to demolition of any designated historic landmark (DMHL) within the city of New Braunfels. The demolition request shall only be considered upon the written application of the property owner.

C. Demolition of Historic Landmark Procedure

Figure 8.5-5 identifies the applicable steps from the common review procedures in §8.2 that apply to applications, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

The Historic Preservation Officer shall review the application and prepare an agenda memo in accordance with the approval criteria in §8.5.5D.

4. Scheduling and Notice of Public Hearings

The application shall be scheduled for public hearing before the Historic Landmark Commission, and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. HLC Hearing, Review, and Decision

a. The HLC shall hold a public hearing on the application after 60 days

SUBMISSION

Pre-Development Meeting

Application Submission & Review

REVIEW & SCHEDULING

Application Analysis

Scheduling & Notice of Public Hearings

DECISION

Hearing, Review & Decision

Post-Decision Actions & Limitations

Figure 8.5-5: DMHL Procedure Steps

⁵⁷ New.

from the date a complete application is received by the Historic Preservation Officer.

- b.** The HLC may recommend approval of the demolition request if it complies with the approval criteria described in §8.5.5D.
- c.** The Commission's decision shall state the reasons for granting or denying the demolition request, and shall be rendered in writing to the applicant.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Demolition Permit

No demolition permit shall be issued prior to final review and approval of the demolition request by the HLC.

b. Appeal

- i.** An applicant who is aggrieved by a denial of a demolition request may file an appeal, as described in §8.2.6B.
- ii.** The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in §8.2.6B.

D. Demolition of Historic Landmark Approval Criteria

[RESERVED]

8.5.5 Economic Hardship Procedure

A. Purpose

The purpose of the economic hardship (EH) procedure is to provide a mechanism for an applicant who has received written notification from the HLC of the denial of a certificate of alteration request, to initiate a request for an economic hardship (EH) designation. No building demolition permit shall be issued unless the HLC makes a finding that hardship exists.

B. Applicability

A request for designation of economic hardship shall only be considered after the applicant demonstrates that a diligent effort has been made to seek an alternative that would have allowed for preservation of the property. The applicant must consult in good faith with the HLC, local preservation groups, and interested parties, and such efforts must be shown to the Commission. The request for economic hardship shall only be considered upon the written application of the property owner expressly requesting that the property be so designated.

C. Economic Hardship Procedure

Figure 8.5-6 identifies the applicable steps from the common review procedures in §8.2 that apply to EH applications, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

a. The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

b. It is the sole responsibility of the property owner to demonstrate both that the historic property is incapable of earning a reasonable return, and that all reasonable efforts to find an interested buyer or other means of preserving the property have failed.

3. Application Analysis

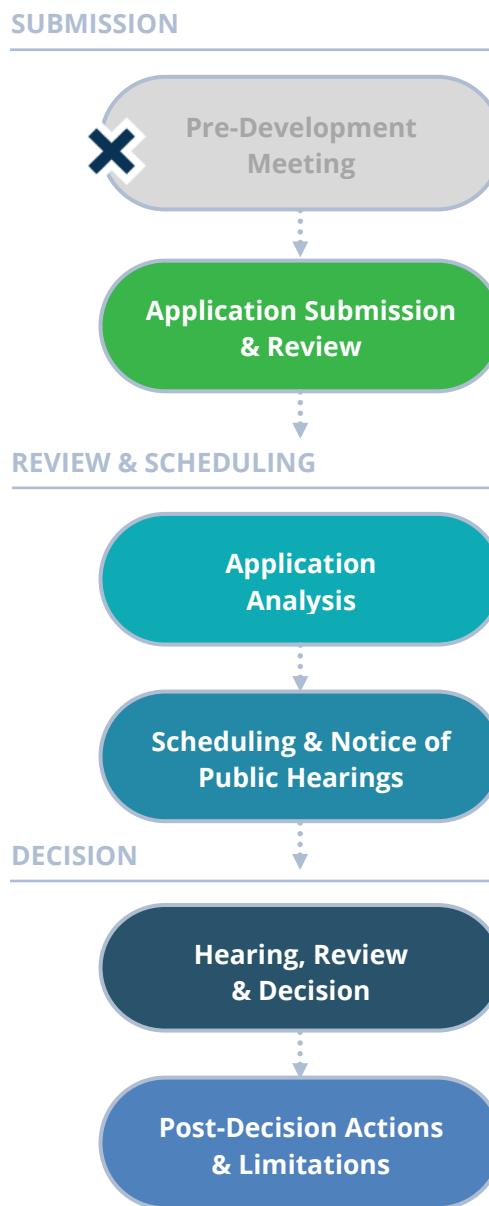


Figure 8.5-6: EH Procedure Steps

The Historic Preservation Officer shall review the application and prepare an agenda memo in accordance with the approval criteria in §8.5.5D.

4. Scheduling and Notice of Public Hearings

The application shall be scheduled for public hearing before the Historic Landmark Commission, and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. HLC Hearing, Review, and Decision

- a. The HLC shall hold a public hearing on the application after 60 days from the date a complete application is received by the Historic Preservation Officer.
- b. The HLC may recommend approval of the economic hardship request if it complies with the approval criteria described in §8.5.5D.
- c. The commission's decision shall state the reasons for granting or denying the hardship application, and shall be rendered in writing to the applicant.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Demolition Permit

No demolition permit shall be issued in conjunction with an economic hardship request prior to final review and approval of the economic hardship request by the HLC.

b. Appeal

- i. An applicant who is aggrieved by a denial of an economic hardship request may file an appeal, as described in §8.2.6B.
- ii. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in §8.2.6B.

c. Denial

If a request for economic hardship designation is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

D. Economic Hardship Approval Criteria

When submitting a claim of economic hardship, the property owner must prove that:

1. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
2. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, that would result in a reasonable return; and
3. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

8.6 Zoning: Flexibility and Relief Procedures

8.6.1 Appeal⁵⁹

A. Purpose

The purpose of an appeal is to allow any person aggrieved by the decision of an administrative official of the City or by a decision-making body in the interpretation or implementation of this LDO to appeal that decision to a higher decision-making body, to the extent permitted by state statute.

B. Applicability

To the extent permitted by state statute, any decision rendered in the administration of this LDO may be appealed to a higher decision-making body, as indicated in Table 8-1: *Summary Table of Review Procedures*.

C. Appeal Procedure

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Appeal Submission and Review

All appeals shall be filed in writing with an explanation of what is being appealed and, to the extent applicable, the reason why the decision is being appealed. Submission of the application for appeal shall be accompanied by the appropriate fee, as described in Appendix D.

- a. Appeals to the Board of Adjustment shall be filed within 20 days from the date of decision.
- b. Appeals to the City Council shall be filed within 45 days from the date of decision.

3. Application Analysis

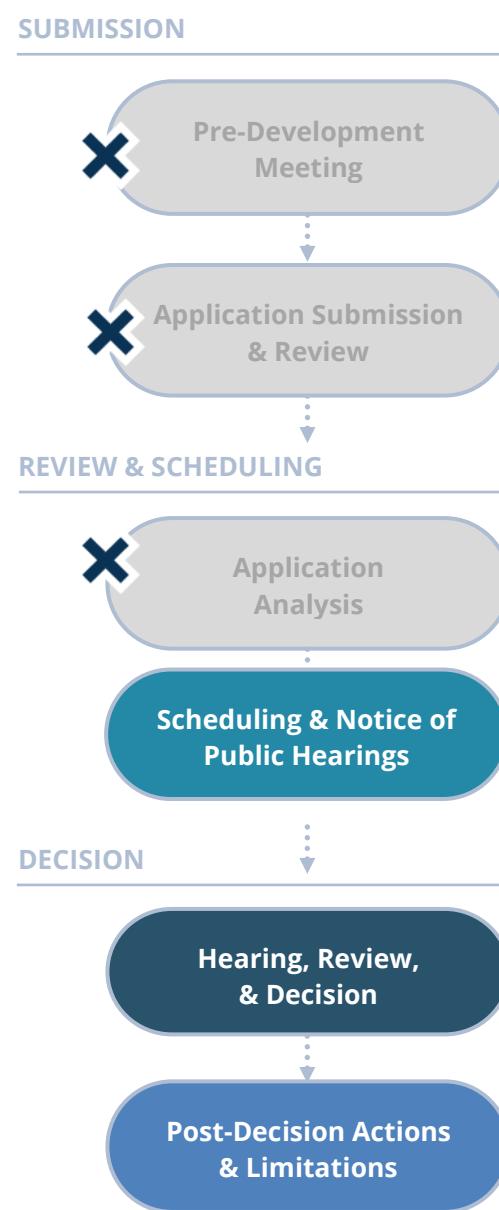


Figure 8.6-1: Appeal Procedure Steps

⁵⁹ 144-2.2-6.

The Planning and Development Services Department shall only review to ensure that the appeal request includes the required information, has been filed within the specified timeframe, and is scheduled to be heard by the appropriate authority.

4. Scheduling and Notice of Public Hearings

- a. Appeals shall be placed on an agenda within 30 calendar days after the written appeal request has been received.
- b. Notice of appeal shall follow the same notice procedure required for the original application type, pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. Hearing, Review, and Decision**a. Review and Decision by the Board of Adjustment**

- i. The appeal shall be heard at a regularly scheduled meeting of the Board of Adjustment, unless the chair of the Board or any two members call a special meeting to consider the appeal.
- ii. The Board of Adjustment may reverse or affirm, in whole or in part, or modify the administrative official's conditions of approval or decision. For that purpose, the Board of Adjustment has the same authority as the administrative official.
- iii. The Board of Adjustment may remand the matter to the original decision-making body for consideration with a statement detailing the reason for the remand.

b. Review and Decision by City Council

- i. The City Council may reverse or affirm, in whole or in part, or modify the original conditions of approval or decision.
- ii. The City Council may remand the matter to the original hearing body for consideration with a statement detailing the reason for the remand.

6. Post-Decision Actions and Limitations

Decisions upon appeal are effective immediately, and are final. An applicant who is aggrieved by a decision rendered upon appeal may file suit with a court of competent jurisdiction in accordance with state statute. See §8.2.6B.8, *Petition to a Court of Record*.

8.6.2 Determination of Nonconforming Status

A. Purpose

The purpose of the determination of nonconforming status (DNCS) procedure is to provide a mechanism for the City to evaluate whether a lot, use, structure, or site feature was legally established, and made nonconforming through the adoption of or amendments to this LDO or other applicable city ordinance. This procedure may also be used to determine compliant uses and structures.

B. Applicability

This procedure may be used to determine the legality of nonconforming structure or uses that are the result of long-existing conditions, or circumstances created by the adoption or amendment of this LDO or other applicable city ordinance or government action. For the same purposes, it may be used to determine the existence of compliant uses and structures.

C. Determination of Nonconforming Status Procedure

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

The Planning and Development Services Department shall review the determination request.

4. Scheduling and Notice of Public Hearings

Public notice and public hearing are not required for a DNCS.

5. Administrative Review and Decision

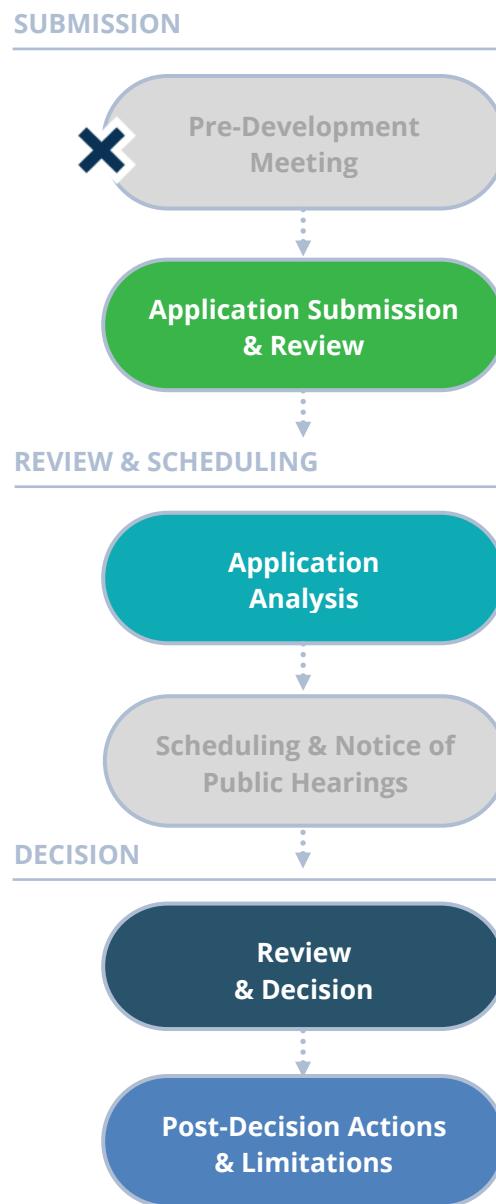


Figure 8.6-2: DNCS Procedure Steps

If adequate supporting materials and information have been provided by the applicant that prove the nonconforming status of the use or structure, Planning and Development Services Department staff shall approve and register the nonconforming use in the city's records.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effect of Decision

The determination regarding nonconforming status becomes effective immediately upon approval.

b. Appeal

An applicant who is aggrieved by a decision regarding the status of a nonconformity may file an appeal with the Board of Adjustment, as described in §8.2.6B.

c. Expiration of a Determination of Nonconforming Status

As long as no further changes or development upon the subject property take place, the determination regarding nonconforming status does not expire.

D. Determination of Nonconforming Status Approval Criteria

1. In reviewing a proposed determination request, the decision-making body shall consider whether and to what extent the applicant provides proof that convincingly demonstrates the nonconformity is the result of long-existing conditions, or circumstances created by the adoption or amendment of this LDO, or applicable city ordinance.
2. If the request is to determine the existence of a compliant use or structure, the application shall demonstrate compliance and conformity with the applicable requirements of §1.6.7, *Compliant Uses and Structures*.

8.6.3 Minor Modification⁶⁰

COMMENTARY

The establishment of a minor modification procedure was recommended in the Assessment Report as a flexibility measure for applicants, who could request minor deviations from defined standards, subject to staff approval.

The procedure as adopted in other communities is included here for staff consideration. If this would not be a good fit in New Braunfels, it is possible that the special exception procedure could be used to accommodate minor requests for flexibility that aren't motivated by hardship.

Pursuant to further discussion, changes to this and/or the special exception procedure can be included in the public draft of this installment.

A. Purpose

The minor modification (MM) procedure allows adjustments to the dimensional or numeric standards of this LDO. Minor modifications are intended to provide greater flexibility when necessary, without requiring a zoning amendment or variance. The minor modification procedure is not a waiver of LDO standards and shall not be used to circumvent the variance procedure.

B. Applicability

1. Allowable Minor Modifications

An application for a minor modification that is not related to a request for Reasonable Accommodations Under the Federal Fair Housing Act (FFHA) or the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) may request only the types of adjustments shown in Table 8-3: *Allowable Minor Modifications*.

Table 8-3: Allowable Minor Modifications

LDO Standard	Modification Allowed (percentage)
Site Standards	
Lot area, minimum	10
Lot coverage, maximum	10
Block length, maximum	10
Lot Dimensional Standards^[1]	
Front setback, minimum	10
Side setback, minimum	10
Rear setback, minimum	10
Building Standards^[2]	
Building height, maximum (accessory or primary) (excludes wireless communication facilities)	10
Development Standards	
Landscape area, minimum	15
Lighting height, maximum	15
Sign height, maximum	15
Fence or wall height, maximum	15
Notes	
[3] For permitted encroachments into setbacks, see Table X-X, Authorized Exceptions to Setback Standards.	

⁶⁰ New.

Table 8-3: Allowable Minor Modifications

LDO Standard	Modification Allowed (percentage)
[4] For permitted projections above maximum height, see Table X-X, Authorized Exceptions to Maximum Height Standards.	

2. **Reasonable Accommodations Under the Federal Fair Housing Act (FFHA)**
 - a. In response to a written application identifying the type of housing being provided and the portions of the FFHA that require that reasonable accommodations be made for such housing, the City is authorized to take any of the following actions in order to provide reasonable accommodation without the need for a rezoning or variance:
 - i. Modify any facility spacing, building setback, height, lot coverage, or landscaping requirement by no more than ten percent; or
 - ii. Reduce any minimum off-street parking requirement by no more than one space.
 - b. The City may approve a type of reasonable accommodation different from that requested by the applicant upon concluding that a different form of accommodation would satisfy the requirements of the FFHA with fewer impacts on adjacent areas.
 - c. The decision of the City regarding any such request for reasonable accommodation shall be accompanied by written findings of fact as to the applicability of the FFHA, the need for reasonable accommodation, and the authority for any reasonable accommodations approved.
 - d. Requests for types of accommodation that are not listed above may only be approved through a variance or rezoning process, or as otherwise specified in this LDO.
3. **Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)**

The City may grant a modification beyond those listed in the above table in order to eliminate a substantial burden on religious exercise as guaranteed by the Federal Religious Land Use and Institutionalized Persons Act of 2000, as amended.

C. Limitations on Minor Modifications

1. Except when requested under the terms of provisions §8.6.3B.2 or 3 above, a request for a minor modification shall not be used to further modify a development standard that, as applied to the subject property, already qualifies as an exception to, or modification of, a generally applicable development standard required under Article 4: Development Standards.
2. The minor modification procedure shall not apply to any proposed modification or deviation that results in:
 - a. A change in allowed uses or mix of uses;
 - b. A deviation from the standards in §X-X, Use-Specific Standards;
 - c. A deviation from building or fire codes;
 - d. A deviation from the City's engineering, flood, or public works standards;
 - e. A deviation from the requirements for public roadways, utilities, or other public infrastructure or facilities; or

- f. A change to a development standard where that same standard was already modified through a separate procedure authorized by this LDO, such as a variance or special exception.

D. Minor Modification Procedure

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

- a. The application shall be submitted accompanied by the required fee specified in Appendix D. The application and accompanying site plan will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.
- b. The request for a minor modification may only be submitted in conjunction with another development application.
- c. Multiple requests for eligible modifications may be considered under the same application.

3. Application Analysis

Each LDO standard in Table 8-3 shall be considered a separate minor modification request as it relates to the approval criteria in §8.6.3E, but multiple adjustments may be considered in one minor modification application.

4. Scheduling and Notice of Public Hearing

Public notice and public hearing are not required for a minor modification request, separate from any public hearing and notice requirements that apply to the application with which the minor modification is associated.

5. Review and Decision

a. Applications Approved Administratively

When the request for a minor modification is submitted concurrently with and associated with an application that requires approval by the Director, the Director shall review and approve, approve with conditions, or deny the modification in accordance with the criteria in §8.6.3E.



Figure 8.6-3: MM Procedure Steps

b. Applications Approved by a Commission or City Council

When the request for a minor modification is submitted concurrently with and associated with an application that requires approval by the Historic Landmark Commission, Planning Commission, or City Council, the applicable final decision-maker shall review the modification and approve, approve with conditions, or deny the modification in accordance with the criteria in §8.6.3E.

6. Post-Decision Actions and Limitations**a. Denial**

- i. If the application with which the minor modification is associated is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.
- ii. If an applicant wishes to pursue a minor modification that has been denied as part of application that has been approved, that may be done by means of requesting a variance or special exception.

b. Appeals

Minor modification denials may not be appealed separately from the application with which they are associated.

c. Expiration of Minor Modification

A minor modification approval shall automatically expire if approval of the concurrently reviewed application expires, is revoked, or otherwise deemed invalid, according to the standards described in §8.8.6H.

d. Extension of Approval

The applicant may request an extension of approval as described in §8.2.6F, *Extension of Approval*. An extension of approval for the associated application has the effect of extending the approval of the minor modification.

E. Minor Modification Approval Criteria

In reviewing a proposed minor modification, the decision-making body shall consider whether and to what extent the adjustment:

1. Will not result in incompatible development;
2. Will not result in adverse impacts unless adequately mitigated; and
3. Is of a technical nature and is required to:
 - a. Compensate for an unusual site condition;
 - b. Eliminate a minor inadvertent failure to comply with an LDO standard; or
 - c. Protect a sensitive resource, natural feature, or community asset.

8.6.4 Special Exception⁶¹

COMMENTARY

Pursuant to conversations with staff, the special exception process has been drafted to allow broader use for requests for flexibility from the LDO, not just in cases of nonconformities and semipublic parking areas.

In reviewing this section, please consider whether the 30 percent limitation regarding nonconformity requests should continue to apply. As currently drafted in Section 1.6, there could be more flexibility in expanding nonconforming structures and uses, without the need for Board of Adjustment review and approval.

A. Purpose⁶²

The purpose of the special exception (SE) procedure is to provide a mechanism for allowing the Board of Adjustment to grant flexibility in complying with certain regulations of this LDO. This allowance may be approved by the Board of Adjustment without finding of a physical hardship or unique limitation on the property.

B. Applicability

The Board of Adjustment may grant special exceptions to the regulations of this LDO, upon written request of the property owner, subject to the standards applicable to each exception set forth below in this section, or as specified in elsewhere in this LDO.

1. Nonconforming Uses and Structures⁶³

The Board of Adjustment may grant special exceptions to the provisions of this chapter pertaining to nonconforming status, limited to the following, and in accordance with the following standards. In granting special exceptions under this subsection, the Board of Adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the amortization period during which the nonconforming use may continue to operate or exist before terminating or being brought into conformance with the standards of this chapter.

- a. Expansion of the land area of a nonconforming use;
- b. Expansion of the gross floor area of a nonconforming structure, provided that such expansion does not decrease any existing setback and does not encroach onto adjacent property, and such expansion will otherwise improve or enhance public health, safety or welfare; or
- c. Change from one nonconforming use to another, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.
- d. Reconstruction and occupancy of a nonconforming structure, or a structure containing a nonconforming use, and/or the restoration of a building site that is nonconforming as to development standards (including, but not limited to, parking arrangement, landscaping, etc.), when a structure has been damaged by fire, flood or other calamity to the extent of more than 75 percent of the replacement cost of the building or structure at the time such damage. Such

⁶¹ 144-2.2-4.

⁶² The purpose has been drafted to focus less narrowly on nonconformities, since these permissions have been updated, and more on general allowance for flexibility unrelated to hardship, as discussed with staff.

⁶³ 144-2-2-3.

action by the Board of Adjustment shall have due regard for the property rights of the person or people affected, and shall be considered in regard to the public welfare, character of the area surrounding such structure, and the conservation, preservation and protection of property.

2. Semipublic Parking Areas in Residential Districts

To permit in residential districts semipublic parking areas for occupants of apartment houses, multiple dwellings, hotels, apartment hotels, fraternity or sorority houses, lodging houses, members of private clubs, and visitors to or patrons of hospitals, institutions, or places of public assembly, provided that such parking areas are located not more than $\frac{1}{4}$ mile from the facility they are intended to serve, and provided that parking area complies with all requirements of this LDO.

3. Adjustments to Other Standards of this LDO

The Board of Adjustment may consider granting special exceptions to the provisions of this LDO where specifically stated in the respective Sections and subsections of this Chapter.

C. Special Exception Procedure

Figure 8.6-4 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of rezoning requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

The Planning and Development Services Department shall review the application and prepare an agenda memo in accordance with the approval criteria in §8.6.4C.6.c.

4. Scheduling and Notice of Public Hearings

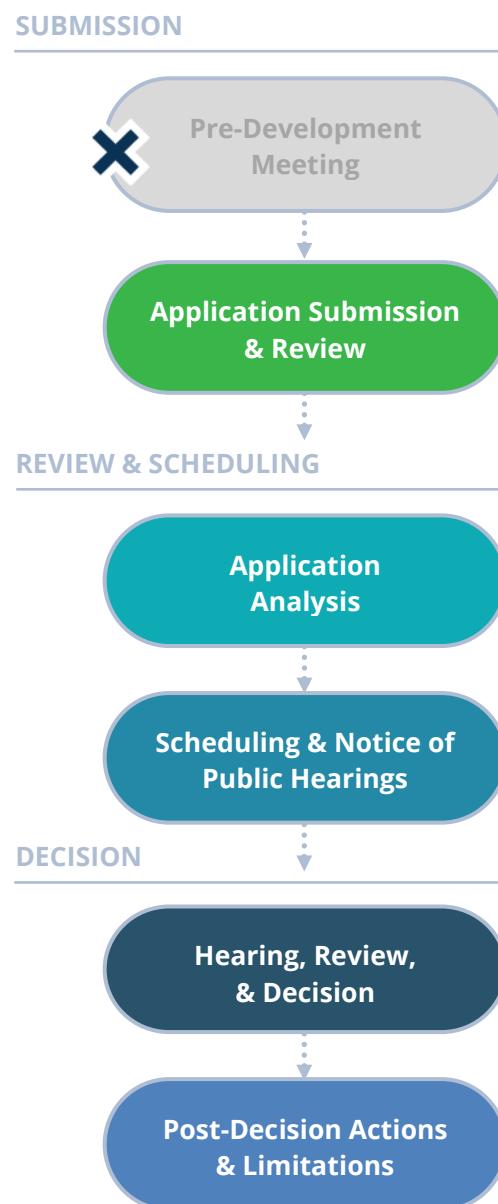


Figure 8.6-4: SE Procedure Steps

The application shall be scheduled for public hearing before the Board of Adjustment and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. Board of Adjustment Hearing, Review, and Decision

The Board of Adjustment may review and approve, approve with conditions, or deny the request in accordance with the approval criteria in §8.6.4C.6.c.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effect of Approval

A special exception becomes effective immediately upon approval.

b. Expiration of a Special Exception Approval

If construction of the development for which the special exception was approved is not substantially underway within 12 months after the date of SE approval, the approval shall expire, unless an extension has been requested as described in provision c.

c. Extension of Approval

The applicant may request an extension as described in §8.2.6F, *Extension of Approval*.

d. Effect of Denial

i. If a special exception request is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

ii. A special exception that has been denied shall be exempt from the one-year waiting period for re-submission in the following circumstances:

a. A re-hearing may be allowed within the one-year waiting period only if the Board of Adjustment has made a decision on another property within **one-quarter mile** of the property that received the denial that alters the facts and conditions upon which the denial was based.⁶⁶

b. Such changes of circumstances shall permit the re-hearing of the special exception request by the Board of Adjustment, but do not in any way have the force of law to compel the Board of Adjustment to approve the request after a hearing on the matter. Any re-hearing shall be considered entirely on its own merits and on the specific circumstances related to the subject property.

D. Special Exception Approval Criteria

The Board of Adjustment shall approve the special exception, upon finding that it complies with the general approval criteria described in §8.2.5E.

⁶⁶ This is a change from prior vague language that specified "immediate vicinity." The distance can be changed if one-quarter mile radius is too large or small, but some distance should be specified.

8.6.5 Variance⁶⁷

A. Purpose

1. In accordance with state statute, the purpose of the variance (VAR) procedure is to provide a mechanism allowing property owners to request relief from the strict application of this LDO, where literal enforcement of the requirements of the LDO will result in an unnecessary hardship due to the physical and topographical limitations of the specific parcel of land, and where the variance is necessary to develop the land, which could not otherwise be developed in the same manner allowed for other similar parcels due to unique conditions on the property.
2. A variance shall not be used:
 - a. To relieve property owners of the responsibility for compliance with LDO requirements in instances where the hardship is self-imposed;
 - b. To allow a use in a zoning district where it is not currently permitted; or
 - c. To alleviate inconvenience or financial burden imposed on property owners resulting from the requirement to comply with the applicable regulations of this LDO.

B. Applicability

Any property owner seeking relief from this LDO may request a variance when the strict application of the LDO would meet the criteria listed in §8.6.5D.

C. Variance Procedure⁶⁸

Figure 8.6-5 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of variance requests, with additions or modifications noted below.

1. Pre-development meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

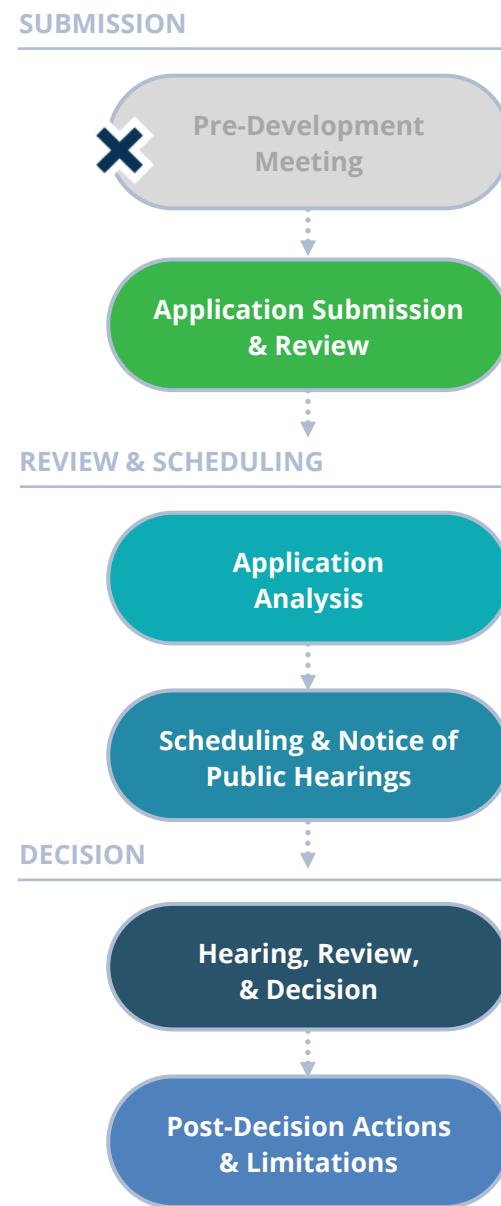


Figure 8.6-5: VAR Procedure Steps

⁶⁷ 144-2.2-3.

⁶⁸ 144-2.2-3(b).

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

The Planning and Development Services Department shall review the variance application and prepare an agenda memo in accordance with the approval criteria in §8.6.5D.

4. Scheduling and Notice of Public Hearings

The variance application shall be scheduled for review and decision at the next available regular meeting of the Board of Adjustment.

5. Board of Adjustment Hearing, Review, and Decision

- a. The applicant may appear at the hearing in person or by agent or attorney.
- b. The Board of Adjustment may review and approve, approve with conditions, or deny the VAR application in accordance with the approval criteria in §8.6.5D.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effect of Approval

A variance becomes effective immediately upon approval.

b. Expiration of a Variance Approval

If construction of the development for which the variance was approved is not substantially underway within 12 months after the date of approval, the approval shall expire, unless an extension has been requested as described in provision c. Once substantial construction is underway, the variance runs with the land and does not expire unless the zoning on the property is changed.

c. Extension of Approval

The applicant may request an extension of approval as described in §8.2.6F, *Extension of Approval*.

d. Effect of Denial

- i. If a variance request is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.
- ii. A variance that has been denied shall be exempt from the one-year waiting period for re-submission in the following circumstances:
 - a. A re-hearing may be allowed within the one-year waiting period only if the Board of Adjustment has made a decision on another property within **one-quarter mile** of the property that received the denial that alters the facts and conditions upon which the denial was based.⁶⁹
 - b. Such changes of circumstances shall permit the re-hearing of the variance request by the Board of Adjustment, but do not in any way have

⁶⁹ This is a change from prior vague language that specified "immediate vicinity." The distance can be changed if one-quarter mile radius is too large or small, but some distance should be specified.

the force of law to compel the Board of Adjustment to approve the request after a hearing on the matter. Any re-hearing shall be considered entirely on its own merits and on the specific circumstances related to the subject property.

D. Variance Approval Criteria⁷⁰

In reviewing a proposed variance, the Board of Adjustment shall consider the general approval criteria in §8.2.5E, and if:

1. There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of reasonable use of land;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
3. Granting the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
4. Granting the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this chapter;
5. An unusual physical or topographical hardship exists;
6. Granting a variance will be in harmony with the spirit and purpose of these regulations;
7. The variance is not being granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by this chapter to other parcels of land in the same zoning district; and
8. No variance may be granted which results in undue hardship upon another parcel of land.

⁷⁰ 144-2.2-3(a). Heading changed from "Authority" in Chapter 144.

8.7 Zoning: Signs Procedures

8.7.1 Alternative Sign Plan

A. Purpose⁷¹

The purpose of an alternative sign plan (ASP) procedure is to allow a specialized review by the Board of Adjustment of signs that may not generally be considered appropriate without certain restrictions, but that, if controlled as to the number, size, height, color, location, lighting, or relation to adjacent properties, may be permissible within the community.

B. Applicability

An alternative sign plan may be requested when an applicant wishes to request permission to vary from the applicable sign standards in §X.X, *Signs*, with respect to number, size, height, color, location, or lighting of signs on their property. The ASP is an allowance for flexibility that may be approved by the Board of Adjustment, unrelated to a hardship or unique limitation on the property.

C. Alternative Sign Plan Procedure

Figure 8.7-1 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of ASP requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

The Planning and Development Services Department shall review the application and prepare an agenda memo in accordance with the approval criteria in §8.7.1D.

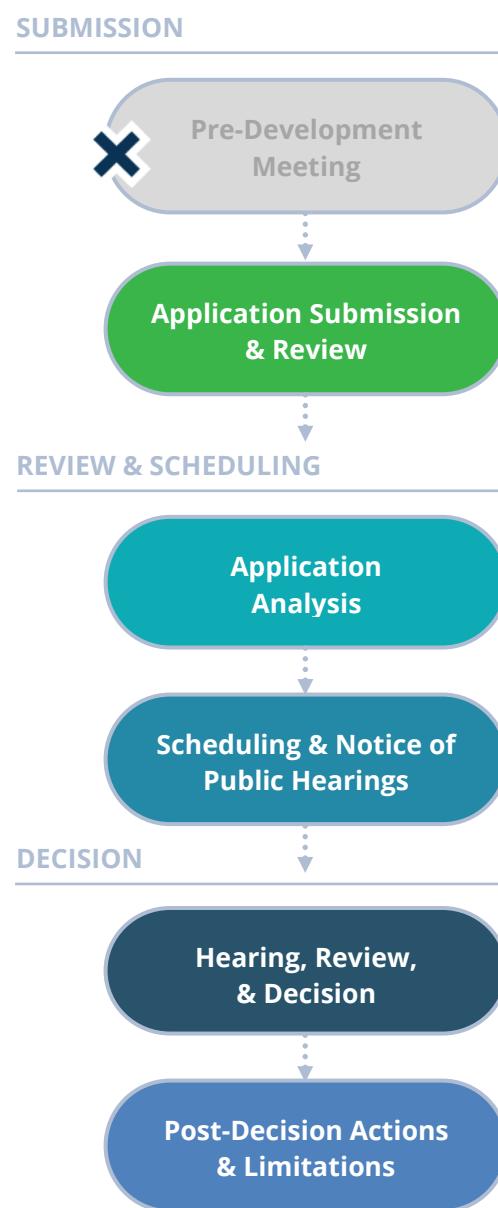


Figure 8.7-1: ASP Procedure Steps

⁷¹ Excerpted from 106-8.d.

4. Scheduling and Notice of Public Hearings

The application shall be scheduled for review and decision before the Board of Adjustment and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.2.4B.

5. Board of Adjustment Hearing, Review, and Decision

The Board of Adjustment may review and approve, approve with conditions, or deny the application in accordance with the approval criteria in §8.7.1D.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effect of Approval

An alternative sign plan becomes effective immediately upon approval.

b. Expiration of Approval

If the sign or signs have not been erected or a building permit to construct the sign(s) secured within 12 months after the date of approval, the approval shall expire, unless an extension has been requested as described in provision c.

c. Extension of Approval

The applicant may request an extension of approval as described in §8.2.6F, *Extension of Approval*.

d. Denial

If an alternative sign plan is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

D. Alternative Sign Plan Approval Criteria

In reviewing a proposed ASP, the Board of Adjustment shall consider the general approval criteria in §8.2.5E, and whether the proposed sign plan:

1. Is compatible with the surrounding area;
2. Will have no negative impacts on future development of the area;
3. Will have minimal physical impact on adjacent properties, or proposes means to ensure adequate mitigation of potentially unfavorable factors such as the number, size, height, color, location, lighting, or other potentially unfavorable impacts of the signs proposed within the plan;
4. Has no adverse impact on the health, safety, and welfare of the inhabitants of the area and the City of New Braunfels; and
5. Includes overall site sign consolidation, alternatives, and/or trade-offs to achieve a harmonious, overall plan that reduces the aggregate number, height, and/or size of signs that would normally be allowed.

8.7.2 Sign Variance

A. Purpose

The purpose of the sign variance (SV) procedure is to allow property owners a means of requesting relief from the strict application of the sign standards of this LDO, where literal enforcement of the requirements would result in an unnecessary hardship, and where the variance is necessary to respond to unique conditions on the property that would otherwise prohibit erection of a sign upon the parcel, in the same manner allowed for other similar parcels.

B. Applicability

1. Any property owner seeking relief from this LDO may request a sign variance when the strict application of the LDO would meet the approval criteria listed in §8.7.2D.
2. A sign variance may not be used to request permission to install prohibited signs as described in **§X.X, Prohibited Signs**, or to vary sign standards established by the City Council as part of a zoning change with additional restrictions, such as a special use approval, or planned development district.⁷²

C. Sign Variance Procedure

Figure 8.7-2 identifies the applicable steps from the common review procedures in §8.2 that apply to the review of SV requests, with additions or modifications noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.2.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.2.2.

3. Application Analysis

SUBMISSION



Pre-Development Meeting

Application Submission & Review

REVIEW & SCHEDULING

Application Analysis

Scheduling & Notice of Public Hearings

DECISION

Hearing, Review, & Decision

Post-Decision Actions & Limitations

Figure 8.7-2: SV Procedure Steps

⁷² 106-8.b.

The application shall be submitted accompanied by the required fee specified in Appendix D. The application and accompanying site plan will be accepted, The Planning and Development Services Department shall review the application and prepare an agenda memo in accordance with the approval criteria in §8.7.2D.

4. Scheduling and Notice of Public Hearings

The application shall be scheduled for review and decision by the Board of Adjustment.

5. Board of Adjustment Hearing, Review, and Decision

The Board of Adjustment shall review the application in accordance with the approval criteria in §8.7.2D and base its decision for approval, approval with conditions, or denial upon compliance with the criteria.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.2.6 shall apply with the following modifications:

a. Effect of Approval

A sign variance becomes effective immediately upon approval.

b. Expiration of Approval

If the sign has not been erected or a building permit to construct the sign secured within 12 months after the date of approval, the approval shall expire, unless an extension has been requested as described in provision c.

c. Extension of Approval

The applicant may request an extension of approval as described in §8.2.6F, *Extension of Approval*.

d. Denial

If a sign variance request is denied, consideration of an application that is substantially similar to what has been denied is subject to the provisions described in §8.2.6D, *Effect of Denial*.

D. Sign Variance Approval Criteria

In reviewing a proposed SV, the Board of Adjustment shall consider the general approval criteria in §8.2.5E, and if:

1. There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would prevent erection of a sign that would otherwise be permitted upon the property;
2. The sign variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
3. Granting the sign variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
4. Granting the sign variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this chapter;
5. An undue physical or topographical hardship exists;
6. Granting the sign variance will be in harmony with the spirit and purpose of these regulations;

7. The sign variance is not being granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss; and
8. No sign variance may be granted which results in undue hardship upon another parcel of land.

8.8 Subdivision Common Review Procedures

COMMENTARY

Subdivision procedures have been updated to comply with state law. Further changes to the content of these common review procedures and individual platting procedures may be warranted upon the conclusion of staff efforts to review subdivision design standards.

This section describes the standard review procedures required for all subdivision plats unless otherwise stated in this LDO. Generally, the review procedures include the steps shown below; however, not every application requires every step. Application-specific procedures are described in §§8.9.1 through 8.9.11.

8.8.1 Pre-Development Meeting

A. Purpose

The pre-development meeting provides an opportunity to meet with staff from the Planning and Development Services Department, the Transportation and Capital Improvements Department, and other departments with regulations and review authority over subdivision applications. The conference allows potential applicants to discuss the proposed development plans, review procedures, submittal requirements, any impact to public facilities, infrastructure needs, and mitigation measures, if necessary.

B. When Required

1. A pre-development meeting is only required when a proposed subdivision includes:
 - a. Planned development district zoning with subdivision;
 - b. Any application that involves the submission of the Level 2 or higher Traffic Impact Analysis; or
 - c. Any application that involves the submission and consideration of a revision to flood boundary maps.
2. For any other application type, a pre-development meeting is optional but encouraged.
3. There is no fee for a pre-development meeting.

C. Procedure

1. Request

The applicant shall submit an online request for a pre-development meeting to the City.

2. Scheduling

The City will consult with the applicant to schedule a pre-development meeting, and notify appropriate staff of the time and location of the conference. Depending on the complexity of the project, the meeting can be scheduled for 30 minutes or one hour.

3. Information Submission for Required Pre-Development Meeting

At least five days prior to the scheduled pre-development meeting, the applicant shall submit the following materials at a minimum:

- a. A written description of the proposed project;
- b. Conceptual drawings showing the location, layout, and primary elements of the proposal;

- c. Uses that are proposed, and the location of proposed uses, structures, and public improvements;
- d. Whether any variance or other request for flexibility related to the proposed project is anticipated;
- e. Any questions for staff regarding the project or applicable regulations.

4. Meeting Discussions

City staff attending the pre-development meeting shall identify concerns or factors the applicant should consider related to the scope, features, and potential impacts of the project as they relate to this LDO, adopted building code, engineering standards, public safety, or other policies or regulations enforced by the City and/or other public entities. City staff shall also indicate to the extent possible what approval procedures are required for the proposed project, and if applications associated with such procedures may be processed concurrently.

D. Effect

Discussions that occur and information that is conveyed at a pre-development meeting are preliminary and advisory, and shall not be binding upon the meeting participants. Discussion of potential conditions to mitigate impacts do not reflect actions by the decision-making body until and unless a decision-making body takes formal action to attach that condition to a development approval.

E. Expiration

If an application is not submitted within 180 days following a required pre-development meeting, a new pre-development meeting shall be necessary prior to application submission. There is no expiration for optional pre-development meetings.

8.8.2 Application Submission**A. Authority to Submit an Application**

1. The following entities are authorized to initiate or submit a subdivision application:
 - a. The property owner;
 - b. A contract purchaser, who may be an individual, firm, government entity, association, syndicate, partnership, or corporation, with specific authorization in writing by the property owner; or
 - c. A person or entity specifically authorized in writing by the property owner.
2. If there are multiple owners, or other people authorized to submit the application, a single representative for all such people shall sign the application or a letter or document consenting to the application.

B. Proof of Land Ownership

1. The City requires proof of land ownership prior to acceptance of any application involving real property, and shall have the authority to determine what document(s) are required to prove ownership. These documents may include:
 - a. Deed;
 - b. Title policy;
 - c. Tax receipt;
 - d. Signature(s) on the application form; or
 - e. Some other documentation that is deemed acceptable by the City

2. Along with the application submission, the applicant shall provide written verification of being the owner of record of the subject land parcel or parcels, or proof of being the property owner's duly authorized agent.
3. If ownership cannot be conclusively established during application completeness review, the City shall have the authority to reject the application as incomplete on the basis of protecting the public interest. The applicant may resubmit an application for the property at any time.

C. Standards for Acceptance

1. When a pre-development meeting is required, application submission cannot be accepted until the pre-development meeting is complete.
2. A plat application cannot be accepted until the Infrastructure Construction Plans, as described in §8.8.2F below, are approved.
3. Applications shall be submitted using the appropriate application form established by the City and accompanied by a nonrefundable application fee and any other documents required by the application checklist, including approved letters of certification (LOCs), as described below in §8.8.2E.
4. When submitted, applications shall be accompanied by all required fees, as described in Appendix D of the City's Code of Ordinances. The fee schedule shall be established by the City Council, subject to periodic review and updating.
5. It is the responsibility of the applicant to demonstrate that the application meets all applicable standards and regulations set forth in the City's Code of Ordinances.
6. Simultaneous processing of multiple applications for the same project is permissible. Applications to be considered concurrently shall include all required materials for all application types at one time. Application documentation and maps or plans may be combined, if all requirements in this section are satisfied and all required information is provided.
7. All parcels of land included on an application shall be contiguous.
8. In addition to the requirements outlined herein for each type of application, the City may maintain separate policies and procedures for the submission and processing of applications consistent with the provisions of this chapter including, but not limited to, application forms, fee schedules, checklists, language blocks for plats, and other similar items. These policies and procedures are incorporated by reference into this ordinance, as may be amended from time to time, and it is the applicant's responsibility to be familiar with, and to comply with, these policies and procedures.

D. Determination of Application Completeness

Planning and Development Services Department staff shall conduct a "Completeness Check" to determine whether the application is complete or incomplete. If the application meets the completeness review, the plat is considered filed on the final day of completeness review. If the application is incomplete, it will be returned to the applicant who may resubmit their application at a later time.

1. To be deemed complete an application must include sufficient information and all required materials to be processed, including the required fee. A determination that an application is complete or incomplete does not constitute a determination as to

whether the application complies with all applicable standards for approval of the application.

2. A complete application shall be processed according to the procedures in this chapter.
3. An applicant shall be notified within five business days of the date of submission if an application is incomplete.
4. If all deficiencies in an incomplete application have not been remedied within 45 days of the date of original submission, the application shall expire.
5. An applicant wishing to resubmit an application that expired shall be required to re-initiate the application process from the beginning, including a new pre-development meeting, if required.

E. Letters of Certification

1. When Required

Prior to submitting an application to have a plat considered by the City, the applicant shall secure letters of certification (LOCs) from all reviewing entities, including but not limited to the Transportation and Capital Improvements Department, water and wastewater utility providers, pertinent counties and state agencies including the Texas Department of Transportation (TxDOT). Any request for an LOC shall be accompanied by an application, fees, and associated documents required on the application.

2. Review and Issuance⁷⁵

- a. For LOCs issued by the City, after determining that request for LOC and required technical data is complete, the City shall review the application and associated documents and issue or deny the LOC.
- b. If the City determines that the application and supporting documents do not conform with City requirements, the applicant may revise any non-compliant information and resubmit the application. The City shall review the revised information for compliance with requirements, and then issue or deny the LOC.

3. Scope of Issuance

- a. An LOC will indicate that the plat or master development plan meets the respective issuing reviewing entity's requirements.
- b. On its own, an LOC does not authorize the development or subdivision of land, nor does it approve items not specified and reviewed by other reviewing entities.

4. Expiration

An LOC shall remain valid for one year from the date of issuance. If a completed application has not been submitted by that time, the LOC shall expire and a new LOC shall be required to pursue approval for a subdivision plat or master development plan.

5. Amendments

⁷⁵ To eliminate confusion over when a completeness review occurs, 118-21.f.2 has not been carried forward. Instead, this provision explains that at this stage, the LOC request is reviewed to ensure there is adequate technical information provided on which to grant the LOC. The full completeness review occurs when the application accompanied by LOC is submitted to the Planning & Development Services Department.

An LOC may be amended prior to submitting an application for subdivision plat or master development plan if the proposed amendment does not change:

- a. The boundary of the subdivision.
- b. The traffic impact analysis submittal type or increase the peak hour trips by more than ten percent.
- c. The drainage area, development discharge location, or floodplain/floodway boundary.

6. Recording Procedures

LOCs are not recorded. An LOC shall be maintained by the applicant and submitted as part of the application for subdivision plat or master development plan.

F. Infrastructure Construction Plans⁷⁷

1. The applicant shall submit infrastructure construction plans to the Transportation and Capital Improvements Department, and any pertinent utility providers.
2. Plans and specifications shall be prepared in accordance with sound engineering practice under the supervision of an engineer registered to practice engineering in the state of Texas.
3. Infrastructure construction plans shall conform to city standards and include information indicated in the City of New Braunfels Construction Plan Set and Report Requirements.
4. The Transportation and Capital Improvements Department and pertinent public utility providers shall review the infrastructure construction plans for the purpose of determining conformity with this chapter and applicable city standards, giving consideration to sound engineering practices and design criteria.
5. When submitted, all plans and engineering calculations shall bear an engineer's certificate in accordance with this chapter.
6. If security for public improvement is provided, copies of detailed cost estimates shall also be provided.
7. Upon approval of the infrastructure construction plans by the city and utility provider, the submitting engineer shall be notified in writing that the infrastructure construction plans have been approved.
8. Approved infrastructure construction plans shall be accepted in lieu of an approved LOC from the City and pertinent water and wastewater utility providers.

G. Zoning Requirement

1. The City may consider a master development plan or any type of plat simultaneously with a rezoning application, or an application for a waiver from the standards in this LDO, and may condition approval of a master development plan or any type of plat upon final City Council approval of the rezoning or approval of the waiver request.
2. Noncompliance with the requirements of the zoning district in which the subject property is located, or lack of the proper zoning, may constitute grounds for denial of the master development plan or plat.

⁷⁷ 118-31.

8.8.3 Application Analysis

A. Referral to Staff and Review Agencies

The Planning and Development Services Department shall distribute the complete application to appropriate staff, and pertinent reviewing agencies.

B. Staff Review and Application Revisions

Staff shall review the application and submit recommendations and comments to the applicant in a form established by the Planning and Development Services Department. If requested by Planning and Development Services Department staff, the applicant shall attend a meeting to discuss staff recommendations and comments on revisions to the pending application. The application will not move forward for further review until the applicant has adequately responded to the City's recommendations and comments.

C. Withdrawal

A property owner or applicant may withdraw an application at any time, by writing to the Planning and Development Services Department.

1. Refund of Fees

- a. The City may refund 75 percent of the application fees if the request for withdrawal is received within ten calendar days of the application being deemed complete by Planning and Development Services Department staff.
- b. No refund is possible for a withdrawal request received 11 or more calendar days after an application has been deemed complete by Planning and Development Services Department staff.

2. Resubmission of Application

- a. An application that is withdrawn before any public hearing on it has been held may be resubmitted at any time.
- b. An application that is withdrawn after a public hearing has been held on it may not be resubmitted for 180 days from the date of withdrawal.

D. General Standards for Approval

These general standards apply to all application types; additional standards for approval, specific to a given application type, may also apply. See specific application description.

1. Consistency with Adopted Plans

The proposed development is consistent with and supports accomplishment of policies and goals outlined in the Comprehensive Plan, Strategic Plan, and Thoroughfare Plan.

2. Compliance with Adopted Ordinances and Policies

The proposed development shall comply with all applicable standards in the LDO, adopted criteria manuals, or other chapter of the City Code, unless a waiver or exception from a particular standard is approved.

3. Prior Approvals

The proposed development shall be consistent with the conditions of any prior unexpired land use, plan, or subdivision plat approval. The proposed development shall also be consistent with any approved phasing plan or development master development plan and installation of public improvements and amenities.

8.8.4 Scheduling and Notice of Public Hearings

A. Public Hearing Not Required

With the exception of residential replat (§8.9.8D.3) and waiver (§8.9.10) requests, public hearings are not required for plat review and approval. See §8.8.5A.3, Applications Subject to Administrative Decision.

B. Scheduling

Applications subject to a public hearing per Table 8-1: *Summary Table of Review Procedures*, shall be scheduled at either a regularly scheduled or special meeting of the appropriate decision-making body.

C. Required Public Notice

1. Notice Requirements

- a. A residential replat request is subject to a public hearing requirement, and shall be preceded by public notice.
- b. Planning and Development Services Department staff shall be responsible for mailing and publishing notice as described below; however, the applicant shall bear all costs incurred in connection with giving notice of the public hearing, including costs for re-notification, in the event such is required.

2. Types of Notice

a. Published Newspaper Notice

Newspaper notice shall be published in a newspaper of general circulation more than 15 calendar days prior to the scheduled hearing.

b. Mailed Written Notice

- i. When required, written notice shall be:

- a. Sent via first-class mail before the 15th calendar day prior to the scheduled hearing date.
- b. Provided to all owners whose property is wholly or partially within 200 feet of the subject property and within the original subdivision.
- c. Property owners shall be as listed in the most recent tax records.
- d. The notification radius shall be measured from the outer boundary of the area covered by the proposed replat a distance outward including the properties within the listed radius distance.

- ii. At minimum, mailed notice shall include the following information:
 - a. A description of the proposed project with the application type;
 - b. A location map or description of the location of the proposed project; and
 - c. The date, time, and location of the hearing being noticed.

c. Posted Agenda Notice

The agenda of applications scheduled for a Planning Commission hearing shall be posted on the [City of New Braunfels web page](#) at least 72 hours prior to the scheduled public hearing.

D. Minor Defects in Notice Shall Not Invalidate Proceedings

Minor defects in any notice shall not invalidate the public hearing proceedings if a bona fide attempt has been made to comply with applicable notice requirements. For

example, the failure of any person or entity to receive notice sent as set forth in this chapter shall not constitute grounds to invalidate the actions of the City.

8.8.5 Hearing, Review, and Decision

A. General Standards

1. All subdivision plats, master development plans, and replats are to be approved or approved with conditions by the City in accordance with the requirements of the Texas Local Government Code ch. 212 as amended, and the applicable approval criteria described in this section.
2. The decision-making body listed in Table 8-1: *Summary Table of Review Procedures*, shall have the authority to take final action.
3. The decision-making body shall consider the application, relevant supporting materials, agenda memo, recommendations from other reviewing bodies, along with any public comments or public testimony presented at the public hearing, as applicable.

B. Applications Subject to Administrative Decision

1. Review and Decision

Except for residential replats and waiver requests, plat approvals are subject to review and a final decision within 30 days of the application acceptance date by the Planning and Development Services Department.

a. Plat Approval

If, upon review, staff find that the plat conforms to the requirements of Article 5, *Subdivision Standards*, and the criteria for approval in this section, the plat shall be approved.

b. Plat Approval with Conditions

- i. If, upon review, staff find that the plat does not conform to the requirements of Article 5, *Subdivision Standards*, and the criteria for approval in this section, the plat shall be approved with conditions, and returned to the applicant to satisfy the conditions of approval, prior to resubmitting the application.
- ii. A plat that is subject to conditions of approval shall be accompanied by a written statement of the conditions of approval and the reason(s) for the conditions being applied. Each condition or reason must be directly related to the requirements of this LDO or state statute and include citations to the specific law/ordinance.
- iii. To obtain final approval after a conditional approval, an applicant shall submit a written response demonstrating how each condition has been satisfied, or the adopted remedy that resolves each condition of approval.
- iv. The Planning and Development Services Department and all other reviewing entities shall determine whether to grant final approval or to disapprove a previously conditionally approved plat within 15 days of receipt of the applicant's response.
 - a. If the applicant's response adequately addresses each condition of approval, then the city shall approve the plat.

- b.** The plat may be disapproved only on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision. New reasons for denial or conditions of approval may not be considered at this stage.
 - c.** If the City does not approve or disapprove the plat within 15 days, the plat is deemed approved, and may be recorded as described in provision c.ii below.
 - c. Failure to Act**
 - i.** If the Planning and Development Services Department does not approve or approve with conditions any plat application within 30 days after it has been submitted and deemed complete, the plat shall be considered approved.
 - ii.** A certificate showing the acceptance date and the failure to take action on the application within the timeframe prescribed in this section shall, on demand by the applicant, be issued by the Planning and Development Services Department. In lieu of the written endorsement or other evidence of approval typically required in this section, such a certificate shall be sufficient to allow for plat recordation.
- 2. Finality of Decision**
 - a.** For any application subject to administrative review and decision, the decision is immediately final.
 - b.** An applicant who disputes the validity of a staff-level decision or any condition of approval attached to a plat may file an appeal with the Board of Adjustment, as described in §8.2.6B.
 - c.** An applicant may also request a waiver of any condition in accordance with §8.9.10, *Non-Residential Replat*.

C. Applications Subject to Planning Commission Review and Decision**1. Agenda Memo**

If an application is subject to review by the Planning Commission, per Table 8-1: *Summary Table of Review Procedures*, staff shall prepare a written agenda memo. The agenda memo shall state whether or not the application complies with requirements of this LDO, other relevant Chapters of the City's Code of Ordinances, and applicable standards of the Transportation and Capital Improvements Department, and include relevant commentary on the application's conformance with the Comprehensive Plan, Strategic Plan, and other adopted plans and policies of the city.

2. Distribution and Availability of Application and Agenda Memo

The Planning and Development Services Department shall submit a copy of the agenda memo to the applicant and the decision-making body, and shall make the agenda memo and related materials available for public review no later than 72 hours prior to the scheduled hearing where the application is to be heard.

D. Conditions of Approval

- 1.** The decision-making body may impose conditions necessary to meet the objectives of this LDO and to mitigate potential adverse impacts of the proposed development on the surrounding properties, communities, and streets.
- 2.** All conditions of approval shall be accompanied by a written statement of the conditions of approval and the reason(s) for the conditions being applied. Each

condition or reason must be directly related to the requirements of this LDO or state statute and include citations to the specific law/ordinance.

3. The decision-making body may recommend alternative conditions to those proposed by the Planning and Development Services Department. The modified conditions shall be applied prior to rendering a decision on an application.
4. Any condition of approval that requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts. The City shall bear the burden of determining such impacts.
5. If a prior approved application, or portion thereof, is expunged by a subsequent application approval, any prior conditions of approval shall also be considered expunged.
6. Conditions imposed on any application shall run with the land and be binding on the property owner and their successors.

E. Postponements

Because of state law provisions regarding processing time, postponement of any plat application that has been deemed complete is not possible. An applicant wishing to postpone or delay their plat will need to formally withdraw their application and resubmit when ready to proceed.

8.8.6 Post-Decision Actions and Limitations**A. Notice of Decision**

Within ten days after a final decision on an application, the Planning and Development Services Department shall provide written notification of the decision via email or first-class mail to the applicant

B. Appeals

Appeals of decisions by the Planning Commission regarding waivers or residential replats may be pursued as described §8.2.6B, *Appeals*.

C. Effect of Approval**1. Authorized Activity**

- a. Approval of any subdivision application in accordance with this LDO authorizes only the particular development, plan, or other specific activity approved, and not any other development requiring separate application.
- b. If one development permit or approval is a prerequisite to another permit or approval (e.g., variance approval prior to final plat approval), development may not take place until all required permits and approvals are obtained. Approval of one application does not necessarily guarantee approval of any subsequent application.
- c. The approval of an application does not waive Building, Fire, Flood, or other codes, or any other requirements imposed by County, State, or Federal regulations or law.

D. Recordation⁹¹

1. After approval of any plat and infrastructure construction plans by the City and pertinent utility provider, the City shall record such final plat with the appropriate county clerk upon the applicant's performance of one of the following:
 - a. Completion of the construction of required improvements prior to recordation in compliance with this chapter.
 - b. Filing of security in lieu of completing construction prior to recordation in a form approved by the city attorney, and in compliance with this chapter.
2. In addition fulfilling the requirements of provision 1 above, the applicant shall provide as appropriate the following:
 - a. A check or checks payable to the county clerk in the amount of the recordation fee for filing the final plat.
 - b. A tax certificate from the city, county and school district showing that no taxes are currently due or delinquent against the property.
 - c. Dedication of all streets, alleys, parks, easements and other land intended for public use, signed by the owner or owners and by all other people owning an interest in the property subdivided and platted, which shall be acknowledged in the manner prescribed by the laws of the state for conveyance of real property, and which shall be submitted and attached to or placed in the final plat in accordance with the provisions in this chapter.

E. Deferral of Required Improvements

1. Upon petition of the property owner and favorable recommendation of the Transportation and Capital Improvements Department, at the time of plat approval the City may defer the provision of any or all public improvements, subject to appropriate conditions, that it deems are not required in the immediate interests of the public health, safety and general welfare.
2. When a petition to defer the construction of any public improvements required under this chapter is granted by the City, the property owner shall deposit in escrow with the City their share of the costs of the future public improvements as approved by the Transportation and Capital Improvements Department prior to filing of the plat, or the property owner may execute a separate improvement agreement secured by a cash escrow or, where authorized, a letter of credit guaranteeing completion of the deferred public improvements upon demand of the City.

F. Issuance of Building Permits and Certificates Of Occupancy

1. No building permit, other than sign permits, shall be issued or utility connection allowed for a lot, building site, building or use unless the lot or building site has been officially recorded by a final plat approved by the City and filed for record at the applicable county.
2. Upon application for a "foundation only" building permit, a building "foundation only" permit shall be issued provided that a final plat has been recorded. However the building permit shall not be issued and building construction shall not be allowed

⁹¹ 118-40.

to surpass the construction of fire protection improvements until all required fire lanes have been completed and until all water lines serving fire hydrants have been completed, inspected and tested, within 500 feet of the lot to which the building permit applies.

3. Unless exempted by this chapter, no lot may be sold nor title conveyed until the final plat has been approved and recorded at the applicable county.
4. No certificate of occupancy shall be issued for a building or the use of property unless all subdivision improvements have been completed and a final plat has been approved by the City and recorded at the applicable county. Notwithstanding the above, the Building Official may authorize the conditional occupancy of a structure provided that an agreement providing cash escrow, a letter of credit, or other sufficient surety is approved by the Transportation and Capital Improvements Department for the completion of all remaining public improvements, and provided that the structure is safely habitable in accordance with the city's building codes.

G. Modification or Amendment of Approval

Unless otherwise provided in this LDO, any modification of an approved plan, permit, or condition of approval shall require a new application that is submitted and reviewed in accordance with the full procedure and fee requirements applicable to the particular type of application.

H. Expiration of Approval

1. A subdivision plat approval shall be valid as authorization for the approved activity until expiration five years after approval, if progress toward completion is being made. Progress towards completion of the development for which the plat was approved includes the following:
 - a. An application for a final plat is submitted;
 - b. A good faith effort is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
 - c. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
 - d. Security is posted with the city to ensure performance of an obligation required by the city; or
 - e. Utility connection fees or impact fees for the project have been paid to the city, New Braunfels Utilities, or other pertinent utility provider.
2. A change in ownership of the land shall not affect the established expiration time period of an approval.

I. Extension of Approval

1. An approval may be extended for 12 additional months by the Planning and Development Services Department.
2. The request for extension shall be submitted in writing no less than 30 days prior to the expiration of the original approval.

3. At the end of this 12-month extension, the plat approval shall be revoked in writing by the City, unless:
 - a. A further extension is granted by the Planning Commission;
 - b. Subdivision development has begun; or
 - c. Surety has been provided for in accordance with this chapter.

8.9 Subdivision: Procedures

8.9.1 Master Development Plan

A. Purpose

A purpose of the subdivision master development plan (MDP) is to enable review when a proposed subdivision constitutes a unit of a larger tract that is to be subsequently subdivided, and developed in successive phases. The master development plan shall encompass the entire area that will ultimately be developed as part of the subdivision.

B. Applicability

A tract subject to phased development under an approved master development plan need not be developed in any particular order, as long as the final plat for any particular phase provides for adequate facilities, such as roads, drainage improvements, and utilities in accordance with the standards of this chapter. The number of lots and/or area of land in any phase may be different from that shown on the approved master development plan as long as the density of the overall project does not increase beyond the standards for minor revisions to master development plans. The City shall approve such changes to an approved master development plan as noted in this section as a minor revision so long as the revised master development plan is in accordance with this chapter.

C. Master Development Plan Procedure

Figure 8.9-3 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of master development plans. Additions or modifications to the common review procedures are noted below.

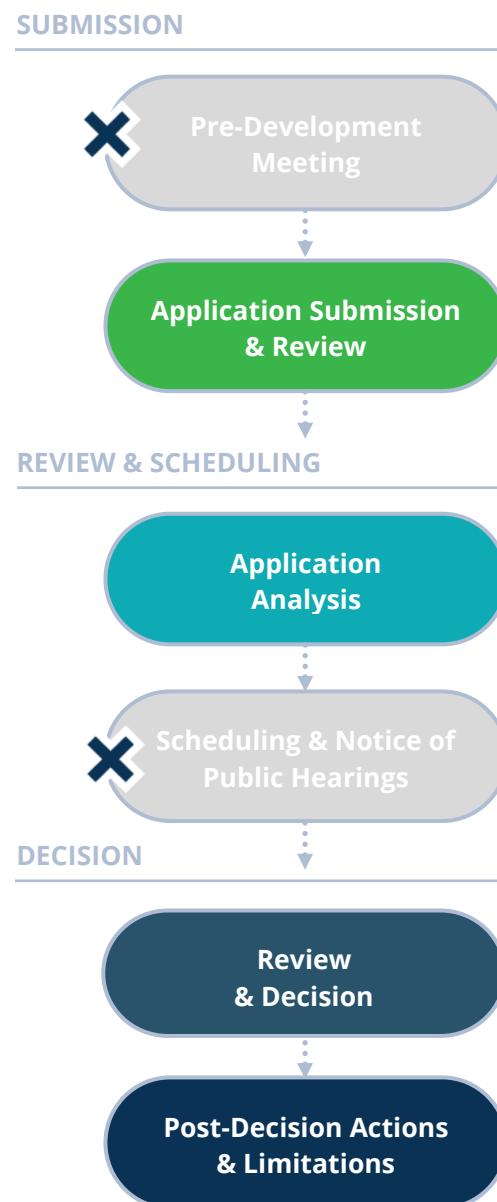


Figure 8.9-3: MDP Procedure Steps

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

The application shall be submitted accompanied by the required fee specified in Appendix D. The application will be accepted, and may be revised or withdrawn, in accordance with §8.8.2.

3. Application Analysis

The Planning and Development Services Department shall review the master development plan and return to the applicant written recommendations for changes or amendments to the information contained in the plan, when reviewed against the approval criteria in §8.9.1D.

4. Scheduling and Notice of Public Hearings

Public notice and public hearing are not required for a master development plan review.

5. Administrative Review and Decision

The master development plan shall be approved, or approved with conditions, according to the process described in §8.8.5A.3. In addition to any other conditions required to conform the master development plan to the standards of this chapter, the Planning and Development Services Department may condition its approval of the master development plan upon exclusion of land from the master development plan, or upon adjustments in the proposed phases of the development, or any other conditions it may deem appropriate to protect the public health, safety or welfare.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Conformity with Approved Layout

Once the overall layout has been approved by the Planning and Development Services Department, it shall be maintained in the city's records. Thereafter plats of subsequent units of the subdivision shall conform to the approved overall layout, unless changed in compliance with provisions b and c below. Approval of a subdivision master development plan shall not constitute automatic approval of the preliminary or final plat.

b. Minor Revisions To Approved Master Development Plan

The Planning and Development Services Department is hereby authorized to review and approve minor revisions to the approved master development plan.

i. Minor revisions are changes that do not:

- a.** Increase project density by more than ten percent;
- b.** Alter land area or size by more than ten percent;
- c.** Increase the intensity of land uses; parking or traffic generation by more than ten percent;
- d.** Involve changes to street and drainage items approved by the Transportation and Capital Improvements Department, development phase changes in accordance with subparagraph i., and minor water and wastewater items approved by the utility provider.

- ii. Specific conditions of approval applied to the master development plan shall not be considered as minor revisions.
- iii. Any minor revision that the Planning and Development Services Department declines to approve may be submitted as a major revision as described in provision c below.
- iv. Any minor revisions to a master development plan that are approved by the Planning and Development Services Department shall be reflected and shown on a new master development plan drawing labeled as "amended master development plan (minor revisions)", and the revised plan shall be submitted to the Planning and Development Services Department.
- v. Minor revisions to an approved master development plan shall not extend the original approval date of the master development plan, unless an extension for the original master development plan is requested and approved as described in §8.9.1C.6.f.
- vi. Any minor revision to a master development plan does not constitute the first in a new series of permits as defined in the Texas Local Government Code ch. 245 for that portion of the approved master development plan, if it is approved.

c. **Major Revisions to Approved Master Development Plan**

- i. A major revision to a master development plan is any revision other than those described as minor revisions in §8.9.1C.6.b.i above. Any request for a major revision shall be submitted as an "amended master development plan" to the Planning and Development Services Department for review and consideration in the same manner as an initial master development plan.
- ii. An amended master development plan presented to the City for consideration constitutes the first in a new series of permits as defined in V.T.C.A., Local Government Code ch. 245 for that portion of the approved master development plan so amended.
- iii. Any major revisions to a master development plan shall be reflected and shown on a new master development plan drawing, labeled as "amended master development plan", and the revised plan shall be submitted to the Planning and Development Services Department.
- iv. Revisions to an approved master development plan shall not extend the original approval date of the master development plan, unless an extension for the original master development plan is requested and approved as described in §8.9.1C.6.f.

d. **Appeals**

- i. A master development plan may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a master development plan may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

e. Expiration of a Master Development Plan Approval

Master development plan approval shall expire according to the standards described in §8.2.6B, *Appeals*.

f. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Master Development Plan Approval Criteria

Planning and Development Services staff shall approve the master development plan, upon finding that it complies with the general approval criteria described in §8.8.3D, and:

1. The subdivision master development plan is consistent with all zoning requirements (if applicable) for the property and any approved development agreement(s) that are applicable to the property;
2. The proposed provision and configuration of roads, water, wastewater, and drainage is adequate to serve each phase of the subdivision, and meet the standards set forth in this chapter;
3. The schedule of development is feasible and prudent;
4. The location and size of development proposed ensures orderly and efficient development of the land subject to the approved master development plan; and
5. Where the proposed development is located in whole or in part within the extraterritorial jurisdiction of the city and is subject to an interlocal agreement under the Texas Local Government Code ch. 242, the proposed subdivision master development plan meets any county standards to be applied pursuant to the agreement.

8.9.2 Preliminary Plat (Optional)

A. Purpose

The purpose of the preliminary plat (PP) procedure is to allow for preliminary review of a plat, and accompanying street and utility drawings, and schematic layout. The review provides feedback to an applicant on any elements of the proposed development that may need to be amended to comply with all applicable standards prior to submission and acceptance of a final plat.

B. Applicability

Submission of a preliminary plat is optional. However, the applicant may elect to have a preliminary plat prepared by a surveyor in accordance with this chapter. The preliminary plat and final plat and all accompanying data may be submitted together, or the applicant may submit a final plat and all accompanying data required by this chapter without submitting a preliminary plat.

C. Preliminary Plat Procedure

Figure 8.9-1 identifies the applicable steps from subdivision platting common review procedures in §8.8 that apply to the review of preliminary plats. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

The preliminary plat shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.

3. Application Completeness Check

The Planning and Development Services Department shall review the preliminary plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice and public hearing are not required for a preliminary plat review.

5. Administrative Review and Decision

SUBMISSION



Pre-Development Meeting

Application Submission & Review

REVIEW & SCHEDULING

Application Analysis



Scheduling & Notice of Public Hearings

DECISION

Review & Decision

Post-Decision Actions & Limitations

Figure 8.9-4: PP Procedure Steps

The plat shall be approved, or approved with conditions, according to the process described in §8.8.5A.3.

- a. Approval or conditional approval of a preliminary plat shall indicate that the layout submitted on the preliminary plat as a guide to the installation of streets, water, sewer and other required improvements and utilities and to the preparation of the final plat is deemed adequate at the preliminary review stage.
- b. Approval or conditional approval of a preliminary plat does not indicate and should not be construed as a guarantee of automatic approval of the final plat.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

Since preliminary plats are optional, there is no appeal process. A preliminary plat that is not approved may be amended prior to submitting a final plat. If an applicant disagrees with a condition of approval associated with a preliminary plat, the applicant may pursue a waiver or variance to that condition when submitting the final plat.

b. Expiration of a Preliminary Plat Approval

If a final plat for all or part of the preliminary plat is approved before the preliminary plat expires, the preliminary plat shall not expire. Otherwise, the standards described in §8.8.6H shall apply.

c. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Preliminary Plat Approval Criteria

Planning and Development Services staff shall approve the preliminary plat, upon finding that it complies with the general approval criteria described in §8.8.3D.

8.9.3 Minor Plat

A. Purpose

A purpose of a minor plat (MP) is to enable review of a subdivision or development plat resulting in the creation of four or fewer lots, that does not create any new streets or necessitate the extension of any municipal facilities, except sidewalks and trails, to serve any lot within the subdivision.

B. Applicability

A minor plat only applies to property being subdivided that is already adequately served by all required city utilities, as determined by the Transportation and Capital Improvements Department and pertinent utility providers, and all lots created by the plat will have frontage on an existing public roadway.

C. Minor Plat Procedure

Figure 8.9-5 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of minor plats. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

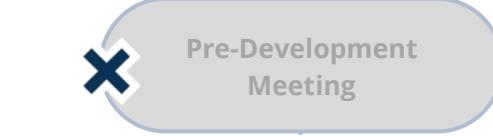
2. Application Submission

- The minor plat shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.
- A minor plat shall meet all of the informational and procedural requirements set forth for a final plat, as described in §8.9.2.
- The minor plat shall be entitled and clearly state that it is a "minor plat."

3. Application Completeness Check

The Planning and Development Services Department shall review the preliminary plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

SUBMISSION



REVIEW & SCHEDULING



DECISION



Figure 8.9-5: MP Procedure Steps



4. Scheduling and Notice of Public Hearings

Public notice, a public hearing, and the approval of other lot owners are not required for the approval a minor plat.

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a plat may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant my file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The minor plat shall be recorded at the applicable county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of a Minot Plat Approval

Minor plat approval shall expire if all filing materials are not submitted to the city and if the plat is not recorded at the applicable county within the time periods specified for a final plat, according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Minor Plat Approval Criteria

Planning and Development Services staff shall approve the minor plat, upon finding that it complies with the general approval criteria described in §8.8.3D, and meets all of the informational and procedural requirements set forth for a final plat.

8.9.4 Final Plat

A. Purpose

The purpose of the final plat (FP) procedure is to allow for final review of a plat, and accompanying street and utility drawings; and schematic layout. The final plat shall include all or part of the land shown on an associated subdivision master development plan and/or preliminary plat, and shall demonstrate that any changes, modifications, alterations, corrections and conditions imposed by the City in prior rounds of review and approval have been addressed, incorporated, and resolved.

B. Applicability

The final plat procedure applies to all subdivisions in the city and the ETJ, unless another platting procedure described in this chapter applies.

C. Final Plat Procedure

Figure 8.9-6 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of final plats. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

The final plat shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.

- a. The preliminary plat and final plat and all accompanying data and plans may be submitted together, or the applicant may submit a final plat and all accompanying data and plans required by this chapter without having submitted a preliminary plat.
- b. If the applicant proposes street names that have not been previously approved by the applicable street name approval authorities, the application shall include a street name approval letter from the applicable street name approval authorities.

SUBMISSION

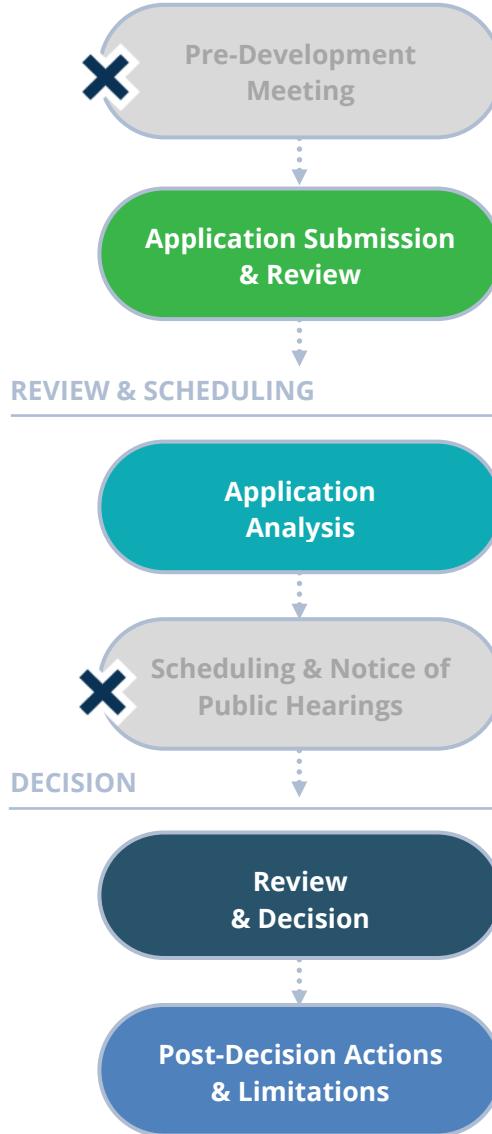


Figure 8.9-6: FP Procedure Steps

- c. An application for a final plat for a subdivision that requires public improvements shall be accompanied by a letter of certification (LOC) from the Transportation and Capital Improvements Department approving the construction plans showing details of streets, alleys, culverts, bridges, storm sewers, water mains, sanitary sewers and other engineering details of the proposed subdivision. Such plans shall be prepared by a registered professional engineer and shall conform to the standard specifications established by the city.

3. Application Completeness Check

The Planning and Development Services Department shall review the preliminary plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice and public hearing are not required for a final plat review.

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Revisions to Approved Final Plat Prior to Filing

- i. Minor revisions may be needed before the final plat can be recorded at the applicable county(s). Minor revisions may occur on the plat prior to recording it without the City having to re-approve the final plat. Minor revisions include, but are not limited to:
 - a. correction of bearings or distances;
 - b. correction of minor labeling errors; and
 - c. addition of erroneously omitted informational items and labels.
- ii. An applicant may submit an application for a determination of whether or not revisions are "minor" in nature which is subject to the judgment of the Planning and Development Services Department and the Transportation and Capital Improvements Department. The following are not minor revisions, and may necessitate re-submission and re-approval of the plat as a "revised final plat":
 - a. Reconfiguration of lot lines or easements;
 - b. Relocation of roads or driveways or access easements;
 - c. Any modification to the perimeter or boundary of the property; and
 - d. Relocation or addition or deletion of any public improvement (including corresponding easement).
- iii. If the Planning and Development Services Department and the Transportation and Capital Improvements Department consider proposed revisions as other than minor, the plat shall be re-submitted to the Planning and Development Services Department as a "revised final plat".

b. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a plat may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

c. Recordation

The final plat shall be recorded as described in §8.8.6D.

d. Expiration of a Final Plat Approval

Final plat approval shall expire according to the standards described in §8.8.6H.

e. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Final Plat Approval Criteria

Planning and Development Services staff shall approve the final plat, upon finding that it complies with the general approval criteria described in §8.8.3D.

8.9.5 Amending Plat

A. Purpose

The purpose of the amending plat (AP) procedure is to allow the approval of an amending plat which may be recorded and controls over the preceding or final plat without vacation of that plat, if the amending plat is signed by the property owner(s), and if the amending plat complies with at least one of the provisions of the Applicability section below.

B. Applicability

An amending plat may be used to:

1. Correct an error in or add a course or distance shown on the preceding plat;
2. Correct an error in a real property description shown on the preceding plat;
3. Indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
4. Show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
5. Correct any other type of scrivener or clerical error or omission previously approved by the City, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
6. Modify easements if the easements were created by a plat;
7. Correct an error in courses and distances of lot lines between two abutting lots if:
 - a. Both lot owners join in the application for amending the plat;
 - b. Neither lot is abolished;
 - c. The amendment does not attempt to remove or modify recorded covenants or restrictions; and
 - d. The amendment does not have a material adverse effect on the property rights of the owners in the plat;

SUBMISSION



REVIEW & SCHEDULING



DECISION



Figure 8.9-7: Amending Plat Procedure Steps

8. Relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
9. Relocate or remove one or more lot lines between one or more abutting lots if:
 - a. The owners of all those lots join in the application for amending the plat;
 - b. The amendment does not attempt to remove or modify recorded covenants or restrictions; and
 - c. The amendment does not increase the number of lots;
10. Make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:
 - a. The changes do not affect applicable zoning and other regulations of the city; and
 - b. The amendment does not attempt to remove or modify recorded covenants or restrictions;
11. Replat one or more lots fronting on an existing street if:
 - a. The owners of all those lots join in the application for amending the plat;
 - b. The amendment does not attempt to remove recorded covenants or restrictions;
 - c. The amendment does not increase the number of lots; and
 - d. The amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities;

C. Amending Plat Procedure

Figure 8.9-7 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of amending plats. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

The amending plat shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.

- a. An amended plat shall meet all of the informational and procedural requirements set forth for a final plat, as described in §8.9.2.
- b. The amended plat shall be entitled and clearly state that it is an "amended plat", and it shall include a detailed "purpose for amended plat" statement which describes exactly what has been changed on the plat since the original (or previous) plat was approved by the city and recorded at the applicable county. It shall also state the specific lots affected or changed as a result of the amended plat, and shall include the original subdivision plat boundary. All references to "final plat" or "replat" shall be removed.

3. Application Completeness Check

The Planning and Development Services Department shall review the amending plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice, a public hearing, and notification to surrounding property owners are not required for the approval and issuance of an amending plat.

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a plat may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The amending plat shall be recorded at the applicable county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of an Amending Plat Approval

Amending plat approval shall expire according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Amending Plat Approval Criteria

Planning and Development Services staff shall approve the amending plat, upon finding that it complies with the general approval criteria described in §8.8.3D.

8.9.6 Lot Combination Plat

A. Purpose

The purpose of the lot combination plat (LCP) procedure is to allow the combination of two separate platted lots under single ownership to be combined into a single lot.

B. Applicability

Lot combinations are only allowed for adjacent lots under single ownership in Comal County.

C. Lot Combination Procedure

Figure 8.9-8 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to lot combinations. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

- a. The lot combination request shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.
- b. Since lot combinations apply to already-platted lots, the plat for combination does not have to be prepared by a registered surveyor.

3. Application Completeness Check

The Planning and Development Services Department shall review the lot combination plat application for completeness in accordance with criteria in §8.8.2. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice, a public hearing, and notification to surrounding property owners are not required for the approval of a lot combination plat.

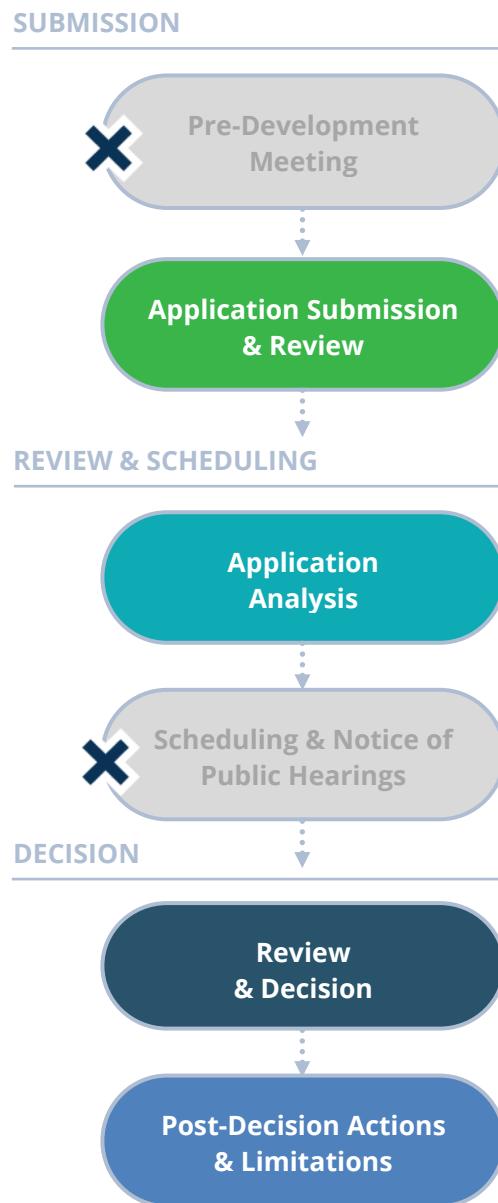


Figure 8.9-8: LCP Procedure Steps

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a plat may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The amending plat shall be recorded at the county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of an Lot Combination Plat Approval

Lot combination plat approval shall expire according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Amending Plat Approval Criteria

Planning and Development Services staff shall approve the lot combination request upon finding that it complies with the general approval criteria described in §8.8.3D, and if:

1. The applicant is the owner of both lots;
2. Proof is provided from the utility providers that any easements affected by the lot combination are not needed currently or in the future; and
3. The amendment does not attempt to remove or modify recorded covenants or restrictions.

8.9.7 Vacating Plat

A. Purpose

The purpose of the vacating plat (VP) procedure is to allow a landowner to terminate a previously approved and recorded plat, so that all of the previously platted property returns to an unplatted and unsubdivided condition.

B. Applicability

1. Prior to the Sale of Any Lot

- a. In cases where no lots have been sold, the approved plat may be vacated by the owner(s) of the land covered therein at any time before the sale of any lot.
- b. This vacation shall be accomplished through a written instrument declaring the plat, or replat to be vacated. The written declaration shall be duly executed, acknowledged and recorded in the same office as the plat to be vacated, and shall be accompanied by the approval of the City.
- c. On the execution and recording of the vacating instrument, the plat is vacated, and has no further effect.

2. After the Sale of Any Lot

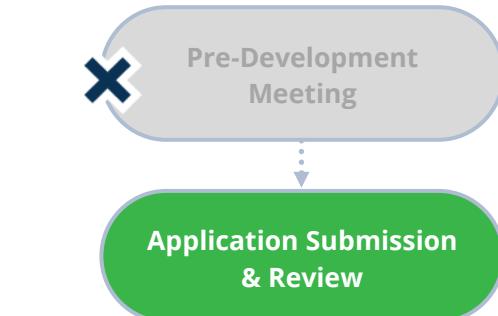
- a. In cases where lots have been sold, the plat, or any part thereof, may be vacated upon the application of all the owners of lots in such plat, and shall be accompanied by the approval of the City.
- b. On the execution and recording of the vacating instrument, the plat is vacated, and has no further effect.

C. Vacating Plat Procedure

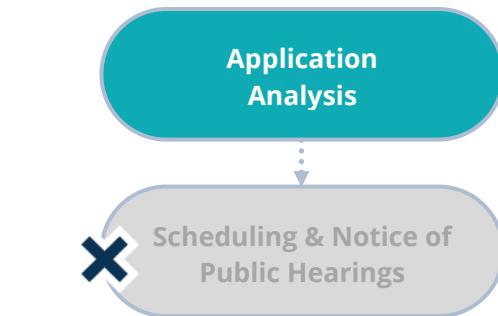
Figure 8.9-9 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of vacating plats. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

SUBMISSION



REVIEW & SCHEDULING



DECISION

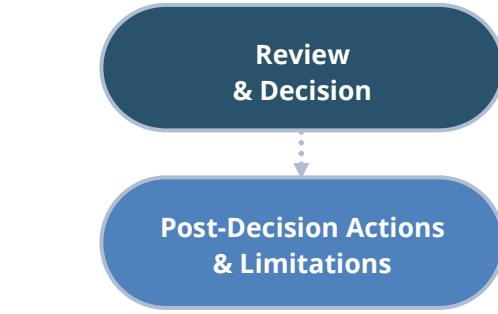


Figure 8.9-9: VP Procedure Steps

Scheduling & Notice of Public Hearings

Review & Decision

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

The vacating plat shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.

3. Application Completeness Check

The Planning and Development Services Department shall review the preliminary plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice and a public hearing are not required for the approval and issuance of a vacating plat.

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Recordation

The vacating plat shall be recorded at the applicable county. On the execution and recording of the vacating instrument, the original plat is vacated, and has no further effect.

b. Expiration of a Vacating Plat Approval

Vacating plat approval shall expire in five years if not recorded at the applicable county.

c. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Vacating Plat Approval Criteria

Planning and Development Services staff shall approve the vacating plat, upon finding that it complies with the general approval criteria described in §8.8.3D.

8.9.8 Development Plat

A. Purpose

The purpose of the development plat (DP) review procedure is to ensure that adequate easements and rights-of-way will be provided with respect to land not subject to platting requirements. Site plan approval is not required.

B. Applicability

For purposes of this section the term "development" means the new construction of any building or structure of any nature (residential or non-residential), except buildings or improvements used for agricultural purposes. This section shall apply to any land lying within the city or within its extraterritorial jurisdiction, as follows:

1. The development of any tract of land which has not been platted or replatted prior to the effective date of this section, unless expressly exempted herein;
2. The development of any tract of land for which the property owner claims an exemption from the city's subdivision ordinance, including requirements to replat, which exemption is not expressly provided for in such regulations;
3. The development of any tract of land for which the only access is a private easement or street; and/or
4. The division of any tract of land resulting in parcels or lots each of which is greater than five acres in size, and where no public improvement is proposed to be dedicated or constructed.

5. Exceptions

No development plat shall be required where:

- a. The tract to be developed has received final plat or replat approval or was created prior to the effective date of this chapter; or
- b. A subdivision plat is also required under the ordinances of the city.

SUBMISSION

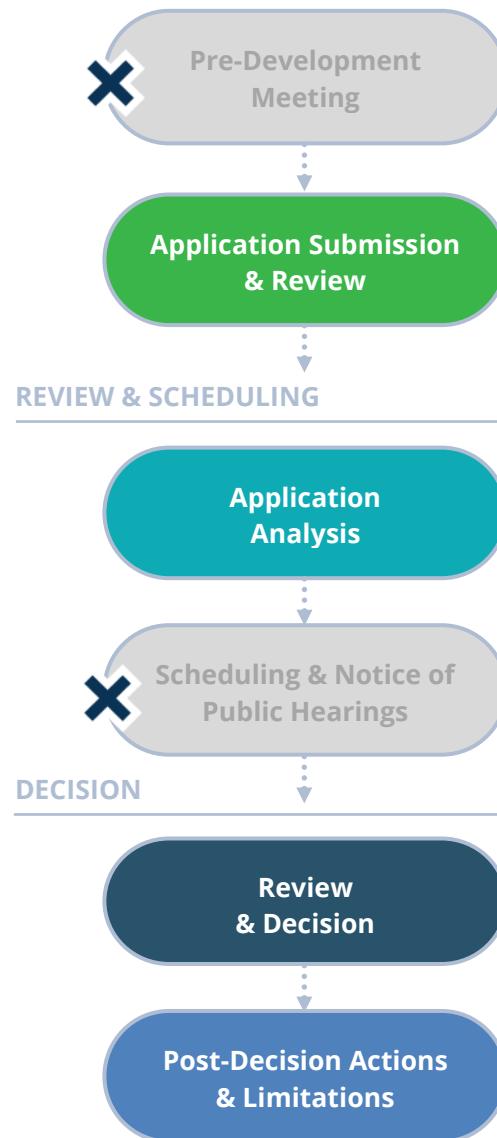


Figure 8.9-10: DP Procedure Steps

C. Development Plat Procedure

Figure 8.9-10 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of development plats. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

- a. The development plat shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.
- b. A development plat shall meet all of the informational and procedural requirements set forth for a final plat, as described in §8.9.2.

3. Application Completeness Check

The Planning and Development Services Department shall review the preliminary plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice and public hearing are not required for a development plat review.

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A development plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a development plat may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The development plat shall be recorded at the applicable county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of a Development Plat Approval

Development plat approval shall expire according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

D. Development Plat Approval Criteria

Planning and Development Services staff shall approve the development plat, upon finding that it complies with the general approval criteria described in §8.8.3D, and:

1. The proposed development conforms to the rules and ordinances of the City concerning its current and future streets, sidewalks, alleys, and public utilities facilities;
2. Public dedications to serve the development have been tendered; and
3. The proposed development conforms to the general plan, rules and ordinances of the city that are related to development of a land parcel not otherwise subject to the city's platting requirements.

8.9.9 Residential Replat

A. Purpose

Unless otherwise expressly provided for herein, a property owner who proposes to replat any portion of an already approved and recorded final plat, other than to amend or vacate the plat, must first obtain approval for the replat under the standards and procedures prescribed for the replatting of land by this chapter. All improvements shall be constructed in accordance with the same requirements as for a final plat as provided herein.

B. Applicability

1. Replatting without Vacating Preceding Plat

A replat of a final plat or portion of a final plat may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- a. Is signed and acknowledged by only the owners of the property being replatted; and
- b. Does not attempt to amend or remove any covenants or restrictions previously incorporated in the final plat.

2. Replatting when Preceding Plat Has Been Vacated

If the previous plat is vacated as prescribed in the Texas Local Government Code §212.013, as amended, and as provided in this chapter, a public hearing is not required for a replat of the area vacated. It would, instead, be submitted as a preliminary or final plat and reviewed accordingly. See §8.9.6, *Lot Combination Plat*

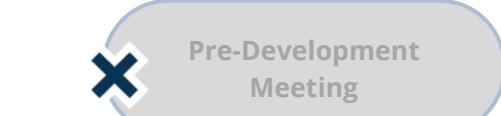
C. Purpose

The purpose of the lot combination plat (LCP) procedure is to allow the combination of two separate platted lots under single ownership to be combined into a single lot.

D. Applicability

Lot combinations are only allowed for adjacent lots under single ownership in Comal County.

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Figure 8.9-11: Residential Replat Procedure Steps

E. Lot Combination Procedure

Figure 8.9-8 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to lot combinations. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

- a. The lot combination request shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.
- b. Since lot combinations apply to already-platted lots, the plat for combination does not have to be prepared by a registered surveyor.

3. Application Completeness Check

The Planning and Development Services Department shall review the lot combination plat application for completeness in accordance with criteria in §8.8.2. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice, a public hearing, and notification to surrounding property owners are not required for the approval of a lot combination plat.

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a plat may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The amending plat shall be recorded at the county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of an Lot Combination Plat Approval

Lot combination plat approval shall expire according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

F. Amending Plat Approval Criteria

Planning and Development Services staff shall approve the lot combination request upon finding that it complies with the general approval criteria described in §8.8.3D, and if:

1. The applicant is the owner of both lots;
2. Proof is provided from the utility providers that any easements affected by the lot combination are not needed currently or in the future; and
3. The amendment does not attempt to remove or modify recorded covenants or restrictions.

Vacating Plat.

G. Residential Replat Procedure

Figure 8.9-11 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of replatting requests. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

- a. The replatting request shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.
- b. An application submittal for a replat shall be the same as for a final plat, as described in §8.9.2, and shall be accompanied by all items required for final plats.
- c. The replat shall also bear a detailed "purpose for replat" statement which describes exactly what has been changed on the plat since the original (or previous) plat was approved by the city and filed at the county.
- d. The title shall identify the document as a "Final Plat" of the "_____ Addition, Block _____, Lot(s) _____, being a Replat of Block _____, Lot(s) _____ of the _____ Addition, an addition to the City of New Braunfels, Texas, as recorded in Volume _____, Page/Document # _____ of the Plat Records of _____ County, Texas".
- e. Any replat that adds or deletes lots must include the original subdivision and lot boundaries. If a replat is submitted for only a portion of a previously platted subdivision, the replat must reference the previous subdivision name and recording information, and must state on the replat the specific lots which have changed along with a detailed "purpose for replat" statement.

3. Application Completeness Check

The Planning and Development Services Department shall review the preliminary plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

A residential replat shall be scheduled for public hearing before the Planning Commission, and shall be noticed pursuant to Table 8-1: *Summary Table of Review Procedures*, and §8.8.4, *Scheduling and Notice of Public Hearings*.

5. Planning Commission Hearing, Review, and Decision

The Planning Commission may review and approve, approve with conditions, or deny the residential replat request in accordance with the approval criteria in §8.9.9H.

a. Protest Procedure

- i. The protest procedure may only be invoked when a residential replat requests a waiver.
- ii. To file a legal protest, written protests duly signed and acknowledged by the property owners of at least 20 percent of the total land area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the city prior to the close of the public hearing. In computing the percentage of land area subject to the "20 percent rule" described above, the area of streets and alleys shall be included.
- iii. The rules governing amendment over protest are contained in TLGC, Chapter 211.006. The Planning and Development Services Department may prescribe forms for submission of protest petitions.
- iv. If valid written protests are submitted by 20 percent of property owners as described in provision ii. above, approval of the waiver shall require three-fourths vote of the Planning Commission to become effective.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a plat may file a waiver or variance request.
- iii. If the Planning Commission denies a residential replat request, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The residential plat shall be recorded at the applicable county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of a Replat Approval

Replat approval shall expire according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

H. Residential Replat Approval Criteria

The Planning Commission shall approve the replat, upon finding that it complies with the general approval criteria described in §8.8.3D, and:

1. During the preceding five years any of the area to be replatted was limited by an interim or permanent zoning district to residential use for not more than two

residential units per lot; or any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

2. The replat of the subdivision meets all the requirements for a final plat for a new subdivision that may be pertinent, as provided for in §8.9.2.

8.9.10 Non-Residential Replat

A. Purpose

Unless otherwise expressly provided for herein, a property owner who proposes to replat any portion of an already approved and recorded final plat, other than to amend or vacate the plat, must first obtain approval for the replat under the standards and procedures prescribed for the replatting of land by this chapter. All improvements shall be constructed in accordance with the same requirements as for a final plat as provided herein.

B. Applicability

1. Replatting without Vacating Preceding Plat

A replat of a final plat or portion of a final plat may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- a. Is signed and acknowledged by only the owners of the property being replatted; and
- b. Does not attempt to amend or remove any covenants or restrictions previously incorporated in the final plat.

2. Replatting when Preceding Plat Has Been Vacated

If the previous plat is vacated as prescribed in the Texas Local Government Code §212.013, as amended, and as provided in this chapter, a public hearing is not required for a replat of the area vacated. It would, instead, be submitted as a preliminary or final plat and reviewed accordingly. See §8.9.6, *Lot Combination Plat*

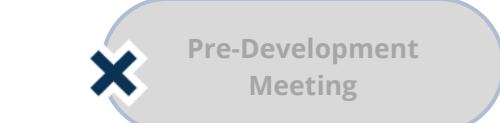
C. Purpose

The purpose of the lot combination plat (LCP) procedure is to allow the combination of two separate platted lots under single ownership to be combined into a single lot.

D. Applicability

Lot combinations are only allowed for adjacent lots under single ownership in Comal County.

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Figure 8.9-12: Non-Residential Replat Procedure Steps

E. Lot Combination Procedure

Figure 8.9-8 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to lot combinations. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

- a. The lot combination request shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.
- b. Since lot combinations apply to already-platted lots, the plat for combination does not have to be prepared by a registered surveyor.

3. Application Completeness Check

The Planning and Development Services Department shall review the lot combination plat application for completeness in accordance with criteria in §8.8.2. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice, a public hearing, and notification to surrounding property owners are not required for the approval of a lot combination plat.

5. Administrative Review and Decision

The plat shall be approved, or approved with conditions, according to the process described in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a plat may file a waiver or variance request.
- iii. If a waiver request is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The amending plat shall be recorded at the county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of an Lot Combination Plat Approval

Lot combination plat approval shall expire according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

F. Amending Plat Approval Criteria

Planning and Development Services staff shall approve the lot combination request upon finding that it complies with the general approval criteria described in §8.8.3D, and if:

1. The applicant is the owner of both lots;
2. Proof is provided from the utility providers that any easements affected by the lot combination are not needed currently or in the future; and
3. The amendment does not attempt to remove or modify recorded covenants or restrictions.

Vacating Plat.

G. Non-Residential Replat Procedure

Figure 8.9-11 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of non-residential replatting requests. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

- a. The replatting request shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.
- b. An application submittal for a replat shall be the same as for a final plat, as described in §8.9.2, and shall be accompanied by all items required for final plats.
- c. The replat shall also bear a detailed "purpose for replat" statement which describes exactly what has been changed on the plat since the original (or previous) plat was approved by the city and filed at the county.
- d. The title shall identify the document as a "Final Plat" of the "_____ Addition, Block _____, Lot(s) _____, being a Replat of Block _____, Lot(s) _____ of the _____ Addition, an addition to the City of New Braunfels, Texas, as recorded in Volume _____, Page/Document # _____ of the Plat Records of _____ County, Texas".
- e. Any replat that adds or deletes lots must include the original subdivision and lot boundaries. If a replat is submitted for only a portion of a previously platted subdivision, the replat must reference the previous subdivision name and recording information, and must state on the replat the specific lots which have changed along with a detailed "purpose for replat" statement.

3. Application Completeness Check

The Planning and Development Services Department shall review the preliminary plat application for completeness in accordance with criteria in §8.8.2, including ensuring submission of all LOCs. Staff will reject the application and return to the applicant if incomplete.

4. Scheduling and Notice of Public Hearings

Public notice and public hearing are not required for a non-residential replat review.

5. Administrative Review and Decision

The replat request shall be approved, or approved with conditions, according to the process described in in §8.8.5A.3.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

- i. A plat may only be denied on the basis of failure to resolve a condition of approval that was provided to the applicant in response to the initial decision.
- ii. An applicant who disputes the validity of a condition of approval attached to a replat may file a waiver or variance request.
- iii. If a request for a waiver or variance is denied, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

The replat shall be recorded at the applicable county in the same manner as prescribed for a final plat in §8.8.6D.

c. Expiration of a Replat Approval

Replat approval shall expire according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval may be requested and approved as described in §8.8.6I.

H. Non-Residential Replat Approval Criteria

The replat request shall be approved, upon finding that it complies with the general approval criteria described in §8.8.3D, and the replat of the subdivision meets all the requirements for a final plat for a new subdivision that may be pertinent, as provided for in §8.9.2.

8.9.11 Waiver⁹⁶

A. Purpose

The purpose of the waiver procedure is to provide a mechanism that prevents the imposition of undue hardships that would result from strict compliance with a certain provision(s) of this chapter, or to allow flexibility where the purposes of these regulations may be served to a greater extent by an alternative proposal.

B. Applicability

A waiver may be used to request a departure from the standards and requirements described in Article 5, Subdivision Standards.

C. Waiver Procedure

Figure 8.9-12 identifies the applicable steps from the subdivision platting common review procedures in §8.8 that apply to the review of amending plats. Additions or modifications to the common review procedures are noted below.

1. Pre-Development Meeting

A pre-development meeting is not required, unless otherwise indicated by §8.8.1B.

2. Application Submission

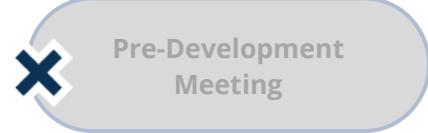
The waiver request shall be submitted and accepted, and may be revised or withdrawn, in accordance with §8.8.2.

- a. A waiver request may be submitted as a separate request or concurrently with a subdivision application.
- b. To ensure compliance with state statutes, waiver requests from procedural requirements or process steps are not allowed.
- c. The petition application shall explain the purpose of the waiver, state fully the grounds for the waiver, and all of the facts relied upon by the petitioner.

3. Application Analysis

The Planning and Development Services Department shall review the waiver request and return to the applicant written recommendations for changes or amendments

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Figure 8.9-13: Waiver Procedure Steps

⁹⁶ 118-11.

to the information contained in the request, when reviewed against the approval criteria in §8.9.11D.

4. Scheduling and Notice of Public Hearing

Requests for waivers from the requirements of Article 5 cannot be approved administratively, and must be considered by the Planning Commission after a public hearing.

- a. The Planning and Development Services Department shall make a recommendation to the Planning Commission on all waiver requests.
- b. If the Planning Commission concurs with the recommendation of the Planning and Development Services Department, then the Planning Commission shall be the final determinant for the waiver request.
- c. If the Planning Commission recommendation differs from the staff recommendation, the request shall be further considered by City Council, who shall then determine final approval or disapproval of the waiver request.

5. Hearing, Review, and Decision**a. Planning Commission Review and Decision**

The Planning Commission may review and approve, approve with conditions, or deny the waiver request in accordance with the approval criteria in §8.9.11D.

b. Concurrent Processing

If a zoning variance is requested on a particular parcel of property, then it may be decided concurrently with the submittal and consideration of any request for a waiver from any provision of Article 5, Subdivision Standards.

c. Conditions of Approval

In approving a waiver from any provision of Article 5, Subdivision Standards, any review or decision-making body may apply such conditions of approval as are necessary to secure substantially the purposes described in Article 5.

6. Post-Decision Actions and Limitations

Post-decision actions and limitations in §8.8.6 shall apply with the following modifications:

a. Appeals

If the Planning Commission denies a waiver request, an applicant may file an appeal as described in §8.6.1 and §8.8.6B.

b. Recordation

Approval of a waiver allows for recordation of the associated plat.

c. Expiration of a Waiver

A waiver automatically expires if approval of the associated plat expires, according to the standards described in §8.8.6H.

d. Extension of Approval

An extension of approval for the associated plat may be requested and approved as described in §8.8.6I. An extension of approval for the associated plat has the effect of extending the approval of the waiver.

D. Waiver Approval Criteria

In reviewing a waiver request, the decision-making body shall consider the general approval criteria in §8.8.3D, and:

1. The waiver shall not have the effect of nullifying the intent and purpose of these regulations;
2. Granting the waiver will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property, and the waiver will not prevent the orderly subdivision of other property in the vicinity;
3. Because of the particular physical surroundings, shape and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; or an alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein;
4. The waiver will not in any manner vary the provisions of the zoning ordinance or other ordinance(s) of the city. A request to vary from zoning regulations of this Chapter requires a variance request to the Board of Adjustment, as described in §8.6.5.

8.10 Duties and Responsibilities⁹⁹

8.10.1 City Council

The City Council shall have all powers granted it by the City Charter. Where not limited by the Charter or the Constitution of the State of Texas, the City Council shall have such additional powers granted to cities of the same class by Texas Local Government Code. In the administration and enforcement of this Chapter, the City Council has the review and decision authority as shown in Table 8-1: *Summary Table of Review Procedures*.

8.10.2 Board of Adjustment¹⁰⁰

A. Powers and Duties

1. In accordance with state statute, the Board of Adjustment is a quasi-judicial body that may make special exceptions and variances to the terms of this chapter, and decide appeals from decisions of administrative officials, in appropriate cases subject to appropriate conditions and safeguards, and in harmony with the general purpose and intent of this Chapter, and in accordance with general or specific rules herein contained.
2. The concurring vote of four members (or 75 percent) of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in this chapter.

B. Procedures

1. The Board of Adjustment shall operate in accordance with the Texas Local Government Code §§211.008—211.011 and shall adopt rules in accordance with the provisions of this chapter.
2. Meetings of the Board of Adjustment shall be held at the call of the chairperson and at other such times as the Board may determine necessary. The chairperson, or in their absence the acting chair, may administer oaths and compel the attendance of witnesses.
3. All meetings of the Board of Adjustment shall be open to the public.
4. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record.

⁹⁹ New.

¹⁰⁰ 144-2.2-1 and 144-2.2-2.

8.10.3 Planning Commission¹⁰¹

A. Powers and Duties

The Planning Commission shall have the review and decision authority as shown in Table 8-1: *Summary Table of Review Procedures*, pursuant to the application-specific procedures outlined in this Chapter.

B. Members and Terms of Office

1. The Planning Commission shall consist of nine members, who shall be citizens of the City of New Braunfels.
2. Each member shall serve a three-year term.
3. Terms expire on a rolling basis.

8.10.4 Historic Landmark Commission¹⁰³

A. Powers and Duties

The Historic Landmark Commission shall have the review and decision-making responsibilities listed in Table 8-1: *Summary Table of Review Procedures*. Additionally, it shall be responsibility of the Commission to recommend to City Council policies to protect, enhance, and perpetuate landmarks or districts of historical and cultural importance and promote economic prosperity and welfare and encourage stabilization, restoration, and improvements of such properties.

B. Members and Terms of Office

1. The Historic Landmark Commission shall consist of nine members, who shall be citizens of the City of New Braunfels.
2. Of the nine members, there shall be:
 - a. One person from the Comal County Historical Commission; and
 - b. At least two property owners from any historic district.
3. Each member shall serve a four-year term.
4. Terms expire on a rolling basis.

8.10.5 City Administration

A. Building Official

1. Cessation and Revocation

Whenever any building work is being done contrary to the provisions of this chapter, the Building Official may order the work stopped and also revoke the building permit theretofore issued by notice in writing served on any person owning such property or their agent or on any person engaged in the doing or causing of such work to be done. Such person shall forthwith stop and cause to be stopped such work until authorized by the Building Official to recommence and proceed with the work or

¹⁰¹ New.

¹⁰³ 66-52. Chapter 66 uses Historic Landmark Commission and Historic Preservation Commission interchangeably. Given the existence also of the Heritage Commission, this is confusing. It is carried forward for now, but deciding on one designation, either Preservation Commission or Landmark Commission, is desirable.

upon issuance of a building permit in those cases in which the building permit has been revoked. Such stop work order and revocation of permit shall be posted on work being done in violation of this chapter.

2. Discontinuing a Use or Occupancy

Whenever any building or portion thereof is being used or occupied contrary to the provisions of this chapter, the Building Official, code compliance officer, or the Planning and Development Services Department or designee may order such use or occupancy discontinued and the building or portion thereof vacated by notice served on any person using or causing such use or occupancy to be continued. Such person shall vacate such building or portion thereof within ten days after receipt of such notice, or make the building or portion thereof comply with the requirements of this chapter.

B. Planning and Development Services Department

1. Under the authority of the Director, the Planning and Development Services Department shall have the responsibility for administering this LDO, and shall have the review and decision-making responsibilities listed in Table 8-1: *Summary Table of Review Procedures*, and referenced elsewhere in this Chapter.
2. The Planning and Development Services Department may amend the LDO standards from time to time. Such amendments shall have a public hearing before the Planning Commission and final consideration by the City Council. Amendments shall be filed with the city secretary and shall become effective immediately upon signature of the Mayor, unless otherwise specified in the City Charter.

C. Transportation and Capital Improvements Department¹⁰⁴

1. The Transportation and Capital Improvements Department is hereby authorized and directed to promulgate city standards for the design, construction, installation, location and arrangement of streets, curbs, street signs, alleys, sidewalks, septic tanks, monuments, criteria for drainage easement requirements, drainage facilities, pedestrian ways and for the compaction of utility ditches within the right-of-way.
2. The Transportation and Capital Improvements Department shall submit such standards to the Planning Commission for recommendation to city council and, thereafter, file such standards with the city secretary at least ten days before they become effective.
3. The Transportation and Capital Improvements Department may amend the standards from time to time. Such amendments shall have a public hearing before the Planning Commission and final consideration by the City Council. Amendments shall be filed with the city secretary and shall become effective immediately upon signature of the Mayor, unless otherwise specified in the City Charter.
4. No such rules, regulations, standards, and specifications shall conflict with this chapter or any other ordinance of the city. All such improvements shall be constructed, installed, designed, located and arranged by the applicant in accordance with such rules, regulations, standards and specifications.

¹⁰⁴ 118-17.

8.10.6 Utilities¹⁰⁵

Pursuant to authority contained in the Texas Government Code §1502.070 and the City Charter, management and control of the city's waterworks, sanitary sewer and electric system that lies within New Braunfels Utilities' Certificate of Convenience and Necessity (CCN) is vested in the board of trustees of New Braunfels Utilities (NBU). The NBU's board of trustees is hereby authorized and directed to promulgate city standards for the design, construction, installation, location of streetlights, utility layouts, utility easements, gates for utility easements, water supply and water distribution systems, fire hydrants, sewage disposal systems and electric service systems where NBU provides service. All such improvements shall be constructed, installed, designed, located and arranged by the applicant in accordance with such rules, regulations, standards and specifications. Areas within the City and its ETJ which lie within other utility providers' CCNs are governed and managed by those respective utility providers.

¹⁰⁵ 118-18.

Article 9: Rules of Construction and Definitions

9.1 Rules of Construction¹⁰⁶

9.1.1 Meanings and Intent

All provisions, terms, phrases, and expressions in this Chapter shall be construed according to the general purpose set forth in §1.3, *Purpose*, and the specific purpose statements elsewhere in this Chapter. If a specific section provides a different meaning of a term defined for general purposes in this Article, the specific section's meaning and application shall control.

9.1.2 Headings, Illustrations, and Text

In case of any difference of meaning or implication between the text of this Chapter and any heading, caption, figure, illustration, table, or map, the text shall control.

9.1.3 Lists and Examples

Unless otherwise indicated, lists of items or examples that use terms such as "for example," "including," and "such as," or similar are intended to provide examples and are not exhaustive lists of all possibilities.

9.1.4 Mandatory and Discretionary Terms

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation to comply. The words "may" and "should" are permissive in nature.

9.1.5 Conjunctions

Unless the context clearly suggests otherwise, conjunctions shall be interpreted as follows:

- A. "And" indicates that all connected items apply; and
- B. "Or" indicates that one or more of the connected items apply.

9.1.6 Tenses and Plurals

Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.

¹⁰⁶ New.

9.1.7 Computation of Time

References to days are calendar days unless otherwise stated. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or a holiday observed by the City, that day shall be excluded.

9.1.8 Delegation of Authority

Whenever a provision requires the Director or head of a department or another officer or employee of the City to perform an act or duty, that provision shall be construed as authorizing any person to whom the Director or department head or officer has delegated that responsibility.

9.1.9 Technical and Non-Technical Terms

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

9.1.10 References to Other Regulations, Publications, and Documents

Whenever reference is made to this Chapter or any other resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of this Chapter or any other such regulation (as amended), resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

9.1.11 Term Not Defined

In the event there is a term used in this Chapter that is not defined in this chapter, the Planning and Development Services Department Director shall have the authority to provide a definition based upon the definitions used in accepted sources.

9.2 Definitions

COMMENTARY

This section contains definitions for terms used in this LDO. New definitions are highlighted yellow. Existing definitions that have been carried forward are only footnoted if the definition has been amended or copy-edited.

9.2.1 A

Abutting

Lots, buildings, uses, or other features regulated by this LDO share a common lot line (contiguous) for a distance greater than a point. Lots buildings, uses, or other features regulated by this LDO that are separated by a street, right-of-way, alley, trail, drainage channel, body of water, or railroad track are not abutting.

Accessory Building or Structure

A subordinate structure or building having a use customarily incident to and located on the lot occupied by the main residential building; or a use customarily incident to the main residential use of the property. This term is not applicable for commercial property, as multiple buildings are

allowed on commercial lots where each is considered a main structure and is subject to the restrictions of the zoning district.

Accessory Dwelling Unit

A separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and full bathroom facilities, which is an attached or detached extension to an existing single-family structure.

Active/Independent Senior Living Facility¹⁰⁷

A development that is planned, designed, and operated to provide a full range of accommodations and services for older adults, including independent living, congregate care housing, and limited or intermittent medical care or personal assistance. Dwellings may include, but are not limited to, attached or detached houses, apartments, or townhomes, offering private or semi-private rooms, and may be either rental or owner-occupied units. This use generally includes a variety of housing types and provides residents with varying levels of assistance and care so that residents may continue to live independently, accessing higher levels of care and service as they age without having to move to another residential care facility.

Acreage, gross

The total acreage of a subdivision.

Acreage, net

The total acreage of a subdivision less areas dedicated to public use such as rights-of-way (streets and alleys), and recreation areas. Easements shall be included in net acreage calculations.

Adjacent

Lots, buildings, uses, or other features regulated by this LDO that are near each other but are separated by an intervening human-made or geographic feature including but not limited to a street, right-of-way, alley, trail, drainage channel, body of water, or railroad track, unless otherwise stated in this LDO.

Administrative Officers

Any officer of the city referred to in this Chapter by title, including but not limited to the Planning and Development Services Director, City Manager, Fire Chief, Police Chief, Transportation and Capital Improvements Director, and Chief Building Official, or and person acting as their duly authorized representative or designee. This definition shall also include civil engineering, planning, legal, financial, traffic engineering and other consultants retained by the city to supplement or support existing city staff, as deemed appropriate by the city.

Agricultural Uses

Uses characterized by raising, producing, or keeping plants or animals, or cultivation and management of farm products. Accessory uses may include dwellings for proprietors and

¹⁰⁷ Active/independent senior living facility was listed among definitions in 144-4.1, but was not included in the Land Use Matrix. The use name has been carried forward, while providing a new definition that encompasses a combination of existing uses that were not defined, except for "Sanitarium," which has not been carried forward.

employees, barns, storage of grain, animal raising, feed preparation, and wholesale sales of products produced on-site.

Airport Definitions¹⁰⁸

When used in the context of §X.X, *AHO -- Airport Hazard Overlay District*, the following words, terms, and phrases shall have the meanings ascribed to them in these definitions, except where the context clearly indicates a different meaning.

Airport

A landing area, runway, or other facility designed, used, or intended to be used for the landing or taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars, facilities for the fueling of aircraft, office uses relating to the airport function, associated fixed-base operations (FBO), and other necessary buildings and open spaces. In this Chapter, the airport referenced is the New Braunfels National Airport, formerly known as both the New Braunfels Regional Airport and the New Braunfels Municipal Airport and the Clear Springs Auxiliary Air Force Base.

Airport Elevation

The established elevation of the highest point on the useable landing area measured in feet from mean sea level.

Airport Hazard

A structure or object of natural growth that obstructs the air space required for the taking off, landing, and flight of aircraft or that interferes with visual, radar, radio, or other systems for tracking, acquiring data relating to, monitoring, or controlling aircraft.

Airport Hazard Area

Any area of land or water upon which an airport hazard might be established if not prevented as provided in §X.X, *AHO -- Airport Hazard Overlay District*.

Airport Reference Point

The point established as the approximate geographic center of the airport landing area and so designated.

Approach Surface

A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zones height limitation slope set forth in §X.X. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

Approach, transitional, horizontal, and conical zones

These zones are set forth in §X.X, *Approach Zones*, of this Chapter.

Conical Surface

A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to one for a horizontal distance of 4,000 feet.

Hazard to Air Navigation

An obstruction determined to have a substantially adverse effect on the safe and efficient utilization of the navigable airspace.

Height

¹⁰⁸ 144-5.20-1.

For the purpose of determining the height limits in all zones set forth in this section and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

Horizontal Surface

A horizontal surface 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

Landing Area

The surface area of the airport used for the landing, takeoff or taxiing of aircraft.

Nonconforming Use

For the purposes of airport-related nonconformities, this term refers to any preexisting structure, object of natural growth, or use of land which is inconsistent with the provisions of § XX or an amendment thereto.

Non-Precision Instrument Runway

A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.

Obstruction

Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in § XX, *Height Limitations*.

Overlay Zone

In the context of airport-related terms, the defined areas establishing land use restrictions set forth in § XX, *Overlay Zones*.

Precision Instrument Runway

A runway having an existing instrument approach procedure utilizing Instrument Landing System (ILS) or Localizer Precision, Vertical (LPV) air navigation facilities with vertical and horizontal guidance for which a straight-in precision instrument approach procedure has been approved or planned.

Primary Surface

A surface longitudinally centered on a runway. When the runway has a specially prepared or planned hard surface, the primary surface extends 200 feet beyond each end of that hard surface runway; but when the runway has no specially prepared hard surface or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 500 feet for the non-precision instrument runway and 1,000 feet for the precision runways having visibility minimums greater than three-fourths statute mile.

Runway

A defined area on an airport prepared for landing and takeoff of aircraft along its length.

Runway Protection Zone (RPZ)

An area off the runway end to enhance the protection of people and property on the ground in a trapezoidal shape established in guidelines published in the Advisory Circular 150/5300-13A by the FAA. Structure means an object, including a mobile object, constructed, or installed by man, including, but not limited to, buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

Airstrip or Landing Field

A private area of land used for the landing and take-off of personal private aircraft, excluding receiving cargo, picking up passengers, or fueling aircraft.

Alley

A minor public right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting a street.

Alternative Tower Structure

In the context of wireless communication facilities, an alternative tower structure may be a clock or bell tower, steeple, light pole, or similar alternative-design mounting structure.

Amended or Amending Plat

A revised plat correcting errors or making minor changes to a recorded plat.

Amended Master Development Plan

A master development plan previously approved by the Planning Commission with major revisions that has been approved by the Planning Commission.

Amended Master Development Plan (Minor Revisions)

A master development plan, previously approved by the Planning Commission, that has minor revisions approved by the Planning and Development Services Department or the Planning Commission.

Amenity

An improvement to be dedicated to the public or to the common ownership of the lot owners of the subdivision and providing an aesthetic, recreational or other benefit, other than those prescribed by this chapter.

Amortization

A process decided and imposed by the Board of Adjustment with the objective of discontinuing a nonconforming land use, in response to determination of nuisance or significant negative impacts imposed on surrounding property owners. Amortization is imposed over a period of time of sufficient length to allow the owner of the legal nonconformity to realize any reasonable investment-backed expectations regarding the legal nonconformity.

Amphitheater¹⁰⁹

An open-air venue used for entertainment, performance, ceremonies, or sports purposes. An amphitheater may or may not have fixed or designated seating, a partial or temporary roof, or be under tents.

Animal Boarding

A commercial establishment that provides boarding, grooming, training, and other non-medical services for domestic pets, primarily dogs and cats, and other small animals (e.g., rabbits). Outdoor facilities, including runs and exercise yards, may or may not be included in this use. This use does not include medical or veterinary treatment and services.

¹⁰⁹ Carries forward the current definition in Sec. 144-1.4 with minor revisions.

Animal Grooming

An establishment where small animals such as dogs, cats, and other household pets are bathed, clipped, or combed for compensation for hygienic or aesthetic reasons. This use does not include the overnight boarding of animals.

Animal Uses

Uses in this category include the boarding and care of animals on a commercial basis. Accessory uses may include confinement facilities for animals, parking, and storage areas.

Antenna¹¹⁰

Any exterior apparatus designed for telephonic, radio, or television communication through the sending and/or receiving of electromagnetic waves, but not including a wireless communication tower (which may include antennas on the structure).

Apartment

A room or a suite of rooms arranged, intended, or designed as a place of residence for a single family, individual, or group of individuals. Generally referred to as multi-family dwelling throughout this LDO.

Applicant

A person or entity who submits an application for an approval required by this chapter. Also sometimes referred to as "developer", "subdivider", or other similar term.

Application

A written request, on forms provided by the city, for an approval required by this chapter.

Arcade¹¹¹

An establishment where more than ten percent of the public floor area is devoted to four or more amusement devices that are operated for a profit, whether the same is operated in conjunction with any other business or not, including but not limited to such amusement devices as coin- or card-operated pinball machines, video games, electronic games, shuffle City Councils, pool tables or other similar amusement devices. However, the term "amusement device," as used in this definition, shall not include musical devices, billiard tables which are not coin-operated, machines that are designed exclusively for small children, and devices designed to train people in athletic skills or golf, tennis, baseball, archery, or other similar sports.

Artificial Plant Materials

Any inorganic material intended as a substitute for live plantings, including but not limited to artificial turf, or imitation plants created from plastic or other inorganic material. Aside from use of inorganic materials as ground cover (granite, gravel, mulch), such materials are prohibited from use in satisfying the landscaping requirements of this LDO.

¹¹⁰ Carries forward the definition in Sec. 144-1.4 with clarifications to distinguish from the telecommunications tower use.

¹¹¹ Carries forward the current definition in Sec. 144-1.4 with minor revisions.

Assisted Living Facility¹¹²

A facility combining housing, supportive services, personalized assistance, and health care, designed to respond to the individual needs of those who need help with activities of daily living, such as dressing, grooming, bathing, diet, financial management, evacuation of a residence in the event of an emergency, or medication prescribed for self-administration, but who do not require hospitalization.

Attic

The area between roof framing and the ceiling of the rooms below that is not habitable, but may be reached by ladder and used for storage or mechanical equipment. Improvement to habitable status shall make it a story.

Auction Sales, Livestock

An area or building at which livestock are offered for sale through an auction.

Audio or Video Studio¹¹³

An establishment which is used to record and broadcast music, videos, television, and other oral and visual related media productions.

Automated Teller Machine (ATM)

A mechanized device operated by or on behalf of a bank or financial institution that allows customers to conduct automated banking or financial transactions.

9.2.2 B**Bank or Financial Institution**

An establishment that provides financial and banking services to individuals and businesses. These services may include deposit banking and closely related functions such as making loans, investments, and fiduciary activities. This definition does not include check cashing, title loans, or payday lending uses. Accessory uses may include automated teller machines and, where permitted as an accessory use, drive-through access.

Bar or Tavern

A commercial establishment that operates under license from the Texas Alcohol and Beverage Planning Commission which is principally engaged in the retail sale of alcoholic beverages, with food only incidental to the sale of alcohol.

Barrier, Natural or Artificial

Any river, pond, canal, railroad, levee, embankment, or screening fence of masonry or solid wood not less than six feet high.

Base Flood

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

¹¹² Carries forward the current definition in Sec. 144-1.4 with minor revisions.

¹¹³ New definition and new name for existing use "Studio for radio or television, without tower."

Base Zoning District

Any section of the city for which the regulations of this LDO govern the use of land and the use, density, bulk, height and coverage of buildings and other structures are uniform for each class or kind of building within the district's designated boundaries.

Basement

A story partly or wholly underground. For purposes of height measurement, a basement shall be counted as a story where more than one-half of its height is above the average level of the adjoining ground.

Bed & Breakfast¹¹⁴

A dwelling or grouping of dwellings that is owner- or manager-occupied, at which breakfast is served and sleeping accommodations are provided/offered in rooms or unattached units (such as cabins) for transient guests for compensation for periods of 30 days or fewer.

Beverage Stand

A small, freestanding structure with a drive-through where customers can purchase coffee, tea, and other beverages, along with pre-made bakery goods or other light, pre-made meals such as sandwiches or burritos.

Block

A piece or parcel of land entirely surrounded by public highways or streets, other than alleys. In cases where the platting is incomplete or disconnected, the Planning and Development Services Department shall determine the outline of the block.

Block

A unit of land bounded by streets or other transportation or utility rights-of-way, parks, streams, waterways, or any other barrier to the continuity of development.

Boarding House¹¹⁵

A facility other than a hotel where lodging or meals are provided for five or fewer people for compensation, pursuant to previous arrangements, with rental or lease periods of no less than one month.

Bond

Any form of a surety bond in an amount and form satisfactory to the city.

Buffer

An area of land used to physically and/or visually separate one use or lot from another.

¹¹⁴ Carries forward the current definition in Sec. 144-1.4 with minor revisions and adds time limitation.

¹¹⁵ Carries forward the current definition in Sec. 144-1.4 with minor revisions.

Building

A structure enclosed within exterior walls, built, erected, and framed of a combination of materials, whether portable or fixed, having a roof, to form a structure for the shelter of people, animals, or property.

Building Setback Line

A line defining an area on the building lot between the street right-of-way line or property line and the building line within which no building shall be constructed, encroach, or project except as specifically authorized in an adopted ordinance of the city.

Bus Barn

A facility where buses are stored and maintained.

Bus Station

A facility where patrons wait for and City Council or depart from buses. This use may include ticket sales, accessory vehicle maintenance facilities, and retail sales.

Business Day

Any day except Saturday, Sunday, or a legal holiday.

9.2.3 C**Campground**

An outdoor facility designed for overnight accommodation of human beings in tents, rustic cabins and shelters for recreation, education, naturalist, or vacation purposes. Ancillary services such as a convenience store, restrooms, power, and electric hook-ups may be provided.

Canopy Tree**Capital Improvements Program (CIP)**

The official proposed schedule, if any, of all future public projects listed together with cost estimates and the anticipated means of financing each project, as adopted by City Council.

Carport

A permanent structure consisting of a roof and supported on posts with three or four open sides used as a minimal shelter for an automobile. It may be freestanding or attached to another structure on one side.

Catering

An establishment that prepares food on-site which is transported and served at another location off-site. On-site sale and consumption of food or beverages to patrons is limited to taste-testing.

Cemetery

Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes including columbaria, mausoleums, and funeral establishments, when operated in conjunction with and within the boundary of the cemetery.

Certificate of Occupancy

A certificate, issued by the Building Official, certifying that all work on any building or project has been inspected by the official, meets all building requirements, and is ready for occupancy.

Check Cashing

An establishment that, for compensation, engages in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. This definition shall not include a bank or financial institution use, and does not include retail uses, such as grocery stores, where the cashing of checks or money orders is incidental to the main purpose of the business.

City

The City of New Braunfels, Texas.

City Attorney

An attorney, or firm of attorneys, that has been specifically employed by the city to assist in legal matters. This term shall also apply if the city retains a person to perform the functions of city attorney as an official city employee.

City Council

The duly elected governing body of the City of New Braunfels, Texas.

City Engineer¹¹⁶

The duly authorized person in charge of engineering for the city, or that person's designated representative.

City Officials

Includes but is not limited to the following: Building official, local health authority, city sanitarian, fire chief, policeman, Planning and Development Services Department Director, and tax assessor-collector.

City Standards

The city's standards and specifications, together with all tables, drawings, and other attachments as may be approved by the Council or the Planning Commission, which once approved become a part of this chapter.

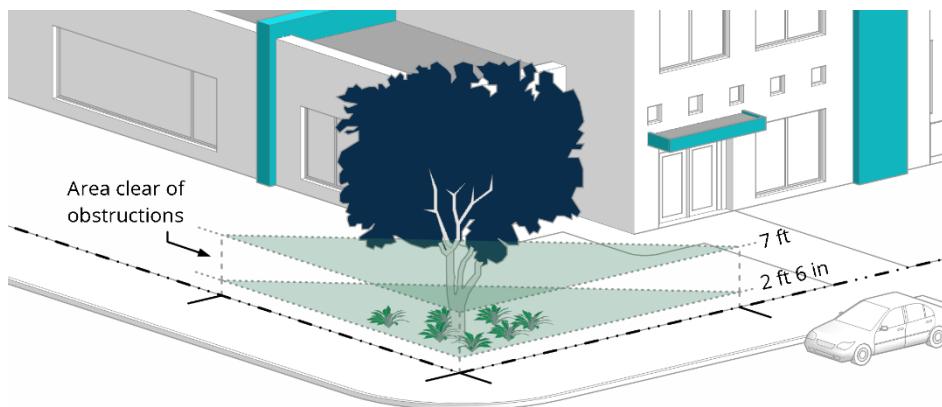
Civic Club

A nonprofit membership organization that holds regular meetings and pursues a common interest, usually cultural, civic, religious, or social, and has formal written membership rules along with the requirement for members to pay dues. A "club or lodge" may, subject to other regulations controlling such uses, maintain dining facilities; engage professional entertainment for the enjoyment of members and their guests; or store, sell, possess, or serve any alcoholic beverage permitted by the law of the State of Texas. This definition does not include any form of sleeping accommodations.

¹¹⁶ Should this be retained? Or, as elsewhere in the draft, should it be changed to refer to the Director of the Transportation and Capital Improvements Department?

Clear Vision Area

An area of unobstructed vision at intersections of streets, alleys, and driveways. Sometimes also called a vision triangle, the area is determined by extending the intersection of the two curb lines from their point of intersection, and connecting these points with an imaginary line, thereby making a triangle.

**Clinic, Medical or Dental¹¹⁷**

A facility that provides medical, dental, psychiatric, or surgical services for sick or injured individuals exclusively on an out-patient basis, including diagnostic services, training, administration, and services to outpatients, employees, or visitors. This use includes facilities that principally provide emergency treatment, but in no case involves overnight stays.

Coffee Shop

An establishment that primarily prepares sells and serves coffee, tea and other beverages, and which may sell baked goods and light meals such as soups and sandwiches, but does not serve full meals, and which has a seating area which serves as an informal conversation or lounging place.

Co-location¹¹⁸

In the context of wireless communication facilities, the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Common Open Space

Private property under common ownership, designated as recreation area, private park (for use of property owners within the subdivision), play lot area, or ornamental areas open to general view.

Community and Cultural Facilities

Uses including buildings, structures, or facilities to provide a service to the public. Accessory uses may include limited retail, concessions, parking, and maintenance facilities.

¹¹⁷ Revises the existing definition of "Clinic" in Sec. 144-1.4 of the Code of Ordinances.

¹¹⁸ Definition from 47 CFR §1.6100.

Community Building

A place, structure, area, or other facility used for and providing cultural, social, educational, or recreational programs or activities, or swimming pools, tennis courts, and similar facilities, which is owned and operated by a homeowners' association or similar organization and that is intended for use by members of the residential community in which it is located. The use may be open to the general public or a designated part of the public.

Community Garden

A lot or area used for the cultivation of food and/or horticultural crops. Community Garden may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of a group and may include common areas maintained and used by group members. Any crops or produce grown in a community garden are for individual consumption only, and may not be sold to members of the public.

Compliant Structure

A compliant structure or building is one that lawfully complied with all applicable lot, building, and design standards prior to the adoption, revision, or amendment of this Chapter, but which by reason of such adoption, revision, or amendment, no longer complies with all such applicable standards.

Compliant Use

A land use that was lawful and permitted prior to the adoption, revision, or amendment of this Chapter, but which by reason of such adoption, revision, or amendment, is no longer allowed in the zoning district where the use is located, or no longer complies with current use limitations applicable to the use. Compliant uses have been registered with the Department of Planning and Development Services within **one year** after the effective date of this ordinance.

Comprehensive Plan

The adopted goals, policy statements, standards, programs, and maps for guiding the physical, social, and economic development, both public and private, of the City and its environs, including, any unit or part of such plan separately adopted, and as amended by City Council.

Condominium

A form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of the portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

Conference or Convention Center

A facility used for service, business, or professional conferences, conventions, seminars, training programs, and similar events. The facility may be either freestanding or incorporated into a hotel or office facility and may include eating and drinking establishments.

Conforming¹¹⁹

A conforming use, building, or site feature is one that is in compliance with all applicable regulations of this LDO.

Construction Plans

The drawings and technical specifications, including bid documents and contract conditions, where applicable, that provide a graphic and written description of the character and scope of the work to be performed in construction of a subdivision.

Contiguous

Lots are contiguous when at least one boundary line or point of one lot touches a boundary line, or lines, or point of another lot.

Controlled Street

In the context of the clear vision area, or sight visibility triangle, a controlled street is one with a traffic control device, such as a yield or stop sign, or traffic signal, at the intersection.

Cottage Home Development

A cluster of at least five attached or detached dwellings located within a common development that has shared access, parking, and common spaces. Cottage developments can include homes on individual lots, homes owned as condominiums, or leased homes. This use can include communities of five or more factory-built small detached dwellings, provided that each home meets applicable building codes or is a modular or industrialized home as defined in Chapter 1202, Occupations Code, of the Texas state statutes.

Country Club, Private¹²⁰

Land area and buildings containing facilities such as tennis courts, golf courses, other recreational facilities, a clubhouse, swimming pools, food services, and other customary accessory uses which are open only to members and their guests.

Court or Courtyard

An open, unoccupied space, other than a yard, on the same lot with the building or group of buildings and which is bounded on two or more sides by such building or buildings.

Coverage, Building

The lot area that is covered by all buildings located thereon, including the area covered by all overhanging roofs and canopies.

Coverage, Lot

The combined area of all yards on a given lot.

Crematorium

A facility used for the purification and reduction of bodies by fire.

¹¹⁹ Carries forward the definition in Sec. 144-1.4 with minor revisions.

¹²⁰ Carries forward the current definition in Sec. 144-1.4 with minor revisions.

Cul-de-Sac

A short, minor street having but one outlet to another street and terminating on the opposite end by a vehicular turnaround.

Curb Level

The elevation of the established curb in front of a building measured at the center of such front.

9.2.4 D**Dance Hall or Dancing Facility¹²¹**

An establishment where dancing and musical entertainment are the primary activity. Dance halls may or may not serve alcoholic beverages for on-site consumption.

Day Camp

An establishment including buildings and open land areas that offers supervised recreational and sporting activities for children, especially in summer and during school vacations, but does not include sleeping accommodations for camp attendees.

Day Care Center¹²²

A facility where care, protection, and supervision are provided for children or adults on a regular basis away from their primary residence for less than 24 hours a day, with or without compensation and with or without stated educational purposes. The term includes, but is not limited to, facilities commonly known as day-care centers, day nurseries, nursery schools, preschools, play groups, day camps, summer camps, and centers for mentally disabled children, but specifically excludes any day care home uses or kindergartens.

Day Care Home¹²³

A facility that regularly provides care in the caretaker's own residence for no more than six adults or six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, provided that at no time shall more than 12 children and adults, including the caretaker's own, be provided care.

Dead-End Street

A street, other than a cul-de-sac, with only one outlet.

Deck

A roofless platform, either freestanding or attached to a building that is supported by pillars or posts.

¹²¹ Carries forward the current definition in Sec. 144-1.4 with minor revisions.

¹²² New definition for a use that consolidates previous separate adult and child day care uses.

¹²³ Carries forward and consolidates the current definition for "Family home (adult care in place of residence)" and "Family home (child care in place of residence)" in Sec. 144-1.4 with revisions for clarity; some portions of the current definition have been included as use-specific standards.

Dedication

A conveyance or donation of property by the owner to the city or Comal or Guadalupe County.

Density, Residential

The number of dwelling units per gross acre of subdivision, excluding any areas that are non-residential in use.

Department

The department, division or personnel otherwise designated by the city manager to administer or enforce any or all of the provisions of this LDO.

Depth of Rear Yard

The horizontal distance between the rear line of the main building and the rear lot line.

Developer

An individual, partnership, corporation, or governmental entity undertaking the subdivision or improvement of land and other activities covered by this LDO, including the preparation of a master development plan or subdivision plat showing the layout of the land and the public improvements involved therein. The term "developer" is intended to include the term "subdivider," even though personnel in successive stages of a project may vary.

Development

The laying out of a subdivision through the platting process, construction of one or more new buildings or structures on one or more building lots, the moving of an existing building to another lot, or the use of open land for a new use. "To develop" shall mean to create development.

Development Agreement

A contract entered into by the applicant and the city, by which the applicant promises to complete the required public improvements or perform other required obligations within the subdivision or addition within a specified time period following final plat approval. A development agreement may be used to deal with current and future platting issues for a proposed project.

Development Application

This term has the same meaning as "application."

Diameter at Breast Height (DBH)

A standard method of expressing the diameter of the trunk or bole of a standing tree, measured at 4.5 feet above the ground.

Director

Unless otherwise specified, Director, Planning and Development Services Department, or Planning and Development Services Director means the Director of the Planning and Development Services Department. This designation also includes any person designated by the Director (their "designee") to carry out their assigned responsibilities and authorities in their stead.

Distance between Buildings

The shortest horizontal distance between the vertical walls of two structures.

Distribution Center

A specialized warehouse that serves as a hub to store finished goods, streamline the picking and packing process, and ship goods out to other locations or final destinations. Also referred to as a fulfillment center, a distribution center is distinguished from a warehouse by the far more rapid turnover of inventory.

Donation Collection Container**Dripline**

A vertical line extending from the outermost portion of the tree canopy to the ground.

Drive-Through Facility¹²⁴

A facility used to provide products or services to customers who remain in their vehicles, whether through a window or door in a building, a machine in a building or detached structure (e.g., Automated Teller Machine), or through a mechanical device (e.g., a pneumatic tube system). In addition to the pick-up window or door, drive-through service facilities also may include remote menu City Councils and ordering stations.

Driveway

A minor, private way off a common access route within the community to an off-street auto parking area serving one or more mobile homes.

Duplex

A building designed as a single structure containing two separate living units, each of which is designed to be occupied as a separate permanent residence for one family or individual. Alternately a duplex may be two separate structures on one lot, each of which is occupied separately.

Dwelling¹²⁵

A building or structure, or portion of a building or structure, designed for residential purposes as a single housekeeping unit, but not including a motor home, trailer coach, automobile chassis, tent, or portable building. Examples of dwellings include single-family detached dwellings, single-family attached dwellings (townhouses), two-family (duplex) dwellings, three-family (triplex) dwellings, four-family (fourplex) dwellings, multi-family dwellings, manufactured home dwellings, and cottage home development.

Dwelling, Four-Family (Fourplex)

A building located on its own lot that contains four separate living units, each of which is arranged, intended, or designed for occupancy as a residence by one family.

Dwelling, Live-Work

A dwelling unit containing an integrated living and working space in different areas of the unit.

¹²⁴ This updates the current definition in Sec. 144-1.4 of the Code of Ordinances.

¹²⁵ Carries forward the definition in Sec. 144-1.4 with references to household living uses in this Chapter.

Dwelling, Manufactured Home

A structure constructed on or after June 15, 1976, according to the rules of the National Manufactured Home Construction and Safety Standards Act of 1974 and Title of the Housing and Community Development Act of 1974. Generally, manufactured homes are designed and built in a factory, may be transported in pieces, and assembled on site.

Dwelling, Multi-family¹²⁶

One or more buildings or portions of buildings on a single lot or tract that contains five or more dwelling units, each of which is occupied or intended to be occupied by people living independently of each other and maintaining separate cooking facilities, and where each unit has an individual entrance to the outdoors or a common hallway.

Dwelling, Single-Family Attached (Townhouse)

A single-family dwelling unit on an individual lot which is one of a series of dwelling units having one or two common side walls with the other units in the series.

Dwelling, Single-Family Detached¹²⁷

A building located on its own lot that contains one dwelling unit that is not physically attached to any other principal structure and is arranged, intended, or designed for occupancy by one family. This definition includes a modular or industrialized home as defined in Chapter 1202, Occupations Code, of the Texas statute statutes, but does not include a Manufactured Home or Recreational Vehicle.

Dwelling, Two-Family (Duplex)¹²⁸

A building designed as a single structure that contains two separate living units, each of which is designed to be occupied as a separate permanent residence for one family. This definition includes a modular or industrialized home as defined in Chapter 1202 of the Occupations Code, but does not include a Manufactured Home Dwelling or Recreational Vehicle.

Dwelling, Three-Family (Triplex)

A building located on its own lot that contains three separate living units, each of which is arranged, intended, or designed for occupancy as a residence by one family.

Dwelling, Tiny Home

A single-family detached dwelling that is less than 500 square feet and more than 300 square feet in size. The dwelling is constructed on a frame and capable of being transported on its own wheels, but when used for permanent habitation, the wheels must be removed, and the dwelling installed on a permanent foundation. To be distinguished from a Recreational Vehicle, a tiny home must meet

¹²⁶ Simplifies the current definition in Sec. 144-1.4 of the Code of Ordinances, and changes the minimum configuration from three or more dwelling units to five or more dwelling units to allow for separate triplex and fourplex uses which may simplify the development of those housing options.

¹²⁷ Updates the current definition of "One-family dwelling" in Sec. 144-1.4 of the Code of Ordinances. The separate definition of a "Single-family industrialized home (also called modular prefabricated structure or modular home) been consolidated into this new definition, and the definition in the current code replaced with a reference to state law. Also incorporates the "Zero lot line/patio homes" use.

¹²⁸ Simplifies the current definition in Sec. 144-1.4 of the Code of Ordinances, renames the use "Duplex/two-family/duplex condominiums," makes revisions for consistency with the single-family detached dwelling use, and removes the alternative definition of two buildings on a single lot as that is just two single-family detached homes on a single lot, not a duplex.

either the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sections 5401 et. seq.) or the international building code.

Dwelling, Zero Lot Line

A single-family dwelling that is built adjacent to one side property line.

9.2.5 E**Easement**

An area for restricted use on private property upon which the City or a public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, and other improvements or growths which in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems within said easements. The City and public utilities shall, at all times, have the right of ingress and egress to and from and upon easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, and adding to or removing all or part of their respective systems without the necessity at any time of procuring the permission of anyone.

Educational Facilities¹²⁹

Uses in this category include public, private, and parochial institutions at the primary, elementary, middle, high school, or post-secondary level, or vocational or trade schools. Accessory uses commonly include cafeterias, indoor and outdoor recreational and sport facilities, auditoriums, and day care facilities.

Eligible Facilities Request¹³⁰

In the context of wireless communication facilities, this is any request for modification of an existing WCF that involves the co-location of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.

Eligible Support Structure¹³¹

In the context of wireless communication facilities, this is any WCF as defined in this LDO that is in existence at the time an application is filed.

Enforcing Agency

Any officer of the city, or health agency of this state, who is charged by law to enforce the provisions of this Chapter and other applicable regulations.

Engineer

A person duly authorized under the provisions of the Texas Engineering Registration Act, as amended, to practice the profession of engineering.

Escrow

A deposit of cash with the city in accordance with this chapter.

¹²⁹ Definition from 47 CFR §1.6100.

¹³⁰ Definition from 47 CFR §1.6100.

¹³¹ Definition from 47 CFR §1.6100.

EV Charging Station¹³²

An electrical component assembly or cluster of component assemblies (battery charging station) designed and intended to transfer electric energy by conductive or inductive means from the electric grid or other off-City Council electrical source to a battery or other energy storage device within a vehicle that operates partially or exclusively on electric energy. The charging station may include a digital display for control of the charging station. There are three types of electric vehicle charging stations.

- 1) A Level 1 charging station is a slow-charging station that typically operates on a 15- or 20-amp breaker on a 120-volt Alternating Current (AC) circuit.
- 2) A Level 2 charging station is a medium-speed charging station that typically operates on a 40- to 100-amp breaker on a 208- or 240-volt AC circuit.
- 3) A Level 3 charging station is an industrial-grade charging station that operates on a high-voltage circuit to allow for fast charging.

EV Charging Station, Level 1 or 2

A Level 1 or Level 2 EV charging station.

EV Charging Station, Level 3

A Level 3 EV charging station.

Event or Reception Center¹³³

A commercial or non-profit facility that may have indoor or outdoor components, or both, that can be rented to accommodate large groups of people for entertainment, wedding receptions, reunions, and similar gatherings.

Existing¹³⁴

In the context of wireless communication facilities, existing applies to any WCF that has already been constructed, and was reviewed and approved in accordance with all requirements of applicable law as of the time of an eligible facilities request.

Extraction Uses

Uses in this category include the excavation or extraction of raw materials from the earth.

Extraterritorial jurisdiction (ETJ)

The unincorporated area, not a part of any other city, which is contiguous to the corporate limits of the city, the outer limits of which are measured from the extremities of the corporate limits of the city outward for such distances as may be stipulated in the Texas Municipal Annexation Act in accordance with the total population of the incorporated city, and in which area, within the terms of the act, the city may enjoin the violation of its subdivision ordinance.

¹³² This replaces the definition for "Battery charging station" in Sec. 144-1.4 of the Code of Ordinances.

¹³³ This replaces the definition for "Event Center" in Sec. 144-1.4 with an expanded definition.

¹³⁴ Definition from 47 CFR §1.6100.

9.2.6 F

FAA

The Federal Aviation Administration.

Façade

A side of a building or accessory structure which consists of a separate architectural elevation as viewed horizontally from the ground, street or other nearby location. The area of a façade is defined by the outer limits of all of its visible exterior elements. Separate faces of a building oriented in the same direction or within 45 degrees of each other are considered part of the façade.

Fairground

An area where outdoor fairs, rodeos, circuses, or exhibitions are held.

Farm

Land used for the primary purpose of agriculture, horticulture, floriculture, or viticulture.

Farmers Market

An occasional or periodic market held in an open area or structure where multiple individual vendors offer for sale to the public items such as fresh produce, seasonal fruits, prepared foods, fresh flowers, arts and crafts items, and food and beverages dispensed from booths located on-site.

FCC

The Federal Communications Planning Commission.

Fence

A tangible enclosure or barrier generally erected to provide a boundary or separation of properties.

Final Plat

The one official and authentic map of any given subdivision of land prepared from actual field measurement and staking of all identifiable points by a surveyor or engineer, with the subdivision location referenced to a survey corner, and with all boundaries, corners and curves of the land division sufficiently described so that they can be reproduced without additional references. A final plat shows the exact layout and proposed construction of a proposed subdivision into lots, blocks, streets, and alleys, and may include parks, school sites, drainageways, easements, and/or any other elements as required by this chapter and which an applicant shall submit for approval in accordance with this chapter and is recorded with the appropriate county clerk. A final plat includes: amended, amending, development and minor plats and replats.

Fleet Services

A central facility for the distribution, storage, loading, and repair of fleet vehicles, with or without associated dispatch services and offices. This use includes limousine services and taxi services.

Floodplain



An area of land that is subject to a one-percent or greater chance of flooding in any given year, based on developed conditions existing as of the date a development application is accepted for filing, and not based on projected or anticipated future build-out for a watershed.

Floodplain

Any and all land area adjoining the channel of a river, stream, lake, watercourse, marshy area, or other drainage element, which has been or may be inundated by stormwater runoff. The extent of the floodplain shall be determined by the crest of a flood having a one percent chance of occurrence in one year.

Floodway

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

Food and Beverage Uses

Uses in this category are involved in the preparation and service of food or beverages for consumption on or off the premises.

Food Processing

A facility that produces food for human consumption in its final form, including but not limited to candy, baked goods, tortillas, or ice cream, for distribution to retailers or wholesalers for resale on or off the premises. This use does not include the slaughter of small or large livestock, meatpacking, or animal feeding operations.

Freight Terminal

A building or outdoor area used primarily for the temporary parking of trucks of common or contract carriers during loading or unloading and for receiving and dispatch of freight vehicles, including necessary warehouse space for storage of transitory freight. Incidental uses may include, but are not limited to, a truck wash, overnight truck parking, and loading and unloading from rail spurs.

Front Building Setback Line

A line parallel to the street right-of-way which the building faces, and takes its primary access from and that is the required minimum distance establishing the area within which the principle must be exited or placed.

Frontage

The lineal distance measured along all abutting street rights-of-way.

Funeral Home

An establishment for the care, preparation, or disposition of the deceased for burial, and the display of the deceased and rituals connected with and conducted before burial or cremation. This use includes mortuaries, which are facilities in which dead bodies are prepared for burial, but does not include the separate crematorium use. Accessory uses may include:

- 1) Embalming and the performance of other services used in preparation of the dead for burial;
- 2) The performance of autopsies and other similar surgical procedures;
- 3) The storage of caskets, funeral urns, and other related funeral supplies;
- 4) The storage of funeral vehicles; and
- 5) A funeral chapel.

Funeral Services

Uses in this category provide services related to the care and disposition of deceased bodies.

9.2.7 G**Garage, Detached**

A private garage wholly separated and independent of the principal building.

Garage, Public

A building or portion thereof, designed or used for the storage, sale, hiring, care, or repair of motor vehicles, which is operated for commercial purposes, also referred to as structured parking, or a structured parking lot.

Golf Course

A tract of land laid out with a course having nine or more holes for playing the game of golf, including any accessory clubhouse, driving range, office, restaurant, picnic tables, pro shop, maintenance building, restroom facility, or similar accessory use or structure.

Governing Authority

The City Council of the City of New Braunfels, Texas.

Government Agency

Any department, agent, or employee of the City of New Braunfels, County of Comal, County of Guadalupe, State of Texas, United States Government as well as any public utility, school district or other political subdivision of the State of Texas.

Government or Municipal Facility

Any government office or publicly accessible county or municipal facility, including but not limited to libraries, public recreation or community centers, public swimming pools, and athletic fields or sports courts (which may be part of public parks, or may be standalone facilities).

Grain Elevator

A facility or area for the temporary storage of grain for transfer to trucks, train cars, or other forms of transportation.

Gross Density

The number of dwelling units per gross acre within the subdivision.

Gross Floor Area¹³⁵

The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

¹³⁵ Carries forward the definition in Sec. 144-1.4 of the Code of Ordinances.

Group Home¹³⁶

A residential dwelling or facility where people are living, together with staff, as a single housekeeping unit providing care, supervision, and/or treatment, for the exclusive use of citizens protected by the provisions of the federal Fair Housing Act Amendments of 1988, as defined in that Act and interpreted by the courts, or by any similar legislation of the State of Texas, including but not limited to facilities providing housing for physically challenged, mentally ill, or developmentally disabled individuals. The limitation on the number of individuals with disabilities applies regardless of the legal relationship of those individuals to one another.

Group Care Home, FHAA Small

A facility designed for and occupied by six or fewer residents living together.

Group Care Home, FHAA Large

A facility designed for and occupied by seven or more residents living together.

Group Living

Uses characterized by residential occupancy of a structure by a group of people who do not meet the definition of "household living." Tenancy is arranged on a monthly or longer basis and the living structures generally have a common eating area for residents. Residents may receive care, training, or treatment, and caregivers may or may not also reside at the site. Group living as a category includes but is not synonymous with "group home," which is a specific type of group living.

9.2.8 H**Habitable Space**

The enclosed area of a building used for living area, including but not limited to bedrooms, bathrooms, kitchens, living rooms, family rooms, dining rooms, recreation rooms, utility rooms, and workshops.

Hazardous Materials Storage

Bulk storage of fuel and flammable liquids (except liquefied petroleum gas) shall be any aboveground tank for storage of subject liquids which exceeds 500 gallons water capacity, or any facility for which the total aggregate capacity of belowground storage tanks shall exceed 50,000 gallons. Bulk storage of liquefied petroleum gas shall be any facility for which the total aggregate capacity of storage tanks (including truck and/or trailer tanks) exceeds 2,000 gallons water capacity.

Health Care Services

Uses characterized by activities focusing on medical services, particularly licensed public or private institutions that provide preventative health care, primary health services, and medical or surgical care to individuals suffering from illness, disease, injury, or other physical or mental conditions. Accessory uses may include laboratories, outpatient, or training facilities, or other amenities primarily for the use of patients or employees in the firm or building such as cafeteria and limited retail sales.

¹³⁶ Carries forward portions of the current definition of "community home" in Chapter 144-1.4, with revisions to incorporate reference to current federal law. The threshold for small group homes being six or fewer residents and large group homes being seven or more is based on the current definition of community home.

Height, Building

The vertical distance of a structure measured from the average elevation of the finished grade surrounding the structure to the highest point of the structure. The average finished grade is calculated by averaging the midpoints of the four finished exterior walls of the building.

Height, Tower

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

Heliport¹³⁷

An area of land or water or a structural surface designed, used, or intended for use for the landing and taking off of helicopters, including all facilities related to the operation of the heliport such as hangers, fueling facilities, and office uses relating to the heliport function.

Heritage Tree

Any tree attaining a circumference of one-half of the state record for that tree species as defined by the Texas Forest Service, or having a trunk circumference of 75 inches or more (about 24 inches in diameter) measured 4 and ½ feet above the ground.

Home Occupation¹³⁸

An occupation carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises, and which is clearly incidental and secondary to the use of the premises for residential purposes.

Hospice

An establishment that provides a coordinated program of inpatient care and services including the coordination of nursing care, social services, medical supplies, physician's services, counseling, and bereavement services for patients' families to hospice patients and families, through a medically directed interdisciplinary team using interdisciplinary plans, to meet the physical, psychological, social, spiritual, and other special needs that are experienced during the final stages of illness, dying, and bereavement.

Hospital¹³⁹

An institution that provides primary health services and medical or surgical care to individuals, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residences. This includes institutions that provide rehabilitation services to individuals who require intensive medical services. A hospital may include a helistop as an accessory use.

¹³⁷ Carries forward the existing definition in Sec. 144-1.4 with revisions for consistency and clarity.

¹³⁸ Carries forward the definition in Sec. 144-1.4 with minor revisions.

¹³⁹ Consolidates the existing definitions of "Hospital, general" and "Hospital, rehabilitation" in Sec. 144-1.4 of the Code of Ordinances.

Hotel¹⁴⁰

A building providing, for compensation, sleeping accommodations and customary lodging services. Related ancillary uses typically include 24-hour front desk service, housekeeping service, conference and meeting rooms, restaurants, bars, and recreational facilities. Stays are typically for 30 days or less, although an extended stay hotel which permits stays longer than 30 days is included in this definition.

Household

An individual or a group of people living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and serving of food within the dwelling unit.

Household Living

Uses characterized by residential occupancy of a dwelling unit by a person or group of people. Common accessory uses include recreational activities, raising of household pets, personal gardens, personal storage buildings, swing sets, playground equipment, swimming pools, hobbies, and resident parking.

Hydrogeologist

A person with at least five years of progressively more responsible professional experience, following receipt of a baccalaureate degree, during which full competence has been demonstrated in the application of scientific or engineering principles and methods to the execution of work involving:

- 1) The understanding of the occurrence, movement, and composition of ground water in relation to the geologic environment,
- 2) The development, management, or regulation of ground water, or
- 3) The teaching and research of ground water subjects at the university level.

9.2.9 |**Idling¹⁴¹**

The operation of an engine in the operating mode where the engine is not engaged in gear, where the engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released, and there is no load on the engine.

Industrialized Home¹⁴²

Industrialized homes, also called prefab or modular homes, are designed and built in a factory, may be transported in pieces, and assembled on site. This type of housing is distinguished from manufactured housing in that, in the State of Texas, it is constructed to meet the same building codes as site-built housing, and must be installed upon a permanent foundation. According to the Texas Department of Licensing and Regulation, no municipality may differentiate between modular

¹⁴⁰ New definition that replaces the definition in Sec. 144-1.4 of the Code of Ordinances.

¹⁴¹ Carries forward the definition in Sec. 144-1.4.

¹⁴² Carries forward the definition in Sec. 144-1.4 with minor revisions.

homes built under the Texas Industrialized Housing and Buildings (IHB) program and site-built homes.

Itinerant Merchant Operation¹⁴³

Activity by any person involving the display, sale, offering for sale, offering to give away, or giving away of anything of value including any food, beverage, goods, wares, merchandise, or services including food, which takes place in a temporary structure.

9.2.10J**Junkyard¹⁴⁴**

A building or outdoor area used for the abandonment, storage, keeping, collecting, or bailing of paper, rags, scrap metals, or other discarded materials, or where three or more non-operative vehicles are stored for the purpose of dismantling or wrecking the vehicles to remove parts for sale or for use in automotive repair or rebuilding.

9.2.11K**Kitchen**

Any room or portion of a room within a building designed and intended to be used for the cooking or preparation of food.

9.2.12 L**Landfill**

A facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste. Ancillary facilities may include a waste transfer station or materials recovery operations.

Landscaped Area

The area of a lot which is devoted to and consists of plant material adaptable to this region, including but not limited to trees, shrubs, grass, vines, ground cover, and other plant materials, along with planters, brick, stone walkways, natural forms, water forms, and other landscape features, but not including any paved area of smooth concrete or asphalt.

Laundry, Commercial

An establishment that performs laundry and linen cleaning services for commercial and industrial customers, including but not limited to hotels and hospitals. Commercial laundries do not serve individuals or the general public.

¹⁴³ Carries forward the definition in Sec. 144-1.4 with minor revisions.

¹⁴⁴ Carries forward and consolidates the definitions in Sec. 144-1.4 for "Junkyard or automotive wrecking and salvage yard" and "Wrecking yard (junkyard or auto salvage)" with minor revisions to incorporate broader junkyard uses.

Laundry, Drop-Off and Self-Service

An establishment where laundry may be dropped off and picked up by customers (wash-and-fold), or where customers may pay to use self-service washing and drying machines on the premises. This use may include tailoring services, but does not include dry-cleaning services.

Letter of Certification (LOC)

A formal document that is provided to a subdivider/developer by a reviewing entity; an LOC certifies a proposal's compliance with all standards administered by the respective reviewing entity.

License

In the context of a mobile home park, a document issued by the local health authority which will allow a person to operate and maintain a mobile home community under the provisions of this LDO and other applicable regulations.

Licensee

In the context of a mobile home park, any person who holds a valid license to operate and maintain a mobile home community under the terms of this LDO and other applicable regulations.

Living Unit

A residential unit complete with facilities to accommodate one person or family with provisions for eating, sleeping, and sanitation.

Lodging uses

Uses in this category provide lodging services for a defined period of time with incidental food, drink, and other sales and services typically intended for the convenience of guests. Accessory uses may include food preparation areas, offices, and parking.

Lot

A parcel of land occupied or to be occupied by one building, or group of buildings, and the accessory buildings or uses customarily incident thereto, including such open spaces as are required by this LDO.

Lot, corner

A lot abutting upon two or more streets at their intersection. The front of a corner lot shall be deemed the street frontage upon which its shorter property line faces. If street-facing property lines are equal in length, either street-facing property line may be deemed the front of the lot.

Lot Coverage

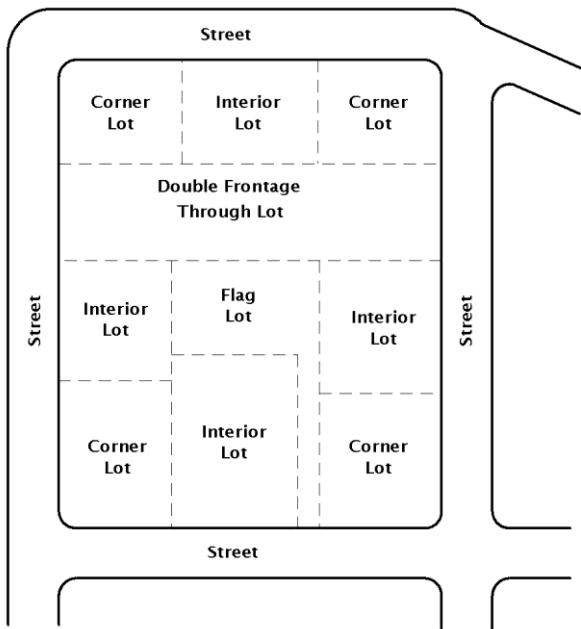
See Coverage, lot.

Lot Depth

The length of a line connecting the midpoints of the front and rear lot lines.

Lot, Double Frontage

Any lot, not a corner lot, with frontage on two streets that are parallel to each other or within 45 degrees of being parallel to each other. When there is a non-access easement along a property line adjacent one of the streets of a platted double frontage lot, the property line with said easement it is to be considered the rear lot line for purposes of this ordinance and is subject to the rear building setback.



Lot Frontage

The length of street frontage between property lines.

Lot, Interior

A lot whose side lines do not abut upon any street.

Lot, Irregular

Any lot not having equal front and rear lot lines, or equal side lot lines; a lot, the opposite lot lines of which vary in dimension and the corners of which have an angle of either more or less than 90 degrees.

Lot Lines

The lines bounding a lot as defined herein.

Lot Line, Front

The boundary between a lot and the street on which it fronts.

Lot Line, Rear

The boundary line which is opposite and most distant from front street line; except that in the case of uncertainty the Planning and Development Services Department shall determine the rear line.

Lot Line, Side

Any lot boundary line not a front or rear line thereof. A side lot line may be a part lot line, a line bordering on an alley or place or a side street line. Lots may have more than two side lot lines.

Lot, Through

An interior lot having frontage on two streets, also called a double frontage lot.

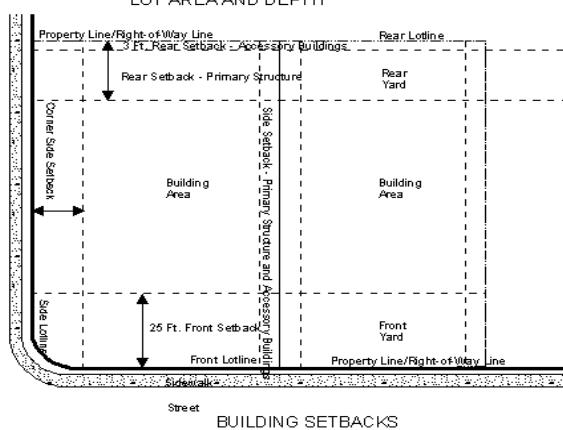
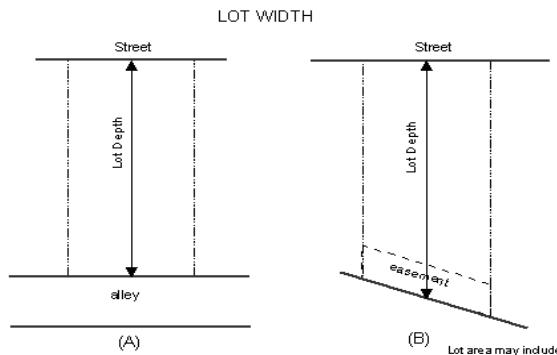
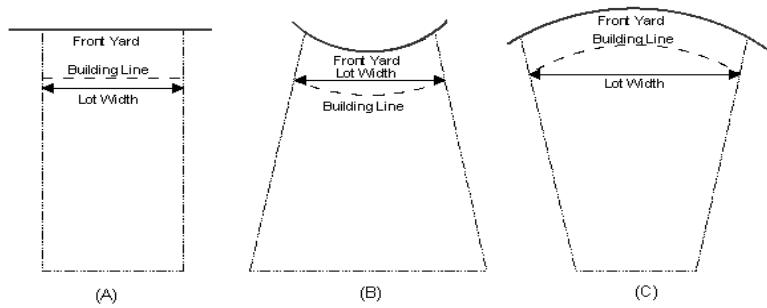
Lot Width

The horizontal distance between side lines, measured at the front building line, as established by the minimum front yard requirement of this LDO.

Article 9: Rules of Construction and Definitions

9.2 Definitions

9.2.12



Low Income Elderly

Any person 55 years of age or older with low or moderate income, according to HUD standards.

Lumber Mill

An establishment that processes and treats raw logs to create lumber products that can be used for construction and other purposes.

Lumberyard or Building Supply Store¹⁴⁵

A building or outdoor area used for the storage of lumber and building materials for sale or rental that are commonly used for building construction or home repair purposes. This use may include the outdoor storage and display of merchandise. Incidental uses include the pick-up and shipment of materials to and from the site.

9.2.13 M**Manager or Owner**

In the context of a manufactured home park, the person who owns or has charge, care, or control of the mobile home community.

Manufactured Home

A structure constructed on or after June 15, 1976, according to the rules of the National Manufactured Home Construction and Safety Standards Act of 1974 and Title of the Housing and Community Development Act of 1974, and certified as attaining certain safety and construction standards by the Department of Housing and Urban Development. Generally, manufactured homes are designed and built in a factory, may be transported in pieces, and assembled on site. Manufactured homes are distinct from industrialized or modular homes which, while also factory-built, comply with local, state and regional building codes.

Manufactured Home Community

A unified development of manufactured or mobile home spaces restricted to manufactured and mobile home use, with community facilities and permitted permanent buildings; this development being located on a single tract of land under one ownership and meeting the requirements of this ordinance.

Manufacturing and Processing Uses

Uses in this category includes the transporting, manufacture, fabrication, processing, reduction, destruction, or any other treatment of any article, substance, or commodity, in order to change its form, character, or appearance. Accessory uses may include retail sales, offices, storage, cafeterias, employee amenities, parking, warehousing, and repair facilities.

Manufacturing, Artisan

An establishment or business where an artist, artisan, or craftsperson teaches, makes, or fabricates crafts or products by hand or with minimal automation and may include direct sales to consumers. This definition includes but is not limited to small-scale fabrication or manufacturing operations conducted entirely within a building, that have no external impact on adjacent properties. Examples of this use include but are not limited to: artistic production such as sculpting or pottery, handicrafts such as weaving or soap-making, 3-D printing, small-scale food processing such as coffee roasting, and by-hand furniture production. This use does not include alcohol production.

¹⁴⁵This combination of uses reflects the current "Lumberyard or building material sales" use in 144-4.2. (There is also a separate "Lumberyard" use, not carried forward).

Manufacturing, Heavy¹⁴⁶

An establishment engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous conditions. These uses have the potential to create significant impacts on surrounding areas due to the types of materials used, byproducts created, hours of operations, volumes of truck or rail traffic, or other factors. Typical uses include acid manufacture, concrete or asphalt mixing, blooming or rolling mills, large-scale breweries or distilleries, canning or preserving facilities, cement or concrete manufacture or mixing, chemical manufacture, fertilizer manufacture, iron or steel manufacture, meat or fish packing, chrome plating, paint production, petroleum refining, slaughterhouse, smelting, stockyard, and wood distillation.

Manufacturing, Light¹⁴⁷

The production, processing, fabrication, assembly, treatment, repair, or packaging of finished products, predominantly from previously prepared or refined materials (or from raw materials that do not need refining), and that do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where the industrial activities take place. Warehousing, wholesaling, and distribution of the finished products produced at the site is allowed as part of this use. Typical uses include bottling, electronics assembly, forging, furniture manufacture, industrial laundries, printing plant, metal fabrication, plastics molding, poultry dressing, sheet metal, sign fabrication, and stone/clay/glass manufacture.

Marginal Access Street

A local street, parallel and adjacent to an arterial or other major thoroughfare, but separated from it by a long strip, which provides access to abutting properties and control of intersections with the major street.

Master Development Plan, Subdivision

The first or introductory plan of a proposed subdivision, in such case where the developer intends to develop and record only an individual portion to such subdivision, and which exhibits the proposed development of the balance of the subdivision.

Micro-Brewery or Micro-Distillery¹⁴⁸

A facility for the production and packaging of alcoholic beverages for distribution, retail, or wholesale, either on- or off-premises. Other uses commonly collocated with this use are a restaurant or bar. The use is permitted to produce either malt beverages of low alcoholic content with a capacity of not more than 15,000 barrels per year, or up to 100,000 gallons per year of distilled alcohol, such as whiskey, rum, gin, vodka, and other spirits.

Minor Plat

A subdivision resulting in four or fewer lots, which does not create any new street or necessitate the extension of any municipal facilities to serve any lot within the subdivision. Any property to be

¹⁴⁶ This revises the definition for "Industry, heavy" in Sec. 144-1.4 and includes references to current uses that have been consolidated into the new Heavy Manufacturing use.

¹⁴⁷ This revises the definition for "Industry, light" in Sec. 144-1.4 and includes references to current uses that have been consolidated into the new Light Manufacturing use.

¹⁴⁸ Combines two existing definitions from Sec. 144-1.4 into a single definition for a combined use.

subdivided using a minor plat shall already be adequately served by all required city utilities and services, and all lots will have frontage on a public roadway.

Mixed-Use Building¹⁴⁹

This refers to the use of a structure for non-residential use in conjunction with a residential dwelling unit.

Mobile Food Court¹⁵⁰

A parcel of land where two or more mobile food establishments congregate to offer food or beverages for sale to the public as the principal use of the land. This definition shall not be interpreted to include a congregation of mobile food establishments as a secondary, accessory use, and/or temporary use on existing commercially developed land, which is an itinerant merchant operation.

Mobile Food Unit¹⁵¹

A business that serves food or beverages from a self-contained unit, either motorized or in a trailer on wheels, and conducts all or part of its operations on premises other than its own and is readily movable, without disassembling, for transport to another location. This definition does include individual non-motorized vending carts.

Mobile Food Vending, Base of Operation¹⁵²

The location where a mobile food vending vehicle originates, and is returned for cleaning, storing or stocking. Food preparation for catering is permitted. This does not include activities associated with the Mobile Food Court use.

Mobile Storage Unit

A container designed and rented or leased for the temporary storage of commercial, industrial, or residential household goods, and does not contain a foundation or wheels for movement. This definition includes facilities such as piggyback containers that can be transported by mounting on a chassis, and "POD" type boxes that can be transported on a flatbed or other truck; but do not include prefabricated sheds that are not designed for transport after erection, or commercial trailers used by construction or other uses in the regular performance of their business.

Modular Home

This term is synonymous and interchangeable with Industrialized Home.

Movie Theater

A facility designed or used primarily for the commercial exhibition of motion pictures to the general public, or for the presentation of plays by actors or live performances by musicians and other artists.

¹⁴⁹ This definition was part of the Walnut Neighborhood Special District definitions. Carried forward, eliminating the limitation that the dwelling unit has to be occupied by the owner of the non-residential unit.

¹⁵⁰ Carries forward the current definition in Sec. 144-5.26-2 of the Code of Ordinances with minor revisions.

¹⁵¹ Carries forward the current definition in Sec. 144-5.26-2 of the Code of Ordinances with minor revisions.

¹⁵² Carries forward the current definition in Sec. 144-5.26-2 of the Code of Ordinances with minor revisions.

Municipal Infrastructure

Water, wastewater, drainage, road, pedestrian and bicycle, utility, and communication easements, rights-of-way, and facilities.

Museum

An establishment operated as a repository for a collection of nature, scientific, literary curiosities, or objects of interest or works of art, not including the regular sale or distribution of the objects collected. A museum may also include meeting rooms, offices for museum personnel, supportive visitor uses such as eating establishments, and similar facilities.

Music, Live or Recorded

As a use, any facility or venue that features live or recorded music for the enjoyment of patrons. Music may be an accessory use, as in the case of a bar or tavern, or it may be the primary use of a venue, as in a concert facility.

9.2.14 N**NBU**

New Braunfels Utilities.

Neighborhood Food and Service

An establishment containing not more than 2,000 square feet of gross floor area, and intended to serve the local neighborhood, whose primary business is the sale of food and/or non-alcoholic beverages including a restaurant, bakery, coffee shop, ice cream parlor, deli, grocery, or similar use.

Nonconforming Use

A use that does not conform to the regulations of the district in which it is situated. A use is considered legal nonconforming if it was established prior to passage of [LDO adoption date], and illegal nonconforming if it was established after [LDO adoption date], and not otherwise approved as provided herein. Continued operation of illegal nonconforming uses is a violation of this ordinance, subject to enforcement and penalties as described herein. See also: Compliant Use.

Nuisance

A defined legal term that applies to a condition, activity, or situation that interferes with the use or enjoyment of property in an unreasonable or substantial way. Courts use a balancing test to determine if an activity is a nuisance, weighing the extent and severity of the harm caused by the activity against the activity's social value. Common nuisances include but are not limited to excessive noise, odor, or vibration; noxious fumes; light trespass beyond property line, conducting a business that does not comply with zoning, and indecent signs or pictures displayed by a business.

9.2.15 O**Oak Wilt**

A disease caused by the fungus *Ophiostoma fagacearum* (*Ceratocystis fagacearum*).

Office¹⁵³

An establishment where services are provided and/or business is conducted including administrative, professional, consulting, governmental, or clerical operations. Typical examples include accounting, bookkeeping, tax preparation, investment, financial, law, computer programming, telemarketing, call centers, insurance, engineering, architecture, design, surveying, legal services, medical security monitoring, government departments or agencies, real estate, political and philanthropic, insurance, property management, investment, financial, employment, travel, and similar offices. This use does not include the contractors' office, personal services, or research and development uses.

Office and Services

Uses in this category provide executive, management, administrative, governmental, or professional services, but do not sell merchandise except as incidental to a permitted use, or provide individual services related to personal needs directly to customers at the site of the business, or that receive goods from or return goods to the customer, which have been treated or processed at that location or another location. Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building.

Office, Contractor's¹⁵⁴

A building used as office space with related outdoor areas used to store and maintain construction equipment and other materials and facilities customarily required in the building trade by a construction contractor.

Off-Site Facilities or Improvements

Those facilities or improvements that are required to serve the site but that are not located within the boundaries of the plat.

On-Site Facilities or Improvements

The existing or proposed facilities or improvements constructed within the property boundaries of a plat. Facilities and improvements include, but are not limited to, streets, alleys, water lines, sewer lines, storm drainage facilities, sidewalks, screening devices, and curbs and gutters.

Open Space

Private property designated for recreational area, private park (for use of property owners within the subdivision), play lot area, plaza area, building setbacks (other than those required by city ordinance), and ornamental areas open to the general view within the subdivision. "Open space" does not include streets, alleys, utility easements, public parks or required setbacks.

¹⁵³ This is a new definition that makes specific reference to most of the current uses in the Code of Ordinances that have been consolidated into the new use "Office."

¹⁵⁴ Carries forward and consolidates the definitions in Sec. 144-1.4 for "Contractor's office/sales (with outside storage)" and "Contractor's storage yard" with minor revisions.

Ornamental Tree**Outdoor Display of Merchandise**

The placement of goods, equipment, or materials for sale, rental or lease in a location not enclosed by a structure consisting of walls and a roof.

Outside Storage¹⁵⁵

As a primary use, a property or area used for the long term (more than 24 hours) storage of materials, merchandise, products, stock, supplies, machines, operable vehicles, equipment, manufacturing materials, or other items not enclosed within a structure having four walls and a roof. Outdoor sales and display areas shall not be defined as outside storage.

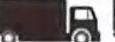
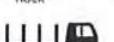
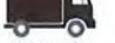
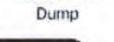
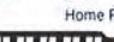
Overlay District

A set of zoning regulations that is applied in a defined area in addition to the standards of the underlying base zoning district. Developments within the overlay zone must conform to the requirements of both the base district and the overlay zoning district, or the more restrictive of the two. Overlay districts are created by ordinance to implement policies or objectives in the Comprehensive Plan.

¹⁵⁵ This new definition is proposed as a replacement for an existing definition in 144-1.4, to place greater emphasis on the characteristics of Outside storage as a primary use.

Oversized Vehicle

Any vehicle designated as Class 6, Class 7 or Class 8 vehicles as illustrated herein, including but not limited to the following designated vehicles: dump trucks, truck-tractors, tractor-trailers, semi-trailers, 18-wheelers, concrete mixing trucks, buses, or other similar vehicles. The weights referenced in the table are a vehicle's maximum gross weight or maximum load carrying capacity as set forth in the vehicle's registration or as designated by the vehicle manufacturer, whichever amount is greater. Oversized vehicle shall include the aforementioned vehicles that can be used or

Class 1: 6,000 pounds or less	Class 5: 16,001 to 19,500 pounds
 Full Size Pickup  Mini Pickup  Minivan  SUV  Utility Van	 Bucket  City Delivery  Large Walk In
Class 2: 6,001 to 10,000 pounds	Class 6: 19,501 to 26,000 pounds
 Crew Size Pickup  Full Size Pickup  Mini Bus  Minivan  Step Van  Utility Van	 Beverage  Rack  School Bus  Single Axle Van  Stake Body
Class 3: 10,001 to 14,000 pounds	Class 7: 26,001 to 33,000 pounds
 City Delivery  Mini Bus  Walk In	 City Transit Bus  Furniture  High Profile Semi  Home Fuel  Medium Semi Tractor  Refuse  Tow
Class 4: 14,001 to 16,000 pounds	Class 8: 33,001 pounds and over
 City Delivery  Conventional Van  Landscape Utility  Large Walk In	 Cement Mixer  Dump  Fire Truck  Home Fuel  Heavy Semi Tractor  Refrigerated Van  Semi Sleeper  Tour Bus

modified for sleeping. The term shall exclude recreational vehicles as defined in this section.

Owner

The person or entity having legal title to the property or a lessee, agent, employee, or other person acting on behalf of the title holder with authorization to do so.

Owner

In the context of subdivision, may also be referred to as "applicant," "subdivider," or "developer." Any person or firm, association, syndicate, general or limited partnership, corporation, trust or other legal entity, or any agent thereof, that has sufficient proprietary interest in the land to be subdivided or developed, to commence and maintain proceedings to subdivide or develop the same under this Chapter. In any event, the term "property owner" shall be restricted to include only the owner(s) or authorized agent(s) of such owner(s), such as a developer of land sought to be subdivided.

9.2.16 P

Park

Land dedicated to, or purchased by, the city for the purpose of providing public recreation and/or open areas. Parkland may be developed or unimproved but is created, established, designated, maintained, provided, or set aside for purposes of serving the general population's need for rest, enjoyment, play, assembly, and recreation. The term includes all facilities, structures, and buildings located on that land. A park may include playgrounds, maintenance facilities, swimming pools, dressing rooms, concessions, community centers, museums, and parking.

Community Park

A community park is generally ten to 75 acres in area, located within one-mile to three-mile of the majority of the residences to be served by the park, and can be linear in nature.

Neighborhood Park

A neighborhood park is generally five to ten acres in area, located within half-mile to one-mile from a majority of the residences to be served by the park, and can be linear in nature.

Regional Park

A regional park provides outdoor recreational opportunities for all city residents, rather than only those residents who reside in proximity to the park. The acquisition and development of the "basic" infrastructure and facilities for the usage of these parks should be based upon the demand from the area residents they are intended to serve. The primary cost of regional parks should be borne by all city residents.

Park, Parking or Store

When prohibited, means the standing of an oversized vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in the loading or unloading of merchandise or passengers.

Parking Lot, Structured

A structure designed to accommodate motor vehicle parking spaces that are fully or partially enclosed or located on the deck surface of a building. This use does not include parking lot structures that are accessory to another principal use.

Parking Lot, Surface¹⁵⁶

A paved surface on ground level designed, used, or intended for use for the temporary storage of motor vehicles, paid or non-paid. This use does not include surface parking lots that are accessory to another principal use, or areas used for the sale, display, or storage of motor vehicles for sale.

Parking Space, Off-Street

An area not less than nine feet wide and 18 feet long, having unobstructed access from a street within the community and located on a mobile home lot or in a common parking area, or in a common parking and storage area located within 100 feet of the lot it serves.

¹⁵⁶ This heavily modifies the definition of "Parking Lot" in Sec. 144-1.4 to conform with the goal of this use (previously undefined).

Parking Space, Off-Street

Space for the parking or temporary storage of one motor vehicle, not on a public street or alley, having a driveway connecting the parking space with a street or alley permitting free ingress and egress without encroachment on the street or alley.

Pavement, Permeable

A pavement system with traditional strength characteristics, but which allows rainfall to percolate through it rather than running off. A permeable pavement system utilizes either porous asphalt, pervious concrete, pavers interlaid in a running bond pattern and either pinned or interlocked in place, or other permeable technology. Porous asphalt consists of an open graded coarse aggregate held together by asphalt with sufficient interconnected voids to provide a high rate of permeability. Pervious concrete is a discontinuous mixture of Portland cement, coarse aggregate, admixtures, and water which allow for passage of runoff and air.

Pavement Width

The portion of street available for vehicular traffic; where curbs are laid, it is the portion between the face of curbs.

Pawn Shop¹⁵⁷

An establishment that engages, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or special sales of personal property, or the purchase or sale of personal property. The retail sale of primarily used items is also allowed in accordance with local, state, and federal regulations.

Pedestrian Way

An area which provides pedestrian circulation.

Perimeter Street

Any existing or planned street which is adjacent to the subdivision or addition to be platted.

Permanent Building

Any building that is not an accessory building.

Permit

A written document issued by the Building Official permitting the construction, alteration, or expansion of mobile home community facilities.

Person

For the purposes of this LDO, means every natural person or individual, firm, trust, partnership, public or private association, governmental agency, political subdivision, corporation, or society.

Personal Instruction Facility

An establishment that provides teaching or instruction to groups of people on various topics, including but not limited to yoga studio, gyms or health clubs, art instruction, martial arts training, and music lessons. This use is distinguished from personal service by the larger number of

¹⁵⁷ Builds on the current definition in Sec. 144-1.4 of the Code of Ordinances.

individuals accessing the facility at any given time, and distinguished from primary, secondary, or vocational instruction by the non-academic nature of instruction.

Personal Services¹⁵⁸

An establishment that provides individuals with services related to non-medical personal or household care needs. Typical examples include but are not limited to barber shops and hair salons, day spas, massage services, nail salons, tanning salons, tattooing and body piercing, as well as services such as dry cleaners, tailors. Personal services facilities typically do not have large groups of patrons on site at any given time, and may include related incidental retail sales.

Pet Day Care

An establishment where dogs are cared for during the day for compensation. This use may include indoor play areas, outdoor play areas, and ancillary grooming services. This use does not include the overnight boarding of animals.

Place

An open, unoccupied space other than a street or alley permanently established or dedicated as the principal means of access to property abutting thereon.

Planned Development

A subdivision that may consist of a variety of land use types, incorporating a single or variety of types of residential dwelling units, and/or compatible commercial and industrial land uses, and may include public land uses and common open space and recreational areas, adequate to service the needs of the tract when fully developed and populated, and which is to be developed as a single entity under unified control.

Planning Commission

The Planning Commission of the City of New Braunfels, Comal County, Texas.

Planning and Development Services Department

The Director of the Planning and Development Services Department, or that person's designee. Also referred to as Planning and Development Services Director.

Plant Nursery

An establishment, including a building or open space, for the growth, display, and/or sale of plants, trees, and other materials to be used in indoor or outdoor planting. This use may conduct wholesale sale of plant materials, but does not include the retail sales of plant products to the public, which are included in the Retail Sales use.

Plat

A map, drawing, chart or plan showing the exact layout and proposed construction of a proposed subdivision into lots, blocks, streets, and may include parks, school sites, drainageways, easements, alleys, and/or any other elements as required by this chapter and which an applicant shall submit for approval in accordance with this chapter.

¹⁵⁸ This builds on the current definition in Sec. 144-1.4 with specific reference to most of the current uses in the Code of Ordinances that have been consolidated into this use.

Plat, Preliminary

A plat that is submitted to the city for its review of the concept and performance of the subdivision as related to the provisions of this chapter. The preliminary plat and the review thereof are intended to produce a subdivision design in which all planning factors are recognized and reconciled, prior to submission of the final plat.

Plat Revision, Replat, or Resubdivision

A plat vacating an existing subdivision in lieu of a new pattern of development, the subdivision of an existing or duly recorded lot or lots, the combining of two or more lots to create one lot, or the subdividing of an existing platted but undeveloped subdivision into a new pattern of lots and blocks.

Porch

A one-story, usually covered entrance to a building, with or without a separate roof, that is not used for livable space and extends along the building.

Power Generation

A large-scale facility or area that generates electricity from mechanical power produced by the firing of fossil fuels, or that produces heat or steam for space heating and other similar uses from thermal plants or biomass facilities. This does not include power generation uses that employ renewable sources that have generally lower impact on surrounding areas, such as solar, wind, or geothermal power generation systems.

Preliminary Approval

Approval expressed by the Planning Commission as to the arrangement and approximate size of streets, alleys, parks, reserves, easements, blocks and lots indicated on a preliminary plat.

Premises

A parcel or tract of land or one or more platted lots under the same ownership and use, together with the buildings and structures located thereon.

Primary Façade

Any building façade oriented toward the street.

Private Club¹⁵⁹

An establishment owned or operated by a corporation, association, person, or group of people, for a social, educational, or recreational purpose, but not primarily for profit, and which provides social and dining facilities only to members and invited guests, and which may include service of alcoholic beverages in accordance with the provisions of Chapter 32, Title 3, Alcoholic Beverage Code, of the Texas state statutes.

Private Street

A vehicular access way, including an alley, that is shared by and that serves two or more lots, which is not dedicated to the public, and which is not publicly maintained.

¹⁵⁹ Consolidates the definitions in Sec. 144-1.4 of "Club, private" and "Private club" with minor revisions.

Project

An endeavor over which the city exerts its jurisdiction and for which one or more plans or plats may be required to initiate, continue, or complete a development.

Protected Tree

Any tree on the Approved Plant List (Appendix A), having a trunk circumference of 25 inches or more (about eight inches in diameter) measured 4 and ½ feet above the ground. As used in the text of this Chapter, the term "protected tree" includes all heritage trees.

Public Improvements

Also referred to as "subdivision improvements," these are facilities, infrastructure, and other appurtenances, typically owned and maintained by the city (but not necessarily located upon city-owned property or right-of-way—public improvements can be located upon private property), which serve a public purpose in providing a needed service or commodity, such as wastewater collection and treatment and water storage and distribution, and which protect the general health, safety, welfare, and convenience of the city's citizens, including efficiency in traffic circulation and access for emergency services. Required public improvements may include, but shall not be limited to, street and alley paving, including any necessary median openings and left turn lanes on major thoroughfares; water lines and pumping stations; sanitary sewer lines and lift stations; storm drainage structures and storm water management devices; water quality and erosion controls; screening and retaining walls; fire lane paving and fire hydrants; landscaping, where such is used for required screening or other required landscaped area, and associated irrigation system; and any required public sidewalks, street lights and street name signs. The term "public improvements" shall not include facilities or infrastructure of private providers of utility services other than water and wastewater, but shall be deemed to include facilities and infrastructure that the city would normally require of a development but which will be owned and maintained by an entity such as a homeowners association, as in the case of private streets.

Public Property

All parks, esplanades, traffic islands, municipal and utility easements and rights-of-way, and miscellaneous property owned by a governmental entity or the public.

Public Trees

All trees and shrubs having 50 percent or more of its diameter, measured at existing grade, resting on public property.

Public Water System

A system approved by the TCEQ for the provision to the public of water for human consumption through pipes or other constructed conveyances.

9.2.17 R**Railroad Facilities**

Land, buildings, and structures used to support railroad operations, including facilities such as tracks, sidings, signal devices and structures, maintenance shops and yards, loading platforms, and passenger and freight terminals and yards.

Reconstruction

The rehabilitation or replacement of a structure which either has been damaged, altered or removed or which is proposed to be altered or removed to an extent exceeding 50 percent of the replacement cost of the structure at the time of the damage, alteration or removal.

Recreation and Entertainment

Uses in this category include indoor and outdoor recreation and entertainment activities. Accessory uses may include limited retail, concessions, parking, and maintenance facilities.

Recreation, Indoor¹⁶⁰

A facility that provides entertainment or recreation activities in an enclosed area for the entertainment of customers or members. Uses may include, but are not limited to bowling alleys, ice skating rinks, racquetball or handball clubs, indoor tennis courts or clubs, indoor swimming pools or scuba diving facilities, indoor rock climbing, and other similar types of uses. Accessory uses may include administrative offices, concessions, and maintenance facilities.

Recreation, Outdoor¹⁶¹

Recreation and entertainment activities that are mostly outdoors, including picnic areas, archery, outdoor swimming pools, skateboard parks, sports courts and athletic fields, golf driving ranges, miniature golf course, tennis courts, small amphitheaters, arenas, batting cages, go-cart tracks, ziplines, amusement parks, and similar types of activities. This use does not include a river outfitter, although a river outfitter may be included on the same site as an outdoor recreation use provided all outfitter standards are met. Accessory uses may pro shops, offices, concessions, and maintenance facilities.

Recreational Vehicle¹⁶²

Any travel trailer, pickup camper, motor home, camping trailer, tent trailer, or mobile home less than eight feet wide and 35 feet long according to the certificate of title, that has its own sink, lavatory, flush toilet, and tub or shower, designed for temporary human habitation and most often used for outdoor recreation.

Recycling Center

A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper, or clothing for recycling purposes. This definition does not include processing except for can banks that crush cans as they are deposited.

Regulatory Agency

The governing body of, or a bureau, department, division, City Council, Planning Commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

¹⁶⁰ This makes substantial revisions to the definition for "Amusement services (indoors)" in Sec. 144-1.4.

¹⁶¹ This makes substantial revisions to the definition for "Amusement services (outdoors)" in Sec. 144-1.4.

¹⁶² Carries forward the current definition in Sec. 144-5.26-2 of the Code of Ordinances with edits.

Religious Assembly¹⁶³

An establishment used for religious worship and customary accessory educational, cultural, and social activities. This use may include the place of residence for ministers, priests, nuns, rabbis, or other religious leaders on the premises.

Removal

As applied to trees means uprooting, severing the main trunk of the tree or any act which causes, or may reasonably be expected to cause the tree to die, including but not limited to, damage inflicted upon the root system by machinery, storage of materials, or soil compaction: substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may reasonably be expected to kill the tree.

Replatting or Replat

The re-subdivision of any part or all of a block or blocks of a previously platted subdivision, addition, lot or tract.

Research and Development

An establishment with facilities for scientific research, and the design, development, and testing of electrical, electronic, magnetic, optical, and mechanical components in advance of product manufacturing. These facilities are not associated with a manufacturing facility on the same site, except as incidental to the main purpose of the facility. This use includes but is not limited to chemical, biotechnology, pharmaceutical, and medical research and development, software development, and soils and other materials testing laboratories.

Reserve Strip

A privately owned strip of land, 20 feet wide or less, adjacent to a public right-of-way or easement preventing the extension of such right-of-way or easement without the expressed consent of the adjacent land owner.

Reserved Use

A reserved use is one that historically was permitted by right in a given zoning district but, by virtue of the adoption of this LDO, is no longer a permitted use in that district. By registering their potential intent to develop such a use on their property with the City of New Braunfels, a property owner preserves their right to develop the no-longer-permitted use on their property for a period of three years following the **effective date** of this LDO.

Residence Hall¹⁶⁴

A building used or intended to be used principally for sleeping accommodations where the building is related to an educational or public institution, including religious orders, and typically includes common areas and shared food preparation facilities.

¹⁶³ Simplifies the current definition in Sec. 144-1.4 of "Church/place of religious assembly" with minor revisions and removes the references to tax-exempt status and exemption of at-home bible study and like activities.

¹⁶⁴ New definition for an existing use.

Resource or Mineral Extraction

The extraction of sand, gravel, soil, rock, minerals, oil, gas, mineral substances or organic substances other than vegetation, from water or on land or underground, whether exposed or submerged. Accessory use may include the transport of extracted resources or minerals away from the site.

Restaurant¹⁶⁵

An eating establishment where customers are primarily served at tables or are self-served, and where food is consumed on the premises, carried out, picked up "curbside," or delivered. Drive-through service is allowed as an accessory use only in districts which permit the drive-through accessory use.

Retail Sales

An establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. These uses are found individually or with other retail sales and/or personal sales uses in shopping centers. Typical examples include auto tire sales, prepared food sellers such as bakeries, bicycle sales, bookstores, computer and electronic sales, consignment shop, department stores, drug stores or pharmacies, furniture sales, grocery stores, hardware stores, major appliance stores, manufactured home sales, pawn shops, pet supply stores, plant nurseries, propane sales, or tool rental or sales. There are three types of retail sales establishments.

Retail Sales, Small¹⁶⁶

A retail sales establishment with up to 5,000 square feet of gross floor area.

Retail Sales, Medium

A retail sales establishment with more than 5,000 and up to 50,000 square feet of gross floor area.

Retail Sales, Large¹⁶⁷

A retail sales establishment with more than 50,000 square feet of gross floor area.

Retail Sales Uses

Uses involving the sale, lease, or rent of new or used products directly to the final consumer for whatever purpose but not specifically or exclusively for the purpose of resale. Accessory uses may include offices, parking, storage of goods, assembly, repackaging, or repair of goods for on-site sale.

Review

To read, analyze, assess, and act upon.

Right-of-Way

A parcel of land occupied, or intended to be occupied, by a public road, street or alley. Where appropriate, right-of-way may include other facilities and utilities such as sidewalks; electrical, communication, oil and natural gas lines and facilities; and water and sanitary and storm sewer facilities. The use of right-of-way shall also include parkways and medians outside of the paved

¹⁶⁵ Carries forward the current definition from Sec. 144-1.4 of the Code of Ordinances.

¹⁶⁶ These thresholds are offered as a departure point for discussion. Use categories of small, medium, and large for retail operations are common, but the square footage allowed in each of these categories varies by community. What do you think will work in New Braunfels?

¹⁶⁷ Definition for Retail establishment, large scale from 144-1.4 not carried forward. That use definition specifies a threshold of 100,000 sq ft and above. That kind of development would still be in this same use category, with the threshold changed from 50,000 sq ft to 100,000 sq ft.

portion of the street. The usage of the term right-of-way for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way, and shall not be included within the dimensions or areas of such lots or parcels.

River Entrance/Exit

[definition to be added]

River Outfitter

A facility that rents equipment for swimming, boating, or floating, and that may also use private transportation vehicles to drop patrons off at a river entrance as well as pick patrons up downstream at a river exit.

Roof Pitch

The amount of slope of the roof in terms of angle or other numerical measure; one unit of horizontal rise for three units of horizontal run is expressed as "1 in 3" or "4:12."

RV Park

An outdoor facility designed for overnight accommodation of human beings in a recreational vehicle for recreation, education, naturalist, or vacation purposes. Ancillary services such as a convenience store, restrooms, power, and electric hook-ups may be provided.

9.2.18 S**School, College or University**

An institution that provides full-time or part-time education beyond high school that leads towards associates', bachelors', or graduate degrees, not including vocational schools. This use also includes post-high school education facilities for special needs, mentally disabled, or physically challenged individuals.

School, Pre-K-12

An establishment, public or private, that provides educational services in accordance with the standards and requirements of the compulsory education laws of the State of Texas, between the grades of pre-kindergarten and 12th grade. This use includes pre-kindergarten schools, elementary schools (grades K-5), middle schools and junior high schools (grades 6-8), and high schools (grades 9-12).

School, Vocational

A private or public educational facility offering instruction in a skill, trade, industry, or technical field such as construction, cosmetology, data processing, health care, legal services manufacturing, truck driving, or vehicle maintenance.

Screening

A method of visually shielding or obscuring an abutting or nearby use or structure from another by fencing, walls, berms, or densely planted vegetation.

Screening Fence

A fence that is continuous and opaque like a wall, used as a screening device, as opposed to a perimeter fence which can be wrought iron, chain link, or other non-opaque material.

Seasonal Sales

The temporary display and sale of products outside of a building or structure. Seasonal sales may include but are not limited to temporary farm stands selling produce, pumpkin patches, and Christmas tree sales. Seasonal sales are distinct from outdoor display of merchandise, associated with a retail establishment as an accessory use.

Secondary Facade

Any building façade that is not oriented toward the street.

Self-Storage¹⁶⁸

An establishment that provides individual storage units for rent or lease, restricted solely to the storage of items, which are typically used for the storage of household or business goods, but not including the conduct of sales, business, or any other activity within the individual storage units. This use may include the outdoor storage of large equipment such as boats and RVs.

Sensitive Feature

In the context of the Edwards Aquifer protection zone, a sensitive feature, as defined by the Texas Planning Commission on Environmental Quality, is a permeable geologic or manmade feature located on the recharge zone or transition zone where a potential for hydraulic interconnectedness between the surface and the Edwards Aquifer exists, and rapid infiltration to the subsurface may occur.

Septic Tank

A watertight receptacle that receives the discharge of sewage from a building, sewer, or part thereof, and is designed and constructed so as to permit settling of solids from this liquid, digestion of the organic matter, and discharge of the treated liquid portion into a disposal area.

Service Building

A building housing toilet and sanitary facilities, as required by this ordinance.

Service and Repair Shop

A workshop or studio that provides on-site maintenance and repair service of consumer goods, or offers a service to be performed off-site. Such facilities include but are not limited to computer and cell phone repair, small appliance repair, carpet cleaning, electrical repair, exterminator, locksmith, janitorial service, plumbing service, shoe repair, carpenters, or upholsterers. This use does not include service or maintenance on any item with a combustion engine.

¹⁶⁸ Carries forward the definition in Sec. 144-1.4 with minor revisions.

Sewerage Disposal System, Individual or Private

Any system designed to provide on-site treatment and disposal of sewage flows from individual residences, duplexes, businesses, or any other buildings. The system may be anaerobic, e.g., a septic transpiration bed, or other. The system must not require a permit from the state.

Sewerage System, Public

A system designed for the wastewater collection, treatment and disposal that is wholly owned and operated by the city or any other legally incorporated town or city or public systems approved by the state.

Screening

A method of visually shielding or obscuring an abutting or nearby use or structure from another by fencing, walls, berms, or densely planted vegetation.

Setback Line

A line running parallel to a lot line or property line defining the boundary of a setback. Area between the property line and this setback line is the setback, or yard, and is typically required to remain open from the ground to the sky.

Sexually-Oriented Business

See definition in Sec 18-231 of the Code of Ordinances.

Shooting Range, Indoor

An enclosed facility used for firearm target practice, instruction, competitions, or similar activities, including but not limited to skeet, trap, and similar shooting activities. All activity at an indoor shooting range is conducted within an enclosed building.

Shooting Range, Outdoor

An area or facility to be used for firearm target practice, instruction, competitions, or similar activities, including but not limited to skeet, trap, and similar shooting activities. Outdoor shooting ranges may include both indoor and outdoor facilities.

Short Term Rental

The rental for compensation of all or part of a privately owned dwelling, including but not limited to a one- to four-family dwelling, multi-family dwelling, apartment house, tiny home, townhouse, manufactured home, , or garage apartment/accessory dwelling unit, for dwelling, lodging, or sleeping purposes for a period of not less than one night and not more than 30 days other than ongoing month-to-month tenancy granted to the same renter for the same unit. This term use is distinct from bed and breakfasts, hotels, residence halls, group homes, RV parks, hospitals and other health care facilities, continuing care retirement communities, nursing homes, foster homes, halfway houses, transitional housing facilities, resort properties as defined in this LDO, or resort condominiums. Short-Term Rentals are subject to the regulations described in §X.X.

Sidewalk

A paved pedestrian way generally located within the public or private street right-of-way, but outside of the roadway.

Site

- 1) A tract of property that is the subject of a development application.
- 2) In the context of wireless communication facilities, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by the city, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

Site Plan

A detailed plan showing the roads, parking, footprints of all buildings, existing trees, proposed landscaping, parkland, open space, grading and drainage, and similar features needed to verify compliance with the approved land use plan and development standards.

Solar Energy System, Small-Scale

Equipment for the collection of solar energy or its conversion to electrical energy for use on the same property, or for incidental sale to a public utility, when that equipment is accessory to a principal use of the property. Components are typically mounted on the roof(s) of principal or accessory structures, but may be mounted on other parts of structures or on the ground.

Solar Farm, Large-Scale

A facility consisting of solar panels, modules, and related equipment (e.g., heat exchanger, pipes, inverter, wiring, and storage) that collects solar energy and converts it into electricity or transfers it as heat to a carrier fluid for use in hot water heating or space heating and cooling. This use is generally designed to produce electricity to accommodate demands of a neighborhood or larger area and is typically mounted on the ground.

Special Event¹⁶⁹

A festival, celebration, or gathering that involves the reservation and temporary use of a portion of a private property that includes activities such as dancing, music, dramatic productions, art or cultural exhibitions, other types of entertainment activities, and the sale of merchandise, food, or beverages. The term does not pertain to buildings or properties that host public events on a regular basis such as the Wurstfest grounds, the Comal County Fairgrounds, the New Braunfels Civic/Convention Center, Heritage Village, Conservation Plaza, school grounds, private event centers, homeowners' association amenity centers/property, and similar areas.

Special-Purpose Base District

Special-Purpose Base Districts, also called special districts, are created to accomplish or preserve certain forms of development and desired uses in defined areas. Special districts replace the underlying base zoning that would have applied in the area within the special district's defined boundary.

¹⁶⁹ Carries forward the definition in Sec. 144-1.4 with minor revisions.

Special Use

An authorization of a use that is not allowed by right in a specific zoning district, but through certain conditions may be found by City Council to be compatible at a specific location in that zoning district. Special uses **are not permits, but rather are a zoning overlays** and, as such, follow the procedures outlined in §8.3.4, *Special Use*, of this LDO which include a public hearing and recommendation by the Planning Commission, and final public hearing and decision by the City Council.

Stable, Accessory¹⁷⁰

A building or structure used to keep horses, ponies, or mules owned by occupants of the premises, and not kept for remuneration, hire, or sale.

Stable, Commercial¹⁷¹

A building or structure in which horses, ponies, or mules are housed, or kept for hire.

Steep Slope

Areas that contain slopes over 15 percent grade and are characterized by increased runoff, erosion, and sediment hazards.

Storage and Warehousing Uses

Uses in this category are engaged in the storage or movement of goods for themselves or other businesses. Goods are generally delivered to other businesses or the final consumer, except for some will-call pickups, and there are typically few customers present. Accessory uses may include offices, truck fleet parking, and maintenance areas.

Storage Pod (portable on demand)

A storage container 16 feet long or shorter, typically used for the temporary storage of materials or belongings while a structure is being built or renovated, or a change of occupancy is occurring.

Story

The part of a building included between the surface of one floor and the surface of the next floor above, or if there is no floor above, that part of the building which is above the surface of the highest floor thereof. A top story attic is a half story when the main line of the wall plates is not above the middle of the interior height of such story. A basement that is no more than four feet above average grade shall not be considered a story.

Street

A public maintained thoroughfare or privately maintained public access easement which affords principal means of access to property abutting thereon, and normally consists of the road surface, ditch or curbs, and sidewalk or parking areas.

Street

A public or private right-of-way that provides primary vehicular access to adjacent land, whether designated as a street, highway, thoroughfare, parkway, throughway, avenue, lane, boulevard, road, place, drive, or however otherwise designated.

¹⁷⁰ Carries forward the definition in Sec. 144-1.4 with minor revisions.

¹⁷¹ Carries forward the definition in Sec. 144-1.4 of "Stable, riding" with revisions to fit this more general use.

Street, Arterial

A thoroughfare designated as a freeway, expressway, major arterial, or minor arterial in the most recently adopted city Thoroughfare Plan. The primary function of an arterial is to carry traffic through the city, and is designed for as high a speed as possible, to carry as much traffic as possible. Also known as a "major thoroughfare."

Street, Collector or Sub-Collector

A street that primarily carries traffic from local or residential streets to major thoroughfares and highways, including the principal entrance streets for circulation to schools, parks, and other community facilities within such a development, and also including all streets which carry traffic through or adjacent to commercial or industrial areas.

Street, Local or Residential

A street that is used primarily for access to abutting residential property and circulation of traffic within residential neighborhoods. It is of a width and design to discourage through traffic, thereby protecting the residential area. A local street serves the same purpose in a commercial or industrial district.

Street, Marginal Access

A street that is parallel and adjacent to an arterial street and which primarily provides vehicular access to abutting properties and protection from through traffic.

Street, Standard

A street or road that meets or exceeds the minimum specifications in the city's standard street specifications, and which is constructed to the ultimate configuration for the type of roadway it is designated for on the city's Thoroughfare Plan.

Street, Substandard

An existing street or road that does not meet the minimum specifications in the city's standard street specifications, and which is not constructed to the ultimate configuration for the type of roadway it is designated for on the city's Thoroughfare Plan.

Street Improvements

Any street or thoroughfare, together with all appurtenances required by city regulations to be provided with such street or thoroughfare, and including but not limited to curbs and gutters, walkways (sidewalks), drainage facilities to be situated in the right-of-way for such street or thoroughfare, traffic control devices, street lights and street signs, for which facilities the city will ultimately assume the responsibility for maintenance and operation.

Street Line

The dividing line between the street right-of-way and the abutting property, normally to the lot property line.

Street Yard

The area of a lot that lies between the street right-of-way line and the actual front wall line of a building, as such building wall line extends from the outward corners of the building, parallel to the street, until such imaginary extensions of such front building wall intersect the side property lines.

Structure

Anything built, constructed, or erected, an edifice or building of any kind, or any piece of work built up or composed of parts joined together in some definite manner, which requires location on the ground, or attached to something having a location on the ground. Structures include, but are not limited to, buildings, stadiums, platforms, decks, telecommunication towers, sheds, storage bins,

improved facilities for drainage, flood control, retention, public recreation, advertising signs, billboards, and poster panels, but do not include swimming pools, fences, or boundary or retaining walls.

Structural Alterations

Any change in the supporting members of a building, such as bearing walls, columns, beams, or girders.

Subdivider

Any person or any agent of the person dividing or proposing to divide land so as to constitute a subdivision, as that term is defined in this LDO. In any event, the term "subdivider" is restricted to include only the owner, equitable owner, or authorized agent of the owner or equitable owner of land to be subdivided.

Subdivision

A division or re-division of any tract of land situated within the city's corporate limits or its extraterritorial jurisdiction into two or more parts, lots, or sites, for the purpose, whether immediate or future, of sale, division of ownership, or building development. Subdivision includes re-subdivisions of land or lots which are part of a previously recorded subdivision.

Supportive Housing

A dwelling where people are living, together with staff, as a single housekeeping unit providing care, supervision, and treatment for the exclusive use of individuals requiring medical, correctional, or other mandated supervision or a protective environment to avoid past or likely future violence or addiction and whose right to live together is not protected by the federal Fair Housing Act Amendments, as amended and as interpreted by the courts. This includes and is not limited to:

- 1) Transitional housing for released offenders or individuals exiting structured rehabilitation programs.
- 2) A shelter for individuals experiencing temporary homelessness.
- 3) A domestic violence shelter, which is a public or private building or structure housing residents for the purpose of the rehabilitation or special care for victims of domestic violence or emotional or mental abuse.
- 4) Sober living facilities for those recovering from substance addiction.

Supportive Housing, Small

A facility designed for and occupied by six or fewer residents living together.

Supportive Housing, Large

A facility designed for and occupied by seven or more residents living together.

Surveyor

A licensed state land surveyor or a registered professional land surveyor as authorized by the state statutes to practice the profession of surveying.

Swimming Pool

A self-contained body of water at least 18 inches deep and eight feet in diameter or width and used for recreational purposes. It may be above or below ground level. As an accessory use, a swimming pool is accessory to a principal residential use.

9.2.19 T

Tandem Parking

A tandem parking space is a standard width, and a sufficient length to allow two cars, with one parked behind the other. Tandem spaces may be used in valet parking operations, or multi-family developments, if use of a tandem space is assigned to a single unit.

Telecommunication Tower

A structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and wireless communication facilities.

Temporary Housing

Housing for a time period of six to 24 months for individuals/families who do not have current accommodations.

Temporary Improvements

Improvements built and maintained by the property owner that are needed to remedy a circumstance that is temporary in nature, such as a temporary drainage easement or erosion control device, that will be removed upon completion of the subdivision or development or shortly thereafter.

Temporary Mobile Storage Unit

A standard-shaped box, greater than 16 feet in length, and typically made of steel originally intended for shipping goods by sea, road or rail. Also referred to as a storage container, shipping container, CONEX box, or cargo container.

Temporary On-Site Contractor's Office

A structure or shelter used in connection with a development or building project for housing on the site of temporary administrative and supervisory functions and for sheltering employees and equipment.

Temporary Real Estate Office

A structure, including but not limited to a trailer, modular unit, or a model home, which is used a real estate sale office in a new residential development for the sale and promotion of properties within the project and its future sales.

Temporary Roll-off Dumpster

A roll-off style dumpster that is placed on a site for a temporary period to facilitate construction or disposal of items from the site.

Temporary Uses

Temporary uses are activities that take place for a defined period of time, generally from one day to ninety days in duration, and that may be accessory to an established primary use on the site, or may be unrelated to such primary use. Examples include but are not limited to: model homes, temporary storage or waste containers, temporary construction buildings, outdoor fairs, festivals, or other special events, and seasonal sales.

Theater, Drive-In

An establishment including a large outdoor movie screen, a projection booth, and a large parking area for automobiles from which films projected outdoors may be seen.

Thoroughfare Plan

The street plan, which is part of the Comprehensive Plan of the city.

Tiny Home

A detached structure built for either temporary or permanent habitation, typically with living area of 600 square feet or less.

Townhouse or Rowhouse¹⁷²

One of a group of not less than four nor more than eight adjoining single-family dwelling units sharing a common wall with one or more of such adjoining dwelling units, each dwelling unit located on a separate lot.

Transient housing

Short-term accommodation for visitors or travelers, such as a hotel or motel.

Transitional Surfaces

Surfaces that extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal surface.

Transmission Equipment¹⁷³

In the context of wireless communication facilities, this is equipment that facilitates transmission for any Federal Communications Planning Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Transportation and Utility Facilities

Uses in this category include a broad range of uses including those primarily associated with train, bus, and aircraft facilities or uses and facilities for utility systems such as water, sewer, gas, power, and broadband. Accessory uses may include incidental repair, storage, and offices.

Tree

A woody plant having a well-defined stem, trunk, or multi-trunk and a more or less definitely formed crown, usually attaining a mature height of at least eight feet. For purposes of this LDO, the following publications may be used as a reference in defining which plants may be classified as trees:

- 1) Texas Trees, A Friendly Guide, by Paul W. Cox and Patty Leslie, Corona Publishing.
- 2) A Field Guide to Texas Trees, by Benny J. Simpson, Texas Monthly Press.

¹⁷² Replaces the current definition in Sec. 144-1.4.

¹⁷³ Definition from 47 CFR §1.6100.

- 3) Trees of Central Texas, by Robert A. Vines, University of Texas Press, Austin, 1984.
- 4) Landa Park Arboretum, Harry Landa Self-Guiding Tree Trail and Growing Guide, published by Landa Park, New Braunfels, Texas.

Tree Canopy Coverage

The percentage of an area covered by the tree canopy. The area of the tree canopy is the sum of the drip-line areas of all trees within the lot plus the portion of the drip-line area that lies within the lot for trees on the perimeter of the lot.

Truck Stop¹⁷⁴

An establishment engaged primarily in the fueling, servicing, repair, or parking of tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include facilities such as overnight accommodations, showers, a convenience store, or restaurants primarily for the use of truck crews.

Trunk Circumference

The distance around the trunk of a tree measured at six inches above the ground for trees to be planted, and four and one half feet (4 ½') above the ground for existing trees. In the case of multi-trunk trees, the trunk circumference of the tree as a whole is the sum of the diameter of the largest trunk, plus ½ of the diameter of all additional trunks.

9.2.20 U**Uncontrolled Street**

In the context of the clear vision area, or sight visibility triangle, an uncontrolled street is one that does not have a traffic control device, such as a yield or stop sign, or traffic signal, at the intersection.

Use

The classification of the purpose or activity for which land or buildings are designated, arranged, intended, occupied, or maintained.

Utility, Major

A facility used to convert electric power, natural gas, telephone signals, cable/fiber optic communications, and water services from a form appropriate for transmission over long distances to a form appropriate for residential household or commercial use, or vice versa. Major public utilities are of a size and scale found only in scattered sites within city limits. This use includes but is not limited to electric substations, natural gas regulator stations, telephone switching stations, water pressure control facilities, sewage lift stations, regional stormwater drainage facilities, and water and sewer treatment facilities.

Utility, Minor

A facility used to convert electric power, natural gas, telephone signals, cable/fiber optic communications, and water services from a form appropriate for transmission over long distances to a form appropriate for residential household or commercial use, or vice versa. Minor public

¹⁷⁴ Carries forward the current definition in Sec. 144-1.4 with minor revisions.

utilities are of a size and scale commonly found in numerous areas within city limits, including but not limited to electrical distribution lines, poles, or cables; switch boxes; communication facilities; transformers, water towers; transformer boxes; relay and booster devices; and well, water and sewer pump stations.

9.2.21 V**Vacate or Vacation**

To cancel, rescind, or render an act that has the effect of voiding a subdivision plat as recorded in the county clerk's office.

Valet Parking

When used in the context of §X.X, the following words, terms, and phrases shall have the meanings ascribed to them in these definitions, except where the context clearly indicates a different meaning.

Attendant

A person employed by a licensee who drives a vehicle while providing valet parking.

Sponsor

Any person who operates, or causes to be operated, a valet parking operation at the sponsor's place of business or function.

Valet Parking Operation

The receiving, taking possession of, driving, moving, parking, or leaving standing, any vehicle that is left at one location to be driven to another location for parking, whether or not a charge is levied and whether or not done under contract to the business or organization for which the vehicles are being parked, or done independently. It does not include operators of public or private off-street parking operations or facilities where customers park their own vehicles and remove the keys themselves.

Valet Parking Operator

A person who employs one or more attendants for the purpose of providing a valet parking service or who provides such services as a contractor, but not in the capacity of employee, at any business establishment, for the purpose of providing a valet parking service to such establishment.

Valet Parking Service

A parking service provided to accommodate patrons of any business establishment, which service is incidental to the business of the establishment and by which an attendant on behalf of the establishments takes temporary custody of the patron's motor vehicle and moves, parks, stores, or retrieves the vehicle for the patron's convenience.

Vehicle Fuel Sales¹⁷⁵

An establishment at which gasoline or other motor vehicle fuel is offered for sale to the public. Repair services are not provided. Accessory uses may include a retail sales use such as a convenience store.

Vehicle-Related Uses

Uses in this category relate to the sale, lease, rental, repair, storage, and fueling of motor vehicles, including cars, light trucks, and heavier vehicles. Accessory uses may include incidental retail sales.

¹⁷⁵ New definition that incorporates the definition of "Convenience store with (or without) fuel sales" in Sec. 144-1.4 of the Code of Ordinances.

Vehicle Repair, Major

An establishment primarily engaged in providing repair services to motor vehicles that may have particular noise or other impacts on nearby properties, such as engine overhauls, welding, and similar activities, or such services to heavy farm vehicles. This use may also engage in the less impactful repair activities that are included in the minor vehicle repair use.

Vehicle Repair, Minor

An establishment primarily engaged in providing motor vehicle repair services that have limited noise or odor impacts on other properties such as lubrication, oil and tire changes, engine tune-ups, brake repair, tire replacement, interior and exterior cleaning and polishing, installation of after-market accessories such as tinting, auto alarms, spoilers, sunroofs, headlight covers, and similar items.

Vehicle Repair, Paint and Body Shop

An establishment primarily engaged in providing motor vehicle repair services that are limited to painting vehicles or body repair.

Vehicle Sales and Rental

An establishment engaged in the sale or lease of new or used motor vehicles, motorcycles, trailers, boats, all-terrain vehicles, and recreational vehicles, along with the rental of motor vehicles. This use may include facilities for motor vehicle servicing and repair, indoor and outdoor storage, and ancillary uses such as offices, display areas, and waiting areas for patrons.

Vehicle Storage Facility

A garage, parking lot, or any facility owned or operated by a person, other than a governmental entity, for storing or parking ten or more vehicles per year, without the consent of the owners of the vehicles, and which is licensed by the Texas Department of Transportation's Motor Carrier Division.

Vehicle Wash

A facility for washing, cleaning, drying, and waxing of passenger vehicles, recreational vehicles, or other light duty equipment, but not including buses or heavy trucks. A car wash may be self-service or full service.

Vending¹⁷⁶

Any activity by any person involving the display, sale, offering for sale, offering to give away, or giving away of anything of value including any food, beverage, goods, wares, merchandise, or services.

Veterinary Clinic¹⁷⁷

An establishment for the care and treatment of animals, including household pets and larger domesticated animals, operated by a licensed veterinarian. A veterinary clinic may include the boarding of household pets and kennels that are incidental to the veterinary care.

¹⁷⁶ Carries forward the current definition in Sec. 144-5.26-2 of the Code of Ordinances.

¹⁷⁷ Consider differentiating between a clinic (which is 9-to-5ish) and Vet Hospital, which is 24 hours. Similarly, important to differentiate between all indoors (clinic), or outdoor areas as well if boarding is allowed.

9.2.22 W

Wall

A solid vertical structure of building material allowed by this LDO or other chapters of the City Code as applicable that forms the exterior of buildings, separates portions of buildings, or separates properties. When a wall is used to separate or screen adjacent properties, this LDO refers to that wall as a screening fence.

Warehouse and Storage

An establishment engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment. Warehouses may include accessory offices and showrooms, but any retail sales to the general public are incidental to the inventory storage purpose of the establishment.

Wastewater Service

The collection of waste-bearing water that requires treatment prior to its return to nature and the system of pipes and equipment used to collect and transmit this water to treatment facilities; also called sanitary sewer service.

Waste-Related Uses

Uses in this category are engaged in the receipt of solid or liquid waste and the transfer to other locations for final disposal, or for disposal on site. Accessory uses may include recycling, offices, and parking.

Waste Transfer Station

A solid waste collection or storage facility at which solid waste is transferred from collection vehicles to hauling vehicles for transportation to a separate solid waste management facility.

Water Distribution Facility

A system of network of pipes and valves designed to deliver potable water to users.

Water Production Facility

A collection of pumps, treatment equipment, tanks and other devices designed to extract water from a source, provide necessary treatment to purify and disinfect, pressurize, pump, and store potable water.

Water Storage

Any structure or container used for surface, underground, or overhead storage of water, also including water wells and pumping stations that are part of a public or municipal system.

Water Supply

A source of water.

Waterfront Recreation¹⁷⁸

Recreation activities that are located on or near a river, lake, or other body of water, including boat berthing and fuel storage facilities, boat landing piers and launching ramps, swimming and wading facilities, and other types of activities included in the outdoor recreation use.

Wholesale Farm Sales

An establishment, including a building or open space, used for the storage and wholesale sale of products used in agricultural operations such as hay, grain, or feed.

Wholesale Sales

Establishments or places of business primarily engaged in selling merchandise to retail, industrial, commercial, institutional, or professional business users or to other wholesalers, but not to the public at-large.

Wind Energy System, Large

A facility or equipment that converts wind energy into electrical power for the primary purpose of sale, resale, or off-site use and that has an output rating greater than 100 kW.

Wind Energy System, Small

A facility or equipment that converts wind energy into electrical power primarily to support the principal use(s) on the same property, which is mounted to the ground or a rooftop, and that has a rated capacity of 100 kW or less.

Wireless Communication Facility (WCF)

A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332(c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A wireless communications facility includes an antenna or antennas, including without limitation, directional, omni-directional and parabolic antennas, support equipment and permitted supporting structures, but does not include the support structure to which the wireless communications facility or its components are attached if the use of such structure for the wireless communications facility is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or handheld radios/telephones and their associated transmitting antennas. This LDO defines the following types of WCF:

Building-Mounted

An antenna that is mounted on a building with a primary purpose to be a use other than as an antenna support structure.

Roof-Mounted

An antenna that is mounted on a structure that is located on the roof of a building.

Ground-Mounted

An antenna that is mounted on a freestanding support structure, such as a monopole or tower.

¹⁷⁸ Unresolved issue: "Clarification needed on resort property and resort condominiums. Differentiate between an apartment house where the units have been sold as condominiums and some owners are STR renting them vs a time share/condominium building where all units are intended to be rented for less than 30 days but each unit may be owned separately."

9.2.23 X

Xeriscape or Xeriscaping

a set of garden design and landscape maintenance principles that promote good horticultural practices, efficient use of water, and means water-conserving drought-tolerant landscaping.

9.2.24 Y

Yard

An open space between a building and the nearest lot line, unoccupied and unobstructed by any portion of a structure from the ground upward. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the least horizontal distance between the lot line and the main building shall be used.

Yard

A required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure from the general ground level of the graded lot upward; provided however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture are not deemed to be obstructions if height limitations and requirements limiting obstruction of visibility are observed.

Yard, Front

A yard across the full width of the lot extending from the front line of the main building to the front line of the lot.

Yard, Rear

A yard between the rear lot line and the rear line of the main building.

Yard, Side

A yard between the main building and the adjacent side line of the lot, and extending entirely from the front yard to the rear yard thereof.

9.2.25 Z

Zero Lot Line

A lot where no setback is required along one of the side property lines of the lot.