

ORDINANCE NO. 0-08-11-10

**ZONING ORDINANCE
OF THE CITY OF NIXON, TEXAS**

AN ORDINANCE ESTABLISHING ZONING REGULATIONS AND DISTRICTS FOR THE PURPOSE OF PROMOTING HEALTH, SAFETY, MORALS, AND FOR THE PROTECTION AND PRESERVATION OF THE GENERAL WELFARE OF THE COMMUNITY; REGULATING AND RESTRICTING THE HEIGHT, NUMBER OF STORIES, AND SIZE OF BUILDINGS, AND OTHER STRUCTURES, THE SIZE OF YARDS, COURTS, AND OTHER OPEN SPACES, AND THE LOCATION AND USE OF BUILDINGS, STRUCTURES, AND LAND FOR TRADE, INDUSTRY, RESIDENCES, AND OTHER PURPOSES; DIVIDING THE CITY OF NIXON INTO DISTRICTS SUITED FOR SUCH PURPOSES, AND WITHIN SUCH DISTRICTS REGULATING AND RESTRICTING THE ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR, OR USE OF BUILDINGS, STRUCTURES OR LAND; ALL IN ACCORDANCE WITH A COMPREHENSIVE PLAN AND DESIGNED TO LESSEN CONGESTION IN THE STREETS; TO SECURE SAFETY FROM FIRE, PANIC AND OTHER DANGERS; TO PROMOTE HEALTH AND THE GENERAL WELFARE; TO PREVENT THE OVERCROWDING OF LAND, TO AVOID UNDUE CONCENTRATION OF POPULATION; TO FACILITATE THE ADEQUATE PROVISION OF TRANSPORTATION, WATER, SEWERAGE, SCHOOLS, PARKS, AND OTHER PUBLIC REQUIREMENTS; ADOPTING A ZONING DISTRICT MAP DISCLOSING THE SEVERAL DISTRICTS AND USE AREAS AND THE RESTRICTIONS, LIMITATIONS AND PROVISIONS APPLICABLE TO SUCH DISTRICTS AND AREAS; CREATING A BOARD OF ADJUSTMENT; PRESCRIBING A PENALTY FOR VIOLATION OF THIS ORDINANCE; AND PROVIDING FOR RULES OF INTERPRETATION AND SEVERABILITY OF CLAUSES IN CASES OF INVALIDITY OF ANY OF THEM.

WHEREAS, it has come to the attention of the City Council of the City of Nixon, Texas that there are no zoning regulations within the City and that the present and future uses of property are such that it is reasonably necessary for zoning regulations to be enacted in order to promote and preserve the health, safety, morals, and general welfare of the community;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIXON, TEXAS:

THAT the following regulations, subject to future amendment, shall constitute the zoning regulations within the City of Nixon, Texas and shall govern the uses of property within the City:

0-08-11-10

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ARTICLE I. IN GENERAL

Sec. 001. Purpose

This Ordinance is enacted and subject to amendment hereafter to promote the safety, health, and general welfare of the community by regulating development within the City, to lessen congestion in the streets, secure safety from fire, panic and other dangers, promote health and the general welfare, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, and to facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

Within the zones or districts, the City may restrict and regulate the location, erection, construction, reconstruction, alteration and use of buildings, structures and land for trade, industry, residence and other specified uses; regulate the intensity of the use of lot areas, and regulate and determine the area of open spaces surrounding such uses; establish building lines and locations of buildings designed for specified industrial, business, residential and other uses within such areas, set standards to which buildings or structures shall conform; prohibit uses, set performance standards or prohibit buildings or structures incompatible with the characteristics of such districts; prevent additions to and alterations or remodeling of existing buildings or structures done in such a way as to avoid the restrictions and limitations lawfully imposed hereunder; and provide for the gradual elimination of nonconforming uses of land, buildings and structures.

Sec. 002. Definitions

For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When consistent with the context, words used in the present tense include the future, words in the plural

number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory, while the word "may" implies an option. Definitions not expressly prescribed herein are to be determined in accordance with the law. Definitions expressly prescribed herein are to be construed in accordance with the City's Subdivision Ordinance or other applicable ordinances of the City, or in the absence of such ordinances, then in accordance with the customary usage in municipal planning, surveying, and engineering practices.

Access: A means of egress and ingress from a tract of land to a dedicated right-of-way or from a city-approved private street.

Accessory building: A structure, the use of which is incidental, appropriate, and subordinate to that of the principal structure on the same lot.

Accessory use: A land use, activity, or structure that is customarily incidental, appropriate, and subordinate to the principal use of the land or of the principal structure on the same lot.

Agriculture: The use of land including but not limited to farming, dairying, ranching, or animal or poultry husbandry, and the necessary accessory operations for packing, crating, or storing the produce; provided that the operations of any such accessory operations must be secondary to that of the normal agricultural activities.

Apartment: See *Multifamily*.

Assisted living facility: means a facility providing responsible adult supervision of or assistance with routine living functions of an individual in instances where the individual's condition necessitates that supervision or assistance.

Attached single-family dwelling: Two or more dwelling units that are joined by party walls or abutting separate walls, on adjacent lots, including but not limited to row houses and townhomes.

Base flood: (also known as the "100-year flood")-means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement: That part of a building with more than half its height below the average ground level. A basement shall not be counted as a story. This term includes cellar.

Board: The board of adjustment of the City of Nixon.

Boardinghouse: A dwelling, other than a hotel or motel, where not more than four separate sleeping rooms for unrelated persons are provided for compensation. This term includes roominghouse.

Buildable area: That portion of a lot remaining after the required setbacks have been provided.

Building height: The vertical distance from the average ground level to the highest point of the roof.

Building line: A line within a lot defined by the minimum permitted horizontal distance from an adjacent property line.

Cellar: See *Basement*.

Child care center: Any place, home, or institution which provides temporary custodial care and is regulated by the State of Texas.

Child care home: means a home providing 24 hour or overnight care for not more than three (3) unrelated orphaned, abandoned, dependent, abused, or neglected children under the age of eighteen (18) with not more than two adults who supervise such children, all of whom live together as a single housekeeping unit.

Child care group home: means a home providing 24 hour or overnight care for four (4) unrelated to twelve (12) unrelated orphaned, abandoned, dependent, abused, or neglected children under the age of eighteen (18).

Child care institution: means an institutional facility providing 24 hour or overnight care for thirteen (13) or more unrelated orphaned, abandoned, dependent, abused, or neglected children under the age of eighteen (18). This term includes facilities known as children's homes, youth halfway houses, residential treatment centers, emergency shelters, and therapeutic camps regardless of the number of children in the facility. The term does not include hospitals for children.

Church. See *Religious institution*.

Clear sight triangle: means that area of unobstructed vision at street intersections, entrances and exits, permitting a vehicle driver to see approaching vehicles to the right or left. Nothing over 2.5 feet in height measured from the street at the point where the pavement meets the curb-stone shall be permitted to obstruct a sight line which shall be the front street and side street lines of a corner lot and a line connecting point feet (50) feet from the intersection of the property line of such lot. Any existing trees located within the clear sight triangle will be allowed to remain if all branches are trimmed from a height between three (3) feet and eight (8) feet. No single post or column within the designated triangle shall exceed twelve (12) inches in thickness at its greatest cross-sectional.

Clinic: means an institution, public or private, or a station for the examination of patients who are not lodged overnight, but admitted for out-patient services by an individual or group of doctors, dentists or other licensed members of the human health-care profession.

Club: means a building or use catering exclusively to club members and their guests for recreational and/or social purposes, and not operated primarily for profit; includes lodges.

Combined family: A residential development type which provides for not more than four dwelling units within a single principal structure. Separate ownership of one or more units with separate and/or common ownership of portions of accessory buildings or yard areas does not constitute a condominium.

Commission: The planning and zoning commission of the City of Nixon.

Community home: means a community-based residential home containing not more than six disabled persons and two non-resident supervisory personnel and which otherwise meets the requirements of the Community Homes for Disabled Persons Location Act, Chapter 123.001, Texas Human Resources Code.

Comprehensive master plan: A statement of public policy containing the goals and objectives of the community which may include:

- (1) Capital improvements programs;
- (2) Land use plan;
- (3) Thoroughfare plan;
- (4) Community facilities plan;
- (5) Subdivision and zoning regulations and other development codes, ordinances, policies, and plans promulgated by the Council for the quality and orderly growth of the community.

Condominium: A type of multifamily dwelling in which each dwelling unit is owned by the occupant but in which the halls, entranceways, and underlying land are wholly or in part jointly owned.

Council: The City Council of the City of Nixon.

Day care center: means a facility that provides non-medical care and supervision for more than six children, elderly persons, or persons with physical and/or mental disabilities less than 24 hours a day and not overnight. This definition does not include those uses defined as a Child Care Home, Group Home, or Institution.

Day care home: means a facility that provides non-medical care and supervision for six or fewer children, elderly persons, or persons with physical and/or mental disabilities less than 24 hours a day and not overnight. This definition does not include those uses defined as a Child Care Home, Group Home, or Institution.

Development type: The form and use of a residential structure allowed or permitted within the various residential districts within the City.

District: means any zone of the City of Nixon within which certain zoning and land use requirements are specified and are uniform, and which are designated on the Official Zoning District Map.

Duplex: A residential development type which provides for two dwelling units within a single principal structure. Separate ownership of units with separate and/or common ownership of portions of accessory buildings or yard areas does not constitute a condominium.

Dwelling unit: A single unit providing complete independent living facilities for one or more persons; including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Family: means one or more persons related by blood or marriage, or a group of not more than five (5) persons who need not be related by blood or marriage occupying a premise and living together as a single housekeeping unit.

Floodplain: means any land area susceptible to being inundated by water from the base flood. The term refers to that area designated as subject to flooding from the base flood on the latest Flood Insurance Rate Map (FIRM) available from the Federal Emergency Management Agency (FEMA). A copy of the latest FIRM is on file at City Hall. This area will comprise the Floodplain Overlay District and will be designated by "FP" on the official zoning map.

Floodway: means 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. The term refers to that area designated as a floodway on the latest Flood Insurance Rate Map (FIRM) available from the Federal Emergency Management Agency (FEMA). A copy of the latest FIRM is on file at City Hall. This area will comprise the Floodway Overlay District and will be designated by "FW" on the official zoning map.

Foster home: means a child-care facility that provides care for not more than three foster children under age 18 for 24 hours a day.

Group home: means a family based facility, which provides 24-hour care for adults in a protected living arrangement for the mentally and/or physically impaired, developmentally disabled, or victims of abuse or neglect. This classification includes congregate living facilities for the elderly, maternity homes, emergency shelters during crisis intervention for victims of crime, abuse, or neglect, and residential services licensed by the Texas Commission on Alcohol and Drug Abuse, but not primarily for criminal rehabilitation.

Halfway house: means a residential facility located in a building or dwelling unit designed, used, or intended to be used as human habitation which principal use is to serve as a place for adult persons seeking rehabilitation, recovery, or counseling from any physical, mental, emotional, penal or legal infirmity, in a family setting, as part of a group rehabilitation or recovery program.

Heavy industry: Establishments engaged in the manufacturing of products from extracted or raw materials or the bulk storage and handling of such products and materials; or a use engaged in storage or manufacturing processes involving flammable or explosive materials or storage and manufacturing processes that involve potentially hazardous materials or materials commonly recognized as offensive. Uses in this category typically involve a high incidence of truck or rail traffic and outdoor storage of products, materials, equipment or bulk fuel. Heavy industry includes such uses as chemical manufacturing or processing; food processing and packaging plants over 10,000 square feet in size; laundry and dry cleaning plants over 10,000 square feet in size; oil or gas wells and facilities for exploration, production or refining of oil or gas; gas or oil pipeline manufacturing; tank farms, oil or gas storage; slaughterhouses and animal stockyards; concrete, asphalt and tar plants; scrap, junk or metal recovery yards, tire storage or recycling yards; stonework and concrete manufacturing; power generation plants; mining or excavation for commercial purposes; refuse collection, refuse transfer and recycling facilities that are not fully enclosed; sanitary landfills; and other similar uses.

Home occupation: Any occupation or profession carried on by the inhabitants of a dwelling which is clearly incidental and secondary to the use of the structure for dwelling purposes, which does not change the character thereof, and which is conducted entirely within the main or accessory buildings; provided that no trading in merchandise is carried on.

Hospice: Temporary residence for patients and their families receiving medical or psychological care from licensed institutions. May include family counseling, group therapy, psychiatric treatment and training of family members by authorized practitioners in the provision of a caring environment for supplying the physical and

emotional needs of the ill and their families, Includes homes for adult alcoholic, narcotic, or psychiatric patients, and institutions for patients with a contagious disease, such as tuberculosis sanitariums.

Hospital: An institution providing in-patient medical or surgical care for the acutely sick, chronically ill, or injured. Included as an integral part of the institutions are such related facilities as laboratories, outpatient departments, food services and staff offices; includes homes for alcoholic, narcotic, or psychiatric patients, and institutions for patients with a contagious disease, such as tuberculosis sanitariums. This definition does not include care as described in CHILD CARE INSTITUTION or HOSPICE, but does include specialized medical institutions providing acute care for children.

Hotel: A building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel, an establishment shall provide five or more individual guestrooms or units and shall furnish customary hotel services such as linen, maid service, telephone, use and upkeep of furniture. This term includes motels.

HUD-Code manufactured home: A structure, constructed on or after June 15, 1976, meeting the National Manufactured Home Construction and Safety Standards Act as administered by the United States Department of Housing and Urban Development. The term does not include mobile homes or recreational vehicles as defined in this section.

Indoor recreation, entertainment, and amusement facilities: Arcade, billiard/pool hall, bowling alley, skating rink, gymnasium, natatorium, health club, or theater within an entirely enclosed building.

Kennel, commercial: means any premises on which eight (8) or more dogs, and/or eight (8) or more cats, four (4) months of age or older, are kept; and/or where the business of buying, selling, breeding, training, or boarding of dogs and/or cats is conducted; does not include veterinary hospitals, or the humane societies, or animal shelters or pounds approved by a governmental agency.

Kennel, private residential: means any premise on which more than two (2) dogs or two (2) cats or any combination thereof in excess of two (2) but not more than seven (7) in number, four (4) months of age or older, are kept and on which premises the business of buying, selling, breeding, training, or boarding of either dogs or cats is not carried on with the exception that the sale of not more than two (2) litters per year shall be permitted.

Large animals: means those that shall include equine, bovine, and swine and other such animals described and assumed by their size, weight, and/or appearance to be large animals.

Land use plan: A document adopted by the Council which attempts to identify and guide growth within the City, and is a part of the comprehensive master plan.

Light industry: An establishment engaged in the manufacture of finished products or parts, predominately using previously prepared materials, including processing, fabrication, assembly, treatment and packaging of such products, and incidental storage, sales and distribution of such products.

Lot depth: The average of the length of the side lot lines.

Lot width: The average of the length of the front lot line and of the rear lot line.

Manufactured home: A HUD-Code manufactured home.

Manufactured home park: A tract of land not less than five acres in size under single ownership, which is designed and improved to contain two or more spaces available for longterm lease or rent to the public for the placement of manufactured homes, and which may include private streets, buildings, and other facilities and services for common use by the residents, in conformance with the regulations and Ordinances of the City.

Manufactured home subdivision: A division of land not less than five acres in size for the purpose of sale of two or more lots intended to be developed with residential units including manufactured homes, and having all necessary public utilities, streets, and other facilities required by the Subdivision Ordinance.

Mobile home: A structure that was constructed before June 15, 1976, ¹⁸²¹ transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems. The term does not include recreational vehicles as defined in this section.

Modular dwelling: A prefabricated single-family or duplex dwelling assembled on a permanent foundation that is not a manufactured home, as defined in this section, and has been constructed and inspected so that it complies with the Texas Industrialized Housing and Buildings Act as administered by the Texas Department of Licensing and Regulation, and which complies with the International Residential Code as currently adopted by the City of Nixon. Modular dwellings shall be considered the same as the corresponding site-built single-family or duplex residential development types for the purpose of regulation under this Ordinance.

Motel: See *Hotel*.

Multifamily: A residential development type which provides for five or more dwelling units within a single principal structure. Separate ownership of one or more units shall constitute a condominium. This term includes and is synonymous with apartment.

Nonconforming building: Any building, or part thereof, lawfully existing or occupied at the effective date of this Ordinance that does not comply, after the passage of this Ordinance, with the height, yard, or coverage area regulations of the district in which it is located.

Nonconforming lot: Any lot lawfully existing at the effective date of this Ordinance that does not comply, after the passage of this Ordinance, to the width, depth, and area regulations of the zoning district in which it is located.

Nonconforming use: Any use lawfully existing at the effective date of this Ordinance that does not comply, after the passage of this Ordinance, with the use, parking, loading, or screening regulations of the district in which it is located.

Nuisance: means the use of property or land, which creates unusual, unnecessary, or undue problems or situations for persons in the vicinity that would not have normally occurred otherwise.

Nursing home: means an institution providing meals and resident care and services for adult persons who are generally admitted for periods of time exceeding 30 days. Such service includes custodial or attendant care, and may or may not provide for routine and regular medical and nursing services. Nursing and care homes include homes for the aged, and convalescent and rest homes.

Patio home: A residential single-family development type which provides for utilization of the presently existing small lots within the City. This term includes zero-lot-line home, garden home, and other similar dwellings.

Principal structure: The primary building on a lot which by its design defines the use and character of the tract.

Recreational vehicle: A vehicular-type portable structure without a permanent foundation that can be towed, hauled, or driven which is designed as a temporary living accommodation for recreational, camping, and travel use, and which includes but is not limited to travel-trailers, truck-campers, camping trailers, and self-propelled motor homes.

MUST BE LESS THAN 8 X 40

Recyclable material: A nonputrescible, source-separated, nonhazardous material that has been recovered or diverted from the municipal waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials.

Recycling facility: A collection point for recyclable materials that is exempt from Texas Commission on Environmental Quality municipal solid waste permitting and registration requirements under the Texas Administrative Code.

Religious institution: means a building in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief and do not provide overnight care.

Roominghouse: See *Boardinghouse*.

Row house: See *Townhouse*.

School: means public and private, primary and secondary educational facilities providing education up through and including the twelfth grade level. Schools providing educational facilities as well as long-term treatment or rehabilitative services are not considered schools for the purposes of this definition.

School, commercial: means a school, conservatory or business operated for profit which is not approved by the State as a kindergarten, elementary, or secondary school and where the primary function is instruction or teaching.

School, private: means a school approved by the State with a curriculum approximately the same as ordinarily given in a public kindergarten, elementary, junior high, or high school.

School, vocational/technical: means a secondary or higher educational facility primarily teaching skills that prepare students for jobs in a trade and/or meeting the state requirement for a vocational facility such as a barber/beauty college, or electrical training.

Sexually-oriented business: An adult book store, adult video arcade, adult movie theater, massage parlor (other than a state registered massage or therapy service), sexual encounter center, nude modeling studio, cabaret, gentlemen's club, or other establishment that either: 1) has any form of live or recorded entertainment that provides sexual stimulation or sexual gratification to patrons; and/or, 2) which devotes more than 20 percent of its merchandise display area, or signage or other advertising, to the sale, rental, or exhibition of devices, materials, or other items used for sexual stimulation or gratification or which depict sexual nudity or sexual activities, or which derives more than 20 percent of its gross net revenues from such sales, rental, or exhibition.

Single-family home: A residential development type which provides for a single dwelling unit within a single principal structure.

Small animals: means goats, sheep, fowl, miniature horses, and other such comparably-sized animals distinguished from those described as large animals, and from domestic animals which live inside the dwelling.

Specific use: means a use which may be allowed by special permit in a district, subject to the requirements of this ordinance as well as any additional requirements imposed by the City Planning and Zoning Commission.

Street, arterial: means a street that accommodates a large volume of comparatively high-speed traffic from one area of the City to another.

Street, collector: means a street which carries moderate volumes of traffic from local or minor residential streets to the major arterial streets and highways.

Street, cul-de-sac: means a street that terminates in a vehicular turnaround.

Street, residential: means a street of relatively short length and width that provides direct access to a limited number of abutting residential properties, and is designed to discourage its use for through traffic.

Structure: Anything constructed or erected on the ground including, but not limited to, buildings, factories, sheds, cabins, manufactured homes, and other similar forms.

Thoroughfare plan: A document adopted by the Council which attempts to identify and guide the locations of arterial and collector streets within the City and is a part of the comprehensive master plan.

Tower: means any 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 and reception towers, microwave towers, common-carrier towers, cellular telephone towers, and the like, but shall not include towers accessory to residential uses. Towers accessory to residential uses shall mean amateur radio equipment not used for commercial purposes, including amateur (ham) radio and Citizen's Band equipment, and towers incident to private home reception of television and radio broadcasts.

Townhouse: A residential development type which provides for five or more dwelling units generally separated by common walls within a single structure. Usually each dwelling unit is placed on an individually owned lot and each story of the structure on each lot is under the same ownership. Some areas and yards may be commonly owned. A townhouse where the lot under and immediately adjacent to the structure is individually owned does not constitute a condominium. This term includes row house.

Use: Any activity, function, or purpose to which a parcel of land or building is put and shall include the words "used," "arranged," or "occupied," for any purpose, including all residential, commercial business, industrial, public, or other use.

Accessory use: A use which is wholly incidental to and supportive of the principal use of the same lot.

Principal use: The primary purpose for which land or a building is used as permitted by the applicable zoning district.

Variance: means a relaxation of the terms of this ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of this ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance may be authorized only for area, height, dimension, distance, setback, parking, and loading requirements or as elsewhere specifically authorized by the ordinance.

Veterinary hospital: means any establishment maintained and operated by a licensed veterinarian for boarding, grooming, surgery, diagnosis, and treatment of diseases and injuries of animals.

Wild animals: means any living raccoon, skunk, fox, opossum, coyote, snake, or monkeys, llamas, lizards, insects and such which are not indigenous to the Southwest and which are not normally domesticated.

Yard: An open space of ground between a structure and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided. In measuring a yard, the least horizontal distance between the lot line and the structure shall be used.

Front yard: A yard across the full width of the lot from the front wall of a structure to the front line of the lot.

Rear yard: A yard across the full width of the lot from the rear wall of a structure to the rear line of the lot.

Required yard: The area between a lot line and the adjacent setback line. The area within a lot which does not constitute a buildable area.

Side yard: A yard between the wall of a structure and the adjacent side line of the lot, and extending from the front wall of a structure to the rear wall of a structure. No vertical structures, other than fences and air conditioner compressors, are allowed in any required yard.

Zoning Administrator: The same person designated by the City Council as Building Official of the City.

Secs. 003—029. Reserved.

ARTICLE II. OFFICIAL ZONING MAP

Sec. 030. Delineation of Districts

The City is hereby divided into zones, or districts, and the boundaries of zoning districts set out herein are delineated upon the Official Zoning Map of the City, adopted herein. All land, buildings, structures or appurtenances located within the City shall be occupied, used, erected, altered, removed, placed, demolished and/or converted in conformance with the zoning regulations prescribed for the zoning district in which the land, building, structure or appurtenance is located. All of the standards and regulations contained herein shall be considered as minimum requirements unless explicitly stated otherwise.

Sec. 031. Authenticity and maintenance.

- (a) The city adopts and declares to be a part of this Ordinance that map prepared in 2008, and adopted on the date of passage of this Ordinance as the official zoning map.
- (b) The map shall be signed by the zoning administrator to attest to its accuracy.
- (c) The map shall be signed by the mayor to attest to its adoption by the City Council.
- (d) The map shall be signed by the City Secretary to attest to its authenticity and to its receipt on the date of adoption.
- (e) The map shall be displayed in a secured transparent-faced case at a public location at City Hall.
- (f) Changes to the official zoning map shall be made only under the direct supervision of the zoning administrator.
- (g) Changes made to the corporate limits of the City or additions or subdivisions approved by the Council and subsequently recorded shall be added to the map and a marginal notation made giving the annexation ordinance number and adoption date, along with the volume and page where recorded, or the subdivision/addition name and the plat book and page where recorded. The notation shall be dated and initialed by the zoning administrator.
- (h) Rezoned tracts shall be individually outlined on the map. Each rezoned tract shall be marked with a sequential key number and a marginal notation made giving the key number, new zoning designation, agency approving such action, and a reference to the ordinance or court order authorizing such action. The notation shall be dated and initialed by the zoning administrator.
- (i) Copies of all or part of the official zoning map may be made for use, sale, or reference; but only the original of the official zoning map, as amended, shall be deemed as the official current zoning status within the City.

(j) If the official zoning map becomes difficult to interpret due to damage or due to the number and/or nature of changes or additions thereto, the Council may adopt by ordinance a new official zoning map which shall supersede the prior map. The new official zoning map may also correct drafting or other errors or omissions in the prior map, but no such correction shall have the effect of amending the prior map. The new official zoning map shall reference the effective date of the prior map and shall be attested and authenticated as in Subsections (b), (c), and (d), of this Section.

(k) Should the official zoning map become lost or destroyed, a new official zoning map shall be reconstructed by the zoning administrator from any reliable source of copies and from such other documentation available. After a public hearing concerning the accuracy thereof, the Council may adopt by ordinance such map to be the new official zoning map. The new official zoning map shall be attested and authenticated as in Subsections (b), (c), and (d), of this Section. Should the lost map be discovered prior to amendment of the reconstructed map, the reconstructed map shall be void. If one or more amendments have been made to the reconstructed map, such corrections to the reconstructed map, as are needed to bring it into conformity with the previously lost map, shall be made by the zoning administrator as in Subsection (h) above, and those property owners affected by the corrections notified by ordinary mail. The reconstructed map shall then continue in effect as the official zoning map.

(l) Any superseded official zoning map, or remaining portions thereof, along with documentation of actions modifying such maps shall be maintained in the files of the City.

Sec. 032. Interpretation.

Where uncertainties exist with respect to the intended boundaries of the various districts as shown on the official zoning map, the following rules shall apply:

(1) Unless otherwise clearly shown on the map, where district boundaries follow the centerline of a street, alley, waterway, railroads, or other rights-of-way, the centerline of such or, where appropriate, the extension or continuation of the centerline shall be construed to be the district boundary.

(2) Unless otherwise clearly shown on the map, where district boundaries follow approximately along lot or tract lines, the actual lot or tract line or, where appropriate, the extension thereof, shall constitute the boundary.

(3) When property is hereafter subdivided into lots and blocks and the district lines on the official zoning map differ from the platted lines, the nearest platted line shall become the district boundary unless indicated otherwise on the plat of such subdivision.

(4) Where a district boundary crosses an existing platted or described lot or tract, the nearest existing property line, as of January 1, 2007, shall be construed to be such district boundary.

(5) Where a district boundary crosses an unsubdivided tract larger than two acres, the location of such boundary shall be determined from the

nearest identifiable line shown on the map by use of the scale appearing on the map.

(6) When none of the above apply or there is a dispute as to actual location of the district boundary, the commission shall make such determination.

Secs. 033--060. Reserved.

ARTICLE III. NONCONFORMANCE

Within the districts established by this ordinance or amendments that may later be adopted there exist:

- (a) Lots,
- (b) Structures,
- (c) Uses of land and structures, or
- (d) Characteristics of use

which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. It is not the intent of this ordinance to authorize, and this ordinance shall not be construed to authorize, uses that constitute public or private nuisances or are otherwise prohibited by law or regulations.

Nonconforming uses are declared by this ordinance to be incompatible with, or not within the meaning of, permitted uses in the district in which they are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment or additions on a building or premises or by placement of additional signs intended to be seen from off premises or by the addition of other—similar or different—uses, of a nature which would not be permitted generally in the district involved.

All nonconforming lots, structures, and uses must apply for a Certificate of Occupancy within 60 days of the passage or amendment of this ordinance or establishment of a zoning area that would make a present use nonconforming.

Sec. 061. Nonconforming uses of structures or of structures and premises in combination.

If lawful use involving individual structures, or structures and premises in combination, exists at the effective date of adoption or amendment of terms of this ordinance, the lawful use may be continued until the compliance date as established by the Board of Adjustment. The use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

- (a) The Board of Adjustment shall, in accordance with the law, provide a compliance date for the nonconformity under a plan whereby the owner's actual investment before the time that the nonconformity was created can be amortized within a definite time period. The board will consider the following factors in determining a reasonable amortization period:
- (i) The owner's capital investment in nonconforming structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the nonconformity was created by passage of this ordinance or an amendment to it.
 - (ii) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (iii) Any return on investment since inception of the use, including net income and depreciation.
 - (iv) The anticipated annual recovery of investment, including net income and depreciation.
- (b) Until the compliance date, the nonconformity may be continued so long as it remains otherwise lawful, subject to the following provisions:
- (i) No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
 - (ii) Any nonconforming use may employ any parts of a building that were manifestly arranged or designed for such use at the time of adoption of this ordinance, but no such use shall be extended to occupy any land outside such building nor may the extent of the use be expanded beyond that at the adoption of the ordinance.
 - (iii) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
 - (iv) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for 18 months during any three-year period (except when government action impedes access to the premises), the use of the structure, or structure and premises in combination, shall not resume except in conformance with the regulations of the district in which the premises is located, or unless a variance is granted for resumption of the discontinued use as authorized in section 129. Resumption of a discontinued nonconforming use shall be subject to compliance with all applicable building and fire codes;

- (v) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this Subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction.
- [c] Any use which is listed as a conditional use within the district for which it is zoned shall be considered to be a nonconforming use until a specific use permit has been granted.
- [d] To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently according to the City's building official and within the timeframe outline in the required permits. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition, or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation, demolition, or removal shall be deemed to be actual construction, provided that work shall be carried on diligently as determined by the City's building official.
- (e) No existing building or portion thereof devoted to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved, or otherwise structurally altered except that it may be repaired or remodeled provided that the gross floor area devoted to the nonconforming use is not increased. The nonconforming use shall cease if the total cost of repairs or remodeling would exceed 30 percent of its assessed value for tax purposes.
- (f) A conforming use in a nonconforming building may be changed to another conforming use.
- (g) When a nonconforming use is changed to a conforming use, it shall not thereafter be changed back to a nonconforming use.
- (h) A nonconforming use shall not be changed to another nonconforming use, unless authorized as a special exception by the board of adjustment.

Sec. 062. Nonconforming buildings.

- (a) A nonconforming building, as defined in this Ordinance, shall not be enlarged, nor shall it be structurally altered, unless such enlargement or alteration is otherwise in conformance with all applicable standards of the district in which it is located, or to provide for continued safe use of the structure as determined by the building official.
- (b) Nonstructural repair or remodeling of a nonconforming building is permitted provided that the degree of nonconformity is not increased.
- (c) A nonconforming building shall not be repaired, restored, or reconstructed if it is destroyed or damaged above its foundation to such an extent that the cost to restore the structure to its condition prior to the damage exceeds 50

percent of its assessed value for tax purposes, exclusive of the value of the foundation. If the building can be repaired, restored, or reconstructed at a cost of less than 50 percent of its assessed value, it may then continue to be used as before. Such repair, restoration, or reconstruction must be completed within 12 months of the damaging event.

(d) When a nonconforming building is in the process of construction (all foundation forms being in place) or in the process of alteration or repair (all materials having been delivered) on the date that the premises is annexed into the City limits, the construction, alteration, or repair may be continued upon issuance of a building permit. Such construction, alteration, or repair shall be completed within 12 months of annexation.

Sec. 063. Nonconforming lots.

(a) A nonconforming lot, as defined in this Ordinance, may be developed or redeveloped if it is shown by a recorded plat or deed to have been owned separately and individually from adjoining parcels of land on January 1, 2008, and since that date has remained under different ownership from all adjoining parcels.

(b) In any residential district, a dwelling permitted by the applicable district regulations may be erected on a lawfully nonconforming lot having no dimension or area less than 70 percent of the normal minimum required provided that the lot and buildings thereon comply with all other requirements of the district except that, where the lot width is nonconforming, side-yards may be reduced to a minimum of five feet where a greater setback would otherwise be required.

(c) In districts other than residential, a building designed for a use permitted-by-right in the applicable district may be erected on a lawfully nonconforming lot provided that the lot and buildings thereon comply with all other requirements of the district.

Sec. 064. Prohibited installation of mobile home.

It shall be unlawful from and after the effective date of this Ordinance to install any mobile home, as defined by this Ordinance, on any lot, tract, or parcel of land or manufactured home park within the limits of the City of Nixon. Existing mobile homes may remain until such time that the legal nonconforming status is terminated as provided in section 061. Replacement of a mobile home with, or the first time installation of, a manufactured home may be permitted, but only in conformance with the applicable provisions of this Ordinance and of other applicable regulations and Ordinances of the City.

Section 065. Building Permits and Certificates of Occupancy

[a] Building permits required: No building or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the building official. No building permit shall be issued by the building official except in conformity with the provisions of this ordinance, unless he receives a

written order from the Board of Adjustment in the form of an administrative review or variance as provided by this ordinance.

[b] Applications: Applications for building permits must be in strict compliance with the provisions set forth in the ordinances of the City of Nixon, Texas. All applications for building permits shall be accompanied by plans in triplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of all structures already existing, if any, and the location and dimensions of the proposed structure or alteration. The application shall include such other information as lawfully may be required by the building official, including existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance.

The application shall be accompanied by a site plan that should provide the following information:

- (a) Boundaries of the area covered by the site plan;
- (b) Location of each existing and proposed building and structure in the area;
- (c) The location of existing drainage ways and significant natural features;
- (d) Proposed landscaping and screening buffers;
- (e) The location and dimensions of all curb cuts, public and private streets, parking and loading areas, pedestrian walks, lighting facilities, and outside storage facilities;
- (f) The location, height and type of each wall, fence and all other types of screening; and
- (g) The location, height and size of all proposed signs.

One copy of the plans shall be returned to the applicant by the building official, after he or she shall have marked such copy either as approved or disapproved and attested to it by his signature on such copy. The original and one copy of the plans, similarly marked, shall be retained by the building official.

[c] Certificates for new, altered, or non-conforming uses: It shall be unlawful to use or occupy or permit the use or occupancy of any structure, land, or part thereof hereafter created, erected, converted, altered or enlarged in its use or dimensions until a certificate of occupancy shall have been issued by the building official stating that the proposed use of the structure or land conforms to the requirements of this ordinance.

No nonconforming structure or use shall be maintained, renewed, or changed until the building official shall have issued a certificate of occupancy. The certificate of occupancy shall state specifically how the nonconformity differs

from the provisions of this ordinance, provided that upon enactment of this ordinance, owners or occupants of nonconformities shall have 90 days to apply for certificates of occupancy. Failure to make such application within 90 days shall be presumptive evidence that the property was an illegal nonconformity at the time of enactment or amendment of this ordinance.

No permit for erection, alteration, moving, or repair of any building shall be issued until an application has been made for a certificate of occupancy, and the certificate shall be issued in conformance with the provisions of this ordinance upon completion of the work.

The building official may issue a temporary certificate of occupancy for a period not to exceed six months during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public.

The building official shall maintain a record of all certificates of occupancy, and a copy shall be furnished upon request to any person.

Failure to obtain a certificate of occupancy shall be a violation of this ordinance and punishable under the Penalty section of this ordinance.

[d] Expiration of building permit: If the work described in any building permit has not begun within 90 days from the date of issuance thereof, said permit shall expire; the building official shall cancel it, and written notice thereof shall be given to the persons affected.

If work described in any building permit has not been substantially completed within two years of the date of issuance, said permit shall be cancelled by the building official, and written notice shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

[e] Construction and use to be as provided in application, plans, permits and certificates: Building permits or certificates of occupancy issued on the basis of plans and applications approved by the building official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction, as further stipulated in ordinances adopted by the City of Nixon. Use, arrangement, or construction at variance with that authorized shall be a violation of this ordinance, and punishable as provided the Penalties section below.

[f] Fees: Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for building permits, sign permits, conditional use permits, variances and other administrative relief. The amount of the fees charged shall be as set forth in the City's budget or as established by resolution of the City Council filed in the office of the City Clerk.

Fees established in accordance with the above paragraph shall be paid upon submission of a signed application or notice of appeal.

ARTICLE IV. ZONING AGENCIES, CHANGES, VARIATIONS AND ANNEXATIONS

Sec. 091. Building official.

(a) *Building official.* The building official is the City staff member or consultant who is the chief code enforcement officer for zoning and for building construction compliance. The building official and his alternate are appointed by the City Council. The building official shall serve as a staff resource person during those meetings of the commission, the board, or the Council when a zoning action is before that body.

(b) *Responsibilities and duties.* The building official shall have the following responsibilities and duties:

(1) Review and participate in staff processing of the following:

- a. Building permits;
- b. Zoning variance requests;
- c. Specific use permits;
- d. Rezoning requests;
- e. Special exceptions.

(2) Code enforcement:

a. The building official is responsible for enforcement of building codes adopted by the Council.

b. As chief code enforcement officer the building official shall issue a stop order or a citation against any person in violation of this Ordinance and shall revoke any permit where it appears that there is a departure from plans, specifications, or conditions as required under the terms of the permit, where the permit was issued by mistake, where the permit was procured by false representation, or where any provisions of the zoning ordinance are being violated.

Sec. 092. Zoning administrator.

(a) The building official shall be the zoning administrator, unless the Council appoints a separate zoning administrator.

(b) *Authority and duties.* The zoning administrator or alternate shall have the following authority and duties:

(1) Administer and enforce the provisions of this Ordinance.

(2) Serve as a nonvoting ex officio member, serve as secretary, and maintain the office of record of the commission and the board.

(3) Review and coordinate staff activities with respect to the following applications:

- a. Zoning variance requests;

- b. Specific use permits;
- c. Rezoning requests;

Sec. 093. Planning and Zoning commission.

A Planning and Zoning Commission is hereby established for the purpose of preparation, updating and implementing a comprehensive plan or other specific plans through various means such as zoning, subdivision, annexation, and other related techniques. The City Council shall have final authority on all Specific Use Permits, and subdivisions.

(a) *Composition and method of appointment.*

(1) The planning and zoning commission of the City shall consist of five (5) members to be elected by the City Council at the first Council meeting following the election and qualification of new Council members following the City election, annually. Each member of the commission shall be a resident of the City. The City Council shall designate a chairperson of the commission. The planning and zoning commission shall perform all of the duties prescribed in this ordinance as well as the duties prescribed by the subdivision ordinance of the City. Any vacancy on the commission shall be filled for the unexpired term by the City Council at the next regular meeting of the City Council after such vacancy occurs. The members of the commission shall serve without compensation. In the event that no members have been appointed to the commission by the City Council, the City Council shall serve as the planning and zoning commission until such appointments have been made.

(2) The zoning administrator shall be a nonvoting ex officio member of the commission, shall serve as secretary of the commission, and shall maintain the records of the commission.

(3) A quorum of the commission shall consist of a minimum of three members of the commission and any issue shall be decided by a majority vote of those members present. The member serving as chairman for the meeting is entitled to vote but has no veto power.

(b) *Meetings.*

(1) The commission shall meet upon call of the mayor, zoning administrator, or chairman when there is a case to be heard by the commission or when there is such other business to be conducted that is within the responsibility of the commission.

(2) All meetings of the commission shall be open to the public and minutes shall be kept and maintained as public records.

(3) The meetings of the commission are subject to the Open Meetings Law. Notice shall be posted and record minutes kept according to law.