

ORDINANCE NO. 02.07.15.10

AN ORDINANCE OF THE CITY OF SMILEY, TEXAS, ADOPTING A COMPREHENSIVE ZONING PLAN AND ZONING MAP AND DIVIDING THE CITY INTO SEVERAL DISTRICTS; ESTABLISHING AND PROVIDING FOR ZONING REGULATIONS AND CREATING ZONING DISTRICTS IN ACCORDANCE WITH A COMPREHENSIVE PLAN.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SMILEY;

That the comprehensive zoning ordinance and maps are hereby enacted

PASSED AND APPROVED this, the 15 day of July 2010.

APPROVED:

Ellis Villasana
Ellis Villasana, Mayor

ATTEST:

Eloise E Estes
Eloise E Estes
City Secretary

CITY OF SMILEY
ZONING ORDINANCE # 02.07.15.10

- Section 1.00 General Provisions
- 1.01 Short Title
 - 1.02 Purpose
 - 1.03 Definitions
 - 1.04 Establishment of Districts
 - 1.05 Rules of Interpretation
 - 1.06 Official Zoning Map; Future Land Use

- Section 2.00 District Regulations
- 2.01 Regulations Applicable to all Districts
 - 2.02 A, Agricultural
 - 2.03 SF-A, Suburban Single-Family Residential
 - 2.04 SF, Urban Single-Family Residential
 - 2.05 MF, Low Density Multi-Family Residential
 - 2.06 MH, Manufactured Housing
 - 2.07 NC, Neighborhood Commercial
 - 2.08 C, Commercial
 - 2.09 HCI, Heavy Commercial/Industrial
 - 2.10 PD, Planned Development Districts

- Section 3.00 General Regulations
- 3.01 Nonconforming Uses of Land and Structures
 - 3.02 Nonconforming Structures
 - 3.03 Noncomplying Structures

- Section 4.00 Administration and Enforcement
- 4.01 Administration and Enforcement
 - 4.02 Amendments
 - 4.03 Variances
 - 4.04 Special Use Permits
 - 4.05 Stop Work Orders
 - 4.06 Fees
 - 4.07 Penalty

SECTION 1.00 GENERAL PROVISIONS

§ 1.01 SHORTTITLE.

This Ordinance shall be known and may be cited as "The Zoning Ordinance of the City of Smiley, Texas."

§ 1.02 PURPOSE.

The provisions of this Ordinance are deemed to be necessary to promote the health, safety, morals and general welfare of the residents of the city.

§ 1.03 DEFINITIONS.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY BUILDING. A subordinate building, not a mobile home except by special permit, detached from the main building without separate utilities, and not used for commercial purposes other than a home occupation unless in a commercial or industrial district and not for habitation unless otherwise specifically as an allowed use in a particular district. In districts other than residential, an **ACCESSORY BUILDING** is a subordinate building, the use of which is incidental to and used only in conjunction with the main building.

ACCESSORY STRUCTURE. A structure including an accessory building, the use of which is customarily incidental and subordinate to that of the main building on the same lot, such as a swimming pool, sports court, greenhouse, tool shed and the like.

ACCESSORY USE. A use customarily incidental and subordinate to the primary use of the main building to the primary use of the premises.

ADMINISTRATIVE SERVICES. Administrative and clerical offices, public contact services and incidental activities of federal, state, county and city governments. Typical uses include city halls, post offices and held offices of federal and state agencies.

AGRICULTURAL INDUSTRY. Uses and facilities engaged primarily in the initial processing and storage of farm and ranch products including, but not limited to crops, livestock, poultry and fish. Typical uses include cotton gins, grain elevators, hatcheries, livestock auction facilities and slaughtering facilities.

ANIMAL SERVICES. Businesses engaged in the treatment, care and boarding of livestock and other animals including those listed under pet services, and for which an outside run is provided. The uses typically include blacksmith shops, commercial stables and veterinary hospitals with an outside run.

APARTMENT. A suite of rooms located in an apartment house and arranged, designed or occupied as a place of residence by a single family.

APARTMENT HOUSE. Any building thereof, which is designed, built, rented, leased or let to be occupied as a name or place of residence for any two or more families living in independent dwelling units.

BASIC INDUSTRY. Uses engaged primarily in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of or manufacturing processes utilizing flammable or explosive materials or storage or manufacturing

processes which potentially involve hazardous or commonly recognized offensive conditions. Typical uses include food processing and dehydrating, salvage yards, tire recapping, welding shops, shop forges, tool and die shops, machine shops and metal products, manufacturing of chemicals, acids, pharmaceuticals, fertilizers and plastic products, and mineral extraction.

BROADCAST/RECEPTION PRODUCTION. Antennas, towers and satellite dishes used to broadcast and/or receive signals for radio, television, radar or other telecommunications for other than personal use.

BUILDING. Any roofed structure designed or used for the housing or enclosure of persons, animals or property.

BUILDING, MAIN, PRIMARY or PRINCIPAL. A building in which is conducted the primary use of the lot on which it is situated.

CAFÉ. See "restaurant."

CEMETERY. Land used or intended to be used for burial of the dead. Crematoriums, columbaria, mausoleums and mortuaries are allowed when operated in conjunction with and within the boundary of the CEMETERY.

CITY. The City of Smiley, Gonzales County, Texas.

CIVIC USE. Any public or semi-public facilities, including governmental offices, police and fire facilities, hospitals, religious, public and private schools and other community facilities.

COMMERCIAL RECREATION. Businesses engaged primarily in the provisions of facilities for sports, entertainment or recreation for participants or spectators indoors or outdoors. Typical uses include amusement arcades, billiard and poolrooms, bowling alleys, camping facilities, including hook-up facilities for recreational vehicles, canoe rentals, dance halls, golf courses, driving ranges, miniature golf courses and theaters.

COMMUNICATIONS SERVICES. Businesses engaged primarily in the recording and broadcasting of information and other services. Typical uses include radio and television studios, recording studios and telecommunications service centers.

COMPREHENSIVE PLAN. The plan required by Tex. Loc. Govt Code Ch. 219. It is an independent, long-term policy document for use and development of land and the provision of facilities and services within the city's corporate area and extraterritorial jurisdiction.

CONSTRUCTION MATERIALS PRODUCTION. Uses engaged primarily in the extraction, processing and finishing of construction materials. Typical uses include sand and gravel pits, cement manufacturing, concrete block and brick manufacturing, and steel processing plants.

COUNCIL. The City Council of Smiley, Texas.

CULTURAL SERVICES. Uses preserving and exhibiting objects of community and cultural interest in one or more of the arts and sciences. Typical uses include libraries, exhibition grounds, museums and auditoriums or similar registered nonprofit organizational uses.

DAY-CARE SERVICES. A use designed or adapted for the care of children or adults for a set number of daytime hours, not to include overnight boarding or care. Typical uses include nursery schools, pre-schools, care centers for children or adults and similar uses.

DISTRICT. A section of the city for which the regulations governing the uses of and development standards for buildings or lots are uniform.

DWELLING. A building designed and having facilities for year-round human habitation.

- (1) **SINGLE-FAMILY DWELLING.** A detached dwelling unit, including a modular home but not a mobile home or manufactured home, on its own lot, and designed and having facilities for year-round human habitation by only one family.
- (2) **DUPLEX or TWO-FAMILY DWELLING.** A dwelling, not a mobile home, on its own lot, and designed, arranged or used exclusively for the use and occupancy of two families living independently of each other.
- (3) **TRIPLEX or THREE-FAMILY DWELLING.** A dwelling, not a mobile home, on its own lot, and designed, arranged or used exclusively for the use and occupancy of three families living independently of each other.
- (4) **FOURPLEX or FOUR-FAMILY DWELLING.** A dwelling, not a mobile home, on its own lot, and designed, arranged or used exclusively for the use and occupancy of four families living independently of each other.
- (5) **MULTIPLE-FAMILY or MULTI-FAMILY DWELLING.** A dwelling, not a mobile home, designed, arranged or used exclusively for the use and occupancy of two or more families living independently of each other.

DWELLING UNIT or DU. Several interrelated rooms designed for human habitation by one family with facilities for living, sleeping, cooking, eating and sanitation.

EDUCATIONAL FACILITIES. Public or private primary, secondary and postsecondary educational facilities offering instruction in the branches of learning and study required to be taught by the public schools of the state.

FAMILY. An individual, or two or more persons related by blood, marriage or adoption, or a group of not to exceed four persons, not any of whom are related by blood, marriage or adoption occupying the premises and living as a single non-profit housekeeping unit.

FARMING or RANCHING. A use engaged primarily in the raising of crops, livestock and other agricultural products, including storage and processing facilities other than those listed under "stockyard" uses.

FINANCIAL SERVICES. Establishments engaged primarily in the provision of banking and other **FINANCIAL SERVICES.** Typical uses include banks, savings and loan institutions, stock and bond brokers, and loan and lending services.

FOUNDATION, PERMANENT. A concrete slab or wooden, concrete and/or steel pier and beam substructure upon which a building is permanently fastened and attached so as to preclude the transport of the building on its own chassis.

FUNERAL SERVICES. Undertaking services engaged primarily in the preparation of the human dead for burial, including the arranging and managing of funerals. Typical uses include funeral homes and mortuaries.

GENERAL RETAIL. Establishments serving a large market area and engaged primarily in the rental or sale of retail of goods and service commonly purchased by the general public. However, this does not include any commercial uses classified more specifically in other commercial sections. Typical uses include appliance and furniture sales and services, auction sales except livestock, building materials sales, business or trade schools, department stores, plumbing, electric, heating and air conditioning sales and service, health or athletic clubs, hotels and motels, supermarkets, pawn shops, radio and television sales and service, variety stores and upholstery stores.

GENERAL SHIPPING AND STORAGE. Uses engaged primarily in the handling, warehousing and distribution of materials and equipment, other than live animals or plants, either in enclosed structures or open-air fenced-in areas. Typical uses include distribution centers, monument or stone yards and other storage yards.

GROUP RESIDENTIAL. A dwelling unit designed, arranged or used for any more than six four persons, not defined as a family, on a weekly or longer basis. Typical uses include fraternity or sorority houses, dormitories, residence halls and boarding houses.

HOME OCCUPATION. An occupation customarily carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises, which occupation is clearly incidental and secondary to the use of the premises for residential purposes

LIGHT MANUFACTURING. Uses engaged primarily in the processing, fabrication, assembly, treatment and packaging of finished products and parts, including the incidental storage and distribution of the products. Anything defined as "basic industry" is excluded.

LIMITED RETAIL. Establishments, generally serving a neighborhood, local area or portion of the city, which are engaged primarily in the provision of personal services, the sale of food or household products for home consumption or the rental or retail sale of goods for personal consumption or household use. This category does not include those items specifically noted under the definitions of "general retail." Typical uses include barber and beauty shops, book or stationery stores, camera stores, convenience stores, craft or hobby shops (without an outside garage), dressmakers and tailors, dry cleaners and laundries, fabric shops, florists, hardware and paint stores, jewelers, optical shops, photo, artistic, dance and music studios, and printing and copying shops.

LIMITED SHIPPING AND STORAGE. Uses engaged primarily in warehousing services for household goods and wholesale distributors in enclosed structures. Typical uses include moving and storage firms and wholesale distributors.

LOT. A designated parcel, tract or area of land, established by a plat or otherwise as allowed by law, to be used, developed or built upon as a unit.

MANUFACTURED BUILDING.

- (1) Either an independent, individual building, combination of modules or a module for combination with other elements to form a building, not a mobile home, which has been mass-produced in a factory and designated and constructed for transportation to a site for installation and use on a permanent foundation when connected to required utilities at that site.
- (2) All MANUFACTURED BUILDINGS must either meet the standards set by the city's building, plumbing, electrical and energy codes as determined by an on-site inspection by

the City Inspector or be certified as meeting the codes and standards established by either the Texas Department of Labor and Standards or the U.S. Department of Housing and Urban Development (HUD), as appropriate.

MANUFACTURED HOUSING. (HUD code). A structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, and Article 522 of V.T.C.S., 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.

MEDICAL SERVICES. Establishments providing consultation, diagnosis, therapeutic, preventive or corrective personal treatment by doctors, dentists, medical and dental laboratories and similar practitioners of medical and healing arts for humans licensed for the practice by the state. Typical uses include clinics, convalescent homes, hospitals, laboratories and sanitariums.

MOBILE HOME. A structure that was constructed before June 15, 1976, 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 a recreational vehicle.

MODULAR HOME. A residential structure constructed wholly or in modules at a location other than the building site, then transported in one or more sections to the site, and installed on a permanent foundation. The term includes the plumbing, heating, air-conditioning and electrical systems contained in the structure. The term does not include mobile homes or HUD-Code manufactured homes as defined in the Texas Manufactured Housing Standards Act (Article 5221f, V.A.C.S.). Modular homes must meet all applicable local building codes and zoning regulations that pertain to construction of traditional site constructed ("stick built") homes.

NEIGHBORHOOD RECREATION. Indoor or outdoor recreational facilities for use by residents and guests of a particular residential development, church, private educational facility, social club or fraternal organization. Typical uses include private parks and recreation areas and swimming pools. Uses do not include those listed under "commercial recreation."

NONCOMPLYING STRUCTURE. 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, parking, loading, coverage area, or screening 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 regulations of the district in which it is located.

NUISANCE. Any substance or disturbance that, if extended over a period of time or repeated at periodic intervals, would endanger the health, safety, morals or general welfare or otherwise diminish the

quality of the utility afforded a person living, working or otherwise in free use, possession or enjoyment of his or her property, including but not limited to noise, dust, smoke, fumes, odor, glare, flashes, heat, electronic or atomic radiation, effluent, vibration, shock waves, bases, debris and hazardous material.

OVERLAY DISTRICT. A district which is applied in conjunction with one or more of the other districts in this Ordinance to address special circumstances which add requirements to those districts or allow alternative development standards based on specific site plans or building plans.

PARKING SPACE. An area designated for the parking of one light-duty vehicle.

PET SERVICES. Establishments engaged primarily in retail sales, veterinary services, grooming and boarding (when totally within the confines of a building) of small animals, customarily defined as household pets. These uses typically include veterinary offices, pet stores and kennels, but excluding those with outside runs.

PROFESSIONAL and ADMINISTRATIVE OFFICE. Establishments engaged primarily in providing professional or consulting services in the fields of accounting, architecture, design, engineering, law, insurance, management and planning. Uses may also include employment services and individual medical and dental offices.

PUBLIC RECREATION. Publicly owned and operated parks, recreation areas and playgrounds, swimming pools, and open spaces available for use by the general public without requirement of membership or affiliation.

PUBLIC SAFETY SERVICES. Uses for the conduct of public safety and emergency services, including police and fire protection, emergency medical and ambulance services, and municipal jails.

PUBLIC UTILITY FACILITIES. Facilities and structures relating to the provision and maintenance of various utility services to local residents. Services may include, but shall not be limited to water, wastewater, natural gas, electricity, telephone and cable communications.

QUARRYING. The removal from the earth of stone, sand, gravel, caliche, minerals, topsoil or other natural material for the purpose of sale or another commercial purpose, other than such as may be incidental to excavating or regarding in connection with or in anticipation of building development or landscaping on the site.

RELIGIOUS ASSEMBLY. A use located in a permanent building and providing regular organized religious worship and religious education incident thereto, but excluding private primary and secondary educational facilities, community recreation facilities and day-care services. A property tax exemption obtained pursuant to the property tax code of the state shall constitute prima facie evidence of RELIGIOUS ASSEMBLY use.

RESTAURANT.

- (1) An establishment whose primary business is selling food for consumption at tables on the premises or for take-out.
- (2) Establishments engaged primarily in the preparation and retail sale of food and beverages, including the sale of alcoholic beverages as allowed by §2.46. Service may be of a take-out or drive-in nature (excluding the sale of alcoholic beverages) or provide service for on-premise consumption. Live entertainment may also be provided.
- (3) Typical uses include cafes, cafeterias, coffee shops, indoor and drive-in restaurants and sandwich shops.

SETBACK. The minimum distance required between a structure and the front, side or rear boundary line of the parcel of land on which the structure is located. For parcels adjacent to an alley, the SETBACK line may be measured from the center line of the alley.

SITE PLAN. A development plan of one or more lots on which is shown the following:

- (1) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains and waterways;
- (2) The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting and screening devices; and
- (3) Any other information that may be reasonably required in order to determine whether the proposed development complies with the criteria and standards in this Ordinance and with the requirement of other city ordinances.

SPECIAL USE. A use not allowed by right and not expressly prohibited that may be authorized by the City Council if the applicant can show to the satisfaction of the Council that the use may be suitable in the district if developed and operated under specific conditions and/or for a limited period of time.

STOCKYARD. A use engaged primarily in the storage and processing of livestock for slaughter and shipment to market.

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

SUBDIVISION ORDINANCE. Subdivision Ordinance included in the Smiley Code of Ordinances.

TOWNHOUSE. A dwelling unit occupying the entire width of the lot or constructed with common walls or walls abutting another building and located on a separate lot.

TRANSPORTATION TERMINAL. A facility for loading, unloading and interchange of passengers and incidental baggage, freight and package express between modes of transportation, including bus depots, railroad stations, airport terminals and mass transit facilities.

VEHICLE.

- (1) **COMMERCIAL VEHICLES.** Any motorized vehicle, except as otherwise defined in this Ordinance, commonly used for the transport of persons, goods or livestock over public streets for a commercial purpose, including but not limited to dump trucks, tractor-trailer combinations, buses and commercial delivery vehicles.
- (2) **LIGHT-DUTY VEHICLES.** Any motorized vehicle, except these defined as "commercial vehicles" in this Ordinance, commonly used for the transport of persons over public streets, including but not limited to automobiles, mopeds, motorcycles, passenger trucks and vans.

VEHICLE AND EQUIPMENT SALES AND SERVICE. Businesses engaged primarily in vehicle and heavy equipment related sales and/or services. This includes, but is not limited to, any one or more of the following for vehicles, farm and implement equipment and boats, showrooms, vehicle

washing, commercial off-street parking (not an accessory to another use), rentals, long-term vehicle storage and repair service. These do not include those uses specifically listed as "vehicle fuel and service stations."

VEHICLE FUEL AND SERVICE STATIONS. Businesses engaged primarily in the retail sale of fuel, parts, accessories and repair and maintenance services only for light-duty vehicles.

YARD. An open, unoccupied space other than a court, on the same lot as a building and which is unobstructed from the ground to the sky and is the minimum horizontal distance from the nearest lot line and the main building or any projections thereof other than roof overhangs.

YARDS, CORNER LOT. Corner lots shall be construed to have two front yards, in keeping with the setback requirements for corner lots. Either of the remaining two yards may be designated as the rear yard and the other side yard as appropriate to meet the setback requirements for rear and side yards.

§ 1.04 ESTABLISHMENT OF DISTRICTS.

The city hereby establishes the following districts.

- (A) A, agricultural;
- (B) SF-A, suburban single-family residential;
- (C) SF, urban single-family residential;
- (D) MF, multi-family, low density;
- (E) MH, manufactured housing;
- (F) NC, neighborhood commercial;
- (G) C, commercial;
- (I) HCI, heavy commercial/industrial;
- (J) PUD, planned unit development.

§ 1.05 RULES OF INTERPRETATION.

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply.

- (A) Boundaries which appear to follow streets, roads or streams shall be construed to follow the centers thereof
- (B) Boundaries which appear to follow the lines of lots or other parcels of record shall be construed as following the lines.
- (C) Boundaries which appear to follow city limit lines shall be construed as following the lines.
- (D) In case of uncertainty as to the true location of a district boundary line not covered by the above rules, the City Council shall make a determination of the true location of the line.

§ 1.06 OFFICIAL ZONING MAP; FUTURE LAND USE.

- (A) Official Zoning Map.

- (1) The locations and boundaries of zoning districts established by ordinance shall be recorded on an Official Zoning Map to be adopted by a resolution of the City Council and identified and amended in the manner specified in this Ordinance.

Recording on the official map is not a prerequisite to causing the zoning Ordinance to take effect.

- (2) "The Official Zoning Map shall be identified by the signature of the Mayor attested by the City Secretary under the following words: "This is to certify that this is the Official Zoning Map of the City of Smiley, Texas, adopted by official action of the City Council on _____ (date)."
- (3) Changes in the zoning classifications of particular parcels or areas of land, approved by the City Council in accordance with the provisions of this Ordinance, shall be noted promptly on the Official Zoning Map with the following entry: "On _____ (date), by official action of the City Council, the following changes were made in the Official Zoning Map: (brief description of the nature of the changes)." The entry shall be signed by the Mayor and attested by the City Secretary.
- (4) No changes of any nature shall be made in the Official Zoning Map, except in conformity with the procedures in this Ordinance.
- (5) In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret, the City Council may, by resolution, adopt a new Official Zoning Map which shall exactly duplicate the original, as amended, except for corrections of errors or omissions.

(B) Consistency with the comprehensive plan.

- (1) Future land use map.
 - (a) The city, as part of its comprehensive plan, shall adopt a future land use map, to be used to establish interim zoning classification, and to be used as a guideline for permanent zonings and zoning changes. Wherever practical, permanent zonings and zoning changes shall be consistent with the future land use map.
 - (b) The future land use map shall be considered a fluid document. The City Council shall consider, no less than once every ten years, revisions to the future land use map to incorporate those permanent zonings and zoning changes that have occurred since the last revision, and further to consider other revisions as may be directed by current circumstances.
 - (c) An official copy of the current future land use map shall be maintained in clear and legible fashion in city hall, and shall be accessible for public viewing during normal business hours.
- (2) Zoning of newly annexed areas.
 - (a) All territory hereinafter annexed to the city shall be automatically classified, on an interim basis, as in the most restrictive district consistent with the future land use map and of the comprehensive plan and shall be so noted on the Official Zoning Map in accordance with division (A).
 - (b) As soon as practical after annexation proceedings are completed, but in no event more than 120 days thereafter, unless expressly approved by the City Council, the City Council shall institute proceedings on its own motion, to give

the newly annexed territory a permanent zoning classification.

- (c) The owner of land to be annexed may submit an application to amend the zoning under consideration by the City Council simultaneously with the petition for annexation, but no annexation application may be made conditioned upon the approval of particular zoning classification.

(C) Building construction permits in newly annexed areas. Upon annexation, no existing building or structure within any territory newly annexed to the city shall be altered, remodeled or constructed without a permit as required herein and without permanent zoning having been approved by the City Council.

SECTION 2.00 DISTRICT REGULATIONS

§2.01 REGULATIONS APPLICABLE TO ALL DISTRICTS.

- (A) Home Occupation, when allowed shall comply with the following criteria:
 - (1) The occupation shall produce no alteration or change in the character or exterior appearance of the principal building from that of a dwelling.
 - (2) The use shall be incidental and secondary to the use of the premises for residential purposes and shall not utilize an area exceeding 20% of the combined gross floor area of the dwelling unit and accessory building if used for the home occupation.
 - (3) The occupation use shall be carried on by a member or members of the family residing on the premises and not more than one nonresident assistant.
 - (4) The proprietor shall provide adequate off-street parking on the property where the use is located as required for commercial uses in this ordinance.
 - (5) The occupation use shall not create a nuisance, as defined by the Ordinance of the City of Smiley.
- (B) Accessory Buildings may be used as a non-commercial workshop, a washroom, recreation room, storage room for domestic storage belonging to the owner or tenant only, or a space for one or more boats or light-duty vehicles owned by the owner, tenant or guest.
- (C) Parking Paved
 - (1) All parking areas/spaces must be paved with asphalt or concrete.
- (D) Manufactured housing, in any District where it is allowed shall comply with the following standards:
 - (1) The structure shall be secured on a permanent foundation, as defined in this Ordinance.
 - (2) The main roof shall be pitched, rather than flat.
 - (3) The house shall appear to face the street and have a gabled entry or other break in the facade of equivalent proportions.
 - (4) The foundation shall form a complete enclosure under exterior.
 - (5) Square footage shall be consistent with other houses in the neighborhood.
- (E) Zoning Districts listed in 1.04 A thru J shall be construed as successfully more dense in their use. Except as specifically noted, less dense uses than the district designation for the property are permitted.

§ 2.02 A, AGRICULTURAL.

(A) Purpose. The purpose of the A district is to establish and maintain agricultural lands in productivity for farming and ranching.

(B) Allowed uses and structures.

- (1) All Agricultural Industry structures are allowed in this district.
- (2) Animal services are allowed.
- (3) Single-family dwellings are allowed as residential uses and structures.

(C) Site requirements for primary uses and structures.

- (1) Minimum lot size shall be five acres.
- (2) Minimum lot width at the building setback line shall be 300 feet.
- (3) Minimum street frontage for a standard lot shall be 300 feet. Minimum street frontage for a cul-de-sac lot shall be 120 feet.
- (4) Minimum front setbacks shall be 100 feet. Minimum side setbacks shall be 25 feet. Minimum rear setbacks shall be 50 feet.
- (5) Maximum building height shall be 2 story.
- (6) Minimum off-street parking for residential uses shall be two spaces per dwelling unit.

(D) Supplemental requirements for accessory buildings and uses.

- (1) Maximum height shall be 25 feet.
- (2) Minimum rear and side setbacks shall be 25 feet.
- (3) Dwellings may be connected to either on-site or collective wastewater systems.
- (4) Located in rear area.

§ 2.03 SF-A, SUBURBAN SINGLE-FAMILY RESIDENTIAL.

(A) Purpose. The purpose of the SF-A district is to establish and preserve low density single-family residential neighborhoods with a rural character and urban amenities.

(B) Allowed uses and structures.

- (1) Single-family residential uses and structures.
- (2) Any home occupation or structure requires a special use permit.

(C) Site requirements for primary uses and structures.

- (1) Minimum lot size shall be 2 acres.
- (2) Minimum street frontage for a standard lot shall be 150 feet.
- (3) Minimum front setbacks shall be 25 feet. Minimum side setbacks shall be 15 feet. Minimum rear setbacks shall be 25 feet.
- (4) Maximum building height shall be 2 story.
- (5) Minimum off-street parking shall be two spaces per dwelling unit, plus one half-space for every bedroom over two.
- (6) Minimum square feet of living space shall be no less than 1,800 square feet.

(D) Supplemental requirements for accessory buildings.

- (1) The number of accessory buildings allowed per lot shall be two.
- (2) Maximum height shall be 15 feet eave height.
- (3) Placement shall be in the rear yard only.
- (4) Swimming pools must be fenced in accordance with city ordinance.

§2.04 -SF, URBAN SINGLE-FAMILY RESIDENTIAL.

(A) Purpose. The purpose of the SF district is to protect and maintain dwelling units and the low density character of single-family residential neighborhoods within the urban environment.

(B) Allowed uses and structures.

- (1) Single-family residential uses and structures shall be allowed, whether manufactured or constructed on site.
- (2) A special use permit shall be required for any home occupations.

(C) Site requirements for primary uses and structures.

- (1) Minimum lot size shall be 5,000 square feet.
- (2) Minimum lot width shall be 60 feet.
- (3) Minimum street frontage for a standard lot shall be 80 feet. Minimum street frontage for a cul-de-sac lot shall be 60 feet.
- (4) Minimum front setback shall be 20 feet. Minimum side setback shall be 5 feet. Minimum rear setback shall be 10 feet.
- (5) Maximum building height shall be 2 story.
- (6) Minimum off-street parking shall be two spaces per dwelling unit, plus one half-space for every bedroom over two.
- (7) Minimum square feet of living space shall be no less than 1,000 square feet.

(D) Supplemental requirements for accessory buildings.

- (1) The number of accessory buildings allowed per lot shall be one.
- (2) The maximum height shall be 15 feet eave height.
- (3) Placement shall be rear yard only.
- (4) Swimming pools must be fenced in accordance with city ordinance.

§ 2.05 MF, LOW DENSITY MULTI-FAMILY RESIDENTIAL.

(A) Purpose. The purpose of the MF-I district shall be to establish clusters of low density multi-family dwellings in a fully landscaped environment including adequate buffering adjacent to single-family residential neighborhoods.

(B) Allowed uses and structures.

- (1) Single-family, duplex, triples and fourplex residential structures shall be allowed.
- (2) A special use permit shall be required for any temporary structure, home occupation, day-care service, educational facility, public or semi-public use.
- (3) A Special Use Permit shall be required for a Manufactured Home.
- (4) Special use permits shall be required for any home occupation, educational facility, neighborhood recreation or public recreation.

(C) Site requirements for primary uses and structures.

- (1) Minimum lot size shall be 10,000 square feet.
- (2) Minimum lot width shall be 100 feet.
- (3) Minimum street frontage for a standard lot shall be 100 feet. Minimum street frontage for a cul-de-sac lot shall be 60 feet.
- (4) Minimum front setback is 25 feet. Minimum side setback is 5 feet. Minimum rear setback is 10 feet.
- (5) Two story maximum structure height

(6) Minimum off-street parking for residential uses and structures is two spaces per dwelling unit, plus one half-space for every bedroom over two.

(D) Supplemental requirements for accessory buildings and uses.

- (1) Maximum height shall be 15 feet.
- (2) Placement shall be rear yard only.
- (3) No swimming pools.
- (4) Six-foot privacy fences must be erected on property lines shared with less intensive land uses or zoning districts.
- (5) Only one (1) accessory building allowed per dwelling unit.

§ 2.06 MH, MANUFACTURED HOUSING.

(A) Purpose. The purpose of the MH district is to establish and maintain areas for manufactured home communities in an effort to extend alternative housing opportunities.

(B) Allowed uses and structures.

- (1) Manufactured housing and single-family dwellings shall be allowed.
- (2) Special use permits shall be required for any temporary structure, home occupation, day-care service, educational facility or neighborhood and public recreation.

(C) Site requirements for primary uses and structures.

- (1) Minimum lot size shall be 60 feet front x 100 feet deep.
- (2) Minimum lot area per dwelling unit shall be 6,000 square feet.
- (3) Minimum lot width at the building line shall be 60 feet.
- (4) Minimum street frontage for a standard lot shall be 60 feet. Minimum street frontage for a cul-de-sac shall be 40 feet.
- (5) Minimum front setback shall be 25 feet. Minimum side setback shall be 5 feet. Minimum rear setback shall be 10 feet.
- (6) Maximum height shall be 1 story.
- (7) Minimum off-street parking shall be two spaces per dwelling unit, plus one half-space for every bedroom over two per unit.

(D) Supplemental requirements for accessory buildings and uses.

- (1) Maximum height shall be 15 feet.
- (2) Placement shall be rear yard only.
- (3) No swimming pools.
- (4) Six-foot privacy fences must be erected on property lines shared with less intensive land uses or zoning districts.

§ 2.07 NC, NEIGHBORHOOD COMMERCIAL.

(A) Purpose. The purpose of the NC district shall be to provide quiet, low density retail, office and other neighborhood-oriented commercial uses in permanent buildings, except mobile homes.

(B) Allowed uses and structures.

- (1) Administrative and pet services, limited retail, restaurants and professional and administrative offices shall be allowed.
- (2) A special use permit shall be required for any temporary structure, civic use, cultural, day-care and public safety service, public recreation, public utility facility (except

water and wastewater treatment plants, electric substations and generating plants), alcoholic beverage sales in restaurants, vehicle fuel and service stations and all residential uses.

(C) Site requirements for primary uses and structures.

- (1) Minimum lot size shall be 15,000 square feet.
- (2) Minimum lot width at the building line shall be 100 feet.
- (3) Minimum street frontage for a standard lot shall be 100 feet. Minimum street frontage for a cul-de-sac shall be 60 feet.
- (4) Minimum front setbacks shall be 25 feet. Minimum side setbacks shall be 15 feet. Minimum rear setbacks shall be 10 feet.
- (5) Maximum height shall be 2 stories.
- (6) (a) Minimum off-street parking shall be one space per full-time employee or equivalent, plus one space for each ten persons based on the capacity of the largest meeting facility on the site at which a regularly scheduled activity may be held.
(b) All civic uses shall provide a minimum of five spaces.
(c) For commercial uses, one space shall be provided for every 300 square feet of floor area devoted to the use.
- (7) The maximum contiguous area, including streets, shall be ten acres.

(D) Supplemental requirements for accessory buildings and uses.

- (1) Signs shall be keeping with the character of the existing commercial development.
- (2) Signs on wheels or on motor vehicles used for temporary or permanent advertisement of the commercial use are prohibited.
- (3) Outdoor lighting shall be directed so as not to adversely impact adjacent or nearby residential uses.
- (4) Commercial uses adjacent to one or more residential uses must provide suitable buffering between the commercial use and each residential use through landscaping or fencing extending to a height of six feet.
- (5) All parking areas and accessory buildings and uses must be screened from view from the street through fencing and/or landscaping.
- (6) All parking areas must be paved.

§ 2.08 C, COMMERCIAL.

(A) Purpose. The purpose of the C district is to provide sites for quiet, retail, office and other community-oriented development.

(B) Allowed uses and structures.

- (1) All civic uses, except cemeteries and day-care services, and commercial uses, except general shipping and storage and those listed in division (2) below shall be allowed uses.
- (2) Special use permits shall be required for any temporary structure, animal service, limited shipping and storage, vehicle and equipment sales and service, vehicle fuel and service station, and multi-family residence.

(C) Site requirements for primary uses and structures.

- (1) Minimum lot size shall be 15,000 square feet.
- (2) Minimum lot width shall be 100 feet.
- (3) Minimum street frontage for a standard lot shall be 100 feet.

*inc 100,000
four mobile units*

- (4) Minimum front setback shall be 25 feet; side and rear setbacks shall be 10 feet.
 - (5) Maximum building height shall be 35 feet.
 - (6) (a) Minimum off-street parking for civic uses shall be one space per full-time employee or equivalent, plus one space for each ten persons based on the capacity of the largest meeting facility on the site at which a regularly scheduled activity may be held. All civic uses shall provide a minimum of five spaces.
 - (b) Minimum off-street parking for commercial uses shall be one space per 300 square feet of floor area devoted to the commercial use.
 - (c) A variance shall be granted for lot size, set back and parking requirements for those commercial properties along Highway 87 from Cummins Rd to FM 108.
- (D) Supplemental requirements for accessory buildings and uses.
- (1) Commercial uses adjacent to one or more residential uses must provide suitable buffering between the commercial use and each residential use through landscaping or fencing extending to a height of six feet.
 - (2) All parking areas must be paved.

§ 2.09 HCI, HEAVY COMMERCIAL/INDUSTRIAL.

- (A) Purpose. The purpose of the HCI district shall be to provide sites for warehouses, vehicle, heavy equipment sales and service, other intensive commercial uses, light industry, industrial park and commercial development that serves not only the local community, but also the region.
- (B) Allowed uses and structures — Heavy Commercial. All commercial and civic uses, except day-care services, are allowed.
- (C) Site requirements for primary uses and structures — Heavy Commercial:
- (1) Minimum lot size shall be 15,000 square feet.
 - (2) Minimum lot width at the building setback line shall be 100 feet.
 - (3) Minimum street frontage for a standard lot shall be 100 feet. Minimum street frontage for a cul-de-sac lot shall be 60 feet.
 - (4) Minimum front setback shall be 25 feet; side and rear setbacks shall be 10 feet.
 - (5) Maximum building height shall be 35 feet.
 - (6) (a) Minimum off-street parking for civic uses shall be one space per full-time employee or equivalent, plus one space for each ten persons based on the capacity of the largest meeting facility on the site at which a regularly scheduled activity may be held. All civic uses shall provide a minimum of five spaces.
- (D) Supplemental requirements for accessory buildings and uses — Heavy Commercial:
- (1) Commercial uses adjacent to one or more residential uses must provide suitable buffering between the commercial use and each residential use through landscaping or fencing extending to a height of six feet.
 - (2) All parking areas must be paved.
- (E) Allowed uses and structures — Industrial:
- (1) All commercial uses, broadcast/reception equipment, light manufacturing and all civic uses, except day-care services, shall be allowed.
 - (2) (2) Special use permits shall be required for any temporary sign or structure or any handling of hazardous chemicals, byproducts or wastes or any agricultural use.

(F) Site requirements for primary uses and structures — Industrial:

- (1) Minimum lot size shall be 30,000 square feet.
- (2) Minimum lot width at the building setback line shall be 150 feet.
- (3) Minimum street frontage for a standard lot is 150 feet. Minimum street frontage for a cul-de-sac lot shall be 90 feet.
- (4) Minimum front setbacks shall be 25 feet. Minimum side setbacks shall be 15 feet. Minimum rear setbacks shall be 15 feet.
- (5) Maximum building height shall be 35 feet.
- (6) Minimum off-street parking for civic uses shall be one space per full-time employee or equivalent, plus one space for each ten persons based on the capacity of the largest meeting facility on the site at which a regularly scheduled activity may be held. All civic uses shall provide a minimum of five spaces.

(G) Supplemental requirements for accessory buildings and uses - Industrial:

- (1) Commercial uses adjacent to one or more residential uses must provide suitable buffering between the commercial use and each residential use through the use of landscaping or fencing extending to a height of six feet.

§ 2.10 PD, PLANNED DEVELOPMENT DISTRICTS.

(A) Purpose. The planned development district is a free-standing district designed to provide for the development of land as an integral unit for single or mixed uses in accordance with a plan that may vary from the established regulations of other zoning districts. It is the intent in such a district to insure compliance with good zoning practices while allowing certain desirable departures from the strict provisions of specific zoning classifications.

(B) Application. An application for a planned development district shall be processed in accordance with this Ordinance. A pre-planning conference is required between the applicant and the City Manager or his designee prior to the actual filing of the application.

(C) Base district. A base zoning district shall be specified. The regulations in the base zoning district shall control unless specifically stated otherwise in the PD.

(D) District plans and requirements. There are two types of plans that may be required to be used in the planned development process. The general purpose and use of each plan is described as follows:

- (1) Concept plan. This plan is intended to be used as the first step in the planned development process. It establishes the most general guidelines for the district by identifying the land use types, development standards, approximate road locations and project boundaries and illustrates the integration of these elements into a master plan for the whole district.
- (2) Detail plan. The detail plan is the final step of the planned development process. It contains the details of development for the property. For smaller tracts or where final development plans are otherwise known, the detail plan may be used to establish the district and be the only required step in the planned development process.

(E) Concept plan requirements. Said concept plan shall include the following:

- (1) Relation to the comprehensive plan. A general statement setting forth how the proposed district will relate to the city's comprehensive plan and the degree to which it is or is not consistent with that plan and the proposed base zoning district.
- (2) Acreage. The total acreage within the proposed district.
- (3) Survey. An accurate survey of the boundaries of the district.

- (4) Land uses. Proposed general land uses and the acreage for each use, including open space. For residential development, the total number of units and the number of units per acre.
- (5) General thoroughfare layout. Proposed streets, as a minimum to arterial street level. (Showing collector and local streets is optional.)
- (6) Development standards. Development standards, if different from the base zoning district, for each proposed land use, as follows:
 - (a) Minimum lot area.
 - (b) Minimum lot width and depth.
 - (c) Minimum front, side, and rear building setback areas.
 - (d) Maximum height of buildings.
 - (e) Maximum building coverage.
 - (f) Maximum floor to area ratios for nonresidential uses.
 - (g) Minimum parking standards for each general land use.
 - (h) Other standards as deemed appropriate.
- (7) Existing conditions. On a scaled map sufficient to determine detail, the following shall be shown for the area within the proposed district:
 - (a) Topographic contours often feet or less.
 - (b) Existing streets.
 - (c) Existing 100-year floodplain, floodway and major drainage ways.
 - (d) City limits and E.T.J. boundaries.
 - (e) Zoning districts within and adjacent to the proposed district.
 - (f) Land use.
 - (g) Utilities, including water, wastewater and electric lines.

(F) Detail plan requirements: The application for a planned development district shall include a detail plan consistent with the concept plan. Said detail plan shall include the following:

- (1) Acreage. The acreage in the plan as shown by a survey, certified by a registered surveyor.
- (2) Land uses. Permitted uses, specified in detail, and the acreage for each use.
- (3) Off-site information. Adjacent or surrounding land uses, zoning, streets, drainage facilities and other existing or proposed off-site improvements, as specified by the department, sufficient to demonstrate the relationship and compatibility of the district to the surrounding properties, uses, and facilities.
- (4) Traffic and transportation. The location and size of all streets, alleys, parking lots and parking spaces, loading areas or other areas to be used for vehicular traffic; the proposed access and connection to existing or proposed streets adjacent to the district; and the traffic generated by the proposed uses.
- (5) Buildings. The locations, maximum height, maximum floor area and minimum setbacks for all nonresidential buildings.
- (6) Residential development. The numbers, location, and dimensions of the lots, the minimum setbacks, the number of dwelling units, and number of units per acre (density).
- (7) Water and drainage. The location of all creeks, ponds, lakes, floodplains or other water retention or major drainage facilities and improvements.
- (8) Utilities. The location and route of all major sewer, water, or electrical lines and facilities necessary to serve the district.
- (9) Open space. The approximate location and size of greenbelt, open, common, or recreation areas, the proposed use of such areas, and whether they are to be for public or private use.

- (10) Sidewalks and bike paths. Sidewalks or other improved ways for pedestrian or bicycle use.
- (11) Landscape plan. If multifamily or non-residential development, a landscape plan.

A detailed plan, with all of the information required of a concept plan, may be submitted in lieu of a concept plan.

(G) Phasing schedule: PD districts larger than 350 acres shall provide a phasing schedule depicting the different construction phases.

(H) Approval of district: The city council may, after receiving a recommendation from the planning and zoning commission, approve by ordinance the creation of a district based upon a concept plan or a detail plan. The approved plan shall be made part of the ordinance establishing the district. Upon approval said change shall be indicated on the zoning maps of the city.

The development standards and requirements including, but not limited to, maximum height, lot width, lot depth, floor area, lot area, setbacks and maximum off-street parking and loading requirements for uses proposed shall be established for each planned development district based upon the particular merits of the development design and layout. Such standards and requirements shall comply with or be more restrictive than the standards established in the base zoning district for the specific type uses allowed in the district, except that modifications in these regulations may be granted if it shall be found that such modifications are in the public interest, are in harmony with the purposes of this Ordinance and will not adversely affect nearby properties.

(I) Planning commission approval of detail, plan. The planning and zoning commission is authorized to approve a detail plan or the amendment of a detail plan for property for which a concept plan has been approved by the city council. If the city council initially approved a detail plan in establishing the district, the detail plan may only be amended by the city council. The approved detail plan shall be permanently filed with the City Secretary. The planning and zoning commission shall approve the detail plan if it finds that:

- (1) Compliance. The plan complies with the concept plan approved for that property and the standards and conditions of the PD district;
- (2) Compatibility. The plan provides for a compatible arrangement of buildings and land uses and would not adversely affect adjoining neighborhood or properties outside the plan; and
- (3) Circulation of vehicular traffic. The plan provides for the adequate and safe circulation of vehicular traffic.

If no detail plan has been approved for the property within five years of the date of approval of a concept plan, the detail plan must be approved by the city council, after receiving a recommendation from the planning commission, after notice and hearing.

(J) Expiration of detail plan. A detail plan shall be valid for five years from the date of its approval. If a building permit has not been issued or construction begun on the detail plan within the five years, the detail plan shall automatically expire and no longer be valid. The planning and zoning commission may, prior to expiration of the detail plan, for good cause shown, extend for up to 24 months the time for which the detail plan is valid.

(K) Appeals from planning commission action. If the planning and zoning commission disapproves a detail plan over which it has final approval authority, or imposes conditions, or refuses to grant an extension of time for which a detail plan is valid, the applicant may appeal the decision to the city council by filing a written request with the planning director within ten days of the decision.

(L) Changes in detail plan. Changes in the detail plan shall be considered the same as changes in the zoning ordinance and shall be processed as required in section 4.02. Those changes which do not alter the basic relationship of the proposed development to adjacent property and which do not alter the uses permitted or increase the density, floor area ratio, height, or coverage of the site, or which do not decrease the off-street parking ratio or reduce the yards provided at the boundary of the site, as indicated on the approved detail plan, may be authorized by the Mayor. Any applicant may appeal the decision of the Mayor to the planning and zoning commission for review and decision as to whether an amendment to the planned development district ordinance shall be required.

(M) Minimum development size. The total initial development of any planned development district shall not be less than two acres for nonresidential developments and five acres for residential developments.

(N) Deviation from code standards. The city council may approve a PD concept plan with deviations from any provision in this Code. Such deviations shall be listed or shown as part of the ordinance that approves the concept plan.

SECTION 3.00 GENERAL REGULATIONS

§ 3.01 NONCONFORMING USES OF LANDS AND STRUCTURES.

Any use of land or structures lawfully existing on the effective date of this Ordinance, that is not allowed in the district in which the use is located or any use or structure which becomes nonconforming as a result of an amendment to this Ordinance may be continued, subject to the following conditions.

(A) No nonconforming use of land shall be extended to occupy a greater area of land that was occupied at the effective date of adoption or amendment of this Ordinance.

(B) No nonconforming use of land shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by the use at the effective date of adoption or amendment of this Ordinance.

(C) No existing structure devoted to a use not allowed by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered, except for routine repairs or in changing the use of the structure to a use allowed in the district in which it is located.

(D) Any nonconforming use may be extended throughout any parts of a building, which were manifestly arranged or designed for the use at the time of adoption or amendment of this Ordinance, but no use shall be extended to occupy any land outside the building.

(E) Any structure, or structure and land in combination, in or in which a nonconforming use is superseded by an allowed use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.

(F) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming use status of the land. Thereafter, the land must be used in compliance with the rules established in this Ordinance governing the district in which the land is located. Destruction for the purpose of this Ordinance is defined as damage to an extent of more than 50% of the replacement cost at time of destruction.

(G) The Council, after notice and hearing, may require that a nonconforming use be screened from view of the street or surrounding property, or may require the elimination of any nuisance caused by a nonconforming use.

(H) When nonconforming structures or land have ceased to be used for any nonconforming use for more than six (6) full calendar months, whether with intent to abandon such use or not, the nonconforming use shall not thereafter be made of such structures or land.

§3.02 NONCONFORMING STRUCTURES.

(A) Any structure lawfully existing on the effective date of this Ordinance, or any amendment hereto that is designed for a use not allowed in the district where the structure is located shall be designated a nonconforming structure.

(B) No nonconforming structure may be enlarged or altered, except to redesign it for a use allowed in the district where the structure is located. Ordinary maintenance and repairs are allowed.

(C) Should the nonconforming structure be destroyed by any means to an extent of more than 50% of its replacement cost at time of destruction, it shall not be reconstructed, except in conformity with the provisions of this Ordinance.

(D) Should the structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

§ 3.03 NONCOMPLYING STRUCTURES.

(A) Any structure lawfully existing on the effective date of this Ordinance, or any amendments hereto, that is designed for a use that is allowed in the district where the structure is located, but which does not comply with one or more of the dimensional regulations of this Ordinance, such as limitations on areas, lot coverage, height, parking area and locations on lot, shall be designated a noncomplying structure.

(B) Noncomplying structures shall be treated the same as structures which comply with all of the regulations of this Ordinance, provided that alterations shall not be allowed which increase the noncompliance.

SECTION 4.00 ADMINISTRATION AND ENFORCEMENT

§ 4.01 ADMINISTRATION AND ENFORCEMENT.

(A) Zoning Administrator

- (I) The Mayor shall be the zoning administrator and shall designate an alternate designee.
- (2) Authority and Duties. The zoning administrator or the designated alternate shall have the following authority and duties:
 - (a) Administer and enforce the provisions of this Ordinance.

- (b) Review and coordinate staff activities with respect to the following applications:
 - (i) Zoning variance requests;
 - (ii) Special use permits; and
 - (iii) Rezoning requests.

§ 4.02 AMENDMENTS.

- (A) Amendments to this Ordinance shall be made by the Council in accordance with the provisions of this Ordinance.

- (1) Amendments to this Ordinance shall be of two types:

- (a) Those that change the zoning classification of particular parcels of land; and
 - (b) All others, which include amendments that supplement, change or repeal general provisions of this Ordinance.

- (2) All amendments shall conform to the goals, standards and the future land use map of the comprehensive plan of the city.

(B) Process

- (1) Before Planning and Zoning Commission:

- (a) An application for a change in zoning classification shall, after consultation with the zoning administrator, include any accompanying information and the nonrefundable filing fee in an amount established by the City Council be submitted by the applicant.
 - (b) The zoning administrator shall review the application for completeness with this Ordinance. Within ten (10) business days, written notice of the necessary documents or other information that the applicant failed to provide with the application shall be provided to the owner/applicant (as designated on the application form) for compliance. The written notice shall include the date the application will expire if the necessary documents or other information is not provided. Zoning change applications will expire within 45 days of the date the application is delivered to the City or sent to the City by certified mail if the applicant fails to provide the specified documents or other information required in the written notice to the applicant.
 - (c) The zoning administrator shall have a map prepared to an appropriate scale which shall show the owner of each tract within the area to be rezoned as well as the current and the proposed zoning district or districts of each tract.
 - (d) The zoning administrator shall verify with the agent of the several owners that the map is correct with respect to ownership and zoning district requested or with the mayor and/or commission chairman, as appropriate, as to delineation of the zoning districts shown thereon.

- (2) Notice. The zoning administrator shall then initiate the following actions:

- (a) In an application for a change in zoning classification, the preparation of a list, using a current tax appraisal map and the current city tax roll, of all owners of any property within the area to be considered for rezoning and within two hundred (200) feet of such area.
 - (b) Determination of the date of the next meeting of the commission, not less than three (3) full weeks and not more than seven (7) full weeks from the date of the application, place such request on the agenda of the commission, and schedule a public hearing thereon.
 - (c) Mailing a letter to each of the property owners as above and including the applicant, stating the purpose of the request, street address of the property for which rezoning is requested, date, time and place of the public hearing before the

commission, and that comments about the request must be made in writing or verbally before the commission. The notification letters deposited at the post office as ordinary mail not less than ten (10) days prior to the meeting of the commission shall constitute constructive notice.

- (d) Whether for an application for a change in zoning classification or otherwise amending this ordinance, notice of a public hearing before the Commission to consider a proposed variance, proposed zoning classification change or a proposed general amendment to this Ordinance shall be published in an official newspaper of general circulation in Smiley at least 15 days prior to the date set for the hearing. The notice shall state the time and place of the hearing and contain a description of the matter to be considered.
- (3) The city staff shall prepare a statement for presentation at the public hearing before the commission. The statement shall contain at a minimum:
 - (a) Any information bearing upon the request that may not be evident from the application.
 - (b) Impact of approval of the zoning change upon utility service, drainage, streets, parking, police protection, and fire protection in the local area.
- (4) Commission Action.
 - (a) The commission shall hold a public hearing pertaining to the rezoning request and shall receive comment in writing or verbally.
 - (b) The commission shall consider the staff statement.
 - (c) The commission shall recommend in writing to the council that the rezoning request should be approved, approved with modification, or denied.
- (5) Council Action.
 - (a) Hearing. The Council shall hold at least one public hearing on all proposed variances, zoning classification changes and general amendments to this Ordinance before acting thereon.
 - (b) Notice. Notice of a public hearing before the Council to consider a proposed variance, proposed zoning classification change or a proposed general amendment to this Ordinance shall be published in an official newspaper of general circulation in Smiley at least 15 days prior to the date set for the hearing. The notice shall state the time and place of the hearing and contain a description of the matter to be considered.
 - (c) Special considerations. A change of zoning classification proposed by the owner of the parcel affected may be enacted, even though the proposed change does not conform to the future land use map in the comprehensive plan of the city, provided that the Council finds that significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the future land use map was adopted which make it unlikely that the parcel can be developed or used for any use allowed under the zoning classification indicated for the parcel in the plan and, provided further, that the Council finds that the requested zoning classification is the most appropriate classification for the area affected.
 - (d) Protest by adjacent property owners. If a written protest is submitted against a proposed change of zoning classification signed by all the owners of 20% or more either of the area of the lots or land included in the proposed change, or of the lots of land immediately adjoining the same and extending 200 feet therefrom, the change of zoning classification shall not become effective except by the favorable vote of three-fourths of all the members of the Council.
 - (e) Consideration. The Council shall approve, approve with the modification, or deny the request.
 - (f) Subsequent Actions. The zoning administrator shall have the Official Zoning Map amended.

- (C) No applications for a change of zoning classification shall be accepted if an application for a similar zoning change on the same property has been denied by the City Council within the preceding 12-month period.

§ 4.03 VARIANCES.

- (A) The Council shall serve as the Zoning Board of Adjustment and may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Council shall prescribe only conditions that it deems necessary to or desirable in the public interest. In making the findings herein below required, the Council shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed use, and the probable effect the variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.

- (B) A variance is an appeal by the applicant that a grant of relief be made from a specific requirement of the zoning regulations because of a peculiar condition existing within or adjacent to a specific tract or structure located thereon. Such variances are allowed where, owing to special conditions, a literal enforcement of the provision of the zoning regulations or of the building codes would result in exceptional difficulties or hardships upon the owner of the property. In deciding the variance petition, the council shall apply the following criteria:

- (1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Code to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
- (2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
- (3) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
- (4) Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- (5) Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;
- (6) The hardship or inequity suffered by petitioner is not self-induced;
- (7) The request for a variance is not based exclusively upon a desire from the petitioner for increased financial gain from the property, or to reduce an existing financial hardship; and
- (8) The degree of variance requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this Ordinance.

The variance shall not permit a use for other than uses specifically authorized for the district within which the property is located.

- (C) An application for a variance shall be made in writing in a form prescribed by the City Council and shall be accompanied by a site plan and additional information as may be requested in order to properly review the application. The information may include, but is not limited to, plat plans, site building plans and contour maps.

- (D) After consultation with the city staff, the application, accompanying information, and the nonrefundable filing fee, in an amount established by the City Council, shall be submitted.
- (1) The Zoning Administrator or a duly appointed city official shall visit the site where the proposed variance will apply and the surrounding area and shall report his findings to the City Council.
 - (2) The Council shall review each application at a public hearing within 45 days of application.
 - (3) The Council shall not grant a variance unless it finds, based on competent evidence, that each of the conditions in division (B) above has been established. The burden of establishing conditions is on the applicant.
 - (4) The Council may impose conditions, limitations and safeguards as it deems appropriate upon the grant of any variance. Violation of any condition, limitation or safeguard shall constitute a violation of this Ordinance.
 - (5) Any rights authorized by a variance which are not exercised within one year from the date of granting the variance shall lapse and may be reestablished only after application and a new hearing pursuant to this Ordinance.

§ 4.04 SPECIAL USE PERMITS.

- (A)
 - (1) No special use shall be established, operated or maintained, except as authorized by a special use permit issued in accordance with the requirements of this Ordinance.
 - (2) A special use permit may be issued only for the special uses specified in the district in which it is authorized, or for a temporary use which is not allowed in any district. A special use permit may be issued by the City Council acting after a properly noticed public hearing.
 - (3) An application for a special use permit shall be made in writing and shall be accompanied by a site plan as defined by this Ordinance in order to analyze properly the proposed use. For commercial and industrial uses requiring a special use permit, detailed building plans and operational data are also required.
 - (4) The City Planner or other authorized city official shall visit the site where the proposed special use permit will apply and shall report his findings to the City Council.
 - (5) For the purpose of notice and public hearing, a special use permit application shall be treated as a zoning change request and shall comply with the provisions of § 4.02.
- (B) A proposed special use permit must comply with all the following criteria:
 - (1) The appearance, size, density and operating characteristics of the neighborhood and uses;
 - (2) The proposed use will not have an adverse effect on the value of surrounding properties nor impede their proper development;
 - (3) The proposed use will neither create a nuisance nor otherwise interfere with a neighbor's enjoyment of his property or operation of his business;
 - (4) The traffic that the proposed use can reasonably be expected to generate on existing streets will not create nor add significantly to congestion, a safety hazard or a parking problem in the area, nor will it disturb the peace and quiet of the neighborhood; and
 - (5) The proposed use complies with all other applicable ordinances and regulations.

§4.05 STOP WORK ORDERS.

- (A) The City Inspector or another duly authorized city official may order all works, including site clearing or other site preparation, stopped on any site where a significant violation of this Ordinance or a final site plan is found. Any person, including a workman on the site, who fails to comply with a stop work order shall be guilty of a misdemeanor punishable as provided in the penalty section thereof.

- (B) If the Council finds, after notice and hearing, that a significant violation of an approved final site plan has occurred, the Council may revoke its approval of the site plan. It shall be unlawful for any person to do any work on the site covered by the site plan unless and until a new application for site plan approval has been filed and processed in accordance with the provisions of this Ordinance and the Council grants approval to a new final site plan which corrects the violations of the original site plan.
- (C) Any structure erected or used, or any work done, contrary to any of the provisions of this Ordinance or to any of the details contained in the final site plan approved by the City Council is hereby declared to be unlawful and shall constitute a violation of this Ordinance. The Council may direct the City Attorney to initiate injunction, mandamus, abatement or any other action available in law or equity to prevent, enjoin, abate, correct or remove the unlawful structure, use or work.

§ 4.06 FEES.

- (A) All applications and submissions required by this Ordinance are to be accompanied by fees and costs as may be required pursuant to the schedule of fees as may be adopted and amended from time to time by resolution of the Council.
- (B) These fees are not mutually exclusive. The full amount of the fee for each type of application shall be charged. The fee for a variance request may be waived by the Council for those cases, such as existing undersized lots, in which the strict application of the development standards for the applicable zoning district would render the property unusable. For mixed use projects, fees shall be prorated in accordance with the acreage devoted to each use.

§ 4.07 PENALTY.

Any Person, firm or Corporation violating any provision of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not more than \$2,000.00; each day such violation continues shall constitute a separate offense.