

# Part II Code

## Table of Content

<b>Table of Content</b> .....	<b>I</b>
<b>PART II</b> .....	<b>1</b>
<b>CODE OF ORDINANCES</b> .....	<b>1</b>
<b>Chapter 1</b> .....	<b>1</b>
<b>GENERAL PROVISIONS</b> .....	<b>1</b>
Sec. 1-1. How Code designated and cited.....	1
Sec. 1-2. Rules of construction.....	1
Sec. 1-3. Catchlines of sections. ....	3
Sec. 1-4. Amendments to Code - Effect. ....	3
Sec. 1-5. Same - Manner. ....	3
Sec. 1-6. Same - Language.....	4
Sec. 1-7. Same - New material.....	4
Sec. 1-8. Same - Repeal. ....	4
Sec. 1-9. Same - Subject to general penalty. ....	4
Sec. 1-10. Supplementation of Code.....	5
Sec. 1-11. Altering Code. ....	6
Sec. 1-12. General penalty for violations of Code; continuing violations.....	6
Sec. 1-13. Effect of repeal of ordinances.....	6
Sec. 1-14. Severability of parts of Code. ....	6
<b>Chapter 2</b> .....	<b>13</b>
<b>ADMINISTRATION</b> .....	<b>13</b>
<b>ARTICLE I. IN GENERAL</b> .....	<b>13</b>
Secs. 2-1 - 2-15. Reserved. ....	13
<b>ARTICLE II. EMPLOYEE BENEFITS</b> .....	<b>13</b>
DIVISION 1. GENERALLY .....	13
Sec. 2-16. Worker's compensation.....	13
Secs. 2-17 - 2-23. Reserved.....	13
DIVISION 2. SOCIAL SECURITY † .....	13
Sec. 2-24. Execution of agreements - Directed. ....	13
Sec. 2-25. Same - Agent. ....	13
Sec. 2-26. Duties of secretary. ....	14
Sec. 2-27. Fund established.....	14
Secs. 2-28 - 2-34. Reserved.....	14
DIVISION 3. MUNICIPAL RETIREMENT SYSTEM.....	14
Sec. 2-35. Election to participate.....	14
Sec. 2-36. Notice of election.....	14
Sec. 2-37. Inclusion of employees.....	14
Sec. 2-38. Additions to, discontinuance of coverage. ....	15
Sec. 2-39. Contribution deposits. ....	15
Sec. 2-40. Remittance, reports to board of trustees. ....	15
Sec. 2-41. Effective date. ....	15
Sec. 2-42. Supplemental disability benefits fund - Election to participate. ....	15
Sec. 2-43. Same - Notice to trustees.....	16
Sec. 2-44. Same - Employees included.....	16
Sec. 2-45. Same - Remittance, reports to trustees.....	16

Sec. 2-46. Same - Effective date.....	16
Sec. 2-47. Supplemental death benefits.....	16
Sec. 2-48. Authorization of updated service credits.....	17
Sec. 2-49. Increase in retirement annuities.....	17
<b>ARTICLE III. RECORDS MANAGEMENT PROGRAM.....</b>	<b>18</b>
Sec. 2-50. Definition of City Records.....	18
Sec. 2-51. Additional Definitions.....	18
Sec. 2-52. City Records Declared Public Property.....	19
Sec. 2-53. Policy.....	19
Sec. 2-54. Designation of Records Management Officer.....	20
Sec. 2-55. Establishment of Records Management Committee.....	20
Sec. 2-56. Records Management Plan to be Developed; Approval of Plan; Authority of Plan.....	20
Sec. 2-57. Duties of Records Management Officer.....	21
Sec. 2-58. Duties and Responsibilities of Department Heads.....	22
Sec. 2-59. Designation of Records Liaison Officers.....	23
Sec. 2-60. Duties and Responsibilities of Records Liaison Officers.....	23
Sec. 2-61. Records Control Schedules to be Developed; Approval; Filing with State.....	23
Sec. 2-62. Implementation of Records control Schedules; Destruction of Records under Schedule.....	24
Sec. 2-63. Destruction of Unscheduled Records.....	24
Sec. 2-64. Records Center.....	24
<b>Chapter 3.....</b>	<b>33</b>
<b>ADVERTISING.....</b>	<b>33</b>
<b>ARTICLE I. IN GENERAL.....</b>	<b>33</b>
Sec. 3-1. Reserved.....	33
Sec. 3-2. Destroying lawful posters.....	33
Secs. 3-3 - 3-20. Reserved.....	33
<b>ARTICLE II. SIGNS AND BILLBOARDS.....</b>	<b>33</b>
DIVISION 1. GENERALLY.....	33
Sec. 3-21. Definitions.....	33
Sec. 3-22. Scope of article.....	35
Sec. 3-23. Posting bills, etc. - on public property.....	35
Sec. 3-24. Same - On private premises.....	35
Sec. 3-25. Violations defined; penalties; nuisance signs.....	35
Secs. 3-26 - 3-35. Reserved.....	36
DIVISION 2. LICENSES AND BONDS.....	36
Sec. 3-36. Billboard operator - License.....	36
Sec. 3-37. Same - Bond.....	36
Sec. 3-38. License nontransferable.....	36
Sec. 3-39. Expiration and renewal of licenses.....	37
Sec. 3-40. Liability on bonds for violations.....	37
Sec. 3-41. Recoveries on bonds.....	37
Sec. 3-42. Disposition of recoveries.....	37
Sec. 3-43. Sign and Billboards.....	38
DIVISION 3. LOCATION, CONSTRUCTION AND MAINTENANCE REQUIREMENTS.....	38
Sec. 3-53. Billboards - Location.....	38
Sec. 3-54. Same - Construction.....	38
Sec. 3-55. Same - Maintenance, generally.....	41

<b>Chapter 4.....</b>	<b>47</b>
<b>ALCOHOLIC BEVERAGES .....</b>	<b>47</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>47</b>
Sec. 4-1. Hours of Sale. ....	47
Sec. 4-2. Definitions. ....	47
Sec. 4-3. Permits Required; Fees. ....	47
Sec. 4-4. Prohibited locations.....	48
Sec. 4-5. Sale of Beer Prohibited in Residential Areas; Proper zoning district required.....	49
Sec. 4-6. Penalty.....	49
Secs. 4-7 - 4-20. Reserved. ....	50
<b>ARTICLE II. PERMITS" .....</b>	<b>50</b>
Sec. 4-21. Violations. ....	50
Sec. 4-22. Permit required. ....	50
Sec. 4-23. Nature of permit. ....	51
Sec. 4-24. Application for permit. ....	51
Sec. 4-25. False statements on application.....	51
Sec. 4-26. Investigation; appeal. ....	51
Sec. 4-27. Issuance. ....	52
Sec. 4-28. Fee. ....	52
<b>Chapter 5.....</b>	<b>57</b>
<b>AMUSEMENTS .....</b>	<b>57</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>57</b>
Sec. 5-1. Bond or liability insurance required for amusement rides. ....	57
Secs. 5-2 - 5-15. Reserved. ....	57
<b>ARTICLE II. POOL AND BILLIARD ROOMS.....</b>	<b>57</b>
DIVISION 1. GENERALLY .....	57
Sec. 5-16. Definitions. ....	57
Sec. 5-17. Hours of operation.....	59
Sec. 5-18. Reserved .....	59
Sec. 5-19. Partitions.....	59
Sec. 5-20. Location. ....	59
Sec. 5-21. Restrictions .....	59
For all Amusement Redemption Machine Game Rooms: .....	60
Sec. 5-22. Unrestricted Access; Inspections. ....	60
Sec. 5-23. Disturbing Peace; Security Guard Required.....	61
Sec. 5-24 - 5-30. Reserved. ....	61
DIVISION 2. LICENSE .....	61
Sec. 5-31. Required. ....	61
Sec. 5-32. Application - Generally. ....	61
Sec. 5-33. Same - Contents. ....	61
Sec. 5-34. Reserved. ....	62
Sec. 5-35. Investigation.....	62
Sec. 5-36. Denial of.....	62
Sec. 5-37. Tax.....	63
Sec. 5-38. License fee for Amusement Redemption Game Room; Term.....	64
Sec. 5-39. Transfer. ....	64
Sec. 5-40. Display. ....	64
Sec. 5-41. Fines and Penalties.....	64
Sec. 5-42. Severability Clause .....	64
Sec. 5-43. Grandfather Clause.....	65

<b>Chapter 6</b> .....	<b>67</b>
<b>ANIMALS AND FOWLS</b> .....	<b>67</b>
<b>ARTICLE I. IN GENERAL</b> .....	<b>67</b>
Sec. 6-1. Animals, fowl at large prohibited.....	67
Sec. 6-2. Diseased animals.....	67
Secs. 6-3 - 6-15. Reserved.....	67
<b>ARTICLE II. KEEPING REGULATIONS ‡</b> .....	<b>67</b>
Sec. 6-16. Limitations on swine.....	67
Sec. 6-17. Requirements governing hoofed animals.....	68
Sec. 6-18. Small animals and fowl.....	68
Sec. 6-19. Pens and enclosures.....	68
Sec. 6-20. Distances required for new construction.....	68
Secs. 6-21 - 6-30. Reserved.....	68
<b>ARTICLE III. ANIMAL CONTROL</b> .....	<b>69</b>
<b>DIVISION 1. GENERALLY</b> .....	<b>69</b>
Section 6-31. Definitions .....	69
Section 6-32. Penalty for violation of article.....	71
Section 6-33. Exemptions from article.....	71
Section 6-34. Animal control officer (ACO); authority; interference with duties prohibited.....	72
Section 6-35. Certain animals prohibited; exceptions.....	72
Secs. 6-36 - 6-49 Reserved.....	72
<b>DIVISION 2. LICENSING OF DOGS AND CATS</b> .....	<b>72</b>
Sec. 6-50. License required.....	72
Sec. 6-51. Rabies vaccination a prerequisite to issuance.....	73
Sec. 6-52. Display of license and rabies tag; retention of license receipt and vaccination certificates.....	73
Sec. 6-53. Duplicate tags.....	73
Sec. 6-54. False and stolen license documents.....	73
Sec. 6-55 Transferability .....	73
<b>DIVISION 3. RABIES CONTROL</b> .....	<b>74</b>
Sec. 6-67. Vaccinations-Required; annual revaccination; waiting period .....	74
Sec. 6-68. Certificate of vaccination .....	74
Sec. 6-70. Duplicates .....	74
Sec. 6-71. Proof of vaccination; exhibition upon enforcement official's demand.....	74
Sec. 6-72. Harboring unvaccinated animals.....	75
Sec. 6-73. Bite from animals susceptible to rabies - duty to report.....	75
Sec. 6-74. Same -Exclusions.....	75
Sec. 6-75. Same - Confinement of dogs and cats .....	75
Sec. 6-76. Diagnosis or suspicion of rabies - Report.....	75
Sec. 6-77. Same-Pathological examination of animal suspected to be rabid. ....	76
Sec. 6-78. Same Authorization for citywide quarantine.....	76
Sec. 6-79. Disposition of affected Animals .....	76
<b>DIVISION 4. RUNNING AT LARGE, NUISANCE ACTIVITIES, DANGEROUS OR VICIOUS</b> .....	<b>77</b>
Sec. 6-91. Unlawful possession-running at large prohibited.....	77
Sec. 6-92. Dangerous and or Vicious Dog or other Animal.....	77
Sec. 6-93. Harboring a dog or animal declared to be dangerous, vicious or a nuisance.....	78
Secs. 6-94 - 6-96 Reserved.....	80

Sec. 6-97. Dog or other animal that has bitten, scratched or attacked any person.	80
Secs. 6-98 - 6-107 Reserved.....	81
DIVISION 5. IMPOUND .....	81
Sec. 6-108. Authority to impound. ....	81
Sec. 6-109. Animal shelter-Established.....	81
Sec. 6-110. Same - Removal of animals without official consent prohibited. ....	82
Sec. 6-111 Removal of biting dogs or cats from confinement.....	82
Sec. 6-112. Disposition of impounded dogs or cats.....	82
Sec. 6-113. Disposition of impounded animal being held on complaint. ....	82
Sec. 6-114. Humane destruction of dogs and cats when requested by the owner.	82
Secs. 6-115 - 6-125 Reserved.....	83
DIVISION 6. KENNELS.....	83
Sec. 6-126. Operation of kennels generally; definition; license required.....	83
Sec. 6-127. Licenses -Issuance, renewal; inspection, fee; maximum capacity; state license prerequisite.....	83
Sec. 6-128. Same - Revocation or suspension.....	83
Sec. 6-129. Same - Exceptions to requirement. ....	84
<b>Chapter 7.....</b>	<b>93</b>
<b>AVIATION .....</b>	<b>93</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>93</b>
Secs. 7-1 - 7-15. Reserved. ....	93
<b>ARTICLE II. AIRPORT ADVISORY BOARD‡ .....</b>	<b>93</b>
Sec. 7-16. Created.....	93
Sec. 7-17. Composition.....	93
Sec. 7-18. Qualifications. ....	93
Sec. 7-19 Appointment.....	93
Sec. 7-20. Terms.....	93
Sec. 7-21. Compensation.....	94
Sec. 7-22. Officers. ....	94
Sec. 7-23. Secretary. ....	94
Sec. 7-24. Manager.....	94
Sec. 7-25. Rules, regulations. ....	94
Sec. 7-26. Duties generally. ....	94
Secs. 7-27 - 7-30. Reserved.....	95
<b>ARTICLE III. AIRPORT HAZARD ZONING.....</b>	<b>95</b>
Sec. 7-31. Short title.....	95
Sec. 7-32. Penalties. ....	95
Sec. 7-33. Definitions. ....	95
Sec. 7-34. Zones.....	98
Sec. 7-35. Height limitations.....	98
Sec. 7-36. Use restrictions. ....	99
Sec. 7-37. Conflicting regulations.....	99
Sec. 7-38. Nonconforming uses. ....	100
Sec. 7-39. Permits and variances.....	100
Sec. 7-40. Administration. ....	101
Sec. 7-41. Board of adjustment.....	102
Sec. 7-42. Appeals.....	103
Sec. 7-43. Judicial review.....	103
Sec. 7-44. Enforcement and remedies. ....	103

<b>Chapter 8</b> .....	<b>109</b>
<b>BUILDINGS</b> .....	<b>109</b>
<b>ARTICLE I. IN GENERAL</b> .....	<b>109</b>
Sec. 8-1. Fire limits.....	109
Secs. 8-2 - 8-15. Reserved.....	109
<b>ARTICLE II. BUILDING CODE</b> .....	<b>109</b>
Sec. 8-16. Adoption.....	109
Sec 8-17. Reserved.....	109
Sec. 8-18. Conflicts. ....	110
Sec. 8-19. Definitions. ....	110
Sec. 8-20. Penalty for violation. ....	110
Sec. 8-21 – 8-31. Reserved.....	110
<b>ARTICLE III. BUILDING INSPECTOR</b> .....	<b>110</b>
Sec. 8-32. Establishment of office. ....	110
Sec. 8-33. Appointment.....	110
Sec. 8-34. Term. ....	110
Sec. 8-35. Removal.....	111
Sec. 8-36. Temporary absence. ....	111
Sec. 8-37. Compensation. ....	111
Sec. 8-38. Duties generally. ....	111
Sec. 8-39. Issuance of permits. ....	111
Sec. 8-40. Permit fees.....	112
Sec. 8-41. Right of entry.....	112
<b>ARTICLE IV. SUBSTANDARD BUILDINGS</b> .....	<b>112</b>
Sec. 8-43. Abatement.....	113
Sec. 8-44. Minimum standards.....	113
Sec. 8-45. Authority.....	115
Sec. 8-46. Inspection and notice of abatement.....	116
Sec. 8-47. Enforcement powers of City Council.....	118
Sec. 8-48. Receiver.....	119
Sec. 8-49. Order to abate.....	119
Sec. 8-50. Filing and publication of order; sending of order to owner and lienholders.....	120
Sec. 8-51. Appeal and Judicial Review.....	120
Sec. 8-52. Violation and Penalty.....	121
Sec. 8-53. Expense of lien.....	121
Sec. 8-54. Voluntary Conveyance of Property to City for Demolition .....	122
Sec. 8-55. Administrative liability .....	122
Sec. 8-56. Building permit, fees.....	122
Sec. 8-57. Demolition-permit required. ....	123
Sec. 8-58 – Sec. 8-61 reserved.....	123
<b>ARTICLE V. LICENSE</b> .....	<b>123</b>
Sec. 8.62.....	123
Sec. 8.63.....	123
Sec. 8.64.....	124
Sec. 8.65.....	124
Sec. 8.66.....	124
Sec. 8.67.....	124
<b>Chapter 9</b> .....	<b>125</b>
<b>RESERVED</b> .....	<b>125</b>
<b>Chapter 10</b> .....	<b>133</b>

<b>ELECTRICITY .....</b>	<b>133</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>133</b>
Sec. 10-1 In General.....	133
Sec. 10-2 Amendments to Annex G, Administrative Code of NEC 2005 .....	133
Sec. 10-3 Contractor Registrations.....	134
Sec. 10-4 Fees.....	136
Sec. 10-5. Conflicts.....	136
Sec. 10-6. Penalty for violation.....	136
PAGES RESERVED .....	137
<b>Chapter 11.....</b>	<b>147</b>
<b>FIRE PROTECTION AND PREVENTION .....</b>	<b>147</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>147</b>
Sec. 11-1. Arson reward - Established. ....	147
Sec. 11-2. Same - How offered. ....	147
Sec. 11-3. Same - Notice. ....	147
Sec. 11-4. Same - Payment. ....	148
Sec. 11-5. Reserved. ....	148
Sec. 11-6. Hindrance or interference at fires. ....	148
Sec. 11-7. Tampering with, molesting equipment.....	148
Section 11-8: Burning of trash and rubbish restricted. ....	148
Section 11-9: Same - Location .....	149
Secs. 11-10 - 11-18. Reserved.....	150
<b>ARTICLE II. FIRE MARSHAL .....</b>	<b>150</b>
Sec. 11-19. Office created.....	150
Sec. 11-20. Independence of office.....	150
Sec. 11-21. Appointment.....	150
Sec. 11-22. Qualifications. ....	150
Sec. 11-23. Removal from office. ....	150
Sec. 11-24. Compensation.....	150
Sec. 11-25. Duty to investigate fires.....	150
Sec. 11-26. Taking of testimony generally.....	151
Sec. 11-27. Summon witnesses, obtain evidence, oaths.....	151
Sec. 11-28. Private investigations, separate witnesses. ....	151
Sec. 11-29. Duty when evidence indicates arson. ....	151
Sec. 11-30. Misconduct of witnesses. ....	151
Sec. 11-31. Right of entry.....	152
Sec. 11-32. Inspection of premises. ....	152
Sec. 11-33. Correction of dangerous conditions.....	152
Sec. 11-34. Record of fires.....	153
Sec. 11-35. Monthly report. ....	153
Sec. 11-36 - 11-46. Reserved. ....	153
<b>ARTICLE III. FIRE PREVENTION CODE .....</b>	<b>153</b>
Sec. 11-47. Adoption.....	153
Sec. 11-48. Flammable liquid regulations adopted.....	153
Sec. 11-49. Definitions. ....	153
Sec. 11-50. Conflicts.....	154
Sec. 11-51. Penalty for violation.....	154
Sec. 11-52. Establishment and duties of bureau of fire prevention. ....	154
Sec. 11-53. Districts in which storage of explosives, blasting agent is prohibited.	
.....	155

Sec. 11-54. Limits of districts in which storage of flammable liquids is outside aboveground storage tanks prohibited.....	155
Sec. 11-55. Limits in which bulk storage of liquefied petroleum gases is restricted. ....	155
Sec. 11-56. Establishment of routes for vehicles transporting explosives and blasting agents.....	155
Sec. 11-57. Establishment of routes for vehicles transporting hazardous chemicals or other dangerous articles. ....	155
Sec. 11-58. Establishment of fire lanes on private property devoted to public use. ....	155
Sec. 11-59. Modifications.....	156
Sec. 11-60. Appeals. ....	156
Sec. 11-61. New materials, processes or occupancies which may require permits. ....	156
Sec. 11-62. Mobile service units.....	156
Secs. 11-63 - 11-73. Reserved.....	156
<b>ARTICLE IV. LIQUEFIED PETROLEUM GAS .....</b>	<b>157</b>
Sec. 11-74. Minimum standards for appliances, appurtenances.....	157
Sec. 11-75. Minimum standards for piping. ....	157
Sec. 11-76. Installation permit. ....	157
Sec. 11-77. Manner of installation. ....	157
Sec. 11-78. Operation of installations.....	158
Sec. 11-79. Inspection, approval of installations.....	158
Sec. 11-80. Tank trucks, trailers generally.....	158
Sec. 11-81. Treatment for odor. ....	158
Secs. 11-82 – 11-99 Reserved.....	159
<b>ARTICLE V. FIREWORKS .....</b>	<b>159</b>
Sec. 11-100 Finding of Council .....	159
Sec. 11-101 Manufacture or Sale Unlawful .....	159
Sec. 11-102 Unlawful to explode within City limits, any City Lake Property, and the City Airport Property. ....	159
Sec. 11-103 Exception .....	159
Sec. 11-104 Penalty.....	159
<b>Chapter 12.....</b>	<b>165</b>
<b>FOOD AND FOOD HANDLERS.....</b>	<b>165</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>165</b>
Sec. 12-1. Disposal of contaminated foods. ....	165
Secs. 12-2 - 12-15. Reserved.....	165
<b>ARTICLE II. MILK AND MILK PRODUCTS: ‡ .....</b>	<b>165</b>
Sec. 12-16. Adoption of regulations.....	165
Sec. 12-17. Delivery containers.....	165
Sec. 12-18. Adulterated, misbranded or ungraded milk or milk products. ....	166
Sec. 12-19. Future dairies and milk plants.....	166
Sec. 12-20. Enforcement of article provisions.....	166
Secs. 12-21 - 12-31. Reserved.....	166
<b>ARTICLE III. FOOD SERVICE ESTABLISHMENTS .....</b>	<b>166</b>
Sec. 12-32. Adoption of Texas Food Establishment Rules. ....	166
Sec. 12-33. Permits and Exemptions .....	167
Sec. 12-34. Application for Permit and Fees .....	167
Sec. 12-35. Review of Plans .....	167
Sec. 12-36. Suspension of Permit .....	168



Sec. 12-37. Revocation of Permit.....	168
Sec. 12-38. Administrative Process.....	169
Sec. 12-39. Remedies.....	169
Secs. 12-41 -12-47. Reserved.....	169
<b>ARTICLE IV. MEAT AND POULTRY .....</b>	<b>169</b>
Sec. 12-48. Adoption of regulations.....	169
Sec. 12-49. Sale of uninspected products prohibited.....	170
Sec. 12-50. Seizure, destruction of uninspected products.....	170
Sec. 12-51. Appeal from condemnation.....	170
<b>Chapter 13.....</b>	<b>175</b>
<b>GARBAGE AND TRASH .....</b>	<b>175</b>
<b>ARTICLE I. COLLECTION OF GARBAGE .....</b>	<b>175</b>
Sec. 13 - 1. Definitions.....	175
Sec. 13 - 2. Duties of Customer.....	175
Sec. 13 - 3. Residential Collection - Containers and their Placement.....	176
Sec. 13 - 4. Residential Collection - Brush.....	176
Sec. 13 - 5. Wastes from Building Operations.....	176
Sec. 13 - 6. Prohibited Acts.....	176
Sec. 13 - 7. Residential Collection - Charges.....	177
Sec. 13 - 8. Duties of Commercial, Institutional and Industrial Customers.....	177
Sec. 13 - 9. Commercial, Institutional, and Industrial Collection.....	177
Sec. 13 - 10. Collection of Charges.....	177
Sec. 13 - 11. Manner of Collection, Transportation.....	178
Sec. 13 - 12. Private Disposal.....	178
Sec. 13 - 13. Penalty.....	178
Sec. 13 -14. Reserved.....	178
<b>ARTICLE II. CITY RECYCLE CENTER.....</b>	<b>178</b>
Sec. 13 - 15 City Recycle Center.....	178
Sec. 13-16. PENALTIES.....	180
Sec. 13-17. SEVERABILITY.....	180
Secs. 13-18 - 13-59. Reserved.....	180
<b>Chapter 14.....</b>	<b>187</b>
<b>HEALTH AND SANITATION.....</b>	<b>187</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>187</b>
Secs. 14-1 - 14-15. Reserved.....	187
<b>ARTICLE II. OFFENSIVE CONDITIONS AND NUISANCES:†.....</b>	<b>187</b>
Sec. 14-16. Declaration of nuisance.....	187
Sec. 14-17. Illustrative enumeration.....	187
Sec. 14-18. Notice to remove or citation.....	190
Sec. 14-19. City abatement.....	191
Sec. 14-20. Lien on property.....	191
Sec. 14-21. Remedies.....	191
Secs. 14-22--14-34. Reserved.....	192
<b>ARTICLE III. RATPROOFING .....</b>	<b>192</b>
Sec. 14-35. Definitions.....	192
Sec. 14-36. Rat harborage prohibited.....	193
Sec. 14-37. Storage of building materials.....	193
Sec. 14-38. Protection of food products.....	194
Sec. 14-39. Ratproofing required.....	194
Sec. 14-40. Inspections authorized.....	194
Sec. 14-41. Closure of infested premises.....	194

Sec. 14-42. Order to ratproof.....	194
Sec. 14-43. Time allowed for ratproofing.....	195
Sec. 14-44. Trapping.....	195
Sec. 14-45. Poisoning, fumigation.....	195
Sec. 14-46. Protection against climbing rats.....	195
Secs. 14-47 -14-57. Reserved.....	196
<b>ARTICLE IV. MOSQUITO CONTROL .....</b>	<b>196</b>
Sec. 14-58. Definition.....	196
Sec. 14-59. Treatment required.....	196
Sec. 14-60. Methods of treatment.....	196
Sec. 14-61. Presence of larvae.....	197
Sec. 14-62. Failure of person to abate.....	197
Sec. 14-63. Right of entry.....	197
<b>ARTICLE V. NOISE ABATEMENT AND CONTROL.....</b>	<b>197</b>
Sec. 14- 64. Purpose and Intent.....	197
Sec. 14- 65. Definitions.....	198
Sec. 14- 66. Regulations for Use.....	199
Sec. 14- 67. General Prohibitions.....	200
Sec. 14- 68. Disturbing, Excessive, Offensive Noises.....	201
Sec. 14 - 69. Burglar Alarms. Reserved.....	203
Sec. 14 - 70. Violations: Misdemeanors.....	203
Sec. 14-71 – 14-79 Reserved.....	203
<b>ARTICLE VI. NO SMOKING IN ALL CITY BUILDINGS .....</b>	<b>203</b>
Sec. 14-80. In General.....	203
Secs 14-81 – 14-89 Reserved.....	204
<b>ARTICLE VII. TIRE BUSINESS REGISTRATION, AND REGULATION .....</b>	<b>204</b>
Sec. 14-90 Purpose.....	204
Sec. 14-91. Definitions.....	204
Sec. 14-92. Tire Business Registration Program.....	205
Sec. 14-93. Tire Business Mobile Tire Repair Road Service Units, and Disposal of Tires Business Application.....	206
Sec. 14-94. Terms of Registration.....	207
Sec. 14-95. Denial of permit or renewal; suspension or revocation of permit..	207
Sec. 14-96. Fees.....	207
Sec. 14-97. Disposal of tires.....	208
Sec. 14-98 Tire Transporter, Tire Disposal Business, or Individual.....	208
Sec. 14-99 Unlawful disposal of tires.....	208
Sec. 14-100. Injunctive relief.....	209
Sec. 14-101 Abatement and relief by judgment.....	209
Sec. 14-102. Penalty for violation.....	209
Sec. 14-103. Severability.....	209
Secs. 14-104 – 14-124 Reserved.....	209
<b>Chapter 15.....</b>	<b>221</b>
<b>HOUSING.....</b>	<b>221</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>221</b>
Secs. 15-1 - 15-20. Reserved.....	221
<b>ARTICLE II. FAIR HOUSING†.....</b>	<b>221</b>
Sec. 15-21. Penalty.....	221
Sec. 15-22. Definitions.....	221
Sec. 15-23. Unlawful intimidation.....	222
Sec. 15-24. Discrimination in the sale or rental of housing.....	222

Sec. 15-25. Discrimination in the financing of housing.....	223
Sec. 15-26. Discrimination in the provision of brokerage services. ....	223
Sec. 15-27. Exemptions and exclusions. ....	224
Sec. 15-28. Fair housing administrator. ....	225
Sec. 15-29. Complaints. ....	225
Sec. 15-30. Investigation. ....	226
Sec. 15-31. Referral. ....	227
Sec. 15-32. Cumulative legal effect. ....	227
Sec. 15-33. Cooperation with the secretary of housing and urban development. .....	227
Sec. 15-34. Education and Public Information. ....	227
<b>Chapter 16-A</b> .....	<b>229</b>
<b>MOBILE HOMES*</b> .....	<b>229</b>
<b>ARTICLE I. IN GENERAL</b> .....	<b>229</b>
Sec. 16-A-1. Definitions.....	229
Sec. 16-A-2. Compliance. ....	230
Secs. 16-A-3 -16-A-15. Reserved. ....	230
<b>ARTICLE II. MOBILE HOME</b> .....	<b>230</b>
DIVISION 1. GENERALLY .....	231
Sec. 16-A-16. Compliance. ....	231
Sec. 16-A-17. Maintenance.....	231
Sec. 16-A-18. Rules and regulations for park. ....	231
Sec. 16-A-19. Office building.....	231
Sec. 16-A-20. Registration of occupants. ....	231
Secs. 16-A-21 - 16-A-26. Reserved.....	232
DIVISION 2. LICENSE .....	232
Sec. 16-A-27. Required.....	232
Sec. 16-A-28. Application.....	232
Sec. 16-A-29. Investigation. ....	232
Sec. 16-A-30. Fees. ....	233
Sec. 16-A-31. Issuance. ....	233
Sec. 16-A-32. Transfer. ....	233
Sec. 16-A-33. Display.....	233
Sec. 16-A-34. Revocation. ....	233
Secs. 16-A-35 - 16-A-42. Reserved.....	233
DIVISION 3. PHYSICAL REQUIREMENTS .....	233
Sec. 16-A-43. Compliance. ....	233
Sec. 16-A-44. Water supply and sanitary sewer.....	234
Sec. 16-A-45. Drainage.....	234
Sec. 16-A-46. Plumbing generally. ....	234
Sec. 16-A-47. Electrical work generally. ....	234
Sec. 16-A-48. Fire protection.....	234
Sec. 16-A-49. Setbacks.....	234
Sec. 16-A-50. Minimum lot size.....	235
Sec. 16-A-51. Streets.....	235
Sec. 16-A-52. Walkways .....	235
Sec. 16-A-53. Additional construction.....	235
Sec. 16-A-54. Location in City Limits.....	235
Secs. 16-A-56 -16-A-65. Reserved.....	237
<b>ARTICLE III. LOCATION OUTSIDE PARKS</b> .....	<b>237</b>
Sec. 16-A-66. Prohibited on public ways. ....	237

Sec. 16-A-67. Permit required. ....	237
Sec. 16-A-68. Application. ....	238
Sec. 16-A-69. Where obtained. ....	238
Sec. 16-A-70. Fee. ....	238
Sec. 16-A-71. Consent required. ....	238
Sec. 16-A-72. Certain toilets prohibited. ....	238
Sec. 16-A-73. Sewage disposal. ....	238
Sec. 16-A-74. Proximity to structures. ....	239
Sec. 16-A-75. Reserved. ....	239
<b>Chapter 16-B</b> .....	<b>240</b>
<b>TRAVEL TRAILERS*</b> .....	<b>240</b>
<b>ARTICLE I. IN GENERAL</b> .....	<b>240</b>
Sec. 16-B-1. Definitions. ....	240
Sec. 16-B-2. Compliance. ....	241
Secs. 16-B-3 - 16-B-15. Reserved. ....	241
<b>ARTICLE II. TRAVEL TRAILER PARK</b> .....	<b>241</b>
<b>DIVISION 1. GENERALLY</b> .....	<b>241</b>
Sec. 16-B-16. Compliance. ....	241
Sec. 16-B-17. Maintenance. ....	241
Sec. 16-B-18. Rules and regulations for park. ....	241
Sec. 16-B-19. Office building. ....	242
Sec. 16-B-20. Registration of occupants. ....	242
Secs. 16-B-21 - 16-B-26. Reserved. ....	242
<b>DIVISION 2. LICENSE</b> .....	<b>242</b>
Sec. 16-B-27. Required. ....	242
Sec. 16-B-28. Application. ....	243
Sec. 16-B-29. Investigation. ....	243
Sec. 16-B-30. Fees. ....	243
Sec. 16-B-31. Issuance. ....	235
Sec. 16-B-32. Transfer fee. ....	235
Sec. 16-B-33. Display. ....	235
Sec. 16-B-34. Revocation. ....	235
Secs. 16-B-35 - 16-B-42. Reserved. ....	235
<b>DIVISION 3. PHYSICAL REQUIREMENTS</b> .....	<b>235</b>
Sec. 16-B-43. Compliance. ....	235
Sec. 16-B-44. Water supply and sanitary sewer. ....	235
Sec. 16-B-45. Drainage. ....	236
Sec. 16-B-46. Plumbing generally. ....	236
Sec. 16-B-47. Electrical work generally. ....	236
Sec. 16-B-48. Fire protection. ....	236
Sec. 16-B-49. Setbacks. ....	236
Sec. 16-B-50. Minimum lot size. ....	237
Sec. 16-B-51. Streets. ....	237
Sec. 16-B-52. Walkways. ....	237
Sec. 16-B-53. Additional construction. ....	237
Sec. 16-B-54. Location in City Limits. ....	238
Secs. 16-B-55 - 16-B-65. Reserved. ....	238
<b>ARTICLE III. LOCATION OUTSIDE PARKS</b> .....	<b>238</b>
Sec. 16-B-66. Prohibited on public ways. ....	238
Sec. 16-B-67. Permit required. ....	238
Sec. 16-B-68. Application. ....	238

Sec. 16-B-69. Where obtained. ....	239
Sec. 16-B-70. Fee. ....	239
Sec. 16-B-71. Consent required. ....	239
Sec. 16-B-72. Certain toilets prohibited. ....	239
Sec. 16-B-73. Sewage disposal. ....	239
Sec. 16-B-74. Proximity to structures. ....	239
Sec. 16-B-75. Reserved. ....	239
<b>Chapter 17. ....</b>	<b>251</b>
<b>OFFENSES. ....</b>	<b>251</b>
Sec. 17-1. Reserved. ....	251
Sec. 17-2. Giving false name and address to officers prohibited. ....	251
Sec. 17-3. Discharge of weapons. ....	251
Sec. 17-4. Reserved. ....	251
Sec. 17-5. Trespass prohibited. ....	251
Sec. 17-6. Illegal Smoking Products. ....	252
<b>Chapter 17.5. ....</b>	<b>257</b>
<b>PARKS AND RECREATION. ....</b>	<b>257</b>
<b>ARTICLE I. IN GENERAL: . ....</b>	<b>257</b>
Sec. 17.5-1 - 17.5-15. Reserved. ....	257
<b>ARTICLE II. CITY PARKS AND BALLINGER MUNICIPAL LAKE AREA . ....</b>	<b>257</b>
Sec. 17.5-16. Definitions. ....	257
Sec. 17.5-17. Commercial establishments. ....	258
Sec. 17.5-18. Public activity. ....	258
Sec. 17.5-19. Firearms; weapons; explosives, ....	258
Sec. 17.5-20. Fees. ....	258
Sec. 17.5-21. Fishing. ....	259
Sec. 17.5-22. Swimming, etc. ....	259
Sec. 17.5-23. Camping. ....	259
Sec. 17.5-24. Pollution; garbage. ....	260
Sec. 17.5-25. Fires. ....	261
Sec. 17.5-26. Control of animals. ....	261
Sec. 17.5-27. Hours; noise. ....	261
Sec. 17.5-28. Damaging public property. ....	262
Sec. 17.5-29. Unauthorized structures. ....	262
Sec. 17.5-30. Interference with city employees. ....	262
Sec. 17.5-31. Picnicking. ....	262
Sec. 17.5-32. Assumption of risk by users. ....	263
Sec. 17.5-33. Exclusion of persons. ....	263
Sec. 17.5-34. Authority of police. ....	263
Sec. 17.5-35. Boating; where permitted. ....	263
Sec. 17.5-36. Application of water safety act. ....	263
Sec. 17.5-37. Boats; rules of the road. ....	263
Sec. 17.5-38. Vehicles. ....	264
Sec. 17.5-39. Penalty. ....	265
Sec. 17.5-40. Necessity of compliance with other laws and ordinances. ....	265
Sec. 17.5-41. Definition. ....	266
Sec. 17.5-42. Appointment of Members. ....	266
Sec. 17.5-43. Qualifications. ....	266
Sec. 17.5-44. Terms of Members. ....	266
Sec. 17.5-45. Filling of Vacancies. ....	266
Sec. 17.5-46. Officers. ....	266

Sec. 17.5-47. Ex Officio Member.....	266
Sec. 17.5-48. Meetings. ....	267
Sec. 17.5-49. Minutes. ....	267
Sec. 17.5-50. Rules of Procedure; Quorum.....	267
Sec. 17.5-51. Removal of Members. ....	267
Sec. 17.5-52. Compensation.....	267
Sec. 17.5-53. Power and Duties.....	267
Sec. 17.5-54. Relationship to Park Department.....	268
Sec. 17.5-55. Severance Clause.....	268
Sec. 17.5-56. Repeal.....	268
<b>Chapter 18.....</b>	<b>293</b>
<b>ITINERANT MERCHANTS, SOLICITORS, ETC. ....</b>	<b>293</b>
<b>ARTICLE I IN GENERAL .....</b>	<b>293</b>
Sec. 18-1. Purpose:.....	293
Sec. 18-2. Definitions: .....	293
Sec. 18-3. Hours of Operation:.....	293
Sec. 18-4. Entrance to Premises- Restricted:.....	294
Sec. 18-5. Refusing to Leave: .....	294
<b>ARTICLE II: LICENSE.....</b>	<b>294</b>
Sec. 18-6. License Required: .....	294
Sec. 18-7. Exceptions: .....	294
Sec. 18-8. Application for License: .....	295
Sec. 18-9. Fee for License: .....	296
Sec. 18-10. Bond for License: .....	296
Sec. 18-11. Service of Process: .....	296
Sec. 18-12. Records:.....	297
Sec. 18-13. Revocation and Suspension of License:.....	297
Sec. 18-14. License Display: .....	297
Sec. 18-15. Transfer or Assignment of License: .....	297
Sec. 18-16. Penalty: .....	297
Sec. 18-17. Reserved.....	298
<b>ARTICLE III. PERMIT .....</b>	<b>298</b>
Sec. 18-18. Required .....	298
Sec. 18-19. Application .....	298
Sec. 18-20. Driver's License.....	299
Sec. 18-21. Application fee.....	299
Sec. 18-22. False information.....	299
Sec. 18-23. Fingerprints. ....	299
Sec. 18-24. Fee.....	299
Sec. 18-25. Bond. ....	300
Sec. 18-26. Service of process.....	300
Sec. 18-27. Investigation.....	300
Sec. 18-28. Denial.....	300
Sec. 18-30. Issuance.....	301
Sec. 18-31. Record .....	301
Sec. 18-32. Display .....	301
Sec. 18-33. Duration. ....	301
Sec. 18-34. Revocation.....	301
<b>ARTICLE IV GARAGE SALES.....</b>	<b>301</b>
Sec. 18-35. Permitted in residential areas.....	301
Sec. 18-36. Conditions under which permitted. ....	301

Sec. 18-37. Penalty.....	302
Sec. 18-38. Each day separate offense:.....	302
Sec. 18-39. Severability. ....	302
Sec. 18-40 - 18-49 Reserved .....	302
<b>ARTICLE V: TEMPORARY SALES VENDORS .....</b>	<b>302</b>
Sec. 18-50. Definitions. ....	302
Sec. 18-51. Exempt classification.....	303
Sec. 18-52. Permit required.....	303
Sec. 18-53. Application for Permit. ....	303
Sec. 18-54. Processing Fee. ....	304
Sec. 18-55. Investigation of Applicant. ....	304
Sec. 18-56. Denial or Revocation or Permit - Reasons.....	305
Sec. 18-57. Notification of Denial or Revocation of Permit. ....	305
Sec. 18-58. Duration of Permit. ....	305
Sec. 18-59. Display of Permit. ....	306
Sec. 18-60. Permit Not Transferable or Assignable.....	306
Sec. 18-61. Use of Permit by Another .....	306
Sec. 18-62. Selling of Merchandise on Public Streets, Alleys or Sidewalks .....	306
Sec. 18-63. Trespassing. ....	306
Sec. 18-64. Violation of Chapter.....	306
Sec. 18-65 - 18-69 Reserved .....	306
<b>ARTICLE VI: SECONDHAND GOODS .....</b>	<b>307</b>
Sec. 18-70. Penalty.....	307
Sec. 18-71. Compliance with other laws.....	307
Sec. 18-72. Definitions. ....	307
Sec. 18-73. Goods having tampered with serial numbers.....	308
Sec. 18-74. Purchases from minors. ....	308
Sec. 18-75. Dealers required to keep records. ....	308
Sec. 18-76. Inspection of dealers' books and goods.....	309
Sec. 18-77. Retention of property.....	309
<b>Chapter 19.....</b>	<b>327</b>
<b>PLANNING AND ZONING .....</b>	<b>327</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>327</b>
Secs. 19-1 - 19-15. Reserved.....	327
<b>ARTICLE II. PLANNING AND ZONING COMMISSIONS .....</b>	<b>327</b>
Sec. 19-16. Created. ....	327
Sec. 19-17. Composition. ....	327
Sec. 19-18. Appointment.....	327
Sec. 19-19. Terms.....	328
Sec. 19-20. Removal.....	328
Sec. 19-21. Filling vacancies.....	328
Sec. 19-22. Compensation. ....	328
Sec. 19-23. Officers. ....	328
Sec. 19-24. Personnel authorized. ....	328
Sec. 19-25. Rules, regulations. ....	328
Sec. 19-26. Duties generally. ....	329
Sec. 19-27 - 1930 Reserved.....	329
<b>Article III FLOOD DAMAGE PREVENTION ORDINANCE .....</b>	<b>329</b>
DIVISION 1 Statutory Authorization, Findings Of Fact, Statement Of Purpose, Methods Of Reducing Flood Losses .....	329
Sec. 19-31. Statutory authorization .....	329

Sec. 19-32. Findings of fact.....	330
Sec. 19-33. Statement of purpose.....	330
Sec. 19-34. Methods of reducing flood losses .....	330
DIVISION 2 DEFINITIONS .....	331
DIVISION 3 GENERAL PROVISIONS .....	337
Sec. 19-35. Lands to which this ordinance applies .....	337
Sec. 19-36. Basis for establishing the areas of special flood hazard .....	337
Sec. 19-37. Establishment of development permit.....	338
Sec. 19-38. Compliance .....	338
Sec. 19-39. Abrogation and greater restrictions.....	338
Sec. 19-40. Interpretation .....	338
Sec. 19-41. Warning and disclaimer or liability .....	338
DIVISION 4 ADMINISTRATION.....	339
Sec. 19-42. Designation of the floodplain administrator.....	339
Sec. 19-43. Duties & responsibilities of the floodplain administrator .....	339
Sec. 19-44. Permit procedures.....	340
Sec. 19-45. Variance procedures .....	341
DIVISION 5 PROVISIONS FOR FLOOD HAZARD REDUCTION .....	343
Sec. 19-46. General standards.....	343
Sec. 19-47. Specific standards.....	344
Sec. 19-48. Standards for subdivision proposals.....	346
Sec. 19-49. Standards for areas of shallow flooding (AO/AH ZONES) .....	347
Sec. 19-50. Floodways.....	348
Sec. 19-51. Severability .....	348
Sec. 19-52. Penalties for non-compliance .....	348
Sec. 19-53. Certification of adoption.....	349
<b>Chapter 20.....</b>	<b>363</b>
<b>PLUMBING AND GAS .....</b>	<b>363</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>363</b>
Sec. 20-1. Plumbing license law adopted. ....	363
Secs. 20-2 - 20-15. Reserved.....	363
<b>ARTICLE II. TECHNICAL PROVISIONS.....</b>	<b>363</b>
Sec. 20-16. Code - Adopted. ....	363
Sec. 20-16.1. Same - Amendment. ....	363
Sec. 20-17. Reserved.....	364
Sec. 20-18. Definitions. ....	364
Sec. 20-19. Penalty for violation .....	364
<b>Chapter 21 .....</b>	<b>371</b>
<b>POLICE .....</b>	<b>371</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>371</b>
Sec. 21-1. Arrest without warrant. ....	371
Sec. 21-2. Refusing to aid an officer.....	371
Secs. 21-3 - 21-16. Reserved.....	371
<b>ARTICLE II. POLICE RESERVE FORCE†:.....</b>	<b>371</b>
Sec. 21-17. Appointment. ....	371
Sec. 21-18. Qualification. ....	371
Sec. 21-19. Standards.....	372
Sec. 21-20. Dismissal.....	372
Sec. 21-21. Status as peace officer.....	372
Sec. 21-22. Status as regular police officer. ....	372
Sec. 21-23. Compensation. ....	372



Sec. 21-24. Use of weapons .....	372
Sec. 21-25. Service generally.....	372
Secs. 21-26 - 21-35. Reserved.....	373
<b>ARTICLE III. JUNKED VEHICLES .....</b>	<b>373</b>
Sec. 21-36. Preamble .....	373
Sec. 21-37. Authority.....	373
Sec. 21-38 Definitions .....	373
Sec. 21-39 Junked (Inoperable) Vehicles Declared a Public Nuisance.....	374
Sec. 21-40. Offense .....	374
Sec. 21-41. Exceptions .....	375
Sec. 21-42. Procedure for Disposition of Junked Vehicles .....	375
Sec. 21-43. Disposal of Junked (Inoperable) Vehicles .....	377
Sec. 21-44. Authority to Enforce.....	378
Sec. 21-45. Effect of Act on Other Laws.....	378
<b>Chapter 22.....</b>	<b>383</b>
<b>RAILROADS .....</b>	<b>383</b>
Sec. 22-1. Speed restricted.....	383
Sec. 22-2. RESERVED (Ord. 4-19-2007-G).....	383
Sec. 22-3. Maintenance of crossings.....	383
Sec. 22-4. Obedience to warning devices. ....	383
Sec. 22-5. City drainage not to be obstructed.....	384
Sec. 22-6. Headlight, signal bells. ....	384
<b>Chapter 23.....</b>	<b>391</b>
<b>STREETS AND SIDEWALKS .....</b>	<b>391</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>391</b>
Sec. 23-1. Adoption of state law relative to street improvements.....	391
Sec. 23-2. Specifications for sidewalks, curbs and gutters. ....	391
Sec. 23-3. Obstruction of public ways generally. ....	391
Sec. 23-4. Display of merchandise, etc. ....	392
Sec. 23-5. Interference, obstruction of public improvements prohibited.....	392
Sec. 23-6. Manner of work; cleanliness of premises.....	392
Sec. 23-7. Obstruction, etc., of drainage. ....	392
Sec. 23-8. Street numbers on all buildings .....	392
Sec. 23-9 - 23-20. Reserved. ....	392
<b>ARTICLE II. EXCAVATIONS.....</b>	<b>393</b>
Sec. 23-21. Permit - Required. ....	393
Sec. 28-22. Same - Application. ....	393
Sec. 23-23. Same - Bond required. ....	393
Sec. 23-24. Same - Issuance. ....	393
Sec. 23-25. Protection of public.....	393
Sec. 23-26. Supervision of work.....	394
Sec. 23-27. Duties upon completion of work. ....	394
Sec. 23-28. Acceptance, inspection of completed work.....	394
Secs. 23-29 - 23-40. Reserved.....	394
<b>ARTICLE III. SIGHT OBSTRUCTIONS AT INTERSECTIONS .....</b>	<b>394</b>
Sec. 23-41. Definition.....	394
Sec. 23-42. Enforcement of article provisions. ....	395
Sec. 23-43. Restricted areas.....	395
Sec. 23-44. Maximum height of shrubs, etc.....	395
Sec. 23-45. Minimum clearance of trees. ....	395
Sec. 23-46 - 23-56 Reserved .....	395

<b>ARTICLE IV. STREET MAINTENANCE FEE .....</b>	<b>396</b>
Sec. 23-57. Definitions .....	396
Sec. 23-58. Street Maintenance Fee .....	396
Sec. 23-59. Street Maintenance Fund .....	396
Sec. 23-60. Pavement Management Program.....	397
Sec. 23-61. Billing and Collection of Street Maintenance Charges .....	397
Sec. 23-62. Enforcement.....	398
Sec. 23-63 - 23-69 RESERVED .....	399
<b>ARTICLE V. PROHIBITION OF SKATEBOARDS, ROLLERSKATES, ROLLERBLADES AND SIMILAR DEVICES .....</b>	<b>399</b>
Sec. 23-70. Prohibition of Skateboards, Roller skates, Rollerblades and Similar Devices in the designated areas set out in subsection three (3). .....	399
Sec. 23-71. Prohibition of Ramps, Jumps or Similar Devices. ....	399
Sec. 23-72. The place to which Section One (1.) and Section Two (2.) apply in the City of Ballinger: .....	400
Sec. 23-73. Authority of City Manager. ....	400
Sec. 23-74. Penalties for Violation .....	400
Sec. 23-75. Repeal. ....	400
Sec. 23-76. Severability. ....	400
Sec. 23-77. Effective Date.....	400
<b>Chapter 24 .....</b>	<b>431</b>
<b>TAXATION .....</b>	<b>431</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>431</b>
Sec. 24-1. Adoption of state law relative to payment of taxes and penalties. ....	431
Secs. 24-2 - 24-20. Reserved.....	431
<b>ARTICLE II. OCCUPANCY TAX .....</b>	<b>431</b>
Sec. 24-21. Definitions. ....	431
Sec. 24-22. Penalty. ....	432
Sec. 24-23. Occupancy tax imposed; exceptions. ....	432
Sec. 24-24. Collection; reimbursement fee.....	433
Sec. 24-25. Reports. ....	433
Sec. 24-26. Disposition of revenue.....	433
<b>Chapter 25 .....</b>	<b>441</b>
<b>TAXICABS .....</b>	<b>441</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>441</b>
Sec. 25-1. Definitions. ....	441
Sec. 25-2. Exclusion from provisions.....	441
Sec. 25-3. Inspections.....	441
Sec. 25-4. Cruising prohibited. ....	442
Sec. 25-5. Ownership of vehicle. ....	442
Sec. 25-6. Council to fix and require display of rates. ....	442
Sec. 25-7. Conformance to rate required,.....	442
Sec. 25-8. Maximum seating. ....	442
Sec. 25-9. Sale of alcoholic beverages.....	442
Sec. 25-10. Receipt, discharge of passengers. ....	442
Secs. 25-11 - 25-21. Reserved.....	442
<b>ARTICLE II. PERMIT .....</b>	<b>443</b>
Sec. 25-22. Required. ....	443
Sec. 25-23. Application. ....	443
Sec. 25-24. Action by council. ....	443
Sec. 25-25. Issuance.....	443

Sec. 25-26. Contents. ....	444
Sec. 25-27. Statement of individual taxicabs. ....	444
Sec. 25-28. Fee.....	444
Sec. 25-29. Additional taxicabs. ....	444
Sec. 25-30. Gross receipts tax. ....	444
Sec. 25-31. Examination of books. ....	445
Sec. 25-32. Display. ....	445
Sec. 25-33. Nonassignable. ....	445
Sec. 25-34. Cancellation, revocation, suspension. ....	445
Sec. 25-35. Identification of taxicabs. ....	445
Secs. 25-36 - 25-46. Reserved.....	445
<b>ARTICLE III. LIABILITY INSURANCE .....</b>	<b>445</b>
Sec. 25-47. Required. ....	445
Sec. 25-48. Minimum amount of coverage. ....	446
Sec. 25-49. Persons protected. ....	446
Sec. 25-50. Provision for continuing liability. ....	446
Sec. 25-51. Increasing amount upon return of execution unsatisfied.....	446
Sec. 25-52. Cancellation. ....	447
Sec. 25-53. City not liable for solvency of insurer; owner's liability not affected; suits on policy. ....	447
Secs. 25-54 - 25-63. Reserved.....	447
<b>ARTICLE IV. DRIVERS .....</b>	<b>447</b>
Sec. 25-64. Leaving taxicab. ....	447
Sec. 25-65. Appearance.....	448
Sec. 25-66. Solicitation of business.....	448
Sec. 25-67. Operation while incapacitated. ....	448
Sec. 25-68. Property left in taxicabs. ....	448
<b>Chapter 26.....</b>	<b>455</b>
<b>TRAFFIC .....</b>	<b>455</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>455</b>
Sec. 26-1. Definitions. ....	455
Sec. 26-2. Driver's license.....	461
Sec. 26-3. Application of chapter provisions - To governmental vehicles. ....	461
Sec. 26-4. Same - To persons propelling pushcarts or riding animals. ....	461
Sec. 26-5. Same - To workmen, equipment. ....	461
Sec. 26-6. Riding motorcycles - Generally.....	462
Sec. 26-7. RESERVED .....	462
Sec. 26-8. Use of roller skates, toys and similar devices restricted.....	462
Sec. 26-9. Clinging to moving vehicle.....	462
Sec. 26-10. Opening vehicle doors.....	462
Sec. 26-11. Removing or damaging traffic barriers.....	462
Sec. 26-12. Emerging from alleys, private driveways or buildings. ....	463
Secs. 26-13 - 26-22. Reserved.....	463
<b>ARTICLE II. ENFORCEMENT AND OBEDIENCE .....</b>	<b>463</b>
Sec. 26-23. Enforcement of regulations generally. ....	463
Sec. 26-24. Obedience to traffic officers.....	463
Sec. 26-25. Privately owned parking lots.....	463
Sec. 26-26. Reserved .....	463
Sec. 26-27. Arrest procedure for traffic violations. ....	463
Sec. 26-28. Reserved .....	464
Sec. 26-29. Disposition of fines and forfeitures. ....	464

Sec. 26-30. Failure to obey notice or summons.....	464
Secs. 26-31. Reserved.....	464
Sec. 26-32. Court Costs; Municipal Court Building Security Fund. ....	464
Secs. 26-33 - 26-41. Reserved.....	465
<b>ARTICLE III. ADMINISTRATION.....</b>	<b>465</b>
DIVISION 1. GENERALLY .....	465
Sec. 26-42. Authority of police officers to direct traffic. ....	465
Sec. 26-43. Authority of officers of fire department to direct traffic .....	466
Sec. 26-44. Temporary traffic-control officers .....	466
Secs. 26-45 - 26-50. Reserved.....	466
DIVISION 2. TRAFFIC ENGINEER.....	466
Sec. 26-51. Office created.....	466
Sec. 26-52. Investigation of traffic conditions, accidents.....	466
Sec. 26-53. Emergency and experimental regulations.....	466
Secs. 26-54 - 26-64. Reserved.....	466
<b>ARTICLE IV. ACCIDENTS .....</b>	<b>467</b>
Sec. 26-65. Accidents involving damage to vehicle. ....	467
Sec. 26-66. Duty to give information and render aid.....	467
Sec. 26-67. Duty upon striking unattended vehicle.....	467
Sec. 26-68. Duty upon striking fixtures on public thoroughfare. ....	467
Sec. 26-69. Investigation of accidents. ....	468
Sec. 26-70. Accident reports - Required.....	468
Sec. 26-71. Same - Filing with city. ....	468
Sec. 26-72. When driver unable to report accident.....	469
Sec. 26-73. Removing vehicle from scene. ....	469
Secs. 26-74 - 26-84. Reserved.....	469
<b>ARTICLE V. VEHICLE EQUIPMENT.....</b>	<b>469</b>
Sec. 26-85. Headlights - When required.....	469
Sec. 26-86. Same - On motor vehicles.....	469
Sec. 26-87. Same - Bicycles. ....	470
Sec. 26-88. Tail lamps.....	470
Sec. 26-89. Lamps on parked vehicles.....	470
Sec. 26-90. Mufflers and prevention of noise. ....	471
Sec. 26-91. Brakes - Required. ....	472
Sec. 26-92. Same - Maintenance.....	472
Sec. 26-93. Horns and warning devices.....	472
Sec. 26-94. Protuberances on tires. ....	473
Sec. 26-95. Projecting loads.....	473
Sec. 26-96. Mirrors.....	473
Sec. 26-97. Windshields must be unobstructed and equipped with wipers. ....	473
Secs. 26-98 - 26-108. Reserved.....	474
<b>ARTICLE VI. AUTHORIZED EMERGENCY VEHICLES .....</b>	<b>474</b>
Sec. 26-109. When exempt from chapter provisions. ....	474
Sec. 26-110. Duty of drivers of other vehicles upon approach of authorized emergency vehicles.....	474
Sec. 26-111. Warning devices required.....	475
Sec. 26-112. Duty of drivers.....	475
Sec. 26-113. Limitation on application of exemptions.....	475
Secs. 26-114 - 26-124. Reserved.....	476
<b>ARTICLE VII. OPERATION OF VEHICLES GENERALLY.....</b>	<b>476</b>
Sec. 26-125. Starting parked vehicle.....	476

Sec. 26-126. Drive on right side of roadway - Exceptions.....	476
Sec. 26-127. Driving on divided highways.....	477
Sec. 26-128. Driving on roadways laned for traffic.....	477
Sec. 26-129. Following too closely.....	477
Sec. 26-130. Passing vehicle proceeding in the opposite direction.....	478
Sec. 26-131. Overtaking vehicles - Generally.....	478
Sec. 26-132. Same - When prohibited.....	478
Sec. 26-133. Same - When permitted.....	478
Sec. 26-134. Same - Duty of driver of overtaken vehicle.....	479
Sec. 26-135. Same - On right side.....	479
Sec. 26-136. Control of vehicle.....	479
Sec. 26-137. Driving on fresh pavement.....	479
Sec. 26-138. "Digging out" prohibited.....	480
Sec. 26-139. Obstructing traffic generally.....	480
Sec. 26-140. Obstructing intersection or crosswalk.....	480
Sec. 26-141. Operation of dangerous vehicles.....	480
Secs. 26-142 - 26-152. Reserved.....	480
<b>ARTICLE VIII. RIGHT-OF-WAY REGULATIONS.....</b>	<b>480</b>
Sec. 26-153. Generally.....	480
Sec. 26-154. When driver to yield to vehicle on his right.....	480
Sec. 26-155. When making left turn.....	481
Sec. 26-156. When approaching multilaned roadway from single- or double-laned roadway.....	481
Sec. 26-157. When approaching paved roadway from unpaved roadway.....	481
Sec. 26-158. Presumption of failure to yield.....	481
Secs. 26-159 - 26-170. Reserved.....	482
<b>ARTICLE IX. SPEED.....</b>	<b>482</b>
Sec. 26-171. Maximum limits generally.....	482
Sec. 26-172. Maximum limits on specific streets.....	482
Sec. 26-173. Minimum limits.....	483
Sec. 26-174. Regulation of speed by traffic signals.....	483
Sec. 26-175. Racing prohibited.....	483
Sec. 26-176. State Highway 158 (Broadway Avenue) Speed Limits.....	483
Secs. 26-177 -26-186. Reserved.....	483
<b>ARTICLE X. TURNS.....</b>	<b>484</b>
Sec. 26-187. Limitations on turning.....	484
Sec. 26-188. General limitation.....	484
Sec. 26-189. Right turn generally.....	484
Sec. 26-190. Left turn generally.....	484
Sec. 26-191. U-turns restricted.....	484
Sec. 26-192. When turn signals required.....	485
Sec. 26-193. When stop signal required.....	485
Sec. 26-194. Signals by hand and arm or signal device.....	485
Sec. 26-195. "Courtesy" signals prohibited.....	485
Sec. 26-196. Method of giving hand-and-arm signal.....	485
Secs. 26-197 - 26-207. Reserved.....	486
<b>ARTICLE XI. TRAFFIC-CONTROL SIGNS, SIGNALS, DEVICES.....</b>	<b>486</b>
DIVISION 1. GENERALLY.....	486
Sec. 26-208. General powers, duties of traffic engineer.....	486
Sec. 26-209. Uniformity of devices.....	486

Sec. 26-210. Conformity with manual and specifications of state highway department.....	486
Sec. 26-211. Obedience to devices.....	486
Sec. 26-212. When devices required for enforcement.....	487
Sec. 26-213. Interference with official traffic-control devices.....	487
Sec. 26-214. Display of unauthorized signs, signals or markings.....	487
Sec. 26-215. Ratification of existing devices.....	487
Sec. 26-216. Traffic-control signal legend.....	488
Sec. 26-217. Flashing signals.....	489
Sec. 26-218. When signals not operating.....	489
Secs. 26-219 - 26-225. Reserved.....	490
<b>DIVISION 2. STOP, YIELD INTERSECTIONS.....</b>	<b>490</b>
Sec. 26-226. Stop at through streets.....	490
Sec. 26-227. Signals required at through streets.....	490
Sec. 26-228. Other intersections where stop or yield required.....	490
Sec. 26-229. Stop and yield signs.....	490
Sec. 26-230. Vehicle entering stop intersection.....	491
Sec. 26-231. Vehicle entering yield intersection.....	491
Secs. 26-232 - 26-240. Reserved.....	491
<b>DIVISION 3. ONE-WAY STREETS, ALLEYS .....</b>	<b>491</b>
Sec. 26-241. Designation.....	491
Sec. 26-242. Operation of vehicles.....	492
Secs. 26-243. Traffic circulation around the Ballinger Elementary School .....	492
Secs. 26-244 -26-250. Reserved.....	492
<b>DIVISION 4. TRUCK ROUTES .....</b>	<b>492</b>
Sec. 26-251. Definitions.....	492
Sec. 26-252. Application of regulations.....	493
Sec. 26-253. Exceptions.....	493
Sec. 26-254. Trucks originating outside city - One inside destination point.....	493
Sec. 26-255. Same - Multiple inside destination points.....	494
Sec. 26-256. Trucks originating inside city - Outside destination point.....	494
Sec. 26- 257. Reserved.....	494
Sec. 26-258. Maps.....	494
Sec. 26-259. Signs.....	494
Sec. 26-260. Failure to post.....	494
Sec. 26-261. Weigh-in.....	494
Sec. 26-262. Load weight on Elm Creek .....	495
Secs. 26-263 - 26-272. Reserved.....	495
<b>ARTICLE XII. STOPPING, STANDING, PARKING .....</b>	<b>495</b>
<b>DIVISION 1. GENERALLY .....</b>	<b>495</b>
Sec. 26-273. Stop when traffic obstructed.....	495
Sec. 26-274. Unattended vehicles.....	495
Sec. 26-275. Reserved.....	496
Sec. 26-276. No stopping, standing or parking near hazardous or congested places.....	496
Sec. 26-277. Presumption that owner of vehicle illegally parked same.....	496
Sec. 26-278. Impoundment of standing or parked vehicles - Generally.....	496
Sec. 26-279. Same - Liability of city.....	497
Sec. 26-280. Special parking .....	498
Sec. 26-281. Prohibited in specified places.....	498
Sec. 26-282. Parking for certain purposes.....	499

Sec. 26-283. Parallel parking. ....	499
Sec. 26-284. Angle parking. ....	500
Sec. 26-285. Parking not to obstruct traffic. ....	500
Sec. 26-286. Parking in alleys. ....	500
Sec. 26-287. Residential parking restrictions. ....	500
Sec. 26-288. Parking for more than seventy-two hours prohibited. ....	500
Sec. 26-289: An ordinance restricting parking of Commercial Vehicles in residential districts. ....	501
Secs. 26-290 - 26-295. Reserved. ....	501
<b>DIVISION 2. RESTRICTED, PROHIBITED ON CERTAIN STREETS</b> .....	<b>501</b>
Sec. 26-296. Application. ....	501
Sec. 26-297. Regulations not exclusive. ....	501
Sec. 26-298. Parking signs required. ....	501
Sec. 26-299. Parking prohibited on certain streets. ....	502
Sec. 26-300. Parking restricted on certain streets. ....	502
Secs. 26-301 - 26-306. Reserved. ....	502
<b>DIVISION 3. LOADING AND UNLOADING</b> .....	<b>502</b>
Sec. 26-307. City traffic engineer to designate curb loading zones. ....	502
Sec. 26-308. Standing in passenger curb loading zone. ....	502
Sec. 26-309. Standing in freight curb loading zones. ....	502
Sec. 26-310. City traffic engineer to designate public carrier stops and stands. ....	502
.....	503
Sec. 26-311. Stopping, standing and parking of buses and taxicabs regulated. ....	503
.....	503
Sec. 26-312. Restricted use of bus and taxicab stands. ....	503
Secs. 26-313 - 26-320. Reserved. ....	503
<b>DIVISION 4. COMPRESSION RELEASE TYPE BRAKING SYSTEMS "JAKES BRAKES"</b> .....	<b>504</b>
Section 26-321 Purpose. ....	504
Section 26-322. Definitions. ....	504
Section 26-323. Prohibitive Acts. ....	504
Section 26-324. Punishment. ....	504
Secs. 26-325 - 26-343. Reserved. ....	504
<b>ARTICLE XIII. MISCELLANEOUS DRIVING RULES</b> .....	<b>504</b>
Sec. 26-344. Driving while intoxicated. ....	504
Sec. 26-345. Putting rubbish or hazardous material on streets. ....	505
Sec. 26-346. Riding on portion of vehicle not intended for passengers. ....	505
Sec. 26-347. Overloading, crowding of vehicles. ....	505
Sec. 26-348. Boarding or alighting from vehicles. ....	505
Sec. 26-349. Following emergency vehicles. ....	505
Sec. 26-350. Crossing fire hose. ....	506
Sec. 26-351. Limitations on backing. ....	506
Sec. 26-352. Driving on sidewalks .....	506
Sec. 26-353. Driving through safety zones Traffic: Through Safety Zones. ....	506
Sec. 26-354. "Corner cutting" prohibited. ....	506
Sec. 26-355. Controlled access. ....	506
Sec. 26-356. School buses - Required equipment. ....	507
Sec. 26-357. Same - Operation of equipment. ....	507
Sec. 26-358. Same - Procedure of drivers meeting or overtaking. ....	507
Secs 26-359 - 26-370. Reserved. ....	507
<b>ARTICLE XIV. PARADES AND PROCESSIONS</b> .....	<b>507</b>

Sec. 26-371. Definition.....	507
Sec. 26-372. Exception to article.....	507
Sec. 26-373. Permit required.....	508
Sec. 26-374. Application for permit.....	508
Sec. 26-375. General restrictions.....	508
Sec. 26-376. Change of route.....	508
Sec. 26-377. Issuance restricted.....	508
Sec. 26-378. Driving through procession prohibited.....	509
Sec. 26-379. Unlawful to interrupt.....	509
Secs. 26-380 - 26-390. Reserved.....	509
<b>ARTICLE XV PEDESTRIANS .....</b>	<b>509</b>
Sec. 26-391. Subject to traffic control.....	509
Sec. 26-392. Right-at-way at crosswalks.....	509
Sec. 26-393. When pedestrians shall yield.....	510
Sec. 26-394. Use right halt at crosswalk.....	510
Sec. 26-395. Pedestrians on roadways.....	510
Sec. 26-396. Use of sidewalks and safety zones.....	510
Sec. 26-397. Pedestrians soliciting.....	510
Sec. 26-398. Drivers to exercise due care.....	511
<b>Chapter 27 .....</b>	<b>525</b>
<b>UTILITIES.....</b>	<b>525</b>
<b>ARTICLE I. IN GENERAL .....</b>	<b>525</b>
Sec. 27-1. Definition.....	525
Sec. 27-2. Scope of provisions.....	525
Sec. 27-3. Service to comply with technical provisions.....	525
Sec. 27-4. Customers outside city limits.....	526
Sec. 27-5. Rules, regulations.....	526
Sec. 27-6. Right of entry.....	526
Sec. 27-7. Termination of service authorized.....	526
Sec. 27-8. Liability of city for damage.....	527
Sec. 27-9. Utility service - Application required.....	527
Sec. 27-10. Same - Not available to debtors.....	527
Sec. 27-11. Same - Permit.....	527
Sec. 27-12. Same - Use assumed.....	527
Sec. 27-13. Not to use contrary to permit.....	527
Sec. 27-14. Damage, trespass of equipment.....	527
Sec. 27-15. Temporary interruption of service.....	528
Sec. 27-16. Restricting use.....	528
Sec. 27-17. Sale of service by customer.....	528
Sec. 27-18. Connections to service.....	528
Sec. 27-19. Separate connections.....	528
Sec. 27-20. Unlawful connections.....	528
Sec. 27-21. Unlawful use.....	528
Sec. 27-22. Maintenance of system by consumer.....	528
Secs. 27-23 - 27-33. Reserved.....	529
<b>ARTICLE II. RATES AND CHARGES .....</b>	<b>529</b>
Sec. 27-34. Meters.....	529
Sec. 27-35. Deposits required.....	529
Sec. 27-36. Refund of deposit.....	529
Sec. 27-37. Determination of charges.....	529
Sec. 27-38. When payment due.....	529



Sec. 27-39. Disconnection for nonpayment.....	529
Sec. 27-40. Reconnection after disconnection.....	530
Sec. 27-41. Voluntary discontinuance of service.....	530
Sec. 27-42. All returned insufficient checks.....	530
Sec. 27-43. Authorizing payment by Credit/Debit cards.....	530
Secs. 27-44 - 27-52. Reserved.....	530
<b>ARTICLE III. SEWERS.....</b>	<b>531</b>
DIVISION 1 GENERALLY.....	531
Sec. 27-53. Definitions.....	531
Sec. 27-54. Inspections authorized.....	531
Sec. 27-55. Violations generally; corrections.....	531
Sec. 27-56. Discharges into sanitary sewers restricted.....	531
Sec. 27-57. Industrial discharge into storm sewer, drainage systems prohibited.....	532
Sec. 27-58. Prohibited discharges into public sewers.....	532
Sec. 27-59. Limitations on discharges.....	533
Sec. 27-60. Volume, flow rate capacity.....	533
Sec. 27-61. Pretreatment facilities.....	533
Sec. 27-62. Interceptors.....	534
Sec. 27-63. Other agreements not affected.....	534
Sec. 27-64. Damaging equipment.....	534
Sec. 27-65. Testing procedures.....	534
Sec. 27-66. Sanitary Sewer Rate.....	535
Secs. 27-67 - 27-73. Reserved.....	535
DIVISION 2. INSTALLATION OF SEWER MAINS AND LINES.....	535
Sec. 27-74. Policy established.....	535
Sec. 27-75. Other policies possible.....	535
Sec. 27-76. City liability.....	535
Sec. 27-77. Conformance with technical provisions.....	535
Sec. 27-78. Sewer line services.....	535
Sec. 27-79. Sewer mains.....	536
Secs. 27-80 - 27-90. Reserved.....	537
<b>ARTICLE IV. WATER.....</b>	<b>537</b>
DIVISION 1. GENERALLY.....	537
Sec. 27-91. Definitions.....	537
DIVISION 2. INSTALLATION OF WATER MAINS AND LINES.....	537
Sec. 27-101. Policies established.....	537
Sec. 27-102. Other policies possible.....	538
Sec. 27-103. City liability.....	538
Sec. 27-104. Service lines.....	538
Sec. 27-105. Water mains.....	538
Sec. 27-105.5. Water Rates.....	540
DIVISION 3. DROUGHT AND EMERGENCY CONTINGENCY PLAN.....	540
EXHIBIT "A".....	540
Sec. 27-106. Declaration of policy.....	540
Sec. 27-107. Authorization.....	540
Sec. 27-108. Application.....	540
Sec. 27-109. Mandatory drought contingency stage implementation.....	541
Sec. 27-110. Implementation and termination criteria guidelines.....	541
Sec. 27-111. Drought or emergency contingency stages.....	541
Sec. 27-112. Penalties for violations.....	543

Sec. 27-113 Legend.....	543
EXHIBIT "B" .....	545
DIVISION 4. CROSS-CONNECTION CONTROL .....	548
Sec. 27-113 General Policy.....	548
Sec. 27-114. Definitions .....	549
Sec. 27-115 Requirements.....	552
<b>Chapter 28.....</b>	<b>569</b>
<b>CURFEW ORDINANCE .....</b>	<b>569</b>
Sec. 28-1. Definitions: .....	569
Sec. 28-2. Offenses:.....	569
Sec. 28-3. Defenses:.....	569
Sec. 28-4. Enforcement Procedure. ....	570
Sec. 28-5. Penalties: .....	571
Sec. 28-6. Severability. ....	571
<b>Chapter 29.....</b>	<b>585</b>
<b>CITY FRANCHISES .....</b>	<b>585</b>
Sec. 29-1. Franchise Contracts. ....	585
Secs. 29-2 - 29-20 Reserved.....	585
<b>Chapter 30.....</b>	<b>619</b>
<b>APPENDIX A. ZONING .....</b>	<b>619</b>
Sec. 30-1. Title.....	619
Sec. 30-2. Purpose.....	619
Sec. 30-3. Definitions. ....	620
Sec. 30-4. Districts. ....	622
Sec. 30-5. "R-1" Residential Area No.1. ....	624
Sec. 30-5-A-1 SPECIFIC USE PERMITS.....	629
Sec. 30-6. "R-2" Residential Area No.2. ....	630
Sec. 30-7. "B-1" Neighborhood Business District. ....	632
<i>C. Yard regulations:</i> .....	634
Sec. 30-8. "B-2" Central Business District. ....	635
Sec. 30-8A-1. "I-1" Industrial District. ....	638
Sec. 30-8A-2. Oil and gas wells. ....	641
Sec. 30-9. Nonconforming uses. ....	642
Sec. 30-10. Board of adjustment. ....	642
Sec. 30-11. Changes and amendments. ....	645
Sec. 30-12. Enforcement and penalty for violation. ....	646
Sec. 30-13. Interpretation, purpose and conflict. ....	647
Sec. 30-14. Validity. ....	647
Sec. 30-15. When effective. ....	647
Sec. 30-16. Fees.....	647
<b>Chapter 31.....</b>	<b>651</b>
<b>APPENDIX B. SUBDIVISIONS .....</b>	<b>651</b>
Sec. 31-1. General. ....	651
Sec. 31-2. Definitions. ....	651
Sec. 31-3. Requirements of subdivisions and resubdivisions. ....	652
Sec. 31-4. Procedure. ....	656
Sec. 31-5. Penalties. ....	657
Sec. 31-6. Severability. ....	658
Sec. 31-7. Conflicting ordinances. ....	658
<b>Chapter 32.....</b>	<b>675</b>
<b>Emergency Management.....</b>	<b>675</b>

Sec. 32 1. Organization.....	675
Sec. 32 2. Emergency management director - powers and duties.....	675
Sec. 32 3. Emergency Management Plan .....	677
Sec. 32 4. Interjurisdictional Program.....	677
Sec. 32 5. Override .....	678
Sec. 32 6. Liability .....	678
Sec. 32 7. Commitment of funds .....	678
Sec. 32 8. Offences; penalties.....	678
Sec. 32-9. Severability .....	679
Sec. 32-10. Limitations .....	679
Sec. 32-11. Repealer .....	679
PART II CODE INDEX .....	dclxxxi



**PART II**  
**CODE OF ORDINANCES**

Chapter 1

GENERAL PROVISIONS

**Sec. 1-1. How Code designated and cited.**

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Ballinger City Code" and may be so cited.

**State law reference** - Authority to adopt a civil and criminal code of ordinances, Vernon's Ann. Civ. St. art. 53 § 001.

**Sec. 1-2. Rules of construction.**

In the construction of this Code, and of all ordinances and resolutions passed by the city council, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council:

*Generally.* Words shall be construed in their common and usual significance unless the contrary is clearly indicated.

*City.* The words "the city" or "this city" shall mean the City of Ballinger in the County of Runnels and State of Texas.

*City administrator, city secretary, chief of police or other city officers.* The words "city administrator," "city secretary," "chief of police" or other city officers or departments shall be construed to mean the city administrator, city secretary, chief of police or such other city officers or departments, respectively, of the City of Ballinger, Texas.

*Computation of time.* In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 53 § 001.

*Council.* Whenever the term "council," "this council" or "the council" is used in this Code, it shall mean the city council of the City of Ballinger, Texas.

*County.* The term "county" or "this county" shall mean the County of Runnels, Texas.

*Delegation of authority.* Whenever a provision of this Code requires or authorizes an officer or employee of the city to do some act or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the act or duty unless the terms of the provision specifically provide otherwise.

*Easement.* A right, liberty, privilege or advantage without profit which the owner of one parcel of land may have in the lands of another. A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property right in the owner.

*Gender.* Words of one gender include the other genders.

*Highway.* The term "highway" shall include any street, alley, highway, avenue or public place or square, bridge, viaduct, tunnel, underpass, overpass and causeway in the city, dedicated or devoted to public use.

*Joint authority.* A grant of authority to three (3) or more persons as a public body confers the authority of the number of members fixed by statute.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 5429b-2, § 2.03(a).

*Month.* The word "month" shall mean a calendar month.

*Number.* Any word importing the singular number shall include the plural and any word importing the plural number shall include the singular.

*Oath.* The word "oath" shall be construed to include an affirmation and the words "swear" and "sworn" include the words "affirm" and "affirmed".

*Official time standard.* Whenever certain hours are named herein they shall mean standard time or daylight saving time as may be in current use in the city.

*Or, and.* "Or" may be read "and," and "and" may be read "or" if the sense requires it.

*Owner.* The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land.

*Person.* "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

*Preceding, following.* "Preceding" when used by way of reference to title, chapter or article, means the next preceding. "Succeeding" in like manner, means the next succeeding.

*Sidewalk.* The word "sidewalk" shall mean that the portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

*Signature, signed, subscriber.* "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing. "Signature" or "subscribe" includes the mark of a person unable to write.

*State.* The words "the state" or "this state" shall be construed to mean the State of Texas.

*Street or highway.* A "street" or "highway" is the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

*Tense.* Words used in the past or present tense include the future as well as the past and present.

*Written.* The term "written" includes any representation of words, letters, symbols or figures.

*Year.* The word "year" shall mean twelve (12) consecutive calendar months.

### **Sec. 1-3. Catchlines of sections.**

Section captions do not limit or expand the meaning of any of the sections of this Code.

### **Sec. 1-4. Amendments to Code - Effect.**

Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the city council to make the same a part hereof, shall be deemed to be incorporated in this Code so that reference to the "Ballinger City Code" shall be understood and intended to include such additions and amendments.

### **Sec. 1-5. Same - Manner.**

All ordinances passed subsequent to the adoption of this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein, or in the case of

repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby, and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the city council.

**Charter reference** - Ordinances generally, § 3.10.

### **Sec. 1-6. Same - Language.**

Amendments to any of the provisions of this Code should be made by amending such provisions by specific reference to the section of this Code in substantially the following language: "That section of the Ballinger Code, is hereby amended to read as follows: .... "The new provisions shall then be set out in full as desired.

### **Sec. 1-7. Same - New material.**

In the event a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Ballinger City Code is hereby amended by adding a section (or article, chapter or other designation as the case may be), to be numbered, which reads as follows: .... "The new provisions shall then be set out in full as desired.

In lieu of subsection (a) hereof, when the city council desires to enact an ordinance of a general and permanent nature embracing a subject not previously existing in the Code, which the city council desires to incorporate into the Code, a provision in substantially the following language may be made part of such ordinance: "It is the intention of the city council, and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Ballinger City Code, and the sections of this ordinance may be renumbered to accomplish such intention."

### **Sec. 1-8. Same - Repeal.**

All sections, articles, chapters or other provisions of this Code desired to be repealed should be specifically repealed by section number, article number, chapter or other number, as the ease may be.

### **Sec. 1-9. Same - Subject to general penalty.**

In case of the amendment by the city council of any section of this Code for which a penalty is not provided, the general penalty as provided in section 1-12 of this Code shall apply to the section as amended; or in case such amendment contains provisions for which a penalty, other than the aforementioned general penalty, is provided in another section in the same chapter, the penalty so



provided in such other section shall be held to relate to the section so amended, unless such penalty is specifically repealed therein.

**Sec. 1-10. Supplementation of Code.**

By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the Code should include all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code, and also all amendments to the charter during the period. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:

Organize the ordinance material into appropriate subdivisions;

Provide appropriate catch lines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catch-lines, headings and titles;

Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_ to \_\_\_" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier

make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

**Sec. 1-11. Altering Code.**

It shall be unlawful for any person in the city to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of Ballinger to be misrepresented thereby. Any person violating this section shall be punished as provided in section 1-12 hereof.

**Sec. 1-12. General penalty for violations of Code; continuing violations.**

Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefore, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding two thousand dollars (\$2,000.00) for violations of all such rules, ordinances and police regulations that govern fire safety, zoning and public health and sanitation other than vegetation and litter violations nor five hundred dollars (\$500.00) for all other violations.

Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense. In the event any such violation is designated as a nuisance under the provisions of this Code, such nuisance may be summarily abated by the police department of the city.

**State law reference** - Authority of city to prescribe penalties for violation of Code of Ordinances, Vernon's Ann. Civ. St. art. 53 § 001; penalty for violation of ordinances generally. V.T.C.S., art. 1011; punishment for misdemeanor V.T.P.C., § 12.21 et seq.; maximum punishment by municipal court, V.T.C.P., art. 4.14.

**Sec. 1-13. Effect of repeal of ordinances.**

The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed.

**Sec. 1-14. Severability of parts of Code.**

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code,

since the same would have been enacted by the city council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

PAGES RESERVED

## Chapter 2

### ADMINISTRATION\*

- Art. I. In General, §§ 2-1 - 2-15
- Art. II. Employee Benefits, §§ 2-16 - 2-49
- Div. 1. Generally, §§ 2-16 - 2-23
- Div. 2. Social Security, §§ 2-24 - 2-34
- Div. 3. Municipal Retirement System, §§ 2-35 - 2-49
- Art. III. Records Management Program

#### ARTICLE I. IN GENERAL

**Secs. 2-1 - 2-15. Reserved.**

#### ARTICLE II. EMPLOYEE BENEFITS

##### DIVISION 1. GENERALLY

**Sec. 2-16. Worker's compensation.**

The city shall provide worker's compensation insurance for all city employees.  
(Ord. of 11-15-17)

*State law reference* - Worker's compensation, Vernon's Ann. Civ. S1. art. 8306 et seq.

**Secs. 2-17 - 2-23. Reserved.**

##### DIVISION 2. SOCIAL SECURITY ‡

**Sec. 2-24. Execution of agreements - Directed.**

The city council acting for and on behalf of the city, shall enter into all necessary agreements with the employees' retirement system of Texas for the purpose of carrying out the provisions of the applicable state and federal laws relative to federal old-age and survivors insurance for employees of the city. (Ord. of 1-25-55, § 1)

**Sec. 2-25. Same - Agent.**

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\* **Charter references** - Form of government, § 1.02; city council, art. 3; nominations and elections, art. 4; administrative services, art. 7.

**Cross references** - Airport advisory board, § 7-16 et seq.; building inspector, § 8-32 et seq.; civil defense, ch. 9; fire marshal, § 11-19 et seq.; fair housing administrator, § 15-28; planning and zoning commission, § 19-16 et seq.; police reserve force, § 21-17 et seq. ;

‡ *State law reference* - Social security, for municipal employees, Vernon's Ann. Civ. S1. art. 606 § 021.

The mayor is hereby appointed as agent of the city council and of the city to execute all necessary agreements and instruments required for the purposes of this division for and in behalf of the city council and the city. (Ord. of 1-25-55, § 2)

**Sec. 2-26. Duties of secretary.**

The city secretary is hereby directed to be the person responsible for making assessments, collections, payments and reports, as required by the employees' retirement system of Texas, in connection with the federal old-age and survivors insurance program. (Ord. of 1-25-55, § 3)

**Sec. 2-27. Fund established.**

A sufficient sum of money shall be allocated and set aside from available funds for the purpose of carrying out the provisions of this division. Such sum of money shall be known as the city social security fund, which fund shall be set aside and maintained in the regular city depository. (Ord. of 1-25-55, § 4)

**Secs. 2-28 - 2-34. Reserved.**

**DIVISION 3. MUNICIPAL RETIREMENT SYSTEM**

**Sec. 2-35. Election to participate.**

On behalf of the city, the city council hereby exercises its option and elects to have the city and all of the employees of all departments participate in the Texas Municipal Retirement System as provided in title 1108 of the civil statutes, and all of the benefits and obligations of such system are hereby accepted as to such employees. (Ord. of 2-5-74, § 1)

**Sec. 2-36. Notice of election.**

The mayor is hereby directed to notify the board of trustees of the Texas Municipal Retirement System that the city has elected to participate and have the employees of the city participate in such system. (Ord. of 2-5-74, § 2)

**Sec. 2-37. Inclusion of employees.**

Any person who becomes an employee of any participating department of this city on or after the effective date of participation of such department shall be included within and subject to the provisions of the Texas Municipal Retirement System beginning one year from and after the date such person becomes an

employee as that term is defined in subsection 14, section 2 of such system. (Ord. of 2-5-74, § 3)

**Sec. 2-38. Additions to, discontinuance of coverage.**

The city may in the future refuse to add new departments or new employees to the Texas Municipal Retirement System but shall never discontinue any participants. (Ord. of 2-5-74, § 3)

**Sec. 2-39. Contribution deposits.**

In accordance with the provisions of the state statutes, the deposits to be made to the Texas Municipal Retirement System on account of current service of the employees of the several participating departments are hereby fixed at the rate of five (5) per cent of the earnings of each employee of such departments, and in determining the deposits to be made on account of such service, the maximum earnings of the city shall be full salary. (Ord. of 2-5-74, § 4)

**Sec. 2-40. Remittance, reports to board of trustees.**

The city secretary is hereby directed to remit to the board of trustees of the Texas Municipal Retirement System, at its office in Austin, Texas, the city's proper contributions to the system and the amounts which shall be deducted from the compensation or payroll of employees, all as required by the board under the provisions of chapter 75, Acts of the 50th Legislature of the State of Texas, as amended, and the city secretary is hereby authorized and directed to ascertain and certify officially on behalf of the city, the prior service rendered to the city by each of the employees of the participating departments, and the average prior service compensation received by each, and to make and execute all other reports and certificates which may be required by the City of Ballinger, Texas, under the provisions of chapter 24, Acts Regular Session, 51st Legislature or the rules and regulations of the board of trustees of the Texas Municipal Retirement System. (Ord. of 2-5-74, § 5)

**Sec. 2-41. Effective date.**

Participation of the employees of the city in the Texas Municipal Retirement System shall be effective March 1, 1974. (Ord. of 2-5-74, § 6)

**Sec. 2-42. Supplemental disability benefits fund - Election to participate.**

On behalf of the city, the city council hereby elects to have the employees of all participating departments of the city participate in and be covered by the supplemental benefits fund of the Texas Municipal Retirement System, as

provided by V.T.C.S. Title 110B, sections 65.313 and 65.408, and all the benefits and obligations of participation in such fund are hereby accepted by the city as to such employees. (Ord. of 2-5-74, § 1)

**Sec. 2-43. Same - Notice to trustees.**

The mayor is hereby directed to notify the board of trustees of the Texas Municipal Retirement System that the city has elected to participate and have the employees of the city participate in the supplemental benefits fund of such system. (Ord. of 2-5-74, § 2)

**Sec. 2-44. Same - Employees included.**

Any person who becomes an employee of any participating department of the city on or after the effective date of participation of such department in the supplemental benefits fund shall, as a condition of his employment, be covered into such fund of the Texas Municipal Retirement System. The city may in the future refuse to add new departments or new employees to such fund, but shall never discontinue any member who is participating in the fund. (Ord. of 2-5-74, § 3)

**Sec. 2-45. Same - Remittance, reports to trustees.**

The city secretary is hereby directed to remit monthly to the board of trustees of the Texas Municipal Retirement System at its office in Austin, Texas, as the city's contributions to the supplemental benefits fund of the Texas Municipal Retirement System, such percentage of earnings of the participating employees of the city as may be fixed by the board of trustees of the Texas Municipal Retirement System; provided, however, the rate of contributions to such fund shall not exceed one-half of one per centum of the earnings of the employees of the city who are covered under such fund. The city secretary shall make for the city such reports as the board of trustees of the Texas Municipal Retirement System may prescribe. (Ord. of 2-5-74, § 4)

**Sec. 2-46. Same - Effective date.**

Participation of the employees in the participating departments of the city in the supplemental benefits fund of the Texas Municipal Retirement System shall be effective March 1, 1974. (Ord. of 2-5-74, § 5)

**Sec. 2-47. Supplemental death benefits.**

The city hereby elects to participate in the supplemental death benefits fund of the Texas Municipal Retirement System for the purpose of providing in-service death benefits for each of the city's employees who are members of said system, and for the purpose of providing post-retirement death benefits for annuitants



whose last covered employment was as an employee of the city, in the amounts and on the terms provided for in sections 62.004,64.601 through 64.605,65.314, 65.409, and 65.502 of title 11 OS, Revised Civil Statutes of Texas, 1925, as amended. (Ord. of 12-7-82, § 1)

**Editor's note** - A nonamendatory ordinance of Dec. 7, 1982, has been codified as § 2-47 at the editor's discretion.

### **Sec. 2-48. Authorization of updated service credits.**

(a) On the terms and conditions set out in sections 63.401 through 63.403 of title 11 OS, Revised Civil Statutes of Texas, 1925, as amended, each member of the Texas Municipal Retirement System who has current service credit or prior service credit in said system in force and effect on the first day of January, 1983, by reason of service in the employment of the city, and on such date has at least thirty-six (36) months of credited service with said system, shall be and is hereby allowed "updated service credit" (as that term is defined in subsection (d) of section 63.402 of said title) in an amount that is eighty (80) percent of the "base updated service credit" of the member (calculated as provided in subsection (c) of section 63.402 of said title). The updated service credit hereby allowed shall replace any updated service credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(b) In accordance with the provisions of subsection (d) of section 63.401 of said title, the deposits required to be made to the Texas Municipal Retirement System by employees of the several participating departments on account of current service shall be calculated from and after the date aforesaid on the full amount of such person's earnings as an employee of the city. (Ord. of 12-7-82, § 1)

Editor's note -Inclusion of §§ 1 and 2 of an ordinance of Dec. 7, 1982, as Code §§ 2-48 and 2-49 has been as the editor's discretion.

### **Sec. 2-49. Increase in retirement annuities.**

(a) On terms and conditions set out in section 64.208 of title 11 OB, Revised Civil Statutes of Texas, 1925, as amended, the city hereby elects to allow and to provide for payment of the increases below stated in monthly benefits payable by the Texas Municipal Retirement System to retired employees and to beneficiaries of deceased employees of this city under current service annuities and prior service annuities arising from service by such employees to this city. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of annuity increase under this section is computed as the sum of the prior and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by sixty (60) percent of the percentage change in Consumer Price Index for All Urban Consumers, from December of the year immediately preceding the effective date of the

person's retirement to the December that is thirteen (13) months before the effective date of this section.

(c) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(d) If a computation hereunder does not result in an increase in the amount of an annuity, the amount of the annuity will not be changed hereby.

(e) The amount by which an increase under this section exceeds all previously granted increases to an annuitant is an obligation of this city and of its account in the municipality accumulation fund of the Texas Municipal Retirement System.

(Ord. of 12-7-82, § 2)

**Note - See the editor's note for § 2-48.**

## ARTICLE III. RECORDS MANAGEMENT PROGRAM

### **Sec. 2-50. Definition of City Records.**

All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the City of Ballinger or any of its officers or employees pursuant to law or in the transaction of public business are hereby declared to be the records of the City of Ballinger and shall be created, maintained, and disposed of in accordance with the provision of this ordinance or procedures or procedures authorized by it and in no other manner.

### **Sec. 2-51. Additional Definitions.**

(a) "Department head" means the officer who by ordinance, order, or administrative policy is in charge of an office of the City of Ballinger that creates or receives records.

(b) "Essential record" means any record of the City of Ballinger necessary to the resumption of continuation of operations of the City of Ballinger in an emergency or disaster, to the re-creation of the legal and financial status of the City of Ballinger, or to the protection and fulfillment of obligation to the people of the state.

(c) "Permanent record" means any record of the City of Ballinger for which the retention period on a records control schedule is given as permanent.

(d) "Records control schedule" means a document prepared by or under the authority of the Records Management Officer listing the records maintained by the City of Ballinger, their retention periods, and other records disposition information that the record management program may require.

(e) "Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purpose of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

(f) "Records liaison officers" mean the person designated under Section 2-59 of this ordinance.

(g) "Records management committee" means the committee established in Section 2-55 of this ordinance.

(h) "Records management officer" means the person designated in Section 254 of this ordinance

(i) "Records management plan" means the plan developed under Section 2-56 of this ordinance.

(j) "Retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

### **Sec. 2-52. City Records Declared Public Property.**

All city records as defined in Sec. 2-50 of this ordinance are hereby declared to be the property of the City of Ballinger. No City official or employee has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

### **Sec. 2-53. Policy.**

It is hereby declared to be the policy of the City of Ballinger to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use and disposition of all City records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements

of the Texas Local Government Record Act and accepted records management practice.

**Sec. 2-54. Designation of Records Management Officer.**

The City secretary, and the successive holder of said office, shall serve as Records Management Officer for the City of Ballinger. As provided by state law, each successive holder of the office shall file his or her name with the director and librarian of the Texas State Library within thirty days of the initial designation or of taking up the office, as applicable.

**Sec. 2-55. Establishment of Records Management Committee.**

A records Management Committee consisting of the Mayor, City Administrator, and City Attorney is hereby established. The committee shall:

- (a) assist the Records Management Officer in the development of policies and procedures governing the records management program;
- (b) review the performance of the program on a regular basis and propose changes and improvements if needed.
- (c) review and approve records control schedules submitted by the Records Management Officer;
- (d) give final approval to the destruction of records in accordance with approved records control schedules; and
- (e) actively support and promote the records management program throughout the City of Ballinger

**Sec. 2-56. Records Management Plan to be Developed; Approval of Plan; Authority of Plan.**

(a) The Records Management Officer and the Records Management Committee shall develop a records management plan for the City of Ballinger for submission to the City Council. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the essential records of the City and to properly preserve those records of the City that are of historical value. The plan must be designed to enable the Records Management Officer to carry out his or her duties prescribed by state law and this ordinance effectively.

(b) Once approved by the City Council the records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of the City of Ballinger and records shall

be created, maintained, stored, microfilmed, or disposed of in accordance with the plan.

(c) State law relating to the duties other responsibilities, or recordkeeping requirements of a department head do not exempt the department head or the records in the department head's care from the application of the ordinance and the records management plan adopted under it and may not be used by the department head as a basis for refusal to participate in the records management program of the City of Ballinger.

### **Sec. 2-57. Duties of Records Management Officer.**

In addition to other duties assigned in this ordinance, the Records Management Officer shall:

(a) administer the records management program and provide assistance to department heads in its implementation;

(b) plan, formulate, and prescribe records disposition policies, systems, standards, and procedures;

(c) in cooperation with department heads identify essential records and establish a disaster plan for each office and department to ensure maximum availability of the records in order to re-establish operation quickly and with minimum disruption and expense;

(d) develop procedures to ensure the permanent preservation of the historically valuable records of the City;

(e) establish standards for filing and storage equipment and for recordkeeping supplies;

(f) study the feasibility of and, if appropriate, establish a uniform filing system and a forms design and control system for the City of Ballinger;

(g) provide records management advice and assistance to all City departments by preparation of a manual or manuals of procedures and policy and by on-site consultation;

(h) monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the records management program and the City records control schedules are in compliance with state regulation;

(i) disseminate to the City Council and department heads information concerning state laws and administrative rules relating to local government records;

(j) instruct Records Liaison Officer and other personnel in policies and procedures of the records management plan and their duties in the records management program;

(k) direct Records Liaison Officers or other personnel in the conduct of record: inventories in preparation for the development of records control schedules as required by state law and this ordinance;

(l) ensure that the maintenance, preservation, microfilming, destruction, or other disposition of City is carried out in accordance with the policies and procedures of the records management program and the requirements of state law;

(m) maintain records on the volume of records destroyed under approved records control schedules, the volume of records microfilmed or stored electronically, and the estimated cost and space savings as the result of such disposal or disposition;

(n) report annually to the City Council on the implementation of the records management plan in each department of the City of Ballinger, including summaries of the statistical and fiscal data compiled under Subsection (13); and

(o) bring to the attention of the City Council noncompliance by department heads or other City personnel with the policies and procedures of the records management program or the Local Government Records Act.

### **Sec. 2-58. Duties and Responsibilities of Department Heads.**

In addition to other duties assigned in this ordinance, department heads shall:

(a) cooperate with the Records Management Officer in carrying out the policies and procedures established in the City of Ballinger for the efficient and economical management of records and in carrying out the requirement of this ordinance;

(b) adequately document the transaction of government business and the services, programs, and duties for which the department head and his or her staff are responsible; and

(c) maintain the records in his or her care and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the records management program of the City of Ballinger and the requirements of this ordinance.

**Sec. 2-59. Designation of Records Liaison Officers.**

Each department head shall designate a member of his or her staff to serve as Records Liaison Officer for the implementation of the records management program in the department. If the Records Management Officer determine that in the best interests of the records management program more than one Records

Liaison Officer should be designated for a department, the department head shall designate the number of Records Liaison Officer specified by the Records Management Officer. Persons designated as Records Liaison Officer shall be thoroughly familiar with all the records created and maintained by the department and shall have full access to all records of the City of Ballinger maintained by the department. In the event of the resignation, retirement, dismissal, or removal by action of the department head of a person designated as a Records Liaison Officer, the department head shall promptly designate another person to fill the vacancy. A department head may serve as Records Liaison Officer for his or her department.

**Sec. 2-60. Duties and Responsibilities of Records Liaison Officers.**

In addition to other duties assigned in this ordinance. Records Liaison Officer shall:

- (a) conduct or supervise the conduct of inventories of the records of the department in preparation for the development of records control schedules;
- (b) in cooperation with the records Management Officer coordinate and implement the policies and procedures of the records management program in their departments; and
- (c) disseminate information to department staff concerning the records management program.

**Sec. 2-61. Records Control Schedules to be Developed; Approval; Filing with State.**

- (a) The Records Management Officer, in cooperation with department heads and Records Liaison officers, shall prepare records control schedules on a department by department basis listing all records created or received by department and the retention period for each record. Records control schedules shall also contain such other information regarding the disposition of City records as the records management plan may require.
- (b) Each records control schedule shall be monitored and amended as needed by the Records Management Officer on a regular basis to ensure that it is in

compliance with records retention schedules issued by the state and that it continues to reflect the recordkeeping procedures and needs of the department and the records management program of the City of Ballinger.

(c) Before its adoption a records control schedule or amended schedule for a department must be approved by the department head and the members of the Records Management Committee.

(d) Before its adoption a records control schedule must be submitted to and accepted for filing by the director and librarian as provided by state law. If a schedule is not acceptable for filing the schedule shall be amended to make it acceptable for filing. The Records Management Officer shall submit the records control schedules to the director and Librarian.

**Sec. 2-62. Implementation of Records control Schedules; Destruction of Records under Schedule.**

(a) A records control schedule for a department that has been approved and adopted under Section 2-56 shall be implemented by department heads and Records Liaison officer according to the policies and procedures of the records management plan.

(b) A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or the department head requests in writing to the Records Management Committee that the record be retained for an additional period.

(c) Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained by the Records Management Officer from the Records Management Committee.

**Sec. 2-63. Destruction of Unscheduled Records.**

A record that has not yet been listed on an approved control schedule may be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the Records Management officer has submitted to and received back from the director and librarian an approved destruction authorization request.

**Sec. 2-64. Records Center.**

A records center, developed pursuant to the plan required by Section 7, shall be under the direct control and supervision of the Records Management Officer. Policies and procedures regulating the operations and use of the records center



shall be contained in the records management plan developed under Section 2-56.

PAGES RESERVED

## Chapter 3

### ADVERTISING

Art. I. In General, §§ 3-1 - 3-20

Art. II. Signs and Billboards, §§ 3-21 - 3-55 Div. 1. Generally, §§ 3-21 - 3-35

Div. 2. Licenses and Bonds, §§ 3-36 - 3-52

Div. 3. Location, Construction and Maintenance Requirements, §§ 3-53 - 3-55

#### ARTICLE I. IN GENERAL

##### **Sec. 3-1. Reserved.**

Editor's note - Former § 3-1 which had pertained to posting of advertisements upon utility poles, and was derived from § 1 of an ordinance of Oct. 5, 1904, was deleted, at the discretion of the editor, as being superseded by provisions of §§ 3 and 4 of an ordinance of Oct. 16, 1979, codified as §§ 3-23, 3-24.

##### **Sec. 3-2. Destroying lawful posters.**

It shall be unlawful for any person to wrongfully and maliciously tear down, deface or cover up any posted advertisement or bill of any person when the same is rightfully posted and put up and during the time such sign or advertisement shall be of value.

##### **Secs. 3-3 - 3-20. Reserved.**

#### ARTICLE II. SIGNS AND BILLBOARDS\*

##### DIVISION 1. GENERALLY

##### **Sec. 3-21. Definitions.**

As used in this article, the following definitions of terms shall apply:

(1) Display sign. The term "display sign" shall mean a structure that is arranged, intended, designed or used as an advertisement, announcement or direction, and includes a sign, sign screen, billboard and advertising devices of every kind. The

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\* **Editor's note** - Sections 1 -15 of an ordinance of Oct. 16, 1979, designated by the city as new Ch. 3A, Arts. I and II, have been codified for purposes of classification as Art. II, Div. 1, §§ 321 - 3-25; Div. 2, §§ 3-36 - 3-42; and Div. 3, §§ 3-53 - 3-55.

**Charter reference** - Department of planning and zoning, §§ 13.01 - 13.03.

**Cross references** - Buildings, Ch. 8; electricity, Ch. 10; planning and zoning, Ch. 19; railroads, Ch. 22; streets and sidewalks, Ch. 23; traffic, Ch. 26; utilities, Ch. 27; zoning, App. A; subdivisions, App. B.

foregoing enumeration of display signs shall not be construed to be exclusive, but the term "display sign" shall include all other devices or structures which may reasonably be included in such term, whether attached or unattached. Wherever the word "sign" is used in this chapter, the same shall be construed to mean and be synonymous with the term "display sign."

(2) *Billboard*. The term "billboard" shall apply to any sign erected on a free-standing framework and independent of a building, upon which sign the primary display copy is nonelectric and shall include poster billboard and painted bulletins.

(a) Billboards upon which paper copy is placed shall be referred to as "poster billboards";

(b) Billboards upon which the copy is painted shall be referred to as "painted bulletins",

(c) Billboards may contain electric as well as nonelectric embellishments.

(3) *Pole sign*. The term "pole sign" shall mean a projecting or flat sign supported and placed upon a single pole or standard. Any such standard may be made of several poles or other structural components bound together into a single support or base for a sign.

(4) *Portable sign*. The term "portable sign" shall apply to any sign ordinarily, but not necessarily, supported on a base and in no way attached or affixed to the ground, a building or other structure or object.

(5) *Outdoor advertising sign*. The term "outdoor advertising sign" shall be deemed to mean a sign which directs the attention of the general public to a business, product, service or activity not usually conducted upon the premises where such sign is located. Outdoor advertising signs are to be considered as a specific use rather than as an incidental use to an existing land use, in that outdoor advertising signs produce a revenue to the property owner as a land use, while the advertising messages carried by commercial signs do not produce a revenue, but are incidental to a revenue-producing land use.

(5.1) *Back-to-back sign*. The term "back-to-back sign" shall be deemed to mean a structure with two (2) parallel and directly opposite signs, with their faces oriented in opposite directions and spaced no more than ten (10) feet apart.

(6) *V-type sign*. The term "V-type sign" shall be deemed to mean a structure composed of two (2) signs in the shape of the letter "V" when viewed from above and with their faces oriented in opposite directions. (Ord. of 10-1679, § 1)

**Sec. 3-22. Scope of article.**

The provisions of this article shall be effective, and shall be applied to the entire area, within the corporate limits of the city and to any property owned by or under the jurisdiction of the city outside of its corporate limits. (Ord. of 10-16-79, § 2)

**Sec. 3-23. Posting bills, etc. - on public property.**

In accordance with power the legislature has delegated to the City of Ballinger in Article 1175, R. S. 1963, Section 24, the City of Ballinger does hereby prohibit the erection of billboards, pole signs, outdoor advertising signs, back to back signs, V-type signs in the city limits of the City of Ballinger, as defined in this chapter, on or after January 1, 1989 provided however, that any sign erected prior to January 1, 1989 may continue, as constructed, as long as the other provision of this article are adhered to; however, if any sign structure is completely destroyed or damaged to the extent of 75K of its replacement cost, it shall not be permitted to be replaced in the City of Ballinger; also providing that any violation of this section shall be deemed to be a violation of Section 5 of this chapter and all provisions of said Section 5 of this chapter shall control.

**Sec. 3-24. Same - On private premises.**

No person shall attach, place, paint, write, stamp or paste any sign, advertisement or other matter upon any house, wall, fence, gatepost or tree box, without first having obtained the written permission of the owner, agents or occupants of the premises and having complied with the provisions of this article. (Ord. of 10-16-79, § 4)

**Sec. 3-25. Violations defined; penalties; nuisance signs.**

(a) Violations. Wherever by the provisions of this article the performance of any act is required or the performance of any act is prohibited or wherever any regulation, dimension or limitation is imposed on the use or change of use of, or upon, any land, or on the erection or alteration of any structure or the use or change of use of such structure, a failure to comply with the provisions of this article shall constitute a violation of this article. Every day on which a violation exists shall constitute a separate violation and a separate offense.

(b) Penalties. Any person who shall violate any provision of this article shall be deemed to be guilty of a misdemeanor and shall, upon conviction, be punished as prescribed in section 1-12.

(c) When sign held to be nuisance; removal; reclaiming. Any sign erected, altered, used or maintained in violation of this article shall constitute a public nuisance, and if the owner fails to remove same within thirty (30) days after being

notified in writing to do so, it may be summarily removed by the city at the expense of the owner or of the person erecting, using or maintaining it. Any such sign so removed shall be stored or impounded and shall not be returned to the owner until all charges for removing and storing same shall have been paid. Provided, however, that if any such sign remains unclaimed for a period of thirty (30) days after its removal, or if the costs of removal and storage are not paid within such thirty (30) day period, the city may destroy, sell or otherwise dispose of same. (Ord. of 10-16-79, § 5)

**Secs. 3-26 - 3-35. Reserved.**

## DIVISION 2. LICENSES AND BONDS

**Sec. 3-36. Billboard operator - License.**

No person shall engage in the business of erecting, installing, servicing, or maintaining display signs or poster billboards and/or painted bulletins for rental or leasing purposes, until such person shall have applied to the city administrator for a license to conduct such business and shall have deposited with the city administrator an annual license fee in the sum of two hundred twenty dollars (\$220.00). For the purpose of this article, all such persons engaged in the business of erecting, installing, servicing or maintaining such display signs and billboards shall be designated as billboard operators. (Ord. of 10-16-79, § 6)

**Sec. 3-37. Same - Bond.**

No person shall erect, install or maintain any display sign within the city, for which a permit is required, until such person has filed with the city clerk a bond or policy of insurance in the sum of twenty-five thousand dollars (\$25,000.00); such bond or policy of insurance to be conditional for the erection of such sign in accordance with this Code and the ordinances of the city and laws of the state, and providing for the indemnification of the city for any and all damages or liabilities that may accrue to or against the city by reason of erection, maintenance, demolition, repair, removal or defects in, or collapse of, any display sign erected by or under the direction of such persons, and further providing for the indemnification of any person who shall, while upon public property of the city, incur damages for which the person erecting such sign is legally liable, by reason of the erecting, maintenance, demolition, repair, removal or defects in, or collapse of, any such sign. (Ord. of 10-16-79, § 7)

**Sec. 3-38. License nontransferable.**

No license shall be transferable and no holder of any license issued under this division shall allow his name to be used by any other party, either for the purpose of doing work or obtaining a permit, under the penalty of forfeiting his license in

addition to any fine levied, and the building inspector or his representative is authorized to refuse to issue permits to the holder of any license violating this provision. (Ord. of 10-16-79, § 8)

**Sec. 3-39. Expiration and renewal of licenses.**

All licenses shall be for the calendar year and shall expire at midnight on the 31st of December; and shall be renewed upon application of the holder, payment of the required fee and filing of the required bond, where such is required, at any time within thirty (30) days before the date of such expiration, unless such license has been revoked or cancelled for cause as provided herein. Any license granted under the provisions of this division may be revoked by the building inspector if the holder of such license violates any provision of this article. When a license is revoked, a new license shall not be granted to the same person for at least thirty (30) days. (Ord. of 10-16-79, § 9)

**Sec. 3-40. Liability on bonds for violations.**

Any person having complied with the provisions of this article as to the procuring of a license and giving of bond, who shall violate any of the provisions of this article relating to the erection, painting, servicing or maintaining of any display sign as provided in this article, shall, in addition to any other penalties provided, be liable, together with his sureties, on the bond furnished, conditioned that such licensed person comply in good faith with the terms and conditions and provisions of this article, and for each violation of the provisions of this article, such licensed person and his sureties shall be liable to the city in the sum of twenty-five dollars (\$25.00) for each violation, and such bond shall be liable for successive recoveries for each offense committed by such person. (Ord. of 10-1679, § 10)

**Sec. 3-41. Recoveries on bonds.**

It shall be the duty of the building inspector to report each and every violation of the provisions of this article to the city attorney, who shall immediately make demand upon the principal and sureties on his bond, for the amount of liability for each offense, and in the event of default in the payment of such sum, it shall be the duty of the city attorney immediately to file suit upon the bond for the recovery of any amount due the city, by reason of the penalties incurred. (Ord. of 10-16-79, § 11)

**Sec. 3-42. Disposition of recoveries.**

All sums of money collected as provided in section 3-36 [or 3-41] shall be paid immediately into the treasury of the city in like manner as taxes, licenses and other funds are deposited on behalf of the city. (Ord. of 10-16-79, § 12)

**Sec. 3-43. Sign and Billboards.**

In accordance with the power the legislature has delegated to the City of Ballinger in Article 1175, R.S. 1963, Section 24, the City of Ballinger does hereby prohibit the erection of billboards, pole signs, out door advertising signs, back to back signs, V-type signs in the city limits of the City of Ballinger, as defined in this chapter, on or after January 1, 1989 provided however, that any sign erected prior to January 1, 1989 may continue, as constructed, as long as the other provisions of this article are adhered to; however, if any sign structure is completely destroyed or damaged to the extent of 75% of its replacement cost, it shall not be a violation of Section 5 of this chapter and all provisions of said Section 5 of this chapter shall control. (Ord. of 1-1-89)

**DIVISION 3. LOCATION, CONSTRUCTION AND MAINTENANCE REQUIREMENTS**

**Sec. 3-53. Billboards - Location.**

No billboard, or part thereof, shall be located on or above any public property, nor shall any billboard be located on any private property without the written consent of the owner, holder, lessee, agent or trustee. (Ord. of 10-16-79, § 13) Cross reference - Zoning, App. A

**Sec. 3-54. Same - Construction.**

Every billboard shall be firmly and solidly constructed so as to bear a wind pressure of at least thirty (30) pounds per square foot of area, according to the following requirements:

(1) Billboards not exceeding seventy-five (75) square feet of advertising display area, per facing, exclusive of trim, including billboards used as commercial signs, shall be located entirely within the property lines of the private property upon which they are situated and there shall be an open space of at least six (6) feet in height maintained between the bottom of such signs or billboards and the ground, except that the necessary supports extending through such space are not prohibited.

(2) Billboards exceeding seventy-five (75) square feet of advertising display area per facing, exclusive of trim, including billboards used as commercial signs, shall be located entirely within the established building line at the front of the property upon which they are situated; except, electric light lamps and fixtures attached to, and intended to illuminate, the face of such signs or billboards may project beyond the building lines for a distance of not more than six (6) feet, but in no instance beyond a line of two (2) feet inside the curb line and parallel to the



curb line. Except when it is deemed to be aesthetically desirable to fully cover the sign structure and such structure so arranged does not create a public hazard or nuisance, there shall be an open space of at least six (6) feet in height maintained between the bottom of such signs or billboards and the ground, except that the necessary supports extending through such space are not prohibited.

(3) Construction and maintenance of all billboards erected within the city shall be required to meet the following standards:

- (a) There shall be sufficient creosoted poles or steel channel uprights to adequately support each outdoor advertising sign to ensure that each such structure, including foundation, supports, braces and display sign, shall be able to bear a wind pressure of at least thirty (30) pounds per square foot of area;
- (b) Base aprons measuring not less than twenty-four (24) inches in height shall be attached to the bottom of all painted bulletins measuring ten (10') feet or more in height and forty (40) feet or more in width of display surface;
- (c) All service platforms shall have a jack or support at each structural upright and shall have a minimum width of twenty (20) inches of workman's walking surface. Service platforms shall be mandatory, as specified herein, on all billboards and flat signs measuring more than twelve (12) feet between grade level and bottom of the sign display area;
- (d) All creosoted poles and channel or pipe uprights shall reach a uniform height on individual advertising displays. Extensions will be acceptable only if they are of sufficient strength to comply with the requirements of this division and are made uniform in appearance on individual signs;
- (e) All exposed surfaces of wood or metal, including treated but unpainted stringers, platforms, jacks or other supports, excepting galvanized metal, shall be painted on both front and back, upon installation or erection of such display signs;
- (f) Perpetual maintenance of all such display signs shall be required, including periodic repainting and replacement, where necessary, of stringers, platforms, jacks and other supports;
- (g) The director of housing and inspections shall have the authority to direct the city sign inspector to make periodic inspections at least every two (2) years and to enforce compliance with the requirements as set out herein.

(4) No flat sign, except electric signs, shall extend higher than eight (8) feet above the roof or parapet line of the building to which attached. No roof sign structure, except electric signs, shall extend higher than thirty-two (32) feet above

the roof at the point of mounting, and an open space of at least six (6) feet shall be provided between the base of the sign and the roof level, except for needed supports.

(5) No single outdoor advertising sign shall be permitted to be erected to exceed a sign area of sixteen hundred fifty (1,650) square feet. There shall be not more than two (2) billboards per facing for each sign location, whether such billboards or flat signs are placed on the same structure or separate structures, and when there are two (2) signs per facing, no single advertising sign shall have a sign area exceeding two hundred eighty-eight (288) square feet.

(6) No billboards or flat signs shall be permitted to be erected within three hundred (300) feet of another such sign structure on the same side of a street or expressway, measured along a line parallel to such street or side signs on the same location.

(7) No outdoor advertising sign shall be erected or maintained in the vicinity of any railroad crossing or any street intersection in such fashion as to create a public hazard.

(8) Flat signs, except electric signs, placed against the exterior wall of buildings or structures or other walls shall not extend more than twelve (12) inches out from the wall surface.

(9) Signs shall not be erected or maintained in such a manner as to obscure an otherwise physically interfere with an official traffic sign, signal or device, or to obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

(10) Signs shall not be erected or maintained, which imitate or resemble any official traffic sign, signal or device, nor erected or maintained upon trees, nor painted or drawn upon rocks or natural features, or which are structurally unsafe or in disrepair.

(11) No sign shall be permitted which is not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled ways of a road or highway, or which is of such intensity or brilliance as to cause glare or to impair the vision of the driver of any vehicle, or which otherwise interferes with any driver's operation of a motor vehicle.

(12) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures, an official traffic sign, signal or device.

(13) Official, electrical and commercial signs shall not be counted, nor shall measurements be made from them, for the purpose of determining compliance with the spacing requirements of outdoor advertising sign structures.

(14) Notwithstanding any other provisions of this article, it shall be unlawful for a land subdivision developer to erect and maintain billboards not exceeding two hundred and eighty-eight (288) square feet in area, for the purpose of advertising homes for sale.

(15) Notwithstanding the provisions, controls and limitations of any urban renewal plan or project area regulation, outdoor advertising signs shall be permitted to be erected in the nonresidential portions of such project areas pursuant to the provisions and limitations of this division.

(16) The electrical examining board is hereby authorized to grant variances from the terms of this division in specific cases, upon the application of a sign owner or agent thereof, when strict application of spacing, size, lighting or height provisions would result in practical difficulties or unnecessary hardship or inconvenience.

(17) Signs erected prior to the effective date of this article may continue, as constructed; however, if any sign structure is completely destroyed or damaged to the extent of seventy-five (75) per cent of its replacement cost it shall not be permitted to be replaced, if located in any residential zone.

(18) Signs located in other than residential zones may be modernized, replaced, structurally altered and reconstructed; except, that they may not be enlarged to an extent greater than fifty (50) per cent of previous size or height, except in conformity with the provisions of this division.

(19) All outdoor advertising signs shall be set back from the railing of any road street, highway or expressway overpass or bridge a distance of at least fifteen (15) feet.

(20) No sign shall be placed on any property, that shall interfere with the use of the adjoining property, and any sign shall extend back from the front line of the property and be even with at least the front portion of any building on any adjoining property. (Ord. of 10-16-79, § 14)

**Sec. 3-55. Same - Maintenance, generally.**

All signs must be kept in good repair. On undeveloped lots, the area between any sign and the street or highway to which it is oriented and the area within twenty-five (25) feet of such sign must be kept free and clear of sign materials, weeds, debris, trash, and other refuse. (Ord. of 10-16-79, § 15)

PAGES RESERVED

## Chapter 4

### ALCOHOLIC BEVERAGES\*

Art. I. In General, §§ 4-1 - 4-20

Art. II. Permits, §§ 4-21 - 4-28

#### ARTICLE I. IN GENERAL

##### **Sec. 4-1. Hours of Sale.**

It is unlawful for any person to sell or deliver any alcoholic beverages in the City except within those hours as prescribed by state law.

##### **Sec. 4-2. Definitions.**

(a) All terms used herein, and not defined herein, shall have the meaning assigned to them by the Texas Alcoholic Beverage Code, as amended, and/or the Texas Human Resources Code, as amended.

(b) *Church* means any structure used primarily as a place where persons regularly assemble for religious worship, including sanctuaries, chapels and cathedrals, and on-site buildings adjacent thereto, such as parsonages, fellowship halls, Sunday schools and rectories.

(c) *Public hospital* means a hospital that is supported in whole, or in part, by public funds.

(d) *Public school* means any building where persons regularly assemble for the purposes of instruction or education supported in whole, or in part, by public funds, together with playgrounds, dormitories, or other structures or grounds used in conjunction therewith.

##### **Sec. 4-3. Permits Required; Fees.**

(a) It shall be unlawful for any person to sell alcoholic beverages within the City unless such person has obtained a permit or license from the Texas Alcoholic Beverage Commission.

(b) Unless state law exempts a permittee or licensee from payment of a fee established by this section, a permittee or licensee must pay the City an annual permit or license fee

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\* \*\*State law references - Local regulation of alcoholic beverages, V.T.C.A. Alcoholic Beverage Code, § 109.31 et seq.; public intoxication, V.T.P.C., § 42.08; general penalty, V.T.C.A. Alcoholic Beverage Code § 1.05.

of one-half (1/2) the amount of the state fee for each permit or license authorizing the sale of alcoholic beverages. The fee shall be paid to the City at the time of initial issuance of a state permit or license and when such permit or license is renewed with the state thereafter.

(c) A permittee or licensee shall pay the fees established under subsection (b) to the City no later than the 30th day after the date the permittee's or licensee's payment of a state permit or license fee is due.

(d) A permittee or licensee who sells an alcoholic beverage at a business location before the permittee or licensee pays the fees established by this section, either at the time of initial issuance of a state permit or license or when such permit or license is renewed with the state, commits a class C misdemeanor punishable by a fine established herein.

(e) The City Secretary shall issue and deliver a receipt under this section to the permittee or licensee authorizing the sale of alcoholic beverages under this ordinance and a state permit or license, if the permittee or licensee:

- (1) Pays the fees established by subsection (b); and
- (2) Provides the permit or license issued by the state to the City Secretary.

(f) The City Secretary shall keep a copy of all receipts issued and the state permits or licenses provided in subsection (e) in the City Secretary's office.

#### **Sec. 4-4. Prohibited locations.**

(a) It shall be unlawful for any person who is engaged in the business of selling alcoholic beverages to sell alcoholic beverages where the place of business is within 300 feet of any church, public or private school, or public hospital.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be: (1) in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or (2) if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

(c) Except as provided by Section 109.3310 of the Texas Alcoholic Beverage Code, the provisions of this ordinance relating to a public school shall also apply to a day-care center and a child-care facility as those terms are defined by Section 42.002, Human Resources Code for a permit or license holder under Chapter 25, 28, 32, 69, or 74 who does not hold a food or beverage certificate. Therefore, it shall be unlawful for any person who is engaged in the business of selling alcoholic beverages described in this

subsection to sell alcoholic beverages where the place of business is within 300 feet of any day-care center and/or a child-care facility.

This subsection does not apply to a permit or license holder who sells alcoholic beverages if:

- (1) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or
- (2) the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.

(d) The City Council may allow variances to the distance regulations established above if the City Council determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason, the City Council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

(e) No variance may be granted under subsection (d) except after a public hearing for which notice has been given as provided in this subsection. Notice of a request for a variance shall be given to owners of property within three hundred feet of the business. The notice shall be sent via regular United States mail, not less than ten days before the date set for the hearing, to all such owners who have rendered their property for City taxes as the ownership appears on the last approved City tax roll.

#### **Sec. 4-5. Sale of Beer Prohibited in Residential Areas; Proper zoning district required.**

(a) It shall be unlawful for any person or dealer to sell beer in residential areas zoned R-1 and R-2.

(b) No person shall engage in the business of manufacturing, distributing or selling any alcoholic beverage in the City unless the place of business of such person is located in a zoning district of the City, as established by present and future zoning regulations of the City, in which the manufacture, distribution, and/or sale of alcoholic beverages is permitted.

#### **Sec. 4-6. Penalty.**

(a) Any person who violates or fails to comply with this ordinance, and any person who is the alcoholic beverage permit or license holder or otherwise operates any alcoholic beverage establishment that does not comply with the requirements of this ordinance, and any responsible officer of that alcoholic beverage permit or license holder, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than \$500.00. Each day any violation or noncompliance continues constitutes a separate offense.

(b) A violation of any term or provision of this ordinance may be enjoined by civil injunctive relief. The City may, at its sole discretion, seek injunctive and other equitable relief to restrain any violation of this ordinance and may, in addition, pursue any lawful remedies to correct, abate, or punish any violation hereof.

(c) The penalties and remedies provided for in this ordinance are not exclusive of each other or of any other remedy at law or in equity, and all such remedies are declared to be cumulative.

II. Severability Clause. It is hereby declared to be the intention of the City Council of the City of Ballinger that any phrase, sentence, section, or paragraph of this ordinance shall be declared unconstitutional or otherwise invalid by final judgment of a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remainder of this ordinance since the same would have been enacted by the City Council without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

III. Repealing Clause. All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

IV. Publication and Effective Date. The City Secretary is hereby authorized and directed to publish the caption of this Ordinance in the manner and for the length of time prescribed by law and this ordinance shall become effective after publication of same as provided by charter and/or State law.

**Secs. 4-7 - 4-20. Reserved.**

## ARTICLE II. PERMITS"

### **Sec. 4-21. Violations.**

The violation of any provision of this article, including any false statement contained in application for issuance or renewal of a permit or any false statement in any personal history sheet of an employee shall constitute a misdemeanor punishable as prescribed in section 1-12. (Ord. of 12-18-85)

### **Sec. 4-22. Permit required.**

Every holder of any alcoholic beverage permit or license issued by the state under the Liquor Control Act of that state and doing business within the corporate city limits shall be required to have a similar permit or license from said city, subject to the exceptions specifically provided in the Liquor Control Act. The permit or license to be issued by the city shall be in such form as may be provided by the city secretary and each applicant for such permit shall make application upon the form, if any, to be provided by the city. (Ord. of 12-18-85)



#### **Sec. 4-23. Nature of permit.**

The permit or license shall be issued by the city secretary upon authorization by the city administrator and shall cover the same transactions or activities described in the applicant's state permit or license. The city permit or license shall, unless sooner revoked, remain in effect for one year from the date of its issuance and shall not be transferable or assignable to other permits or licensees. It may, upon application to the city secretary, reflect a change of address at which the activity is to be conducted. A separate city permit or license shall be required for each separate location at which the proposed activity is to be conducted. (Ord. of 12-18-85)

#### **Sec. 4-24. Application for permit.**

In order to secure the necessary permit or license, the applicant shall:

- (1) Submit to the city secretary, in duplicate, a copy of the application for the state permit and license; and
- (2) Make payment of the fee required under this article. (Ord. of 12-18-85)

\*Editor's note - Inclusion of a nonamendatory ordinance of Dec. 18, 1985, as Art. II has been at the editor's discretion.

#### **Sec. 4-25. False statements on application.**

Any false statement contained in application for permit or license shall constitute a misdemeanor punishable as herein set out, and any false statement contained in the application for permit or license shall be good cause for the refusal to issue any permit or license or for the revocation of any permit or license. If any affirmative statement required in the application for permit or license, other than a statement as to age, becomes untrue after the issuance of a permit or license, that fact shall be good cause for the revocation of a permit or license. (Ord. of 12-18-85)

#### **Sec. 4-26. Investigation; appeal.**

The city secretary shall deliver one copy of the application to the chief of police or his designee, who shall within four (4) working days, recommend to the city secretary the approval or disapproval of the application. The city secretary shall then submit the application, together with the recommendation of the chief of police, to the city administrator for approval or disapproval. If the application is disapproved, the permit or license shall not issue. If an application is refused, the applicant shall have five (5) days in which to file a written appeal with the city secretary, appealing such ruling to the city council. The city council, at its next regular meeting or at a special meeting to be held without unnecessary delay, shall hear testimony from the applicant, the city administrator and from the chief c

police or his designee, to determine whether good cause existed for denying such permit or license. If good cause for such refusal is found to exist, no permit or license shall issue. (Ord. of 12-18-85)

**Sec. 4-27. Issuance.**

If the application for permit is found to be in compliance with the City Charter, all city ordinances and any amendments thereto, the city secretary will certify the application for permit; thereafter, the applicant shall demonstrate to the city secretary a state permit or license in full force and effect, within twenty (20) days after issuance. (Ord. of 12-18-85)

**Sec. 4-28. Fee.**

There is hereby levied a fee equal to one-half of the amount of the state fee applicable to each permit and license issued under the authority of this and such fee shall be payable at the time of the granting or renewal of the permit or license that each permit and license is valid for one year from date of issuance; further that prior to the expiration of the permit and license granted by the state, the applicant must present to the city secretary evidence of a renewal license granted by the state and pay the renewal fee (one-half of the amount of the state fee) to the city. (Ord. of 12-18-85)

PAGES RESERVED



## Chapter 5

### AMUSEMENTS\*

Art. I. In General, §§ 5-1 - 5-15

Art. II. Pool and Billiard Rooms, §§ 5-16 - 5-41

Div. 1. Generally, §§ 5-16 - 5-30

Div. 2. License, §§ 5-31 - 5-41

#### ARTICLE I. IN GENERAL

##### **Sec. 5-1. Bond or liability insurance required for amusement rides.**

No person shall conduct, operate, manage or sponsor any Ferris wheel, merry-go-round or other amusement ride operated for hire or for the purpose of promoting or advertising any trade or business, without first filing with the city secretary a bond or certificate of liability insurance, in an amount of 100/300/100 indemnifying the public against damages sustained by reason of the operation of such ride. Such bond or certificate of insurance shall be subject to approval by the city attorney. This section shall apply to all persons, whether or not a license is required by any other provision of this Code.

##### **Secs. 5-2 - 5-15. Reserved.**

#### ARTICLE II. POOL AND BILLIARD ROOMS

##### DIVISION 1. GENERALLY

##### **Sec. 5-16. Definitions.**

For the purposes of this article the following words and phrases shall have the meanings respectively ascribed to them:

*Games*: Including but not limited to pin ball machines, video games, electronic games of chance manually operated games, amusement redemption machine or any other device used or operated.

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\* **State law references** - Regulation of coin-operated machines, V.T.G.S., Art. 8817; coin-operated services generally, V.T.G.S., Art. 8801 et seq.; amusement machine commission, V.T.G.S., Art. 4413(41).

*Licensee:* Any person holding a license issued under the provisions of this article.

*Game Room:* Any place or establishment that owns or operates games as defined in Sec 5-16.

*Pool or billiard room:* Any place or establishment which is required by state law to pay an occupation tax to the state, county or city for owning and operating one or more game pool or billiard tables.

*Pool or billiard table:* Any table surrounded by a ledge or cushion, with or without pockets, upon which balls are propelled by a stick or cue, and where the player thereon does not or is not required to make a coin deposit causing an electrical connection of any nature or kind before such game may be actually commenced.

*Public domino parlor:* Any place within the city limits of Ballinger where dominoes are kept to be played by the public.

*Amusement Redemption Machine Game Room:* Any place or establishment where amusement redemption machines are located.

*Amusement Redemption Machines* means the following except for excluded machines:

1. A skill or pleasure coin-operated machine that is designed, made and adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill and chance affords the use, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, novelties, or a representation of value redeemable for those items.
2. Any electronic, electromechanical or mechanical contrivance designed, made and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with non-cash merchandise, prizes, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than ten times the amount charged to lay the game or device once or \$5.00, whichever is less.

*Coin-operated machine* means a machine or device operated by the payment or insertion of coin or paper currency or any other consideration.

*Excluded machines:* An amusement redemption machine does not include:

1. A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and direct from the machine, including claw, crane, or similar machines; nor
2. A machine from which the opportunity to receive non-cash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, varies depending upon the user's ability to throw, roll, flip, toss, hit or drop a ball or other physical object into the machine or a part thereof, including basketball, skeet ball, golf, bowling, pusher, or similar machines; nor
3. A machine or any device defined in V.T.C.A. Penal Code, section 47.01, as a gambling device, or any activity prohibited or described in V.T.C.A. Penal Code, ch. 47.

*Representation of value* means cash paid under authority of sweepstakes contests as provided in the Texas Business and Commerce Code, Chapter 43(B), or a gift certificate or gift card that is presented to a merchant in exchange for merchandise. (Ord. of 7-9-18)

#### **Sec. 5-17. Hours of operation.**

No person shall engage in the operation for profit of any pool or billiard table, a public domino parlor or amusement redemption machine, within the city between the hours of 12:00 midnight and 7:00 a.m., except on Sundays they may be operated only between the hours of 1 :00 p.m. and 7:00 p.m. (Ord. of 7-9-18)

#### **Sec. 5-18. Reserved**

#### **Sec. 5-19. Partitions.**

It shall be unlawful for any person to erect or construct on any premises licensed under the provisions of this article any partition obstructing the view of any part of the building or premises or to cut the building into two (2) or more rooms by constructing partitions therein; provided, however, toilets or other sanitary facilities shall be enclosed and adequately ventilated in accordance with health, plumbing, sanitary and other applicable ordinances of the city. (Ord. of 108-63, § 6)

#### **Sec. 5-20. Location.**

Places of business governed by this article shall be located on the ground floor or street level only of any building and shall not be licensed for any other floor than the ground or street level floor. (Ord. of 10-8-63, § 6)

#### **Sec. 5-21. Restrictions**

**For all Amusement Redemption Machine Game Rooms:**

1. *Minors Prohibited:* No person who has control of any Amusement Redemption Game Room shall permit or allow any minor under the age of eighteen (18) to participate in an Amusement Redemption Game or operate video sweepstakes machines. It shall be the duty of any person who is the proprietor or keeper of such business establishment to post conspicuously in his/her place of business the following sign: "Minors under the Age of 18 Years May Not Participate in Amusement Redemption Games."
2. *Device Limits:* There shall be no more than twelve (12) Amusement Redemption Games located at a single location. In addition, there shall be only one monitor per game.
3. *Gross and Net Revenue Restrictions:* Gross revenue generated by the Amusement Redemption Games may not exceed 50% to total revenues for the total business at same location.
4. *Location:* Amusement Redemption Machine Game Rooms must be located in freestanding buildings. There can be no other buildings connected or immediately adjacent to the building housing the game room. No Amusement Redemption Machine Game Room may be located within five hundred (500) feet of another Amusement Redemption Game Room. (Ord. of 7-9-18)

**Sec. 5-22. Unrestricted Access; Inspections.**

- a) It shall be the duty of any owner, manager, or employee foamy Game Room, including an Amusement Redemption Machine Game Room, to provide any law enforcement officer, code enforcement officer, city council member, or agent of the City of Ballinger with immediate unrestricted access during business hours to all areas of the operation and to all Amusement Redemption Machines located on the premises.
- b) Any law enforcement officer, code enforcement officer, city council member or agent of the City of Ballinger may inspect a Game Room, including an Amusement Redemption Machine Game Room, to determine whether the operation complies with this ordinance and State law.
- c) An owner, manager, or employee of a Game Room or other person who does not allow a law enforcement officer, code enforcement officer, city council member or agent of the City of Ballinger to inspect a Game Room, including an Amusement Redemption Machine Game Room, commits an offense. (Ord. of 7-9-18)



**Sec. 5-23. Disturbing Peace; Security Guard Required.**

- a) It shall be the duty of every owner, keeper or operator of places of business governed by this article to keep good order within the same, and to prevent all persons who may be on the premises from disturbing the peace and tranquility of the premises or the neighborhood by cries, songs, or any noise or disturbance whatever.
- b) The operator of an Amusement Redemption Machine Game Room shall have a licensed security guard, in accordance with the requirements of State law, on the premises during the hours of operation of any Amusement Redemption Machine.

**Sec. 5-24 - 5-30. Reserved.**

**DIVISION 2. LICENSE**

**Sec. 5-31. Required.**

- a) It shall be unlawful for any person, save and except religious, charitable or educational organizations, authorized under the laws of the state, to own and operate for profit any pool or billiard table, to operate a public domino parlor, or Amusement Redemption Machine Game Room within the city without first obtaining an appropriate license from the city council.
- b) No Amusement Redemption Machine Game Room shall be operated in the City limits until the application as provided herein has been completed fully and truthfully, and the occupation tax has been paid for each Amusement Redemption Machine as required by this article. (Ord. of 7-9-18)

**Sec. 5-32. Application - Generally.**

Any person desiring to operate any operation required to be licensed in this article, including an Amusement Redemption Machine Game Room, in the city shall make an application in writing on forms provided by the city requesting a license for such game room. Each application for a license shall be verified under oath and filed with the city secretary who shall present the same to the city council at its next regular meeting. (Ord. of 7-9-18)

**Sec. 5-33. Same - Contents.**

Each application for a license required under the provisions of this division to operate a game room shall contain the following information:

- (1) The name, address and telephone number of the owner or officer of the corporation

- (2) The location of the proposed game room;
- (3) The number of person to be employed by the applicant, if any, and the nature of such employment;
- (4) Whether the applicant has ever been charged with or convicted of a felony involving moral turpitude, any violation of the liquor laws, or any offense involving lewd or indecent conduct or narcotics, or any other misdemeanor, other than traffic violations, and full information concerning the conviction;
- (5) A statement that no person will be allowed to work or perform duties at such establishment who has been convicted of a crime involving moral turpitude, or any offense involving immoral acts, lewd or indecent conduct or narcotics.
- (6) For Amusement Redemption Machine Game Rooms, the following information is required:
  - a. The machine and software manufacturer/designer
    - i. Name(s)
    - ii. Location of company
    - iii. Serial numbers
  - b. The company operating the games
    - i. Name
    - ii. Location
    - iii. Tax ID number
    - iv. Officers of the Company
  - c. Estimated percentage of Gross revenues generated by Amusement Redemption Machines as a percentage of the total business at same location. (Ord. of 7-9-18)

**Sec. 5-34. Reserved.**

**Sec. 5-35. Investigation.**

The city council shall refer all applications for licenses required by the provisions of this division to the City Police Chief: who shall investigate the application or cause the same to be investigated, to determine whether the premises and the owner and manager sought to be licensed complies with the regulations, ordinances and laws applicable thereto. The City Police Chief shall, no later than thirty (30) days after receiving the completed application, furnish the city council, in writing or orally, the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or denied. (Ord. of 7-9-18)

**Sec. 5-36. Denial of.**

A license required by this division to operate a Game Room, including an Amusement Redemption Machine Game Room, shall not be issued under the following conditions:

- (1) If the applicant is not a person of good moral character as shown by the application of the applicant or by police investigation; If the applicant has had a license revoked during the past two (2) years;
- (2) If the applicant has had a license denied during the past twelve (12) months;
- (3) If the applicant has been convicted of a felony involving moral turpitude or any offense involving immoral acts, lewd or indecent conduct or narcotics;
- (4) If the applicant has been convicted of, or is currently being investigated for, operating an illegal gambling device defined in V.T.C.A. Penal Code, section 47.01, or any activity prohibited or described in V.T.C.A. Penal Code, ch. 47.
- (5) If the premises to be used does not meet the provisions of any applicable code, state law, federal code, city ordinances, rules or regulations.
- (6) If the application does not meet the requirements of this ordinance, including the payment of the occupation tax or license fee as provided herein. (Ord. of 7-9-18)

**Sec. 5-37. Tax.**

- (a) There is hereby levied an annual occupation tax of ten dollars (\$10.00) for each pool table, billiard table, pinball machine, video game, electronic game of chance, manually operated game, owned and operated within the city by any person, save and except religious, charitable and educational organizations authorized under the laws of the state, which tax shall be paid to the tax collector of the city who shall issue an occupation tax receipt. The occupation tax receipt shall specify the number of pool tables, billiard tables, or any games for which issued; the address of the building or premises in or on which such tables are located; and shall bear the serial number or numbers, if any, of the particular tables. Such occupation tax shall have and bear no relation to any license fee otherwise provided herein, the license fee being required to provide proper official supervision, inspection and services for the premises.
- (b) There is hereby levied an annual occupation tax per Amusement Redemption Machine equal to 25 percent of the occupation tax charged and collected by the State, which occupation tax is specifically authorized by Texas Occupations Code Section 2153.451, save and except religious, charitable and educational organizations authorized under the laws of the state, which tax shall be paid to the tax collector of the city who shall issue an occupation tax receipt. The occupation tax receipt shall specify the number of Amusement Redemption Machines for which issued; the address of the building or premises in or on which such games are located; and shall bear the serial number or numbers, if any, of the particular tables. Such occupation tax shall have and bear no relation to any license fee otherwise provided herein, the license fee being required to provide proper official supervision, inspection and services for the premises. (Ord. of 7-9-18)

**Sec. 5-38. License fee for Amusement Redemption Game Room; Term.**

- (a) A license fee shall be \$250.00 for an Amusement Redemption Game Room and shall be payable at the time of the application.
- (b) Any license issued pursuant to this division shall be for a period of time ending on the thirty-first day of December following its date of issuance.
- (c) No later than ten (10) days after expiration of the license on the thirty-first day of December following its date of issuance, the applicant shall apply for a renewal in the same manner as the original license by filing an application as required herein. If a person applies for a renewal license within the ten (10) day period after expiration of the original license and the license is granted, the license shall be considered to be in continuous operation for purposes of the grandfather clause stated below. If a person fails to apply for a renewal within the ten (10) days after expiration, the license shall be expired and the business shall cease operations until an application for a renewal license is filed and approved by the City. The renewal license fee shall be one-half the amount of the original annual license fee of \$250.00. (Ord. of 7-9-18)

**Sec. 5-39. Transfer.**

No license issued under the provisions of this division may be transferred to any other location or person. (Ord. of 10-8-63, § 6)

**Sec. 5-40. Display.**

Every license issued under the provisions of this division shall at all times be displayed in some conspicuous place within the licensed place of business.

**Sec. 5-41. Fines and Penalties**

Any license issued a license to operate a game room under the provisions of this division may be fined up to \$1.000 per violation at the discretion of the municipal court upon the violation of any applicable provision of this Code, state law, city ordinance, rule or regulation by the license or any of his employees.

Violations may also result in revocation and suspension of license upon the violation of any applicable provision of this Code, state law, city ordinance, rule or regulation by the license or any of his employees. (Ord. of 7-9-18)

**Sec. 5-42. Severability Clause**

If any provision of these rules is declared invalid for any reason, the invalidity of that provision shall not affect the validity of the remaining rules and/or Ordinance or any other provision thereof. (Ord. 7-9-18)

**Sec. 5-43. Grandfather Clause**

The location restrictions and the requirements to employ a licensed security guard enacted by this ordinance shall not apply to Amusement Redemption Machine Game Rooms currently in operation at the time of enactment of this ordinance and that stay continuously licensed for operation pursuant to the terms of this ordinance. (Ord. 7-9-18)



## Chapter 6

### ANIMALS AND FOWLS \*

Art. I. In General, §§ 6-1-6-15

Art. II. Keeping Regulations, §§ 6-16 - 6-30

Art. III. Animal Control, §§ 6-31 - 6-129

Div. 1. Generally, §§ 6-31 - 6-49

Div. 2. Licensing of Dogs and Cats, §§ 6-50 - 6-66

Div. 3. Rabies Control, §§ 6-67 - 6-90

Div. 4. Running at Large; Nuisance Activities, Conditions, §§ 6-91 - 6-107

Div. 5. Impoundment, §§ 6-108 - 6-125

Div. 6. Kennels, §§ 6-126 - 6-129

#### ARTICLE I. IN GENERAL

##### **Sec. 6-1. Animals, fowl at large prohibited.**

It shall be unlawful for any person to permit any horse, mule, goat, cattle, sheep, swine, geese, chicken or other domestic fowl to run at large within the limits of the city. (Ord. of 5-26-4, § 1)

**Cross reference** - Dogs, cats or other pet animals running at large, § 6-91.

##### **Sec. 6-2. Diseased animals.**

It shall be unlawful for any person to have or keep any animal or fowl infected with a disease which may contaminate other animals or fowl or which may be a health hazard. (Ord. of 5-26-4, § 6)

##### **Secs. 6-3 - 6-15. Reserved.**

#### ARTICLE II. KEEPING REGULATIONS ‡

##### **Sec. 6-16. Limitations on swine.**

(a) It shall be unlawful for any person to keep, harbor or have in his custody, possession or control within the limits of the city more than two (2) pigs, hogs, boars or swine.

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\* **Cross reference** - Health and sanitation, ch. 14.

‡ **Cross reference** - Zoning ordinance, App. A. Supp. NO.1

(b) Such prohibition shall not apply to operators of slaughterhouses, packing plants, livestock sales or auction companies or places of business holding any pig, hog, boar or swine for the purposes of sale or slaughter.

(c) It shall be unlawful to keep any pig, hog, boar or swine in any pen or enclosure within five hundred (500) feet of any residence, other than the residence of the livestock owner, or within five hundred (500) feet of any business establishment which is regularly used by the general public. (Ord. of 5-26-64, § 2)

**Sec. 6-17. Requirements governing hoofed animals.**

It shall be unlawful for any person to keep cows, horses, sheep, goats or other hoofed animals in a pen or enclosure within one hundred (100) feet of any residence, other than the residence of the livestock owner, or within one hundred (100) feet of any business establishment other than the business establishment of the owner. (Ord. of 5-2664, § 3)

**Sec. 6-18. Small animals and fowl.**

It shall be unlawful for any person to keep any animal, including, but not limited to, rabbits, guinea pigs, fowl, chickens, guinea fowl and turkeys within fifty (50) feet of any residence other than the residences of the owners of such animals or within fifty (50) feet of any business establishment other than the businesses of the owners of such animals. (Ord. of 5-26-64, § 4)

**Sec. 6-19. Pens and enclosures.**

It shall be unlawful for any person, having the authority under this article to keep animals, to allow any pen or enclosure or other place where such animals are being kept to become unsanitary, offensive or disagreeable to persons residing in the vicinity thereof. All places where livestock is kept shall have adequate drainage sufficient to prevent the standing of water in yards, pens or enclosures. (Ord. of 5-26-64, § 5)

**Sec. 6-20. Distances required for new construction.**

The specified distances established in this article shall apply also when new construction consisting of homes or businesses is affected adjacent to the place where livestock is being kept. When such new construction is occupied, the livestock owner shall have thirty (30) days after such occupancy in which to remove his livestock to the required distances, and failure to so remove such livestock shall be a misdemeanor. (Ord. of 5-26-64, § 8)

**Secs. 6-21 - 6-30. Reserved.**



## ARTICLE III. ANIMAL CONTROL \*

### DIVISION 1. GENERALLY

#### **Section 6-31. Definitions**

Animal control officer (ACO): a person employed by the municipality to enforce animal control ordinances, educate the public in the care, health and vaccinating of animals. ACO have the authority to issue citations to citizens.

**Animal control authority:** a city or county animal control officer with authority over the area where the animal is kept.

**Cat:** All members of the feline family of either sex and including, one neutered or sterilized.

**Dog:** All members of the canine family of either sex and including one neutered or sterilized.

**Domestic Animal:** Any animal normally adapted to live in intimate association with humans or for the advantage of humans.

**Harboring:** Shall mean the act of keeping or caring for an animal or of providing a premise to which the animal returns for food, shelter or care for a period of three days or more.

**Local Rabies Control Authority (LRCA):** cities and counties appoint a person' to serve as local rabies control authority; the person can be a municipal health officer, animal control officer, peace officer, or anyone the governing body thinks can effectively do the job. The LRCA has the final word about what happens to an animal that has bitten a person. It is a legally appointed position with the authority to enforce all provisions of this law. The LRCA cannot be overruled by other people, such as police chiefs, county judges, veterinarians, or pet owners. Chapter 826 (legislative) Texas Health and Safety Code as defined by Texas Department of Health Zoonosis Control.

**Neutered:** Shall mean rendering the animal permanently incapable of reproduction by spaying or castration.

**Nuisance:** Shall mean a dog, cat or other animal that;

1. Molests passerby's
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2. chases passing cars
3. is not vaccinated against rabies as required by this Chapter
4. is repeatedly at large
5. turning over, garbage cans
6. barks, whines, or howls in an excessive, loud, continuous fashion so as to unreasonably disturbs a nearby person
7. meows, growls, or hisses in an excessive, loud, continuous fashion so as to unreasonably disturb a nearby person
8. damages, soils, defiles, or defecates on private property other than the owner's or on public walks and recreation areas unless such waste is immediately removed and properly disposed of by the owner
9. causes unsanitary, dangerous or offensive conditions
10. molests, attacks, or interferes with a person or other domestic animal
11. Is without an owner

**Owner:** means a person who owns or has custody or control of the animal

**Pet animal:** a domesticated or tamed animal kept for pleasure rather than utility but does not include skunks, nonhuman primates, and any other species of wild exotic or carnivorous animals.

**Proper authority:** any police officer or animal control officer assigned enforcing the ordinances of this code and being duly authorized by the City Council.

**Rabies vaccination:** the vaccination of a dog, cat or other animal with an antirabies vaccine approved by the Texas Department of Health and administered by a veterinarian licensed by the State of Texas

**Running at large:** an animal off the premises of the owner and not under the physical, visible, or audible control of the owner or his authorized representative. An animal within an automobile or other vehicle of its owner shall not be deemed "running at large".

**Stray animal:** any animal for which there is no identifiable owner

**Vicious animal:** any animal that demonstrates a propensity toward the unprovoked biting, scratching or attacking of animals or humans and which demonstrates a disposition toward savagery or ferociousness toward animals or humans or which represent a physical threat to animals or humans.

**Dangerous animal:** any animal that

1. makes an unprovoked attack on a person that causes injury and occurs in a place other than an enclosure in which the animal is being kept and that was reasonably certain to prevent the animal from escaping the enclosure on its own; or
2. commits unprovoked acts in a place other than an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to that person.

**Secure enclosure:** means a fenced in area or structure that is:

1. locked,
2. capable of preventing the entry of the general public, including children,
3. capable of preventing the escape or release of an animal,
4. clearly marked as containing a dangerous animal, and
5. in conformance with the requirements for enclosures established by the local animal control authority.

### **Section 6-32. Penalty for violation of article.**

Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as prescribed in Section 1-12. (Ord. of 9-18-79, Div. 12(6.71))

### **Section 6-33. Exemptions from article.**

- (a) Veterinary establishments. Hospital, clinics and other premises operated by licensed veterinarians for the care and treatment of animals are exempt from the provisions of this article, except where expressly stated.

(b) Nonresidents. The licensing and vaccination requirements of this article shall not apply to any animal belonging to a nonresident of the city and kept within the city for no longer than thirty days; provided, however such animal shall at all times while in the city be kept within a building, enclosure or vehicle or be under restraint by the owner.

**Section 6-34. Animal control officer (ACO); authority; interference with duties prohibited.**

It shall be unlawful for any person to interfere with, molest, hinder, or prevent the ACO or his/her authorized representatives in the discharge of their duties as herein prescribed, or to violate any of the provisions of this article. The ACO shall have the authority to call upon any member of the police department to assist the ACO in carrying out his/her duties under this article, and in the event that there is not a designated animal control officer, the police chief shall serve in that capacity until such time as an animal control officer is employed or appointed.

**Section 6-35. Certain animals prohibited; exceptions.**

It is hereby prohibited and it shall be unlawful for any person to import, offer for sale, keep, maintain, harbor, or permit in the city of Ballinger any monkey, or other nonhuman primate, skunk, raccoon, jaguar, leopard, lynx, tiger, lion, ocelot, bobcat, cheetah, mountain lion., wildcat, panther, bear, wolf, coyote, fox, other dangerous wild animals or poisonous reptiles.

This section shall not apply to:

1. a bona fide publicly or privately owned zoological park;
2. a bona fide research institution using animals for scientific research;
3. a circus duly authorized to do Business in the city. Ord. Of9-18-79, Div. 9 (6.64, 6.65)

**Secs. 6-36 - 6-49 Reserved**

**DIVISION 2. LICENSING OF DOGS AND CATS**

**Sec. 6-50. License required.**

Any owner of a dog or cat at least four months of age shall procure a license. This license shall be renewed annually. All dog and cat licenses issued thereunder shall expire one year from the date of issuance. The fee for a dog or

cat license is set by the Ballinger City Council at; Ten dollars per dog or cat or one dollar for a neutered or spayed dog or cat. Upon collection of the license fee a dated and numbered receipt shall be issued stating the name and address of the owner, license number, description of the dog or cat and a city license tag stamped with a corresponding serial number, year of issuance, and City of Ballinger, Tx.

**Sec. 6-51. Rabies vaccination a prerequisite to issuance.**

No dog or cat shall be licensed without proof of rabies vaccination, as provided in this article (Ord. Of 9-19-79, Div. 4 (6.43))

**Sec. 6-52. Display of license and rabies tag; retention of license receipt and vaccination certificates.**

The license tag shall be attached to a collar, harness or other device and shall be worn by the licensed dog or cat at all times. The original license receipt and rabies vaccination certificates for dogs or cats shall be retained by the owner for inspection by any person charged with the enforcement of this article.

**Sec. 6-53. Duplicate tags.**

In the event of loss or destruction of the original license tag, the owner shall obtain a duplicate tag from the ACO at a cost of one dollar.

**Sec. 6-54. False and stolen license documents.**

It shall be unlawful for any person to make use of a stolen, counterfeit or forged license receipt, license tag, rabies vaccination certificate, rabies vaccination tag, or other form [of document or identification] and any person who shall willfully take a collar or tag from any animal shall be deemed guilty of a misdemeanor. (Ord. Of9-18-79, Div. 4(6.4600))

**Sec. 6-55 Transferability**

Dog and cat licenses are not transferable and it shall be unlawful for any person to use any license or rabies tag for any dog or cat other than the dog or cat for which such tag as originally issued. (Ord. of 9-18-79, Div. 4(6.47))

**Secs. 6-56 - 6-66. Reserved**

## DIVISION 3. RABIES CONTROL

### **Sec. 6-67. Vaccinations-Required; annual revaccination; waiting period**

Every owner of a dog or cat four months of age or older shall have such animal vaccinated against rabies. All dogs or cats vaccinated at four months of age or older shall be re-vaccinated at one year of age and annually thereafter. Any person moving into the city from a location outside the city shall comply with this article within thirty days after having moved into the city. If a dog or cat has inflicted a bite on any person or another animal, the owner shall report such fact to the veterinarian and no rabies vaccine shall be administered until after a ten-day observation period.

### **Sec. 6-68. Certificate of vaccination**

Upon vaccination, the veterinarian shall execute and furnish to the owner of the dog or cat, as evidence thereof, a certificate which meets the minimum standards approved by the state board of health under Chapter 169. Zoonosis Control Rabies Control and Eradication 169.29. The veterinarian shall retain a duplicate. Such certificate shall contain at least the following information:

1. The name, address and telephone number of the owner of the vaccinated dog or cat;
2. The date of vaccination;
3. The year and number of the rabies tag
4. The breed, age, color, and sex of the vaccinated dog or cat. (Ord. Of9-18-79, 2(6.33))

### **Sec. 6-69. Reserved**

### **Sec. 6-70. Duplicates**

In the event of loss or destruction of the original tag provided in section 6-50, the owner of the animal shall obtain a duplicate tag. (Ord. of 9-18-70, 2, (6.35))

### **Sec. 6-71. Proof of vaccination; exhibition upon enforcement official's demand.**

It shall be unlawful for any person who owns or harbors a vaccinated dog or cat to fail or refuse to exhibit his/her copy of the certificate of vaccination, upon demand, to any person charged with the enforcement of this article. (Ord. of 9-18-79, 2(6.36))

**Sec. 6-72. Harboring unvaccinated animals.**

It shall be unlawful for any person to harbor any dog or cat which has not been vaccinated against rabies, as provided herein, or which cannot be identified as having a current vaccination certificate. (Ord. Of9-18-79, 2(6.37))

**Sec. 6-73. Bite from animals susceptible to rabies - duty to report.**

Any person having knowledge that an animal has bitten a human shall immediately report the incident to the city health officer, ACO, or to the Texas Department of Health. Every physician or other medical practitioner, who treats a person or persons for such bites shall, within twelve hours, report such treatment to the city health official, ACO, or to the Texas Department of Health, giving the name, sex and precise location of the bitten person or persons and such other information as the officer or agency may require. (Ord. of 9-18-79, Div. 3(6.38))

**State Law Reference**-Reports of exposure to rabies, Vernons Ann. Civ. St. art. 826.001

**Sec. 6-74. Same -Exclusions.**

Bites from reptiles inflicted on humans are excluded from the reporting requirements of this division. (Ord. Of9-18-79, Div. 3(6.39))

**State Law Reference** - Animals affected, Vernon's Ann. Civ. St. art. 826.001

**Sec. 6-75. Same - Confinement of dogs and cats**

Any dog or cat, which has bitten or scratched a person, shall be placed in quarantine for a period of ten days from the date of the bite. The investigating officer or responsible agency shall designate the procedure and place of quarantine. Confinement shall be in the city animal shelter or at any veterinary hospital of the owner's choice, within the county. Such confinement shall be at the expense of the owner. Stray dogs or cats whose owners cannot be located shall be confined in the city animal shelter. Any dogs or cats without an owner shall be humanely killed and tested for rabies.

The owner of any dog or cat that has been reported to have inflicted a bite or scratch on a person shall on demand produce said dog or cat for impoundment, as prescribed in this section. Refusal to produce said dog or cat constitutes a violation of this section, and each day of such refusal shall constitute a separate and individual violation. (Ord. Of 9-18-79, Div. 3 (6.41))

**Cross reference**-Approval required for removal of confined dogs and cats, 6-111.

**Sec. 6-76. Diagnosis or suspicion of rabies - Report.**

Any veterinarian who clinically diagnoses rabies, or any person who suspects rabies in a dog, cat or other animal, shall immediately report the incident to the city health official, ACO, or Texas Department of Health, stating precisely where such animal may be found. If a known or suspected rabid animal bites or attacks

a domestic animal, such incident shall also be reported as required above. (Ord. of 9-18-79, Div. 3(6.40))

**Sec. 6-77. Same-Pathological examination of animal suspected to be rabid.**

When rabies has been diagnosed in an animal under quarantine or rabies is suspected by a licensed veterinarian, and the animal dies while under observation, the city health officer or animal control officer shall immediately send the head of such animal to the state health department for pathological examination and shall notify the proper public health office of the reports of human contacts and the diagnosis. (Ord. Of 9-18-79, Div.3(6.41(a)))

**Sec. 6-78. Same Authorization for citywide quarantine.**

When the report required in section 6-77 indicates positive diagnoses of rabies, the LRCA may order an area wide quarantine for a period of sixty (60) days, and upon invoking such quarantine, no animal shall be taken into the streets or permitted to be in the streets during such period of quarantine, nor shall such animal be taken or shipped from the city without the written permission of the LRCA.

During the quarantine period and for such period of time afterward as the LRCA may deem it necessary to prevent the spread of rabies, he/she may require that all animals at least four months of age be vaccinated against rabies. All vaccinated animals shall be restricted by leashing or confinement on enclosed premises for thirty days after vaccination. During the quarantine period, the LRCA is hereby empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination clinics strategically located throughout the area of the quarantine.

No animal that has been impounded by reason of its being a stray, unclaimed by its owner, is allowed to be adopted from the animal shelter during the period of rabies emergency quarantine.

In the event additional cases of rabies occur during the quarantine period, such period may be extended for an additional period of time. (Ord. Of 9-18-79, Div. 3(6.41(b)))

**Sec. 6-79. Disposition of affected Animals**

(a) Disposition of bitten animals. Animals bitten by a rabid animal shall be immediately destroyed, or if the owner is unwilling to destroy the exposed animal, strict isolation of the animal in a kennel for six months shall be enforced. If the animal has been previously vaccinated, within time limits established by the public health service based on the kind of vaccination



used, revaccination and restraint by leashing and confinement for thirty days shall be carried out.

(b) Disposition of rabid animals. The LRCA shall direct the disposition of any animal found to be infected with rabies.

(c) Killing rabid animals. No person shall kill or cause to be killed any rabid animal, any animal suspected of having been exposed to rabies or any animal biting a human, except as herein provided, nor remove the same from the city without written permission from the LRCA.

(d) Surrender of carcass of dead animal. The carcass of any dead animal exposed to rabies shall be surrendered to the LRCA upon demand.

**Secs. 6-80 - 6-90. Reserved**

**DIVISION 4. RUNNING AT LARGE, NUISANCE ACTIVITIES,  
DANGEROUS OR VICIOUS**

**Sec. 6-91. Unlawful possession-running at large prohibited.**

A. Dogs or other animals running at large as defined in Sec. 6-31 are prohibited.

B. No female dog in heat shall be allowed upon any street, avenue, highway, alley sidewalk, parkway, park, or other public place in the city of Ballinger whether said dog is under the control of the owner or any other person either by leash, cord, or otherwise.

**Sec. 6-92. Dangerous and or Vicious Dog or other Animal**

A. No dog or other animal of fierce, dangerous, and / or vicious propensities as defined in Sec. 6-31 shall be allowed upon any street, avenue, highway, alley, sidewalk, parkway, park, or other public place in the City of Ballinger. The dog shall be confined within a building or a secure enclosure and not taken out of such building or secure enclosure unless such animal is under the control of the owner or any other person at least 18 years of age by leash, cord, or chain. Also the owner shall obtain insurance coverage or show financial responsibility in an amount of at least \$100,000.00 to cover damages resulting from an attack by the dangerous and/or vicious dog and provide this proof on demand by the ACO or any police officer. This subsection does not impose any responsibility on an insurance company or an insurance agent to inform a person who owns or keeps a dog of the provisions of this subsection.

B. It is a defense to prosecution under this subsection that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody or control of the dog in connection with his/her position.

C. An offense under this subsection is a Class C misdemeanor.

D. An offense under this subsection is a Class B misdemeanor if it is shown on the trial of the offense the defendant has previously been convicted under this section.

**Sec. 6-93. Harboring a dog or animal declared to be dangerous, vicious or a nuisance.**

Upon written complaint wherein any dog or other animal is alleged to be dangerous, vicious or a nuisance as defined in Sec. 6-31, the Municipal Court of the City shall have the authority to order and hold a hearing upon giving notice to the owner of such dog or animal. A summons for such hearing detailing the time, date, place and purpose therefore, personally delivered to the owner of such dog or animal within 24 hours of the hearing shall be deemed sufficient and proper notice.

If the Municipal Court determines at such hearing that such dog or animal is vicious or dangerous as Defined in Sec. 6-31, the Court may order that such dog or other animal be;

A. kept muzzled at all times,

B. Be kept within a secured enclosure as defined in Sec.6-31 and approved by the ACO, and in conformance with the requirements for enclosures established by the Local Rabies Control Authority according to State law Chapter 822-Regulation of Animals, Subchapter D. Dangerous Dogs. Sec 822.041.

1. 10' x10' x6' minimum enclosure.
2. The enclosure must have a top and bottom
3. The perimeter will be constructed with 2" x 4" welded wire stock panels. The top and bottom may be 4" x 4" welded wire stock panels. The top must also be covered with a material of owner's choice, excluding tarps, blankets, etc. (Example: wood, tin, fiberglass, to protect animals from elements of weather).
4. Must have a fence around the perimeter of the enclosure at least two (2) feet from the enclosure. (This fence will be separate from

the fence surrounding the owner's property.

5. Posted signs on all four sides of enclosure that state "Dangerous Dog".
6. Must be kept locked with large padlock at times.
7. The dog will also be registered with the City of Ballinger in conformance to State law Chapter 822-Regulation of Animals, Subchapter D. Dangerous Dogs. Sec 822.043.
8. The dog or other animal will be in custody of the ACO and be impounded at the animal shelter until the enclosure is completed and inspected and in compliance with the specifications required. The owner will be responsible for the shelter fee of \$10.00 per day and have seven (7) days to complete the enclosure. If the dog or other animal is not claimed and the impoundment fees not paid at the end of the seven (7) days, the animal will be humanely destroyed.

C. obtain insurance coverage or show financial responsibility in an amount of at least \$100,000.00 to cover damages resulting from an attack by the dangerous dog and provide this proof on demand by the ACO or any police officer,

D. delivered to the proper authority and then be humanely destroyed.

E. removed from the City Limits of Ballinger, Texas

F. assess a fine against the owner thereof, as provided herein, or any combination of the foregoing.

If the Municipal Court shall determine that any dog or animal is a nuisance as defined in Sec. 6-31, the Court may order that such dog or animal be;

A. be kept muzzled at all times,

B. removed permanently beyond the City Limits of Ballinger, Texas or,

C. delivered to the proper authority and then be humanely destroyed.

Failure or refusal to abide by the decision of the Municipal Court within twenty-four' hours after receiving said order shall be deemed an offense.

Provided however, if it appears upon trial thereof that any person attacked, scratched or bitten was trespassing upon the property of the owner or the person

having control of such dog or animal, or if any person attacked, scratched or bitten was provoking or teasing such dog or animal or if such loud, unusual or prolonged barking or howling was provoked as the result of teasing or harassment by a person other than the owner, such conduct shall be a defense to any complaint brought hereunder if THE DOG OR ANIMAL HAS BEEN VACCINATED.

**Secs. 6-94 - 6-96 Reserved**

**Sec. 6-97. Dog or other animal that has bitten, scratched or attacked any person.**

If the dog or other animal that has bitten or scratched any person and has been vaccinated within the past twelve months:

1. The dog or other animal must be quarantined for a period of not less than ten days from the time of injury. Quarantine shall be in the city animal shelter at a cost to the owner often dollars per day or with a licensed veterinarian.
2. The dog or other animal shall be placed into a secured enclosure at the animal shelter or with a licensed veterinarian for the period of quarantine at the owner's expense.
3. Any illness or incident involving the dog or other animal during quarantine must be reported to the LRCA, police, and victim.
4. If the dog or other animal becomes sick or dies during the quarantine period, the dog or other animal will be tested for rabies.
5. Upon completing the quarantine period, if the dog or other animal is thought to be dangerous, vicious or a nuisance, upon written complaint there will be a hearing as required by Section 6-93 of this Chapter wherein the Municipal Judge will determine the status of the dog or other animal.

If the dog or other animal has bitten or scratched and has not been vaccinated within the past twelve months.

1. A complaint will be immediately filed in Municipal Court and a hearing set. The owner will be summoned and a hearing will be held in Municipal Court as required by Sec. 6-93.
2. At the hearing the dog or other animal may be declared dangerous, vicious or a nuisance.
3. If declared dangerous or vicious, the owner shall be ordered to

immediately take and surrender the dog or other animal to the ACO to be humanely destroyed and the brain tested for rabies or to a veterinarian of their choice located in Runnels County, where the dog or other animal shall be quarantined for a period of not less than ten days. It will be the responsibility of the veterinarian to notify the ACC of any changes in the dog or other animal's health. At the end of the' quarantine, the owner shall follow all orders issued by the Municipal Court during the prior hearing.

4. If not declared dangerous or vicious, the dog or other animal must still be quarantined for a period often days as required in Sec. 6-75.

5. The rabies test results will be released to the Municipal Court, victim, owner and the city health official.

6. If the owner of said dog or other animal should refuse or resist surrendering the dog or other animal, The Municipal Court shall issue an order of seizure for the dog or other animal. The ACC shall take all necessary action to take the dog or other animal into custody. If the owner interferes with the seizure of the dog or other animal, criminal charges will be filed against the owner.

Penalty for violation. Any person who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be punished accordingly.

**Secs. 6-98 - 6-107 Reserved**

## DIVISION 5. IMPOUND

### **Sec. 6-108. Authority to impound.**

Animals owned or harbored in violation of this article or any other ordinance or law of the State of Texas shall be taken into custody by an ACO or other designated official and impounded. Stray animals shall be similarly impounded. The ACO is hereby authorized to enter upon any unfenced lot, tract or parcel of land for the purpose of seizing and impounding any animal found thereon in violation of this article (Ord. Of 9-18-79, Div. 7(6.54))

### **Sec. 6-109. Animal shelter-Established.**

A suitable animal shelter shall be provided for the purpose of boarding and caring for any animal impounded under the provisions of this article. Such shelter shall be constructed in accordance with recommendations from the Ballinger City Council. (Ord. 01'9-18-79, Div. 7(6.55))

**Sec. 6-110. Same - Removal of animals without official consent prohibited.**

It shall be unlawful for any person to remove any impounded animal from the animal shelter without the consent of the LRCA and the ACO or designated official or agency. (Ord. Of9-18-79, Div. 7(6.56))

**Sec. 6-111 Removal of biting dogs or cats from confinement.**

Dogs and cats that have inflicted human bites shall be impounded for a period of ten days for observation and shall not be released until approved by the LRCA, ACO, or Municipal Court.

**Sec. 6-112. Disposition of impounded dogs or cats.**

As soon as practical after the impoundment, notice of impoundment shall be posted in a conspicuous place at the animal shelter for five days. If the owner of the impounded animal is known, immediate notice shall be given to him/her. Any impounded animal may be redeemed upon payment of the license fee, care and feeding charges, veterinary charges, rabies vaccination charges if unvaccinated and such other costs as set by the Ballinger City Council; provided, however, the payment of any such impoundment fees shall not bar the imposition of any fine which may be imposed for the violation of this article. If such animal is not redeemed within five days, it shall be deemed abandoned and may be placed for adoption subject to payment of the license fee, impoundment fee, care and feeding charges, veterinary charges, rabies vaccination charges, spaying or neutering and such other costs as set by the Ballinger city Council; or the ACO may humanely euthanize said animal. (Ord. Of9-18-79, Div. 7(6.58))

**Sec. 6-113. Disposition of impounded animal being held on complaint.**

If a complaint has been filed in the municipal court of the City as required by Sec.6-93 against the owner of an impounded animal for a violation of this article, the animal shall not be released except on the order of the court, which may also direct the owner to pay any penalties for violation of this article, in addition to all impoundment fees. Surrender of an animal by the owner thereof to the ACO does not relieve or render the owner immune from the decisions of the court, nor to the fees and fines which may result from a violation or violations of this article. (Ord. Of9-18-79, div. 7(6.59))

**Sec. 6-114. Humane destruction of dogs and cats when requested by the owner.**

An owner of a dog or cat that wishes to have the animal euthanized shall be directed by the ACO to take the animal to a licensed veterinarian. If a licensed

veterinarian is unavailable, the ACO shall get a signed owners release from the owner and may euthanize the animal.

**Secs. 6-115 - 6-125 Reserved**

**DIVISION 6. KENNELS**

**Sec. 6-126. Operation of kennels generally; definition; license required.**

A kennel within the meaning of this article is any establishment designated for the permanent or temporary boarding or keeping of animals. No person, group of persons or business entity shall own, keep or harbor more than three (3) dogs of more than three (3) months of age or more than one litter of kittens, or more than a total of five (5) dogs and cats more than three (3) months of age in any combination, or engage in the commercial business of breeding, buying, selling, trading, training, or boarding dogs or cats, or both dogs and cats or other pet animals, without having obtained a valid kennel license from the city director. (Ord. of 9-18-79, Div. 8(6.60))

**Sec. 6-127. Licenses -Issuance, renewal; inspection, fee; maximum capacity; state license prerequisite.**

Kennel licenses shall expire one year from date of issuance. No kennel license shall be issued until an inspection certificate shall have been issued by the director. The yearly license fee for kennels shall be determined by the city council. The license issued shall specify the maximum number of animals permitted to be kept, handled or exhibited by the licensee. It shall be unlawful for the licensee to keep, handle or exhibit any number of animals in excess of the maximum specified on the license.

All applicants for a kennel license within the city are required by state statute to be licensed by the Texas Department of Health, and must have a valid license issued by said department to qualify for license by the city. The possession of a state license, however, shall not in itself assure that a city license will be granted. Standards and regulations affecting kennels may be adopted by the city, which are as restrictive or more restrictive than applicable state standards. (Ord. of 918-79, Div. 8(6.61))

**Sec. 6-128. Same - Revocation or suspension.**

Any kennel licensed under this division, found to be in violation of any zoning law, health law, or any other applicable law of the city or of the State of Texas, or that is maintained in such a manner as to be detrimental to the health, safety or

peace of mind of persons residing in the immediate vicinity, may have its kennel license suspended or revoked. (Ord. of 9-18-79, Div. 8(6.62))

**Sec. 6-129. Same - Exceptions to requirement.**

This division shall not apply to, and will not be construed to require a kennel license for:

- (1) A veterinary hospital, operated by a licensed veterinarian, which retains animals for veterinary medical care;
- (2) A bona fide publicly or privately owned zoological park;
- (3) A bona fide research institution using animals for scientific research;
- (4) A publicly owned animal pound;
- (5) A bona fide animal shelter operated by an organized humane society. (Ord. of 9-18-79, Div. 8 (6.63))



PAGES RESERVED



## Chapter 7

### AVIATION\*

Art. I. In General, §§ 7-1 -7-15

Art. II. Airport Advisory Board, §§ 7-16 - 7-30

Art. III. Airport Hazard Zoning, §§ 7-31 - 7-44

#### ARTICLE I. IN GENERAL

**Secs. 7-1 - 7-15. Reserved.**

#### ARTICLE II. AIRPORT ADVISORY BOARD‡

**Sec. 7-16. Created.**

There is hereby created the airport advisory board for the city. (Ord. of 10-367, § 1)

**Sec. 7-17. Composition.**

The airport advisory board shall be composed of seven (7) members. (Ord. of 10-3-67, § 1)

**Sec. 7-18. Qualifications.**

All persons appointed to the airport advisory board shall be resident citizens of the city; provided, however, no person having any financial interest in any commercial carrier by air, or in any concession, right or privilege to conduct any business or render any service for compensation upon the premises of the municipal airport shall be eligible for membership on the airport advisory board. (Ord. of 10-3-67, § 4)

**Sec. 7-19 Appointment.**

Members of the airport advisory board shall be appointed by the mayor with the advice and consent of the city council. (Ord. of 10-3-67, §1)

**Sec. 7-20. Terms.**

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\* **State law reference** - Airport zoning regulations, Vernon's Ann. Civ. Cross reference - Administration, ch. 2.

‡**Editor's note** - A joint city-county airport zoning board was created by the city on Oct. 15, 1984. Supp. No.2

The members of the airport advisory board shall serve for terms of two (2) years each; provided, however, the members appointed to the original board shall be appointed in such a manner that the terms of three (3) members shall expire in even-numbered years, and the terms of four (4) members shall expire in odd-numbered years. (Ord. of 10-347, § 1)

**Sec. 7-21. Compensation.**

All members of the airport advisory board shall serve without compensation, but may be reimbursed for all expenses reasonably incurred by them in the performance of their duties as members of such board, when authorized by the city council. (Ord. of 10-3-67, § 5)

**Sec. 7-22. Officers.**

The airport advisory board shall select from among its own members a chairman and a vice-chairman. (Ord. of 10-3-67, § 2)

**Sec. 7-23. Secretary.**

The airport advisory board shall appoint a secretary who may be, but need not be, a member of the board. (Ord. of 10-3-67, § 2)

**Sec. 7-24. Manager.**

The manager of the municipal airport shall provide the airport advisory board with all the information necessary for the performance of its duties. (Ord. of 10-3-67, § 2)

**Sec. 7-25. Rules, regulations.**

The airport advisory board shall adopt, subject to the approval of the city council, such rules and regulations governing its proceedings as it may deem proper. Such rules and regulations shall not be inconsistent with the provisions of this Code and ordinances of the city. (Ord. of 10-3-67, § 2)

**Sec. 7-26. Duties generally.**

The airport advisory board shall, from time to time, make such general studies of airport construction and operation as may be useful in keeping the municipal airport efficient and adequate to the needs of the city and of the air transportation industry; make recommendations to the city council in respect to construction, expansion, improvements, maintenance and operation of such airport; call the manager's attention to any failure by personnel of the airport to carry out any orders or policies adopted by the city council; and shall, acting in an advisory

capacity, work toward the general improvement of the airport and the advancement of the city as an air transportation center. (Ord. of 10-3-67, §3)

**Secs. 7-27 - 7-30. Reserved.**

ARTICLE III. AIRPORT HAZARD ZONING\*

**Sec. 7-31. Short title.**

This article shall be known and may be cited as "Bruce Field Airport Zoning Ordinance." (Ord. of 1-3-85, § 1)

**Sec. 7-32. Penalties.**

Each violation of this article or of any regulation, order, or ruling promulgated hereunder shall constitute a misdemeanor and upon conviction shall be punishable by a fine of not more than five hundred dollars (\$500.00) and each day a violation continues to exist shall constitute a separate offense. (Ord. of 1-385, §13)

**Sec. 7-33. Definitions.**

As used in this article, unless the context otherwise requires:

*Airport* means Bruce Field Airport.

*Airport elevation* means the established elevation of the highest point on the usable landing area measured in feet from mean sea level.

*Airport hazard* means any structure or tree or use of land which obstructs the air space required for the flights of aircraft or which obstructs or interferes with the control or tracking *and/or* data acquisition in the landing, taking off or flight at an airport, or at any installation or facility relating to flight, and tracking *and/or* data acquisition of the flight craft; which is hazardous, interfering with or obstructing such landing, taking off or flight of aircraft; or which is hazardous to or interferes with tracking *and/or* data acquisition pertaining to flight and flight vehicles.

*Airport hazard area means* any area of land or water upon which an airport hazard might be established if not prevented as provided in this article.

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\* **Editor's note**-Inclusion of the Bruce Field airport hazard zoning ordinance, adopted Jan. 3, 1985, as Art. III hereof has been at the discretion of the editor.

*Airport reference point* means the point established as the approximate geographic center of the airport landing area and so designated.

*Approach surface* means a surface longitudinally centered on the extended runway center line, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in section 7-35. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

Approach, transitional, horizontal, and conical zones means these zones are set forth in section 7-34.

*Board of adjustment* means a board consisting of five (5) members appointed by the city council of the City of Ballinger, Texas, as provided by article 46e-1 0, Tex. Rev. Civ. Stat. Ann. (1969).

*Conical surface* means a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one for a horizontal distance of four thousand (4,000) feet.

*Hazard to air navigation* means an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

*Height* means, for the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map, mean sea level elevation unless otherwise specified.

*Horizontal surface* means a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

*Joint airport zoning board* means a board consisting of five (5) members, two (2) members appointed by the city council of the City of Ballinger, Texas, and two (2) members appointed by the commissioners' court of Runnels, Texas. The four (4) appointed members shall elect a fifth member who shall serve as chairman of said board.

*Landing area* means the surface area of the airport used for the landing, takeoff or taxing of aircraft.

*Nonconforming use* means any pre-existing structure, object of natural growth or use of land which is inconsistent with the provisions of this article or an amendment thereto.

*Nonprecision instrument runway* means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal

guidance, or area-type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.

*Obstruction* means any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in section 7-35.

*Person* means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

*Primary surface* means a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations (FAR) for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is five hundred (500) feet for utility runways having nonprecision instrument approaches.

*Runway* means a defined area on an airport prepared for landing and take-off of aircraft along its length.

*Structure* means an object, including a mobile object, constructed or installed by man, including but not limited to buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.

*Transitional surfaces* means surfaces extending outward at ninety (90) degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.

*Tree* means any object of natural growth.

*Visual runway* means a runway intended solely for the operation of aircraft using visual approach procedures.

*Utility runway* means a runway that is constructed for and intended to be used by propeller driven aircraft twelve thousand five hundred (12,500) pounds maximum gross weight and less. (Ord. of 1-3-85, § 2)

## **Sec. 7-34. Zones.**

In order to carry out the provisions of this article, there are hereby created and e§ 7-33 established certain zones which include all of the land lying beneath the approach surfaces, transition surface, horizontal surface and conical surface as they apply to Bruce Field Airport. Such zones are shown on the zoning map consisting of one sheet, prepared by the Texas Aeronautics Commission, Austin, Texas, and dated July 24, 1984, which is attached to the ordinance from which this article derives and made a part hereof. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

(1) *Approach zones; Runway 17/35.* The approach zone is established beneath the approach surface at the ends of runway 17/35 on Bruce Field Airport for nonprecision instrument landings and take-offs. The inner edge of the approach zone shall have a width of five hundred (500) feet which coincides with the width of the primary surface at a distance of two hundred (200) feet beyond each end of the runway, widening thereafter uniformly to a width of two thousand (2,000) feet at a horizontal distance of five thousand (5,000) feet beyond each end of the primary surface, its center line being the continuation of the center line of the runway.

(2) *Transition zones.* Transition zones are hereby established beneath the transition surface adjacent to each runway and approach surface as indicated on the zoning map. Transition surfaces, symmetrically located on either side of runways, have variable widths as shown on the zoning map. Transitional surfaces extend outward and upward at right angles to the runway center line and the runway center line extended at a slope of seven (7) to one from the sides of the primary surface and from the sides of approach surfaces.

(3) *Horizontal zone.* The area beneath a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of five thousand (5,000) foot radii from the center of each end of the primary surface of runway 17/35 and connecting the adjacent arcs by lines tangent to those arcs.

(4) *Conical zone.* The area beneath the conical surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one for a horizontal distance of four thousand (4,000) feet. (Ord. of 1-8-85, § 3)

## **Sec. 7-35. Height limitations.**

Except as otherwise provided in this article, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this article to a height in excess of the applicable height limit herein established for



such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

(1) *Approach zones; Runway 17/35.* One foot in height for each twenty (20) feet in horizontal distance beginning at the end of and at the elevation of the primary surface and extending to a point five-thousand (5,000) feet from the end of the primary surface.

(2) *Transition zones.* Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of one hundred fifty (150) feet above the airport elevation which is one thousand seven hundred thirty-seven (1,737) feet above mean sea level.

(3) *Horizontal zone.* Established at one hundred fifty (150) feet above the airport elevation, or a height of one thousand eight hundred eighty-seven (1,887) feet above mean sea level.

(4) *Conical zone.* Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at one hundred fifty (150) feet above the airport elevation and extending to a height of three hundred fifty (850) feet above the airport elevation.

(5) *Excepted height limitations.* Nothing in this article shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height up to forty (40) feet above the surface of the land. (Ord. of 1-385, § 4)

#### **Sec. 7-36. Use restrictions.**

Notwithstanding any other provisions of this article, no use may be made of land or water within any zone established by this article in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport light and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the airport. (Ord. No. 1-3-85, § 5)

#### **Sec. 7-37. Conflicting regulations.**

Where there exists a conflict between any of the regulations or limitations prescribed in this article and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail. (Ord. of 1-3-85, § 14)

### **Sec. 7-38. Nonconforming uses.**

(a) *Regulations not retroactive.* The regulations prescribed by this article shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this article, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this article and is diligently prosecuted.

(b) *Marking and lighting.* Notwithstanding the preceding provision of this section, the owner of any nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the city administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the city. (Ord. of 1-3-85, § 6)

### **Sec. 7-39. Permits and variances.**

(a) *Future uses.* Except as specifically provided in subsections (1) and (2), no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this article shall be granted unless a variance has been approved in accordance with paragraph (d).

1. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

2. In areas lying within the limits of the approach zones, but at a horizontal distance of not less than four thousand two hundred (4,200) feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure,

or growth of any tree in excess of any of the height limits established by this article except as set forth in section 7-35. (5).

(b) *Existing uses.* No permit shall be granted that would allow the establishment or creation of any airport hazard or permit a nonconforming use, structure, or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of this article or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

(c) *Nonconforming uses abandoned or destroyed.* Whenever the city administrator determines that a nonconforming structure or tree has been abandoned or more than eighty (80) per cent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

(d) *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, in violation of the regulations prescribed in this article, may apply to the board of adjustment for a variance from such regulations in question. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and the relief granted would not be contrary to the public interest, but do substantial justice, and be in accordance with the spirit of this article. Additionally, no application for variance to the requirements of this article may be considered by the board of adjustment unless a copy of the application has been furnished to the Bruce Field Airport Advisory Board for advice as to the aeronautical effects of the variance. If the Bruce Field Airport Advisory Board does not respond to the application within fifteen (15) days after receipt, the board of adjustment may act on its own to grant or deny said application.

(e) *Obstructing marking and lighting.* Any permit or variance granted may if such action is deemed advisable by the city administrator or the board of adjustment to effectuate the purpose of this article and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to allow the city administrator to install, operate, and maintain, at the expense of the city, such markings and lights as may be necessary. (Ord. of 1-385, § 7)

#### **Sec. 7-40. Administration.**

It shall be the duty of the city administrator to administer and enforce the regulations prescribed herein. Applications for permits shall be made to the city

administrator upon a form published for that purpose. Applications required by this article to be submitted to the city administrator shall be promptly considered and granted or denied. Applications for variances shall be made to the board of adjustment by first filing said application for variance with the city administrator who shall forthwith transmit said application to the board of adjustment for determination. (Ord. of 14-85, § 8)

**Sec. 7-41. Board of adjustment.**

(a) There is hereby created a board of adjustment to have and exercise the following powers:

1. To hear and decide appeals from any order, requirement, decision, or determination made by the city administrator in the enforcement of this article.
2. To hear and decide special exceptions to the terms of this article upon which such board of adjustment under such regulations may be required to pass.
3. To hear and decide specific variances.

(b) The board of adjustment shall consist of five (5) members appointed by the city council and each shall serve for a term of two (2') years and removable for cause by the appointment authority upon written charges, after a public hearing.

(c) The board of adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this article. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board of adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board of adjustment shall be public. The board of adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the city clerk and shall be a public record.

(d) The board of adjustment shall make written findings of fact and conclusions of law stating the facts upon which it relied when making its legal conclusions in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this article.

(e) The concurring vote of four (4) members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the city administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this article or to effect any variation in this article. (Ord. of 1-3-85, § 9)

**Sec. 7-42. Appeals.**

(a) Any person aggrieved, or any taxpayer affected, by any decision of the city administrator made in his administration of this article, if of the opinion that a decision of the city administrator is an improper application of these regulations, may appeal to the board of adjustment.

(b) All appeals hereunder must be taken within a reasonable time as provided by the rules of the board of adjustment, by filing with the city administrator a notice of appeal specifying the grounds thereof. The city administrator shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the city administrator certifies to the board of adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate, a stay would, in the opinion of the city administrator cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the board of adjustment on notice to the city administrator and on due cause shown.

(d) The board of adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(e) The board of adjustment may, in conformity with the provisions of this article reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances. (Ord. of 1-3-85, § 10)

**Sec. 7-43. Judicial review.**

Any person aggrieved, or any taxpayer affected, by any decision of the board of adjustment, may appeal to a court of competent jurisdiction, as provided by the Airport Zoning Act, as amended, Revised Civil Statutes article 46e-11 (1969). (Ord. of 1-3-85, § 11)

**Sec. 7-44. Enforcement and remedies.**

The city council may institute in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this article, or of any order or ruling made in connection with its administration or enforcement including, but

not limited to, an action for injunctive relief as provided by the Airport Zoning Act, as amended, Revised Civil Statutes article 46e-12 (1969). (Ord. of 1-3-85, § 12)

PAGES RESERVED





## Chapter 8

### BUILDINGS\*

Art. I. In General, §§ 8-1 - 8-15

Art. II. Building Code, § 8-16 - 8-31

Art. III. Building Inspector, §§ 8-32 - 8-53

Art. IV. Substandard Buildings, §§ 8-54 - 8-61

Art. V. License, §§ 8-62 - 8-67<sup>1</sup>

#### ARTICLE I. IN GENERAL

##### **Sec. 8-1. Fire limits.**

The fire limits of the city are hereby established as follows:

All of Blocks 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 31, 32 and 33, Original Town of Ballinger, Texas, as shown on the map and plat of record in the county clerk's office of Runnels County, Texas, to which reference is here made; also the land known as the railroad right-of-way lying between Park Avenue and Railroad Avenue and between Sixth Street and Eleventh Street, and the land known as the Court House Square, all within the city limits. (Ord. of 4-9-68, § 6)

##### **Secs. 8-2 - 8-15. Reserved.**

#### ARTICLE II. BUILDING CODE

##### **Sec. 8-16. Adoption.**

There is hereby adopted by the city council for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures including penalties and permits, that certain building code known as the 2003 International Building Code.

##### **Sec 8-17. Reserved**

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<sup>1</sup>Charter reference - Building permits, \* 13.02.

**Cross references** - Signs and billboards, § 3-21 et seq.; electricity, ch. 10; fire protection and prevention, ch. 11; health and sanitation"ch. 14; housing, ch. 15; mobile homes, ch. 16; planning and zoning, ch. 19; plumbing and gas, ch. 20; utilities, ch. 27; zoning, App. A; subdivisions, App. B.

<sup>1</sup> Article V added 1-23-2004

**Sec. 8-18. Conflicts.**

In the event of any conflict between the provisions of the code adopted by this article and the applicable provisions of this Code of Ordinances, state law or city ordinances, rules or regulations, the provisions of this Code of Ordinances, state law or city ordinances, rules or regulations shall prevail and be controlling.

**Sec. 8-19. Definitions.**

Whenever the word "municipality" or the word "city" is used in the code adopted by this article, it shall be construed to mean the City of Ballinger, Texas.

Whenever the term "corporate counsel" or "city attorney" is used in the code adopted by this article, it shall be construed to mean the city attorney of the city.

**Sec. 8-20. Penalty for violation.**

Any person who shall violate any provision of the code adopted by the provisions of this article shall be deemed guilty of a misdemeanor, and shall be punished as provided in section 1-12 of this Code. Each day such violation continues shall be deemed a separate offense.

**Sec. 8-21 – 8-31. Reserved.**

ARTICLE III. BUILDING INSPECTOR\*

**Sec. 8-32. Establishment of office.**

The office of building official is hereby created and the executive official in charge shall be known as the building inspector. (Ord. of 4-9-68, § 2)

**Sec. 8-33. Appointment.**

The building inspector shall be appointed by the city council. (Ord. of 4-9-68, 2)

**Sec. 8-34. Term.**

The building inspector shall hold his office during good behavior and satisfactory service. (Ord. of 4-9-68, § 2)

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\* \*Cross reference - Administration, ch. 2.

**Sec. 8-35. Removal.**

The building inspector shall not be removed from office except for cause after full opportunity has been given him to be heard of specific charges. (Ord. of 4-9- 68, § 2)

**Sec. 8-36. Temporary absence.**

During the temporary absence or disability of the building inspector, the city council shall designate an acting building inspector, (Ord. of 4-9-68, § 2)

**Sec. 8-37. Compensation.**

The building inspector shall receive such compensation as provided by the city council from time to time. (Ord. of 4-9-68, § 3)

**Sec. 8-38. Duties generally.**

It shall be the duty of the building inspector to enforce all laws relating to the construction, alteration, removal and demolition of buildings and structures.

The building inspector shall also be charged with the enforcement of all zoning ordinances now in effect or put in effect by the city council, and no permit shall be issued in violation of such zoning ordinances, except as provided herein.

In all cases, the building inspector will be guided by any presently existing building code requirement, zoning ordinance requirement and any other ordinance that may be passed by the city council from time to time. The building inspector may also be assigned such other duties as deemed advisable by the city council. (Ord. of 4-9-68, § 3)

**Sec. 8-39. Issuance of permits.**

Upon the issuance of any permit for the construction, alteration or removal and demolition of any building or structure within the city limits, the building inspector shall cause the permit to be signed by the applicant, and shall indicate his approval of the permit by signing and filing it with the city administrator for final approval by the city council. (Ord. of 4-9-68, § 3)

If the construction or removal or demolition is not commenced within six (6) months from the date of approval of the permit, said permit shall automatically expire; or if the construction, removal or demolition is not completed within six (6) months following commencement, said permit shall automatically expire. (Ord. 01 1-97)

**Sec. 8-40. Permit fees.**

Upon the issuance of any building permit by the building inspector, the fees established by ordinance and kept on file in the office of the city secretary shall be paid to the building inspector, who shall not issue any permit until such fees have been paid. (Ord. of 4-9-68, § 3; Ord. of 10-6-81)

**Sec. 8-41. Right of entry.**

The building inspector, in the discharge of his official duties and upon proper identification, shall have the authority to enter any building, structure or premises at any reasonable hour. (Ord. of 4-9-68, § 4)

ARTICLE IV. SUBSTANDARD BUILDINGS\*

**ARTICLE IV. SUBSTANDARD BUILDINGS**

**Sec. 8-42. Definitions.**

The words and phrases contained herein shall have the following meanings ascribed to them unless the context states otherwise:

Abatement. Any action the city may take on public or private property and any adjacent property as may be necessary to remove or alleviate a nuisance, including, but not limited to, demolition, removal, repair, boarding and securing or replacement of property.

Administrative enforcement order. An order issued by the City Council, after a hearing, requiring a responsible person to correct a violation, abate a public nuisance, pay civil penalties and administrative costs or take any other action as authorized or required by this Code and applicable state codes. Such term may also include an order authorizing the city to abate a public nuisance or assess a code enforcement lien.

Building or Structure. Includes, but is not limited to, any building, fence, awning, canopy, sign, shed, garage, house, manufactured or modular home, mobile home, tent, trailer or other structure whatsoever, wherever located in the city.

Code enforcement official. Any person authorized to enforce violations of this Article or applicable state codes.

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\* **State law reference** - Dangerous buildings, Vernon's Ann. Civ. St. art. 1175 (25), (36).

Minimum standards. The minimum standards for continued use and occupancy of a building as set forth in section 8-44 herein.

Owner of record. Any person, agent, firm, corporation or governmental agency shown to be the owner or owners of a building in:

- (1) The real property, assumed name, or appraisal district records of the county;
- (2) The tax and utility records of the city; or
- (3) The records of the secretary of state.

Public nuisance.

- (1) Whatever is dangerous to human life or health; whatever renders the ground, water, air or food hazardous to human life, or health, or that is offensive to the senses; or that is or threatens to become detrimental to the public health; or
- (2) Any building that creates a hazard to health, safety, comfort or welfare.

Substandard building. Any building or structure that does not comply with the minimum standards set forth in Section 8-44.

#### **Sec. 8-43. Abatement.**

(a) It shall be unlawful for any owner, occupant, or other person in control of a building to allow that building to be in a condition that does not conform to the minimum standards, as defined herein.

(b) Any building that does not conform to the minimum standards is hereby declared to be a public nuisance and shall be abated by vacation, relocation of occupants, repair, demolition, or removal, as necessary, upon the issuance of an order to abate issued in accordance with the procedures specified in this article.

#### **Sec. 8-44. Minimum standards.**

A building is considered not to meet the minimum standards of the city for continued use and occupancy of a building, regardless of its date of construction, under any of the following conditions:

- (1) Any building that is dilapidated, substandard, or unfit for human habitation and a hazard to public health, safety and welfare, including, but not limited to:
- (A) Any building with roof, ceiling, floors, walls, sills, windows, or foundation or any combination thereof rotted or decayed, and falling apart; or that is uninhabitable due to obsolescence and deterioration caused by neglect, vandalism, fire damage, old age, or the elements;
  - (B) Any building intended for human occupancy that is in danger of collapse or cannot be expected to withstand reasonably anticipated storms or hurricanes, which may present a danger to persons or property;
  - (C) Any building that is a fire hazard because it is in a dilapidated condition, as described in subsections (1)(A) and (B) above or that is likely to become a fire hazard or be set on fire;
  - (D) Any building that is in unsanitary condition and is likely to create disease because of the presence of insects, rodents or vermin;
  - (E) Any building that is damp and in unsanitary condition and is likely to create disease and sickness because of being in the condition in subsection (1)(A), (B), (C) or (D) above, or for other reasons;
  - (F) Any building that has holes, cracks or other defects in it, or does not have railings for stairs, steps, balconies, porches, and elsewhere, thereby constituting a danger to persons or property;
  - (G) Any building occupied by humans that does not have in operating condition a connection to discharge sewage from the structure or land into a public sewer system (where such is available), a toilet connected to a water source and to a public sewer system (where such is available), and connection to potable water at adequate pressure;
  - (H) Any building intended for human occupancy that does not have operating supply lines for electrical service, if electric service is available within three hundred feet of the building, or that does not have operating electrical circuits and outlets sufficient to safely carry a load imposed by normal use of appliances and fixtures.

- (2) Any building that is not occupied by its owners, lessees or other invitees and is not secure from unauthorized entry so that it could be entered or used by uninvited persons or children regardless of its structural condition.
- (3) Any building that is boarded up, fenced or secured if:
  - (A) The building constitutes a danger to the public even though secured from entry; or
  - (B) The means used to secure the building are inadequate to prevent unauthorized entry or use of the building.
- (4) Any building that fails to comply with provisions of adopted State codes, including, without limitation, the International Residential Code, the International Building Code and the National Electric Code.

**Sec. 8-45. Authority.**

(a) The city manager or any of the city's designated code enforcement officials, including the building inspector ("code enforcement officials") shall have the authority and powers necessary to gain compliance with the provisions of this article. Such powers include the power to issue notices of violation, issue citations, inspect public and private property and use whatever judicial and administrative remedies are available under this article or applicable state laws. The city manager and any code enforcement official are authorized to enter upon any property or premises to ascertain whether the provisions of this article or applicable state codes and statutes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. Such duties may include the taking of photographs, samples or other physical evidence

(b) Any code enforcement official shall have the authority to issue citations for any violation of this article. If the person being cited is not present, the code enforcement official may send the citation to the alleged offender by certified mail, return receipt requested. If a person who receives a citation by personal service or as provided under this subsection fails to appear on the return date of the citation, the court may issue a warrant for the person's arrest for the violation described in the citation.

(c) It shall be unlawful for any person to interfere with a code enforcement official in the performance of his or her duties and enforcement under this section.

(d) The city may secure a building that it determines does not meet the minimum standards and is unoccupied or occupied only by persons who do not have a right to possess the building according to the following procedures:

(1) Before the 11th day after the date the building is secured, the city shall give notice to the owner of record by:

- (i) Personally serving the owner with written notice;
- (ii) Depositing the notice in the United States mail addressed to the owner at the owner's last known post office address;
- (iii) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the city if personal service cannot be obtained and the owner's post office address is unknown; or
- (iv) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(2) The notice shall contain identification of the building and the property on which it is located, a description of the existing violation(s) of the minimum standards, and a statement that the municipality will secure or has secured the building.

(3) The notice shall also state that the owner may request a hearing about any matter related to the city's securing of the building no later than thirty (30) days after the date the city secures a building, and that if such a hearing is requested, it shall be held within twenty (20) days after the request for hearing is filed pursuant to Texas Local Government Code sec. 214.0011(e) and heard by the city manager or his designee.

#### **Sec. 8-46. Inspection and notice of abatement.**

(a) Inspection. The city manager shall designate the building inspector or any code enforcement official to inspect or cause to be inspected any building the official has probable cause to believe does not meet the minimum standards. If an owner, occupant, agent or person in control of the premises refuses permission to enter or inspect, the code enforcement official, first authorized by the city manager, may seek an administrative search warrant pursuant to Texas Code of Criminal Procedure Article 18.05 unless an exception to the warrant requirement exists. All inspections, entries, examinations and surveys shall be done in a reasonable manner.



(b) Determination. After completing the inspection, the inspecting official shall determine if the building is a substandard building, as defined herein.

(c) Notice of Abatement. After an initial determination that a building is a substandard building, the inspecting official shall notify the owner of record of the building, by certified mail, return receipt requested, of the nature of the violation(s) of the minimum standards. The inspecting official shall also notify the owner of record of the building that the building is substandard and that the owner must vacate and/or repair, demolish, or remove the building for the good of the public health, safety and welfare. A notice shall be posted on the substandard building as follows:

“THIS BUILDING IS SUBSTANDARD ACCORDING TO THE MINIMUM STANDARDS SET FORTH IN THE OFFICIAL CODE OF THE CITY, CHAPTER 8, ARTICLE IV., AND THE OWNER MUST REPAIR, DEMOLISH OR REMOVE IT. CONTACT \_\_\_\_\_ AT \_\_\_\_\_ FOR FURTHER INFORMATION.

“DATE \_\_\_\_\_”

(d) Request for public hearing before City Council. If the owner does not reply or take action within fifteen (15) days from the date the notice was mailed, the inspecting official may request that a public hearing be held before the City Council, as defined in Sec. 8-47, to determine whether the building complies with the minimum standards set forth in this article. The city shall then order a public hearing.

- (1) If a public hearing is ordered, the city shall make a diligent effort to discover the identity and address of the owner(s) of record and any lienholders or mortgagees of the building and the underlying property.
- (2) The city shall notify each owner, lienholder, or mortgagee by certified mail, return receipt requested, no later than ten (10) days prior to the date of the public hearing, and notify any unknown owners by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable that a public hearing will be held in reference to the building and that the interested party may appear at the public hearing, be heard, and present evidence in reference to the condition of the building. The notice shall further advise the owner, lienholder, or mortgagee or unknown owner that he will have the burden of proof at such hearing and will be required to submit at the hearing proof of the scope of any work that may be required to make the building comply with this article and the amount of time it will take to reasonably perform the work.

- (3) The city will publish notice of the public hearing in a newspaper of general circulation in the city no later than ten (10) days prior to the date of the public hearing. The city may also file a notice of the public hearing in the official public records of real property in the county. The notice must contain the name and address of the owner of the property (if it can be determined from a reasonable search of county records), a legal description of the affected property and a description of the proceeding, including the date, location and time of the public hearing.

### **Sec. 8-47. Enforcement powers of City Council.**

(a) Setting hearing. Upon the request of the City Manager or the code enforcement official for a public hearing, the City Council shall set a date and time for the hearing and shall provide notice of the hearing as may be required by law. The City Council shall conduct its activities and enforce this article in accordance with the provisions of the Local Government Code.

(b) Powers and duties. The City Council shall have the power and duty to:

- (1) Require the reduction in occupancy load of an overcrowded structure or vacation of a structure that is hazardous to the health, safety and welfare of the occupants;
- (2) Permit the repair of a substandard structure as an alternative to demolition of the structure; or
- (3) Require the demolition of structures found to be substandard.
- (4) Require the removal of personalty from a structure ordered vacated or demolished. Removal may be accomplished by use of city forces or a private transfer company if the owner of the personalty is not known, the whereabouts of the owner cannot be ascertained or the owner fails to remove the personalty. The City Council may cause any personalty removed to be stored in the care and custody of a bonded warehouse facility. Cost of removal and storage is the responsibility of the owner of the personalty;
- (5) Require that a vacant structure or vacant portion of a structure constituting a hazard be securely closed and made safe;
- (6) Grant a variance when, in the opinion of the City Council, a literal interpretation of the city's housing standards regulations would result in an imposition of an unnecessary or unreasonable hardship;
- (7) Interpret the provisions of this article in a way so as to carry out their intent and purpose and propose and carry forward amendments to

the city's housing standards regulations, including the minimum standards contained herein; and

- (8) Enforce any and all ordinances of the city authorizing or subject to quasi-judicial enforcement under Sec. 54.032 of the Local Government Code.

(c) Applicability. This provision applies only to buildings and structures that are considered not to meet the minimum standards defined in Sec. 8-44, herein. This section does not affect the ability of a municipality to proceed under the jurisdiction of the municipal court.

#### **Sec. 8-48. Receiver.**

The city may bring an action in district court against an owner of residential property that is not in substantial compliance with the minimum standards and request the appointment of a receiver for purposes of rehabilitating the property pursuant to Tex. Local Government Code Sec. 214.003.

#### **Sec. 8-49. Order to abate.**

(a) If it is found at the public hearing that the building is in violation of the minimum standards, one of the following orders or any combination thereof may be issued by the City Council:

- (1) An order to secure or vacate the building and relocate occupants; or
- (2) If it is determined that the order provided for in subsection (a)(1) above is not sufficient to protect the public health, safety or welfare, an order may be issued to repair, demolish or remove the building within a reasonable time.

(b) The city shall promptly mail by certified mail, return receipt requested, a copy of any order issued pursuant to subsection (a) of this section to the owner of record of the building and to any lienholder or mortgagee along with a notice containing an identification of the building and the property on which it is located; a description of the violation(s) of the minimum standards; a statement that the municipality will secure, vacate, repair, remove or demolish the building if the ordered action is not taken by the owner within a reasonable time.

(c) The order shall allow the owner thirty (30) days to complete the ordered action, unless it is determined from the evidence presented at the public hearing that additional time is required. If more than thirty (30) days is allowed to repair,

remove or demolish the building, specific time schedules shall be established for the commencement and performance of the work.

(d) The order shall also state that any lienholders or mortgagees of the building and/or the underlying property shall have an additional thirty (30) days to complete the ordered action if the owner fails to comply within the time allotted in subsection (c) above.

(e) The owner, lienholder or mortgagee may not be allowed more than ninety (90) days to complete any part of the work required, remove or demolish the building unless the requirements of Texas Local Government Code Sec. 214.001(k) are met.

**Sec. 8-50. Filing and publication of order; sending of order to owner and lienholders.**

Within then (10) days following the date that an order is issued, the City Council shall:

- (1) File a copy of the order in the office of the city secretary; and
- (2) Publish in a newspaper of general circulation in the city a notice containing the following:
  - (A) The street address or legal description of the property;
  - (B) The date the hearing was held;
  - (C) A brief statement indication the results of the hearing and the contents of the order; and
  - (D) Instructions stating where a complete copy of the order may be obtained.
- (3) Send by certified mail, return receipt requested, signature confirmation through United States Postal Service, or personal delivery, a copy of the order to the owner and to any lienholder or mortgagee of the building.

**Sec. 8-51. Appeal and Judicial Review.**

Any owner, lienholder or mortgagee of record of a property jointly or severally aggrieved by any order issued under this article shall be entitled to judicial review in district court. A petition must be filed in district court by an owner, lienholder or

mortgagee within thirty days of after delivery of said order pursuant to Texas Local Government Code Sec. 214.0012

**Sec. 8-52. Violation and Penalty.**

(a) Criminal violations; penalty. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. A violation of any of the provisions or failure to comply with any of the mandatory requirements of this Code shall constitute a Class C misdemeanor punishable by a fine not to exceed \$2,000.00. Each such person may be charged with a separate offense for each and every day, or portion thereof, during which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

(b) Civil violations. In addition to any other remedy provided by this Code, any provision of this Code or applicable state law may be enforced by injunction issued by a court of competent jurisdiction upon a suit brought by the city. As part of a civil action filed to enforce provisions of this Code, a court may assess a maximum civil penalty as allowed by law per violation of this Code or state law for each day during which any person commits, continues, allows or maintains a violation of any provision of this Code or state law.

(c) Recovery of civil penalties. The city manager may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including referral to the city attorney, the recordation of a code enforcement lien pursuant to the procedures set forth in this chapter and state law, and the filing of a court action to recover such penalties and costs.

**Sec. 8-53. Expense of lien.**

(a) All expenses of vacating, securing, repairing, removing, demolition, or the relocation of occupants of a building are the responsibility of the owner of the property.

(b) If an owner or other interested party does not vacate, secure, repair, remove, demolish, or relocate occupants of a building within the time allotted in an order issued pursuant to this article, the city may take the ordered action at its expense at the direction of the city manager. If the city repairs the building, such repairs shall only be to the extent required to meet minimum standards and only if the building is a residential building with ten (10) or fewer dwelling units.

(c) As an alternative to subsection (a) a civil penalty may be assessed against the property owner for failure to repair, remove or demolish the building. A notice of penalty shall be mailed by certified mail, return receipt requested, to the property

owner advising the amount and duration of the penalty, the date on which it is due, and notice that failure to pay said penalty shall result in a lien being placed on the property.

(d) In addition to subsections (a), (b) and (c) above, the city may assess and recover a civil penalty against a property owner at the time of the hearing for violations of this article, pursuant to Texas Local Government Code sec. 214.0015.

(e) Any expenses incurred by the city pursuant to subsection (a) of this section and any civil penalties incurred by the owner pursuant to subsections (b) and (c) of this section will be assessed against the property on which the building stands or stood. The city will have a privileged lien upon filing same in the official public records of the county clerk subordinate only to tax liens against the property unless it is a homestead as protected by the state constitution. Then lien will be extinguished if the property owner or other interested party reimburses the city for all expenses and penalties.

#### **Sec. 8-54. Voluntary Conveyance of Property to City for Demolition**

Upon approval by the City Council and a determination by the City Council that a certain property has value to the city, the city may take possession of property on which there is located a building that the owner has been ordered to demolish; this requires conveyance of the property by deed to the city and may require payment by the property owner for some portion of the demolition and disposal or the administrative costs associated with the conveyance and demolition. The terms of this type of agreement must be reduced to writing, to be signed by both parties, and approved and accepted by the City Council prior to conveyance.

#### **Sec. 8-55. Administrative liability.**

No officer, agent or employee of the City of Ballinger shall render himself personally liable for any damage that may accrue to any person or property as a result of any act required or permitted in the discharge of his duties under this article.

#### **Sec. 8-56. Building permit, fees.**

It shall be unlawful for any person to construct, repair, alter, add on to, remodel or structurally alter, install, or move any building or structure within the city without first obtaining a permit from the designated code enforcement official of the city. Application for a building permit shall be made on a form furnished by the city. All permit fees will be as set by the City Council annually by ordinance in conjunction with the budget process.

**Sec. 8-57. Demolition-permit required.**

It shall be unlawful for any person to demolish any building situated within the limits of the city without first obtaining a written permit from the city. Application for such permit shall be made on a form furnished by the city. The cost of the permit shall be as set by the City Council annually by ordinance in conjunction with the budget process.

**Sec. 8-58 – Sec. 8-61 reserved.**

ARTICLE V. LICENSE\*

**Sec. 8.62**

It shall be unlawful for any person to engage in business or work as a roofing contractor or journeyman contractor without first registering with the City and meeting the requirements of this Code.

**Sec. 8.63**

The following acts, works, and conducts shall be expressly permitted without examination or license or bond as a roofing contractor:

- (1) Roofing work done by property owner in a residence owned and occupied by him as his home; provided, however, all work and service herein named or referred to shall be subject to permit, inspection and approval in accordance with the terms of this chapter.
- (2) Roofing work done by persons engaged by any public service company in the construction and maintenance of their public utility systems.
- (3) Nothing in this chapter shall operate to prohibit merchants or their agents from roofing where the installation is providing free of charge or the cost of installation is included in the purchase price and is at their own risk.

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\* Ordinance Article V, 1-23-2004.

**Sec. 8.64**

Any person desiring to perform roofing contracting in the City of Ballinger shall make application in writing to the City Secretary and shall provide the information required by the City Secretary in the application.

**Sec. 8.65**

No registration shall be approved until the roofing contractor has given bond in the sum of Three Thousand and no/100 (\$3,000.00) Dollars conditioned upon the full and faithful performance with the contract for the person for which the roofing contractor performs work within the City limits of Ballinger.

**Sec. 8.66**

Any applicants shall provide a copy of the bond to City and provide all of the information requested by the City Secretary, including but not limited to names of individual, person, firm, or corporation, their address, the provider of their bond, therein in the roofing contract business.

**Sec. 8.67**

Any person who shall violate any provisions of the code adopted by the provision of this article shall be deemed guilty of a misdemeanor and shall be provided by law. Each day violation continues, shall be deemed a separate offense.



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Chapter 9  
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## Chapter 10<sup>2</sup>

### ELECTRICITY

Art. I. In General \*\*10-1 - 10-7

#### ARTICLE I. IN GENERAL

##### **Sec. 10-1 In General**

That Chapter 10 Electricity of the City Of Ballinger Code of Ordinances is amended to read as follows:

That the 2005 National Electrical Code, NFPA (National Fire Protection Association) and Annex G Administrative Code for the National Electrical Code, 2005 Edition, are hereby adopted by reference. Unless deleted, amended, expanded or otherwise changed herein, all provisions of such code shall be fully applicable and binding.

##### **Sec. 10-2 Amendments to Annex G, Administrative Code of NEC 2005**

That Chapter 10 Sec. 10-1 of the City Of Ballinger Code of Ordinances is amended to read in its entirety as follows:

Chapter 150.076 Amendments to Annex G Administrative Code of the National Electrical Code (2005 edition).

Definitions, is amended to read:

State of Texas Journeyman Electrician's License: A State of Texas Journeyman Electrician's License shall entitle the holder thereof to perform any type of electrical work under the supervision of a Master Electrician, but in no case shall a Journeyman Electrician contract for or engage in the business of electrical work of any nature, nor perform electrical work of any nature, except under the supervision of a Master Electrician.

State of Texas Master Electrician's License: A State of Texas Master Electrician's License shall entitle the holder to perform wiring of any nature and to employ and supervise Journeyman Electricians.

State of Texas Residential Wireman License: A State of Texas Residential Wireman License shall entitle the holder to only perform electrical installation in single-family and multi-family dwellings of four stories or less.

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<sup>2</sup> Chapter 10 Amended by substituting a new chapter 6-10-75.

State of Texas Electrical Contractor License: Entitles the holder to contract for and engage in the business of electrical wiring of any nature. The holder of a Texas Electrical Contractors License must meet all the State of Texas Department of Licensing and Regulation requirements.

Whenever the word "municipality" or the word "city" is used in the code adopted by this article, it shall be construed to mean the City of Ballinger, Texas. Whenever the term "corporate counsel" or "city attorney" is used in the code adopted by this article, it shall be construed to mean the city attorney of -the city.

### **Sec. 10-3 Contractor Registrations.**

(A) Contractor registration.

1) No person, firm or corporation shall engage in the business of electrical construction or install, augment, alter, or maintain any electrical equipment or system, within the city, without first obtaining a contractor registration as required by this chapter.

2) Any person, firm or corporation performing any electrical work within the city without possessing a contractor registration shall be subject to an investigation fee for contractor registration.

The investigation fee will be assessed at the same rate and in addition to the contractor registration fee. The payment of investigation fees shall not relieve any person from complying with this chapter, nor from any other penalties prescribed by this chapter or by law.

(B) Application: An application for contractor registration required by this chapter shall be filed with the City Secretary. Such applications shall be on forms prepared and furnished by the city. Each applicant shall state in writing, and under oath, the information required, in order that the building official may determine if he has the qualifications prescribed by this chapter.

(C) Prerequisites of specific applicants:

1) Electrical contractor. An electrical contractor's registration, enabling the holder to secure permits for and engage in the business of installing, augmenting, altering and maintaining electrical equipment and systems, shall not be valid unless:

(a) The business has a Texas State Contractor License and is qualified by a State of Texas master electrician, licensed under provisions of this chapter, who:

1. Is an owner or full-time employee of the business; and

2. Actively supervises the daily operation of the business.

(b) A State of Texas master electrician shall not qualify more than one electrical contracting business at any one time.

(c) The business owner and/or State of Texas master electrician qualifying the business shall be jointly responsible for the following:

1. Obtaining and paying for permits; and

2. Having a licensed electrician, licensed under the provisions of this chapter, on each job, supervising the work undertaken by the electrical contracting company; and

3. Correcting deficiencies, errors or defects in installations within this jurisdiction. Exception: City of Ballinger, Traffic and Transportation Department for electrical service equipment supplying electronic traffic devices.

(d) Homeowner's right. Nothing herein shall prohibit any home owner from personally installing electrical conductors or equipment within his own homestead premises; providing that the owner applies for and secures a permit; pays required fees; does work in accordance with this chapter; requests inspections of his work during the process of the installation; and receives final approval of his work upon completion.

(e) Recognition of licenses. Any person holding a currently valid master electrician's license of the State of Texas and is the owner of or is employed by a Texas Electrical Contractor Licensed business may apply for and receive a contractor's registration in the City of Ballinger without taking an examination, providing the following conditions are complied with:

1. He/She shall pay the proper fee per year, "Sec. 10-4 Fees", which is required and comply with all other requirements of this chapter.

(f) Not transferable. No registration shall be transferable.

(g) Expiration and renewal:

1). All registrations issued shall expire at 12:00 midnight, one year from date of issuance, and shall be renewed on or before such date by payment of the prescribed fee.

2) License for firms or corporations. The master licensing under this chapter of any member, officer, or supervisory employee of a firm or corporation shall be sufficient to qualify the firm or corporation to engage in the business or trade for which license application has been made. Should the holder of the license

through which a firm or corporation engages in such business or trade terminate his or her relationship with such firm or corporation, such firm or corporation may continue in such business trade, if it has in its employ in a supervisory capacity a person whose qualifications are acceptable to the Board.

**Sec. 10-4 Fees.**

Fees shall be provided for in the city approved fee schedule kept on file in the City Secretary's office.

**Sec. 10-5. Conflicts.**

In the event of any conflict between the provisions of the code adopted by this article and the applicable provisions of this Code of Ordinances, state law or city ordinances, rules or regulations, the provisions of this Code of Ordinances, state law or city ordinances, rules or regulations shall prevail and be controlling.

**Sec. 10-6. Penalty for violation.**

Any person who shall violate any provision of the code adopted by the provisions of this article shall be deemed guilty of a misdemeanor, and shall be punished as provided by Chapter 1, Section 1-12 of this City of Ballinger Ordances. Each day such violation continues shall be deemed a separate offense. (Ord. of 5-23-67, \*2)



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## Chapter 11

### FIRE PROTECTION AND PREVENTION\*

- Art. I. In General, §§ 11-1 - 11-18
- Art. II. Fire Marshal, §§ 11-19-11-46
- Art. III. Fire Prevention Code, §§ 11-47 -11-73
- Art. IV. Liquefied Petroleum Gas, §§ 11-74 -11-81
- Art. V. Fireworks §§ 11-100 – 11-104.

#### ARTICLE I. IN GENERAL

##### **Sec. 11-1. Arson reward - Established.**

The city hereby offers a standing reward in the amount of two hundred and fifty dollars (\$250.00) for the arrest and conviction of any person found guilty of the crime of arson within the corporate limits of the city, which reward shall be payable immediately after the final conviction of such person. (Ord. of 9-30-15, § 1)

**State law references** - Arson generally, Vernon's Ann. P.C. art. 13.04; rewards, Vernon's Ann. Civ. S1. arts. 7880 - 3b, 7930 - 4.

##### **Sec. 11-2. Same - How offered.**

Whenever the mayor shall be informed that any fire occurring in the city was of an incendiary origin, he shall call for a report on the same by the fire marshal, and if the fire marshal shall report that such fire was caused by the commission of the crime of arson, it shall become the duty of the mayor to offer the reward provided by this chapter, which reward shall be in the form of a proclamation duly issued by the mayor under his official signature and attested by the seal of the city.

##### **Sec. 11-3. Same - Notice.**

(a) The fire marshal is hereby directed to have prepared and posted an arson reward notice on placards eight (8) inches by twelve (12) inches in size showing the following reward notice:

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\* **Charter reference** - Fire department, art. 9.

**Cross references** - Buildings, ch. 8; electricity, ch. 10; fires on Ballinger Municipal Lake, § 17.525; zoning, App. A.

## ARSON REWARD

The City of Ballinger, Texas, hereby offers the reward of two hundred fifty dollars (\$250.00) for the arrest and conviction of any person found guilty of committing the crime of arson within the corporate limits of the City of Ballinger, Texas. This reward is a standing offer and shall be paid out of the general fund of the City of Ballinger, Texas.

(b) Such placards shall be placed in wooden frames under glass and shall be posted inside at least twelve (12) different public buildings within the city, one of which shall be the city hall, in accordance with the regulations of the state fire insurance department.

### **Sec. 11-4. Same - Payment.**

Upon information being given by any person causing the arrest and conviction of any person guilty of the specific crime of arson, and upon the final conviction of such person, the person giving such information shall be entitled to receive the reward offered by this chapter from the city.

### **Sec. 11-5. Reserved.**

### **Sec. 11-6. Hindrance or interference at fires.**

It shall be unlawful for any person to willfully offer any hindrance to any officer or fireman in the performance of his duty at a fire. (Ord. of 1-8-08, § 1)

### **Sec. 11-7. Tampering with, molesting equipment.**

It shall be unlawful for any person to turn on or turn off any fire hydrant without the authority of the fire chief, or to molest, tamper with or deface any fire hydrant, fire truck, fire apparatus or fire equipment belonging to the city. (Ord. of 1-8-08, § 1)

### **Section 11-8: Burning of trash and rubbish restricted.**

No outside burning is allowed within the city limits of Ballinger unless the provision of Section 11-9, control burn permit, have been adhered to and any person violating the provisions of this chapter shall be guilty of a misdemeanor and upon the conviction thereof shall be fined in an amount not to exceed Two Hundred and *No/100* (\$200.00) Dollars.

## **Section 11-9: Same - Location**

No outside burning is allowed within the city limits of Ballinger unless and until a control burn permit has been obtained from the City of Ballinger and approved by the Ballinger Fire Chief or Fire Marshall, City Administrator and the Texas Air Control Board. As a condition to obtaining a control burn permit the following requirements shall be adhered to:

(1) The Fire Marshall shall be notified at least one (1) hour prior to any outside burning.

(2) The outdoor burn must not create a nuisance for residents in the area.

(3) Wind direction must be such that smoke from fire is away from nearby residents.

(4) The burn and resulting smoke must not create a traffic hazard.

(5) All brush and other materials must be dry before burning.

(6) No oils, tires, asphaltic materials, or other petroleum derived materials may be burned.

(7) No hazardous materials may be burned.

(8) There must be a minimum wind of 6 mph and a maximum of 15 mph.

(9) A fire lane of no less than 10 feet must surround the burn area, and no burning will be allowed within 15 feet of property line.

(10) Burning cannot begin before 9:00 A.M. and must be totally extinguished before 5:00 P.M.

(11) Provision for extinguishing fire must be available at burnsite during entire period of burn.

(12) The fire will not be left unattended at any time until it has been totally extinguished.

(13) Permit holder shall agree to hold the City of Ballinger hold and harmless for all claims, demands and costs, including attorney's fees, court costs and other expenses.

If the fire becomes uncontrolled and it is necessary for the Ballinger Fire Department to extinguish the fire, the permit holder will be charged Two Hundred Fifty and No/100 (\$250.00) Dollars for each fire truck responding to the fire plus

Thirty and No/100 (\$30.00) Dollars for each firefighter, not to exceed a total 01 Five Hundred and No/100 (\$500.00) Dollars. (Ord. of 04-29-91)

**Secs. 11-10 - 11-18. Reserved.**

**ARTICLE II. FIRE MARSHAL \***

**Sec. 11-19. Office created.**

The office of fire marshal is hereby created in and for the city. (Ord. of 9-5-11, § 1)

**Sec. 11-20. Independence of office.**

The office of fire marshal shall be independent of other city departments, the fire marshal reporting directly to the city administrator. (Ord. of 9-5-11, § 1)

**Sec. 11-21. Appointment.**

The office of fire marshal shall be filled by appointment by the mayor, by and with the consent of the city council. (Ord. of 9-5-11, § 1)

**Sec. 11-22. Qualifications.**

The person appointed as the fire marshal shall be properly qualified for the duties of his office in accordance with recognized standards. (Ord. of 9-5-11, § 1)

**Sec. 11-23. Removal from office.**

The person appointed as the fire marshal shall be removed from office only for cause. (Ord. of 9-5-11, § 1)

**Sec. 11-24. Compensation.**

The fire marshal shall receive a salary which shall be determined by the city council. (Ord. of 9-5-11, § 1)

**Sec. 11-25. Duty to investigate fires.**

The fire marshal shall investigate the cause, origin and circumstances of every fire occurring within the city by which property has been destroyed or damaged,

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\* Cross reference - Administration, ch. 2.

and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall begin within twenty-four (24) hours, not including Sunday, of the occurrence of such fire. (Ord. of 9-5-11, § 2)

**Sec. 11-26. Taking of testimony generally.**

The fire marshal, when in his opinion further investigation is necessary, shall take or cause to be taken the testimony, on oath, of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing. (Ord. of 9-5-11, § 3)

**Sec. 11-27. Summon witnesses, obtain evidence, oaths.**

The fire marshal shall have the power to summon witnesses before him to testify in relation to any matter which is by the provisions of this chapter a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent thereto. The fire marshal is hereby authorized and empowered to administer oaths and affirmations to any person appearing as a witness before him. (Ord. of 9-5-11, § 4)

**Sec. 11-28. Private investigations, separate witnesses.**

All investigations held by or under the direction of the fire marshal may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined. (Ord. of 9-5-11, § 4)

**Sec. 11-29. Duty when evidence indicates arson.**

If the fire marshal shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he shall cause such person to be lawfully arrested and charged with such offense or either of them, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all of the information obtained by him, including a copy of all pertinent and material testimony taken in the case. (Ord. of 9-5-11, § 3)

**Sec. 11-30. Misconduct of witnesses.**

Any witness who refuses to be sworn, refuses to appear or testify, disobeys any lawful order of the fire marshal, fails or refuses to produce any book, paper or document touching any matter under examination, or who is guilty of any contemptuous conduct during any of the proceedings of the fire marshal in the

matter of such investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation as aforesaid, shall be deemed guilty of a misdemeanor, and it shall be the duty of the fire marshal to cause all such offenders to be prosecuted. (Ord. of 9-5-11, § 4)

**Sec. 11-31. Right of entry.**

The fire marshal shall have the authority at all times of the day or night, when necessary, in the performance of the duties imposed upon him by the provisions of this article, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same, which authority shall be exercised only with reason and good discretion. (Ord. of 9-5-11, § 5)

**Sec. 11-32. Inspection of premises.**

The fire marshal, upon complaint of any person having an interest in any building or property adjacent to the scene of a fire, or without any complaint, shall have the right at all reasonable hours for the purpose of examination to enter into and upon all buildings and premises within the city, and it shall be his duty, monthly or more often, to enter upon and make, or cause to be entered and made, a thorough examination of all mercantile, manufacturing and public buildings, together with the premises belonging thereto. (Ord. of 9-5-11, § 6)

**Sec. 11-33. Correction of dangerous conditions.**

Whenever the fire marshal shall find a building or other structure which, for want of repair, or by reason of age or dilapidated condition, or for any cause is especially liable to fire, and which is so situated as to endanger other buildings or property, or so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues and pipes with which the same may be connected, or a dangerous arrangement of lighting devices or systems, or a dangerous or unlawful storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes or combustible, inflammable and refuse materials or other conditions which may be dangerous in character or liable to cause or promote fire or create conditions dangerous to the firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of the building or premises; provided, however, if the owner or occupant deems himself aggrieved by such order, he may, within five (5) days, appeal to the city administrator, who shall investigate the cause of the complaint and unless by his authority the order is revoked, such order shall remain in force and be forthwith complied with by the owner or occupant. (Ord. of 9-4-11, § 6)



**Sec. 11-34. Record of fires.**

The fire marshal shall keep in his office a record of all fires occurring within the city, together with all facts, statistics and circumstances, including the origin of the fires and the amount of loss, which may be determined by the investigation required by this article. (Ord. of 9-5-11, § 2)

**Sec. 11-35. Monthly report.**

At the end of each month, the fire marshal shall report to the state fire marshal, with copies to the city administrator, all existing hazardous conditions, together with separate reports on each fire in the city during the month.

**Sec. 11-36 - 11-46. Reserved.**

**ARTICLE III. FIRE PREVENTION CODE**

**Sec. 11-47. Adoption.**

There is hereby adopted by the city for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the International Fire Code thereof, and any amendments or addition or replacement or update thereof, save and except such portions as are hereinafter deleted, of which code not less than one (1) copy is now filed in the office of the city clerk and two (2) copies now filed at the Ballinger Fire Department and the provisions of such code are incorporated as fully as if set out at length herein and shall be controlling within the limits of the city.

**Sec. 11-48. Flammable liquid regulations adopted.**

That certain publication entitled "Storage and Handling of Flammable Liquids" published by the state board of insurance is hereby adopted by the city for the purpose of establishing rules and regulations for the safe storage, handling and use of flammable liquids at retail service stations within the city, copies of which are on file in the office of the city secretary.

**Sec. 11-49. Definitions.**

Whenever the word "municipality" or the word "city" is used in the code adopted by this article, it shall be construed to mean the City of Ballinger, Texas. Whenever the term "corporate counsel" or "city attorney" is used in the code adopted by this article, it shall be construed to mean the city attorney of the city. (Ord. of 5-9-67, § 3)

**Sec. 11-50. Conflicts.**

In the event of any conflict between the provisions of the code adopted by this article and the other provisions of this Code of Ordinances, state law or city ordinances, rules or regulations, the provisions of this Code of Ordinances, state law or city ordinances, rules or regulations shall prevail and be controlling.

**Sec. 11-51. Penalty for violation.**

Any person who shall violate any provision of the code adopted by the provisions of this article shall be deemed guilty of a misdemeanor, and shall be punished as provided by section 1-12 of this Code. Each day such violation continues shall be deemed a separate offense. (Ord. of 5-9-67, § 11)

**Sec. 11-52. Establishment and duties of bureau of fire prevention.**

(a) The fire prevention code adopted by this article shall be enforced by the bureau of fire prevention in the fire department which is hereby established and which shall be operated under the supervision of the chief of the fire department.

(b) The chief in charge of the bureau of fire prevention shall be appointed by the city administrator on the basis of examination to determine his qualifications. His appointment shall continue during good behavior and satisfactory service, and he shall not be removed from office except for cause after public trial.

(c) The chief of the fire department may detail such members of the fire department as inspectors as shall from time to time be necessary. The chief of the fire department shall recommend to the city administrator the employment of technical inspectors, who, when such authorization is made, shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the fire department and appointments made after examination shall be for an indefinite term with removal only for cause.

(d) A report of the bureau of fire prevention shall be made annually and transmitted to the mayor, which report shall contain all proceedings under the code, with such statistics as the chief of the fire department may wish to include therein, and the chief of the fire department shall also recommend any amendments to the code which, in his judgment, shall be desirable. (Ord. of 5-9-47, § 2)

**Sec. 11-53. Districts in which storage of explosives, blasting agent is prohibited.**

The limits referred to in section 12.5b of the fire prevention code adopted by this article, in which the storage of explosives and blasting agents is prohibited are hereby established as the city limits. (Ord. of 5-9-67, § 4)

**Sec. 11-54. Limits of districts in which storage of flammable liquids is outside aboveground storage tanks prohibited.**

The limits referred to in section 16.22a of the fire prevention code adopted by this article, in which the storage of flammable liquids in outside aboveground tanks is prohibited, are hereby established as the fire zone of the city. (Ord. of 5-9-67, § 5)

**Sec. 11-55. Limits in which bulk storage of liquefied petroleum gases is restricted.**

The limits referred to in section 21.6a of the fire prevention code adopted by this article, in which the bulk storage of liquefied petroleum gas is restricted, and hereby established as follows: The bulk storage of liquefied petroleum gas is prohibited in Residential Area 1, Residential Area 2 and the Neighborhood Business District, and shall be allowed in the city only upon special application in the commercial or industrial zones as established in the zoning ordinance of the city. (Ord. of 5-9-67, § 6)

**Sec. 11-56. Establishment of routes for vehicles transporting explosives and blasting agents.**

The routes referred to in section 12.70 of the fire prevention code adopted by this article for vehicles transporting explosives and blasting agents shall be as designated by the traffic engineer.

**Sec. 11-57. Establishment of routes for vehicles transporting hazardous chemicals or other dangerous articles.**

The routes referred to in section 20.14 of the fire prevention code adopted by this article for vehicles transporting hazardous chemicals and other dangerous articles shall be as designated by the traffic engineer.

**Sec. 11-58. Establishment of fire lanes on private property devoted to public use.**

The fire lanes referred to in section 28.16 of the fire prevention code adopted by this article shall be as established from time to time by the fire marshal and the traffic engineer.

**Sec. 11-59. Modifications.**

The fire chief shall have the power to modify any of the provisions of the fire prevention code adopted by this article upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire chief thereon shall be entered upon the records of the department and a signed copy shall be furnished to the applicant. (Ord. of 5-9-67, § 8)

**Sec. 11-60. Appeals.**

Whenever the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the fire prevention code adopted by this article do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the city council within thirty (30) days from the date of the decision appealed. (Ord. of 5-9-67, § 9)

**Sec. 11-61. New materials, processes or occupancies which may require permits.**

The city administrator, the chief of the fire department and the fire marshal shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those now enumerated in the fire prevention code adopted by this article. The fire marshal shall post such list in a conspicuous place in his office and distribute copies thereof to interested persons. (Ord. of 5-9-67, § 10)

**Sec. 11-62. Mobile service units.**

It shall be unlawful for any person to operate a mobile service unit for the dispensing of gasoline or similar flammable liquids at retail, for delivery directly to the fuel tanks of motor vehicles, within the city, including, but not limited to, the retail sale of gasoline from service trucks or mobile units for delivery to motor vehicles on private or public parking lots; provided, however, the provisions of this section shall not be interpreted to prevent operators of regular service stations from delivering small quantities of gasoline or similar flammable liquids for emergency service, such as to the vehicle of a customer whose automobile has run out of gasoline completely and cannot be operated.

**Secs. 11-63 - 11-73. Reserved.**

## ARTICLE IV. LIQUEFIED PETROLEUM GAS

### **Sec. 11-74. Minimum standards for appliances, appurtenances.**

All cylinders, drums and containers of any kind and pertinent equipment therefor, installed for use or for resale within the city used for the storage, transportation and dispensing of liquefied petroleum gas for industrial, commercial and domestic uses, or for motor fuel, shall be designed, constructed, equipped transported, stored, installed and used in accordance with the current published regulations of the American Insurance Association, a copy of which regulation shall be kept and are on file in the office of the city secretary and shall be approved by the state railroad commission and/or Underwriters' Laboratories, Inc. or bear the Interstate Commerce Commission license number and date of examination. All gas-consuming appliances used in connection with liquefied petroleum gas shall be especially designed for the purposes and approved as such by the American Gas Association and/or Underwriters' Laboratories, Inc.

### **Sec. 11-75. Minimum standards for piping.**

Standard full weight wrought iron or steel pipe free from defects shall be used in conveying gas to the inside of buildings. Approved nonferrous material may be used for making service connections to buildings. Approved seam-less-drawn well-annealed copper, brass or other approved nonferrous tubing with approved fittings may be used for permanent connections on stationary appliances. All fittings for wrought iron or steel pipe (except stopcocks or valves) shall be of best quality malleable iron. Threads shall be in accordance with the American Pipe Thread Standard. Only such joint compound that is insoluble when coming in contact with liquefied petroleum gas shall be used. No sweat joints are permissible. (See NBFU Pamphlet No. 54 for further recommended good practices)

### **Sec. 11-76. Installation permit.**

Any person desiring to install or equip any residence, business house or apartment house, or any other building, located or situated within the city, with any installation or equipment, designed to use as fuel any form of manufactured and/or liquefied petroleum gas, shall first obtain a permit from the city for so doing and the city shall receive the sum of one dollar (\$1.00) for the issuance of such permit.

### **Sec. 11-77. Manner of installation.**

Any equipment installed under the provisions of this article shall be installed or repaired in a workmanlike manner which shall comply with all laws or regulations of the city and the regulations of the National Board of Fire Underwriters and the National Fire Protection Association. No equipment using liquefied petroleum gas

shall be permitted to have attached thereto any container with a total capacity of more than sixty (60) gallons of liquefied petroleum gas within the fire limits of the city, except that portable steel cylinders or drums constructed, equipped, transported, used and maintained in accordance with the current Interstate Commerce Commission requirements when containing not to exceed ten (10) pounds of liquefied petroleum gas in each cylinder or drum, may be installed and used anywhere within the city if such installation and use is first approved in writing by the fire marshal.

**Sec. 11-78. Operation of installations.**

When any equipment is installed under the provisions of this article, the same shall not be placed in operation or used by any person unless and until the installation has been approved as complying with this article by the fire marshal.

**Sec. 11-79. Inspection, approval of installations.**

Any person installing any equipment under the provisions of this article shall secure approval of the same as complying with the requirements of this article by the fire marshal and shall, upon requesting such inspection for approval, pay an inspection fee of ten dollars (\$10.00) for each piece of equipment to cover the cost of inspection.

**Sec. 11-80. Tank trucks, trailers generally.**

(a) Any tank truck or tank trailer used for the transportation of liquefied petroleum gas within the city shall be so constructed and operated as to comply with the regulations for the design, construction or operation of automobile tank trucks and tank trailers for the transportation of liquefied petroleum gas as approved by the National Board of Fire Underwriters and the National Fire Protection Association of the state railroad commission.

(b) Any person who shall operate or cause to be operated any tank truck or tank trailer used for the purpose of transporting liquefied petroleum gas within the city shall keep any equipment thereof in a good condition at all times, and upon the development of any defect that would create a hazard to persons or property, the tank truck or tank trailer shall be removed from the streets of the city until such defects have been repaired or faulty equipment replaced, and such tank truck or tank trailer shall be subject to inspection by the proper authorities at any time.

**Sec. 11-81. Treatment for odor.**

All liquefied petroleum gas sold within the city shall be treated with a malodorant in such quantities as required by state law to create an odor easily detected in case of leaks in piping or equipment.

**State law reference** - Malodorants, Vernon's Ann. Civ. S1. art. 6053, § 2.

**Secs. 11-82 – 11-99 Reserved**

**ARTICLE V. FIREWORKS**

**Sec. 11-100 Finding of Council**

The city council does hereby find and determine that fireworks, defined as any composition or device designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation, including but not limited to fireworks, roman candles, torpedoes, skyrockets, bombs, sparklers, flares and other articles of like nature, when ignited and exploded within the City of Ballinger or on any of the property of the City or herein after listed, creates a hazard to the life and limb of both pedestrians and vehicular traffic and also creates a fire hazard to property, and that the prevention of the sale and use of such fireworks within the City limits, any City Lake Property, and the City Airport of the City of Ballinger would greatly reduce, if not eliminate, such hazards and dangers.

**Sec. 11-101 Manufacture or Sale Unlawful**

Hereafter it shall be unlawful for any person to manufacture, sell or offer for sale within the City limits, any City Lake Property, and the City Airport of the City of Ballinger fireworks consisting of firecrackers, roman candles, torpedoes, skyrockets, bombs, sparklers, flares and other articles of like nature consisting of gunpowder and other explosive materials.

**Sec. 11-102 Unlawful to explode within City limits, any City Lake Property, and the City Airport Property.**

Unless prior approval is obtained from the City Council of the City of Ballinger, it shall be unlawful for any person to use or explode fireworks within the city limits, both city lakes, or airport of the City of Ballinger, Texas.

**Sec. 11-103 Exception**

Upon approval by the City Council of the City of Ballinger, a fireworks presentation for the public may be allowed at the Ballinger City Lake. The organization presenting the presentation must be pre-approved by the City Council.

**Sec. 11-104 Penalty**

- a. Every person violating any provision of this article shall, upon conviction, be penalized by a fine of not more than five hundred dollars (500.00), and

each day that such fireworks are offered for sale shall constitute a separate offense.

- b. Every person violating this article by the use or by exploding fireworks, upon conviction, shall be penalized by a fine of not more than five hundred dollars (500.00) and each incident shall constitute a separate offense.



## Chapter 12

### FOOD AND FOOD HANDLERS\*

Art. I. In General, §§ 12-1 - 12-15

Art. II. Milk and Milk Products, §§12-16 -12-31

Art. III. Food Service Establishments, §§ 12-32 -12-47

Art. IV. Meat and Poultry, §§ 12-48 -12-51

#### ARTICLE I. IN GENERAL

##### **Sec. 12-1. Disposal of contaminated foods.**

Any time the health authority finds any food, food product, drink or beverage which is contaminated, spoiled or unfit for human consumption; it shall be his duty to immediately condemn such food or beverage. The owner of such contaminated food or beverage shall be required to dispose of the same in a manner approved by the health officer at the owner's expense.

##### **Secs. 12-2 - 12-15. Reserved.**

#### ARTICLE II. MILK AND MILK PRODUCTS: ‡

##### **Sec. 12-16. Adoption of regulations.**

The health authority shall inspect the equipment and sanitation of all dairies and milk plants and grade the milk according to the provisions of article 165-3 of Vernon's Annotated Civil Statutes, and all amendments thereto, in accordance with the rules and regulations promulgated by the state health officer pursuant thereto. The grading and labeling of milk and milk products sold and offered for sale within the city according to section 2 of article 165 - 3 for grade A raw milk and milk products, and pasteurized milk and milk products, is hereby made mandatory. These specifications are on file in the office of the city secretary for public examination.

##### **Sec. 12-17. Delivery containers.**

All pasteurized milk and milk products shall be placed in their final delivery containers in the plant in which they are pasteurized and all raw milk and milk products sold for consumption in the raw state shall be placed in their final delivery containers at the farm at which they are produced.

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\* **Cross references** - Health and sanitation, ch. 14; litter at drive-in eating establishments, § 13-3.

‡ **State law reference** - Milk grading, pasteurization and authority of city relative thereto, Vernon's Ann. Civ. St. arts. 435 § 001.

**Sec. 12-18. Adulterated, misbranded or ungraded milk or milk products.**

No person within the city, or its police jurisdiction, shall produce, sell, offer or expose for sale, or have in his possession with the intent to sell, any milk or milk product which is adulterated, misbranded or ungraded within the meaning of and under the penalty of article 165 - 3 of Vernon's Annotated Civil Statutes. Violations of this section shall be sufficient cause for the revocation of permits for the sale of milk or milk products.

**Sec. 12-19. Future dairies and milk plants.**

All future dairies and milk plants from which milk or milk products are supplied to the city, which are constructed, reconstructed or extensively altered shall conform in their construction to the grade A requirements of article 165 - 3 of Vernon's Annotated Civil Statutes and the rules and regulations promulgated pursuant thereto.

**Sec. 12-20. Enforcement of article provisions.**

This article shall be enforced by the health authority in accordance with the interpretations thereof contained in the 1965 edition of the US Public Health Service Milk Code and article 165 - 3 of Vernon's Annotated Civil Statutes.

**Secs. 12-21 - 12-31. Reserved.**

**ARTICLE III. FOOD SERVICE ESTABLISHMENTS**

**Sec. 12-32. Adoption of Texas Food Establishment Rules.**

A. The City of Ballinger adopts by reference the provisions of the current rules or rules as amended by the Texas Board of Health found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction.

B. Definitions

The words "authorized agent or employee" mean the employees of the regulatory authority.

The words "food establishment" mean a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

The words "municipality of Ballinger, Texas" in this ordinance shall be understood to refer to the City of Ballinger.

The words "state rules" mean the state rules found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the Texas Food Establishment Rules.

The words "regulatory authority" mean the City of Ballinger administrative department.

### **Sec. 12-33. Permits and Exemptions**

A. A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this ordinance. A valid permit must be posted in or on every food establishment regulated by this ordinance.

B. A food establishment operated solely by a nonprofit organization is exempt from the permitting requirements of this ordinance, but is not exempt from compliance with state rules. The regulatory authority may require any information necessary to determine whether an organization is nonprofit for purposes of this exemption

### **Sec. 12-34. Application for Permit and Fees**

A. Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

B. Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.

C. The Permit Fees shall be approved by the City Council and kept on file in the City Secretary's office.

### **Sec. 12-35. Review of Plans**

A. Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment,

properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review before work is begun. Extensive remodeling means that 20% or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the regulatory authority if they meet the requirements of the rules adopted by this ordinance. The approved plans and specifications must be followed in construction, remodeling or conversion.

B. Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

### **Sec. 12-36. Suspension of Permit**

A. The regulatory authority may, without warning, notice, or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by Paragraph (5) (B) of this ordinance. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.

B. Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

### **Sec. 12-37. Revocation of Permit**

A. The regulatory authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the regulatory authority by the holder of the permit within such ten-day period.

B. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

**Sec. 12-38. Administrative Process**

A. A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority.

B. The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the regulatory authority shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the regulatory authority.

**Sec. 12-39. Remedies**

A. Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than Two Thousand dollars (\$2000.00).

B. The regulatory authority may seek to enjoin violations of these rules.

**Sec. 12-40. Severability**

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

**Secs. 12-41 -12-47. Reserved.**

**ARTICLE IV. MEAT AND POULTRY\***

**Sec. 12-48. Adoption of regulations.**

Any meat or poultry product processed or sold within the city shall be regulated in accordance with the terms of the unabridged form of "Regulations Governing the Inspection of Meat and Poultry," as amended, which are promulgated by the

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\* **State law reference** - Meat and Poultry Inspection Act, Vernon's Ann. Civ. S1. art. 433 § 003.

commissioner of health and approved by the state, copies of which are on file in the office of the city secretary.

**Sec. 12-49. Sale of uninspected products prohibited.**

It shall be unlawful for any person to sell any meat or poultry product for human consumption which has not been inspected and passed under the supervision of the Bureau of Animal Industry of the federal Department of Agriculture, the state department of health or the city, and so properly labeled as provided for by the provisions of this article.

**Sec. 12-50. Seizure, destruction of uninspected products.**

If any meat or poultry product is found within the city which has not been properly labeled and inspected as provided by this article, it shall be seized and destroyed or excluded from the city by the health officer.

**Sec. 12-51. Appeal from condemnation.**

When the action of the health authority in condemning any meat or poultry product is questioned, an appeal shall be made to the city administrator whose decision shall be final.

PAGES RESERVED





## Chapter 13

### GARBAGE AND TRASH\*

Article I Collection of Garbage, §§ 13-1 – 13- 14

Article II City Recycle Center, §§ 13-15 – 13-17

#### ARTICLE I. COLLECTION OF GARBAGE

##### **Sec. 13 - 1. Definitions.**

Words used in this ordinance shall be defined as follows;

Brush: Tree and shrub trimmings which are not easily placed in disposable containers.

Construction Debris: Dirt, concrete, rocks, bricks or other waste building materials.

Disposable container: Metal or plastic dumpster furnished by the company that has a contract with the city to collect and dispose of garbage.

Garbage: Refuse or vegetable matter, as from a kitchen or food processing facility; ashes, any other household waste which is damp or capable of omitting noxious odors.

Trash: All refuse other than garbage, debris, brush, household furniture and appliances; trash shall include grass clippings, leaves, paper and other household trash except as included in the foregoing definitions.

##### **Sec. 13 - 2. Duties of Customer.**

a. It shall be the duty of every owner, agent, lessee, tenant or occupant of any premises in the City to use the container furnished by the company contracted to pick up and dispose of garbage.

b. Every customer shall keep all garbage and trash containers in use securely closed in such a manner as to prevent the scattering of the contents thereof and to render said contents inaccessible to insects, rodents and other animals.

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**Cross references** - Burning trash, N 11-8, 11-9; health and sanitation, ch. 14; utilities, ch. 27.

Adoption – This chapter 13 replaced previous Garbage Chapter 13 on 1-8-2007.

**State law reference** - Accumulation and removal of garbage and trash, Vernon's Ann. Civ. St art. 341 § 001; Solid Waste Disposal Act, art., 361 § 001.

**Sec. 13 - 3. Residential Collection - Containers and their Placement.**

It shall be the duty of each residential customer to place garbage and trash as follows:

- a. All garbage shall be placed in containers or dumpsters furnished by the company contracted to pick up and dispose of garbage.
- b. Containers shall be placed in the alley or the curbside on the street bearing the customer address. The number of containers per block shall be defined by a contract between the City and the company contracted to pick up and dispose of the garbage.

**Sec. 13 - 4. Residential Collection - Brush.**

In the event brush is of such a nature that it cannot be placed in disposable containers, it shall be cut in lengths not to exceed a demission defined by contract between the City and the contracted disposal company. A customer may receive a special pickup upon request, for an additional charge, depending on the quantity of material to be removed.

**Sec. 13 - 5. Wastes from Building Operations.**

Construction debris, as that term is defined herein, or other trash resulting from construction, major remodeling, general cleanup of property, or resulting from sizeable amounts of trash and debris being cleared in preparation for construction will not be removed by the City as regular service. The owner will have such debris and trash removed at his expense, by his own agent.

**Sec. 13 - 6. Prohibited Acts.**

- a. It shall be unlawful for any person to sweep, throw, or deposit any garbage, trash, debris, stagnant water, or dead animal into, upon, or along any public property or private property of another, except as may be specifically provided by this ordinance.
- b. It shall be unlawful for any person owning or otherwise in control of any premises within the City to permit any of the conditions described in Sec. 13-6a hereof to exist upon property owned or controlled by him after having actual or constructive notice thereof.
- c. It shall be unlawful for any person to place in any container any material other than as specifically provided in this ordinance.
- d. It shall be unlawful for any person to deposit or maintain garbage or trash except as provided for by this ordinance.

e. It shall be unlawful for any person to deposit any burning match, charcoal, ember or other material in any container used for the disposal of garbage or trash.

f. It shall be unlawful for any person who is not a customer of the City's garbage collection to use dumpsters or disposal containers for which they do not have an account to use.

g. It shall be unlawful for any person to scatter garbage and debris on the ground around a dumpster. Garbage and debris shall be put into the dumpster or container and the lid closed when a lid is provided.

**Sec. 13 - 7. Residential Collection - Charges.**

The rates that are established by the City Council shall be kept on file in the Ballinger City Secretary's office.

**Sec. 13 - 8. Duties of Commercial, Institutional and Industrial Customers.**

It shall be the duty of the owner or person otherwise in charge of commercial, institutional or industrial premises within the City to cause all garbage and trash accumulated on said premises to be placed in a dumpster provided by the contractor, or, with the approval of the contractor, in disposable containers, if such disposable containers will not create a nuisance. Dumpsters and disposable containers shall be placed at a location on the premises which is readily accessible to the collector and screened, subject to review by the City at any time. Commercial type containers may be used and may be placed at a location on the premises as arranged between the customer and collector, but subject to review by the city at any time.

**Sec. 13 - 9. Commercial, Institutional, and Industrial Collection.**

Frequency of collection: The collection and removal of garbage and trash from houses, buildings, and premises used for commercial, institutional, or industrial purposes shall be made as often as necessary in order to maintain such premises free of accumulations of garbage and trash. In this regard, garbage collection shall be defined within the contract between the City and contracted disposal company.

**Sec. 13 - 10. Collection of Charges.**

The charges approved by the City Council for the removal and disposal of all garbage and trash shall be entered by the City against the customer and shall be collected as charges for other City services. Any person who shall fail or refuse

to pay the charge herein specified within ten (10) days from the date of any bill containing an arrears balance shall have his garbage service suspended, and the City shall be notified immediately for appropriate action. The City Attorney is hereby authorized to act as agent for the City in the collection of charges herein provided.

**Sec. 13 - 11. Manner of Collection, Transportation.**

a. The collection, removal and disposal of all garbage, trash and rubbish shall be carried on in a systematic, efficient manner, to keep the City in a clean and sanitary condition.

b. All vehicles used for the collection and transportation of garbage and trash shall be equipped with suitable covers which shall be used to prevent blowing or scattering of refuse while garbage and trash is being transported for disposal.

**Sec. 13 - 12. Private Disposal.**

No person, firm, business or corporation may dispose of its own residential or commercial garbage, trash and rubbish. No commercial enterprise, other than City's contractor, shall be employed to remove and dispose of garbage, trash or rubbish within the City.

**Sec. 13 - 13. Penalty.**

Any person violating any provision of the foregoing sections shall be deemed guilty of a misdemeanor and upon final conviction thereof shall be fined in an amount not to exceed Two Thousand Dollars (\$2000.00). Each and every day such occurrence shall continue shall constitute a separate offense.

**Sec. 13 -14. Reserved**

**ARTICLE II. CITY RECYCLE CENTER**

Any entity that has received a permit or permission in the business of collecting, removing or disposing of garbage, trash, or rubbish in the City shall provide for and comply with the following rules and regulations or any other regulations as provided by the City of Ballinger or the State of Texas

**Sec. 13 - 15 City Recycle Center**

1. Inspectors inspecting at the Recycle Center shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges and have the unauthorized material removed by

on-site personnel.

2. Empty containers which have contained pesticides, herbicides, fungicides, or rodenticides shall be accepted for disposal only if they have been triple-rinsed and rendered un-usable.

3. No free liquid waste may be accepted at a type 1 municipal Recycle Center. Any potential liquid shall have been tested in accordance with the method 9095 (paint filter liquids test), as described in "Test Methods for Evaluating Solid Wastes; Physical/Chemical Methods" (EPA publication #SW-846), and is certified to contain no free liquids.

4. Oil and used-oil filters from internal combustion engines shall not be intentionally and knowingly accepted for disposal in waste containers by a Recycle Center permitted under this chapter. A person commits an offense if, without benefit of a valid permit authorizing the particular action, the person knowingly mixes or commingles used automotive oil with solid waste that is to be disposed of in Recycle Centers or directly disposes of used automotive oil on land or in Recycle Centers.

5. No person may place a used lead-acid battery in mixed Municipal solid waste or discard or otherwise dispose of a lead-acid battery except by delivery to:

- a. A battery retailer;
- b. A battery wholesaler;
- c. A secondary lead smelter;
- d. A collection or recycling facility authorized under the laws of this state or by the Environmental Protection Agency (EPA).

6. Rules pertaining to Brush and Bulky Waste.

- a. All brush and bulky waste that will not fit in the dumpster should be placed beside (not in front of) the dumpster, limit 3X4 foot pile between each monthly clean-up cycle.
- b. All tree limbs should be bundled and not exceed 4 feet in length.
- c. Stumps and large debris should not exceed 60 pounds.
- d. Any debris with thorny or sharp points should be placed in protective container so as to protect employees from being injured.

e. White goods (refrigerators, freezers, air conditioners, etc.) need to have all Freon type coolant retrieved and tagged by an authorized representative, pickup of these objects will be residential type only.

f. Any accumulation such as brick, broken concrete, lumber, ashes, dirt and plaster, sand or gravel, automobile frames and parts, dead trees, and other bulky heavy material, shall be disposed of at the expense of the owner or person controlling the same under the direction of the city sanitarian.

### **Sec. 13-16. PENALTIES**

Any person violating provisions of this ordinance shall be guilty of Class C misdemeanor which shall be punishable by a fine of not less than \$100.00 and no more than \$2000.00.

### **Sec. 13-17. SEVERABILITY**

It is hereby declared to be the intention of the City Council of the City of Ballinger that if any of the sections, paragraphs, sentences, clauses and phrases of this ordinance shall be declared unconstitutional or otherwise illegal by a valid judgment or decree of any court or competent jurisdiction, such event shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections.

### **Secs. 13-18 - 13-59. Reserved.**

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## Chapter 14

### HEALTH AND SANITATION\*

- Art. I. In General, §§ 14-1 - 14-15
- Art. II. Offensive Conditions and Nuisances, §§ 14-16 -14-34 <sup>3</sup>
- Art. III. Ratproofing, §§ 14-35 -14-57
- Art. IV. Mosquito Control, §§ 14-58 - 14-63
- Art. V. Noise abatement and control, §§ 14-64 – 14-70
- Art. VI. No Smoking in All City Buildings §§ 14-80
- Art. VII. Tire Business Registration, and Regulation §§ 14-90 – 14-103

#### ARTICLE I. IN GENERAL

**Secs. 14-1 - 14-15. Reserved.**

#### ARTICLE II. OFFENSIVE CONDITIONS AND NUISANCES:‡

**Sec. 14-16. Declaration of nuisance.**

Any act, condition or thing existing or done within the city, or within the city's extraterritorial jurisdiction, which endangers the public peace, property, health, welfare and safety of the citizens of the city is hereby declared to be unlawful and a public nuisance. (Ord. of 8-7-06, § 1; Ord. of 8-5-12, § 1; Ord. of 9-13-26, § 1)

**Sec. 14-17. Illustrative enumeration.**

Without limiting the power of the city council to declare as a public nuisance any act, condition or thing, the following specific acts, conditions and things are hereby declared to be and constitute public nuisances:

- 1) The maintenance of unsanitary toilets and those in noncompliance with the public health laws, ordinances and regulations of the state, county and city;
- 2) The disposal or accumulation of any vile, decaying or putrescence substance or other offensive material dangerous to the public health in or

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\* **Charter reference** - Department of health, art. 10.

Cross references - Animals and fowl, ch. 6; buildings, ch. 8; food and food handlers, ch. 12; garbage and trash, ch. 13; mobile homes, ch. 16; planning and zoning, ch. 19; plumbing and gas, ch. 20; utilities, ch. 27.

‡ **Cross reference** - Junked vehicles, § 21-37 et seq.

**State law reference** - Authority of city to prohibit conditions described in this article, Vernon's Ann. Civ. St. art. 342 § 001.

<sup>3</sup> Art II. Offensive Conditions and Nuisances, §§ 14-16 – 14-34; Amended 3-6-2006.

upon any lot, street or highway, or the escape of any gas or odor to such an extent that by reason of offensive odors it becomes a source of discomfort to persons living or passing in the vicinity;

3) The deposit or accumulation of manure or other noxious fertilizer, unless it is in flyproof receptacles;

4) The use or operation of any mechanical or electrical device, machine, apparatus or instrument to intensify, amplify or reproduce the human voice or any other sound for the purpose of advertising or attracting attention when the sounds emanating therefrom may be heard by users of the streets or sidewalks to their annoyance, inconvenience or discomfort;

5) The presence of polluted water in a well, cistern, spring or other source of water supply, when the water therefrom is used for human consumption;

6) Weeds, Grass, Brush or un-kept Foliage, Trash, Rubbish, Debris, or Junk

a. Any weeds, grass, brush or un-kept foliage growing in excess of the standards provided herein within the city or its extraterritorial jurisdiction is a health and fire hazard and, as such, is hereby declared to be a nuisance and shall be maintained as follows: .  
(Ord. of 8-7-06 § 1; Ord. of 8-5-12, § 1; Ord. of 9-13-26, § 1; Ord. of 7-7-36, § 1; Ord. of 5-16-72, § 5)

1) Class I, vacant urban lots. On platted lots, either single or grouped, within developed areas of the city, and on lots or tracts that do not qualify as undeveloped vacant properties or wilderness properties, any growth of weeds or grass may not exceed a height of twelve (12) inches. Such property must also be cleared of any brush.

2) Class II, vacant undeveloped properties. On undeveloped properties of more than an acre in size, in areas of the city which have not been fully developed, any growth of weeds or grass may not exceed a height of twenty-four (24) inches. Such property must also be cleared of any brush within twenty (20) feet of any adjoining right-of-way or property line.

3) Class III, vacant wilderness properties. On properties which have significant vegetation other than weeds or grass, and have unusually steep slopes or other terrain features which inhibit

mowing or development, and which will not create problems if left in their natural state, any growth of weeds or grass may be left in a natural state; however, areas located within twenty (20) feet of developed property or rights-of-way must be maintained in accordance with the standards for vacant undeveloped properties. Additionally, litter must not be allowed to accumulate on such properties.

4) Class IV, lots and properties with structures. On a lot or property that has a structure upon it, any growth of weeds and grass may not exceed twelve (12) inches. All brush must also be cleared from the property.

5) Class V, property adjoining public rights-of-way. Any right-of-way adjoining developed private property within the city must be maintained by the owner, occupant, lessee or person in control of such adjoining private property. Any growth of weeds and grass may not exceed twelve (12) inches in height, and all brush must be cleared from such right-of-way.

b. The accumulation of trash, rubbish, litter and junk within the city or its extraterritorial jurisdiction is a fire and health hazard and, as such, is hereby declared to be a nuisance.

1) Littering by accumulation: Every owner, lessee, occupant, or other person in charge of any privately or publicly owned property (be it occupied, unoccupied, vacant, developed or undeveloped), within the city, shall:

- a. Not allow litter, refuse, or junk to accumulate or be thrown, deposited, or left upon such premises, except in a receptacle designed to contain litter in a manner so as not to allow it to be blown, carried, or deposited by the wind upon any right-of-way, public property, or private property.
- b. Keep the sidewalk and right-of-way in front of and adjacent to those premises, and any alley or right-of-way or behind those premises free of litter, refuse, and junk.
- c. Not accumulate or allow to accumulate within any house, building, or other structure any filth, carrion, litter, refuse, or other impure, unwholesome, or unsanitary matter.

2) Littering by depositing or dumping: No person shall throw, deposit, drop, sweep, or place any litter or junk into or on to any privately or publicly owned property, park, sidewalk, street, driveway, gutter, right-of-way, or other place which is not a receptacle designed to contain litter (in a manner so as not to allow it to be blown, carried, or deposited by the wind elsewhere.)

**Sec. 14-18. Notice to remove or citation. <sup>4</sup>**

- 1) Accumulation violations: Any owner, lessee, occupant or person in control of any public or private property having on it any of the nuisances described in this article may be required to remove, abate, or cure the nuisance by written notice from the building official, code enforcement officer or authorized representative. Such nuisances shall demand the nuisance be removed, abated or cured within ten (10) days after the date of such notice. In addition, the notice shall state that it is in effect for a period of one (1) year from the date of issuance and the city may remove, abate, or cure such nuisance without further notice during the year, and the owner, lessee, occupant or person in charge may be required to pay either restitution or a penal fine, or both. The notice required in this section may be given by either: (i) a certified letter, with five-day return requested, addressed to the last known owner of the property as shown in the current tax rolls and the lessee, if applicable; or (ii) if a reliable address cannot be found for the owner, then by publication in a newspaper of general circulation in this city at least twice within ten consecutive days. In either event, notice shall also be posted on or near the front door of each building on the property (or on a placard attached to a stake in the ground if there is no building). In addition to, or as an alternative to the abatement notice described above, a municipal court citation or summons may also be issued for the violation by the building official, code enforcement officer, authorized representative or police officer.
- 2) Depositing or dumping violations: The building official, code enforcement officer, authorized representative or police officer shall immediately issue a municipal court citation or summons to any person observed littering, as defined in section 14-17-b-2.

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<sup>4</sup> State law reference - Notice to remove unsanitary, unsightly, etc., conditions, Vernon's Ann. Civ. St. art. 342 § 001.

**Sec. 14-19. City abatement.** <sup>5</sup>

- 1) If the owner, lessee, occupant or person in control of any property fails to comply with the notice within ten (10) days of its receipt, the city may enter the property and remove, abate or cure such nuisance. The doing of such work by the city shall not relieve such person from prosecution for failure to comply with such notice in violation of this article. (Ord. of 8-7-06, § 3; Ord. of 9-13-26, § 3)
- 2) The City of Ballinger may charge an additional cleaning administration fee of \$100.

**Sec. 14-20. Lien on property.**

- 1) If the city abates a nuisance under this article, the owner, lessee, occupant or person in charge of the property shall be notified by mail of the charges therefor. If such charges are not paid within sixty (60) days of the receipt of such notice, the city manager shall cause to be filed with the county clerk documentation of such charges sufficient to establish a lien against the property on which the nuisance was abated. (Ord. of 9-13-26, § 3)
- 2) After the statement provided for in section 14-20-1 is filed, the city shall have a privileged lien on the lot or real estate upon which the work was done or improvements made to secure the expenses thereof. Such lien shall be second only to tax liens and liens for street improvements, and the amount thereof shall bear interest at the rate of ten (10) per cent per annum from the date the statement was filed. For any such expenditures and interest, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the city and the statement of expenses made in accord with section 14-21-2, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.
- 3) The City of Ballinger may charge an additional \$100 administration fee.

**Sec. 14-21. Remedies.**

- 1) An individual who violates this Article shall be subject to either or both of the remedies provided herein, which are cumulative of any other relief provided by law.

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<sup>5</sup> State law reference - Authority of city to correct or remove conditions described in this article. Vernon's Ann. Civ. St. art. 342 § 001.

- 2) Abatement Restitution: Any individual who receives a notice to abate a nuisance, and fails to do so within ten (10) days after date of the notice, may be required to pay to the city restitution for the city's service in removing, abating, or curing such nuisance, to cover the cost of wages for all employees, charges for machinery, tools, and vehicles used, plus any administrative fee as set by the city council.
- 3) Penal Fine: An individual receiving a citation or summons who is convicted of violating any provision of this article shall be guilty of a class C misdemeanor:
  - a. violations of fire safety, zoning, or public health and sanitation, including dumping of refuse are punishable by fine of not less than one hundred dollars (\$100.00) nor more than two thousand dollars (\$2,000.00); or
  - b. all other violations of this article are punishable by fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- 4) Combined actions: The failure of an owner, lessee, occupant or other person in control of property to remove and abate a nuisance after receipt of a 10-day administrative notice from the building official, code enforcement officer or authorized representative for accumulation violations shall be deemed prima facie evidence of a criminal intent to violate this ordinance, whereupon a citation and summons may also be issued by the building official or his designated representative. For persons receiving a notice from the building official, each day after the ten-day period after receipt of the notice in which the nuisance is not removed, abated or cured may be a separate violation. <sup>6</sup>

**Secs. 14-22--14-34. Reserved.**

## ARTICLE III. RATPROOFING

### **Sec. 14-35. Definitions.**

For the purpose of this article the following definitions shall apply:

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<sup>6</sup> State law reference - Authority of city to correct or remove conditions described in this article, Vernon's Ann. Civ. St. art. 342 § 001.

*Business buildings:* Any structure, whether public or private, regardless of the type of material used in its construction, located within the boundaries of the city which is adapted to occupancy for the transaction of business, whether vacant or occupied for the rendering of professional services for the display, sale or storage of goods, wares or merchandise or for the performance of work or labor, including hotels, rooming houses, beer parlors, office buildings, public buildings, stores, markets, restaurants, grain elevators, abattoirs warehouses, workshops and factories

*Opening:* Any opening in the foundation, side or walls of any business building, including the roof, chimney, eaves, grilles, windows or sidewalk elevators, through which a rat may pass.

*Premises:* All business buildings, outhouses, sheds, barns, garages, docks, wharves, piers, grain elevators and abattoirs, whether public or private, and any and all other structures used in connection with the operation of any business building as herein defined.

*Rat harborage:* Any condition found to exist under which rats may find shelter or protection, and shall include any defective construction which would permit the entrance of rats into any business building. (Ord. of 12-4-46, § 1)

*Rat stoppage:* An inexpensive form of ratproofing designed to prevent the ingress of rats into business buildings. It is essentially the closing or protecting of all openings in exterior walls and foundations or the grates in a sidewalk of business buildings with ratproof materials installed in such a manner as to prevent rats from gaining entrance thereto.

#### **Sec. 14-36. Rat harborage prohibited.**

It shall be unlawful for any person to use or maintain any business building or premises in such a manner that a rat harborage is brought into existence or maintained. (Ord. of 12-4-46, § 10)

#### **Sec. 14-37. Storage of building materials.**

It shall be unlawful for any person to permit any premises, improved or unimproved, and all open lots and alleys in the city to accumulate lumber, boxes, barrels, bricks or stones and similar materials that may be permitted to remain thereon and that may be used as a harborage by rats, unless the same shall be placed on open racks and elevated not less than eighteen (18) inches above the ground, with a clear intervening space underneath, to prevent the harborage of rats. (Ord. of 12-4-46, § 13)

**Sec. 14-38. Protection of food products.**

Curb or farmers' markets in which fruits, vegetables or any other food products are exposed and offered for sale, on racks, stands, platforms and in vehicles outside of business buildings, shall have the floors paved with concrete or asphalt for the entire surface area of the market. Display racks, stands or platforms on which fruits, vegetables or any other food products are displayed or offered for sale shall be of sufficient height that all such fruits, vegetables or other food products shall be kept at a distance of not less than eighteen (18) inches above the floor pavement and be so constructed that rats cannot harbor therein or thereunder. (Ord. of 12-4-46, § 6)

**Sec. 14-39. Ratproofing required.**

It shall be unlawful for any person to construct within the corporate limits of the city any business building, curb or farmers' market, unless such construction shall render the business building ratproof in accordance with the regulations prescribed by this article. (Ord. of 12-4-46, § 2)

**Sec. 14-40. Inspections authorized.**

(a) The health officer, or his representative, is authorized to make inspections during the course of and upon completion of any construction, repair, remodeling or installation of rat control measures to business buildings to insure compliance with the provisions of this article, and no person shall interfere with or refuse to permit such inspections.

(b) The health officer, or his representative, is authorized to make frequent and unannounced inspections of existing business buildings within the corporate limits of the city for the purpose of determining any rat infestation. (Ord. of 12-4-46, § 3)

**Sec. 14-41. Closure of infested premises.**

When the health officer finds any building, structure or premises so heavily infested with rats resulting in a present menace to public health, he shall have the authority to close the same to any occupancy or use, until the rats have been eradicated or while in the process of being eradicated. (Ord. of 12-4-46, § 9)

**Sec. 14-42. Order to ratproof.**

In the event the health officer shall find any business building within the city in violation of the provisions of this article, he shall order, in writing, the owner, occupant, agent or any other person in custody of any rat-infested business building to protect the business building by rat stoppage, regardless of the need for the remodeling of or repairs to such building, and further order that such rat



control methods be employed as may be deemed necessary by the health officer to maintain the business building free from rats. (Ord. of 12-4-46, § 3)

**Sec. 14-43. Time allowed for ratproofing.**

The written notice or order to ratproof any business building pursuant to this article shall specify the time, in no event less than thirty (30) days, for completion of such work and improvements. Failure to comply with such written notice or order within the time specified shall constitute a violation of this article.

**Sec. 14-44. Trapping.**

For the purpose of eliminating all rats that may remain in any business building after rat stoppage has been carried into effect as provided in this article, all storerooms, warehouses or other business buildings in the city shall be provided with one or more traps by the owner, occupant, agent or any other person in custody of such business buildings. Such traps shall be kept set and freshly baited at frequent intervals, maintained in a good working condition and inspected daily. Any rat caught therein shall be killed, removed daily and disposed of in a manner acceptable to the health officer and such traps reset and rebaited. (Ord. of 12-4-46, § 7)

**Sec. 14-45. Poisoning, fumigation.**

Rats may be destroyed by' poisoning and fumigating in the manner approved by the health officer or by any other authorized agency of the United States Public Health Service, or the state board of health and subject to the applicable laws and ordinances relating to poisonous substances and fumigators. (Ord. of 12-4-46, § 7)

**Sec. 14-46. Protection against climbing rats.**

(a) In order to protect business buildings from what is commonly called the climbing or roof rat, it shall be unlawful for any person to permit fishing poles, ladders or any other object that a rat could climb on in order to reach the roof of any business building, to lean against the side of the walls of such business building.

(b) The owner of a business building shall also protect elevator shafts, fire escapes and guy wires in such a manner that rats will not be able to gain ingress into the business building.

(c) It shall be the duty of any person in charge of a business building to trim the branches of all trees extending over and against such business building, and the same shall be cut and trimmed and kept cut and trimmed so that no part of any branch or any part of such trees shall be closer than ten (10) feet to the business

building and the tops of all trees shall be cut back ten (10) feet from a line extending perpendicularly from any exterior wall of such business building. (Ord. of 12-4-46, § 8)

**Secs. 14-47 -14-57. Reserved.**

## ARTICLE IV. MOSQUITO CONTROL

### **Sec. 14-58. Definition.**

For the purposes of this article, the phrase "collections of water" shall be any water contained in ditches, pools, ponds, excavations, holes, depressions, open cesspools, privy vaults, fountains, cisterns, tanks, shallow wells, barrels, troughs (except horse troughs in frequent use), urns, cans, boxes, bottles, tubs, buckets, defective house roof gutters, tanks or flush closets, or other similar water containers.

### **Sec. 14-59. Treatment required.**

It shall be unlawful for any person to have, keep, maintain, cause or permit within the city any collection of standing or flowing water in which mosquitoes breed or are likely to breed, unless such collection of water is treated so as to effectually prevent such breeding.

### **Sec. 14-60. Methods of treatment.**

The method of treatment of any collection of water directed toward the prevention of breeding of mosquitoes shall be approved by the accredited health officer, and may be anyone or more of the following:

- (1) Screening with wire netting of at least sixteen (16) meshes to the inch each way or with any other material which will effectually prevent the ingress or egress of mosquitoes;
- (2) Complete emptying every seven (7) days of unscreened containers, together with their thorough drying or cleaning;
- (3) Using a larvicide approved and applied under the direction of the health officer;
- (4) Covering completely the surface of the water with kerosene, petroleum or paraffin oil once every seven (7) days;
- (5) Cleaning and keeping sufficiently free of vegetable growth and other obstructions and stocking with mosquito-destroying fish;

(6) Filling or draining to the satisfaction of the health officer;

(7) Proper disposal, by removal or destruction of tin cans, tin boxes, broken or empty bottles and similar articles likely to hold water.

**Sec. 14-61. Presence of larvae.**

The natural presence of mosquito larvae in standing or running water shall be evidence that mosquitoes are breeding therein, and failure of any person to prevent such breeding within three (3) days after notice by the health officer shall be deemed a violation of this article.

**Sec. 14-62. Failure of person to abate.**

If the person responsible for conditions giving rise to the breeding of mosquitoes fails or refuses to take necessary measures to prevent the same within three (3) days after due notice has been given to him, the health officer is hereby authorized to do so, and all necessary costs incurred by him for such purpose shall be a charge against the property owner or other person offending, as the case may be.

**Sec. 14-63. Right of entry.**

For the purpose of enforcing the provisions of this article, the health officer, or his duly accredited agent, acting under his authority, may at all reasonable times enter in and upon any premises within his jurisdiction; and any person charged with any of the duties imposed by this article failing, within the time designated by this article, or within the time stated in the notice of the health officer, as the case may be, to perform such duties, or to carry out the necessary measures to the satisfaction of the health officer, shall be deemed guilty of a separate violation of this article.

**ARTICLE V. NOISE ABATEMENT AND CONTROL**

**Sec. 14- 64. Purpose and Intent.**

The Council of the City of Ballinger finds and declares that:

- A. The necessity, in the public interest, for the provisions and prohibitions hereinafter contained and enacted is declared to be a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety,

welfare, prosperity, peace and quiet of the City of Ballinger and its inhabitants.

**Sec. 14- 65. Definitions.**

Whenever the following words and phrases are used in this article, they shall have the meaning ascribed to them in this section:

- A. Average Sound Level - a sound level typical of the sound levels at a certain place during a given period of time, averaged by the general rule of combination for sound levels, said general rule being set forth in American National Standard Specifications for Sound Level Meters SI. 4-1971. Average sound level is also called continuous sound level.
- B. Decibel (dB) - a unit measure of sound (noise) level.
- C. Noise level - the same as "sound level." The terms may be used interchangeably herein.
- D. Person - a person, firm, association, copartnership, joint venture, corporation, or any entity, public or private.
- E. Sound level - in decibels, that quantity measured with a sound level meter as defined herein, by the use of the "A" frequency weighting and "fast" time averaging unless some other time averaging is specified.
- F. Sound Level Meter - An instrument for the measurement of sound, including a microphone, an amplifier, an attenuator, networks at least for the standardized weighting A, and an indicating instrument having at least the standardized dynamic characteristic "fast" as specified in American National Standard Specifications for Sound Level Meters SI.4-1971 or its successor.
- G. Sound Amplifying Equipment - the words "sound amplifying equipment" as used herein shall mean any machine or device for the amplification of the human voice, music or any other sound, "Sound amplifying equipment" as used herein shall not be construed as including standard automobile radios and speakers when used and heard only by the occupants of the vehicle in which installed or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes.
- H. Sound Truck - shall mean any motor vehicle, or any other vehicle regardless of motive power, whether in motion or stationary, having mounted thereon or attached thereto, any sound amplifying equipment.

- I. Disturbing, Excessive or Offensive Noise - any sound or noise conflicting with the criteria or levels set forth in this article or, any sound or noise that would disturb or offend the sensibilities of the average person under normal conditions.
- J. Supplementary Definitions of Technical Terms -definitions of technical terms not defined herein shall be obtained from American National Standard Acoustical Terminology, S1.1-1960 (R-1976).

**Sec. 14- 66. Regulations for Use.**

Noncommercial use of sound trucks in the City of Ballinger with sound amplifying equipment in operation shall be subject to the following regulations:

- A. The only sounds permitted are music and human speech.
- B. Operations are permitted between the hours of 8:00 a.m. and 8:00 p.m. at and during public events and affairs of interest to the general public.
- C. Sound amplifying equipment shall not be operated unless the sound truck upon which such equipment is mounted is operated at a speed of at least ten (10) miles per hour except when said truck is stopped or impeded by traffic. Where stopped by traffic the said sound amplifying equipment shall not be operated for longer than one minute at each stop.
- D. Sound shall not be issued within one hundred (100) yards of hospitals, schools, nursing homes, churches, or courthouses.
- E. No sound truck with its amplifying device in operation shall be operated with a zoned business district of the City of Ballinger.
- F. The human speech and music amplified shall not be obscene, lewd, indecent or slanderous.
- G. The volume of sound shall be controlled so that said volume is not unreasonably loud, raucous, jarring, disturbing or a nuisance to persons within the area of audibility and so that the volume of sound shall not exceed an "A" weighted sound level of 65 decibels on the "slow" scale at a distance of 50 feet from the sound amplifying equipment as measured by a sound level meter which meets "American National Standard" ANSI S1.4-1983 or its successor.
- H. No sound amplifying equipment shall be operated unless the axis of the center of any sound reproducing equipment used shall be parallel to the direction of travel of the sound truck; provided, however, that any sound reproducing equipment may be so placed upon said sound truck as to not

vary more than 15 degrees either side of the axis of the center of the direction of travel.

- I. No sound truck with its amplifying device in operation shall be driven on the same street past the same point more than twice in a period of one hour.
- J. It shall be unlawful to operate a noncommercial sound truck in violation of these regulations.

#### **Sec. 14- 67. General Prohibitions**

(a) It is unlawful for any person operating or controlling a motor vehicle in either a public or private place within the City to operate any sound amplifier which is part of, or connected to, any radio, stereo receiver, compact disk player, cassette tape player, or other similar device in the motor vehicle, in such a manner that, when operated, it is audible at a distance of 30 feet, or when operated, causes a person to be aware of the vibration accompanying the sound at a distance of 30 feet from the source.

(b) It shall be unlawful for any person to make, continue, or cause to be made or continued, within the limits of the City, any disturbing, excessive, or offensive noise which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

(c) The characteristics and conditions which should be considered in determining whether a violation of the provisions of this section exists should include, but not be limited to the following:

- A. The level of the noise;
- B. Whether the nature of the noise is usual or unusual;
- C. Whether the origin of the noise is natural or unnatural;
- D. The level of the ambient noise;
- E. The proximity of the noise to sleeping facilities or facilities where ill, recovering or infirmed persons are staying;
- F. The nature and zoning of the area from which the noise emanates and the area where it is received;
- G. The time of day or night the noise occurs;

- H. The duration of the noise; and
- I. Whether the noise is recurrent, intermittent or constant.

**Sec. 14- 68. Disturbing, Excessive, Offensive Noises.**

The following activities, among others, are declared to cause disturbing, excessive or offensive noises in violation of this section and are unlawful, namely:

A. Horns, Signaling Devices, etc.

Unnecessary use or operation of horns, signaling devices, or other similar devices, on automobiles, motorcycles, or any other vehicle.

B. Radios, Television Sets, Phonographs, Loud Speaking Amplifiers and Similar Devices.

(1) Uses Restricted

The use or operation of any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loud speakers and sound amplifier or other similar machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet or comfort of any reasonable person of normal sensitivity in any area of the City is prohibited. This provision shall not apply to any participant in a licensed parade, or to any person who has been otherwise duly authorized by the City of Ballinger to engage in such conduct.

(2) Prima Facie Violations

Any of the following shall constitute evidence of a prima facie violation of this section:

- (a) The operation of any such sound production or reproduction device, radio receiving set, musical instrument, drum, phonograph, television set. machine, loud speaker and sound amplifier or similar machine or device between the hours of 10:00 p.m. and 8:00 a.m. in such a manner as to be plainly audible at a distance of thirty (30) feet from the building, structure, or vehicle in which it is located.
- (b) The operation of any sound amplifier, which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette player, or other similar device when operated in such a

manner as to be plainly audible at a distance of thirty (30) feet and when operated in such a manner as to cause a person to be aware of vibration accompanying the sound at a distance of thirty (30) feet from the source.

### 3. Enforcement of Prima Facie Violations

- (a) Any peace officer who encounters evidence of a prima facie violation of this section is empowered and shall by policy issue the violator or violators a written notice of warning for the violation. Any and all subsequent violations of this section shall be filed by the peace officer in Ballinger Municipal Court after the issuance of a citation for the violation. By policy, all warning citations issued by peace officers of the City of Ballinger are in effect for 24 months from the time of issuance.
- (b) Any peace officer who encounters evidence of a prima facie violation of this section after having duly warned the violator or violators in writing and after having duly cited the violator or violators for the citation and, during the same continuing episode of violation, the violator or violators continue to violate this section and refuse to comply, the officer is empowered to confiscate and impound as evidence, any or all of the components amplifying or transmitting the sound.

### C. Animals

- 1. The keeping or maintenance, or the permitting to be kept or maintained upon any premises owned, occupied, or controlled by any person of any animal or animals which by any frequent or long continued noise, shall cause annoyance or discomfort to a reasonable person of normal sensitiveness in the vicinity.
- 2. The noise from any such animal or animals that disturbs two or more residents residing in separate residences adjacent to any part of the property on which the subject animal or animals are kept or maintained, or three or more residents residing in separate residences in close proximity to the property on which the subject animal or animals are kept or maintained shall be prima facie evidence of a violation of this section.

### D. Hospitals, Schools, Churches, Libraries, Rest Homes, Long-Term Medical or Mental Care Facilities.

To make noise adjacent to a hospital, church, school, library, rest home or long-term medical or mental care facility, which noise unreasonably interferes with the



workings of such institutions or which disturbs or unduly annoys occupants in said institutions.

**E. Playing of Radios, Phonographs, and Other Sound Production or Reproduction devices in Public Parks and Public Parking Lots and Street Adjacent Thereto.**

The operation of any radio, phonograph, television set, or any other sound production or reproduction device in any public park or any public parking lot or street adjacent to such park, without the prior written approval of the City Manager in such a manner that such radio, phonograph, television set or sound production or reproduction device emits a sound level exceeding those round in the following table at any point ten (10) feet or more from the noise source is prohibited:

**TABLE OF APPLICABLE LIMITS**

Time of Day		Sound Level Limit
7 a.m. to 7 p.m.		65 decibels
7:01 p.m. to 6:59 a.m.		55 decibels

**Sec. 14 - 69. Burglar Alarms. Reserved.**

**Sec. 14 - 70. Violations: Misdemeanors.**

Any person violating any of the provisions of this Article V, Section 14 shall be deemed guilty of a misdemeanor. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

Notwithstanding the above described penalties, following the conviction of a defendant for any prima facie violations of this article, the prosecutor may bring a motion requesting the court to order the destruction of any or all of the components amplifying or transmitting the sound. (Ord. 3-2-1998)

**Sec. 14-71 – 14-79 Reserved.**

**ARTICLE VI. NO SMOKING IN ALL CITY BUILDINGS**

**Sec. 14-80. In General**

There shall be "no smoking" in all City buildings owned by or leased by the City of Ballinger within the City limits of the City of Ballinger.

## PENALTIES

Any person violating provisions of this ordinance shall be guilty of Class C misdemeanor which shall be punishable by a fine of not less than \$50.00 and no more than \$500.00.

## SEVERABILITY

It is hereby declared to be the intention of the City Council of the City of Ballinger that if any of the sections, paragraphs, sentences, clauses and phrases of this ordinance shall be declared unconstitutional or otherwise illegal by a valid judgment or decree of any court or competent jurisdiction, such event shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections.

## **Secs 14-81 – 14-89 Reserved**

# ARTICLE VII. TIRE BUSINESS REGISTRATION, AND REGULATION

## **Sec. 14-90 Purpose**

To regulate the tire business to prevent fires, reduce reproduction sites for the spread of diseases vector (mosquitoes), rats and snakes.

## **Sec. 14-91. Definitions.**

As used in this article, the following words shall have the meaning herein ascribed to them:

**Code Enforcement Officer** shall mean the person designated as being Code Enforcement Officer of the City of Ballinger or authorized representative(s), who are empowered to enforce the provisions of this article.

**Tires** shall mean all motorcycle, automobile, truck, trailer, tractor or other vehicle tires.

**Good Reusable Tire** shall mean used tires that are stacked, sorted, classified, and arranged in an organized manner for sale.

**Generator(s)** are tire dealers, junk yards, fleet operators, and others, who generate scrap tires

**Disposal Manifest** shall mean a cradle to grave record of each load of scrap tires removed from a generator site.

**Tire Business** shall mean and include any place or establishment occupied, used or maintained for the purpose of offering or exposing for sale (for either retail or wholesale), keeping with the intention to sell, generating, transporting, repairing, processing, storing, utilizing, and disposing of any and all types of tires.

**Mobile Tire Repair Road Service Unit** shall mean and include any motorized vehicle occupied, used or maintained for the purpose of providing tire repair road services that includes selling, offering or exposing for sale, keeping with the intention to sell, generating, transporting, repairing, processing, storing, utilizing, and disposing of any and all types of tires

**Tire Recycling Facility** shall mean a state registered facility that processes, conducts energy recovery or recycles scrap tires.

**Transportation Facilities** are rail yards, or trucking facilities that store more than 500 scrap tires or equivalent scrap tire pieces for more than 30 days. Transportation facilities must meet all local and state registering and report requirements.

**Scrap Tire** shall mean a whole tire that can no longer be used for its original intended purpose. A whole used tire that can be used for its original intended purpose is not a scrap tire.

**Tire Business Operator(s)** shall mean the individual(s) having supervisory or management responsibilities, as well as any other person working in a tire shop or a mobile tire repair road service units who may be the person in charge at any given time.

#### **Sec. 14-92. Tire Business Registration Program.**

The city, by and through the City Secretary, will institute a tire business registration program including mobile tire repair road service units located within the city limits. The Code Enforcement Officer will establish and conduct regular inspections and annual registration of all tire businesses and mobile tire repair road service units located within the city limits. The tire business registration program shall be consistent with requirements established in Chapter 14, Health and Sanitation, Article IV Mosquito Control and all applicable city ordinances.

The Police Department is hereby authorized to stop and investigate all persons subject to the regulation requirements of this ordinance in order to verify compliance with this ordinance.

**Sec. 14-93. Tire Business Mobile Tire Repair Road Service Units, and Disposal of Tires Business Application.**

Every person, firm, or corporation desiring to establish, maintain or operate a tire business, tire disposal business or a mobile tire repair road service unit in the City of Ballinger shall make written application for registration thereof. The application shall be made on a form obtained from the City of Ballinger City Secretary. The following must be provided to the City Secretary:

1. the name, mailing address, county, telephone and facsimile numbers of the applicant; and
2. the name, mailing address, county, and telephone number of the property owner where the tire business is located; and
3. the physical address where the tire business is located; and
4. the approximate number of tires that will be stored on site; and
5. the existing zoning of the site and certified compliance with zoning laws by the City of Ballinger Zoning Enforcement Supervisor or designated representative; and
6. compliance with building codes and all applicable health and safety ordinances; and
7. the tax identification number or tax payer identification number; and
8. mobile tire repair road service units shall provide and demonstrate proof of vehicle license, current vehicle inspection sticker, current liability insurance and driver's license; and
9. the required annual registration fee.

**Sec. 14-94. Terms of Registration.**

The Code Enforcement Officer or his authorized representative shall issue a permit to a tire business and/or mobile tire shop road repair unit, to any person who submits the required and completed application, pays to the city the fee as required in this article, and has demonstrated compliance with this article and Chapter 14, Health and Sanitation, Article IV Mosquito Control and all applicable city ordinances. Every person registered in accordance with the provisions of this article shall immediately post such registration(s) and inspections report(s) or cause same to be posted in a conspicuous place within the premises where such tire shop and or mobile tire business road repair unit is thereby authorized to be established, maintained or operated.

**Sec. 14-95. Denial of permit or renewal; suspension or revocation of permit.**

The Code Enforcement Officer may refuse to issue or renew a tire business and or a mobile tire repair road service units permit(s) or may suspend or revoke such permit(s) if:

1. The applicant or permit holder is not in compliance with all Federal, State, and Local Code and regulations. All required Federal, State, and Local permits or requirements are not current and in compliance. Any taxes related to the operation of the tire business are not current and paid. Any records are not up to date and properly maintained including disposal manifests; or
2. The applicant or permit holder refuses to permit entry into the tire business by the Code Enforcement Officer or his authorized representative or otherwise willfully obstructs the inspection of the tire business and or mobile tire repair road service unit; or
3. There are repeated or a serious violation(s) of any city ordinance by the tire business and or mobile tire repair road service units; or
4. The tire business and or mobile tire repair road service units fails to comply with any provisions of the Article, or Chapter 14, Health and Sanitation, Article IV Mosquito Control and or any applicable city ordinance.

**Sec. 14-96. Fees.**

All tire business and or mobile tire repair road service units registration fees are due annually by January 1, of each calendar year at the City of Ballinger City Secretary office; the annual registration fee shall be determined by the number of persons employed in connection with such tire business and/or mobile tire repair

road service unit, including the applicant for such registration, and shall be paid in advance of the issuance of such registration as follows:

1. One (1) to five (5) persons, thirty-five dollars (\$35.00).
2. Six (6) to ten (10) persons, seventy dollars (\$70.00).
3. Eleven (11) or more persons, one hundred forty dollars (\$140.00).
4. Mobile Tire Repair Road Service Unit, one hundred dollars (\$100) per Mobile Unit.

**Sec. 14-97. Disposal of tires.**

Tires shall be disposed of in the following manner:

1. Tires may be disposed of by delivery and manifesting of tires through a registered tire transporter to a registered tire recycling facility or a tire disposal facility regulated and licensed by the State for the disposal and/or processing of tires, provided said transporter signs transmittal manifest and authorized disposal facility accepts the tires and signs the transmittal manifest.

**Sec. 14-98 Tire Transporter, Tire Disposal Business, or Individual**

1. Tire Transporter, Tire Disposal Business, or individual shall not be allowed to have a location for the sorting, storage, or processing of scrap tires within the City Limits or Extra Territorial Jurisdiction of the City of Ballinger.
2. The City of Ballinger is exempt from this Article for reasons of using the City Recycle Center for the purpose of proper disposal of scrap tires. The city reserves the right to charge a fee to recover the cost generated by the proper handling, transporting and disposal of said tires to licensed facilities.

**Sec. 14-99 Unlawful disposal of tires**

It shall be a Class C Misdemeanor of anyone to dispose of tires in any way that is not allowed in the article, to include but not limited to throwing tires upon city property, public Right of Ways or private lands that are not licensed for proper tire disposal. It is unlawful to dispose of tire(s) at the City Recycle Center without the knowledge or permission of the personnel designated to receive, document, and oversee tire disposal of tire(s) at said location.

**Sec. 14-100. Injunctive relief.**

In the addition to and cumulative of all other penalties the City of Ballinger shall have the right to seek injunctive relief, for any violation(s) of this article.

**Sec. 14-101 Abatement and relief by judgment.**

When an individual(s) or operator(s) refuses to comply with this article, after proper notification to the property owner(s) and operator(s) by certified mail of a public meeting, and upon completion of a public meeting the city council may declare the location a public nuisance; the city has the right to obtain a court order to enter the property to abate the violation(s). Furthermore, the city reserves the right to seek a judicial judgment for the relief of any or all accumulative expenses that are incurred by the city to abate any site or sites that are in violation of the article.

**Sec. 14-102. Penalty for violation.**

Any person who violates a provision of this article and/or Chapter 14, Health and Sanitation, Article IV Mosquito Control, or any applicable city ordinance, shall upon conviction by the municipal court of the city be subject to a minimum fine of five hundred dollars (\$500) or a fine not to exceed two thousand dollars (\$2,000.00) for each offense, and each day of violation of said article shall constitute a separate offense.

**Sec. 14-103. Severability.**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of same, to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portion of this ordinance, or its application to other persons or sets of circumstances, shall not be affected thereby, and it being the intent of the City Council of the City of Ballinger in adopting and approving this ordinance, that no portion hereof or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion of this ordinance.

**Secs. 14-104 – 14-124 Reserved.**

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## Chapter 15

### HOUSING\*

Art. I. In General, §§ 15-1 -15-20

Art. II. Fair Housing, §§ 15-21 -15-31

#### ARTICLE I. IN GENERAL

**Secs. 15-1 - 15-20. Reserved.**

#### ARTICLE II. FAIR HOUSING‡

**Sec. 15-21. Penalty.**

(a) Any person, firm or corporation violating any provision of this article shall be guilty of a misdemeanor, and upon conviction shall be punished as prescribed in section 1-12 for each violation. Each day a violation continues after passage of seventy-five (75) days from the date of the filing of the initial complaint with the administrator shall constitute a separate and distinct offense.

(b) Any person, firm, or corporation violating any provision of this article may be enjoined by a suit filed by the city in a court of competent jurisdiction and this remedy is in addition to any other penalty provision. (Ord. of 11-2-82; § 14)

**Sec. 15-22. Definitions.**

For the purpose of this article the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words so used in the present tense include the future; words in the masculine gender include the feminine; words in the plural number include the singular, and words in the singular number include the plural.

*Discriminatory housing practice* means an act that is unlawful under sections 15-24, 15-25 or 15-26.

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\* **Editor's note** - See the editor's footnote for ch. 17.5 for information relating to former ch. 15, "Lake Ballinger."

**Cross reference** - Abatement of substandard buildings, § 8-54 et seq.; mobile homes, ch. 16; occupancy tax, § 24-21 et seq.; zoning, App. A.

‡**Editor's note** -Inclusion of a nonamendatory ordinance of Nov. 2, 1982, as Art. II hereof has been at the discretion of the editor.

*Dwelling* means any building, structure or portion thereof which is occupied as, or designed and intended for occupancy as a residence by one or more families or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

*Family* includes a single individual.

*Person* includes one or more individuals, corporations, partner-ships, associations, labor organizations legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, fiduciaries, and any other organization or entity of whatever character.

*To rent* includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant. (Ord. of 11-2-82, §1)

**Sec. 15-23. Unlawful intimidation.**

It shall be unlawful for any person to harass, threaten, harm, damage or otherwise penalize any individual, group or business because he or they have complied with the provisions of this article, because he or they have exercised his or their rights under this article, or enjoyed the benefits of this article, or because he or they have made a charge, testified or assisted in any manner in any investigation, or in any proceeding thereunder or have made any reports to the administrator. (Ord. of 11-2-82, § 11)

**Sec. 15-24. Discrimination in the sale or rental of housing.**

Except as exempted by section 15-27, it shall be unlawful for any person to:

- (1) Refuse to sell or rent, after the making of a bonafide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, sex, religion, or national origin.
- (2) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, sex, religion, or national origin.
- (3) Make, print, publish, or cause to be made, printed or published any notice, statement or advertisement regarding the sale or rental of a dwelling that indicates a preference, limitation or discrimination based on race, color, sex, religion, or national origin, or any intention to make any such preference, limitation or discrimination.

(4) Represent to any person because of race, color, sex, religion or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(5) For profit or with the hope or expectation of profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, religion or national origin.

(6) For profit or with the hope or expectation of profit to influence or to attempt to influence, by words, acts, or failure to act, any seller, purchaser, landlord or tenant of a dwelling so as to promote the maintenance of racially segregated housing or so as to retard, obstruct, or discourage racially integrated housing. (Ord. of 11-2-82, § 2)

### **Sec. 15-25. Discrimination in the financing of housing.**

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm, or other enterprise whose business consists in whole or in part of the making of commercial or residential real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling; or to discriminate against any such person in the fixing of the amount, interest rate, brokerage points, duration, or other terms or conditions of such loan or their financial assistance, because of:

(1) The race, color, sex, religion, or national origin of such person or any other person associated with him in connection with such loan or other financial assistance; or

(2) The race, color, sex, religion, or national origin of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings for which such loan or other financial assistance is to be made 01 given. (Ord. of 11-2-82, § 3)

### **Sec. 15-26. Discrimination in the provision of brokerage services.**

It shall be unlawful for any person to deny access to or membership or participation in any multiple listing service, real estate broker's organization or other services, organization or facility relating to the business of selling or renting dwellings, or to discriminate in the terms or conditions of such access, membership or participation, on account of race, color, sex, religion, or national origin. (Ord. of 11-2-82, § 4)

## **Sec. 15-27. Exemptions and exclusions.**

(a) There shall be exempted from the application of section 15-24 hereof all transactions involving:

(1) The rental of units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other if the owner actually maintains and occupies one of such units as his residence.

(2) The rental of a single room in a dwelling containing living quarters occupied or intended to be occupied by no more than one family if the person offering such room for rental actually maintains and occupies the remainder of such dwelling as his residence and not more than four (4) such rooms are offered

(3) The sale or rental of any single house by a private individual who owns such house, provided that:

a. The sale or rental is made without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting a dwelling or of any employee or agent of any such broker, agent, salesman, or person; and

b. The sale is made without the publication, posting or mailing of any advertisement or written notice in violation of section 15-24(3) (this shall not prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professionals and assistance necessary to perfect or transfer the title); and

c. The owner does not own more than three (3) single family houses at the time of the sale; and

d. The owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or any portion of the proceeds from the sale or rental to all or more than three (3) single family-houses at any one time.

e. If the owner does not reside in the house at the time of sale or was not the most recent resident of such house prior to the sale, the exemption granted by this subsection shall apply only with the respect to one such sale within any twenty-four-month period.

(b) Nothing in this article shall prohibit a religious organization or association or society or any other nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious association or society from limiting

the sale, rental, occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such person, unless membership in such religion is restricted on account of race, color, sex, or national origin.

(c) Nothing in this article shall prohibit a bona fide private club, not in fact open to the public, which as an incident to its primary purpose, provides lodging which it owns or operates for other than a commercial purpose from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(d) Nothing in this article shall bar any person from owning and operating a housing accommodation in which a room or rooms are leased, subleased, or rented only to persons of the same sex, when such housing accommodations, contain common lavatory, kitchen, or similar facilities available for the use of all persons occupying such housing accommodations. (Ord. of 11-2-82, § 5)

#### **Sec. 15-28. Fair housing administrator.**

The mayor shall appoint and council shall confirm a fair housing administrator (hereinafter referred to as "administrator"), who shall have the responsibility for implementing this article. The administrator may delegate his authority to investigate and conciliate complaints to other city employees under his direction. (Ord. of 11-2-82, § 6)

#### **Sec. 15-29. Complaints.**

(a) Only the person who claims to have been injured by a discriminatory housing practice who believes he will be irrevocably injured by a discriminatory housing practice that has occurred or is occurring (hereinafter referred to as "person aggrieved") may file a complaint with the administrator. Such complaints shall be in writing and shall identify the person alleged to have committed or alleged to be committing a discriminatory housing practice and shall state the facts upon which the allegations of a discriminatory housing practice are based. The administrator shall prepare complaint forms and furnish them without charge to any person, upon request.

(b) If at any time the administrator shall receive or discover credible evidence and shall have probable cause to believe that any person or persons have committed or are committing a discriminatory housing practice as to which no complaint has been filed, the administrator may prepare and file a complaint upon his own motion and in his own name and such complaint shall thereafter be treated in the same manner as a complaint filed by a person aggrieved.

(c) The administrator shall receive and accept notification and referral complaints from the US Attorney General and the Secretary of Housing and Urban

Development pursuant to the provisions of Title VIII, Fair Housing Act of 1968, Public Law 90-284, and shall treat such complaints thereunder in the same manners complaints filed pursuant to paragraph (a) of this section.

(d) All complaints shall be filed within sixty (60) days following the occurrence of an alleged discriminatory housing practice. Upon the filing or referral of any complaint, the administrator shall provide notice of the complaint by furnishing a copy of such complaint to the persons named therein who allegedly committed or were threatening to commit an alleged discriminatory housing practice. The accused may file an answer to the complaint within fifteen (15) days of receipt of the written complaint.

(e) All complaints and answers shall be subscribed and sworn to before an officer authorized to administer oaths. (Ord. of 11-2-82, § 7)

### **Sec. 15-30. Investigation.**

(a) Upon the filing or referral of a complaint as herein provided, the administrator shall cause to be made a prompt and full investigation of the matter stated in the complaint.

(b) During or after the investigation, but subsequent to the mailing of the notice of the complaint, the administrator shall, if it appears that a discriminatory housing practice has occurred or is threatening to occur, attempt by informal endeavors to effect conciliation, including voluntary discontinuance of the discriminatory housing practice and adequate assurance of future voluntary compliance with the provisions of this article. Nothing said or done in the course of such voluntary endeavors may be made public by the administrator, by the complainant or by any other party to the proceedings without the written consent of all persons concerned.

(c) Upon completion of the investigation and informal endeavors at conciliation by the administrator, but within thirty (30) days of the filing of the complaint with the administrator, if the efforts of the administrator to secure voluntary compliance have been unsuccessful, and if the administrator has made a determination that a discriminatory housing practice has in fact occurred, the administrator shall recommend to the city attorney that such violations be prosecuted in municipal court. With such recommendations, the administrator shall refer his entire file to the city attorney. The city attorney shall, within thirty (80) days after such referral, make a determination as to whether to proceed with prosecution of such complaint in municipal court. If the city attorney determines to prosecute, he shall institute a complaint and prosecute same to conclusion within thirty (30) days after such determination or as soon thereafter as practicable. (Ord. of 11-2-82, § 8)

**Sec. 15-31. Referral.**

(a) Any discrimination complaints filed with the administrator may be directly referred to the fair housing/equal opportunity division of the Fort Worth regional office of the US Department of Housing and Urban Development.

(b) When necessary, complainants will be referred to West Texas Legal Services and/or other applicable legal services counsel, for the purpose of providing legal assistance to low income individuals and families. (Ord. of 11-2-82, § 9)

**Sec. 15-32. Cumulative legal effect.**

This article is cumulative in its legal effect and is not in lieu of any and all other legal remedies which the person aggrieved may pursue. (Ord. of 11-2-82, § 10)

**Sec. 15-33. Cooperation with the secretary of housing and urban development.**

The administrator and the city attorney are authorized to cooperate with the secretary of housing and urban development and the US Attorney General pursuant to the provisions of Title VIII, Fair Housing Act of 1968, Public Law 90-284, and may render such service to the secretary as they shall deem appropriate to further the policies of this article. (Ord. of 11-2-82, § 12)

**Sec. 15-34. Education and Public Information.**

In order to further the objectives of this article, the administrator may conduct educational and public information programs. (Ord. of 11-2-82, § 13)

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## Chapter 16-A

### MOBILE HOMES\*

Art. I. In General, §§ 16-A-1 - 16-A-15

Art. II. Mobile Home, §§ 16-A-16 - 16-A-65

Div. 1. Generally, §§ 16-A-16 - 16-A-26

Div. 2. License, §§ 16-A-27 - 16-A-42

Div. 3. Physical Requirements, §§ 16-A-43 - 16-A-65 Art

III. Location Outside Parks, §§ 16-A-66 - 16-A-75

#### ARTICLE I. IN GENERAL

##### **Sec. 16-A-1. Definitions.**

For the purpose of this chapter the following words and phrases shall have the meanings respectively ascribed to them:

*Mobile home:* Any vehicle or similar portable structure that has at any time had axles and/or a tongue attached or that was designed for axles, such as the use of steel beams as floor joists or supports, if so designed or constructed as to permit occupancy for dwelling or sleeping purposes or commercial purposes. (Ord. of 08-05-96)

*Mobile home lot:* A plot of ground within a mobile home park designed for the accommodation of one mobile home.

*Mobile home park:* Any plot of ground upon which one or more mobile homes, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodations.

*Natural or artificial barrier:* Any river, pond, canal, railroad, levee, embankment, brick wall or hedge.

*Park:* Any mobile home park. (Ord. of 9-22-59, §1) <sup>7</sup>

The existing definition of "Mobile Home" is repealed and replaced with the

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\*Cross references - Buildings, Ch. 8; health and sanitation, Ch. 14; planning and zoning, Ch. 19; zoning, App. A; subdivisions, App. B.

following definition:

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

The definition of "Manufacture Home" is added as follows:

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

The definition of "Travel Trailer" is hereby added:

"Travel Trailer" is defined as any vehicle or similar portable structure that has at any time had axles and/or a tongue attached or that was designed for axles, such as the use of steel beams as floor joists or supports, if so designed or constructed as to permit occupancy for dwelling or sleeping purposes or commercial purposes.

Where the term "Mobile Home" is used in the existing Code of Ordinances, it shall be replaced with the term "Manufactured Home."

### **Sec. 16-A-2. Compliance.**

No mobile home shall be parked, used or occupied on any tract of ground within the corporate limits of the city except as provided in this chapter. (Ord. of 9-22-59, §2)

### **Secs. 16-A-3 -16-A-15. Reserved.**

## ARTICLE II. MOBILE HOME

## DIVISION 1. GENERALLY

### **Sec. 16-A-16. Compliance.**

No mobile home park shall be operated within the corporate limits of the city except as provided in this article. (Ord. of 9-22-59, §3)

### **Sec. 16-A-17. Maintenance.**

Any person owning or operating a mobile home park shall maintain such park, and any facilities, fixtures and permanent equipment in connection therewith, in a clean and sanitary condition and shall maintain such equipment in a state of good repair.

### **Sec. 16-A-18. Rules and regulations for park.**

It shall be the duty of the owner, his agent, representative or manager of any mobile home park to prescribe rules and regulations for the management of the park and to make adequate provisions for the subsequent rules and regulations which may be adopted for the management of such park. In addition thereto, it shall be the duty of the owner, his agent, representative or manager to comply strictly with the following:

- (1) Provide for regular inspections of the water and sanitary conveniences;
- (2) Provide for the collection and removal of garbage and other waste material;
- (3) Prohibit the placing or storage of unsightly material or vehicles of any kind.

### **Sec. 16-A-19. Office building.**

Each mobile home park shall be provided with a building to be known as the office in which copies of all records pertaining to the management and supervision of the park, as well as all rules and regulations of the park, shall be kept, and such records, rules and regulations shall be available for inspection by officials whose duties necessitate acquisition of the information contained therein.

### **Sec. 16-A-20. Registration of occupants.**

(a) All mobile home park owners or operators who have land under their control within the city where mobile homes are parked either temporarily or permanently shall register each tenant and include:

(1) The full name and address of the owner and occupant of the mobile home, and the full name and address of the registered owner, if different from the occupant;

(2) The location of the mobile home and the date of its arrival;

(b) The park shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register. The register record for each occupant registered shall not be destroyed for a period of three (3) years following the date of departure of the registrant from the park. (Ord. of 9-22-59, §4)

**Secs. 16-A-21 - 16-A-26. Reserved.**

**DIVISION 2. LICENSE**

**Sec. 16-A-27. Required.**

It shall be unlawful for any person to maintain or operate, within the limits of the city, any mobile home park unless such person first obtains a license therefore. (Ord. of 9-22-59, §3)

**Sec. 16-A-28. Application.**

Applications for a mobile home park license shall be filed in triplicate with the City Council. Applications shall be in writing, signed by the applicant, and shall contain the following:

(1) The name and address of the applicant;

(2) The location and legal description of the mobile home park;

(3) A complete plan of the mobile home park showing compliance with this article;

(4) Plans and specifications of all buildings and other improvements constructed or to be constructed within the mobile home park.

**Sec. 16-A-29. Investigation.**

The city administrator, and the city planning and zoning commission shall investigate the applicant for a license required by this division, inspect the proposed plans and specifications and make a report to the City Council concerning such applicant and include therein their recommendations relative to

the issuance of a license. If the mobile home park is in compliance with all the provisions of this article and all other applicable provisions of this Code, city ordinances or state statutes, the City Council may approve the application, and in the case of proposed parks, make such approval contingent upon the completion of the park according to the plans and specifications submitted with the application.

**Sec. 16-A-30. Fees.**

The annual license fee for each mobile home park shall be one hundred dollars (\$100.00). Renewal shall be required one year following date of issuance. (Ord. of 9-22-59, §3)

**Sec. 16-A-31. Issuance.**

Upon approval by the City Council of the application for a license required by the provisions of this division, the City Secretary shall issue such license.

**Sec. 16-A-32. Transfer.**

Upon application for a transfer of a license issued under the provisions of this division, the City Council may issue a transfer upon payment of a one hundred dollar (\$100.00) transfer fee.

**Sec. 16-A-33. Display.**

The license certificate issued under the provisions of this division shall be conspicuously posted in the office of or on the premises of the mobile home park at all times. (Ord. of 9-22-59, §3)

**Sec. 16-A-34. Revocation.**

The City Council may revoke any license issued under this division in case any of the applicable provisions of this Code, state law or city ordinance, rule or regulation are violated. Before the license may be revoked, the City Council must give ten (10) day notice to the holder of the license and hold a hearing thereon. After the license has been revoked, the license may be reissued if the reasons for such revocation have been duly corrected.

**Secs. 16-A-35 - 16-A-42. Reserved.**

**DIVISION 3. PHYSICAL REQUIREMENTS**

**Sec. 16-A-43. Compliance.**

Each mobile home park established or operated within this city shall

conform to the provisions of this division. (Ord. of 9-22-59, §6)

**Sec. 16-A-44. Water supply and sanitary sewer.**

Every mobile home park shall have city water connections furnishing an ample and adequate supply of water and shall be connected with the sanitary sewer and adequate provisions shall be made for the collection and removal of waste and garbage. (Ord. of 9-22-59, §5)

Cross Reference - Utilities, Ch. 27 .

**Sec. 16-A-45. Drainage.**

Each mobile home park shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.

**Sec. 16-A-46. Plumbing generally.**

All plumbing installations, alterations or repairs in the mobile home park shall be done in accordance with the provisions of the plumbing code and ordinances of the city.

Cross Reference - Plumbing and gas, Ch. 20.

**Sec. 16-A-47. Electrical work generally.**

All electrical work shall be done in conformity with the National electrical code, the ordinances of the city and in compliance with the rules and requirements of the National Board of Fire Underwriters for installation of electric wiring and apparatus, known as the National Electrical Code. (Ord. of 9-22-59, §6)

Cross Reference - Electricity, Ch. 10.

**Sec. 16-A-48. Fire protection.**

Every mobile home park shall be equipped at all times with fire extinguishing equipment in good working order of such type, size and number and so located within the park as to satisfy applicable reasonable regulations of the fire department. No open fire shall be permitted at any place which may endanger life or property and no fire shall be left unattended at any time. (Ord. of 9-22-59, §7)

Cross Reference - Fire protection and prevention, Ch. 11.

**Sec. 16-A-49. Setbacks.**

(a) The minimum setback from front property lines shall be to conform to the existing building line within the block, but in no case shall the setback be less than fifteen (15) feet.

(b) The minimum setback from an interior lot line shall be five (5) feet.

(c) The minimum setback from the alley line shall be five (5) feet.

**Sec. 16-A-50. Minimum lot size.**

Mobile home lots shall be provided with a minimum of four thousand (4,000) square feet for each lot, which shall be at least forty (40) feet wide and one hundred (100) feet in depth and be clearly defined. (Ord. of 1-15-80, Art. IV)

**Sec. 16-A-51. Streets.**

All mobile home lots shall abut upon a public street of not less than twenty-eight (28) feet in width which shall have unobstructed access to another public street, alley or highway. All streets shall be hard-surfaced, well-marked in the daytime and lighted at night. The minimum quality of such street surface shall be specified by the city's subdivision ordinance.

Cross Reference - Streets and sidewalks, Ch. 23.

**Sec. 16-A-52. Walkways**

Walkways not less than two (2) feet wide shall be provided from the mobile home lots to the service buildings and shall be hard-surfaced and well-marked in the daytime and lighted at night.

**Sec. 16-A-53. Additional construction.**

It shall be unlawful for any person operating a mobile home park or occupying a mobile home to construct or permit to be constructed in such park, or in connection therewith, any additional structure except for porches or decks; however, storage sheds may be allowed on said property 'detached from the mobile home.

(1) Strength of the materials and structure shall meet the minimum standards of the city building code;

(2) Capable of being dismantled when moved;

(3) Completely dismantled and removed from the site at the time the mobile home to which it is an accessory is moved;

(4) Finish and appearance shall be as nearly as possible the same as the mobile home to which it is an accessory;

(5) Length must not exceed the length of the mobile home on which it is an accessory.

**Sec. 16-A-54. Location in City Limits.**

There shall be no mobile home located within one hundred (100) feet of Highway 67, Highway 83, and Highway 158 from the City Limits of each highway entrance through the City on each highway to the City Limits Sign of each highway on the other end of the highway.

**Sec. 16-A-55. Requirements for Manufactured Homes, Mobile Homes and Travel Trailers.**

(a) No travel trailer over ten (10) years of age will be allowed inside the city limits of Ballinger for dwelling purposes. This age restriction does not apply to travel trailers used for recreational purposes.

(b) Mobile homes for dwelling purposes are not allowed inside the city limits of Ballinger.

(c) A manufactured home, mobile home or travel trailer that is a substandard structure or nuisance as defined by state and/or local law will not be allowed inside the city limits of Ballinger.

(d) A manufactured home, mobile home or travel trailer cannot be used as a storage building or for non-dwelling purposes such as offices, except manufactured homes or travel trailers for temporary office space (duration of the project only) on construction sites.

(e) Once a travel trailer exceeds the age of ten years it cannot be moved to another address in the city limits of Ballinger. If it is moved, it must be moved out of the city limits of Ballinger.

(f) A title showing the vin number of the travel trailer with the make and year model must accompany the building permit.

(g) Exception to mobile home prohibition or travel trailer age requirement: Any mobile home or travel trailer inside the city limits of Ballinger prior to the effective date of this Ordinance is grand fathered in place. All other regulations applicable to mobile homes or travel trailers, such as relocating, use as storage buildings or non-dwelling purposes, nuisances and being moved shall apply. Any owners of travel trailers older than ten (10) years of age or mobile homes inside the city limits of Ballinger on the effective date of this Ordinance shall register the mobile home or travel trailer with the City's Code Enforcement Department.

**II. Penalty.**

(a) Any person who violates or fails to comply with this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined not more than \$500.00.



Each day any violation or noncompliance continues constitutes a separate offense.

(b) A violation of any term or provision of this ordinance may be enjoined by civil injunctive relief. The City may, at its sole discretion, seek injunctive and other equitable relief to restrain any violation of this ordinance and may, in addition, pursue any lawful remedies to correct, abate, or punish any violation hereof.

(c) The penalties and remedies provided for in this ordinance are not exclusive of each other or of any other remedy at law or in equity, and all such remedies are declared to be cumulative.

III. Severability Clause. It is hereby declared to be the intention of the City Council of the City of Ballinger that any phrase, sentence, section, or paragraph of this ordinance shall be declared unconstitutional or otherwise invalid by final judgment of a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remainder of this ordinance since the same would have been enacted by the City Council without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

IV. Repealing Clause. All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

V. Publication and Effective Date. The City Secretary is hereby authorized and directed to publish the caption of this Ordinance in the manner and for the length of time prescribed by law and this ordinance shall become effective after publication of same as provided by charter and/or State law. (Ord. 2-26-16)

**Secs. 16-A-56 -16-A-65. Reserved.**

### ARTICLE III. LOCATION OUTSIDE PARKS

**Sec. 16-A-66. Prohibited on public ways.**

It shall be unlawful for any person to park any mobile home of any kind on any street, alley, highway or other public place within the corporate limits of the city. (Ord. of 9-22-59, §2)

**Sec. 16-A-67. Permit required.**

No person shall park, use or occupy, or permit to be parked, used or occupied, any mobile home for more than (48) forty eight hours, on the premises of any occupied dwelling, or for more than twenty-four (24) hours on any lot which is not a part of the premises of an occupied dwelling, unless a

permit there for has first been obtained. (Ord. of 9-22-59, §2)

**Sec. 16-A-68. Application.**

(a) Application for a permit required by the provisions of this article shall contain the street and number of the occupied dwelling; the name of the occupant of the dwelling and his permission to locate such mobile home on such premises; a statement of the nature and location of sanitary facilities and the permission of the occupant of the dwelling house for their use; and a statement that all waste water from mobile home will be emptied into a proper sewer-connected fixture.

(b) Application for a permit to locate a mobile home on a vacant lot shall contain the street with the name and approximate distance from the nearest intersection; a statement of the nature and location of sanitary facilities; and a statement that all waste water from the mobile home will be emptied into a properly connected fixture. (Ord. of 9-22-59, §2)

**Sec. 16-A-69. Where obtained.**

Permits required by the provisions of this article may be obtained from the office of the city secretary. (Ord. of 9-22-59, §2)

**Sec. 16-A-70. Fee.**

Permit fees are set according to the value of the mobile home. Permit Fees shall be approved by the City Council and kept on file in the City Secretary's office. (Ord. of 9-22-59, §3)

**Sec. 16-A-71. Consent required.**

Permits required by the provisions of this article shall be granted only upon the written consent of the owner, his legal agent or the lessee of the premises upon which the mobile home is to be located. (Ord. of 9-22-59, §2)

**Sec. 16-A-72. Certain toilets prohibited.**

The use of built-in water closets not connected to an approved private or public system or chemical toilets in a mobile home located within the city is prohibited. (Ord. of 9-22-59, §2)

**Sec. 16-A-73. Sewage disposal.**

The use of mobile home plumbing fixtures is prohibited unless such fixtures are connected to the city sewer. (Ord. of 9-22-59, §2)

**Sec. 16-A-74. Proximity to structures.**

No mobile home shall be parked, used or occupied within twenty (20) feet of any structure. (Ord. of 9-22-59, §2)

**Sec. 16-A-75. Reserved**

## Chapter 16-B

### TRAVEL TRAILERS\*

Art. I. In General, §§ 16-B-1 - 16-B-15

Art. II. Mobile Home, §§ 16-B-16 - 16-B-65

Div. 1. Generally, §§ 16-B-16 - 16-B-26

Div. 2. License, §§ 16-B-27 - 16-B-42

Div. 3. Physical Requirements, §§ 16-B-43 - 16-B-65

Art III. Location Outside Parks, §§ 16-B-66 - 16-B-75

### ARTICLE I. IN GENERAL

#### **Sec. 16-B-1. Definitions.**

For the purpose of this chapter the following words and phrases shall have the meanings respectively ascribed to them:

*Travel trailer.* Any vehicle or similar portable structure that has at any time had axles and *l* or a tongue attached or that was designed for axles, such as the use of steel beams a<sup>s</sup> floor joists or supports, if so designed or constructed as to permit occupancy for dwelling or sleeping purposes or commercial purposes.

*Travel trailer lot:* A plot of ground within a travel trailer park designed for the accommodation of one travel trailer.

*Travel trailer park:* Any plot of ground upon which one or more travel trailers, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodations.

*Natural or artificial barrier:* Any river; pond, canal, railroad, levee, embankment, brick wall or hedge.

*Park:* Any travel trailer park. (Ord. of 9-22-59, §1)

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\*Cross references - Buildings, Ch. 8; health and sanitation, Ch. 14; planning and zoning, Ch. 19; zoning, App. A; subdivisions, App. B.

**Sec. 16-B-2. Compliance.**

Travel trailer shall be parked, used or occupied on any tract of ground within the corporate limits of the city except as provided in this chapter. (Ord. of 9-22-59, §2)

**Secs. 16-B-3 - 16-B-15. Reserved.**

ARTICLE II. TRAVEL TRAILER PARK

DIVISION 1. GENERALLY

**Sec. 16-B-16. Compliance.**

No travel trailer park shall be operated within the corporate limits of the city except as provided in this article. (Ord. of 9-22-59, §3)

**Sec. 16-B-17. Maintenance.**

Any person owning or operating a travel trailer park shall maintain such park, and any facilities, fixtures and permanent equipment in connection therewith, in a clean and sanitary condition and shall maintain such equipment in a state of good repair.

**Sec. 16-B-18. Rules and regulations for park.**

It shall be the duty of the owner, his agent, representative or manager of any travel trailer park to prescribe rules and regulations for the management of the park and to make adequate provisions for the subsequent rules and regulations which may be adopted for the management of such park. In addition thereto, it shall be the duty of the owner, his agent, representative or manager to comply strictly with the following:

(1) Provide for regular inspections of the water and sanitary conveniences;

(2) Provide for the collection and removal of garbage and other waste material;

(3) Prohibit the placing or storage of unsightly material or vehicles of any kind.

**Sec. 16-B-19. Office building.**

Each travel trailer park shall be provided with a building to be known as the office in which copies of all records pertaining to the management and supervision of the park, as well as all rules and regulations of the park, shall be kept, and such records, rules and regulations shall be available for inspection officials whose duties necessitate acquisition of the information contained therein.

**Sec. 16-B-20. Registration of occupants.**

(a) All travel trailer park owners or operators who have land under their control within the city where travel trailers are parked either temporarily or permanently, shall register each tenant and include:

(1) The full name and address of the owner and occupant of the travel trailer, and the full name and address of the registered owner, if different from the occupant;

(2) The location of the travel trailer and the date of its arrival;

(3) The license number and state issuing such number or any other serial number or identifying date;

(4) The color and material construction of the travel trailer;

(5) The make and length of the travel trailer;

(b) The park shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register. The register record for each occupant registered shall not be destroyed for a period of three years following the date of departure of the registrant from the park. (Ord. of 9-22-59, §4)

**Secs. 16-B-21 - 16-B-26. Reserved.**

**DIVISION 2. LICENSE**

**Sec. 16-B-27. Required.**

It shall be unlawful for any person to maintain or operate, within the limits of the city, any travel trailer park unless such person first obtains a license therefore. (Ord. of 9-22-59, §3)

**Sec. 16-B-28. Application.**

Applications for a travel trailer park license shall be filed in triplicate with the City Council. Applications shall be in writing, signed by the applicant, and shall contain the following:

- (1) The name and address of the applicant;
- (2) The location and legal description of the travel trailer park;
- (3) A complete plan of the travel trailer park showing compliance with this article;
- (4) Plans and specifications of all buildings and other improvements constructed or to be constructed within the travel trailer park; and
- (5) Such further information as may be requested by the City Council to enable it to determine if the travel trailer park will comply with all other requirements.

**Sec.16-B-29. Investigation.**

The city administrator and the city planning and zoning commission shall investigate the applicant for a license required by this division, inspect the proposed plans and specifications and make a report to the City Council concerning such applicant and include therein their recommendations relative to the issuance of a license. If the travel trailer park is in compliance with all the provisions of this article and all other applicable provisions of this Code, city ordinances or state statutes, the City Council may approve the application, and in the case of proposed parks, make such approval contingent upon the completion of the park according to the plans and specifications submitted with the application.

**Sec.16-B-30. Fees.**

The annual license fee for each travel trailer park permit shall be one hundred dollars (\$100.00). Renewal shall be required one year

following date of issuance. (Ord. of 9-22-59, §3)



**Sec.16-B-31. Issuance.**

Upon approval by the City Council of the application for a license required by the provisions of this division, the city secretary shall issue such license.

**Sec. 16-B-32. Transfer fee.**

Upon application for a transfer of a license issued under the provisions of this division, the City Council may issue a transfer upon payment of a one hundred dollar (\$100.00) transfer fee.

**Sec. 16-B-33. Display.**

The license certificate issued under the provisions of this division shall be conspicuously posted in the office of or on the premises of the travel trailer park at all times. (Ord. of 9-22-59, §3)

**Sec. 16-B-34. Revocation.**

The City Council may revoke any license issued under this division in case any of the applicable provisions of this Code, state law or city ordinance, rule or regulation are violated. Before the license may be revoked, the City Council must give a ten (10) day notice to the holder of the license and hold a hearing thereon. After the license has been revoked, the license may be reissued if the reasons for such revocation have been duly corrected.

**Secs. 16-B-35 - 16-B-42. Reserved.**

**DIVISION 3. PHYSICAL REQUIREMENTS**

**Sec. 16-B-43. Compliance.**

Each travel trailer park established or operated within this city shall conform to the provisions of this division. (Ord. of 9-22-59, §6)

**Sec. 16-B-44. Water supply and sanitary sewer.**

Every travel trailer park shall have city water connections furnishing an ample and adequate supply of water and shall be connected with the sanitary sewer and adequate provisions shall be made for the collection and removal of waste and garbage. (Ord. of 9-22-59, §5)

Cross Reference - Utilities, Ch. 27.

**Sec. 16-B-45. Drainage.**

Each travel trailer park shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.

**Sec. 16-B-46. Plumbing generally.**

All plumbing installations, alterations or repairs in travel trailer park shall be done in accordance with the provisions of the plumbing code and ordinances of the city.

Cross Reference - Plumbing and gas, Ch. 20.

**Sec. 16-B-47. Electrical work generally.**

All electrical work shall be done in conformity with the National electrical code, the ordinances of the city and in compliance with the rules and requirements of the National Board of Fire Underwriters for installation of electric wiring and apparatus, known as the National Electrical Code. (Ord. of 9-22-59, §6)

Cross Reference - Electricity, Ch. 10.

**Sec. 16-B-48. Fire protection.**

Every travel trailer park shall be equipped at all times with fire extinguishing equipment in good working order of such type, size and number and so located within the park as to satisfy applicable reasonable regulations of the fire department. No open fire shall be permitted at any place which may endanger life or property and no fire shall be left unattended at any time. (Ord. of 9-22-59, §7)

Cross Reference - Fire protection and prevention, Ch. 11.

**Sec. 16-B-49. Setbacks.**

(a) The minimum setback from front property lines shall be to conform to the existing building line within the block, but in no case shall the setback be less than fifteen (15) feet.

(b) The minimum setback from an interior lot line shall be five (5) feet.

(c) The minimum setback from the alley line shall be five (5) feet. (Ord. of 9-22-59, §6)

**Sec. 16-B-50. Minimum lot size.**

Travel trailer lots shall be provided with a minimum of one thousand (1,000) square feet for each lot, which shall be at least twenty (20) feet wide and fifty (50) feet in depth and be clearly defined. (Ord. of 1-15-80, Art. IV)

**Sec. 16-B-51. Streets.**

All travel trailer lots shall abut upon a public street of not less than twenty-eight (28) feet in width which shall have unobstructed access to another public street, alley or highway. All streets shall be hard-surfaced, well- marked in the daytime and lighted at night. The minimum quality of such street surface shall be specified by the city's subdivision ordinance.

Cross Reference - Streets and sidewalks, Ch. 23.

**Sec. 16-B-52. Walkways.**

Walkways not less than two (2) feet wide shall be provided from the travel trailer lots to the service buildings and shall be hard-surfaced and well-marked in the daytime and lighted at night.

**Sec. 16-B-53. Additional construction.**

It shall be unlawful for any person operating a travel trailer park or occupying a travel trailer to construct or permit to be constructed in such park, or in connection therewith, any additional structure, building, storage shed or shelter in connection with or attached to a travel trailer, except for porches or decks.

(1) Strength of the materials and structure shall meet the minimum standards of the city building code;

(2) Capable of being dismantled when moved;

(3) Completely dismantled and removed from the site at the time the travel trailer to which it is an accessory is moved;

(4) Finish and appearance shall be as nearly as possible the same

as the travel trailer to which it is an accessory;

(5) Length must not exceed the length of the travel trailer on which it is an accessory.

**Sec. 16-B-54. Location in City Limits.**

There shall be no travel trailer located within one hundred (100) feet of Highway 67, Highway 83, and Highway 158 from the City Limits of each highway entrance through the City on each highway to the City Limits Sign of each highway on the other end of the highway.

**Sees. 16-B-55 - 16-B-65. Reserved.**

ARTICLE III. LOCATION OUTSIDE PARKS

**Sec. 16-B-66. Prohibited on public ways.**

It shall be unlawful for any person to park any travel trailer of any kind on any street, alley, highway or other public place within the corporate limits of the city. (Ord. of 9-22-59, §2)

**Sec. 16-B-67. Permit required.**

No person shall park, use or occupy, or permit to be parked, used or occupied, any travel trailer for more than forty-eight (48) hours on the premises of any occupied dwelling, or for more than twenty-four (24) hours on any lot which is not a part of the premises of an occupied dwelling, unless a permit therefor has first been obtained. (Ord. of 9-22-59, §2)

**Sec. 16-B-68. Application.**

(a) Application for a permit required by the provisions of this article shall contain the street and number of the occupied dwelling; the name of the occupant of the dwelling and his permission to locate such travel trailer on such premises; a statement of the nature and location of sanitary facilities and the permission of the occupant of the dwelling house for their use; and a statement that all waste water from travel trailer sinks will be emptied into a proper sewer-connected fixture.

(b) Application for a permit to locate a travel trailer on a vacant lot

shall contain the street with the name and approximate distance from the nearest intersection; a statement of the nature and location of sanitary facilities; and a statement that all waste water from the mobile home or travel trailer will be emptied into a properly connected fixture. (Ord. of 9-22.59, §2)

**Sec. 16-B-69. Where obtained.**

Permits required by the provisions of this article may be obtained from the office of the city secretary. (Ord. of 9-22-59, §2)

**Sec. 16-B-70. Fee.**

Permit Fees shall be approved by the City Council and kept on file in the City Secretary's office. (Ord. of 9-22-59, §3)

**Sec. 16-B-71. Consent required.**

Permits required by the provisions of this article shall be granted only upon the written consent of the owner, his legal agent or the lessee of the premises upon which the travel trailer is to be located. (Ord. of 9-22-59, §2)

**Sec. 16-B-72. Certain toilets prohibited.**

The use of built-in water closets not connected to an approved private or public system or chemical toilets in a travel trailer located within the city is prohibited. (Ord. of 9-22-59, §2)

**Sec. 16-B-73. Sewage disposal.**

The use of travel trailer plumbing fixtures is prohibited unless such fixtures are connected to the city sewer. (Ord. of 9-22-59, §2)

**Sec. 16-B-74. Proximity to structures.**

No travel trailer shall be parked, used or occupied within twenty (20) feet of any structure. (Ord. of 9-22-59, §2)

**Sec. 16-B-75. Reserved**

PAGES RESERVED

## Chapter 17

### OFFENSES

#### **Sec. 17-1. Reserved.**

#### **Sec. 17-2. Giving false name and address to officers prohibited.**

It shall be unlawful for any person when given a written promise to appear, or given a written notice by any police officer to appear before the municipal court of the city to answer for an offense against any law of this state, sections of this Code or any ordinance of the city, to give an assumed or fictitious name or a false place of residence or address, or any other than his true name and the true place of his residence or address, upon the request of such officer.

#### **Sec. 17-3. Discharge of weapons.**

No person shall fire or discharge any gun, revolver, pistol or other dangerous weapon of any kind in the city.

**Cross reference** - Discharge of weapons at Ballinger Municipal Lake, § 17.5-19.

#### **Sec. 17-4. Reserved.**

#### **Sec. 17-5. Trespass prohibited.**

It shall be unlawful for any person to enter into or to go upon the premises of any other person without first securing the consent, express or implied, of the owner of such premises, his agent or attorney, or other actual bona fide occupant of such premises. A person going into or upon any business premises during the regular hours of such business shall be presumed to be there by invitation. Any person other than the owner or bona fide occupant of a business premises going into or upon any business premises at any hour other than the regular business hours of such business shall be presumed not to be at such premises by invitation, express or implied.

**State law reference** - Criminal trespass, V.T.CA Penal Code, § 30.05.

## Sec. 17-6. Illegal Smoking Products.

**1. Enactment.** The following provisions are adopted as the illegal Smoking Ordinance of the City of Ballinger and shall be codified as Chapter 17 Offenses, 17-6 Illegal Smoking Products in the Code of Ordinances of the City of Ballinger to read follows:

a. Purpose.

The purpose of this article is to prohibit the use, possession, sale, ingestion or smoking of illegal smoking products and ingestion devices, as hereinafter defined, within the city limits of the City of Ballinger, Texas.

b. Definitions.

"Person" shall mean an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

"Illegal Smoking Product" shall mean any substance, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which includes anyone or more of the following chemicals:

(a) Salvia divinorum or Salvinorum A: all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts;

(b) 2-(1 R, 3S)-3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl); phenol (also known as CP47, 497) and homologues;

(c) (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-01) (also known as HU-211 or Dexanabinol):

(d) I-Pentyl-3-(1-naphthoyl) indole (also known as JWH 018); or

(e) Butyl-3-(1-naphthoyl) indole (also known as JWH-73).

"Ingestion Device" shall mean equipment, a product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

(a) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(b) a water pipe;

(c) a carburetion tube or device;



- (d) a smoking or carburetion mask,
- (e) a chamber pipe;
- (f) a carburetor pipe;
- (g) an electric pipe;
- (h) an air-driven pipe;
- (i) a chillum;
- (j) a bong; or
- (k) an ice pipe or chiller.

c. Sell, Offer, Gift, Display or Possession of Illegal Smoking Product.

It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell or offer for sale any illegal smoking product, as defined herein.

d. Use or Possession of Ingestion Devices.

It shall be unlawful for any person to use or possess with intent to use an ingestion device to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.

e. Defense.

It shall be a defense to a violation of this article that any act described in this chapter is under and pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

f. Violation and Penalty.

Any person, as defined herein, violating any of the provisions of this ordinance shall be guilty of a Class C misdemeanor upon conviction and shall be subject to a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense. An offense committed before the effective date of this ordinance is governed by prior law.”

**2. Conflict and Repeal.** All ordinances of the City of Ballinger, Texas in conflict with the provisions of this ordinance shall be, and the same are, hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to conflict with the Texas Controlled Substance Act, or any other state and/or federal law governing the same.

**3. Severability.** The provisions of this ordinance are declared to be severable. If any section, sentence, clause or phrase of the ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this

ordinance, but they shall remain in full force and effect; it being the legislative intent that this ordinance shall remain in effect notwithstanding the validity of any part.

**4. Open Meetings.** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Local Government Code.

**5. Effective Date.** This Ordinance shall take effect immediately upon its adoption and enactment by the City Council and publication as required by the Texas Local Government Code. (Ord. 11-15-2010)

PAGES RESERVED



Chapter 17.5  
PARKS AND RECREATION

Art. I. In General, §§ 17.5-1 -17.5-15

Art. II. Ballinger Municipal Lake, §§ 17.5-16 -17.5-40

ARTICLE I. IN GENERAL:

**Sec. 17.5-1 - 17.5-15. Reserved.**

ARTICLE II. CITY PARKS AND BALLINGER MUNICIPAL LAKE  
AREA

**Sec. 17.5-16. Definitions.**

The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City:* The City of Ballinger, Texas, and all employees and agents authorized to act on its behalf. <sup>9</sup>

*Park / parks:* City owned, and city maintained, areas designated for public use for recreational use. Including but not limited to Ballinger City Park, Gore Park, and the Ballinger Municipal Lake. (Ord. amendment 8-2008)

*Lake:* The Ballinger Municipal Lake.

*Lake area:* The area inclusive of the Ballinger Municipal Lake, the old Ballinger Lake, and all city-owned land adjacent thereto.

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**Editor's note** -Inclusion of an ordinance of May 6,1985, as Ch. 17.5 has been at the editor's discretion. Said ordinance enacted a new chapter, Ch. 15-B, which the editor has renumbered in order to retain the alphabetical arrangement of chapter titles. Previously, regulations concerning Lake Ballinger were contained In Ch. 15, Which derived from and ordinance of Aprt1 0, 1973. An ordinance of Oct. 15, 1984, established regulations for Ballinger Municipal Lake and Lake Ballinger. Both ordinances have been treated as having been superseded by the provisions of Ch. 17.5.

**Charter reference** - Department of parks and recreation, §§ 12.01, 12.02.

Cross references - Posting bills in public parks, § 3-23; amusements, ch. 5; consumption of alcoholic beverages at City Park, § 4-2.

**‡Editor's note** - Fees for use of the community center are set by ordinance. The schedule of charges is on file in the office of the city secretary.

Restricted areas:

(1) The water line within two hundred (200) feet of the dam intake.

(2) The area within two hundred (200) feet of any designated public boat landing. (Ord. of 5-6-85)

**Sec. 17.5-17. Commercial establishments.**

Commercial establishments on the lake will be governed by individual contract with the city. (Ord. of 5-6-85)

**Sec. 17.5-18. Public activity.**

(a) No public activity of any kind is permitted in the restricted areas defined in section 17.5-16.

(b) Identification signs designating areas and regulations will be posted at the city parks, around the lake area, and the users of the lake area shall comply with such posted regulations. (Ord. of 5-6-85) (Amended 8-2008)

(c) Unauthorized removal, defacing or damaging signs posted by the city shall be a Class C misdemeanor. (Ord. 8-2008)

(d) Willful damage or destruction to city owned property shall be a Class C misdemeanor. (Ord. 8-2008)

**Sec. 17.5-19. Firearms; weapons; explosives,**

The possession of loaded firearms, ammunition, loaded projectile-firing devices, bows and arrows, crossbows and explosives of any kind is prohibited in the lake area unless they are in the possession of a state or local law enforcement officer on official business. (Ord. of 5-6-85)

**Cross reference** - Discharge of weapons, § 17-8.

**Sec. 17.5-20. Fees.**

**(a) The following rates shall be charge for campsites as a use fee for persons camping in the City Park and Lake Park:**

**The charges for the use of the Lake Park are:**

**(1) Fifteen (\$15.00) dollars per night for camper space rental at the City Park for spaces with water and electric;**

**(2) Fifteen (\$15.00) dollars per night for camper space rental at the Lake Park for spaces with water only;**

**(3) Fifteen (\$15.00) dollars per night for camper space rental for**

**Lake Park spaces with water and electricity;**

**(b) The rates set out above or any changes thereto must be paid to the city prior to such camping.**

**(c) The rates set out above may be amended from time to time by the city council. (Ord. 6-10-75 amended 5-6-85)**

**Sec. 17.5-21. Fishing**

(a) Fishing is permitted along Elm Creek within the City Park, along the Colorado River within Gore Park and all areas of the lake except those restricted areas defined in section 17.5-16. (Amended 8-2008)

(b) All organized groups must contact the city for permission to hold a fishing tournament before such event is held. (Ord. of 5-6-85)

**Sec. 17.5-22. Swimming, etc.**

(a) Swimming and diving within the allowed posted diving area is allowed at the Ballinger City Swimming Pool at one's own risk under the established posted rules at the City Swimming Pool. Anyone who fails to comply with the established posted rules may be removed or restricted from the Ballinger City Swimming Pool area. Unauthorized access to the Ballinger City Swimming Pool area is a Class C Misdemeanor. (Amended 8-2008)

(b) At the Municipal Lake Swimming, diving, snorkeling or scuba diving, surf boarding and skiing at one's own risk is permitted, except in restricted areas defined in section 17.5-16.

(c) Water skiing and surf boarding, where permitted at City Lake, shall be subject to the following regulations:

(1) All persons directly engaged in skiing or surf boarding shall wear an approved life jacket at all times.

(2) Boats towing persons engaged in skiing or surf boarding shall approach no nearer than two hundred (200) feet to the shore or to any other boat dock or fisherman, except when leaving or approaching a landing dock. (Ord. of 5-6-85)

**Sec. 17.5-23. Camping.**

(a) Camping is permitted only at cited areas and/or areas designated by the city for City Parks and the City Lake Areas.

(b) Camping at one or more campsites at the city Parks or lake area for a period longer than seven (7) consecutive days is prohibited without the written permission of the city. Written permission is also required to camp in

excess of seven (7) days during any thirty-day period.

(c) The placement of camping equipment on a campsite or intermittent personal appearance at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited without the written permission of the city.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the city is prohibited.

(e) Campers shall keep their campsites free of trash and litter during the period of occupancy and shall clean their campsites and remove all personal equipment upon departure.

(f) Campsites will be provided on a first-come/first-served basis.

(g) No reservations for campsites will be accepted.

(h) Camping fees will be collected by the park manager, or his designated representative, either at night before closing the gate, or the next morning, at his discretion. Anyone paying by check will be required to furnish proper identification. Credit cards shall not be accepted and those paying by cash are responsible for having the proper change.

(i) Horseplay or any other actions which might cause someone to be injured or which might be offensive to other guests at the park shall not be allowed.

(j) Absolutely no littering will be tolerated nor will visitors to the park be allowed to waste utilities. Those observed doing either will be asked to immediately stop the littering or waste. If they refuse to do so, they will be asked to leave the park area. Anyone refusing shall immediately be reported to the police and shall be prosecuted for a violation of this article. (Ord. of 5-6-85)

(k) Parking on the grassy areas is not permitted and is considered to be a class C misdemeanor parking violation. (Amendment 8-2008)

#### **Sec. 17.5-24. Pollution; garbage.**

(a) Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated in the parks or lake area and incidental to authorized recreational activities shall be either removed from the lake area or deposited in receptacles provided for that purpose. The improper disposal of such wastes is prohibited.

(b) The use of refuse containers or other refuse facilities for dumping or disposing of household or commercial garbage, trash, rubbish, debris, sewage, dead animals or litter of any kind brought onto the lake area is prohibited. (Ord. of



5-6-85) (Amended 8-2008)

**Cross reference** - Littering generally, § 13-2.

**Sec. 17.5-25. Fires.**

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment or hand portable containers, shall not be carried onto or stored within the lake area without written permission of the city.

(b) Fires shall be confined to those areas designated by the city and shall be confined to fireplaces, grills, or other facilities designed for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure.

(c) The gathering of wood is prohibited without written permission of the city, except for the gathering of dead material on the ground for use in designated recreation areas. (Ord. of 5-6-85)

**Sec. 17.5-26. Control of animals.**

(a) No person shall bring or allow horses, cattle or other livestock in the parks and lake area except in areas designated by the city. (Amended 8-2008)

(b) No person shall bring dogs, cats or other pets into camping and picnic areas unless penned, caged or on a leash under six (6) feet in length, or otherwise under physical restraint at all times.

(c) Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(d) Allowing unauthorized livestock to enter upon or to be upon the lake area and failing or refusing to remove unauthorized livestock from such lands when requested by the city are prohibited. (Ord. of 5-6-85)

**Sec. 17.5-27. Hours; noise.**

(a) The city may establish and post a schedule of visitation hours and/or restrictions on the public use of the lake area or portion of the parks and lake area. The city may close or restrict the use of the parks and lake area or portion thereof when necessitated by reason of public health, public safety, maintenance or other reasons in the public interest. Entering or using the lake area in a manner which is contrary to the schedule of visiting hours, closure or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10:00 p.m. and 6:00 a.m. Excessive noise during such times which

unreasonably disturbs persons is prohibited.

(c) The operation or use of any audio or other noise-producing device, including but not limited to communications media and motorized equipment or vehicles, in such a manner as to unreasonably annoy or endanger persons is prohibited.

(d) The hours of denied public access to the parks is between 10:00 p.m. and 6:00 a.m. The city maintains the right to lock the gates to the parks and lake areas. If the city parks or lake area gates are locked, prior to locking the gates, the park manager will ask everyone not in a designated campsite to immediately leave. Anyone refusing to leave or who becomes a problem to the manager will be reported to the police. At the City Lake Camp ground, any camper having an emergency during the night and needing to get out of the park will inform the manager at the manager's residence. The gates will be opened at 6:00 a.m. on weekends and holidays and at the discretion of the park manager at other times. (Ord. of 5-6-85) (Amended 8-2008)

#### **Sec. 17.5-28. Damaging public property.**

Destruction, injury, defacement, removal or any alteration of public property including, but not limited to natural formations, constructed facilities (including the dam and all facilities connected therewith) and vegetative growth is prohibited and is a Class C Misdemeanor. (Ord. of 5-6-85) (Amended 8-2008)

#### **Sec. 17.5-29. Unauthorized structures.**

The construction, placing or continued existence of any structure of any kind under, upon, in or over the lake area, lands or waters is prohibited. (Ord. of 5-6-85)

**Cross reference** - Obstructing public property, § 23-3.

#### **Sec. 17.5-30. Interference with city employees.**

(a) Any questions and/or concerns about these policies or anything else concerning the operation of the city parks and the Ballinger Municipal Lake Park should be brought to the attention to the city administrator.

(b) Interference with any city employee in the conduct of his or her official duties pertaining to the administration of the regulations in this article is prohibited. It is a violation to fail to comply with a lawful order directed by any city employee in the performance of his or her official duties pertaining to the administration of these regulations. (Ord. of --85) (Amended 8-2008)

#### **Sec. 17.5-31. Picnicking.**

Picnicking is permitted in all camping areas designated by the city and in other specified areas as may be indicated by signs. (Ord. of 5-6-85)

**Sec. 17.5-32. Assumption of risk by users.**

Each person who uses the facilities of the parks or lake area, or who goes upon the parks or lake area for any purpose, does so at his own risk and assumes the risk of property damage, personal injury or loss of life by so doing. The city will not be liable in any instance for any injury or loss of life, or for any damage whatsoever. (Ord. of 5-6-85) (Amended 8-2008)

**Sec. 17.5-33. Exclusion of persons.**

The city acting through its authorized agents shall have the power to exclude any person from the parks or lake area when, in its opinion, such person is creating a nuisance, disturbing the peace, or creating a danger for themselves or others. (Ord. of 5-6-85) (Amended 8-2008)

**Sec. 17.5-34. Authority of police.**

(a) All ordinances of the city are enforceable and visitors are expected to abide by same.

(b) Police officers of the city shall have the same power and authority on the extraterritorial jurisdiction area of the Ballinger city lake area as they exercise within the corporate limits of the city. (Ord. of 5-6-85) (Amended 8-2008)

**Sec. 17.5-35. Boating; where permitted.**

Boating is permitted in all areas of the lake except those restricted areas defined in section 17.5-16 of this article. (Ord. of 5-6-85)

**Sec. 17.5-36. Application of water safety act.**

All boating activities conducted on the lake shall be governed by V. T. C.A. Parks and Wildlife Code, section 31.001 et seq., commonly known as the "Water Safety Act," which is hereby adopted and made apart of this article. (Ord. of 5-6-85)

**Sec. 17.5-37. Boats; rules of the road.**

(a) All boats and crafts of every description operated on the lake must observe the rules of the road as set forth by the bureau of navigation,

(b) The right-of-way of boats, rafts and devices shall be as follows:

(1) Rowboats, rafts and canoes shall have the right-of-way over all other craft.

(2) Sailboats shall have the right-of-way over all power boats.

(3) Outboard power boats shall have the right-of-way over inboard power

boats.

(c) Reckless driving, driving while under the influence of intoxicants and driving at speeds greater than is prudent for the conditions existing are strictly prohibited. When traveling nearer than two hundred (200) feet to the shoreline, boats shall not create a wake.

(d) It shall be unlawful for any person to operate a boat on the waters of the Ballinger Municipal Lake at a speed in excess of thirty-five (35) miles per hour.

(e) All operators of power boats, shall, upon approach to other boats, reduce speed and pass in such a manner as to prevent damage from their wake.

(f) Mooring to buoys in the lake is prohibited.

(g) Racing on the lake is prohibited.

(h) One approved life preserver for each passenger must be carried in all boats.

(i) All boats having sleeping facilities must be equipped with sanitary facilities in the form of marine toilets.

(j) No boat shall remain on the lake for a period in excess of seven (7) days.

(k) It shall be unlawful for any person to permit or allow any boat controlled by him to be occupied by more persons than its rated capacity.

(l) Blocking boat landings in any manner, other than the customary loading and unloading of boats, is prohibited.

(m) Any abandoned boat or any other craft found on the lake area may be impounded by order of the chief of police.

(n) All power boats, inboard and outboard, used upon the lake shall be equipped with an approved underwater exhaust, or with the manufacturer's original-type exhaust equipment.

(o) All other rules, as applicable to inland waterways, shall be observed at all times. (Ord. of 5-6-85)

### **Sec. 17.5-38. Vehicles.**

(a) This section pertains to all vehicles including, but not limited to,

automobiles, trucks, motorcycles, mini-bikes, trail bikes, dune buggies, all-terrain vehicles, bicycles and trailers, campers or any other such equipment.

(b) Vehicles of any kind or type shall not be allowed, except on authorized roads and parking areas.

(c) Vehicles shall not be parked in violation of posted restrictions, nor in such a manner as to endanger any lake property or environmental feature. The owner of any vehicle parked in violation of this section shall be presumed to have parked it, and unless rebutted such presumption will be sufficient to sustain a conviction.

(d) The operation of a vehicle off roadways is prohibited except at locations and times designated by the city.

(e) Vehicles shall be operated only in accordance with posted regulations.

(f) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any project, property or environmental feature.

(g) At developed areas, vehicles shall be used only for ingress and egress unless otherwise posted.

(h) Except as authorized by the city, no person shall operate any motorized vehicle without a proper and effective exhaust muffler, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust. (Ord. of 5-6-85)

**Sec. 17.5-39. Penalty.**

Any person who fails or refuses to comply with any section of this article shall be guilty of a misdemeanor and upon conviction may be punished as prescribed in section 1-12. Each act in violation of the provisions of this article shall constitute a separate violation and each day in which the violation continues shall be a separate violation. (Ord. of 5-6-85)

**Sec. 17.5-40. Necessity of compliance with other laws and ordinances.**

Nothing in this chapter excuses noncompliance with any other federal or state law or city ordinance which covers and regulates the Parks and Ballinger Municipal Lake area. This law is not intended to be repugnant to nor contradictory of any other such laws; consequently, if such other laws are more restrictive, or impose greater penalties, then they shall govern and control in those instances. (Ord. of 5-6-85) (Amended 8-2008)

**Sec. 17.5-41. Definition.**

There is hereby created in and for the City, a board which shall be known as the Parks Board. For the purpose of the article; the word "board" shall be deemed to mean the parks board of the city.

**Sec. 17.5-42. Appointment of Members.**

The Parks Board shall consist of five (5) members who shall be appointed by a majority vote of the City Council.

**Sec. 17.5-43. Qualifications.**

Each member of the board shall be a resident citizen, taxpayer, and a qualified voter within the city.

**Sec. 17.5-44. Terms of Members.**

The initial five (5) members of the Parks Board shall be determined by lot beginning January 1, 1987, and three (3) of such members shall be appointed for a two (2) year term and two (2) of such members shall be appointed for a one (1) year term; thereafter, three (3) members shall be appointed each odd numbered year and two (2) members shall be appointed each even numbered year.

Upon the expiration of the term of such members, thereafter their successors shall be appointed in like manner by the City Council, with each member to serve for a two (2) year term.

No member appointed to the Parks Board shall serve for more than two (2) consecutive terms and shall after serving two (2) consecutive terms, remain *off* the board for at least one (1) year before such member shall be eligible for appointment again to the board.

**Sec. 17.5-45. Filling of Vacancies.**

All vacancies occurring in the membership of the Parks Board shall be filled by appointment by a majority vote of the City Council.

**Sec. 17.5-46. Officers.**

The officers of the board shall be a chairman, vice-chairman and secretary. Beginning each fiscal year of February 1, the board shall by majority vote, appoint the member who shall act as chairman of the board. The vice-chairman and secretary of the board shall be elected by the board. The Chairman shall serve for one (1) year or until his successor is elected or qualified.

**Sec. 17.5-47. Ex Officio Member.**

In addition to the five (5) Parks Board members, the City Administrator shall serve as the ex officio member of the board, such City Administrator will not have the right to vote but shall have the right to participate fully in all discussions on matters coming before the board and shall be responsible for reporting to and advising the City Council with regard to matters coming before the board as reflected in the board's minutes and recommendations.

**Sec. 17.5-48. Meetings.**

The Parks Board shall hold meetings regularly beginning the 3rd Thursday in February and at least once each three (3) months or as often as deemed necessary. The board shall designate by majority vote the time and place for meetings. The chairman of the board or in the absence of the chairman, the vice chairman shall have the right to call a meeting of the board at the regular time and place within the city.

**Sec. 17.5-49. Minutes.**

The secretary of the Parks Board shall keep the minutes of the board's proceedings and shall submit same in a timely manner following each meeting to the City Administrator. The minutes and recommendations become part of the City Council informational reports.

**Sec. 17.5-50. Rules of Procedure; Quorum.**

The Parks Board shall adopt rules of procedure for the conduct of its meetings. A quorum of the board shall be three (3) members present at any meeting excluding the ex officio member thereof.

**Sec. 17.5-51. Removal of Members.**

Any member of the Board may be removed by the mayor, with the consent of the City Council, after public hearing and for cause assigned in writing.

**Sec. 17.5-52. Compensation.**

All members of the Parks Board shall serve without compensation other than compensation following from the performance of civic duty. The board shall not have any power and authority to incur any expenses or debt of any kind or character on behalf of the board or anyone acting for such board.

**Sec. 17.5-53. Power and Duties.**

The powers and duties of the Parks Board shall be as follows:

(a) Submit to the City Council an annual report of its operations together with such recommendations for the improvement of the Park and Recreation

Program as it may deem appropriate

(b) Endeavor to stimulate public interest in the development and maintenance of parks and playgrounds in a well-rounded community wide recreation program.

(c) Act in an advisory capacity in matters pertaining to public parks operated by the city.

(d) Assist in the planning of parks and promote and stimulate public interest therein and to that end, solicit to the fullest possible extent the cooperation of the school authorities and other private agencies.

(e) Submit to the City Administrator on or before July 1st of each year the board's recommendations to be considered for the proposed city budget.

(f) Endeavor to interpret the work of the Parks and Recreation Department and to promote close cooperation between the city and all private citizens, institutions and agencies to the end that all parks and recreation facilities and resources within or control by the city may make their maximum contribution to the public welfare.

**Sec. 17.5-54. Relationship to Park Department.**

The Parks Department is one of the departments of the City of Ballinger and all the employees of the Parks Department shall remain subject to the direct supervision and control of the City Administrator. The board shall not have any authority to give any order at any time to any employee of the Parks Department, the board herein created being an advisory board only.

**Sec. 17.5-55. Severance Clause.**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid such decision shall not affect the validity of the remaining portions of this ordinance.

**Sec. 17.5-56. Repeal.**

All other ordinances, parts of ordinances in conflict herewith are hereby repealed. (Ord. of 11-? -86, §§ 41-56)



PAGES RESERVED



## Chapter 18

### ITINERANT MERCHANTS, SOLICITORS, ETC.

Article I: In General  
Article II: License  
Article III: Permit  
Article IV: Garage Sales  
Article V: Temporary Sales Vendors  
Article VI: Second Hand Goods

#### ARTICLE I IN GENERAL

##### **Sec. 18-1. Purpose:**

This article is and shall be deemed an exercise of the police power of the state and of the City for the safety, comfort, convenience and protection of the City and its citizens. The provisions hereof shall be construed for the accomplishment of that purpose.

##### **Sec. 18-2. Definitions:**

The following word, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

**ITINERANT MERCHANT:** As used in this Chapter, itinerant merchant shall mean any person, his agent, employee, servant or representative, who engages in the City in any business which is transacted or conducted in the City on, in, upon, through or from any premises or space upon any nongovernmental property within the city for which no arrangement has been made which provides a legal right of occupancy for the purpose of conducting such business for a period of six (6) months or more.

**INTERSTATE COMMERCE:** Soliciting, selling or taking orders for or offering to take orders for any goods, wares, merchandise photographs, newspapers or magazines or subscriptions to newspapers or magazines which at the time the order is taken are in another state or will be produced in another state and shipped or introduced into this City in the fulfillment of such orders.

##### **Sec. 18-3. Hours of Operation:**

It shall be unlawful for any itinerant merchant or solicitor to engage in any business as defined above within the City between the hours of one-half hour before sunset and 9:00 a.m. the following morning, or 'at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

**Sec. 18-4. Entrance to Premises- Restricted:**

Itinerant merchants, vendors, solicitors, or peddlers are not allowed to sell merchandise or do business in the City of Ballinger's Parks or Lakes, in municipal buildings or on municipal properties without prior approval of the City Council.

It shall be unlawful for any itinerant merchant to enter upon any private premises when such premises are posted with a sign stating "No Peddlers Allowed," "No Solicitations Allowed" or other word to such effect.

**Sec. 18-5. Refusing to Leave:**

Any itinerant merchant who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return shall be deemed guilty of a misdemeanor.

**ARTICLE II: LICENSE**

**Sec. 18-6. License Required:**

A. Solicitation: It shall be unlawful for any person referred to as solicitor in this ordinance to go from house to house or from place to place in the City soliciting, selling, or taking orders for or offering to sell or take orders for any goods, wares, merchandise or services without having obtained a current license to do so from the City, in compliance with the terms of this Chapter.

B. Itinerant Merchant: It shall be unlawful for any itinerant merchant, as defined herein, his agents, employee, servant or representative to sell, offer or exhibit for the purpose of taking orders for sale thereof, any goods, wares, services or merchandise in the City without having obtained a current license to do so from the City, in compliance with the terms of this Chapter.

**Sec. 18-7. Exceptions:**

A. The provision of this article shall not apply to persons engaged in interstate commerce; provided, however, it shall be unlawful for persons engaged in interstate commerce to go from house to house or from place to place in the City without having first registered with the City secretary, giving the following information:

- (1) The name, home address and local address, if any, of the registrant.

- (2) The name and address of the person if any, that he or she represents or for whom orders are to be solicited or cleared.
- (3) The nature of the article or things which are to be sold or for which orders are to be solicited.
- (4) Whether the registrant, upon any sale or order, shall demand or receive or accept payment or deposit of money advance of final delivery.
- (5) The period of time which the registrant wishes to solicit or sell in the City.
- (6) Names and addresses of all sales personnel.
- (7) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing the application, which picture shall be two (2) inches by two (2) inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (8) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any City ordinance, and if convicted the nature of the offense and the punishment or penalty assessed therefor;

The registrant at the time of registration shall submit, for inspection by the City Secretary, written proof of his identity, which may be in the form of an automobile operator's license, identification letter or card issued to the registrant by the person for whom orders are to be solicited or cleared.

B. The provisions of this article shall not apply to sales made to dealers by commercial travelers or sales agents in the usual course of business, nor to sales made under authority and by order of law, nor to vendors of farm and dairy products sold by the producer.

#### **Sec. 18-8. Application for License:**

Every person required by this Chapter to have a license shall make written sworn application to the Police Department of the City for such license. The license application shall show

- (1) The name and address of the applicant.
- (2) The name and address of the person, firm or corporation, if any, that the applicant represents.
- (3) The authority of the applicant to act for the cause he purports to represent.

- (4) The type of goods, merchandise, wares, or services offered for sale.
- (5) The period of time the applicant wishes to sell or solicit in the City.

Said applicant must furnish a copy of his active Limited Sales and Use Tax Permit to complete the application information. In addition, the Police Department may require said applicant to furnish photograph, fingerprint identification, and references to complete the application information.

**Sec. 18-9. Fee for License:**

Fees paid for a license under this article shall be used for the purpose of defraying expenses incident to the issuing of said license. The fee paid for the license and specified periods for the length of the license will be set by the Council.

**Sec. 18-10. Bond for License:**

The application mentioned in section 18-8 of this article shall be accompanied by a bond in the penal sum of one thousand dollars (1,000.00), signed by the applicant and signed, as surety, by some surety company authorized to do business in the State, conditioned for the final delivery of goods, wares, merchandise, services, photographs, magazines and newspapers in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of said bond, at the time of delivery, and that may be discovered by such purchaser or customer within thirty (30) days after delivery, and which bond shall be for the use and benefit of all persons who may make any purchase or give any order to the principal on said bond, or to an agent or employee of the principal. In case the applicant is engaging in any activity mentioned in Section 18-6 of this article through one or more agents or employees, such person shall enter into only one bond in the sum of one thousand dollars (1,000.00) as above required, which bond shall be made to cover the activities of all its agents or employees. Action on such bond may be brought in the name of the City to the use or benefit of the aggrieved person.

**Sec. 18-11. Service of Process:**

Before any permit shall issue under this article, there shall also be filed with the City Secretary an instrument in writing, signed by the applicant under oath, nominating and appointing the City Secretary his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on the behalf of such applicant, and service of summons in any action brought upon the applicant's bond shall be deemed made when served on the City Secretary

**Sec. 18-12. Records:**

The City Police Department shall keep a full record of all licenses issued under the terms of this article.

**Sec. 18-13. Revocation and Suspension of License:**

The Chief of Police, upon investigation by the Police Department, is authorized to revoke the Itinerant Merchant's license of any person found to be misrepresenting or making false statements in regard to the product or service he is attempting to sell, his authority to sell such product or service, or if the conduct of such person during selling or delivery endangers the safety, health or property of the citizens of the City.

The License issued under this article may be suspended upon receipt by the Chief of Police of complaints by two (2) or more persons that any license holder has made misrepresentation or false statement as to the product or service he is attempting to sell or take orders for, his authority to make such solicitation, or that such license holder's conduct, in the belief of such persons making the complaints, endangers their safety, health or property. Upon suspension, the Chief of Police shall immediately investigate such complaints and he may revoke such license upon completion of his investigation, provided however, that notice of such revocation shall be mailed to licensee at the address given on licensee's application form. Said notice shall inform licensee that he may request in writing, within ten (10) days of his receipt of notice of revocation, a hearing before the City Council to determine whether his permit should be reinstated. Said hearing shall be held within thirty (30) day of the date of request for hearing.

**Sec. 18-14. License Display:**

Each person having a license issued under the provisions of this Chapter who operates solely and exclusively from a fixed business location within the City, shall prominently display the license at all times in a conspicuous place upon the premises of said fixed business location. Every person having a license issued under the provisions of this Chapter who goes from house to house or from place to place within the City shall carry the license upon their person and produce the license for inspection by any person so requesting.

**Sec. 18-15. Transfer or Assignment of License:**

No license issued under the provisions of this Chapter shall be transferable or assignable nor give authority to more than one person.

**Sec. 18-16. Penalty:**

Any person violating any provision of this Chapter or failing to observe any provision hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not more than two hundred dollars (\$200.00) and each and every day or fraction of a day during which this Chapter, or any part thereof, shall be violated, shall be deemed a separate offense and punishable as such. (Ord. of 05-08-89)

**Sec. 18-17. Reserved**

**ARTICLE III. PERMIT**

**Sec. 18-18. Required**

It shall be unlawful for any person to engage in business as a peddler within the city without first obtaining a permit to do so. (Ord. of 4-18-50, § 2)

**Sec. 18-19. Application**

Applicants for a permit required by this article shall file with the city clerk a sworn application in writing, in duplicate, on a form to be furnished by the city clerk, which shall give the following information:

- (1) The name and a description of the applicant;
- (2) The permanent home address and full local address of the applicant;
- (3) A brief description of the nature of the business and the goods to be sold;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time the application is filed and the proposed method of delivery;
- (7) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing the application, which picture shall be two (2) inches by two (2) inches showing the head and shoulders of the applicant in a clear and distinguishing manner;



(8) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any city ordinance, and if convicted the nature of the offense and the punishment or penalty assessed therefor;

(9) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or a deposit of money in advance of final delivery;

(10) The last five (5) municipalities wherein the applicant has worked before coming to this city; and

(11) Such other relevant information as may be required for the investigation of the applicant. (Ord. of 4-18-50 § 3)

**Sec. 18-20. Driver's License.**

At the time of filing an application for a permit required by this article, the applicant shall present his driver's license, if he has one, to the city clerk.

**Sec. 18-21. Application fee.**

At the time of filing an application for a permit required by this article, a fee of five dollars (\$5.00) shall be paid to the city clerk to cover the cost of investigating the facts stated therein.

**Sec. 18-22. False information.**

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit required by this article.

**Sec. 18-23. Fingerprints.**

At the time of making application for a permit required by this article, the applicant shall submit to fingerprinting by the chief of police.

**Sec. 18-24. Fee.**

Before any permit shall be issued under the provisions of this article, the applicant therefor shall pay a fee, based upon the duration of time he desires to engage in business in the city, as follows:

Per day	\$ 5.00
Per week	10.00
Per month	30.00
Per 3 months	50.00
Per 6 months	75.00

Per 12 months

100.00

(Ord. of 4-18-50, § 6)

**Sec. 18-25. Bond.**

(a) Every applicant, not a resident of the city, or who is a resident of the city and represents a firm whose principal place of business is located outside the state, shall file with the city clerk a surety bond running to the city in the amount of one thousand dollars (\$1,000.00), with surety acceptable to and approved by the mayor, conditioned that the applicant shall fully comply with all the applicable provisions of this Code, the ordinances of the city and state laws regulating and concerning the business or peddling and guaranteeing to any citizen of the city doing business with such peddler that the property purchased will be delivered according to the representations of such peddler. Action on such bond may be brought in the name of the city to the use or benefit of the aggrieved person.

(b) If the applicant is an agent, employee, canvasser or solicitor of a corporation authorized to do business in this state or registered under the fictitious name act of the state, such corporation or fictitious name business may furnish one bond in the amount of one thousand dollars (\$1,000.00) for any and all of its agents, employees, canvassers or solicitors. (Ord. of 4-18-50 § 4)

**Sec. 18-26. Service of process.**

Before any permit shall issue under this article, there shall also be filed with the city clerk an instrument in writing, signed by the applicant under oath, nominating and appointing the city clerk his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on the behalf of such applicant, and service of summons in any action brought upon the applicant's bond shall be deemed made when served on the city clerk.

**Sec. 18-27. Investigation.**

Upon receipt of an application for a permit required by this article, the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good. The chief of police shall complete his investigation within one week of receiving the application.

**Sec. 18-28. Denial.**

If, as a result of investigation, the applicant's character or business responsibility is found to be unsatisfactory, the chief of police shall endorse on

the application his disapproval and his reasons for the same, and return the application to the city clerk, who shall notify the applicant that his application is disapproved and that no permit will be issued.

**Sec. 18-30. Issuance**

If, as a result of investigation, the character and business responsibility of the applicant are found to be satisfactory, the chief of police shall endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return the permit along with the application to the city clerk, who shall, upon payment of the required fee, deliver the permit to the applicant.

**Sec. 18-31. Record**

The city clerk shall keep a permanent record of all permits issued under the provisions of this article.

**Sec. 18-32. Display**

Every peddler having a permit issued under the provisions of this article and doing business within the city shall display her permit upon the request of any person, and failure to do so shall be deemed a misdemeanor.

**Sec. 18-33. Duration.**

Every permit issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit be issued for a period of time in excess of twelve (12) months.

**Sec. 18-34. Revocation.**

Any permit issued under the provisions of this article may be revoked by the city council for the violation by the permittee of any applicable provision of this Code, state law or city ordinance, rule or regulation.

**ARTICLE IV GARAGE SALES**

**Sec. 18-35. Permitted in residential areas.**

Occasional or garage sales will be permitted in R-1 and R-2 and Districts and other districts where the primary use of property is residential.

**Sec. 18-36. Conditions under which permitted.**

(A) Only the sale of tangible personal property at retail, by the property owner, who does not hold himself out as engaging, nor does habitually engage, in the business of selling such tangible personal property at retail, shall constitute a garage or occasional sale under this Chapter.

(B) There shall not be more than six (6) sales per year by the same property owner or on the same premises. Such sales may last a maximum of three (3) consecutive calendar days.

(C) Sales by churches, charities and fraternal organizations for the purpose of raising funds may be held on property other than that owned by the organization and tangible personal property donated by members or others may be sold.

**Sec. 18-37. Penalty.**

Any person violating any provision of Title V, Section 18 of the Official Code of the City shall be guilty of a misdemeanor punishable by a fine not exceeding Two hundred (\$200.00) Dollars.

**Sec. 18-38. Each day separate offense:**

Each day any provision of Chapter 18, section 18-35 through 18-39 of the Official Code of the City is violated shall constitute a separate offense.

**Sec. 18-39. Severability.**

The provisions of this Chapter are declared to be severable and if any sections, sentence, clause or phrase of this Chapter shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Chapter, but they shall remain in effect, it being the legislative intent of this Chapter that this Chapter shall stand notwithstanding the invalidity of any part. (Ord. of 12-04-89).

**Sec. 18-40 - 18-49 Reserved**

**ARTICLE V: TEMPORARY SALES VENDORS**

**Sec. 18-50. Definitions.**

For the purpose of this chapter, the following words, terms, and phrases shall have the meanings ascribed to them in this section, except where the context indicates a different meaning.

Temporary Sales Vendor means any person who sells or offers for sale merchandise or services from a tent, vehicle, or place which is not a permanent building for any period of time.

Person means any individual, firm, association, partnership, company, society, corporation, group or entity of any nature.

**Sec. 18-51. Exempt classification**

The provisions of this chapter concerning permit requirements shall not apply to persons who come within any of the following classifications:

- (1) Peddlers selling to or soliciting orders from retail business houses only.
- (2) Peddlers going to a house or place at the express invitation of the owner or occupant of such house or place.
- (3) Persons engaged in a business or activity which the state or federal government has exclusive authority to regulate
- (4) Persons distributing or selling newspapers, pamphlets, handbills or other written or printed matters sold or distributed for the purpose of disseminating news, information or religious materials.
- (5) Persons living in Ballinger in residential zoning districts who hold garage sales which consist of the sale of used domestic merchandise, for two days or less duration, no more than twice a year.
- (6) Governmental entities.
- (7) Chamber of Commerce or other civic sponsored seasonal activities, i.e. festivals, farmers markets.

**Sec. 18-52. Permit required.**

Except as otherwise provided in section 18-41 above, it shall be unlawful for any person to engage in the business of temporary sales as defined in Section 18-40 within the City of Ballinger without having first obtained a permit therefor as hereinafter provided.

**Sec. 18-53. Application for Permit.**

Applicants for a temporary sales vendor permit under this chapter shall make a sworn application to the City of Ballinger upon forms to be furnished by the City. Each application shall give the following information:

- (1) Full name and all information contained on driver's license of the applicant and each agent or employee working under the permit.
- (2) Permanent home address and present local address of the applicant.
- (3) Name and home office address of applicant's employer.
- (4) If the applicant owns or uses a motor vehicle in connection with his business, a description of such motor vehicle and the license number of same.
- (5) A brief description of the merchandise or services to be sold.
- (6) A statement as to whether or not the applicant has been convicted of any felony and the disposition of same.
- (7) A site plan to be drawn by the applicant, not to scale, which need only show the location to be used by the temporary sales vendor in relationship to streets, alleys, and other buildings and uses. This site plan will be used as the basis for the issuance of the permit.
- (8) Proposed duration of the temporary sales operation.
- (9) Written permission of the owner of the land or building where the sales are to take place.
- (10) A copy of the applicant's Texas limited sales and use tax permit.

**Sec. 18-54. Processing Fee.**

Each application shall be accompanied with a payment of a processing fee of \$75.00. An additional \$10.00 charge shall be charged for each agent in excess of two. These fees shall be applied to the expenses incurred in the processing, investigation, and enforcement of the ordinances applicable to this activity. Persons selling or offering for sale merchandise or services for the purpose of a periodic fund raising project for a nonprofit organization, such as a civic club, church or school organization, when the person selling in behalf of the organization receives no individual financial gain shall not be required to pay any fees. No more than one investigation charge shall be made for anyone location.

**Sec. 18-55. Investigation of Applicant.**

Each application or a copy thereof shall be referred to the City Administrator or authorized representative for investigation and approval of the proposed sales area with regard to the City zoning ordinance and code of ordinances, and to the Police Department for an investigation with regard to the

other requirements of this chapter. No permit shall be approved or issued for areas zoned 'R-1' (residential area-1) or 'R-2'(residential area-2).

**Sec. 18-56. Denial or Revocation or Permit - Reasons.**

Any application for a temporary sales vendor permit may be denied or such permit may be revoked for any of the following reasons:

- (1) Any misrepresentation or false statement contained in the application for permit.
- (2) A violation of any of the provisions of this chapter.
- (3) Conviction of any crime involving moral turpitude.
- (4) Conviction of any crime constituting a breach of peace, or a violation of any city ordinance or state law, when the incident constituting the basis of such crime occurred during the course of business as a temporary sales vendor.
- (5) Proposed operation would not comply with federal, state or local law, including zoning restrictions.
- (6) Failure to provide an adequate off-street parking area, which need not be paved, but sufficient in number to accommodate the number of vehicles being reasonably anticipated to be parked at any one time taking into consideration the type, size, and quantity of merchandise to be offered for sale, and in addition to those parking spaces required under the Zoning Ordinance for any existing business.
- (7) Block access or driveway
- (8) Failure to provide adequate trash containers for the proposed use.

**Sec. 18-57. Notification of Denial or Revocation of Permit.**

Upon the denial or revocation of a temporary sales vendor permit, the City Administrator shall notify in writing the applicant or permittee of the reason for such denial or revocation. The applicant or permittee shall have the right of appeal to the City Council upon the denial or revocation of the permit.

**Sec. 18-58. Duration of Permit.**

Each temporary sales vendor permit issued under the authority of this chapter shall be valid for the period of anticipated use of the applicant, but not to exceed five days from date of issuance or until revoked by the provisions of this

chapter. No permit shall be issued to the same vendor at the same location until a period of seven days has passed.

**Sec. 18-59. Display of Permit.**

Every temporary sales vendor who has secured a permit under the authority of this chapter shall keep a copy of the permit upon their person at all times and shall display the same upon the request of any city official, customer, policeman, or owner/occupant upon whose property the vendor has located.

**Sec. 18-60. Permit Not Transferable or Assignable.**

The permit issued under the authority of this chapter shall not be transferable or assignable.

**Sec. 18-61. Use of Permit by Another**

It shall be unlawful for any person other than the person to whom the permit was issued to display or otherwise use any other vendor's permit.

**Sec. 18-62. Selling of Merchandise on Public Streets, Alleys or Sidewalks**

It shall be unlawful for any person to display, sell or solicit for the sale of any merchandise upon or within any public street, alley or sidewalk. This section shall not prohibit a merchant from utilizing the sidewalks abutting their place of business for the temporary display of merchandise provided such display does not unreasonably interfere with vehicle or pedestrian traffic.

**Sec. 18-63. Trespassing.**

Any vendor who enters upon property owned, leased or controlled by another and willfully refuses to leave said property after having been notified by such owner or possessor of said property, or agent, to leave such property, shall be guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$200.00.

**Sec. 18-64. Violation of Chapter.**

Any person who violates or fails to comply with the provisions of any section of this chapter shall be guilty of a misdemeanor and upon conviction shall be punishable by fine not to exceed \$200.00, provided, however, that if a different penalty is specified in the section involved, that penalty there specified shall govern. (Ord. of 1-8-96)

**Sec. 18-65 - 18-69 Reserved**



## ARTICLE VI: SECONDHAND GOODS

### **Sec. 18-70. Penalty.**

Any secondhand goods dealer who fails or refuses to comply with any section of this chapter shall be guilty of a misdemeanor and upon conviction may be punished as prescribed in section 1-12. Each transaction in violation of the provisions of this chapter shall constitute a separate violation and each day in which the violation continues shall be a separate violation. (Ord. of 3-18-85, § 7)

### **Sec. 18-71. Compliance with other laws.**

Nothing in this chapter excuses noncompliance with any other federal or state law or city ordinance which covers and regulates the purchase, reporting, and sale of any secondhand good covered herein. This chapter is not intended to be repugnant to nor contradictory of any other such laws; consequently, if such other laws are more restrictive or impose greater penalties, then they shall govern and control in those instances. (Ord. of 3-18-85, § 8)

### **Sec. 18-72. Definitions.**

As used in this chapter:

*Person* shall mean any individual, firm, association, partnership, company, society, corporation, group or entity of any nature whatsoever.

*Secondhand goods* shall mean any article, material, item, fixture or other personal property of any type, kind or nature whatsoever, or any portion thereof, of which use had been made in any manner whatsoever. The term "secondhand goods" shall also include all merchandise purchased by a secondhand goods dealer for resale if not purchased from an authorized representative of the manufacturer or an authorized wholesaler for same. The term shall include, but not be limited to, crafted precious metals, mechanical tools, garden tools, utensils, fixtures, furniture, electrical appliances and supplies, business machines, televisions, stereos, video cassette recorders, video cameras, telephones, home computer components, television video game components, gas fittings, pipes and supplies, water fittings, bicycles, automobile or bicycle tires, casings, and inner tubes, any part, accessory or appliance of any automobile, motorcycle, bicycle or other vehicle, and any type of gun.

*Secondhand goods dealer* shall mean any person who engages, whether full-or part-time, in the business of buying, selling, trading, leasing, accepting for sale on consignment, accepting for deposit in pledge for any purpose, accepting for auction, or auctioning any secondhand goods. The term "secondhand goods dealer" shall specifically mean, but not be limited to, any pawnbroker, secondhand furniture dealer, secondhand automotive parts dealer, crafted

precious metal dealer, business machine dealer; and all other who habitually engage in the business of dealing with secondhand goods. (Ord. of 8-18-85, § 1)

**Sec. 18-73. Goods having tampered with serial numbers.**

A secondhand goods dealer may not knowingly purchase any secondhand good or article if any person has tampered with a serial number on the good or article. (Ord. of 3-18-85, § 6)

**Sec. 18-74. Purchases from minors.**

A secondhand goods dealer may not purchase any secondhand goods, articles, or other property from a person under eighteen (18) years of age unless such minor delivers to the dealer before the purchase a written statement from a parent or legal guardian of such minor consenting to the transaction, (Ord. of 3-18-85, § 6)

**Sec. 18-75. Dealers required to keep records.**

(a) Every secondhand goods dealer doing business or offering to do business within the city shall keep an accurate daily record, fairly and legibly written in ink, of each and every secondhand good purchased or deposited in pledge for any purpose in a well-bound book. This record shall include all of the following information.

- (1) An accurate and complete description in the English language of the secondhand goods or articles or things purchased or deposited;
- (2) The amount of money paid for said goods or articles or loaned thereon;
- (3) The date of purchase or deposit of any goods;
- (4) The name, residence address, nationality, sex, age, weight and height of the person selling or depositing the secondhand goods, articles or things;
- (5) The driver's license number and issuing state, or Texas department of public safety identification card number or military identification card number of the seller, as recorded by the dealer only upon being physically presented the driver's license or identification card by the seller; and
- (6) A certification by the seller that the information is true and complete.

(b) All entries required in said book shall be made at the time of purchase or deposit.

(c) No entries made in such book shall be obliterated, removed, erased, or defaced.

(d) The type of book and form used must contain all of the information specified in paragraph (a) above and must be approved by the chief of police. (Ord. of 8-18-85, §2)

**Sec. 18-76. Inspection of dealers' books and goods.**

The said books, as well as any secondhand good or article purchased or deposited, shall be kept in a secure place by the secondhand goods dealer and shall at all reasonable times be open to inspection by any peace officer of the city. (Ord, of 3-18-85, §8)

**Sec. 18-77. Retention of property.**

Before the eleventh day after a day on which a report required by this chapter is recorded, a secondhand goods dealer may not dispose of the secondhand good for which the report is made unless the secondhand goods dealer obtains the name, residence address, and description of the buyer of the property and retains this information record, which shall be made available for inspection by any peace officer of the city. (Ord. of 3-18-85, §4)

PAGES RESERVED

## Chapter 19

### PLANNING AND ZONING\*

- Art. I. In General, §§ 19-1 -19-15
- Art. II. Planning and Zoning Commission, §§ 19-16 -19-26
- Art. III. Flood Damage Prevention Ordinance, §§ 19-31 - 19-53
- Div. 1 Statutory Authorization, Findings of Fact, Statement Of Purpose, Methods of Reducing Flood Losses
- Div. 2 Definitions
- Div. 3 General Provisions
- Div. 4 Administration
- Div. 5 Provisions for Flood Hazard Reduction

#### ARTICLE I. IN GENERAL

**Secs. 19-1 - 19-15. Reserved.**

#### ARTICLE II. PLANNING AND ZONING COMMISSIONS\*

**Sec. 19-16. Created.**

There is hereby created and established for the city a planning and zoning commission. (Ord. of 12-6-45, § 1)

**Sec. 19-17. Composition.**

The planning and zoning commission shall be composed of five (5) members, all of whom shall be resident citizens, taxpayers and qualified voters of the city. (Ord. of 12-6-45, § 1)

**Sec. 19-18. Appointment.**

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\* **Charter reference** - Department of planning and zoning, art. 13.  
**Cross references** - Buildings, ch. 8; health and sanitation, ch. 14; streets and sidewalks, ch. 23; utilities, ch. 27; zoning, App. A; subdivisions, App. B. :J:  
**Cross reference** - Administration, ch. 2.

\* **Charter reference** - Department of planning and zoning, art. 13.  
**Cross references** - Buildings, ch. 8; health and sanitation, ch. 14; streets and sidewalks, ch. 23; utilities, ch. 27; zoning, App. A; subdivisions, App. B. :J:  
**Cross reference** - Administration, ch. 2.

The members of the planning and zoning commission shall be appointed by the mayor, subject to confirmation by the city council. (Ord. of 12-6-45, § 1)

**Sec. 19-19. Terms.**

Each member of the planning and zoning commission shall serve for a term of two (2) years. (Ord. of 12-6-45, § 1)

**Sec. 19-20. Removal.**

Any member of the planning and zoning commission may be removed by the mayor, with the consent of the city council, after public hearing and for cause assigned in writing. (Ord. of 12-6-45, § 1)

**Sec. 19-21. Filling vacancies.**

Vacancies occurring in the membership of the planning and zoning commission shall be filled for the unexpired term in the same manner as provided for original appointments. (Ord. of 12-6-15, § 1)

**Sec. 19-22. Compensation.**

The members of the planning and zoning commission shall serve without, compensation. (Ord. of 12-6-45, § 1)

**Sec. 19-23. Officers.**

The planning and zoning commission shall elect a chairman and a vice-chairman from its membership. (Ord. 12-6-45, § 2)

**Sec. 19-24. Personnel authorized.**

The planning and zoning commission shall have the power to employ such qualified persons as may be necessary for the proper conduct and undertakings of the commission and to pay for their services and such other necessary expenses; provided, however, the cost of such services and expenses shall not exceed the amount appropriated by the city council for the use of the commission. (Ord. of 12-6-45, § 2)

**Sec. 19-25. Rules, regulations.**

The planning and zoning commission shall have the power to make rules, regulations and bylaws for its own government, which shall conform as nearly as passable with those governing the city council and the same shall be subject to approval by the city council. Such bylaws shall include, among other items, provisions for:

- (1) Regular and special meetings open to the public;
- (2) Records of its proceedings to be open for inspection by the public;
- (3) Reporting to the city council and the public, from time to time and annually;  
and
- (4) Holding public hearings on its recommendations. (Ord. of 12-6-45, § 2)

**Sec. 19-26. Duties generally.**

The planning and zoning commission shall have the power, and it shall be its duty:

- (1) To make and recommend for adoption a master plan, as a whole or in parts, for the future development and redevelopment of the city and its environs;
- (2) To prepare a comprehensive plan and ordinance for zoning the city in accordance with chapter 288, Acts of the Regular Session of the Legislature, 1927 (articles 1011a to 1011j, Revised Civil Statutes); and Local Govt. 211.001 et seq.
- (3) To perform such other duties as may be prescribed by ordinance or state law.
- (4) To perform the duties of the Board of Adjustments, as may be prescribed in the Zoning Ordinance or state law, upon designation by the City Council. (Ord. of 10-2-95)

**Sec. 19-27 - 1930 Reserved**

Article III FLOOD DAMAGE PREVENTION ORDINANCE<sup>‡</sup>

DIVISION 1 Statutory Authorization, Findings Of Fact, Statement Of Purpose, Methods Of Reducing Flood Losses

**Sec. 19-31. Statutory authorization**

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City of Ballinger, Texas does ordain as follows:

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<sup>‡</sup> Flood Damage Ordinance 1990, amended 11-5-2007.

### **Sec. 19-32. Findings of fact**

(1) The flood hazard areas of the City of Ballinger are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

### **Sec. 19-33. Statement of purpose**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

### **Sec. 19-34. Methods of reducing flood losses**

In order to accomplish its purposes, this ordinance uses the following methods:



- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

## DIVISION 2 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

*ALLUVIAL FAN FLOODING* - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

*APEX* - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

*APPURTENANT STRUCTURE* – means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

*AREA OF FUTURE CONDITIONS FLOOD HAZARD* – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

*AREA OF SHALLOW FLOODING* - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is

unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*AREA OF SPECIAL FLOOD HAZARD* - is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

*BASE FLOOD* - means the flood having a 1 percent chance of being equaled or exceeded in any given year.

*BASE FLOOD ELEVATION (BFE)* – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

*BASEMENT* - means any area of the building having its floor subgrade (below ground level) on all sides.

*BREAKAWAY WALL* – means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

*CRITICAL FEATURE* - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

*DEVELOPMENT* - means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*ELEVATED BUILDING* – means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

*EXISTING CONSTRUCTION* - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

*EXISTING MANUFACTURED HOME PARK OR SUBDIVISION* - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

*EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION* - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*FLOOD OR FLOODING* - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters.

(2) the unusual and rapid accumulation or runoff of surface waters from any source.

*FLOOD ELEVATION STUDY* – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

*FLOOD INSURANCE RATE MAP (FIRM)* - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

*FLOOD INSURANCE STUDY (FIS)* – see Flood Elevation Study

*FLOODPLAIN OR FLOOD-PRONE AREA* - means any land area susceptible to being inundated by water from any source (see definition of flooding).

*FLOODPLAIN MANAGEMENT* - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

*FLOODPLAIN MANAGEMENT REGULATIONS* - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes

such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

*FLOOD PROTECTION SYSTEM* - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

*FLOOD PROOFING* - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*FLOODWAY* – see Regulatory Floodway

*FUNCTIONALLY DEPENDENT USE* - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*HIGHEST ADJACENT GRADE* - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*HISTORIC STRUCTURE* - means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior or;

(b) Directly by the Secretary of the Interior in states without approved programs.

*LEVEE* - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

*LEVEE SYSTEM* - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*LOWEST FLOOR* - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

*MANUFACTURED HOME* - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

*MANUFACTURED HOME PARK OR SUBDIVISION* - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

*MEAN SEA LEVEL* - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

*NEW CONSTRUCTION* - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

*NEW MANUFACTURED HOME PARK OR SUBDIVISION* - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

*RECREATIONAL VEHICLE* - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*REGULATORY 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 a designated height.

*RIVERINE* – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

*SPECIAL FLOOD HAZARD AREA* – see Area of Special Flood Hazard

*START OF CONSTRUCTION* - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*STRUCTURE* – means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

*SUBSTANTIAL DAMAGE* - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*SUBSTANTIAL IMPROVEMENT* - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

*VARIANCE* – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

*VIOLATION* - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR Chapter 1, Section 60.3(b)(5), (c)(4), (c) (10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program Regulations is presumed to be in violation until such time as that documentation is provided.

*WATER SURFACE ELEVATION* - means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### DIVISION 3 GENERAL PROVISIONS

#### **Sec. 19-35. Lands to which this ordinance applies**

The ordinance shall apply to all areas of special flood hazard with the jurisdiction of the City of Ballinger

#### **Sec. 19-36. Basis for establishing the areas of special flood hazard**

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for the City of Ballinger, Texas, Runnels County," dated February 16, 1990, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated February 16, 1990 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

#### **Sec. 19-37. Establishment of development permit**

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

#### **Sec. 19-38. Compliance**

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

#### **Sec. 19-39. Abrogation and greater restrictions**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **Sec. 19-40. Interpretation**

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

#### **Sec. 19-41. Warning and disclaimer or liability**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.



## DIVISION 4 ADMINISTRATION

### **Sec. 19-42. Designation of the floodplain administrator**

The appointed Floodplain Administrator is hereby appointed to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

### **Sec. 19-43. Duties & responsibilities of the floodplain administrator**

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1)** Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- (2)** Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3)** Review, approve or deny all applications for development permits required by adoption of this ordinance.
- (4)** Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5)** Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
- (6)** Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (7)** Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

**(8)** When base flood elevation data has not been provided in accordance with Division 3, Section 19-36, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Division 5.

**(9)** When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**(10)** Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by Section 65.12.

#### **Sec. 19-44. Permit procedures**

(1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Division 5, Section 19-47 (2);

(d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

(e) Maintain a record of all such information in accordance with Division 4, Section 19-43 (1);

(2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage;

(b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(c) The danger that materials may be swept onto other lands to the injury of others;

(d) The compatibility of the proposed use with existing and anticipated development;

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(h) The necessity to the facility of a waterfront location, where applicable;

(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

#### **Sec. 19-45. Variance procedures**

(1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this

ordinance.

(2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

(3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 19-44 (2) of this Division have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Division 1, Section 19-33).

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

[10) Prerequisites for granting variances:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Division 4, Section 19-45 (1) -(9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

## DIVISION 5 PROVISIONS FOR FLOOD HAZARD REDUCTION

### **Sec. 19-46. General standards**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

**(1)** All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

**(2)** All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

**(3)** All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

**(4)** All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water

from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### **Sec. 19-47. Specific standards**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Division 3, Section 19-36, (ii) Division 4, Section 19-43 (8), or (iii) Division 5, Section 19-48 (3), the following provisions are required:

(1) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Division 4, Section 19-44 (1) a., is satisfied.

(2) Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) Enclosures - new construction and substantial improvements, with

fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than 1 foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

#### (4) Manufactured Homes

(a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Require that manufactured homes be placed or

substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

(i) the lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) Recreational Vehicles - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Division 4, Section 19-44 (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

#### **Sec. 19-48. Standards for subdivision proposals**

**(1)** All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Division 1, Sections 19-32, 19-33, and 19-34 of this ordinance.

**(2)** All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Division 3, Section 19-37; Division 4, Section 19-44; and the provisions of Division 5 of this ordinance.

**(3)** Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Division 3, Section 19-36 or Division 4, Section 19-43 (8) of this ordinance.



**(4)** All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

**(5)** All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

**Sec. 19-49. Standards for areas of shallow flooding (AO/AH ZONES)**

Located within the areas of special flood hazard established in Division 3, Section 19-36, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

**(1)** All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified).

**(2)** All new construction and substantial improvements of non-residential structures;

**(a)** have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified), or

**(b)** together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

**(3)** A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of

this Section, as proposed in Division 4, Section 19-44 are satisfied.

**(4)** Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

### **Sec. 19-50. Floodways**

Floodways - located within areas of special flood hazard established in Division 3, Section 19-36, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

**(1)** Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

**(2)** If Division 5, Section 19-50 (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Division 5.

**(3)** Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

### **Sec. 19-51. Severability**

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

### **Sec. 19-52. Penalties for non-compliance**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to

comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Ballinger from taking such other lawful action as is necessary to prevent or remedy any violation.

**Sec. 19-53. Certification of adoption**

APPROVED: Ballinger City Council and Mayor

PASSED: November 5, 2007

ORDINANCE BECOMES EFFECTIVE: November 5, 2007

I, the undersigned, Bonita Shields, do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the City of Ballinger City Council and Mayor, at a regular meeting duly convened on November 5, 2007.

\_\_\_\_/ sign /\_\_\_\_

Bonita Shields, City Secretary

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PAGES RESERVED

## Chapter 20

### PLUMBING AND GAS\*

Art. I. In General, §§ 20-1 - 20-15

Art. II. Technical Provisions, §§ 20-16 - 20-19

#### ARTICLE I. IN GENERAL

##### **Sec. 20-1. Plumbing license law adopted.**

Before any person shall do any work or make any connection with the sewer system or the gas system in the city, or do any plumbing work connected or intended to be connected with the sewer or gas system, he shall be licensed as provided in "The Plumbing License Law of 1947," as amended, the same being title 109a, Revised Civil Statutes of Texas, 1925, Article 6243-101. (Ord. of 4-23-47)

**State law reference** - Plumbing License Law, Vernon's Ann. Civ. St. art. 6243-101.

##### **Secs. 20-2 - 20-15. Reserved.**

#### ARTICLE II. TECHNICAL PROVISIONS

##### **Sec. 20-16. Code - Adopted.**

There is hereby adopted by and for the city a plumbing and gas code known as the 2006 International Plumbing Code, which code is hereby referred to, incorporated herein and made a part hereof for all purposes, a copy of which code is on file in the office of the city secretary

##### **Sec. 20-16.1. Same - Amendment.**

As to the description of materials, of the International Plumbing Code, as adopted in section 20-16, is amended such that anywhere that cast iron is required as a material, that it be provided that PVC soil pipe, class 40 or better, may be used instead of the said cast iron.

In the event of any conflict between the provisions of the code adopted by the provisions of this article and the provisions of this Code of Ordinances, state law

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\* **CROSS REFERENCE** - Buildings, ch. 8; health and sanitation, ch. 14; planning and zoning, ch. 19; utilities, ch. 27.

or city ordinances, rules or regulations, the provisions of this Code of Ordinances, state law or city ordinances, rules or regulations shall prevail and be controlling. (Ord. of 1-8-2007)

**Sec. 20-17. Reserved**

**Sec. 20-18. Definitions.**

Whenever the word "municipality" or the word "city" is used in the code adopted by this article, it shall be construed to mean the City of Ballinger, Texas.

Whenever the term "corporate counsel" or "city attorney" is used in the code adopted by this article, it shall be construed to mean the city attorney of the city.

**Sec. 20-19. Penalty for violation.**

Any person who shall violate any provision of the code adopted by the provisions of this article shall be deemed guilty of a misdemeanor and shall be punished as provided by section 1-12 of this Code. Each day such violation continues shall be deemed a separate offense.

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## Chapter 21

### POLICE\*

Art. I. In General, §§ 21-1 - 21-16

Art. II. Police Reserve Force, §§ 21-17 - 21-36

Art. III. Junked Vehicles, §§ 21-87 - 21-42

#### ARTICLE I. IN GENERAL

##### **Sec. 21-1. Arrest without warrant.**

Arrests without warrant shall be authorized as provided in Article 14.01 et seq. of the Code of Criminal Procedure.

##### **Sec. 21-2. Refusing to aid an officer.**

If any person, being called on by the chief of police or any other peace officer, shall refuse or fail to aid such officer in any manner in which, by law, he may be rightfully called on to aid or assist in the execution of a duty incumbent upon such officer, he shall be fined not, exceeding one hundred dollars (\$100.00).

State law reference - Refusing, to aid officer, Vernon's Ann. P.C. art. 348.

##### **Secs. 21-3 - 21-16. Reserved.**

#### ARTICLE II. POLICE RESERVE FORCE‡:

##### **Sec. 21-17. Appointment.**

Members of the police reserve force shall be appointed at the discretion of the chief of police. (Ord. of 11-16-71, § 1)

##### **Sec. 21-18. Qualification.**

Every person appointed to the police reserve force shall be at least eighteen (18)

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\* **Charter reference** - Department of police, art. 14.

**Cross references** - Duty of police chief re animal control, § 6-34; authority of police at Ballinger Municipal Lake, § 17.5-34.

‡**Cross reference** - Administration, ch. 2.

**State law reference** - Police reserve force, Vernon's Ann. Civ. St. art. 998a

years of age; shall be in good health; shall live in the city limits; and shall not have a criminal record. (Ord. of 11-16-71, § 4)

**Sec. 21-19. Standards.**

All reserve police officers shall meet the minimum physical, mental, educational and moral standards established by the commission of law enforcement officer standards and education and shall comply within the time limit set by the commission as far as training is concerned. Reserve officers shall not be required to meet the standards until such time as the commission requires said training. (Ord. of 11-16-71, § 2)

**Sec. 21-20. Dismissal.**

Any member of the police reserve force may be dismissed at the discretion of the chief of police. (Ord. of 11-16-71, § 1)

**Sec. 21-21. Status as peace officer.**

Any members of the police reserve force shall serve as peace officers during the actual discharge of their official duties. (Ord. of 11-16-71, § 1)

**Sec. 21-22. Status as regular police officer.**

Reserve police officers shall act only in a supplementary capacity to the regular police force and shall in no case assume the full-time duties of regular police officers without first complying with all the requirements for such regular police officers. (Ord. of 11-16-71, § 7)

**Sec. 21-23. Compensation.**

Members of the police reserve force shall serve without compensation until such time as compensation might be set by the city council. (Ord. of 11-16-71 § 3)

**Sec. 21-24. Use of weapons**

No person appointed to the police reserve force may carry a weapon or otherwise act as a peace officer until he has been approved by the city council. After such approval, such person may carry a weapon only when authorized by the chief of police, and when discharging duties as a duly constituted peace officer. (Ord. of 11-16-71, § 5)

**Sec. 21-25. Service generally.**

Members of the police reserve force shall serve at the discretion of the chief of police and may be called into service at any time the chief of police considers it

necessary to have additional officers to preserve the peace and enforce the law.  
(Ord. of 11-16-71, § 6)

**Secs. 21-26 - 21-35. Reserved.**

**ARTICLE III. JUNKED VEHICLES\***

**Sec. 21-36. Preamble**

The City of Ballinger believes that junked, abandoned, and/or legally unusable vehicles in public view are a detriment to the quality of life of Ballinger residents and inhibit commerce. The presence of these vehicles erodes the integrity of the neighborhoods where they exist and undermines the safety, atmosphere and environment where family life and commerce takes place.

**Sec. 21-37. Authority**

This article is adopted pursuant to the authority provided by the Texas Transportation Code, Chapter 683, Subchapter E, and any successor statutes, to establish procedures for the abatement and removal from private or public property or public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance.

**Sec. 21-38 Definitions**

"Antique Vehicle" shall mean a passenger car or truck that is at least 25 years old.

"Junked Vehicle" shall mean a vehicle that is self-propelled and

1. does not have lawfully attached to it:
  - a. an unexpired license plate; and
  - b. a valid motor vehicle inspection certificate; and
2. is:
  - c. wrecked, dismantled or partially dismantled, or discarded; or
  - d. inoperable and has remained inoperable for more than:
    - (i) seventy-two (72) consecutive hours, if the vehicle is on

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\* Cross reference - Offensive conditions, § 14-16.  
State law reference – Texas Transpiration Code, Chapter 683, Subchapter E.  
Art III. Junked Vehicles §§ 21-36 – 21-45, Amended 3-6-2006.

public property; or  
(ii) thirty (30) consecutive days if the vehicle is on private property.

"Motor vehicle" shall mean any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.

"Motor vehicle collector" shall mean a person who owns one or more antique or special interest vehicles and who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

"Motor vehicle demolisher" shall mean any person in the business of converting motor vehicles into processed scrap or scrap metal, or to otherwise wreck or dismantle motor vehicles.

"Special interest vehicle" shall mean a motor vehicle of any age which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

"Storage facility" shall mean a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

### **Sec. 21-39 Junked (Inoperable) Vehicles Declared a Public Nuisance**

A junked vehicle which is located in any place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the City, by producing urban blight which is adverse to the maintenance and continuing development of the City, and such vehicles are therefore, declared to be a public nuisance.

### **Sec. 21-40. Offense**

- A. A person commits an offense if the person maintains a public nuisance described by Section 21-39 of this Chapter.
- B. An offense under this section is a misdemeanor punishable by a fine not to exceed Two Hundred and No/100 Dollars (\$200).
- C. The court shall order abatement and removal of the nuisance on conviction.

## **Sec. 21-41. Exceptions**

The following vehicles or parts thereof are excepted from the provisions of this ordinance:

- A. A vehicle or vehicle part which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property.
- B. A vehicle or vehicle part which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, provided that the vehicle or part and the outdoor storage area, if any, are maintained in orderly manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.
- C. An unlicensed, operable or inoperable antique or special interest vehicle or part thereof stored by a motor vehicle collector on the collector's property, provided that the vehicle or part and the outdoor storage area, if any, are maintained in orderly manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

## **Sec. 21-42. Procedure for Disposition of Junked Vehicles**

The procedure for the abatement and removal of a junked vehicle or part thereof, as a public nuisance, from private property, public property, or public right-of-way shall be as follows:

- A. There shall be furnished not less than ten (10) days notice, stating the nature of the public nuisance on private property and that it must be removed and abated not later than the 10th day after the date on which the notice was personally delivered or mailed and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be personally delivered or sent by certified mail with a five (5) day return requested, or delivered by the United States Postal Service with signature confirmation service to the last known registered owner of the junked vehicle and all lien holders of record and to the owner or the occupant of the private premises whereupon such public nuisance exists. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not earlier than the 11th day after the date of such return.

B. There shall be furnished not less than ten (10) days' notice, stating the nature of the public nuisance on public property or on public right-of-way and that it must be removed and abated not later than the 10th day after the date on which the notice was personally delivered or mailed and further that a request for hearing must be made before expiration of said ten (10) day period, such notice to be personally delivered or mailed by certified mail with a five (5) day return requested or delivered by the United States Postal Service with signature confirmation service to

1. the property occupant or owner of location of violation,
2. last known registered owner of the junked vehicle and
3. all lien holders of record

and if on public right-of-way,

1. to the owner or occupant of the property adjacent to the public right-of-way whereupon such public nuisance exists.

If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not earlier than the 11th day after the date of such return.

C. After a vehicle has been removed, it shall not be reconstructed or made operable.

D. Upon request there shall be a public hearing prior to the removal of the vehicle or part thereof as a public nuisance if such hearing is requested by the last known registered owner of the motor vehicle, or by any lien holder of record, or by the owner or occupant of the public or private premises, or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, by the Police Department or, code enforcement officer. The public hearing shall be held before the Municipal Judge of the City of Ballinger not earlier than the 11th day after the date of the service of notice to abate the nuisance. At the hearing, the vehicle which is the subject of the junked vehicle hearing is presumed, unless demonstrated otherwise by the owner, to be inoperable. Any resolution or order requiring the removal of a junked vehicle or part thereof must include the vehicle's description, vehicle identification number, and license plate number if the information is available at the location of the nuisance. A Judge of the Municipal Court of the City of Ballinger may issue necessary orders to enforce the procedures for the abatement and removal of a public nuisance under this Article.

E. If a public hearing is not requested by a qualified person, named in Sec. 21-42-D of this article, the Judge of the Municipal Court of the City of Ballinger shall issue necessary orders to enforce the procedures for the abatement and removal of a public nuisance under this Article. Such orders may not be issued before the 11th day after the date of the service of notice to abate the nuisance.

F. The relocation of a junked vehicle that is a public nuisance to another location within the City, after a proceeding for the abatement and removal of such junked vehicle has commenced, has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

G. Notice must be given to the State Department of Highways and Public Transportation not later than the fifth (5th) day after the date of removal identifying the vehicle or part thereof. Said Department shall cancel the certificate of title issued for the vehicle immediately on receipt of such notice.

H. The administration of the procedures herein shall be by the Code Enforcement Officer or Police Department of the City of Ballinger, Texas, and by such other regularly salaried, full-time City employees as may be from time-to-time granted authority by the City's governing body to enforce this ordinance, except that the removal of junked vehicles or parts thereof from property may be by any duly authorized person.

I. A citation may be issued and a complaint may be filed in the Municipal Court of the City of Ballinger for the violation of maintaining a public nuisance, if the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided in Subsections (A) and (B).

### **Sec. 21-43. Disposal of Junked (Inoperable) Vehicles**

A. A junked vehicle or part thereof may be disposed of by removal to a scrapyards, a motor vehicle demolisher, or any suitable site operated by the City, for processing as scrap or salvage pursuant to authority provided in the Texas Transportation Code, § 683.078 or any successor statute for junked vehicle disposal.

B. Any individual who fails to timely abate a nuisance may be required by the Municipal Judge of the City of Ballinger to pay the city restitution for the city's cost in removing, abating, or curing such nuisance, plus an administrative fee of one hundred dollars (\$100.00).

### **Sec. 21-44. Authority to Enforce**

Any peace officer, Code Enforcement officer or other regularly salaried, full-time City employee authorized to enforce this ordinance, may enter the public areas of any building or premises, not a private residence or dwelling, structure or completely enclosed structure on private property, at all reasonable times whenever necessary in the performance of his duties to inspect and investigate for violations of any law, or to enforce any law. The authority to inspect shall include but not be limited to the authority to examine vehicles or parts thereof, obtain information as to identity of vehicles and to remove or cause the removal of a vehicle or part thereof declared to be a nuisance. If such building or premises be occupied and involved in conducting business, he shall first present proper credentials and demand entry, unless otherwise permitted by law. If such entry is refused, or, if no owner or other person having charge or control of the building or premises can be located, he shall have recourse to every remedy provided by law to secure entry.

### **Sec. 21-45. Effect of Act on Other Laws**

Nothing in this Article shall affect laws that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic, or laws that establish procedures for taking possession of abandoned motor vehicles.



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## Chapter 22

### RAILROADS\*

#### **Sec. 22-1. Speed restricted.**

It shall be unlawful for any person to operate an engine or motorcar on railroad tracks between the [railroad property on Elm Creek and the] railroad bridge on Colorado River in the city, at a rate of speed more than thirty-five (35) miles per hour. (Ord. of 9-3-35, § 1; Ord. of 11-3-81)

#### **Sec. 22-2. RESERVED (Ord. 4-19-2007-G)**

#### **Sec. 22-3. Maintenance of crossings.**

It shall be the duty of each railroad company whose lines of tracks are constructed within the corporate limits of the city to put in good repair and maintain in good condition all streets or parts of streets through or over which its lines of tracks may run, and to keep the same free from obstructions of every kind, which repair shall be made and constructed under the direction and supervision of the city.

#### **Sec. 22-4. Obedience to warning devices.**

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet, but not less than fifteen (15) feet, from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach of a railroad train;

(3) A railroad train approaching within approximately fifteen hundred (1,500) feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(4) An approaching railroad train is plainly visible and is in hazardous

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\* **State law reference** - Railroads generally, Vernon's Ann Civ, S1. art. 6259 et seq. Cross reference - Signs and billboards, § 3-21 et seq.

proximity to such' crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad grade crossing while such gate or barrier is closed or is being opened or closed.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545 § 251.

**Sec. 22-5. City drainage not to be obstructed.**

It shall be unlawful for any railroad company to obstruct the drainage of the city in any way or by any means whatsoever.

**Sec. 22-6. Headlight, signal bells.**

No railroad engine, train or similar railroad equipment shall be run or moved in the nighttime without a headlight or shall be run or moved at any time without the usual signal bells or devices. It shall be unlawful for any person not an employee of the railroad company to get on or off of a railroad passenger coach, freight car or engine while such equipment is in motion.

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## Chapter 23

### STREETS AND SIDEWALKS\*

Art. I. In General, §§ 23-1 - 23-20

Art. II. Excavations, §§ 23-21 - 23-40

Art. III. Sight Obstructions at Intersections, §§ 23-41 - 23-56

Art. IV. Street Maintenance Fee §§ 23-57 - 23-62

#### ARTICLE I. IN GENERAL

##### **Sec. 23-1. Adoption of state law relative to street improvements.**

The provisions of chapter 106, 40th Legislature, the first called session, Acts of 1927, commonly known as Vernon's Annotated Civil Statutes, article 11 05b, as amended, are hereby adopted by the city as controlling the establishment, construction and repair of street improvements within the city.

##### **Sec. 23-2. Specifications for sidewalks, curbs and gutters.**

All sidewalks, curbs and gutters and driveways constructed in the city shall conform to the plans and specifications established therefor by the city.

##### **Sec. 23-3. Obstruction of public ways generally.**

(a) It shall be unlawful for any person within the city without obtaining a permit to erect, construct, reconstruct, alter or repair or to permit the erection, construction, reconstruction, alteration or repair of any fence, wall, hedge, structure or any other character of obstruction:

(1) Over, on or across any public property, way, alley, street, sidewalk or park; or

(2) Between the property line of any lot and a public street or alley line.

(b) Any person who shall violate any of the provisions of this section or fail to comply therewith shall be guilty of a misdemeanor. The owner of any building or premises or part thereof, where anything in violation of this section shall be placed or exist, and any architect, builder, contractor, agent or person assisting in the commission of any such violation shall be guilty of a separate misdemeanor. (Ord. of 8-2-28)

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\* **Cross references** - Signs and billboards, § 3-21 et seq.; planning and zoning, ch. 19; zoning, App. A; subdivisions, App. 8; streets in mobile home parks, § 16-52.

**Sec. 23-4. Display of merchandise, etc.**

It shall be unlawful for any person acting for himself or acting as an agent, employee or contractor to set out for display any merchandise, equipment, racks, empty bottles or cases, or any other articles which create a hazard or would detract from the appearance of the city sidewalks or streets in the city. (Ord. of 87-06)

**Sec. 23-5. Interference, obstruction of public improvements prohibited.**

It shall be unlawful for any person to interfere with or obstruct any public improvements authorized by the city council, the mayor or other city officials by means of threats, coercion, duress or any other method whatsoever, either directly or indirectly.

**Sec. 23-6. Manner of work; cleanliness of premises.**

All work done or performed under the provisions of this chapter shall be done or performed in a good, workmanlike manner. Such work shall not be accepted or approved by the city until the premises thereof has been cleaned and cleared of all debris, trash and rubbish which may have accumulated during such work.

**Sec. 23-7. Obstruction, etc., of drainage.**

It shall be unlawful for any person to obstruct, close up or fill any street gutter or public drainageway of any kind for any purpose.

**Sec. 23-8. Street numbers on all buildings**

(a) All buildings fronting on any street or alley in the city shall be numbered in some conspicuous place, by the owner thereof, according to the map made by the city administrator for such purpose and on file in his office, all odd numbers being on one side of the street and all even numbers on the other side.

(b) Any person desiring to have a number put on his building shall first apply to the city administrator for the proper number, and any person failing or refusing to put the proper number on his building or putting the wrong number thereon, or failing or refusing to comply with any other requirement of this section shall be guilty of a misdemeanor. (Ord. of 3-10-08)

**Sec. 23-9 - 23-20. Reserved.**



## ARTICLE II. EXCAVATIONS

### **Sec. 23-21. Permit - Required.**

It shall be unlawful for any person to make any excavation or opening in any street, alley or public highway of the city without first obtaining a permit from the city administrator to do so.

### **Sec. 28-22. Same - Application.**

An application for a permit required by this article to make any excavation or opening in any of the streets, alleys or public highways of the city shall be made to the city administrator and state clearly the name of the street or highway in which it is proposed to make such an opening; the exact location in the highway wherein it is proposed to make such opening; the purpose of making the opening; and the name of the person who proposes to make such excavation or opening.

### **Sec. 23-23. Same - Bond required.**

The city administrator shall estimate the probable cost of replacing the soil which may be removed from any public street or highway, and shall require the applicant to file a written bond in an amount sufficient to cover such cost, with two (2) or more sufficient sureties, conditioned that the street shall be restored in as good condition as it was before the excavation or opening therein was made. Such bond shall be received and approved by the city administrator. If the applicant elects to do so, he may make a cash deposit in such sum as may have been fixed by the city administrator in lieu of the written bond.

### **Sec. 23-24. Same - Issuance.**

When the bond or deposit required in section 23-23 shall have been accepted by the city administrator, he shall then issue a permit for the excavation or opening named in the application, and the applicant may then proceed with the work in the exact location named in his application, and in no other place.

### **Sec. 23-25. Protection of public.**

It shall be the duty of any person making any excavation in the streets of the city to adequately and sufficiently protect all such excavations by barricades or other obstructions, including not less than one red light on each side of such excavation during the nighttime, so as to prevent accidents or injury to persons or property until such time as such

excavation is resurfaced and approved by the city administrator.

**Sec. 23-26. Supervision of work.**

All work of excavating or making any character of opening in any of the streets, alleys or highways of the city shall at all times be under the supervision of the city administrator, and the person doing such work shall do the same in the manner directed by the city administrator to the end that the streets and highways of the city shall not be unduly disturbed and traffic thereon obstructed.

**Sec. 23-27. Duties upon completion of work.**

After an excavation or opening shall have been made, the person so making it shall backfill the same with such materials and in such a manner as the city administrator may require, and leave the street or highway in at least the same condition as it was before the opening therein was made.

**Sec. 23-28. Acceptance, inspection of completed work.**

The conditions of the bond required by section 23-23 shall not be considered to have been complied with until the city administrator shall have accepted the street or highway as being in good condition. In the event the person making the opening shall fail to leave the highway in a good state of repair, satisfactory to the city administrator, the city administrator shall call upon the bondsmen to pay for the cost of repairing such highway; provided, however, in the event of a cash deposit instead of a bond, the city administrator may proceed to have the street or other highway put in a good condition, paying for the same out of the deposit made with him, and if there is any remainder of the deposit after paying for such work, such remainder shall be refunded to the person making the deposit.

**Secs. 23-29 - 23-40. Reserved.**

**ARTICLE III. SIGHT OBSTRUCTIONS AT INTERSECTIONS**

**Sec. 23-41. Definition.**

For the purposes of this article the phrase "street gutter flow line" shall mean the street gutter flow line of the curb adjacent to and bordering upon each such restricted area; in the event there is no such curb, the height restrictions set forth in this article shall be based upon the actual level of the paved or used portion of the public street adjacent to and

bordering upon each such restricted area.

**Sec. 23-42. Enforcement of article provisions.**

In addition to any penalty which may be imposed for the violation of this article, the city shall be entitled to enter upon and remove from the triangular corner areas described in this article any of the growths prohibited by this article, such entry and removal shall be without liability to the owners thereof.

**Sec. 23-43. Restricted areas.**

The areas in the city restricted by the provisions of this article are as follows:

- (1) All that portion of land lying within a triangular shaped area on each street corner within the city described by metes and bounds as follows:

Beginning at the precise corner of the intersection point of the curbs of each of the two (2) streets forming each corner and extending twenty (20) feet along each such curb line from the curb intersection point, the third side being determined by the drawing of a straight line from the ends of such twenty-foot extensions, whether the land is privately owned or unpaved or untraveled street right-of-way property.

- (2) Where no curbs are in existence at such street intersections, such twenty-foot lines shall coincide with the central flow line of the ditches paralleling such uncurbed streets as shall be determined by the city engineer.

**Sec. 23-44. Maximum height of shrubs, etc.**

No person shall plant, grow or maintain in any restricted area any plant, hedge, shrub or other growth, except trees, at a height greater than three (3) feet from the street gutter flow line.

**Sec. 23-45. Minimum clearance of trees.**

Any trees planted, grown and maintained in any restricted area shall not have branches or foliage extending from the trunk thereof at a height lower than ten (10) feet from the street gutter flow line.

**Sec. 23-46 - 23-56 Reserved**

## ARTICLE IV. STREET MAINTENANCE FEE

### **Sec. 23-57. Definitions**

- A.** “Developed Property,” for purposes of this Article, shall mean any lot or parcel upon which impervious surface improvements have been constructed, a water meter installed or a municipal utility account opened.
- B.** “Owner or Occupant” shall mean the person who pays, or is legally responsible for the payment of the municipal utility charges made against Developed Property.
- C.** “Pavement Management Program” shall mean a program established by the City Administrator on an annual basis establishing the purposes and projects for which the Street Maintenance Fee may be used and the program shall be approved by the Ballinger City Council.
- D.** “Street Maintenance Fee” shall mean the fee established by this Article which is imposed upon and collected from Owners or Occupants of Developed Property for the purpose of rehabilitating, repairing and maintaining the City of Ballinger street system in accordance with a Pavement Management Program.

### **Sec. 23-58. Street Maintenance Fee**

- A.** There is hereby established a Street Maintenance Fee to be paid by the Owner or Occupant of Developed Property within the City of Ballinger.
- B.** Collection of the fee shall be made by a monthly charge added to the water utility bill for such property.
- C.** The City Administrator shall establish a Pavement Management Program annually. The Plan may be amended by the City Council as required to reflect changing needs of the City of Ballinger.

### **Sec. 23-59. Street Maintenance Fund**

- A.** Street Maintenance Fee payments shall be placed in a special fund known as the Street Maintenance Fund. This fund may be supplemented by any other funds legally available to the City for

such purposes.

- B. All Street Maintenance Fees collected pursuant to this Article shall be designated as such and used only for the purposes provided herein and as designated in the Pavement Management Program as amended from time to time.
- C. A report of the Fund, the Street Maintenance Fee, and the Pavement Management Program will be provided to the City Council annually.

### **Sec. 23-60. Pavement Management Program**

The City Administrator is directed and authorized to develop an annual Pavement Management Program establishing the purposes and projects for which the Street Maintenance Fee may be used and which program shall be approved by the City Council.

### **Sec. 23-61. Billing and Collection of Street Maintenance Charges**

- A. The Street Maintenance Fee shall be included on each City of Ballinger monthly utility statement. The Street Maintenance Fee will be a separate line item on the water utility statement and shall be clearly identified as a separate charge. The Director of Utilities is authorized to collect such charges in a manner consistent with the "Water and Sewer" Chapter, the City Charter and State Law.
- B. The rates per month are hereby established as follows:
  - 1. Residential/ Commercial Accounts  
  
Each separately metered \$2.50 per account residential/ commercial municipal utility account.
- C. Except as otherwise provided by this section, billing, charges and collection procedures shall be consistent with that of the water and sewer services, including collection of delinquent charges. Any fee due hereunder which shall not be paid when due may be recovered in an action at law by the City.
- D. The City Manager or his designee(s) shall adopt rules for the administration of the Street Maintenance Fee.
- E. E. The Street Maintenance Fee established by this ordinance shall be discontinued at such time as (1) the legislature provides

authority to call an election on the issue of increasing local sales taxes for the purpose of funding City-wide street maintenance, rehabilitation and repair, and (2) such sales tax is authorized by the voters of the City of Ballinger and implemented by the City; or (3) the City Council of the City of Ballinger repeals such Street Maintenance Fee.

### **Sec. 23-62. Enforcement**

1. This article does not create or imply a right, benefit or expectation of any particular level of maintenance on City streets, roads and highways and does not create additional duties on the part of the City. This article does not waive the City's immunity under any law.
2. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed Five Hundred Dollars and No Cents (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.
3. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Ballinger, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.
4. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.
5. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City Official or employee charged with the enforcement of this ordinance, acting for the City of Ballinger in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6. Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Ballinger in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in the ordinance or in the Code of the City of Ballinger.
7. The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Ballinger, in compliance with the provisions of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.
8. This ordinance shall become effective on October 1, 2007.

**Sec. 23-63 - 23-69 RESERVED**

**ARTICLE V. PROHIBITION OF SKATEBOARDS,  
ROLLERSKATES, ROLLERBLADES AND SIMILAR  
DEVICES**

**Sec. 23-70. Prohibition of Skateboards, Roller skates, Rollerblades and Similar Devices in the designated areas set out in subsection three (3).**

No person shall operate, propel and/or ride any type of skateboard, roller skates, rollerblades or similar devices on any highway, street, alley, sidewalk, walkway, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons or vehicles in an unsafe manner in the areas set out below.

For purposes of this section, "unsafe manner" means to operate a skateboard, roller skates, rollerblade or similar device in such a manner that may endanger the health and safety of the rider and/or any member of the public, in the area or locations herein below set out.

**Sec. 23-71. Prohibition of Ramps, Jumps or Similar Devices.**

No person will construct any ramp, jump or similar device intended for use by a person with a skateboard, roller skates, rollerblades or similar device on any highway, street, alley, sidewalk, walkway, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances in the areas or location below set out.

**Sec. 23-72. The place to which Section One (1.) and Section Two (2.) apply in the City of Ballinger:**

(1) Streets, sidewalks, alleys, City-owned structures or within the following area:

- a. The area from and including Park to Strong Avenue from the bridge on the Colorado River on Highway 67 for the westerly boundary, and to the bridge on Elm Creek on Highway 67 for the easterly boundary, OR
- b. Any property upon which skateboarding on any property that a private or public entity place any sign prohibiting skateboarding (which shall include rollerblading, roller skating or similar devices).

**Sec. 23-73. Authority of City Manager.**

The city manager or his authorized representative is authorized to designate any part of any city-owned building, park, grounds or sidewalk adjacent thereto as an area where skateboarding, rollerblading, roller skating or the placement of lubricating substances is prohibited. The city manager is further authorized to require the placement of signs at appropriate locations to indicate this prohibition.

**Sec. 23-74. Penalties for Violation**

Any person who violates any provision of this subchapter for which another penalty has been enacted shall be punished as set forth in Section 26-324 of this code.

**Sec. 23-75. Repeal.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**Sec. 23-76. Severability.**

If any section, subsection or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

**Sec. 23-77. Effective Date.**

This ordinance shall be effective from and after the date of its passage.  
PASSED AND APPROVED June 1<sup>st</sup>, 2009.



PAGES RESERVED



## Chapter 24 TAXATION\*

Art. I. In General, §§ 24-1 - 24-20  
Art. II. Occupancy Tax, §§ 24-21 - 24-26

### ARTICLE I. IN GENERAL

#### **Sec. 24-1. Adoption of state law relative to payment of taxes and penalties.**

The provisions of state law, Texas Property Tax Code, Title 1. Property Tax Code, Subtitle E. Collection and Delinquency, applicable to municipalities shall apply to and govern the payment of taxes due and owing to the city and penalties in connection therewith. (Ord. 4-19-2007-K)

#### **Secs. 24-2 - 24-20. Reserved.**

### ARTICLE II. OCCUPANCY TAX\*

#### **Sec. 24-21. Definitions.**

The following words, terms and phrases are, for the purposes of this article and except where the context clearly indicates a different meaning, defined as follows:

*Consideration* shall mean the cost of the room in such hotel only if the room is one ordinarily used for sleeping and shall not include the cost of any food served or personal services rendered to the occupant of such rooms not related to the cleaning and readying of such room for occupancy.

*Hotel* shall mean any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses or other buildings where rooms are furnished for a consideration, but hotel shall not, be defined so as to include hospitals, sanitariums, or nursing homes.

*Occupancy* shall mean the use or possession or the right to the use or

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\* **Charter Reference** – Department of finance, art. 8.

**State law reference** – Taxation generally, Vernon's Ann. Civ. St. Title 122, Vol 20, V.T.C.A., Tax Code, § 1.01 et seq.

**Editor's note** - Inclusion of the nonamendatory ordinance of Oct.. 15, 1984, as Art II hereof has been at the editor's discretion.

possession of any room if the room is one ordinarily used for sleeping and if the occupant's use, possession or right to use or possession extends for a period of less than thirty (30) days.

*Occupant* shall mean anyone who, for a consideration, uses, possesses, or has a right to use or possess any room in a hotel if the room is one ordinarily used for sleeping.

*Permanent resident* shall mean any occupant who has or shall have the right of occupancy of any sleeping room in a hotel for at least thirty (30) consecutive days during the calendar year or preceding year.

*Person* shall mean any individual, company, corporation or association owning, operating, managing or controlling any hotel.

*Quarterly period* shall mean the regular calendar quarters of the year, the first quarter being composed of the months of January, February, March; the second quarter being the months of April, May and June; the third quarter being the months of July, August, and September; and the fourth quarter being the months of October, November, and December. (Ord. of 10-15-84, § 1)

#### **Sec. 24-22. Penalty.**

If any person, firm or corporation required by the provisions of this article to collect the tax imposed herein or to make reports as required herein, and to pay the tax imposed herein, shall fail to collect such tax or shall fail to file such report, or shall fail to pay such tax, or if any such person, firm, or corporation shall file a false report; then such person, firm, or corporation shall be deemed guilty of a misdemeanor, and upon conviction shall be punished as prescribed in section 1-12 and each day after the due date of such report or payment of such fine shall be deemed to be a separate offense and subject to a separate fine, and in addition to such fine, such person, firm or corporation shall pay to the city secretary the tax due. (Ord. of 10-15-84, § 6)

#### **Sec. 24-23. Occupancy tax imposed; exceptions.**

(a) There is hereby levied a tax upon the cost of occupancy of any sleeping room furnished by any hotel where the cost of occupancy is at the rate of two dollars (\$2.00) or more per day. Such tax is to be equal to five (5) per cent of the consideration paid by the occupant of the sleeping room to the hotel.

(b) No tax shall be imposed thereunder upon a permanent resident.

(c) No tax shall be imposed thereunder upon a corporation or an association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which insures to the benefit of any

private shareholder or individual. (Ord. of 10-15-84, § 2)

**Sec. 24-24. Collection; reimbursement fee.**

(a) Every person owning, operating, managing or controlling any hotel shall collect the tax imposed by section 24-23 hereof for the city.

(b) The person collecting the tax may deduct and keep from the tax collected, a fee equal to one per cent of the amount of tax collected and required to be reported to the city as a reimbursement for the cost of collecting the tax.

(c) Failure to file reports or failure to pay the tax as required by this article shall result in forfeiture of the right of reimbursement as contained in paragraph (b) above, as well as result in the penalties set out in section 24-22. (Ord. of 10-15--84, § 3)

**Sec. 24-25. Reports.**

On the last day of the month following each quarterly period, every person required in section 24-24 hereof to collect the tax imposed herein shall file a report, with the city secretary showing:

(1) The consideration paid for room occupancies in the preceding quarter,

(2) The amount, of the tax collected on such occupancies on behalf of the city, and

(3) The amount of the reimbursement fee deducted from the tax. Such person shall pay the tax due on such occupancies at the time of the filing of such report. There shall also be furnished to the city secretary at the time of payment of said tax a photocopy of the quarterly report filed with state comptroller in connection with the State of Texas hotel occupancy tax. (Ord. of 10-15-84, § 4)

**Sec. 24-26. Disposition of revenue.**

All revenue received by the city under the terms of this article may be disposed of in a manner to be determined by the city council, and not in violation of sections 3c of article 1269J-4.1, Revised Civil Statutes. (Ord. of 10-15-84, § 5)

PAGES RESERVED

## Chapter 25

### TAXICABS

- Art. I. In General, §§ 25-1 - 25-21
- Art. II. Permit, §§ 25-22 - 25-46
- Art. III. Liability Insurance, §§ 25-47 - 25-63
- Art. IV. Drivers, §§ 25-64 - 25-68

#### ARTICLE I. IN GENERAL

##### **Sec. 25-1. Definitions.**

For the purposes of this article the following words and phrases shall have the meanings respectively ascribed to them:

*Conduct a taxicab business:* The use of one or more taxicabs within the city, by the owner thereof, for the purpose of carrying passengers for hire, either by driving the same himself or having the same driven by some other person; provided, however, this definition shall not apply to any licensed chauffeur hired as a driver by any person holding a permit to conduct a taxicab business in the city.

*Taxicab:* Any and all vehicles carrying passengers for hire, except motor buses or motor coaches operated by bus lines over designated routes in and through the city. (Ord. of 2-8-43, §§1, 2)

##### **Sec. 25-2. Exclusion from provisions.**

The provisions of this chapter shall not apply to passenger buses operating under the regulations of the state railroad commission and coming into or passing through the city for the purpose of loading and unloading passengers. (Ord. of 2-8-43, § 17)

##### **Sec. 25-3. Inspections.**

Every holder of a permit required by this chapter to conduct a taxicab business in the city shall have each and every taxicab used in his business inspected once each month, and shall file with the city secretary on or before the first day of each and every month, a statement in writing signed by a competent resident mechanic showing that he has inspected the taxicabs, the date of such inspection, the license numbers of such taxicabs, the name of the permittee and the serial number of his permit; and that the lights, brakes and steering apparatus of all such taxicabs so inspected by him are in good mechanical condition. (Ord. of 2-8-43, § 11)

**Sec. 25-4. Cruising prohibited.**

It shall be unlawful for any driver of any taxicab to drive or cruise about on the streets of the city seeking passengers who have not therefore ordered or called a taxicab. (Ord. of 2-8-43, § 13)

**Sec. 25-5. Ownership of vehicle.**

It shall be unlawful for any person conducting a taxicab business in the city to use or operate, or cause to be used or operated, as a taxicab, any vehicle not owned or leased by him. (Ord. of 2-8-43, § 15)

**Sec. 25-6. Council to fix and require display of rates.**

The city council shall have the power to fix the rates, charges and fares of all taxicabs operating within the city. There shall be displayed in a permanent place within every taxicab doing business within the city a card or other notice setting forth such rates.

**Sec. 25-7. Conformance to rate required,**

If any owner, driver, licensee or operator of any taxicab shall refuse to convey a passenger at the rate specified on the rate card displayed in the taxicab or shall demand or receive an amount in excess of the rate displayed on the card, he shall be deemed guilty of a misdemeanor.

**Sec. 25-8. Maximum seating.**

It shall be unlawful for the driver of a taxicab to carry more than five (5) passengers in such taxicab, and in no event shall more than two (2) passengers ride in the front seat with the driver.

**Sec. 25-9. Sale of alcoholic beverages.**

No driver of a taxicab or owner of a taxicab shall engage in selling intoxicating liquors or soliciting business for any person selling intoxicating liquors.

**Sec. 25-10. Receipt, discharge of passengers.**

No driver of a taxicab shall receive or discharge passengers in the roadway of any street, but shall drive to the right-hand sidewalk, as nearly as possible, or, in the absence of a sidewalk, to the extreme right-hand side of the road, and there receive or discharge passengers.

**Secs. 25-11 - 25-21. Reserved.**



## ARTICLE II. PERMIT

### **Sec. 25-22. Required.**

It shall be unlawful for any person holding a permit to conduct a taxicab business in the city to permit any person who does not hold a valid permit from the city as a taxicab driver to drive or operate on the public streets of the city any taxicab owned or used in connection with the business of the permittee. (Ord. of 2-8-43, § 10)

### **Sec. 25-23. Application.**

(a) Before any person shall conduct a taxicab business in the city, he shall file with the city secretary an application to the council for a permit required by this article to conduct such business. The application shall state the name and address of such applicant, whether the applicant is an individual, firm or corporation, and if a firm the name and address of each member thereof, and the number of vehicles proposed to be operated under such permit.

(b) Before any permit is granted, if the applicant is an individual it shall be ascertained that he is a bona fide resident of the city; if partnership, that the member of the firm who will be in active charge and control of the affairs of the partnership is a bona fide resident of the city; and if a corporation, that the president or other executive officer in active charge and control of the affairs of the corporation is a bona fide inhabitant or resident of the city. (Ord. of 2-8-43, §§ 3,4)

### **Sec. 25-24. Action by council.**

It shall be the duty of the city secretary, when an application for a permit required by this article is filed with him, at the next regular meeting of the city council following the filing of such application to call the attention of the council thereto. Upon consideration of such application, the city council may grant or refuse such permit, as in its discretion may seem to the best interest of the citizenship of the city and the public in general. (Ord. of 2-8-43, § 5)

### **Sec. 25-25. Issuance.**

All permits required by this article for the conduct of a taxicab business in the city shall be issued and signed by the city secretary and sealed with the seal of his office and shall bear a serial number. (Ord. of 2-8-43, § 6)

**Sec. 25-26. Contents.**

Every permit required by this article for the conduct of a taxicab business in the city shall be dated on the day of its issuance; shall bear a serial number; shall show the name and address of the permittee; and shall state that the permittee has been authorized by the city council to conduct a taxicab business in the city until the expiration of the thirty-first day of December next following the date of issuance. (Ord. of 2-8-43, § 6)

**Sec. 25-27. Statement of individual taxicabs.**

Each permittee under this article shall file with the city secretary a statement in writing under oath signed by him showing the make, model, motor number and state license number of each taxicab operated by him.

**Sec. 25-28. Fee.**

At the time of issuance of a permit required by this article, the permittee shall pay to the city secretary the sum of twenty-five dollars (\$25.00) for the first taxicab, and fifteen dollars (\$15.00) for each additional taxicab to be operated in the city for a twelve-month period ending December thirty-first; provided, however, if such permit is granted for less than the full year, the permittee shall pay to the city an amount prorated according to the number of months for which the permit is issued. (Ord. of 2-8-43, § 7)

**Sec. 25-29. Additional taxicabs.**

If at any time the holder of a taxicab permit required by this article shall desire to use any additional taxicabs under the permit, he may do so only after he has made application to the city council for a permit to operate such additional taxicabs and has had his application for such permit granted. He shall furnish to the city secretary the same information regarding such additional taxicabs as is required regarding those covered by the original permit, and shall pay to the city secretary the required fee for each additional taxicab. (Ord. of 2-8-43, § 7)

**Sec. 25-30. Gross receipts tax.**

Each operator of a taxicab business holding a permit required by this article shall make and file an affidavit on the tenth day of each month stated under oath the gross receipts received during the preceding month from the operation of each such taxicab. At the expiration of the thirty-first day of December next following the date of issuance of each permit, all such affidavits will be reviewed and an adjustment will be made by and between the city and the operator of such taxicab so that such operator shall pay to the city a total sum, including the required permit fee, equal to one per cent of the gross receipts from the

operation of his taxicabs in the city for the period for which the permit was granted.

**Sec. 25-31. Examination of books.**

The city, through a designated official, shall at all times have the right to examine and audit the books of each person conducting a taxicab business to determine its gross income from the operations of the taxicabs. Every such person shall keep a complete set of books and records as would be necessary to make the proper calculations.

**Sec. 25-32. Display.**

The permit issued for the operation of a taxicab under the terms of this article shall be posted within the taxicab in a conspicuous place, and failure to so post the permit shall be a misdemeanor.

**Sec. 25-33. Nonassignable.**

Any permit issued under the provisions of this article shall be nonassignable. (Ord. of 2-8-43, § 12)

**Sec. 25-34. Cancellation, revocation, suspension.**

Any permit issued under the provisions of this article may be canceled, revoked or suspended by the city council for the violation by the permittee of any applicable provision of this Code, state law or city ordinance, rule or regulation. (Ord. of 2-8-43, § 12)

**Sec. 25-35. Identification of taxicabs.**

Every holder of a permit granted under the terms of this article for a taxicab shall have and keep painted in fast colors contrasting with the color of the taxicab on each side of each and every vehicle used by him as a taxicab the words "TAXI PERMIT NO.," filling the blank with figures denoting the serial number of his permit. The letters and figures shall not be less than three (3) inches in height. He shall also paint the words "CAR NO. "in letters of a minimum height of five (5) inches. (Ord. of 2-8-43, § 9)

**Secs. 25-36 - 25-46. Reserved.**

ARTICLE III. LIABILITY INSURANCE

**Sec. 25-47. Required.**

Before any permit required by article II of this chapter shall be issued to any owner or operator of a taxicab, or before any renewal of the permit shall be granted, the owner or operator shall be required to file with the city secretary, and thereafter keep in full force and effect, a liability policy in a form approved by the board of insurance commissioners, issued by an insurance company duly authorized to transact liability insurance in the state, covering bodily injuries and injury to or destruction of property resulting from the operation of such taxicab. (Ord. of 2-8-43, § H)

**Sec. 25-48. Minimum amount of coverage.**

(a) The minimum amount of recovery in a policy of insurance required by this article shall not be less than the following sums:

(1) For the injury or death of anyone person in anyone accident, twenty thousand dollars (\$20,000.00);

(2) For total liability in anyone accident for personal injuries or death, forty thousand dollars (\$40,000.00);

(3) For injury or destruction of property in anyone accident, fifteen thousand dollars (\$15,000.00)

(b) The minimum amount of liability insurance shall never be less than the amount established by the statutes of the state under the Texas Safety Responsibility Act or amendments thereto. (Ord. of 2-8-43, § 8)

State law reference - Amount of insurance required by Safety Responsibility Act, Vernon's Ann. Civ. St. art. 601 § 002 ..

**Sec. 25-49. Persons protected.**

The public liability insurance required by this article shall be for the protection of the passengers of the insured taxicab and for the public, but shall not cover personal injuries sustained by the servants, agents or employees of the person filing the insurance.

**Sec. 25-50. Provision for continuing liability.**

All policies of public liability insurance required by this article shall contain a provision for a continuing liability thereon up to the full amount thereof, notwithstanding any recovery thereon.

**Sec. 25-51. Increasing amount upon return of execution unsatisfied.**

In the event of the return unsatisfied of any execution issued on any final judgment rendered against any taxicab owner in any suit for damages on account of injury to person or property occasioned by the operation of any

taxicab, such owner, within ten (10) days after the return of such execution unsatisfied, provided the judgment is still unpaid, shall increase the amount of his insurance by the amount of such judgment, and failure to do so shall forthwith cease the operation of taxicabs in the city until such additional insurance is deposited or such judgment is paid.

**Sec. 25-52. Cancellation.**

(a) In the event any insurer desires to be released from any insurance filed under this article, it may give written notice of such desire to the chief of police at least thirty (30) days before it desires its liability released, and the chief of police shall thereupon give written notice, by personal delivery or by mail, to the insured and demand that he furnish new assurance by the expiration of the thirty-day period, and shall discharge such first insurer from any liability which shall accrue after the time of approval of such new policy, or shall discharge such first insurer after the expiration of such thirty-day period.

(b) In the event any policy is so canceled upon the request of the insurer, and no new insurance policy is filed before the cancellation of the original insurance, the permit to operate taxicabs granted to the insured shall be automatically revoked.

**Sec. 25-53. City not liable for solvency of insurer; owner's liability not affected; suits on policy.**

Neither the city nor any officer thereof shall be held liable for the pecuniary responsibility or solvency of any insurer under the provisions of this article, or in any manner become liable for any sum on account of any such claim or act or omission relating to the insured taxicab, nor shall the liability of the owner of any such taxicab be in any manner limited or changed by reason of the provisions of this article, but the judgment creditors having causes of action secured thereby shall be authorized to sue directly on such policy of insurance without impleading the city, and all persons known to any insurer to have been injured or damaged in the same accident and claiming damages, thereunder may be made parties without priority of claim on payment in any suit had or instituted on account of such matters.

**Secs. 25-54 - 25-63. Reserved.**

## ARTICLE IV. DRIVERS

**Sec. 25-64. Leaving taxicab.**

It shall be unlawful for the holder of any permit issued under the terms of this chapter, or the agent, servant or employee of such permittee, to park or leave

standing any taxicab on the streets of the city except while loading and unloading passengers into and from such taxicab. (Ord. of 2-8-43, § 14)

**Sec. 25-65. Appearance.**

It shall be the responsibility of every person operating a taxicab business or service in the city to require the drivers in his employ to be neat and clean in appearance while on duty.

**Sec. 25-66. Solicitation of business.**

No driver of a taxicab shall solicit patronage in a loud or annoying tone of voice or in any manner annoy, obstruct the movement of or follow any person for the purpose of soliciting patronage.

**Sec. 25-67. Operation while incapacitated.**

No person shall operate any taxicab in a state of intoxication or be incapacitated otherwise or unable to properly and safely operate such taxicab.

**Sec. 25-68. Property left in taxicabs.**

All drivers of taxicabs shall promptly deliver to the police department, or to the authorized agencies of their companies, all property left in such taxicabs by passengers. Any driver violating the provisions of this section shall be guilty of a misdemeanor.

PAGES RESERVED





## Chapter 26

### TRAFFIC\*

- Art. I. In General, §§ 26-1 - 26-22
- Art. II. Enforcement and Obedience, §§ 26-23 - 26-41
- Art. III. Administration, §§ 26-42 - 26-64
- Div. 1. Generally, §§ 26-42 - 26-50
- Div.2. Traffic Engineer, §§ 26-51 - 26-64
- Art. IV. Accidents, §§ 26-65 - 26-84
- Art. V. Vehicle Equipment, §§ 26-85 - 26-108
- Art. VI. Authorized Emergency Vehicles, §§ 26-109 - 26-124
- Art. VII. Operation of Vehicles Generally, §§ 26-125 -26-152
- Art. VIII. Right-of-Way Regulations, §§ 26-153 - 26-170
- Art. IX. Speed, §§ 26-171 - 26-186
- Art. X. Turns, §§ 26-187 - 26-207
- Art. XI. Traffic-Control Signs, Signals, Devices, §§ 26-208 - 26-272
- Div. 1. Generally, §§ 26-208 - 225
- Div. 2. Stop, Yield Intersection, §§ 26-226 - 26-240
- Div.3. One-Way Streets, Alleys, §§ 26-241 - 26-250
- Div.4. Truck Routes, §§ 26-251 - 26-272
- Art. XII. Stopping, Standing, Parking, §§ 26-273 - 26-343
- Div. 1. Generally, §§ 26-273 - 26-295
- Div. 2. Restricted, Prohibited on Certain Streets, §§ 26-296 - 26-306
- Div.3. Loading and Unloading, §§ 26-307 - 26-320
- Div. 4. "Jake Brake / Engine Brake", §§ 26-321 - 26-324
- Art. XIII. Miscellaneous Driving Rules, §§ 26-344 - 26-370
- Art. XIV. Parades and Processions, §§ 26-271 - 26-390
- Art. XV. Pedestrians, §§ 26-391 - 26-398

### ARTICLE I. IN GENERAL

#### **Sec. 26-1. Definitions.**

For the purpose of this chapter the following terms shall have the meanings respectively ascribed to them:

*Alley*: Any street having no regular or official name other than "alley" and being twenty (20) feet or less in width.

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\* **Cross references** - Vehicles on Ballinger Municipal Lake, §17.5-38; taxicabs, ch. 25.  
**State law reference** - Uniform Traffic Act, Vernon's Ann. Civ. S1. art. 541 § 201.

*Authorized emergency vehicles:* Vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the state board of health, emergency vehicles of municipal departments or public service corporations as are designated or authorized by the city council, private vehicles operated by volunteer firemen or certified EMS volunteers while answering a fire alarm or responding to a medical emergency, and vehicles operated by blood banks or tissue banks, accredited or approved under the laws of this state or the United States, while making emergency deliveries of blood, drugs or medicines or organs.

*Bicycle:* Every device, propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is more than fourteen (14) inches in diameter.

*Bus:* Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle other than taxicabs designed and used for the transportation of persons for compensation.

*Bus stop:* A section of the roadway along the edge thereof marked by signs reading "bus stop" as a place for the sole use and convenience of the general public to board and depart from any bus.

*Business district:* The territory contiguous to and including a roadway when within six hundred (600) feet along such roadway there are buildings in use for business or industrial purposes which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the roadway, or any other area so classified by the city zoning ordinance.

*Controlled-access or limited-access highway:* Every highway to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such a manner as may be determined by the public authority having jurisdiction over such highway.

*Crosswalk:* That part of a roadway at, any intersection included within the connection of the lateral lines of the sidewalks on opposite sides of the street, whether marked or not, measured from the curbs or in the absence of curbs, from the edges of the traversable roadway. The word "crosswalk" also includes any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossings by lines or other markings on the surface.

*Curb:* The edge of a street, roadway or highway.

*Curb loading zone:* A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers, freight, merchandise or other material

*Digging out:* The practice of starting any motor vehicle from a standing position by applying a sudden burst of power, recognized by spinning rear wheels and noise of tires on the surface of the roadway,

*Double parking:* The standing of a vehicle, whether occupied or not, upon a street or roadway in the rear of an angle-parked vehicle at the curb of such street or alongside a vehicle parked parallel with the curb of such street.

*Driver:* Every person who drives or is in actual physical control of the movements of a vehicle.

*Driveway, private:* Any entrance or exit over the sidewalk or sidewalk area of any street affording a means of ingress or egress for vehicles to or from any private property, or the entrance or exit of any private garage into or from any alley.

*Driveway, public:* Any entrance or exit over the sidewalk or sidewalk area of any street affording a means of ingress or egress for vehicles to or from any public property.

*Freight loading zone:* See "Curb loading zone."

*Intersection:* The area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two (2) streets or highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets or highways joining at any other angle may come in conflict. Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided street or highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting street or highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of the two (2) roadways of such highway shall be regarded as a separate intersection.

*Laned street:* A street which is divided into two (2) or more clearly marked lanes for vehicular traffic.

*Limit lines:* Boundaries of parking areas, loading zones, safety or danger zones and lines marked for the purpose of excluding traffic or parking.

*Map, official traffic-control:* An engineering drawing of such dimensions and scale as to show clearly all streets, alleys, speed limits, traffic movement regulations and prohibitions, type of traffic-control devices, right-of-way dimensions and names of all streets within the boundaries of the city.

*Moped* means a motor-driven cycle whose speed attainable in one mile is not more than thirty (30) miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement

may not exceed fifty (50) cc and the power drive system may not require the operator to shift gears.

*Motor vehicle:* Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

*Motor-driven cycle:* Every motorcycle with a motor which has an engine piston displacement of not more than one hundred twenty-five (125) cc.

*Motorcycle':* Every motor vehicle having a saddle for the use of the rider and designed to propel itself with not more than three (3) wheels in contact with the ground but excluding a tractor.

*Negligence:* The failure to use that degree of care that a reasonable and prudent person would use under the same or similar circumstances.

*No-parking zone:* A space or area on the roadway adjacent to the curb, whether marked by official signs or not, in which no vehicle may be parked.

*Normally and safely driven* means the vehicle does not require towing and can be operated under its own power in its customary manner, without further damage or hazard to the vehicle, other traffic, or the roadway.

*Official traffic-control devices:* All signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

*One-way street:* A street on which all vehicular traffic is required to move in the same general direction as indicated by direction signs.

*Park or parking:* The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading materials or passengers.

*Parking stall or parking space:* That portion or section of a roadway adjacent to the curbing or edge, set apart, marked and bounded by lines painted or marked upon the surface of the roadway and extending into the roadway for the use of parking vehicles, or that portion of any alley marked by official signs showing such space to be a parking zone.

*Passenger:* Any person in or on a vehicle other than the driver, whether or not the vehicle is moving.

*Passenger loading zone:* See "curb loading zone." *Pedestrian:* Any person afoot.

*Police officer:* Every officer of the city police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

*Private road or driveway:* Every way or place in private ownership and used for vehicular travel by the owner and those having expressed or implied permission from the owner but not by other persons.

*Procession or parade:* A group of pedestrians or vehicles standing or moving on a street and occupying more than six hundred (600) feet of the street and having a common destination, purpose or direction.

*Public place:* A place where people are assembled or to which people commonly resort for purposes of business, amusement, recreation or other lawful purposes and, for the purpose of this chapter, shall include all streets and alleys within the boundaries of the city.

*Railroad:* A carrier of persons or materials upon cars operated upon stationary rails, including a motorized locomotive with or without cars coupled thereto operated upon rails.

*Residence district:* The territory contiguous to and including a street or highway not comprising a business district when the property on such street or highway for a distance of three hundred (300) feet or more is, in the main, improved with residences or residences and buildings in use for business or any other area so classified by the city zoning ordinance.

*Right-of-way:* The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

*Roadway:* That portion of a street or highway, improved, designed for or ordinarily used for vehicular travel exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

*Route:* A street on which signs are erected giving notice thereof that certain types of vehicles may or may not be operated.

*Safety zone:* The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

*School bus:* Every motor vehicle that complies with the color and identification requirements set forth in the most recent edition of standards as produced and sponsored by the National Commission on Safety Education of the National Education Association, Washington, D.C., and is being used to transport children to or from school or in connection with school activities, but not including buses

operated by common carriers in urban transportation of schoolchildren.

*Sidewalk:* That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

*Signs and signals:* When pertaining to drivers of vehicles, the position of a driver's hand or arm to indicate to the driver of other vehicles that he intends to stop, start or change his direction of travel. When pertaining to a physical object or marking, any official traffic-control device.

*Stand or standing:* The halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

*Stop:* When required, means complete cessation of movement.

*Stop, stopping or standing:* When prohibited, means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

*Street or highway:* The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

*Through street or highway:* A street or highway, or a portion thereof, on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on such through highway in obedience to either a stop sign, caution sign or yield sign or other official traffic-control device when such signs or devices are erected as provided in this chapter.

*Tractor:* A motor vehicle other than a truck which is designed, maintained or used primarily for the pulling, pushing, or dragging of other objects.

*Traffic:* Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any street for purposes of travel.

*Truck:* Every vehicle designed, maintained or used primarily for the transportation of property.

*Tunnel or underpass:* A complete enclosure through which passes a street, roadway or walkway.

*U-turn:* The turning or causing the turning of a vehicle, so that when such turn is completed such vehicle will be headed in the opposite direction from that in which it was headed before such turning was begun, whether or not such vehicle is pulled into a

driveway or any space beyond the curb line of the street.

*Vehicle:* Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

*Walks:* Areas in public ways designed primarily for pedestrian use.

*Zones:* Areas in public ways designed for limited or specialized uses.  
**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 541 § 201 et seq.

### **Sec. 26-2. Driver's license.**

It shall be unlawful for any person to drive or otherwise propel any motor vehicle within the city unless such person shall have in his possession a current, valid driver's license issued by the state of his residency.

**State law reference** - Who may not obtain driver's license, Vernon's Ann. Civ. St. art. 521 § 001 et seq

### **Sec. 26-3. Application of chapter provisions - To governmental vehicles.**

The provisions of this chapter applicable to the drivers of vehicles upon the highways and streets shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, town or any other political subdivision of this state subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 542 § 002 ..

### **Sec. 26-4. Same - To persons propelling pushcarts or riding animals.**

Every person propelling any pushcart, riding animals or driving any animal drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle, except those provisions of this chapter which by their very nature can have no application.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 542 § 003.

### **Sec. 26-5. Same - To workmen, equipment.**

The provisions of this chapter shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway or street, but shall apply to such persons and vehicles when traveling to or from such work.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545 § 401.

**Sec. 26-6. Riding motorcycles - Generally.**

A person operating a motorcycle, motor scooter or moped shall ride only on the permanent and regular seat attached thereto, and such operator shall not permit any other person to ride on such vehicle unless it is designed to carry more than one person in which event a passenger may ride on the permanent and regular seat if designed for two (2) or more persons or upon another seat firmly attached to the rear or side of the operator.

**Sec. 26-7. RESERVED**

**Sec. 26-8. Use of roller skates, toys and similar devices restricted.**

No person upon roller skates or riding in or by means of any coaster, skate board, toy vehicle, whether motorized or not, or other similar device shall go upon any roadway except while crossing a street on a crosswalk. When so crossing, such person shall be granted all the rights and shall be subject to all of the duties applicable to pedestrians. Such provision shall not apply upon any street while set aside as a play street. (ORD 4-19-2007-F)

**Sec. 26-9. Clinging to moving vehicle.**

It shall be unlawful for any person traveling upon any bicycle, coaster, sled, roller skates or any toy vehicle to cling to or attach himself or his vehicle to any moving vehicle upon any roadway.

**Sec. 26-10. Opening vehicle doors.**

(a) No vehicle shall be driven within the city unless all side doors are securely closed.

(b) No person shall open the door of a parked or stopped vehicle on the side adjacent to moving traffic until it is reasonably safe to do so and can be done without interfering with the movement of other traffic.

(c) No person shall leave a vehicle door open on the side adjacent to moving traffic for a period of time longer than necessary to load or unload passengers.

**Sec. 26-11. Removing or damaging traffic barriers.**

It shall be unlawful for any person, other than a city employee, to remove or damage any barrier erected under the direction of the chief of police or city administrator either closing a street or for the purpose of warning traffic of an obstruction in the street.



**Sec. 26-12. Emerging from alleys, private driveways or buildings.**

The driver of a vehicle emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or sidewalk area extending across any alleyway or driveway, yielding the right-of-way to any pedestrian as may be necessary to avoid collision and upon entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway.

**Secs. 26-13 - 26-22. Reserved.**

**ARTICLE II. ENFORCEMENT AND OBEDIENCE**

**Sec. 26-23. Enforcement of regulations generally.**

It shall be the duty of the city police department to enforce the provisions of this chapter, all other street and traffic laws of the city and all the state traffic laws applicable to traffic in the city.

**Sec. 26-24. Obedience to traffic officers.**

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with the authority to direct, control or regulate traffic.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 727 § 004.

**Sec. 26-25. Privately owned parking lots.**

(a) A "privately owned parking lot opened to the public" within the meaning of this section shall be deemed to be any privately owned parking lot which is offered by any business establishment to its customers, or to the public in general, without charge of a fee for parking.

(b) All privately owned parking lots opened to the public are hereby declared to be public places. All statutes, provisions of this Code and ordinances regulating behavior or otherwise affecting public places are to be enforced on the parking lots.

**Sec. 26-26. Reserved**

**Sec. 26-27. Arrest procedure for traffic violations.**

The procedure stated in article XVII of article 6701 d, Revised Civil Statutes of Texas, 1925, shall govern the police officers in making arrests for moving traffic violations insofar as applicable.

**Sec. 26-28. Reserved**

**Sec. 26-29. Disposition of fines and forfeitures.**

All fines or forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any of the provisions of this chapter shall be paid into the city treasury and deposited in the general fund.

**Sec. 26-30. Failure to obey notice or summons.**

(a) Any person who violates his written promise to appear, given to an officer upon an arrest for any traffic violation, shall be deemed guilty of a misdemeanor regardless of the disposition of the charge on which he was originally arrested.

(b) Any driver of a motor vehicle who unlawfully neglects to answer to the charges set forth in a written notice affixed to such motor vehicle by a police officer shall be deemed guilty of a misdemeanor regardless of the disposition of the charge for which the notice was originally given.

**Secs. 26-31. Reserved.**

**Sec. 26-32. Court Costs; Municipal Court Building Security Fund.**

- A. The Council of the City of Ballinger finds and declares in the public interest and for the purpose of securing or promoting the public health, comfort, convenience, safety, welfare, prosperity, peace, and quiet of the City of Ballinger and its inhabitants does hereby create a municipal court building security fund and thereby requires that a defendant convicted of a misdemeanor offense in Municipal Court to pay a \$3.00 security fee as cost of court.
- B. A person is considered if:
  - 1. A sentence is imposed on the person;
  - 2. The person receives community supervision, including deferred adjudication; or
  - 3. The court defers final disposition of the person's case.
- C. The Municipal Court Clerk shall collect the costs and pay the funds to the Municipal Treasurer, or to any other official who discharges the duties commonly delegated to the Municipal Treasurer, for deposit in a fund to be known as the Municipal Court Building Security Fund. A fund designated by this subsection may be used only to finance items when used for the

purpose of providing security services for buildings housing a municipal court, including:

1. The purchase or repair of X-ray machines and conveying systems;
2. Handheld metal detectors;
3. Walkthrough metal detectors;
4. Identification cards and systems;
5. Electronic locking and surveillance equipment;
6. Bailiffs or contract security personnel during times when they are providing appropriate security services;
7. Signage;
8. Confiscated weapon inventory and tracking systems;
9. Locks, chains, alarms, or similar security devices;
10. The purchase or repair of bullet-proof glass; and
11. Continuing education on security issues for court personnel and security personnel.

- D. The Municipal Court Security Fund shall be administered by or under the direction of the governing body of the municipality.

**Secs. 26-33 - 26-41. Reserved.**

## ARTICLE III. ADMINISTRATION

### DIVISION 1. GENERALLY

**Sec. 26-42. Authority of police officers to direct traffic.**

Officers of the police department, or such officers as are assigned by the chief of police, are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws. In the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require, notwithstanding the provisions of the traffic laws.

**State law reference** - Authority of city to regulate traffic by means of police officers, Vernon's Ann. Civ. 51. art. 542 § 202.

**Sec. 26-43. Authority of officers of fire department to direct traffic .**

Members of the city fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity thereof when requested by a police officer.

**Sec. 26-44. Temporary traffic-control officers .**

Under unusual conditions the chief of police may appoint temporary traffic control officers until such unusual conditions cease to exist, which officers shall have the same authority as regular officers of the police department unless they are specifically limited by the chief of police.

**Secs. 26-45 - 26-50. Reserved.**

**DIVISION 2. TRAFFIC ENGINEER**

**Sec. 26-51. Office created.**

The office of city traffic engineer is hereby created and established in and for the city.

**Sec. 26-52. Investigation of traffic conditions, accidents.**

It shall be the general duty of the city traffic engineer to conduct investigations and studies of traffic conditions and to conduct investigations and analyses of traffic accidents.

**Sec. 26-53. Emergency and experimental regulations.**

(a) The chief of police, by and with the approval of the city traffic engineer, is hereby empowered to make and enforce such emergency or experimental traffic regulations for a period not to exceed forty-eight (48) hours, as may be necessary to prevent or correct any hazardous condition.

(b) The chief of police, by and with the approval of the city council, is hereby empowered to make and enforce such regulations as may be necessary to cover emergencies or special conditions. No such temporary or experimental regulation shall remain in effect longer than thirty (30) days unless the approval of the city council is renewed.

**Secs. 26-54 - 26-64. Reserved.**

## ARTICLE IV. ACCIDENTS

### **Sec. 26-65. Accidents involving damage to vehicle.**

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, without distracting traffic more than is necessary but shall forthwith return to the damaged vehicle and remain at the scene of such accident until he has fulfilled the requirements of section 26-66. Every such stop shall be made in such a way as not to obstruct traffic.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 550 § 022.

### **Sec. 26-66. Duty to give information and render aid.**

The driver of any vehicle involved in an accident, resulting in injury to or death of any person, or damage to any vehicle which is driven or attended by any person, shall give his name, address and the registration number of the vehicle he is driving and the name of his motor vehicle liability insurer and shall upon request and if available, exhibit his driver's license to the person struck or to the driver or occupants of or persons attending any vehicle collided with, or any peace officer, and shall render reasonable assistance to any person injured in such accident, including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 550 § 023.

### **Sec. 26-67. Duty upon striking unattended vehicle.**

The driver of any vehicle which collides with and damages any vehicle which is unattended shall immediately stop, and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver or owner of the vehicle striking the unattended vehicle, or shall leave securely fastened in a conspicuous place in or on the vehicle struck a written notice, giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 550 § 024.

### **Sec. 26-68. Duty upon striking fixtures on public thoroughfare.**

The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a street, roadway or highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address, and of the registration number of the vehicle he is driving, and shall upon request and if available, exhibit his operator's or chauffeur's license, and shall make a report of such

accident when and as required in section 26-70.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 550 § 025.

### **Sec. 26-69. Investigation of accidents.**

Upon notification of a law enforcement officer by the driver of a vehicle involved in an accident resulting in injury to or death of any person, or total property damage to an apparent extent of two hundred fifty dollars (\$250.00) or more, the officer may investigate the accident and file any justifiable charges relating thereto without regard to whether the accident occurred on a public street or highway or other public property, on a road owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the road, or on private property commonly used by the public such as supermarket or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients or patrons, parking lots owned and operated by the city or any other parking area owned and operated for the convenience of, and commonly used by, the public; provided, however, this section shall not apply to accidents occurring on privately owned residential parking areas or on privately owned parking lots where a fee is charged for the privilege of parking or storing a motor vehicle.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 550 § 041.

### **Sec. 26-70. Accident reports - Required.**

(a) The driver of a vehicle in an accident within the city resulting in an injury to or death of any person or damage to any vehicle to the extent that it cannot be normally and safely driven shall immediately by the quickest means of communication give notice of such accident to the police department.

(b) The police department may require any driver of a vehicle involved in an accident, of which a report must be made as provided herein, to file a supplemental report whenever the original report is insufficient, and it is hereby made the duty of all persons witnessing any accident or collision of a vehicle of any kind to report the same to the police department.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 550 § 026, 550 § 061.

### **Sec. 26-71. Same - Filing with city.**

Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident resulting in injury to or death of any person or damage to the property of anyone person to an apparent extent of at least two hundred fifty dollars (\$250.00), either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within ten (10) days after completing such investigation, forward a written report of such accident to the traffic division of the police department. Every accident report shall be made on the appropriate form provided by the traffic division and shall contain all of the information required therein unless not available. Such report

shall be without prejudice to the officer so reporting and shall be for the confidential use of the police department and the city traffic engineer.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 550 § 062.

**Sec. 26-72. When driver unable to report accident.**

When the driver or operator of a vehicle is unable physically to make the accident, report required in this article and there were other occupants of the vehicle at the time of the accident capable of making the report such occupants shall make or cause such report to be made.

**Sec. 26-73. Removing vehicle from scene.**

It, shall be unlawful for the driver or any other person to remove any vehicle involved in an accident from the scene of the accident until authorized to do so by a police officer of the police department of the city; provided, however, this section shall not apply if there exists or arises a duty on the part of such driver or other person in control of such vehicle to use the vehicle in carrying any person injured in the accident to a physician or surgeon for medical or surgical treatment or to notify the police department of the accident.

**Secs. 26-74 - 26-84. Reserved.**

ARTICLE V. VEHICLE EQUIPMENT

**Sec. 26-85. Headlights - When required.**

Every vehicle upon a highway at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and further that stoplights, turn signals and other signaling devices shall be lighted as prescribed for the use of such devices.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 547 § 302.

**Sec. 26-86. Same - On motor vehicles.**

(a) Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) head lamps with one on each side of the front of the motor vehicle, which lamps shall comply with the requirements and limitations set forth in this article.

(b) Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two (2) head lamps which shall comply with the requirements and limitations of this article.

(c) Every head lamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four (54) inches nor less than twenty-four (24) inches.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 547, § 321.

### **Sec. 26-87. Same - Bicycles.**

No bicycle shall be permitted on any street or other public highway of the city between thirty (30) minutes after sunset and thirty (30) minutes before sunrise without a headlight visible from the front thereof for not less than five hundred (500) feet indicating the approach or presence of the bicycle firmly attached to such bicycle and properly lighted, nor without a red taillight or in lieu thereof a reflector attached to and visible from the rear of such bicycle for a distance of not less than three hundred (300) feet.

### **Sec. 26-88. Tail lamps.**

(a) Every motor vehicle, trailer, semi-trailer and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two (2) tail lamps mounted on the rear which, when lighted as required in section 26-85, shall emit a red light plainly visible from a distance of one thousand (1,000) feet to the rear, except that passenger cars and trucks manufactured or assembled prior to the model year 1960 shall have at least one tail lamp. On a combination of vehicles, only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more than one tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than fifteen (15) inches.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 547, § 322.

### **Sec. 26-89. Lamps on parked vehicles.**

a) Every vehicle shall be equipped with one or more lamps which when lighted shall display a white or amber light visible from a distance of one thousand



(1,000) feet to the front of the vehicle, and a red light visible from a distance of one thousand (1,000) feet to the rear of the vehicle. The location of the lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(b) Whenever a vehicle is lawfully parked upon a street or highway during the hours between one-half hour after sunset and one-half hour before sunrise and in the event there is sufficient light to reveal any person or vehicle within a distance of one thousand (1,000) feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(c) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between one-half hour after sunset and one-half hour before sunrise and there is insufficient light to reveal any person or object within a distance of one thousand (1,000) feet upon such highway, such vehicle so parked or stopped shall be equipped with and shall display lamps meeting the requirements of subsection (a).

(d) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.  
**State law reference** - Similar state law, Vernon's Ann. Civ. S1. art. 547, § 383.

#### **Sec. 26-90. Mufflers and prevention of noise.**

(a) Every vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and no person shall use a muffler cutout or bypass or similar device upon a motor vehicle on a highway or street.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(c) Every new motor vehicle and new motor vehicle engine beginning with the model year 1968 shall at all times be so equipped that crankcase emissions are not discharged into the ambient atmosphere from the vehicle or engine.

(d) The owner or operator of any new motor vehicle or new motor vehicle engine beginning with the model year 1968 equipped with an exhaust emission system shall maintain the exhaust emission system in good operable condition and shall use it at all times the motor vehicle or motor vehicle engine is operated. The owner or operator of the motor vehicle or motor vehicle engine shall not remove or intentionally make inoperable within the state the exhaust emission system, or any part thereof, except where the purpose of removal of the exhaust emission system, or part thereof, is to install another exhaust emission system, or part thereof, which is intended to be equally effective in reducing atmospheric emissions from the vehicle or engine.

(e) No person or vehicle shall emit excessive or unusual noise on the highways or streets and no vehicle shall be equipped with a noisemaker other than the required horn.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 547, § 604.

### **Sec. 26-91. Brakes - Required.**

Every motor vehicle operated upon the streets, alleys and public ways within the city shall be equipped with brakes as required by state law.

**State law reference** - Brakes, Vernon's Ann. Civ. S1. art. 547 § 403.

### **Sec. 26-92. Same - Maintenance.**

All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as possible with respect to the wheels on opposite sides of the vehicle.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 547, § 402.

### **Sec. 26-93. Horns and warning devices.**

(a) Every motor vehicle when operated upon a public thoroughfare shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his horn but shall not otherwise use such horn when upon a thoroughfare.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.

(c) It is permissible, but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(d) Any authorized emergency vehicle may be equipped with a siren, whistle or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which latter event the driver of such vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 547, § 501.

**Sec. 26-94. Protuberances on tires.**

(a) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(b) Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished as prescribed in Section 1-12. (Ord. of 4-16-2007-D)

**Sec. 26-95. Projecting loads.**

Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in section 26-85, two (2) red lamps visible from a distance of at least five hundred (500) feet to the rear, two (2) red reflectors visible at night from all distances within six hundred (600) feet to one hundred (100) feet to the rear when directly in front of lawful lower beams of head lamps and located so as to indicate maximum width, and on each side one red lamp visible from a distance of at least five hundred (500) feet to the side and located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than four (4) feet beyond its rear, red flags not less than twelve (12) inches square, marking the extremities of such load, at each point where a lamp would otherwise be required by this section.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 547, § 382.

**Sec. 26-96. Mirrors.**

Every motor vehicle which is operated singly or when towing any other vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the roadway for a distance of at least two hundred (200) feet to the rear of such vehicle.

**Sec. 26-97. Windshields must be unobstructed and equipped with wipers.**

(a) No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, side wing or side or rear windows of such vehicle so as to obstruct the driver's clear view of the roadway or any intersecting roadway.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

**Secs. 26-98 - 26-108. Reserved.**

## ARTICLE VI. AUTHORIZED EMERGENCY VEHICLES

### **Sec. 26-109. When exempt from chapter provisions.**

The provisions of this chapter regulating the operation, parking and standing of vehicles shall apply to authorized emergency vehicles, except that a driver, when responding to an emergency call or in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, except when otherwise directed by a police officer, may:

(1) Park or stand notwithstanding the provisions of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property;

(4) Exceed the prima facie speed limits established by this chapter so long as life or property is not endangered; provided, however, such exception shall not apply to ambulances which shall not be operated at a speed of more than ten (10) miles per hour over the posted speed limit.

**State law reference** - Exemption of authorized emergency vehicles from certain regulations, Vernon's Ann. Civ. S1. art. 545, § 401.

### **Sec. 26-110. Duty of drivers of other vehicles upon approach of authorized emergency vehicles.**

Upon the immediate approach of an authorized emergency vehicle making use of audible or visual signals meeting the requirements of the laws of this state, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. (Ord. of 8-2-28, § 1)

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 156.

**Sec. 26-111. Warning devices required.**

(a) The exemptions granted in section 26-109 to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of section 124 of article 6701 d except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle. The driver of an authorized emergency vehicle that is used for law enforcement purposes may operate without using the emergency warning devices required by this subsection only when the driver is responding to an emergency call or when he or she is in pursuit of a suspected violator of the law and he or she has probable cause to believe that:

(1) Knowledge of his or her presence will cause the suspect to destroy or lose evidence of a suspected felony;

(2) Knowledge of his or her presence will cause the suspect to cease a suspected continuing felony before the driver has acquired sufficient evidence to establish grounds for arrest;

(3) Knowledge of his or her presence will cause the suspect to evade apprehension or identification of the suspect or his or her vehicle; or

(4) Traffic conditions on a multilaned roadway are such that movements of motorists in response to the emergency warning devices may increase the potential for a collision or may unreasonably extend the duration of the pursuit.

(b) The driver of an authorized emergency vehicle that is used for law enforcement purposes may not operate without using the emergency warning devices as provided above unless he or she has first notified a designated office of his or her intention to operate without such devices. The designated office to which such notification is made shall keep an accurate record of the exact time notification is received.

**Sec. 26-112. Duty of drivers.**

The exemptions granted authorized emergency vehicles by section 26-109 shall not relieve the driver thereof from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

**Sec. 26-113. Limitation on application of exemptions.**

No driver of any authorized emergency vehicle shall assume any special privilege under the provisions of this article, except when such vehicle is operated as provided in section 26-109.

**Secs. 26-114 - 26-124. Reserved.**

## ARTICLE VII. OPERATION OF VEHICLES GENERALLY

### **See. 26-125. Starting parked vehicle.**

No person shall start a vehicle which is stopped, standing parked unless and until such movement can be made with safety.

### **Sec. 26-126. Drive on right side of roadway - Exceptions.**

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the, roadway except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, however, any person doing so shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway restricted to one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four (4) or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (a)(2) hereof: provided, however, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or drive. (Ord. of 8-2-28, § 6)

**State law reference** - Similar provisions, Vernon's Ann. Civ, S1. art. 545, § 051.

### **Sec. 26-127. Driving on divided highways.**

Whenever any street or highway has been divided into two (2) or more roadways by leaving an intervening space or by a physical barrier or clearly indicated divider section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section except through an opening in such or at a crossover or intersection established by public authority.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545 § 063.

### **Sec. 26-128. Driving on roadways laned for traffic.**

Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply:

(1) The driver of a vehicle shall drive as nearly as practicable entirely within a single lane and the vehicle shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three (3) lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(3) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the direction of every such sign.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadways and drivers of vehicles shall obey the directions of every such device.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 060.

### **Sec. 26-129. Following too closely.**

The driver of a motor vehicle shall, when following another vehicle, maintain an assured clear distance between the two (2) vehicles, exercising due regard for the speed of such vehicles, traffic upon and conditions of the street or highway so that such motor vehicle can be safely brought to a stop without colliding with

the preceding vehicle, or veering into other vehicles, objects or persons on or near the street or highway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 062.

**Sec. 26-130. Passing vehicle proceeding in the opposite direction.**

Drivers of vehicles proceeding in opposite directions shall pass each other to the right and upon the roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 052.

**Sec. 26-131. Overtaking vehicles - Generally.**

Except as provided in section 26-135, the driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the street until safely clear of the overtaken vehicle. (Ord. of 8-2-28, § 7)

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 058.

**Sec. 26-132. Same - When prohibited.**

No vehicle shall at any time be driven to the left of the street for the purpose of passing a vehicle proceeding in the same direction when:

(1) A marking or other sight restriction is such that the section of the roadway being traversed lies within a no-passing zone;

(2) Approaching within one hundred (100) feet of any intersection or railroad grade crossing;

(3) Approaching within one hundred (100) feet of any bridge, viaduct or tunnel.

**State law reference** - Similar provision's, Vernon's Ann. Civ. S1. art. 541, § 202.

**Sec. 26-133. Same - When permitted.**

No vehicle shall be driven to the left side of the center of any roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this article and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred (200) feet of any approaching vehicle.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 053.



**Sec. 26-134. Same - Duty of driver of overtaken vehicle.**

It shall be the duty of the driver of a vehicle, upon audible signal that he is about, to be overtaken on the left, to give way to the right in favor of the overtaking vehicle and he shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 053.

**Sec. 26-135. Same - On right side.**

(a) The driver of a vehicle may overtake and pass to the right of a vehicle proceeding in the same direction only under the following conditions:

(1) When the overtaken vehicle is making or about to make a left turn;

(2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving traffic in each direction;

(3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of traffic.

(b) The driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the street, except as provided in Art. 6701 d, § 54A.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 057.

**Sec. 26-136. Control of vehicle.**

It shall be the duty of any person who shall operate any vehicle within the city to keep the same under control at all times and to avoid colliding with any other vehicle or person whenever possible.

**Sec. 26-137. Driving on fresh pavement.**

It shall be unlawful for any person to drive any vehicle upon any portion of any street in the city that has been freshly paved, unless all barriers or signal lights have been lawfully removed therefrom indicating that the street is ready for travel.

**Sec. 26-138. "Digging out" prohibited.**

Any driver of any motor vehicle who shall willfully cause such vehicle to "dig out" or shall cause the vehicle to make unnecessary noise by reason of operating it in such a manner as to cause the wheels thereof to spin or slide on the roadway of any street when starting such vehicle or while making any turning movement shall be deemed guilty of a misdemeanor.

**Sec. 26-139. Obstructing traffic generally.**

It shall be unlawful for any person to stop, drive or propel a vehicle in such a manner as to block or obstruct the traffic on any street or alley of the city.

**Sec. 26-140. Obstructing intersection or crosswalk.**

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

**Sec. 26-141. Operation of dangerous vehicles.**

It shall be unlawful for any person to operate any vehicle within the city which is mechanically defective or dangerous in any way that would endanger the life or property of others.

**Secs. 26-142 - 26-152. Reserved.**

**ARTICLE VIII. RIGHT-OF-WAY REGULATIONS**

**Sec. 26-153. Generally.**

The driver of a vehicle approaching the intersection of a different street or roadway shall stop, yield and grant the privilege of immediate use of such intersection in obedience to any stop sign, yield-right-of-way sign or traffic-control device erected by public authority, and after so stopping, may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such different street or roadway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 151.

**Sec. 26-154. When driver to yield to vehicle on his right.**

The driver of a vehicle approaching the intersection of a different street or roadway, not otherwise regulated herein, or controlled by traffic-control signs or

signals, shall stop, yield and grant the privilege of immediate use of such intersection to any other vehicle which has entered the intersection from such driver's right or is approaching such intersection from such driver's right in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter such intersection without interference or collision with traffic using such different street or roadway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 151.

**Sec. 26-155. When making left turn.**

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection, or so close thereto as to constitute an immediate hazard.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 152.

**Sec. 26-156. When approaching multilaned roadway from single- or double-laned roadway.**

The driver of a vehicle on a single-laned street or roadway, or a street or roadway consisting of only two (2) traffic lanes, upon approaching the intersection, not otherwise controlled by traffic signs or signals, of a divided street or roadway, or of a street or roadway divided into three (3) or more marked traffic lanes, shall stop, yield and grant the privilege of immediate use of such intersection to vehicles on such other street which are within the intersection or approaching such intersection in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such different street or roadway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 151.

**Sec. 26-157. When approaching paved roadway from unpaved roadway.**

The driver of a vehicle on an unpaved street or roadway approaching the intersection of a paved roadway shall stop, yield and grant the privilege of immediate use of such intersection to any vehicle on such paved roadway which is within the intersection or approaching such intersection in such proximity thereto as to constitute a hazard, and after so stopping may only proceed thereafter when such driver may safely enter the intersection without interference or collision with traffic using such paved street or roadway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 151.

**Sec. 26-158. Presumption of failure to yield.**

A driver obligated to stop and yield the right-of-way in accord with this article who is involved in a collision or interference with other traffic at such intersection is

presumed not to have yielded the right-of-way as required by this article.  
**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 151.

**Secs. 26-159 - 26-170. Reserved.**

**ARTICLE IX. SPEED\***

**Sec. 26-171. Maximum limits generally.**

(a) No person shall operate or drive any vehicle on any street within the city at a greater speed than thirty (30) miles per hour, unless signs are erected designating another speed in accordance with this article.

(b) Notwithstanding any other provision of this article, no person shall drive a vehicle on a street at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the street in compliance with legal requirements and the duty of all persons to use due care.

(c) The driver of a vehicle shall, consistent with the requirements of subsection (b), drive at an appropriate reduced speed when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or street or highway conditions. (Ord. of 7-3-73)

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 541, § 201.

**Sec. 26-172. Maximum limits on specific streets.**

The city council may alter the maximum speed limit established by section 26171 on any street or portion thereof within the city in accord with the provisions of article 6701 d, section 169 of Vernon's Annotated Civil Statutes. Whenever signs are posted giving notice of the maximum legal speed limit so established for a particular street or portion thereof, it shall be unlawful for any person to drive or operate any vehicle at a rate of speed in excess of such limit. (Ord. of 6-16-64; Ord, of 7 -3-73)

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\* **State law reference** - Speed of vehicles in cities and authority of cities to alter prima facie speed limits established by state law, Vernon's Ann. Civ. S1. art. 541, § 201.

**Sec. 26-173. Minimum limits.**

No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 363.

**Sec. 26-174. Regulation of speed by traffic signals.**

The city traffic engineer, by and with the approval of the city council, is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections and shall erect appropriate signs giving notice thereof.

**Sec. 26-175. Racing prohibited.**

Any person who shall race or engage in a contest for speed between motor vehicles of any kind upon any public street or alley within the city shall be deemed guilty of a misdemeanor. The fact that the actual speed attained by any vehicle engaged in racing or a contest for speed is less than the prima facie legal speed limit shall be no defense to a complaint of racing or engaging in a contest for speed in violation of this section. (Ord. of 8-2-28, § 3)

**Sec. 26-176. State Highway 158 (Broadway Avenue) Speed Limits**

The prima facie speed on HWY. SH 158 within the limits of the City of Ballinger shall be;

Westbound (toward FM 2887)

Between Park Street and Phillips Street is 35 mph.

Between Field Street and Crosson Street is 35 mph.

Eastbound (toward US 67)

Between Crosson Street and Field Street is 35 mph.

Between Park Street and Phillips Street is 35 mph.

**Secs. 26-177 -26-186. Reserved.**

**Cross reference** - Racing on highways, Vernon's Ann. Civ. S1. art. 545, § 420.

## ARTICLE X. TURNS\*

### **Sec. 26-187. Limitations on turning.**

No person shall turn a vehicle at any place or in any direction where there appears an authorized sign or device prohibiting such turn.

### **Sec. 26-188. General limitation.**

No person shall turn a vehicle at an intersection unless the vehicle is in a proper position upon the roadway as required in sections 26-189 and 26-190 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with safety. (Ord. of 8-2-28, § 10)

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 103.

### **Sec. 26-189. Right turn generally.**

The driver of a vehicle intending to turn right at an intersection shall both approach and turn as close as practicable to the right-hand curb or edge of the roadway. (Ord. of 8-2-28, § 10)

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 101.

### **Sec. 26-190. Left turn generally.**

The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection. (Ord. of 8-2-28, § 10)

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 101.

### **Sec. 26-191. U-turns restricted.**

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district or at any intersection controlled by traffic lights and shall not upon any other street or intersection so turn a vehicle unless such movement can be made in safety and without

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\* **State law reference** - Authority of city to regulate turning at intersections, Vernon's Ann. Civ. S1. 542, § 202.

interfering with other traffic. (Ord. of 9-13-26, § 1)

**Sec. 26-192. When turn signals required.**

No person shall turn any vehicle without first giving an appropriate signal in the event any other traffic may be affected by such movement. Such signal of intention to turn right or left, when required, shall be given continuously during not less than the last one hundred (100) feet traveled by the driver of such vehicle before turning.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 103, 104.

**Sec. 26-193. When stop signal required.**

No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is an opportunity to give such signal.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 105.

**Sec. 26-194. Signals by hand and arm or signal device.**

Any stop or turn signal, when required, shall be given either by means of the hand and arm or by a signal lamp or mechanical signal device of a type approved by the state department of public safety, but when a vehicle is so constructed or loaded as described in article 6701 d, § 69(b), such signal must be given by lamp or signal device.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 106.

**Sec. 26-195. "Courtesy" signals prohibited.**

The signal lamps provided for in section 26-194 shall be used to indicate an intention to turn, change lanes or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle or flashed as a courtesy or lido pass" signal to operators of other vehicles approaching from the rear.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 104.

**Sec. 26-196. Method of giving hand-and-arm signal.**

All signals required by this article to be given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (1) *Left turn:* Hand and arm extended horizontally.
- (2) *Right turn:* Hand and arm extended upward.
- (3) *Stop or decrease speed:* Hand and arm extended downward.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 107.

**Secs. 26-197 - 26-207. Reserved.**

**ARTICLE XI. TRAFFIC-CONTROL SIGNS, SIGNALS, DEVICES\***

**DIVISION 1. GENERALLY**

**Sec. 26-208. General powers, duties of traffic engineer.**

The city traffic engineer, subject to the approval of the city council, shall place and maintain traffic-control signs, signals and devices when and as required under this chapter to make effective the provisions of this chapter, and may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under this chapter or state law or to guide or warn the city traffic engineer to supervise the installation and proper timing and maintenance of traffic-control devices.

**Sec. 26-209. Uniformity of devices.**

All signs and signals required under the provisions of this article for a particular purpose shall, so far as practicable, be uniform as to type and location throughout the city.

**Sec. 26-210. Conformity with manual and specifications of state highway department.**

(a) All traffic-control signs, signals and devices shall conform to the manual on uniform traffic-control devices and specifications approved by the state highway commission and resolutions adopted by the city council.

(b) All traffic-control devices erected within the city and not inconsistent with the provisions of state law or this chapter shall be official traffic-control devices.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 544, § 002.

**Sec. 26-211. Obedience to devices.**

The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto, placed in accordance with this chapter and other traffic ordinances of this city, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 544, § 004.

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\* **State law reference** - Authority of city to regulate traffic by means of traffic-control devices and signals, Vernon's Ann. Civ. St. art. 542 § 202, 544 § 002.



**Sec. 26-212. When devices required for enforcement.**

No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation the official traffic-control device or sign is not in reasonable position and sufficiently legible to be seen by an ordinarily observant person.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St., art. 6701d, § 32(b).

**Sec. 26-213. Interference with official traffic-control devices.**

No person shall, without lawful authority, attempt to or in fact, alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription or shield, or insignia thereon or any part thereof.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St., art., 544, § 005.

**Sec. 26-214. Display of unauthorized signs, signals or markings.**

(a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) No person shall place or maintain a flashing light or flashing electric sign of any kind or color within one thousand (1,000) feet of any intersection unless a permit is granted by the state highway commission for such flashing light or electric sign.

(d) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(e) Every such prohibited sign, signal, light or marking is hereby declared to be a public nuisance and the chief of police is hereby empowered to remove the same or cause it to be removed without notice.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St., art. 544, § 006.

**Sec. 26-215. Ratification of existing devices.**

All traffic-control signs, signals, devices and markings placed or erected prior

to the adoption of this Code and in use for the purpose of regulating, warning or guiding traffic are hereby affirmed, ratified and declared to be official traffic control devices, provided such traffic-control devices are not inconsistent with the provisions of this chapter or state law.

**Sec. 26-216. Traffic-control signal legend.**

(a) Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication:

a. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

b. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

c. Unless otherwise directed by a pedestrian-control signal, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication:

a. Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

b. Pedestrians facing a steady yellow signal are thereby advised that there is sufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(3) Steady red indication:

a. Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection and may then turn right or, if the intersecting side of the intersecting

streets are both one-way and left turns are permissible, may turn left, after standing until the intersection may be entered safely, yielding the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. Traffic not so turning shall remain standing until an indication to proceed is shown. The city council may prohibit such turns by posting a sign stating that such turns are prohibited.

b. Unless directed by a pedestrian-control signal, pedestrians facing a steady red signal alone shall not enter the roadway.

(b) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal. (Ord. of 6-25-47, § 1)

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 544, § 007.

### **Sec. 26-217. Flashing signals.**

(a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

*(1) Flashing red (stop signal):* When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

*(2) Flashing yellow (caution signal):* When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through an intersection or past such signal only with caution.

(b) This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in section 22-4.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 544 § 008

### **Sec. 26-218. When signals not operating.**

(a) Whenever a traffic signal is out of order the driver of a vehicle approaching the area of control by the signal shall approach such area at a slow speed and stop if necessary and shall not proceed until reasonably certain that it is safe to do so.

(b) It shall be the duty of all persons knowing of any traffic signal or control device that is out of order, altered, defaced, removed or otherwise inoperative to report such condition to the police department.

**Secs. 26-219 - 26-225. Reserved.**

**DIVISION 2. STOP, YIELD INTERSECTIONS**

**Sec. 26-226. Stop at through streets.**

The driver of any vehicle on any street or other way intersecting with a through street shall bring such vehicle to a full and complete stop before entering such through street and shall yield the right-of-way to any vehicle approaching on such through street. (Ord. of 9-13-26)

**Sec. 26-227. Signals required at through streets.**

Whenever any ordinance of the city designates and describes a through street it shall be the duty of the city traffic engineer to place and maintain a stop sign, or on the basis of an engineering and traffic investigation at any intersection a yield sign, on each and every street intersecting such through street unless traffic at any such intersection is controlled at all times by traffic-control signals; provided, however, at the intersection of two (2) through streets or at the intersection of a through street and a heavy traffic street not so designated, stop signs shall be erected at the approaches of either of such streets as may be determined by the city traffic engineer upon the basis of an engineering and traffic study.

**Sec. 26-228. Other intersections where stop or yield required.**

The city traffic engineer is hereby authorized to determine and designate intersections where particular hazard exists upon other than through streets and to determine whether vehicles shall stop at one or more entrances to any such intersection, in which event he shall cause to be erected a stop sign at every such place where a stop is required, or whether vehicles shall yield the right-of-way to vehicles on a different street at such intersection as prescribed in subsection (a) of section 26-229, in which event he shall cause to be erected a yield sign at every place where obedience thereto is required.

**Sec. 26-229. Stop and yield signs.**

(a) The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

**Sec. 26-230. Vehicle entering stop intersection.**

Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by subsection (b) of section 26-229, and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

**Sec. 26-231. Vehicle entering yield intersection.**

The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection; provided, however, if such driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right-of-way.

**Secs. 26-232 - 26-240. Reserved.**

**DIVISION 3. ONE-WAY STREETS, ALLEYS \***

**Sec. 26-241. Designation.**

Whenever any ordinance of the city designates anyone-way street, or alley, the traffic engineer shall place and maintain signs giving notice thereof, and no such regulation shall be effective unless such signs are in place. Signs indicating the

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\* **State law reference** - Authority of city to designate one-way streets, Vernon's Ann. Civ. 51. art. 542, § 202.

direction of lawful traffic movement shall be placed at every intersection where the movement of traffic in the opposite direction is prohibited.

**Sec. 26-242. Operation of vehicles.**

Upon those streets and parts of streets and in those alleys which are designated as one-way streets or alleys, vehicular traffic shall move only in the indicated direction where signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.

**Secs. 26-243. Traffic circulation around the Ballinger Elementary School**

1. Avenue A between 8th and 9th Street is hereby designated as a bus loading zone. In order for the school buses to have a free and clear area to load and unload passengers, no vehicles shall be within fifty (50) feet of the area designated as bus loading zone for any purpose including but not limited to picking up passengers or blocking access to that area.
2. Avenue A between 8th and 9th Street shall be designated as a one way traffic area from 9th Street easterly to 8th Street between the hours of 7:30 A.M. and 4:30 P.M. Monday through Friday during school operating months.
3. Broad Avenue, between 8th Street and 9th Street, shall be closed to through-traffic from 8:30 AM. to 4:30 P.M. Monday through Friday during school operating months.
4. RESERVED.
5. The presence of any vehicles aforementioned in the designated area as to location or direction of traffic shall be prima facie evidence that such vehicle is illegally in the designated area and that the same is illegally parked or proceeding through the area in violation of this ordinance.
6. Any person violating the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Hundred (\$200.00) Dollars. (ORD. 4-16-2007-C)

**Secs. 26-244 -26-250. Reserved.**

**DIVISION 4. TRUCK ROUTES**

**Sec. 26-251. Definitions.**

For the purposes of this division the following words and phrases shall have the meanings respectively ascribed to them:

*Deviating truck:* A truck which leaves and departs from a truck route while traveling inside the city.

*Truck:* Any and all truck tractors, van trailers, semi-trailers, house trailers or any vehicle designed or operated for the transportation of property, whose body weight or whose rated or licensed combined body and load weight exceeds twelve thousand (12,000) pounds.

*Truck route:* A way over certain streets, as designated herein, over and along which trucks coming into and going out of the city must operate.

### **Sec. 26-252. Application of regulations.**

All trucks within the city shall be operated only over and along the truck routes herein established and on the other designated streets over which travel is permitted.

### **Sec. 26-253. Exceptions.**

The provisions of this division shall not prohibit:

(1) *Operation on street of destination.* The operation of trucks upon any street where necessary to the conduct of business at a destination point, provided streets upon which such traffic is permitted are used until reaching the intersection nearest the destination point.

(2) *Emergency vehicles.* The operation of emergency vehicles upon any street in the city.

(3) *Public utilities.* The operation of trucks owned or operated by the city, public utilities or any contractor or material man, while engaged in the repair, maintenance or construction of streets, street improvements or street utilities within the city.

(4) *Detoured trucks.* The operation of trucks upon any officially established detour in any case where such truck could lawfully be operated upon the street for which such detour is established.

### **Sec. 26-254. Trucks originating outside city - One inside destination point.**

All trucks entering the city for a destination point in the city shall proceed only over one of the streets designated for truck traffic, and shall deviate only at the intersection with the street upon which such traffic is permitted, nearest to the destination point. Upon leaving the destination point, a deviating truck shall return to the truck route by the shortest permissible route.

**Sec. 26-255. Same - Multiple inside destination points.**

All trucks entering the city for multiple destination points shall proceed only over one of the streets designated for truck traffic, and shall deviate only at the intersection with the street upon which such traffic is permitted, nearest to the first destination point. Upon leaving the first destination point, a deviating truck shall proceed to other destination points by the shortest direction and only upon streets upon which such traffic is permitted. Upon leaving the last destination point, a deviating truck shall return to the truck route by the shortest permissible route.

**Sec. 26-256. Trucks originating inside city - Outside destination point.**

All trucks on a trip originating in the city and traveling in the city for a destination point outside the city shall proceed by the shortest direction over which such traffic is permitted to a truck route as herein established. All trucks on a trip originating in the city and traveling in the city for destination points in the city shall proceed only over streets upon which such traffic is permitted.

**Sec. 26- 257. Reserved**

**Sec. 26-258. Maps.**

The city secretary shall keep and maintain accurate maps setting out truck routes and streets upon which truck traffic is permitted. The maps shall be kept on file in the office of the city secretary and shall be available to the public.

**Sec. 26-259. Signs.**

The chief of police shall cause all truck routes and those streets upon which truck traffic is prohibited to be clearly signposted to give notice of the provisions of this division.

**Sec. 26-260. Failure to post.**

No person shall be charged with violating the provisions of this division by reason of operating a truck upon a street wherein truck travel is prohibited unless appropriate signs are posted on such street.

**Sec. 26-261. Weigh-in.**

The chief of police and city policemen shall have the authority to require the person driving or in control of any commercial vehicle not proceeding over a truck route or street over which truck traffic is permitted to proceed to any public or private scale available for the purpose of weighing and determining whether this division has been complied with, and such person's failure or refusal to proceed



as required shall be deemed a misdemeanor.

**Sec. 26-262. Load weight on Elm Creek**

Whereas, it has been determined that in cooperation with the State of Texas that the maximum load limit on the old Elm Creek bridge in Ballinger, Texas should be a weight of a gross 40,000 lbs. and for tandem axles 21,000 lbs. upon the basis of engineering and upon which it shall be prima facie unlawful for any person to drive a vehicle of excess of said weight limits so declared in this ordinance when signs are in place giving notice thereof.

It is hereby declared that the prima facie maximum weight limits of a gross 40,000 lbs. and for tandem axle 21,000 lbs. on the old Elm Creek bridge in Ballinger, Texas and which shall apply at all times when signs are erected giving notice thereof. (Ord. of 8-10-86)

**Secs. 26-263 - 26-272. Reserved.**

**ARTICLE XII. STOPPING, STANDING, PARKING\***

**DIVISION 1. GENERALLY**

**Sec. 26-273. Stop when traffic obstructed.**

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

**Sec. 26-274. Unattended vehicles.**

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition and effectively setting the brakes thereon and, when standing upon any grade, turning the front wheels to the curb or side of the roadway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 404.

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\* **Cross reference** - Parking of motor vehicles at Lake Ballinger, § 15-8.

**State law reference** - Authority of city to regulate standing and parking of vehicles, Vernon's Ann. Civ. St. art. 542 §202.

**Sec. 26-275. Reserved.**

**Sec. 26-276. No stopping, standing or parking near hazardous or congested places.**

(a) The city traffic engineer is hereby authorized to determine and designate by proper signs places not exceeding one hundred (<100) feet, in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

(b) When official signs are erected at hazardous or congested places as authorized herein, no person shall stop, stand or park a vehicle in any such designated place.

**Sec. 26-277. Presumption that owner of vehicle illegally parked same.**

In any prosecution charging a violation of any ordinance or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such ordinance or regulation, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle shall constitute in evidence a prima facie presumption that the registered owner of such vehicle vehicles was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred. Vernon's Ann. Civ. St. art. 6701 d, § 27(a)(1),

**Sec. 26-278. Impoundment of standing or parked vehicles - Generally.**

(a) Any vehicle which shall be or remain standing or parked upon any public street, avenue, way, alley or other public place may be removed by or upon order of the chief of police and placed in storage in a privately operated garage or other place designated or maintained by the city under the following circumstances:

(1) When any vehicle is found upon a street, avenue, alley, way or public place and a report has been previously made that such vehicle has been stolen or complaint has been filed and a warrant issued thereon charging that such vehicle has been stolen or converted in violation of law;

(2) When any police officer of the city has reasonable grounds to believe that any vehicle has been abandoned;

(3) When a police officer arrests any person driving or in control of a vehicle for an alleged offense and such officer is or may be required by law to take the person arrested immediately before a magistrate, or if the arrested person is immediately taken before a magistrate, and when the arrested person is the sole occupant or the owner of the vehicle and is immediately placed in custody;

(4) When a vehicle is so disabled that its normal operation is impossible or impractical and the persons in charge of the vehicle are incapacitated by reason of physical injury or other causes to such an extent as to be unable to provide for its removal or custody, or cannot be found or are not in the immediate vicinity of such vehicle;

(5) When such vehicle is left unattended upon any bridge, viaduct or causeway, or in a tunnel or tube and constitutes an obstruction to traffic;

(6) When any vehicle is illegally parked so as to block the entrance to any private driveway and it is impracticable to move such vehicle from in front of the driveway to any other point on the highway;

(7) When any vehicle constitutes a hazard or interferes with the normal function of a governmental agency, or by reason of any catastrophe, emergency or unusual circumstance the safety of the vehicle is imperiled;

(8) When any vehicle is left standing or parked unattended for more than forty-eight (48) hours in violation of any applicable section of this Code, state law or city ordinances, rules or regulations; provided, however, in the event such vehicle is parked or standing immediately in front of or immediately adjacent to property owned by the owner of such vehicle, or property rented by such owner, before such vehicle shall be removed, the owner thereof shall be given written notice after the expiration of forty-eight (48) hours and shall be given an additional twenty-four (24) hours to remove such vehicle or cause it to be removed. Such written notice may be given by depositing the same in the United States mail, addressed to the owner at the address given on the registration receipt of the vehicle or his last known address.

(b) In order to obtain possession of a vehicle stored under the provisions of this section, the claimant must produce satisfactory evidence of ownership or right to possession within thirty (30) days from the date of such storage and, in addition thereto, must pay all charges for storage and removal of such vehicle in addition to any fine.

(c) If a vehicle removed under this section is not claimed within thirty (30) days from the date of storage, the same may be sold by the city or the garage where the same is stored for storage charges as provided by law.

**State law reference** - Removal of illegally parked vehicles, Vernon's Ann. Civ. 51. art. 545, § 305.

### **Sec. 26-279. Same - Liability of city.**

The provisions of section 26-278 shall not be construed to relieve from or lessen the responsibility of any person who shall leave his vehicle parked on the streets of the city in such a manner that the same may be impounded; nor shall the city

be held as assuming any such liability by reason of impounding such vehicle or causing it to be impounded.

**Sec. 26-280. Special parking .**

(a) The chief of police, with the approval of the city traffic engineer, may issue special permits for a definite period of time to allow parking of an unusual nature which may be contrary to or in violation of any of the provisions of this article.

(b) It shall be unlawful for any person to use the permit for purposes, places or times other than that clearly indicated in the written permit.

(c) It shall be unlawful for any person other than those named in the permit to use the permit for any purpose whatsoever.

**Sec. 26-281. Prohibited in specified places.**

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand or park a vehicle:

a. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

b. On a sidewalk;

c. Within an intersection;

d. On a crosswalk;

e. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

f. Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

g. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

h. On any railroad track;

i. At any place where official signs prohibit stopping.

(2) *Stand or park a vehicle*, whether occupied or not, except momentarily to pick up or discharge a passenger:

- a. In front of a public or private driveway;
- b. Within fifteen (15) feet of a fire hydrant;
- c. Within twenty (20) feet of a crosswalk at an intersection;
- d. Within thirty (30) feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway;
- e. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of the entrance when properly sign posted;
- f. At any place where official signs prohibit standing.

(3) *Park a vehicle*, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

- a. Within fifty (50) feet of the nearest rail of a railroad crossing;
- b. At any place where official signs prohibit parking.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful. (Ord. of 8-2-28, §§ 8, 11; Ord. of 1-22-41, § 1 .2)

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 302.

### **Sec. 26-282. Parking for certain purposes.**

No person shall park a vehicle upon any street in the city for the principal purpose of:

- (1) Displaying such vehicle for sale;
- (2) Washing, greasing or repairing such vehicle, except repairs necessitated by an emergency;
- (3) Advertising, except by permit issued by the chief of police and under the conditions stipulated therein.

### **Sec. 26-283. Parallel parking.**

Vehicles may be parked on all public streets or alleys in the city provided the following conditions are met:

(1) The vehicle shall be headed in the direction of travel of the nearest adjacent traffic lane;

(2) The wheels nearest the curb shall be approximately parallel to and within eighteen (18) inches of the curb or edge of the roadway;

(3) The manner of so parking such vehicle shall be in compliance with all applicable provisions of this chapter and state law.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 303.

#### **Sec. 26-284. Angle parking.**

Vehicles may be parked at any angle not to exceed forty-five (45) degrees to the curb or edge of the roadway at those places and angles where signs or markings clearly indicate that it is permissible and no part or contents of such vehicle shall protrude into or cause a hazard with other vehicles or pedestrians in the nearest adjacent traffic lane, sidewalk or crosswalk. In no case shall such parking exceed twelve (12) feet from the curb. (Ord. of 8-2-28, § 12)

**State law reference** - Authority to permit angle parking, Vernon's Ann. Civ. S1. art. 545, § 303.

#### **Sec. 26-285. Parking not to obstruct traffic.**

No person shall park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for the free movement of vehicular traffic.

#### **Sec. 26-286. Parking in alleys.**

No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property.

#### **Sec. 26-287. Residential parking restrictions.**

It shall be unlawful for any person in charge of or operating a vehicle to allow, permit or park such vehicle habitually on that portion of the street abutting residential property when the person in charge of the vehicle does not own or occupy the residence or a portion of the lot in front of which or alongside of which such vehicle is habitually parked.

#### **Sec. 26-288. Parking for more than seventy-two hours prohibited.**

It shall be unlawful for the owner or operator of any vehicle to allow, cause or permit such vehicle to remain standing or parked on any street, alley, avenue or public way, within the city, for more than seventy-two (72) hours continuously.

**Sec. 26-289: An ordinance restricting parking of Commercial Vehicles in residential districts**

No truck tractor, road tractor, truck trailer, semi-trailer or any other commercial motor vehicle which exceeds thirty (30') feet in length, eight (8') feet in height or seven (7') feet in width shall be parked for any period of time on any public street, alley, parkway, boulevard, public park, public property, or private property, in or adjacent to a residential zoned district under the code of the City of Ballinger; EXCEPT, upon streets or parts of streets in "B-1" and "B-2" Central Business District and Neighborhood Business District and "I-1" Industrial District.

This section shall not apply to street construction, maintenance, and repair equipment; trucks, equipment, trailers, and vehicles used by the City of Ballinger municipality or public service utility companies engaged in repairing or extending public service utilities.

Any person violating the provisions of this chapter shall be guilty of a Class C misdemeanor and upon conviction thereof shall be fined in an amount not to exceed \$500.

**Secs. 26-290 - 26-295. Reserved.**

**DIVISION 2. RESTRICTED, PROHIBITED ON CERTAIN STREETS**

**Sec. 26-296. Application.**

The provisions of this division prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

**Sec. 26-297. Regulations not exclusive.**

The provisions of this division imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

**Sec. 26-298. Parking signs required.**

Whenever any parking time limit is imposed or parking is prohibited on designated streets by this division or any ordinance of the city, it shall be the duty of the city traffic engineer to erect appropriate signs giving notice thereof and no such regulations shall be effective unless such signs are erected and in place at the time of any alleged offense.

**Sec. 26-299. Parking prohibited on certain streets.**

When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any of the streets described by ordinance.

**Sec. 26-300. Parking restricted on certain streets.**

When signs are erected in each block giving notice thereof, no person shall park a vehicle between the hours specified by ordinance on any day except Sundays or public holidays within the district or upon any of the streets described by ordinance.

**Secs. 26-301 - 26-306. Reserved.**

**DIVISION 3. LOADING AND UNLOADING**

**Sec. 26-307. City traffic engineer to designate curb loading zones.**

The city traffic engineer, subject to the approval of the city council, is hereby authorized to determine the location of passenger and freight curb loading zones and shall place and maintain appropriate signs indicating the same and stating the hours during which the provisions of this section are applicable.

**Sec. 26-308. Standing in passenger curb loading zone.**

No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such curb loading zone are effective, and then only for a period not to exceed three (3) minutes.

**Sec. 26-309. Standing in freight curb loading zones.**

No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to such zones are in effect.

**Sec. 26-310. City traffic engineer to designate public carrier stops and stands.**



The city traffic engineer is hereby authorized and required to establish bus stops, bus stands, taxicab stands and stands for other passenger common carrier motor vehicles on such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public, and every such bus stop, bus stand, taxicab stand or other stand shall be designated by appropriate signs.

**Sec. 26-311. Stopping, standing and parking of buses and taxicabs regulated.**

(a) The operator of a bus shall not stand or park such vehicle upon any street at any place other than a bus stand so designated as provided herein.

(b) The operator of a bus shall not stop such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in case of an emergency.

(c) The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than eighteen (18) inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated as provided herein. Such provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

**Sec. 26-312. Restricted use of bus and taxicab stands.**

No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when any such stop or stand has been officially designated and appropriately signed; provided, however, the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

**Secs. 26-313 - 26-320. Reserved.**

## DIVISION 4. COMPRESSION RELEASE TYPE BRAKING SYSTEMS "JAKES BRAKES"

### **Section 26-321 Purpose.**

The purpose of this ordinance is to make it unlawful for vehicles equipped with compression release type braking systems: sometimes known as "Jake Brakes" to use such braking systems or devices upon any public streets., roads, or highways within the limits of the City and its extraterritorial jurisdiction except in an emergency situation for the peace, health and comfort of the citizens of Ballinger and the public.

### **Section 26-322. Definitions.**

For the purpose of this section, compression release type braking system shall mean any devices equipped on certain commercial vehicles, including by not limited to, tractors, semi-trucks, motor carriers and buses that utilizes engine compression release or engine retarders as a means of slowing to braking the speed of the vehicle in lieu of applying to clutch or brakes. The term "emergency situation" for the purposes of this ordinance, shall mean one in which there is imminent danger of collision with property, persons or animals.

### **Section 26-323. Prohibitive Acts.**

Every driver of any vehicle who shall cause their vehicle to brake or slow by any method which increases the noise emission levels of the engine such as, but not limited to engine compression release or engine retarder in lieu of applying the clutch or brakes upon any public streets, roads, or highways within the limits of the City of Ballinger and its extraterritorial jurisdiction upon conviction, shall be guilty of a misdemeanor; provided that such prohibition shall not apply if an emergency situation exists and the use of engine compression brakes is necessary for the protection of persons or property. (ORD. 07-16-2005)

### **Section 26-324. Punishment.**

Violation of this ordinance shall punishable by a fine of not more than Five Hundred Dollars (\$500.00) for each offense. (ORD. 4-16-2007-B)

### **Secs. 26-325 - 26-343. Reserved.**

## ARTICLE XIII. MISCELLANEOUS DRIVING RULES

### **Sec. 26-344. Driving while intoxicated.**

No person shall operate or attempt to operate any vehicle upon any of the public streets, alleys or driveways in the city while such person is in a state of intoxication, or in any other respect incapable of properly and safely operating or driving such vehicle. (Ord. of 8-2-28, § 5)

**Sec. 26-345. Putting rubbish or hazardous material on streets.**

(a) Any person who drops or permits to be dropped upon any highway or street any destructive or injurious material shall remove the same or cause it to be removed.

(b) Any person removing a wrecked or damaged vehicle from a highway or street shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 600, § 001.

**Sec. 26-346. Riding on portion of vehicle not intended for passengers.**

It shall be unlawful for any person to ride on any vehicle upon any portion thereof not designated or intended for the use of passengers when the vehicle is in motion. Such provision shall not apply to an employee engaged in the necessary discharge of his duty or to persons riding within truck bodies in space intended for merchandise.

**Sec. 26-347. Overloading, crowding of vehicles.**

(a) It shall be unlawful for the driver of any vehicle to drive the same when it is so loaded, or when there is in the front seat of such vehicle such number of persons as to obstruct the view of the driver to the front or sides, or to interfere with the operator's control over the driving mechanism of the vehicle.

(b) It shall be unlawful for any passenger of a vehicle to ride in such a position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

**Sec. 26-348. Boarding or alighting from vehicles.**

It shall be unlawful for any person to board or alight from any vehicle while it is in motion.

**Sec. 26-349. Following emergency vehicles.**

(a) The driver of a vehicle, other than one on official business, shall not follow any fire apparatus traveling in response to a fire alarm, closer than five hundred (500) feet, or drive such vehicle into or park such vehicle within the block where the fire apparatus has stopped to answer a fire alarm.

(b) No driver of a vehicle, except a driver on official business, may follow closer than five hundred (500) feet behind an ambulance when the flashing red lights of the ambulance are operating. No driver of a vehicle may drive or park his vehicle at a place where an ambulance has been summoned for an emergency call in a manner calculated to interfere with the arrival or departure of the ambulance.

(Ord. of 8-2-28, § 2)

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 407.

### **Sec. 26-350. Crossing fire hose.**

No vehicle shall be driven over any unprotected hose of the fire department when laid down on any street or private driveway to be used at any fire or alarm of fire without the consent of the fire marshal or the fire department official in command.

(Ord. of 1-20-08)

**State law reference** - Similar provisions, Vernon's Ann. Civ. St., art. 545, § 205.

### **Sec. 26-351. Limitations on backing.**

The driver of a vehicle shall not back the same unless such movement can be made in safety, and shall yield the right-of-way to other vehicular traffic.

### **Sec. 26-352. Driving on sidewalks .**

Any driver of any vehicle who shall drive such vehicle upon or across any sidewalk or sidewalk area of any street within the city, except on a permanent or duly authorized temporary driveway, shall be deemed guilty of a misdemeanor.

(Ord. of 9-2-08; Ord. of 9-8-15)

### **Sec. 26-353. Driving through safety zones Traffic: Through Safety Zones.**

No driver of a vehicle shall, at any time, drive through or within a safety zone.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 545, § 403.

### **Sec. 26-354. "Corner cutting" prohibited.**

It shall be unlawful for any person to drive a vehicle over any sidewalk area and through any driveway, parking lot or any business entrance at any intersection, in making either a right or left turn, except for the purpose of coming to a complete stop to obtain or render some service or make a sale or purchase. It is the intention of this section to prohibit "corner cutting" by driving a vehicle from one street into another across any sidewalk or driveway or through any driveway.

### **Sec. 26-355. Controlled access.**

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

**Sec. 26-356. School buses - Required equipment.**

Any school bus, public or private, operated within the city, shall be equipped with flashing signal devices which shall be visible to the front and rear of such bus.

**State law references** - Flashing warning signs, Vernon's Ann. Civ. S1. art. 547, §701; warning lamps, Vernon's Ann. Civ. S1. art. 547, § 102.

**Sec. 26-357. Same - Operation of equipment.**

Whenever the operator of a school bus shall stop for the purpose of loading or unloading passengers he shall cause the flashing signal devices required by section 26-356 to be operated to indicate that such bus has stopped for such purpose.

**Sec. 26-358. Same - Procedure of drivers meeting or overtaking.**

The driver of a vehicle upon a public street within the city, upon meeting or overtaking from either direction any school bus, private or public, which has stopped on such street for the purpose of receiving or discharging any passenger, shall stop his vehicle before reaching such school bus when there is in operation on the school bus a visual signal as specified in section 26-356, and the driver shall not proceed until such school bus resumes motion or he is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 6701d, § 104(a).

**Secs 26-359 - 26-370. Reserved.**

ARTICLE XIV. PARADES AND PROCESSIONS\*

**Sec. 26-371. Definition.**

For the purpose of this article a "parade" is hereby defined to be the concerted movement of a body of persons, equestrians or vehicles, in something approximating military order over the streets, sidewalks or public ways of the city.

**Sec. 26-372. Exception to article.**

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\* **State law reference** - Authority of city to regulate parades and processions, Vernon's Ann. Civ. S1. art. 542, § 202.

The provisions of this article shall not apply to movements of the military forces of the United States, or of this state, nor to a funeral procession being held as a part of the burial services of a human body.

**Sec. 26-373. Permit required.**

All parades within the city are expressly prohibited unless a permit for the parade shall have first been obtained in conformity with the provisions of this article.

**Sec. 26-374. Application for permit.**

Any person or group of persons desiring to engage in or conduct a parade in the city shall make application in writing for a permit as required by section 26373 to the chief of police not less than two (2) hours before the time for holding the proposed parade and shall state in the application the probable number of persons, animals and vehicles to be used in the parade and the object, time and route of the parade, together with the names of the persons to be in charge thereof.

**Sec. 26-375. General restrictions.**

No permit required by section 26-373 for a parade shall be issued or granted by the chief of police when such parade is to be held on a Sunday, except to a religious order for religious purposes, or to the local chapter of a national, civic, patriotic or fraternal organization, such as the Knights of Columbus, Woodmen of the World, Maccabees, Boy Scouts, American Legion, Veterans of Foreign Wars, and the like; and in no event shall a permit be issued for a parade to be held at any time when the holding of such parade or the route of the parade will, in the opinion of the chief of police, tend to cause or bring about riot, undue commotion, breach of the peace or undue congestion of traffic within the city.

**Sec. 26-376. Change of route.**

The chief of police is authorized to make any change in the route of any proposed parade as he may deem proper and necessary in averting breach of the peace, public disorder or traffic congestion within the city.

**Sec. 26-377. Issuance restricted.**

Upon application for a parade permit as required by section 26-373, the chief of police shall forthwith, and without a fee or charge, issue a permit or license for such parade unless he is justified in refusing a permit for such proposed parade under the provisions of this article, in which event he shall refuse the issuance of such permit to the applicant therefor.

**Sec. 26-378. Driving through procession prohibited.**

It shall be unlawful for the driver of a vehicle to drive between vehicles comprising a funeral or other authorized parade procession while such vehicles are in motion, provided the vehicles are conspicuously so designated. Such provision shall not apply to intersections where traffic is controlled by traffic - control signals or police officers.

**Sec. 26-379. Unlawful to interrupt.**

It shall be unlawful for any vehicle or person to interrupt, enter or otherwise disrupt the free movement of a parade or procession unless specifically directed to do so by an official law enforcement officer.

**Secs. 26-380 - 26-390. Reserved.**

ARTICLE XV PEDESTRIANS

**Sec. 26-391. Subject to traffic control.**

Pedestrians shall be subject to traffic-control signals at intersections as provided in this chapter, but at all other places pedestrians shall be accorded privileges and shall be subject to the restrictions stated in this article.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St. art. 545, § 156.

**Sec. 26-392. Right-at-way at crosswalks.**

(a) When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(c) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, no driver of another vehicle approaching from the rear shall overtake and pass such vehicle.

**State law reference** - Similar provisions, Ann. Civ. St. art. 552, § 003.

**Sec. 26-393. When pedestrians shall yield.**

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing is provided shall yield the right-of-way to all vehicles in the roadway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. St., art. 552, § 005.

**Sec. 26-394. Use right half at crosswalk.**

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 552, § 004.

**Sec. 26-395. Pedestrians on roadways.**

Where sidewalks are provided no pedestrian shall walk along and upon an adjacent roadway. Where sidewalks are not provided any pedestrian walking along and upon a highway shall when possible walk only on the left side of the roadway or its shoulder facing traffic which may be approaching from the opposite direction.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 552, § 006.

**Sec. 26-396. Use of sidewalks and safety zones.**

(a) Where sidewalks or safety zones are provided pedestrians shall stand on the sidewalk or in the safety zone while waiting for a bus, taxi or other vehicle.

(b) Pedestrians shall enter or leave a vehicle only at a safety zone or crosswalk.

(c) Pedestrians shall, while waiting on a sidewalk, stand either near the curb or away from the curb so as not to interfere with other pedestrians.

**Sec. 26-397. Pedestrians soliciting.**

(a) No pedestrian shall stand in a roadway for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.

(b) No pedestrian shall stand on or in the proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 552, § 007.



**Sec. 26-398. Drivers to exercise due care.**

Notwithstanding the provisions of this article, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian on any roadway and shall give warning by sounding the horn of such vehicle when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway.

**State law reference** - Similar provisions, Vernon's Ann. Civ. S1. art. 552, § 008.

PAGES RESERVED

## Chapter 27

### UTILITIES\*

Art. I. In General, §§ 27-1 - 27-33

Art. II. Rates and Charges, §§ 27-34 - 27-52

Art. III. Sewers, §§ 27-53 - 27-90

Div. 1. Generally, §§ 27-53 - 27-73

Div. 2. Installation of Sewer Mains and Lines, §§ 27-74 - 27-90

Art. IV. Water, §§ 27-91 - 27-105

Div. 1. Generally, §§ 27-91 - 27-100

Div. 2. Installation of Water Mains and Lines, §§ 27-101 - 27-105

Div. 3. Drought and Emergency Contingency Plan. §§ 27-106 – 27-112

Div 4. Cross-Connection Control §§ 27-113 – 27-115

#### ARTICLE I. IN GENERAL

##### **Sec. 27-1. Definition.**

For the purpose of this chapter the word "utility" shall be construed to mean and include water and sewer service, garbage and trash collection or any other utility service furnished by the city to the consumers thereof.

##### **Sec. 27-2. Scope of provisions.**

All pertinent provisions of this chapter are hereby made a part of the terms and conditions whereby the city shall furnish any utility service to any person, or whereby the city shall make any utility connection or perform any work of any kind in connection with the furnishing of any utility service pursuant to the rules and regulations of the city council. (Ord. of 4-27-48, § 3)

##### **Sec. 27-3. Service to comply with technical provisions.**

Any utility service furnished under the provisions of this chapter shall be in accordance with and in compliance with all applicable technical provisions of this Code, state law and city ordinances, rules and regulations. (Ord. of 4-27-48, § 2)

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\* **Charter reference** - Department of public utilities, art. 15.

**Cross references** - Buildings, ch. 8; garbage and trash, ch. 13; health and sanitation, ch. 14; mobile homes, ch. 16; planning and zoning, ch. 11); plumbing and gas, ch. 20; zoning, App. A; subdivisions, App. B; water supply and sanitary sewers in mobile home parks, § 16-4.

**Sec. 27-4. Customers outside city limits.**

All utility customers of the city living outside the city limits shall be subject to all of the ordinances, rules, regulations and inspections to which utility customers living inside the city limits are subject. (Ord. of 4-27-48, § 1)

**Sec. 27-5. Rules, regulations.**

The city council shall have the authority to establish by rule or regulation such standards and specifications as may be deemed necessary for the installation, construction and maintenance of any utility service system owned and operated by the city within or without the city and under the management of the council. Such rules, regulations, standards and specifications shall be filed in the office of the city secretary. Violation of such rules, regulations, standards and specifications shall be deemed a misdemeanor.

**Sec. 27-6. Right of entry.**

Any authorized inspector of the city shall have free access at any time to all premises supplied with any utility service by the city for the purpose of examination in order to protect the utility services from abusive use.

**Sec. 27-7. Termination of service authorized.**

The city shall have the right to disconnect or refuse to connect or reconnect any utility service for any of the following reasons:

- (1) Failure to meet the applicable provisions of law;
- (2) Violation of the rules and regulations pertaining to utility service;
- (3) Nonpayment of bills;
- (4) Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise;
- (5) Molesting any meter, seal or other equipment controlling or regulating the supply of utility service;
- (6) Theft or diversion or use of service without payment therefor;
- (7) Vacancy of premises.

**Sec. 27-8. Liability of city for damage.**

The city shall not be liable for any damage to any customer of any utility service furnished by the city due to backflow of the sewerage system, failure of supply, interruption of service or any other cause outside the direct control of the city.

**Sec. 27-9. Utility service - Application required.**

Any person desiring any utility service furnished by the city shall make application for the same to the appropriate city authority, which application shall contain the applicant's name, address and the uses for which such utility service is desired,

**Sec. 27-10. Same - Not available to debtors.**

The city may decline, fail or cease to furnish utility service to any person who may be in debt to the city for any reason, except ad valorem taxes and special assessments.

**Sec. 27-11. Same - Permit.**

Approval of the application for any utility service by the city council shall be deemed permission for such service.

**Sec. 27-12. Same - Use assumed.**

All premises connected to any utility service of the city shall be assumed to be using such utility service and the owner or occupant shall be charged there for so long as such premises shall remain connected with the utility service.

**Sec. 27-13. Not to use contrary to permit.**

Any person having a permit from the city for the use of any utility service offered by the city who shall use such utility service for any purpose other than that mentioned in such permit or who shall make any unauthorized changes in such service shall be deemed guilty of a misdemeanor.

**Sec. 27-14. Damage, trespass of equipment.**

It shall be unlawful for any person, not having the authority to do so, to open any water hydrant or tamper with any utility service furnished by the city to consumers, or to in any other way molest, damage or trespass upon any equipment or premises belonging to the city connected with any utility service.

**Sec. 27-15. Temporary interruption of service.**

The city reserves the right to cut off any utility service without notice in case of emergencies. When an interruption in service is necessary for the maintenance and improvement of the utility system affected customers will be notified as circumstances permit.

**Sec. 27-16. Restricting use.**

The city hereby reserves the right at any time to restrict or prevent the use of any utility service furnished by the city during periods of emergency or circumstances demanding such restriction or prevention of use.

**Sec. 27-17. Sale of service by customer.**

It shall be unlawful for any person to resell to others any utility service obtained from the city except only by special arrangement with the city council.

**Sec. 27-18. Connections to service.**

Connections for any utility service furnished by the city shall be made only under the supervision of the city council.

**Sec. 27-19. Separate connections.**

Every building, structure or consumer in the city shall have a separate utility service connection.

**Sec. 27-20. Unlawful connections.**

Any person who shall make any connection in any manner to any utility system, whether owned by the city or not, without the prior knowledge and consent of the owner of such utility system shall be deemed guilty of a misdemeanor.

**Sec. 27-21. Unlawful use.**

No person, other than employees of the city, shall be authorized to connect, turn on, turn off or disconnect any utility service offered by the city or remove, replace or repair any equipment connected to such utility service.

**Sec. 27-22. Maintenance of system by consumer.**

The consumer of any utility service furnished by the city shall maintain and keep in good repair all connections, appliances and other apparatus installed and used in connection with such utility service.

**Secs. 27-23 - 27-33. Reserved.**

## ARTICLE II. RATES AND CHARGES

### **Sec. 27-34. Meters.**

Meters for the measurement of utility services furnished by the city shall be furnished and installed by, and shall remain the property of, the city.

### **Sec. 27-35. Deposits required.**

Along with the application for utility service, the applicant therefor may be required to pay to the city a deposit in an amount set by ordinance.

### **Sec. 27-36. Refund of deposit.**

Refunds of deposits made for utility service shall be made upon the termination of such utility service only after payment of all indebtedness to the city for such utility service. Application of the deposit may be made in partial or total settlement of accounts when the supply is cut off for nonpayment of the bill, or for any infraction or violation of any ordinance, rule or regulation of the city relative to utility services offered by the city.

### **Sec. 27-37. Determination of charges.**

The rates and charges for the consumption of utility services furnished by the city, as well as the charges and fees for connection thereto, shall be as determined by the city council from time to time and on file in the office of the city secretary. (Ord. of 7-9-63, § 1; Ord. of 2-17-69, §2; Ord. of 5-16-72, §2)  
(Includes but not limited to Raw Water, Treated Water, Sewer, Garbage, Credit Card / Convenience Fee)

### **Sec. 27-38. When payment due.**

All bills for utility services furnished by the city shall be due and payable prior to midnight of the tenth day following the date of such bill; provided, however, if such due date shall fall on a Sunday or a legal holiday observed by the city then such bill shall be due and payable by midnight of the following business day. (Ord. of 7-9-63, § 3; Ord. of 2-17-69, § 3; Ord. of 5-16-72, § 2)

### **Sec. 27-39. Disconnection for nonpayment.**

In the event bills for utility services shall not be paid when the same become due, the city shall have the right to disconnect and discontinue all utility services furnished by the city to any consumer so in arrears. (Ord. of 7-9-63, § 3; Ord. of 2-17-69, § 4)

**Sec. 27-40. Reconnection after disconnection.**

In the event utility service is disconnected for nonpayment of a bill, the consumer thereof shall have the right to have the same reconnected only upon the payment of the amount due, and in addition thereto, a reconnection fee as set by Ordinance. (Ord. of 7-9-63, § 3; Ord. of 2-17-69, § 4; Ord. of 7-15-85)

**Sec. 27-41. Voluntary discontinuance of service.**

Consumers wishing to discontinue the use of any utility service shall give written notice thereof at the city hall and failure to do so shall render them liable for the payment of all bills until such notice has been given.

**Sec. 27-42. All returned insufficient checks**

Not limited to this chapter, a twenty-five dollar (\$25.00) returned check fee will be assessed for all returned checks for insufficient funds.

**Sec. 27-43. Authorizing payment by Credit/Debit cards**

(1). Each office employee of the City of Ballinger who, as part of that employment, collect fees, fines, court cost and other charges from members of the public that are due the City of Ballinger is authorized to accept credit cards as payment for such fees, fines, court cost and other charges. (See Sec. 37-27)

(2) For each fee, fine, court cost or other charge that is paid by credit/debit cards, the office employee collecting same shall also collect a processing fee in an amount of exceed five percent (5%) of the amount of fee, fine, court cost, or other charge, as authorized by Section 132.003 (b), Texas Local Government Code. (See Sec. 27-37)

(3) If for any reason a payment by credit card is not honored by the credit card company on which the funds are drawn, the officer shall collect from the member of the public who attempted to pay by the credit card an additional service charge in an amount equal to the fee being charges for the collection of a check drawn on an account with insufficient funds as authorized by Section 132.004, Texas Local Government Code. (See Sec. 27 – 37)

(4) Processing fees and service charges collected pursuant to this ordinance shall be deposited in the general fund of the City Of Ballinger, as provided by Section 132.006, Texas Local Government Code. (See Sec. 27-37) (Ord. 10 -01 -12)

**Secs. 27-44 - 27-52. Reserved.**



## ARTICLE III. SEWERS

### DIVISION 1 GENERALLY

#### **Sec. 27-53. Definitions.**

For the purpose of this article the following words and phrases shall have the meanings respectively ascribed to them:

*Sewer mains:* Any line forming a part of the sewer system of the city to which sewer service lines are or may be connected to service customers.

*Sewer service line:* Any line extending to a sewer main.

*Sewer system:* The facilities owned by the city to furnish sewage disposal for use by the citizens within the city limits and the adjacent territory thereto, and including not only the existing facilities, but all future additions thereto and extensions thereof. (Ord. of 4-1-65, § 2)

#### **Sec. 27-54. Inspections authorized.**

The city administrator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter upon any property for the purpose of inspection, observation, measurement, sampling and testing, in accordance with the provisions of this article. (Ord. of 1-2-73, § F)

#### **Sec. 27-55. Violations generally; corrections.**

Any person found violating any provision of this article shall be served by the city with a written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease the violation. If the offender continues such violation after the expiration of the time stated in the notice, the city council may prohibit the further use of the sewer system by the offender and may remove or close his sewage and water connections. (Ord. of 12-73, § G)

#### **Sec. 27-56. Discharges into sanitary sewers restricted.**

No person shall discharge, or cause to be discharged, any storm water, groundwater, roof runoff, subsurface drainage, or any drainage from downspouts, yard drains, yard fountains, ponds or lawn sprays, water from swimming pools or unpolluted industrial water into any sanitary sewer of the city. (Ord. of 1-2-73, § A)

**Sec. 27-57. Industrial discharge into storm sewer, drainage systems prohibited.**

The discharge of industrial sewage wastes into the storm sewer system or storm water drainage system of the city is hereby prohibited. (Ord. of 1-2-73, § 1)

**Sec. 27-58. Prohibited discharges into public sewers.**

No person shall discharge, or cause to be discharged, into any public sewer of the city, any of the following described substances, materials, waters or wastes:

(1) Liquids or vapors having a temperature greater than one hundred twenty-two (122) degrees Fahrenheit (50 degrees centigrade).

(2) Toxic, corrosive, flammable or explosive liquids, solids or gas, such as gasoline, kerosene, phenols, benzene, naphtha, etc.

(3) Waters or wastes which contain wax, grease, oil cleaning solvents, mineral oils or other substances which will solidify at temperatures between thirty-two (32) degrees Fahrenheit to one hundred fifty (150) degrees Fahrenheit.

(4) Garbage that has not been properly comminuted or shredded. (The installation and operation of any garbage grinder equipped with a motor of three-fourths hp or greater shall be subject to the review and approval of the city administrator.)

(5) Solid or viscous substances, such as ashes, cinders, sand, mud, gravel, straw, tar, asphalt, ceramics, wastes, shavings, sawdust, whole blood, paunch, manure, hair and fleshings, entrails, lime slurries, lime residues, slops, chemical residues, paint residues or bulk solids.

(6) Heavy metals, such as the following:

Antimony	Arsenic
Barium	Beryllium
Bismuth	Boron
Cadmium	Chromium (hexa)
Chromium (tri)	Cobalt
Copper	Iron
Lead	Manganese
Mercury	Molybdenum
Nickel	Rhenium
Selenium	Silver
Strontium	Tellurium
Tin	Uranylion
Zinc	

(7) Radioactive wastes or isotopes of such half-life or concentration that exceeds

limits established by the US Public Health Service for Public Drinking Water Standards.

- (8) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters. (Ord. of 1-2-73, § B)

**Sec. 27-59. Limitations on discharges.**

Discharges into the city sewer system shall consist only of domestic sewage, properly shredded garbage, industrial wastes and other wastes which are free from the prohibited constituents as listed in section 27-58 and limited in BOD suspended solids, dissolved sulfides and pH as follows:

- (1) Biochemical oxygen demand (BOD) of such wastes delivered shall not exceed 250 ppm, as determined by standard methods.
- (2) Suspended solids delivered shall not exceed 250 ppm, as determined by standard methods.
- (3) Hydrogen ion concentration (pH) of the sewage delivered shall be no lower than 6.0 nor higher than 9.5 and any acid wastes shall not be discharged unless neutralized to a pH of 6.0 or more.
- (4) Dissolved sulfides in the wastes delivered to the system shall not exceed 0.1 ppm.
- (5) Alkalinity shall not exceed 400 ppm. (Ord. of 1-2-73, § C)

**Sec. 27-60. Volume, flow rate capacity.**

The volume and rate of flow of wastes to the city sewer system shall not be in excess of the capacity of the facility provided, as determined and regulated by the city administrator. (Ord. of 1-2-73, § D)

**Sec. 27-61. Pretreatment facilities.**

Any person or owner discharging industrial wastes into the city sewer system which exhibit any of the prohibited wastes set out in section 27-58 shall pretreat or otherwise dispose of such industrial wastes as to make the remaining wastes meet the requirements of section 27-59, and be acceptable to the city sewer department. Any such person or owner shall provide and maintain, in a suitable, accessible position on his premises, an inspection chamber or control manhole near the outlet of such sewer prior to the discharge into the city sewer system. Every such chamber shall be of such

design and construction as to prevent infiltration of any water or foreign matter into the city sewer system and shall be so maintained by the person discharging the wastes so that any authorized representative of the city may readily and safely measure the volume and obtain samples of the flow at all times. Where pretreatment or equalization of waste flows is practiced prior to discharge into the city's sewer system, the design and installation of the plants and equipment of said pretreatment or equalization facilities shall be subject to the review and approval of the city administrator, and subject to the requirements of all applicable codes, ordinances and laws. (Ord. of 1-2-73, § E)

**Sec. 27-62. Interceptors.**

Grease, oil and sand interceptors shall be provided for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients; provided, however, such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the city administrator and shall be located so as to be readily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature, which interceptors shall be of substantial construction, watertight and equipped with easily removable covers which when bolted in place shall be gas tight and watertight. (Ord. of 1-2-73, § E)

**Sec. 27-63. Other agreements not affected.**

No statement contained in this article shall be construed as preventing any agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern for any portion of the excess cost to the city of handling and treating such industrial wastes, as may be established by the city council. (Ord. of 1-2-73, § E)

**Sec. 27-64. Damaging equipment.**

No unauthorized person shall maliciously, willfully or negligently break damage, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city sewerage works. Any person violating such provision shall be subject to immediate arrest under the charge of disorderly conduct. (Ord. of 1-2-73, § E)

**Sec. 27-65. Testing procedures.**

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event

no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewerage works and to determine the existence of hazards to life, limb and property. The particular analyses involved will determine whether a twenty-four-hour composite of all outfalls of a premises is appropriate or whether a grab sample shall be taken. (Ord. of 1-2-73, § J)

**Sec. 27-66. Sanitary Sewer Rate**

Sanitary Sewer Rates shall be provided for in the City Council approved Sanitary Sewer Rate Schedule kept on file in the City Secretary's office.

**Secs. 27-67 - 27-73. Reserved.**

**DIVISION 2. INSTALLATION OF SEWER MAINS AND LINES.**

**Sec. 27-74. Policy established.**

There is hereby established a policy for the laying of sewer mains and other sewer lines for the sewer system of the city. The city council shall require the city administrator and other employees of the city to comply with the provisions of this division. The city council shall be required to cause the operations of the sewer department of the city to be kept within the scope of the policy hereby established. (Ord. of 4-1-65, § 1)

**Sec. 27-75. Other policies possible.**

Any policy not established by this division relating to the subject thereof shall be established by an order or resolution of the city council, provided such policy shall not be in violation of the provisions of this division. (Ord. of 4-1-65, § 6)

**Sec. 27-76. City liability.**

Nothing contained in this division shall ever create any liability on the city. (Ord. of 4-1-65, § 5)

**Sec. 27-77. Conformance with technical provisions.**

All installations under this division shall be in compliance with the city's plumbing code and all other provisions of this Code and ordinances pertinent to or affecting the city sewer system. (Ord. of 4-1-65, §§ 3,4)

**Sec. 27-78. Sewer line services.**

It shall be unlawful for any person to lay or install a sewer service line connected or to be connected to a sewer main or any other facility of the sewer system of the City without first having the approval of the City by its duly authorized official. The City of Ballinger shall make all service line connections from the property line of owner of said property to the City sewer main and the applicant desiring a sewer tap to the main shall formally apply to the City Hall for such connection. The city council approved fee schedule for charges of each new tap to the sewer main shall be kept in the City Secretary's office. (Ord. of 4-19-2007-l)

**Sec. 27-79. Sewer mains.**

(a) It shall be unlawful for any person to lay or install a sewer main connected or to be connected to another sewer main or to any part or facility of the sewer system of the city without first having the approval of the city by its duly authorized official.

(b) All sewer mains hereafter laid, installed or connected in any manner to any other main or any other part or facility of the city sewer system shall become the property of the city and form a part of the city sewer system, notwithstanding the fact that such sewer main may not have been laid, installed or connected at the expense of or cost to the city.

(c) All sewer mains hereafter laid, installed or connected in any manner to any other main or any other part or facility of the city sewer system shall be within the boundaries of an alley, street, public road or state highway, either of which may have been used as such to become such an alley, street, road or highway by prescription, or which may have been conveyed to the state or any political subdivision thereof, including, among others, the city, or within the boundaries of a perpetual easement granted to the city for such purposes at the same time, and such easement shall include all rights of ingress and egress by the city without liability against the city for any damage resulting from the use of such easement for the laying, installing, connecting, maintaining, replacing or repairing of said sewer mains, or in any manner using or working on or with such sewer mains.

(d) The city shall never be required to extend any sewer main or install any sewer facility, unless the net income therefrom, taking into consideration the cost of such extension or installation and the reasonable maintenance thereof, shall be sufficient to repay the city, within a period not exceeding ten (10) years, the full amount of the cost of such extension or installation and the reasonable maintenance thereof during such period; provided, however, the available funds in the sewer reserve account shall not be depleted by reason of such expenditures below an amount required to be available for such emergencies, repairs, replacements and maintenance as may be reasonably anticipated by the city in keeping with good business practices and proper management of the city sewer system.

(e) The city may grant its approval to any person to make such extensions of the sewer mains at his own cost and expense, but no extension shall be made by any person

which is not under the supervision and control of the city; and it shall be unlawful for any person to make such extension without first obtaining the approval of the city by its duly authorized official.

(f) In no event shall the city be required or permitted to make extensions under the provisions of this division if within the discretion of the city council there are no funds available for the purpose of extending any particular sewer line or installing any sewer equipment.

(g) The city is hereby prohibited from buying any existing sewer system or sewer main hereafter installed by any person, unless such sewer system or sewer main was installed by the city with its own material and its own workmen, or by a contract let by the city for that purpose. (Ord. of 4-1-65, § 4)

**Secs. 27-80 - 27-90. Reserved.**

## ARTICLE IV. WATER

### DIVISION 1. GENERALLY

#### **Sec. 27-91. Definitions.**

For the purposes of this article the following words and phrases shall have the meanings respectively ascribed to them:

Service lines: Any line extending from a water main to a customer or a water line to a meter set for the registration of the amount of water consumed through any line for use by a customer.

Water mains: Any line forming a part of the water system of the city and to which service lines are or may be connected to service customers.

Water system: The facilities owned by the city to furnish water for use by the citizens within the city limits and adjacent territory thereto, and including not only the existing facilities, but all future additions thereto and extensions thereof. (Ord. of 3-9-65, § 2)

Secs. 27-92 - 27-100. Reserved.

### DIVISION 2. INSTALLATION OF WATER MAINS AND LINES

#### **Sec. 27-101. Policies established.**

There is hereby established a policy for the laying of water mains for the water system of the city. The city council shall require the city administrator and other employees of the city to comply with the provisions of this division. The city council shall be required

to cause the operations of the water department of the city to be kept within the scope of the policy hereby established. (Ord. of 3-9-65, § 1)

**Sec. 27-102. Other policies possible.**

Any policy not established by this division relating to the subject thereof shall be established by an order or resolution of the city council provided such policy shall not be in violation of the provisions of this division. (Ord. of 3-9-65, § 5)

**Sec. 27-103. City liability.**

Nothing contained in this division shall ever create any liability on the city. (Ord. of 3-9-65, § 4)

**Sec. 27-104. Service lines.**

It shall be unlawful for any person to lay or install a service line connected or to be connected to a water main or any other facility of the water system without first having the approval of the city by its duly authorized official. No service line shall be furnished by or at the expense of the city. (Ord. of 3-9-65, § 3)

**Sec. 27-105. Water mains.**

(a) It shall be unlawful for any person to lay or install a water main connected or to be connected to another water main or to any other part or facility of the water system without first having the approval of the city by its duly authorized official.

(b) All water mains hereafter laid, installed or connected in any manner to any other main or any other part or facility of the water system shall become the property of the city and form a part of the water system, notwithstanding the fact that such water main may not have been laid, installed or connected at the expense of or cost to the city.

(c) All water mains hereafter laid, installed or connected in any manner to any other main or any other part or facility of the water system shall be within the boundaries of an alley or street dedicated for public use, or a public road, state highway or tract conveyed to the city, or within the boundaries of a perpetual easement granted to the city for such purposes; provided, however, such easement may be granted for and used for other purposes at the same time, and shall include all rights of ingress and egress by the city without liability against the city for any damage resulting from the use of such easement for the laying, installing, connecting, maintaining, replacing or repairing of said water main, or in any manner using or working on or with such water main.

(d) The city shall never be required to extend any water main for any distance beyond one hundred (100) feet from the nearest existing water main and shall not be required to extend the water main a distance of one hundred (100) feet if the potential use of the water to be run through the same will not produce a profit for the water system sufficient



to justify such extension. The city may grant its approval to any person to make such extensions at his own cost and expense, but no extension shall be made by any person which is not made under the supervision and control of the city; and it shall be unlawful for any person to make such extension without first obtaining the approval of the city by its duly authorized official.

(e) In the event any person shall make an extension of a water main under the conditions hereinbefore defined, the city may reimburse such person upon the following conditions and in the following manner:

(1) An agreement and contract in writing has been made and entered into by and between the city and the person intending to make such an extension, embodying therein the method by which the cost shall be determined and the method of reimbursement by the city, but which agreement and contract shall be limited to the authority vested in the city by this division.

(2) The city shall never be permitted to agree to pay or contract to reimburse any person for an amount greater than the actual cost of making the extension, nor for the sum greater than the contract cost of making such an extension determined by the submission of bids upon competitive bidding, after public notice of the intent to take such bids, whichever is the lesser amount. The city council shall have the discretion of determining if bids will be required.

(3) Before the extension of water mains is made and prior to approval thereof granted by the city, evidence shall be produced to the city that such mains are to be planned, laid, installed or connected to the water system in keeping with good engineering practices; that the size and material of such water mains are sufficient to meet the requirements of the area for which such water mains are intended to serve, taking the future growth of the area into consideration; and that such extension will provide for all valves, fittings and fire hydrants which are necessary in the area to be served thereby. Upon completion of such extension evidence shall be produced to the city that such water mains were actually laid, installed or connected to the water system in accordance with the plans therefore produced in evidence, and that all of the conditions and provisions of this division in other respects have been fully met.

(4) If reimbursement is made by the city it shall be made only under these conditions:

a. In accordance with the agreement and contract in writing previously made and executed as provided in paragraph (1) of this section;

b. At not more than the actual cost of such mains at the rate of one hundred (100) feet for each service connection made during the preceding calendar year and continuous use of water service therefrom beginning with the date of installation thereof and continuing until the reimbursement has been fully repaid as herein provided, or until the expiration of the seven-year limit hereinafter established;

c. On January fifteenth of each year payment may be made of one-fourth of the total reimbursement to which such party is entitled during the preceding calendar year, and one-fourth thereof payable on the fifteenth day of each succeeding January until the whole amount thereof has been paid, provided such payments do not extend beyond the seven-year limit hereinafter established; and

d. No reimbursement shall be paid by the city for any portion of the cost of such mains in any event after a period of seven (7) years from the date of completion of such improvement.

(f) The city shall not be required to make any such extensions with its own materials and workmen unless specifically directed by an order of the city council. (Ord. of 3-9-65, § 4)

**Sec. 27-105.5. Water Rates.**

See: Section 27 – 37.

**DIVISION 3. DROUGHT AND EMERGENCY CONTINGENCY PLAN**

**EXHIBIT “A”**

**Sec. 27-106. Declaration of policy.**

It is hereby declared that, under certain conditions water supplies may be limited in the City of Ballinger. The general public welfare requires that the available water resources be put to the maximum beneficial use and that the waste, unreasonable use, or unreasonable method of use of water be prevented. This Drought or Emergency Contingency Plan (the "Plan") provides a reasonable beneficial use plan that protects the health and welfare of the citizens of Ballinger.

**Sec. 27-107. Authorization.**

The City Council does hereby authorized, to declare a water emergency and to declare a water emergency and to direct the City Manager to implement the Plan.

**Sec. 27-108. Application.**

The provisions of this chapter shall apply to persons, customers, and property served by the department of water utilities wherever situated, including customers such as water supply corporations, those citizens living outside of the city limits of the City of Ballinger but receiving City water, and any others that receive water from the city on a contract basis.

These water use restrictions only apply to water from the City of Ballinger water system. Customers are encouraged to develop and use alternate sources of water for outdoor uses and commercial car washes.

**Sec. 27-109. Mandatory drought contingency stage implementation.**

The water utilities department shall monitor the projected supply and demand for water by its customer on a daily basis and shall recommend to the city manager the extent of the conservation required through the implementation and/or termination of particular drought contingency stages in order for the department to prudently plan for and supply water to its customers. Thereafter, the city manager will order that the appropriate drought contingency stage be implemented or terminated in accordance with the applicable provisions of this article. Said order shall be made by public announcement and shall be publicized until such time as all restrictions are implemented or removed and shall become effective immediately upon such announcement.

**Sec. 27-110. Implementation and termination criteria guidelines.**

The city manager, upon recommendation of the director of water utilities, or his/her designee, shall determine whether conditions warrant implementation and/or termination of the Plan and recommend accordingly to the Mayor. Changes in water Supply conditions due to unanticipated higher water usage, weather, or other developments may necessitate changes in the implementation of different stages.

Termination of any stage may occur when all of the conditions listed as implementation criteria for that stage have ceased to exist for a period of time as determined by the City Manager upon recommendation of the director of water utilities or his/her designee.

**Sec. 27-111. Drought or emergency contingency stages.**

No person shall make, cause, use or permit the use of water from the City of Ballinger Water System for residential, commercial, industrial, agricultural, governmental or any other purpose in a manner contrary to provisions of this article or in an amount in excess of that use permitted by the conservation stage in effect pursuant to action taken by the mayor or designee in accordance with the provisions of this article.

The guidelines below shall set forth the criteria for determining which mandatory restrictions shall apply during a particular drought contingency stage. Such guidelines shall be updated when the city manager determines, upon recommendation of the director of water utilities, that the conditions of the utility system have changed so as to necessitate such updating. The city manager shall include in such guidelines a calendar system designating allowed days for irrigation by customers. These guidelines shall be available for inspection at the city secretary's office and the water administration office during normal business hours.

The minimum criteria for each stage shall be as follows:

- (a) Stage 1. Water Alert Outside watering shall be prohibited between the hours of 10:00 A.M. and 7:00 P.M. and any other watering shall be on

a voluntary basis but shall only be used on the customers designated water date as set out in Exhibit "B" herein.

- (b) Stage 2. Water emergency. Outside watering is prohibited between the hours of 10:00 A.M. and 7:00 P.M. and all City of Ballinger water customers shall follow the customers designated water date on any other allowable watering; anyone not abiding by the water calendar will receive a warning on the first offense, however, if a second offense occurs a fine of \$75.00 shall be imposed; if a third offense occurs a fine of \$150.00 shall be imposed and water service may be discontinued.
- (c) Stage 3. Water crisis.

Mandatory compliance - Water crisis. Upon announcement and implementation by the city manager, the following restrictions shall apply to all persons:

1. Irrigation by all commercial, industrial and residential customers utilizing individual sprinklers or sprinkler systems for lawns, gardens, landscaped areas, trees, shrubs or other plants is prohibited; provided however, irrigation of gardens, trees and shrubs shall be permitted on the customers designated date, as hereinafter set out, except between the hours of 10:00 A.M. to 4:00 P.M., if
  - a. a hand held hose is used and is personally attended by an individual at all times the water is running.
2. Use of water from fire hydrants shall be limited to fire fighting and related activities. Water for domestic use only may be purchased from the bulk loading station.
3. The following uses of water are defined as "waste of water" and are absolutely prohibited:
  - a. Allowing water to run off more than 75 feet from the downgrade of the property line;
  - b. Failure to repair a controllable leak;
  - c. Washing sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire, health or safety hazards.
  - d. The filling, refilling or adding of water to swimming and/or wading pools is prohibited.

**Sec. 27-112. Penalties for violations.**

- (a) Any violation of the provisions of this ordinance is hereby prohibited, declared to be unlawful, and subjects the violator to the following range of penalties in addition to applicable court costs and any other fees that might be involved herein:
  - (1) Upon conviction of any violation at a residence, a fine of \$300.00 per violation will be imposed. If a second offense occurs a fine of \$500.00 will be imposed and repeated violations may result in termination of water service with an associated \$200.00 reconnect fee.
  - (2) Upon conviction of any violation at a commercial (including apartments) or industrial location, \$500.00 per violation, repeat of violation may result in termination of water service with an associated \$500.00 reconnect fee.
- (b) It is an affirmative defense to any violation of this article if the customer proves that the misused wasted water is from an operable water well serving said property.

**Sec. 27-113 Legend.**

The Plan is based upon a calendar system determined by the number of an individuals address shown by the corresponding symbols set out below and as designated on the examples for October, November and December. Although the calendar system is especially important for yard watering, it shall also be used for other water conservation activities.

A customer's watering day is determined by the last number of his house or property address, Multi-unit properties will use the lowest address number. Customers on rural routes will use the last number of their post office box number or their route number if they do not have a post office box number. Customers in trailer parks will use the last number of their lot number.

----- IMPORTANT NOTICE -----

THE CURRENT CITY OF BALLINGER WATERING  
PLAN'S CALENDAR MAY BE OBTAINED AT

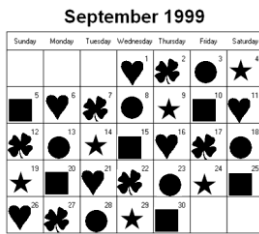
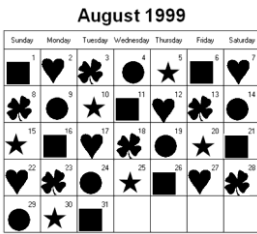
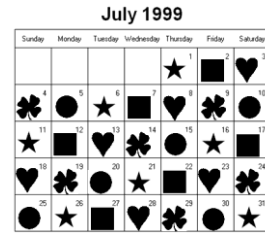
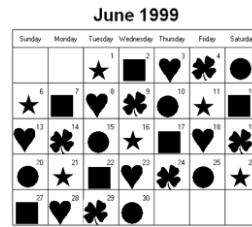
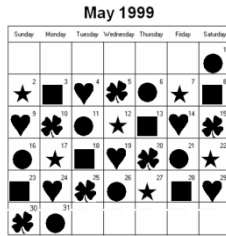
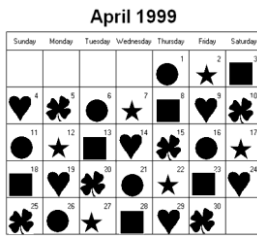
# THE BALLINGER CITY HALL.

EXHIBIT "B"

CITY OF BALLINGER  
 WATER CONSERVATION PLAN  
 STAGE I WATER ALERT

CITY OF BALLINGER  
 WATER CONSERVATION PLAN

**EXAMPLES OF Watering Calendar**



IF YOUR ADDRESS ENDS IN THE NUMBERS BELOW THEN YOUR WATERING DAY IS FOR THE CORRESPONDING SYMBOL

- 1 OR 6 ●
- 2 OR 7 ★
- 3 OR 8 ■
- 4 OR 9 ♥
- 5 OR 0 ♣

EXAMPLE: IF YOUR ADDRESS IS 1107 ANYWHERE ST. YOUR WATERING DAY WOULD BE ON THE ★ SYMBOL DAY

**NO OUTSIDE WATERING IS ALLOWED BETWEEN THE HOURS OF 10 A.M. AND 4 P.M.**

TIPS TO WATER WISELY

- Water no more than once every five days using the schedule from the CURRENT WATERING CALENDER WHICH CAN BE OBTAINED FROM THE BALLINGER CITY HALL. Provide no more than one inch of water each time you water.
- **No watering between the hours of 10a.m. and 4p.m.** This is to avoid excessive evaporation.
- If it rains an inch or more, delay watering for at least another five days.
- If watering your lawn causes water to run into the street or gutter, stop watering! You need to adjust your sprinkler or water for a shorter time period.
- Do not water on windy days.

EXHIBIT "C"

CITYOF BALLINGER  
 Example of WATER CONSERVATION PLAN  
 STAGE 3 WATER CRISIS

October 1999

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					♥ <sup>1</sup>	♣ <sup>2</sup>
● <sup>3</sup>	★ <sup>4</sup>	■ <sup>5</sup>	♥ <sup>6</sup>	♣ <sup>7</sup>	● <sup>8</sup>	★ <sup>9</sup>
■ <sup>10</sup>	♥ <sup>11</sup>	♣ <sup>12</sup>	● <sup>13</sup>	★ <sup>14</sup>	■ <sup>15</sup>	♥ <sup>16</sup>
♣ <sup>17</sup>	● <sup>18</sup>	★ <sup>19</sup>	■ <sup>20</sup>	♥ <sup>21</sup>	♣ <sup>22</sup>	● <sup>23</sup>
★ <sup>24</sup>	■ <sup>25</sup>	♥ <sup>26</sup>	♣ <sup>27</sup>	● <sup>28</sup>	★ <sup>29</sup>	■ <sup>30</sup>
♥ <sup>31</sup>						

November 1999

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	♣ <sup>1</sup>	● <sup>2</sup>	★ <sup>3</sup>	■ <sup>4</sup>	♥ <sup>5</sup>	♣ <sup>6</sup>
● <sup>7</sup>	★ <sup>8</sup>	■ <sup>9</sup>	♥ <sup>10</sup>	♣ <sup>11</sup>	● <sup>12</sup>	★ <sup>13</sup>
■ <sup>14</sup>	♥ <sup>15</sup>	♣ <sup>16</sup>	● <sup>17</sup>	★ <sup>18</sup>	■ <sup>19</sup>	♥ <sup>20</sup>
♣ <sup>21</sup>	● <sup>22</sup>	★ <sup>23</sup>	■ <sup>24</sup>	♥ <sup>25</sup>	♣ <sup>26</sup>	● <sup>27</sup>
★ <sup>28</sup>	■ <sup>29</sup>	♥ <sup>30</sup>				

December 1999

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			♣ <sup>1</sup>	● <sup>2</sup>	★ <sup>3</sup>	■ <sup>4</sup>
♥ <sup>5</sup>	♣ <sup>6</sup>	● <sup>7</sup>	★ <sup>8</sup>	■ <sup>9</sup>	♥ <sup>10</sup>	♣ <sup>11</sup>
● <sup>12</sup>	★ <sup>13</sup>	■ <sup>14</sup>	♥ <sup>15</sup>	♣ <sup>16</sup>	● <sup>17</sup>	★ <sup>18</sup>
■ <sup>19</sup>	♥ <sup>20</sup>	♣ <sup>21</sup>	● <sup>22</sup>	★ <sup>23</sup>	■ <sup>24</sup>	♥ <sup>25</sup>
♣ <sup>26</sup>	● <sup>27</sup>	★ <sup>28</sup>	■ <sup>29</sup>	♥ <sup>30</sup>	♣ <sup>31</sup>	

IF YOUR ADDRESS ENDS  
 IN THE NUMBERS BELOW  
 THEN YOUR WATERING  
 DAY IS FOR THE  
 CORRESPONDING  
 SYMBOL

- 1 OR 6 ●
- 2 OR 7 ★
- 3 OR 8 ■
- 4 OR 9 ♥
- 5 OR 0 ♣ or



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## DIVISION 4. CROSS-CONNECTION CONTROL

### Sec. 27-113 General Policy

#### (a.) Purpose

The purpose of this ordinance is:

- (1) To protect the public potable water supply of Ballinger, Texas from the possibility of contamination or pollution by isolating within the customer's internal distribution system(s) or the customer's private water system(s) such contaminants or pollutants that could backflow into the public water system; and,
- (2) To promote the elimination or control of existing cross connections, actual or potential, between the customer's in-plant potable water system(s) and non-potable water systems, plumbing fixtures, and industrial piping systems; and,
- (3) To provide for the maintenance of a continuing program of cross--connection control that will systematically and effectively prevent the contamination or pollution of all potable water systems.

#### (b.) Responsibility

The water superintendent shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow of contaminants or pollutants through the water service connection. If, in the judgment of said water superintendent an approved backflow-prevention assembly is required at the customer's water service connection for the safety of the water system, the water superintendent or his/her designated agent shall give notice in writing to said customer to install such an approved backflow-prevention assembly(s) at specific location(s) on his/her premises. The customer shall immediately install such approved assembly(s) at his/her own expense; and, failure, refusal, or inability on the part of the customer to install, have tested, and maintain said assembly(s) shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met.

## **Sec. 27-114. Definitions**

### Water Superintendent

The water superintendent in charge of the water department of the City of Ballinger is invested with the authority and responsibility for the implementation of an effective cross-connection control program and for the enforcement of the provisions of this ordinance.

### Approved

Accepted by the authority responsible as meeting an applicable specification stated or cited in this ordinance or as suitable for the proposed use.

### Auxiliary Water Supply

Any water supply on or available to the premises other than the purveyor's approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source(s), such as a well, spring, river, stream, harbor, and so forth; used waters; or industrial fluids. These waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

### Backflow

The undesirable reversal of flow in a potable water distribution system as a result of a cross connection.

### Backpressure

A pressure, higher than the supply pressure, caused by a pump, elevated tank, boiler, or any other means that may cause backflow.

### Backsiphonage

Backflow caused by negative or reduced pressure in the supply piping.

Backflow Preventer an assembly or means designed to prevent backflow.

Air gap. The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other assembly and the flood level rim of the receptacle. These vertical, physical separations must be at least twice the diameter of the water supply outlet, never less than 1 in. (25 mm).

Reduced-pressure backflow-prevention assembly. The approved reduced-pressure principle backflow-prevention assembly consists of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and below the first check valve. These units are located between two tightly closing resilient-seated shutoff valves as an assembly and equipped with properly located resilient-seated test cocks.

Double check valve assembly. The approved double check valve assembly consists of two internally loaded check valves, either spring loaded or internally weighted, installed as a unit between two tightly closing resilient-seated shutoff valves and fittings with properly located resilient-seated test cocks. This assembly shall only be used to protect against a nonhealth hazard (that is, a pollutant).

Contamination An impairment of a potable water supply by the introduction or admission of any foreign substance that degrades the quality and creates a health hazard.

Cross Connection A connection or potential connection between any part of a potable water system and any other environment containing other substances in a manner that, under any circumstances would allow such substances to enter the potable water system. Other substances may be gases, liquids, or solids, such as chemicals, waste products, steam, water from other sources (potable or nonpotable), or any matter that may change the color or add odor to the water.

#### Cross Connection - Controlled

A connection between a potable water system and a nonpotable water system with an approved backflow-prevention assembly properly installed and maintained so that it will continuously afford the protection commensurate with the degree of hazard.

Cross-Connection Control by Containment The installation of an approved backflow-prevention assembly at the water service connection to any customer's premises, where it is physically and economically unfeasible to find and permanently eliminate or control all actual or potential cross connections within the customer's water system; or it shall mean the installation of an approved backflow-prevention assembly on the service line leading to and supplying a portion of a customer's water system where there are actual or potential cross connections that cannot be effectively eliminated or controlled at the point of the cross connection.

Hazard, Degree of The term is derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

Hazard-health. A cross connection or potential cross connection involving any substance that could, if introduced in the potable water supply, cause death, illness, spread disease, or have a high probability of causing such effects.

**Hazard-plumbing.** A plumbing-type cross connection in a consumer's potable water system that has not been properly protected by an approved air gap or an approved backflow-prevention assembly.

**Hazard-nonhealth.** A cross connection or potential cross connection involving any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable, if introduced into the potable water supply.

**Hazard-system.** An actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system or of a pollution or contamination that would have a protracted effect on the quality of the potable water in the system.

#### Industrial Fluids System

Any system containing a fluid or solution that may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration, such as would constitute a health, system, pollution, or plumbing hazard, if introduced into an approved water supply. This may include, but not be limited to: polluted or contaminated waters; all types of process waters and used waters originating from the public potable water system that may have deteriorated in sanitary quality; chemicals in fluid form; plating acids and alkalis; circulating cooling waters connected to an open cooling tower; and/or cooling towers that are chemically or biologically treated or stabilized with toxic substances, contaminated natural waters, such as wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, and so forth, oils, gases, glycerin, paraffin's, caustic and acid solutions, and other liquid and gaseous fluids used in industrial purposes for fire-fighting purposes.

**Pollution** The presence of any foreign substance in water that tends to degrade its quality so as to constitute a non-health hazard or impair the usefulness of the water.

**Water-Potable** Water that is safe for human consumption as described by the public health authority having jurisdiction.

**Water-Nonpotable** Water that is not safe for human consumption or that is of questionable quality.

**Service Connection** The terminal end of a service connection from the public potable water system, that is where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter. There should be no unprotected takeoffs from the service line ahead of any meter or backflow-prevention assembly located at the point of delivery to the customer's water system. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water

service connections from the public potable water system.

Water-Used Any water supplied by a water purveyor from a public potable water system to a customer's water system after it has passed through the point of delivery and is no longer under the sanitary control of the water purveyor.

## **Sec. 27-115 Requirements**

### Water System

The water system shall be considered as made up of two parts: the utility system and the customer system.

Utility system shall consist of the source facilities and the distribution system, and shall include all those facilities of the water system under the complete control of the utility, up to the point where the customer's system begins.

The source shall include all components of the facilities utilized in the production, treatment, storage, and delivery of water to the distribution system.

The distribution system shall include the network of conduits used for the delivery of water from the source to the customer's system.

The customer's system shall include those parts of the facilities beyond the termination of the utility distribution system that are utilized in conveying utility-delivered domestic water to points of use.

### Policy

No water service connection to any premises shall be installed or maintained by the water purveyor unless the water supply is protected as required by state laws and regulations and this municipality. Service of water to any premises shall be discontinued by the water purveyor if a backflow-prevention assembly required by this municipality is not installed, tested, and maintained, or if it is found that a backflow-prevention assembly has been removed, bypassed, or if an unprotected cross connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

The customer's system should be open for inspection at all reasonable times to authorized representatives of the water department of the City of Ballinger to determine whether cross connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the water superintendent shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with state/provincial and city statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.

An approved backflow-prevention assembly shall be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but in all cases, before the first branch line leading off the service line wherever the following conditions exist:

In the case of premises having an auxiliary water supply that is not or may not be of safe bacteriological or chemical quality and that is not acceptable as an additional source by the water superintendent, the public water system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line, appropriate to the degree of hazard.

In the case of premises on which any industrial fluids or any other objectionable substances are handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line, appropriate to the degree of hazard. This shall include the handling of process water and waters originating from the utility system that have been subject to deterioration in quality.

In the case of premises having (1) internal cross connections that cannot be permanently corrected and controlled, or (2) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross connections exist, the public water system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line.

The type of protective assembly required under subsections 27-115. (b). (3). a, 27-115. (b). (3). b, and 27-115. (b). (3).c shall depend upon the degree of hazard that exists as follows:

In the case of any premises where there is an auxiliary water supply as stated in subsection 27-115. (b). (3). as of this section and it is not subject to any of the following rules, the public water system shall be protected by an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly.

In the case of any premises where there is water or substance that would be objectionable but not hazardous to health, if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.

In the case of any premises where there is any material dangerous to health that is handled in such a fashion as to create an actual or potential hazard to the public water system, the public water system shall be protected by an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly. Examples of premises where these conditions will exist include sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals, mortuaries, and plating

plants.

In the case of any premises where there are 'uncontrolled' cross connections, either actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly at the service connection.

In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete in-plant cross-connection survey, the public water system shall be protected against backflow from the premises by either an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly on each service to the premises.

In the case of any premises where, in the opinion of the water superintendent, an undue health threat is posed because of the presence of extremely toxic substances, the water superintendent may require an air gap at the service connection to protect the public water system. This requirement will be at the discretion of the water superintendent and is dependent on the degree of hazard.

Any backflow-prevention assembly required herein shall be a model and size approved by the water superintendent. The term approved backflow-prevention assembly shall mean an assembly that has been manufactured in full conformance with the standards established by the American Water

Works Association titled:

AWWA C510-89-Standard for Double Check Valve Backflow-Prevention Assembly, and AWWA C511-89-Standard for Reduced-Pressure Principle Backflow-Prevention Assembly, and have met completely the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California established by

"Specification of Backflow-Prevention Assemblies" -Sec. 10 of the most current issue of the Manual of Cross-Connection Control.

Said AWWA and FCCHR standards and specifications have been adopted by the water superintendent. Final approval shall be evidenced by a "Certificate of Approval" issued by an approved testing laboratory certifying full compliance with said AWWA standards and FCCHR specifications.

The following testing laboratory has been qualified by the water superintendent to test and certify backflow preventers:

Foundation for Cross-Connection Control and  
Hydraulic Research University of Southern California  
University Park  
Los Angeles, CA 90089

Testing laboratories, other than the laboratory listed above, will be added to an approved list as they are qualified by the water superintendent. Backflow preventers that may be subjected to backpressure or backsiphonage that have been fully tested and have been granted a certificate of approval by said qualified laboratory and are



listed on the laboratory's current list of approved backflow-prevention assemblies may be used without further testing or qualification.

(6) It shall be the duty of the customer-user at any premises where backflow-prevention assemblies are installed to have certified inspections and operational tests made at least once per year. In those instances, where the water superintendent deems the hazard to be great enough, certified inspections may be required at more frequent intervals. These inspections and tests shall be at the expense of the water user and shall be performed by the assembly manufacturer's representative, water department personnel, or by a certified tester approved by the water superintendent. It shall be the duty of the water superintendent to see that these tests are made in a timely manner. The customer-user shall notify the water superintendent in advance when the tests are to be undertaken so that the customer-user may witness the tests if so desired. These assemblies shall be repaired, overhauled, or replaced at the expense of the customer-user whenever said assemblies are found to be defective. Records of such tests, repairs, and overhaul shall be kept and made available to the water superintendent.

(7) All presently installed backflow-prevention assemblies that do not meet the requirements of this section but were approved assemblies for the purpose described herein at the time of installation and that have been properly maintained, shall, except for the inspection and maintenance requirements under subsection 27-115. b. (6), be excluded from the requirements of these rules so long as the water superintendent is assured that they will satisfactorily protect the utility system. Whenever the existing assembly is moved from the present location, requires more than, minimum maintenance, or when the water superintendent finds that the maintenance constitutes a hazard to health, the unit shall be replaced by an approved backflow-prevention assembly meeting the requirements of this section.

PAGES RESERVED

## Chapter 28

### CURFEW ORDINANCE

#### **Sec. 28-1. Definitions:**

- (a) "minor" shall mean any person under seventeen (17) years of age.
- (b) "parent" shall mean a person who is the natural or adoptive parent of a person. As used herein, "parent" shall also include a court appointed guardian or other person 18 years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.
- (c) "guardian" shall mean any person to whom custody of a minor has been given by a court order.
- (d) "emergency" shall include but not be limited to fire, natural disaster, an automobile accident, or obtaining immediate medical care for another person.
- (e) "public place" means any place which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- (f) "adult" for the purpose of Section 3. (b) shall mean any person 21 years of age or older.

#### **Sec. 28-2. Offenses:**

- (a) It shall be unlawful for any minor to purposefully remain, walk, run, stand, drive or ride about in or upon any public place in the City of Ballinger between the hours of twelve o'clock at night (midnight) and 6:00 AM.
- (b) It shall be unlawful for the parent having legal custody of a minor to knowingly allow or permit the minor to be in violation of the curfew imposed in Section 2 (a) of this ordinance.

#### **Sec. 28-3. Defenses:**

It is a defense to prosecution under Section 2 of this Ordinance that:

- (a) The minor was accompanied by his or her parent;
- (b) The minor was accompanied by another adult approved by the parents;
- (c) The minor was on an emergency errand;

(d) The minor was attending a school or religious activity or was going to or coming from a school or religious or government sponsored activity.

(e) The minor was engaged in a lawful employment activity or was going directly to or coming directly from lawful employment;

(f) The minor was on the sidewalk of a place where such minor resides or on the sidewalk of a place where the minor has permission from his/her parent or guardian to be or on the sidewalk of a next-door neighbor not communicating an objection to the police officer.

(g) The minor was upon an errand directed by his or her parent;

(h) The minor was in a motor vehicle involved in intrastate or interstate transportation or transportation for which passage through the curfew area is the most direct route;

(i) The minor was exercising his or her First Amendment rights protected by the United States Constitution, included but not limited to the free exercise of religion, freedom of speech, and the right of assembly; and

(j) The minor was married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code. (Ord 5-21-02, renewed 5-24-2004, renewed 5-2006, renewed 11-15-2010)

#### **Sec. 28-4. Enforcement Procedure.**

Any police officer, upon finding a minor in violation of Section 2 of this ordinance, shall determine the name and address of the minor, and the name and address of his/her parent(s) or guardian(s). The parent(s) or guardian(s) shall be called to the location to take charge of the minor. If the parent(s) or guardian(s) cannot be reached, the minor shall be escorted home by the police officer. The minor and his/her parent(s) or guardian(s) shall be informed that a complaint shall be filed in municipal court against the minor for a violation of Section 2(a) of this ordinance and the case transferred to the proper authorities for handling under the provisions of Title 3 of the Family Code, and that a complaint can be filled against the parent(s) or guardian(s) in municipal court for violation of Section 2(b) hereof. The police department shall file all necessary testimony as required for pursuing violation of this ordinance by either the minor or by any parent or guardian. (Ord. Of 5-24-2004)

**Sec. 28-5. Penalties:**

(a) Any minor violating the provision of this ordinance shall be guilty of a class "C" misdemeanor as defined in the Texas Penal Code and shall be dealt with in accordance with the provisions of Title 3 of the Texas Family Code.

(b) A parent or guardian of a minor violating this ordinance shall be guilty of a class "C" misdemeanor, which shall be punishable by a fine of not less than \$50.00 nor more than \$500.00.

**Sec. 28-6. Severability.**

It is hereby declared to be the intention of the City Council of the City of Ballinger that if any of the sections, paragraphs, sentences, clauses and phrases of this ordinance shall be declared unconstitutional or otherwise illegal by the valid judgment or decree of any court or competent jurisdiction, such event shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections. (Ord. of 11-1-93.) (Curfew Ord 5-21-02, reviewed and renewed 5-24-2004, 5-2006, 11-15-2010)

PAGES RESERVED

## Chapter 29

### CITY FRANCHISES<sup>10</sup>

#### **Sec. 29-1. Franchise Contracts.**

The Cable and Utility Franchise Contracts between the Cable Company, the Utility Companies and the City of Ballinger shall be subject to state law.

The City Council approved contracts shall be kept on file in the City of Ballinger City Secretary's office.

#### **Secs. 29-2 - 29-20 Reserved**

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<sup>10</sup> Chapter 29 amended and Chapter name amended by ordinance 4-16-2007-A.

PAGES RESERVED



## Chapter 30

### APPENDIX A. ZONING\*

*An Ordinance for the purpose of promoting the health, safety, morals or the general welfare of the community by regulating and restricting the height and size of buildings and other structures, size of yards and other open spaces, the density of population, the location, erection, construction, reconstruction, alteration, repair and use of all buildings, structures and land for residence, trade, industry and all other purposes; providing for the amendment and change in such regulations, restrictions and boundaries of such districts or zones; defining certain terms; providing for a board of adjustment and method of procedure for appeals thereto; providing for procedure for all other purposes; and imposing penalties.*

*Be it ordained by the City Commission [Council] of the City of Ballinger, Texas.*

#### **Sec. 30-1. Title.**

This ordinance shall be known and may be cited as the Zoning Ordinance of the City of Ballinger, Texas.

#### **Sec. 30-2. Purpose.**

The zoning regulations and districts as herein established have been made in accordance with a comprehensive plan for the purpose of promoting health, safety, morals and the general welfare of the City of Ballinger, Texas. They have been designed to lessen the congestion in the streets; to secure safety from fire, panic or other dangers; to provide adequate light and air; 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. They have been made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City of Ballinger, Texas.

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\* **Editor's note** - Appendix A sets out the zoning ordinance of the city enacted on the seventh day of April, 1961, as the same was originally enacted and as the same has been amended by the city since such date. Due to the statutory requirements relative to the enactment and amendment of such an ordinance, incorporation thereof into a code of ordinances is not deemed advisable, hence its inclusion as an appendix hereto for the benefit and convenience of the users of this Code. The zoning map referred to in section 4 of this ordinance is not included in this appendix, but is on file in the office of the city secretary.

**Charter reference** - Department of planning and zoning, art. 13.

**Cross references** - Keeping regulations for animals and fowl, ch. 6; buildings, ch. 8; health and sanitation, ch. 14; mobile homes, ch. 16; planning and zoning, ch. 19; plumbing and gas, ch. 20; streets and sidewalks, ch. 23; utilities, ch. 27; subdivisions, App. B.

### **Sec. 30-3. Definitions.**

For the purpose of this ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural, and the plural the singular; the word "building" shall include the word "structure," the word "lot" includes the word "plot," and the word "shall" is mandatory and not merely permissive or directory.

1. *Accessory building* and use: A subordinate building or a portion of the main building, the use of which is incidental to that of the main building or to the main use of the premises. An accessory use is one which is incidental to the main use of the premises.

2. *Alley*: A public or private thoroughfare which affords only a secondary means of access to property abutting thereon.

3. *Apartment*: A room or suite of rooms in a multiple dwelling, or in a building in which more than one living unit is established above or on the same floor as nonresidential uses, which room or suite is intended or designed for use as a residence by one family and which includes culinary accommodations.

4. *Building*: Any structure designed or intended for the support, enclosure, shelter or protection of persons, animals, chattels or property.

5. *Clinic*: An office or group of offices for one or more physicians, surgeons or dentists engaged in treating the sick or injured, but not including rooms for the abiding of patients.

6. *District*: A section or sections of the City of Ballinger, Texas, for which regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

7. *Dwelling*: Any building or portion thereof which is designed and used exclusively for residential purposes.

8. *Family*: One or more persons occupying a premises and living as a single housekeeping unit as distinguished from a group occupying a boardinghouse, lodging house or hotel as herein defined.

9. *Filling station or service station*: Any building or premises used for the dispensing, sale or offering for sale at retail of any automobile fuels or oils. When dispensing, sale or offering for sale is incidental to the conduct of a public garage, or retail store, the premises are classified as a public garage or retail store.

10. *Frontage*: All property on one side of a street between two intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead-ended, then all the property abutting on one (1) side between an intersecting street and the dead end of the street.

11. *Grade*:

a. For buildings having walls adjoining one (1) street only, the elevation of the sidewalk at the center of the wall adjoining the street.

b. For buildings having walls adjoining more than one (1) street the average of the elevation of the sidewalk at the center of all walls adjoining the streets.

c. For buildings having no wall adjoining the street, the average level of the finished surface of the ground adjacent to the exterior walls of the building.

Any wall approximately parallel to and not more than five (5) feet from the street line shall be considered as adjoining the street. Where no sidewalk exists, the grade shall be established by the city building inspector.

12. *Height of building*: The vertical distance from the grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or the mean height level between the eaves and ridge for a gable, hip and gambrel roof.

13. *Lot*: A parcel of land occupied or intended for occupancy by a use permittee in this ordinance, including one (1) main building with its accessory buildings, the open spaces and parking spaces required by this ordinance, and having its principal frontage upon a street or upon an officially approved place.

14. *Lot, corner*: A lot abutting upon two (2) or more streets at their intersection.

15. *Lot, depth of*: The mean horizontal distance between the front and rear lot lines.

16. *Nonconforming use*: Any building or land lawfully occupied by a use at the time of passage of this ordinance or amendment thereto, which does not conform after the passage of this ordinance or amendment thereto with the use regulations of the district in which it is situated.

17. *Parking space*: An enclosed or unenclosed area containing not less than one hundred and sixty (160) square feet exclusive of the driveways connecting said space with a street or alley. Said parking space and connecting driveway shall be durably surfaced and so arranged to permit satisfactory ingress and egress of an automobile.

18. *Street*: A public thoroughfare which affords the principal means of access to abutting property.

19. *Structure*: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including, but without limiting the general inclusiveness of the foregoing, advertising signs, billboards, poster boards and pergolas.

20. *Structural alterations*: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls.

21. *Yard*: An open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the horizontal distance between the lot line and the main building shall be used.

22. *Yard, front*: A yard extending across the front of a lot between the side yard lines, and being the minimum horizontal distance between the street line and the main building or any projection thereof other than the projection of the usual steps, unenclosed balconies or open porches.

23. *Yard, rear*: A yard extending across the rear of a lot, measured between the side lot lines, and being the minimum horizontal distance between the rear lot lines, and the rear of the main building or any projections other than steps, unenclosed balconies or unenclosed porches. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots, the rear yard shall in all cases be at the opposite end of a lot from the front yard.

24. *Yard, side*: A yard between the main building and the sideline of the lot, and extending from the front line to the rear yard line.

#### **Sec. 30-4. Districts.**

For the purpose of regulating and restricting the height and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, the City of Ballinger, Texas, is hereby divided into districts, of which there shall be five (5) classes in number, and which shall be known as:

"R-1" Residential Area No.1

"R-2" Residential Area No.2

"B-1" Neighborhood Business District  
"B\_2" Central Business District  
"I\_1" Industrial District

The boundaries of the districts described above are shown on the map that is attached hereto and made a part of this ordinance, which map is designated as the "zoning district map." Said district map and all notations, references and other information shown thereon are made a part of this ordinance and shall have the same force and effect as if said map and said data thereon were fully set forth or described herein. Said map shall, on its face, be identified and verified in the manner following: It shall bear the title "zoning district map" - Ballinger, Texas; it shall bear even date with the passing of this ordinance; it shall bear the name of the mayor; and it shall be attested by the signature of the city secretary. The original of said map shall be kept in a proper place in the municipal building.

Whenever any street, alley or other public way is lawfully vacated by the council of the City of Ballinger, Texas, the zoning district adjoining each side of such street, alley or public way shall be automatically extended to the center of such vacated area and thereafter all land included in said vacated area shall be subject to all applicable regulations of the extended districts.

All territory hereafter annexed to the City of Ballinger, Texas, shall be classified as "R\_I," until permanently zoned by the governing body [city council] of the City of Ballinger, Texas. The city planning and zoning commission shall, as soon as practicable after annexation of any territory to the City of Ballinger, Texas, institute proceedings on its own motion to give the newly annexed territory permanent zoning, and the procedure to be followed shall be the same as is provided by law for the adoption of original regulations except as hereinafter provided:

No building shall be erected, converted, enlarged, reconstructed or structurally altered, and no building or land shall be used for any purpose that is not permitted in the district in which the building or land is situated.

No building shall be erected, converted, enlarged, reconstructed or structurally altered to exceed the height limit herein established for the district in which the building is situated.

The minimum yards and other open spaces, including lot area per family, required by this ordinance for each and every building existing at the time of the passage of this ordinance, or for any building hereafter erected, shall not be encroached upon or considered as yard or open space requirements for any other building, nor shall any lot area be reduced to an area less than the district requirements of this ordinance.

Every building hereafter erected or structurally altered shall be on a lot as herein defined, and in no case shall there be more than one (1) main building on one (1) lot except as otherwise provided in this ordinance. (Ord. of 1-15-80, Art. V)

**Sec. 30-5. "R-1" Residential Area No.1.**

All the remainder of the property, lots blocks or tracts of land in the City Limits of the City of Ballinger except for those as herein described in "1-1" Industrial, "B2" Central Business District, "B-1" Neighborhood Business District, "R-2" Residential Area.

The following regulations shall apply to the "R-1" Residential Area NO.1:

A. *Use regulations:* A building or premises shall be used only for the following purposes:

1. Single-family dwellings.
2. Churches (except temporary revival).
3. Schools, public or private, having a curriculum equal to a public elementary school, high school or institution of higher learning.
4. Playgrounds, public parks, golf courses (except miniature golf), public recreation and community buildings.
5. Municipal buildings, nonprofit libraries or museums, police or fire stations.
6. [Reserved.]
7. Customary home occupations, incident to the above uses when situated in some dwelling, including home occupations such as physicians, surgeons, dentists, beauty shops, dress shops and flower shops.
8. Accessory buildings and accessory uses, customarily incident to the above uses (not involving the conduct of a business) when located on the same lot, including a private garage for one (1) or more cars, bona fide servants' quarters not for rent or used for commercial purposes.
9. Two-family or duplex dwellings.
10. [Reserved.]
11. Hospitals, except tubercular, liquor, narcotic, insane, feeble-minded or animal hospitals.

12. [Reserved.]

12(a). Medical offices or clinics and other professions, including, but not limited to, physicians, dentists, accountants, attorneys, but specifically excluding pharmacists or any other retail or wholesale business.

13. Fraternities, sororities and lodges, except those the chief activity of which is a service customarily carried on as a business.

14. Institutions of a religious, educational or philanthropic nature.

15. Signs:

a. One (1) unlighted sign, which shall not exceed one (1) square foot in area, indicating the name of the occupant or occupation of a customary home occupation, provided the sign is attached flatwise to the building.

b. One (1) sign, which shall not exceed eighteen (18) square feet for church, school or hospital.

c. One (1) sign which shall not exceed four (4) square feet in area for temporary unlighted signs pertaining to the lease, hire or sale of a building or premises, provided the sign is immediately removed upon the lease, hire or sale of such building or premises.

16. There shall be no trailer houses, mobile homes or mobile home parks within Residential Area No. I.

17. 1) Cargo or Sea Containers as herein defined in 17-3 shall not be allowed in Residential "R-1" and Residential "R-2", or B-1 Neighborhood Business District.

2) DEFINITION OF CARGO OR SEA CONTAINER. A Cargo or Sea Container is herein defined as any dry box van, 18-wheeler trailer, railroad car, or any container used in the transportation of goods or any operable Junked (inoperable) vehicle as defined in Section 21-38 Article 3 Junked (inoperable) Vehicles that is not totally enclosed; however, there is hereby excepted from this ordinance any Cargo or Sea Container, as above defined, that is / or in place prior to the passage of this ordinance on December 8, 2009.

a. Cargo or Sea Containers may be used in any zone through an active building permit for construction for

temporary storage for no longer than Six (6) months without a Specific Use Permit.

3) TARPS.

- a. No cargo container, out buildings, carports or any structures or junked (inoperable) vehicles as defined in Section 21-38 Article 3 Junked (inoperable) Vehicles shall be covered with polypropylene tarps.
- b. There shall be no polypropylene cover allowed on any outdoor storage area or covering of walls.
  - 1. The covering of a structure shall not be weathered or tattered or insufficient covering for protection of any of the property involved.
  - 2. There shall be no polypropylene cover allowed as a substitute for rigid walls and doors for a carport.
- c. The use of polypropylene tarps shall be allowed for temporary protection of the interior of a home against the forces of nature for no longer than ninety (90) days without a Specific Use Permit.
- d. The use of polypropylene tarps shall be allowed for temporary protection of the roof of a house during new construction or repair for no longer than ninety (90) days without a Specific Use Permit.

4) The below named provisions of 1) and 2) of Section 17. shall also apply to all Cargo or Sea Containers within I-1 Industrial or "B-2" Central Business District within the City Limits of the City of Ballinger:

- a. If the Cargo or Sea Container is adjacent to a building, the Cargo or Sea Container must be painted to match the building's color except that a Cargo or Sea Container may be used within either zone for no longer than Six (6) months without painting to match the adjacent building's color.
- b. Some Cargo or Sea Containers may not be stacked.
- c. Cargo or Sea containers may not occupy any off street parking space / spaces.
- d. Cargo or Sea Containers shall not be used to store



hazardous materials.

- e. Refuge or debris shall not be allowed in, against, on or under the Cargo or Sea Container.

#### PENALTIES.

Any person violating provisions of this ordinance shall be guilty of a Class C misdemeanor which shall be punishable by a fine of not less than \$50.00 and no more than \$500.00.

#### SEVERABILITY.

It is hereby declared to be the intention of the City Council of the City of Ballinger that if any of the sections, paragraphs, sentences, clauses and phrases of this ordinance shall be declared unconstitutional or otherwise illegal by a valid judgment or decree of any court or competent jurisdiction, such event shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections. (Ord. 12-8-2009)

B. [Height regulations:] No building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height.

C. Area regulations for Sub-sections 1-8:

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth shall not be less than twenty-five (25) feet.
2. Side Yards: There shall be a side yard on each side of a building, the minimum depth shall be not less than five (5) feet, except on a corner lot the side yard on the street side shall have a side yard of not less than twenty-five (25) feet.
3. Rear Yard: The depth of the rear yard shall be at less than ten (10) feet.

D. Area regulations for Sub-sections 9-14:

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth shall not be less than twenty-five (25) feet.
2. Side Yards: There shall be a side yard on each side of a building, the minimum, depth shall be not less than five (5) feet, except on a corner lot the side yard on the street side shall have a side yard of not less than twenty-five (25) feet.
3. Rear Yard: The depth of the rear yard shall not be less than ten (10) feet.
4. When the owner of two (2) or more platted lots which side yards abut each other and front yards front upon the same street wishes to construct a principal use structure across the interior side yard lot lines, he shall make application with the department of building inspections for a building permit and in the application he shall state which lots are involved, provide information which shows any easement, drainage swall, or other natural or manmade obstruction on or along the side yard lot line which is to be covered by the structure and no building permit shall be issued until the impediment has been removed. When the owner has shown no impediments exist as to construction of a principal use structure or accessory use structure over an interior side yard lot line, the side yard setback requirement in "R-1" and "R-2" zoning districts and any other zoning district of single-family detached dwelling shall be waived and a building permit may be issued for construction of a principal use structure over an interior lot line. In no event shall the exterior side yard setback requirement be violated and no more than one principal structure plus those accessory uses set forth in the above residential zoning districts shall ever be constructed upon two (2) or more lots which have been combined pursuant to this section. (Ord. 8-7-2006)

E. Intensity of use:

1. Every lot or tract of land shall have an area of not less than six thousand (6,000) square feet and an average width of not less than fifty (50) feet, except that if a lot or tract should have less area or width than is herein required and its boundary lines along their entire length should touch lands under other ownership on the effective date of this ordinance and shall not have been changed since said date, such parcel of land may be

used for a single-family dwelling.

2. A lot on which there is erected an apartment house or multiple-family dwelling shall contain an area of not less than one thousand eight hundred (1,800) square feet per dwelling unit.

F. *Parking regulations:* Whenever a structure is erected, converted or structurally altered for a two-family dwelling, or a multiple-family dwelling, one (1) parking space shall be provided and maintained on the lot for each dwelling unit in the building. Such parking space shall be on the lot and so arranged as to permit satisfactory egress and ingress of an automobile, and such parking area shall be in addition to driveways. (Ord. of 3-767; Ord. of 1-15-80, Art. 1, § § A - D)

G. No building or structure shall hereafter be used or occupied and no building or part thereof shall be erected, moved, or altered unless in conformity with the regulation herein specified for the district in which it is located and unless in conformity with the sanitary and healthful regulations of such location and unless in conformity with the average value and construction of established property in such location, provided that this Section shall not be interpreted to prevent construction that is of greater value than existing property.

No building or structure shall hereafter be erected or altered to be higher, to accommodate or house a greater number of families, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such building is located.

No part of a yard or other open space required about any building for the purpose of complying with the provisions of this Chapter shall be included as a part of a yard or other open space similarly required for another building.  
(Ord. of 07-15-96)

H. Subdivision Highpointe is an annexation to the City of Ballinger, Texas and has Residential 1 zoning.

### **Sec. 30-5-A-1 SPECIFIC USE PERMITS**

A. The City council of the City of Ballinger, after public hearing and after recommendations by the Planning and Zoning Commission may authorize the issuance of Specific Use Permits for the uses indicated below:

1. bed and breakfast lodging
2. day care facility
3. doctors clinic
4. professional offices

5. institutions of religious, educational, or philanthropic nature
6. one-chair beauty shop

B. The Planning and Zoning Commission in considering and determining its recommendation to the City Council on any request for a Specific Use Permit may require from the applicant plans, information, operating data and expert evaluation concerning the location, function and characteristics of any building or use proposed. The City Council may, in the interest of the public welfare and to assure compliance with this Ordinance, establish conditions of operation, time limit, location, arrangements and construction of any use for which a permit is authorized. In authorizing the location of any of the uses listed as Specific Use Permits, the City Council may impose such development standards and safeguards as the conditions and locations indicate important to the welfare and protection of adjacent property from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view or other undesirable or hazardous conditions.

C. The Specific Use Permit may be granted for definite periods of time after which the Planning and Zoning Commission may, in the public interest, inquire into the continuation of the Permit and based upon its findings recommend its discontinuance or the extension of the time period as set in the Ordinance establishing the Specific Use Permit.

D. All Specific Use Permits approved in accordance with the provisions of this Ordinance in its original form or as hereafter amended shall be referred on the Zoning map and a list of such permits shall be maintained in the Appendix of this Ordinance.

### **Sec. 30-6. "R-2" Residential Area No.2.**

The area shall be bounded by Park Avenue, the alley between Eleventh and Twelfth Street to Largent Avenue, then east to Eleventh Street then northwest on Eleventh Street to Country Club Road then southwest on Country Club Road to Fifteenth Street, then northwest on Fifteenth Street to the City Limits and following the City Limits to the Colorado River, then following railroad-right-of-way back to point of beginning on Park Avenue,

except for:

A. Blocks 3 and 5 of Woodward Heights Addition, which is included in "B-2" Central Business District. Lots four (4) and five (5), Block No. One Hundred Eight (108), First Railroad Addition. (1994)

B. Removed by ordinance dated 3-5-2007.

All of Block One (1) of the Lankford Addition.

All of Block Two (2) of the Lankford Addition.

All of Block Four (4) of the Lankford Addition.

All of Block Two (2) of the Guion Addition.

All of Lots One (1), Two (2), Three (3), Four (4) and Five (5) of Block Three (3) of the Guion Addition.

All of Lots One (1), Two (2), Three (3), Four (4) and Five (5) of Block One (1), of the Guion Addition.

All of Block A, Block One (1), Block Two (2), Block Three (3), Block Four (4), Block Five (5), Block Six (6) of the Second Railroad Addition to the City of Ballinger.

All of Lots Six (6), Seven (7), Eight (8), Nine (9), and Ten (10) of Block One Hundred (100) of the First Railroad Addition, also known as the First Addition, to the City of Ballinger, Runnels County, Texas, as same appears on the map of the plan of said addition recorded in Volume 1, Page 2, Plat Records of Runnels County, Texas, to which map and the record thereof reference is here made.

All of that area that lies between and within the northerly line of Fourteenth Street, the westerly line of Phillips Avenue, and the southerly line of the J.M. Caldwell Survey as shown on the Map Exhibit 'A' (as shown in 'B2' Business 2 Section) as incorporated herein by this reference and made a part hereof for all purposes, and the easterly line of Block One (1) of the Guion Addition to the City of Ballinger, which is an extension of Block One (1) of the Guion Addition in an easterly direction from the easterly side of Block One (1) of the Guion Addition to the City of Ballinger to the westerly line of Phillips Avenue as shown on the map and plat attached hereto and referred to for all purposes.

All of Eubank Avenue to the westerly line that joins Block One (1) and Block Two (2) of the Lankford Addition and Block Three (3) of the Guion Addition and all streets and alleys within the described amended "B-2" Central Business District as shown on the map and plat which is attached hereto and referred to for all purposes. (Ord. 3-5-2007)

The use regulations, except as below set out, [and as set out in Section 5, "R1" Residential Area No.1,] but not to include the restrictions in paragraph 16 thereof, and height regulations as set out in "R-1" Residential Area No.1, shall also apply to "R-2" Residential Area No.2, but the intensity of use and parking regulations in "R-1" Residential Area NO.1 shall not apply to "R-2," and this classification also includes any other residential use.

A. Additional uses:

1. Animal Hospital: Upon special application to the city council of the City of Ballinger and upon approval by the city council of the City of Ballinger after the application has been considered by the zoning commission and they have submitted their recommendation and report to the city council.
  - a. Any such building or premises shall be used only for the purpose of an animal hospital and shall be constructed in compliance with the building code of the City of Ballinger and in full compliance with all laws and ordinances relating to sanitation applicable to such occupations and subject to review and approval by the city council.
  - b. If, after special application for an animal hospital and approval thereof, such animal hospital is not completed Within one (1) year from the date of approval of such application, such application shall be declared null and void and another special application for construction of an animal hospital shall be required as in the first instance. (Ord. of 4-28-64; Ord. of 1-15-80, Art. 2)

**Sec. 30-7. "B-1" Neighborhood Business District.**

(1) All of both sides of Broadway (one lot deep) from Sargent Avenue to the intersection of Broadway with the junction of the Old Winters Highway.

(2) All the area between the Old Winters Highway and the Bronte Highway to Avenue E, including one lot deep on the westerly side of the Bronte Highway, same being one lot deep on the exterior boundary, and one lot deep on the easterly side of the Old Winters highway, same being one block deep on the exterior boundary.

(3) Triangular area with boundaries of Fifteenth Street, Country Club Road and City Limits (includes site of Ballinger Nursing Center).

The following regulations shall apply to the "B-1" Neighborhood Business District.

A. Use regulations:

1. Any use permitted in subsections 7 and 9 through 14 in "R-1" Residential Area No. I.
2. Advertising signs, when the same are attached to a building and advertise only services, articles or products which are offered within the building to which such sign is attached, and provided that such signs shall not extend above the outside walls of such building, nor more than one (1) foot from the face of the walls of such building, nor shall it contain an area of more than twelve (12) square feet. One (1) freestanding sign not to exceed twenty-four (24) feet in height will be allowed in the front yard provided such sign does not exceed thirty (30) square feet in area.
3. Automobile parking lots.
4. Bakeries employing not more than five (5) persons.
5. Banks.
6. Barbershops.
7. Cleaning, pressing and dyeing plants employing not more than five (5) persons each.
8. Clinics.
9. Garages, public.
10. Filling stations, service stations, provided all storage tanks for gasoline shall be below the surface of the ground.
11. Laundries, employing not more than five (5) persons on the premises.
12. Laundries, self-service.
13. Ice retail distributing stations, no manufacture, and capacity not to exceed five (5) tons of storage.

14. Job printing provided total mechanical power used in operation of such printing plant shall not exceed five (5) horsepower.
15. Lodge halls.
16. Mortuaries.
17. Offices.
18. Radio studios.
19. Radio repair and sales shops.
20. Real estate offices.
21. Restaurants, cafes and cafeterias.
22. Stores and shops for the sale of products at retail only, provided that such use is not noxious or offensive by reason of vibration, smoke, odor, dust, gas or noise.
23. Studio (art, photo, music).

B. *Height regulations:* No building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height.

C. *Yard regulations:*

1. Front Yard: There shall be a front yard along the front line of the lot. The minimum depth of such front yard shall be twenty (20) feet.
2. Side Yards: For uses permitted in subsections 9 through 14 in "R-1" Residential Area No.1, the same side yard regulations shall apply. For additional uses permitted in the "B-1" district no side yards are required except that on a corner lot the side yard on a street side shall be twenty (20) feet. Where a lot is used for any of the commercial purposes permitted in this district and abutting on the side of a lot in an "R-1" district there shall be a side yard of not less than five (5) feet.
3. Rear Yard: For uses permitted in subsections 9 through 12, in "R-1" Residential Area No.1, the rear yard shall be the same as in the "R-1" district. For all other uses a rear yard is not required except when it abuts upon an "R\_1" district in which case there shall be rear yard of not less than ten (10) feet.

D. *Intensity of use:* For uses permitted in subsections 9 through 14 in "R-1" Residential Area No.1, the minimum lot area and minimum lot width



shall be the same as in the "R-1" district. There are no minimum lot area or lot width requirements for other uses.

*E. Parking regulations:*

1. The parking regulations for dwellings are the same as those in the "R-1" district.
2. Where any structure is erected, reconstructed or converted for any of the business or commercial uses permitted in this section, parking spaces shall be provided in the ratio of not less than one (1) parking space for each two hundred (200) square feet of floor space in the building which is used for commercial purposes. Such parking space may be located on the same lot as the building or on an area within three hundred (300) feet of the building. Two (2) or more owners of buildings may join together providing this parking space.

**Sec. 30-8. "B-2" Central Business District.**

(1) Area bounded by the south side of the alley between Strong Avenue and Sealy Avenue, the south side of Park Avenue, the south or westerly side of Elm Creek and the north or easterly side of the Colorado River.

(2) Both sides of Broadway to encompass Lots 1, 2, 3, 4 and 5 in Block 93, and Lots 6, 7, 8, 9, and 10 of Block 92.

(3) The following property on the north side of Park Avenue all of said lots and blocks being in the First Railroad Addition to the city of Ballinger:

Lots 4,5,6, and 7, Block 94  
Lots 6 and 7, Block 93  
Lots 4 and 5, Block 92  
Lots 4,5,6 and 7, Block 91  
Lots 4, 5, 6 and 7, Block 90  
Lots 4, 5,6 and 7, Block 89

(4) Those portions of Block 3 and 5 of the Woodward Heights Addition which are within the City Limits.

(5) The corridor along Highway 83, also known as South Seventh Street, as described below:

Lot 11, Block 32, Original Town of Ballinger  
Lots 1 and 6, Block 42, Original Town of Ballinger  
Lots 1 and 6. Block 57, Original Town of Ballinger  
Lots 1 and 6, Block 63. Original Town of Ballinger

Lots 1 and 6, Block 77, Original Town of Ballinger  
Block 79, Original Town of Ballinger  
Block 88, Original Town of Ballinger  
Lots 6 thru 10, Block 80, Original Town of Ballinger  
Lots 6 thru 10, Block 76, Original Town of Ballinger  
Lots 6 thru 10, Block 64, Original Town of Ballinger  
Lots 6 thru 10, Block 56, Original Town of Ballinger  
Lots 11 thru 31, Block 43, Original Town of Ballinger  
Lot 18, Block 31, Original Town of Ballinger

Added by ordinance dated 3-5-2007.

All of Block One (1) of the Lankford Addition.

All of Block Two (2) of the Lankford Addition.

All of Block Four (4) of the Lankford Addition.

All of Block Two (2) of the Guion Addition.

All of Lots One (1), Two (2), Three (3), Four (4) and Five (5) of Block Three (3) of the Guion Addition.

All of Lots One (1), Two (2), Three (3), Four (4) and Five (5) of Block One (1), of the Guion Addition.

All of Block A, Block One (1), Block Two (2), Block Three (3), Block Four (4), Block Five (5), Block Six (6) of the Second Railroad Addition to the City of Ballinger.

All of Lots Six (6), Seven (7), Eight (8), Nine (9), and Ten (10) of Block One Hundred (100) of the First Railroad Addition, also known as the First Addition, to the City of Ballinger, Runnels County, Texas, as same appears on the map of the plan of said addition recorded in Volume 1, Page 2, Plat Records of Runnels County, Texas, to which map and the record thereof reference is here made.

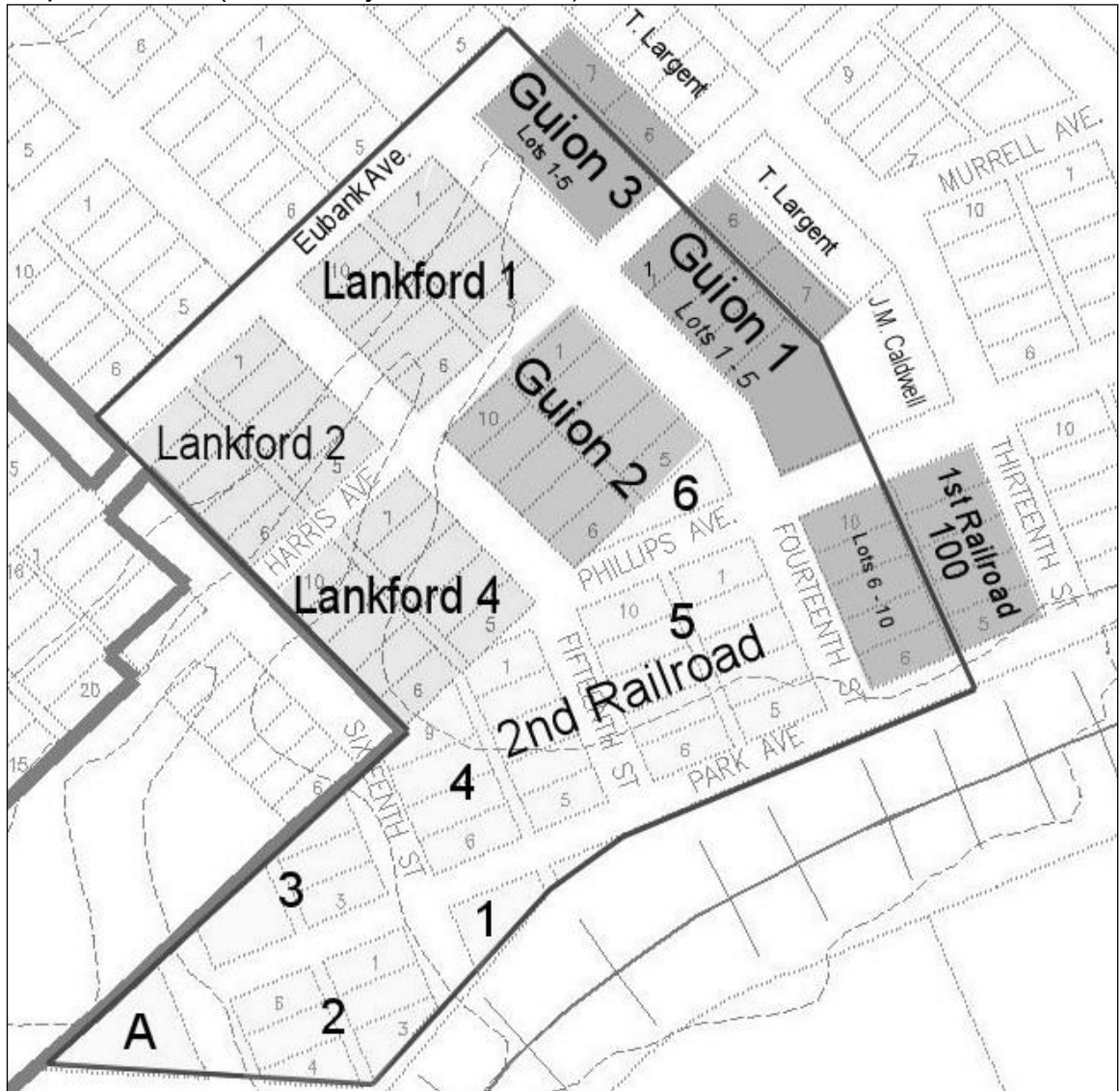
All of that area that lies between and within the northerly line of Fourteenth Street, the westerly line of Phillips Avenue, and the southerly line of the J.M. Caldwell Survey as shown on the Map Exhibit 'A' as incorporated herein by this reference and made a part hereof for all purposes, and the easterly line of Block One (1) of the Guion Addition to the City of Ballinger, which is an extension of Block One (1) of the Guion Addition in an easterly direction from the easterly side of Block One (1) of the Guion Addition to the City of

Ballinger to the westerly line of Phillips Avenue as shown on the map and plat attached hereto and referred to for all purposes.

All of Eubank Avenue to the westerly line that joins Block One (1) and Block Two (2) of the Lankford Addition and Block Three (3) of the Guion Addition and all streets and alleys within the described amended "B-2" Central Business District as shown on the map and plat which is attached hereto and referred to for all purposes.

The B-2 Zone includes the area marked in Map Exhibit 'A' but is not limited to this map.

Map Exhibit 'A' (Addition by Ord 3-5-2007)



The following regulations shall apply to the "B\_2" Central Business District.

A. *Use regulations:* A building or premises shall be used only for the following purposes:

1. Any use permitted in the "B-1" Neighborhood Business District.
2. Automobile salesroom and accompanying service facilities.
3. Automobile repair garages.
4. Bakeries.
5. Billboards and poster boards.
6. Frozen food locker plants.
7. Hotels.
8. Moving picture houses or theaters.
9. Laundries and cleaning.
10. Tourist courts or motels.
11. Any retail business not included in the neighborhood business district, provided that such use is not noxious or offensive by reason of vibration, smoke, odor, dust, gas or noise.
12. Storage in bulk or warehouse for such materials as household goods, clothing, drugs, glass, dry goods, furniture, hardware, groceries, millinery and shop supplies.

B. *Height regulations:* No building hereafter erected or structurally altered shall exceed six (6) stories or seventy-five (75) feet.

Exception: Grain elevators and radio antenna or towers shall not be constructed at a height exceeding one hundred twenty (120) feet.

**Sec. 30-8A-1. "I-1" Industrial District.**

(1) The roughly triangular area bounded by the north side of the alley between Sealy Avenue and Strong Avenue, the westerly side of Elm Creek and the easterly side of the Colorado River except for a corridor of "B-2" Central Business District consisting of those lots fronting onto Highway 83, also known as South

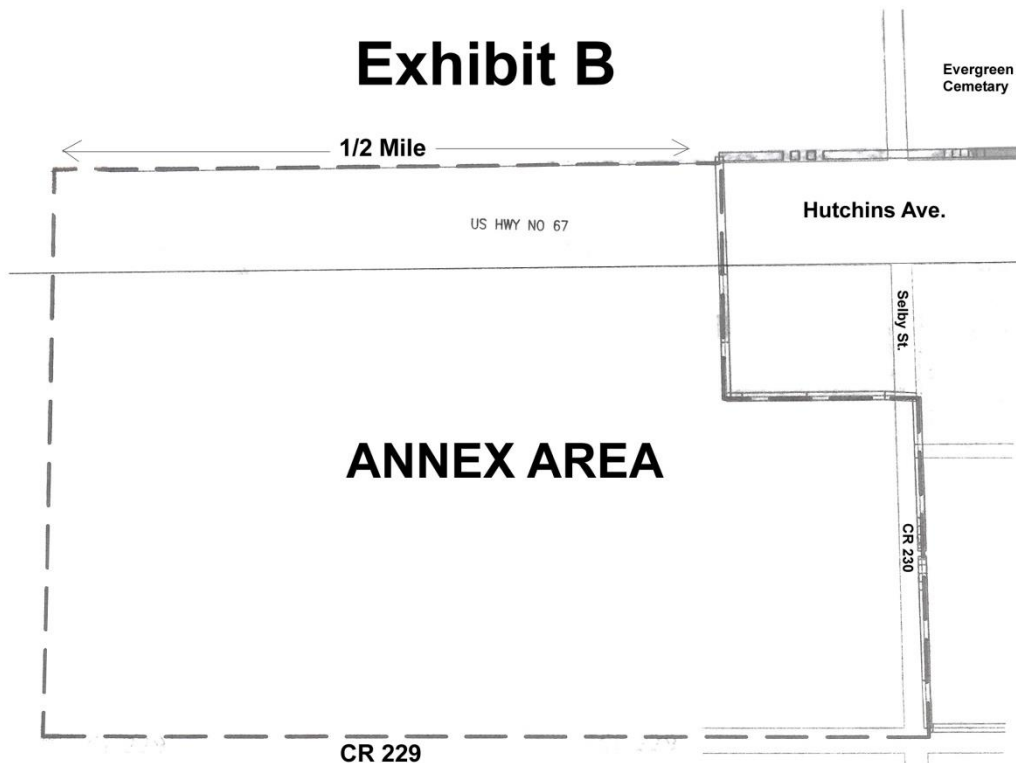
Seventh Street, from the north side of the alley between Sealy Avenue and Strong Avenue to the Colorado River said lots being described as follows:

Lot 11, Block 32, Original Town of Ballinger  
Lots 1 and 6, Block 42, Original Town of Ballinger  
Lots 1 and 6, Block 57, Original Town of Ballinger  
Lots 1 and 6, Block 63, Original Town of Ballinger  
Lots 1 and 6, Block 77, Original Town of Ballinger  
Block 79, Original Town of Ballinger  
Block 88, Original Town of Ballinger  
Lots 6 thru 10, Block 80, Original Town of Ballinger  
Lots 6 thru 10, Block 76, Original Town of Ballinger  
Lots 6 thru 10, Block 64, Original Town of Ballinger  
Lots 6 thru 10, Block 56, Original Town of Ballinger  
Lots 11 thru 15, Block 43, Original Town of Ballinger  
Lot 18, Block 31, Original Town of Ballinger

(2) Old Hillcrest Site

(3) The entire area within the city limits southerly and westerly of the Colorado River along Highway 67.

(4) Located on Highway 67, Parts of Blocks Four (4) and Five (5) of the South Ballinger Addition to the City of Ballinger consisting of 61.415 acres, more or less, as shown on the attached map on EXHIBIT "A" and marked "annex area."



- a. The above described territory and the area so annexed shall be a part of the City of Ballinger, Texas.

A. *Use regulations:* A building or premises shall be used only for the following purposes:

- I. Any use permitted in any of the foregoing districts.
2. Any manufacturing or industrial process not prohibited by any other law; provided, however, that no building or occupancy permit shall be issued for any of the following uses until and unless such use shall have been approved by the city commission [council] following a recommendation by the zoning commission:
  - (1) Junkyards or automobile wrecking yards.
  - (2) Petroleum refining.
  - (3) Cement or lime manufacture.
  - (4) Explosives manufacture or storage.

- (5) Storage or bailing of rags, paper, iron or junk.
- (6) Tanneries.
- (7) Garbage, offal or dead animal reduction or dumping.
- (8) Fertilizer manufacture.
- (9) There shall be no trailer houses, mobile homes or mobile home parks within two hundred (200) feet of US Highway 67.

B. *Height and area regulations:* In the industrial district, the height of buildings, the minimum dimensions of yards and the minimum lot area per family shall be as follows; provided, however, that buildings erected or structurally altered and used exclusively for dwelling purposes shall comply with the front, side and rear yard regulations of the residence use districts:

[1.] Height: No building hereafter erected or structurally altered shall exceed a height equal to twice the width of the widest street on which said building is located; and in no case shall the height be greater than ten (10) stories or one hundred twenty (120) feet (except it may be increased by special permit of the commission [council].)

[2.] Front Yard: No front yard required.

[3.] Side Yard: No side yard required, but if provided it shall be not less than three (3) feet, and except on that side of the lot abutting upon the side of a lot zoned for dwelling purposes in which case there shall be a side yard of not less than five (5) feet.

[4.] Rear Yard: No rear yard required. (Ord. of 6-12-62; Ord. of 1-15-80, Art. III)

C. 4<sup>th</sup> Street Located in South Ballinger, is renamed to Selby Street by Ordinance on 12-21-2009.

**Sec. 30-8A-2. Oil and gas wells.**

Upon special application to the city council of the City of Ballinger and upon meeting and fulfilling the requirements, rules and regulations as set forth by the city council (as to size of units, locations of drilling sites, bond requirements, type of pits, type of equipment to be used, disposal of salt water, fencing, abandonment and plugging procedures, permit fee and length of permit), an oil and gas well may be drilled within the city limits of the City of Ballinger, upon the approval and upon the conditions and requirements as prescribed by the city council of the City of Ballinger. (Ord. of 4-13-76) .

There shall be no drilling or mining activities on property owned by the City of Ballinger and known as the Ballinger Sports Complex consisting of 18.8 acres, more or less, immediately west and northwest of the Ballinger High School complex in the City of Ballinger, declaring that violation of the ordinance be a misdemeanor; providing a penalty; providing each separate day or continuation of offense shall constitute a separate violation. (Ord. of 4-88)

**Sec. 30-9. Nonconforming uses.**

A. *Nonconforming use of land:* The nonconforming use of land where no building is involved existing at the time of the passage of this ordinance may be continued for a period of not more than two (2) years therefrom, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property, and that if such nonconforming use of land or any portion thereof is discontinued or changed, any future use of such land shall be in conformity with regulations of the district in which it lies.

B. *Nonconforming use of buildings:* Except as otherwise provided in this article [ordinance], the nonconforming use of a building existing at the time this ordinance becomes effective may be continued, and the use of a nonconforming building may be changed to another use of the same or more restricted classification, but where such use is changed to a more restricted classification it shall not thereafter be changed back to a use of a less restricted classification. A nonconforming building which is or may hereafter become vacant and which shall remain unoccupied or its nonconforming use discarded for a continuous period of one (1) year shall not thereafter be occupied except by a use which conforms to regulations of the district in which it is located. A nonconforming building may be maintained or kept in good repair except as otherwise provided in this section.

No existing nonconforming building may be enlarged, extended, reconstructed or altered unless its use is changed to a use permitted in the district in which such building is located except in the event such enlargement, extension, reconstruction or alteration is required by court decision, law or ordinance.

No nonconforming building shall be moved in whole or in part to any other location on the lot unless every portion of such building is made to conform to all the regulations of the district in which it is located.

A nonconforming building which is damaged by fire, explosion, flood, wind, earthquake or other calamity or act of God or the public enemy to the extent of fifty (50) per cent or more of its reasonable value may not be restored except in conformity with the regulations of the district in which it is located.

**Sec. 30-10. Board of adjustment.**



A. A Board of Adjustments is hereby established. The City Council may appoint the members of the Planning and Zoning Commission to serve as the Board of Adjustments. (Ord. of 10-2-95)

B. The board of adjustment shall consist of five (5) members who are property owners in the City of Ballinger, Texas, each to be appointed for a term of two (2) years and removable for cause by the city commission [council] upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

C. The board shall adopt rules in accordance with the provisions of this ordinance. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

D. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City of Ballinger, Texas affected by any decision of the building inspector. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof, and by paying a filing fee of three dollars (\$3.00) to the city secretary of the City of Ballinger, Texas, at the time the notice is filed, which shall be credited to the general fund of the City of Ballinger, Texas. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record in application or notice to the officer from whom the appeal is taken and on the [due] cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, giving public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any

party may appear in person or by agent or by attorney.

E. The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this ordinance.
2. When a property owner can show that a strict application of the terms of this ordinance relating to the use, construction or alteration of buildings or structures or the use of land will impose upon him practical difficulties or particular hardships, the board may consider and allow variations of the strict application of the terms of this ordinance if the variations are in harmony with the general purpose and intent of this ordinance, and the board is satisfied, under the evidence heard by it, that a granting of the variation will not merely serve as a convenience to the applicant but will alleviate some demonstrable hardship or difficulty so great as to warrant a variation from the comprehensive plan by this ordinance created.
3. The board may authorize a variance where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property of record at the time of the adoption of this ordinance or by reason of exceptional topographical conditions or other extraordinary or exceptional situations or conditions of a specific piece of property, the strict application of a provision of this ordinance would result in peculiar and exceptional practical difficulties and particular hardship upon the owner of the property and amount to a practical confiscation of the property as distinguished from a mere inconvenience to the owner, provided the variation can be granted without substantial detriment to the public good, and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this ordinance.
4. Special Exceptions: When in its judgment the public convenience and welfare will not be substantially or permanently injured, the board of adjustment may in a specific case, after public notice and hearing and subject to appropriate conditions and safeguards, authorize special exceptions to the regulations herein established as follows:
  - a. Grant in undeveloped sections of the city temporary and conditional permits for not more than two (2) years. The granting or existence of such temporary or conditional permits shall not be reason or cause for extension of such permits.
  - b. Permit such modification of yard, open space, lot area or lot

width regulations as may be necessary to secure an appropriate improvement of a parcel of land if such parcel is separately owned at the time of the original passage of this ordinance or subsequent annexation of the city and is of such restricted area that it cannot be appropriately improved without such modification.

- c. To determine in such cases of uncertainty the classification of any use not specifically named in this ordinance.
  - d. To grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divided a lot in a single ownership at the time of the adoption of this ordinance.
  - e. Permit the reconstruction of a building occupied by a nonconforming use, or permit the extension of a nonconforming use of a building upon the lot occupied by such use or building at the time of the passage of this ordinance.
- F. 1. In exercising the above-mentioned powers such board may, in conformity with the provisions of this act [ordinance], reverse or affirm, wholly or partly, or may modify the order, requirement, decisions or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
2. In considering all appeals and all proposed variations to this ordinance the board shall, before making any finding, in a specific case, first determine that the proposed variation will not constitute any change in the district map and will not impair an adequate supply of light and air to adjacent property, or materially increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals and welfare of the City of Ballinger, Texas.
3. Every variation granted or denied by the board shall be accompanied by a written finding of fact, based on sworn testimony and evidence, specifying the reason for granting or denying the variation.

### **Sec. 30-11. Changes and amendments.**

- A. The city commission [council] may from time to time amend, supplement or change by ordinance the boundaries of the districts or the regulations herein

established.

B. Before taking any action on any proposed amendment, supplement or change, the city commission [council] shall submit the same to the city zoning commission for its recommendation and report.

C. A public hearing shall be held by the city commission [council] before adopting any proposed supplement, amendment or change. Notice of such hearing shall be given by publishing same in a newspaper of general circulation in the City of Ballinger, Texas, stating the time and place of such hearing, which time shall not be earlier than fifteen (15) days from the first day of such publication.

D. Unless such proposed amendment, supplement or change has been approved by the city commission [council] or if a protest against such amendment, supplement or change has been filed with the building inspector, duly signed and acknowledged by the owners of twenty (20) per cent or more, either of the area of the lots included in such proposed change, or those immediately adjacent in the rear thereof extending two hundred (200) feet therefrom, or of those directly opposite thereto extending two hundred (200) feet from the street frontage of such opposite lots, such amendment, supplement or change shall not become effective except by a two-thirds vote of the city commission [council].

### **Sec. 30-12. Enforcement and penalty for violation.**

It shall be the duty of the building inspector to enforce the provisions of this ordinance and to refuse to issue any permit for any building, or for the use of any premises, which would violate any of the provisions of said ordinance.

In case any building is erected, constructed, reconstructed, altered, repaired or converted, or any building or land is used in violation of this ordinance, the building inspector is authorized and directed to institute any appropriate action to put an end to any such violation.

Any person or corporation who shall violate any of the provisions of this ordinance or fail to comply therewith or with any of the requirements thereof or who shall build or alter any building in violation of any detailed statement or plan submitted and approved thereunder shall be guilty of a misdemeanor and shall be liable to a fine of not more than one hundred dollars (\$100.00), and each day such violation shall be permitted shall constitute a separate offense. The owner or owners of any building or premises, or part thereof, where anything in violation of this ordinance shall be placed, or shall exist, and any architect, engineer, builder, contractor, agent, person or corporation, employed in connection therewith and who may have assisted in the commission of any such violation shall be guilty of a separate offense and upon conviction thereof shall be fined as hereinbefore provided.

**Sec. 30-13. Interpretation, purpose and conflict.**

In interpreting and applying the provisions of this ordinance, they shall be held to the minimum requirements for the promotion of the public health, safety, convenience, comfort, morals and prosperity and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any ordinance, rule, regulation or permit previously adopted or issued, and not in conflict with any of the provisions of this ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises, and likewise not in conflict with this ordinance; nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties, except that, if this ordinance imposes a greater restriction, this ordinance shall control.

**Sec. 30-14. Validity.**

A. If any section, paragraph, subdivision [subsection], clause, phrase or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional,

B. All ordinances or parts of ordinances in conflict. herewith are hereby repealed.

**Sec. 30-15. When effective.**

This ordinance shall be in full force and effect from and after its passage and publication as provided by law, and any rule requiring more than one (1) reading is hereby waived.

**Sec. 30-16. Fees**

The City Council of the city of Ballinger hereby ordains that a zoning change application permit, variance application fee of \$100.00 shall be paid to the building inspector and/or the City of Ballinger prior to said application being processed before the Planning and Zoning Commission and the City Council of the City of Ballinger prior to the written notification and/or publication fees required by law. (Ord. 9-5-02)

PAGES RESERVED

## Chapter 31

### APPENDIX B. SUBDIVISIONS\*

*An ordinance providing rules and regulations pertaining to platting and recording of subdivisions and additions within the City of Ballinger and within one mile of the corporate limits of the City of Ballinger, and requiring plats and landowners to conform to such rules and regulations, and providing for the enforcement of this ordinance, and repealing all conflicting ordinances.*

*The City Council of the City of Ballinger hereby ordains:*

#### **Sec. 31-1. General.**

In order to promote and protect the general health, safety and welfare of persons residing within and adjacent to the City of Ballinger, these regulations shall govern every person, firm, association or corporation or anyone else owning any tract of land within the city limits of the City of Ballinger or within one (1) mile of the corporate limits of the City of Ballinger, who may hereafter divide the same in two (2) or more parts for the purpose of laying out any subdivision of any tract of land or any addition to said city, or for laying out suburban lots or building lots, or any lots and streets, alleys or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto, and resubdivisions of any existing subdivisions or additions or parts thereof.

The provisions of article 6626 of the Revised Civil Statutes of the State of Texas and amendments thereto, the Acts of 1951, 52nd Legislature, page 745, chapter 403, article 6626a of the Revised Civil Statutes of the State of Texas and amendments thereto, the Acts of 1961, 57th Legislature, page 1,022, chapter 449, article 970a, the Acts of 1963, 58th Legislature, page 447, chapter 160 and article 974a of the Revised Civil Statutes of the State of Texas and amendments thereto, Acts 195;i, 54th Legislature, page 851, chapter 317, are incorporated herein by reference, and all other applicable statutes are also incorporated herein by reference, and each of such statutes are made a part hereof.

#### **Sec. 31-2. Definitions.**

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\* **Editor's note** - Appendix B sets out the subdivision ordinance of the city enacted on the twenty-third day of March, 1965, as the same was originally enacted and as the same has been amended by the city since such date. Due to the statutory requirements relative to the enactment and amendment of such an ordinance, incorporation thereof into a code of ordinances is not deemed advisable, hence its inclusion as an appendix hereto for the benefit and convenience of the users of this Code.

**Charter reference** - Department of planning and zoning, art. 1 :3.

**Cross references** - Buildings, ch. H; health and sanitation, ch. 14; mobile homes, ch. 16; planning and zoning, ch. 19; streets and sidewalks, ch. 23; utilities, ch. 27; zoning, App. A.

2.01 "City" or "the city" shall mean the City of Ballinger.

2.02 "Subdivision" shall mean the division of a tract or parcel of land into two (2) or more parts or lots for the purpose, whether immediate or future, of sale or building developments, or transfer of ownership, and shall include resubdivision.

2.03 "Resubdivision" shall mean the division of an existing subdivision or addition or part thereof, together with any change of lot size therein, or with the relocation of any street lines, or any other means of altering any existing recorded plat or map or altering the boundary line of any tract of land described by either a description with reference to a map or plat or by a metes and bounds description by field notes into a tract or lot or parcel of land of the size less than that (described in the conveyance to the grantor or other firm, person, association or corporation or anyone else making such alteration or subdivision or resubdivision).

2.04 The word "shall" shall be deemed as mandatory. The word "may" shall be deemed as permissive and not mandatory. A plan or plat or replat or map or sketch shall refer to the same drawing of the plan of the proposed subdivision, resubdivision or addition. The singular shall include the plural and the plural shall include the singular.

The feminine shall include the masculine and the neuter, the masculine shall include the feminine and the neuter, and the neuter shall include the masculine and feminine.

2.05 The word "owner" shall include any person, firm, corporation, association or anyone else who owns or has any interest in any land within the boundaries included in the provisions hereof.

### **Sec. 31-3. Requirements of subdivisions and resubdivisions.**

3.01 General requirements:

In general streets must conform to the following:

Minimum width shall be sixty (60) feet, however greater width may be required.

Shall connect with existing streets in adjoining subdivisions or resubdivisions, or roads or highways then in use;

Shall be given names to provide continuity with existing streets

Shall avoid dead ends, except for future planning courts;



Platted with appropriate regard for all topographical features lending themselves to attractive treatment.

Alleys shall be considered of prime importance and shall be included in the subdivision design and have a minimum width of twenty (20) feet. Except in cases where alleys would be absolutely impractical or inconsistent to good design or practices or detrimental to the overall development of the abutting property, then in such cases there may be substituted utility easements.

Residential lots shall be a minimum of sixty (60) feet wide at the building line and one hundred (100) feet deep, and in no case shall any lot contain less than seven thousand two hundred (7,200) square feet exclusive of drainage easements, if any.

All requirements of the building code, electrical code, plumbing code and all other codes and ordinances of the City of Ballinger relating to building improvements shall be applied to the area included in such subdivision; and all requirements for front building line setbacks and side and rear lot line clearances shall be applied to the tracts within the subdivision or resubdivision.

All requirements of any water improvement ordinance or any ordinance relating to water system operations shall be applied to each subdivision and resubdivision; and all requirements of any sewer improvement ordinance or any ordinance relating to sewer system operations shall be applied to each subdivision and resubdivision; however, such water and sewer facilities shall not be required to be installed by the City of Ballinger and at its expense, and the City of Ballinger shall not be obligated to furnish such utilities services by approving the subdivision and resubdivision and the map and plat in connection therewith, but the City of Ballinger may voluntarily furnish such services, and may contract with reference to improvements of such utilities as may be provided by law or by the other ordinance pertinent thereto.

*3.02 Plats, maps and restrictions:*

- a. The map or plat of not less than three (3) copies of the proposed subdivision or resubdivision shall be submitted, drawn to a specific scale shown on the drawing, showing lots, blocks, streets, alleys and utility easements, with the dimensions of each properly shown thereon.
- b. The boundaries of the tract of land subdivided or resubdivided shall be shown on the plat with sufficient legal information to permit calculation of closure and area.
- c. Adjoining existing tracts of land and subdivisions and resubdivisions, as the case may be, shall be shown and tied by dimensions to the proposed subdivision or resubdivision.

- d. Such map shall include thereon the name of the subdivision or resubdivision
- e. A dedication shall be made by the owner giving a sufficient legal description of the tract of land included in the subdivision or resubdivision, dedicating all streets and alleys to public use and easements, if any, for use by public utilities; and such dedication may be included on the plat, or incorporated in a separate instrument referring to such plat by sufficient reference to identify the same; and such dedication shall be acknowledged by the owner in the same manner and form required for acknowledgment of deeds. When said map and dedication are finally approved by the City of Ballinger, then such map and dedication shall be filed for record in the office of the county clerk of Runnels County, Texas, and evidence of compliance with this provision shall be furnished to the City of Ballinger.

### *3.03 Public parks:*

Small, irregular tracts designed as public parks shall not be acceptable. A large tract to be designed for use as a public park shall first be submitted to the planning and zoning commission for consideration and if approved may be included in the subdivision. Otherwise, no subdivision including a park of any kind shall be approved by the city council.

### *3.04 Street improvements and paving:*

- a. The owner of each subdivision or resubdivision shall improve all streets in the subdivision or resubdivision.
- b. If the proposed subdivision or resubdivision is not within the corporate limits of the City of Ballinger but within one (1) mile of the corporate limits of the City of Ballinger each proposed street shall be graded and surfaced with the same quality or better of grading and surfacing as are county roads within the vicinity of a one (1) mile radius of the proposed subdivision or resubdivision.
- c. If the proposed subdivision or resubdivision is within the corporate limits of the City of Ballinger, then all streets shall be improved with the same quality or better of grading, surfacing or paving, as existing adjacent or connecting streets.
- d. Nothing contained in this ordinance relating to street improvements shall ever create any liability on the City of Ballinger, unless by specific order, resolution or ordinance the City of Ballinger shall assume certain specific liability for a definitely defined street improvement.

- e. Approval of the subdivision or resubdivision by the City of Ballinger shall not impose any duty upon the City of Ballinger concerning the maintenance of such street improvement until the City of Ballinger shall have made actual acceptance of such streets, and until the subdivision or resubdivision shall have been included within the boundaries of the City of Ballinger.
- f. If any street in the subdivision is paved or is to be paved, either by requirement to comply with this or any other ordinance of the City of Ballinger or by choice of the owner of such subdivision, then at the time of such paving there shall be installed a curb and gutter of design, specifications and material and in full compliance with the requirements of the ordinance of the City of Ballinger pertinent to the installation of the curb and gutter.
- g. If any other streets in the subdivision submitted for approval by the City of Ballinger are adjacent to or connect with an existing paved street, either within or outside the limits of the City of Ballinger, then such streets in the subdivision shall be paved to a minimum width of forty (40) feet, and shall be installed to a permanent line and grade and shall be of a quality and material as specified by the City of Ballinger. This provision, however, shall not apply to streets where curbs have been installed prior to the passage of this ordinance. Such specifications by the City of Ballinger may be by resolution or ordinance relating to the specific subdivision not in conflict with any paving ordinance of the City of Ballinger, or by the provisions of the paving ordinance of the City of Ballinger.

### 3.05 Utilities:

- a. The owner of the subdivision or resubdivision may install any public utilities in said subdivision or resubdivision provided the same are installed to meet the requirements of the ordinance relative to each utility now in force or which may hereafter become an ordinance of the City of Ballinger.
- b. All utility lines of every kind and character shall be laid or installed in the alley of such subdivision or resubdivision or within the boundaries of an easement provided therefor, and the same shall never be laid or installed within or under a street unless there is no other available location therefor and not then until specific approval shall have been given by the City of Ballinger, and all damage to such street shall be repaired after such utility shall have been laid or installed.
- c. All water and sewer lines laid and installed by an owner of a subdivision or resubdivision and connected with the water system of the City of Ballinger shall immediately upon making such connection with the water system of

the City of Ballinger become the property of the City of Ballinger free of all liens and encumbrances, and no connection shall be made therewith to the water system of the City of Ballinger until the City of Ballinger shall have approved the same as complying with the requirements of the codes and ordinances of the City of Ballinger relating to such water and sewer services, lines and systems.

**Sec. 31-4. Procedure.**

*4.01 Submission of proposal:*

(a) All preliminary proposals, plats, maps, restrictions, dedications and other matters relating to the proposed subdivision or resubdivision shall first be referred to the planning and zoning commission for study, consideration, revision and approval (approval) or rejection; and if rejected, the owner shall submit such additional matter as may be required by the planning and zoning commission until an approval is obtained.

(b) When the proposed subdivision or resubdivision shall have been finally approved by the planning and zoning commission, then the same, together with the written approval of the planning and zoning commission, shall be submitted to the city council for study, consideration, revision and approval or rejection; and if and when approved by the city council the same shall be recorded as provided in subsection (e) of section 3.02 hereof. If the same is revised or rejected by the city council, then the same shall be returned to the planning and zoning commission with the written suggested revisions or reasons for rejection as the case may be, and further study, consideration, revision and approval or rejection shall be made by the planning and zoning commission and the same again submitted to the city council for study, consideration, revision and approval or rejection. This procedure shall be followed until the owner of the subdivision or resubdivision, planning and zoning commission and city council shall have agreed on the final draft of such subdivision or resubdivision.

(c) All preliminary plats and other data required to be submitted, and all plats and other data finally approved, and all plats and other data finally approved, shall contain the following information, as well as any other additional information required by the planning and zoning commission, to wit:

(1) Name of subdivision;

(2) Names of the owner and the engineer or surveyor responsible for the survey and design;

(3) Boundary lines, existing building lines, and width and location of streets and alleys within and adjacent to the property, and of any utility easements;

(4) Width and depth and/or area of the lost and blocks therein;

(5) Physical features of the property, including location of watercourses, rts, bridges, drainage ditches, existing structures of all kinds, streets, alleys, highways, county roads, private rights-of-way, including the widths thereof and names by which the same are known, and elevations sufficient to inform an examiner of the surface, the general flow of water and drainage and possible location of sewer lines. Additional details may be required by the planning and zoning commission and city council or either of them;

(6) A designation of the proposed uses of the subdivision tracts not intended for residential use. All undesignated tracts will be considered and classified as residential tracts and shall be used for that purpose only until and unless redesignated and defined by the planning and zoning commission and city council as provided in the zoning ordinance of the City of Ballinger;

(7) Adequate off-street automobile and motor vehicle parking shall be provided for any of the subdivision tracts set aside and designated for business, industrial, public or institutional use.

(d) The planning and zoning commission shall establish rules and regulations for the submission of preliminary plats and other data and subsequent data and information which such commission may require.

(e) The city council shall establish the fees and charges which may be made for consideration of such subdivision plats and other data. The fees and charges may be established by resolution or by ordinances as the city council may elect.

### **Sec. 31-5. Penalties.**

5.01 The City of Ballinger and all of its officers and employees are prohibited from furnishing or authorizing the furnishing of any utility services to any person, firm or corporation at any location where there has been a violation of any of the provisions of this ordinance, and the City of Ballinger and all of its officers and employees shall continue to withhold all such utility services to anyone located on any such tract of land until compliance with the provisions of this ordinance shall have been made. Utility services shall mean any services and/or use of water, sewer facilities, electric power and lights, and natural gas and any other similar provisions:

Any person, firm or corporation violating this ordinance or any portion hereof shall upon conviction be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00) and each day

that such violation continues shall be considered a separate offense and punishable accordingly.

**Sec. 31-6. Severability.**

If any section or part of any section or paragraph or sentence of this ordinance is declared invalid or unconstitutional for any reason, it shall not be held to invalidate or impair the validity, force or effect of any other section, sections, part, parts, paragraph, paragraphs, sentence or sentences of this ordinance.

**Sec. 31-7. Conflicting ordinances.**

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

PAGES RESERVED

## Chapter 32

### Emergency Management<sup>‡</sup>

#### **Sec. 32 1. Organization**

There exists the office of Emergency Management Director of the City of Ballinger, which shall be held by the Mayor in accordance with state law.

- (A) An Emergency Management Coordinator may be appointed by and serve at the pleasure of the Director;
- (B) The Director shall be responsible for a program of comprehensive emergency management within the City of Ballinger and for carrying out the duties and responsibilities set forth in this ordinance. He/she may delegate authority for execution of these duties to the Coordinator, but ultimate responsibility for such execution shall remain with the Director.
- (C) The operation Emergency Management organization of the City of Ballinger shall consist of the officers and employees of the City so designated by the Director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan.

#### **Sec. 32 2. Emergency management director - powers and duties.**

The duties and responsibilities of the Emergency Management Director shall include the following:

- (A) Conduct an on-going survey of actual or potential hazards which threaten life and property within the City and an on-going program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.
- (B) Supervision of the development and approval of an emergency management plan for the City of Ballinger, and shall recommending for adoption by the City Council all mutual aid arrangements deemed

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<sup>‡</sup> Emergency Management Chapter code passed 02-04-2004.

necessary for the implementation of such plan.

- (C) Authority to declare a local state of disaster. The declaration may not be continued or renewed -for a period in excess of 7 days except by or with the consent of the City Council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
- (D) Issuance of necessary proclamations, regulations or directives which are necessary for carrying out the purposes of this ordinance. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the City Secretary.
- (E) Direction and control of the operations of the City of Ballinger Emergency Management organization as well as the training of Emergency Management personnel.
- (F) Determination of all questions of authority and responsibility that may arise within the Emergency Management organization of the City.
- (G) Maintenance of liaison with other municipal, county, district, state, regional, or federal, Emergency Management organizations.
- (H) Marshaling of all necessary personnel, equipment or supplies from any department of the City to aid in the carrying out of the provisions of the emergency management plan.
- (I) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which said City is located and with other municipalities within the county, for the county-wide



coordination of Emergency Management efforts.

- (J) Supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving Emergency Management within the City.
- (K) Authorizing of agreements, after approval by the City Attorney, for use of private property for public shelter and other purposes.
- (L) Survey of the availability of existing personnel, equipment, supplies and services which could be used during a disaster, as provided for herein.
- (M) Other requirements as specified in the Texas Disaster Act of 1975, Texas Government Code Chapter 418.

### **Sec. 32 3. Emergency Management Plan**

A comprehensive Emergency Management Plan shall be developed and maintained in a current state. The plan shall set forth for the organization, establish and designate divisions and functions, assign responsibilities, tasks, duties, and powers, and designate officers and employees to carry out the provisions of this ordinance. As provided by state law, the plan shall follow the standards and criteria established by the State Division of Emergency Management of the State of Texas. Insofar as possible, the form of organization, titles, and terminology shall conform to the recommendations of the State Division of Emergency Management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this ordinance and have the effect of law during the time of a disaster.

### **Sec. 32 4. Interjurisdictional Program**

The Mayor is hereby authorized to join with the County Judge of the County of Runnels in the formation of an Emergency Management Council for the County of Runnels and shall have the authority to cooperate in the preparation of a joint emergency management plan and in the appointment of a joint Emergency Management Coordinator, as well as all powers necessary to participate in a county-wide program of emergency management insofar as said program may affect the City of Ballinger.

### **Sec. 32 5. Override**

At all times when the orders, rules, and regulations made and promulgated pursuant to this ordinance shall in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

### **Sec. 32 6. Liability**

This ordinance is an exercise by the City of its governmental functions for the protection of the public peace, health, and safety and neither the City of Ballinger, the agents and representatives of said City, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this ordinance shall be liable for any damage sustained to persons as the result of said activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the City of Ballinger a license of privilege, or otherwise permits the City to inspect, designate and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack or natural or man-made disaster shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person.

### **Sec. 32 7. Commitment of funds**

No person shall have the right to expend any public funds of the City in carrying out any Emergency Management activity authorized by this ordinance without prior approval by the City Council, nor shall any person have any right to bind the City by contract, agreement or otherwise without prior and specific approval of the City Council unless during a declared disaster. During a declared disaster, the Mayor may expend and/or commit public funds of the city when deemed prudent and necessary for the protection of health, life, or property.

### **Sec. 32 8. Offences; penalties**

- (A) It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the Emergency Management organization in the enforcement of any rules or regulation issued pursuant to the authority contained in this ordinance.
- (B) It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or any other means of identification as a member of

Emergency Management organization of the City of Ballinger, unless authority to do so has been granted to such person by the proper officials.

- (C) Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this ordinance and shall be subject to the penalties imposed by this ordinance.
- (D) Convictions for violations of the provisions of this ordinance shall be punishable by fine not to exceed One Thousand and no/100 (\$1,000.00) Dollars.

**Sec. 32-9. Severability**

If any portion of this ordinance shall, for any reason, be declared invalid such, invalidity shall not affect the remaining provisions thereof.

**Sec. 32-10. Limitations**

This ordinance shall not be construed so as to conflict with any State or Federal statute or with military or naval order, rule, or regulation.

**Sec. 32-11. Repealer**

All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

Reserved

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**PART II  
CODE INDEX**

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	Zones ..... 98
 <b>A</b>	
Accidents	
Generally .....	467
Investigation of .....	468
Reports - Required.....	468
Administration	
Employee Benefits.....	13
Records Management .....	18
Advertising	
Destroying lawful posters .....	33
In General .....	33
Airport.....	<i>See Aviation</i>
Alcohol	
General.....	47
Permits .....	50
Sale of .....	50
Amusements	
Definitions .....	57
General.....	57
Public Place .....	459
Animal Control	
Definitions .....	69
Kennels .....	83
Officer.....	69, 72
Violation Penalty .....	71
Animals	
Animals and Fowl	
In General .....	67
Confinement of .....	75
Dangerous and or Vicious.....	77
Fowl - Distances required for new construction .	68
Fowl - Pens and Enclosures .....	68
Fowl and Swine .....	67
Harboring Dangerous, Vicious .....	78
Harboring unvaccinated.....	75
Has bitten, scratched or attacked.....	80
Hoofed .....	68
Humane destruction .....	82
Impound.....	81
Licensing .....	72
Rabies Control .....	74
Rabies vaccination .....	73
Small Animals and Fowl.....	68
Suspicion of Rabies .....	75
Vaccinations-Required.....	74
Aviation	
Airport	
Administration.....	101
Advisory Board .....	93
Definitions.....	95
Hazard Zoning.....	95
In General .....	93
Permits and variances .....	100
 <b>B</b>	
Ballinger Elementary School.....	492
Bicycles .....	470
Billboards	
Billboard operator	
License.....	36
Location, construction.....	38
Brush .....	176
Building	
Permit.....	628
Permit Fees.....	112
Regulations.....	627
Setbacks .....	627
Buildings	
Abatement .....	113
Abatement Normal procedure .....	114
Code .....	109
Contractor License .....	116
Declared nuisances.....	113
Inspections .....	113
Inspector.....	110
Inspector Duties .....	111
Permits .....	111
Substandard.....	112
Substandard Determination .....	112
Substandard Determination Standards.....	115
 <b>C</b>	
Checks	
Insufficient checks .....	530
Returned checks .....	530
City Attorney 20, 37, 57, 110, 116, 134, 153, 226, 227, 364	
City Council .20, 22, 82, 159, 177, 180, 204, 209, 297, 305, 329, 535, 540, 571, 630, 643, 647, 651, 675, 676, 678	
Animal Control Officer .....	70
Animal Shelter .....	81
Set Animal License Fee.....	73
City Recycle Center.....	178
City Secretary .....	14
Code Enforcement Officer.....	204, 205, 207, 377
Credit/Debit Cards.....	,
Curfew .....	569
Defenses.....	569
Enforcement procedure .....	570
Offense .....	569
Penalties .....	571

## D

Drought.....*See* Utilites - Water

## E

Electrical	
Electrical Contractor.....	134
Fees .....	136
Journeyman Electrician .....	133
Master Electrician.....	133
Penalty for code violation.....	136
Residential Wireman .....	133
Electrical Code	
Amendments to Annex G .....	133
Electricity .....	133
Electrical Code adopted.....	133
Emergency Management .....	675
Employees	
Benefits .....	13
Texas Municipal Retirement System.....	15
Excavations	
Permit .....	393

## F

Fees	
Administration Fee .....	191
City Abatement .....	191
Lien On Property .....	191
Fire	
Arson.....	147
Marshal.....	150
Prevention Code .....	153
Protection and Prevention.....	147
Fireworks.....	159
Ballinger City Lakes.....	159
manufacture, sell or offer for sale.....	159
Unlawful to explode .....	159
Flood Damage Prevention Ordinance .....	329
Administration.....	339
Definitions.....	331
Development permit .....	338
Floodplain administrator .....	339
Floodways .....	348
General Provisions .....	337
Methods of reducing flood losses.....	330
Penalties for non compliance.....	348
Permit procedures.....	340
Provisions For Flood Hazard Reduction.....	343
Special flood hazard Zone .....	347
Statutory authorization .....	329
Variance procedures .....	341
Food	
Adoption of Texas Food Establishment Rules... 166	
Food and Food Handlers .....	165
Meat and Poultry .....	169
Milk and Milk Products.....	165
Franchise	
Contracts .....	585

## G

<i>Game Room</i> .....	58
Garage Sales .....	301
Garbage	
Charges - Residential .....	177
Containers.....	176
Definitions .....	175
Duties of Commercial, Institutional and Industrial Customers.....	177
Duties of Customer .....	175
Garbage and Trash.....	175
Penalty .....	178
Private Disposal.....	178
Prohibited Acts .....	176

## H

Health and Sanitation	
Health and Sanitation.....	187
Housing.....	221
Fair Housing .....	221

## I

Illegal Smoking .....	252
possession.....	252
Intersections	
Sight Obstructions .....	394
Itinerant Merchants	
License.....	294
License Suspension Of.....	297
Permit .....	298
Solicitors.....	293

## J

Jake Brakes	
Punishment .....	504
Junked Vehicles .....	373
Definitions .....	373
Disposal .....	377
Enforcement.....	378
Exceptions .....	375
Offense .....	374
Procedure for Disposition .....	375
Public Nuisance .....	374

## L

Lakes, City	
Restricted Merchants, Vendors, Solicitors, Peddlers .....	294

## M

May – <i>The Word</i>	
The word shall be deemed as permissive and not mandatory.....	652
Mayor.....	14, 16, 20, 93, 147, 150, 154, 225, 300, 328, 392, 541, 623

Mobile Homes.....	229	Parking Lots .....	463
Application .....	232	Parks	
Fees.....	233	Restricted Merchants, Vendors, Solicitors,	
Locations .....	237	Peddlers.....	294
Maintenance.....	231	Pedestrians.....	509
Physical Requirements.....	233	Petroleum	
Setbacks .....	234	Liquefied Petroleum Gas.....	157
Mosquito Control .....	196	Liquefied Petroleum Gas Installation permit.....	157
Motorcycles		Planning and Zoning.....	327
Headgear and Fine .....	462	Commission .....	327
Municipal Buildings		Plumbing .....	363
Restricted Merchants, Vendors, Solicitors,		Code .....	363
Peddlers .....	294	Gas .....	363
Municipal Court		Police.....	371
Animals.....	79	Reserve Force.....	371
Building Security Fund.....	464	Pool and Billiard Rooms	
Judge.....	376	License .....	61
Municipal Properties		Pool and Billiards Rooms	
Restricted Merchants, Vendors, Solicitors,		Fines and Penalties.....	64
Peddlers .....	294	<i>Pool or billiard table</i> .....	58
		Premises	
		Restricted .....	294
<b>N</b>			
Noise		<b>R</b>	
Abatement and Control.....	197	Railroads.....	383
Nuisances		Ratproofing.....	192
City abatement .....	191	Records	
Offensive Conditions .....	187	Duties and Responsibilities .....	22
		Keeping Of.....	18
		Roller Skates	
		Traffic .....	462
<b>O</b>			
Offenses		<b>S</b>	
Discharge of weapons .....	251	School buses	
Generally .....	251	Required equipment .....	507
Giving false name and address.....	251	Sewer.....	See Utilities
Illegal Smoking.....	252	Grease, Oil and Sand	
Illegal Smoking Products .....	252	Interceptors .....	534
Ingestion Device .....	252	GreaseTrap.....	534
Trespass .....	251	Tap Fee Schedule .....	535
Offensive Conditions		Shall – <i>The Word</i>	
City abatement .....	191	The word shall be deemed as mandatory.....	652
Nuisances.....	187	Sidewalks	
Ordinances		Display of merchandise .....	392
Amendments To.....	3	In General.....	391
General Penalty.....	6	Signs	
General Provisions.....	1	Violations defined; penalties .....	35
		On Public Property.....	35
<b>P</b>		Signs and Billboards	
Parades and Processions.....	507	Definitions.....	33
Parking		Smoking	
Angle .....	500	City Buildings Restriction.....	204
Certain Purposes .....	499	Street Maintenance Fee .....	396
Commercial Vehicles in residential districts....	501,	Billing and Collection .....	397
<i>See</i> Truck routes		Definitations.....	396
In Alleys .....	500	Enforcement .....	398
Loading and Unloading.....	<i>See</i> Truck - Routes	Owner or Occupant of Developed Property .....	396
Parallel.....	499	Street Maintenance Fund..	<i>See</i> Street Maintenance Fee
Residential Restrictions .....	500	Street Maintenance Program ...	<i>See</i> Street Maintenance Fee
Restricted, Prohibited Streets.....	501		
Signs required .....	501		

Streets	
Street numbers .....	392
Streets and Sidewalks – In General .....	391
Streets and Sidewalks	
Penalties .....	400
Ramps, Jumps.....	399
Roller Skates, Rollerblades .....	399
Skateboards .....	399
Subdivisions	
Definitions.....	652
General .....	651

## T

Taxation	
Adoption of state laws for collecting .....	431
Occupancy Tax.....	431
Taxicabs.....	441
Drivers.....	447
Liability Insurance.....	445
Permit .....	443
Tire Business	
Permit Application .....	206
Permit Application Fees .....	207
Tires.....	204
Abatement and relief by judgment .....	209
Business Registration, and Regulation .....	204
Definitions.....	204
Injunctive relief .....	209
Penalty for violation .....	209
Transporter - Disposal Business - Not Allowed .....	208
Unlawful disposal.....	208
Traffic	
Arrest procedure .....	463
Ballinger Elementary School.....	492
Barriers.....	462
Control signs, signals and devices .....	486
Definitions.....	455
Divided highways.....	477
Driver's license .....	461
Driving on Sidewalks .....	506
Emergency and experimental regulations.....	466
Emerging from alleys, private driveways or buildings.....	463
Enforcement of regulations .....	463
Engineer .....	466
Engineer's Duties.....	486
Fire Department direct traffic .....	466
Following too closely .....	477
In General.....	455
Investigation of traffic conditions, accidents.....	466
Left turn.....	481
Limitations on turning .....	484
Obstructing traffic .....	480
officers to direct traffic .....	465
One-Way Streets, Alleys .....	491
Owner of Vehicle Illegally Parked .....	496
Parking .....	495
Police direct traffic .....	465
Prohibited .....	498
Pushcarts or riding animals .....	461
Right-Of-Way Regulations.....	480

Rubbish or hazardous material on streets.....	505
Special parking .....	498
Speed Limits .....	482
Standing.....	495
Stop and yield signs .....	490
Stop, Yield Intersections.....	490
Stopping.....	495
Temporary officers direct traffic.....	466
Through Safety Zones.....	506
Turn signals required .....	485
Unauthorized signs, signals or markings .....	487
When approaching .....	481
Travel Trailer	
Physical Requirements.....	235
Travel Trailers.....	240
Fees.....	243
License.....	242
Location .....	238
Park.....	241
Setbacks .....	236
Trucks	
Loading and Unloading .....	<i>See Truck - Routes</i>
Routes .....	492
Routes Load weight on Elm Creek .....	495

## U

Utilities	
Convenience Fee .....	529
Customers outside the city limits .....	526
Garbage Rates .....	529
In General .....	525
Rates and Charges.....	529
Raw Water Rates.....	529
Right of entry.....	526
Sanitary Sewer Rate.....	535
Sewer .....	531
Sewer mains and Lines .....	535
Sewer Prohibited discharges .....	532
Sewer Rates.....	529
Sewer Rates .....	529
Water .....	537
Water Drought and Emergency Contingency Plan.....	525, 540
Water Rates .....	529, 540

## V

Vehicles	
Emergency .....	474
Emergency .....	505
Equipment.....	469
Impoundment of Standing or Parked Vehicles.....	496
Loads .....	473
Mufflers and prevention of noise .....	471
Operation Of - Generally .....	476
Parked.....	470
Passing.....	478
Vendors	
Secondhand Goods .....	307
Temporary Sales .....	302
Temporary Sales Permit.....	303



**W**

Water..... *See* Utilities  
Backflow Preventer..... 549  
Backflow-prevention ..... 554  
Cross Connection..... 550  
Industrial Fluids System ..... 551  
Mains ..... 538  
Mains and Lines..... 537  
Mains -Requirement to extend ..... 538  
Service  
Policy..... 552  
System  
Requirements ..... 552

**Z**

Zoning..... 619  
1-1 Industrial District..... 638

Board of adjustment ..... 642  
Cargo..... 625, 626  
Changes and amendments ..... 645  
Definitions..... 620  
Districts ..... 622  
Highpointe..... 629  
Neighborhood Business District..... 632  
Neighborhood Business District Off Sets ..... 634  
Oil and gas wells ..... 641  
Penalties ..... 627  
R-1 Residential Area No.1 ..... 624  
R-1 Residential Area No.1 Off Sets ..... 627  
R-1 Residential Area No.1 Specific Use Permits  
..... 629  
R-2 Residential Area No.2 ..... 630  
Residential..... 625  
Sea Container ..... 626  
Sea Containers..... 625, 626  
Tarps ..... 626