

3.3 Use-Specific Standards

COMMENTARY

This content contains existing standards carried forward unchanged, existing standards with proposed edits, and also suggested new standards.

In several instances, feedback has indicated that the main issues associated with certain uses (river outfitter, event or reception center) are provision of parking, and residential adjacency. Both of these topics will be addressed in Installment 2, Development Standards.

In addition to distance separation requirements that will be part of residential adjacency, hours of operation are often useful in mitigating issues caused by proximity of certain uses. These are included in limited instances (drive-through facilities, animal boarding, veterinary clinic), but could be adopted more widely. Specified hours of operation can be especially useful for any use with an outdoor component, such as restaurants or bars with outdoor seating and or music, event or reception centers with outdoor components, outdoor recreation uses, both indoor and outdoor shooting ranges.

3.3.1 Generally

The use-specific standards listed in the following subsections shall apply to those uses listed on the same line of Table 3-1: Table of Allowed Uses. These use-specific standards cannot be modified through the special use process, but relief may be granted through the Variance procedure established in §X.X. In case of a conflict between these use-specific standards and the standards in Article 4: Development Standards, these use-specific standards shall apply unless otherwise noted.

3.3.2 Accessory Use General Standards³⁹

An accessory use or structure is a use or structure that is customarily incidental, appropriate, and subordinate to the principal uses on a site and located on the same lot. Permitted accessory uses and structures include those specifically identified in Table 3-1: Table of Allowed Uses, as well as those accessory uses, structures, and activities typically associated with the principal use on the site, as identified in §9.2, *Definitions*, unless specifically prohibited in this section.⁴⁰

- A. Unless otherwise specified by standards associated with a particular accessory use or structure, all accessory uses and structures shall:⁴¹
 - 1. Be customarily accessory and clearly incidental and subordinate to the principal use(s) on a site;
 - 2. Be located on the same lot as the principal use(s), or on a contiguous lot in the same ownership;
 - 3. Not be established prior to the establishment of the principal use or structure on the site.
- B. Accessory structures, except for equipment such as air conditioning compressors and swimming pool pumps, may be located within three feet of the side or rear property line provided any

³⁹ These general standards incorporate the standards in Sec. 144-5.4 of the Code of Ordinances, with changes as noted below, except that the limit on the maximum number of buildings per lot has not been carried forward. References to building code requirements has not been carried forward, including the building spacing requirements in subsection (g), and the minimum interior side building setback and rear building setback of three feet in subsection (i).

⁴⁰ Among other things, this paragraph includes a provision that even those accessory uses not listed in the table are permitted if they are customarily accessory to a use; e.g. a swing set in the backyard of a single-family residential dwelling. Definition adapted from Sec. 144-1.4 of the Code of Ordinances.

⁴¹ These are new, general requirements for accessory uses that incorporate the intention in Sec. 144-5.4(a) of the Code of Ordinances.

structure within the minimum required setback is no taller than 12 feet in height and no greater than 120 square feet in floor area.⁴²

- C. No more than 30 percent of the rear yard of properties over the aquifer recharge zone may have accessory structures.⁴³

3.3.3 Agricultural Uses

COMMENTARY

This public draft eliminates Urban Agriculture as a use, since limited animal husbandry is covered in Chapter 6 of the Code of Ordinances, and does not appear to cause any issues, and farm stands to sell produce can be accommodated under Seasonal Sales.

The draft carries forward the standard from Sec. 144-5.9; however, further discussion on whether additional standards are needed for farms can occur as part of the public outreach on this installment. As part of this discussion, we propose for consideration a standard specifying that, if the existence of a farm pre-dates establishment of non-farm residential use on adjacent lots, the farm retains the right to conduct ordinary operations, without risk of enforcement action from the later-established residential use.

A. Farm

Farms and ranches are permitted in residential and commercial districts provided that no obnoxious fertilizer is stored upon the premises and no obnoxious soil or fertilizer renovation is conducted thereon.⁴⁴

3.3.4 Residential Uses

COMMENTARY

This public draft expands on requirements for common open space, including the requirement for a percentage of lot area to be provided as common open space for any development of five or more units. It does not carry forward the open space requirement applicable to townhouses in the current code (unless the townhouse group has 5 or more units).

A. Accessory Building or Structure

Accessory buildings and structures are subject to the standards described in §3.3.2, *Accessory Use General Standards*, as well as the requirements of this section.

1. Size

- a. Accessory structures shall not exceed 25 feet in height.
- b. The floor area of any detached accessory structure shall not exceed the floor area of the principal structure on the site.

2. Location and Setbacks

- a. In residential districts, no accessory structure is permitted between the front property line, and the front building line of the primary structure on the lot.
- b. If an accessory structure, such as a garage, is attached to the main structure, it shall meet the same setbacks as the primary structure.
- c. Accessory structures shall observe a minimum ten-foot setback from the rear lot line when the lot line abuts an alley.
- d. Accessory structures shall observe a minimum five-foot setback from side lot lines.

⁴² These are new standards that minimize potential impact of accessory uses on nearby properties. Minimum side setback reduced from 5 feet. Required 60 foot front setback for accessory structures in front of the principal use on the site has not been carried forward.

⁴³ This provision may be changed as the definitions of "setback" and "yard" are refined.

⁴⁴ Carried forward from Sec. 144-5.9 of the Code of Ordinances.

- e. If the accessory structure is greater than 120 square feet in area and 12 feet in height, it shall comply with the standard side and rear setbacks of the zoning district in which it is located.
- f. No part of an accessory structure shall be located within a recorded easement or over any known underground utilities.

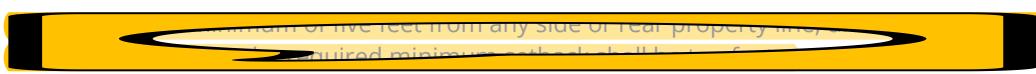
3. Exceptions

The standards of this section do not apply:

- a. To accessory structures in the AG zoning district.
- b. To lots large enough to have two primary structures.

B. Accessory Dwelling Unit⁴⁵

Accessory dwelling units (ADUs) are permitted in accordance with the following standards:

1. ADUs are permitted on any lot where there is a principal use.
2. ADUs may be contained within the principal structure or they may be a separate structure. A detached guest house, converted basement, or a garage apartment are examples of accessory dwelling units.
3. One on-site parking space is required for an ADU.⁴⁶
4. An ADU shall comply with design requirements that apply to a principal structure in the zoning district where it is located.
5. An ADU may have a floor area up to 70 percent as large as the principal structure on the lot, or 1,000 square feet, whichever is less. Structures that exceed this size limit shall be deemed a second principal structure, and may still be allowed pursuant to the requirements of the applicable zoning district.
6. ADUs may be accessed from the front of the lot, or from the rear of the lot if an alley exists, or both.
7. ADUs may not be located within the front setback of the primary structure, but may encroach into the rear setback.
8.  ~~minimum of five feet from any side of rear property line, required minimum on the side of the building~~

C. Carport⁴⁷

A carport shall:

1. Be permitted within the minimum front setback but shall be set back at least 10 feet from the front property line and at least five feet from the near edge of the adjacent sidewalk.
2. Not have side panels or screens in the area between existing grade and 60 inches above existing grade on three sides. The fourth side closest to the principal structure may be enclosed.
3. Not be clad in non-durable or flexible materials such as canvas, plastic, polyester, or other tentlike materials.

⁴⁵ These are new standards intended to expand opportunities for building ADUs within the city. These standards eliminate the restriction on separate kitchen facilities and the payment of compensation for occupying the accessory dwelling. They are intended to apply citywide, in all zoning districts, including overlay and special purpose districts.

⁴⁶ Does the City want to consider allowing on-street parking to count as the required space?

⁴⁷ These are new basic standards to govern the placement and appearance of carports.

D. Cottage Home Development⁴⁸**1. Setbacks and Building Separation**

- a. Setbacks shall apply to the boundaries of the project site, rather than individual units, and comply with the setback requirements of the underlying zoning district.
- b. Internally, there shall be a minimum of 10 feet between dwelling units, measured by the shortest distance between any parts of the two Tiny Homes.
- c. The parking lot for the development shall be a minimum of 20 feet from the right-of-way.

2. Common Open Space

- a. Each cottage development shall include at least one shared open space area equal to at least 15 percent of the total site area. Parking areas and drainage easements shall not be counted toward the common open space requirement.
- b. The design and location of common open space shall meet the standards described in §§X.X.

3. Parking and Access

- a. Parking shall be designed to limit curb cuts and most efficiently park vehicles.
- b. Parking may take place on a shared, paved parking lot or in shared driveways.
- c. Shared driveways may access individual garages.
- d. Project perimeter sidewalks are required, and internal walkways shall connect each cottage unit to the project perimeter sidewalks.
- e. Efficient internal circulation shall be provided; private streets, gates, and accommodation for solid waste pickup and emergency access shall conform to the requirements specified in §§X.X of this Chapter.

4. Architecture

- a. All structures shall meet the design standards applicable to dwellings in the zoning district where the property is located.
- b. Dwelling units shall have a maximum 1:3 width to depth ratio for the first floor.

E. Day Care Home⁴⁹

1. Only residents of the home may be employed by this use.
2. A day care home that cares for children shall comply with Ch. 42, Human Resources Code, of the Texas state statute, and any standards promulgated by the Texas Department of Human Resources.

F. Dwelling, Live-Work⁵⁰**1. Purpose**

This purpose of this section is to establish standards to for developing live-work units that function primarily as a work space, but also integrate living facilities in the same structure as a secondary use. This section aligns the live-work unit requirements with the International Building Code (IBC) and International Fire Code (IFC) as adopted by the City of New Braunfels. This section does not apply to a mix of uses, as separately regulated in the IBC and IFC.

2. Standards**a. Allowed Uses**

The uses allowed in a non-residential component of a live-work unit are those permitted in the applicable zoning district where the building is located, subject to limited exceptions excluded for live-work units in the IBC section 419, and listed in subsection b. below.

⁴⁸ New standards for the new cottage home development use. These are general standards which are intended for discussion purposes.

⁴⁹ Incorporates the standards in the definition at Sec. 144-1.4 of the Code of Ordinances. This Public Draft reconsiders this use, reclassifying it in a manner similar to Home Occupations.

⁵⁰ This content is new for the Public Draft, and comes from proposed changes to Live-Work and Home Occupation regulations.

b. Prohibited Uses

A live-work unit shall not contain any of the following uses:

- i. Vehicle maintenance or repair, vehicle detailing, painting, and upholstery;
- ii. Storage of flammable liquids or hazardous materials beyond that normally associated with a commercial use;
- iii. Outdoor storage of materials;
- iv. Any other use listed in the IBC as a group H or group S occupancy is not allowed in a live-work unit, with the exception that storage may be permitted in the live-work unit provided that the aggregate area of storage in the non-residential portion of the live-work unit shall be limited to ten percent of the space dedicated to non-residential activities.

c. Limitations

- i. Total area for the live-work unit is limited to 3,000 square feet.
- ii. The non-residential work area may not be greater than 50% of the total area of the live-work unit, and shall be located on the first or main floor only of the live-work unit.⁵¹
- iii. The business may have more than five employees; however, no more than five non-resident workers or employees are allowed to occupy the non-residential work area at any one time.
- iv. The residential space within a live-work unit must be occupied by at least one individual who is employed by the business that is conducted within the non-residential component.

d. Parking

- i. Parking is required for the commercial or work use in the non-residential portion of the unit, as required by Table X.X, *Off-Street Parking Requirements*.
- ii. No additional parking is required for the residential component of the dwelling.

e. Landscaping

Landscaping shall be provided as required for the commercial or work use in the live-work dwelling, as described in §X.X.

f. Signs

Signage for the associated commercial or work use shall comply with all applicable regulations as described in Article 7: Signs. Additionally:

- i. Illumination of monument and wall signage shall be restricted to internal illumination where only the lettering or the logo is illuminated. Logos where more than 50 percent of the image is white or light in color shall be restricted to 25 percent of the sign face.
- ii. Flashing or chasing lights are prohibited.
- iii. Electronic message boards are prohibited.
- iv. Temporary A-Frame or T-Frame sign shall be stored indoors when the business is closed.
- v. All other forms of temporary signage are prohibited including, but not limited to, banners, streamers, pennants, yard flags and inflatable signs.

g. Fire Safety

Fire alarm and suppression systems shall be provided in accordance with the International Building Code sections 419.5 and the International Fire Code sections 907.29 and 903.2.8.

⁵¹ This allowance means that the living area is not really secondary, as stated in the purpose. Is that important?

G. Dwelling, Multifamily**1. Common Open Space**

- a. Multifamily developments of five units or greater shall provide a common open space area equal to at least 15 percent of the total site area.
- b. Mixed-use development with residential units shall provide a common open space area equal to at least ten percent of the total site area.
- c. In no case shall parking areas and drainage easements be counted toward the common open space requirement.
- d. The design and location of common open space shall meet the standards described in §X.X.

H. Dwelling, Single-Family Attached (Townhouse)

1. Townhouse developments may contain up to eight individual attached dwelling units.
2. Since units are attached, setbacks are only required at the end of a building row. The minimum distance between two building groups shall be 20 feet and the minimum distance between a building group and any abutting subdivision boundary or zoning district boundary line shall be 20 feet.⁵²
3. **Common Open Space**
 - a. Each townhouse development five or more units shall include at least one shared open space area equal to at least ten percent of the total site area.
 - b. Multiple building groups may share a common open space, provided it meets the dimensional requirement for all the units it serves.
 - c. Parking areas and drainage easements shall not be counted toward the open space requirement.
 - d. The design and location of common open space shall meet the standards described in §X.X.
4. **Lot Width and Access**
 - a. Townhouse lots may have a minimum width of 18 feet.
 - b. Any townhouse lot with a width of less than 25 feet shall locate parking at the rear of the lot, to be accessed by alleys.
5. **Accessory Structures**
 - a. No accessory structures, including carports, shall be located in the front yard of townhouse developments.
 - b. Carports in the rear yard of townhouse structures shall be a minimum of three feet from the side property line, and five feet from the rear property line.
 - c. The carport shall have no side panels or screens in the area between existing grade and 60 inches above existing grade on three sides. The fourth side closest to the principal structure may be enclosed.
 - d. The carport shall not be clad in non-durable or flexible materials such as canvas, plastic, polyester, or other tentlike materials.

I. Dwelling, Single-Family Detached⁵³

In all districts except RMH, when a tiny home or industrialized or modular housing is located on a single lot, the dwelling unit shall:

1. Comply with all applicable requirements of the International Residential Code (IRC).

⁵² Carries forward portion of 3.4-8(b)(3) with edits.

⁵³ Carries forward the standards in Sec. 144-5.8 of the Code of Ordinances, updated to reflect new zoning district organization. The "taxable value" standards for industrialized housing have not been included.

2. Comply with building setbacks, lot area square footage requirements, applicable subdivision controls, parking, landscaping, and other site requirements applicable to single-family dwellings, unless otherwise excepted by this code; and
 3. Be securely fixed to a permanent foundation, with skirting as applicable.
- J. Dwelling, Zero Lot Line**
1. **Minimum Off-set**
The minimum permitted off-set from the property line on the zero-lot-line side of the property is two feet.⁵⁴
 2. **Screening Wall Required**
No door or window openings shall be built into the side wall facing the zero lot line except those that are more than three feet from the property line and screened by a masonry wall at least eight feet in height so that the opening(s) is not visible from the adjoining property.⁵⁵
 3. **Eave and Gutter Overhang**
Eaves and gutters may overhang the zero lot line side of the lot by no more than 18 inches, but shall not extend over the lot line to overhang onto adjoining property.⁵⁶

K. Group Home, FHAA Small or Large⁵⁷

Group care homes for the exclusive use of citizens protected by the provisions of the federal Fair Housing Act Amendments of 1988 (FHAA), as defined in that Act and interpreted by the courts, or by any similar legislation of the State of Texas, including Chapter 123, Human Resources Code, of the Texas state statutes, may be established in any base zoning district or PD district that allows residential dwellings, provided that they meet the definition of "small" and "large" facilities, as described in §9.2.7, *Definitions*, and subject to the licensing requirements of the state of Texas.

L. Home Occupation⁵⁸

1. **Purpose**
The purpose of this section is to allow residents to engage in business activities in their home while establishing standards to minimize negative impacts such as noise, traffic, and odors on neighboring properties.
2. **Standards**
 - a. The home occupation shall be incidental and secondary to the use of the premises for residential purposes.
 - b. No more than two individuals who are not members of the household in which the home occupation takes place may be working on-site in the home occupation at the same time.⁵⁹

⁵⁴ The offset distance has been increased from one foot to two feet, at staff recommendation. If the existing districts are not carried forward, this increase could create nonconformities.

⁵⁵ Carried forward from 3.4-9(c)(2). Should this provision be retained? An eight foot high wall seems excessive; many communities simply say the windows facing this lot line must be frosted glass, glass block, or other partially opaque material.

⁵⁶ Carried forward from 3.4-9(c)(3), with edits. The original provision allowed for overhang onto neighboring property, which would occur if the structure was only one foot off the property line. If the change to a minimum of two feet off the property line is implemented, 18 inch eaves would not overhang, so this draft changes the provision to "shall not" overhang.

⁵⁷ New.

⁵⁸ This carries forward the regulations in Sec. 144-5.5 of the Code of Ordinances with changes to reduce the regulatory burden on home occupations, in accordance with nationwide trends. Key changes include: 1) Eliminating the restriction on floor area which may be devoted to the home occupation, something that is difficult and intrusive to measure; 2) Allowing up to two nonresident employees on-site; 3) Removing the list of permitted home occupation uses, as the list of standards will regulate the impact of the home occupation on neighboring properties; and 4) updating the list of prohibited uses. The prohibition on any home occupation that is "not expressly allowed or expressly prohibited" has been eliminated as well, to provide additional flexibility for residents who wish to open home occupations that meet the performance standards of this section.

⁵⁹ A comment asked about removing this provision, as it is difficult to enforce, and other standards may limit intensity. We would suggest keeping it, just in case there is a complaint. Without it, there is no basis for enforcement.

- c. The home occupation shall primarily take place within the dwelling, and any outdoor activity shall not be visible from the street. The home occupation may take place in a garage provided the site continues to provide adequate space for parking in accordance with §X.X, *Parking and Loading*.
- d. No outdoor activities related to the home occupation shall occur between 9:00 p.m. and 8:00 a.m.
- e. No more than one business-related commercial vehicle shall be parked on the site at one time, and the vehicle shall not be parked on the street. No oversized vehicles, as defined in §9.2.15, are allowed to be parked overnight at the residence.⁶⁰
- f. The home occupation shall not increase vehicular traffic flow beyond what normally occurs within a residential district.⁶¹
- g. No noise, vibration, glare, fumes or odors, heat, or electrical interference beyond what normally occurs within a residential district shall be generated by the home occupation, and no chemicals shall be used that are noxious or hazardous to the welfare of the neighborhood.
- h. Outside storage or display related to the home occupation is not allowed; however, a storage building utilized for the home occupation shall be allowed, subject to all applicable accessory structure standards as described in §X.X.
- i. Each residence with a home occupation is permitted to display one non-illuminated identification sign that is physically attached to the structure and has a sign area no larger than four square feet.

3. **Uses Not Allowed**

The following specific uses are not allowed as home occupations:

- a. Veterinary clinics or animal boarding;
- b. Stables with more than two horses per acre;
- c. Food and beverage uses (except as part of a bed and breakfast use);
- d. Vehicle-related uses;
- e. Repair for any item with an internal combustion engine;
- f. On-premises retail or wholesale sales, except for:
 - i. Items produced entirely on the premises in the home occupation; and
 - ii. During garage sales, which may occur no more than two times per calendar year with at least six months separation between each sale.
- g. Laundry services;
- h. Funeral home uses;
- i. Rental of trailers, vehicles, tools, kayaks, tubes, or other equipment;
- j. Paid parking;
- k. Any industrial use.

M. **Tiny Home, Individual Lot Installation**

- 1. Individual tiny homes may be installed on any lot in any zoning district that permits single-family dwellings.
- 2. Tiny homes may be used as an accessory dwelling unit on any lot where an ADU is permitted, subject to the standards for ADUs described in §3.3.4B.
- 3. Any tiny home that is to be occupied for more than 30 consecutive days shall:
 - a. Meet all applicable requirements of the International Residential Code for detached dwellings;
 - b. Be installed on a permanent foundation, and

⁶⁰ This is a change from the prior one-ton limit. Should this provision only prohibit oversized vehicles, or should the limit be lower than that?

⁶¹ The limitation on number of deliveries has been removed. If any kind of regulation regarding limits on deliveries should be restored, please advise.

- c. Connect to City water, sewer, and electric utilities before occupancy.

N. Tiny Home, Pocket Neighborhood Development⁶²

1. Lot Area per Dwelling Unit

- a. The Tiny Home development shall contain a defined area for the use of each dwelling unit.
- b. The defined area for each Tiny Home shall contain at least 1,000 square feet of land area, or one-and-one half times the gross floor area of the Tiny Home, whichever is less, exclusive of vehicle circulation routes.
- c. None of the defined area for any Tiny Home in the development shall be within a mapped flood hazard area.

2. Setbacks and Building Separation

- a. Setbacks shall apply to the boundaries of the project site, rather than individual Tiny Homes, and comply with the setback requirements of the underlying zoning district.
- b. Internally, there shall be a minimum of 10 feet between dwelling units, measured by the shortest distance between any parts of the two Tiny Homes.
- c. The parking lot for the development shall be a minimum of 20 feet from the right-of-way.

3. Maximum Building Height

- a. The maximum height for a Tiny Home is 20 feet.
- b. The maximum height for a structure in the common area is the same as permitted in the underlying zoning district.

4. Common Open Space

- a. A common open space containing a minimum of 10 percent of the project area shall be provided.
- b. Parking areas and drainage easements shall not be counted toward the open space requirement.
- c. The design and location of common open space shall meet the standards described in §X.X.

5. Parking

- a. One on-site parking space is required per Tiny Home dwelling site.
- b. Parking for the development may be centralized in a single lot, and need not be provided within the defined lot area per dwelling unit, as defined above in subsection 1.

6. Access and Circulation

- a. A five-foot wide sidewalk shall connect each Tiny Home to the parking area, if shared, and to at least external site perimeter that abuts a public right-of-way.
- b. Tiny Home developments of more than five units that abut more than one public right-of-way shall provide sidewalk connections to each abutting public right-of-way.
- c. All public and private streets shall be designed and constructed to the City's adopted street standards and specifications, unless the Director of Transportation and Capital Improvements determines that due to low levels of expected use, a lesser standard will provide equivalent connectivity and safety.
- d. Each Tiny Home development shall comply with all adopted standards for fire and emergency access.

7. Landscaping and Buffering

- a. Tiny Home developments of five units or greater are subject to the landscaping standards applicable to multifamily development, as described in §X.X.
- b. Regardless of development size, a shared parking lot is subject to parking lot landscaping standards, as described in §X.X.

⁶² Should there be a minimum/maximum project size for this kind of development, e.g., 5,000 square foot minimum, but no larger than 1 acre?

3.3.5 Civic and Institutional Uses

A. Airstrip or Landing Field

1. Both temporary and permanent airstrips and landing fields are subject to special use approval, as described in §X.X.

B. Day Care Center⁶³

1. In residential, MXT, and CBD zoning districts, day care center hours of operations are limited to 6 a.m. to 8 p.m.
2. A day care center that cares for children shall comply with Ch. 42, Human Resources Code, of the Texas state statute, and any standards promulgated by the Texas Department of Human Resources.

C. Event or Reception Center⁶⁴

1. In the MXT and CN districts, event or reception centers shall not be permitted outdoor areas.
2. In all other zoning districts, event or reception centers with outdoor areas shall be subject to the residential adjacency standards described in §X.X.

D. Heliport⁶⁵

The following standards apply to heliports and helistops.

1. Heliports and helistops shall conform to all FAA rules governing such uses.
2. A heliport shall not take up existing parking spaces allocated to another use, and adequate parking spaces shall be available for the heliport/helistop use.
3. No heliport or helistop shall be located within 1,000 feet from a residential zoning district or a public or private school, or within 500 feet from a park, measured in a straight line, unless intended for emergency use only. Temporary landing sites may be permitted as a special use.
4. A heliport at a hospital shall have a standard landing area marked with the words "emergency only." The heliport shall be limited to touchdown and liftoff only, and shall have no maintenance, storage, or refueling facilities. A heliport may be located at ground or rooftop level and shall be paved and maintained.
5. Except for a helistop intended for emergency use only, such as a helistop at a hospital, a heliport and helistop shall be separated from all other heliports and helistops by at least one and one-half (1.5) miles.
6. The greater of the required setbacks of the underlying zoning district or overlay district, or the following apply:
 - a. For the takeoff and landing area, 100 feet;
 - b. For helicopter maintenance facilities, at least 35 feet; and
 - c. For an administration or operations building, at least 15 feet.
7. Helicopter approach and departure patterns shall be routed over non-residential uses to the maximum extent practicable.
8. The takeoff and landing area shall be paved and free of gravel, dirt, dust, structures, and debris.

⁶³ This carries forward the distinction between "Adult day care (no overnight stay) and Adult day care (with overnight stay) in the current ordinance and adds a reference to Ch. 42, Human Resources Code, which applies to these uses.

⁶⁴ Does the City want to consider an additional standard that limits the hours of operation of these facilities, if they have outdoor areas, and/or if they are within a certain proximity to residential uses or zones?

⁶⁵ This carries forward the standards for helipads at Sec. 144-5.25 of the Code of Ordinances, with revisions for clarity, except the application procedures (decision by Planning and Development Services Department, appeal to City Council) and penalty/revocation provisions in Secs. 144-5.25-13 through -15 will be relocated to Article 8: Administration and Procedures.

9. All lighting shall be directed away from adjacent properties and public rights-of-way, and shall be in accordance with all applicable standards as described in §X.X, *Exterior Lighting*.

E. Hospital⁶⁶

A helistop at a hospital shall have a standard landing area marked with the words "emergency only." The helistop shall be limited to touchdown and liftoff only, and shall have no maintenance, storage, or refueling facilities. A helistop may be located at ground or rooftop level and shall be paved and maintained.

F. Solar Energy System, Small-Scale⁶⁷

1. Solar energy equipment may be located on the roof of a principal or accessory structure, on the side of such structures, on a pole, or on the ground in accordance with the regulations in this code that apply to all accessory uses. Building-mounted photovoltaic systems are permitted in all districts subject to all necessary permit and building code requirements.
2. A roof-mounted system may exceed the height standards of the district in which it is located by up to five feet, or, in the case of an existing structure that exceeds the maximum height standards of the district in which it is located, the system may extend up to five feet above the roof surface.
3. Solar energy equipment shall be oriented so as to avoid casting glare onto adjacent lots, to the maximum extent practicable.

G. Solar Farm, Large-Scale⁶⁸

1. The lot coverage of the solar energy conversion system and any associated equipment shall not exceed 80 percent.
2. No components of the use shall exceed a height of 20 feet.
3. Except for transmission lines and collector utility structures, all utilities associated with the solar energy conversion system shall be located underground.
4. The application for a special use shall include a decommissioning plan that describes the timeline and manner in which the solar energy conversion system will be decommissioned and the site restored to a condition similar to its condition prior to the establishment of the facility.
5. If the solar energy conversion system ceases operating for a period of 18 consecutive months, the City shall deem it abandoned and will provide a written notice of abandonment to the owner. Within 180 days after notice of abandonment is provided, the owner is required to either complete all decommissioning activities and site restoration in accordance with the decommissioning plan or resume regular operation of the solar energy conversion system.

H. Wind Energy System, Large and Small⁶⁹

1. A wind energy system may exceed the maximum building height in the underlying zoning district in accordance with the following.

Districts	Allowed maximum height
Residential districts	10 feet in excess of maximum building height in the district
MXT	
CBD	
CN	
RC	

⁶⁶ Relocates the existing standards in the development standards for helipads at Sec. 144-5.25-12 of the Code of Ordinances but changes the reference to "helistop" to increase accuracy.

⁶⁷ These are new standards to facilitate the installation of solar energy equipment.

⁶⁸ New. Basic standards for this new use.

⁶⁹ New standards.

Districts	Allowed maximum height
AG	20 feet in excess of maximum building height in the district
MXC	
MXR	
CG	
CR	
Industrial districts	

2. Wind energy systems shall be set back from all property lines at least a distance equal to the height of the tower and blade with the blade in its highest vertical position.

I. Wireless Communication Facilities (WCF)

COMMENTARY

This draft proposes a completely new set of standards for regulating wireless communication facilities (formerly telecommunication towers/antennas in Chapter 144-5.7). The draft incorporates current terminology, reference to current federal regulations on this topic, and includes definition of related terms in the Definitions section.

The draft eliminates many of the elements from a code example that would have relied on the Director's discretionary authority. It also proposes a streamlined review procedure, eliminating the specified timeframes for reviewing applications. Procedurally, this draft proposes:

- Eligible facilities requests that do not entail substantial changes are processed as an administrative review.
- Substantial changes, and requests that seek to deviate from the standards in Table 3-2: Standards for WCF by Facility Type and Zoning District, are processed as special use approvals.

-UNRESOLVED: Should requests for new facilities that comply with the standards in Table 3-2 be processed through administrative review, or always as a special use? The Table of Allowed Uses does have some districts where a new facility that complies with standards is "P". This can be changed if the inclination is to have all new requests reviewed as special uses. This draft does not specify the decision-making authority for any request that is a special use, simply referencing "approval authority." Who should be the decision-making authority for this? The reference can be updated to be more specific in ensuing drafts.

1. Purpose

The purpose of this section is to establish development standards that comply with the requirements of state and federal law for public or private telecommunication service and to:

- a. Protect the public safety and welfare, safeguard community land values, and promote orderly planning and development;
- b. Provide for the managed development, installation, maintenance, modification, and removal of wireless communication infrastructure, allowing the smallest number of WCFs that can complete a network without discriminating against wireless communications providers of functionally equivalent service;
- c. Encourage the joint use and co-location of new and existing WCFs; and
- d. Mitigate adverse, undesirable visual impacts on the community.

2. Applicability

- a. This section shall apply to all WCF applications, and shall not preempt the regulations of the underlying zoning district, unless explicitly stated in this subsection or as explicitly stated in federal and/or state law.

- b. The requirements set forth in this subsection shall not apply to:
 - i. Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are used exclusively for receive-only antennas, provided that the height be no more than the distance from the base of the antenna to the property line.
 - ii. Any WCF for which a permit has been properly issued prior to [Effective Date of this LDO] shall not be required to meet the requirements of this subsection, other than

the operational standards set forth in this subsection. Changes and additions to pre-existing WCFs shall meet applicable operational standards set forth in this subsection.

- iii. Antennas used for reception of television, multi-channel video programming and radio such as over the air reception devices ("OTARD") antennas, television broadcast band antennas, and broadcast radio antennas, provided that the requirement for height to be no more than the distance from the base to the property line is met.
- iv. A WCF installed upon the declaration of a state of emergency by the federal, state, or local government.
- v. A temporary WCF installed for providing coverage of a special event such as a news coverage or sporting event that must be included in a special event permit request.

3. General Provisions

a. Federal Requirements

All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency.⁷⁰

b. Radio Frequency Standards

- i. All WCFs shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards for a WCF have been made to the City, the City may request that the owner or operator of the WCF provide information demonstrating compliance.
- ii. If such information suggests, in the reasonable discretion of the City official reviewing the information, that the WCF may not be in compliance, the City may request and the owner or operator of the WCF shall then submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards.
- iii. If, upon review, the City finds that the facility does not meet federal standards, the City may require corrective action within a reasonable period of time, and if not corrected, may require removal of the WCF pursuant to this Section.
- iv. Any reasonable costs incurred by the City, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the owner or operator of the WCF.

c. Signal Interference

All WCFs shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone, and other communication services utilized by adjacent residential and non-residential properties; nor shall WCFs interfere with any public safety communications.

d. Operation and Maintenance

- i. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with standards contained in applicable local building and safety codes.
- ii. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to people or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance.

⁷⁰ This is a change from the current standards, which allows six months to achieve compliance.

- iii. Upon good cause shown by the owner, the Director of Transportation and Capital Improvements may extend such compliance period not to exceed 90 days from the date of said notice.⁷¹
 - iv. If the owner fails to bring such WCF into compliance within said time period, the City may remove the WCF at the owner's expense.
- e. **Abandonment and Removal**
- i. For any WCF constructed after [Effective Date of this LDO], if the WCF is not used to transmit, receive, or relay voice and data signals to or from wireless communication devices for a period of six months, the WCF shall be considered abandoned and the owner of record shall notify the Director of Transportation and Capital Improvements and apply for a permit to remove the structure.⁷²
 - ii. All WCFs shall be restored to service or removed by the person who constructed the facility, by the person who operated the facility, or by the property owner within 18 months from the time the WCF ceased operating.
 - iii. If the use of the WCF has not been restored within an 18-month period from the time the WCF have ceased being used to transmit, receive, or relay voice and data signals to or from wireless communication devices, the WCF shall be removed and the WCF site restored to its original or better condition, at the property owner's expense.

4. Standards for Specific Facility Types

All new WCFs or co-locations that do not meet the definition of an eligible facilities request, as defined in §9.2.5, shall be subject to the standards in the table below:

Table 3-2: Standards for WCF by Facility Type and Zoning District

	Residential	Mixed Use	All Other Districts
Building-Mounted			
Review Required	Conditional Use	Conditional Use	Building Permit
Maximum Height [2]	Same as maximum height permitted in underlying zoning district [1]		
Camouflage and Screening		<ul style="list-style-type: none">• Structure shall be camouflaged by minimizing the visibility of antennae and transmission equipment. Camouflaging includes locating facilities in bell steeples or clock towers, or on similar alternative design mounting structures.• Structure shall be screened from view by materials that are consistent and compatible with the building design, color, and materials without increasing the apparent height of the building.• Screening of building-mounted WCFs includes the use of existing parapets, walls, or similar architectural elements provided that it is painted and texturized to integrate with the architecture of the surrounding structure. Screening may be waived by the approval authority on buildings where the height of the roofline is thirty-five feet or less, and based on evidence provided by the applicant that the roof cannot structurally support the screen.• Metallic surfaces shall be painted to reduce glare and reflections. No exterior paint colors shall be used which have a light reflecting value (LRV) greater than forty percent. The LRV of a paint is available from paint manufacturers and it measures the amount of light reflected by a certain color.	

⁷¹ Should references to "City" authority in this section be more specific? If so, is the Director of Transportation and Capital Improvements the proper official, or would it be someone else?

⁷² Is a six-month timeframe adequate for this notification?

Table 3-2: Standards for WCF by Facility Type and Zoning District

	Residential	Mixed Use	All Other Districts
Other Design Standards	<ul style="list-style-type: none"> Structure shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible. The antenna and any associated screening or transmission equipment shall not project above the top of the wall on which is mounted, excluding any conduit that may extend over and behind the roofline or parapet wall. 		
Lighting	<ul style="list-style-type: none"> WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the Planning and Development Services Department may review and require alternatives to the proposed lighting, and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences. 		
Noise	Noise generated on the site shall not exceed the standards permitted in Chapter 82, Section 82-9, <i>Noise Regulations</i> , in the Code of Ordinances, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours, without prior authorization from the City.		
Roof-Mounted			
Review Required	Conditional Use	Building Permit	Building Permit
Maximum Height [2]	10 feet above existing roofline	15 feet above existing roofline	
Camouflage and Screening	<ul style="list-style-type: none"> Structure shall be camouflaged by minimizing the visibility of antennae and transmission equipment. Camouflaging includes locating facilities in bell steeples or clock towers, or on similar alternative design mounting structures. Structure shall be screened from view by materials that are consistent and compatible with the building design, color, and materials without increasing the apparent height of the building. Screening of roof-mounted WCFs includes the use of existing parapets, walls, or similar architectural elements provided that it is painted and texturized to integrate with the architecture of the surrounding structure. Screening may be waived by the approval authority on buildings where the height of the roofline is 35 feet or less, and based on evidence provided by the applicant that the roof cannot structurally support the screen. Metallic surfaces shall be painted to reduce glare and reflections. No exterior paint colors shall be used which have a light reflecting value (LRV) greater than forty percent. The LRV of a paint is available from paint manufacturers and it measures the amount of light reflected by a certain color. 		
Lighting	<ul style="list-style-type: none"> WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the approval authority may review and require alternatives to the proposed lighting, and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences. 		
Noise	Noise generated on the site shall not exceed the standards permitted in Chapter 82, Section 82-9, <i>Noise Regulations</i> , in the Code of Ordinances, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours, without prior authorization from the City.		

Table 3-2: Standards for WCF by Facility Type and Zoning District

	Residential	Mixed Use	All Other Districts
Ground-Mounted			
Review Required	Conditional Use	Conditional Use	Conditional Use
Maximum Height [2]	Same as maximum height permitted in underlying zoning district [1]	90 feet	150 feet
Camouflage and Screening	<ul style="list-style-type: none"> Ground-mounted WCFs shall use existing landforms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment. Camouflaging includes, but is not limited to, making ground-mounted WCFs resemble manmade trees, locating facilities in bell steeples or clock towers, or on similar alternative design mounting structures. Considerations such as architectural designs, adjacent land uses, scale, color, and texture should be reviewed to make facility as compatible as possible to the surrounding area, including views from public areas as well as from private residences. Ground-mounted WCFs shall be enclosed by security fencing or wall and shall also be equipped with an appropriate anti-climbing device. Ground-mounted WCFs shall be compatible with the surrounding tree coverage and foliage. 		
Minimum Setback	25 feet from any abutting property line plus 1 foot for every foot of tower height	15 feet from any abutting property line plus 1 foot for every foot of tower height	15 feet from any abutting property line plus 1 foot for every 3 feet of tower height
Minimum Separation [3]	1760 feet	1320 feet	750 feet
Lighting	<ul style="list-style-type: none"> WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the approval authority may review and require alternatives to the proposed lighting, and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences. 		
Noise	Noise generated on the site shall not exceed the standards permitted in Chapter 82, Section 82-9, Noise Regulations, in the Code of Ordinances, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours, without prior authorization from the City.		

NOTES

[1] Height measured to top of steel or antenna, whichever is greater.

[2] Height measured from base of facility to top of steel.

[3] Separation measured from the outermost portion of the base of the existing facility to the outermost portion of the base of the proposed facility.

5. Eligible Facilities Request

All applications for approval of an eligible facilities request that does not propose a substantial change shall be processed according to and meet the requirements of the federal Telecommunications Act and Section 6409 of the Middle Class Tax Relief and Job Creation Act (2012), also known as the "Spectrum Act," as amended by the federal courts.

6. Substantial Change to Existing WCFs

a. Substantial changes are any modifications that substantially change the physical dimensions of an eligible support structure that meets any of the following criteria:

- i. For ground-mounted WCFs, an increase in the height of the facility by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for roof- and building-mounted WCFs, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the WCF, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
 - ii. For ground-mounted WCFs, the change involves adding an appurtenance to the body of the facility that would protrude from the edge of the facility more than 20 feet, or more than the width of the facility at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet.
 - iii. For any eligible support structure, the change involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure.
 - iv. For any eligible support structure, the change entails any excavation or deployment outside the current site; or would impair the concealment elements of the eligible support structure.
 - v. The change entails any excavation or deployment outside of the current site, except that, for ground-mounted WCFs, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;
 - vi. The change defeats the camouflaging elements of the eligible support structure.
 - vii. For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or WCF equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in provisions i., ii., and iii. of this subsection.
- b. WCF applications that entail a substantial change to existing WCFs, as described above in this subsection, or any WCF application that seeks to deviate from the standards described in Table 3-2: Standards for WCF by Facility Type and Zoning District, are subject to special use approval, as described in §X.X.

7. Timing⁷³

- a. The Planning and Development Services Department shall act to approve an application for an eligible facilities request within 60 days from the submission date of that application, unless the Department determines that the application is not an eligible facilities request.
- b. The 60-day review period begins to run when the application is filed. The applicant and the Planning and Development Services Department may agree to toll the review period.

⁷³ This information related to application procedure and review criteria is included in this draft for review. It will be relocated, with any suggested edits, to the Administration and Procedures installment when that is drafted.

The 60-day review period shall also be tolled when the Planning and Development Services Department Director determines that the application is incomplete. The review period is tolled for incompleteness pursuant to the following standards:

- i.** Within 30 days of receipt of the application, the Planning and Development Services Department shall notify the applicant in writing, specifically delineating all missing documents or information required for determination of an eligible facilities request;
- ii.** The written incompleteness notice tolls the timeframe for review;
- iii.** The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Department's notice of incompleteness;
- iv.** Within 10 days of the supplemental submission, the Department shall notify the applicant in writing if the supplemental submission did not sufficiently address the additional information identified in the original incompleteness notice; and
- v.** The timeframe is tolled in the case of a second or subsequent incompleteness notice pursuant to the procedures for the first incompleteness notice.
- vi.** Second or subsequent incompleteness notices may not specify new or additional missing documents or information that were not delineated in the original incompleteness notice.

8. Failure to Act

- a.** In the event that the Planning and Development Services Department fails to act on an eligible facilities request within the timeframe for review, accounting for any tolling, the request shall be deemed granted.
- b.** The effective date of a deemed-granted approval shall be the day the Department receives written notice from the applicant, after the review period, accounting for any tolling, has expired, that the application has been deemed granted.

9. Review Criteria

The approval authority shall approve an eligible facilities request if the request:

- a.** Is an eligible facilities request for an eligible support structure;
- b.** Complies with the originally approved design elements and other conditions of approval, including but not limited to colors, textures, surfaces, scale, character, mounting, projection and siting, or any approved amendments thereto, except where noncompliance with those elements or conditions is solely limited to the thresholds of increase in height, increase in width, addition of cabinets or new excavation or deployment area identified in the definition of substantial change; and
- c.** Does not defeat the concealment elements of the eligible support structure. Any design element that places the wireless communications facility out of view, hides it from being noticed, blends it with its surroundings or otherwise minimizes the visual or aesthetic impact of the facility is a concealment element of the eligible support structure.

10. Decision

- a.** If the approval authority finds the review criteria are met, the eligible facilities request shall be approved.
- b.** If the approval authority finds that the applicant's request does not meet the review criteria, the approval authority may approve with conditions or deny the eligible facilities request, and provide a written explanation of the reasons for approval or denial to the applicant.
- c.** The approval authority's decision shall be supported by substantial evidence in the written record.

11. Compliance with Other Laws

Any work done in association with the approved eligible facility request application shall be completed in accordance with all generally applicable laws, ordinances, regulations, or other

rules reasonably related to public health and safety, including but not limited to, building and safety codes, noise ordinances, and lighting regulations.

12. Remedies

The applicants and the City may bring a claim related to §6409 of the Spectrum Act (codified at 47 U.S.C. 1455) to any court of competent jurisdiction.

3.3.6 Commercial Uses**A. Animal Boarding**

1. In the MXC, CBD, and CN zoning districts, animal boarding shall not be permitted to have outdoor animal runs.
2. In all other districts, use of outdoor animals runs or kennels is permitted only between the hours of 7:00 a.m. and 9:00 p.m.

B. Bar or Tavern⁷⁴

1. In the MXT, MXC, and CN districts, bar or tavern uses shall not be permitted to have outdoor music.
2. In all other zoning districts, bar or tavern uses with outdoor music shall be subject to the residential adjacency standards described in §X.X.

C. Bed and Breakfast⁷⁵**1. Certificate of Occupancy**

If an approval of a special use is required for the use, the owner of the bed and breakfast shall obtain a certificate of occupancy from the city building official after the special use has been approved, and the facility must successfully pass certificate of occupancy inspection.

2. General Standards

- a. The maximum length of stay shall be 30 days or less.
- b. The facility shall be owner-occupied in the residential zoning districts and owner- or manager-occupied in other zoning districts.
- c. Events such as weddings, parties, and other functions are not allowed unless approved by City Council through a Conditional Use as described in §X.X.

3. Service Standards

- a. Only overnight guests may be served meals.
- b. The owner/operator shall follow all local and state food safety rules and obtain all necessary health permits from the City as applicable prior to issuance of a certificate of occupancy.
- c. Cooking in a guest room is prohibited.
- d. The facility shall provide clean linens and towels on a daily basis; provide adequate heating, air conditioning, ventilation, and lighting; provide adequate hot and cold water; provide adequate sewage disposal; maintain the outside area in a clean and sanitary manner; maintain all structures in a suitable state of repair; and properly clean the premises and facilities during the guest's stay and after each guest has departed.

4. Building and Fire Protection Standards⁷⁶

The bed and breakfast shall comply with all relevant health, food safety, and fire safety regulations of the City, including any inspection requirements.

⁷⁴ This carries forward the standard in the definition of the use in the current use table. Do you want to add hours of operation for facilities that do allow outdoor music?

⁷⁵ This carries forward the standards in Sec. 144-5.6 of the Code of Ordinances, with changes as noted below.

⁷⁶ The list of specific requirements, including inspection requirements, has been replaced with a general requirement that the use comply with current health and fire regulations.

D. Beverage Stand**1. Minimum Stacking Requirements**

- a. A minimum of three stacking spaces shall be provided at or behind the menu board.
- b. If there is no menu board, a minimum of five stacking spaces shall be provided extending back from the service window.
- c. Drive-through lanes shall be contained entirely on-site, and may not cross a public sidewalk.

2. Speaker Box

No drive-through speaker box shall be oriented to face a residential use or residential zoning district.

3. Hours of Operation

When located in a residential zoning district, or abutting a residential use or residential zoning district, drive-through services shall be limited to the hours of 6 a.m. to 11 p.m.

4. Location

The drive-through lane shall be located at least 30 feet from any abutting residential use.

5. Residential Adjacency

Beverage stand uses shall be subject to the residential adjacency standards described in §X.X.

E. Donation Collection Container⁷⁷**1. Number**

One donation collection container per parcel or tract is permitted.

2. Size

Donation collection containers are limited to no more than 175 cubic feet, and a maximum height of seven feet above finished grade.

3. Location

a. No donation container shall be located in:

- i. A parking space that is required to meet the on-site parking requirements, as described in §X.X, for the primary use on the site;
- ii. Any location that impedes the free flow of vehicles within a parking lot, including access to drive aisles, loading areas, and driveways;
- iii. A required landscaping area;
- iv. The public right-of-way or any easements; or
- v. Any location that blocks entrance to or exit from the primary building on site, sidewalks, parking lot pedestrian routes, disabled parking, loading, or access routes.
- vi. Donation collection containers are subject to residential adjacency standards, as described in §X.X.

4. Construction and Materials

All donation containers shall:

- a. Be fabricated of durable and waterproof materials;
- b. Be placed on a paved surface;
- c. Have a tamper-resistant locking mechanism for all collection openings;
- d. Not be electrically, mechanically, or hydraulically powered or otherwise mechanized.

5. Maintenance and Operation

a. Containers shall have the following information painted or posted prominently on the container:

- i. The owner or operator of the container;

⁷⁷ These basic standards are proposed to help address issues that have been identified with the operation of these containers.

- ii. A 24-hour contact telephone number with recording capability for the public to register complaints;
 - iii. The type of goods that may be deposited into the donation container; and
 - iv. Notice stating that material shall not be left outside the container.
- b. Materials shall be picked up as often as necessary so that no overflow materials accumulate outside of the container for longer than 48 hours.
 - c. The container shall be maintained free of graffiti, litter, rust, debris or dumped materials, and all posted notification information shall be kept current and maintained in legible condition.
 - d. Any condition that constitutes a violation of the requirements of this section shall be remedied or abated within 48 hours of being reported to the operator or property owner.

F. Drive-Through Facility⁷⁸

1. Applicability

- a. This section applies to any principal use, such as a bank or fast-food restaurant. That has a drive-through lane as an accessory use, designed to enable customers to remain in their vehicles and transact business with people inside of the principal building.
- b. Drive-through facilities shall be allowed as provided in Table 3-1: Table of Allowed Uses, and shall comply with the development standards of the applicable zoning district, as well as the use-specific standards of this section.
- c. This section does not apply to Beverage Stand uses, standards for which are described in §3.3.6D.

2. Drive-Through Facility Standards⁷⁹

a. Minimum Stacking Requirements

- i. Restaurant and retail establishments, such as drug stores, pharmacies, or fast-food restaurants, shall provide not less than five stacking spaces at or behind the menu board.
- ii. Financial institutions shall provide not less than three stacking spaces at or behind the pneumatic tube or service window for the drive-through.
- iii. Drive-through stacking lanes shall be delineated from other drive aisles and vehicular use areas by means of a raised curb or landscaped divider median.

b. Pedestrian Connections

- i. Drive-through lanes that obstruct the pathway between parking areas and entries into the building shall be designed with a pedestrian crossing that is delineated by landscaping, curbing, raised or decorative pavement, and signage.
- ii. Drive-through lanes shall be entirely contained on-site, and may not cross a public sidewalk.
- iii. Where the exit from a drive-through lane intersects with a public sidewalk, the maximum width of the driveway or exit lane shall be 24 feet. A wider width may be approved where the exit lanes do not cross a sidewalk.

c. Speaker Box

No drive-through speaker box shall be oriented to face a residential use or residential zoning district.

⁷⁸ Carries forward 144-5.2 with edits, including elimination of purpose statement.

⁷⁹ This carries forward 144-5.2, with edits. Pedestrian connections includes the change that a drive-through lane may not cross a public sidewalk. Are there other changes that should be incorporated into these standards? There are some vague or undefined areas (minimum distance of drive lane from residential property line, height of required masonry wall) that can be revisited during updates to landscaping and drafting residential adjacency provisions.

d. Hours of Operation

When the drive-through facility abuts a residential use or residential zoning district, drive-through services shall be prohibited between the 12 a.m. and 6 a.m. on weekdays, and between 1 a.m. and 6 a.m. on Saturday and Sunday.⁸⁰

e. Location

The drive-through lane shall be located to take advantage of the first available alternative in the following prioritized list:

- i. Interior side or rear yard when either yard abuts a non-residential use;
- ii. Street side yard when the interior side and rear yard abut an existing residential use or residential zoning district; or when abutting a non-residential use, the interior side and rear yard are impractical due to the lot's physical constraints or concerns regarding vehicle and pedestrian safety.

f. Landscaping and Buffering⁸¹

The drive-through lane and drive-through facility shall be buffered and visually screened from abutting residential development with a masonry wall and landscaping.

- i. A minimum two-inch diameter tree per 20 linear feet shall be planted along the common property line of the single- to four-family use. A variety of native tree species, as described in **§X.X.** Approved Plant List, shall be used. Shade trees must be used, unless near utility lines where ornamental trees must be used. All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width.
- ii. A minimum of one 24-inch high native Texas bush/shrub per five linear feet. Plantings may be clustered in the buffer area.
- iii. All plant material shall be regularly maintained in conformity with accepted practices for landscape maintenance. Each planting bed shall be served by at least one permanent automatically controlled irrigation line.
- iv. Parking areas visible from the public street must be screened by hedges/shrubberies which will be a minimum of 36 inches high within three years of planting.
- v. Sidewalks of six feet width, abutting the curb, will be installed when no sidewalk exists.
- vi. The front yard setback must maintain a 50-percent permeable surface. Of that area, 50 percent must be living plant material.
- vii. The front yard shall contain a minimum of one shade tree per 25 linear feet of street frontage.
- viii. Trash cans shall be located in the rear yard and screened from view from the public right-of-way.

g. Residential Adjacency

Uses with drive-through shall be subject to the residential adjacency standards described in **§X.X.**

G. Hotel

In the MXT and CN districts hotels are limited to 10 or fewer guest rooms.

⁸⁰ These hours are slightly different from Beverage Stand, which is 6 a.m. to 11 p.m. Should these be standardized?

⁸¹ Some of the material in this section could be covered in the landscaping section in Installment 2. Development standards normally also include a section on trash enclosure requirements. This public draft keeps this content in place for now, but provisions can be relocated as appropriate in the second installment.

H. Lumberyard or Building Supply Store⁸²

With the exception of points for access and egress, any area used for outside storage of materials shall be completely surrounded by a solid wall or fence no less than eight feet in height. No materials within the fenced enclosure may be stacked higher than the height of the wall or fence.

I. Manufacturing, Artisanal

1. In mixed-use districts, artisanal manufacturing facilities shall be limited to structures of 10,000 square feet or less in gross floor area, and all operations shall be conducted within the primary structure.
2. In commercial districts, artisanal manufacturing may be permitted to conduct some operations outdoors, subject to a special use approval, as described in §X.X.⁸³
3. Any artisanal manufacturing operation with an outdoor component shall be subject to the residential adjacency standards described in §X.X.

J. Mobile Food Court⁸⁴**1. Purpose**

The purpose of these standards is to establish standards for outdoor food venues that minimize potential negative impacts on surrounding property while enhancing additional dining experiences within the community.

2. Permits Required

- a. No mobile food court use may operate unless a mobile food court permit has been obtained in accordance with §X.X and remains valid.
- b. A mobile food court shall comply with all relevant health, food safety, and fire safety regulations of the City, including any inspection requirements. The mobile food court shall obtain any required health permits from the City prior to issuance of a certificate of occupancy.

3. Location

- a. Mobile food courts are subject to the residential adjacency standards described in §X.X.
- b. All activity shall occur on private property outside of the public right-of-way unless the City has executed a license agreement authorizing such activity.⁸⁵
- c. Mobile food units may change out as frequently as daily.

4. Development Standards

- a. No mobile food unit, structures associated with the mobile food court, nor any associated seating areas shall be located in a required zoning setback, buffer yard, access easement, drainage easement, floodplain, driveway, utility easement and/or fire lane(s).
- b. There shall be at least ten feet of clearance between all individual mobile food units and all permanent accessory or non-accessory structures.
- c. The wheels of a mobile food unit shall be located on impervious pavers, a concrete pad, or similar materials. The remainder of the site may use permeable materials that are ADA accessible.
- d. Vehicular drive-through service shall not be permitted unless permitted in the underlying zoning district and the use complies with the requirements for drive-through as described in §3.3.6F.

⁸² This carries forward the standards in Sec. 144-5.15 of the Code of Ordinances, and expands the applicability to apply not only to lumberyard, but also to building supply stores. The restriction on the height of materials stacked inside the fence is new.

⁸³ Allowance for outdoor operations may permit a coffee roaster, for example, an outdoor seating area for patrons.

⁸⁴ Carries forward the standards in Sec. 144-5.26 of the Code of Ordinances with revisions as noted below. The application procedures in Sec. 144-5.26-7 have been removed from this section. Parking standards will be addressed as part of the general development standards.

⁸⁵ This provision regarding limits on uses within the public right-of-way is true of all uses, not just mobile food courts. This standard would be covered in Installment 3, Administration and Procedures, under General Provisions. It will be relocated in that future draft.

- e. All mobile food unit related activity, such as seating, must occur within 25 feet from the associated mobile food unit or within a communal arrangement serving all of the mobile food units.
- f. All mobile food units and related activities must be located in compliance with the city's adopted fire code standards regarding the storage or dispensing of flammable combustible liquid or gas.
- g. The placement of the mobile food unit shall not impede traffic nor visually impair any motor vehicle operation within a parking lot, driveway, or street.
- h. A fire lane shall be provided within a mobile food court as required in the city's adopted fire code.
- i. Accessible restroom facilities shall be provided within a permanent structure, and shall not include porta-potties or trailer toilets.
- j. Electrical service may be provided to the mobile food units by a permitted temporary electrical connection (or other permitted connection provided by an electric utility) or on-board generators. The use of on-board generators shall require sound absorbing devices used to contain or deflect noise from any external generator.⁸⁶
- k. A minimum of one 100-gallon garbage receptacle shall be provided for each mobile food unit. However, a sufficient quantity of garbage receptacles shall be provided and maintained so the mobile food court shall be free of trash, debris, and litter at all times. The garbage receptacles shall be maintained in compliance with the Texas Food Code, including:
 - i. The receptacles shall be resistant to rodents. Unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.
 - ii. Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

5. Performance Standards

- a. All mobile food units shall be maintained in good repair, in road-ready condition at all times with up-to-date state vehicle registration, and shall be maintained in accordance with local and state health codes.
- b. No outside sound amplifying equipment, or noisemakers, such as bells, horns, or whistles shall be used.
- c. Mobile food units shall be registered, inspected, and have obtained a health permit from the City.
- d. In addition to the regulations in Article 7: Signs, a mobile food court shall be allowed the following:⁸⁷
 - i. Freestanding sign(s) allowed in the underlying zoning district to identify the name of the mobile food court in compliance with the standards in Article 7: Signs.
 - ii. One sandwich board per mobile food unit, which must be placed within ten feet of the mobile food unit.
 - iii. Signs attached to the exterior of the mobile food unit, excluding roof signs, shall be exempt from permitting.
- e. The following sign types are not allowed:
 - i. Temporary signs, including banners.
 - ii. Off-premise signs.
 - iii. Digital display signs.

⁸⁶ In response to feedback, this provision has been retained, while a later one related to noise has been removed. Generally, noise regulations will be covered in Development Standards.

⁸⁷ These provisions will be reviewed and updated as necessary to comply with the overall updated Signs chapter, once it is drafted.

K. Music, Live or Recorded

1. In the MXT, MXC, and CN districts, outdoor music is not allowed.
2. In all other zoning districts, any facility with outdoor music shall be subject to the residential adjacency standards described in §X.X.⁸⁸

L. Office, Contractor's

Outside storage, including of vehicles, is only permitted in the MXR, CG, CR, LI, and HI districts, subject to applicable screening standards, as described in §X.X.

M. Outdoor Display of Merchandise⁸⁹

Except for areas used for display of vehicles, boats, manufactured homes, or trailers for sale, the outside display of merchandise or commodities for sale or storage is subject to the following:

1. All displayed items shall meet the applicable zoning district setback requirements.
2. No merchandise shall be displayed within the clear vision area, as described in §2.7.4.

N. Recreation, Indoor

1. Indoor recreation uses with over 15,000 square feet of gross floor area shall not have vehicle access points from or channel a majority of the traffic generated by the use onto a local residential street.
2. Uses shall comply with noise regulations in section 82-9, Chapter 82, Offenses and Miscellaneous Provisions of the New Braunfels Code of Ordinances.
3. Residential adjacency standards, as described in §X.X, shall apply.

O. Recreation, Outdoor**1. Design Requirements in All Districts**

- a. Sound amplification systems shall be designed so that the noise level at the property line does not exceed the maximum decibel level permitted in the zoning district applicable to the adjacent property.
- b. The development shall be designed so that no bulb or light source in a ground level fixture is visible from any public right-of-way or adjacent residential properties.
- c. Incidental commercial facilities, such as refreshment stands or pro shops, are permitted subject to the condition they are operated primarily for the patrons of the facility and no outdoor advertising of business or products is maintained.
- d. Parking areas and other areas of intense activity, such as bleachers or rides, shall be setback at least 30 feet from any other property line, and parking surfaces shall have an all-weather surface.

2. Access Requirements

In the MXT, CBD, and CN districts, uses shall not have vehicle access points from or channel a majority of the traffic generated by the use onto a local residential street.

3. Additional Requirements for Certain Uses

- a. Uses that pose a danger because of flying objects, such as driving ranges, shall provide screening or fencing that contains projectiles on the site of operation.
- b. Uses that create noise or glare, such as amusement parks, go-cart tracks, or raceways, shall employ noise attenuation or light shielding to reduce glare. If such measures are not feasible, these uses shall be located at least 1,320 feet from any property line shared with a residential use or zone.

⁸⁸ This is another use where the addition of hours of operation could be helpful – should they be added?

⁸⁹ This draft removes the requirements for screening and fencing as being too onerous. If some less restrictive standards are needed for some instances, this can be revisited. This carries forward the regulations in Sec. 144-5.21(b)(1) and Sec. 144-5.12 of the Code of Ordinances.

P. Sexually-Oriented Business

A sexually-oriented business is subject to the standards and location criteria in Chapter 18, Article VIII, Sexually Oriented Businesses, of the Code of Ordinances.

Q. Shooting Range, Indoor

1. Ranges shall comply with all applicable state and federal requirements, as well as noise regulations in section 82-9, Chapter 82, Offenses and Miscellaneous Provisions of the New Braunfels Code of Ordinances.
2. Ranges shall be constructed to meet or exceed the minimum safety, design, and maintenance standards described in the most current edition of the National Rifle Association's Range Source Book: A Guide to Planning and Construction.

R. Shooting Range, Outdoor

1. Shooting stations shall be located at least 1,000 feet from property lines, unless the range is designed to provide protection from accidental or stray ammunition discharge for surrounding properties.
2. Sound abatement shields or barriers should be installed when residential uses are within 1,320 feet of the range, unless a significant natural barrier exists.
3. Shooting lanes should be oriented to avoid firing into the sun, oriented to the north or slightly northeast.
4. Ranges shall comply with all applicable state and federal requirements, as well as noise regulations in section 82-9, Chapter 82, Offenses and Miscellaneous Provisions of the New Braunfels Code of Ordinances.
5. Ranges shall be constructed to meet or exceed the minimum safety, design, and maintenance standards described in the most current edition of the National Rifle Association's Range Source Book: A Guide to Planning and Construction.

S. Short Term Rental⁹⁰**COMMENTARY**

Because of a recent judicial ruling regarding short term rentals, the Public Draft restores the existing standards with minimal copy edits.

1. Purpose

This section is intended to provide a procedure to allow the rental of private dwellings to visitors on a short term basis, while ensuring that such rental use does not create adverse impacts to surrounding neighborhoods due to excessive traffic, noise, and density.

Additionally, this section is intended to ensure that the number of occupants within such rental units does not exceed the reasonable capacity of the structure to cause health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions.

2. Applicability

- a. Short term rental within residential districts is prohibited.
- b. Short term rental is prohibited in any floodway located within the city limits, regardless of zoning district.
- c. A short term rental permit, as described in §3.3.65.4, is required in all zoning districts. An owner shall obtain and maintain a current permit for all short term rentals. Inspections are required as specified in §3.3.65.5.

⁹⁰ Unresolved issue: "Clarification needed on resort property and resort condominiums. Difference between an apartment house where the units have been sold as condominiums and some owners are STR renting them vs a time share/condominium building where all units are intended to be rented for less than 30 days but each unit may be owned separately. Becoming a common question." Additional information required to address this issue.

- d. In addition to the short term rental permit, a special use, as defined in **SX.X**, is required in all zoning districts except RC – Resort Commercial where a short term rental is proposed in a single-family dwelling or a duplex only, constructed pursuant to the International Residential Code, where not otherwise prohibited in this LDO.

3. General Standards

All short term rentals are subject to the following requirements.

a. Occupancy

The maximum number of occupants allowed to sleep in a short term rental is two occupants per sleeping room plus an additional two occupants.

b. Bathrooms

- i. Not less than one full bathroom shall be provided for each five occupants of the short term rental, as shown in Table 3-3 below.
- ii. The full bathroom must meet the minimum International Residential Code standards (R306, Sanitation) and include a wash basin, toilet and tub or shower.
- iii. Half bathrooms must contain, at a minimum, a wash basin and toilet for the purposes of this section; a full bathroom may be used in lieu of a half bath.

Table 3-3: Required Bathrooms per Occupant

Number of Occupants	Required Number of Bathrooms/Half Bathrooms (rendered as .5) [1]
Up to 5	1
6 – 9	1.5
10	2
11 – 14	2.5
15	3

[1] The number of required bathrooms and half bathrooms continues increasing at the same rate for every additional five occupants.

c. Short Term Rental Decal Display

As part of a short term rental permit, the city issued short term rental decal shall be posted on the front of each short term rental in a location that is accessible and legible to an individual at the entry of the short term rental, or via an electronic database available to emergency responders and code enforcement officers as provided by the city.

d. Advertising

The short term rental permit number, maximum occupancy as permitted, and life-safety inspection expiration date must be listed in all advertising for the short term rental.

e. Parking

A minimum of one off-street parking space, not including the garage, per sleeping room shall be provided. No required parking shall be permitted within public right-of-way or access easements as defined by city and state regulations regarding parking.⁹¹

f. Life Safety

- i. All building and fire related construction shall conform to the city's adopted building codes.
- ii. A 2A:10B:C type fire extinguisher (a standard five-pound extinguisher) shall be properly mounted within 75 feet of all portions of the structure on each floor and shall be maintained in accordance with the manufacturer's specifications.

⁹¹ Does the City want to consider allowing on-site garages – provided the garage space is available to short term renters – to count as one of the required parking spaces? If the intent is to ensure two spaces for a rental, this can be changed to specify that. As for parking in the right-of-way, if a short term renter's car is parked in a legal on-street space, it may be difficult to tell and/or to enforce any restrictions.

- iii. Every sleeping room shall have at least one operable emergency escape and rescue opening.

- iv. An evacuation plan shall be posted conspicuously in each sleeping room.

g. Conduct on Premises

- i. Each occupant and visitor to a short term rental shall comply with all applicable provisions of the City Code, including, without limitation: noise and disorderly conduct restrictions from chapter 82, Offenses and miscellaneous provisions; litter prohibition from chapter 50, Environment; and others such as parking, and trespassing provisions. No occupant of or visitor to a short term rental shall cause or permit a public nuisance to be maintained on such property. This information shall be included in the rental agreement and inside the short term rental as specified in §3.3.6S.3.i, *Tenant Indoor Notification*, below.
- ii. All occupants shall be informed in writing of relevant city ordinances including, but not limited to, the city's nuisance, water conservation, noise, and disorderly conduct ordinances by the owner/operator of the short term rental.
- iii. Excessive noise or other disturbance outside the short term rental is prohibited between the hours of 10:00 p.m. and 8:00 a.m. This includes, but is not limited to, decks, portals, porches, balconies, patios, hot tubs, pools, saunas, or spas.
- iv. No sleeping is allowed outdoors.

h. Signage

Signage shall be in compliance with the city's current sign code.

i. Tenant Indoor Notification

The operator shall post in a conspicuous location in the dwelling the following minimum information:

- i. Maximum number of occupants.
- ii. Location of required off-street parking, other available parking and prohibition of parking on landscaped areas.
- iii. Quiet hours and noise restrictions.
- iv. Restrictions of outdoor facilities.
- v. 24-hour contact person and phone number.
- vi. Property cleanliness requirements.
- vii. Trash pick-up requirements, including location of trash cans.
- viii. Flooding hazards and evacuation routes. Including information on the emergency siren system.
- ix. Emergency numbers.
- x. Notice that failure to conform to the occupancy and parking requirements is a violation of the City Code and occupant or visitor can be cited.
- xi. Other useful information about the community.

j. Rental Agreement Notification

The rental agreement between the owner/operator of the short term rental and the occupant shall include by attachment, all of the information provided on the tenant indoor notification signage.

4. Short Term Rental Permit**a. Application**

Application for a short term rental permit shall be in writing on an application form available in the Planning and Development Services department, shall be accompanied by a one-time payment of the fee per appendix D of this Code and shall include the following information, at a minimum:

- i. A list of all owners of the short term rental including name(s), address and telephone numbers.

- ii. A sketch or narrative describing the location of the available parking spaces as required by this section.
 - iii. A sketch of the floor plan.
 - iv. The name, address and 24-hour telephone numbers of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short term rental.
 - v. Proof of hotel occupancy tax compliance with V.T.C.A., Tax Code ch. 351, before permit is granted.
 - vi. A statement that the owner of the short term rental has met and will continue to comply with the standards and other requirements of this section.
 - vii. Current email address of owner/operator, if applicable.
 - viii. If owner/operator has a property manager or agent, owner/operator shall provide property manager or agent phone number, mailing address and email address.
- b. Completeness of Application**
- If the application is incomplete or the full fee has not been paid, the Planning and Development Services Department shall notify the applicant in writing, within ten business days of the date of the application, that the application is incomplete and will not be considered by the city until the application is complete and/or the full fee is paid. If the full fee is not paid or the application is not complete within 45 days of the date of the application, the application shall expire.
- c. Insurance**
- General commercial liability insurance (or its equivalent) coverage of a minimum of \$500,000.00 per occurrence of coverage is required for all short term rentals. The owner must provide a copy of the certificate of insurance which shows the name insured, any additional insureds, the location address, the effective date, the coverage limit and type. The owner must notify the city within 30 days if the insurance status changes and provide the city with updated insurance information. The short term rental permit shall be suspended until proof of updated insurance is provided.
- d. Annual Renewal**
- A short term rental permit may be renewed annually if:
- i. The permittee pays inspection fee and passes inspection to be conducted by the fire marshal in accordance with §3.3.6S.5.
 - ii. The permittee provides documentation showing that local hotel occupancy taxes have been paid for the permitted unit as required for the previous year.
 - iii. The permittee provides documentation of insurance requirements as described in §3.3.6S.4.c above.
 - iv. The property is not subject to outstanding city code or state law violations.
 - v. The permittee or operator has no outstanding city fees or fines.
 - vi. The permittee or operator does not meet the standards described in §3.3.6S.6, *Enforcement and Penalty*, regarding repeat offenses.
 - vii. The city shall deny an application to renew a permit if, on the date the renewal application was submitted, 12 months have not expired since a revocation pursuant to §3.3.6S.7.
 - viii. Transferability. A short term rental permit is transferable to a new property owner, if the new property owner submits a short term rental permit application and agrees in writing to comply with the requirements of this section. A new owner must apply for a short term rental permit within 90 days from the closing date of the purchase. The new owner must provide a copy of the closing statement with the short term rental permit application form. Failure of the new property owner to apply for permit within 90 days from the closing date will revoke the short term rental permit.

e. Appeal

If an application for a short term rental permit or renewal is denied, the owner or operator may appeal to the planning commission by written notice delivered within 30 days of denial or revocation.

5. Inspections

To ensure continued compliance with the requirements of this section a short term rental shall be inspected in the following methods:

a. Transfer Inspection

As part of the transfer of a short term rental permit to a new owner, in accordance with §3.3.6S.4.d.viii, *Transferability*, and the issuance of a new short term rental permit the city's fire marshal shall conduct an inspection to verify compliance with this section.

b. Fire Extinguishers

The owner/operator is responsible for obtaining annual independent inspections of the fire extinguishers in compliance with the city's current fire code and is responsible for its maintenance in accordance with the manufacturer's specifications.

c. Immediate Inspection

The city's code enforcement division and fire marshal's office will perform inspections immediately when a violation is suspected.

d. Fire Inspection

The city's fire marshal's office will perform inspections annually for non-sprinklered structures and perform inspections every other year for sprinklered structures for compliance with this section. The fee for fire inspections is per appendix D of this Code.

6. Enforcement and Penalty**a. Emergency Contact**

The owner/operator of the short term rental shall provide the city with a 24-hour contact number. The 24-hour contact is required to be able to travel to the short term rental within 60 minutes under reasonable circumstances. Should a law enforcement officer or code enforcement officer respond to the short term rental and issue a citation/notice of violation for any violation of city ordinances, the owner/operator shall be called by the officer. The owner/operator shall attempt to contact the occupants within one hour of the call to address the occupants about the complaints. Should a second complaint be filed and citation/notice of violation issued to any of the occupants or guests, the owner/operator must take appropriate steps, in accordance with the individual rental agreement, to assure future complaints do not occur. Should three separate citations/notices of violation be issued to an occupant or their guest(s), involving separate occupants under separate rental agreements within a six-month period, the short term rental permit and/or special use permit may be revoked in accordance with the revocation process specified in §3.3.6S.7, *Revocation*.

b. Violations of any subsection of this section may result in revocation of the short term rental permit and/or special use permit in accordance with §3.3.6S.7, *Revocation*.**c. Failure to pay hotel occupancy tax timely is considered a violation of this section and may result in revocation of the short term rental permit and/or special use permit in accordance with §3.3.6S.7, *Revocation*. The owner shall have 30 days from the date the city or state issue a notice of delinquency to submit delinquent hotel occupancy tax to city and state before revocation of the short term rental permit/special use permit begins.****d. Failure to successfully complete the renewal process of a short term rental permit is considered a violation of this section. The owner shall have 45 days from the date city issues notice of denial to gain compliance of noncompliant items before the revocation of the short term rental permit begins.**

- e. The provisions of this subsection are in addition to and not in lieu of any criminal prosecution or penalties as provided by city ordinances or county or state law.
- f. Prima facie proof of violation of this section is established if it is shown that visual inspection of more than the posted maximum occupancy was made by a code enforcement officer, building inspector, fire inspector or police officer at a unit.
- g. Establishment of a prima facie level of proof in this subsection does not preclude a showing of illegal "occupancy" of a dwelling by a person in any other manner.
- h. It is an offense for the property owner, any agent of the property owner, or the occupant(s) to directly occupy or indirectly allow, permit, cause, or fail to prohibit an occupancy in violation of this section. Each day that a unit is occupied in violation of this ordinance shall be considered a separate offense, and, upon conviction, shall be subject to a minimum fine of \$500.00 to a maximum fine of \$2,000.00 per violation. Should a property owner operate a short term rental without a permit, a non-compliance fee of \$2,000.00 will be assessed.
- i. Each day of violation of said standards and provisions of this section constitutes a separate offense and is separately punishable, but may be joined in a single prosecution.
- j. **Repeat Offenses**
It shall be deemed a repeat offense:
 - i. If the permittee, operator, owner or person in control of the property fails to comply with any of the provisions of this section more than twice in a 12-month period, and/or
 - ii. If the property is the subject of repeated health or safety violations of city code or state law during a 24-month period prior to applying for a permit or renewing a permit to operate a short term rental.

7. Revocation

If any violations stated in §3.3.6.6, *Enforcement and Penalty*, of this section have been committed and not corrected within the time specified, the city shall begin the procedures to revoke the special use in accordance with §X.X, and revoke the short term rental permit in accordance with the following:

- a. The city shall give 30-day written notice to the owner/operator regarding the public hearing dates which include a recommendation by the Planning Commission, and public hearing and decision by the City Council.
- b. The city shall provide written notice to property owners within 200 feet of the subject property at least 15 days prior to the public hearings.
- c. If a short term rental permit and/or special use permit is revoked, the owner/operator may not reapply for the same property for a period of 12 months.

8. Abrogation and Greater Restrictions

This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

T. Truck Stop⁹²

1. Purpose

The purpose of this section is to establish standards for truck stops that minimize potential negative impacts on surrounding property.

⁹² This carries forward the standards in Sec. 144-5.28 of the Code of Ordinances, with revisions for clarity. The buffering standards have been carried forward, but the references will be updated, and the standards may be updated, after the development standards are drafted.

2. Conditional Use Application Requirements

In addition to the requirements of §X.X, an application for a special use for a truck stop shall include the following:

- a. A completed traffic impact analysis; and
- b. A feasibility study indicating the anticipated demand for truck fueling and overnight parking.

3. Development Standards

A truck stop shall comply with the following:

a. Location

A truck stop shall not be located within 300 feet of water as defined in the Texas Water Code or over an aquifer recharge zone or contributing zone.

b. Setback

Any buildings or truck parking areas shall be set back at least 300 feet from a property line abutting property used or zoned for a residential use including single- to four-dwellings, multi-family or a manufactured home park use.

c. Buffering⁹³

i. A truck stop is not eligible for a residential buffer wall exemption adjacent to land used or zoned for single- to four-family dwelling development.⁹⁴

ii. A six-to-eight foot tall masonry wall, as described in §X.X, Fences and Walls, is required adjacent to any residential development, including multi-family and manufactured home park.

iii. In addition to the masonry wall requirement in §X.X, Fences and Walls, the following landscape materials are required in lieu of other residential landscape buffer standards:

a. At least one shade tree, a minimum of three inches in caliper at time of planting, per 15 linear feet of the property line shared with the residential property is required, and trees must be planted evenly spaced. The trees shall be any of the shade species described in [Appendix A](#).

b. A minimum of one 24-inch-tall shrub for every five linear feet of the property line shared with the residential property is required, and shrub plantings must be evenly spaced. The shrubs shall be any of the shrub species described in [Appendix A](#).

d. Idling

i. Unless specifically approved by the City Council, truck idling is prohibited within the city limits. No person shall allow the primary propulsion engine of a motor vehicle to idle for more than ten consecutive minutes when the motor vehicle is not in motion.⁹⁵

ii. If a truck stop is to provide overnight parking facilities, signage indicating overnight idling is prohibited must be submitted at the time of building permit for approval. The signage must be located at the entrance of overnight parking lots in a visible manner to truck drivers.

iii. The following constitute affirmative defenses to prosecution under this section:

- a. A motor vehicle that has a gross vehicle weight rating of 19,500 pounds or less;
- b. The primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety in an armored

⁹³ These standards are carried forward from Sec. 144-5.28-3(b)2 of the Code of Ordinances, and will be revised following the drafting of the development standards.

⁹⁴ This was carried forward from current regulations, but we recommend there be no exemption if the truck stop is adjacent to any residential use, not just single or duplex.

⁹⁵ This draft includes a change to this provision to maintain City Council's prerogative to approve overnight idling, but eliminates the more detailed provision iv. that was included in a prior draft.

vehicle while the employee remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;

- c. A motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;
- d. A motor vehicle being used by the United States military, national guard, or reserve forces, or as an emergency or law enforcement motor vehicle;
- e. The primary propulsion engine of a motor vehicle providing a power source necessary for maintaining cargo climate control where truck stop electrification technologies are not provided for motor vehicles.
- f. The primary propulsion engine of a motor vehicle being operated for minor maintenance or diagnostic purposes;
- g. The primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;
- h. The primary propulsion engine of a motor vehicle that is being used for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of 30 minutes is allowed; or
- i. The primary propulsion engine of a motor vehicle being used to perform an essential job function related to roadway construction or maintenance;

U. River Outfitter⁹⁶

COMMENTARY

These standards are added based on comments in the detailed review tables, that indicate tube storage and parking are two main issues with this use. Parking will be addressed in Installment 2, but will require further discussion about the issues, and how best to address them.

1. Storage

- a. Storage of tubes, rafts, kayaks, canoes, paddle boards, etc. shall not be permitted in the front yard.
- b. Storage of tubes, rafts, kayaks, canoes, paddle boards, etc. within a rear or side yard that is adjacent to a residential zoning district or a residential use shall be at least 20 feet from the abutting residential property line.
- c. Tubes, rafts, kayaks, canoes, paddle boards, etc. stored outdoors shall be enclosed by an opaque fence or other screening device with a roof.
- d. Tubes, rafts, kayaks, canoes, paddle boards, etc. may not be stacked higher than the height of the surrounding fence or screening device.
- e. The storage structure shall not be located in the floodway.

V. Vehicle Repair, Major and Minor⁹⁷

- 1. All repair facilities and related activities shall take place inside a building.
- 2. No body, paint, or fender repair activities shall take place on a site that abuts a residential zoning district on its side or rear lot lines.
- 3. No wrecked, junked, or otherwise inoperative vehicle shall be stored or parked on the premises except while awaiting repair, when the vehicles shall be screened behind a permanent fence at least six feet in height, made of masonry or wood.
- 4. Tires shall not be stored outside.

⁹⁶ New. These proposed standards are a starting point for discussion on regulating this use.

⁹⁷ This carries forward the standards in Sec. 144-5.21 of the Code of Ordinances, with revisions for clarity. The restrictions about sales and service of heavy load and farm machinery in Sec. 144-5.14 are also included.

W. Vehicle Sales and Rental⁹⁸

1. All vehicles or other merchandise displayed or parked outside the building shall be located on the property and not in the public right-of-way, and shall meet clear vision standards as described in §2.7.4.
2. No outdoor merchandise more than eight feet tall shall be located within 20 feet of a property line shared with a residential use or residential zoning district.⁹⁹
3. Vehicles or merchandise shall be located on a paved surface.
4. No heavy loading and farm machinery shall be displayed within the front setback.¹⁰⁰
5. Tires shall not be stored outside.

X. Veterinary Clinic¹⁰¹

1. In the MXT, MXC, CBD, and CN districts, no outdoor animal runs are allowed.
2. In all other districts, use of outdoor animals runs or kennels is permitted only between the hours of 7:00 a.m. and 9:00 p.m.

3.3.7 Industrial Uses**A. Hazardous Materials Storage¹⁰²**

In accordance with Chapter 753, Health and Safety Code, of the Texas state statutes, bulk storage of fuel and flammable liquids shall not occur at a retail service station in a tank that has a gross capacity of more than 60 gallons above the surface of the ground. The individual or combined capacity or size of an underground flammable liquid tank at a retail service station is not limited, but other state and local regulations concerning the location and construction of underground storage of flammable liquids or fuels may apply.

B. Outside Storage¹⁰³

Where outside storage is permitted as an accessory to a non-residential use, storage of items shall not be permitted within a rear or side yard that is adjacent to a residential zoning district or a residential use.

C. Recycling Center¹⁰⁴

In the CR district, no outside storage of materials is permitted.

D. Self-Storage¹⁰⁵

1. Outside storage of items other than vehicles, boats, trailers, and RVs is prohibited in the CG and CR districts, where any self-storage use shall be entirely within an enclosed building.
2. Boats and RVs stored on site shall be screened from public view with privacy fencing or landscaping, as described in §XX.
3. Self-storage uses in the CG district are limited to climate-controlled facilities, with no outside storage of vehicles, boats, trailers, and RVs allowed.

⁹⁸ This carries forward the standards in Sec. 144-5.14 of the Code of Ordinances regarding the sale of heavy load and farm machinery and Sec. 144-5.12 regarding automobile or trailer sales.

⁹⁹ The prior draft required five feet from the property line, which came from the current code. This draft increases that setback to 20 feet, which is more in line with other residential adjacency setbacks. If 20 seems too great a change, it can be revised in future drafts.

¹⁰⁰ The prior draft required 30 feet from the front lot line, which came from the current code. This draft proposes keeping display materials out of the front setback instead.

¹⁰¹ This carries forward the standard in the definition of the use in the current use table.

¹⁰² This public draft changes the name of this use from "Bulk Storage."

¹⁰³ New standard.

¹⁰⁴ New.

¹⁰⁵ This carries forward the distinction between the current "Mini-warehouse/self-storage units (no boat and RV storage permitted)" use and the "Mini-warehouse/self-storage units with outside boat and RV storage" use.

3.3.8 Temporary Uses

A. General Standards¹⁰⁶

Unless otherwise specified in this Code, all temporary uses and structures shall comply with the following:

1. The temporary use or structure shall not impose negative impacts to surrounding properties or to the public health, safety, or general welfare;
2. The temporary use or structure shall not include permanent alterations to the site;
3. Temporary signs associated with a temporary use or structure shall be removed when the activity ends or permit expires, whichever occurs first;
4. A temporary use or structure shall not violate any applicable use-specific standards or conditions of approval applicable to a principal use on the site;
5. Temporary uses and structures shall not disturb any sensitive or protected resources, including floodplains, karst, trees, and required landscaping;
6. At the conclusion of a temporary use or structure, all disturbed areas shall be restored to the condition that existed prior to the use, or improved;
7. Temporary uses or structures shall not impede with normal operations of any permanent use located on the lot or parcel; and
8. Off-street parking, whether on-site or shared, shall be sufficient to accommodate the proposed temporary use.

B. Itinerant Merchant¹⁰⁷

1. General¹⁰⁸

- a. No permanent or temporary foundation may be placed or constructed for this use.
- b. All structures (including but not limited to booths, vehicles, trailers, and any ancillary equipment and furnishings such as generators, tables, and decks) used by itinerant merchants shall be removed at the end of the permitted period.
- c. No more than two itinerant merchants may be permitted on a single property.

2. Permit Requirement and Expiration¹⁰⁹

- a. No itinerant merchant use may occur without a valid permit issued by the City.
- b. Itinerant merchant permits are not transferable. A permit at any location is valid for one itinerant merchant operation regardless of any sale, lease, name change or any ownership transfer of the itinerant merchant operation.
- c. A permit is valid for 12 months. The itinerant merchant shall post the permit in a visible location, including the expiration date.
- d. If the itinerant merchant sells food/beverages, the vendor shall renew their health permit with the City annually; if the vending unit is mobile, the owner/operator shall bring the unit to City Hall for the annual inspection.
- e. Itinerant merchant uses exceeding the term of the permit shall void the temporary status; such operations shall comply with all permanent structure regulations.

¹⁰⁶ These are new general standards for temporary uses.

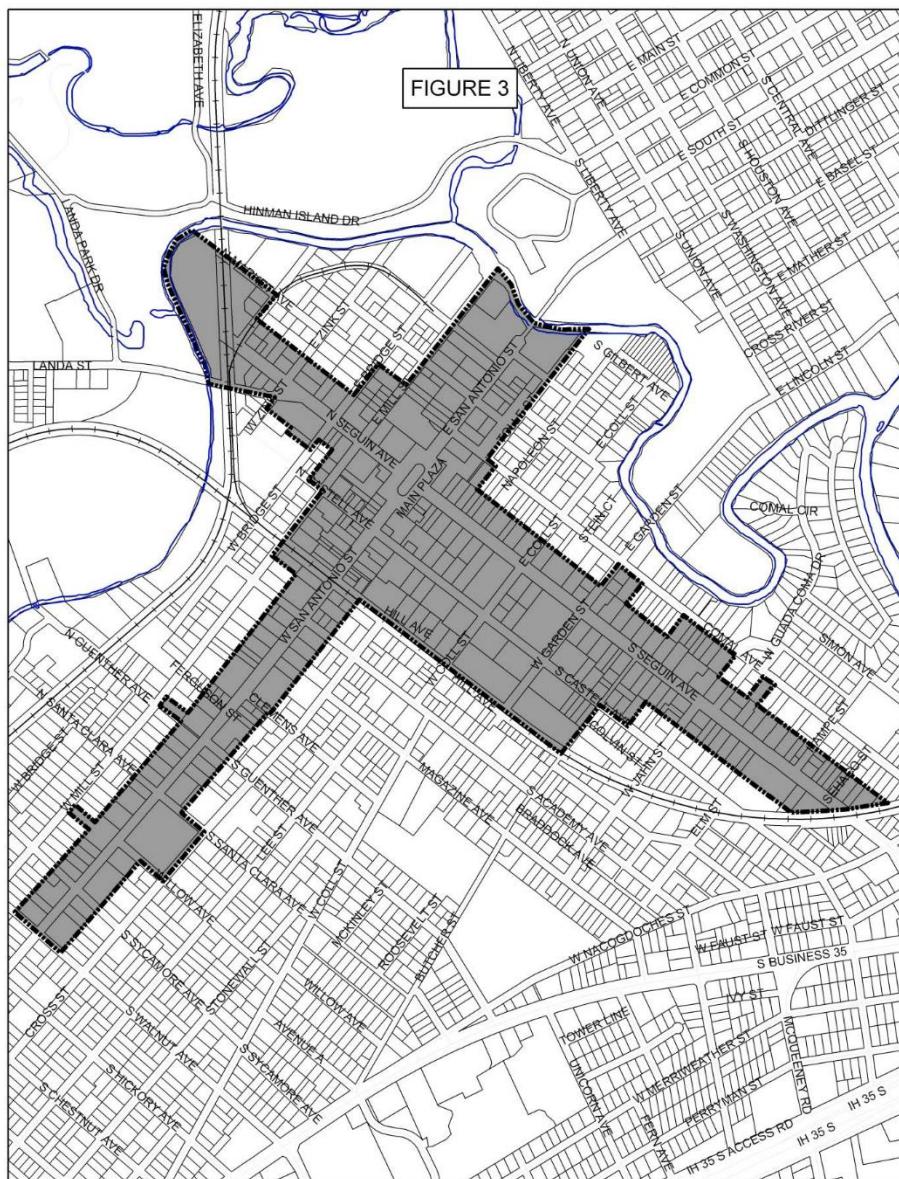
¹⁰⁷ Name changed from Temporary Vending Operation. Carries forward, with revisions, the standards of Sec. 144-5.23 of the Code of Ordinances with changes as noted below.

¹⁰⁸ This incorporates the maximum number of vendor standards from Sec. 144-5.23-13 of the Code of Ordinances.

¹⁰⁹ This carries forward the permit requirements in Sec. 144-5.23-2 of the Code of Ordinances, and incorporates a reference to the application requirements which are currently in Sec. 144-5.23-19 and -20 and will be taken out of the code. The requirement to display the permit has been included from Sec. 144-5.23-20.

3. Standards**a. Parking¹¹⁰**

- i. Required parking allocated for the patronage of the primary use on a site shall not be utilized for set up or parking of the itinerant merchant unit. Additional parking spaces must be available from the primary business.
- ii. All vehicles (motorized or non-motorized), trailers, tents, structures, and other items associated with the itinerant merchant operation, including those from which vending occurs, shall be located within the parking lot.
- iii. Except in the limited parking area identified in **Figure 3**, at least one parking space is required per itinerant merchant .



¹¹⁰ The current parking standards are carried forward, but will be revised after the city-wide parking standards are drafted.

b. Location

- i. All vending activities shall occur on private property. No activity, parking, or signage may be located on public property or street right-of-way or within the clear vision area, as described in §2.7.4.
- ii. Anyone wishing to sell, take orders for immediate or future delivery, collect money or property, or attempt to do any of the foregoing, in exchange for a good or service, is prohibited from peddling, soliciting, or vending or advertising from any public street or park in the city. This restriction does not apply to mobile catering/itinerant merchants as regulated in the Code of Ordinances.

c. Refuse

Adequate garbage receptacles shall be provided and maintained to keep the permitted sites clean of all debris, trash, and litter.

d. Noise

The use of a sound device such as a bell, horn, or voice to attract attention is prohibited.

e. Setbacks¹¹¹**f. Building setbacks do not apply to itinerant merchant operations, except that clear vision areas shall be maintained, as described in §2.7.4Restrooms**

- i. Restrooms shall be provided in compliance with all applicable, current health codes.
- ii. Portable restrooms may be used only if they comply with the residential adjunct standards described in §X.X.

g. Utilities

- i. No permanent water, sewer, electric, fuel, or phone facilities may be connected to the vending operation.
- ii. Utility connections shall have a quick disconnect. Any use of extension cords must be no longer than a maximum of 50 feet, including multiple cords. A maximum of two cords may be utilized.
- iii. Extension cords crossing areas of traffic (vehicular, pedestrian, etc.) must be encased in a cable protector rated for the specific traffic. Documentation of this rating must be provided to City staff upon request.

h. Food Vendors

Itinerant merchants that serve food shall be registered with and inspected by the City, and shall meet all state and local health codes.

i. Storage

Any stored materials shall be contained within a building or other container.

j. Signage

In addition to the requirements of Article 7: Signs, sandwich boards, banners attached to a vending structure, and pennants are allowed. No banners that stand independently by means of stakes, t-posts, or are otherwise attached to the ground, may be used.

4. Enforcement and Penalties**a. Permit Revocation**

A permit may be revoked by any City official for any of the following reasons:

- i. Fraud, misrepresentation, or a false statement contained in the application for the permit;
- ii. Fraud, misrepresentation, or a false statement made in the course of conducting business;

¹¹¹ Carries forward Sec. 144-5.23-10 of the Code of Ordinances but removes references to compliance with codes and ordinances, as that is required for all uses under the updated code.

- iii. Any violation of any City code or ordinance that has not been brought into compliance within 24 hours of notification;
- iv. Conviction of any crime or misdemeanor involving moral turpitude; or
- v. Conducting the business in an unlawful manner so as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public.

b. Penalties for Owner of a Itinerant Merchant Operation

The owner of a permitted itinerant merchant operation that violates this section or any other City code or ordinance shall be penalized as follows:

- i. The first offense shall result in a warning and the owner shall bring the itinerant merchant operation into compliance within 24 hours or the permit shall be revoked, with a penalty of \$500.00 for each offense per day.
- ii. The second offense shall result in the itinerant merchant operation having the permit revoked immediately, and the merchant shall be prohibited from obtaining a permit under this section for one year from the date of the offense, with a penalty of \$1,000.00 for each offense per day.
- iii. The third offense shall result in the itinerant merchant operation having the permit revoked immediately and the merchant shall be prohibited from obtaining a permit under this section indefinitely, with a penalty of \$2,000.00 for each offense per day.

c. Penalties for Owner of Property on Which Itinerant Merchant Is Located

If a property owner has violated this LDO or any other applicable part of the City Code while allowing an itinerant merchant operation to be conducted with or without a permit issued under this section, the property owner shall be penalized as follows:

- i. The first offense shall result in a warning and the host shall correct the violation within 24 hours or the permit shall be revoked, with a penalty of \$500.00 for each offense per day.
- ii. The second offense shall result in the operation having the permits of all the property owner's itinerant merchant operations revoked immediately and the property owner shall be prohibited from hosting mobile vending for one year from the date of the offense, with a penalty of \$1,000.00 for each offense per day.
- iii. The third offense shall result in the operation having the permits of all the property owner's itinerant merchant operations revoked immediately and the property owner shall be prohibited from hosting itinerant merchants indefinitely, with a penalty of \$2,000.00 for each offense per day.

5. Appeals¹¹²

Any enforcement actions under this section may be appealed to the Zoning Board of Adjustment, as follows:

- a. An appeal shall be submitted within 30 days of permit being revoked.
- b. The appeal shall be scheduled for consideration on the next available agenda of the Zoning Board of Adjustment.
- c. The Zoning Board of Adjustment shall review the appeal and may approve, approve subject to certain conditions, or deny the appeal.¹¹³

¹¹² It is unclear what may be appealed. Is it the enforcement action? Or is it the denial of an application? If the latter, these provisions can be consolidated with the general appeal provisions in the updated ordinance. This provision has been revised to indicate appeals go to the ZBA.

¹¹³ Related to the question above, should this standard language be amended to indicate that the ZBA can restore the permit, restore it subject to conditions being met, or deny the appeal?

C. Mobile Storage Unit¹¹⁴**1. Applicability**

- a. On private property, a mobile storage unit that is no more than eight feet in width, eight feet in height, and 16 feet in length is permitted for no more than 30 days in a calendar year unless ownership of the property has changed, the property is being remodeled, or there is a change in occupancy of a rental unit on the site.
- b. If site configuration or topography make placement of the mobile storage unit on the site impossible, the mobile storage unit may be placed in the right-of-way against the curb, the same as parking an automobile, and subject to the same time limits.
- c. The temporary mobile storage unit may be placed for a period not to exceed 180 days in the same location. A unit cannot be set up on the same property within 30 days.

2. Standards**a. Parking**

Any parking required to be provided for the uses on a non-residential site shall not be utilized for placement of the temporary mobile storage unit.

b. Location

Placement of the mobile storage unit shall not impede the clear vision areas, as described in §2.7.4.

c. Setbacks

All temporary mobile storage units must be located a minimum of 100 feet from flammable combustible liquid or fuel storage and dispensing structures.

d. Utilities

- i. No permanent water, sewer, electric, fuel, or phone facilities may be connected to the temporary mobile storage unit.
- ii. Any use of extension cords must be no longer than a maximum of 50 feet, including multiple cords. A maximum of two cords may be utilized.
- iii. Extension cords may not cross an area designated for vehicular traffic.

e. Signage

No signage may be attached to the storage unit, other than the brand or manufacturer's pre-existing name or logo on the container.

D. Temporary On-Site Contractor's Office¹¹⁵

A temporary building use by a contractor as an office or for storage of tools or other construction items may be placed and used on or adjacent to a site under construction and shall be removed no later than the completion or abandonment of the construction work.

E. Temporary Real Estate Office¹¹⁶

A temporary real estate sales office may be a permanent or portable structure and is permitted in any residential subdivision or residential property with new homes for sale. The sales office shall be removed after all homes in the subdivision or residential property have been sold.

F. Temporary Roll-off Dumpster¹¹⁷

A temporary roll-off dumpster:

1. May be stored on private property for no more than four consecutive months in a calendar year;

¹¹⁴ This carries forward the regulations in Sec. 144-5.21(b)(3) and Sec. 144-5.24 of the Code of Ordinances.

¹¹⁵ Carries forward, with revisions, the standards in Sec. 144-5.10(a) of the Code of Ordinances.

¹¹⁶ Carries forward, with revisions, the standards in Sec. 144-5.10(b) of the Code of Ordinances.

¹¹⁷ This carries forward the regulations in Sec. 144-5.21(b)(4) of the Code of Ordinances.

Article 4: Land Uses

3.3 Use-Specific Standards

3.3.8 Temporary Uses

- 2.** Shall be placed on the driveway or other paved surface; and
- 3.** Shall be emptied at least every two weeks.

Article 4: Development Standards

[To be included in Installment 2.]

Article 5: Subdivision Standards

[To be included in Installment 2.]

Article 6: Historic Preservation

[To be included in Installment 4.]

Article 7: Signs

[To be included in Installment 4.]

Article 8: Administration and Procedures

[To be included in Installment 3.]