

UNIFIED DEVELOPMENT CODE

CHAPTER 1: GENERAL PROVISIONS

Chapter 1: General Provisions

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Division 1 – General Provisions

Section 1.1.1.1 Source of Authority

- (a) **Authority.** Authority under this Unified Development Code shall be vested in and delegated to the officials and decision-makers designated in this Article 1 under the City's charter, the constitution and laws of the state of Texas and the City Code. This authority shall be deemed supplemental to any other authority lawfully conferred upon the officials and decision-makers. The omission of a citation in this Unified Development Code to any authority conferred upon the officials and decision-makers under the City's charter, the constitution or laws of the state of Texas or the City Code, nor the failure to identify in this article authority conferred by other provisions of this Unified Development Code, shall not be construed as limiting the actions of such officials and decision-makers taken in accordance with and in reliance upon such authority.

Section 1.1.1.2 Implied Authority

- (a) **Authority.** The officials and decision-makers shall have all implied authority necessary to carry out the duties and responsibilities expressly delegated by this Unified Development Code to the extent the implied authority is not in conflict with the expressly delegated authority.

Section 1.1.1.3 Limitation on Authority

- (a) **City Policy.** It is the policy of the City that the standards and procedures applicable to development of property within the City limits and within the City's extraterritorial jurisdiction are as stated in this Unified Development Code, notwithstanding any representation by any City official summarizing, paraphrasing or otherwise interpreting such standards to the contrary, whether generally or as applied to development of specific property.
- (b) **Representations Concerning Future Action on Development Application or Legislative Action.** No City official, whether an employee of the City or a member of an appointed board or commission, or a member of the governing body of the City, shall have the authority to make representations to a property owner concerning the likelihood of an outcome of that official's decision or the decision of an appointed board or commission or the City Council, on any development application or legislative action that has yet to be filed or is pending before the City for decision. An official may, however, upon request of a person, convey information concerning that official's position on a pending application in accordance with procedures established in this Chapter 1. No person is entitled to rely upon any representation made by an official in contravention of this Subsection, and each and every such representation shall be deemed in violation of the policy of the City, and is not binding on the City in any respect. No subsequent decision of the City shall be deemed a ratification of any representation made in contravention of this Subsection.
- (c) **Representations Concerning Future Amendments.** No City official, whether an employee of the City or a member of an appointed board or commission, or a member of the City Council, shall have the authority to make binding representations to any person concerning the likelihood that a change in any legislative classification

or a change in the text of this Unified Development Code as applied to a specific tract of land will be granted, or that an existing legislative classification or text provision will remain in effect, or that any petition for relief will be granted. No person is entitled to rely upon any representation made by an official in contravention of this Subsection, and each and every such representation shall be deemed in violation of the policy of the City, and is not binding on the City in any respect. No subsequent decision of the City shall be deemed a ratification of any representation made in contravention of this Subsection.

- (d) **Effect of Comprehensive Plan, Ordinance or Development Standard on Liability Claims.** The City's approval of a development application under the standards and procedures of this Unified Development Code does not guarantee or assure that development of the property in accordance with the standards will prevent, minimize or mitigate harm to adjoining property. A person who undertakes development activities shall not rely on the City's approval of a development application as ensuring that the development activities will not result in harm to adjoining property. The regulations contained in this Unified Development Code constitute an exercise of the City's governmental authority, and approval of a development application shall not give rise to any liability on the part of the City or its officers, agents and employees, nor will an approval release the applicant from any liability for harm arising out of development of the property under applicable law.
- (e) **No Waivers.** Except as expressly provided for in this Unified Development Code, no official, board, commission of the City, or the City Council, shall have authority to waive any requirement or standard for a development application. Any attempted waiver of a requirement or standard for a development application in contravention of this Subsection shall hereby be deemed null and void, and, upon discovery, shall be grounds for revocation of a permit or approval, or reconsideration of a legislative decision.

Section 1.1.1.4 Conflict in Authority

- (a) **Internal Inconsistency.** Whenever one or more provisions of this Unified Development Code are in apparent conflict, the provisions shall be construed, if possible, so that effect is given to each. If the conflict is between a general provision and a specific provision, and the conflict is irreconcilable, the specific provision shall prevail as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision should prevail.
- (b) **Incomplete Provisions.** Whenever a specific standard or procedure of this Unified Development Code is incomplete when applied in isolation to a development application or development activity, such standard shall be supplemented by any general or specific provision of this Code, the City Code, or the City Charter in order to give effect to the incomplete provision.

Division 2 – City Staff

Section 1.1.2.1 Responsible Official

- (a) **Responsible Official.** The responsible official shall be the Director of a designated City department who is assigned responsibility under this Unified Development Code for taking the following actions with regard to a particular type of development application or relief petition authorized under this Chapter 1:
- (1) Accepting the application or petition for filing and processing the application;
 - (2) Reviewing and making recommendations concerning the application or petition;
 - (3) Seeking advice of other City departments and coordinating any recommendations from such departments concerning the application or petition;
 - (4) Initially deciding the application or petition, where so authorized;
 - (5) Determining a request for exemption;
 - (6) Preparing reports to and advising any board, commission or the City Council that has responsibility for making recommendations on or deciding the application or petition;
 - (7) Promulgating additional or modified policies, standards and administrative rules for adoption by the City Council that apply to the application or petition;
 - (8) Initiating enforcement actions concerning compliance with the standards applicable to the application or petition and the conditions imposed thereon; and
 - (9) Taking all other actions necessary for administration of the provisions of this Unified Development Code with respect to the application or petition.
- (b) **Specific Duties.** The specific duties of the responsible official shall include those authorized under the universal procedures applicable to all types of development applications pursuant to Article 2 of this Chapter 1, those authorized under the provisions governing procedures for deciding particular applications under this Chapter 1, and those authorized under relief procedures pursuant to Article 3 of this Chapter 1.
- (c) **Delegation.** The responsible official may delegate the official's authority under this Code to subordinate officials, who shall thereupon be deemed the responsible official for purposes of carrying out the delegated duties.

Section 1.1.2.2 Director of Planning

- (a) **Responsible Official.** The Director of Planning, or equivalent, as assigned by the City Manager, is the responsible official for the following types of development applications and relief petitions:
- (1) Petition for amending the Comprehensive Plan;
 - (2) Petition for a zoning map amendment, including a petition for creation of an overlay district, or Planned Development (PD) district;
 - (3) Application for a Conditional Use Permit;
 - (4) Application for a Cluster Development Plan;
 - (5) Application for a special exception;

- (6) Application for change in status of a nonconformity;
 - (7) Application for a Subdivision Master Plan, Preliminary Subdivision Plat, Preliminary Development Plat, Final Subdivision Plat, Final Development Plat, Minor Subdivision Plat, amending plat, and replat;
 - (8) Appeal of a decision on any application for which the Director is the responsible official;
 - (9) Variance petition for any application for which the Director is the responsible official;
 - (10) Vested rights petition for any decision where the Director is the responsible official for the application for which the vested rights petition is filed; and
 - (11) Application for a sign permit.
- (b) **Initial Decision-Maker.** The Director of Planning is the initial decision-maker for the following types of development applications and relief petitions, subject to appeal as provided in this Chapter 1:
- (1) Application for a Subdivision Master Plan;
 - (2) Application for a Minor Subdivision Plat;
 - (2) Application for an amending plat; and
 - (3) Vested rights petition for any decision for which the Director is the initial decision-maker.

Ord. No. 2000T-2, Section 1.1.2.2, February 26, 2007.

Ord. No. 2000T-8, Section 1.1.2.2, August 25, 2008.

Ord. No. 2000T-14, Section 1.1.2.2, January 14, 2013.

Section 1.1.2.3 City Engineer

- (a) **Responsible Official.** The City Engineer is the responsible official for the following types of development applications and relief petitions (except as provided):
- (1) Application for approval of construction plans, and all related construction management tasks, including without limitation, approval of contracts for public improvements;
 - (2) Application for a Development/Grading Permit for compliance with flood plain regulations;
 - (3) Appeal of a decision on any application for which the City Engineer is the responsible official, except a Site Preparation Permit which shall be appealed to the City Manager in accordance with Section 1.1.2.6;
 - (4) Variance petition for any application for which the City Engineer is the responsible official;

- (5) Vested rights petition for any decision where the City Engineer is the responsible official for the application for which the vested rights petition is filed; and
 - (6) Petition for relief from a dedication or construction requirement.
- (b) **Initial Decision-Maker.** The City Engineer is the initial decision-maker for the following types of development applications and relief petitions, subject to appeal as provided in this Chapter 1:
- (1) Application for approval of construction plans, and all related construction management tasks, including without limitation approval of a contract for public improvements;
 - (2) Application for a Development/Grading Permit for compliance with flood plain regulations; and
 - (3) Vested rights petition for any decision for which the City Engineer is the initial decision-maker.
- (c) **Floodplain Administrator.** The City Engineer is the Floodplain Administrator for the City and shall carry out duties and responsibilities as authorized in the Flood Hazard Prevention Ordinance, Ordinance No. 532 and No. 532-4, as amended.

Ord. No. 2000T-8, Section 1.1.2.3, August 25, 2008.

Section 1.1.2.4 Building Official

- (a) **Responsible Official and Initial Decision-Maker.** The Building Official is the responsible official for and shall initially decide the following types of applications:
- (1) Building permit;
 - (2) Certificate of occupancy;
 - (2) Water and sewer impact fees; and
 - (3) Application for a Site Preparation permit.
- (b) **Initial Decision-Maker on Appeals.** The Building Official is the initial decision-maker for appeals of the following application, subject to further appeal as provided for in this Chapter 1:
- (1) Certificate of Occupancy;

Ord. No. 2000T-2, Section 1.1.2.4, February 26, 2007.

Ord. No. 2000T-8, Section 1.1.2.4, August 25, 2008.

Section 1.1.2.5 Parks Director

- (a) The Parks Director is the responsible official for and shall initially decide the following types of applications:
 - (1) Park fee decision.

Section 1.1.2.6 City Manager

- (a) **Initial Decision-Maker on Appeals.** The City Manager is the initial decision-maker for appeals of the following types of development applications, subject to further appeal as provided for in this Chapter 1:
 - (1) A Site Preparation Permit;
 - (2) An impact fee decision; and,
 - (3) A Site Plan

Section 1.1.2.7 Other City Officials

- (a) The City Manager, City Attorney and any other official delegated responsibilities under this Unified Development Code are authorized to take all actions necessary to carry out their responsibilities in accordance with the requirements and limitations prescribed herein.

Division 3 – Planning & Zoning Commission

Section 1.1.3.1 Reference to City Charter

- (a) **Reference.** The Pearland City Charter contains requirements for the Planning & Zoning Commission pertaining to the number of members, authority, term of office, etc. Refer to the City Charter, Article 7, Section 7.01 for such requirements.

Section 1.1.3.2 Structure of Commission

- (a) **Structure.** The members of the Planning and Zoning Commission are appointed by the Council and serve without compensation. In making appointments to the Commission, the Council shall seek to ensure broad representation and expertise among the membership. The Commission shall establish bylaws to govern rules of procedure and the annual election of officers.

Section 1.1.3.3 Advisory Capacity

- (a) **Advise the City Council.** The Planning and Zoning Commission shall advise the City Council on applications and petitions for legislative decisions as authorized by this Unified Development Code. In that capacity, the Commission shall review, prepare reports upon and make recommendations concerning approval, conditional approval or denial of the following types of petitions and development applications, in accordance with the procedures and standards that apply to the petition or development application:

- (1) Petition for amending the Comprehensive Plan;
- (2) Petition for a zoning map amendment, including a petition for creation of an overlay district, Conditional Use Permit (CUP), or Planned Development (PD) district;
- (3) Amendments to the text of the Unified Development Code (UDC) as authorized by City Charter; and
- (4) Other advisory duties as assigned by City Council.

Section 1.1.3.4 Authority for Deciding Applications

- (a) **Final Decision-Maker for Quasi-Judicial Applications.** The Planning and Zoning Commission shall finally decide the following types of quasi-judicial applications:
- (1) An application for a Preliminary Subdivision Plat or Preliminary Development Plat;
 - (2) An application for a Final Subdivision Plat or Final Development Plat, for which no Preliminary Subdivision Plat or Preliminary Development Plat, respectively, has been approved
 - (3) An application for a replat; and
 - (4) A request for a variance from the requirements of Chapter 3.
- (b) **Final Decision-Maker for Administrative Applications.** The Planning and Zoning Commission shall finally decide the following types of administrative applications:
- (1) An application for a Final Subdivision Plat or Final Development Plat for which a Preliminary Subdivision Plat Preliminary Subdivision Plat or Preliminary Development Plat, respectively, has previously been approved; and
 - (2) An application for an amending plat that has been forwarded by the Planning Director.

Ord. No. 2000T-11, Section 1.1.3.4, July 27, 2009.

Section 1.1.3.5 Authority for Deciding Appeals and Relief Petitions

- (a) **Appellate Authority.** The Planning and Zoning Commission shall finally decide appeals filed in accordance with Article 3 of this chapter (Relief Procedures) on the following development applications and relief petitions:
- (1) A Minor Subdivision Plat that has been forwarded by the Director; and
 - (2) A Site Preparation Permit that has been forwarded by the City Manager.
- (b) **Petitions for Relief.** The Planning and Zoning Commission shall finally decide the following petitions for relief:
- (1) The Planning and Zoning Commission shall finally decide any variance petition on an application for a Preliminary Subdivision Plat, Preliminary

Development Plat, Final Subdivision Plat, Final Development Plat or replat;
and

- (2) The Planning and Zoning Commission shall initially decide any vested rights petition for any decision for which it is the initial decision-maker.

Division 4 – City Council

Section 1.1.4.1 Authority for Amendments to the Unified Development Code (UDC)

- (a) **Authority.** The City Council may from time to time amend, supplement or change by ordinance the text of this Unified Development Code on its own initiative or upon petition for a text amendment.

Section 1.1.4.2 Authority for Deciding Legislative Applications

- (a) **Final Decision on Legislative Actions.** The City Council shall finally decide all types of legislative applications authorized under this Unified Development Code.

Section 1.1.4.3 Authority for Deciding Appeals and Relief Petitions

- (a) (a) **Appellate Authority.** The City Council shall finally decide appeals on the following development applications and relief petitions:
 - (1) A vested rights petition filed in conjunction with an application for which the City Council is the final decision-maker
 - (2) An impact fee appeal that has been forwarded by the City Manager; and
 - (3) A sign permit (refer to Section 4.1.2.6).
- (b) **Petitions for Relief.** The City Council shall finally decide the following petitions for relief:
 - (1) Petition for relief from a dedication or construction requirement.

Ord. No. 2000T-11, Section 1.1.4.3, July 27, 2009.

Division 5 – Zoning Board of Adjustment (ZBA)

Section 1.1.5.1 Structure of the Board

- (a) **Composition and Term.** The Zoning Board of Adjustment shall consist of five (5) regular members and four (4) alternates appointed by the City Council, for terms of two years. The members may be removed for cause by the City Council upon written charges and after a public hearing. All regular members and alternates shall reside within the City limits. The alternate members shall serve in the absence of one or more regular members when requested to do so by the Planning Director or chair of the ZBA, as the case may be, so that all cases to be heard by the ZBA will be heard by a minimum of four members. Vacancies are filled for the unexpired term of any member by appointment by the City Council.
- (b) **Rules.** The ZBA may adopt rules to govern its proceedings. These rules must be consistent with this chapter and state law. The chair or, in the chair's absence, the acting chair, may administer oaths and compel the attendance of witnesses.
- (c) **Meetings.** Meetings of the ZBA shall be held at the call of the chair and at other times as the ZBA may determine. All meetings of the ZBA shall be open to the public, except that the ZBA may hold closed meetings as permitted under state law.
- (d) **Minutes.** The ZBA shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and shall keep records of its official actions, all of which shall be filed in the office of the ZBA and shall be public information.
- (e) **Duties of Planning Director.** The Planning Director (or designee) shall act as the staff liaison to the ZBA and secretary of the ZBA and shall set up and maintain a separate file for each application for approval, special exception, and variance received. The Director shall record in each file the names and addresses of all persons to whom notices are mailed, including the date of mailing, and shall keep a record of all notices published as required in this chapter. All records and files provided for in this Subsection shall be permanent and official files and records of the City.

Section 1.1.5.2 Authority for Deciding Applications

- (a) **Authority for Applications.** The Zoning Board of Adjustment shall finally decide the following types of applications:
 - (1) An application for a special exception pursuant to Section 2.2.5.1;
 - (2) An application for a change in the status of a non-conformity pursuant to Section 2.2.5.3; and
 - (3) An application for a variance pursuant to Section 2.2.5.2;
- (b) **Authority for Appeals.** The Zoning Board of Adjustment shall finally decide appeals on the following matters:
 - (1) An appeal of the Planning Director's decision on a sign permit or an interpretation of the sign regulations;

- (2) An appeal of any other official's interpretation of the requirements of Chapters 2 or 4 of this UDC, unless a separate appeals process is otherwise defined within this UDC.

Section 1.1.5.3 Rules Governing Proceedings

- (a) **Majority Decision.** The concurring vote of four members of the ZBA is necessary to reverse an order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on a matter upon which the ZBA is required to pass under this Unified Development Code, or to authorize a variance from the terms of a provision of this Unified Development Code.
- (b) **Quorum.** A quorum shall consist of four members of the ZBA.
- (c) **Limitation on Authority.** The authority delegated to the Zoning Board of Adjustment under this Unified Development Code shall not be construed to effect any of the following:
 - (1) Approval of a petition for a zoning map amendment;
 - (2) Approval of a Conditional Use Permit;
 - (3) Authorization of a use not authorized in the zoning district in which the applicant's property is located, except to the extent necessary to decide a special exception or a petition for a change in status of a non-conformity.
- (d) **Timing of Decision.** The Zoning Board of Adjustment shall not render any decision on a development application, appeal or relief petition while a petition for a zoning amendment, application for a Conditional Use Permit, or plat application for the same land is pending and until such petition or application has been finally decided pursuant to procedures in this Chapter 1.
- (e) **Appeals.** Appeals shall be processed and decided in the manner provided in Article 3, division 1 of this Chapter 1.
- (f) **Notice and Hearing.** Any public hearing shall be preceded by published, personal and posted notice in the manner provided in Article 2, Division 2 of this Chapter 1. Public hearings shall be conducted in the manner provided in Article 2, Division 3 of this Chapter 1.
- (g) **Appeals of Board Decisions.** Appeals of any decision of the ZBA may be taken to a state district court, county court, or county court-at-law by filing a verified petition stating that the decision of the ZBA is illegal in whole or in part and specifying the grounds of the illegality. The petition must be filed within ten (10) days after the date the decision is filed with the Planning Department.

Article 2 – Universal Procedures

Division 1 – Application Processing

Section 1.2.1.1 Initiation of Application

- (a) **Initiation Only By Owner.** Unless otherwise expressly provided by this Unified Development Code, a petition for legislative action affecting land, other than a petition for a text amendment or a zoning amendment, or an application for a development permit, may be initiated only by the owner of an interest in the land subject to the application, or the owner's designated agent. If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf. The responsible official may establish the type of documents needed to determine ownership or agency.

Section 1.2.1.2 Complete Application

- (a) Every petition for a legislative action or application for a development permit or approval (referred to in this section as an "application") authorized by this Unified Development Code shall be subject to a determination of completeness by the official responsible for processing the application.
- (1) No application shall be accepted by the responsible official for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this Unified Development Code.
 - (2) The incompleteness of the application shall be grounds for denial or revocation of the application.
 - (3) A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this Code. A determination of completeness shall be made by the responsible official in writing to the applicant no later than the tenth (10th) business day after the official filing date that the application is submitted to the responsible official. The determination shall specify the documents or other information needed to complete the application and shall state the date the application will expire if the documents or other information is not provided. An application shall be deemed complete on the eleventh 11th business day after the application has been received if the applicant has not otherwise been notified that the application is incomplete.
 - (4) The application shall expire on the forty-fifth (45th) day after the date the application is filed if:
 - a. The applicant fails to provide documents or other information necessary to comply with the City's requirements relating to the permit application;
 - b. The City provides to the applicant, not later than the tenth (10th) business day after the date the application is filed, written notice that specifies the necessary documents or other information, and the date the application will expire if the documents or other information is not provided; and

- c. The applicant fails to provide the specified documents or other information within the time provided in the notice.
- (5) If the application is not completed on the 45th day after the application is submitted to the responsible official, the application will be deemed to have expired and it will be returned to the applicant together with any accompanying applications.

Section 1.2.1.3 Waiver

- (a) Notwithstanding the requirements of Section 1.2.1.2, the responsible official may initially waive the submission of any information in the application and accompanying materials that is not necessary due to the scope and nature of the proposed activity. The decision maker may withdraw a waiver of application requirements if the decision maker determines that meeting the previously waived requirements is necessary to determining compliance with applicable standards of approval.

Section 1.2.1.4 Official Filing Date

- (a) The time period established by state law or this Unified Development Code for processing or deciding an application shall commence on the official filing date. The official filing date is the date the applicant delivers the application or plan to the City or deposits the application or plan with the United States Postal Service by certified mail addressed to the City.

Section 1.2.1.5 Conference Post-Submission Conference

- (a) **Request, Optional.** An applicant is encouraged to request a post-submission conference with the responsible official after submittal of an application in order to determine whether the application is complete. The purposes of the post-submission conference are to ascertain the nature of the proposed development; to identify the procedures and standards that apply to the application; to discuss any project modifications recommended by the responsible official; to identify any requests for relief to be sought by the applicant; to determine whether any waiver of application requirements should be granted; and to outline the schedule for acting on the application.
- (1) A post-submission conference is optional and shall not be required as a standard of approval of the application.
 - (2) An applicant is encouraged to contact and meet with neighborhood organizations for the area in which the applicant's proposed development is located. An applicant may request, in connection with a post-submission conference, contact information for neighborhood organizations known by the City. Contact with these organizations is optional and shall not be required as a standard of approval of the application.

Section 1.2.1.6 Universal Development Application Contents

- (a) **Application Forms Generally.** The City is hereby authorized to prepare application forms that include information requirements, checklists, drawing sizes, applicant contact information, and any other relevant information.
- (b) **Information for All Applications.** All development applications or petitions for a legislative decision shall contain the following information:
 - (1) Identification of property owner and authorized agent;
 - (2) Description of the property and the nature of the development that is the subject of the application;
 - (3) Identification of all zoning classifications (inside the City only) for the property;
 - (4) Identification of all pending legislative applications for the property;
 - (5) Identification of decisions on all quasi-judicial or administrative applications for the property that remain in effect;
 - (6) Identification of all accompanying applications;
 - (7) Identification of all pending or accompanying requests for relief;
 - (8) Demonstration of compliance with approved priority permits; and
 - (9) Proposed waiver, if any, of the time for decision on the application.

Section 1.2.1.7 Application Fees

- (a) Every petition for a legislative action or application for a development permit or approval shall be accompanied by the prescribed fees set forth in the fee schedule prepared and adopted as an appendix to this Code. The prescribed fee shall not be refundable, except when the City Council waives the application fee for resubmission of an approval that was denied. The fee schedule may be amended from time to time by resolution of the City Council.

Section 1.2.1.8 Modification of Applications

- (a) The applicant may modify any application following its filing and prior to the expiration of the period during which the City is required to act on the application. If the modification is under revisions requested by the City, and the modification is received at least five (5) working days prior to the time scheduled for decision on the application, the application shall be decided within the period for decision prescribed by this Unified Development Code. In all other instances (e.g., when the applicant chooses to submit a revised application on his own accord because of a change in development decisions), submittal of a modified application shall extend the time for deciding the application for a period equal to the time specified in this Unified Development Code to decide the original application, commencing on the date the modified application is received, unless a waiver of the time for decision is first required, in which case the terms of the approved waiver shall govern the period within which the City must act on the application.

Section 1.2.1.9 Action by Responsible Official

- (a) Following the determination that an application is complete, the responsible official shall circulate the application to all other administrative officials whose review is required for a decision on the application and compile the comments and recommendations of the officials. The responsible official shall render a decision in the time prescribed, if the official is the decision-maker for the application. In all other cases, the responsible official shall forward the application for review to any advisory body and the final decision-maker, and prepare a report to such board or commission, or to the City Council, as the case may be, including the compilation of any comments and recommendations by other administrative officials. The responsible official also shall prepare required notices and schedule the application for decision within the time and in the manner required by this Unified Development Code.

Section 1.2.1.10 Exemption Determination

- (a) For any application for a development permit for which exemptions are listed, an exemption from the requirement to apply for such permit shall be determined in the following manner:
- (1) The application for exemption must be filed on a form supplied by the responsible official, must be accompanied by the review fee set by the City Council, and must include all of the following information:
 - a. Name, address, and telephone number of the property owner and the applicant.
 - b. A brief description of the activity or development for which exemption is sought;
 - c. A scale drawing depicting the boundaries of the site, the location of existing improvements on the site, and the location of the proposed development activities on the site.
 - d. Information establishing the basis for the exemption.
 - (2) The responsible official shall notify the applicant of the decision. If the responsible official denies the application for exemption, the official shall require that an application for the development permit be prepared in accordance with this Code.
- (b) An exemption is a separate and distinct consideration that is differentiated from a special exception (refer to Section 2.2.5.1) and/or a variance (refer to Section 2.2.5.2).
- (c) The following sections within this UDC contain exemptions:
- (1) Section 1.2.6.10 (enforcement and revocation of permits),
 - (2) Section 2.5.5.2(b) (telecommunications),
 - (3) Section 2.6.2.1(d) (building façade materials requirements),

- (4) Section 3.1.1.3 (plat exemptions),
- (5) Section 3.2.10.1(b)(4) (park dedication),
- (6) Section 4.1.1.1(a) (site plans),
- (7) Section 4.1.2.2(a) (site development permits),
- (8) Section 4.1.2.6(c) (sign permits).

Section 1.2.1.11 Action by Advisory Body

- (a) In the absence of a recommendation from an advisory body by a majority vote on a proposed application, the advisory body shall be presumed conclusively to have recommended that the application be considered by the City Council with a recommendation for denial from the advisory body.

Section 1.2.1.12 Decision

- (a) The decision-maker for the application shall approve, approve with conditions or deny the application within the time prescribed by this Unified Development Code. Unless otherwise prescribed by law or City Charter, where the decision-maker is a board, commission or the Council, the application shall be decided by majority vote of a quorum of the members of the board, commission or the Council, provided that a super-majority vote or other decision rule on the application has not been invoked in accordance with the provisions of law, charter or this Code.

Section 1.2.1.13 Conditions

- (a) The initial or final decision-maker may attach such conditions to the approval of an application as are reasonably necessary to assure compliance with applicable requirements of this Unified Development Code.

Division 2 – Notice Requirements

Section 1.2.2.1 Initiation of Application

- (a) **Initiation Only By Owner.** Unless otherwise expressly provided by this Unified Development Code, a petition for legislative action affecting land, other than a petition for a text amendment or a zoning amendment, or an application for a development permit, may be initiated only by the owner of an interest in the land subject to the application, or the owner's designated agent. If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf. The responsible official may establish the type of documents needed to determine ownership or agency.

Section 1.2.2.2 Published Notice

- (a) Whenever published notice of a public hearing before a board or commission or the City Council is required under state law, the City Charter, or this Unified Development Code, the responsible official shall cause notice to be published in a newspaper of general circulation in the City before the 15th day before the date set for the required hearing. The notice shall set forth the date, time, place and purpose of the hearing, and identification of the subject property, where the decision concerns an individual tract or parcel of land.

Section 1.2.2.3 Personal Notice

- (a) Whenever personal notice of a public hearing is required by state law, the City Charter, or this Unified Development Code before a board or commission or the City Council, the responsible official shall cause notice to be sent by regular mail before the 10th day before the hearing date to 1) each owner of real property located within 200 feet of the exterior boundary of the property in question, 2) the applicant and/or property owner, and 3) if the matter to be considered is an appeal, to the appellant. The notice shall set forth the name of the applicant, the time, place and purpose of the hearing, identification of the subject property, and if the matter to be considered is an appeal, the name of the appellant.
- (1) Notice shall be sent to each owner indicated on the most recently approved municipal tax roll for land inside the City limits, and, when required by state law, on the most recently approved county tax roll for land in the extraterritorial jurisdiction. For recently annexed land that is not included on the most recently approved municipal or county tax roll, notice may be given by publication.
 - (2) Notice may be served by depositing the notice, properly addressed and first class postage prepaid, in the United States mail.

Section 1.2.2.4 Posting Notice on Property

- (a) Any person, firm or corporation requesting a zoning change, a conditional use permit (CUP), or a variance from the terms of this UDC shall be required to erect and maintain a sign(s), to be inspected by the City, upon the property for which a variance or zoning change has been requested. Such sign(s) shall be located as follows:
- (1) One (1) sign per street frontage shall be located within thirty feet (30') of the abutting street, or as determined by the City Manager or his/her designee.
 - (2) So as to be clearly visible and readable from the public right-of-way and not obstructed in any manner.
 - (3) So as not to create a hazard to traffic on the public rights-of-way abutting the property.
 - (4) In the case of a variance request, on the subject property at least ten (10) days prior to the hearing of such variance request by the Zoning Board of Adjustment, and to remain continuously on said property until final action by the Board or withdrawal of the case by the applicant. Removal of the sign by the

applicant prior to a decision by the Zoning Board of Adjustment shall constitute a withdrawal of the request.

- (5) In the case of a zoning change request or a request for a CUP, on the subject property at least ten (10) days prior to the hearing of such request by the Planning and Zoning Commission, and to remain continuously on said property until final action by the City Council or withdrawal of the case by the applicant. Removal of the sign by the applicant prior to a recommendation by the Planning and Zoning Commission and/or a final decision by the City Council shall constitute a withdrawal of the request.
- (b) The signs shall be of a size, type, and message content as determined by the City, but shall advise that a variance, CUP, or zoning change has been requested and shall list the telephone number of the Planning Department for more information. The City is hereby authorized to establish size, type and message requirements for such signs and to distribute such requirements to applicants.
- (c) Upon making an application for a variance, CUP, or zoning change, the applicant shall place sign(s) as required by this section. The City shall inspect such sign(s) to ensure compliance as required by this section.
- (d) In the case of a variance request, after the variance request is approved by the Zoning Board of Adjustment, denied by the Zoning Board of Adjustment, or withdrawn by the applicant, the applicant shall remove the sign from the area of the request within ten (10) days of such event.
- (e) In the case of a zoning change request or a request for a CUP, after the request is approved by the City Council or Planning and Zoning Commission, denied by the City Council or Planning and Zoning Commission, or withdrawn by the applicant, the applicant shall remove the sign from the area of the request within ten (10) days of such event.
- (f) It shall be unlawful for anyone to remove, destroy, deface or obstruct the view of a sign which gives notice that a variance, CUP, or zoning change has been requested.
- (g) In the event the applicant shall fail to erect and/or maintain signs in accordance with this section, then the public hearing before the appropriate body shall be postponed to a date in the future which would allow time for compliance.
- (h) The erection of any sign required by this section shall not require a permit under Section 4.1.2.6 of this UDC.
- (i) The owner or applicant shall promptly notify the Planning Department of any sign required by this section which becomes lost, stolen or vandalized. In the case of a variance request, the Zoning Board of Adjustment shall have the power to decide whether or not there has been substantial compliance with the posting requirements in the case of lost, stolen or vandalized signs. In the case of a zoning change request or a request for a CUP, the Planning and Zoning Commission shall have the power to decide whether or not there has been substantial compliance with the posting requirements in the case of lost, stolen or vandalized signs.

Ord. No. 2000T-2, Section 1.2.2.4, February 26, 2007.

Section 1.2.2.5 Notification Following Decision

- (a) Within ten (10) working days of the date of a responsible official, board, commission or City Council determination on a development application, written notification of the action shall be mailed to the applicant, stating the action taken. Record of this notification shall be filed with the secretary of the board or commission or City Council on the date of notification.

Section 1.2.2.6 Notification of Appeal or Revocation

- (a) Whenever appeal is taken from a final decision on a development application following a public hearing, or whenever the City is to consider revocation of a development permit which was obtained following a public hearing, personal notice of the appeal or revocation proceeding shall be provided in the manner prescribed by Section 1.2.2.3. If no public hearing was held prior to approval of the development application, personal notice of revocation shall be given only to the holder of the permit.

Division 3 – Public Hearings

Section 1.2.3.1 Setting of the Hearing

- (a) When the responsible official determines that a development application is complete and that a public hearing is required by this Unified Development Code, the official shall consult with the secretary of the body required to conduct the hearing and shall select a place and a time certain for the hearing, and shall cause notice of such hearing to be prepared and made under Section 1.2.2.1. The time set for the hearing shall conform to the time periods required by this Code.

Section 1.2.3.2 Conduct of Hearing

- (a) Any person may appear at the public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing shall state his or her name, address, and if appearing on behalf of an organization, state the name and mailing address of the organization for the record.
- (b) The public hearing shall be conducted in accordance with State law.

Section 1.2.3.3 Record of Proceedings

- (a) The body conducting the hearing shall record the proceedings by any appropriate means.

Section 1.2.3.4 Continuance of Proceedings

- (a) The body conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time and place. No notice shall be required if a hearing is continued. If a public hearing is closed, no further public testimony shall be taken.

Section 1.2.3.5 Additional Rules

- (a) The body conducting the hearing may adopt rules of procedure to limit the number of applications for development approval which may be considered per meeting and the time for each presentation, and may apply such additional rules to govern the public hearing which are not inconsistent with this section.

Section 1.2.3.6 Joint Public Hearing

- (a) The City Council may convene a joint public hearing with the Planning and Zoning Commission in the manner prescribed in Chapter 211.007(d) of the Texas Local Government Code.

Division 4 – Post-Decision Procedures

Section 1.2.4.1 Re-Application Following Denial

- (a) A request which has been denied by the responsible official, the Planning and Zoning Commission, and/or the City Council may be resubmitted at any time for reconsideration by the city (a new filing fee must accompany the request). The responsible official, the Planning and Zoning Commission, and/or the City Council may deny any request with prejudice. If a request has been denied with prejudice, the request may not be resubmitted to the City for one (1) year from the original date of denial.

Section 1.2.4.2 Amendments and Revisions to Approval

- (a) Unless another method is expressly provided by this Unified Development Code, any request to amend or revise an approved development application shall be considered a new application, which must be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the City.

Division 5 – Expiration, Extension, & Reinstatement

Section 1.2.5.1 Time of Expiration

- (a) Unless otherwise expressly provided by this Unified Development Code, a complete, officially filed development application shall automatically expire and become null and void, and all activities under the permit thereafter shall be deemed in violation of this Code, if (1) the applicant fails to satisfy any condition that was imposed as part of the approval of the development application or that was made under the terms of any development agreement, within the time limits established for satisfaction of such condition or term, or (2) the applicant fails to submit a subsequent development application required by this Unified Development Code within the time so required. If no time limit for satisfaction of conditions is specified in the decision on the development application, the time shall be presumed to be two (2) years from the date the complete application was officially filed, except as provided in Section 1.2.5.8.

Section 1.2.5.2 Effect of Expiration

- (a) Upon the expiration of a complete, officially filed development application, all previously approved development applications for the same land also shall expire on the expiration date if the filing of an application for the expired permit was required to avoid expiration for the previously approved permit or permits, except as provided in Section 1.2.5.8. Thereafter, a new application for each permit deemed expired under this section must be approved subject to regulations in effect at the time the new application is accepted for filing.

Section 1.2.5.3 Extension Procedures - Initial Request

- (a) Unless a different time is expressly provided for a specific procedure by this Unified Development Code, the responsible official or the board, commission or the City Council that finally approves a development application may grant an initial extension of the time for expiration of the application for a period not to exceed one (1) year from the date of the expiration of the application, provided that a request for extension is made in writing at least thirty (30) days before the approved application expires. Every request for extension shall include a statement of the reasons why the expiration date should be extended. The decision-maker may grant a request for an initial extension upon demonstration that circumstances beyond the control of the permit holder have resulted in the permit holder's inability to perform the tasks necessary to prevent the permit from expiring before the expiration date.

Section 1.2.5.4 Extension Procedures - Subsequent Extension

- (a) A permit-holder may apply for an extension of the expiration date for an application for a period not to exceed two (2) years from the date of the expiration of an officially filed, complete application. A second (2nd) extension of the expiration date of an officially filed, complete application may be granted for a period not to exceed one (1) additional year. The extension application must be in writing. Such an extension

may be granted only by the City Council. In determining whether to grant a request, the Council shall take into account the reasons for the requested extension, the ability of the applicant to comply with any conditions attached to the original approval, whether extension is likely to result in timely completion of the project, and the extent to which any newly adopted regulations should be applied to the proposed development.

Section 1.2.5.5 Conditions

- (a) In granting an extension, the official or body deciding the request may impose such conditions as are needed to assure that the land will be developed in a timely fashion and that the public interest is served. In granting a subsequent extension request, the City Council may require that one or more newly adopted development standards be applied to the proposed development.

Section 1.2.5.6 Reinstatement

- (a) Unless otherwise provided by this Unified Development Code, an applicant may request reinstatement of an expired development application by filing a written request with the responsible official within thirty (30) days of the date of expiration. The request for reinstatement shall include a statement of the reasons why the application should be reinstated and extended. A request for reinstatement shall be processed and decided in the manner provided for an extension of an expiration period for more than one (1) year. The expiration date shall not be extended for more than two (2) years from the date a complete application was officially filed.

Section 1.2.5.7 Effect of Decision on Extension or Reinstatement

- (a) The granting of an extension or reinstatement request for a permit also extends or reinstates any other permits otherwise deemed expired under Section 1.2.5.2. The denial of an extension or reinstatement results in the immediate lapse of the permit and any other permits deemed expired under Section 1.2.5.2. Thereafter, the permit holder shall file a new application for a permit or permits before undertaking any activity authorized by the lapsed permit.

Section 1.2.5.8 Expiration for Projects Commenced On or After September 1, 2005

- (a) Notwithstanding any other provision of this Unified Development Code, for any development permit authorized by this Code for which an expiration date is established and which is submitted for filing after September 1, 2005, the expiration date shall be two (2) years following the date of approval of the permit, unless the holder of the permit files a petition before such date for a vested rights determination pursuant to Article 3, Division 3 of this Chapter 1, alleging that progress has been made toward completion of the project for which the application subject to expiration was filed. If a vested rights petition is timely filed, the City Council shall determine the expiration date of the permit in deciding the petition.

- (b) Notwithstanding any other provision of this Unified Development Code, for any development permit authorized by this Code which is submitted for filing after September 1, 2005, and which has expired under subsection (a), all previously approved development applications for the same land also shall expire no later than five years from the date of filing of the first application for the project for which the expired application was filed, if the filing of an application for or approval of the expired permit was required to avoid expiration for the previously approved permit or permits, unless the holder of such permits files a petition before such date for a vested rights determination pursuant to Article 3, Division 3 of this Chapter 1, alleging that progress has been made toward completion of the project for which the applications subject to expiration were filed. If a vested rights petition is timely filed, the City Council shall determine the expiration date of the previously approved permits in deciding the petition.

Division 6 – Enforcement & Revocation of Permits

Section 1.2.6.1 Enforcement Activities

- (a) Enforcement activities include informal contacts with individuals to advise them of requirements, the issuance of verbal warnings, written warnings, and municipal court citations, formal court action, and billing and collection. Employees of the Fire Marshal's office, Planning, Building Inspections, Code Enforcement, Public Works, Utilities, and Engineering Departments are authorized to issue municipal court citations for violations of this article.

Section 1.2.6.2 Right to Enter

- (a) The authorized official shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this Unified Development Code. Submittal of any application for a development permit that authorizes construction of structures or improvements shall be construed as a grant of authority to the responsible official to enter on land subject to the application for purposes of enforcing the approved permit.

Section 1.2.6.3 General Remedies

- (a) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used or developed in violation of this Unified Development Code or any development application approved there under, in addition to other remedies, the City may institute any appropriate action or proceedings to prevent or abate such activity. Appropriate action or proceedings include termination of utility services (water, gas, electric); revocation of permits, licenses, or bonds; and institution of legal action in a court of competent jurisdiction.

Section 1.2.6.4 Stop Work Orders

- (a) Whenever any construction or development activity is being done contrary to any term, condition or requirements of an approved development application or this Unified Development Code, the authorized official may order the work stopped by notice in writing, served on the property owner or authorized agent. Notice shall be given before the order shall be effective, except when the order should be effective immediately to protect and preserve the public health, safety, or general welfare. Any person thereafter shall cease and desist from further development or construction material to the alleged noncompliance, until corrected by compliance and authorized by the responsible official to proceed with the work. This prohibition shall extend throughout any appeal period.
- (b) The owner or authorized agent may appeal the stop work order to the authorized official by giving written notice. The authorized official shall hear the appeal within five (5) working days of receiving the notice.
- (c) The appellant may appeal a negative ruling by the authorized official in writing to the City Manager, who shall hear the appeal within five (5) working days after receipt of the notice of appeal.
- (d) The decision-maker on the appeal may require the placement of temporary erosion control, drainage protection or other measures by the owner or appellant in order to protect the site and the community resources during the appeal period.
- (e) The authorized official, City Manager, or the City Council, as the case may be, shall decide the appeal and make such order as is necessary to assure compliance with the terms of this Unified Development Code and all approved development applications.

Section 1.2.6.5 Municipal Court Actions

- (a) The City Attorney is authorized to prosecute violations of this Unified Development Code in the municipal court where jurisdiction lies for the action.
- (b) In prosecutions for violations of this Unified Development Code, it shall not be necessary to allege or prove a culpable mental state, as said requirement is hereby waived.
- (c) In prosecutions for violations of Division 5 of Article 2 of Chapter 4 of this Unified Development Code, there shall be a rebuttable presumption that:
 - (1) The record owner of real property upon which a sign is illegally erected, placed, constructed, repaired, or modified is the entity that is responsible for or caused said erection, placement, construction, repair, or modification, if the sign is located on private property; or
 - (2) The business entity advertised on a sign illegally erected, placed, or constructed on public property is the entity that is responsible for or caused said erection, placement, or construction.
 - (3) The primary beneficiary of any advertisement, handbill, circular, poster or piece of paper attached to any public utility pole is the person who attached or caused the attachment to the pole. The term "primary beneficiary" means a

person(s) or legal entity(s) that benefits from the advertisement, handbill, circular, poster or piece of paper.

Ord. No. 2000T-3, Section 1.2.6.5, July 9, 2007.

Section 1.2.6.6 Civil Court Actions

- (a) The City Attorney is authorized to file and prosecute an action at law or in equity, where permitted under the laws of Texas, in a court of competent jurisdiction to enforce the provisions of this Unified Development Code. The initiation of one form of enforcement action by the City Attorney will not preclude the City Attorney from initiating any other form of enforcement action.

Section 1.2.6.7 Fines and Penalties

- (a) A person who violates any provision of this Unified Development Code pertaining to fire safety, zoning or public health and sanitation, including dumping of refuse, shall be punished, upon conviction, by a fine not to exceed \$2,000. A person who violates any other provision of this Unified Development Code shall be punished, upon conviction, by a fine not to exceed \$500. The owner or owners of any building or premises or part thereof, where anything in violation of this ordinance shall be placed or shall exist, any architect, builder, contractor, agent, persons or corporation employed in connection therewith, and who may have assisted in the commission of any such violation, shall be guilty of a separate offense and upon conviction shall be fined as herein provided. This Subsection does not apply to enforcement of an ordinance in the City's extraterritorial jurisdiction.

Section 1.2.6.8 Separate Offenses

- (a) Each day that a violation continues shall be deemed a separate offense under this section.

Section 1.2.6.9 Revocation Proceedings

- (a) If an authorized official determines, based on inspection or investigation by the City, that there are reasonable grounds for revocation of an approved development application, the official shall set a hearing before the board or commission to which appeal may be taken from such decision under this Unified Development Code. If the City Council was the original decision-maker, the Council may refer the proposed revocation to the Planning and Zoning Commission for its report and recommendation prior to such hearing. Circumstances that warrant revocation of an approved development application shall include but not be limited to the following:

- (1) A material mistake was made in approving the development application;
 - (2) Approval of the development application was procured on the basis of material misrepresentations or fraud on the part of the applicant;
 - (3) Development activities being undertaken on the land subject to the development permit are not in conformity with terms of the approved development application;
 - (4) The use authorized by the permit is in violation of a condition of approval of the approved development application;
- (b) The applicant and any interested parties shall be given notice of the hearing in the manner provided in Chapter 1, Article 2, Division 2. The public hearing shall be conducted in accordance with the procedures described in Chapter 1, Article 2, Division 3.
- (c) In rendering its decision whether to revoke the approved application, the decision-maker shall determine whether the activity authorized under the original approved application complies with the terms, conditions and requirements of such approval. The decision-maker may revoke the application, affirm it, or affirm it with attached conditions that assure that the terms; conditions and requirements of the application shall be met.
- (d) Following revocation and pending any appeal, it shall be unlawful to undertake or perform any activity that was previously authorized by the approved application without applying for and obtaining approval of a new development application for the activity. Appeal from the decision to revoke the approved development application shall be to the City Council, unless the decision to revoke was made by the Council, in which case revocation is final.

Section 1.2.6.10 Exemption

- (a) This division does not apply to building permits issued under separate ordinance or provision of the City Code.

Division 7 – Text Amendments

Section 1.2.7.1 Amendments to the Unified Development Code (UDC)

- (a) The City Council may from time to time amend, supplement, or change the text of this Unified Development Code by a majority vote of its members, unless a different vote is otherwise required by this Unified Development Code, the City Charter, or other law.

Section 1.2.7.2 Hearing and Notice

- (a) The City Council shall conduct a public hearing on a proposed text amendment in accordance with Chapter 1, Article 2, Division 3 and cause notice of the amendment

to be published in accordance with Section 1.2.2.1 for amendments to the following provisions of this Unified Development Code (no personal notice is required):

- (1) Any provision of Chapter 1;
 - (2) Any provision of Chapter 2;
 - (3) Any provision of Chapter 4; or
 - (4) Any provision of Chapter 5.
- (b) The hearing and notice requirements of this section do not apply to an action of the City Council imposing a moratorium on the acceptance, processing or issuance of development permits or petitions for legislative actions.
- (c) Amendments to Chapter 3 may be made by notification in accordance with Section 1.2.2.1.

Section 1.2.7.3 Recommendation of Advisory Body

- (a) Where required by this Unified Development Code, the City Charter, or other law, the City Council shall first consider the recommendation of the Planning and Zoning Commission, together with the recommendations of any other advisory body prescribed by this Code, concerning the proposed text amendment. Where action is required of the Planning and Zoning Commission or other advisory body on a proposed text amendment, the advisory body also shall conduct a public hearing.

Section 1.2.7.4 Initiation of Text Amendments

- (a) Unless otherwise limited by this Unified Development Code, a petition for amending the text of the Unified Development Code may be initiated by the City Council, the Planning and Zoning Commission, a board, commission or advisory body described in Chapter 1, Article 1, an ad hoc advisory body appointed by the Council, a responsible official designated in this Code, any citizen or owner of land within the City limits, or any citizen or owner of land within the City's extraterritorial jurisdiction (for a regulation that applies to the ETJ).
- (1) Except for amendments initiated by the City Council, the petition to amend the text of this Unified Development Code shall state with particularity the nature of the amendment and the reason for the amendment.
 - (2) A petition for a text amendment may be submitted in conjunction with a development application, approval of which depends on approval of the amendment, but shall in every such instance be decided prior to any action by the City on the development application.
 - (3) The City Council may establish rules governing times for submission and consideration of text amendments.

Article 3 – Relief Procedures

Division 1 – Appeals

Section 1.3.1.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of an appeal is to contest an initial decision on a development application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this Code that apply to the development application.
- (b) **Applicability.** Unless otherwise provided by this Code, any final administrative decision on a development application by a City official, including a determination by the responsible official that a proposed development is exempt from one or more development applications, may be appealed to the board or commission designated in the regulations establishing the procedure by which the decision was made. For administrative decisions on applications authorized in Chapters 4, appeal shall be to the Zoning Board of Adjustment. Final decisions on a development application by a board or commission may be appealed to the City Council only if expressly provided for in the regulations establishing the procedure by which the decision was made.
- (c) **Effect.** The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the development application for which approval was sought.

Ord. No. 2000T-2, Section 1.3.1.1, February 26, 2007.

Section 1.3.1.2 Appeal Requirements

- (a) **Who May Appeal.** The applicant and any interested person may appeal a final decision on a development application to the appellate body designated by this Code, if any.
- (b) **Form of Appeal.** The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by the fee established by the City Council. An appeal by an applicant shall be accompanied by a copy of the development application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant.
- (c) **Time for Filing Appeal.** A written appeal must be filed with the responsible official within ten (10) working days from the date of notification of the final decision on the development application.

Section 1.3.1.3 Processing of Appeal and Decision

- (a) **Responsible Official.** The responsible official for an appeal is the responsible official designated by this Code for processing of the development application at issue in the appeal. Upon receipt of a written appeal, the responsible official shall

compile all documents constituting the record of the decision on appeal and transmit the record to the appellate body.

- (b) **Stay of Proceedings.** Receipt of a written appeal of a decision on a development application stays all proceedings of the City in furtherance of the decision from which appeal is taken, including without limitation acceptance, processing or issuance of any development applications that are dependent on the application being appealed, and any development activities authorized by initial approval of the development application.
 - (1) The stay shall be lifted only if the responsible official certifies in writing to the appellate body that a stay would cause imminent peril to life or property.
 - (2) Thereafter, the stay may be reinstated only by order of the appellate body or a court of record, on application, after notice to the responsible official, for due cause shown.
- (c) **Hearing and Notice.** Notification of the appeal and conduct of the public hearing thereon shall be in accordance with Article 2, divisions 2 and 3 of this Chapter 1. The initial public hearing on the appeal shall be held within twenty-five (25) working days after the filing of the appeal with the responsible official, unless a different time is prescribed by the provisions of this chapter.
- (d) **Decision on Appeal.** The appellate body shall decide the appeal within thirty (30) working days of the close of the public hearing. The appellate body shall affirm, reverse or modify the decision from which the appeal was taken.
- (e) **Notification of Decision on Appeal.** The appellant and the applicant for the development permit shall be notified of the decision on appeal in the manner provided in Article 2, Division 2 of this Chapter 1.

Section 1.3.1.4 Criteria

- (a) In deciding the appeal, the appellate body shall apply the same criteria that govern the initial decision on the development application under the provisions of this Code.

Section 1.3.1.5 Expiration and Extension

- (a) For purposes of determining expiration or extension periods under this Code, the date of the appellate body's granting of relief on an appeal is the date on which the development application is deemed approved.

Division 2 – Petition for Relief from Dedication or Construction Requirement

Section 1.3.2.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of a petition for relief from a dedication or construction requirement is to assure that the application of uniform dedication and construction standards to a proposed plat does not result in a disproportionate burden on the

property owner, taking into consideration the nature and extent of the demands created by the proposed development on the City's public facilities systems.

- (b) **Applicability.** A petition for relief under this section may be filed by a property owner to contest any requirement to dedicate land or to construct public improvements for dedication to the public that is imposed under the City's public facilities standards in Chapter 3 of this Unified Development Code to a plat application or to any related development application authorized under this Code, whether the requirement is under uniform standards, or attached as a condition to approval of the petition or permit. A petition under this section shall not be used to waive standards on grounds applicable to a petition for a waiver under Section 3.1.1.6 of this UDC.
- (c) **Effect.** If the relief requested under the petition is granted in whole or in part by the City Council, the dedication or construction requirement initially imposed shall be modified accordingly, and the standards applied or the conditions attached to initial approval of the development application shall be thereafter applied in accordance with the relief granted. In the event the original application was denied by the decision-maker based upon the property owner's failure to incorporate the dedication or construction requirement in the proposed permit, the application shall be remanded to the original decision-maker for a decision consistent with the relief granted by the Council.

Section 1.3.2.2 Petition Requirements

- (a) **Who May Apply.** A petition for relief from a dedication or construction requirement may be filed by a property owner or the applicant for a plat application, in which the dedication or construction requirement has been applied or attached as a condition of approval, or as grounds for denying the plat application.
- (b) **Form of Petition.** The petition for relief from a dedication or construction requirement shall allege that application of the standard or the imposition of conditions relating to the dedication or construction requirement is not roughly proportional to the nature and extent of the impacts created by the proposed development on the City's water, wastewater, roadway, drainage or parks system, as the case may be, or does not reasonably benefit the proposed development.
- (c) **Study Required.** The petitioner shall provide a study in support of the petition for relief that includes the following information:
 - (1) Total capacity of the City's water, wastewater, roadway, drainage or park system to be utilized by the proposed development, employing standard measures of capacity and equivalency tables relating the type of development proposed to the quantity of system capacity to be consumed by the development. If the proposed development is to be developed in phases, such information also shall be provided for the entire development proposed, including any phases already developed.
 - (2) Total capacity to be supplied to the City's water, wastewater, roadway, drainage or park system by the proposed dedication of an interest in land or construction of capital improvements. If the development application is part of

a phased development, the information shall include any capacity supplied by prior dedications or construction of capital improvements.

- (3) Comparison of the capacity of the City's public facilities system(s) to be consumed by the proposed development with the capacity to be supplied to such system(s) by the proposed dedication of an interest in land or construction of capital improvements. In making this comparison, the impacts on the City's public facilities system(s) from the entire development shall be considered.
 - (4) The effect of any City participation in the costs of oversizing the capital improvement to be constructed in accordance with the City's requirements.
 - (5) Any other information that shows the alleged disproportionality between the impacts created by the proposed development and the dedication or construction requirement imposed by the City.
- (d) **Time for Filing Petition and Study.** A petition for relief from a dedication or construction requirement shall be filed with the responsible official within ten (10) days of the Planning and Zoning Commission's decision to conditionally approve or deny an application for approval of a Preliminary Subdivision Plat or a Preliminary Development Plat, or where no Preliminary Subdivision Plat or Preliminary Development Plat application has been submitted, an application for approval of a Final Subdivision Plat or Final Development Plat. The study in support of the petition shall be filed within 30 days of the initial decision, unless the petitioner seeks an extension in writing. The responsible official may extend the time for submitting the study for a period not to exceed an additional 30 days for good cause shown.

Section 1.3.2.3 Land in Extraterritorial Jurisdiction

- (a) Where land or facilities to be dedicated are located in the extraterritorial jurisdiction of the City and are to be dedicated to a county under an interlocal agreement under Tex. Loc. Gov't Code Chapter 242, or are located with a drainage district and are to be dedicated to the District, a petition for relief or study in support of the petition shall not be accepted as complete for filing by the responsible official unless the petition or study is accompanied by verification that a copy has been delivered to the county or drainage district in which the facilities are to be located.

Section 1.3.2.4 Processing of Petitions and Decision

- (a) **Responsible Official.** The City Engineer is the responsible official for a petition for relief from a dedication or construction requirement. Where the petition is for relief from dedication of rights-of-way for or construction of a facility in the City's extraterritorial jurisdiction that is to be dedicated to a county under an interlocal agreement under Texas Local Government Code, Chapter 242, or to a drainage district, the City Engineer shall coordinate a recommendation with the county or drainage district official responsible for reviewing plats in the county.
- (b) **Evaluation, Recommendation.** The City Engineer shall evaluate the petition and supporting study and shall make a recommendation to the City Council based upon the information contained in the study, any comments received from the county, and the City Engineer's analysis. In evaluating the petition and study, the City Engineer

shall take into account the maximum amount of any impact fees to be charged against the development for the type of capital improvement that is the subject of the petition, or similar developments on the City's water, wastewater, roadway, drainage or parks systems. The City Engineer may utilize any reasonable methodology in evaluating the petitioner's study, including but not limited to impact fee methodologies.

- (c) **Decision-Maker.** The City Council shall decide the petition for relief from a dedication or construction requirement.
- (d) **Public Hearing.** The City Council shall conduct a public hearing in accordance with Article 2, Division 3 of Chapter 1, within thirty (30) working days after the study supporting the petition is filed with the City Engineer.
- (e) **Burden of Proof.** The petitioner bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the petitioner.
- (f) **Decision.** The City Council shall consider the petition for relief from a dedication or construction requirement and, based upon the criteria set forth in Section 1.3.2.5, shall take one of the following actions:
 - (1) Deny the petition for relief, and impose the standard or condition in accordance with the initial decision; or
 - (2) Deny the petition for relief, upon finding that the proposed dedication or construction requirements are inadequate to offset the impacts of the development on community water, wastewater, roadway or drainage facilities, and either deny the development application or require that additional dedications of rights-of-way for or improvements to such systems be made as a condition of approval of the application; or
 - (3) Grant the petition for relief, and waive in whole or in part any dedication or construction requirement to the extent necessary to achieve proportionality; or
 - (4) Grant the petition for relief, and direct that the City participate in the costs of acquiring land for or constructing the capital improvement under standard participation policies.
- (g) **Notification of Decision on Petition.** The petitioner shall be notified of the decision on the petition for relief in the manner provided in Article 2, Division 2 of Chapter 1.

Section 1.3.2.5 Criteria for Approval

(a) Criteria for Approval.

- (1) In deciding the petition for relief from a dedication or construction requirement, the City Council shall determine whether the application of the standard or condition requiring dedication of an interest in land for public improvements or construction of capital improvements is roughly proportional to the nature and extent of the impacts created by the proposed development on such water, wastewater, roadway, drainage or park system, and reasonably benefits the development.

- (2) In making such determination, the Council shall consider the evidence submitted by the petitioner, the City Engineer's report and recommendation and, where the property is located within the City's extraterritorial jurisdiction, or a drainage district, any recommendations from the county or district.

Section 1.3.2.6 Expiration and Extension

- (a) **Expiration or Failure to File Application.** Where a plat application or related application was denied based upon the imposition of the standard or condition requiring dedication of land or construction of a capital improvement, the petitioner shall resubmit the application to the original decision-maker within ninety (90) days of the date the petition for relief is granted, in whole or in part, showing conformity with the City Council's decision on the petition.
 - (1) If such re-submittal of the application is not made within the ninety-day (90-day) period, the relief granted by the City Council on the petition shall expire.
 - (2) The Council may extend the time for filing the development application for good cause shown, but in any event, the expiration date for the relief granted shall not be extended beyond one year from the date the petition was granted.
 - (3) If the development application is modified to increase the number of residential units or the intensity of non-residential uses, the responsible official may require a new study to validate the relief granted by the City Council.
 - (4) If the development application for which relief was granted is denied on other grounds, a new petition for relief may be required.
- (b) **Effect of Permit Expiration or Extension.** Where approval of the development application was conditioned on satisfaction of the dedication or construction requirement, the Engineering Director may require the applicant to submit a modified application or supporting materials consistent with the relief granted by the City Council on the petition.
 - (1) The relief granted on the petition shall remain in effect for the period the plat or related approved development application is in effect, and shall expire upon expiration of the plat or related application.
 - (2) Extension of the plat also shall result in extension of the relief granted on the petition.

Division 3 – Vested Rights Petition

Section 1.3.3.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of a vested rights petition is to determine whether one or more standards of this Unified Development Code should not be applied to a

development application by operation of state law, or whether certain permits are subject to expiration.

- (b) **Applicability.** A vested rights petition may be filed for an application, permit, plan or plat, or any development application authorized under Chapters 3 and/or 4 of this Unified Development Code, filed in accordance with the Texas Local Government Code, Chapter 245 or successor statute. A vested rights petition may not be filed with a petition for a text amendment, a zoning map amendment or any other request for a legislative decision by the City Council. A vested rights petition also may be filed prior to expiration of certain permits pursuant to Section 1.2.5.8.
- (c) **Effect.** Upon granting of a vested rights petition in whole or in part, the responsible official shall process the development application and the decision-maker shall decide the application in accordance with the standards specified in the relief order based on prior ordinance requirements or development standards, or extend the permit otherwise subject to application pursuant to Section 1.2.5.8.

Section 1.3.3.2 Petition Requirements

- (a) **Who May Petition.** A vested rights petition may be filed by a property owner or the owner's authorized agents, including the applicant, with any development application identified in Section 1.3.2.1, or by the holder of a permit subject to expiration pursuant to Section 1.2.5.8.
- (b) **Form of Petition.** The vested rights petition shall allege that the petitioner has a vested right for some or all of the land subject to the development application under Texas Local Government Code, Chapter 245 or successor statute, or pursuant to Texas Local Government Code, Section 43.002 or successor statute, that requires the City to review and decide the application under standards in effect prior to the effective date of the currently applicable standards. The petition shall include the following information and documents:
 - (1) A narrative description of the grounds for the petition;
 - (2) A copy of each approved or pending development application or permit (the "Vesting Permit") which is the basis for the contention that the City may not apply current standards to the development application which is the subject of the petition;
 - (3) The date of submittal of the application for the Vesting Permit, or of a development plan pursuant to which the Vesting Permit was subsequently filed, if the submittal date is different from the official filing date.
 - (4) The date the project for which the application for the Vesting Permit was submitted was commenced.
 - (5) Identification of all standards otherwise applicable to the development application from which relief is sought;
 - (6) Identification of any current standards which petitioner agrees can be applied to the development application at issue;
 - (7) A narrative description of how the application of current standards affect proposed use of the land, landscaping or tree preservation, open space, or

park dedication, lot size, lot dimensions, lot coverage or building size shown on the development application for which the petition is filed; and

- (8) A copy of any prior vested rights determination involving the same land.
 - (9) Where the petitioner alleges that a permit subject to expiration under Section 1.2.5.8 should not be terminated, a description of the events constituting progress toward completion of the project for which the permit subject to expiration was approved.
- (c) **Time for Filing Petition.** A vested rights petition shall be filed with a development application for which a vested right is claimed, except that the petition may be filed before the date of expiration of any permit when filed pursuant to Section 1.2.5.8. Where more than one application is authorized to be filed by this Unified Development Code, the petition may be filed simultaneously for each application.

Ord. No. 2000T-2, Section 1.3.3.2, February 26, 2007.

Section 1.3.3.3 Processing of Petitions and Decision

- (a) **Responsible Official.** The responsible official for a vested rights petition is the responsible official for processing the development application with which the petition is associated, except where a petition is submitted pursuant to Section 1.2.5.8. Where multiple applications are submitted, and there is more than one responsible official, the decision of each responsible official shall be coordinated with that of any other responsible official on the vested rights petition. The responsible official shall promptly forward a copy of the vested rights petition to the City Attorney following acceptance.
- (b) **Initial Decision.** If the responsible official is the decision-maker on the application, the official shall determine whether the relief requested in the vested rights petition should be granted in whole or in part, and shall formulate a written report summarizing the official's reasoning and setting forth the decision on the petition, which shall be delivered to the applicant within ten (10) business days from the date the vested rights petition is accepted for filing, unless the tenth business day falls on a weekend or a City holiday, in which case the deadline shall be the next business day following said weekend or holiday.
- (c) **Decision by Commission or Board on Petition.** If the development application is to be decided by the Planning and Zoning Commission or another board or commission, the Director shall submit a report in the form of a recommendation to the decision-maker. The commission or board shall render a decision on the vested rights petition in conjunction with its decision on the development application.
- (d) **Decision by City Council.** Where the City Council is the final decision-maker on the development application, or for any petition submitted pursuant to Section 1.2.5.8, the petitioner may submit a written request that the vested rights petition be immediately forwarded to the Council for a determination. The request must be accompanied by a waiver of the time for decision on the application imposed under this Unified Development Code pending decision by the Council on the petition, which shall stay further proceedings on the application. Upon receipt of the request,

the responsible official shall prepare a recommendation and forward the matter to the Council for decision, which shall decide the petition within thirty (30) calendar days of the petitioner's request. If no written request for Council referral is filed, the Council shall decide the vested rights petition with its decision on the development application.

- (e) **Appeal of Decision on Petition.** The petitioner or any interested person may appeal the responsible official's or the commission's or board's decision on the vested rights petition within ten (10) working days of the date of such decision to the City Council in accordance with the procedures in Division 1 of this Article 3. An appeal under this Subsection stays acceptance of filing of any related development applications. The Council shall decide the petition within thirty (30) days of receipt of the notice of appeal.

Ord. No. 2000T-2, Section 1.3.3.3, February 26, 2007.

Section 1.3.3.4 Action on Petition and Order

- (a) **Action on the Petition.** The decision-maker on the vested rights petition may take any of the following actions:
- (1) Deny the relief requested in the petition, and direct that the development application shall be reviewed and decided under currently applicable standards;
 - (2) Grant the relief requested in the petition, and direct that the development application shall be reviewed and decided in accordance with the standards contained in identified prior regulations; or
 - (3) Grant the relief requested in part, and direct that certain identified current standards shall be applied to the development application, while standards contained in identified prior regulations also shall be applied; or
 - (4) For petitions filed pursuant to Section 1.2.5.8, specify the expiration date or the conditions of expiration for the permit(s).
- (b) **Order on Petition.** The responsible official's report and each decision on the vested rights petition shall be memorialized in an order identifying the following:
- (1) The nature of the relief granted, if any;
 - (2) The approved or filed development application(s) upon which relief is premised under the petition;
 - (3) Current standards which shall apply to the development application for which relief is sought;
 - (4) Prior standards which shall apply to the development application for which relief is sought, including any procedural standards;
 - (5) The statutory exception or other grounds upon which relief is denied in whole or in part on the petition;

- (6) To the extent feasible, subordinate development applications that are subject to the same relief granted on the petition; and
- (7) For petitions filed pursuant to Section 1.2.5.8, the date of expiration of the permit or permits.

Section 1.3.3.5 Criteria for Approval

- (a) **Factors.** The decision-maker shall decide the vested rights petition based upon the following factors:
 - (1) The nature and extent of prior development applications filed for the land subject to the petition;
 - (2) Whether any prior vested rights determinations have been made with respect to the property subject to the petition;
 - (3) Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
 - (4) Whether current standards adopted after commencement of the project-affect proposed use of the land, landscaping or tree preservation, open space, or park dedication, lot size, lot dimensions, lot coverage or building size based upon the proposed development application;
 - (5) Whether any statutory exception applies to the standards in the current Unified Development Code from which the applicant seeks relief;
 - (6) Whether any prior approved applications relied upon by the petitioner have expired
 - (7) For petitions filed pursuant to Section 1.2.5.8, whether any of the events in Section 1.3.3.8(c) have occurred.
 - (8) Any other provisions outlined in the Texas Local Government Code Chapter 245 or successor statute.
- (b) **Conditions.** If the claim of vested rights under a petition is based upon a pending application subject to standards that have been superseded by current standards under this Unified Development Code, the decision-maker may condition any relief granted on the petition on the approval of the application under such prior standards.

Section 1.3.3.6 Application Following Final Decision on Petition

- (a) Following the City's final decision on the vested rights petition, the property owner shall conform the development application for which relief is sought to such decision. The decision-maker on the development application shall consider any application revised under this Subsection in accordance with the procedures for deciding the initial application under this Unified Development Code and in conformity with the relief granted on the petition. If the relief granted on the vested rights petition is consistent with the development application on file, no revisions are necessary. If proceedings have been stayed on the development application pending referral of

the vested rights petition to the City Council, proceedings on the application shall resume after the Council's decision on the vested rights petition.

Section 1.3.3.7 Expiration and Extension

- (a) **Expiration.** Relief granted on a vested rights petition shall expire on occurrence of one of the following events:
- (1) The petitioner or property owner fails to submit a required revised development application consistent with the relief granted within forty-five (45) days of the final decision on the petition;
 - (2) The development application for which relief was granted on the vested rights petition is denied under the criteria made applicable through the relief granted on the petition; or
 - (3) The development application for which relief was granted on the vested rights petition expires.
- (b) **Extension.** Extension of the date of expiration for the development application for which relief was granted on a vested rights petition shall result in extension of the relief granted on petition for a like period.

Section 1.3.3.8 Dormant Projects

- (a) **Definitions.** For purposes of this section only:
- (1) Initial permit means any of the following types of approvals granted under the Pearland Land Use and Urban Development Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development ordinance that was in effect prior to the adoption of this UDC, including: site plan, landscape plan, development plan, design plan, zoning site plan, special use permit, sign permit, preliminary plat, variances or any other application that was approved subject to a schematic drawing illustrating the location, arrangement, orientation or design of land uses, lots or improvements on a site intended for development.
 - (2) Final permit means a building permit, certificate of occupancy, or final plat approved under the Pearland Land Use and Urban Development Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development ordinance that was in effect prior to the adoption of this UDC.
- (b) **Expiration of Permits.** Any application for an initial permit that was approved or filed before, but that was not subject to an expiration date, two (2) years prior to the adoption date of this UDC, and that was under the Pearland Land Use and Urban Development Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development ordinance, shall expire on the effective date of this Unified Development Code.
- (c) **Reinstatement.** The owner of the land subject to an initial permit that expires under Subsection (b) above may petition the City Council to reinstate such zoning permit by filing a written petition within sixty (60) calendar days of the effective date of this

Unified Development Code. The petition shall clearly state the grounds for reinstatement, and shall be accompanied by documentation of one of the following:

- (1) As of two (2) years prior to the adoption date of this UDC, one of the following events had occurred:
 - a. A final permit for all or part of the land subject to the approved initial permit was approved, or was filed and was subsequently approved;
 - b. An application for a final permit was submitted for all or part of the land subject to the expired initial permit, but such application was rejected on grounds of incompleteness;
 - c. Costs for development of the land subject to the initial permit, including but not limited to costs associated with roadway, utility and other infrastructure facilities designed to serve the land in whole or in part, but exclusive of land acquisition costs, were incurred in the aggregate amount of five percent (5%) of the most recent appraised market value of the land;
 - d. Fiscal security was posted to ensure performance of an obligation required for all or a part of the land subject to the approved initial permit; or
 - e. Utility connection fees or impact fees for all or part of the land subject to the approved initial permit were paid.
- (2) After two (2) years prior to the adoption date of this UDC but before the expiration date specified in Subsection (b) above, one of the following events had occurred:
 - a. A final permit was approved for all or part of the land subject to the approved zoning permit, and remained in effect for such land on such expiration date; or
 - b. A complete application for approval of a final permit for all or part of the land subject to the approved initial permit was pending for decision on such expiration date.

(d) **Council Action on Reinstatement.** The City Council may take one of the following actions:

- (1) Reinstatement the expired initial permit without an expiration date, if it finds that the petitioner has met any one of the criteria listed in Subsection (c)(1);
- (2) Reinstatement the initial permit for all or part of the land subject thereto, if it finds that the petitioner has met any one of the criteria listed in Subsection (c)(2), subject to such expiration dates or other conditions that assure that the remaining land that is not subject to an approved or pending final permit application will be developed in a timely fashion. In granting relief under this provision, the Council may require that development of such remaining land is subject to standards enacted after approval of the initial permit;
- (3) Deny the petition, if it finds that the petitioner has failed to meet any of the criteria in Subsection (c); or

- (4) Reinstate the permit for only that part of the land subject to a pending final permit application, if it finds that the petitioner has met the criteria in Subsection (c)(2)(b) and the pending application subsequently was approved, and deny the petition for the remaining land subject to the expired initial permit.

Division 4 – Petition for Waivers

Section 1.3.4.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of a petition for a waiver is to determine whether one or more standards of applicable to plats within this Unified Development Code should not be applied to a development application by operation of state law.
- (b) **Applicability.** The applicant may file a petition for waiver of one or more standards applicable to a Preliminary Subdivision Plat or a Preliminary Development Plat, or where no Preliminary Subdivision Plat or Preliminary Development Plat application, has been submitted for approval, to the standards applicable to a Final Subdivision Plat or Final Development Plat, respectively, in accordance with Article 3, Division 2 of Chapter 1.

Section 1.3.4.2 Application & Decision-Maker

- (a) The waiver petition shall be decided by the Planning and Zoning Commission in conjunction with the application for approval of the preliminary plat.

Section 1.3.4.3 Criteria for Approval

- (a) The following criteria shall be applied in deciding a waiver:
 - (1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land such that the strict application of the provisions of this Chapter to the proposed use would create an unnecessary hardship or inequity upon or for the applicant, as distinguished from a mere inconvenience, in developing the land or deprive the applicant of the reasonable and beneficial use of the land;
 - (2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
 - (3) The waiver is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
 - (4) Granting the waiver will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
 - (5) Granting the waiver will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;
 - (6) The hardship or inequity is not caused wholly or in substantial part by the petitioner;

- (7) The request for a waiver is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
 - (8) The degree of variation requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.
- (b) **Burden of Proof.** The petitioner bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the petitioner.
- (c) **Decision.** The Planning & Zoning Commission shall consider the waiver petition and, based upon the criteria set forth in Subsection (a) above, shall take one of the following actions:
- (1) Deny the petition, and impose the standard or requirement as it is stated in this UDC; or
 - (2) Grant the petition, and waive in whole or in part the standard or requirement as it is stated in this UDC.
- (d) **Notification of Decision on Petition.** The petitioner shall be notified of the decision on the waiver petition in the manner provided in Article 2, Division 2 of Chapter 1.

Section 1.3.4.4 Effect of Approval

- (a) **Effect.** The waiver granted shall remain in effect for the period the plat or related approved development application is in effect, and shall expire upon expiration of the plat or related application. Extension of the plat also shall result in extension of the relief granted on the petition.