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GENERAL PROVISIONS

§ 150.01 DRIVEWAYS AND CULVERTS.

(A) All structures, buildings, and dwellings that require a driveway shall henceforth be required to install an approved culvert.

(B) Prior to any culvert installation or replacement, the property owner must attend Town Board meeting to obtain approval, to ensure proper sizing of pipe and proper installation.
(Ord. 26, passed 8-13-1979; Ord. 96-47, passed 7-8-1996) Penalty, see § 150.99

§ 150.02 BUILDING PERMITS.

No building permit for any facility or structure within the town or its extraterritorial jurisdiction shall be issued until the applicant has satisfied the town that it will meet all applicable town, county, state, and federal environmental, safety, and health rules and regulations. All required permits at any level must be submitted to the town for review. The building permit for any commercial facility must include a statement that the applicant understands and will comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986, also known as SARA Title III, being 42 U.S.C. §§ 11001 et seq. (Ord. 94-45, passed - -1994)

§ 150.03 BUILDING PERMIT PROCEDURES.

(A) The definitions set out in § 152.05 of this code of ordinances shall apply to this section unless expressly noted otherwise.

(B) All persons intending to build a new structure or substantially improve an existing structure that is within the corporate limits of the town, and is provided electrical service by the electric company, shall obtain a building permit before construction begins.

(C) The town adopts the International Building Codes (IBC) currently in effect on the date of the permit application as the applicable building codes for the town.

(1) *Codes.* The following code editions and appendixes, as published by the International Code Council, Inc., shall be and are hereby adopted by reference as though they were copied herein, fully, save and except such portions as are hereinafter deleted, modified, or amended:

- (a) The International Building Code, 2003 Edition;
- (b) International Residential Code, 2003;
- (c) National Electrical Code, 2008;
- (d) International Fire Code, 2003;
- (e) International Plumbing Code, 2003;
- (f) International Mechanical Code, 2003; and
- (g) International Fuel Gas Code, 2003.

(2) *Statutes.* The following statutes of the state shall be and are hereby adopted by reference as though they were fully copied herein, together with such amendments to same as may be made from

time to time: the State Plumbing License Law, as set out in Tex. Civil Statutes, Art. 6243-101, in its entirety, as amended.

(D) The Mayor shall collect a \$25 building permit fee for each application in addition to any other fees. The Mayor shall assist the applicant in locating the current codes in effect on that date.

(E) Although the town adopts the IBC it does not undertake any obligation to ensure compliance with same. The builder, owner, or both, shall ensure compliance with the IBC.

(F) An applicant for a building permit shall provide to the Mayor a sketch or drawing showing the proposed new structure and/or substantial improvement, payment of all fees, and completion of all forms required by the town, if any. The sketch or drawing shall include, at a minimum, the square footage of living area, the type of construction, the type of exterior construction material, and the type of roofing material. The applicant shall acknowledge that the structure is to be constructed according to the IBC.

(G) Upon receipt of all required information and payment of all fees, the Mayor shall approve the building permit. All approved applications shall be presented by the Mayor to the Board of Aldermen at the next regularly scheduled Board meeting. The Mayor shall notify the town when a permit application is received, but not yet approved, at the next regularly scheduled Board meeting.

(H) Should the Mayor decline or refuse to approve the building permit, the applicant shall have the right to present the application to the full Town Board for its consideration and acceptance or rejection.

(I) The Board of Aldermen hereby supports a moratorium of the issuance of all building permits, business licenses, special use permits, or certificates of occupancy of any kind that could be used to authorize the creation or construction including, but not limited to, any new residence, business or the remodeling of either involving new plumbing, electrical, concrete slab, and new room additions as the term is defined in the town code of ordinances.

(Ord. 2001-1, passed 1-9-2001; Ord. 2010-7-13-1, passed 7-13-2010; Res. 2015-06-09-01, passed 5-12-2015)

§ 150.04 HEIGHT OF STRUCTURES.

No part of any structure located within the town limits or in its extraterritorial jurisdiction shall be higher than a two-story residence (a maximum of 40 feet above grade level) unless the location of the structure is such that it does not obstruct or detract from the view of the tree line or open sky from any residence or public park within 1,000 feet of the structure. Utility poles and lines owned by a public entity are exempt from the provisions of this section.

(Ord. 94-42, passed - -1994) Penalty, see § 150.99

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DANGEROUS STRUCTURES

§ 150.15 TITLE.

This subchapter shall be known as the “Dangerous Structures Ordinance”.
(Ord. 92-37, passed - -)

§ 150.16 DEFINITION.

(A) A dangerous structure is identified by a program that is aimed at identifying and eliminating dangerous structures within the town through rehabilitation, repair, removal, or demolition. Dangerous structures are those that are deteriorating, dilapidated, or decayed to the point of being a hazard to the health and/or welfare of the general public or the occupants of the structure.

(B) How it works.

(1) Possible dangerous structures are identified from multiple sources, including complaints from the public, inspectors, and employees of other departments of the town, and through proactive inspections by Code Enforcement Officers.

(2) Once a complaint is received, a case is opened and a visual inspection from the public right-of-way is performed to determine the condition of the structure.

(a) Properties are classified as: having no violation, being below ordinance-defined minimum standards, or dangerous to the health and welfare of the general public or to its occupants.

1. If the structure is not found to be below ordinance-defined minimum standards, photos are taken to document the finding and the case is closed as “no violation”.

2. If the structure is deemed dangerous, photos are taken and notice given to the legal owner, any legal representatives of the owner, and any person(s) identified through due diligence as having a vested interest in the property. Such notice will include:

- a. A statement that the structure(s) on the property have been deemed deteriorated, decayed, or dilapidated to the point of being dangerous;
- b. The violation(s) identified;
- c. The location of the violation;
- d. The date the violation was observed from public right-of-way by the officer;

- e. A consent form requesting an interior inspection;
- f. A request to secure any structures on the property that are open and vacant;
- g. An allotted timeframe to bring the violation(s) into compliance, through rehabilitation, repair, removal, or demolition;
- h. A property re-inspection date;
- i. An explanation of possible consequence for not correcting, removing, or repairing the violation(s), including issuing citations, a public hearing before the Health and Building Standards Commission, and/or the town correcting the violation;
- j. A statement about the owner's right to appeal; and
- k. The officer's contact information.

(b) If an interior inspection is conducted, either through consent or administrative warrant, a second notice is sent to the owner, identifying additional violations and allotting a timeframe for compliance.

(c) If the identified dangerous structure violation(s) are remedied by the owner through rehabilitation, repair, removal, or demolition, the case is closed.

(d) If the identified dangerous structure violation(s) are not remedied by owner, then the case is taken before the Town Board of Aldermen at a regular or special session.
(Ord. 92-37, passed - -)

§ 150.17 DECLARATION OF NUISANCES.

All dangerous buildings and dangerous structures are declared to be public nuisances and shall be repaired, vacated, removed, or demolished as herein provided.
(Ord. 92-37, passed - -) Penalty, see § 150.99

§ 150.18 BUILDING COMMISSION; DUTIES.

(A) The Board of Aldermen is named the Town Building Commission and as such shall exercise those powers and responsibilities conferred on it by this subchapter.

(B) The Building Commission shall have the following duties:

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(1) To inspect or cause to be inspected every building or structure observed or reported being a dangerous building or a dangerous structure, as defined herein;

(2) Written notice by personal service or U.S. certified mail, return receipt requested, shall be given to the owner of the property concerned, as shown by the tax records of the town, as well as the occupant hereof if different than the owner, to appear before the Building Commission on a date specified in the notice to show cause why the building or structure reported to be a dangerous building or a dangerous structure should not be repaired, vacated, removed, or demolished in accordance with this subchapter. In addition, notice shall be given to the owner of the property concerned, as shown by the tax records of the town, and all other persons having an interest in said building or structure, by publishing the notice in a newspaper of general circulation in the county at least two weeks prior to the date of the hearing to be held by the Building Commission;

(3) Hold a hearing and consider such testimony, evidence, and facts relative to the determination of the question of whether the building or structure in question is a dangerous building or a dangerous structure;

(4) Make written findings of fact from the testimony, evidence, and facts offered pursuant to division (B)(3) above as to whether or not the building in question is a dangerous building or a dangerous structure;

(5) Upon a determination that the building or structure in question does constitute a dangerous building or dangerous structure, to issue an order based upon the findings of fact and made pursuant to division (B)(4) above commanding the owner or any other person having an interest in said building or structure to repair, vacate, remove, or demolish the building or structure found to be a dangerous building or structure within the terms of this subchapter and shall specify the time within which the order must be complied with;

(6) To place a notice on all dangerous buildings or dangerous structures upon determination by the Building Commission, reading as follows.

<p>“This building or structure has been found to be a dangerous building or dangerous structure by the Town of Rose Hill Acres. This notice is to remain on this building or structure until it is repaired, vacated, removed, or demolished as required by Ordinance _____, Town of Rose Hill Acres, Texas. It is unlawful to remove this notice without prior approval of the Building Commission of the Town of Rose Hill Acres”.</p>
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(7) If the owner or any other person having an interest in said building or structure shall fail or refuse to take the action ordered by the Commission within the time specified in such order, the town may proceed to board or take down and/or remove such building, or have it boarded or taken down and/or removed, and the costs of such boarding, demolition, removal, and clearing shall be assessed against the owner and the tract of land upon which the building or structure is or was located. The town shall have a special lien to secure such expenses, and such lien shall be evidenced by a statement

describing the property, the work done, and the expenses incurred, signed by the Mayor or his or her designee, and filed with the County Clerk. Such lien shall be in the nature of a special assessment lien which may be foreclosed as permitted by law for similar liens; and

(8) The action of the Building Commission shall be final.
(Ord. 92-37, passed - -)

§ 150.19 REPAIR, VACATION, REMOVAL, OR DEMOLITION.

The following standards shall be followed in substance by the Building Commission in ordering repair, vacation, removal, or demolition.

(A) If the dangerous building or dangerous structure can reasonably be repaired so that it will no longer exist in violation of this subchapter, it shall be ordered repaired.

(B) If the dangerous building or dangerous structure is in such a condition as to make it dangerous to the health, safety, and general welfare of its occupants, it shall be ordered to be vacated.

(C) In any case where a dangerous building or dangerous structure cannot or will not be repaired so that it will no longer exist in violation of the terms of this subchapter, it shall be removed or demolished. Included in the term “demolished” in this subchapter is the cleaning of the property and removing of all debris and trash.
(Ord. 92-37, passed - -)

§ 150.20 AUTHORITY TO ORDER DEMOLITION.

Notwithstanding all other provisions of this subchapter, nothing herein shall be deemed a limitation on the duty of the town to summarily order the demolition of any building or structure where it is apparent that the immediate demolition of such building or structure is necessary to the preservation of life and property in the town.
(Ord. 92-37, passed - -)

§ 150.21 LIMITATION OF RIGHTS.

Nothing herein shall limit or preclude any other right or action otherwise permitted by law, including, but not limited to, judicial suit for injunction and/or damages, that the town has or may have.
(Ord. 92-37, passed - -)

§ 150.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Violation of the provisions of § 150.03, or failure to comply with any of its requirements, shall constitute a misdemeanor. Any person who violates § 150.03 or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$200 and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(C) Each violation of § 150.04 shall be punishable by a fine of up to \$500. Each day of violation shall be a separate violation.

(D) (1) The owner of any dangerous building or structure who shall fail to comply with any notice or order to repair, vacate, or demolish said building or structure, such notice or order having been given by the authority of the Building Commission, shall be guilty of a misdemeanor, and, upon conviction, thereof shall be punished by fine not to exceed \$200 for each offense, and each day the violation continues shall constitute a new offense.

(2) The occupant or lessee in possession of any dangerous building or dangerous structure who fails to comply with any notice or order to vacate such building or structure, as per § 150.19, given by authority of the building Commission, and fails to repair such building or structure insofar as he or she may be required to do so under his or her occupancy or lease agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not to exceed \$200 for each offense, and each day the violation continues shall constitute a new offense.

(3) Any person removing the notice provided for in § 150.18(B)(6) shall be guilty of a misdemeanor and upon conviction shall be punished by fine not to exceed \$200 for each offense. (Ord. 92-37, passed - -; Ord. 94-42, passed - -1994; Ord. 2001-1, passed 1-9-2001; Ord. 2010-7-13-1, passed 7-13-2010)

CHAPTER 151: MOBILE HOMES, TRAILERS, AND THE LIKE

Section

- 151.01 Existing mobile homes
- 151.02 Authorization

§ 151.01 EXISTING MOBILE HOMES.

Existing and occupied mobile homes presently providing a residence and homestead for its occupants are hereby permitted to remain in the present locations within the town, so long as they remain so occupied; but none of them shall be replaced when said mobile homes become beyond repair and uninhabitable. No other mobile homes shall be permitted in the town except within established trailer parks recognized by the town or such mobile homes, campers, or other recreational vehicles which are permitted by the Mayor under authority conferred upon him or her by the Board of Aldermen in an emergency and on a temporary basis. Authority of the Mayor must be granted to the occupant of the mobile home, camper, or recreational vehicle for a definite term under expressed conditions and in writing. Campers or other recreational vehicles are placed under the same restrictions as mobile homes with the understanding that owners may park them off the town streets and on their respective properties for storage, so long as not occupied as a residence without obtaining written permission. (Ord. 23, passed 1-11-1972)

§ 151.02 AUTHORIZATION.

Because of the necessity of making immediate provisions for mobile homes, campers, and recreational vehicles outside of trailer parks; and because any delay may create an unfair condition, an emergency is created in behalf of the public peace, health, safety, and general welfare, necessitating that this chapter become effective at once, and it is accordingly ordained that this chapter become effective immediately upon its passage as in such cases as made and provided by the Charter of the town. (Ord. 23, passed 1-11-1972)

CHAPTER 152: FLOODPLAINS

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GENERAL PROVISIONS

§ 152.01 STATUTORY AUTHORIZATION.

The Legislature of the state has in the Flood Control Insurance Act, Tex. Water Code § 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of Aldermen of the town does ordain as follows.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.02 FINDINGS OF FACT.

(A) The flood hazard areas of the town are subject to periodic inundation, which results in loss of life and property, health, and safety hazards; disruption of commerce and governmental services; and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed, or otherwise protected from flood damage.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.03 STATEMENT OF PURPOSE.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; streets; and bridges located in floodplains;

(F) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

(G) Ensure that potential buyers are notified that property is in a flood area.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.04 METHODS OF REDUCING FLOOD LOSSES.

In order to accomplish its purposes, this chapter uses the following methods:

(A) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(D) Control filling, grading, dredging, and other development which may increase flood damage; and

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.05 DEFINITIONS.

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

ALLUVIAL FAN FLOODING. Flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

APEX. A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

APPURTENANT STRUCTURE. A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

AREA OF FUTURE CONDITIONS FLOOD HAZARD. The land area that would be inundated by the 1% annual chance (100-year) flood based on future conditions hydrology.

AREA OF SHALLOW FLOODING. A designated AO, AH, AR/AO, AR/AH, or VO Zone on a community's flood insurance rate map (FIRM) with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD. The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. The area may be designated as Zone A on the flood hazard boundary map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V.

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE). The elevation shown on the flood insurance rate map (FIRM) and found in the accompanying flood insurance study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year; also called the **BASE FLOOD**.

BASEMENT. Any area of the building having its floor sub-grade (below ground level) on all sides.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

CRITICAL FEATURE. An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT. Any human-made change to improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.

ELEVATED BUILDING. For insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

EXISTING CONSTRUCTION. For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. **EXISTING CONSTRUCTION** may also be referred to as "existing structures".

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ELEVATION STUDY. An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS). See **FLOOD ELEVATION STUDY**.

FLOODPLAIN or FLOOD-PRONE AREA. Any land area susceptible to being inundated by water from any source. (See definition of **FLOODING**.)

FLOODPLAIN MANAGEMENT. The operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD PROTECTION SYSTEM. Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a special flood hazard and the

extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD-PROOFING. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

FLOODWAY. See **REGULATORY FLOODWAY**.

FUNCTIONALLY DEPENDENT USE. A use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior; or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LEVEE. A human-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM. A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of § 60.3 of the National Flood Insurance Program regulations, being 44 C.F.R. § 60.3.

MANUFACTURED HOME. A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term **MANUFACTURED HOME** does not include a "recreational vehicle".

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL. For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

NEW CONSTRUCTION. For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, **NEW CONSTRUCTION** means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

RECREATIONAL VEHICLE. A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

RIVERINE. Relating to, formed by, or resembling a river (including tributaries), stream, brook, and the like.

SPECIAL FLOOD HAZARD AREA. See **AREA OF SPECIAL FLOOD HAZARD**.

START OF CONSTRUCTION. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. Law No. 97-348), being 16 U.S.C. §§ 3501 et seq., includes substantial improvement and means the date the building permit was issued, provided, the actual **START OF CONSTRUCTION**, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The **ACTUAL START** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT.

(1) Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

(2) The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a “historic structure”; provided, that the alteration will not preclude the structure’s continued designation as a “historic structure”.

VARIANCE. A grant of relief by a community from the terms of a floodplain management regulation. (For full requirements, see § 60.6 of the National Flood Insurance Program regulations, being 44 C.F.R. § 60.6.)

VIOLATION. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 C.F.R. §§ 60.3(b)(5), 60.3(c)(4), 60.3(c)(10), 60.3(d)(3), 60.3(e)(2), 60.3(e)(4), or 60.3(e)(5) is presumed to be in **VIOLATION** until such time as that documentation is provided.

WATER SURFACE ELEVATION. The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.06 LANDS TO WHICH CHAPTER APPLIES.

This chapter shall apply to all areas of special flood hazard with the jurisdiction of the town.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.07 BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Hardin County, Texas and Incorporated Areas", dated October 6, 2010, with accompanying flood insurance rate maps and/or flood boundary floodway maps (FIRM and/or FBFM) dated October 6, 2010, and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.08 ESTABLISHMENT OF DEVELOPMENT PERMIT.

A floodplain development permit shall be required to ensure conformance with the provisions of this chapter.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.09 COMPLIANCE.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.10 ABROGATION AND GREATER RESTRICTIONS.

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

(B) In the interpretation and application of this chapter, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.11 WARNING AND DISCLAIMER OF LIABILITY.

(A) The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by human-made or natural causes.

(B) This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

(C) This chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 2010-07-13-02, passed 8-10-2010)

ADMINISTRATION AND ENFORCEMENT**§ 152.25 FLOODPLAIN ADMINISTRATOR; DUTIES AND RESPONSIBILITIES.**

(A) *Designation of the Floodplain Administrator.* The Town Mayor is hereby appointed the Floodplain Administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 C.F.R. (Emergency Management and Assistance - National Flood Insurance Program regulations) pertaining to floodplain management.

(B) *Duties and responsibilities of the Floodplain Administrator.* Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter;
- (2) Review the permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding;
- (3) Review, approve, or deny all applications for development permits required by adoption of this chapter;
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334) from which prior approval is required;
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation;
- (6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
- (7) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
- (8) When base flood elevation data has not been provided in accordance with § 152.07, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source, in order to administer the provisions of §§ 152.40 through 152.44;
- (9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
- (10) Under the provisions of 44 C.F.R. § 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot; provided, that the community first completes all of the provisions required by § 65.12.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.26 PERMIT PROCEDURES.

(A) (1) Application for a floodplain development permit shall be presented to the Floodplain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard.

(2) Additionally, the following information is required:

(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(b) Elevation in relation to mean sea level to which any nonresidential structure shall be flood-proofed;

(c) A certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure shall meet the flood-proofing criteria of § 152.41(B);

(d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

(e) Maintain a record of all such information in accordance with § 152.25(B)(1);

(B) Approval or denial of a floodplain development permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;

(7) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable; and

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.27 VARIANCE PROCEDURES.

(A) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this chapter.

(B) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(C) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

(D) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(E) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.

(F) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level; provided, the relevant factors in § 152.26(B) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(G) Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (§ 152.03).

(H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(I) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(J) Prerequisites for granting variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

(a) Showing a good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(K) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that:

(1) The criteria outlined in divisions (A) through (J) above are met; and

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
(Ord. 2010-07-13-02, passed 8-10-2010)

FLOOD HAZARD REDUCTION

§ 152.40 GENERAL STANDARDS.

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements.

(A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(C) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.

(D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.

(G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.41 SPECIFIC STANDARDS.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in §§ 152.07, 152.25(B)(9), or 152.42(C), the following provisions are required.

(A) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this division (A) as proposed in § 151.26(A)(2)(a) is satisfied.

(B) *Nonresidential construction.*

(1) New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(2) A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of

construction are in accordance with accepted standards of practice as outlined in this division (A)(2). A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood-proofed shall be maintained by the Floodplain Administrator.

(C) *Enclosures.*

(1) New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building, access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(2) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(b) The bottom of all openings shall be no higher than one foot above grade; and

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

(D) *Manufactured Homes.*

(1) (a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage.

(b) For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement.

(c) Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites:

(a) Outside of a manufactured home park or subdivision;

(b) In a new manufactured home park or subdivision;

(c) In an expansion to an existing manufactured home park or subdivision; or

(d) In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(3) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH, and AE on the community’s FIRM that are not subject to the provisions of this division (D) be elevated so that either:

(a) The lowest floor of the manufactured home is at or above the base flood elevation; or

(b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(E) *Recreational vehicles*. Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community’s FIRM either:

(1) Be on the site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use; or

(3) (a) Meet the permit requirements of § 152.26(A), and the elevation and anchoring requirements for “manufactured homes” in division (D) above.

(b) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.42 SUBDIVISION PROPOSALS.

(A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with §§ 152.02 through 152.04.

(B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet floodplain development permit requirements of §§ 152.08, 152.26, and the provisions of this subchapter.

(C) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than

50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to § 152.07 or § 152.25 (B)(8).

(D) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(E) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.43 AREAS OF SHALLOW FLOODING (AO/AH ZONES).

(A) Located within the areas of special flood hazard established in § 152.07 are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident.

(B) Such flooding is characterized by ponding or sheet flow; therefor, the following provisions apply.

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of nonresidential structures:

(a) Have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or

(b) Together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the base flood elevation in an AH Zone, level the structure is water-tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in § 152.26, are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.44 FLOODWAYS.

(A) Floodways located within areas of special flood hazard established in § 152.07, are areas designated as floodways.

(B) Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply.

(1) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If division (B)(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this subchapter.

(3) Under the provisions of 44 C.F.R. § 64.12 (the National Flood Insurance Program regulations), a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations; provided, that the community first completes all of the provisions required by § 65.12.
(Ord. 2010-07-13-02, passed 8-10-2010)

§ 152.99 PENALTY.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this court order and other applicable regulations. Violation of the provisions of this court order by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this court order or fails to comply with any of its requirements shall, upon conviction, thereof be fined not more than \$500 (Tex. Local Government Code, § 54.001 limits the fine to \$500) or each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Board of Aldermen from taking such other lawful action as is necessary to prevent or remedy any violation.
(Ord. 2010-07-13-02, passed 8-10-2010)

CHAPTER 153: FENCES AND GATES

Section

- 153.01 Definitions
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- 153.19 Number of fences along property line
- 153.20 Intent
- 153.21 Effective date

- 153.99 Penalty

§ 153.01 DEFINITIONS.

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

BERM. A level space, shelf, or raised barriers separating two areas constructed as a hill or mound of either earth or stone or both.

CHIEF BUILDING OFFICIAL. The Mayor or the Mayor's designee.

CORNER LOT. A lot that adjoins two (or more) intersecting streets.

DECORATIVE FENCE. An open fence constructed of wrought iron or similar material, split rails, or pickets, and not a shadow box, “board on board” type fence.

DOUBLE FRONTAGE LOT. A lot having two street lines parallel to and opposite each other forming the boundaries of the lot. Such lots shall be considered to have only one front yard to determine the address and it shall be determined by the location of the front door and/or address of the property.

FENCE. An enclosure or barrier constructed of permitted materials, a structure forming a barrier between lots, between a lot and a street or any alley, public or private, or between portions of a lot or lots, such structures being independent of any other.

FRONT OF THE HOUSE. Shall be determined by the location of the main entrance of the building or upon which the address is based and shall be determined by the Building Official or a designee if a conflict exist between the two.

FRONT YARD. A yard extending along the whole length of the front lot line between the side lot lines, and being the minimum horizontal distance between the street line and the main building or any projections thereof, that portion of property directly between the front of a residence and the town easement, other than steps, planter boxes, unenclosed porches and driveways. The yard between the principal building and the front lot line, with a line running generally perpendicular to that line from the front corners of the building to the closest side lot line.

HIGH VOLUME STREETS. Indicates streets that have a 24-hour traffic volume of 2,000 or more vehicles.

LOT LINE. As defined in the town-zoning ordinance, zoning maps, and definitions of the same found herein.

OPEN FENCE. One constructed so that at least 40% of the superficial area thereof consists of apertures.

PRIVATE SWIMMING POOL. Private pools used in private family swimming or family or friends group swimming parties.

PUBLIC PROPERTY. Property used by the public, (i.e., not private by nature).

REAR YARD. A yard extending across the rear of a lot between the side lot lines and being the minimum horizontal distance between the rear lot line and the rear of the principal building or any projections thereof other than steps, unenclosed balconies, unenclosed porches, or driveways.

SEMI-PUBLIC SWIMMING POOLS. Private pools used in swimming classes or group swimming parties.

SWIMMING POOL. A pool of water constructed for swimming either in ground or above ground.

SHADOW BOX or **BOARD ON BOARD FENCE.** A fence that is the same on both sides when mounted or installed between the vertical fence posts. A **SHADOW BOX FENCE** shall be considered open when such fence has boards installed on alternating sides of horizontal members so that when viewed perpendicular, there is a one-quarter inch or greater separation between the alternating vertical boards.

SIDE YARD. A yard extending along the side lot line from the front yard to the rear yard, being the minimum horizontal distance, measured at the building line, between any building or projections thereof except steps or driveways and the side lot line.

SIDE YARD ADJOINING A STREET. A corner lot where the side yard adjoins the street, the side yard shall be considered that portion of the lot between the principal building with a line running perpendicular with the side lot line and this line shall extend from the front yard to the rear property line. Notwithstanding the foregoing, the depth of the **SIDE YARD ADJOINING A PUBLIC STREET** shall be no more than 20 feet.

SPLIT RAIL FENCE. An underdressed fence rail split lengthwise from a log and set at either end into an upright post, not exceeding a height of four feet above grade.

WATERFRONT. Land, land with buildings, or a section of the town fronting or abutting on a body of water.

YARD. An open space on the same building lot with a building, unoccupied, and unobstructed by any portion of a structure from the ground upward, except as otherwise provided. In measuring a **YARD** for the purpose of determining the width of a side yard, the depth of a rear yard, and the depth of a front yard, the minimum horizontal distance between the building site and the lot line shall be used. A **YARD** extends along a lot line and at right angles to such lot line to a depth or width specified in the yard regulations of the zoning district in which such building is located.
(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.02 BUILDING PERMIT REQUIRED.

(A) Generally.

(1) Before the erection or enlargement of any fence, or the structural alteration of a fence, a permit shall be obtained by the owner, or his or her agent, from the Director of Building and Code Enforcement; and it shall be unlawful to proceed with any such work unless such permit shall first have been obtained. It shall be unlawful for any person to erect, construct, enlarge, alter, repair, replace, remove, or demolish any fence regulated by this chapter without first obtaining a separate permit for each fence from the Building Official. A fence permit shall not be required if it is determined by the Building Official that only minor repair or painting is necessary.

(2) It shall be unlawful for any person to construct a fence over two and one-half feet in height on any lot without having first obtained a fence permit thereof from the Building Inspection Department of the town and the cost of the building permit shall be \$0.

(B) *Information on plans.* Plans shall be drawn to scale and shall include the following:

(1) Building locations and area to be fenced. Location of proposed fence on the owner's premises must be submitted with each application for a building permit;

(2) Legal description of land to be fenced;

(3) Height of fence and type of materials to be used;

(4) Intersections of streets, roads, highways, alleys, and driveways;

(5) Zoning;

(6) Corner "visibility range", when required, shall be shown; and

(7) Plans to scale plat of survey and specifications showing work to be done.

(C) *Validity of permit.* The issuance or granting of a permit under this chapter or approval of plans shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter or any other code or ordinance of the town. The issuance of a permit based upon plans and other data shall not prevent the Building Official of the Building Inspection Division of the Community Development Department from thereafter requiring correction of errors in such plans and other data, or from preventing building operations being carried on thereunder when in violation of this chapter or any other code or ordinance of the town.

(D) *Permit expiration.*

(1) Every permit issued by the Building Official of the Building Inspection Division of the Community Development Department under the provisions of this chapter shall expire by limitation and become null and void if the authorized work is not commenced within 60 days from the date of permitting, or if the authorized work is not completed, or is abandoned for a period of 60 days.

(2) Before the work can be recommenced, a new permit shall be first obtained and the fee shall be one-half the amount required for a new permit for such work, provided, the elapsed time does not exceed 180 days from the date of permitting in which case the permittee shall pay a new full permit fee in order to renew the permit.

(E) *Suspension or revocation of permit.* The Building Official of the Building Inspection Division of the Community Development Department may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error or on the basis of incorrect

information supplied, or in violation of any code or ordinance of the town or any of the provisions of this chapter.

(F) *Permit issuance.*

(1) The application, plans, and other data, filed by an applicant for a permit under this chapter shall be reviewed by the Building Official of the building inspection. If the work described in an application for a permit and the plans and other data filed therewith conform to the requirements of this chapter and all other pertinent laws and ordinances, and the fees specified in the town ordinance providing for permit, inspection, and license fees have been paid, the permit shall be issued to the applicant.

(2) The plans shall be endorsed by the town in writing or stamped “approved” and shall not be changed, modified, or altered without authorization from the Building Official, and all work shall be done in accordance with the approved plans.

(3) One set of approved plans shall be retained by the Building Official for a period of not less than 90 days from the date of completion of the work covered. One set of the approved plans shall be retained by the Town Secretary as a archive record and one set of the approved plans shall be returned to the applicant.

(G) *Certain fence prohibitions; special permits.*

(1) No chain link fence shall contain strips or slats of any kind between or among the links.

(2) (a) Any school, church, governmental entity, private utility, or public utility may petition the Town Board for a permit to construct a protective fence that would not conform to the requirements of this section.

(b) The Town Board shall approve such petition only upon finding that the proposed fence would:

1. Not alter the essential character of an area;
2. Be in harmony with the general intent and purpose of this section;
3. Not set any unfavorable precedent either to the locality or the town as a whole;
4. Not adversely affect the public safety and general welfare; or

5. No gate or fence shall be locked as to prevent access that is permitted across a driveway within the front or side yard abutting a street in a residential district.

(H) *Supervision, inspection offenses.* It is hereby made the duty of the Director of Building and Code Enforcement to exercise supervision over all fences erected, altered, constructed, or maintained in the town, and to cause inspection to be made whenever it shall appear to the director that any such fence, or any part thereof, has been erected in violation of the provisions of this chapter or any ordinance of the town or is in an unsafe condition or has become unstable or insecure or is in such condition as to be a menace to the safety or health of the public.
(Ord. 2012-02-14-02, passed 3-8-2012) Penalty, see § 153.99

§ 153.03 WATERFRONT FENCING.

(A) No waterfront property shall have fencing that would obstruct the view of any adjacent property from the ground floor elevation.

(B) No waterfront property shall have fencing that would obstruct the flow of water runoff from weather-related events or flooding.
(Ord. 2012-02-14-02, passed 3-8-2012) Penalty, see § 153.99

§ 153.04 CONSTRUCTION MATERIALS AND REQUIREMENTS.

(A) *Construction materials.* Materials permitted shall be of wood, metal tubing, wrought iron, ornamental iron, stone, masonry, and chain link. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed, and constructed for fencing materials. Metal posts will be allowed on wood fences.

(B) *Construction requirements.* Fence construction and location standards shall be as follows.

(1) Fences shall be designed and constructed to resist a horizontal wind pressure of not less than 30 pounds per square foot equal to 86.6 Mph in addition to all other forces to which they may be subjected.

(2) A fence, including all posts, bases, and other structural parts thereof, shall be located completely within the boundaries of the lot on which it is located. No fence shall be located closer than 12 inches to a public sidewalk or right away.

(3) All chain link fences must be constructed so that twists (barbed ends) are to the ground. The tops of all chain link fences shall be a knuckle edge.

(4) Fences shall be located so that accesses to property owned by the property owner, or adjacent parkways or alleyways can be maintained. Access must also be maintained to utilities such as but not limited to “utility boxes” sewer catch basins and water valves.

(5) Fences must maintain a continuous line, without missing sections.

(6) All fences in front yards shall be finished on both sides when they share a side or rear yard with an adjoining property, but otherwise shall at least be finished on the outside.

(7) All fences shall be finished on both sides with no over sized in length, screws, nails, or bolts beyond the nut.

(8) All fence heights shall be measured vertically from the inside natural or mean grade elevation of the yard. To obtain proper sight distance where an alley and street intersect, a clear area formed by a ten-foot right triangle must be maintained so as not to cause danger to traffic by obstructing the view. When topography prevents a clear view, this bank should be removed.

(9) All fences shall have a minimum of one gate for emergency ingress and egress. The minimum width of such gate shall be two feet. A driveway approach, in conformance with the respective driveway ordinances and approved by the Inspection Department, shall be required for all vehicle gates.

(Ord. 2012-02-14-02, passed 3-8-2012) Penalty, see § 150.99

§ 153.05 FENCES NOT PERMITTED ON PUBLIC PROPERTY.

(A) No fence or any part of such fence shall be constructed upon or caused to protrude over public property.

(B) (1) All fences must be maintained in a plane so as not to overhang public property.

(2) No fence, guy wire, brace, or post shall be constructed upon or extend over property that the town has control over, owns, or has an easement over or under, except upon:

- (a) Underground drainage easements that contain no pressurized storm sewer pipes;
- (b) Underground sanitary sewer easements that contain no pressurized pipes; and
- (c) Utility easements if written permission is granted by all users.

(3) No drainage easement, public or private, shall be fenced or obstructed in any manner, if the drainage is above ground. A gate shall be constructed in a fence along easements with a minimum of three feet to allow ingress and egress for maintenance.

(Ord. 2012-02-14-02, passed 3-8-2012) Penalty, see § 153.99

§ 153.06 PROHIBITED CONSTRUCTION AND/OR LOCATION.

(A) *Maximum fence heights.*

(1) For any rear yard adjoining residential property, no fence shall be constructed at a height exceeding six feet along the rear property line.

(2) For any rear yard adjoining commercial property, no fence shall be constructed at a height exceeding eight feet along the rear property line.

(3) For any side yard, no fence shall be constructed at a height exceeding six feet on any side yard line from the rear property line up to the front building line.

(4) For any front yard, no fence shall be permitted in the front yard unless a part of the landscaping or a decorative screen, but in no case shall the fence exceed three and one-half feet in height and it shall not create a traffic hazard. Such fencing shall be subject to the approval of the Chief Building Official.

(5) No fence may be erected to a height of more than six feet above grade except as permitted under division (A)(6) below. Such fence may be either an open type or solid type fence.

(6) No fence may be erected to a height of more than three and one-half feet above grade within the setback of the intersection of the lot lines at the intersection of any street with any other street in the front of the residence.

(7) No fence may be erected to a height of more than three and one-half three and one-half feet above grade within a front yard as defined by this chapter except when the front yard is adjacent to a rear or side yard of an adjoining property, in which case the front yard fence along the shared lot line may be constructed in conformance with the standards for the rear or side yard fencing of the adjacent lot.

(8) No fence may be erected to a height of more than three and one-half feet above grade within the side yard adjoining a street, at an intersection from the corner of the intersecting roads down the side road of the property line to the residential setback of the residence as defined by this chapter. Such fence shall only be an open type fence.

(9) Fences installed within the side yard adjoining a street, as defined in this chapter, may be erected to a height of six feet above grade when such side yard adjoins the following high volume streets. (See definitions for "high volume".)

(10) Fences installed within the side yard adjoining property, as defined in this chapter, may be erected to a height of six feet at the highest point the property and increase in height to accommodate unlevelled property at either end of the lower property to maintain as level an appearance as possible, (see § 153.09) as not to exceed the adjacent property fence by more than 18 inches at the corner post or column above grade.

(11) Fences installed within the along the side yard adjoining property, as defined in this chapter, may be erected to a height of six feet at the highest point the property and increase in height to accommodate unlevelled property at either end of the lower property to maintain as level an appearance as possible, as not to exceed the adjacent property fence by more than 18 inches at the corner post or column above grade.

(12) An open type or solid type fence may be erected to a height not exceeding eight feet above grade in any of the following instances:

(a) Along a railroad right-of-way;

(b) Along the lot line of residential property (R1, R2) which separates such property from any business, multi-family, or industrial district, or from any property being used for a nonconforming use which is permitted only in a business or industrial district; and

(c) Along the lot line of property used as a private or public utility substation.

(13) If a topographical difference exists between the level of the street or pedestrian way and the abutting side or rear yard which results in the level of the street, Prairie Path or pedestrian way being higher than the level of the abutting property as measured from the centerline of the street, Prairie Path or pedestrian way to the property line of the abutting property, then for each one-half foot of grade differential between the level of the street, Prairie Path or pedestrian way and the abutting property line, the fence may be increased in height of one-half foot up to a maximum of eight feet.

(14) Ornamental elements of the fence (i.e., decorative designs) may exceed the maximum height restrictions by no more than 12 inches. Fences must be installed so that the bottom of the fence is generally no more than two inches above existing grade.

(15) Structural elements of the fence (i.e., post or columns) may exceed the maximum height restrictions of the fence by no more than 12 inches.

(16) Ornamental elements atop of the post or columns (i.e., figurines or light lamps) may exceed the maximum height restrictions of the post or column by no more than 18 inches.

(17) Stone columns or columns of other materials shall not exceed three feet in diameter.

(18) Support foundations for mason columns shall contain sufficient concrete to support said column (i.e., a three-foot by three-foot column will have a three by three-foot by three-foot foundation 12 inches deep with a center dept support column of 12 by 12 inches, as deep, as the column is high, with iron rod one-half inch or greater from top to bottom of the support slab.

(19) A dog enclosure or run shall not exceed six feet in height, or enclose an area greater than 20% of the rear yard and set back five feet from all property lines. A dog enclosure or run shall not be permitted in the front or side yard abutting a street.

(20) Open top gates, may not exceed the fence height by no more than 18 inches.

(21) Gates with ornamental enhancements may exceed the gate height by no more than 12 inches.

(22) Gate or pathway arches should at a minimum be six feet, six inches at its apex in opening height.

(23) Gate or pathway arches should at a maximum not to exceed 12 feet in height at the top of the highest material point.

(24) Supporting columns for gate or pathway arches shall be of sufficient height to support the arch. No element shall exceed 12 feet.

(25) Arches and overhangs driveway and gates shall not exceed a height necessary to allow the safe passage of pedestrian or vehicular traffic based on the material used and span to a height necessary to establish a safe method of construction, not to exceed 12 feet in height.

(26) Construction greater than 12 feet may be granted by a variance by the approval of the majority of Town Board if construction materials and design safety can be adequately demonstrated.

(27) Construction of decorative fences with arch or u-shape feature between columns may be granted by a variance by the approval of the majority of Town Board if construction materials and design safety can be adequately demonstrated.

(28) No trees, berm, or other obstructions shall be planted or maintained within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

(29) No fence shall be located within any easement except by prior written approval of those agencies having interest in such easement.

(B) *Prohibited materials.*

(1) No person shall use rope, string, wire products including, but not limited to, chicken wire, hog wire, wire fabric, barbed wire (except as allowed in other sections of this code), razor ribbon wire, and similar welded or woven wire fabrics, chain, netting, cut or broken glass, paper, metal panels, corrugated metal panels, sheet metal, galvanized sheet metal, plywood, fiberglass panels, or plastic panels in any fence or any other materials that are not manufactured specifically as fencing materials. The Building Official of the Building Inspection Division of the Community Development Department may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.

(2) No person shall use for a decorative low-profile yard fence chain link, rope, string, wire products including, but not limited to, chicken wire, hog wire, wire fabric, barbed wire (except as allowed in other sections of this code), razor ribbon wire, and similar welded or woven wire fabrics, chain, netting, cut or broken glass, paper, metal panels, corrugated metal panels, galvanized sheet metal, plywood, fiberglass panels or plastic panels in any fence or any other materials that are not manufactured specifically as fencing materials. The Building Official may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.

(3) No person shall construct a fence of wood, metal, or plastic products that are designed specifically for uses other than fence construction.

(4) No person shall construct a fence of used, damaged, or unsafe materials.

(5) No person shall weave or use slats of any material, including, but not limited to, metal, fiberglass, or bamboo, through a chain link fence to create a blind fence, screening fence, or any other type of fence addressed in this chapter.

(6) Used materials, equipment and devices shall not be reused unless it can be determined by the Building Official of the Building Inspection Division of the Community Development Department that they meet the requirements of the building code for new materials.
(Ord. 2012-02-14-02, passed 3-8-2012) Penalty, see § 153.99

§ 153.07 SETBACKS.

(A) No fence or wall shall be erected placed or altered on any lot nearer to any street than the minimum building setback unless similarly approved.

(B) Approval shall be as provided below.

(1) Fences erected on the front 75 feet of the property shall be either wood painted picket or chain wire (chain link) fences.

(2) No materials, other than the items listed above, shall be considered as pursuant to the setback regulations set forth in this chapter with out a variance issued by authorization of the Town Board (i.e., columns, decorative iron fencing).

(3) Issuance of a variance to the setback may be granted by the Building Inspector if said variance is consistent with restrictions governing setbacks in the subdivision the fence shall be located.
(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.08 TEMPORARY CONSTRUCTION SITE FENCING.

(A) (1) Temporary construction site fencing not exceeding eight feet in height shall be permitted to enclose the complete project or a partial area.

(2) No such fence erected under the above provision shall be erected in such position or placed so as to be dangerous or detrimental to the health or safety of any person or obstruct the view so as to constitute a traffic hazard.

(B) (1) Temporary construction fences must be removed prior to occupancy of any portion of the facility.

(2) Temporary construction site fencing restrictions are as follows.

(a) Fences constructed on any lot, and specifically corner lots, will be subject to, and shall conform to the visibility range requirements contained in the drawing at the end of this section. The town engineer may require an additional clear zone.

(b) All fences shall have a minimum of one gate for emergency ingress and egress. The minimum width of such gate shall be two feet. A driveway approach, in conformance with the respective driveway ordinances and approved by the Inspection Department, shall be required for all vehicle gates,

(c) Heavy commercial or industrial zoning districts, fences six feet or greater in height may be constructed with angle arms at the top and such angle arms may be armed with barbed wire. Such arms shall not extend over public property, town, county, or state rights-of-way, easements, or private property. Any property that requires a screening device shall conform to the general development ordinance.

(d) Materials permitted for temporary fencing on a construction site are wood, metal tubing or wrought iron, and chain link. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed and constructed for fencing materials. Metal posts will be allowed on wood fences.

(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.09 INSPECTIONS AND MAINTENANCE.

(A) When any fence is completed, it must be inspected. The Building Inspection Department shall be notified upon completion of the fence. All fences constructed under the provisions of this chapter shall be maintained so as to comply with the requirements of this chapter at all times.

(B) Fences shall be maintained by the owner or person in charge of the property in as near as possible the condition of such fence when installed and accepted as provided herein, and shall be maintained as follows.

(1) Said fence shall not be out of vertical alignment more than 10%.

(2) All damaged or removed or missing portions of said fence shall be replaced with comparable materials of a comparable color to the remaining portion of said fence.

(3) All damaged or missing parts shall be replaced or repaired.

(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.10 APPEALS.

Any appeal from a decision of the Building Inspector under the terms of this chapter shall be made to the Town Board. Any applicant for a fence permit whose request is denied by the town staff for

noncompliance with this chapter, or whose permit is suspended or revoked, may, within ten days from the date of written notification, appeal such decision for consideration by the Town Board. The decision of the Town Board shall be final.

(Ord. 2012-03-08, passed - -; Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.11 NONCONFORMING USES.

Any and all fences erected, installed, or maintained in violation of this chapter, which existed lawfully at the time of adoption of this chapter amendments thereto, shall become nonconforming upon the adoption of this chapter or any amendment thereto and may continue only in accordance with the following regulations.

(A) A nonconforming fence, which is destroyed by fire or other casualty or act of God or deteriorates to the extent that the restoration to the condition in which it was before the occurrence involves restoration of greater than 25% of the nonconforming fence, shall not be restored unless said fence shall conform to all regulations of this chapter. In the event that such damage or destruction is less than 25% of the nonconforming fence, no repairs or reconstruction shall be made unless such restoration is started within 90 days from the date of the partial destruction and is diligently prosecuted to completion.

(B) Any fence erected prior to the effective date hereof, which is in violation of any provision of this chapter, shall be removed or brought into compliance with all provisions of this chapter not later than January 15, 2020.

(C) Notwithstanding the foregoing, each strip or slat between and among the links of a chain link fence shall be maintained in good repair. Should more than 5% of the strips or slats at any given time need repair, all of the strips or slats shall be removed from the links of a chain link fence and not replaced.

(D) Being assessed a nonconforming fence, and if alterations are made to said alterations, shall not result in a nonconforming fence.

(E) If such nonconforming use of fencing is voluntarily removed, the future use of such premises shall be in conformity with the provisions of this chapter.

(F) In the event a nonconforming use of any fence is voluntarily discontinued for a period of one year, the use of the same shall thereafter conform to the provisions of this chapter.

(G) Any fence erected prior to the effective date hereof, which is in violation of any provision of this chapter, and is found to be in violation of prior existing ordinances shall be removed or brought into compliance with all provisions of this chapter not later than 90 days after notification to the property owner by the code enforcement officer.

(Ord. 2012-03-08, passed - -; Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.12 SEMI-PUBLIC AND PRIVATE SWIMMING POOLS.

All swimming pools shall have a fence or enclosure, which complies with the following.

(A) If property line fence is less than five feet, the top of the barrier surrounding the swimming pool fence shall be at least 72 inches above grade measured on the side of the barrier, which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier, which faces away from the swimming pool, shall be two inches. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be two inches.

(B) If a property line fence of six feet or greater secures the yard incorporating the pool, the top of the barrier surrounding the swimming pool fence shall be at least 48 inches between bottom rail and the next elevated horizontal rail. The top of fence shall be at least 50 inches above grade measured on the side of the barrier, which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier, which faces away from the swimming pool shall be two inches. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be two inches.

(C) Openings in the barrier shall not allow passage of more than a four-inch diameter sphere.

(D) Solid barriers, which do not have openings, such as masonry or stonewall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

(E) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed one and three-quarter inches in width.

(F) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches or more, spacing between vertical members shall not exceed four inches (i.e., latticework design). Where there are decorative cut outs within vertical members, spacing within the cutouts shall not exceed one and three-quarter inches in width.

(G) Maximum mesh size for chain link fences shall be a one and three-quarter inch square unless the fence is provided with slats fastened at the top and the bottom which reduce the openings to no more than one and three-quarter inches.

(H) Where the barrier is composed of diagonal members (i.e., lattice work) the maximum opening formed by the diagonal members shall be no more than one and three-quarter inches.

(I) (1) Access gates shall comply with the requirements of divisions (A) through (G) above, and shall be equipped to accommodate a locking device.

(2) Gates shall have self-closing and self-latching devices, which shall meet the following three requirements.

(a) The release mechanism of the self-latching device must be located not less than 45 inches from the grade below the gate.

(b) The release mechanism shall be located on the poolside of the gate at least three inches below the top of the gate.

(c) The gate and barrier shall have no opening greater than one-half inch within 18 inches of the release mechanism.

(J) Where a wall of a dwelling serves as part of the barrier, direct access to the pool through the wall shall be limited to doors and windows, which meet the following conditions.

(1) Windows leading to the pool area shall have a latching device at least 54 inches above the floor.

(2) Hinged doors leading to the pool area shall be self-closing and shall have a self-latching device. The release mechanism, if not self-locking, shall be located at least 54 inches above the floor.

(3) Sliding doors or sliding screen doors leading to the pool area shall be self-closing and shall have a self-latching device. The release mechanism, if not self-locking, shall be located at least 54 inches above the floor.

(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.13 DECORATIVE LOW-PROFILE YARD FENCING.

(A) Fences that are constructed to a height no greater than 24 inches above the finished lot grade at the location of the fence may be constructed at the right-of-way line.

(B) The following are permitted materials.

(1) Materials permitted for a decorative low-profile yard fence are brick, stone, decorative block, wood, metal tubing, or wrought iron.

(2) Vinyl or fiberglass composite materials may be utilized if the material is listed, designed, and constructed for fencing materials.

(3) Metal posts will be allowed on wood fences.
(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.14 CONSTRUCTION OF FENCES ADJACENT TO RIGHT-OF-WAY.

Every fence constructed along the rear lot line of a property, which is adjacent to an existing or proposed road right-of-way, except for corner lots, must include a gate providing access to the right-of-way in order to allow the adjoining property owner access to maintain such right-of-way.

(A) *Right-of-way yard fence.* No solid fence, except a decorative low profile yard fence, shall be constructed closer to a front yard right-of-way line than the primary structure on that lot or within ten feet of a front yard right-of-way line, whichever is more restrictive. In the event that portions of the front elevation of a primary structure are closer to the front property line than other portions, it is the intent of this chapter to not allow any solid fence to be constructed closer to the front property line than the portion of the front elevation nearest to the right-of-way yard fence. In no event shall any portion of the front elevation be blocked by a solid right-of-way yard fence.

(1) *Height.* A right-of-way yard fence shall be constructed to a height no greater than eight feet above the finished lot grade at the location of the fence.

(2) *Permitted materials.* Materials permitted for a right-of-way yard fence are brick, stone, decorative block, wood, metal tubing, or wrought iron. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed and constructed for fencing materials. Metal posts will be allowed on wood fences.

(B) *Right-of-way decorative yard fence.* Any fence, except a decorative low profile yard fence, that is constructed between any structure on the lot and the front yard right-of-way line shall be a minimum of 75% open.

(1) *Height.* A right-of-way decorative yard fence shall be constructed to a height no greater than six feet above the finished lot grade at the location of the fence.

(2) *Permitted materials.*

(a) Materials permitted for a right-of-way decorative yard fence are brick, stone, decorative block, wood, metal tubing, or wrought iron.

(b) Vinyl or fiberglass composite materials may be utilized if the material is listed, designed, and constructed for fencing materials.

(c) Metal posts will be allowed on wood fences.
(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.15 CLASSIFICATION OF FENCES.

Fences shall be classified as either solid or open type.
(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.16 NOTICE OF VIOLATION.

Should the Director of Building and Code Enforcement, upon examination and inspection of any fence, find any of the conditions enumerated in § 153.03 to exist, he or she shall thereupon issue or cause to be issued a notice in writing to the owner of the property upon which the fence is placed, informing such person of the violation of this chapter and the dangerous condition of such fence, and directing him or her to make such fence comply with the requirements of this chapter, within such reasonable time as may be stated in such notice.

(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.17 ELECTRICALLY-CHARGED FENCES AND BARBED WIRE.

The use of barbed wire is prohibited except under the following conditions:

(A) In the Industrial District, but at a height of not less than seven feet above ground level; and

(B) In other districts by special permit from the Town Board when in its opinion such type protective barrier is required for the protection of the health, safety, and welfare of the residents of the town.

(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.18 FINISHED SIDE TO FACE OUTWARD.

All fences shall be erected so that the finished side of the fence shall face outward from the property on which it is erected.

(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.19 NUMBER OF FENCES ALONG PROPERTY LINE.

No more than one fence shall be permitted along the lot line of a parcel.

(Ord. 2012-02-14-02, passed 3-8-2012) Penalty, see § 153.99

§ 153.20 INTENT.

The intent of this chapter is to provide for regulations and clarification for the construction, placement, and materials for fences and gates, and offenses and providing for a penalty.

(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.21 EFFECTIVE DATE.

This chapter shall take effect immediately from and after its passage, subject to whatever publication that may be required by law.
(Ord. 2012-02-14-02, passed 3-8-2012)

§ 153.99 PENALTY.

Any person, firm, or corporation violating any of the provisions or terms of this chapter of this code of ordinances, as amended hereby, within the corporate limits of the town shall be guilty of a Class C misdemeanor and upon conviction in the Municipal Court, or other court of competent jurisdiction, shall be subject to a fine not to exceed \$500 for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense. In addition, the town may seek to enforce this order by injunction and any other legal process to which it may be entitled.
(Ord. 2012-02-14-02, passed 3-8-2012)

CHAPTER 154: SUBDIVISIONS

Section

154.01 Adoption of restrictions
154.02 Architectural Committee

154.99 Penalty

Statutory reference:

Texas Residential Property Owners Protection Act, see Tex. Property Code, Ch. 209

§ 154.01 ADOPTION OF RESTRICTIONS.

(A) There is hereby adopted by the town for purpose of establishing rules and regulations for the construction, alteration, use and occupation, location, and maintenance of buildings and structures, those certain restrictions respecting those subdivisions which are located within the town limits with respect to, and, in each case, limited to the territory covered by the respective restrictions. It is not intended that any restriction have an effect beyond the territory presently covered by said restriction.

(B) A copy of each of the restrictions, more particularly described as covering Roselawn Park, Hillcrest, and Artesian Acres I and II subdivisions is on file with the Town Clerk as well as attached hereto and made a part hereof.

(C) From the date on which this chapter shall take effect, the provisions hereof shall be controlling in the construction, alteration, use, and occupation, location, and maintenance of buildings and structures within the corporate limits of the town, save and except the territories not originally covered by the above restrictions; and in these territories application for a building permit shall be presented to the Town Board.

(Ord. passed 2-10-1966)

§ 154.02 ARCHITECTURAL COMMITTEE.

The Mayor shall appoint an Architectural Committee composed of at least three members, one of whom shall be designated as the Chairperson. The member may or may not be a member of the Town Board but, in any event, such appointment or appointments shall be consistent with the provisions of the

subdivision restrictions. If necessary, separate Architectural Committees may be appointed for each of the subdivisions.

(Ord. passed 2-10-1966)

§ 154.99 PENALTY.

Any person who shall violate a provision of this chapter, or fail to comply therewith, or with any of the requirements thereof, or who shall erect, construct, alter, demolish, or move any structures, or who has erected, constructed, altered, repaired, moved, or demolished any building or structure in violation of a detailed statement or drawing submitted and approved hereunder, shall be guilty of a misdemeanor. Each such person shall be deemed guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.

(Ord. passed 2-10-1966)

CHAPTER 155: ZONING

Section

- 155.01 Incorporation of zoning map
- 155.02 Use of land and erection of buildings to comply
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§ 155.01 INCORPORATION OF ZONING MAP.

The boundaries of the districts are indicated upon the zoning map of the town which is incorporated into and made a part of this chapter by references and which is on file in the office of the town. It is further identified as authenticated by the Mayor on June 13, 1972.
(Ord. passed 4-10-1973)

§ 155.02 USE OF LAND AND ERECTION OF BUILDINGS TO COMPLY.

No land shall be used for, or no building shall be erected for, or converted to, any use other than provided in the regulations prescribed for the district in which it is located, except as in herein provided.
(Ord. passed 4-10-1973)

§ 155.03 ONE BUILDING PER LOT.

Every building hereafter erected or structurally altered shall be located as set out in the residential restrictions, and in no case shall there be more than one building on one lot.
(Ord. passed 4-10-1973)

§ 155.04 CLASSES OF DISTRICTS; ENUMERATION.

(A) In order to classify, regulate, and restrict the location of trades and industries and the location of buildings designed for specific uses; to regulate and limit the intensity of the use of lot areas and to regulate and determine an area of yards and other empty spaces surrounding such buildings, the town is hereby divided into two classes of districts.

(B) The use and area regulations are uniform in each class of district, and such districts shall be known as:

(1) One- or single-family; and

(2) Two-family and multiple-dwelling district.

(Ord. passed 4-10-1973)

§ 155.05 TEMPORARY CLASSIFICATION; ISSUANCE OF BUILDING PERMIT.

(A) *Temporary designation, proceeding to give permanent designation.* All territory annexed to the town hereafter shall be temporarily designated as a one-family dwelling district, until permanently zoned by the governing body of the town. The Planning and Zoning Commission shall, as soon as practicable after annexation of any territory to the town, institute proceedings on its own motion to give the newly annexed territory a permanent zoning, and the procedure to be followed shall be the same as is provided by law for the adoption of the original zoning regulations.

(B) *Building permits.*

(1) In an area temporarily classified as family dwelling, no permit for the construction of a building other than those permitted in the family dwelling district shall be issued until such permit has been specifically authorized by the Town Board.

(2) (a) Permits for the construction of buildings in a newly annexed territory prior to permanent zoning may be authorized by the Town Board on the following condition: an application for any use shall be made to the Mayor in accordance with the provisions of the Building Code other than that permitted in an R, Family Dwelling District regulations, it shall be referred by the Mayor to the Town Planning and Zoning Commission for consideration in its recommendation to the Town Board after giving due consideration to the type of permanent zoning to be applied to the area in which the application is located.

(b) When such a recommendation is filed with the Town Board, it shall be advisory only and the Town Board may grant or deny as the facts may justify.

(Ord. passed 4-10-1973)

§ 155.06 FAMILY RESIDENTIAL DISTRICT.

(A) *Generally.* The regulations set forth in this section or set forth elsewhere in this chapter, when referred to in this section are the R, Family Residential District regulations.

(B) *Permitted uses.* Use regulations, in an R, Family Dwelling District, no land or premises shall be used for any use other than:

- (1) A single-family dwelling;
- (2) Public-owned or operated park, playground, community building, museum, library, or art gallery;
- (3) A church or other place of worship or Sunday School;
- (4) Public school, elementary, and higher educational institutions, having a curriculum the same as ordinarily given in public schools;
- (5) A golf course or grounds. A miniature course or practice driving tee operated for commercial purposes is not permitted;
- (6) Utility substations and rights-of-way for pipe lines, utility poles, and other facilities or public utilities and the operation of vehicles for public transportation;
- (7) Two-family dwelling and multiple-dwelling units; and
- (8) Accessory building or use, including a private garage, customarily incidental to the above uses but not involving the conduct of a business.

(C) *Clarification of R1 and R2, residential town property restrictions and building codes.*

(1) Any residence erected on any lot in the town, henceforth known as the town, shall not have less than 1,250 square feet of floor space for a one-story building for a single-family residence or 750 square feet of first floor for a two-story building with a total of not less than 1,250 for a two-story single-family residence, exclusive of open porches and garages. Each addition in the town with building restrictions greater in square footage than the town's minimum limits shall be regarded as the minimum for that addition.

(2) Residential setbacks from the front of the property line shall be located in accordance with the restrictions set forth in the deed restrictions. Site regulation § 3 (a separate document on file with the town) will determine properties not falling inside deed-restricted additions. The Town Board of Aldermen, by special variance, will determine setbacks if not covered by town site regulation § 3 or deed restriction.

(3) Location of the residence, orientation, and all other permitted structures and accessory buildings shall be located in accordance with the restrictions set forth in the deed restrictions. Properties not falling inside deed restricted additions will be determined by site regulation § 3, or the Town Board of Aldermen by special variance, if not covered by town site regulation § 3 or deed restriction.

(4) Temporary signs.

(a) *Definitions.* For the purpose of this division (C)(4), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BANNERS.

a. Banner signs require a permit and shall be constructed of cloth, vinyl, or canvas material and be no more than 40 square feet in effective area. A business in a C1 zoning that has been in operation for a year or more, and non-profit organizations may erect one temporary banner sign at a location, three times a calendar year for a maximum of 14 days per permit.

b. A new business may erect the first of the three banner signs for 45 days. In addition, a new business shall also be permitted to erect one grand opening temporary banner sign at the same time as the initial 45-day banner is up. Such sign shall be erected a maximum of 14 days.

BUSINESS WINDOW SIGNS. The total area of window signs is limited to 10% of the entire area of all windows within the facade. The outlining of a window on two or more of any sides with lighting, luminescent gaseous tubing, or by any similar means shall establish 100% of the total window area as a sign.

COMMERCIAL BUILDER AND DEVELOPER SIGNS. Builders and developers may erect temporary off-premises signs only between the hours of 6:00 p.m. Thursday and 10:00 p.m. Sunday. Signs shall not exceed six square feet in effective area of 36 inches in height, as measured from grade. No more than four signs will be allowed per subdivision. Signs can only refer to development within the town. Signs are not allowed in the sign and school sign zones.

GARAGE SALE. Includes any private sale of merchandise or other personal property to the public which is held by the homeowner in his or her garage, in his or her yard, or elsewhere on his or her property.

GARAGE SALE SIGNS. Homeowners may erect temporary off-premises signs referring to a garage sale held on their property. Garage sale signs may only be erected between the hours of 6:00 p.m. Thursday and 10:00 p.m. Sunday. Sign faces cannot exceed three square feet or be any higher off the ground than 36 inches. Signs may be placed within the town right-of-way, provided that they do not project out over the street or sidewalk. No sign will be allowed within any street median or attached to any tree, public utility pole, street sign, traffic control sign or device or other sign. No permit or fee is required. Signs are not allowed in the sign and school sign zones.

ON PREMISES, DWELLING. A lot zoned R1 or R2 that is occupied by a residential housing structure.

POLITICAL SIGN. Any sign that contains primarily a political message.

REMOVAL OF IMPROPER SIGNS. Any sign erected in such a manner that it violates this division (C)(4) shall be construed a public nuisance and the town may, without notice, remove and dispose of the sign.

RESIDENTIAL PROPERTY SALE AND RENTAL SIGNS. Any rental signs and personal property sale signs are only allowed in the required front yard of platted property zoned R1, R2, or C1 until the ownership has been transferred or the property is leased. Signs must be placed on premises only. Real estate agents and homeowners may erect temporary signs on private or public rights-of-way that refer to open houses within the town and may contain only a directional arrow and the words "Open House". Signs may measure no more than two-square feet in effective area and no taller than 36 inches in height as measured from the ground. Signs can only be out between the hours of 6:00 p.m. Thursday and 10:00 p.m. Sunday. Signs are not allowed in the sign and school sign zones.

RIGHT-OF-WAY. The area lying within the dedicated or public easement of any street, road, or alley located within the town, whether improved or not, including the public sidewalks, golf cart paths, ditches, drains, medians, and esplanades thereof.

SIGN. Any outdoor structure or display, billboard, light device, figure, poster, placard, handbill, flyer, painting, or other similar object in any form whatsoever which contains printed or written matter in words, symbols, pictures, or any combination thereof, including, but not limited to, signs displaying political or commercial advertising, which is designed, intended, or used to advertise or inform.

SPECIAL EVENT SIGN. Any temporary sign which shall advertise or promote any meeting, event, gathering, function, entertainment, or other activity scheduled for a particular date or series of consecutive days.

TEMPORARY OFF-PREMISES SIGNS LOCATED IN SIGN AND SCHOOL SIGN ZONES. For temporary off premises signs, a permit is required. No permit fee will be assessed to any non-profit organization or public school related event in the sign and school zone. There is a limit of two corners per sign applicant per zone. Two sign frames will be issued to that organization during the permit process. Signs shall be placed on a metal angle, two-leg frame bracket installed at each sign zone. Sign faces shall be 18 inches by 24 inches in effective area. No wire brackets are allowed.

TEMPORARY ON-PREMISES SIGNS. On-premises signs shall not exceed three square feet in effective area or 42 inches in height above grade. The signs cannot be placed in the right-of-way. A temporary construction and/or advertisement sign is allowed after the project is permitted and only while the construction, remodel, or repair is taking place.

TEMPORARY SIGN. Any sign not exceeding three square feet in face size which is constructed of cloth, canvas, light fabric, cardboard, wallboard, or other light materials and is not permanently affixed to realty.

(b) *Unlawful placing signs.* It shall be unlawful for any person to place or cause to be placed in or on any street, golf cart path, sidewalk, alley, or other public right-of-way in the town, or on or against any pole, post, tree, or other property located in the street, public right-of-way, or sidewalk area, any sign, poster, advertisement, bill, placard, notice, or handbill, or to place the same in any street, sidewalk, alley, or public right-of-way, or on any car or other vehicle in such a manner that the same may reasonably be expected to become loose and blow about upon the streets, sidewalks, public rights-of-way or private property of the town.

(c) *Exceptions.* Provided, however, that the foregoing division (C)(4)(b) shall not apply to the following:

1. *Signs placed by government employees.* Any notice, signs, or posters placed on or against any tree, post, pole, vehicle, or other property in any street, sidewalk, alley, or right-to-way, or other public area by any town, county, or other authorized government employee, in the performance of his or her official duties and functions;

2. *Temporary directional signs.* Directional special event signs may be temporarily placed on a public right-of-way for one day before the special event and the day of the special event. The address of the person or concern hosting the special event must be on each sign; and

3. *Lost pet signs.* Temporary signs advertising a lost pet may be posted for no more than ten days. The address of the owner of the lost animal must be on each sign.

(d) *Signs on improved and unimproved real property.*

1. *Signs on unimproved private real property.* The only sign that may be placed on any private unimproved real property is a "For Sale" sign with the address of the person or concern offering the property for sale.

2. *Signs on improved private real property.* On any improved private real property, there may be placed with of the following special event signs: "Garage Sale", "Open House", "Lost Pet", "For Sale", "For Rent", or "For Lease" signs, or other temporary sign, with the address of the person or concern to contact, which shall contain an area not to exceed three square feet; provided:

a. Any "Garage Sale" sign may not be displayed more than three days before the sale and must be removed no later than one day following the sale; and

b. "Lost Pet" signs may not be posted for more than ten days.

3. *Temporary signs advertising construction businesses.* Signs advertising builders and other construction contractors building, remodeling, or repairing a building or pool on private real property may advertise with a sign in the front yard only during the duration of the construction.

4. *Political signs on private real property.* On private real property, political signs may be placed with the consent of the property owner; provided that this exception does not apply to a sign that:

- a. Has an effective area greater than three square feet;
- b. Is more than 42 inches high;
- c. Is illuminated; or
- d. Has any moving elements.

(e) *Unlawful placing any advertisement on property of others.* It shall be unlawful for any person to post, paint, or otherwise exhibit any advertisement, poster, bill, or other notice or sign, except any notice or sign ordered posted by a court of law, on any building, fence, bulletin board, or other property not belonging to or controlled by him or her, without the permission of the person owning or controlling the same.

(f) *Sign zones.*

1. Sign zones are specific locations around the town where signs can actually be placed. A sign zone permit must be obtained prior to placing a sign at these locations. No permit fee will be assessed. Non-profit organization or public school related event signs may only be placed within identified sign zones.

2. Signs within the sign zone may only be placed in the direction of travel as the intersection is approached.

3. The following intersections are designated as sign zones:

- a. Circle medium at Nell and Cunningham Avenues; and
- b. Designated area at Keith and Jordan.

(g) *Unlawful to tear down any notice.* On property without consent of owner subject to division (C)(4)(f) above, it shall also be unlawful for any person to tear down, remove, or otherwise interfere with any such notice, sign, advertisement, bill, or poster put up by another on private property, without having obtained permission to do so, unless the same is on his or her separate property.

(h) *Town employee or authorized persons to remove signs.*

1. *Signs to be removed after 30 days.* A town official, police officer, or utility employee on or after 30 days from date of passage of this division (C)(4), shall remove all notices, signs, placards, handbills, posters, or advertising data remaining on trees, posts, poles, and vehicles in the town streets, sidewalks, alleys, and rights-of-way in violation of this division (C)(4), and dispose of same.

2. *Removal of future signs.* A town official, police officer, or utility employee shall remove any notices, signs, posters, placards, handbills, or any other advertising data attached to, on, or against any pole, post, or tree in any street, sidewalk, trees, or other public areas in the town, which are in violation of this division (C)(4).

(5) No mercantile or other business shall be carried on or conducted on said property zoned R1 Residential other than those business allowed under § 155.10.

(6) No surface toilets shall be erected or maintained on said property, the said site shall have current excavation, plumbing, piping, and materials as directed by the Lumberton Municipal Utility District as contracted and certified and by a licensed plumber and directed by a MUD authorized inspector falling the standard codes set forth by MUD and the state.

(7) In the event Lumberton Municipal Utility District (MUD) is unable to provide service to a residence prior to occupancy, the resident shall be authorized to install and maintain or use and maintain, an established septic tank system. Such system shall be erected and maintained as prescribed by current state code and the State Board of Health at time of installation. No septic system shall drain into any open ditch or allow to vent into an open surface area, allowing drainage by way of access cleanout or vent accesses, the system shall be maintained as a closed system. A filtered water filtration system that releases clean water may be included in system to remove water content allowing solids to be collected for removal by a qualified service company.

(8) No lot shall be used for storage purposes, including, but not limited to, no storing of old lumber, cars, or junk of any description.

(9) No structure of a temporary character shall be used on any lot at any time as a residence, either temporarily or permanently. This includes, but shall not be limited to, tents, trailers, travel trailers, mobile homes, recreational vehicles, shacks, garages, or other buildings.

(10) No lot shall be subdivided.

(11) No lot shall have more than one main dwelling house.

(12) Building materials for all residences and permitted structures shall be comprised of contemporary materials composed of, but not limited to, wood, plastics, steels, aluminum, stone, or brick. The use of iron or galvanized corrugated steel shall not be permitted. The prospective building materials shall have in its appearance of stone, brick, or wood in both texture, color, and appearance, wood textures materials may have the color of painted wood. All permitted structures shall have the same

appearance as the primary residence. The Town Board may approve building materials not incorporated in this provision by issuance of a variance.

(13) In the case of wooden construction, the residence shall be a frame double wall building with drop siding. No residence erected in said addition shall contain less than four rooms, exclusive of open or screen porches and attached garages. All exterior woodwork of all buildings erected shall be painted with at least two coats of paint. All roofs shall be roofed according to standard building codes, materials, and in accordance with the harmony of external design with existing structures.

(14) All building, electrical, and fire codes as set forth by the town shall be followed as a minimum standard and in the absence of such code, the state codes shall be followed. Where overlapping of codes appear, the more stringent of the two shall prevail. Plumbing codes, set forth by the governing utility district, shall also be complied with.

(15) No building shall be constructed without a qualifying building permit. Refer to *Zoning Site Development*, including, but not limited to, location of structure, topography, sub-grade, finish grade fencing, and setbacks as defined in the appropriate ordinance.

(16) A violation of this section will result in fines and or penalties as prescribed by the Town Board in conciliation with the Town Attorney.

(17) This section does not replace pre-existing deed restrictions. This section shall be considered an addition to a previous deed restrictions where they exist.

(18) Existing construction inside the town will be considered grandfathered as to its existence as long as it did not violate previous building codes; the health, safety, and welfare of the community; or was inactively persuaded as a violation prior to the adoption of this section. This pertains to, but is not limited to all existing structures, fences, and building materials. This only pertains to the town ordinance and does not effect actions taken by any authorized residents in accordance with their subdivision deed restrictions where they apply.

(19) The following exceptions shall apply.

(a) An existing structure that has 51% damage that may or may not have been previously grandfathered shall be considered a new construction and no longer grandfathered; furthermore, it shall be subject to replacement under new building codes that may exist at the time of its replacement. The remaining 49% or less of the remaining structure that does not comply with current building codes at the time of the sustained damage replacement of said structure, or brought into compliance of said structure will be required. An appeal of this division (C)(19)(a) may be placed on the agenda, presented before the Town Board at its regular scheduled meeting, and a decision will be given within 45 days. It shall be the decision of Town Board to remove, replace, or repair said structure and issue an opinion as to whether it constitutes a health, safety, or welfare issue, and does or does not add to an undue hardship to the owner.

(b) Upon a state of emergency declared by a State Governor or County Judge or the Mayor's office by the Municipal Judge following a natural or human-made disaster effecting the community as a whole such as a major flood or storm and not a single event as a house fire, a suspension of the temporary housing segment of this division (C) may be imposed or granted for a reasonable period of time; meaning, not greater than six months and may be extended by a case by case basis by a temporary variance, but not to exceed 24 months. The temporary residence shall be approved by the Town Board, and not to be greater than the approved size established by FEMA, not a double-wide trailer, not to exceed 40 feet in length and 14 feet in width, and to be occupied by the owner living at said property or the primary resident of said property at the time of the event, for a period of time necessary to repair or replace the residence.

(Ord. passed 4-10-1973; Ord. 2011-06-14-02, passed - -; Ord. 2015-06-09-02, passed 2-14-2012; Ord. 2014-08-12-01, passed 8-12-2014)

§ 155.07 COMMERCIAL AND LIGHT INDUSTRIAL DISTRICT.

(A) *Generally.* Any retail, wholesale, or commercial use; provided, such use is not noxious or offensive by reason of emission of odors, soot, dust, noise, fumes, or vibrations, and provided such use is of a character and type as to be in conformity with the generally accepted commercial district, and provided such use is not contrary to the welfare of the general public.

(B) *Permitted uses, property/site development standards, and the like.*

(1) *Intent.* This Zone is intended to provide for the establishment of restricted commercial facilities, to serve the conveniences and needs of the immediate neighborhood, and must be compatible with the residential character and environment of the neighborhood, with limited commercial, institutional, and office usage. These uses generally result in limited traffic generation. Alcoholic beverage sales are prohibited.

(2) *Principle permitted uses.* Building, structures, and lands shall be used, and buildings and structures shall hereinafter be erected, altered, or enlarged only for the following uses as the Town Board, by resolution, may deem to be similar to those uses listed and not obnoxious or detrimental to the public health, safety, and welfare:

- (a) Administrative and business office;
- (b) Convalescent services;
- (c) Cultural services;
- (d) Daycare services;
- (e) Town homes;

- (f) Local utility services;
- (g) Medical services;
- (h) Patio homes;
- (i) Personal services;
- (j) Private primary educational services;
- (k) Secondary educational facilities;
- (l) Professional offices; and
- (m) Religious assembly.

(3) *Limitations on the Commercial District.* Limitations on the Commercial District shall be as follows.

- (a) Sale of alcoholic beverages shall not be permitted.
- (b) All business shall be conducted wholly within an enclosed building.
- (c) No drive-in or curb services shall be permitted.

(4) *Property development standards.* Except as hereinafter provided, no building or structure or part thereof shall be erected, altered, or converted for any use permitted in this District unless it is in conformity with all the standards and regulations herein specified for lot area, lot width, lot depth, dwelling unit area, lot coverage, yards, and building height. The following standards shall apply except in cases where a lot does not meet the standards herein required but was an official “lot of record” prior to the adoption of this chapter. In such cases, the present dimension shall be maintained as a minimum standard until such time as the use is removed. The replacement shall meet the standards and regulations herein specified.

(5) *Site development regulations.* Each site in the C1 District shall be subject to the following site development regulations. (The site development regulations for the C1 District are a separate document and are on file with the town.)

<i>Feature</i>	<i>Regulation</i>
Fences, walls, and visibility	§ 7.530
Front yard	Minimum required setback, 40 feet
Height	Maximum building height, 2 stories, 26 feet
Interior side yard	Minimum required setback, 10 feet*

Rose Hill Acres - Land Usage

<i>Feature</i>	<i>Regulation</i>
Landscaping and screening regulations	§ 7.900
Lot size	Minimum lot area, 7,500 square feet
Lot width	Minimum lot width, 70 feet
Maximum building coverage	Percent of lot area, 30%
Maximum imperious coverage	50%
Nonconforming uses	§ 6.100
Parking	§ 7.800
Rear yard	Minimum required setback, 30 feet
Residential density	§ 3.120
Screening regulations	§ 7.900
Signs	Sign ordinance
Site development regulations	§ 7.000
Special yard regulations	§ 7.300
Street side yard	Minimum required setback, 40 feet
Temporary accessory building	§ 8.00
* 30 feet when adjacent to R1 to R5	

(6) *Structure*. Structure size and building materials:

- (a) Business or tenant maximum size per structure, 5,000 square feet floor gross area, on a half-acre lot;
- (b) Exterior entrances are required for each tenant in a single-tenant structure;
- (c) Exterior entrances are required for each tenant in a multi-tenant structure;
- (d) Exterior egress required on back wall on single tenant or multi-tenant structure;
- (e) Special exception required for each business in excess of 5,000 square feet on a lot greater than one-half acre, submitted to Town Building and Zoning Committee for recommendations to forward to Town Board of Aldermen for final approval;
- (f) A jointing structure cannot exceed 10,000 square feet and require additional fire retardant and fire suppression systems, on a lot greater than one-half acre, submitted to Town Building and Zoning Committee for recommendations to forward to Town Board of Aldermen for final approval;

(g) Building materials employed in construction:

1. All building materials used shall be the same as those found in R1 zoned areas to give the appearance of a primary living structures;
2. Materials on exterior walls shall be of 50% stone or brick or a brick veneer, wood, or a cement board with a wood or stucco appearance; and
3. No concrete materials such as cinder block, or metal materials for walls shall be used in the construction of exposed exterior walls.

(h) All building materials used in exterior walls not listed above shall be submitted to the Town Building and Zoning Committee for recommendations to be forward to Town Board of Aldermen for final approval.

(Ord. passed 4-10-1973; Ord. 2009-11-10, passed - -) Penalty, § 155.99

§ 155.08 PROHIBITIONS.

(A) The following prohibitions apply to this chapter: boundaries; trucking operations; truck stops; and feed lots are specifically prohibited anywhere within the town limits.

(B) Any manufacturing, distributing, or industrial plant of any type of character, except where such use is noxious or offensive by reason of odors, soot, dust, noise, fumes. or vibrations, or where such use is prohibited by law.

(Ord. passed 4-10-1973) Penalty, see § 155.99

§ 155.09 USE AND CONTINUATION OF STRUCTURES.

Use of land which does not conform to the provisions of this chapter at the time of the effective date of this chapter from which this chapter derived may be continued until such time as a structure is erected thereon, and thereafter the use of the land and the building must conform to provisions of this chapter.

(Ord. passed 4-10-1973)

§ 155.10 R1 AND R2 HOME OCCUPATIONS.

(A) *Definitions.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

HOME OCCUPATION. A business activity customarily carried on in the home by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment, or materials other than that customary to

the normal household operations; without the employment of persons not residing in the home; without the use of a sign to advertise the occupation; and which does not cause the generation of additional traffic in the street.

(B) *Purpose.*

(1) Standards for controlling home occupations are set forth to minimize annoyance and inconvenience to neighboring property owners within residential areas. These standards are intended to allow reasonable and comfortable enjoyment of adjacent and nearby property by their owners and by occupants of neighboring residential dwellings, while providing opportunities for the pursuit of home-based businesses.

(2) In simple terms, a home occupation should be conducted in such a manner that the neighbors are unaware of its existence. No permits are required for most home occupations, however, any occupation that requires state licensing, food permits, or health inspections are required to possess valid licenses and have the premises inspected regularly, such as catering, beauticians/barbers, attorneys, tax advisors, architects, and the like.

(C) *Clarification of permitted home occupations.*

(1) (a) Home occupations are permitted as an accessory use in single- and two-family residential zoning districts as designated in the town; provided, that they comply with the following restrictions.

(b) 1. The use is conducted entirely within:

a. The principal dwelling unit and attached garage; and

b. Such use is limited to the members of the family or other residents residing in the dwelling unit. Employees that do not visit or use the home as part of their job are excluded from this provision.

2. Exceptions to the above may be permitted if approved by the Town Board of Aldermen. In reviewing such a request, the Town Board of Aldermen may consider the following:

a. The reason for the request;

b. The impact on the character of the neighborhood;

c. The availability of on-site parking and number of employee vehicles;

d. Hours when employees will be located on-site; and

e. The consent of the majority of property owners of the one- or two-family residential property along both sides of the block face.

(2) (a) The occupation shall produce no alteration or change in the character or exterior or interior appearance of the principal building from that of a residential dwelling, and performance of the occupation activity shall not be visible from the street.

(b) A change in the outside appearance of the dwelling unit or lot indicating the use or conduct of a home occupation, including advertising signs or displays is prohibited. All equipment, goods, wares, merchandise, or the use must be clearly incidental and secondary to the residential use of the dwelling and may not alter the existing residential character of the principal dwelling or the garage/accessory building. A home occupation that requires structural alteration of the principal dwelling or garage/accessory building to comply with nonresidential construction code is prohibited. Materials associated with home occupation, including equipment, goods wares, merchandise, or materials located in or on vehicles, must not be visible from any public street or public right-of-way or from other locations off the premises.

(3) Such use shall be incidental and secondary to the use of the premises for residential purposes, and shall not utilize floor area exceeding 20% of the combined gross floor area of the dwelling unit. In no case shall the combined floor area utilized for a home occupation exceed 250 square feet, inventory and supplies shall not occupy more than 20% of the area permitted to be used as a home business.

(4) Not more than one patron or his or her vehicles shall be present at one time, and the proprietor shall provide adequate off-street parking on the property where the use is located. The direct sale of commodities, goods, wares, materials, merchandise, or products to the general public is prohibited; however, orders may be filled on the premises to persons by prior individual's oral or written invitation, or if placed earlier by a customer by phone, mail, internet, or off-site sales parties.

(5) The operation of such an occupation shall be between 8:00 a.m. and 10:00 p.m. for indoor activities. No outdoor activities are permitted.

(6) No commercial vehicle may be used in connection with the home occupation may be parked at the property outside of the above hours of operation.

(7) (a) The occupation activity shall not increase vehicular traffic flow beyond what normally occurs within a residential district and shall not require regular and frequent deliveries by large delivery trucks or vehicles with a rated capacity in excess of one and one-half tons, according to the manufacturer's classification.

(b) No vehicular traffic shall be generated by the home occupation business which would create unreasonable parking or traffic congestion for the abutting or adjoining neighbors or for the immediate neighborhood. Any parking of vehicles must be consistent with town ordinances. Any parking

or traffic of such character, intensity, and continued duration, which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities, shall be considered unreasonable.

(c) Any activity conducted on the premises shall be of such a nature as to not appreciably increase the vehicular traffic or pedestrian activity in the neighborhood, and shall not encourage queues, browsing of displays, or any similar activity.

(8) There shall be no outside storage, including trailers, or outside display related to the home occupation use.

(9) (a) No mechanical or electrical equipment shall be employed on the premises other than that which is customarily found in a home environment, and that which is customarily associated with a hobby or avocation which is conducted solely for pleasure and not for profit or financial gain and no mechanical equipment shall be used which will be obnoxious or offensive by reason of vibrations, noise, odor, dust, smoke, or fumes.

(b) No combustible materials shall be permitted on the premises that are in violation of the Town's Fire Code.

(10) The occupation shall not require the use of chemicals on the property that are obnoxious or hazardous to the welfare of the neighborhood.

(11) The home occupation shall not involve the use of advertising signs or window displays or any other device that calls attention to the business use of the premises through audio and/or visual means, including, but not limited to, business signs on vehicles billboards, television, radio, newspaper, or other forms of direct advertising, pamphlets, posters, handouts.

(12) The occupation shall not offer a ready inventory of any commodity for sale on the premises unless the commodity is made or assembled on-site (e.g., arts and crafts items, handmade clothing, and the like).

(13) The occupation shall not be harmful or detrimental to the health, welfare, and safety of the neighborhood, nor shall it interfere with the comfortable enjoyment of life, property, and recreation by residents of the area.

(D) *Applicability of other regulations.* Home occupations shall also be subject to any and all other provisions of local, state, and/or federal regulations and laws that govern such uses.

(E) *Uses allowed as home occupations.* In compliance with divisions (A) through (D) above, home occupations may include, but are not limited to, the following uses:

(1) Office facility of an accountant, architect, landscape architect, attorney, engineer, consultant, insurance agent, realtor, broker, salesperson, sales or manufacturer's representative, or similar profession;

(2) On-premises retail or wholesale or internet sales not to exceed one customer at a time with no on-site inventory, except that which is ordered or produced to fill an individual order;

(3) Dressmaker, seamstress, or tailor;

(4) Music/dance teacher, or similar types of instruction; provided, that instruction shall be limited to no more than one pupil at a time;

(5) Individual tutoring and home schooling;

(6) Office facility of a minister, rabbi, priest, or other clergy;

(7) Home crafts, such as rug weaving, model making, and the like;

(8) Garage sales and or estate sales are not to exceed two a year, for a total period of ten days. A variance may be issued by the Mayor's office or a majority of Town Board, in the case of an estate sale. The variance may extend an additional period up to seven days if the estate is that of the resident of that location;

(9) Repair shops for small electrical appliances, cameras, radio shops, watches/clocks, and other small items; provided, that the items can be carried by one person without using special equipment, and; provided, that the items are not equipped with an internal combustion engine;

(10) Food preparation establishments such as cake making/decorating or catering; provided, that there is no on-premises consumption by customers, and; provided, that all aspects of the business comply with all state and local health regulations;

(11) Swimming lessons and water safety instruction; provided, that such instruction involves no more than two pupils at any one time; and home schooling, with more than one pupil at a time;

(12) Author, artist, or sculptor; and

(13) "Mary Kay" type of businesses.

(F) *Uses prohibited as home occupations.* Home occupations shall not, in any event, be deemed to include the following uses:

(1) Animal hospitals or clinics, commercial stables, or kennels; the physical or medical treatment of animals;

(2) Dancing studios or schools, and instruction thereof;

(3) Restaurants or on-premises food or beverage (including private clubs) consumption of any kind, except for limited food/meal consumption associated with the operation of a licensed registered family home or a bed and breakfast facility;

(4) Automobile, boat, or trailer paint or repair shop; small engine or motorcycle repair shop; welding shop; large household appliance repair shop; or other similar type of business;

(5) Office facility for a doctor, dentist, veterinarian, or other medical-related profession, including, but not limited to, chiropractor and massage services or clinics, the physical or medical treatment of people;

(6) Commercial clothing laundering or cleaning;

(7) Mortuaries or funeral homes;

(8) Trailer, vehicle, tool, or equipment rentals, sales, or leasing. (Exception as to personal vehicles titled to the resident for a period of not less than 12 months may be granted through a variance in writing from the Board of Aldermen.);

(9) Repair shops or rental outlets;

(10) Drapery or furniture upholstery shops;

(11) Antique, gift, or specialty shops;

(12) Repair shops for any items having internal combustion engines;

(13) Any use that would be defined by the Building Code as an assembly, factory/industrial, hazardous, institutional, or mercantile occupancy;

(14) Junk yards;

(15) Rest home;

(16) Child care center;

(17) Schools or schooling with more than one pupil; and

(18) Sign painting.

(G) *Home occupations used not classified.* Any use that is not either expressly allowed nor expressly prohibited by this chapter respectively, must prior to its establishment and operation, be approved by the Town Board of Aldermen, subsequent to an affirmative recommendation by the Planning and Zoning Commission.

(H) *Intent.* This section will be subject to, however, not limited to, some or all ordinances listed above and in the existing ordinance.

(I) *Effective date.* This section shall take effect immediately from and after its passage, subject to whatever publication that may be required by law.
(Ord. 2011-09-13-01, passed 9-13-2011)

§ 155.11 ACTION TO PREVENT AND ABATE.

In case any building or structure is erected, constructed, re-constructed, altered, repaired, converted, or maintained, or any building or structure or land is used in violation of this chapter, the Mayor, in addition to other remedies, may institute any proper action or proceedings in the name of the town or to prevent such unlawful erection, construction, re-construction, alteration, repair, conversion, maintenance, or use restrain, correct, or abate such violations to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.
(Ord. passed 4-10-1973)

§ 155.99 PENALTY.

(A) Any person or corporation who shall violate any of the provisions of this chapter to fail to comply therewith or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder, shall be deemed guilty of a misdemeanor and shall be liable for a fine for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500. Any architect, builder, contractor, individual person, or corporation employed in connection therewith who assisted in the commission of any such violation shall be deemed guilty of a separate offense and upon conviction shall be fined as herein provided.

(B) Any person, firm, or corporation violating any provisions of § 155.06(C)(4) shall be punished by a fine of not more than \$500.
(Ord. passed 4-10-1973; Ord. 2015-06-09-02, passed 2-14-2012)

