

Chapter 4

General Regulations

Section 1. **Completion of Existing Buildings**

A. Nothing herein contained shall require and change in the plans, construction, or designated use of a building actually under construction at the time of the adoption of this Code.

B. Nothing herein contained shall require any change in plans, construction, or designated use of a building for which a building permit has been issued within 30 days prior to the adoption of this code provided construction is started on said building within 120 days after adoption of this code.

Section 2. **Annexed Area**

A. Territory annexed to the City after adoption of this code shall be given district designations within 90 days after the effective date of the annexation in accordance with the amendment procedures of this code.

B. Before official district designation is made after annexation, all requests for building permits shall be referred to the City Planning Commission. The Planning Commission or its designated committee may recommend issuance of the permit if said use conforms to the land use plan and the structure meets the requirements of the zone in which it is to be located.

Section 3. **Areas Not to be Diminished**

A. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this code, shall be included as a part of a yard, open space, or off-street parking or loading space similarly required for any other building or use.

B. No yard or lot existing at the time of passage of this code shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this code shall meet at least the minimum requirements established by this code.

Section 4. **Home Occupations**

A. Classification

Home occupations, as defined herein, are divided into two classes, Type A and Type B, and may be permitted in accordance with the following provisions:

1. Type A. Type A home occupations are only those occupations that meet all of the requirements listed below. Type A home occupations do not require approval of the Planning Commission.

- (a) The home occupation is located completely within the principal dwelling unit.
- (b) The home occupation is solely operated by the owner(s) and occupant(s) of the dwelling. No non-resident persons are employed.
- (c) The home occupation is not primarily a retail sales operation. (Incidental sales, i.e. shampoo, cosmetics, are permitted.)
- (d) The home occupation does not occupy more than 25 percent of the gross habitable ground floor area of the principal dwelling unit.
- (e) The home occupation does not display merchandise or have outside storage of equipment or materials.
- (f) The home occupation does not alter the external appearance of the principal dwelling unit.
- (g) The home occupation does not create noise, vibration, glare, fumes, electromagnetic interference, odors, or air pollution outside the principal dwelling unit.
- (h) The home occupation has no more than one non-illuminated business identification sign mounted flush to the dwelling unit, not more than four square feet in area.
- (i) The home occupation does not involve the storage of hazardous materials, other than substances of a type and quantity customarily associated with a home or hobby.
- (j) The home occupation will not cause more than one customer vehicle to be parked in the vicinity of the principal dwelling unit at a time.
- (k) The home occupation does not involve the external or visible manufacturing of goods on-site.

2. Type B. Type B home occupations are those occupations that do not meet one or more of the requirements of a Type A home occupation and/or by their nature, have

characteristics that may not be suitable for a residential structure or area. Type B home occupations must be approved by the Planning Commission through the conditional use procedure. However, Type B home occupations must meet the following requirements to be considered for a conditional use permit:

- (a) Traffic generated by the proposed use must not negatively impact the safety, ambiance and characteristics of the residential neighborhood.
- (b) The home occupation does not create noise, vibration, glare, fumes, electromagnetic interference, odors, or air pollution outside a structure.
- (c) The home occupation is not primarily a retail sales operation. (Incidental sales, i.e. shampoo, cosmetics, are permitted.)
- (d) The home occupation does not involve the storage of hazardous materials, other than substances of a type and quantity customarily associated with a home or hobby.
- (e) The home occupation is solely operated by the owner(s) and occupant(s) of the dwelling. No non-resident persons are employed.

B. Examples of Home Occupations

- 1. Activities conducted principally by telephone, computer, facsimile, or mail.
- 2. Studios where handicrafts are produced.
- 3. Dressmaking or apparel alterations.
- 4. Barber and beauty shop (Only one chair is permitted in a Barber or Beauty Shop home occupation).

C. Prohibited Home Occupations

- 1. Bed and breakfast.
- 2. Eating and drinking establishments.
- 3. Kennels.
- 4. Commercial sales or leasing of vehicles.
- 5. Rest home.

6. Clinic, Doctor or Dentist Office.
7. Tourist Home.
8. Any use that requires a building code upgrade (i.e., from residential standards to commercial standards) to accommodate the home occupation.

D. Hobbies

Hobbies conducted solely within the confines of a structure with no external impacts whatsoever, are not considered home occupations, even if occasional items are sold on the premises or transported away from the premises for sale.

Section 5. **Non-Conforming**

A. Intent

1. Within the districts established by this code or amendments that may be later adopted, there exist lots, structures, and uses of land and structures which were lawful before this code was passed, but which would be prohibited, regulated, or restricted under the terms of this code.
2. Such uses are declared to be incompatible with permitted uses in the districts involved.

B. Non-conforming Uses

1. Where, at the effective date of this code, a lawful use exists that is no longer permissible after the enactment of this Code, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions of this Section.
2. If any such non-conforming use ceases for any reason the owner shall notify the city of the intent to rebuild or resume operation within 60 days of the cessation of the non-conforming use. Reconstruction or the resuming of operation of the non-conforming use shall be completed within 12 months of the cessation of use. If the non-conforming use ceases for a period of more than 60 days and no intent to rebuild or resume operation has been filed with the city, any subsequent use shall conform to the regulations specified by this code for the district in which such land is located.
3. Any non-conforming use may be extended throughout any parts of a structure which are manifestly arranged or designed for such use at the time of adoption of this Code.

4. Any change in use must be to a conforming one.

C. Non-conforming Structures

1. When a lawful structures exists at the effective date of this code that could not be built under requirements of this code by reason of restrictions on area, lot coverage, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions of this Section.
2. Any structure or portion of structure declared unsafe by a proper authority may be restored to a safe condition.
3. No such structure may be enlarged or altered in a way which increases its non-conformity.

D. Repairs and Maintenance

1. Any building devoted in whole or in part to any non-conforming use may have ordinary repair, or repair and replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent no to exceed 10 percent of the replacement value of the building in any twelve-month period, provide that the size of the building is not increased.
2. Nothing in this code shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

E. Lots of Record

A building may be built on any lot of record that is smaller than required by these regulations provided that it was legally recorded before the effective date of these regulations. If the lot is less than 60 feet wide, offsets from side lot lines may be reduced to 5 feet.

Section 6. Board of Zoning Adjustment

A. Designation and Organization of Board of Zoning Adjustment

1. The Board of Zoning Adjustment, hereafter referred to as the Board, shall consist of the members of the City Planning Commission. All meetings of the Board shall be Public Hearings duly advertised as stated in F of this Section.
2. The Board shall, upon its creation, meet, organize, and elect its own chairman who shall serve for one (1) year until his successor duly qualifies.

3. All business will be conducted as stated in the By-Laws of the Board of Zoning Adjustment approved by the Council.

B. Meetings

1. Meetings of the Board shall be held at such times and at such place or places as the Board may designate, and may meet at any time on call of the chairman. The Board shall maintain minutes of its proceedings, which shall be public record.
2. The presence of three members shall be necessary to constitute a quorum and the concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which it is required to pass under the zoning code, or to authorize a variance from the zoning regulations.

C. Appeals from Decision of Enforcement Officer

1. The Board shall hear appeals from an administrative decision of the enforcement officer, who shall be designated by the City Council, concerning interpretation of the zoning regulations and shall decide whether such interpretation was in error or not.

D. Variances

1. The Board shall hear requests for variances from the literal provisions of the zoning regulations in instances where strict enforcement of the zoning regulations would cause undue hardship as a result of circumstances unique to the individual property under consideration, and grant such variances only which it is demonstrated that such action will be in keeping with the spirit and intent of the zoning regulations.
2. The Board shall not permit, as a variance, any use in a zone that is not permitted under the regulations.
3. The Board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

E. Appeals from Decision of Board

Appeal from the decision of the Board of Zoning Adjustment shall be to a court having jurisdiction not more than thirty (30) days after the decision of the Board.

F. Notice and Fees

Whenever an appeal or application for a variance is made to the Board, the Board shall cause to have published, at the expense of the appellant or applicant, a notice of the time and place of a public hearing upon such appeal or application, which notice shall be published at least once not less than seven (7) days preceding the date of such hearing in an official paper or a paper of general circulation, said notice to designate the particular location with which the appeal or application is concerned, and a brief statement as to what the appeal or application consists of. The Board shall also give or cause to be given such additional notice of such hearing to interested persons and organizations, such as adjacent property owners, as it shall deem feasible and practicable.

Section 7. **Amendments**

A. General

1. This Code may be amended by changing the text, the Official Zoning Map, or both in accordance with the procedures prescribed herein. Notice of any public hearings held using any of the methods shall be published at least one time, not less than fifteen (15) days prior to the date of the public hearing, in a newspaper of general circulation.

2. The following may initiate a request to amend this Code.

- (a) A member or members of the City Council
- (b) A member or members of the Planning Commission
- (c) The owner of a property or his appointed agent

B. Amendments by the City Council may be made in the following manner.

- 1. The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section 3, below.
- 2. The City Council may act upon a request to amend this Code when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City. An amendment may be made upon the approval of two-thirds of the entire City Council.

C. Amendments by the Planning Commission may be made only in accordance with the procedures outlined herein.

1. The Planning Commission may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Code.
2. The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. If the proposed amendments are not consistent with the comprehensive plan, the Planning Commission shall first consider and adopt any necessary changes to the plan.
4. The Planning Commission shall hold a public hearing to consider amendments to the Zoning Code and amendments to the Comprehensive Plan, if required.
5. Changes in zoning classifications initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes will be available in City Hall for interested citizens and property owners.
6. Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

D. Amendments by property owners may be made in the following manner.

1. An application for amendment shall be filed with the city.
2. The application for a Zoning Map Amendment shall contain the following information:
 - (a) Name and address of applicant.
 - (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
 - (c) Address and legal description of property.
 - (d) A map of the subject property, delineating:
 - i. the dimensions of property;
 - ii. approximate location of buildings with appropriate dimensions;
 - iii. owner's name and land uses of adjacent properties.
 - (e) The application shall be accompanied by the processing fee as set by the City Council.

3. Hearing on Application

Upon receipt in proper form of the application for a Zoning Map Amendment, the Planning Commission shall fix a date for a public hearing.

Notice of such hearing shall be published by the applicant at least one time not less than fifteen (15) days prior to the public hearing in a newspaper of general circulation in the City of Lavaca. Content of such notice shall be of a general nature describing the general subject matter and the Chapters involved, with respect to the proposed amendment.

In addition to newspaper notice, notice of such hearing shall be given by posting a suitable and pertinent sign on the property involved by the applicant not less than fifteen (15) days prior to the hearing.

Notice of the Public Hearing prescribing the date of the hearing and including a description of the property and of the proposed Amendment relating thereto shall be given by the Applicant, at his expense, to each owner/or occupant of property located within adjacent to or across the street from the property which is the subject matter of the application within 15 days of the hearing date. This notice requirement may be satisfied by either of the following methods:

(a.) Notice by certified mail, return receipt requested.

(b.) Hand delivery of the required notice and the execution of an acknowledgement of receipt thereof by the owner/or occupant of the property.

At the hearing, the Applicant shall be required to submit evidence of notice in accordance herewith.

E. Finding of Fact

Within thirty (30) days following the public hearing, the Planning Commission shall make a specific finding as to whether or not the change is consistent with the objectives of the Zoning Code, and the Plans adopted by the Planning Commission, and that the purpose of the Amendment is not based exclusively upon a desire to increase the value or income potential of the property. The Planning Commission shall make written recommendations to the City Council setting forth the basis for its recommendations. A copy of these recommendations shall be submitted to the applicant at the same time.

F. Authorization by City Council

Any amendment hereto shall become effective only upon passage by ordinance by a two-thirds (2/3) vote of all members of the City Council.

G. Effect of Denial of Amendment

No application for an Amendment which has been denied wholly or partly by the City Council shall be resubmitted for a period of one (1) year from the date of said denial, except upon a showing of a substantial change in conditions found to be valid by the Planning Commission. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.

Section 8. **Enforcement – Penalty for Violation – Severability**

A. Enforcement

1. The provisions of these regulations shall be administered by an enforcement officer designated by the City Council.

2. A building permit shall be issued only when the application for such permit has been approved by the enforcement officer as meeting the requirements of these regulations. All applications for building permits shall be accompanied by a plan in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size of the building to be erected, its location on the lot, and such other information as may be necessary to provide for the enforcement of these regulations. A record of such application and plats shall be kept in the office of the enforcement officer.

B. Penalty for Violation

1. Any person or corporation who shall violate any of the provisions of these regulations or fail to comply therewith or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder, shall be guilty of a misdemeanor and shall be liable to a fine of not more than one hundred (100) dollars nor less than ten (10) dollars. Each day such violation is known to exist shall constitute a separate offense. The owner or owners of any building or premises or part thereof, where anything in violation of these regulations shall be placed or shall exist, and any architect, builder, contractor, agent, person, or corporation employed in connection therewith who may have assisted in the commission of any such violation, shall be guilty of a separate offense and upon conviction thereof shall be fined as herein before provided.

C. Severability

1. The provisions of these regulations are hereby declared to be severable. If any section, paragraph, sentence, or clause of these regulations shall be held invalid, the invalidity of such section, paragraph, sentence, or clause shall not affect the validity of any part of the remainder of the said regulations.

Chapter 5 Conditional Uses

Section 1. **General Purposes**

The purposes of this section are to define more clearly the concept of conditional uses; to establish standards by which the Planning Commission shall evaluate conditional uses; and to set forth procedures for processing conditional uses.

Section 2. **What is a Conditional Use?**

A Conditional Use is a use that conforms to the intent of the comprehensive plan for a specific area and is generally allowable. The use may represent potential problems, however, with respect to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The Conditional Use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the comprehensive plan or zoning code. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the commission or by the applicant to ameliorate those impacts.

Section 3. **Standards for Conditional Uses**

The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth below. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the zoning code.

In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

- (a) The proposed use is so designed, located and proposed to be operated that the public health, safety, morals, and welfare will be protected.
- (b) The proposed land use is compatible with and will not adversely affect other property in the area where it is proposed to be located.

- (c) The proposed use is within the provision of "Conditional Uses" as set out in this Code.
- (d) The proposed use conforms to all applicable provisions of this code for the zoning district in which it is to be located, and the use facilitates public convenience at that location.
- (e) The size and shape of the site, and the size, shape and arrangement of the proposed structures, are in keeping with the intent of the comprehensive plan and this code.
- (f) The internal street system, ingress or egress, off-street parking, loading and pedestrian ways will be efficient and safe.
- (g) Safeguards, including, but not limited to, hours and methods of operation, landscaping and screening, controlling noxious or offensive emissions, including lighting, noise, glare, dust and odor, are satisfactory.
- (h) Landscaping, fencing and open space will be properly maintained by the owner/developer.
- (i) Proposed signs will be appropriate for the location and in accordance with the requirements of the existing City Code.
- (j) Public utilities are, or will be, available and will not be overloaded.

Section 4. **Conditions**

The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize the injurious effects of the conditional use, insure compatibility with the surrounding property, and carry out the general intent of this code. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the zoning code.

Conditions imposed as part of the conditional use may be of two types. Threshold Conditions are those that must be met by all proposed developments before an application for a conditional use permit will be forwarded to the Planning Commission. Implicit Conditions are those that the Planning Commission may apply during the review of an individual case.

In no case shall the Planning Commission authorize relief from the minimum requirements of the code relating to height, area, parking or screening. However, Applicants may be directed to the Board of Zoning Adjustment for variances.

Section 5. Application Procedure for Conditional Use Permit

Application for a conditional use permit shall be made by the property owner or authorized agent for the owner. The application shall be submitted to the Planning Commission which will process all applicable surveys, site plans and other supporting information pertinent to this review process and make recommendations to the planning commission.

Notice of the Conditional Use Permit application shall be published at least one time, not less than ten (10) days prior to the date of the public hearing, in a newspaper of general circulation. The applicant shall give notice of such hearing by posting a suitable and pertinent sign on the property involved not less than ten (10) days prior to the hearing. The applicant shall notify all adjacent property owners no less than ten (10) days prior to the public hearing.

Section 6. Development Plan Requirements

The development plan requirements for a conditional use application shall include a graphic representation of what is proposed and a general statement as to the intent of the use. The graphic representation shall include the following:

- (a) The location, size and use of buildings, signs, land and improvements
- (b) The location, size and arrangement of parking space, loading space, driveways and street access
- (c) The existing topography with proposed grading and drainage plans
- (d) Proposed screening and landscaping
- (e) The use of adjoining property
- (f) Scale, north arrow and vicinity map
- (g) Any additional information needed by the staff because of conditions peculiar to the development.

Section 7. Planning Commission Action

The Planning Commission shall review conditional use applications at its scheduled meeting, at which time interested persons may appear and offer information in support of, or against the proposed conditional use. The Planning Commission shall then make one of the following determinations: approve the conditional use as requested; approve the conditional use with modifications; defer the conditional use; or deny the conditional use.

The Planning Commission may impose conditions and restrictions upon the premises benefited by a conditional use permit as may be necessary to reduce or minimize the injurious effects of the conditional use, insure compatibility with the surrounding property and carry out the general intent of the comprehensive plan, appropriate neighborhood plans and this code.

In no case shall the Planning Commission authorize reduction from the minimum requirements of the code relating to height, area, parking or screening. However, the Applicant may be directed to the Board of Zoning Adjustment for variances under the Zoning Code.

Section 8. Status of Conditions

Once any portion of the conditional use permit which has been authorized is utilized, all such conditions pertaining to such authorization shall become immediately operative. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit. Such conditions may include time limits for exercise of such authorization and must commence within a reasonable time.

The Board of Zoning Adjustment is not authorized to grant a variance from conditions imposed by the commission in connection with a conditional use. However, the Board of Zoning Adjustment may grant variances as provided by the Zoning Code.

Amendments or major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan. No building permit shall be issued except in conformance with the provisions of this section.

A Conditional Use Permit is a part of the Zoning Code and shall run with the land upon which the use is located. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the zoning code.