

**ORDINANCE NO. 120406-B**

**AN ORDINANCE REPEALING ORDINANCE NO. 112398A, THE ZONING ORDINANCE OF THE CITY OF NIEDERWALD, TEXAS AS HERETOFORE AMENDED; PROVIDING FOR THE ADOPTION OF ZONING REGULATIONS APPLICABLE TO ALL LAND SITUATED WITHIN THE BOUNDARIES OF THE CITY; PROVIDING FOR A PENALTY CLAUSE, A SEVERABILITY CLAUSE, AN EFFECTIVE DATE, AND VARIOUS OTHER PROVISIONS.**

**WHEREAS**, the City Secretary of Niederwald, Texas, directed that notices of a hearing be issued, as required by the laws of the State of Texas, at a meeting of the City Council, to be held on the 4th day of December, 2006, for the purpose of considering to the adoption of a new Zoning Ordinance; and

**WHEREAS**, the City accordingly caused to be issued and published the notices required by the laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Niederwald, Texas, at least fifteen (15) days prior to the time set for such hearing, as is all shown by the publisher's affidavit attached to the original copy of this Ordinance; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the adoption of a new Zoning Ordinance, on the 4th day of December, 2006; and

**WHEREAS**, the City Council is of the opinion and finds that the adoption of a new Zoning Ordinance will promote the public health, safety, or general welfare, will promote the purposes outlined in Chapter 211 of the Texas Local Government Code, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Niederwald, and as well, the owners and occupants thereof, and the City generally; Now Therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS THAT:**

**I.**

Ordinance No. 112398A, as heretofore amended, is hereby repealed in its entirety.

**II.**

The Zoning Ordinance set out herein is hereby adopted, to provide as follows:

## **SECTION 1**

### **PURPOSE**

**1-100** The zoning regulations and districts as herein established have been made for the purpose of promoting the health, safety, morals, and general welfare of the City. They have been designed to lessen the congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land, to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewer, schools, parks and other public requirements. They have been made with reasonable consideration, among other things, for the character of the district, and its peculiar suitability for the particular uses specified; and with a view to conserving the value of real property and associated improvements and encouraging the most appropriate use of land throughout the City.

## **SECTION 2**

### **DEFINITION REFERENCE**

**2-100** Section 21 contains the Definitions used throughout the Zoning Ordinance. Definitions related to Sexually Oriented Businesses are contained in a separate Ordinance Number 120406-A, dated December 4th, 2006.

## **SECTION 3**

### **ZONING DISTRICTS ESTABLISHED**

**3-100** The City is hereby divided into twelve (12) zoning districts, the use, height and area regulations as set out herein shall be uniform in each district. The twelve (12) districts established shall be known as:

#### **ABBREVIATED DESIGNATION**

#### **ZONING DISTRICT NAME**

A	Agricultural District
SF-1	Single-Family Rural Residential District
SF-2	Single-Family Suburban Residential District
SF-3	Single-Family Residential District
MH	Manufactured Home District
MF-1	Multiple-Family Dwelling District-1
MF-2	Multiple-Family Dwelling District-2
LR	Local Retail District
GB	General Business District
LI	Light Industrial District
HI	Heavy Industrial District
PD	Planned Development District

FP Prefix

Floodplain prefix. When prefixed to any District designation as it appears on the Zoning District Map specified as a Sub-District subject to provisions of 7-600 through 7-608

## **ZONING DISTRICT DESCRIPTIONS:**

Zoning is used in the City of Niederwald to achieve compatible land use arrangements. Complementary land use transitions are often capable of achieving a good land use "fit" between different uses and zoning districts. Summarized below are Niederwald's Zoning Districts, with a brief explanation of the principal uses allowed in each.

**A AGRICULTURAL DISTRICT:** Allows detached single-family residences and related accessory structures on a minimum one-acre tract. Typical zone upon annexation.

**SF-1 SINGLE FAMILY RURAL RESIDENTIAL DISTRICT:** Permits detached single-family site-built residences and related accessory structures on a minimum 43,560 square foot (1.0 acre) lot with the following guidelines:

- Minimum ROW Frontage = 100'
- Front & Rear Setback = 30'
- Side setback = 15'
- Corner Lot side setback = 30'
- Minimum lot depth = 150'

These lots have water wells, septic systems or other approved onsite private sewage facility. Streets may be built with a rural type section as approved by the City of Niederwald. Manufactured homes are not allowed in this district.

**SF-2 SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT:** Allows detached single-family site-built residences and related accessory structures on a minimum 32,670 square foot (0.75 acre) lot with the following guidelines:

- Minimum ROW Frontage = 100'
- Front & Rear Setback = 30'
- Side setback = 15'
- Corner Lot side setback = 30'
- Minimum lot depth = 150'

These lots must have approved water service. No water wells allowed on SF-2 lots. These lots may have septic systems or other approved onsite private sewage facility. Streets may be built with a rural type section as approved by the City of Niederwald. Manufactured homes are not allowed in this district.

**SF-3 SINGLE FAMILY RESIDENTIAL DISTRICT:** Allows detached single-family site-built residences and related accessory structures on a minimum 9,100 square foot lot with the following guidelines:

- Minimum width at Building Line (BL) = 70'
- Front & Rear Setback = 25'
- Side setback = 10'
- Corner Lot side setback = 25'
- Minimum lot depth = 120'

These lots must have approved water and wastewater service. No water wells, septic systems or other onsite private sewage facility are allowed. Streets serving SF-3 lots must be standard curb & gutter streets with 30' width and a minimum 50' ROW. Manufactured homes are not allowed in this district.

- MH MANUFACTURED HOME DISTRICT:** Permits manufactured homes in a manufactured home subdivision, a manufactured home park and single-family residences on individual lots.
- MF-1 MULTIPLE FAMILY DWELLING DISTRICT 1:** Permits typical garden apartment development of 1 to 3 stories, allowing approximately 20 units per acre.
- MF-2 MULTIPLE FAMILY DWELLING DISTRICT 2:** Allows conventional and high density high rise apartment development over 3 stories, as well as boarding house, hotel or motel, and nursing home.
- LR LOCAL RETAIL DISTRICT:** Permits limited retail services, usually for a small neighborhood area, with uses such as a convenience store, bank, barber or beauty shop, small cleaners, florist, as well as any residential use, except apartments.
- GB GENERAL BUSINESS DISTRICT:** This district allows all retail and most commercial land uses including auto dealerships with complete servicing facilities, building material sales, light manufacturing, and heavy machinery sales and storage. Also, residential uses are allowed, except apartments.
- LI LIGHT INDUSTRIAL DISTRICT:** Permits light industrial uses as defined by performance standards in the zoning ordinance. Single family, duplex, and apartment uses are not allowed.
- HI HEAVY INDUSTRIAL DISTRICT:** Permits heavy industrial uses as defined by performance standards in the zoning ordinance. Single family, duplex, and apartment uses are not allowed.
- PD PLANNED DEVELOPMENT DISTRICT:** Flexible zoning district mechanism, designed to respond to unique development proposal, special design considerations and land use transitions by allowing evaluation of land use relationship to surrounding area through site plan approval.
- C.U.P CONDITIONAL USE PERMIT:** Specified opportunity in Zoning Ordinance for land use approval, within particular zoning district, subject to evaluation of land use relationship to surrounding area and site plan approval. If approved, the base zoning of the property does not change.



## **SECTION 4**

### **ZONING DISTRICT MAP**

**4-100** The boundaries of the zoning districts set out herein are delineated upon the Zoning District Map of the City of Niederwald, said Map being a part of this Ordinance as fully as if the same were set forth in detail.

**4-101** Three original, official, and identical copies of the Zoning District Map are hereby adopted bearing the signature of the Mayor and the attestation of the City Secretary and shall be filed and maintained as follows:

1. One copy shall be filed with the City Secretary and retained as the original record and shall not be changed in any manner.

2. One copy, referred to as the current record shall be filed with the City Secretary and shall be maintained up to date by the City Secretary by posting thereon all changes and subsequent amendments for observation in issuing building permits, certificates of occupancy and compliance and enforcing the Zoning Ordinance.

3. Reproductions for information purposes may, from time to time, be made of the official Zoning District Map.

## **SECTION 5**

### **ZONING DISTRICT BOUNDARIES**

**5-100** The district boundary lines shown on the Zoning District Map are usually along streets, alleys, property lines or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the official Zoning District Map, the following rules shall apply.

**5-101** Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.

**5-102** Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

**5-103** Boundaries indicated as approximately following city limits shall be construed as following city limits.

**5-104** Boundaries indicated as following railroad lines shall be construed to the centerline of the right-of-way or if no centerline is established, the boundary shall be interpreted to be midway between the right-of-way lines.

**5-105** Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the centerlines

of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines.

- 5-106** Boundaries indicated as parallel to or extensions of features indicated in 5-101 through 5-105 above shall be so construed. Distances not specifically indicated on the original Zoning District Map or by subsequent amendment shall be determined by the scale of the map.
- 5-107** Whenever any street, alley or other public way is vacated by official action of the City Council or whenever such area is franchised for building purposes, the zoning district line adjoining each side of such street, alley or other public way shall be automatically extended to the centerline of such vacated street, alley or way and all area so involved shall then and henceforth be subject to all regulations of the extended districts.
- 5-108** Where physical features on the ground are at variance with information shown on the official Zoning District Map or when there arises a question as to how or whether a parcel of property is zoned and such question cannot be resolved by the application of subsections 5-101 through 5-107, the property shall be considered as classified "A," Agricultural District, temporarily in the same manner as provided for newly annexed territory and the issuance of a building permit and the determination of permanent zoning shall be in accordance with the provisions provided in Section 6 for temporarily zoned areas.

## **SECTION 6**

### **TEMPORARY ZONING - ANNEXED TERRITORY**

- 6-100** All territory hereafter annexed to the City of Niederwald shall be temporarily classified as A, Agricultural District, until permanent zoning is established by the City Council. The procedure for establishing permanent zoning on annexed territory shall conform to the procedure established by law for the adoption of original zoning regulations.
- 6-101** In an area temporarily classified as A, Agricultural District:
1. No person shall erect, construct or proceed or continue with the erection or construction of any building or structure or add to any building or structure or cause the same to be done in any newly annexed territory to the City without first applying for and obtaining a building permit or certificate of occupancy therefore, from the City Secretary or the City Council as may be required herein.
  2. No permit for the construction of a building or use of land shall be issued by the City Secretary other than a permit which will allow the construction of a building permitted in the A, Agricultural District, unless and until such territory has been classified in a zoning district other than the A, Agricultural District, by the City Council in the manner provided by law, except as provided in 6-101 (3) following.

3. Application for a permit for a use other than what is specified in paragraph 2 above shall be made to the City Secretary. The City Secretary shall forward the application to the City Council. The City Council will be furnished background on the proposal and the surrounding conditions by the City Secretary. The City Secretary, in making a recommendation to the City Council concerning any such permit, shall take into consideration the appropriate land use for the area. The City Council, after receiving and reviewing the recommendation of the City Secretary may, by majority vote, authorize the issuance of a building permit or certificate of occupancy or may disapprove the application.

4. When annexation and permanent zoning of territory is under consideration, a public hearing may be held by the City Council to consider both questions and both annexation and zoning may be recommended and acted upon simultaneously.

## SECTION 7

### USE OF LAND AND BUILDINGS

**7-100** Land and buildings in each of the following classified districts may be used for any of the following listed uses, but no land shall hereafter be used, and no building or structure shall hereafter be erected, altered or converted which is arranged or designated or used in a manner other than specified for the district in which it is located, as set forth by the following schedule, or as such schedule may be subsequently amended:

#### **7-101 LEGEND FOR INTERPRETING SCHEDULE OF USE**

● Designates Use Permitted in District Indicated

□ Designates Use Prohibited in District Indicated

C Indicates Use May be Approved as Conditional Use Permit (See Section 7-500)

**Note:** Symbols applicable to following Use Schedule 7-102 through 7-114

#### Primary Residential Uses (7-102)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Single Family Detached Dwelling	●		●	●	●	●	●	●	C	●		
Townhouse							●	●	C	●		
2-Family Dwelling							●	●		●		
Multiple Family Dwelling (Apartment)							●	●				
Community Unit Development	C		C	C	C	C	●	●				
Boarding or Rooming House								●		●	●	

Hotel or Motel								●			●	
Manufactured Home Park	C					●						
Manufactured Home Subdivision	C					●						
Modular/Industrialized Housing	C		C	C	C	●	C	C				
Planned Neighborhood Development	C		C	C	C		C	C				
Family Home	●		●	●	●	●	●	●	C	C	C	
Dwelling Unit, Triplex							●	●				

### Accessory and Incidental Uses (7-103)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Accessory Building (Residential)	●		●	●	●	●	●	●	●	●	●	●
Accessory Building (Business or Industry)							●	●	●	●	●	●
Accessory Building (Farm)	●		●	●	●							
Home Occupation	●		●	●	●	●	●	●	●	●	●	●
Off-Street Parking Incidental to Main Use	●		●	●	●	●	●	●	●	●	●	●
Off-Street Parking as an expansion of Retail or Commercial Use	C		C	C	C	C	C	C	●	●	●	●
Stable (Private)	●		C	C	C	C	C	C	C	●	●	●
Swimming Pool (Private)	●		●	●	●	●	●	●	●	●	●	●
Temporary Field or Construction Office	<b>Subject to Temporary Permit Issued by City Secretary</b>											

### Utility and Service Uses (7-104)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Electrical Substation (High Voltage Bulk Power)	●		C	C	C	C	C	C	C	●	●	●
Electrical Energy Generating Plant	C									C	●	●
Electrical Transmission Line (High Voltage)	●		C	C	C	C	C	C	C	●	●	●
Fire Station	●		●	●	●	●	●	●	●	●	●	●
Gas Line and Regulating Station	●		●	●	●	●	●	●	●	●	●	●
Public Building Shop Yard of Local, State, or Federal Government	C		C	C	C	C	C	C	C	●	●	●
Radio, Television or Microwave Tower	C								●	●	●	●
Radio-Television Transmitting Station	C								●	●	●	●
Sewage Pumping Station	●		C	C	C	C	C	C	C	C	●	●
Sewage Treatment Plant	C										C	●
Telephone Business Office									●	●	●	●



Telephone Exchange Switching - Relay or Transmitting Equipment	●		●	●	●	●	●	●	●	●	●	●
Utility Shops or Storage Yards or Buildings										●	●	●
Utilities Other Than Listed	C		C	C	C	C	C	C	C	●	●	●
Water Stand Pipe or Elevated Storage Water	●		●	●	●	●	●	●	●	●	●	●
Water Reservoir Well or Pumping Station	●		●	●	●	●	●	●	●	●	●	●
Water Treatment Plant	C		C	C	C	C	C	C	C	●	●	●

- Height limitation exists in A and L districts. Refer to Section 9 - Height Regulations

• **Recreational and Entertainment Uses (7-105)**

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Alcoholic Beverage Sales/Consumption on Site										●	●	●
Beer Only 75% or More Revenue/Alcohol									C	C	C	C
Mixed Drinks (incl. Beer) 75% or more Revenue/Alcohol										C	C	C
Amusement, Commercial (Indoor)*										●	●	●
Amusement, Commercial (Outdoor)*	C									●	●	●
Carnival or Circus (Temporary)*	●									●	●	●
Country Club (Private)*	C									●	●	●
Dance Hall*										●	●	●
Day Camp for Children	●									C	C	
Drag Strip or Commercial Racing	C									C	C	●
Golf Course (Commercial)	C									●	●	●
Park or Playground (Public)	●		●	●	●	●	●	●	●	●	●	●
Playfield or Stadium (Public)	●		C	C	C	C	C	C	C	●	●	●
Roller or Ice Rink	C									●	●	●
Rodeo Grounds	C									●	●	●
Shooting Range (Outdoor)	C										C	C
Swim, Tennis, Handball, Fitness Club	C						C	C	C	●	●	●
Swimming Pool (Commercial)	C									●	●	●
Theater or Playhouse in Building									●	●	●	●
Theater (Open, Drive-in)	C									●	●	●
Zoo (Public)	●									C	●	●
Zoo (Private)	C									C	●	●

\*If Alcohol Sales are Planned, Must Conform to Appropriate Listing and Its Standards

### Educational, Institutional and Special Uses (7-106)

	A	SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>											
Art Gallery or Museum								●	●	●	●
Cemetery, Mausoleum, Crematorium	C	C	C	C	C	C	C	C	C	C	C
Child Care						C	C	●	●	●	
a) Small, Home-based Facility	●	●	●	●	●	●	●	●	●		
B) Intermediate Facility	C	C	C	C	C	C	C	●	●	●	●
										*	*
c) Large Facility	C							●	●	●	●
										*	*
Church or Rectory	●	●	●	●	●	●	●	●	●	●	●
College or University	C	C	C	C	C	C	C		●	●	
Convent or Monastery	C	C	C	C	C	C	C	C	●	●	
Community Center (Public)	C	C	C	C	C	C	C	C	C	C	C
Fairgrounds or Exhibition Area	C								●	●	●
Fraternity or Sorority	C					C	C			●	
Fraternal Organization, Lodge or Union Hall	C						C		●	●	●
Kinderergarten, Pre-school	C	C	C	C	C	C	C	●	●	●	●
										*	*
Halfway House						C	C	C	C	C	
Home for Aged, Residence	C					C	●		●	●	
Hospital, Acute Care	C								●	●	
Hospital, Chronic Care	C								●	●	
Institution for Alcoholic or Narcotic Patients	C									●	
Institution - Religious - Charitable - Philanthropic Nature	C	C	C	C	C	C	C	C	●	●	●
Military Reserve, National Guard Center									●	●	●
Penal, Correctional Facility	C									●	●
School, Business								●	●	●	●
School, Commercial - Trade									●	●	●
School, Public or Denominational	●	●	●	●	●	●	●	●	●	●	

\* Allowed only when provided in conjunction with service to employees. See definition.



### Transportation and Related Uses (7-107)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Airport or Landing Field	C									C	●	●
Emergency Vehicle Service (Ambulance)										●	●	●
Bus Station or Terminal											●	●
Hauling or Storage Company										●	●	●
Heliport	C									C	●	●
Helistop	C								C	C	●	●
Motor Freight Terminal											●	●
Railroad Freight Terminal										●	●	●
Railroad Passenger Station										●	●	●
Railroad Track or Right-of-Way										●	●	●
Railroad Team Track										●	●	●
Railroad Yard or Roundhouse										●	●	●
Parking Lot, Trucks and Trailers											●	●
Parking Lot or Structure (Commercial)										●	●	●

**Automobile and Related Service Uses (7-108)**

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Auto Laundry (Car Wash)										●	●	●
Auto Leasing, Rental										●	●	●
Auto Parts Accessory and Sales (Indoors)										●	●	●
Auto Parts Accessory and Sales (Outdoors)										C	●	●
Auto Storage or Auto Auction										C	●	●
Boat Sales, Servicing										●	●	●
Gasoline Station Full Service										●	●	●
Gasoline Station Self-Service									C	●	●	●
Major Vehicle Repair										●	●	●
Minor Vehicle Servicing										●	●	●
New or Used Auto Sales Outdoor Lot											●	●
New or Used Auto Sales Facility										●	●	●
Motorcycle or Scooter Sales and Repair										●	●	●
Truck Sales										●	●	●
Truck Stop											●	●
Wrecker or Salvage Yard											C	C

### Retail and Service Type Uses (7-109)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Alcohol Beverage Sales for Off-Premises Consumption									C	●	●	●
Antique Shop									●	●	●	●
Art Supply Store									●	●	●	●
Bakery or Confectionery Shop (Retail)									●	●	●	●
Bank or Savings and Loan Office									●	●	●	●
Barber Shop or Beauty Shop									●	●	●	●
Book or Stationery Shop or Newsstand									●	●	●	●
Cleaning and Pressing, Small Shop and Pick-Up									●	●	●	●
Cleaning Plant (Commercial)											●	●
Custom Personal Service Shop									●	●	●	●
Discount or Department Store										●	●	●
Drapery, Needlework, or Weaving Shop									●	●	●	●
Drug Store or Pharmacy									●	●	●	●
Florist or Garden Shop									●	●	●	●
Food/Beverage Sales Store with Gasoline Sales									C	●	●	●
Food/Beverage Sales Store without Gasoline Sales									●	●	●	●
Food/Beverage Sales Store									●	●	●	●
Furniture and Appliance Store										●	●	●
Greenhouse or Plant Nursery (Retail Sales)									●	●	●	●
Handcraft Shop and Art Objects									●	●	●	●
Hardware Store or Hobby Shop										●	●	●
Household Appliance Service or Repair										●	●	●
Incidental or Accessory Retail and Service Uses									C	●	●	●
Key Shop									●	●	●	●
Laboratory Medical or Dental									C	●	●	●
Laundry and Cleaning (Self-Service)									●	●	●	●
Medical Appliances, Fitting, Sales or Rental									●	●	●	●
Mortuary or Funeral Home										●	●	●

**Retail and Service Type Uses (7-109; Continued)**

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Offices, General Business and Professional									●	●	●	●
Offices, Medical or Dental									●	●	●	●
Pawn Shop										●	●	●
Pet Shop										●	●	●
Restaurant or Cafeteria (Not Drive-In Type)									●	●	●	●
Restaurant or Cafeteria (Drive-In Service)										●	●	●
Retail Shop, Gift, Apparel, Accessory and Similar Items									●	●	●	●
Retail Store or Shop Other Than Listed									●	●	●	●
Studio, Decorator, Artist, Photographer									●	●	●	●
Studio, Health and Reducing or Similar Service									C	●	●	●
Studio, Music, Dance or Drama									●	●	●	●
Tool Rental (Inside a Building)										●	●	●
Tool Rental (Outside Equipment Storage)											●	●
Travel Bureau or Consultant									●	●	●	●
Variety Store or Similar Retail Outlet										●	●	●
Veterinarian, Office Only (No Animal Hospital)									●	●	●	●
Veterinarian Hospital (Inside Pens Only)										●	●	●
Veterinarian Hospital (Outside Pens)	C									C	●	●

### Agricultural Uses (7-110)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Farm, Ranch, Orchard or Garden	●		●	●	●	●	●	●	●	●	●	●
Livestock Auction	C									C	C	●
Hatchery, Poultry	C										●	●
Animal Pound (Public or Private)	C									C	●	●
Kennel	C									●	●	●
Animal Feed Lot	C											C
Greenhouse or Nursery (Commercial)	●									●	●	●
Hatchery, Fish/Shrimp, Fish Farm	C									C	C	C
Grain Elevator	C										C	C



### Commercial Type Uses (7-111)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Bakery or Confectionery Wholesale										●	●	●
Bottling Works											●	●
Building Material Sales										●	●	●
Cabinet and Upholstery Shop										●	●	●
Cleaning Dyeing or Laundry Plant											●	●
Clothing or Similar Light Manufacturing											●	●
Contractor Storage and Equipment Yard											●	●
Flea Market (Indoors)											●	●
Flea Market (Outdoors)											●	●
Heavy Machinery Sales, Storage and Repair*											●	●
Light Manufacturing and Assembly Process											●	●
Laboratory, Manufacturing											●	●
Laboratory, Scientific or Research	C								C	●	●	●
Lithographic or Print Shop										●	●	●
Maintenance and Repair Service for Building										●	●	●
Milk Depot, Dairy or Ice Cream Plant											●	●
Mini-Storage Warehouse										●	●	●
Open Storage of Furniture, Appliances or Machinery *											●	●
Paint Shop											●	●
Plumbing Shop										●	●	●
Storage Warehouse											●	●
Trailer, Portable Bldg., Mobile Home, Sales or Rental											●	●
Upholstery Shop										●	●	●
Warehouse, Office											●	●
Welding or Machine Shop											●	●
Wholesale Storage and Sales										●	●	●

\*See Section 13



### Natural Resource Storage and Extraction Uses (7-112)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Caliche Pit and Caliche Storage	C									C	C	●
Mining and Storage of Mining Waste	C										C	C
Petroleum or Gas Well	C		C	C	C	C	C	C	C	C	C	C
Petroleum Storage and Collecting Facilities	C									C	C	●
Sand or Gravel Extraction or Storage	C									C	C	●
Topsoil Earth, Clay or Stone Extraction or Storage	C									C	C	●

### Special Industrial Process Uses (7-113)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Asphalt or Concrete Batching Plant (Permanent)											C	●
Asphalt or Concrete Batching Plant (Temporary)	C		C	C	C	C	C	C	C	C	●	●
Brick Kiln or Tile Plant												C
Cement or Hydrated Lime Plant												C
Dump or Sanitary Landfill Area											C	C
Recycling Collection Location	C										●	●
Recycling Operation Inside a Building											C	●
Recycling Operation Outside a Building											C	●
Slaughter House Meat Packing Plant											C	C
Smelting, Refinery or Chemical Plant												C
Wrecking Yard											C	C

### General Manufacturing and Industrial Uses (7-114)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Light Manufacturing or Industrial Uses as Defined by Sect. 7-400											●	●
Heavy Manufacturing or Industrial Uses as Defined by Sect. 7-400												Manufacturing or Industrial Uses as Defined by Sect. 7-400
Sexually Oriented Businesses As Defined by City Ordinance											C	C

#### 7-200 CLASSIFICATION OF NEW AND UNLISTED USES

In order to evaluate a proposal for a land use not identified by this Ordinance, a determination of the appropriate classification of any new or unlisted land use will occur as follows:

1. The City Secretary may refer the question concerning any new or unlisted use to the City Council requesting an interpretation of the appropriate zoning classification for such a use. The City Secretary shall submit to the Council a statement of facts listing the nature of the use and whether it involves dwelling activity, sales, processing, type of product, storage and amount and nature thereof, enclosed or open storage, anticipated employment, transportation requirements, the amount of noise, odor, fumes, dust, toxic material and vibration likely to be generated and the general requirements for public utilities such as water and sanitary sewer.
2. The City Council shall consider the nature and described performance of the proposed use, its compatibility with the uses permitted in the various districts, and determine the zoning district or districts within which such use should be permitted. The City Council shall, by ordinance, approve the referred zoning proposal, or make such determination concerning classification of the use as it determines appropriate.

## **7-300 NOISE**

At no point at the bounding line may a zoning district receive sound pressure levels that exceed the decibel levels specified in the groups designated in the following table:

<b>Residential</b>	<b>Business</b>	<b>Ag/Industrial</b>
<b>Zoning District</b>	<b>Zoning District</b>	<b>Zoning District</b>
SF - 1 SF - 2 SF - 3 MH MF - 1 MF - 2	LR GB	A LI HI
<b>Max dB Received</b>	<b>Max dB Received</b>	<b>Max dB Received</b>
<b>65</b>	<b>70</b>	<b>75</b>

Decibel (dB) means a unit of measure of sound pressure, or noise level. An increase by ten decibels doubles the volume.

Measurement of the noise shall be made with a decibel meter meeting the standards prescribed by the American National Standards Institute.

The noise levels included in this Ordinance shall not be applicable to extraction operations or emergency vehicles.

## **7-400 PERFORMANCE STANDARDS LI, HI (Light Industrial and Heavy Industrial) Districts**

All uses in the LI (Light Industrial) and the HI (Heavy Industrial) Districts shall conform in operation, location and construction to the performance standards herein specified for odorous matter, toxic and noxious matter, glare, smoke, particulate matter and other air contaminants, fire and explosive or hazardous matter, vibration, open storage and glare.

## **7-401 SMOKE AND PARTICULATE MATTER**

No operation or use in a LI District or HI District shall cause, create or allow the emission of air contaminants that violate State or Federal environmental laws. Open storage and open processing operations, including on-site transportation movements which are a source of wind or airborne dust or other particulate matter, are subject to the standards and regulations specified herein.

## **7-402 ODOROUS MATTER**

1. No use may be located or operated in a LI District which involves the emission of odorous matter from a source of operation where the odorous matter exceeds the odor threshold at the bounding property line or any point beyond the tract on which such use or operation is located.

2. No use may be located or operated in a HI District which involves the emission of odorous matter from a source of operation where the odorous matter

exceeds a concentration at the bounding property line or any point the tract on which such use or operation is located which, when diluted with an equal volume of odor free air, exceeds the odor threshold (2 odor units).

3. The odor threshold as herein set forth is determined by observation by the City Secretary. In any case where uncertainty may arise or where the operator or owner of an odor emitting use may disagree with the enforcing officer or where specific measurement of odor concentration is required, the method and procedures as specified by American Society for Testing Materials, A.S.T.M.D. 1391-57, Entitled "STANDARD METHOD FOR MEASUREMENT OF ODOR IN ATMOSPHERES", will be used and a copy of A.S.T.M.D. 1391-57 is hereby incorporated by reference.

#### **7-403 FIRE AND EXPLOSIVE HAZARD MATERIAL**

1. No use involving the manufacture or storage of compounds or products which decompose by detonation is permitted in an LI District or an HI District except that chlorates, nitrates, perchlorates phosphorus and similar substances and compounds in small quantities for use by industry, school laboratories, druggists or wholesalers may be permitted when approved by the Fire Marshal of the City as not presenting a fire or explosion hazard.

2. The storage and use of all flammable liquids and materials such as pyroxylin plastics, nitrocellulose films, solvents and petroleum products is permitted only when such storage or use conforms to the standards and regulations of the National Fire Protection Association.

#### **7-404 TOXIC AND NOXIOUS MATTER**

1. No operation or use permitted in an LI (Light Industrial) District may emit a concentration across the bounding property line of the tract on which such operation or use is located of toxic or noxious matter which exceeds the concentration (exposure) considered as the threshold limit for an industrial worker as such standards are set forth by the Texas State Department of Health in Threshold Limit Values Occupational Health Regulation No. 3, as such regulations exist or may later be amended.

2. No operation or use permitted in an HI (Heavy Industrial) District may emit a concentration across the bounding property line of the tract on which such operation or use is located violating State or Federal environmental laws. Open storage and open processing operations, including on-site transportation movements which are a source of wind or airborne dust or other particulate matter, are subject to the standards and regulations specified herein



## **7-405 VIBRATION**

1. No operation or use in an LI District may at any time create earthborn vibration which, when measured at the bounding property line of the source of operation, exceed the limit of displacement set forth in the following table in the frequency ranges specified.

<u>FREQUENCY CYCLES PER SECOND</u>	<u>DISPLACEMENT IN INCHES</u>
0 to 10	.0010
10 to 20	.0008
20 to 30	.0005
30 to 40	.0004
40 to 50	.0003

2. No operation of use in an HI District may at any time create earthborn vibration which, when measured at the bounding property line of the source of operation, exceed the limit of displacement set forth in the following table in the frequency ranges specified.

<u>FREQUENCY CYCLES PER SECOND</u>	<u>DISPLACEMENT IN INCHES</u>
0 to 10	.0020
10 to 20	.0016
20 to 30	.0010
30 to 40	.0006
40 AND OVER	.0005

## **7-406 GLARE**

No use or operation in a LI or HI District may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

## **7-500 CONDITIONAL USE PERMITS**

**7-501** This section provides the City Council the opportunity to deny or conditionally approve those uses for which conditional use permits are required. These uses generally have unusual nuisance characteristics or are of a public or semi-public character often essential or desirable for the general convenience and welfare of the community. Because, however, of the nature of the use or possible adverse impact on neighboring properties of the use, review, evaluation and exercise of planning judgment relative to the location and site plan of the proposed use are required.

**7-502** The City Council, after a public hearing and proper notice to all parties affected may authorize the issuance of conditional use permits for the uses indicated by "C" in the Use Schedule 7-102 through 7-114.

**7-503** A building permit or certificate of occupancy will not be issued for any use proposed in a zoning district which requires a conditional use permit unless a conditional use permit has first been authorized in accordance with the provisions of this Ordinance.

**7-504** Any person proposing to begin a use requiring a conditional use permit may file an application available in City Hall. The application shall be accompanied by a site plan. The site plan, along with the application, will become a part of the conditional use permit, if approved. The accompanying site plan shall provide the following information:

1. Data describing all the processes and activities involved with the proposed use;
2. Boundaries of the area covered by the site plan;
3. The location of each existing and proposed building and structure in the area covered by the site plan and the number of stories, height, roof line, gross floor area and location of building entrances and exits;
4. The location of existing drainage ways and significant natural features;
5. Proposed landscaping and screening buffers;
6. Location and dimensions of all curb cuts, public and private streets, parking and loading areas pedestrian walks, lighting facilities, and outside trash storage facilities;
7. The location, height, and type of each wall, fence, and all other types of screening; and
8. The location, height, and size of all proposed signs.

**7-505** The notification and public hearing process for conditional use permits or revocations thereof shall be the same as rezoning amendments.

**7-506** A conditional use permit shall be authorized only if all the following conditions have been found:

1. The conditional use permit will be compatible with and not injurious to the use and enjoyment of the property, nor significantly diminish or impair property values within the immediate vicinity;
2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;



4. The design, location, and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent development;
5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

**7-507 CONDITIONAL USE PERMITS FOR ON PREMISE SALE OF BEER OR MIXED DRINKS.**

1. A conditional use permit to allow the on premise sale of beer or mixed drinks, once approved, shall run with the land and be used in conjunction with the conditions approved or as modified, and is required for:

(a) The **sale of beer only**, for on premise consumption, where the gross revenue from the sale of beer for on premise consumption is seventy-five percent (75%) or more of the total gross revenues for the establishment; and

(b) The **sale of mixed drinks** (includes beer), for on premise consumption, where the gross revenue from the sale of mixed drinks for on premise consumption is equal to or greater than seventy-five percent (75%) of the total gross revenue for the establishment.

2. General conditions applicable to all conditional use permits allowing the on premise consumption of beer or mixed drinks.

(a) The permittee must design and operate the establishment in such a manner that the proposed use or actual use of the premises shall not substantially increase traffic congestion or create overcrowding in the establishment or the immediately surrounding area.

(b) The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code within six (6) months from the date of the issuance of the conditional use permit by the City Council, such limitation in time being subject to review and possible extension by the City.

(c) The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.

(d) The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to

determine the number of qualified employees necessary to meet the permittee's obligations hereunder.

(e) The establishment must provide adequate parking spaces to accommodate its members and their guests. Provided, however, the number of parking spaces shall never be less than those required for similar uses in that zoning district where the establishment is located.

(f) The permittee must operate the establishment in such a manner as to prevent excessive noise, dirt, litter and odors in the establishment or in the surrounding area and operate the establishment in such a manner as to minimize disturbance to surrounding property owners.

(g) The City Council may deny or revoke a conditional use permit if it affirmatively determines that the issuance of the same is (a) incompatible with the surrounding uses of property, or (2) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.

(h) A conditional use permit issued under this section runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.

(i) All conditional use permits issued under this section will be further conditioned that the same may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-509.

3. Conditions applicable to conditional use permits allowing either the on premise sale of mixed drinks or beer, where the gross revenue from the on premise sale of all alcoholic beverages is equal to or greater than 75% of the total gross revenue of the establishment.

(a) Conditional use permits for this use may be approved in the following zoning districts: Local Retail, General Business, Light Industrial and Heavy Industrial.

(b) No conditional use permit may be granted if the establishment for which a permit is sought is within five hundred (500) feet of a church, public school or denominational school, public hospital, publicly owned park, or any residentially zoned or developed lot. All distances provided for in this section will be determined by the measurement to be made in a straight line from the perimeter of the premises to be permitted to the nearest property line of the said church, public or denominational school, hospital, publicly owned park, any residentially zoned district, residential lot, or any residential development. A location in a multi-storied building on other than the ground floor will be treated as though it were on the ground floor for purpose of this straight-line distance measurement between property lines.

**7-508** In authorizing a conditional use permit, the City Council may impose additional reasonable conditions necessary to protect the public interest and welfare of the community, including a time period for which a conditional use permit is valid. The City Council in considering and determining the additional conditions may impose

such developmental standards and safeguards as conditions and locations indicate to be important to the welfare and protection of adjacent property from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glares, offensive view or other undesirable or hazardous conditions.

**7-509** A conditional use permit, once approved, shall run with the land and be used in conjunction with conditions approved, or as modified. A conditional use permit may be revoked or modified, after notice to the property owner and a hearing before the City Council, for and of the following reasons:

1. The conditional use permit was obtained or extended by fraud of deception; or
2. That one or more of the conditions imposed by the permit has not been met or has been violated; or
3. That the conditional use permit previously authorized is determined to be detrimental to the public health, safety and/or welfare.

**7-510** The procedure for amendment of a conditional use permit will be the same as for a new application.

**7-511** A person making application for a conditional use permit shall pay a fee in an amount determined, and as from time to time amended, by resolution or other action approved by the City Council, a copy of which shall be on file with the City Secretary.

**7-512** All zoning district maps of the City of Niederwald will contain the following:

**CAUTION:** Any prospective property owners or lessees should review the official zoning map located in the City Secretary's office before consummating any agreement based on the current zoning depicted on this map and/or the current use of this property.

Such warning shall be placed in a conspicuous place on the map.

**7-520 AUTO REPAIR/SERVICING FACILITY SITE STANDARDS**

Two categories of Motor Vehicle Servicing/Repair are hereby established and they include Minor Vehicle Servicing and Major Vehicle Repair.

**7-521 MINOR VEHICLE SERVICING**

1. **MINOR VEHICLE SERVICING** is a business specializing in minor, routine, periodic, preventive maintenance of a motor vehicle conducted entirely within an enclosed building, including the following:

- (a) servicing of spark plugs, batteries, distributors and distributor parts and including minor engine tune-ups;
- (b) tire servicing and flat repair but not recapping or regrooving;

- (c) radiator cleaning and flushing (on vehicle);
- (d) fuel pump, oil pump, and related maintenance;
- (e) minor servicing of carburetors;
- (f) emergency wiring repairs;
- (g) minor motor adjustment not involving removal of head or crank case;
- (h) quick oil and filter change;
- (i) servicing hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat belts, windshield wipers, wiper blades, grease retainers, wheel bearings, mirrors, and installation of vehicle accessories such as radios;
- (j) lubrication, greasing, and washing;
- (k) disc pad replacement and minor brake adjustment.

Minor vehicle servicing is allowed in GB, LI and HI zoning districts by right.

## **2. MINOR VEHICLE SERVICING DEVELOPMENT STANDARDS**

- (a) vehicle servicing must be conducted completely within an enclosed building;
- (b) motor vehicles shall not exceed 1-1/2 tons;
- (c) all buildings shall be set back not less than 25' from all existing or proposed street rights-of-way, whichever is greater, 25' from any residentially zoned or developed property, and 25' from any public property, such as a school or park site;
- (d) signage shall conform to the appropriate zoning district;
- (e) there shall be no outside storage or display of any kind;
- (f) there shall be no parking of damaged motor vehicles, except on a temporary basis not to exceed 72 hours;
- (g) customer parking shall be provided on the site at a ratio of one (1) space for each 200 square feet of gross building floor area, and shall conform to parking requirements in the Zoning Ordinance;
- (h) site plan review by the City Secretary is required prior to initiating this use in order to ensure conformance with these conditions.

## **7-522 MAJOR VEHICLE REPAIR**

**1. MAJOR VEHICLE REPAIR** is a business specializing in major repair of motor vehicles including any use listing below, as well as any use not listed as minor vehicle servicing:

- (a) auto glass, seat cover and muffler shop;
- (b) auto painting or body rebuilding shop;
- (c) tire retreading and capping;
- (d) body, fender, clutch, transmission, differential, axle, spring and frame repairs;
- (e) major overhauling of engines requiring removal there from of cylinder head or crankcase pan and any associated engine rebuilding;
- (f) repair of radiator requiring removal from the vehicle;
- (g) repair of truck, trailer, farm or industrial equipment, or other machinery/supplies;
- (h) brake work or repair, other than minor maintenance in 7-521-1 (a-k) above.

Major vehicle repair is allowed in GB, LI, and HI districts, and is not allowed in the LR district under any circumstances.

## **2. MAJOR VEHICLE REPAIR DEVELOPMENT STANDARDS**

- (a) this use shall be conducted within a building (although does not always have to be completely enclosed due to the nature of some of the uses);
- (b) this use shall observe a minimum separation of 25' to residentially developed or zoned property and 25' from public property such as a school or park;
- (c) vehicle parts and wrecked vehicles may be stored outside of a building if screened from public view at any street, residentially developed or zoned property, or adjacent or opposite public property such as a school or park. Such storage shall never occupy more than 20% of the lot or tract; screening standards shall conform to provisions specified in Section 13-102-4;
- (d) there is no vehicle size limit;
- (e) signage shall conform to appropriate zoning district;
- (f) customer parking shall be provided on the site at a ratio of one (1) space for each 200 square feet of gross building floor area, and shall conform to parking requirements in the zoning ordinance.

(g) site plan review by the City Secretary is required prior to initiating this use in order to ensure conformance with these conditions.

## **7-530 STANDARDS FOR CHILD CARE**

### **CHILD CARE - SMALL HOME-BASED FACILITY**

1. **CHILD CARE - SMALL HOME-BASED FACILITY:** A private residence where the occupant provides custodial care and supervision for less than twenty-four (24) hours a day for a maximum six (6) children at any one time. The maximum of 6 children includes the family's natural or adopted children under the age of 14. The residence must contain a minimum 150 square feet of floor area for each child. This use shall exclude a foster home and group home.

2. This use is allowed by right in all the single family residential zoning districts including AGRICULTURAL, SINGLE FAMILY, MANUFACTURED HOME, and MULTIPLE FAMILY districts, as well as in LR and GB districts.

3. A safe loading and unloading location shall be provided. Off-street parking in addition to normally required parking for the residence is not required.

## **7-531 CHILD CARE CENTER - INTERMEDIATE FACILITY**

1. **CHILD CARE CENTER - INTERMEDIATE FACILITY:** A facility (including non-residential structures) which provides custodial care and supervision for less than 24 hours a day for between 7 and 12 children, excluding a foster and group home. The facility must contain a minimum 150 square feet of floor area for each child.

2. This use is allowed by conditional use permit in the residential districts including AGRICULTURAL, SINGLE FAMILY, MANUFACTURED HOME, and MULTIPLE FAMILY districts. An Intermediate facility is allowed by right in LR and GB and allowed in LI and HI only in conjunction with a business where this service is provided for employees.

3. **CHILD CARE - INTERMEDIATE FACILITY:** An off-street location such as a circle drive or another suitable location shall be provided for loading and unloading. Maneuvering room must be provided on the tract for parking and loading so as to preclude the necessity of backing out into public streets. A minimum of 2 off-street parking spaces shall be provided, with 1 additional parking space provided for each staff member in excess of 2. Loading, unloading, and parking areas shall be paved with either asphalt or concrete.

## **7-532 CHILD CARE - LARGE FACILITY**

1. **CHILD CARE CENTER - LARGE FACILITY:** A facility where over 12 children receive custodial care and supervision for less than 24 hours a day, excluding foster and group homes.



2. This use is prohibited in SINGLE FAMILY, MANUFACTURED HOME, and MULTIPLE FAMILY districts. A LARGE FACILITY is allowed by conditional use permit in A districts. A LARGE FACILITY is allowed by right in LR and GB; and is allowed in LI and HI when provided in conjunction with a business providing this service to its employees.

3. The parking objective stated in 7-531-3 for an intermediate facility is identical for the large facility. In this circumstance, parking will be provided on the basis of 1 space per 400 square feet of gross floor area.

### **7-533 SITE DEVELOPMENT STANDARDS**

An applicant proposing a childcare facility is required to prepare a site plan in accordance with the following minimum standards and the City Secretary will verify compliance and issue a letter of conformance.

1. **Location.** Each facility shall be located in an area which is free from conditions dangerous to the physical and moral well-being of the children.

2. **Construction Codes.** The building is subject to all other applicable laws, ordinances, and regulations of the city including, but not limited to, building, electrical, fire and health requirements, and enforcement by the City Secretary

3. **Play Area.** The play area shall be separated from the vehicle circulation and parking areas.

4. **TDPRS Standards.** The fenced outdoor play area, the indoor play area and all other pertinent standards as required shall be in conformance with Texas Department of Protective and Regulatory Services, and the applicant must document this conformity to the City Secretary.

### **7-600 FLOOD PLAIN PREFIX TO DISTRICT DESIGNATION**

To provide for the appropriate use of land which has a history of inundation or is determined to be subject to flood hazard, and to promote the general welfare and provide protection from flooding, portions of certain districts are designated with a flood plain prefix "FP". Areas designated on the zoning district map by a "FP" prefix shall be subject to the following provisions:

### **7-601 USES PERMITTED**

The permitted uses in that portion of any district having a flood plain "FP" prefix are limited to the following:

1. Agricultural activities including the ordinary cultivation or grazing of land and legal types of animal husbandry;

2. Off-street parking incidental to any adjacent main uses permitted in the district;

3. Electrical substation;
4. All types of local utilities including those requiring conditional use permits when approved as provided in Section 7-500;
5. Parks, Community Centers, Playgrounds, Public Golf Courses;
6. Private commercial open area amusements such as golf courses, driving ranges, archery ranges and similar uses when approved by conditional use permit as provided in Section 7-500;
7. Private open space as part of a community unit development;
8. Heliport when approved by conditional use permit as provided in Section 7-500.

**7-602** No building or structure may be erected in that portion of any district designated with a flood plain "FP" prefix until, and unless, such building or structure has been approved by the City Engineer, who will ascertain that such building or structure is not subject to damage by flooding and would not constitute an encroachment hazard or obstacle to the movement of flood waters and that such construction would not endanger the value and safety of other property or the public health and welfare.

**7-603** Any dump, excavation, storage, filling or mining operation within that portion of a district having a flood plain "FP" prefix shall be approved in writing by the City Engineer before such operation is begun.

**7-604** An area may be removed from the flood plain "FP" prefix designation when by the provision of drainage works, grading, flood protection or specific drainage study, it is determined by the City Engineer that the flood hazard has been alleviated. Removal of the flood plain "FP" prefix shall be accomplished by resolution of the City Council after written notification from the City Engineer advising of the removal of the flood hazard.

**7-605** The fact that land is, or is not, within a district having a flood plain "FP" prefix shall not be interpreted as assurance that such land or area is, or is not, subject to periodic local flooding.

**7-606 FLOOD HAZARD PREFIX DESIGNATION**

The City Council may, upon final determination that a lot, tract or parcel of land has no established history of periodic flooding but is subject to flood hazard and has not been designated with a flood plain prefix "FP", in lieu of the flood plain prefix "FP", designate said lot, tract or parcel with a flood hazard prefix "FH". Upon final approval of any zoning, rezoning or subdivision of a lot, tract or parcel of land designated with a flood hazard prefix "FH", said lot, tract or parcel, determined to be subject to flood hazard, shall be identified with an "FH" on the final map or plat filed with the City Engineer, or in the records of the County Clerk of Hays or Caldwell County, Texas (the county in which the land is situated). The "FH" designation on said map or plat shall constitute notice and warning to any person or entity thereafter

purchasing, mortgaging, leasing, building upon or otherwise dealing with the lot, tract or parcel of land that same may be subject to flooding.

#### **7-607 REMOVAL OF FLOOD HAZARD PREFIX**

An area may be removed from the flood hazard prefix "FH" designation in the same manner provided for the removal of the flood plain prefix "FP" designation, established in 7-604 of the zoning ordinance.

#### **7-608 POSSIBILITY OF FLOODING**

The fact that land is, or is not, designated with a flood hazard prefix "FH" shall not be interpreted as assurance or representation that such land or area is, or is not, subject to periodic local flooding.

#### **7-700 OUTDOOR SHOOTING RANGE**

##### **1. General Conditions**

(a) An outdoor shooting range may be allowed by conditional use permit in Agricultural, Light Industrial, and Heavy Industrial zoning districts. The approval process shall consist of two phases as follows: Phase 1: General Site Plan approval, and Phase 2: Detailed Site Plan approval.

Elements required in each phase are identified below, Both phases shall include a public hearing and property owner notification as required for a zone change, and City Council approval.

(b) Only handguns (pistols and revolvers) shall be allowed. No shotguns, rifles, or automatic weapons are allowed.

(c) No armor piercing or incendiary ammunition is allowed.

(d) Ammunition larger than 0.460 caliber shall not be allowed.

(e) There is no minimum range site (total property) required. Range, range site, and uninhabited downrange safety area shall be under uniform control and ownership, so as to maintain its permanency.

(f) Range area includes the firing line; target line, backstops, side berms and walls; and baffles and other safety barriers. No portion of a range area shall be nearer than 100 feet to any public right of way, or adjacent property line.

(g) Firing of handguns shall be prohibited during the hours between sunset and sunrise.

(h) Range shall be used only under the supervision of trained personnel.

(i) Appropriate certifications must be obtained from Texas Department of Public Safety or other appropriate entity.

(j) Operators shall be covered by adequate accident and liability insurance in an amount of not less than one million dollars (\$1,000,000) per single occurrence and two million dollars (\$2,000,000) aggregate per year (combined single-limit for personal injury, death or property damage).

(k) Conditional use permit may be revoked at any time, following public hearing, as provided by Zoning Ordinance, Section 7-509.

(l) No building permit related to the development of the shooting range may be issued until both Phases 1 and 2 have been approved.

(m) Property owner notification shall include owners with property located in the ETJ.

(n) Range shall conform in all respects to TCEQ standards and regulations.

(o) Range shall be accessible by persons with disabilities and provide parking and restrooms facilities as required by law.

(p) Range operator shall be responsible for proper disposition of spent casings and projectiles.

(q) Range operator shall be responsible for ensuring no alcoholic beverages are present on the entire range site.

(r) Violation of any Federal, State, or local law shall be grounds for revoking this conditional use permit.

(s) No portion of range shall be located in a floodway.

## **2. General Site Plan Approval: Phase 1**

(a) Application form, application fee, and general site plan required.

(b) General Site Plan Elements:

(1) Identify and provide dimensions of range site and range area.

(2) Provide distances from range area to adjacent properties and roads.

(3) Identify all structures within 1000 feet of range site and provide distances.

(4) Show all existing utilities on site and within 150 feet of range site.

(5) Show all drainage features/contours.

(c) Approval process requires a public hearing and proper notice to all parties affected, as required for a zoning change, and approval by the City Council.

(d) Phase 2 must be completed prior to any construction or range development.

### **3. Detailed Site Plan Approval: Phase 2**

(a) Application form, application fee, and detailed site plan required.

(b) Environmental assessment, sound study, and construction plans required, and must be prepared and sealed by a certified engineer licensed to practice in the state of Texas.

(c) Application shall include water features/drainage plan, soils report, and sound study.

(d) Detailed Site Plan Elements:

(1) Incorporate results of environmental assessment and sound study, including noise abatement elements.

(2) Site plan must demonstrate design will contain projectiles within berm/enclosure, within the range site.

(3) If berms/baffles consist of tires, tires must be covered with earthen material.

(4) Range site and downrange safety area shall be surrounded by a fence of suitable height and material to exclude unauthorized entry by persons or livestock. Warning signs shall be provided along the perimeter of the fence. These signs shall be placed at the applicant's expense and shall specify a firing range is present, operational during daylight hours. Firing of handguns shall be prohibited during the hours between sunset and sunrise.

(5) Paved parking, landscaping, and all other requirements of the Zoning Ordinance/Subdivision Ordinance shall be satisfied.

(e) Construction plans shall be approved by the City Engineer for design.

(f) Plans shall be approved by the City Administrator for safety.

(g) Approval process requires a public hearing and proper notice to all parties affected as required for a zoning change, and approval by the City Council.

### **7-800 MODULAR/INDUSTRIALIZED HOUSING**

A. Single-family or duplex industrialized housing must comply with all local permit and license requirements that are applicable to other single-family or duplex dwellings.

B. Any industrialized housing shall:



(1) have a value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet of the lot on which the industrialized housing is proposed to be located, as determined by the most recent certified tax appraisal roll for the county in which the industrialized housing is to be located

(2) comply with City aesthetic standards, building setbacks, side and rear yard requirements, square footage, site planning, development, subdivision regulations, landscaping, and all site and other requirements applicable to single-family dwellings;

(3) have exterior siding, roofing, roof pitch, foundation, fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located; and

(4) be securely fixed to a permanent foundation.

C. In this Ordinance:

(1) “Industrialized housing” is a residential structure, including the structure’s plumbing, heating, air conditioning, and electrical systems, that is:

(a) designed for the occupancy of one or more families;

(b) constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent site; and

(c) designed to be used as a permanent residential structure when the module or the modular component is transported to the permanent site and erected or installed on a permanent foundation system.

(2) Industrialized housing does not include:

(a) a residential structure that exceeds three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof;

(b) housing constructed of a sectional or panelized system that does not use a modular component; or

(c) a ready-built home constructed in a manner in which the entire living area is contained in a single unit or section at a temporary

location for the purpose of selling and moving the home to another location.

(3) “Modular component” means a structural part of housing constructed at a location other than the building site in a manner that prevents the construction from being adequately inspected for code compliance at the building site without:

(a) damage; or

(b) removal and reconstruction of a part of the housing.

(4) “Permanent foundation” means a permanent foundation system as defined in 16 Texas Administrative Code §70.10(a)(28), as may be amended.

(5) “Value” means the taxable value of the industrialized housing and lot after installation of the housing.

D. Any person who intends to construct, erect, install, or move any industrialized housing into the City shall first submit all required applications to the City Secretary and obtain all required permits. In addition to any other information otherwise required for the permits, a building permit application for industrialized housing shall:

(1) include a complete set of design plans, specifications, and calculations bearing the stamp of the Texas Industrialized Building Code Council for each installation within the City limits;

(2) identify by address each single-family or duplex dwelling located within 500 feet of the lot on which the industrialized housing is to be located, and show the taxable value for each such dwelling as determined by the most recent certified tax appraisal roll for the county in which the industrialized housing is to be located;

(3) describe the exterior siding, roofing, roof pitch, foundation, fascia, and fenestration of the industrialized housing proposed to be located in the City;

(3) be accompanied by at least one photograph, with identifying address, of the front of each single family or duplex dwelling located within 500 feet of the lot on which the industrialized housing is to be located;

(4) show proof of the value of the improved property by providing;

(a) a copy of the sales receipt, signed by the purchaser, of the industrialized housing unit, including the value of the lot, if the lot is included in the sale; or,

(b) a copy of the sales receipt, signed by the purchaser, of the industrialized housing unit, and documentation showing the taxable value of the lot as determined by the most recent certified tax appraisal roll for the county in which the industrialized housing is to be located, if the lot is not included in sale of the housing unit or if the value of the lot is not included on the sales receipt;

(5) describe the permanent foundation and method of attachment proposed for the industrialized housing to which the application applies; and

E. Failure to provide any documentation as required herein will be considered grounds to deny a permit application.

F. Inspections shall be conducted at the permanent site where the structure is intended to be located. The City Secretary, or authorized designee, shall inspect all construction involving industrialized housing to be located in the City to ensure compliance with designs, plans, and specifications, including inspection of:

(1) the construction of the foundation system; and

(2) the erection and installation of the modules or modular components on the foundation.

G. Any person proposing to locate an industrial housing unit within the territorial limits of the City shall demonstrate that all modules or modular components bear an approved decal or insignia indicating inspection by the Texas Department of Licensing and Regulation, as required by rules adopted by the Texas Commission on Licensing and Regulation.

H. Any person constructing, locating or erecting industrialized housing in the City shall be subject to a final inspection by the City prior to occupancy and no person shall occupy, inhabit or otherwise use an industrialized housing unit unless and until a certificate of occupancy has first been issued by the City.

I. Industrialized housing shall not be constructed, erected, installed, placed or located in a non-residentially zoned district of the City of Niederwald, Texas.

J. A person commits an offense if the person:

(1) causes or permits any industrialized housing to be constructed, erected, installed, or moved into the City without first submitting applications to the building official and obtaining all required permits;

(2) causes or permits any industrialized housing which does not comply with this Ordinance to be constructed, erected, installed, or moved into the City; or

(3) violates any provision of this Section 7-800.

#### **7-900 MODULAR/INDUSTRIALIZED BUILDINGS**

A. All industrialized buildings must comply with all local permit and license requirements that are applicable to other non-residential structures and buildings.

B. Any industrialized building shall:

(1) comply with City aesthetic standards, building setbacks, side and rear yard requirements, square footage, site planning, development, subdivision regulations, landscaping, and all site and other requirements applicable to non-residential structures and buildings; and

(2) be securely fixed to a permanent foundation.

C. In this Ordinance:

(1) “Industrialized building” is a commercial structure, including the structure’s plumbing, heating, air conditioning, and electrical systems, that is:

(a) constructed in one or more modules or constructed using one or more modular components built at a location other than the commercial site; and

(b) designed to be used as a commercial building when the module or the modular component is transported to the commercial site and erected or installed on a permanent foundation system.

(2) Industrialized building does not include:

(a) a commercial structure that exceeds three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof.

- (3) An industrialized building includes a permanent commercial structure and a commercial structure designed to be transported from one commercial site to another commercial site.
- (4) “Modular component” means a structural part of a building constructed at a location other than the building site in a manner that prevents the construction from being adequately inspected for code compliance at the building site without:
  - (a) damage; or
  - (b) removal and reconstruction of a part of the building.
- (5) “Permanent foundation” means a permanent foundation system as defined in 16 Texas Administrative Code §70.10(a)(28), as may be amended.
- D. Any person who intends to construct, erect, install, or move any industrialized building into the City shall first submit all required applications to the City Secretary and obtain all required permits. In addition to any other information otherwise required for the permits, a building permit application for an industrialized building shall:
  - (1) include a complete set of design plans, specifications, and calculations bearing the stamp of the Texas Industrialized Building Code Council for each installation within the City limits;
  - (2) describe the permanent foundation and method of attachment proposed for the industrialized housing to which the application applies.
- E. Failure to provide any documentation as required herein will be considered grounds to deny a permit application.
- F. Inspections shall be conducted at the permanent site where the structure is intended to be located. The City Secretary, or authorized designee, shall inspect all construction involving industrialized buildings to be located in the City to ensure compliance with designs, plans, and specifications, including inspection of:
  - (1) the construction of the foundation system; and
  - (2) the erection and installation of the modules or modular components on the foundation.
- G. Any person proposing to locate an industrial building unit within the territorial limits of the City shall demonstrate that all modules or modular



components bear an approved decal or insignia indicating inspection by the Texas Department of Licensing and Regulation, as required by rules adopted by the Texas Commission on Licensing and Regulation.

- H. Any person constructing, locating or erecting industrialized buildings in the City shall be subject to a final inspection by the City prior to occupancy and no person shall occupy, inhabit or otherwise use an industrialized building unit unless and until a certificate of occupancy has first been issued by the City.
- I. Industrialized buildings shall not be constructed, erected, installed, placed or located in a residentially zoned district of the City of Niederwald, Texas.
- J. A person commits an offense if the person:
  - (1) causes or permits any industrialized building to be constructed, erected, installed, or moved into the City without first submitting applications to the City Secretary and obtaining all required permits;
  - (2) causes or permits any industrialized building which does not comply with this Ordinance to be constructed, erected, installed, or moved into the City; or
  - (3) violates any provision of this Section 7-900.

## **SECTION 8**

### **AREA REGULATIONS**

**8-100** Except as hereinafter provided, no building or structure or part thereof shall be erected, altered or converted for any use permitted in the district in which it is located unless it is in conformity with all the minimum regulations herein specified for lot area, lot width, lot depth, lot coverage and front, side and rear yards.

#### **8-101 LOT AREA**

The minimum residential lot area for the various districts must be in accordance with the following schedule except that a lot having less area than herein required which was an official "Lot of Record" prior to the adoption of this Ordinance may be used for a single-family dwelling and no lot existing at the time of passage of this Ordinance may be reduced in area below the minimum requirements set forth herein:

In the following zoning districts the minimum lot area for each residential dwelling unit must be in accordance with the following schedule:

### Schedule of Minimum Required Lot Areas Per Family Unit (8-101)

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Single Family Detached Dwelling	1 Acre		43,560	32,670	9,100	6,000	7,000	6,000	6,000	6,000	-	-
Two Family Dwelling	-		-	-		-	4,000	3,500	-	3,500	-	-
Multiple Family Dwelling 1-3 Stories	-		-	-		-	2,000	1,800	-	1,800	-	-
Multiple Family Dwelling Over 3 Stories	-		-	-		-	-	600	-	-	-	-
Manufactured Home in Manufactured Home Park	3,500 *		-	-		3,500 *	-	-	-	-	-	-
Manufactured Home In Subdivision	4,000		-	-		4,000	-	-	-	-	-	-
Modular/Industrialized Housing	4,000		43,560	32,670		4,000	4,000	4,000	-	-	-	-

\*Manufactured Home Density in Manufactured Home Park Shall Not Exceed 10 Units Per Gross Acre and No Park Shall Contain Less Than 5 Acres

Minimum Required Lot Area in Square Feet for Each Dwelling Unit

Note: - Indicates Area Does Not Apply for Type of Housing

## 8-200 LOT WIDTH -

The minimum lot width for lots in the various districts used for residential purposes must be in accordance with the following schedule, except that a lot having less width than herein required which was an official "Lot of Record" prior to the adoption of this Ordinance may be used as a single-family dwelling and no lot existing at the time of passage of this Ordinance may be reduced in width below the minimum set forth herein.

**8-201** In the following zoning districts the minimum lot width for residential uses must be in accordance with the following schedule:

**Schedule of Minimum Required Lot Width (8-201)**

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Single Family Detached Dwelling	100		100	100	70	50	50	50	50	50	-	-
Two Family Dwelling	-		-	-	-	-	60	60	-	60	-	-
Multiple Family Dwelling 1-3 Stories	-		-	-	-	-	60	60	-	60	-	-
Multiple Family Dwelling Over 3 Stories	-		-	-	-	-	-	60	-	-	-	-
Manufactured Home in Manufactured Home Park	35		-	-	-	40	-	-	-	-	-	-
Manufactured Home In Subdivision	40		-	-	-	40	-	-	-	-	-	-
Modular/Industrialized Housing	40		100	100	70	40	40	40	-	-	-	-

Minimum Required Lot Width in Feet

Note: - Indicates Width Not Applicable

### 8-300 LOT DEPTH

The minimum lot depth for the various districts must be in accordance with the following schedule, except that a lot having less depth than herein required which was an official "Lot of Record" prior to the adoption of this Ordinance may be used for a single-family dwelling and no lot existing at the time of passage of this Ordinance may be reduced in depth below the minimum set forth herein.

In the following zoning districts the minimum required lot depth for residential uses must be in accordance with the following schedule:

**Schedule of Minimum Required Lot Depth (8-301)**

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Single Family Detached Dwelling	150		150	150	120	100	100	100	100	100	-	-
Two Family Dwelling	-		-	-	-	-	100	100	-	100	-	-
Multiple Family Dwelling 1-3 Stories	-		-	-	-	-	120	120	-	120	-	-
Multiple Family Dwelling Over 3 Stories	-		-	-	-	-	-	120	-	-	-	-
Manufactured Home in Manufactured Home Park	80		-	-	-	80	-	-	-	-	-	-
Manufactured Home In Subdivision	100		-	-	-	40	-	-	-	-	-	-
Modular/Industrialized Housing	100		150	150	120	100	100	100	-	-	-	-

Minimum Required Lot Depth in Feet

Note: - Indicates Width Not Applicable

## **8-400 FRONT YARD**

In the following zoning districts the minimum required front yard must be in accordance with the following schedule and no building, structure or use may hereinafter be located, erected, or altered so as to have a smaller front yard than hereinafter required, and no front yard existing at the time of passage of this Ordinance may be reduced below the minimum set forth in the following schedule:

## **8-401 SCHEDULE MINIMUM REQUIRED FRONT YARDS**

**Schedule of Minimum Required Front Yards (8-401)**

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Minimum Required Front Yard Except As Hereinafter Described	50		30	30	25	20 See 8-402 (2)	25	25 See 8-402 (7)	15	None See 8-402 (10)	-	-

Minimum Required Front Yard Specified in Feet

## **8-402 SPECIAL FRONT YARD REGULATIONS**

1. In all districts except the "A" agricultural district where the frontage on one side of the street between two intersecting streets is divided by two or more zoning districts, the front yard must comply with the requirements of the most restrictive district for the entire frontage from one intersecting street to the other.
2. A manufactured home in a manufactured home park or subdivision must observe a minimum front yard of twenty (20) feet.
3. Where a building line has been established by plat or ordinance and such line requires a front yard setback greater or lesser in depth than is prescribed by this Ordinance for the district in which the building line is located, the required front yard must comply with the building line established by such Ordinance or plat.
4. The front yard is measured from the property line to the front face of the building, covered porch, covered terrace or attached accessory building. Eave and roof extensions may project into the required front yard for a distance not to exceed four (4) feet.
5. Where lots have double frontage, running through from one street to another, a required front yard must be provided on both streets unless a building line for accessory buildings has been established along one frontage on the plat or by ordinance, in which event only one required front yard need be observed.
6. If buildings along the frontage or any street between two intersecting streets in any residential district have observed an average setback which is greater or lesser in dimension than the minimum front yard or setback established for the district in which the street frontage is located, then the average setback of all buildings fronting



upon such street between two intersecting streets will establish the minimum front yard requirement. All vacant lots will be assumed to have a minimum front yard specified for the district in computing the average front yard, these provisions will not be interpreted as requiring a setback or front yard greater than fifty (50) feet nor will they be interpreted as requiring any building to observe a front yard of more than ten (10) feet greater than the front setback observed by any building on a contiguous lot. These provisions will be superseded on any lot where a minimum building line has been established by plat or ordinance and the front yard or setback provisions of such plat or ordinance must be observed.

7. In the MF-2 districts, a minimum front yard of fifteen (15) feet is required in all cases provided, however, that this setback must be increased in MF-2 Districts 1 foot for each 3 feet of additional building height.

8. In the PD (planned development) district front yards will be established in the amending ordinance, explicitly or by reference.

9. Gasoline service station pump islands may not be located nearer than twelve (12) feet to the front property line and the outer edge of the canopy shall not be nearer than (10) feet to the front property line. On corner lots, both street exposures must be treated as front yards.

10. In the GB, LI, and HI districts no front yard is required, except that no structure may be erected nearer than thirty (30) feet to the centerline of any street on which such structure fronts.

11. A buying and receiving area for a Recycling Operation Inside a Building, Recycling Operation Outside a Building, and Wrecking Yard must be set back at least fifty (50) feet from any public street or thoroughfare.

12. A minimum seventy-five (75) feet separation must be observed between any processing operation and the bounding property line of any property zoned for residential purposes.

13. Internal circulation area within a tract used for a recycling operation shall provide a non-permeable surface of either asphalt or concrete.

14. Where a lot abuts the turnaround at the end of a cul de sac street, the setback required in any of the residential zoning districts may be reduced by not more than ten (10') feet if the lesser setback to be observed is shown on the plat approved by the City Council and recorded with the county clerk of Hays County or Caldwell County (the county within which the property is situated), and if such building line is part of a plan for the orderly development of a subdivision either with a uniform or staggered building line provided, however, that such resulting building line shall be not less than sixty-five (65') feet from the center of radius point of such turnaround.

## 8-500 SIDE YARD

In the following zoning districts the minimum required side yard must be in accordance with the following schedule and no building, structure or use may hereafter be located so as to have a smaller side yard on each side of such building than herein required, and no side yard existing at the time of passage of this Ordinance may be reduced below the minimum set forth herein:

**Schedule of Minimum and Maximum Required Side Yards (8-501)**

	A		SF-1	SF-2	SF-3	MH	MF-1	MF-2	LR	GB	LI	HI
<b>Type of Use</b>												
Minimum Required Side Yard for Single-Family and Two-Family Dwellings Detached	15		15	15	10	10% Width of Lot 5' Min.	10% Width of Lot 5' Min.	10% Width of Lot 5' Min.	10% Width of Lot 5' Min.	10% Width of Lot 5' Min.	-	-
Minimum Required Side Yard for Multiple-Family Dwellings	-		-	-	-	-	See 8-502 (2)	See 8-502 (2)	See 8-502 (2)	-	-	-
Manufactured Home Dwelling - Park	See Note 2		-	-	-	See Note 2	-	-	-	*	*	-
Manufactured Home Dwelling - Subdivision And Modular/Industrialized Housing	See Note 2		-	-	-	See Note 2	-	-	-	-	-	-
Non-Residential Uses Schools and Churches in Residential Zones	20		30	30	30	20	20	20	10	See Note 3	See Note 3	See Note 3

### Minimum Required Side Yards Specified in Feet

\*See Side Yard Regulations for Multiple Dwellings 8-502 (2)

#### Notes:

1. - Indicates Side Yard Not Applicable
2. Minimum 10'; 20' Between Units; 20' Form Adjacent Single Family Zoning Boundary
3. Zero (0) feet except 10' adjacent to residential district. If building height exceeds 40', add 1' per 3' over 40' when adjacent to residential district.

## 8-502 SPECIAL SIDE YARD REGULATIONS

1. Every part of a required yard must be open and unobstructed by any building, except for accessory buildings as permitted herein and the ordinary projections of window sills, belt courses, cornices and other architectural features projecting not to exceed twelve (12) inches into the required side yard, and a roof eave or canopy projecting not to exceed twenty-four (24) inches into the required side yard.

2. A minimum side yard of fifteen (15) feet must be provided for multiple-family dwellings between any building wall containing openings for windows, light and air and any side lot line except that any such building face or wall not exceeding thirty-five (35) feet in length may provide a minimum side yard of ten (10) feet. Where a building wall contains no openings for windows, light or air, a minimum side yard of ten (10) feet must be provided between such wall and the side lot line. Where high-rise apartment buildings, exceeding three (3) stories in height are erected in a district permitting such construction, the side yard must be increased one (1) foot for each two (2) feet the structure exceeds three (3) stories but no side yard need exceed fifty (50) feet.
3. On a corner lot, a side yard adjacent to a street for a multiple-family dwelling not exceeding three (3) stories in height must not be less than fifteen (15) feet and no balcony or porch or any portion of the building may extend into such required side yard except that a roof or eave may overhang such side yard not to exceed four (4) feet.
4. On a corner lot used for single-family or two-family dwellings, both street exposures must be treated as front yards on all lots platted after the effective date of this Ordinance, except that where one street exposure is designated as a side yard by a building line shown on an approved subdivision plat containing a side yard of fifteen (15) feet or more, the building line provisions on such plat shall be observed. On lots which were official "Lots of Record" prior to the effective date of this Ordinance, the minimum side yard adjacent to a side street must comply with the required side yard for the respective districts as specified in 8-501.
5. A single-family attached dwelling must provide a minimum required side yard adjacent to a side street of fifteen (15) feet.
6. In GB, LI and HI districts, a zero (0) interior side yard is allowed for nonresidential uses except where a commercial, retail or industrial use or other nonresidential use abuts upon a district boundary line dividing such districts from a residential district, in which event the following shall apply: If the building height exceeds forty (40) feet, increase the setback by one (1) foot for each three (3) feet over forty (40) feet in building height. In GB, LI and HI districts, a minimum ten (10) foot side yard must be provided on the side adjacent to a residential district. If the building height exceeds forty (40) feet, increase the setback by one (1) foot for each three (3) feet over forty (40) feet in building height.
7. In GB, LI and HI districts, nonresidential uses must provide a ten (10) foot side yard setback adjacent to a street.
8. Refer to Sections 7-521 and 7-522 for setback requirements regarding Minor Vehicle Servicing and Major Vehicle Repair.
9. The minimum side yard requirements in a Planned Development district will be established on the site plan, in the amending ordinance, or by reference district.

## **8-600 REAR YARD**

No building or structure may hereafter be located, erected or altered to have a rear yard smaller than herein required and no rear yard existing at the time of passage of this Ordinance may be reduced below the minimum set forth below.

- 8-601** In the A, SF-1, SF-2, SF-3, MF-1, MF-2, LR, and GB districts, no main residential building may be constructed nearer than ten (10) feet to the rear property line. Manufactured homes shall observe a minimum rear yard of ten (10) feet, unless adjacent to property zoned A, SF-1, SF-2, or SF-3, in which case a twenty (20) foot rear yard setback must be observed. Patio homes shall observe a minimum rear yard of ten (10) feet.
- 8-602** In the LR, GB, LI or HI districts, no rear yard is specified for nonresidential uses, except where, retail, commercial or industrial uses back upon a common district line, dividing the district from any on the residential districts listed herein, in which case a minimum rear yard of ten (10) feet is required. Where an alley exists, no rear yard is required.
- 8-603** Every part of a required rear yard must be open and unobstructed to the sky from a point thirty (30) inches above the general ground level of the graded lot except for accessory buildings, landscaping, fences and similar appurtenances and the ordinary projections of window sills, belt courses, cornices and roof overhangs and other architectural features projecting not to exceed three (3) feet into the required rear yard.
- 8-604** The minimum required rear yard in a PD (Planned Development) district shall be established on the site plan, by the amending ordinance, or by reference district.
- 8-605** Where multiple-family dwellings exceed three (3) stories in height, a rear yard equal to one (1) foot for each two (2) feet in height is required, except that no such rear yard need exceed fifty (50) feet as a result of this provision, and except further that in the MF-2 district, no rear yard exceeding ten (10) feet is required where the rear wall of a multiple-family residential structure contains no openings or windows for light or air.

## 8-700 LOT COVERAGE

The maximum percentage of lot area as outlined in 8-701 which may hereafter be covered by the main building and all accessory buildings shall not exceed the following schedule.

- 8-701** In the following zoning districts, the maximum building lot coverage for multiple-family dwellings must conform to the following schedule:

<u>District</u>	<u>Maximum Lot Coverage Main Building</u>	<u>Maximum Lot Coverage Main Buildings and Accessory Buildings</u>
MF-1	40%	50%
MF-2	40%	50%

**Note:** Open off-street parking or loading areas will not be computed in a lot coverage as herein specified.

- 8-702** In the following districts, the maximum building lot coverage for all buildings must not exceed the following schedule:

<u>District</u>	<u>Maximum Lot Coverage Main Building</u>	<u>Maximum Lot Coverage Main Buildings and Accessory Buildings</u>
LR	35%	45%
MF-2	40%	50%
GB	50%	60%
LI	55%	65%
HI	55%	65%

## 8-800 FLOOR AREA RATIO

Except as hereinafter provided, no building or structure may be erected, added to or altered to exceed the maximum floor area ratio standards in the various zoning districts as set forth herein.

- 8-801** In the following zoning districts, the maximum floor area ratio (FAR) for any building or structure shall be as follows:

<u>DISTRICT</u>	<u>MAXIMUM FLOOR AREA RATIO</u>		
	<u>BUILDING AREA</u>		<u>LAND AREA</u>
LR, Local Retail	0.6	to	1
GB, General Business	0.4	to	1
LI, Light Industrial	0.2	to	1
HI, Heavy Industrial	0.2	to	1



**Note:** Structure used for off-street parking of vehicle shall not be computed as area subject to floor area ratio (FAR) standards.

## **8-901 COURT STANDARDS**

The minimum dimension and area of outer or inner courts provided in buildings occupied for multiple-family purposes shall be in accordance with the following provisions.

### **1. OUTER COURTS RESIDENTIAL STRUCTURES**

a. For multiple-family structures, three (3) stories or less in height, any outer court which is used for access of light or air and which has doors or windows or which may be used for emergency access purposes must provide a minimum width equal to the depth of the court up to twenty (20) feet, but the width of any such outer court need not exceed twenty (20) feet even though the depth of the court may exceed such dimension.

b. For residential structures exceeding three (3) stories in height, any outer court which is used for access of light or air or which has doors or windows or which may be used for emergency access purposes must provide a minimum width equal to the depth of the court up to fifty (50) feet, but the width of any such outer court need not exceed fifty (50) feet even though the depth of the court may exceed such dimension.

### **2. INNER COURTS RESIDENTIAL STRUCTURES**

a. For residential structures three (3) stories or less in height, any inner court which is used for access of light or air or which has doors or windows or which may be used for emergency access purposes must provide minimum dimensions in the length and in the width of its base equal to the height of the roof or eave at the top of the wall enclosing such court, but neither the width nor the length of the base of such inner court need exceed twenty (20) feet even though the height of the enclosing walls may exceed such dimension.

b. For residential structures exceeding three (3) stories in height, any inner court which is used for access of light or air or which has doors or windows or which may be used for emergency access purposes must provide a minimum dimension in the length and in the width of its base equal to the height of the roof or eave at the top of the wall enclosing such court, but neither the width nor the length of the base of such inner court need exceed fifty (50) feet even though the height of the enclosing walls may exceed such dimension.

## **8-902 ACCESSORY BUILDING AND STRUCTURE REGULATIONS**

Area regulations for accessory buildings or accessory structures in residential and apartment districts.

### **1. FRONT YARD**

Attached accessory buildings are deemed a part of the main building and require the same yard space as the main building. Detached accessory buildings or structures must be located in the area defined as the rear yard.

## **2. SIDE YARD**

A side yard is required for any accessory building or structure located in a residential area of not less than three (3) feet from any side lot line, alley line or easement line, except that adjacent to a side street the side yard shall never be less than ten (10) feet. Where a one-hour fire wall is provided, no side yard need be provided on one side of a lot only for an accessory building located in the rear one-half (1/2) of the lot.

## **3. REAR YARD**

a. A rear yard is required for any accessory building or structure of not less than three (3) feet measured from any lot line, alley line or easement line. In residential districts, the main building and all accessory buildings shall not cover more than fifty (50) percent of that portion of the lot lying to the rear of a line erected joining the midpoint of one side lot line with the midpoint of the opposite side lot line. Detached carports, garages or other detached accessory buildings located within the rear portion of the lot as heretofore described may not be located closer than ten (10) feet to the main building nor nearer than three (3) feet to any side lot line, except where a fire wall has been provided which meets the requirements of the building and fire codes of the City, in which case no rear yard for accessory buildings is required.

b. Where a garage or carport is designed and constructed to be entered from an alley or side street, such garage or carport must be set back from the side street or alley a minimum distance of fifteen (15) feet to facilitate access without interference to the use of the street or alley by other vehicles or persons.

## **8-910 AREA REGULATIONS FOR LANDSCAPING**

The purpose of these landscaping standards is to enhance the attractiveness of the city through a limited amount of landscaping provided in conjunction with new business development.

## **8-911 APPLICABILITY OF STANDARDS**

These standards will not apply to single family or duplex residential uses located in any zoning district, since these uses typically exceed the required landscaping. All other land uses, including apartments, offices, retail, commercial and industrial uses, and parking lots will be subject to these standards. Existing development is encouraged, but not required, to provide this landscaping standard.

## **8-912 LANDSCAPING STANDARDS**

These landscaping standards will be applicable in conjunction with a building permit for new development, or an addition to an existing site which increases site intensity on the lot or tract by 100% or more. Site intensity includes, but is not limited to,

number of apartment units, or square footage proposed for office, retail, commercial, or industrial development.

1. The developer of each lot or tract subject to these standards is required to provide a minimum landscaped area of 5% of the lot area to be utilized. Required landscaped area must be living trees, shrubs, turf, and/or other living groundcover, native to Central Texas and Hays and Caldwell County, as described below.

Each phase of a phased project shall comply with the requirements of this section. The required landscaped area must be located in the front and/or side yards, except in the GB, LI, and HI districts where no front or side yard is required. In these districts, required landscaping shall be provided between the main building(s) and the street(s) to which the building(s) is (are) oriented.

2. Areas covered by driveways, paved walks or street and alley rights of way will not be counted as part of the total lot area when calculating the 5% minimum landscaping requirement; however, if the street right of way is developed with plant materials conforming to these standards, and is combined into an integrated landscape plan with required landscaping, total required landscaping may be reduced to 3% of the lot area. The street right of way adjacent to the required landscaped area shall be maintained by the adjacent property owner in the same manner as the required landscaping.

3. The height and placement of landscaping shall observe the intersection visibility triangle defined in Section 13-101-1.

4. Where a fence or wall is required by Section 13-102-1, the fence or wall may be located within the required landscaped area.

5. At least one (1) tree, two inches (2") in caliper is required to be planted in the landscaped area or parking lot for each forty feet (40'), or fraction thereof, of linear street frontage. The required number of trees need not be placed uniformly, but may be clustered in groups. Tree species shall be a minimum of five feet (5') overall height immediately after planting. Trees of species whose roots are known to cause damage to public roadways, or other public works shall be prohibited.

Trees planted shall be a minimum of 2" caliper except as indicated, staked and wrapped, and shall be live oak, red oak, cedar elm, bald cypress, silver maple, Japanese black pine, Mondale pine, or other trees of similar quality. Yaupon, crepe myrtle, and other similar trees shall not be required to be a minimum of 2" caliper.

As an alternative to satisfying the requirement above for one tree per forty (40') feet, three (3) shrubs, a minimum of five (5) gallons each in size, may be substituted.

6. In instances where healthy plant material exists on a site prior to its development, the application of the above landscaping requirements may be adjusted if these standards are satisfied.

7. All plant material required by this Section shall be maintained at all times in a living and growing condition. All required landscaping shall be irrigated by an automatic sprinkling system or have access to a hose connection within 100 feet of all landscaping.

8. A final certificate of occupancy may be issued without the required landscaping in place, provided a letter of credit or other suitable assurance is given that landscaping complying with these standards will be installed no later than six (6) months after issuance of the certificate of occupancy.

## **8-920 SIDEWALK STANDARDS**

1. Sidewalks are required to be built whenever a new building or structure is built on, or if an existing building or structure is remodeled to increase its property value by 10 % or more on, any lot or tract of land. Sidewalks are required along both sides of all streets. Sidewalks are required where an applicant is requesting a building permit for a single family residence (site built) unless the City Secretary reasonably determines that extension of sidewalks to property adjoining the single lot will not occur within five years. Sidewalks shall be built in accordance with the City's specifications and typical construction details.

2. Construction plans shall be submitted to the City with the building permit application. Required sidewalks must be constructed before the City will issue a certificate of occupancy or grant a final clearance for a new building or structure.

3. On property developed for single family residential use, the developer shall bear the full cost of sidewalk construction of a four-foot minimum width sidewalk along both sides of the street within the ROW. The developer shall submit a sidewalk plan for approval by the city along with the construction plans for the project, prior to construction of the project.

4. The intent of this provision is to provide safe, continuous pedestrian access along all streets under city jurisdiction, whether within the city limits or the ETJ, for the purpose of safely linking residential areas, neighborhood services, retail services and public facilities.

5. The City Secretary may refer a request for waiver to the City Council or exercise discretion to waive all or a portion of the requirement that a sidewalk be constructed as a condition of a building permit if he/she determines:

(a) that because of special conditions of the property being developed or reconstructed, a literal enforcement of this section would result in unnecessary hardship;

(b) the spirit of this section is observed and substantial justice is done; and

(c) the waiver is not contrary to the public interest.

6. Factors. In determining whether special conditions for granting a waiver exist, the City Secretary should consider:

- (a) the anticipated volume of vehicular and pedestrian traffic in the area based on the proposed development and the current or future uses of surrounding property (as reflected by zoning, thoroughfare, sidewalk and area studies, maps and plans adopted by the City Council);
- (b) the likelihood that a proposed new sidewalk will connect to other sidewalks in the adjoining areas;
- (c) whether the area for which a waiver is being requested is likely to serve as a pedestrian link between public or private facilities in adjoining areas;
- (d) whether any unique topographical or other physical conditions exist which negate or substantially lessen the need for a sidewalk; and
- (e) whether due to the width or the anticipated reconstruction of adjoining roadways, construction of a sidewalk on the property under consideration makes economic sense.

## **SECTION 9**

### **HEIGHT REGULATIONS**

**9-100** No building or structure may be located, erected or altered so as to exceed the height limit hereinafter specified for the district in which the building is located.

<b>9-101</b>	In the following zoning districts:	The maximum height of building and structures shall be:
	A, Agricultural	three (3) stories except as noted in 9-102
	SF-1, Single-Family	two and one-half (2-1/2) dwelling stories except as noted in 9-102
	SF-2, Single-Family	two and one-half (2-1/2) dwelling stories except as noted in 9-102
	SF-3, Single-Family	two and one-half (2-1/2) dwelling stories except as noted in 9-102
	MH, Manufactured Home	two and one-half (2-1/2) dwelling stories except as noted in 9-102
	MF-1, Multiple-Family	three (3) dwelling stories except as noted in 9-102



MF-2, Multiple-Family	three (3) dwelling stories except as noted in 9-102 (See 8-402(7) and 8-502(2)).
LR, Local Retail	two and one-half (2-1/2) service stories except as noted in 9-102
GB, General Business	three (3) stories except as noted in 9-102
LI, Light Industrial	three (3) stories except as noted in 9-102
HI, Heavy Industrial	three (3) stories except as noted in 9-102
PD, Planned Development	as specified on the site plan or in the amending ordinance

## **9-102 SPECIAL HEIGHT REGULATIONS**

In the districts where the height of the buildings is restricted to two (2) or three (3) stories, cooling towers, roof gables, chimneys and bent stacks may extend for an additional height not to exceed forty (40) feet above the average grade line of the building. Water stand pipes and tanks, church steeples, domes and spires, and school buildings and institutional buildings may be erected to exceed three (3) stories in height in residential areas restricted to two (2) or three (3) stories in height, provided that one (1) additional foot shall be added to the width and depth of side and rear yards for each foot that such structures exceed three (3) stories in height.

## **SECTION 10**

### **VEHICLE PARKING REGULATIONS**

**10-100** Except as hereinafter provided, no building or structure or part thereof may be erected, altered or converted for any use permitted in the district in which it is located unless there shall be provided on the lot or tract or on an immediately contiguous lot or tract, or on a lot or tract within one-hundred-fifty (150) feet of such building or structure, vehicle parking in the following ratio of vehicle spaces for the uses specified in the designated districts, except that an established use lawfully existing at the effective date of this Ordinance need not provide vehicle parking as hereinafter set forth and that no existing vehicle parking in connection with said uses at the effective date of this Ordinance may be reduced below the minimum number of spaces as hereinafter required.

**10-101** In the following zoning districts, the minimum off-street parking spaces for residential uses are:

<b>DISTRICTS</b>	<b>NUMBER SPACES REQUIRED</b>
A, Agricultural	Two (2) each dwelling unit

SF-1, Single Family	Two (2) each dwelling unit
SF-2, Single Family	Two (2) each dwelling unit
SF-3, Single Family	Two (2) each dwelling unit
MH, Manufactured Home	Two (2) each manufactured home or dwelling unit
MF-1, Multiple Family	(a) 1.75 spaces each dwelling unit with one bedroom. (b) Two (2) spaces each dwelling unit with two or more bedrooms. (c) One (1) space each dwelling unit designed for occupancy exclusively by persons requiring assisted living services. (d) Two (2) each dwelling unit if less than three (3) units (e) .75 space each dwelling if units designed exclusively for disabled residents.
MF-2, Multiple Family	Same as MF-1 above, except two (2) each dwelling unit if less than three (3) units
LR, Local Retail	Two (2) each dwelling unit
GB, General Business	One (1) each dwelling unit
LI, Light Industrial	Dwellings are excluded
LI, Heavy Industrial	Dwellings are excluded
PD, Planned Development	As specified by the site plan or in the amending ordinance

NOTE: In all single family residential districts (SF-1, SF-2, SF-3) off street parking must include an area with a minimum size of 18 feet by 18 feet to allow side-by-side parking.

**10-102** Parking space schedule for nonresidential uses applicable to all districts.

**Bank, Savings and Loan or similar financial establishment** - One (1) space for each four hundred (400) square feet of total floor area.

**Bowling Alley** - Six (6) spaces for each lane.

**Child Care Facilities** – Refer to Sections 7-530, 7-531 and 7-532 of this Ordinance.

**Small Home-Based Facility**, a safe loading and unloading location shall be provided. Off-street parking in addition to normally required parking for the residence is not required.

**Intermediate Facility**, an off-street location such as a circle drive, or another suitable location, must be provided for loading and unloading. Maneuvering room must be provided on the tract for parking and loading so as to preclude the necessity of backing out into a public street. A minimum of 2 off-street parking spaces shall be provided, with 1 additional parking space provided for each staff member in excess of 2. Loading, unloading, and parking areas must be paved with either asphalt or concrete.

**Large Facility**, one (1) space per 400 square feet of gross floor area. Clinics or Doctor's Offices, one space for each three hundred (300) square feet of total floor area.

**Churches**, one (1) space for each three (3) seats in the main sanctuary.

**Commercial Amusement**, thirty (30) spaces plus one (1) space for each one hundred (100) square feet of total floor area over two thousand (2000) square feet.

**Convalescent Home or Home for the Aged**, one (1) space for each six (6) rooms or beds.

**Family/Group Home**, vehicle parking required for residents and supervisors of the facility. No more vehicles than (1) vehicle per bedroom may be allowed on the premises of a family/group home for use of the residents of the home.

**Flea Market, indoor and/or outdoor**, one (1) space for each 300 square feet of floor area or market area, minimum ten (10) spaces.

**Gasoline Service Station**, minimum of six (6) spaces.

**Golf Course**, minimum of thirty (30) spaces.

**Halfway House**, vehicle parking spaces will be established in the conditional use permit based on number and condition of clientele, location, other surrounding conditions, etc., with the objective of compatibility in the area.

**High School, College or University**, one (1) space for each classroom, laboratory or instruction area plus one (1) space for each three (3) students accommodated in the institution.

**Hospitals**, one (1) space for each two (2) beds.

**Hotel or Motel**, one (1) space for each room, unit or guest accommodation plus specified requirements for restaurants and related facilities.

**Institutions of a Philanthropic Nature**, ten (10) spaces plus one (1) space for each employee.

**Library or Museum**, ten (10) spaces plus one (1) space for each three hundred (300) square feet of total floor area.

**Manufacturing, Processing or Repairing**, one (1) space for each two (2) employees or one (1) space for each one thousand (1000) square feet of total floor area, whichever is greater.

**Offices, General**, one (1) space for each three hundred (300) square feet of total floor area.

**Recreational, Private or Commercial Area or Building** (other than listed), one (1) space for each four (4) persons to be normally accommodated in the establishment.

**Recycling Operation Inside/Outside a Building**, one (1) space for each five hundred (500) square feet of building floor area with a minimum of five (5) spaces required.

**Restaurant or Cafeteria**, one (1) space for every three (3) seats under maximum seating arrangement.

**Retail or Personal Service, General**, one (1) space for each two hundred-fifty (250) square feet of total floor area. Furniture stores and Appliance stores, one (1) space for each five hundred (500) square feet of total floor area.

**Schools, Business**, .75 (3/4) space per student to be normally accommodated in the establishment.

**Schools, Elementary, Middle, and High**, one (1) space for each classroom plus one (1) space for each four (4) seats in any auditorium, gymnasium or other place of assembly.

**Storage or Warehousing**, one (1) space for each two (2) employees or one (1) space for each one thousand (1000) square feet of total floor area, whichever is greater.

**Theaters, Meeting Rooms and Places of Public Assembly**, one (1) space for each three (3) seats.

**Wrecking Yard**, one (1) space for each five hundred (500) square feet of building floor area with a minimum of five (5) spaces required.

## **10-103 SPECIAL OFF-STREET PARKING REGULATIONS**

In computing the parking requirements for any building or development, the total parking requirement is the sum of the specific parking space requirements for each class of use included in the building or buildings for development.

In the SF-1, SF-2, SF-3, MF-1, MF-2, and LR districts, no parking space, garage or carport or other automobile storage space or structure may be used for the storage of any truck, truck trailer or van except a panel or pickup truck not exceeding one and one-half (1-1/2) tons capacity.

Floor area of structure devoted to off-street parking of vehicles will be excluded in computing the off-street parking requirements of any use.

Private access drives to parking lots, or areas which are accessory to or serve non-residential uses in the LR, GB, LI, HI or non-residential PD districts, are prohibited through residential districts.

#### **10-104 PARKING REQUIREMENTS FOR NEW OR UNLISTED USES**

Where questions arise concerning the minimum off-street parking requirements for any use not specifically listed, the requirements may be interpreted as those of a similar use.

Where a determination of the minimum parking requirements cannot be readily ascertained for new or unlisted uses according to 10-104, or where uncertainty exists, the minimum off-street parking requirements shall be established by the same process as provided in 7-200 for classifying new and unlisted uses.

## SECTION 11

### OFF-STREET LOADING REGULATIONS

- 11-100** All retail, commercial, industrial and services structures must provide and maintain off-street facilities for receiving and loading merchandise, supplies and materials within a building or on the lot or tract. Such off-street loading space may be adjacent to a public alley or private service drive or may consist of a truck berth within the structure. Such off-street loading space or truck berth shall consist of a minimum area of ten (10) feet by forty-five (45) feet and such spaces or berths shall be provided in accordance with the following schedule:

<u>SQUARE FEET OF GROSS FLOOR AREA IN STRUCTURE</u>	<u>MINIMUM REQUIRED SPACES OR BERTHS</u>
0 to 5,000	None
5,000 to 15,000	1
15,000 to 40,000	2
40,000 to 65,000	3
65,000 to 100,000	4

**Note:** The existence of a twenty (20) foot alley adjacent to the property shall be the equivalent of one (1) berth.

- 11-101** For hotels, office buildings, restaurants, and similar, off-street loading facilities shall be provided in accordance with the following schedule:

<u>SQUARE FEET OF GROSS FLOOR AREA IN STRUCTURE</u>	<u>MINIMUM REQUIRED SPACES OR BERTHS</u>
0 to 10,000	None
10,000 to 50,000	1
50,000 to 100,000	2
100,000 to 200,000	3
Each Additional 200,000	1 Additional



## **SECTION 12: [Reserved for Future Use]**

### **SECTION 13**

#### **Fence and Wall Regulations, Display for Sale, and Open Storage**

**13-100** In any residential district or along the common boundary between any residential or nonresidential district where a wall, fence or screening separation is erected, the following standards for height and design shall be observed.

##### **13-101 Height of Fence or Wall**

1. Any fence or wall erected on the property line and located to the rear of the minimum required front yard line, as determined by the provision of 8-401 shall not exceed eight (8) feet in height above the adjacent grade. No vehicles shall be parked and no fence, wall, screen, or view obstruction or foliage or hedges, trees, bushes, or shrubs are allowed to be erected, planted or maintained within the "intersection visibility triangle" so as to obstruct within the sight line at elevations between three (3) feet and eight (8) feet above the average street grade. Obstructions of this nature are declared to be a public traffic nuisance.

In connection with regulations provided herein, "intersection visibility triangle" means a triangle sight area, at all intersections where the streets, avenues, alleys and public or private drives, intersect. It includes that portion of public right of way and any corner lot in the triangular area formed by extending the curb lines of the intersecting streets to their imaginary point of intersection for the first point of the triangle, then proceeding back from this imaginary point of intersection fifteen (15) feet along the curb lines of the intersecting streets to establish the two (2) remaining points of the triangle. These points shall then be connected with imaginary lines, thereby forming a triangle. If there are no curbs existing, the triangular area shall be formed by extending the pavement edges to the imaginary point of intersection of the streets and then proceeding in the same manner described above.

Any fence, wall, screen, hedge, tree, bush, shrub, erected, planted or maintained in violation of these paragraphs shall be removed within ten (10) days upon written notice from the city to the owners of the affected or adjacent property.

##### **13-102 Screening Walls/Fences, Screened Refuse Areas, Display for Sale, and Open Storage Outside a Building**

###### **1. Screening Wall/Fences**

Any screening wall or fence required under the provisions of this Ordinance shall be constructed of masonry, wood or other suitable materials, or with a concrete or metal frame supporting a permanent type wall or fence material which does not contain openings constituting more than forty (40) square inches in each one (1) square foot of wall or fence surface, and the surface of such wall or fence shall constitute a visual barrier. All wall or fence openings shall be equipped with gates equal in height and

screening characteristics to the wall or fence. The planned development ordinance shall address required fencing.

Multiple Family Dwelling Units, Townhouses, Condominiums, Manufactured Home Parks and Subdivisions, and all non-residential uses shall provide and maintain a minimum six (6) foot high screen of solid wood and/or masonry fence and/or a natural landscape screen which achieves this screening objective, at the property line where abutting a single family or duplex residential use, or where abutting any single family residential zoning district. However, when these uses are separated from the single family or duplex residential uses by a public street, this screening requirement will not be applicable.

## **2. Screened Refuse Areas**

Refuse container storage areas are encouraged in a rear service area, or alley where available, for all uses other than single family and two family dwellings. Refuse container storage areas located within fifty (50) feet of the curb line of a public street and visible from the public street shall be visually screened from public view by a minimum six (6) foot high solid wooden fence, or suitable alternate, on all sides except the side used for garbage pickup service. At all times maintenance of fencing for the screened refuse area shall be the responsibility of the property owner. Standards for screened refuse areas shall include:

- (a) clear opening of 8' width;
- (b) gates must allow truck to pull alongside within 6" of enclosure;
- (c) enclosure must allow maneuvering room to avoid backing into street or other traffic area; and
- (d) concrete required for area in front of pickup service opening.

The City Council will consider variance requests to these requirements in accordance with the procedures established in Section 16 of this Ordinance.

## **3. Display for Sale**

No commodities, materials, or equipment may be displayed for sale outside a building in any Residential or Local Retail district, except as exempted below:

- (a) garage sales;
- (b) new or used automobile dealer facilities;
- (c) motorcycle, boat, recreational vehicle, and other motorized vehicle/sales facility;
- (d) retail plant nursery and produce stand;
- (e) tires, batteries, etc. in conjunction with a full service gasoline service station only;
- (f) temporary display for a sidewalk sale;
- (g) other uses not listed above where the display for sale area is situated adjacent and/or behind the principal business building and does not exceed a maximum twenty (20%) percent of the building floor area of the business.

Commodities, materials, and equipment may be displayed for sale in the General Business, Light Industrial, and Heavy Industrial districts if not otherwise prohibited or restricted by other provisions of this Ordinance.

#### **4. Open Storage Outside a Building**

Open storage of commodities, materials, and equipment outside a building is permitted as an accessory use in General Business, Light Industrial, and Heavy Industrial districts if not otherwise prohibited or restricted by other provisions of this Ordinance. Such open storage must be screened from public view by a solid wooden, masonry or other suitable screening fence of adequate height to provide an effective screen when located adjacent to, or across the street from, any residentially zoned or developed property.

### **SECTION 14**

#### **Creation of a Building Site**

**14-100** No permit for the construction of a building, structure, parking facility, drainage improvement, utility improvement or other development, including any activity that causes earth disturbance, upon any tract or plot shall be issued by the City Secretary until a building site, building tract or building lot has been created by compliance with one of the following conditions:

1. The lot or tract appears on a plat of record properly approved by the city council or appropriate authority and filed in the plat records of Hays or Caldwell County and a site development permit is issued by the City.
2. The site, plot or tract is all or part of a site plan officially approved by the city council in a planned development district which site plan provides all utility and drainage easements, alleys, streets and other public improvements necessary to meet the normal requirements for platting, including designation of building areas, and such easements, alleys and streets have been required and properly dedicated and the necessary public improvements provided.

### **SECTION 15**

#### **ADMINISTRATION AND ENFORCEMENT OF THE ZONING ORDINANCE**

**15-100** It is the duty of the City Secretary, through proper departments, to administer and enforce the Zoning Ordinance.

**15-101** Administration and enforcement of the Zoning Ordinance shall be the responsibility of the City Secretary. Interpretation of the Zoning Ordinance shall be made by the City Secretary, with appeal to the City Council.

## **SECTION 16**

### **16-100 APPEALS**

1. Appeals to the City Council can be taken by any person aggrieved by any final decision of any official responsible for administration, interpretation, or enforcement of this Ordinance. Such appeal shall be taken within fifteen (15) days after the decision has been rendered by filing with the City Secretary, a notice of appeal specifying the grounds thereof. The City Secretary shall forthwith transmit to the City Council all the papers constituting the record upon which the action appealed from was taken.

2. An appeal shall stay all proceedings of the action appealed from unless the City Secretary certifies to the City Council after the notice of appeal shall have been filed with him/her that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order which may be granted by the City Council or by a an appropriate court.

3. The City Council shall fix a reasonable time, not less than thirty-one (31) days from the date of the application, for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. Any party may appear at the hearing in person or by agent or by attorney.

4. No appeal to the City Council for the same or substantially similar variance ~~on~~ relating to the same piece of property shall be allowed prior to the expiration of two years from a previous ruling by the City Council on any appeal to such body unless other property in the immediate vicinity has within the said two-year period been changed or acted upon by the City Council so as to alter the facts and conditions on which the previous Council action was based. Such change of circumstances shall permit the rehearing of an appeal by the City Council prior to the expiration of a the said two-year period, but such conditions shall in no way have any force in law to compel the City Council, after a hearing, to grant a subsequent appeal. Such subsequent appeal shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the appeal is brought.

### **16-101 JURISDICTION**

When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the City Council may, in specific cases, after public notice and public hearing, and subject to appropriate conditions and safeguards, authorize the following special exceptions to the regulations herein established.

1. Permit the reconstruction, extension or enlargement of a building occupied by a nonconforming use on the lot or tract occupied by such building or the reconstruction of a structure destroyed by fire or the elements not to exceed sixty (60) percent of its reasonable value and the addition of off-street parking or off-street loading to a

nonconforming use, provided such reconstruction does not prevent the return of such property to a conforming use.

2. To hear and decide appeals where it is alleged there is error in any final order, requirement, decision or determination made by any official responsible for administration, interpretation, or enforcement of this Ordinance.

3. Permit such variance or modifications of the height, yard, area, coverage, signage, landscaping, and parking regulations as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape or slope that it cannot be appropriately developed without such modification.

In exercising its power to grant a variance in accordance with this Ordinance, the City Council shall make findings and show in its minutes that:

a. There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the same area and the same Zoning District.

b. That a variance is necessary to permit the applicant the same rights in the use of this property that are presently enjoyed, under the Ordinance, by other properties in the vicinity and Zoning District, but which rights are denied to the property on which the application is made.

c. That the granting of the variance on the specific property will not adversely affect the land use pattern as outlined by a Comprehensive Plan or any Area Plan and will not adversely affect any other feature of a Comprehensive Plan or any Area Plan of the City of Niederwald.

d. That the variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity.

e. That the variance does not violate the intent of the Ordinance or its amendments.

4. Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of this Ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard to the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of the property. The City Council shall from time to time on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation or maintenance of any nonconforming use within the City.

5. No variance may authorize a use other than a use permitted in the district for which the variance is sought.

#### **16-102 ACTIONS OF THE COUNCIL**

1. In exercising its powers, the City Council may, reverse or affirm, wholly or partly, may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken including the power to impose reasonable conditions to be complied with by the applicant.

2. The concurring vote of four (4) members of the City Council shall be necessary to revise any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variance in said Ordinance.

3. Any person or persons, jointly or severally, aggrieved by any decision of the City Council or any taxpayer or any officer, department or board of the City of Niederwald may present to an appropriate court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Such petition shall be presented to the court within the (10) days after the filing of the decision by the City Council in the City offices and not thereafter.

#### **16-103 FEE FOR PROCESSING CITY COUNCIL REQUESTS**

The City Council may, by resolution or other action, establish a processing fee to cover City Council case file preparation, maps, and postage for property owner notification, and other associated administrative expenses.

### **SECTION 17**

#### **NONCONFORMING USES AND STRUCTURES**

**17-100** A nonconforming status shall exist under the following provisions of this Ordinance:

1. When a use or structure which does not conform to the regulations prescribed in the district in which such use or structure is located was in existence and lawfully operating prior to the adoption of this Zoning Ordinance and has been operating since without discontinuance.

2. When on the effective date of this ordinance, the use or structure was in existence and lawfully constructed, located and operating in accordance with the provisions of the previous zoning ordinance or which was a nonconforming use thereunder, and which use or structure does not now conform to the regulations herein prescribed for the district in which the use or structure is located.

**17-101** No nonconforming use or structure lawfully existing and operating prior to the adoption of this Ordinance may be increased, enlarged or expanded beyond that,



as it existed on the effective date of this Ordinance, except in the following circumstances.

1. to provide off-street loading or off-street parking spaces upon approval of the City Council; or
2. to remodel or build an addition to an existing residential structure in a Light Industrial or Heavy Industrial district, in conformance with the Area Regulations for Single-Family Dwelling - 3 districts; or
3. to replace a mobile home with a HUD-code manufactured home or a HUD-code manufactured home with a different HUD-code manufactured home, on property where the existing mobile home or HUD-code manufactured home was in existence and lawfully located before the adoption of this Ordinance. The terms "mobile home" and "HUD-code manufactured home" have the meanings established in the Texas Manufactured Housing Standards Act.

**17-102** Any nonconforming use may be changed to a conforming use and once such change is made, the use shall not thereafter be changed back to a nonconforming use.

**17-103** Whenever a nonconforming use is abandoned, all nonconforming rights shall cease and the use of the premises shall thenceforth be in conformity with this Ordinance. Abandonment shall involve the intent of the user or owner to discontinue a nonconforming operation and the actual act of discontinuance. Discontinuance of a business or the vacancy of a building or premises occupied by a nonconforming use shall be construed as conclusive proof of intent to abandon the nonconforming use. Any nonconforming use which, not involving a permanent type structure, is moved from the premises shall be considered to have been abandoned.

**17-104** If a nonconforming structure or a structure occupied by a nonconforming use is destroyed by fire, the elements or other cause, it may not be rebuilt except to conform to the provisions of this Ordinance. In the case of partial destruction of a nonconforming use not exceeding sixty (60) percent of its reasonable value, reconstruction may be permitted after a hearing and favorable action by the City Council, but the size and function of the nonconforming use shall not be expanded.

## **SECTION 18**

### **COMPLETION OF BUILDING UNDER CONSTRUCTION**

**18-100** Nothing herein contained shall require any change in the plans, construction or designated use of a building actually and legally under construction at the time of the passage of this Ordinance and which entire building shall be completed within one (1) year from the date of the passage of this Ordinance.

## **SECTION 19**

### **AMENDMENTS**

**19-100** Any person or corporation having proprietary interest in any property affected by this Ordinance may petition the City Council for a change or amendment to the provisions of this Ordinance, or the City Council may, on its own motion, institute study and proposal for changes and amendments in the public interest.

#### **19-101 PROCEDURE**

1. The City Council may from time to time amend, supplement or change by ordinance the boundaries of the districts or the regulations herein established as provided by the statutes of the State of Texas.
2. Before taking action on any proposed amendment, supplement or change the City Council shall hold a public hearing on any application for any amendment or change. When any such amendment or change relates to a change in classification or boundary of a zoning district, written notice of public hearing before the City Council on the proposed amendment or change shall be sent to all owners of real property lying within two hundred (200') feet of the property on which the change is requested. Such notice shall be given not less than ten (10) days before the date set for hearing by posting such notice, properly addressed and postage paid, to each taxpayer as the ownership appears on the most recently approved tax roll. The City Council may not adopt a proposed change relating to a change in classification or boundary until after the thirtieth (30<sup>th</sup>) day after the date the notice outlined in this subsection 19-101(2) is given.
3. When any such amendment relates to a change of a zoning regulation or to the text of this Ordinance not affecting specific property, notice of the public hearing of the City Council shall be given by publication in a newspaper of general circulation in the City without the necessity of notifying property owners by mail. Such notice shall state the time and place of such hearing and the nature of the subject to be considered, which time shall not be earlier than fifteen (15) days from the date of publication.
4. The fees for processing an application for rezoning shall be set by resolution of the City Council.
5. A public hearing shall be held by the governing body before adopting any proposed amendment, supplement or change. Notice of such hearing shall be given by publication in a newspaper of general circulation in the City stating the time and place of such hearing, which time shall not be earlier than fifteen (15) days from the date of publication.
6. If a protest against such proposed amendment, supplement or change has been filed, duly signed and acknowledged by the owners of twenty percent (20%) or more, either of the area of the lots or land included in such a proposed change or those immediately adjoining the area extending two hundred feet (200') therefrom, such

amendment shall not become effective except by a three-fourths vote of all members of the City Council.

7. Unless this provision is expressly waived by the City Council, no proposed amendment, supplement, change or repeal of any section of this Ordinance, which has been legally rejected by the City Council shall be again considered by the City Council, nor shall any appeal, petition or other application, by an appellant, be heard by City Council prior to the expiration of six (6) months from the date of the original action by the City Council.

## **SECTION 20**

### **PLANNED DEVELOPMENT DISTRICT (PDD)**

#### **21-100 GENERAL PURPOSE AND DESCRIPTION**

- A. The Planned Development District, herein referred to as PDD, is a special zoning district category that provides an alternate approach to conventional land use controls. The PDD may be used for particular tracts or parcels of land that are under common ownership and are to be developed as one unit according to a master design statement or a master development plan. The PDD is subject to special review procedures, and once approved by the City Council, it becomes a special zoning classification for the property it represents.
- B. The intent and purpose of the planned unit development provisions are to:
  - 1. Encourage innovative development while maintaining appropriate limitations on the character and intensity of use, assuring compatibility with adjoining and proximate properties, and following the guidelines of the Comprehensive Plan;
  - 2. Permit flexibility and creativity within the development to maximize the unique physical features of the particular site;
  - 3. Encourage efficient use of land, facilitate economic arrangement of buildings and circulations systems, and encourage diversified living environments and land uses; and
  - 4. Achieve a continuity of function and design within the development and to encourage diversified living environments and land uses, including open space and common areas; and
  - 5. Provide a vehicle for negotiating modifications in standard development requirements in order to both encourage innovative development and protect the health, safety and welfare of the community.
- C. The City Council, after public hearing and proper notice to all parties affected, may authorize the creation of a Planned Development District by ordinance.

- D. The Planned Development District (PDD) is a district which accommodates planned associations of uses developed as integral land use units such as industrial districts, offices, retail, commercial or service centers, shopping centers, residential developments of multiple or mixed housing including attached single-family dwellings or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A PDD district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this Ordinance. While greater flexibility is given to allow special conditions or restrictions, which would not otherwise allow the development to occur, procedures, are established herein to ensure against misuse of increased flexibility.

#### **20-101 PERMITTED USES**

- A. An application for a PDD district shall specify the base zoning district upon which the PDD is based, and the use or the combination of uses proposed (particularly if any of the proposed uses are not allowed by right in the base zoning district). In selecting a base zoning district, the uses allowed in the base district must be similar or compatible with those proposed for the PDD. PDD designations shall not be attached to CUP requirements. Conditional Use Permits allowed in a base zoning district are allowed in a PDD only if specifically identified at the time of PDD approval, and if specifically cited as an “additional use” (i.e., to those allowed by right in the base zoning district) in the ordinance establishing the PDD.
- B. In the case of residential PDD districts for single-family or duplex categories, the proposed lot area shall be no smaller than the lot sizes allowed in the base zoning district except for minor changes in a small percentage of the lots in order to provide improved design or flexibility in the layout of the subdivision.

#### **20-102 PLANNED DEVELOPMENT DISTRICT REQUIREMENTS**

- A. Development requirements for each separate PDD district shall be set forth in the amending ordinance granting the PDD district and shall include, but may not be limited to: uses, density, lot area, lot width, lot depth, yard depths and widths, building height, building elevations, coverage, floor area ratio, parking, access, screening, landscaping, accessory buildings, signs, lighting, project phasing or scheduling, management associations, and other requirements as the City Council may deem appropriate.
- B. In the PDD, uses shall conform to the standards and regulations of the base zoning district to which it is most similar. The base zoning district shall be stated in the granting ordinance. All applications to the City shall list all requested deviations from the standard requirements set forth throughout this Ordinance (applications without this list will be considered incomplete) as may be amended. The PDD shall conform to all other regulations of the base zoning district, as well as all other applicable ordinance provisions, unless specifically changed or excluded in the ordinance establishing the PDD.

- C. The ordinance granting a PDD shall include a statement as to the purpose and intent of the PDD granted therein. A specific list is required of modifications in each district or districts and general statement citing the reason for the PDD request.
- D. The minimum acreage for a PDD request shall be one (1) acre.
- E. In establishing a Planned Development District in accordance with this Ordinance, the City Council shall approve and file as part of the amending ordinance appropriate plans and standards for each PDD. To facilitate understanding of the request during the review and public hearing process, the concurrent submission of a Concept Plan for a proposed non-residential, multi-family or manufactured home project, or a Land Study for a proposed residential (i.e., single- or two-family) project, shall be required along with the PDD zoning application. A detailed Site Plan may be submitted in lieu of the Concept Plan (or a Preliminary Plat in lieu of the Land Study) if the applicant prefers to do so.
- F. Concept Plan or Land Study - This plan shall be submitted by the applicant at the time of the PDD request. The plan shall show the applicant's intent for the use of the land within the proposed Planned Development District in a graphic manner and, as may be required, supported by written documentation of proposals and standards for development. The City may prepare application form(s) which further describe and explain the following requirements:
  - 1. Residential Land Study - A Land Study plan shall be submitted with any residential PDD zoning request for a development comprised of single-family (detached or attached) or two-family (duplex) dwellings on individually platted lots, and shall show general uses, phasing of the development, access, thoroughfares, alleys (if proposed), preliminary lot arrangements, proposed densities, proposed screening, landscaped or private amenity areas, project scheduling, and other pertinent development data. Application procedures and requirements for Land Studies shall be the same as those established for Concept Plans as set out in the City Subdivision regulations.
  - 2. Nonresidential Concept Plan - A Concept Plan shall be submitted with any nonresidential, multi-family, or manufactured home PDD zoning request, and shall clearly show all pertinent aspects of the type and nature of the proposed development. The Concept Plan shall show the types of use(s) proposed; access, topography and boundaries of the PDD area; existing physical features of the site; existing and proposed streets, alleys, easements and lot lines; location of existing or proposed public facilities; building heights and locations; parking areas and ratios; fire lanes; screening and landscaped areas; project phasing and scheduling; and other pertinent development data to adequately describe the proposed development.
    - a. A detailed Site Plan shall be submitted for approval (in accordance with Subsection B below) within one (1) year from the approval date of the Concept Plan for all or some portion/lot

of the Planned Development District covered by the overall Concept Plan.

- b. If a detailed Site Plan is not submitted within one (1) year, then the Concept Plan may be subject to review by the City Council to determine its continued validity.
  - c. If the City determines that the Concept Plan is no longer valid or that the proposed development is no longer viable, then a new Concept Plan (along with a zoning application to amend the PDD Ordinance and its accompanying Concept Plan) must be submitted for review and approval prior to detailed Site Plan review/approval (and any subsequent issuance of a building permit) for any portion of the PDD.
- G. Site Plan (detailed) - Submission and approval of the detailed Site Plan shall be in accordance with this Ordinance, and shall accompany an application for Planned Development District zoning if the applicant prefers to submit the detailed Site Plan in lieu of the required Concept Plan. The detailed Site Plan will establish the final plans for development of the Planned Development District (or any portion/lot thereof), and it shall substantially conform to the site layout and development data approved on the Concept Plan (adopted along with the PDD Ordinance). If a Concept Plan was previously approved for the overall PDD, then a detailed Site Plan (along with the required engineering/architectural site construction plans) may be submitted for only the sections/lots that are proposed for immediate development rather than for the entire PDD. If no Concept Plan was approved with the Ordinance establishing the PDD, then a detailed Site Plan (along with the required engineering/architectural site construction plans) must be submitted for the entire PDD, even though only portions of it are proposed for immediate development.
- H. For any single- or two-family residential district (AG, SF-1, SF-2, SF-3, MF-1, and MF-2), a Preliminary Plat shall qualify as the detailed Site Plan.

#### **21-103 APPROVAL PROCESS AND PROCEDURE**

- A. The procedure for establishing a Planned Development District shall follow the procedures for zoning amendments as set forth in this Ordinance. This procedure shall be expanded to include concurrent consideration and approval (or denial) of the Concept Plan (or Land Study for a residential PDD) or the detailed Site Plan (or Preliminary Plat for a residential PDD) which is submitted along with the PDD zoning request application. The public hearings conducted for, and the subsequent actions taken upon, the PDD zoning request shall also include the accompanying Concept Plan/Land Study or detailed Site Plan/Preliminary Plat.
- B. The Ordinance establishing the Planned Development District shall not be approved (or adopted) until the accompanying Concept Plan/Land Study or detailed Site Plan/Preliminary Plat is approved by the City Council, and until all other procedural requirements set forth in this Ordinance are satisfied.



- C. When a zoning request for a Planned Development District is being considered, a written report from the City Secretary (or his/her designee) discussing the project's impact upon planning, engineering, water utilities, electric, sanitation, building inspection, tax, police, fire and traffic, as well as written comments from applicable public agencies (such as the school district and/or utility companies), may be submitted to the City Council.
- D. All Planned Development Districts approved in accordance with the provisions of this Ordinance in its original form, or by subsequent amendments thereto, shall be referenced on the Zoning District Map, and a list of such Planned Development Districts, showing the uses permitted and any other special stipulations of each PDD district, shall be maintained as part of this Ordinance.

## **SECTION 21**

### **DEFINITIONS**

**21-100** Certain terms in this Ordinance are defined as follows.

**21-101** Words in the present tense include the future, words in the singular number include the plural number and words in the plural number include the singular number; the word "building" includes the word "structure"; the word "lot" includes the words "plot" or "tract"; the word "shall" is mandatory and not discretionary.

**ACCESSORY BUILDING (DETACHED)** - In a residential district, a subordinate building detached and used for a purpose customarily incidental to the main structure such as a private garage for automobile storage, toolhouse, lath or greenhouse as a hobby (no business), home workshop, children's playhouse, storage house or garden shelter, but not involving the conduct of a business or a guesthouse residence.

**ACCESSORY USE** - A use subordinate to and incidental to the primary use of the main building or to the primary use of the premises.

**ACRE** - A measure of land containing 43,560 square feet.

**ADMINISTRATOR** - See City Secretary.

**AIRPORT OR LANDING FIELD** - An area improved for the landing or take-off of aircraft approved by the City of Niederwald for operation as an aircraft landing facility.

**ALCOHOLIC BEVERAGES, SALES FOR CONSUMPTION OFF-PREMISES**- This is the standard use listing for a convenience store or similar facility where the sale of beer for off-premises consumption is an allowed use according to zoning standards.

**ALCOHOLIC BEVERAGES, SALE OF BEER ONLY FOR ON-PREMISE CONSUMPTION - EQUAL TO OR EXCEEDING 75% OF GROSS REVENUE**

**FROM ALCOHOL SALES** - This is the standard use listing which will solely allow the serving of beer for on-premise consumption where the gross revenue from on-premise sales of beer equals or exceeds 75% of gross revenues. Allowed by conditional use permit in Local Retail, General Business, Light Industrial, and Heavy Industrial districts.

**ALCOHOLIC BEVERAGES, SALE OF MIXED DRINKS FOR ON-PREMISE CONSUMPTION - EQUAL TO OR EXCEEDING 75% OF GROSS REVENUE FROM ALCOHOL SALES.** This is the standard use listing which will allow the serving of alcoholic beverages for on-premise consumption where the gross revenue from on-premise sales of alcohol beverages equals or exceeds 75% of gross revenues. Allowed by conditional use permit in General Business, Light Industrial, and Heavy Industrial districts.

**ALLEY** - A public right-of-way or thoroughfare which affords only secondary means of access to property abutting thereon.

**AMORTIZATION** - A method of eliminating non-conforming uses by requiring the termination of the non-conforming use after a specified period of time.

**AMUSEMENT, COMMERCIAL (INDOOR)** - An amusement enterprise wholly enclosed in a building which is treated acoustically so that noise generated by the enterprise is not perceptible at the bounding property line and including, but not limited to a bowling alley, billiard parlor or shooting range.

**AMUSEMENT, COMMERCIAL (OUTDOOR)** - Any amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open including, but not limited to a golf driving range, archery range and miniature golf course.

**ANNEXATION** - The incorporation of land area into an existing municipality with a resulting change in the boundaries of that municipality.

**ANTIQUE SHOP** - An establishment offering for sale, within a building, articles such as glass, china, furniture or similar furnishings and decorations which have value and significance as a result of age, design or sentiment.

**APARTMENT** - A room or suite of rooms in a multi-family dwelling or apartment house arranged, designed or occupied as a place of residence by a single family, individual or group of individuals.

**APARTMENT HOUSE** - Any building or portion thereof, which is designated, built, rented, leased or let to be occupied as three or more dwelling units or apartments or which is occupied as a home or place of residence by three or more families living in independent dwelling units.

**APPLICANT** - A person submitting an application for development, land use, zone change, variance from these standards, or as otherwise provided in this Ordinance.

**AREA OF THE LOT** - The area of the lot shall be the net area which does not include portions of streets or alleys.

**ART GALLERY OR MUSEUM** - An institution for the collection, display and distribution of objects of art or science, and which is sponsored by a public or quasi-public agency and which facility is open to the general public.

**AUTO REPAIR, MAJOR VEHICLE REPAIR** - A business specializing in major repair of motor vehicles including any use listing below, as well as any use not listed as minor vehicle servicing.

- a. auto glass, seat cover and muffler shop;
- b. auto painting or body rebuilding shop;
- c. tire retreading and capping;
- d. body, fender, clutch, transmission, differential, axle, spring and frame repairs;
- e. major overhauling of engines requiring removal therefrom of cylinder head or crankcase pan and any associated engine rebuilding;
- f. repair of radiator requiring removal from the vehicle;
- g. repair of truck, trailer, farm or industrial equipment, or other machinery/supplies; or
- h. brake work, other than minor maintenance such as disc pad replacement and minor brake adjustment.

**AUTO REPAIR, MINOR VEHICLE SERVICING** - A business specializing in minor, routine, periodic, preventive maintenance of a motor vehicle conducted entirely within an enclosed building, including the following.

- a. servicing of spark plugs, batteries, distributors and distributor parts and including minor engine tune-ups;
- b. tire servicing and flat repair but not recapping or regrooving;
- c. radiator cleaning and flushing (on vehicle);
- d. fuel pump, oil pump, and related maintenance;
- e. minor servicing of carburetors;
- f. emergency wiring repairs;
- g. minor motor adjustment not involving removal of head or crankcase;
- h. quick oil and filter change;

- i. servicing hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat belts, windshield wipers, mirrors, and installation of vehicle accessories such as radios;
- j. lubrication, greasing, and washing; or
- k. disc pad replacement and minor brake adjustment.

**AUTO SALES, NEW OR USED (OUTDOOR LOT)** - An open, dust-free, all weather area, other than a street, alley or other public place, used for the display and sales of new or used automobiles. Where no repair work, except those actions normally associated with vehicle operator service, is done on the cars to be displayed and sold on the premises. A sales office is normally located on the premises and such shall be limited to an area less than 10% of the total sales lot.

**AUTO SALES FACILITY, NEW OR USED** - An open, dust-free, all weather surface other than a street, alley, or other public place, used for the display, wholesale or retail sale, repair, renovation and temporary storage, not to exceed ninety (90) days for repairs or renovation of new or used automobiles.

**BARBER SHOP OR BEAUTY SHOP** - A business of cutting or dressing hair, shaving or trimming beards, performing manicures, facials or other grooming services including the performing of other related services or the selling of related goods for human beings or animals.

**BASEMENT** - A building story which is partly underground, but having at least one-half of its height above the average level of the adjoining ground. A basement shall be counted as a story in computing building height.

**BLOCK** - An area enclosed by streets and occupied by or intended for buildings; or if the same word is used as a term of measurement, it shall mean the distance along a side of a street between the nearest two streets which intersect said street on said side.

**BOARDING HOUSE/LODGING HOUSE/ROOMING HOUSE** - A building other than a hotel, where lodging and meals for four or more persons are served for compensation.

**BUILDABLE LOT AREA** - The area that remains after subtracting the area required for the front, side and rear lot setbacks.

**BUILDING** - Any structure built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire, each portion so subdivided may be deemed a separate building. This term is synonymous with "structure".

**BUILDING ENDS** - Those sides of a building having the least dimension as compared to the front or rear of a building. As used herein for the building spacing regulations for multiple-family dwelling. A building end shall be interpreted as being

the narrowest side of a building regardless of whether it fronts upon a street, faces the rear of the lot or is adjacent to the side lot line or another building.

**BUILDING LINE** - A line parallel or approximately parallel to the street line at a specified distance therefrom creating the minimum distance from the street line that a building must be situated or located.

**BUSINESS REGISTRATION:** A procedure which takes place prior to initiating a business use wherein the following three (3) items are satisfied: identification of emergency contacts; address verification; and zoning use confirmation.

**CELLAR** - A building story with more than one-half its height below the average level of the adjoining ground. A cellar shall not be counted as a story in computing building height.

**CEMETERY** - Land used or intended to be used for the interment of human remains and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.

**CERTIFICATE OF OCCUPANCY** - An official certificate issued by the City Secretary which indicates conformance with, or approved conditional waiver from, the zoning regulations and authorizes the use of the premises for which it is issued.

**CITY COUNCIL** - The governing body of the City of Niederwald.

**CITY SECRETARY** - Chief Administrative Officer of the City of Niederwald; That individual responsible for issuing building permits and enforcing provisions of the building codes adopted by the City, as well as enforcing the Zoning Ordinance.

**CHILD CARE CENTER, SMALL HOME-BASED FACILITY** - A private residence where the occupant provides custodial care and supervision for less than twenty-four (24) hours a day for a maximum six (6) children at any one time. The maximum of six (6) children includes the family's natural or adopted children under the age of fourteen (14). The residence must contain a minimum one hundred and fifty (150) square feet of floor area for each child. This use shall exclude a family/group home.

**CHILD CARE CENTER, INTERMEDIATE FACILITY** - A facility (including non-residential structures) which provides custodial care and supervision for less than twenty-four (24) hours a day for between seven (7) and twelve (12) children, excluding foster and group homes. The facility must contain a minimum one hundred and fifty (150) square feet of floor area for each child.

**CHILD CARE CENTER, LARGE FACILITY** - A facility where over twelve (12) children receive custodial care and supervision for less than 24 hours a day, excluding foster and group homes.

**CHURCH OR RECTORY** - A place of worship and religious training of recognized religions including on site housing of ministers, rabbis, priests, nuns and similar staff personnel.

**CLEANING OR LAUNDRY SELF-SERVICE SHOP** - To be of the customer self-service type and not a commercial laundry or cleaning plant.

**CLEANING SHOP OR LAUNDRY (SMALL SHOP)** - A custom cleaning shop not exceeding two thousand five hundred (2,500) square feet of floor area.

**CLINIC** - A group of offices for one or more physicians, surgeons or dentists to treat sick or injured out-patients who do not remain overnight.

**CLOTHING MANUFACTURE AND LIGHT COMPOUNDING OR FABRICATION** - Including, but not limited to cutting, sewing and forming garments, millinery and accessories and the making of jewelry, compounding of perfume, small instruments or pharmaceuticals, when no noise, dust, vibration, odor or other undesirable or obnoxious condition is created to affect adjacent property.

**COLLEGE OR UNIVERSITY** - An academic institution of higher learning, accredited or recognized by the state and offering a program or series of programs of academic study.

**COMMUNITY CENTER (PUBLIC)** - A building and grounds owned or leased and operated by a governmental body for the social, recreational, health or welfare of the community served.

**COMMON AREA** - Privately owned land and improvements within a townhouse, planned development, or community unit development including buildings, common open space, central services and utilities, streets, walks, parking areas, fencing and screening walls, landscaping, and any other elements and facilities under common ownership and available for the use of all owners or tenants.

**COMMON OPEN SPACE** - That portion of the common area which is designated for outdoor recreation area, private park, play lot, plaza, athletic court, swimming pool, fountain, stream or pond, ornamental landscaping or natural vegetation offering visual amenity, and which is open to general view and conveniently accessible to pedestrians within the project.

**COMMUNITY UNIT DEVELOPMENT** - An area of three (3) acres or more of unsubdivided land or the frontage on one side of a street between two intersecting streets planned as a single integral residential development which may contain variable types of housing with yard setbacks and open space standards differing from the district in which it is located, but which observes the overall density standards set forth in such district. Where the overall density standards are proposed to vary from those of the district in which the community unit development is located, the development should be processed as a planned development district.



**COMPREHENSIVE (MASTER) PLAN** - The comprehensive plan of the City and adjoining areas adopted by the city council, including all its revisions. The plan indicates the general locations recommended for various land uses, transportation routes, public and private buildings, streets, parks, and other public and private developments and improvements, to include detailed plans for water, sewer, etc.

**CONDITIONAL USE** - A use permitted in a particular zoning district only upon showing that such use in a specified location will be compatible and can comply with all the conditions and standards for the location or operation of such a use as specified in the Zoning Ordinance.

**CONDOMINIUM STRUCTURE** - A building or group of buildings in which dwelling units are owned individually, while the structure and common areas and facilities are owned by all the owners on a proportional, individual basis.

**CONVALESCENT HOME** - Any structure used for or customarily occupied by persons recovering from illness or suffering from infirmities of age.

**COUNTRY CLUB (PRIVATE)** - An area of twenty (20) acres or more containing a golf course and a clubhouse and available only to private specific membership, such a club may contain adjunct facilities such as private club, dining room, swimming pool, tennis courts and similar recreational or service facilities.

**COURT** - An open, unoccupied space, bounded on more than two sides by the walls of a building. An inner court is a court entirely surrounded by the exterior walls of a building. An outer court is a court having one side open to a street, alley, yard or other open space.

**COVERAGE** - The percent of a lot or tract covered by the roof or first floor of a building. Roof eaves to the extent of three (3) feet from the walls of a building shall be excluded from the coverage computations.

**CUSTOM PERSONAL SERVICE** - Tailor, dressmaker, shoe shop or similar shop offering custom service.

**DANCE HALL OR NIGHTCLUB** - An establishment offering to the general public facilities for dancing and entertainment for a fee and subject to licensing and regulation by the City of Niederwald.

**DAY CAMP** - A facility arranged and conducted for the organized recreation and instruction of children including outdoor activities on a daytime basis.

**DISTRICT** - A section of the City of Niederwald for which the zoning regulations governing the area, height, or use of the land and buildings are uniform.

**DWELLING, MULTIPLE-FAMILY** - Any building or portion thereof, which is designed, built, rented, leased or let to be occupied as three (3) or more dwelling units or apartments or which is occupied as a home or residence of three (3) or more families.

**DWELLING, ONE-FAMILY** - A detached building having accommodations for and occupied by not more than one (1) family.

**DWELLING, TWO-FAMILY** - A detached building designed and constructed with two (2) separate living units under a single roof for occupancy by two (2) families.

**DWELLING UNIT** - A building or portion of a building that is arranged, occupied, or intended to be occupied as living quarters and includes facilities for food preparation and sleeping.

**DWELLING UNIT, TRIPLEX** - A detached building designed and constructed with three (3) separate living units under a single roof for occupancy by three (3) families.

**EXCLUSIVE USE DISTRICT** - A zoning district that allows only one (1) use, or a limited range of uses, within the specified zoning district.

**FAMILY** - Any number of individuals living together as a single housekeeping unit, in which not more than three (3) individuals are unrelated by blood, marriage, adoption, or guardianship and occupying a dwelling unit.

**FAMILY/GROUP HOME** - A dwelling unit used as a single housekeeping unit where not more than six (6) physically or mentally disabled persons are provided room and board, as well as supervised care and rehabilitation provided by not more than two (2) persons. "Family Home" means a community-based residential home operated in accordance with the Community Homes for Disabled Persons Location Act and its amendments.

**FARM ACCESSORY BUILDING** - A structure, other than a dwelling, on a farm as herein defined, for the housing protection or storage of the usual farm equipment, animals and crops.

**FARM, RANCH, GARDEN OR ORCHARD** - An area of three (3) acres or more which is used for the primary purpose of growing of usual farm products, vegetables, fruits, trees, and grain and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep and including the necessary accessory uses for raising, treating and storing products raised on the premises, but not including the commercial feeding of offal and garbage to swine and other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law.

**FLOODPLAIN** - Any land area susceptible to being inundated by water from any source. See Section 7-600.

**FOOD AND BEVERAGE SALES STORE (CONVENIENCE)** - A retail establishment of less than 2,500 square feet of total floor area selling a variety of consumables, notions and/or similar items, usually serving as a convenient outlet to a neighborhood. This activity can include the retail sale and self-service dispensing of

gasoline or other fuels. Where the retail sale and self-service dispensing of gasoline or other fuels is carried out, this activity shall be limited to General Retail or less restrictive zoning. The sale of beer for off-premises consumption is allowed, if not otherwise prohibited.

**FOOD AND BEVERAGE SALES STORE** - A retail establishment of greater than 2,500 square feet of total floor area, selling a variety of consumables, notions and/or similar items, usually serving a significant market area. The sale of beer for off-premises consumption is allowed, if not otherwise prohibited.

**FLOOR AREA** - The total square feet of floor space within the outside dimensions of a building including each floor level, but excluding cellars, carports or garages.

**FLOOR AREA RATIO (FAR)** - The ratio of the total square feet of floor area in a structure to the total square feet of land in the lot or tract on which the structure is located.

**GASOLINE STATION, FULL SERVICE** - A place where gasoline, other fuels, oil and grease and/or accessories are sold and dispensed to the retail motor vehicle trade, and where one or more of the following activities are conducted: motor vehicles are serviced and repaired; stored batteries are recharged and cared for; or vehicle tires are stored, serviced or exchanged.

**GASOLINE STATIONS, SELF SERVICE** - A place where the services provided are limited to the retail sale, either self-service or attendant dispensed, of gasoline, other fuels and petroleum products for the motor vehicle trade.

**GOLF COURSE (COMMERCIAL)** - A golf course privately owned but open to the public for a fee and operated as a commercial venture.

**HALFWAY HOUSE** - A dwelling unit used as a single housekeeping unit for not more than six (6) persons who have demonstrated a tendency towards alcoholism, drug abuse, anti-social or criminal conduct, together with not more than two (2) persons providing supervision and other services to such persons.

**HEIGHT** - The vertical distance of a building measured from the average established grade at the street line or from the average natural front yard ground level, whichever is higher, to (1) the highest point of the roof's surface if a flat surface, (2) to the deck line of mansard roofs or (3) to the mean height level between eaves and ridge for hip and gable roofs and, in any event, excluding chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio towers, ornamental cupolas, domes or spires and parapet walls not exceeding ten (10) feet in height. If the street grade has not been officially established, the average front yard grade shall be used for a base level.

**HELIPORT** - A landing facility for rotary wing aircraft subject to regularly scheduled use and may include fueling or servicing facilities for such craft and subject to approval by the City of Niederwald.

**HELISTOP** - A landing pad for occasional and infrequent use by rotary wing aircraft not exceeding a gross weight of 6,000 pounds and not for regularly scheduled stops and subject to approval by the City of Niederwald.

**HOME FOR AGED RESIDENCE** - A home where elderly people are provided with lodging and meals without nursing care.

**HOME OCCUPATION** - A home occupation is an occupation carried on in the home by a member of the occupant's family, secondary to the use of the dwelling for dwelling purposes and which does not change the residential character thereof, without the employment of additional persons, without the use of a sign to advertise the occupation, without offering any commodity for sale on the premises and which does not create obnoxious noise or other obnoxious conditions to abutting residential property such as emission of odor, increased traffic, or generation of light or smoke and where the use is carried on in the main structure only. A home occupation shall specifically exclude the operation of a repair garage, beauty shop, or barber shop. A child care center - small home-based facility - is allowed only if the conditions for this use can be satisfied on the property.

**HOMEOWNERS OR UNIT OWNERS ASSOCIATION** - Any association or organization of co-owners within a townhouse project; including the Council of Co-Owners or a Condominium or Townhouse Management Association; organized for the primary purpose of managing and maintaining the common areas and common open space in any townhouse project. An organization, association, or other entity formed and controlled by the developer, project owner or general partner for this purpose will be included in this definition.

**HOSPITAL (ACUTE CARE)** - An institution where sick or injured patients are given medical or surgical treatment intended to restore them to health and an active life and which is licensed by the State of Texas.

**HOSPITAL (CHRONIC CARE)** - An institution where those persons suffering from illness, injury, deformity or deficiency of age are given care and treatment on a prolonged or permanent basis and which is licensed by the State of Texas.

**HOTEL OR MOTEL** - A building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel an establishment shall contain a minimum of six (6) individual guest rooms or units and shall furnish customary hotel services such as linen, maid service, telephone, use and upkeep of furniture.

**INCINERATOR** - A furnace or apparatus for burning waste materials such as trash, wood and other flammable items for the purpose of reducing their weight and bulk.

**KENNEL** - A place in which five (5) or more dogs or cats at least six (6) months of age are kept, boarded or trained, by the owners of the dogs or cats or by persons providing facilities and care, with or without compensation.

**INSTITUTION FOR THE CARE OF ALCOHOLIC OR NARCOTIC**

**PATIENTS** - An institution offering resident or out-patient treatment to alcoholic or narcotic patients.

**KINDERGARTEN OR PRE-SCHOOL** - A private instructional facility offering an educational program generally equivalent to state approved curriculum for pre-school children and operating on a regular basis. A pre-school/kindergarten is not a child care facility.

**LEGAL HEIGHT** - The maximum height of a building permitted by any zoning standard, including airport zoning regulations, or other ordinances restricting the height of structures.

**LIVESTOCK AUCTION FACILITY** - Barns, pens and sheds for the temporary holding and sale of livestock.

**LIVING UNIT** - The room or rooms occupied by a family and must include cooking facilities.

**LOADING SPACE (ZONE)** - An off-street space or berth used for the loading or unloading of commercial or industrial vehicles.

**LOCAL UTILITY LINE** - The facilities provided by a municipality or a franchised utility company for the distribution or collection of gas, water, surface drainage water, sewage, electric power or telephone service including pad and pole mounted transformers.

**LODGING HOUSE/BOARDING HOUSE/ROOMING HOUSE** - See Boarding House.

**LOT** – A platted parcel of land occupied or to be occupied by a building and its accessory buildings, and including such parking, landscaping and open spaces as are required under this Ordinance and having its principal frontage upon a public street or officially approved place.

**LOT COVERAGE** - The percentage of the total area of a lot occupied by the base (first story or floor) of buildings located on the lot or the area determined as the maximum cross-sectional area of a building.

**LOT DEPTH** - The mean distance between the front and rear lot lines.

**LOT LINES** - The lines bounding a lot as defined herein.

**LOT OF RECORD** - A lot which is part of a subdivision, the plat of which has been recorded in the office of the County Clerk of Hays or Caldwell County or a parcel of land, the deed for which it is recorded in the office of the County Clerk of Hays or Caldwell County prior to the adoption of the City of Niederwald Subdivision Ordinance.

**LOT WIDTH** - The width of a lot at the front building line.

**MAIN BUILDING** - The building or buildings on a lot which are occupied by the primary use.

**MANUFACTURED HOME (a.k.a. HUD-CODE MANUFACTURED HOME) –**

A structure constructed on or after June 15, 1976, according to the rules of the United State Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet in length, or, when erected on site, is 800 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems. Anything less than the length and/or width specified in this definition shall not be allowed in a Manufactured Home Park and shall not be installed, located or placed on any lot, land or other location within the corporate limits of the City of Niederwald.

**MINI-STORAGE WAREHOUSE** - A building or group of buildings consisting of individualized shelters of various sizes for rent or lease for the purpose of providing protection of commodities stored therein. The size of each individual storage unit of a mini-storage warehouse shall be limited to 2,000 cubic feet.

**MOBILE HOME** - A structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems. Mobile homes shall not be installed, located or placed on any lot, land or other location within the corporate limits of the City of Niederwald.

**MANUFACTURED HOME PARK** - A tract of land containing a minimum five (5) acres which is designed, improved or intended to be used or rented for the installation, placement or occupancy by manufactured homes in designated spaces in conformance with all applicable laws, ordinances, regulations and other requirements.

**MANUFACTURED HOME SUBDIVISION** - A tract of land containing a minimum of five (5) acres, which has been designed, platted and approved and is intended for the placement of individually owned manufactured home units on platted lots which can be purchased outright by the owners of the manufactured home units.

**MODULAR BUILDING (INDUSTRIALIZED BUILDING)** – Modular building means a commercial structure that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent commercial site, and that is designed to be used as a commercial building when the modules or modular components are transported to the permanent commercial site and are erected or installed on a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include any commercial structure that is in excess of three stories or 49



feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof.

**MODULAR HOME (INDUSTRIALIZED HOUSING)** - Modular home means a residential structure that is designed for the use and occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation system. The term does not include any residential structure that is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof. The term shall not mean nor apply to (i) housing constructed of sectional or panelized systems not utilizing modular components; or (ii) any ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location. The term includes the plumbing, heating, air conditioning and electrical systems contained in the structure. The term does not include a mobile home as defined in the Texas Manufactured Housing Standards Act (Article 5221f V.T.C.S.); nor does it include building modules incorporating concrete or masonry as the primary structural element. See Use Table 7-102 for locations where this use is allowed.

**MULTIPLE-FAMILY DWELLING (APARTMENT)** - Any building or portion thereof, which is designed, built, rented, leased or let to be occupied as three (3) or more dwelling units or apartments or which is occupied as a home or place of residence by three (3) or more families living in independent dwelling units.

**NON-CONFORMING LOT** - A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision or amendment of the Zoning Ordinance, but which fails by reason of such adoption, revision or amendment to conform to the present requirements of the Zoning Ordinance.

**NON-CONFORMING STRUCTURE OR BUILDING** - A structure or building the size, dimensions or location of which was lawful prior to the adoption, revision or amendment of the Zoning Ordinance, but which fails by reason of such adoption, revision or amendment, to conform to the present requirements of the Zoning Ordinance.

**NON-CONFORMING USE** - A use or activity which was lawful prior to the adoption, revision or amendment of the Zoning Ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the Zoning Ordinance.

**OCCUPANCY** - The use or intended use of the land or buildings by the owner(s), proprietor(s) or tenant(s).

**OFF-STREET PARKING INCIDENTAL TO MAIN USE** - Off-street parking spaces provided in accordance with the requirements specified by this Ordinance and

located on the lot or tract occupied by the main use or within one hundred-fifty (150') feet of such lot or tract and located within the same Zoning District as the main use or in an adjacent parking district.

**OFF-STREET PARKING AS EXPANSION OF RETAIL OR COMMERCIAL USE** - An off-street parking lot located in a residential district immediately adjacent to a Local Retail or General Business district and granted by conditional use permit.

**OPEN SPACE** - Area included in any side, rear or front yard or any unoccupied space on the lot that is open and unobstructed to the sky except for the ordinary projections of cornices, eaves, porches, and plant material.

**OPEN/OUTDOOR STORAGE** - The keeping, in an unroofed area of any goods, junk, material, merchandise, on a lot, parcel or tract of land for more than twenty-four (24) hours.

**PARK OR PLAYGROUND (PUBLIC)** - An open recreation facility or park owned and operated by a public agency such as the City of Niederwald or school district and available to the general public for neighborhood use, but not involving lighted athletic fields for nighttime play.

**PARKING SPACE** - An enclosed or unenclosed all-weather (asphalt or concrete only) surfaced area for the parking of a motor vehicle. A typical ninety (90) degree parking space shall measure 9' X 18' and shall not be on a public street or in an alley and shall also include an all-weather (asphalt or concrete only) surfaced driveway connecting the parking space with a street or alley permitting free ingress and egress to the street or alley. Any parking space adjacent to a public street, wherein the parking maneuvers must be done on the public street, shall not be classified as off-street parking in satisfying the parking area requirements specified in this Ordinance, except that this provision shall not apply to the following zones: A, SF-1, SF-2, SF-3, and MH.

**PARKING LOT OR STRUCTURE, COMMERCIAL (AUTO)** - An area or structure devoted to the parking or storage of automobiles for a fee. May include, in the case of a parking structure only, a facility for servicing of automobiles provided such facility is primarily an internal function for use only by automobiles occupying the structure and creates no special problems of ingress or egress.

**PERFORMANCE STANDARD** - A set of criteria or limits relating to nuisance elements that a particular use or process may not exceed.

**PLANNED DEVELOPMENT DISTRICT ("PDD")** - A special zoning district category that provides an alternate approach to conventional land use controls. A PDD is a complex private development that might include residential and commercial uses, cluster housing, common areas, unusual arrangement of structures on site, or other combinations of structures and uses that depart from conventional single-purpose, standard-placement structures and uses. A PDD is a special zoning district category that provides an alternate approach to conventional land use controls. The PDD may be used for particular tracts or parcels of land that are under common

ownership and are to be developed as one unit according to a master design statement or a master development plan. The PDD is subject to special review procedures, and once approved by the City Council by ordinance, it becomes a special zoning classification for the property it represents.

**PLANNED NEIGHBORHOOD DEVELOPMENT** - An area of two hundred (200) acres to eight hundred (800) acres established as a planned development district in which the number of dwelling units, types of housing, open space, park, school, public and semi-public areas and service areas are established as a basic framework for development.

**PLAYFIELD OR STADIUM (PUBLIC)** - An athletic field or stadium owned and operated by a public agency for the general public including but not limited to a baseball field, golf course, football field or stadium which may be lighted for nighttime play.

**PRIVATE GARAGE** - An accessory building housing vehicles owned and used by occupants of the main building; if occupied by vehicles of others, it is a storage space.

**PROCESSING** - The method or action to enhance recyclable materials for reuse, including, but not limited to, separating, baling, flattening, shredding, crushing, cleaning, or cutting for the purpose of preparing recyclable materials for reuse, excluding a smelter operation.

**PUBLIC BUILDING, SHOP OR YARD OF LOCAL, STATE OR FEDERAL GOVERNMENT** - Facilities such as office buildings, maintenance yards and shops required by branches of local, state or federal government for service to an area such as highway department yard, city service center or experiment station.

**RADIO, TELEVISION OR MICROWAVE TOWER** - Structures supporting antennae for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antennae installations for home use of radio or television.

**RAILROAD TEAM TRACK** - A siding for spotting and unloading or loading box cars or other railroad cars and which area is connected to a public street by a drive for access.

**RAILROAD TRACK AND RIGHT-OF-WAY** - Does not include railroad stations, siding, team tracks, loading facilities, docks, yards or maintenance areas.

**RECYCLABLE MATERIALS** - Materials including, but not limited to, scrap steel, aluminum cans, appliances, paper, batteries, glass bottles, motor vehicles, motor vehicle parts, and machinery that have no economic value except as composition material.

**RECYCLING COLLECTION LOCATION** - A location where glass, paper, plastics and/or aluminum cans only are deposited in containers, with no processing on site, and usually occurring as an accessory use on the property.

**RECYCLING OPERATION INSIDE A BUILDING** - A recycling operation which is fully enclosed within permanent walls and roof of a building or, if windows and doors are present, which is capable of enclosure to insure compliance with the required performance standards in the LI and HI districts as appropriate. The outside storage of recyclable materials in conjunction with the recycling operation inside a building is prohibited in LI districts unless allowed as a condition of a conditional use permit. A dust collection system, if utilized in a LI district, may be located outside the main building if authorized by the conditional use permit.

**RECYCLING OPERATION OUTSIDE A BUILDING** - A recycling operation which occurs in the open, without the capability of enclosure inside a building.

**RECYCLING OPERATION** - Any lot, tract, building or structure used for the collection, buying, storage, or processing of recyclable materials in bulk form, which are then processed into other recyclable materials for the purpose of reuse and manufacture, excluding a smelter operation.

**RESIDENTIAL DISTRICTS/ZONES** - Single-Family Dwelling District-1 (SF-1), Single-Family Dwelling District-2 (SF-2), Single-Family Dwelling District-3 (SF-3), Manufactured Home District (MH), Multiple-Family Dwelling District-1 (MF-1), and Multiple-Family Dwelling District-2 (MF-2)

**RESIDENTIAL LANE** - A residential lane is a street that is a minor public thoroughfare which by its design discourages through traffic and which may afford the only public vehicular access to lots abutting thereon, which lots shall be restricted to residential use as set forth herein, for the single-family dwelling attached-3 district. A residential lane shall have the minimum widths, pavement widths, public utility easement requirements and other requirements as set forth in this Ordinance and other applicable ordinances and regulations of the City.

**RESTAURANT OR CAFETERIA (NOT OF DRIVE-IN TYPE)** - An establishment serving food to the general public in specific, designated dining areas and shall not include drive-in establishments where food is delivered to or eaten in automobiles.

**RESTAURANT OR EATING ESTABLISHMENT (DRIVE-IN SERVICE)** - An establishment designed and constructed to serve food for consumption on the premises in an automobile or for carry-out for off-premises consumption and which establishment may or may not have on premises dining room or counter.

**RETAIL SHOP, APPAREL, GIFT, ACCESSORY AND SIMILAR ITEMS** - Small retail shops such as dress shops or gift shops serving specific neighborhood areas, as differentiated from department stores or discount stores having community-wide service importance.

**ROOMING HOUSE/BOARDING HOUSE/LODGING HOUSE** - See Boarding House.

**SCHOOL, BUSINESS** - A business organized to operate for a profit and offering instruction and training in a service or art such as secretarial school, barber college, beauty school or commercial art school, but not including manual trade schools.

**SCHOOL, COMMERCIAL TRADE** - A business organized to operate for a profit and offering instruction and training in a trade such as welding, brick laying, machinery operation and similar trades.

**SCHOOL, PUBLIC OR DENOMINATIONAL** - A school under the sponsorship of a public or religious agency having a curriculum generally equivalent to public elementary or secondary schools, but not including trade or commercial schools.

**SEXUALLY ORIENTED BUSINESSES** - See separate Ordinance Number 120406-A, dated December 4th, 2006 for definitions and development standards pertaining to sexually oriented businesses.

**SIGNS** - See separate Sign Ordinance for regulations pertaining to signs.

**SINGLE-FAMILY DWELLING** - A dwelling designed and constructed as a free-standing structure for occupancy by one family and located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract and occupied by one family.

**SITE PLAN** - The development plan for one or more lots showing the existing and proposed conditions of the lot including, for example, curb cuts, utilities, landscaping, structures and signs, screening devices, lot dimensions, adjacent development, and any other information reasonably required in order to make an informed judgment about the compatibility of the proposal.

**STABLE (PRIVATE)** - An accessory building for quartering horses when the stable building is set back from all adjacent property lines at least fifty (50') feet, is at least one hundred (100') feet from any adjacent residence and when the site contains minimum area of one (1) acre.

**STORY** - The height between the successive floors of a building or from the top floor to the roof. The standard height for a story is eleven (11') feet, six (6") inches.

**STREET** - Any vehicular-way which: 1) is an existing state, county, or municipal roadway; or 2) is shown upon a plat approved pursuant to law; or 3) is approved by other official action; or 4) is shown upon a plat duly filed and recorded in the County records and includes the land between the street right-of-way lines whether improved or unimproved. A street provides a primary means of access to abutting property.

(a) **STREET, ARTERIAL:** A major street in the city street system that primarily provides vehicular circulation to various sections of the City and carries high volume. See Thoroughfare Plan.

(b) **STREET, COLLECTOR:** A street which primarily provides circulation within neighborhoods, to carry traffic from local streets to arterial or major



thoroughfare streets, or to carry traffic through or adjacent to commercial or industrial areas. See Thoroughfare Plan.

(c) **STREET, CUL DE SAC:** A local street with only one street outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.

(d) **STREET, LOCAL:** A street designed primarily for access to abutting residential property. A local street does not include roadways that carry through traffic, but will generally be intersected frequently by collector streets.

(e) **STREET, RESIDENTIAL LANE:** A street which, by its design, discourages through traffic and which may afford the only vehicular access to lots abutting thereon, which lots shall be restricted to residential use as set forth for only certain zoning districts in the Zoning Ordinance and its amending ordinances.

**STREET LINE** - A dividing line between a lot, tract or parcel of land and a contiguous street, the right-of-way line.

**STRUCTURAL ALTERATIONS** - Any change in the supporting member of a building, such as a bearing wall, column, beam or girder.

**STRUCTURE** - (Same as Building)

**SWIMMING POOL (COMMERCIAL)** - A swimming pool with accessory facilities, not part of the municipal or public recreational system and not a private swim club, but where the facilities are available to the general public for a fee.

**SWIMMING POOL, (PRIVATE)** - A swimming pool constructed for the exclusive use of the residents of a one-family, two-family or multiple-family dwelling and located and fenced in accordance with state law and the regulations of the City of Niederwald. A private swimming pool shall not be operated as a business nor maintained in a manner to be hazardous or obnoxious to adjacent property owners.

**TELEPHONE EXCHANGE** - Switching relay and transmitting equipment, but not including public business facilities, storage or repair facilities.

**TEMPORARY FIELD OR CONSTRUCTION OFFICE** - A structure or shelter used in connection with a development or building project for housing on the site of temporary administrative and supervisory functions and for sheltering employees and equipment.

**THOROUGHFARE PLAN/MAJOR STREET PLAN** - A general graphic presentation, accompanied by written text, describing the proposed arrangement of various classes of streets in the City at some future date. A thoroughfare plan is a component of the City's Comprehensive Plan.

**TOWNHOUSE** - A structure on an individual lot, which is one of a series of three (3) or more dwelling units designed for single-family occupancy, which dwelling



units are structurally connected or immediately adjacent to and abutting each other between individual dwelling units. A condominium apartment (as defined in V.T.C.A., Property Code, Section 81) in a condominium structure may be considered a townhouse if no other dwelling unit or use of any kind exists immediately above or below it. Any project including three (3) or more such condominiums or townhouses shall be considered a "Townhouse Project".

**UPHOLSTERY SHOP** - A business establishment engaged in the installation of soft covering material such as fabric and underlayment for furniture and other objects. Except however, with respect to motor vehicles, it shall only include interior upholstering. In no event shall an upholstery shop include the manufacture or building of furniture or other objects.

**USE OR LAND USE** - The activity or function that actually takes place or is intended to take place on a lot, or the purpose for which land or buildings are or may be occupied in a Zoning District.

**USE PERMITTED BY RIGHT** - A use which the Zoning Ordinance designates as a permitted use within a particular district and under certain conditions.

**UTILITIES OTHER THAN LISTED** - Any utility requiring a franchise, such as close circuit television, distribution of steam, hot or chilled water or similar service requiring the use of public streets or easements.

**VARIANCE** - An adjustment in the application of the specific regulations of the Zoning Ordinance to a particular parcel of property which, because of special conditions or circumstances peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and Zoning District.

**WRECKING YARD** - Any lot, tract, or building or structure upon which used automobiles or parts of used automobiles or other motor vehicles are stored for the primary purpose of obtaining parts for resale as an automotive or motor vehicle part.

**YARD** - An open space other than a court, on the lot in which a building is situated and which is not obstructed from a point forty (40) inches above the general ground level of the graded lot to the sky, except as provided for roof overhang and similar special architectural features and plant material.

**YARD, FRONT** - An open, unoccupied space on a lot facing a street extending across the front of a lot between the side lot lines and from the main building to the front lot or street line with the minimum horizontal distance between the street line and the main building line as specified for the district in which it is located.

**YARD, REAR** - An open, unoccupied space, except for accessory buildings as herein permitted, extending across the rear of a lot from one side lot line to the other side lot line and having a depth between the building and the rear lot line as specified in the district in which the lot is situated.

**YARD, SIDE** - An open, unoccupied space or spaces on one side or two sides of a main building and on the same lot with the building situated between the building and a side line of the lot and extending through from the front yard to the rear yard. Any lot line, not the rear line or a front line, shall be deemed a side yard.

**ZONING** - The division of a municipality into districts in an effort to achieve compatible land use relationships, and the associated establishment of regulations governing the use, placement, spacing and size of land and buildings in order to achieve that compatibility.

**ZONING MAP** - The official map showing the division of the City into districts which is a part of the Zoning Ordinance.

**ZOO (PRIVATE)** - A facility housing and displaying live animals, reptiles or birds, privately owned and operated for a fee or for the promotion of some other enterprise.

**ZOO (PUBLIC)** - A publicly owned zoo or similar facility owned and operated by the City or nonprofit zoological society where live animals, birds and reptiles are domiciled and displayed.

### **III.**

That if any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

### **IV.**

That this Ordinance shall take effect immediately from and after its passage, and it is accordingly so ordained.

### **V.**

That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Texas Government Code, Chapter 551.

### **VI.**

In interpreting and applying the provisions of this Ordinance, they shall be held to the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon height of buildings, or requires larger open spaces than are imposed or required by agreements, the provisions of this Ordinance shall govern.

## **VII.**

By the passage of this Ordinance, no presently illegal use shall be deemed to have been legalized unless specifically such use falls within a zoning district where the actual use is a conforming use. Otherwise, such uses shall remain nonconforming uses where recognized, or an illegal use, as the case may be. It is further the intent and declared purpose of this Ordinance that no offense committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time the existing Zoning Ordinance was repealed and this Zoning Ordinance adopted, shall be discharged or affected by such repeal; but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures may be instituted or causes presently pending proceeded with in all respects as if such prior ordinance had not been repealed.

## **VIII.**

Whenever any work is being done contrary to the provisions of this Ordinance, the City may order the work stopped by notice in writing (referred to as a "Stop Work Order") served on any persons engaged in the doing or causing such work to be done. The Stop Work Order shall be posted on the property related to the activity in question, and any such person shall forthwith stop work until authorized by the City to proceed with the work.

## **IX.**

A violation of this Ordinance shall authorize the City Secretary or his/her designee to cancel any permit depending in whole or in part on any approval under this Ordinance. If a permit is canceled, no further work shall be done on the project made the subject of the permit until the violation has been cured and new submittals under this Ordinance, as required by the City Secretary or his/her designee, have been made and approved in accordance with the provisions of this Ordinance and a new permit has been issued. A violation of this Ordinance shall authorize the City Secretary or his/her designee to deny any approvals or permits sought by the person violating this Ordinance.

## **X.**


Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Ordinance is committed, continued or permitted. Upon conviction of any such violation, such person shall be punished by a fine not exceeding \$2,000.00 for violation of any provision of this Ordinance that governs or regulates fire safety, zoning, or public health or sanitation.

## **XI.**


The imposition of any penalties prescribed in this Ordinance shall not preclude the City Attorney from instituting an action or proceeding to enjoin, correct, abate, restrain, prevent or discontinue any violation of this Ordinance or prevent any illegal act, conduct, business or use in or about any premises.

**PASSED AND APPROVED** on this 4th day of December, 2006.


**CITY OF NIEDERWALD, TEXAS**

  
Hon. Shirley Whisenant, Mayor *Pro Tem*

**ATTEST:**

  
Angie Schulze  
City Secretary

**APPROVED AS TO FORM:**

  
Cary Bovey  
City Attorney

