

**ARTICLE VIII
OVERLAY DISTRICTS**

SECTIONS

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Ordinance No. 509, August 16, 2001)**

8-101 OPERATION AND INTENT OF OVERLAY DISTRICTS

8-101.1 Purpose and Intent

Overlay districts are hereby established as a means of addressing specific aspects of land use control or development that transcend conventional zoning district provisions. Included are overlay district provisions that permit greater design flexibility; an overlay to protect areas subject to flooding; and an overlay district designed to regulate the location of adult entertainment establishments

8-101.2 Applicability

An overlay district shall represent a mapped geographic area depicted upon the Official Zoning Map. Overlay districts may be applied to the districts so indicated by this ordinance and may encompass one or more of those districts. Unless expressly stated to the contrary in this article, all lands encumbered by an overlay district shall conform to all other applicable provisions of this ordinance.

8-201 PLANNED UNIT DEVELOPMENT DISTRICTS

8-201.1 General Provisions

1. Intent and Purpose

The planned unit development district regulations are an alternative zoning process that allows for the development of land in a well planned and coordinated manner. This procedure is intended to provide opportunities for more efficient utilization of land than would otherwise be the case under the conventional provisions of this ordinance. The planned unit development provisions permit a greater mixing of land uses

not easily accomplished by the application of conventional zoning district boundaries, or a framework for coordinating the development of land with the provision of adequate roadways and public services. In return, the PUD Districts require a high standard for the protection and preservation of environmentally sensitive lands, well planned living, working and shopping environments and timely provision of essential utilities and streets.

2. Consistency with the General Plan and Area Development Plans

No planned unit development shall be approved unless all plans for development are found to be consistent with the then current issue of the General Plan for city and any adopted special development plan for the area in which it is proposed. The Planning Commission shall make a formal, written finding regarding the consistency of any proposed planned unit development, said report to include findings that the development:

- a. Will be consistent with the currently effective General Plan as well as any special development plan for the area.
- b. Is likely to be compatible with development permitted under the general development provisions of the zoning ordinance.
- c. Will not significantly interfere with the use and enjoyment of other land in the vicinity.

3. Application of the District

a. General

A planned unit development overlay district may be applied over any base zoning district established in ARTICLE IV, of this ordinance.

b. Provisions May Be Made Mandatory

In the event that the adopted development plan for an area in which any development is proposed so recommends, the Board of Commissioners shall require that all petitions for reclassifications of land within the area shall be formulated and administered in accordance with this section, including any amendments thereto. As appropriate for their respective areas, adopted development plans shall also contain recommendations which may differ from or supplement the provisions of this article respecting new or modified planned unit development districts; design standards for signage, setbacks, parking, and other matters, to be made applicable either area-wide or within particular planned unit development districts, or both. The Board of Commissioners shall not entertain proposals for the reclassification of land within such areas until it has formally acted upon these recommendations.

4. Relation of Planned Unit Development Regulations to General Zoning, Subdivision, or Other Regulations; Variations on Equal Satisfaction of Public Purposes

The planned unit development regulations that follow shall apply generally to the initiation and regulation of all planned unit development districts. Where there are conflicts between the special planned unit development regulations herein and general zoning, subdivision, or other regulations or requirements, these regulations shall apply in planned unit development districts.

Where actions, designs, or solutions proposed by the applicant are not literally in accord with applicable planned unit development or general regulations, but the Board of Commissioners makes a finding in the particular case that public purposes are satisfied to an equivalent or greater degree, the Board may make specific modification of the regulations in the particular case, provided that where floor area and similar ratios (other than off-street parking) have been established by these regulations, the Board shall not act in a particular case to modify such ratios.

Except as indicated above, notwithstanding procedures and requirements generally in effect, procedures and requirements set forth herein and in guides and standards officially adopted as part of regulations for particular classes of planned unit development districts shall apply in planned unit development districts, to any amendments creating such districts, and to issuance of all required permits therein.

5. Jurisdiction of Planning Commission and Board of Zoning Appeals

Those activities which require conditional use permits under various provisions of this ordinance may be permitted within planned unit developments provided that such activities are approved initially as part of the Master Development Plan by the Planning Commission and the Board of Commissioners. Thereafter the Board of Zoning Appeals may approve such uses.

6. Ownership and Division of Land

No tract of land may receive preliminary approval as a planned unit development, unless such tract is under the unified control of a landholder as defined by this ordinance. Unless, otherwise, provided as a condition of approval of a planned unit development, the landholder of an approved planned unit development may divide and transfer parts of such development. The transferee shall complete each such unit, and shall use and maintain it in strict conformance with the adopted Master Development Plan.

A report identifying all property owners within the area of the proposed district and giving evidence of unified control of its entire area shall be submitted along with any application for approval of a Master Development Plan. The report shall state agreement of all present property owners and/or their successors in title:

- a. To proceed with the proposed development according to the regulations in effect when the map amendment creating the planned unit development district becomes effective, with such modifications as are set by the Board of Commissioners in the course of such action.
- b. To provide bonds, dedications, guarantees, agreements, contracts, and deed restrictions acceptable to the Board of Commissioners in the course of such action.
- c. To bind further successors in title to any commitments under a, and b, above.

7. Staging of Development

The Planning Commission may elect to permit the staging of development, in which case, the following provisions shall apply.

- a. Each stage shall be so planned and so related to existing surroundings and available facilities and services that failure to proceed with subsequent stages will not have an adverse impact on the planned unit development or its surroundings.
- b. Each stage of the development shall, at the time of approval of any final site development plan for any portion of that stage, be assured adequate public services to serve all development proposed for that stage.

8. Status Of Previously Approved Planned Unit Development Districts

Any Planned Unit Development District which was approved under the provisions of **Ordinance No. 134**, as amended, and is not completely developed at the time of approval of this ordinance may continue under the development plan as approved. In any instance, however, where a change in the approved development plan is proposed such change shall conform to the provisions of this ordinance.

8-202 DEFINITIONS

8-202.1 Application

In the construction of this article, the rules and definitions contained in this section shall be observed and applied, except when the context clearly indicates otherwise:

8-202.2 Terms Defined

ACTUAL CONSTRUCTION - The excavation of a site and/or the placement of building materials in conjunction with the construction of a building or other structure.

COMMON OPEN SPACE - A parcel or parcels of land and/or an area of water within the site designated, designed and intended for benefit, use or enjoyment of the occupants of said development. "Common Open Space" may contain such complementary structures and improvements as necessary and appropriate for the benefit and enjoyment of the occupants of such development.

DWELLING, ATTACHED - A building located upon one (1) zone lot containing not more than two (2) dwelling units, attached at the side or sides in a series of three or more principal buildings each containing not more than two dwelling units.

DWELLING, DETACHED - A building located upon one (1) zone lot containing not more than two (2) dwelling units, separated from structures on adjacent lots.

DWELLING, SEMI-DETACHED - A building located upon one (1) zone lot containing not more than two (2) dwelling units, attached at the side to not more than one other building containing not more than two (2) dwelling units.

ENVIRONMENTAL OPEN SPACE - A parcel or parcels of land and/or an area of water within the site designated, designed and intended for the protection of the natural landscape or certain specified resources.

LANDHOLDER - The legal or beneficial owner or owners of all the land proposed to be included in a planned unit development. The holder of an option or contract to purchase, a lessee having a remaining term of not less than fifty (50) years in duration, or other person having an enforceable proprietary interest may be considered a "landholder" for the purpose of this ordinance.

PRIVATE USE OPEN SPACE - Open areas located upon a lot and held for the exclusive use and enjoyment of owner(s) of such property.

RECREATIONAL OPEN SPACE - A parcel or parcels of land and/or an area of water within the site designated, designed and intended for benefit, active or passive recreational use or enjoyment of the occupants of said development.

RESTRICTED USE OPEN SPACE - Open areas located within a planned unit development that are held in some form of common ownership and restricted to use only as vegetative buffers, or other forms of environmental protection. These areas may include floodplains, steep slopes or other environmentally sensitive lands.

SHARED USE OPEN SPACE - Shared use open space may exist within a planned unit development both as limited use or general use shared open space. Limited use shared open spaces are those limited to use by only a portion of the individuals who reside within the planned unit development. Shared general use open space is intended to be available for use by any resident of the development but may be limited to use only by residents and their guests.

8-203 **ADMINISTRATIVE PROCEDURE GOVERNING PLANNED UNIT DEVELOPMENTS**

8-203.1 **Purpose and Intent**

The purpose of these provisions is to prescribe a procedure for the review, approval and continued administration of all planned unit developments provided for by this section.

8-203.2 **Preapplication Conference**

Prior to filing an application for approval of a planned unit development the applicant shall confer with the Zoning Administrator concerning policy and procedure relative to the application. The Zoning Administrator shall arrange a formal meeting at which the applicant or his representative shall meet with other staff persons who will be involved in reviewing and recommending action on the proposed plan of development.

8-203.3 **Preliminary Approval of the Proposed Planned Unit Development**

1. Application For Preliminary Approval

Application for preliminary approval shall be made by the landholder of the affected property or his authorized agent to the Zoning Administrator in accordance with such written general rules regarding general procedure, form of application, and required information as the Planning Commission may determine, provided they are not inconsistent with the requirements set forth below.

2. Preliminary Master Development Plan of a Planned Unit Development

The preliminary master development plan for the proposed planned unit development shall be a general concept plan which shall include the following:

- a Sufficient information to disclose:
 - i. The location and size of the area involved.
 - ii. Location of transportation routes including streets, driveways, sidewalks, and pedestrian ways, and off-street parking and loading areas.
 - iii. Location and approximate dimensions of structures, other than one and two family detached dwellings, including approximate height, bulk and the utilization of structures including activities and the number of living units.
 - iv. Estimated population and density and extent of activities to be allocated to parts of the project.
 - v. Reservations for public uses including schools, parks, and other open spaces.

- vi. Other major landscaping features, and
- vii. The general means of the disposition of sanitary wastes and storm water.
- viii. The type and proposed use for any common open space included within the proposed development. (Such information shall be sufficient to meet the requirements of Subpart 4, of Subsection 8-204.1, "Quality, Use and Improvement of Common Open Space".)
- ix. The ownership of all property proposed for incorporation within the PUD District. (A copy of all deeds along with written documents signed by all property owners indicating willingness to abide by the approved development plan.)
- x. The base zone district(s) proposed for inclusion within the planned unit development.
- xi. A listing of land uses proposed for the development.

(NOTE In an effort to increase the marketability of nonresidential sites located within PUD Districts, the applicant may submit a list of alternative land uses, other than the uses shown on the plan, for such sites. Any such listing may contain only land uses permitted within the base zoning district(s) which the planned development district overlays and may be further limited as provided in Subsection 8-208.1.

- b. A tabulation of the land area to be devoted to various uses and activities and overall densities.
- c. The nature of the landholder's interest in the land proposed to be developed and a written statement of concurrence from all parties having a beneficial interest in the affected property. (See Subsection 8-201.1, Subpart 6.)
- d. The substance of covenants, grants of easements or other restrictions to be imposed upon the use of the land, buildings and structures including proposed easements for public utilities, drainage ways and common open space.
- e. When it is proposed that the final master development plan will be submitted in stages, a schedule of proposed submissions thereof.

If the application is deemed incomplete by the Zoning Administrator, a written request shall be made within ten (10) days after the original submittal, for further information. In such case the application shall be held in abeyance until deemed complete for final review. No plan shall be formally presented for Planning Commission action until such plan is found complete and ready for review.

3. Review by Other Departments of City Government

Other departments of the city as appropriate, shall review the plan for the proposed planned unit development.

4. Planning Commission Action on Preliminary Application for Planned Unit Development

Within forty-five (45) days after initial formal submission the Planning Commission shall take action on the preliminary application by any one of the following:

- a. Unconditional preliminary approval.
- b. Conditional preliminary approval, in which the Planning Commission expressly denotes modifications which must be a part of the preliminary approval.
- c. Disapproval.

5. Conditional Preliminary Approval - Landholder's Response

When the Planning Commission's action is conditional preliminary approval, the commission shall specifically note in its' minutes the conditions or modifications which must be compiled with in order that the proposed planned unit development receive preliminary approval. Within sixty (60) days following the meeting in which conditional approval is granted, the landholder may make a written response concurring with the required modifications, in which case the planned unit development is deemed to have preliminary Planning Commission approval, at the date of receipt of said written concurrence. When the landholder makes a negative reply or does not reply within sixty (60) days of the date of conditional preliminary approval the planned unit development shall be deemed as a recommendation for disapproval, unless such time limit is extended by a specific action of the Planning Commission upon a written request of the landholder. In the event of a recommendation for disapproval, the applicant may at his option proceed to the Board of Commissioners with his request.

6. Action by Board of Commissioners

Upon completion of preliminary development plan review, the Planning Commission shall forward its report and recommendations to the Board of Commissioners for action. Upon receipt of the Planning Commission's report the Board shall consider such report and recommendations, the preliminary development plan and such other information as it may require. The Board of Commissioners shall hold such required hearings and otherwise proceed in the manner set forth in Article XIV, for consideration of an amendment to the zoning ordinance.

In any instance where the Board of Commissioners may act either to approve a proposed development which the Planning Commission had recommended for disapproval or to conditionally approve the plan, the Board shall provide specific guidance as to:

- a. Overall design of the plan,
- b. Any modifications required, and
- c. Any additional information which may be required by the Planning Commission in order for it to determine substantial compliance between the preliminary and final development plan.

7. Planned Unit Development and the Official Zoning Map

Upon approval by the Board of Commissioners, the Zoning Administrator shall place the extent of the planned unit development on the official zoning map identified by the ordinance number providing approval. Similarly in the instance of action by the Planning Commission abolishing or canceling the planned unit development, the Zoning Administrator shall remove the PUD District from the official zoning map.

8. Recording of PUD District

Within sixty (60) days following the enactment of an adopting ordinance by the Board of Commissioners, all owners shall record with the Register of Deeds a boundary plat or suitably comparable document identifying that the affected properties are subject to the provisions of a Planned Unit Development Overlay District. Suitable instruments indicating the nature and extent of all off-site improvements and special conditions to which the development is subject shall be recorded with such plat.

9. Addition of Land Uses not Included Within an Approved Preliminary Master Development Plan or Listing of Alternative Uses Allowable Within the Base Zoning District

The proposed addition of any use not authorized within an approved preliminary development plan and accompanying listing of alternative nonresidential land uses may be added to the plan only when approved as provided, herein. The Planning Commission shall hear all such proposed amendments. In the course of its consideration of any alteration presented hereunder, the Planning Commission shall hold a public hearing. Said hearing is held for the purpose of making a recommendation to the Board of Commissioners as to disposition of the requested change. The commission's action on the request for change shall be in the form of a submission of a resolution to the Board of Commissioners for amendment to the approved preliminary plan. A report detailing the action recommended by the Planning Commission shall accompany the submission of Board of Commissioners.

8-203.4 Final Approval of a Proposed Planned Unit Development

The approval by the Board of Commissioners of the preliminary development plan shall authorize and form the basis for the Planning Commission's final approval of said development. The final approval by the Planning Commission of the planned unit development shall be subject to the procedures and requirements of this section.

1. Application for Final Approval

Following approval of a preliminary planned unit development plan by the Board of Commissioners, the landholder may make application to the Planning Commission for approval of final development plans for all or a portion, provided the portion is consistent with the staging schedule approved with the preliminary development plan, of the proposed planned unit development. No action shall be taken on any final development plan for any portion of a planned unit development until the landholder demonstrates that all land included within the portion of the development for which final approval is requested is owned by the landholder and that any options have been closed.

The application shall include all aspects of the preliminary application, the proposed final master development plan, other required drawings, specifications, covenants, easements, and conditions and forms of bond as were set forth by the Planning Commission resolution of preliminary approval. Copies of legal documents required by the Commission for dedication or reservation of common open space and/or for the creation of a nonprofit association shall also be submitted.

2. Final Approval of Stages

The application for final approval and the final approval by the Planning Commission may be limited to each stage as appropriate in a large planned unit development, in compliance with the staging plan approved as part of the preliminary development plan.

3. Final Master Development Plan of a Planned Unit Development

The application for final approval shall be sufficiently detailed to indicate the ultimate operation and appearance of the development, or portion thereof, and shall include, but not be limited to, the following:

- a. Final development plan drawings at a scale no smaller than one (1) inch to one hundred (100) feet indicating:
 - i. The anticipated finished topography of the area involved (contours at vertical intervals no greater than two (2) feet where topography does not exceed ten (10) percent and five (5) feet) elsewhere.
 - ii. A circulation diagram indicating the proposed movement of vehicles, goods, and pedestrians within the planned unit development and to and from existing thoroughfares. This shall specifically include: Width of proposed streets; a plan of any sidewalks or proposed pedestrian ways; and any special engineering features and traffic regulation devices needed to facilitate or insure the safety of the circulation pattern.

- iii. An off-street parking and loading plan indicating ground coverage of parking areas.
- v. Areas proposed to be conveyed, dedicated or reserved for parks, parkways, and other public or semi-public open space uses including any improvements which are to be deeded as part of any common use area. (Such information shall include detailed site designs indicating all intended uses, equipment and facilities along with building or construction plans for the same.)
- v. Information regarding the physical characteristics of the surrounding area and developments within three hundred (300) feet of the proposed planned unit development.
- vi. Within nonresidential developments, a plan for each building site showing the approximate location of all buildings, structures, and improvements and indicating the open spaces around buildings and structures. Within residential developments typical building envelopes shall be shown.
- vii. A plan for proposed utilities including sewers, both sanitary and storm, gas lines, water lines, fire hydrants and electric lines showing proposed connections to existing utility systems. **(NOTE: Within any Planned Unit Development District, all utilities including electric service, telephone and cable television service shall be underground.)**
- b. A detailed land use map and a listing of land uses approved for the development. **(NOTE: The listing of approved land uses shall include the list of alternative land uses, other than the uses shown on the plan, which were approved within the preliminary planned unit development plan for nonresidential sites located within the development.)**
- c. A tabulation of proposed densities to be allocated to various parts of the area to be developed.
- d. Final drafts of all proposed covenants and grants of easement which are proposed for filing with final plats. Such documents shall be in a form approved by legal council.
- e. Final drafts of all proposed documents creating a Homeowner's Association or similar organization created for the purpose of owning and maintaining any common open space of facilities associated therewith.
- f. A detailed listing of all conditions of approval to which the particular development, or individual sites located therein, are subject.

If the application is deemed incomplete by the Zoning Administrator, a written request shall be made within ten (10) days after the original submittal, for further information. In such case, the application shall be

held in abeyance until deemed complete for final review. No plan shall be formally presented for Planning Commission action until such plan is found complete and ready for review.

4. Action on Final Master Development Plan

In reviewing a final plan, the function of the reviewing agencies is twofold. First, the plan must be found to be in substantial compliance with the previously approved preliminary development plan. Second, all new information must be reviewed to determine its quality and compliance with all substantive requirements of this ordinance.

a. Review Procedure

- i. Application for final approval shall be made to the Planning Commission.
- ii. The completed final plan must be submitted to the Zoning Administrator ten (10) days prior to the meeting of the commission at which the plan is to be presented. Ten (10) copies of the plan and related documents will be required.
- iii. Within forty-five (45) days subsequent to the formal presentation of the final plan to the Planning Commission it shall be the duty of the Zoning Administrator to present data and findings of the various departments and agencies of the government concerning the proposed plan to the Planning Commission.
- iv. The Planning Commission may approve the final plan if it finds:
 - (a) That the final plan meets the provisions for substantial compliance with the preliminary plan set forth in Subsection 8-203.5 (below), and
 - (b) That the plan complies with all other standards for review which were not considered when the preliminary plan was approved.

5. Approval with Modification

Should the Planning Commission require any modification in the final development plan or any portion thereof such modifications shall be agreed to by the applicant in writing prior to formal acceptance and filing of the final development plan.

6. Filing of an Approved Final Development Plan

Upon formal action by the Planning Commission approving a final development plan, or in the instance of conditional final approval, upon acceptance of the modifications as set forth in Subpart 5, of this section, said plan and all maps, covenants, and other portions thereof, shall be filed with the following:

- a. The Zoning Administrator
- b. The City Recorder

7. Disapproval

If the Planning Commission finds that the final plan does not meet the test for substantial compliance set forth in Subsection 8-203.5, or does not comply with other standards of review it shall disapprove the plan. In the event of disapproval, a written report shall be prepared by the Planning Commission and sent to the applicant. This report shall detail the grounds on which the plan was denied to specifically include ways in which the final plan violated the substantial compliance provisions or other standards of review.

8-203.5 Determination of Substantial Compliance

The final development plan shall be deemed in substantial compliance with the preliminary development plan provided modifications by the applicant do not involve changes which in aggregate:

1. Violate any provisions of this article;
2. Vary the lot area requirement as submitted in the preliminary plan by more than ten (10) percent;
3. Involve a reduction of more than five (5) percent of the area shown on the preliminary development plan as reserved for common open space.
4. Increase the floor area proposed in the preliminary development plan for nonresidential use by more than two (2) percent; and
5. Increase the total ground area covered by buildings by more than two (2) percent.
6. Involve any land use not specified on the approved preliminary development plan or the alternative list of uses for nonresidential sites.

In any instance wherein a final development plan, including minor changes authorized under the provision of Subsection 8-203.10 ("Minor Site Modifications to an Adopted Final Planned Unit Development Plan") is found to not meet the test of substantial compliance as set forth herein such plan may only be approved upon adoption of appropriate amendments to the adopted plan.

8-203.6 Failure to Begin Planned Unit Development

If no "actual construction" has begun in the planned unit development within three (3) years from the date of approval of the final development plan, or section thereof, said approval shall lapse and be of no further effect. No further developmental activity may take place until the existing development plan is reinstated to an active status or a revised development plan meeting all conditions of this ordinance is approved.

8-203.7 Maintaining a Current Development Plan

Building permits may be issued only within such portion(s) of a planned unit development for which a current final development plan is in effect. In spite of prior approvals, no action shall be taken in furtherance of any plan for a planned unit development for which a current final development plan is not in effect. In any instance where the approval of such plans may have lapsed due to non commencement of actual construction (See Subsection 8-203.6) the following actions may be taken.

1. Reinstatement of Previously Approved Development Plan

In the event that actual construction may not have begun and/or the approval of the final development plan shall have lapsed, such plan may be reinstated by action of the Planning Commission and development may proceed, provided that no change is proposed that would require amendment of the plan.

2. Amending a Lapsed Development Plan

In the event that actual construction may not have begun, approval of the development plan shall have lapsed and revisions and/or alterations are proposed that exceed the minor site modifications authorized by Subsection 8-203.10, and, thus, would require amendment of the plan, such action may be accomplished only with the approval of a new preliminary development plan.

8-203.8 Enforcement of the Development Schedule

The construction and provision of all common open spaces and recreational facilities which are shown on the approved preliminary development plan must proceed at no slower rate than the construction of dwelling units. From time to time the Planning Commission shall compare the actual development accomplished with the approved development schedule. If the Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public and recreational facilities have been constructed and provided, then the Planning Commission may take either or both of the following actions:

1. Cease to approve any additional final plats;
2. Instruct the Zoning Administrator to discontinue issuance of building permits.

In any instance where the above actions are taken the Planning Commission shall gain assurance that the relationship between the construction of dwellings or other structures of a commercial or industrial nature and the provision of common open spaces and public and recreational facilities is brought into adequate balance prior to the continuance of construction.

8-203.9 Building Permits and Use and Occupancy Permits

Building permits and use and occupancy permits shall be issued for uses, buildings and other structures in planned unit developments in accordance with this section; otherwise, permits and certificates shall be issued in accordance with the other provisions of this ordinance as applicable.

1. Site plans

Site plans shall be provided in accordance with the provisions of Article XIV, Subsection 14-103.4. **(NOTE:** See Subsection 14-103.4, for those uses and structures which require site plans.)

2. Building Permits

Building permits may be issued for structures, buildings, activities, or uses only in strict compliance with the adopted final development plan of the planned unit development, including the conditions of approval. No building permit shall be issued for the area included in a preliminary planned unit development until the final development plan has been approved.

2. Use and Occupancy Permits

A use and occupancy permit may be issued only when the Zoning Administrator determines that the structure, building, activity, or use as a part of a planned unit development conforms with the adopted final development plan, including the conditions of its approval.

8-203.10 Minor Site Modifications to an Adopted Final Planned Unit Development Plan

Minor modifications in the terms and conditions of the adopted final development plan may be made from time to time as provided in the following paragraphs. Any proposed modification which is not permitted under these provisions may be approved only as an amendment to the adopted final development plan.

1. Minor Modifications During Construction

The Zoning Administrator may approve minor modifications in the location, siting, and height of buildings and structures if required by engineering or other circumstances not foreseen at the time the final development plan was approved so long as no modification violates the basic policy and concept or bulk and open space regulations of the planned unit development as presented in the preliminary development plan. The total of such modifications approved by the Zoning Administrator shall never in aggregate result in:

- a. Any increase in the number of residential units;
- b. An increase of more than three (3) percent in the floor area proposed for nonresidential use of a commercial or industrial nature;
- c. An increase of more than three (3) percent in the total ground area covered by buildings; or

- d. A reduction of more than two (2) percent in the area set aside for common open space.

Minor modifications in the location of streets and underground utilities may be approved under this section.

2. Subjects not Included for Modification

The proposed addition of any use not approved in the final development plan as well as any increases in the number of dwelling units permitted, building height, decreases in the parking requirements, and vision clearance area are not subjects for adjustments by the Zoning Administrator. Any proposed modifications of any of the above may be made only as amendments to the adopted final development plan.

3. Minimum Adjustments Only

Any modification must be held to the minimum necessary. Each of the following conditions must be found to apply to the particular circumstances prior to the granting of the adjustment.

- a. **Practical Difficulties or Unnecessary Hardship**: That strict application of the provisions of this ordinance would result in practically difficulties or unnecessary hardships.
- b. **Extraordinary Circumstances**: That there are exceptional or extraordinary circumstances or conditions applying to the land, buildings or uses referred to in the application, which circumstances or conditions do not apply generally to other land, buildings or uses in the same district.
- c. **Not Detrimental**: That granting the application will not be detrimental, to the public welfare or injurious to property or improvements in the neighborhood of the premises.
- d. **Health or Safety not Adversely Affected**: That granting the application under the circumstances of the particular case will not adversely affect the health or safety of persons working or residing in the neighborhood containing the property of the applicant.
- e. **Maintains Intent of Ordinance and the Development Plan**: That such adjustment is within the intent and purpose of the ordinance and will not adversely affect the community objectives of the comprehensive plan.

8-203.11 Amendments in an Approved Final Development Plan During the Period of Initial Construction

During the period of actual development or construction of any planned unit development, (or when developed in stages of any portion of the total

development) the provisions of this section shall apply to all proposed modifications which exceed the minor adjustments permitted by Subsection 8-203.10. Once a planned unit development, or portion thereof, has been completed, any further changes or alterations shall be governed by the provisions of Subsection 8-203.12.

All proposed additions of uses not approved in the final master development plan as well as any decreases in the number of parking spaces or vision clearance area shall be subject to these provisions. In addition all minor modifications which exceed the cumulative changes in the ground coverage ratio, etc., permitted under Subsection 8-203.10, shall be governed by the provisions of this section.

1. Addition of Uses not Authorized in the Approved Development Plan, but Allowable Within the Base Zoning District

The proposed addition of any use not authorized within an approved preliminary development plan and listing of alternative nonresidential land uses but allowable within the base zoning district wherein such use is proposed, may be added to the plan only when approved as provided, herein. The Planning Commission shall hear all such proposed amendments. In the course of its consideration of any alteration presented hereunder, the Planning Commission shall hold a public hearing. Said hearing is held for the purpose of making a recommendation to the Board of Commissioners as to disposition of the requested change. The Commission's action on the request for change shall be in the form of a submission of a resolution to the Board of Commissioners for amendment to the approved preliminary plan. A report detailing the action recommended by the Planning Commission shall accompany the submission of Board of Commissioners. All additions of uses not approved in the preliminary development plan must be made by the Board of Commissioners, under the procedures authorized by this ordinance for amendment of the zoning map.

2. Addition of Residential Density, Floor Area of Nonresidential Uses and All Other Changes, Other Than Changes in Use, not Authorized in the Approved Development Plan, but Allowable Within the Base Zoning District

All proposed additions other than the additions of uses governed by Subpart 1, of this section, including the addition of residential density or nonresidential use area which exceed the minor changes permitted under Subsection 8-203.10, and were not authorized in the approved preliminary development plan, but are allowable within the base zoning district, shall be considered as provided herein.

All amendments to an approved development plan proposed under this section shall first be presented to the Planning Commission for a recommendation. In the course of its consideration of any amendment proposed hereunder the Planning Commission may hold a public hearing for all residents and parties who in the judgment of the Planning Commission have an interest in the amendment.

The Planning Commission shall hear the proposed amendment and shall forward its recommendation to the Board of Commissioners for action. The Board of Commissioners shall hold a public hearing for all residents and other interested parties prior to any final action on any amendment proposed hereunder. Should the Board of Commissioners concur in the proposed amendment to the development plan, the Planning Commission may adopt said amendment only with an amended preliminary plan as a basis for such action.

8-203.12 Control of Planned Unit Development Following Completion

1. Issuance of Certificate of Completion

Upon completion of a planned unit development, or when developed in stages, of any portion of said development, the Zoning Administrator shall note the completion on the final development plan.

2. Changes in the Use of Land or Bulk of Structures Within a Planned Development After Completion

After completion of a planned unit development, or portion thereof, has been certified, the use of land and the construction, modification, or alteration of any buildings or structures within the planned development will be governed by the approved final development plan, to the extent that such provisions are applicable rather than by any other provisions of this ordinance. In any instance where a change in the completed development is proposed the Planning Commission shall review the final development plan and shall provide an evaluation of the proposed change to the agency to whom application for the change has been made. Such evaluation shall as a minimum indicate the Commission's findings concerning consistency of the proposed change with the approved development plan and impact upon the continued successful operation of such development relative to its original purpose and intent. In the course of its consideration of any change proposed hereunder the Planning Commission shall hold a public hearing for all residents and parties who in the judgment of the Planning Commission have an interest in the proposed amendment. No changes may be made in the final development plan, unless such are required for the continued successful functioning of the planned development or unless such are required by changes in conditions that have occurred since the final plan was adopted or by changes in the development policy of the community. Changes may be made in the approved final development plan, only upon application to the appropriate agency under the procedure below:

- a. Any minor extensions, alterations, or modifications of existing buildings or structures may be authorized by the Planning Commission, if the extensions, alterations or modifications are determined to be consistent with the purposes and intent of the recorded final development plan. No change authorized by this section may increase the cube of any building or structure by more than ten (10) percent.

- b. Any uses not authorized by the approved final development plan, but allowable as a permitted use, a use permitted with supplemental provisions or a conditional use in the base zoning district within which the applicable portion of the planned development is located, may be added to the recorded final development plan under the procedures provided by this ordinance for the approval of conditional uses. (See Subpart 5, of Subsection 8-201.1, "Jurisdiction of Planning Commission and Board of Zoning Appeals")
- c. A building or structure that is totally or substantially destroyed may be reconstructed only in compliance with the final development plan, unless an amendment to the final development plan is approved, as set forth below.
- d. Changes in the use of common open space may be authorized by an amendment to the final development plan provided that no amendment approved hereunder may act to abrogate or annul any covenant which provides for the use, operation, or continuance of the common open space.
- e. All other changes in the final development plan must be made by the Board of Commissioners, under the procedures authorized by this ordinance for amendment of the zoning map.
- f. No changes in the final development plan which are approved under this section are to be considered as a waiver of the covenants limiting the use of land, buildings, structures and improvements within the area of the planned development, and all rights to enforce these covenants against any changes permitted by this section are expressly reserved.

3. Resubdivision of a Planned Unit Development After Completion

A planned unit development may be subdivided and resubdivided for purpose of sale or lease after the certificate of completion has been issued under the procedures set forth below:

- a. If the subdivision or resubdivision of planned development will create a new plot line, the applicant shall make application to the Planning Commission for the approval of a subdivision or resubdivision. The Planning Commission may approve the subdivision or resubdivision of each section of the subdivided or resubdivided planned development if it meets the provisions of this article governing density, common open space, and dimensional requirements.
- b. All sections of a subdivided or resubdivided planned development are to be controlled by the final development plan rather than by the provisions of the zoning ordinance that otherwise would be applicable..

- c. The owners or lessees of a subdivided or resubdivided planned development may jointly make application for a conditional use or for an amendment to the adopted final development plan.

8-204 COMMON OPEN SPACE

Any common open space established by an adopted Final Master Development Plan for a planned unit development shall be subject to the following:

8-204.1 Quality, Use and Improvement of Common Open Space

1. Common open space must be for amenity, site protection or recreational purposes. The uses authorized for common open space must be appropriate to the scale and character of the planned unit development considering its size, density, expected population, topography and other factors.
2. No common open space may be put to any use not specified in the approved Master Development Plan, unless such plan has been amended by action of the Board of Commissioners to specifically allow the change of use. No matter how authorized, no change may be considered as a waiver of any of the covenants limiting the use of common open space areas, and all rights to enforce these covenants against any use so permitted are expressly reserved.
3. Common open space may, subject to approval by the Planning Commission and Board of Commissioners, consist of improved or unimproved land. All such land shall be designated as to its intended use upon the Master Development Plan, all Site Development Plans and all plats.

8-204.2 Conveyance of Common Open Space

All land shown on the final development plans as common open space shall be conveyed under one of the following options:

1. It may be conveyed to a public agency that will agree to maintain the common open space and any buildings, structures, or improvements which have been placed on it.
2. It may be conveyed to trustees provided in an indenture establishing an association, funded trust, or similar organization meeting the requirements of Subsection 8-204.3, below, for the maintenance of the planned development. The common open space must be conveyed to the trustees subject to covenants to be approved by the Planning Commission which restrict the common open space to the uses specified on the Master Development Plan, and which provide for maintenance of the common open space in a manner that assures its continuing use for its intended purposes.

8-204.3 Requirement for Maintenance Organization

In any instance where common open space is to be conveyed to an organization other than a public agency, the Planning Commission and Board of Commissioners shall require that the landholder provide for and establish an organization for the ownership and maintenance of any common open space, and such organization shall not be dissolved nor shall it dispose of any common open space, by sale or otherwise except to an organization conceived and established to own and maintain the common open space.

8-204.4 Mandatory Provisions Governing Organization and Operation of Maintenance Association

In any instance where common open space is to be deeded to a maintenance organization, the landholder shall file a declaration of covenants and restrictions that will govern the association. This document is to be submitted with the application for approval of the final site development plan. The provisions shall include but not be limited to, the following:

1. The maintenance organization shall be established, funded and operational before any property is sold.
2. Membership shall be mandatory for each owner and must run with the land so that any successive purchaser will automatically become a member.
3. The restrictions covering the use, etc., of the open space shall be permanent, not just for a period of years.
4. The association(s) shall be responsible for liability insurance, local taxes and the maintenance of all facilities and lands deeded to it.
5. Property owners shall pay their pro rata share of the cost assessed by the maintenance association; said assessment by the association can become a lien on the owner's property for failure to pay.
6. The association shall be able to adjust the assessment of fees to meet changing needs.

8-204.5 Failure of Maintenance Organization

In the event that the organization established to own and maintain common open space, or any successor organization shall at any time after the establishment of the planned unit development fail to maintain the common open space in reasonable order and condition in accordance with the adopted Master Development Plan, the Zoning Administrator may serve written notice upon such organization and/or the owners or residents of the planned unit development and hold a public hearing. After thirty (30) days when deficiencies of maintenance are not corrected, the Zoning Administrator shall call upon any public or private agency to maintain the common open space for a period of one (1) year. When the Zoning Administrator determines that the original organization is not prepared for the maintenance of common open space, the agency appointed under the provisions of this section may continue maintenance for yearly periods.

The cost of such maintenance shall be assessed proportionately against the properties within the planned unit development that have a right of enjoyment of the common open space, and shall become a special assessment to the property tax or a lien on said properties.

8-204.6 Assurance Involving the Provision of Common Open Space

The Planning Commission shall require adequate assurance, in a form and manner which it approves, that the common open space shown on the final development plan will be provided and developed. The following methods of assurance are illustrative of the types of assurances required, They may be used singly, in combination or in conjunction with other similar methods:

1. The City may accept a Letter of Credit, corporate surety, or other acceptable financial guarantee in an amount sufficient to purchase the common open space shown in the final development plan or alternative acreage which is equivalent in size and character.
2. The title to the land shown as common open space may be put in escrow. The escrow agreement to provide that the land is to be held in escrow until the Planning Commission has certified to the escrow agent that the planned development has been completed, at which time the common open space is to be conveyed as provided in this section. The escrow agreement may provide for the release of common open space by the escrow agent in stages. In such instance the Planning Commission is to certify the completion of each stage of the planned unit development to the escrow agent and the escrow agreement must provide that the open space may be conveyed in stages. In this event, the open space which is conveyed is to be of the same proportions to the total open space provided on the final development plan as the dwelling units that have been built are to the total number of dwelling units which are allowable by the Master Development Plan.
3. In general, the construction and provision of all common open spaces and public and recreational facilities which are shown on the Master Development Plan must proceed at no slower rate than the construction of dwelling units. From time to time the Planning Commission shall compare the actual development with the development schedule. If the Commission finds that the rate of construction of dwelling units or commercial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may either cease to approve additional final plats and/or instruct the Zoning Administrator to discontinue issuance of building permits.

8-205 MINIMUM PERFORMANCE STANDARDS

In addition to satisfying all other applicable provisions of this ordinance, approval of a Master Development Plan shall be based upon a demonstration that the following design and development objectives have been satisfied.

8-205.1 Protection of Environmentally Sensitive Areas

Approval of a Master Development Plan, for any PUD District, shall be based upon a demonstration that the proposed development plan will result in greater protection and preservation of environmentally sensitive areas than would otherwise result under provisions of the base zoning district. Areas to be protected shall include undisturbed hillsides in excess of eighteen (18) percent, designated wetlands and all floodplain areas along streams, major drains and sink holes.

8-205.2 Adequate Streets, Utilities and Drainage

Approval of a Master Development Plan, for any PUD District, shall be based upon a demonstration that streets, utilities and drainage features will be of adequate capacity to serve the proposed development. As a part of a Master Development Plan proposal, a property owner may offer to improve or otherwise provide adequate facilities to support the proposed intensity of development. Public facilities already included in an adopted Capital Improvements Budget may be considered a demonstration of adequate capacity if the proposed funding is timed with anticipated construction of the development.

8-205.3 Coordinated Vehicular Access

Approval of a Master Development Plan, for any PUD District, shall be based upon a demonstration that the internal traffic circulation system will be adequate to support the operational needs of the development itself in a manner that maintains the integrity and operational capacity of the community's major street network to standards equal to or greater than current levels of operation.

8-205.4 Preservation of Historic and/or Archaeological Sites

All reasonable measures shall be taken to incorporate features of historic or archaeological significance into the design of any PUD District in a manner which contributes to the protection and preservation of those features.

8-206 GENERAL DEVELOPMENT STANDARDS

The following provisions shall be applicable as indicated to all planned unit developments.

8-206.1 Relationship to Other Requirements

Unless, otherwise, specified in this article, all requirements and standards established by other provisions of this ordinance shall apply to the development and use of properties located within any PUD District. In a case of conflict between the provisions of this article and any other provision of this ordinance, the provisions of this article shall apply within PUD Districts.

8-206.2 Landscaping and Buffering

Within any planned unit development, landscaping and buffering shall be provided which meets or exceeds the purposes and intents for such established in Article X. It is intended, however, that within planned unit development

districts, alternative means may be employed to achieve an equal level of protection to that resulting from strict application of the provisions of Article X. This provision is intended to permit and encourage the use of flexible techniques to achieve a transitional character through site design which minimizes the harmful impact of noise, dust and other debris, motor vehicle headlight glare or other artificial light intrusion, and other objectionable activities or impacts conducted on or created by an adjoining or nearby use.

8-206.3 Parking, Loading and Access

All planned unit developments shall be subject to the provisions of Article IX, (Parking, Loading and Access) provided that the Planning Commission may permit a variance from off-street parking and loading requirements in approving a final development plan.

8-206.4 Neighborhood Relationship

A planned unit development shall be harmonious and not conflict with surrounding residential neighborhoods. It shall be planned, designed and constructed so as to avoid undue traffic congestion in the surrounding residential area and provide a satisfactory relationship of land use with the surrounding residential area, making use of landscaping, screening, open space and the placement of buildings where required by accepted land planning principles.

8-206.5 Architectural Compatibility

Architectural features deemed essential to ensure compatibility with surrounding properties shall be incorporated. Architectural compatibility should be limited to those portions of the development which abut adjacent properties or can be seen from the frontage street. Examples of architectural features which may be important for ensuring compatibility include building bulk, height, roof slopes, building orientation, overhangs, porches and exterior materials.

8-206.6 Permitted Land Uses

Land uses permitted within any PUD District shall be established by the underlying zoning district(s). Any land use classified as a (P) or (SUP) by the land use tables applicable to the underlying district may be permitted within a corresponding PUD District. Any land use classified as a conditional (C) use may be permitted within a PUD District, if approved initially as a part of a Master Development Plan, or, upon completion of the development, by the Board of Zoning Appeals (See Subpart 5, "Jurisdiction of Planning Commission and Board of Zoning Appeals", of Subsection 8-201.1) based upon a favorable recommendation by the Planning Commission.

8-206.7 Transfer of Development Rights

The PUD District may be used to transfer development rights between properties located within it. All donor and recipient properties shall be cross-referenced respectively on recorded plats and associated deeds along with the ordinance number creating the PUD District. Properties from which development rights have been transferred shall be noted on the boundary plats and deeds as nonbuildable sites.

As provided in Tennessee Code, 13-7-201, (2), (A), property designated to receive transferred development rights shall be of equal or greater size than the property donating the development rights. To qualify for a Transfer of Development Rights, the donor and recipient properties shall be of the same general zoning classification.

8-206.8 Preservation of Natural Features

Mature trees, vegetative cover, watercourses, stone walls, existing relief and other natural site features shall be preserved to the greatest extent possible. Abrupt changes in natural slope shall be avoided. Preservation shall be directed toward:

1. Enhancing the quality of new development;
2. Protecting the natural environment;
3. Providing buffering between new development and surrounding properties; and
4. Preserving the existing neighborhood character.

8-207 RESIDENTIAL DEVELOPMENT STANDARDS

Residential Planned Unit Developments (RPUD) shall be subject to the following provisions.

8-207.1 Minimum Size of Residential Planned Unit Development Districts

No residential planned unit development may contain less than the minimum area as stipulated herein unless the Planning Commission and/or Board of Commissioners find that a tract containing less than this minimum is suitable as a planned unit development by virtue of its historical character, unique scenic qualities, ecological or topographic features. Whenever a residential planned unit development is proposed to be located within two (2) or more zoning districts with different required minimum areas, the largest required minimum area shall control.

(Districts Amended by Ordinance No. 509, August 16, 2001)

<u>Unit Development District</u>	<u>Minimum Gross Area for Creation of</u>			
<u>District</u>	<u>Residential</u>	<u>Planned</u>	<u>Base</u>	<u>Zoning</u>
AR-15A	100 Acres			
AR-5A	50 Acres			
RS-40 and RSM-40	20 Acres			
R-20	10 Acres			
RS-15	5 Acres			
RM-8	No Minimum			
RM-12	No Minimum			
RS-8	No Minimum			
RS-5	No Minimum			
RM-20	No Minimum			

8-207.2 Density Permitted

The density permitted within a planned unit development is to be derived from that permitted within the base zoning district which the residential PUD District is to overlay. The maximum number of dwelling units permitted shall be calculated as follows:

1. Basic Density Calculations

The overall residential density of a Master Development Plan shall be established by the application of the following table to the respective land area within each underlying district classification. A maximum density shall be assigned to each residential component of the Master Development Plan and recorded by plat or equivalent instrument with the first phase of final development.

(Districts Amended by Ordinance No. 509, August 16, 2001)

<u>Base Zoning District</u>	<u>Dwelling Units Per Acre</u>
AR-15A	.07
AR-5A	.2
RS-40 and RSM-40	1.1
R-20	2.2*
RS-15	2.9
RM-8	8.0
RM-12	12.0
RS-8	5.4
RS-5	8.7
RM-20	20.0

Any fractions of .5 or greater shall be rounded to the next whole number.

NOTE: In a residential planned unit development which is especially designed for the use and occupancy of persons of sixty (60) years of age or older or families with one (1) spouse of that age, maximum permitted densities may be increased up to thirty (30) percent over that shown in the districts indicated.

*For developments located within the R-20 District, density may be increased to 4.3 units per acre where two-family dwellings are permitted.

2. Assignment of Density

Within an RPUD District, the total density permitted according to the calculation presented in Subpart 1, above, shall be assigned within the PUD as follows:

- a. The applicant may select a single zoning district or a series of districts from the table presented in Subpart 1, above, to which density is to be assigned.

- b. The maximum density permitted within any portion of the PUD shall not exceed that permitted for the district(s) assigned.
- c. The district classification assigned to each phase shall be noted on the Master Development Plan, each Site Development Plan and all associated subdivision plats.

8-207.3 Minimum Lot Sizes

The minimum size of lots created for single and two-family dwellings may be less than the standard lot sizes required for the underlying base zoning districts, subject to the following restrictions:

1. Lots fronting a street along the boundary of an RPUD District shall contain at least seventy-five (75) percent of the minimum lot area and ninety (90) percent of the lot width required by the adjoining zoning districts(s) along all points where such district(s) abut the PUD District.
2. Residential lots located within the interior portion of an RPUD District may select any standard zoning district classification to establish minimum lot sizes for that phase of the development. The equivalent base district classification assigned to each phase shall be noted on the Master Development Plan, each Final Site Development Plan and all associated subdivision plats.
3. Lots may be reduced in area as provided in Article V, Subsection 5-104.3, "Variable Lot Size Residential Developments".
4. Special Requirements Pertaining to the Number of and Location of Lots Within the RS-15 District **(Added by Ordinance No. 459, June 15, 1999)**

Lots proposed for location within any RS-15, Base Zoning District, shall adhere to the standards set out in Article V, Section 5-103.8

8-207.4 Bulk and Yard Provisions Applicable to All Uses Other Than Residential

For all uses and activities other than residential activities located within any RPUD, the bulk and yard provisions established for the base zoning district wherein such use is to be located shall apply.

8-207.5 Open Space Requirements

1. General

Within any development subject to the provisions of this section, open space shall be provided which is adequate to:

- a. Buffer both internal and external activities from objectionable or conflicting characteristics associated with such uses;

- b. Assure adequate space, light and air along with visual and acoustical privacy;
- c. Assure protection of steep slopes, floodable and other hazardous and/or undesirable building areas, and
- d. Provide space for recreation and enjoyment of the residents.

2. Use of Common Open Space

All open space shown on a development plan of any residential planned unit development shall be indicated as to its intended use. In this regard, common open space may consist of the following:

- a. Cultural and environmental open space.
- b. Improved recreational open space

3. Cultural and Environmental Open Space

Except for those portions of a residential planned unit development required for the installation of streets and utilities, the following areas shall be designated as environmental open space and no development shall take place thereon.

- a. Natural slopes of eighteen (18) percent or greater;
- b. Areas classified as Floodplain Districts in Section 8-301, of this ordinance, and located as determined from field run surveys;
- c. Streams, creeks and major drainage ways (specifically, including all "blue line" streams);
- d. Areas classified as wetlands;
- e. Sites of paleontological, prehistoric, historic and/or archeological significance, specifically including all sites of historic or prehistoric human activity such as, but not restricted to, buildings, stone walls, mounds, forts, earthworks, burial grounds, structures, villages, mines, caves and all locations which are or may be sources of paleontological remains;
- f. All areas which present geological hazards specifically including those within unstable geological and karst formations, (including sink holes); and
- g. Areas presenting environmentally or ecologically unique resources, including the habitat of any and all threatened or endangered species of plants or animals,

4. Improved Recreational Open Space

In addition to the environmental open space required by Subpart 3, (above) open space designed to meet the active and passive recreational needs of the resident population of any residential planned unit development shall be provided. These areas shall meet the requirements set forth herein:

a. Plan to Reflect Anticipated Needs of Resident Population

A recreation plan shall be developed and presented with the Master Development Plan for the proposed residential planned unit development. This plan shall indicate the general demographic characteristics of the anticipated market being targeted by the proposed development. The plan shall indicate the recreation facilities proposed and the age groups these facilities are designed to serve. A minimum of five (5) percent of the gross area of every residential PUD shall be devoted to improved recreational open space. These facilities may be devoted to either: (1) Shared limited use facilities designed so as to assure privacy and control of access by and for the exclusive use of the intended resident clientele; or (2) shared general use recreation facilities which are available to all residents of the proposed development.

b. Recreational Equipment

All recreational equipment provided within any shared general use recreation space shall be durable commercial grade equipment manufactured by Gametime, Inc., Iron Mountain Forge or equivalent manufacturer. All equipment shall meet all Consumer Product Safety Commission Safety Guidelines, as well as the ASTM F1487-93, Public Use Playground Standard.

c. Recreation Facilities

The following land areas and facilities shall, subject to compliance with the stipulated conditions, qualify as **shared general use recreation space**. Construction details of all improvements shall be shown on all final development plans and will be bonded prior to filing of final subdivision plats.

i. Mini-Parks and Tot Lots

Mini-parks and tot lots are specialized facilities that serve a concentrated or limited population or specific age group such as very young children or senior citizens within areas that are in immediate walking distance (i.e. 1/4 mile) of their residences. The minimum total area of a mini-parks is one-half (1/2) acre with a minimum dimension of one hundred (100) feet. The individual pieces of playground equipment shall be specified on the site plan. All recreational equipment provided shall meet or exceed the requirements of Subpart b, "Recreational Equipment" (above).

ii. Neighborhood Parks

Neighborhood parks are intended as areas of intense active recreational activities for school age and older children and adults. The minimum area included within a neighborhood park shall be (5) acres, provided that such space is linked to all dwelling units within the planned unit development by a continuous pedestrian circulation system of sidewalks or trails. The park shall serve the population within a one-half (1/2) mile radius. The recreation facilities will include areas for field games, crafts and playground apparatus along with areas for skating, picnicking and similar activities.

iii. Recreational Buildings

Recreational open space may be comprised of the area occupied by a multiple-use recreation building and its attendant outdoor recreation facilities, excluding a golf course.

iv. Pedestrian Open Space System

The total area contained in a continuous open space pedestrian system, consisting of permanently maintained walks and trails leading to a natural amenity, recreation facility or commercial use may be included as recreational open space. This system is intended to provide intradevelopment linkage of all elements of the improved recreational open space through a network that is divorced from roads and streets. The minimum width of all portions of this system is twenty-five (25) feet with a paved surface of five (5) feet.

v. Specialized Facilities

A golf course may be used to satisfy a maximum of fifty (50) percent of the shared general use recreation space requirement, **“provided the access meets the standards for “shared general use recreational space”**. Swimming pools, tennis courts and similar facilities principally intended to serve an adult population may be substituted for other recreational facilities within developments marketed to a totally adult population.

8-208 NONRESIDENTIAL DEVELOPMENT STANDARDS

8-208.1 Uses Permitted

1. General

In general, the uses and activities permitted within the underlying base commercial or mixed-use zoning district may be permitted within NRPUD,

Nonresidential Planned Unit Developments, which overlay those districts. Provided, however, that such uses may be further restricted as provided in Subpart 2, of this section, below.

2. Findings of Appropriateness

Due to the unique ability of the planned unit development process to tailor individual developments so as to achieve balanced and reasonable use of the land while maintaining an assured measure of protection for surrounding owners, it is necessary that limited discretion be afforded the Planning Commission and Board of Commissioners in the process of selecting uses within particular developments. In this regard, it is necessary that the uses permitted within a particular development establish and maintain a high degree of compatibility with the immediately surrounding area. To this end, the selection of uses permitted within each individual commercial planned unit development will be guided by:

- a. The use provisions established for the base district which the commercial planned unit development overlays.
- b. The appropriateness of each use given the intended function of each type commercial planned unit development.
- c. The unique nature of the property surrounding each development.
- d. Consistency with any adopted area development plan which may be applicable to the proposed site.

This process may result in limitations, restrictions or the prohibition of particular uses permitted within a base zoning district from a commercial planned unit development which overlays that district.

8-208.2 Location and Required Area of Nonresidential Planned Unit Developments

1. Review of Adopted Long-Range General Plan Required

In no event shall the location, composition, and extent of a proposed commercial planned unit development be approved unless such proposed development is consistent with the actions and policies regarding land development adopted by the Planning Commission.

2. Market Analysis for Nonresidential Planned Unit Development

The Planning Commission may require a market analysis for any proposed nonresidential planned unit development. The market analysis will be utilized, among other things, to determine the impact of the proposed development on the long-range development of the commercial land use in the area, to determine the timing of any proposed development, to limit the extent of convenience districts, serving a particular residential area; to ascertain the effects of a proposed development upon lands used or zoned for commercial purposes; to form

a basis for evaluating the estimated effects on traffic, and other purposes which assist in an understanding of the public interest pertinent in the evaluation of a proposed development. The market analysis, if required, shall be provided by the landholder and the landholder shall provide any other economic data or analysis as may be reasonably requested by the Planning Commission or Board of Commissioners.

8-208.3 Bulk, Height and Building Spacing Requirements

1. Building Coverage Ratio

Individual buildings located within a nonresidential planned unit development district may exceed the maximum lot coverage ratio established for the base zoning district wherein the nonresidential planned unit development is located. However, in no instance shall the aggregate site coverage of all buildings located within the Nonresidential Planned Unit Development District exceed the coverage provisions established for the base zoning district in which such site is located. Building coverage ratios shall be calculated on a pro-rata basis when more than one underlying base zoning district exists within a nonresidential planned unit development. If land uses are proposed to be redistributed across the boundaries of underlying zoning districts, maximum floor areas shall be assigned to each component of the Master Development Plan and recorded by plat or equivalent instrument with the first phase of the Final Master Development Plan.

2. Maximum Building Height

The building height provisions established for the base zoning wherein the nonresidential planned unit development is located shall apply to all buildings.

3. Building Spacing and Yards

a. Provisions Applicable Along Residential District Boundaries (Amended by Ordinance No. 509, August 16, 2001)

Along all portions of a district boundary where a nonresidential planned unit development adjoins residentially zoned land not included within the PUD District, all buildings, measured from the site boundary to the nearest building line, shall be set back a minimum of sixty (60) feet. Within the Town Center Overlay District, Minimum required setbacks shall be established by the applicable NRPUD Master Development Plan at a standard deemed appropriate by the City Commission.

b. Provisions Applicable Along all Other District Boundaries (Amended by Ordinance No. 509, August 16, 2001)

Unless, otherwise, specified in the approved Master Development Plan for the nonresidential planned unit development all development located along district boundaries shall provide

minimum yards and building separations specified for the base zoning district. Within the nonresidential planned unit development district, such yards shall be landscaped and maintained in a manner appropriate to a residential neighborhood for a distance of ten (10) feet from the lot line adjacent to any street. No such required landscaped area shall be used for off-street parking, loading or storage of any kind. No landscaping adjacent to a street shall be of a nature which impairs visibility of or from approaching traffic, or creates potential hazards for pedestrians. Within the Town Center Overlay District, minimum setback and screening requirements shall be established by the applicable NRPUD master Development Plan at a standard deemed appropriate by the City Commission.

Where the site plan indicates potential adverse effects of parking or other characteristics of a commercial activity, a wall, fence, or appropriate vegetative screening shall be required to be erected and maintained in such manner as to eliminate such effects or reduce them to an acceptable level. If there is to be parking on the premises after dark, such buffering shall at a minimum prevent lights from automobiles parked or maneuvering incidental to parking from shining across adjacent residential property below a height of five (5) feet.

c. Provisions Applicable to Internal Portions of a Commercial Planned Unit Development District **(Amended by Ordinance No. 509, August 16, 2001)**

Except as provided in Subparts a, and b, of this section, the minimum yard requirements of the base district shall be waived within nonresidential planned unit development districts. Minimum building separation shall be as provided herein. Along all sides of buildings where vehicular access is from a public street buildings shall be set back a minimum of sixty (60) feet.. In cases where a building wall is not located directly adjacent to an interior side or rear lot line that is not adjacent to an alley, a yard with a minimum width or depth from the lot line of fifteen (15) feet or the distance required by applicable building and fire codes shall be provided. Permitted obstructions within such yards shall be limited to those listed in Article VI, Subsection 6-103.4, Subpart 1. Within the Town Center Overlay District, minimum building separation requirements shall be established by the applicable NRPUD Master Development Plan at a standard deemed appropriate by the Board of Commissioners.

4. Outdoor Storage or Activities

Unless, otherwise, specified in the approved Master Development Plan for the nonresidential planned unit development all outdoor storage facilities and outdoor sales activities are prohibited in any nonresidential planned unit development district. This provision shall not be construed to exclude

seasonal displays, short-term charitable events, of no more than ninety, (90) days duration, the outdoor display of new or used automotive vehicles or trailers for sale or rent, or the incidental display of goods or chattels for sale or rent in a nonresidential planned unit development district, by an establishment having activities that occur principally within a building.

5. Lighting Provisions

No direct source of illumination which may be located in a nonresidential planned unit development shall be visible beyond the boundary of such development. No illumination of any kind shall exceed one (1) foot-candle power at or beyond the boundary of such development and shall not flash or blink or appear to flash or blink, or shall be animated or appear to be animated.

6. Landscaping Provisions

The provisions of Subsection 8-206.2, (Landscaping and Buffering) shall apply fully within all nonresidential planned unit development districts. In particular, off-street parking areas, service areas for loading and unloading other than passenger vehicles, and areas for storage and collection of refuse and garbage shall be screened.

8-301 FLOODPLAIN DISTRICT REGULATIONS (Deleted and Replaced by Ordinance 639, September 7, 2006)

8-301.1 Statutory Authorization

The Legislature of the State of Tennessee has in Sections 13-7-201 through 13-7-210; Tennessee Code Annotated, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Fairview, Tennessee Board of Commissioners, does ordain as follows:

8-301.2 Findings of Fact

The Fairview, Tennessee Board of Commissioners, wishes to maintain eligibility in the National Flood Insurance Program and in order to do so must meet the requirements of 60.3 of the Federal Insurance Administration Regulations found at 44 CFR Ch. 1 (10-1-04 Edition).

Areas of Fairview are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

These flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities; by uses in flood hazard areas which are vulnerable to floods; or construction which is inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

8-301.3 Statement of Purpose

It is the purpose of these provisions to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas. These provisions are designed to:

1. Restrict or prohibit uses which are vulnerable to water or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;
2. Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers involved in the accommodation floodwaters;
4. Control filling, grading, dredging and other development which may increase flood damage or erosion, and;
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

8-301.4 Objectives

The objectives of these provisions are:

1. To protect human life, health and property;
2. To minimize expenditure of public funds for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodable areas;
6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize blight in flood areas;
7. To ensure that potential homebuyers are notified that property is in a floodable area; and
8. To maintain eligibility for participation in the National Flood Insurance Program.

8-302 DEFINITIONS

Unless specifically defined below, words or phrases used in this article shall be interpreted as to give them the meaning they have in common usage and to give this article its most reasonable application given its stated purpose and objectives.

"Accessory Structure" shall represent a subordinate structure to the principal structure and, for the purpose of this section, shall conform to the following:

1. Accessory structures shall not be used for human habitation.
2. Accessory structures shall be designed to have low flood damage potential.
3. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
4. Accessory structures shall be firmly anchored to prevent flotation that may result in damage to other structures.
5. Service facilities such as electrical and heating equipment shall be elevated or floodproofed.

"Act" means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

"Addition (to an existing building)" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by an independent perimeter load-bearing wall, shall be considered **"New Construction"**.

"Appeal" means a request for a review of the local enforcement officer's interpretation of any provision of this article or a request for a variance.

"Area of Shallow Flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate; and where velocity flow may be evident. (Such flooding is characterized by ponding or sheet flow.)

"Area of Special Flood-Related Erosion Hazard" is the land within a community that is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

"Area of Special Flood Hazard" is the land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. The area may be designated as Zone A, on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A, usually is refined into Zones A, AO, AH, A1-30, AE or A99.

"Base Flood" means the flood having a one (1) percent chance of being equalled or exceeded in any given year.

"Basement" means that portion of a building having its floor subgrade (below ground level) on all sides.

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

"Building", means any structure built for support, shelter, or enclosure for any occupancy or storage (See **"Structure"**)

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of equipment or materials.

"Elevated Building" means a nonbasement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of fill, solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

"Emergency Flood Insurance Program" or **"Emergency Program"** means the program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

"Erosion" means the process of the gradual wearing away of landmasses. This peril is not per se covered under the Program.

"Exception" means a waiver from the provisions of this article that relieves the applicant from the requirements of a rule, regulation, order or other determination made or issued pursuant to this article.

"Existing Construction" means any structure for which the "start of construction" commenced before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP).

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP).

"Existing Structures" see **"Existing Construction"**.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

"Flood Elevation Determination" means a determination by the Director of the water surface elevations of the base flood, that is, the flood level that has a one (1) percent or greater chance of occurrence in any given year.

"Flood Elevation Study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of areas of special flood hazard have been designated as Zone A.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the Federal Emergency Management Agency, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

"Flood Insurance Study" is the official report provided by the Federal Emergency Management Agency, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.

"Floodplain" or **"Flood Prone Area"** means any land area susceptible to being inundated by water from any source (see definition of **"Flood or Flooding"**).

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

"Flood Protection System" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Flood-Related Erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-Related Erosion Area" or "Flood-Related Erosion Prone Area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-Related Erosion Area Management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and flood plain management regulations.

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

"Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings and the hydrological effect of urbanization of the watershed.

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

"Highest Adjacent Grade" means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

"Historic Structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the Tennessee inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs certified either:
 - a. By an approved state program as determined by the Secretary of the Interior, or
 - b. Directly by the Secretary of the Interior.

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

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

"Lowest Floor" means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term **"Manufactured Home"** does not include a **"Recreational Vehicle"**, unless such transportable structures are placed on a site for one hundred-eighty (180) consecutive days or longer.

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

"Mean-Sea-Level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"National Geodetic Vertical Datum (NGVD)" as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

"New Construction" means any structure for which the "start of construction" commenced after the effective date of this article or the effective date of the first floodplain management ordinance and includes any subsequent improvements to such structure.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed after the effective date of this article or the effective date of the first floodplain management ordinance and includes any subsequent improvements to such structure.

"North American Vertical Datum (NAVD)" as corrected in 1988 is a vertical control used as a reference for establishing varying elevations within the floodplain.

"100-Year Flood" see **"Base Flood"**.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

"Recreational Vehicle" means a vehicle which is:

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Special Hazard Area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred-eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; and includes the

placement of a manufactured home on a foundation. (Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State Coordinating Agency" The Tennessee Department of Economic and Community Development's, Local Planning Assistance Office as designated by the Governor of the State of Tennessee at the request of the Director to assist in the implementation of the National Flood Insurance Program for the state.

"Structure", for purposes of this section, means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any repairs, reconstruction's, rehabilitation's, additions, alterations or other improvements to a structure, taking place during a five (5) year period, in which the cumulative cost equals or exceeds fifty percent of the market value of the structure before the "start of construction" of the improvement. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed.

For the purpose of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project or; (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"Substantially Improved Existing Manufactured Home Parks or Subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

"Variance" is a grant of relief from the requirements of this article that permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

8-303 GENERAL PROVISIONS

8-303.1 Application

These provisions shall apply to all areas within the incorporated area of Fairview, Tennessee.

8-303.2 Basis for Establishing the Areas of Special Flood Hazard

The Areas of Special Flood Hazard identified on the Fairview, Tennessee, Federal Emergency Management Agency, Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), **Community Panel Numbers 0015, 0020, 0038, 0039, 0045, 0135, 0151, 0152, 0153, and 0160, dated, September 29, 2006**, along with all supporting technical data, are adopted by reference and declared to be a part of this article.

8-303.3 Requirement for Development Permit

A development permit shall be required in conformity with this article prior to the commencement of any development activities.

8-303.4 Compliance

No land, structure or use shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

8-303.5 Abrogation and Greater Restrictions

These provisions are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these provisions conflict or overlap with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.

8-303.6 Interpretation

In the interpretation and application of these provisions, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and; (3) deemed neither to limit nor repeal any other powers granted under Tennessee statutes.

8-303.7 Warning and Disclaimer of Liability

The degree of flood protection required by these provisions is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the Fairview, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

8-303.8 Penalties for Violation

Violation of these provisions or failure to comply with any requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Fairview, Tennessee from taking such other lawful actions to prevent or remedy any violation.

8-304 ADMINISTRATION

8-304.1 Designation of Ordinance Administrator

The Zoning Director is hereby appointed as the administrator to implement the provisions of this article.

8-304.2 Permit Procedures

Application for a development permit shall be made to the Director on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:

1. Application stage
 - a. Elevation in relation to mean-sea-level of the proposed lowest floor, including basement, of all buildings where Base Flood Elevations (BFE's) are available, or to the highest adjacent grade when applicable under this article.
 - b. Elevation in relation to mean-sea-level to which any nonresidential building will be floodproofed where BFE's are available, or to the highest adjacent grade when applicable under this article.
 - c. Design certificate from a registered professional engineer or architect that the proposed nonresidential floodproofed building will meet the floodproofing criteria in Subsection 8-304.2 (Permit Procedures).

- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

2. Construction Stage

Within unnumbered A Zones, where flood elevation data are not available, the Director shall record the elevation of the lowest floor on the development permit. The elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade.

For all new construction and substantial improvements, the permit holder shall provide to the Director an as-built certification of the regulatory floor elevation or floodproofing level upon the completion of the lowest floor or floodproofing. Within unnumbered A Zones, where flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade.

Any lowest floor certification made relative to mean-sea-level shall be prepared by or under the direct supervision of, a registered land surveyor and certified by same. When floodproofing is utilized for a residential building said certification shall be prepared by or under the direct supervision of, a professional engineer or architect and certified by same.

Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Director shall review the above-referenced certification data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit the certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

8-304.3 Duties and Responsibilities of the Director

Duties of the Director shall include, but not be limited to:

1. Review of all development permits to assure that the permit requirements of this article have been satisfied, and that proposed building sites will be reasonably safe from flooding.
2. Advice to permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit. This shall include Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.
3. Notification to adjacent communities and the Tennessee Department of Economic and Community Development, Local Planning Assistance Office, prior to any alteration or relocation of a watercourse, and submission of evidence of such notification to the Federal Emergency Management Agency.

4. For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to the Federal Emergency Management Agency to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure that the flood carrying capacity within an altered or relocated portion of any watercourse is maintained.
5. Record the elevation, in relation to mean-sea-level or the highest adjacent grade, where applicable of the lowest floor including basement of all new or substantially improved buildings, in accordance with Subsection 8-304.2.
6. Record the actual elevation; in relation to mean-sea-level or the highest adjacent grade, where applicable to which the new or substantially improved buildings have been floodproofed, in accordance with Subsection 8-304.2.
7. When floodproofing is utilized for a structure, the Director shall obtain certification of design criteria from a registered professional engineer or architect, in accordance with Subsection 8-304.2.
8. Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Director shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in these provisions.
9. When base flood elevation data or floodway data have not been provided by the Federal Emergency Management Agency then the Director shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in Zone A, on the Community FIRM, meet the requirements of this article.

Within unnumbered A Zones, where base flood elevations have not been established and where alternative data is not available, the Director shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three (3) feet above the highest adjacent grade (lowest floor and highest adjacent grade being defined in Section 8-302, of these provisions). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in Subsection 8-304.2.

10. All records pertaining to these provisions shall be maintained in the office of the Director and shall be open for public inspection. Permits issued under the provisions of this article shall be maintained in a separate file or marked for expedited retrieval within combined files.

8-305 PROVISIONS FOR FLOOD HAZARD REDUCTION

8-305.1 General Standards

In all flood prone areas the following provisions are required:

1. New construction and substantial improvements to existing buildings shall be anchored to prevent flotation, collapse or lateral movement of the structure;
2. Manufactured homes shall be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
3. New construction and substantial improvements to existing buildings shall be constructed with materials and utility equipment resistant to flood damage;
4. New construction or substantial improvements to existing buildings shall be constructed by methods and practices that minimize flood damage;
5. All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
9. Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this article; and,
10. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provision of this article, shall be undertaken only if said conformity is not further extended or replaced.

8-305.2 Specific Standards

These provisions shall apply to ALL Areas of Special Flood Hazard as provided herein:

1. Residential Construction. Where base flood elevation data is available, new construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls and to ensure unimpeded movement of floodwater shall be provided in accordance with the standards of Section 8-304.2.

Within unnumbered A zones, where base flood elevations have not been established and where alternative data is not available, the Director shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three (3) feet above the highest adjacent grade (lowest floor and highest adjacent grade being defined in Section 8-302, of this article). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in Subsection 8-304.2.

2. Nonresidential Construction. New construction or substantial improvement of any commercial, industrial, or nonresidential building, when BFE data is available, shall have the lowest floor, including basement, elevated or floodproofed no lower than one (1) foot above the level of the base flood elevation.

Within unnumbered A Zones, where base flood elevations have not been established and where alternative data is not available, the Director shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three (3) feet above the highest adjacent grade (lowest floor and highest adjacent grade being defined in Section 8-302, of this article). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in Subsection 8-304.2.

Buildings located in all A-zones may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and are built with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the Director as set forth in Subsection 8-304.2.

3. Elevated Building. All new construction or substantial improvements to existing buildings that include ANY fully enclosed areas formed by foundation and other exterior walls below the base flood elevation, or required height above the highest adjacent grade, shall be designed to preclude finished living space and designed to allow for the entry and exit of flood waters to automatically equalize hydrostatic flood forces on exterior walls.

- a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria.
 - i. Provide a minimum of two openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
 - ii. The bottom of all openings shall be no higher than one (1) foot above the finish grade; and
 - iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the elevated living area (stairway or elevator); and
- c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms in such a way as to impede the movement of floodwaters and all such petitions shall comply with the provisions of Subsection 8-305.2, of this article.

4. Standards for Manufactured Homes and Recreational Vehicles

- a. All manufactured homes placed, or substantially improved, on: (1) individual lots or parcels, (2) in expansions to existing manufactured home parks or subdivisions, or (3) in new or substantially improved manufactured home parks or subdivisions, must meet all the requirements of new construction, including elevations and anchoring.
- b. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:
 - i. When base flood elevations are available the lowest floor of the manufactured home is elevated on a permanent foundation no lower than one (1) foot above the level of the base flood elevation; or,
 - ii. Absent base flood elevations the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements) at least three (3) feet in height above the highest adjacent grade.
- c. Any manufactured home, which has incurred “substantial damage” as the result of a flood or that has substantially improved, must meet the standards of Subsection 8-305.2, of this article.

- d. All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- e. All recreational vehicles placed on identified flood hazard sites must either:
 - i. Be on the site for fewer than one hundred (180) consecutive days;
 - ii. Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions.
 - iii. The recreational vehicle must meet all the requirements for new construction, including the anchoring and elevation requirements of this section above if on the site for longer than one hundred-eighty (180) consecutive days.

5. Standards for Subdivisions

Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood prone area, any such proposals shall be reviewed to ensure that:

- a. All subdivision proposals shall be consistent with the need to minimize flood damage.
- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- d. Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including manufactured home parks and subdivisions) that are greater than fifty (5) lots and/or five (5) acres in area.

8-305.3 Standards for Areas of Special Flood Hazard with Established Base Flood Elevations and with Floodways Designated

Located within the Areas of Special Flood Hazard established in Subsection 8-303.2, are areas designated as floodways. A floodway may be an extremely hazardous area due to the velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights and velocities. Therefore, the following provisions shall apply:

1. Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other developments within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the cumulative effect of the proposed encroachments or new development, when combined with all other existing and anticipated development, shall not result in ANY increase the water surface elevation of the base flood level, velocities or floodway widths during the occurrence of a base flood discharge at any point within the community. A registered professional engineer must provide supporting technical data and certification thereof.
2. New construction or substantial improvements of buildings shall comply with all applicable flood hazard reduction provisions of Section 8-305.

8-305.4 Standards for Areas of Special Flood Hazard Zones AE with Established Base Flood Elevations but Without Floodways Designated

Located within the Areas of Special Flood Hazard established in Subsection 8-303.2, where streams exist with base flood data provided but where no floodways have been designated, (Zones AE) the following provisions apply:

1. No encroachments, including fill material, new structures or substantial improvements shall be located within areas of special flood hazard, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.
2. New construction or substantial improvements of buildings shall be elevated or floodproofed to elevations established in accordance with Subsection 8-305.2.

8-305.5 Standards for Streams Without Established Base Flood Elevations or Floodways (A Zones)

Located within the Areas of Special Flood Hazard established in Subsection 8-303.2, where streams exist, but no base flood data has been provided (A Zones), OR where a Floodway has not been delineated, the following provisions shall apply:

1. When base flood elevation data or floodway data have not been provided in accordance with Section 8-303, then the Director shall obtain, review and reasonably utilize any scientific or historic base flood elevation and floodway data available from a Federal, State or other source, in order to administer the provisions of Section 8-305 ONLY if data is not available from these sources, then the following provisions (2 & 3) shall apply:

2. No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet, whichever is greater, measured from the top of the stream bank, unless certification by registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.
3. In special flood hazard areas without base flood elevation data, new construction or substantial improvements of existing shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Subsection 8-305.2 and "Elevated Buildings".

8-305.6 Standards for Areas of Shallow Flooding (AO and AH Zones)

Located within the Areas of Special Flood Hazard established in Section 8-303.2, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (1'-3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential and residential buildings shall have the lowest floor, including basement, elevated to at least one (1) foot above the flood depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated, at least three (3) feet above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of Section 8-305.2, and "Elevated Buildings".
2. All new construction and substantial improvements of nonresidential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed watertight to be completely floodproofed to at least one (1) foot above the specified FIRM flood level, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified, the lowest floor, including basement, shall be floodproofed to at least three (3) feet above the highest adjacent grade. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this article and shall provide such certification to the Director as set forth above and as required in Section 8-304.2.
3. Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.

4. The Director shall certify the elevation or the highest adjacent grade, where applicable, and the record shall become a permanent part of the permit file.

8-305.7 Standards for Areas Protected by Flood Protection System (A-99 Zones)

Located within the areas of special flood hazard established in Section 8-303 are areas of the 100-year floodplain protected by a flood protection system but where base flood elevations and flood hazard factors have not been determined. Within these areas (A-99 Zones), all provisions of Section 8-304, and Section 8-305.1 shall apply.

8-305.8 Standards for Unmapped Streams

Located within Fairview, Tennessee are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams the following provisions shall apply:

1. In areas adjacent to such unmapped streams, no encroachments including fill material or structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the locality.
2. When new elevation data is available, new construction or substantial improvements of buildings shall be elevated or floodproofed to elevations established in accordance with Section 8-304.

8-306 VARIANCE PROCEDURES

The provisions of this section shall apply exclusively to areas of Special Flood Hazard within Fairview, Tennessee.

8-306.1 Board of Zoning Appeals

1. The Fairview Board of Zoning Appeals shall hear and decide appeals and requests for variances from the requirements of these provisions.
2. Variances may be issued for the repair or rehabilitation of historic structures (see definition) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.
3. In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
 - a. The danger that materials may be swept onto other property to the injury of others;

- b. The danger to life and property due to flooding or erosion;
 - c. The susceptibility of the proposed facility and its contents to flood damage;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - h. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - i. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site, and;
 - j. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
4. Upon consideration of the factors listed above, and the purposes of this article, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to effectuate the purposes of this article.
 5. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

8-306.2 Conditions for Variances

1. Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum relief necessary so as not to destroy the historic character and design of the building.
2. Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; or a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety,

extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.

3. Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.
4. The Director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

8-401 ADULT ENTERTAINMENT DISTRICTS

8-401.1 Purpose and Intent

The Board of Commissioners is aware that numerous communities and states have experienced significant negative effects due to the fact that concentration of "Adult-Oriented Businesses" (as defined by this ordinance) tend to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere. The Adult Entertainment Overlay District is intended to provide adequate locational opportunities for adult entertainment establishments within the planning jurisdiction while reasonably preventing the concentration of such activities in order reduce the potential detrimental impact of these activities upon the public health, safety and welfare.

8-401.2 Locational Standards

All adult entertainment establishments shall be located within the Adult Entertainment Overlay District. These districts may overlay those base zone districts, as indicated by the Letter "O", in Table 7-102A. In addition, all adult entertainment establishments shall adhere to the following locational criteria within the overlay district:

1. No establishment shall be located within five hundred (500) feet (measured property line to property line) of any church, school ground, college campus or park; and
2. No establishment shall be located within one-hundred fifty (150) feet (measured property line to property line) of another adult entertainment establishment.

8-501 TCOD, TOWN CENTER OVERLAY DISTRICT (Added by Ordinance No. 509, August 16, 2001)

8-501.1 General Provisions

1. General Purpose and Intent

As a result of a comprehensive planning process culminating in the adoption of the long-range General Plan, the citizen's of Fairview have

identified a need and desire to enhance the sense of “community” by establishing a readily identifiable “town center”, a centralized “place” for the use and enjoyment of all present and future citizens of Fairview. To that end, the Town Center Overlay District is established with the purpose of successfully implementing the development of the Town Center as recommended by the General Plan.

The purpose of the Town Center Overlay District is to identify those properties designated for development and use as the Town Center under special standards and guidelines enumerated by this ordinance. The TCOD is designed to provide guidance and direction to the City through both the short and long-term development review and adoption processes in a well-planned, coordinated and consistent manner, and to provide a basic regulatory framework from which to thereafter administer the ongoing evolution of the Town Center. The TCOD is also intended to provide the City with a long range land use and development framework that is necessary to establish and administer a cost-effective capital budgeting process for the Town Center area.

2. Consistency with the General Plan

The community’s adopted General Plan identifies both a geographical location and a conceptual plan of development for the Fairview Town Center, as depicted in Illustration 8-1. The conceptual Town Center contained within the General Plan is intended to establish the basic land planning and development framework from which to make specific land use, zoning and development approval decisions. As such, the Board of Commissioners may establish specific geographical boundaries and associated zoning for the Town Center as deemed necessary and appropriate provided that such actions are in keeping with the general spirit and intent of the General Plan’s designation of a Town Center. The Planning Commission also shall review and act on development proposals in accordance with the general spirit and intent of the General Plan’s Town Center concept.

3. Enactment of the TCOD

The Town Center Overlay District is intended and designed to be applied to any and/or all properties determined by the Board of Commissioners as being appropriately included within the general area for the Town Center as identified by the adopted General Plan. The Town Center Overlay District shall be enacted by ordinance in accordance with the processes and procedures of Article VIII, of this ordinance. Immediately, thereafter, the TCOD boundaries shall be accurately reflected on the City’s official zoning map.

ILLUSTRATION 8-1
TOWN CENTER CONCEPT PLAN

The TCOD shall be comprised of individual subdistricts that collectively comprise a balanced mixture of civic, commercial, entertainment, residential and institutional land uses deemed by the General Plan as being appropriate and necessary for a viable and healthy community town center. The establishment of subdistricts permits greater flexibility and specificity in the application of zoning districts and their associated range of land uses and development standards. All lands located within the TCOD shall be included within a designated sub-district. The enacting Town Center Overlay district shall include, but is not necessarily limited to the following subdistricts, as depicted in Illustration No. 8-2, the Government Core; Main Street Mixed-Use; Fairview Boulevard Retail; the East Neighborhood; and the West Neighborhood. Following initial establishment of the TCOD and its associated subdistricts, the Board of Commissioners may, thereafter, establish additional subdistricts or, otherwise, amend and alter existing subdistrict boundaries from time to time as deemed appropriate and necessary.

4. Development Objectives of the TCOD

The Town Center is intended to function as the governmental, cultural, commercial, institutional and residential core of the community. Therefore, it is the stated intention of the General Plan and the TCOD to establish and maintain within the designated Town Center a complimentary mixture of governmental, cultural, institutional, retail, consumer service, office and residential land use activities within a well-planned, fully integrated, cohesive, economically viable, and stable environment. It is the further intention of this ordinance to establish a well-balanced and symbiotic arrangement of those activities within a physical context and form that: creates a vibrant activity center that serves to draw the residents of the community together into this centralized “place”; promotes full pedestrian mobility in a safe, high-quality environment; places greater importance on the quality of the living, working, shopping and recreating experience than on the accommodation of the automobile; accommodates the automobile to the extent necessary to maintain the economic viability of the Town Center, but does so in a manner that mitigates the associated negative impacts on both the aesthetic character of the Town Center and the pedestrian experience within; and achievement of good civic design through the establishment and administration of high quality, pedestrian-scaled design standards for streets, buildings, public spaces, parking areas and amenities that invoke a sense of community pride and permanence.

In anticipation that the Town Center will develop as a series of independent development initiatives occurring over an extended period of time, the TCOD shall include an associated Town Center Infrastructure Plan (TCIP) that is intended and designed to properly direct the location and timing of essential roadway, utility and public open space development in a well-planned, coherent and consistent manner.

ILLUSTRATION 8-2
TCOD SUB-DISTRICTS

5. Development Objectives of TCOD Sub-districts

The following development objectives are established for each of the TCOD subdistricts:

Government Core: This subdistrict is intended to function as the center of government activities for the community. Principle uses and activities intended for the area include the City Hall, the main library, a fire hall and police station, the Chamber of Commerce and the Federal Post Office.

The Government Core is located in the southern sector of the Town Center so as to abut the easterly margins of Bowie Park. In order to protect the natural character of the Park, all development within the Government Core should be conducted in a manner that results in great sensitivity to the integrity and viability of the Park. The primary gateway to the Government Core from Fairview Boulevard should be via a boulevard entry road located directly opposite Chester Road. The southerly terminus of a grand north/south boulevard is intended to form the northerly gateway to the Government Core. To the extent possible, City Hall should be located directly along the north/south axis of the grand boulevard.

Main Street Mixed-Use: This subdistrict is intended for development of a wide range of retail commercial, consumer service, financial, medical and professional office, food service and high density residential uses developed in the character of a traditional "main street". The desired urban character of this area is one of pedestrian oriented commercial streets with outdoor public spaces framed by two and three story buildings built predominantly up to the front sidewalk line. This is an area intended for active and festive sidewalk activities, such as that provided by outdoor cafes and occasional retail sales events. As a general rule, consumer related activities are encouraged at a building's street level, with upper floors devoted to uses such as offices, personal services and residential activities. Buildings should be designed sensitively to relate to the street and its pedestrian orientation. On-street parking should be encouraged, with shared parking lots located discreetly to the rear or side of businesses and screened from the public sidewalks.

Fairview Boulevard Retail: This sub-district is designed to accommodate those types of commercial uses that generally insist on maintaining a high level of highway visibility and vehicular accessibility from Fairview Boulevard, together with those types of consumer retail uses that by their nature require larger building forms generally not in keeping with a pedestrian scaled main street character. Uses considered appropriate for this area may include a community scale grocery store, convenience retail sales and service, and fast food restaurants with or without drive-through window facilities. Activity types such as general business - communication service, automotive or marine craft sales and service, outside material equipment sales and repair yards, or any form of scrap, storage, warehousing, distribution, wholesale sales or industrial activity are not considered appropriate uses anywhere within the Town Center Overlay District.

East Neighborhood: This residential neighborhood is designed for a wide range of housing opportunities at various density levels. Envisioned in this sub-district are single family lots of varying sizes, multi-family dwellings, and senior housing. Also encouraged within this neighborhood at the major gateways and intersections are prominent civic and institutional uses such as religious facilities or community assembly activities. Common open spaces should be well distributed throughout the neighborhood. Designed with a high level of vehicular interconnectivity, residential streets should contain street trees and sidewalks. Service alleys and rear-loaded garages are encouraged to minimize the impact of the automobile and promote a pedestrian oriented community.

West Neighborhood: This residential neighborhood located on the west side of the town center is designed for a combination of single-family residences on a variety of lot sizes and medium density multi-family development. Community facilities such as day care centers and religious facilities may also be accommodated at the major gateways to the neighborhood. Designed with a high level of vehicular interconnectivity, residential streets should contain street trees and sidewalks. Service alleys and rear loaded garages are encouraged to minimize the impact of the automobile and promote a pedestrian oriented community. Common open spaces should be well distributed throughout the neighborhood.

6. Implementation of the TCOD

Following initial application of the Town Center Overlay District to subject properties by the City, property owners shall retain reasonable use and enjoyment of their properties according to the opportunities and privileges afforded by the existing zoning district(s) associated with the property; provided, however, that all subsequent subdivision of lands and development of those lands shall be in full conformance with the stated development objectives of the TCOD, the adopted TCOD Infrastructure Plan, and all other applicable provisions of this ordinance.

Properties located within the designated TCOD may be rezoned only in conjunction with a RPUD or NRPUD overlay district. A proposed base zoning district and its corresponding RPUD or NRPUD Overlay District shall be approved only upon a finding by the Board of Commissioners that both are in general accordance with the Town Center Concept Plan and the associated subdistrict designations of the adopted TCOD. The land use and development standards thereafter applicable to lands located within the TCOD shall be established by the underlying base zone district(s) and the specific terms and conditions of the associated planned unit development overlay district(s). The process and procedures for rezoning properties located within the TCOD shall be in accordance with Article VIII, of this ordinance.

The following zoning districts may be utilized in conjunction with a RPUD or NRPUD Overlay District (as applicable) to implement the land use and development objectives of the designated TCOD subdistricts:

TCOD Subdistrict

Qualifying Zoning District(s)

**Government Core
Main Street Mixed-Use
Fairview Blvd. Retail
East Neighborhood
West Neighborhood**

**OG
MSMU
CC
RS-5, RS-8, RM-8, RM-12, RM-20
RS-5, RS-8, RM-8**

Given the unique character and function associated with the Town Center, the standard land use, bulk, parking and general development criteria typically governed by an applied base zoning district may be modified as specifically noted in this ordinance. In addition to the standard PUD submittal requirements of Subsection 8-203.3, all applications for preliminary or final PUD approvals shall contain sufficient information to accurately represent the proposed character of development, how the proposed development adheres to the basic spirit and intent of the Town Center concept plan, the manner in which the proposal satisfies the stated development objectives of the TCOD, and the relationship the new development with other nearby properties.

7. Town Center Infrastructure Plan

In recognition that the development of a Town Center may occur over an extended period of time as a series of incremental land-development initiatives undertaken by individual land owners, the City hereby adopts in conjunction with the Town Center Overlay District an associated Town Center Infrastructure Plan (TCIP). It is the expressed purpose of the Town Center Infrastructure Plan to establish a basic design framework governing the general location, alignment and/or design of major vehicular ingress-egress points along Fairview Boulevard, major internal streets, pedestrian-way, bicycle, parks and common open space systems; major storm drainage systems, sewer and water trunk lines, and guidelines for the installation of electrical and communication facilities (See Illustration 8-3).

The Town Center Infrastructure Plan shall be administered and implemented via the application of the Planned Unit Development provisions of this ordinance and the Fairview Subdivision Regulations. Each phase of development occurring within the TCOD shall be designed and constructed in a manner consistent with the design objectives of the adopted TCIP.

a. Fairview Boulevard Access Management

The Town Center Master Plan identifies three major gateway entries to the Town Center from Fairview Boulevard (see Illustration 8-3): a southerly gateway into the Government Core opposite Chester Road; a northerly gateway created by the realignment of Cox Pike; and a mid-point entry gateway located at and along the common boundary between the Main Street Mixed Use and Fairview Boulevard General Retail sub-districts. It is intended that these major gateways will be signaled as warranted by traffic

ILLUSTRATION 8-3
TOWN CENTER INFRASTRUCTURE PLAN

volumes. Boulevard cross-sections with landscaping and sidewalks of a character depicted in Illustration 8-4, are intended for these gateways. Secondary points of ingress and egress from Fairview Boulevard may be authorized by the City as deemed necessary to facilitate efficient and safe traffic movement into and out of the Town Center. Single use driveways from Fairview Boulevard are to be discouraged. All properties fronting or otherwise oriented to Fairview Boulevard should be inter-connected via public streets, cross-access easements and joint use driveways.

b. Major Streets

A Town Center requires a hierarchy of internal streets with cross sections and design standards appropriate to the intensity and character of abutting land uses, pedestrian accessibility and anticipated traffic volumes (See Illustration 8-4). The major street components of the TCIP serve to tie the Town Center together as unifying elements, defining the boundaries of sub-districts and creating strong visual and functional linkages between the major gateways and significant public buildings and open spaces. Whenever possible, streets should be designed to permit parallel on-street parking.

The predominant street within the Town Center should be the grand north/south boulevard connecting the northern Cox Pike gateway with the new City Hall site in the Government Core in the southerly sector. To the greatest extent feasible, the alignment with cross-section design of this boulevard should provide a strong, un-interrupted visual sight line of the City Hall. Illustration 8-4, identifies the preferred design elements for the grand north/south boulevard, as well as a typical gateway boulevard, and a typical residential neighborhood boulevard. Actual roadway design standards shall be established by the Subdivision Regulations as administered by Planning Commission.

c. Pedestrian Ways and Bicycle Facilities

All streets within the TCOD should be constructed with sidewalks to establish pedestrian linkages between the residential neighborhoods and all other sub-districts of the Town Center, thus creating a pedestrian friendly, fully accessible and walkable community. Pedestrian ways should also be incorporated into the design of public parks and common open spaces throughout the Town Center, particularly within those spaces associated with natural drainage systems. Bicycle facilities should be incorporated into the design of major streets within the Town Center, as well as in the design of major open space networks so as to provide an alternative to the automobile for trips occurring within the Town Center proper, and to contribute towards the implementation of a community-wide bicycle network as embodied by the adopted General Plan.

ILLUSTRATION 8-4
TYPICAL TOWN CENTER STREET SECTIONS
Grand Blvd.
Main St. - Gateway Blvd.

ILLUSTRATION 8-4
TYPICAL TOWN CENTER STREET SECTIONS
Town Center "Main Street"
Town Center "Avenue"
Town Center "Drive"

ILLUSTRATION 8-4
TYPICAL TOWN CENTER STREET SECTIONS
Residential Blvd.
Residential "Avenue"
Residential "Street"
Residential "Alley"

d. Parks and Common Open Spaces

A Town Center must provide a hierarchy of well located and appropriately scaled public open spaces for the use and enjoyment of its residents and visitors. Residential neighborhoods should provide for appropriately scaled open space and common use areas for local residents. Publicly accessible open spaces should be established along major waterway and drainage corridors. More

formal community open spaces and parks should be strategically located at major focal points throughout the Town Center, such as where the grand north/south boulevard intersects with east/west boulevards. Major open spaces and public use areas should also be provided along the westerly perimeters of the Government Core to both complement the natural resources and recreational opportunities afforded by Bowie Park, as well as to function as a low intensity buffer zone for the Park itself.

e. Stormwater Facilities

Proper attention must be given to storm water management in an urbanized Town Center environment. As a general rule, streets, alleys and common access roads should be constructed with curb and gutter facilities. The City may require the construction and dedication of regional stormwater detention facilities in strategically located areas of the Town Center. In addition to accumulating stormwater discharges, natural drainage systems also provide practical and cost effective opportunities to weaving open space and pedestrian linkages throughout the urban fabric of the Town Center. To the greatest extent possible, therefore, natural drainage systems and their local ecosystems should be preserved. In selected locations along Fairview Boulevard, prominent drainage systems also should be utilized for the construction of pedestrian/bikeway underpasses to connect existing residential neighborhoods east of Fairview Boulevard with the Town Center open space network.

f. Water and Sewer Facilities

Coincident with the incremental development of the Town Center, major service lines for water and sewer shall be located and sized so as to facilitate development of the Town Center in a well-planned, cost-effective and timely manner. All properties developed in the TCOD shall be serviced by public water and sewer.

g. Electrical and Communication Services

In order to create an attractive and safe living and working environment, the electric and communication service lines shall be installed underground.

8. Staging of Development

It is presumed that the Town Center will develop incrementally over an extended period of time as a series of construction initiatives undertaken by independent developers and property owners. Therefore, it is necessary that each incremental stage of development occur in a manner that generally adheres to the Town Center concept plan and the Town Center Infrastructure Plan. All site plan approvals and development initiatives associated with the Town Center Overlay District shall be in substantial conformance with the Town Center Infrastructure Plan.

9. Town Center Overlay District Boundary Amendments

Should the City determine that it is necessary and desirable to alter the geographical limits of the TCOB boundary from time to time, the TCOB may be amended under the same procedures and processes of this ordinance governing amendments to an overlay district.

Following adoption of a Town Center Infrastructure Plan by the Board of Commissioners, significant changes to the Plan, including but not limited to the Fairview Boulevard access management program or the alignment of major internal streets, may be authorized by the Board of Commissioners following a recommendation by the Planning Commission.