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## Section 8.02 Administration

### A. *Nonconforming Uses and Structures.*

#### 1. *Intent of Provisions.*

- a. Within the districts established by this Code or amendments thereto, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Code was enacted, amended, or otherwise made applicable to such lots, structures or uses, but which do not now conform to the regulations of the district in which they are located. It is the intent of this Code to permit such nonconforming uses to continue, as long as the conditions within this Section and other applicable sections are met.
- b. It is further the intent of this Code that nonconforming uses shall not be enlarged upon, expanded or extended, and not be used as a basis for adding other structures or uses prohibited elsewhere in the same district.
- c. Nonconforming uses are hereby declared to be incompatible with the permitted uses in the districts involved.

#### 2. *Nonconforming Status.* Any use, platted lot, or structure which does not conform with the regulations of the zoning district in which it is located shall be deemed a nonconforming use or structure when:

- a. Such use, platted lot, or structure was in existence and lawfully operating at the time of the passage of the previous Code or this Code, and has since been in regular and continuous use; or
- b. Such use, platted lot, or structure is a lawful use at the time of the adoption of any amendment to this Code but by such amendment is placed in a district wherein such use, platted lot, or structure is not otherwise permitted and has since been in regular and continuous use; or
- c. Such use, platted lot, or structure was in existence and lawfully operating at the time of annexation to the City and has since been in regular and continuous use.

#### 3. *Continuing Lawful Use of Property and Existence of Structures.*

- a. The lawful use of land or lawful existence of structures at the time of the passage of this Code, although such do not conform to the provisions hereof, may be continued; but if said nonconforming use or structure is discontinued or abandoned, any future use of said premises shall be in conformity with the provisions of this Code.
- b. Discontinuance of a nonconforming use shall consist of the actual act or date of discontinuance of a use previously operational in a building. Abandonment of a nonconforming structure shall consist of the act or date of abandonment.
- c. When a nonconforming use or structure which does not meet the development standards in this Code ceases to be used for a period of six (6) months, such use shall not be resumed and proof of such event shall constitute prima facie evidence of an act of abandonment. Any nonconforming use which does not involve a permanent type of structure or operation and which is moved from the premises shall be considered to have been abandoned.
- d. No nonconforming use or structure may be expanded, reoccupied with another nonconforming use, or increased as of the effective date of this Code except as provided herein.
- e. Conforming single-family residential uses on platted lots or unplatted tracts approved prior to this Code, which may now be nonconforming due to stricter standards or right- of-way dedications/takings, shall be deemed in conformance with this Code as long as the use of the lot is allowed in the respective district. Only the lot size, depth, width, and setbacks shall be allowed

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to be less than the regulations prescribed in the zoning district in which it is located. All other regulations of this Code shall be met or the lot shall be considered nonconforming.

4. *Changing Nonconforming Uses.*

- a. Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not be changed back to a nonconforming use.
- b. Where a conforming use is located in a nonconforming structure, the use may be changed to another conforming use by the process outlined herein.
- c. A nonconforming use may not be changed to another nonconforming use.

5. *Expansion of Nonconforming Uses and Buildings.* An expansion of a nonconforming use or structure is allowed in accordance with the following:

- a. A non-conforming use located within a building may be extended throughout the existing building, provided;
  - 1) No structural alteration may be made on or in the building except those required by law to preserve such building in a structurally sound condition.
  - 2) The number of dwelling units or rooms in a nonconforming residential use shall not be increased so as to exceed the number of dwelling units or rooms existing at the time said use became a nonconforming use.
- b. No nonconforming use within a building may be extended to occupy any land outside the building.
- c. No nonconforming use of land or building shall be enlarged, increased, or extended to occupy a greater area of land than was occupied at the time the land became a nonconforming use, except to provide off-street loading or off-street parking space, if required by City ordinances; and except where adaptive re-use is proposed, in which case the proposal shall be presented to both the Planning and Zoning Commission and the City Council for consideration.
- d. The minimum residential lot areas for the various zoning districts shall be in accordance with their respective districts except that a lot having less area than herein required which was an official "lot of record" prior to the adoption of this Code, may be used for a single-family dwelling. A residential lot that is not a legal lot of record and does not meet the depth or width requirements of this Code at the time of platting may be approved by the Zoning Board of Adjustment with a variance.
- e. Buildings or structures which do not conform to the area regulations or development standards in this Code shall not increase their gross floor area except when such expansion brings nonconformity into conformance; and except where adaptive re-use is proposed, in which case the proposal shall be presented to both the Planning and Zoning Commission and the City Council for consideration.
- f. A non-residential building or structure that does not meet current area regulations or development standards may be reoccupied with a conforming use and without any expansion upon approval of a modified site plan meeting the requirements of Section 8.02 (A.5.g) below and issuance of a Certificate of Occupancy. The Development Review Committee (DRC) shall review this plan for compliance and, once approved by the DRC, a Certificate of Occupancy may be issued.
- g. A conforming non-single family residential use in a building which does not meet the area regulations or development standards in this Code may be reoccupied with another conforming use upon approval of a modified site plan to determine compliance with the following:

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- 1) Off-street parking, driveways, and circulation requirements.
  - 2) Dumpster location and screening; sidewalk and landscaping requirements.
  - 3) Sign requirements.
  - 4) Building codes.
  - 5) Screening requirements.
  - 6) Drainage requirements.

Each of the above will be reviewed for compliance by the Development Review Committee (DRC) and may be approved by the Planning Manager if total compliance is met. The Planning and Zoning Commission shall make final approval or disapproval of a site plan if substantial compliance is met and there is concurrence with the City Staff's recommendations. If the Planning and Zoning Commission does not concur with City Staff's recommendations, the site plan shall automatically be sent to the City Council for approval or denial.

6. *Restoration of Nonconforming Uses or Structures.*

- a. If a structure occupied by a nonconforming use is destroyed by fire, the elements, or other cause, it may not be rebuilt except to conform to the provisions of this Code. In the case of partial destruction of a nonconforming use structure not exceeding sixty percent (60%) of its total appraised value as determined by the Tarrant County Central Appraisal District, reconstruction will be permitted, in accordance with Section 9.01, but the existing square footage or function of the nonconforming use cannot be expanded, and the above procedures in 8.02 (A.5.g) shall be met.
- b. A nonconforming use or structure can be remodeled, maintained, or improved as long as the size (square footage) of the structure is not increased.
- c. When a nonconforming sign, or a substantial part of the sign is damaged, destroyed, taken down, or removed, it may not be re-erected, reconstructed, or rebuilt except in full compliance and conformance with this Code. For purposes of this section, substantial shall mean if the cost of repair exceeds fifty percent (50%) of the cost of a new sign of the same construction and size. A nonconforming, on-premise, detached sign which is required to be relocated due to expansion of public right-of-way may be relocated on the same lot or tract, provided there is no more than one (1) detached sign per lot or tract. The relocation shall occur within six (6) months following completion of the road.

7. *Completion of Structures.*

- a. Nothing herein contained shall require any change in the plans, construction, or designated use of:
  - 1) A building or structure for which a building permit has been issued or a site plan approved prior to the effective date of these zoning regulations, and the permits have not expired in accordance with this Code; or
  - 2) A building or structure for which a substantially complete application for a building permit was accepted by the Building Official on or before the effective date of these regulations, provided however that such building permit shall comply with all applicable ordinances of the City of Keller in effect on the date such application was filed and the building permit is issued within thirty (30) days of the effective date of these regulations.

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- b. All structures that have received a permit and have started construction shall complete construction within twelve (12) months or a proposed timeframe accepted and authorized by the Building Official. In the event that construction is delayed, the owner may request a one-time extension to the construction period of up to six (6) months or a proposed timeframe accepted and authorized by the Building Official. If a building is left unfinished and the City determines that construction activity has ceased, the City shall require the owner/developer to submit a proposal for timing to finish the building. Otherwise, the City shall cause the unfinished structure to be demolished at the owner's expense.
- B. *Planning and Zoning Commission.*
- 1. *General.* The Planning and Zoning Commission shall function according to the Code of Ordinances and Texas Local Government Code which establishes other membership and operating procedures.
  - 2. *Created; Membership; Officers.*
    - a. There is hereby created in accordance with Chapter 211 of the Texas Local Government Code, a City Planning and Zoning Commission which shall consist of seven (7) members, each of whom shall be a resident of the City of Keller. Members shall be appointed by the City Council. Of the seven (7) members, four (4) shall serve a period of one (1) year from the date of initial appointment and three (3) shall serve for a period of two (2) years from the date of initial appointment. Thereafter, all seven (7) members shall serve for a period of two (2) years from the date of appointment. Vacancies shall be filled by appointments for unexpired terms only.
    - b. Members may be removed from office at any time by a majority vote of the City Council for any reason. All members shall serve without compensation. All members shall serve in accordance with Ordinance No. 1701 or most current ordinance pertaining to attendance and tenure requirements. The City Secretary or his/her designee shall keep minutes of all meetings held by the Planning and Zoning Commission and full record of all recommendations to be made by the Planning and Zoning Commission to the City Council. A Chairman may be appointed by the City Council, however if they do not make the appointment on the date annual appointments are made, the Chairman and Vice-Chairman shall be elected by the Planning and Zoning Commission from its membership at its first meeting following the date of annual appointments. The Chairman and Vice Chairman shall hold said offices for a term of one (1) year and until their successors have been elected.
    - c. Any member of the Planning and Zoning Commission remaining absent for three (3) consecutive regular meetings of the commission may have their appointment declared vacated by a majority vote of the City Council. Any member of the commission remaining absent for six (6) consecutive regular meetings of the commission shall be deemed to have vacated their appointment.
    - d. Newly appointed members of the Planning and Zoning Commission shall go through training offered by the city attorney and the American Planning Association for new commissioners.
  - 3. *Quorum; Voting.* Four (4) members of the Planning and Zoning Commission shall constitute a quorum, and all members, including the presiding chairman, shall have the right of one vote each, a quorum being present. All actions by the Planning and Zoning Commission shall be by a majority vote of those members present. If any member has a conflict of interest in review of any item on the Commission's agenda, he or she shall remove themselves from the room and refrain from voting only on the item for which a conflict exists. In the absence of the Chairperson and/or Vice-Chairperson the members constituting a quorum shall select, from the members present, a Chairperson to conduct the meeting.
  - 4. *Meetings.* The Planning and Zoning Commission shall meet at such times in the Town Hall or other specified locations as may be designated by the Chairman or Vice-Chairman in the absence of the

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Chairman, and at such intervals as may be necessary to orderly and properly transact the business of the Commission but not less than once every thirty (30) days.

5. *Powers and Duties.* The Planning and Zoning Commission shall be an advisory body to the City Council and shall carry out the duties detailed in the Texas Local Government Code and Ordinance No. 70 to make recommendations regarding amendments to the Comprehensive Plan, changes of zoning and permanent zoning to be given to newly annexed areas, and shall approve or make recommendations regarding the approval of the plats of subdivisions as provided by the Texas Local Government Code. The Planning and Zoning Commission shall make a periodic review of the City's Comprehensive Thoroughfare Plan and Future Land Use Plan and be prepared to make such recommendations to the City Council as deemed necessary to keep the City's Plans with the needs and uses of the City as outlined in the Comprehensive Plan. The Planning and Zoning Commission shall serve in an advisory capacity on any land use or planning related item(s) in the City.
6. *Procedure on Zoning Hearings.* The procedure and process for zoning changes and/or amendments shall be in accordance with this Code.

C. *Zoning Board of Adjustment (ZBA).*

1. *General.* In accordance with the Texas Local Government Code, Chapter 211, a Board of Adjustment may be appointed for the purpose of hearing and deciding appeals or special exceptions or authorizing variances or other matters as adopted.
2. *Creation.* There is hereby created a Board of Adjustment to be composed of five (5) members and two (2) alternate members who shall be residents and qualified voters of the City of Keller and shall serve without compensation.
3. *Members and Terms of Office.*
  - a. The Board of Adjustment shall consist of five (5) regular members and two (2) alternate members who shall be appointed by the City Council in accordance with Section 211 of the Texas Local Government Code, as amended. The members shall serve for a period of two (2) years and until their successors are duly appointed and qualified. The regular members of the board shall be identified by place numbers 1 through 5. Places 1, 3, and 5 and the first alternate member shall be appointed to serve for two-year terms with terms beginning on November 30 of odd numbered years. Places 2, 4 and the second alternate member shall be appointed to serve for two-year terms beginning on November 30 of even numbered years. All members will be appointed by a majority vote of the City Council. Members may be removed in accordance with State law. Board members may be appointed to succeed themselves. Vacancies shall be filled by an alternate member for the unexpired term of a member whose term becomes vacant. A Chairman may be appointed by the City Council, however if they do not make the appointment on the date annual appointments are made, the Chairman and Vice-Chairman shall be elected by the Board of Adjustment from its membership at its first meeting following the date of annual appointments. The Chairman and Vice Chairman shall hold said offices for a term of one (1) year and until their successors have been elected.
  - b. Any member absent for three (3) regular consecutive meetings may have their office declared vacated by a majority vote of the City Council. Any member of the board remaining absent for six (6) consecutive regular meetings of the board shall be deemed to have vacated their office. Vacancies of an alternate member shall be filled by appointment of the City Council by majority vote.
  - c. Newly appointed members of the Zoning Board of Adjustment shall go through training offered by the city attorney and the American Planning Association for new board members.

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- d. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. Four (4) members of the Board shall constitute a quorum for the conduct of business. All cases to be heard by the Board of Adjustment will always be heard by a minimum number of four (4) members. In the absence of the Chairperson and/or Vice- Chairperson the members constituting a quorum shall select, from the members present, a Chairperson to conduct the meeting. The members of the Board shall regularly attend meetings and public hearings of the Board and shall serve without compensation.
4. *Authority of Board.* The Board of Adjustment shall have the authority, subject to the standards established in Sections 211.008 to 211.011 of the Texas Local Government Code and those established herein, to exercise the following powers and perform the following duties:
- a. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this Code;
  - b. Hear and decide special exceptions to the terms of this Code when it requires the Board to do so; and
  - c. Authorize in specific cases a variance from the terms of the zoning portions of this Code, such as lot width, depth and building lines, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement would result in unnecessary hardship, and so that the spirit of this Code is observed and substantial justice is done.
  - d. In exercising its authority under Section 8.02 (C.4.a) above, the Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official.
  - e. Each case before the Board of Adjustment must be heard by at least seventy-five percent (75%) [four (4)] of the members. The concurring vote of four (4) members of the Board is necessary to:
    - 1) Reverse an order, requirement, decision, or determination of an administrative official.
    - 2) Decide in favor of an applicant on a matter on which the Board is required to pass under this Code.
    - 3) Authorize a variation from the terms of this Code.
  - f. The Chairperson may administer oaths and compel the attendance of witnesses.
5. *Limitations on Authority of Board.*
- a. The Board may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought.
  - b. The Board shall have no power to grant or modify Specific Use Permits (SUP) authorized under Section 8.02 (F) of these regulations.
  - c. The Board shall have no power to grant a zoning amendment. In the event that a request for a zoning amendment is pending before the Planning and Zoning Commission or the City Council, the Board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment.
  - d. The Board shall not grant a variance for any parcel of property or portion thereof upon which a Site Plan, Preliminary Site Evaluation, or Final Plat if required by the City, has not been finally acted upon by both the Planning and Zoning Commission and, if required by the City, by the City

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Council. All administrative remedies available to the applicant shall have been exhausted prior to hearing by the Zoning Board of Adjustment.

- e. The Board shall have no power to grant variances except to those established in Section 8.02 (C.4.c) in this Code.

6. *Variances.*

- a. In order to grant a variance from these zoning regulations, the Board of Adjustment must make written findings that the variance relieves undue hardship, using the following criteria:
  - 1) That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;
  - 2) That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district;
  - 3) That the relief sought will not injure the permitted use of adjacent conforming property; and
  - 4) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.
- b. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this Code to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship on another parcel of land.
- c. The applicant bears the burden of proof in establishing the facts justifying a variance.

7. *Special Exceptions.*

- a. The Zoning Board of Adjustment shall have the authority to hear and allow special exceptions only for uses which are conforming but the building structure is not.
- b. In granting a special exception, the Zoning Board of Adjustment shall not authorize uses that are not allowed under the terms of this Code for the respective district.
- c. A proof of hardship is not required for granting a special exception.
- d. In granting a special exception, the Board shall not permit variances from the use district regulations which are not prevalent on other lots in the same zoning district.
- e. The Board may consider special exceptions to the Development Standards contained in this section for single-family residential uses that do not require a plat or site plan approval by the Planning and Zoning Commission (P & Z) and City Council.

8. *Procedures.*

- a. *Application and Fee.* An application for granting a variance by the Board of Adjustment, other than an appeal, shall be in writing using forms provided by the City and shall be accompanied by a fee.
- b. *Notice and Hearing.* The Board of Adjustment shall hold a public hearing no later than forty-five (45) days after the date the application for action or an appeal is filed on each such application or appeal. Notice of a public hearing shall be provided to all property owners within two hundred feet (200') of the affected property ten (10) days prior to the public hearing.
- c. *Appeals.*

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- 1) An appeal may be taken from the decision of an administrative official by an applicant for the permit on which the decision is rendered, by any person or persons directly aggrieved by the decision or by any officer, department, board, or bureau of the municipality affected by the decision.
  - 2) The appellant must file with the Board and the official against whom the appeal is taken a written notice of appeal specifying the grounds for the appeal within fifteen (15) days after the decision has been rendered. The officer to whom the appeal is made shall forthwith transmit to the Board all papers constituting the record of the action that is appealed.
  - 3) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certified in writing to the Board that facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the Board or a court of record on application, after notice to the official, if due cause is shown.
  - 4) The Board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties. The appellant party may appear at the appeal hearing in person or by agent or attorney.
  - 5) The Board shall decide the appeal within three (3) weeks after placement on its agenda after which time the request shall be deemed automatically approved. The Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken, and make the correct order, requirement, decision, or determination.
    - a) *Vote Required for Board Decisions.* The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under these zoning regulations, or to effect any variance to the zoning regulations granted by the Board.
    - b) *Judicial Review.* Any person or persons, jointly or severally, aggrieved by a decision of the Board of Adjustment, or any taxpayer, or any officer, department, or Board of the City may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented within ten (10) days after the date the decision is filed in the Board's office.

D. *Changes and Amendments to All Zoning Ordinances and Districts and Administrative Procedures.*

1. *Declaration of Policy and Review Criteria.* The City declares the enactment of these regulations governing the use and development of land, buildings, and structures as a measure necessary to the orderly development of the community. Therefore, no change shall be made in these regulations or in the boundaries of the zoning districts except:
  - a. To correct any error in the regulations or map;
  - b. To recognize changed or changing conditions or circumstances in a particular locality;
  - c. To recognize changes in technology, the style of living, or manner of conducting business;
  - d. To change the property to uses in accordance with the approved Master Plan;
  - e. In making a determination regarding a requested zoning change, the Planning and Zoning Commission and City Council shall consider the following factors:



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- 1) Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned and their relationship to the general area and the City as a whole, and in compliance with the Future Land Use Plan.
  - 2) Whether the proposed change is in accord with any existing or proposed plans for providing streets, water supply, sanitary sewers, and other utilities to the area, and shall note the findings.
  - 3) The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.
  - 4) The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.
  - 5) How other areas designated for similar development will be, or are unlikely to be, affected if the proposed amendment is approved.
  - 6) Any other factors which will substantially affect the health, safety, morals, or general welfare.

2. *Authority to Amend Ordinance.*

- a. The City Council may from time to time, after receiving a final report thereon by the Planning and Zoning Commission and after public hearings required by law, amend, supplement, or change the regulations herein provided or the boundaries of the zoning districts specified on the Zoning Map. Any Ordinance regulations or Zoning District boundary amendment may be ordered for consideration by the City Council, be initiated by the Planning and Zoning Commission, or be requested by the owner of real property, or the authorized representative of an owner of real property.
- b. Consideration for a change in any district boundary line or special zoning regulation may be initiated only with written consent of the property owner, or by the Planning and Zoning Commission, or City Council on its own motion when it finds that public benefit will be derived from consideration of such matter. In the event the ownership stated on an application and that shown on the City records are different, the applicant shall submit proof of ownership.
- c. Each application for zoning or for an amendment or change to the existing provisions of this Code shall be made in writing on an application form available at the City, filed with the City and shall be accompanied by payment of the appropriate fee as established by the City of Keller, Texas and on file with the City Secretary.

3. *Public Hearing and Notice.*

- a. Upon receipt of a complete written application for a change in a zoning classification (rezoning) or for an amendment to the existing provisions of this Code (text amendment), Community Development staff will set a date for a public hearing before the Planning and Zoning Commission.
- b. Community Development staff shall prepare notice of the public hearing before the Planning and Zoning Commission in accordance with the notice provisions of Chapter 211 of the Texas Local Government Code.
  - 1) For a change in zoning classification, written notice of the public hearing shall be sent to the independent school district with jurisdiction and each owner, as indicated by the most recently approved municipal tax roll, of real property within three hundred feet (300') of the property on which the change in classification is proposed. Written notice will also be

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sent to each property owner, as indicated by the most recently approved municipal tax roll, of the land for which the change in zoning classification is being proposed. Written opposition towards initiating the super-majority vote shall only be applicable to property owners receiving notice within the two hundred foot (200') distance in accordance with State law and Section 8.02 (D.6.e) of this Code.

- a) For the purposes of this section, "most recently approved municipal tax roll" shall mean the annual supplemental tax roll from Tarrant Appraisal District (TAD) as amended by the most recent TAD monthly update.
  - b) The notice shall be sent not less than ten (10) days prior to the date of the public hearing. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.
- 2) For an amendment to the existing provisions of this Code, notice of the public hearing shall be published in in the official newspaper of the City not less than ten (10) days prior to the date of the public hearing.
- c. The City will place at least one sign on the property proposed to be rezoned. Such sign shall, if possible, be located adjacent to a public street. Such sign shall be erected on or before the first date of the first notice to property owners required by law. The City will remove the sign(s) immediately after final action by the City Council, or upon withdrawal of the request of the applicant, whichever comes first. The sign shall state the property posted is under consideration by the City for a zone change and shall contain the City telephone number and office to contact for specific information about hearing dates and the requested zoning action. The erection or continued maintenance of the sign shall not be deemed a condition precedent to the granting of any zone change or the holding of any public hearing.
- 4. *Failure to Appear.* Failure of the applicant or his representative to appear before the Planning and Zoning Commission or City Council for more than one hearing without an approved delay by the Planning Manager shall constitute sufficient grounds for the Planning and Zoning Commission to table or deny the application.
- 5. *Planning and Zoning Commission Consideration and Report.* The Planning and Zoning Commission, after the public hearing is closed, shall prepare its report and recommendations on the proposed change stating its findings, its evaluation of the request and of the relationship of the request to the Master Plan. The Planning and Zoning Commission may defer its report for not more than ninety (90) days from the time it is posted on the agenda or until it has had an opportunity to consider other proposed changes which may have a direct bearing thereon unless a postponement is requested by the applicant.
- 6. *City Council Consideration.*
  - a. Applications Recommended for Approval by the Planning and Zoning Commission: Every application or proposal which is recommended favorable by the Planning and Zoning Commission shall be automatically forwarded to the City Council for setting and holding of public hearing thereon. No change, however, shall become effective until after the adoption of an ordinance for same.
  - b. Applications Recommended for Denial by the Planning and Zoning Commission: When the Planning and Zoning Commission makes a recommendation that a proposal should be denied, the request, in its original form, shall be automatically placed on the City Council agenda, unless the request is withdrawn by the applicant.

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- c. Resubmission of Applications: A request which has been denied by the City Council may be resubmitted at any time for reconsideration by the City (a new filing fee must accompany the request).
  - d. City Council Hearing and Notice for Zoning Changes: Notice of the City Council public hearing shall be given by publication in the official newspaper of the City, stating the time and place of such hearing, which shall be at least fifteen (15) days after the date of publication.
  - e. Three-Fourths Vote: If a proposed change in zoning classification is protested by the owners of at least twenty percent (20%) of either the area of the lots or land covered by the proposed change or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred feet (200') from that area, the affirmative vote of at least three-fourths (3/4) of all members of the City Council is required to effect the change in zoning classification provided:
    - 1) The protest is by/from property owners as described in 3.b.(1)(a) above.
    - 2) The protest is written and signed by all persons listed as owners of the property as described in 3.b.(1)(a) above.
    - 3) Written protests with signatures are submitted to the City of Keller Community Development department no later than 12:00 p.m. (noon) on the day of the City Council public hearing on the proposed change in zoning classification.
7. *Final Approval and Ordinance Adoption.* Upon approval of the zoning request by the City Council, the applicant shall submit a metes and bounds description of the property to the City for the preparation of the amending Ordinance. The amending Ordinance shall be approved at the time the City Council makes a decision to approve the request as submitted or with certain conditions. The amending Ordinance will not be approved until a correct property description has been prepared for the amending Ordinance.
- E. *Certificates of Occupancy and Compliance.*
- 1. Certificates of Occupancy shall be required for any of the following:
    - a. Occupancy and use of a building hereafter erected or structurally altered.
    - b. Change in use of an existing building to a use of a different classification.
    - c. Change in the use of land to a use of a different classification.
    - d. Change in ownership or business within a building.

No such use, or change of use, shall take place until a Certificate of Occupancy therefore shall have been issued by the Building Official or his/her agent. A fee shall be established by separate Ordinance.
  - 2. Procedure for New or Altered Buildings: Written application for a Certificate of Occupancy for a new building or for an existing building which is to be altered shall be made at the same time as the application for the Building Permit for such building. Said Certificate shall be issued after the Public Services Director or his/her designee orders the building or structure inspected and finds no violations of the provisions of this Code or other regulations which are enforced by the Department of Public Services. Said Certificate shall be issued by the Public Services Director or his/her designee after the erection or alteration of such building or part thereof has been completed in conformity with the provisions of this Code.
  - 3. Procedure for Vacant Land or a Change in Building Use: Written application for a Certificate of Occupancy for the use of vacant land, a change in the use of land or a change in the use of a building, or for a change from a nonconforming use to a conforming use, shall be made to said Planning

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Manager or his/her agent. If the proposed use is a conforming use, as herein provided, written application shall be made to said Planning Manager. If the proposed use is found to be in conformity with the provisions of this Code upon review of a site plan, the Certificate of Occupancy shall be issued after the application for same has been made and all required inspections are completed and approved by the Public Services Director or his/her designee.

4. Contents: Every Certificate of Occupancy shall contain the following:
  - a. A building permit number.
  - b. The address of the building.
  - c. The name and address of the owner.
  - d. A description of that portion of the building for which the Certificate is issued.
  - e. A statement that the described portion of the building has been inspected for compliance with the requirements of the adopted Building Codes.
  - f. Signature by the Building Official or his/her designee.
5. Temporary Certificate: If the Building Official finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, a temporary Certificate of Occupancy may be issued for a period not to exceed six (6) months, for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure. Such temporary Certificate of Occupancy shall not be construed as in any way altering the respective rights, duties, or other obligations of the owners/tenants relating to the use or occupancy of the premises, or any other provision of this Code.
6. Posting: The Certificate of Occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the Building Official or his authorized agent.
7. Revocation: The Building Official may, in writing, suspend or revoke a Certificate of Occupancy or a building permit issued under the provisions of this Code whenever the permit or Certificate of Occupancy is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any Ordinance or regulation, or any of the provision of this Code, or the most current Building, Electrical, Mechanical, Fire, and Plumbing Codes.

F. *SUP or "S" - Specific Use Permits.*

1. *Specific Uses.*
  - a. The purpose of this district is to allow the consideration of certain uses in districts that under most circumstances would not be compatible with other permitted uses but with certain conditions and development restrictions may be compatible.
  - b. The City Council by an affirmative vote may, after public hearing and proper notice to all parties affected, and after recommendations from the Planning and Zoning Commission that the uses are in general conformance with the Master Plan and general objectives of the City and containing such requirements and safeguards as are necessary to protect adjoining property and health, safety, and general welfare of the population, authorize certain uses by a Specific Use Permit.
  - c. Application shall be accompanied by a written and Detailed Site Plan or Concept Plan as defined in this Code drawn to scale and showing the general arrangement of the project, together with essential requirements such as building elevations, site landscaping, off-street parking facilities; size, height, construction materials, and locations of buildings and the uses to be permitted;

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location and instruction of signs; means of ingress and egress to public streets; traffic study if needed, the type of visual screening such as walls, plantings and fences; and the relationship of the intended use to all existing properties and land uses in all directions. The Planning Manager, Planning and Zoning Commission, or City Council may require additional information or drawings (such as building floor plans or material sample), operating data and expert evaluation or testimony concerning the location, function, and characteristics of any building or use proposed.

2. *Specific Use Permit Regulations.*

- a. In recommending that a Specific Use Permit for the premises under consideration be granted, the City shall determine that such uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall make recommendations as to requirements for the paving of streets, alleys and sidewalks, means of ingress and egress to public streets, provisions for drainage, adequate off-street parking, screening and open space, heights of structures, and compatibility of buildings. In approving a requested Specific Use Permit, the City Council may consider the following:
  - 1) The use is harmonious and compatible with surrounding existing uses or proposed uses;
  - 2) The activities requested by the applicant are normally associated with the permitted uses in the base district;
  - 3) The nature of the use is reasonable and appropriate in the immediate area;
  - 4) Any negative impact on the surrounding area has been mitigated; and
  - 5) That any additional conditions specified ensure that the intent of the district purposes are being upheld.
- b. In granting a Specific Use Permit, the City Council may impose conditions which shall be complied with by the owner or grantee before a certificate of occupancy may be issued by the Planning Manager for use of the building on such property pursuant to such Specific Use Permit and such conditions precedent to the granting of the certificate of occupancy. Any special conditions shall be set forth in writing by the City Council prior to issuance of the Certificate of Occupancy.
- c. No Specific Use Permit shall be granted unless the applicant, owner and grantee of the Specific Use Permit shall be willing to accept and agree to be bound by and comply with the written requirements of the Specific Use Permit, as attached to the site plan drawing (or drawings) and reviewed by the Planning and Zoning Commission and approved by the City Council. An SUP and/or Certificate of Occupancy may be revoked by the Planning Manager or Building Official if all SUP conditions are not complied with.
- d. A Building Permit or Certificate of Occupancy shall be applied for and secured within one (1) year from the time of granting the Specific Use Permit, provided however, that the City Council may authorize an extension. After one (1) year from the date of approval has elapsed, the Planning and Zoning Commission and City Council may review the site plan for compliance. If the site plan is determined to be invalid, the property owner(s) must submit a new or revised site plan for approval prior to any construction or application for building permit for the area designated for the Specific Use Permit. If the use for which the SUP applies is not issued a building permit or certificate of occupancy within one year, the SUP will automatically expire.
- e. No use, building, premise, or land operating under a Specific Use Permit may be enlarged, modified, altered, or otherwise changed unless an amendment to the Specific Use Permit is granted by the City Council for such enlargement, modification, alteration, or change. The requirement to amend a Specific Use Permit is triggered by, but is not limited to, the following:
  - (1) The provision of additional services;

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- (2) Amendments to the site plan or detailed site plan;
    - (3) A change in the type of products or services offered that is not anticipated by the use associated with the SUP;
    - (4) A commercial structure operating under a SUP is vacant for a period of six (6) months or longer.
  - f. A change in business name or property ownership shall not trigger a Specific Use Permit amendment.
  - g. For legal non-conforming uses operating without an SUP in a zoning district where an SUP would otherwise be required, the requirement to obtain an SUP is triggered by, but is not limited to, the following:
    - (1) The provision of additional services;
    - (2) Amendments to the site plan or detailed site plan;
    - (3) A change in the type of products or services offered;
    - (4) A commercial structure is vacant for a period of six months or longer.
  - h. The Board of Adjustment shall not have jurisdiction to hear, review, reverse, or modify any decision, determination, or ruling with respect to the specific land use designated by any Specific Use Permit.
  - i. When the City Council authorizes granting of a Specific Use Permit, the records shall be amended according to its legend to indicate that the affected area has conditional and limited uses.
- 3. *Use Regulations - Uses permitted by SUP are specified in the base-zoning district.*
  - 4. *Prior SUP Ordinances Remaining In Effect.* Prior to adoption of this Code, the City Council had established various Specific Use Permits, some of which are to be continued in full force and effect. The permits or parts of permits approved prior to this Code shall be carried forth in full force and effect and are the conditions, restrictions, regulations, and requirements which apply to the respective Specific Use Permits as authorized within the approving Ordinance at the date of adoption of this Code. Any changes to an existing SUP shall be approved in accordance with the provisions of this Code.

(Ord. No. 2112, § 2,3-21-23)