

NO. 23-0767

IN THE SUPREME COURT OF TEXAS

SHANA ELLIOTT AND LAWRENCE KALKE,
Petitioners,

v.

**CITY OF COLLEGE STATION, TEXAS; KARL MOONEY, IN HIS OFFICIAL
CAPACITY AS MAYOR OF THE CITY OF COLLEGE STATION; AND BRYAN
WOODS, IN HIS OFFICIAL CAPACITY AS THE CITY MANAGER OF THE CITY
OF COLLEGE STATION,**
Respondents.

On Petition for Review from the Sixth Court of Appeals
Texarkana, Texas
Case No. 06-22-00078-CV

RESPONDENTS' RESPONSE BRIEF ON THE MERITS

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STATEMENT OF THE CASE

Nature of the Case. This is an appeal of an order, dismissing Petitioners' claims for lack of subject matter jurisdiction. CR55-56. Petitioners own and reside on properties in Respondent City's extraterritorial jurisdiction and filed suit against the City, and its mayor and city manager, in their official capacities, challenging the authority of Texas cities to regulate outside of their corporate boundaries. Petitioners seek declaratory and injunctive relief under the theory that the statutes authorizing cities to exercise regulatory authority in their extraterritorial jurisdiction, and any ordinances exercising that authority, are unconstitutional as a violation of the "republican form of government" pledge in the Texas Constitution. CR3-11. Respondents challenged jurisdiction on three separate bases: 1) standing; 2) ripeness; and 3) the political question doctrine. CR13-17; CR26-52; CR126-159.

Trial Court. 85th District Court of Brazos County, Texas; Hon. Kyle Hawthorne, presiding.

Disposition of Trial Court. On September 16, 2022, after a hearing on the City's plea to jurisdiction, the trial court granted the City's plea, and dismissed Petitioners' case with prejudice. CR55-56.

Parties on Appeal. Petitioners: Shana Elliott and Lawrence Kalke.

Respondents: City of College Station, Texas; Karl Mooney, in his official capacity as Mayor of the City of College Station; and Bryan Woods, in his official capacity as the City Manager of the City of College Station.

Court of Appeals. Sixth Court of Appeals, Texarkana.

Justices. Chief Justice Stevens and Justices Van Cleef and Ramin.

Citation. *Elliott v. City of Coll. Station*, 674 S.W.3d 653 (Tex. App.—Texarkana 2023) (pet. filed).

Disposition on Appeal. The Sixth Court of Appeals affirmed the trial court’s order, granting the Respondents’ plea to jurisdiction. Petitioners did not file motions for rehearing or for en banc reconsideration.

STATEMENT OF JURISDICTION

The opinion of the court of appeals was rightly decided and, contrary to Petitioners' contentions, does not create a conflict with the decisions of other Texas courts. Furthermore, this lawsuit does not present a real and current controversy but instead is based entirely upon hypothetical future actions and injuries that might result from those actions. Consequently, the courts lack jurisdiction over Petitioners' claims because of a lack of standing and ripeness and the application of the political question doctrine.

ISSUES PRESENTED

Respondents do not believe the Court should grant review. Nevertheless, if the Court determines that review is necessary, Respondents are dissatisfied with Petitioners' presentation of the issues. Contrary to Petitioners' insinuations, the court of appeals upheld the trial court's dismissal for lack of jurisdiction and did not address the merits of Petitioners' argument that any Texas city's regulation in the extraterritorial jurisdiction violates the "republican form of government" pledge in the Texas Constitution. Therefore, Petitioners' second issue requests a judicial determination from this Court that is not ripe for review.

There are three jurisdictional issues which are as follows:

1. Whether Petitioners lack standing.
2. Whether Petitioners' claims are ripe.
3. Whether the court of appeals was correct in ruling that Petitioners' claims present a non-justiciable political question.

STATEMENT OF FACTS

I. The Texas Legislature has authorized Texas municipalities to regulate certain activities in nearby areas outside their city limits.

Texas cities have had the limited authority to regulate outside their city limits for over a hundred years. In the early 1900s, the Texas Legislature enacted a law authorizing home-rule cities to “define all nuisances and prohibit the same within the city and outside the city limits for a distance of 5000 feet.” Acts of 1913, 33rd Leg., R.S., ch. 147, § 1, 1913 Tex. Gen. Laws 307, 314 (originally codified Tex. Civ. Stats. Ann. art. 1175). Then, in 1927, the Legislature expanded that regulatory power to authorize cities with populations of 25,000 or more to regulate the subdivision of property “within five miles of the[ir] corporate limits... .” Acts of 1927, 40th Leg., R.S., ch. 231, § 1, 1927 Tex. Gen. Laws 342.

In more recent years, the Legislature has codified the concept of municipal extraterritorial jurisdiction (“ETJ”) in Chapter 42 of the Texas Local Government Code. Chapter 42 defines ETJ as “the unincorporated area that is contiguous to the corporate boundaries of the municipality.” Tex. Loc. Gov’t Code § 42.021(a).

The geographical extent of a particular city's ETJ is contingent upon the number of inhabitants of the city. *Id.* A municipality with 100,000 or more inhabitants, like the City of College Station, has an ETJ extending five miles out from its corporate boundaries. *Id.*

Section 42.001 of the Texas Local Government Code explains the purpose of ETJ. "The legislature declares it to be the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to municipalities." Tex. Loc. Gov't Code § 42.001.

Current statutes that authorize municipalities to regulate activities outside their corporate boundaries include, but are not limited to: a) Chapter 212 of the Texas Local Government Code, authorizing the regulation of the subdivision of property and access to public roads in ETJ; b) Chapter 216 of the Texas Local Government Code, authorizing the regulation of signs in ETJ; c) Chapter 217 of the Texas Local Government Code, authorizing the regulation of certain nuisance activities occurring within one mile of a city's boundaries; and

d) Chapter 713 of the Texas Health & Safety Code, authorizing the regulation of cemeteries in ETJ.

II. The City has adopted certain local regulations that apply under certain circumstances within the City's extraterritorial jurisdiction, where the Petitioners reside.

The City has adopted regulations that are applicable within its ETJ, including restrictions on the construction and alteration of private driveways and on the placement and use of certain signs. *See* Appendix A, Unified Development Ordinance, art. 7, § 7.5; Code of Ordinances, College Station, Tex., ch. 34, art. II, § 34-36. Petitioners own and reside in single-family homes in the ETJ that may, in certain circumstances, be subject to those regulations. CR4-5.

III. Petitioners sued the City and its officials arguing that the mere existence of regulations that might be read as applying to their residential lots causes them harm regardless of whether the City has ever enforced or threatened to enforce them in the manner Petitioners fear.

Petitioners sued the City, its mayor, and its city manager,¹ arguing that it is unconstitutional, under the “republican form of government” pledge in the Texas Constitution, for the City to exercise any regulatory authority outside its city limits because people residing

¹ Petitioners sued the mayor and city manager in their official capacities.

outside the City are not permitted to vote in City elections. CR8-10. Effectively, they argue that both the state statutes granting such authority and the ordinances exercising that authority are unconstitutional. *Id.*

To attempt to meet their burden to show that there is a real and current controversy that will have real consequences for the parties, Petitioners make certain allegations about future actions they may “seek,” “wish,” and “desire” to take on their properties and state their concern that the challenged City ordinances will interfere with those hypothetical plans. CR43; 47. The future actions include: a) shooting air guns or practicing archery on their properties; b) putting up signs on their properties criticizing the City and its officials; and c) relocating or making other changes to their driveways. CR4-10.

They further allege that they are concerned that, if they ever take such actions, the City will consider the actions as violations of certain City ordinances and take enforcement action against them. CR4-5; 8; 43-47. Importantly, they do not allege that the City has ever told them that their actions would be considered violations of the subject ordinances or threatened them with enforcement action. CR43-47. In

fact, the city manager testified that the City has never enforced any of the challenged regulations against residential properties in its ETJ. CR52.

IV. The City has never enforced or threatened to enforce the challenged regulations against owners of residential lots in its ETJ, and the only means of enforcement would be the filing of a civil suit for injunctive relief.

It is uncontroverted that the City has never enforced any of the challenged regulations against the owners of residential lots in the ETJ. CR50-52. Also, unlike the enforcement of regulations within the city limits which may include the imposition of criminal fines or civil penalties, the enforcement of the challenged regulations within the ETJ is limited to the City filing a civil suit for injunctive relief. CR136-137; 159. No fines, or civil or criminal penalties apply to violations of the two challenged ordinances to the extent they apply outside the city limits. *Id.*; *see also* Tex. Loc. Gov't Code § 212.003.

For example, regarding enforcement of the City's sign regulations, Section 10.3 of the City's Unified Development Ordinance provides:

Any person violating any provision of this UDO, outside the corporate limits of the City, but within the City's extraterritorial jurisdiction, shall not be considered as committing a misdemeanor, nor shall any fine provided in Section A above be applicable; however, the City shall have

the right to institute an action in a court of competent jurisdiction to enjoin the violation of any provision of this UDO.

CR159.

Likewise, relating to the City's authority to regulate subdivision of property and construction of driveways in its ETJ, the Legislature has authorized cities to enforce by filing a civil suit for injunctive relief. "A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction." Tex. Loc. Gov't Code § 212.003(b). The City is only "entitled to appropriate injunctive relief in district court to enjoin a violation ... in the extraterritorial jurisdiction." *Id.* § 212.003(c).

V. On September 1, 2023, a new state law, that grants property owners the unilateral right to opt out of a city's extraterritorial jurisdiction and thus escape any possibility of regulation, went into effect.

Petitioners filed their lawsuit on May 23, 2022. CR3. On September 1, 2023, a new state law took effect which grants property owners the unilateral right to opt out of a city's ETJ and thereby escape regulation. Senate Bill 2038 amended Chapter 42 of the Texas Local Government Code by adding Subchapter D: Release of Area by Petition of Landowner or Resident from Extraterritorial Jurisdiction. Tex. Loc.

Gov't Code §§ 42.101–42.105. Subject to some exceptions not applicable to Petitioners, Subchapter D provides a mechanism for property owners in a city's ETJ to unilaterally “opt out” of the ETJ.² *Id.*

By its terms, Subchapter D states that a property owner with property in a city's ETJ that desires that the property be removed from that city's ETJ need only submit a valid petition to the city for release. Tex. Loc. Gov't Code § 42.105. The only requirements for the petition are that it describe the property and be signed by the owner. *Id.* Once a city is presented with a petition the city must release the land from its ETJ, or the land will be released automatically by operation of law.³ *Id.*

SUMMARY OF THE ARGUMENT

The trial court lacks jurisdiction over Petitioners' claims for three reasons: 1) they lack standing; 2) their claims are not ripe for judicial review; and 3) their claims present a non-justiciable political question. The appellate court correctly affirmed the trial court's dismissal of

² The exceptions do not apply to this case.

³ Grand Prairie, Texas, and at least fourteen other cities, have filed an action, challenging the constitutionality of SB 2038: Cause No. D-1-GN-23-007785 in the 261st District of Travis County, Texas.

Petitioners' claims for lack of jurisdiction, although it limited its basis to the application of the political question doctrine.

Courts have no power to issue judgments to resolve hypothetical claims or remedy hypothetical injuries. Petitioners have failed to meet their burden of establishing standing and ripeness because their claims are based on hypothetical future controversies with the City that may never come to pass. Petitioners have not alleged that the City has enforced or threatened to enforce the challenged regulations against them, and a new state law gives Petitioners the unilateral right to remove their properties from the City's ETJ. Consequently, there is no real and current controversy between the parties and Petitioners lack a real stake in the case.

Finally, while the trial court did not need to reach the issue, because of Petitioners' failure to establish standing and ripeness, the political question doctrine is also a jurisdictional basis for dismissal. Under the political question doctrine, courts respect the separation of powers and abstain from deciding matters committed to the other branches of the government. The political question doctrine is applicable where there is "a textually demonstrable constitutional

commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.” *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 252-53 (Tex. 2018). The constitutional issue in this appeal presents a political question under both tests.

The Texas Constitution has committed issues concerning the structure and operation of local governments to the elected state legislature. The overriding feature of a republican form of government is popular sovereignty—the recognition that the people are the ultimate source of all legitimate public power.

In Texas, people exercise that power by electing legislators who hold office at their sufferance and who exercise legislative power on behalf of the people who elected them. Thus, political power resides in the people of the state as a whole, not in some part of it. When the legislators enacted the statutes granting cities authority to regulate certain activities in areas outside their boundaries, they acted as the representatives of all of the voters of the state not the voters of some part of it.

Moreover, the brief phrase “a republican form of government” as used in the Texas Constitution provides no judicially discoverable and manageable standards for resolving the issue Petitioners attempt to raise here. Petitioners have failed to identify anything in the text of the provision, the history of its enactment, or the structure of the Texas Constitution that places the limits on legislative discretion that the Petitioners advocate. Any limitation on that discretion must be expressed in, or implied from, a provision of the Constitution itself.

ARGUMENT

- I. **Petitioners cannot demonstrate that their claims are ripe or that they have standing to bring them.**
 - A. **The existence of standing and ripeness are necessary to the Court’s jurisdiction.**

Before a court may address the merits of any case, it must have jurisdiction over the subject matter, jurisdiction to enter the particular judgment and capacity to act as a court. *The State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). “Subject matter jurisdiction requires that the party bringing the suit have standing, that there be a live controversy between the parties, and that the case be justiciable.” *Id.*

While the court of appeals did not resolve the case on the grounds of ripeness or standing, instead, ruling that Petitioners' challenge to the City's regulatory authority in the ETJ was barred as a non-justiciable political question, this Court may rule on any jurisdictional ground. *See Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) (holding claims were unripe despite court of appeals' failure to reach ripeness issue). "We have an obligation to examine our jurisdiction any time it is in doubt." *Tex. Propane Gas Ass'n v. City of Houston*, 622 S.W.3d 791, 797 (Tex. 2021).

B. The actions and injuries that Petitioners allege are entirely hypothetical and insufficient to establish the existence of a real and current controversy.

"The ripeness doctrine conserves judicial time and resources for real and current controversies, rather than abstract, hypothetical, or remote disputes." *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998). "Ripeness, like standing, is a threshold issue that implicates subject matter jurisdiction, ... and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998) (internal citations omitted). The concepts of standing and ripeness are

sometimes merged when the circumstances indicate that what has happened to the claimant is insufficiently developed. *Id.* This is one of those instances because both the future actions on which the claims are based and the future injuries from those actions are hypothetical.

- 1. Petitioners have not suffered an actual or threatened restriction from regulations that have never been enforced against them or others similarly situated.**

Both standing and ripeness require that the facts of a case be sufficiently developed at the time a lawsuit is filed “so that an injury has occurred or is likely to occur, rather than being contingent or remote.” *Ackers v. Comerica Bank & Tr., N.A.*, 654 S.W.3d 750, 751 (Tex. 2022). The Texas requirements for standing parallel the federal test for Article III standing. *Carney v. Adams*, 141 S. Ct. 493, 499 (2020). Thus, standing requires “an injury in fact” that is “concrete and particularized, as well as actual or imminent.” *Id.*

It cannot be “conjectural or hypothetical.” *Id.* Likewise, “a case is not ripe when its resolution depends on contingent or hypothetical facts, or upon events that have not yet come to pass.” *Patterson*, 971 S.W.2d at 443.

The standing doctrine identifies suits appropriate for judicial resolution. *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001). Standing assures there is a real controversy between the parties that will be determined by the judicial declaration sought. *Id.* (quoting *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 517-18 (Tex. 1995)). “[T]o challenge a statute, a plaintiff must [both] suffer some actual or threatened restriction under the statute” and “contend that the statute unconstitutionally restricts the plaintiff’s rights.” *Garcia*, 893 S.W.2d at 518.

Patel v. Tex. Dep’t of Licensing & Regulation, 469 S.W.3d 69, 77 (Tex. 2015). Similarly, to establish the ripeness of a constitutionality challenge, Petitioners must show that an enforcement action is imminent or sufficiently likely. *Id.* at 78.

In *Patel*, the plaintiffs were individuals who practiced commercial eyebrow threading and salon owners that employed the threaders. *Id.* at 73. The plaintiffs challenged Texas licensing regulations requiring cosmetology training that was generally unrelated to threading. *Id.* at 73-74. They alleged the regulations violated the Texas Constitution and sought injunctive and declaratory relief under the Uniform Declaratory Judgments Act (“UDJA”). *Id.*

To determine whether the plaintiffs had standing to challenge the regulations, this Court examined the status of the enforcement actions against them. *Id.* at 77-78; *see also Tex. Workers' Comp. Comm'n v.*

Garcia, 893 S.W.2d 504, 518-19 (Tex. 1995) (analyzing lack of action by regulatory authority in finding no standing in context of facial challenge to the Workers' Compensation Act). After an inspection of a salon resulted in a finding that individuals were practicing threading without licenses, the Department of Licensing and Regulation issued Notices of Alleged Violations to the threaders. *Patel*, 469 S.W.3d at 74. As a result, they were subjected to administrative hearings and fines. *Id.*

This Court ruled that the plaintiffs, “who received Notices of Alleged Violation, have standing.” *Id.* at 78. The Court reasoned that they “suffered some actual restriction under the challenged statute because regulatory proceedings had been initiated against each of them pursuant to their alleged violations.” *Id.* Similarly, in finding ripeness, this Court reasoned: a) one of the plaintiff's received warnings from the State and had been referred for enforcement for employing unlicensed threaders; b) two others were subjected to \$5,000 per day in penalties under the regulations; and c) another plaintiff was cited by the State for practicing without a license. *Id.*

In *Garcia*, workers and unions brought a declaratory judgment action against the Workers' Compensation Commission (the

“Commission”), its executive director, and a private employer of one of the plaintiffs. *See* 893 S.W.2d 504. The plaintiffs asserted a facial constitutional challenge to several provisions of the Workers’ Compensation Act. *Id.* at 517.

In analyzing whether the plaintiffs had standing to bring the facial challenge, this Court explained that the plaintiffs must “demonstrate that they are suffering some actual or threatened restriction under the Act.” *Id.* at 518. Ultimately, the Court found that one of the plaintiffs, John Fuller, lacked standing because he had not submitted a claim for benefits under the Act and may never submit a claim. *Id.* at 519. Thus, the Commission had not taken any action as to Fuller, and no “real controversy” existed. *Id.*

The Court went on to contemplate that even if Fuller submitted a claim in the future, there was no way to predict what action the Commission might take on that hypothetical future claim. *Id.* “Until Fuller files a claim which is rejected by the Commission ... no real controversy exists regarding his particular complaints.” *Id.*

Here, Petitioners have not established “that they are suffering some actual or threatened restriction” under the challenged regulations,

or than an enforcement action is imminent or sufficiently likely. *Id.* at 518; *Patel*, 469 S.W.3d at 77-78. They allege only that the challenged regulations exist and that they believe that the regulations apply to hypothetical activities that they have not engaged in but contemplate engaging in, at some point in the future. CR4-5; CR8; CR43-47.

Petitioners do not allege and cannot show that the City has issued Notices of Alleged Violation or that there are pending administrative proceedings or threatened fines, as in *Patel*. In fact, it is uncontested that the City has never enforced or threatened to enforce any of the challenged ordinances against Petitioners or anyone similarly situated. CR50-52. Moreover, even if this Court assumes that the City will enforce the challenged ordinances against Petitioners in the future in the manner they allege, the only action that the City could take to enforce the challenged sign regulations is to initiate a civil lawsuit for injunctive relief. CR159; Tex. Loc. Gov't Code § 212.003(b)-(c). No such suit has been initiated or threatened.

This Court surmised in *Garcia* that even if it assumed Fuller had submitted a claim to the Commission, there was no way to predict what

action the Commission might take in response. Until the Commission took some action, the Court concluded that Fuller lacked standing.

Similarly, Petitioners only contemplate taking certain actions someday. CR43; CR47. The court of appeals described it well: “[Petitioners] admit that they have not taken any concrete steps towards the realization of their desires. Neither has applied for a driveway permit. Neither has turned so much as a spade of soil for a driveway. Neither has bought so much as a posterboard or a paintbrush for a sign.” Op. at 659.

If the contingencies that Petitioners hypothesize ever occur, a real and current controversy will likely exist. However, that possibility was already remote when Petitioners filed their lawsuit and has become even more remote because of the adoption of a new statute under which they have the right to avoid the challenged regulations by opting out of the City’s ETJ.

As things currently stand, Petitioners ask the court to prematurely decide that action the City might take in response to hypothetical scenarios would violate the Constitution. Courts cannot play guessing games about how regulations might be applied to an

imaginary set of circumstances that may never come to pass. “Some day’ intentions – without any description of concrete plans, or indeed even any specification of when the some day will be – do not support a finding of the ‘actual or imminent’ injury that our cases require.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992); *Carney*, 141 S. Ct. at 502. It is not the function of the courts “to sit in judgment on these nice and intriguing questions which today may readily be imagined, but may never in fact come to pass.” *Am. Fid. & Cas. Co. v. Pa. Threshermen & Farmers’ Mut. Cas. Ins. Co.*, 280 F.2d 453, 461 (5th Cir. 1960).

2. The mere existence of a regulation is insufficient to meet the requirements of standing and ripeness.

Petitioners ignore *Patel* and *Garcia*, which focused on enforcement actions, and, instead, rely on non-authoritative and inapplicable case law to support their position that proof of the mere existence of the challenged regulations, without regard to any actual or threatened enforcement action, is enough to satisfy their burden. Petitioners also claim that the plain language of the UDJA confers jurisdiction. Petitioners are mistaken for several reasons.

First, the UDJA does not remove the requirement that the plaintiff must establish standing and a ripe controversy. *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683 (Tex. 2020). “The UDJA does not authorize a court to decide a case in which the issues are hypothetical or contingent—the dispute must still involve an actual controversy.” *Id.* It is well-established that the UDJA does not create or augment the trial court’s jurisdiction. *Tex. Dep’t of Transportation v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011).

“To be sure, the often future-looking nature of UDJA suits does not remove the requirement that the court must have subject matter jurisdiction over the suit—that is, that the parties must have standing, and a ripe, justiciable controversy must exist.” *Sw. Elec. Power Co.*, 595 S.W.3d at 685. There must be more than “unadorned speculation” that the City will enforce the challenged ordinance to show that the Petitioners have “a realistic danger of sustaining a direct injury as a result” of enforcement. *Pennell v. San Jose*, 485 U.S. 1, 8 (1988) (citations omitted).

Petitioners argue that all they need show to establish standing is that they are the “object” of the challenged regulations. Even if that

were the only requirement in a case such as this, Petitioners are not the “object” of the regulations they challenge. The challenged ordinances regulate activities: 1) Section 26-2 of the Code of Ordinances regulates firearms; 2) Section 7-5 of the Unified Development Ordinance regulates signs; 3) Section 34-36 of the Code of Ordinances regulates driveways.

Petitioners’ reliance on *Austin City Cemetery Ass’n, Sw. Elec. Power Co.*, and *Zaatari*, is misplaced. In *Austin v. Austin City Cemetery Ass’n*, the issue was whether a court of equity could enjoin the enforcement of a criminal ordinance, an issue not present here. 87 Tex. 330, 336 (Tex. 1894). The challenged ordinances in this case are not criminal ordinances that threaten criminal penalties.

Sw. Elec. Power Co. v. Lynch involved a dispute between landowners and an electric company over the width of certain easements. 595 S.W.3d at 678, 685. The electric company argued there was no evidence that it intended to use the easements in an unreasonable and unnecessary way, so the landowners could not show an injury to establish a justiciable controversy. *Id.* at 684.

However, one of the landowners testified that he received a letter from the electric company listing a cost estimate to bulldoze the landowner's house and other buildings on the property pursuant to the electric company's opinion of the scope of the easements, and the company's intentions regarding the easements. *Id.* at 685. The landowner disagreed with how the electric company intended to enforce the easements and sought a judicial determination to stop the electric company from taking threatened actions pursuant to its interpretation of the scope of the easements. *Id.*

This Court held that the landowners' claims were "not merely academic or theoretical" but "inextricably tethered to a present disagreement." *Id.* at 684-85. Here, Petitioners' claims are purely theoretical and not based on a present disagreement involving any realistic threat of enforcement of the challenged regulations.

In *Zaatari v. City of Austin*, property owners sued the City of Austin, challenging certain ordinances that retroactively banned the use of short-term rentals. 615 S.W.3d 172, 181 (Tex. App.—Austin 2019, pet. denied). The city of Austin did not deny that it intended to enforce the amended regulations against the plaintiffs. *Id.* at 188.

When analyzing whether the property owners had suffered an injury sufficient to establish standing, the court of appeals held that at least one plaintiff could show an injury because she was already using property as a short-term rental in violation of the retroactive ban. *Id.* at 183. Therefore, she suffered an actual restriction under the regulations at issue. *Id.*

Unlike here, the Austin regulations banned a specific type of activity the plaintiffs were already engaged in, there was no question that the city intended to enforce the challenged restrictions against them, and they were at risk of incurring criminal fines of up to \$2,000 if they violated the regulations. *Id.* at 181-88. The court did not find standing merely because the restrictions applied to property the plaintiffs owned.

The cases cited by Petitioners do not hold that a plaintiff may bypass the requirement that “a real and substantial controversy involving genuine conflict” exists. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). A mere “theoretical dispute” is not enough. *Id.*; *Sw. Elec. Power Co.*, 595 S.W.3d at 684; *see also Save Our Springs All. v. City of Austin*, 149 S.W.3d 674, 684 (Tex. App.—Austin

2004, no pet.) (appellants' claims were not ripe because they failed to allege facts showing the city had applied its land-use regulations to them).

In closing on these issues, while the appellate court's judgment in this case did not turn on ripeness or standing, the court recognized that Petitioners' conduct, or lack thereof, reveals that the resolution of this hypothetical dispute has no bearing on Petitioners' use of their property. This case does not present a situation where a city has determined that a certain activity violates a city regulation, and the city has begun an enforcement action, or indicated it intends to enforce the regulation to stop the activity. This is a situation where Petitioners are asking a court to prematurely determine whether activities they say they wish to engage in the future would violate existing regulations and thereby require the resolution of a constitutional issue. Such questions cannot be decided in the abstract.

C. Two of the challenged regulations do not apply on their face to Petitioners' contemplated actions.

In their pleadings, Petitioners assert a challenge to Section 26-2 of the City's Code of Ordinances, which regulates the use of firearms, bows and arrows, and air guns in the City. CR8-10. However, as the City

pointed out in its briefing at the court of appeals, the challenged section applies only “within the limits of the City.” CR121. Because Petitioners live outside the City limits, the regulations on their face do not prohibit the use of air guns or bows and arrows on their property. In apparent recognition of that fact, Petitioners have abandoned their challenge to Section 26-2 by omitting any mention of it in their brief to this Court.

Petitioners maintain their challenge to the City’s sign regulations, alleging that the regulations would prohibit them from putting signs in their front yard criticizing the City and its officials. CR43; CR47. That allegation is based on a misreading of the text of the subject regulations.

The City’s sign regulations are contained in the City’s Unified Development Ordinance.⁴ While it is true that Section 7.5(CC)⁵

⁴ Pursuant to Rule 204 of the Texas Rules of Evidence, Respondents request that the Court take judicial notice of Section 7.5 of Article 7 of the Unified Development Code as well as Article 11, Definitions, of the Unified Development Code, which were amended in 2023. The Appendix to this Brief contains a copy of the amended regulations and definitions, which are available publicly at the following URL:

https://library.municode.com/tx/college_station/codes/code_of_ordinances.

⁵ Since the time the lawsuit was filed, this subsection has been renumbered as 7.5(BB).

contained a general prohibition on “off-premise and portable signs” in the ETJ, the regulations also contain an exception for “[n]on-commercial signs on private property or works of art that in no way identify or advertise a product or business, or by their location and placement impede traffic safety” *Id.* § 7.5(E)5. A non-commercial sign is defined as “a work of art or message which is political, religious, or pertaining to a point of view, expression, opinion, or idea that contains no reference to the endorsement, advertising of, or promotion of patronage, of a business, commodity, service, entertainment, or attraction that is sold, offered, or existing.” *See* Appendix B, Unified Development Ordinance, art. 11, § 11.2.

Petitioners’ hypothetical signs with messages about how the City regulates property would be non-commercial signs on private property. Therefore, they would be exempt from the general prohibition in Section 7.5(CC).

D. Whether the City’s driveway ordinance would require the Petitioners to seek a permit before altering their driveways could be resolved by simply inquiring of the City whether such a permit would be required.

State law authorizes cities to “extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances

adopted under Section 212.002 and other municipal ordinances relating to access to public roads... ." Tex. Loc. Gov't Code § 212.003(a). Chapter 34, Article II of the City's Code governs "streets, sidewalks, and driveways" within the city limits and "within the extraterritorial jurisdiction of the City as established by the Texas Local Government Code." Code of Ordinances of the City of College Station, Tex. § 34-31(a). Article II includes a permit requirement for "a new driveway approach or an improvement to an existing driveway." *Id.* § 34-36(b)(3).

The City concedes that this provision can be read as requiring a permit for "a new driveway approach or an improvement to an existing driveway" on residential property in the ETJ. However, it is undisputed that the City has never interpreted it that way or applied it to residential property in the ETJ. CR52. As a practical matter, Petitioners could have resolved any concern they had by simply asking the City if they would need a permit to construct a new driveway or modify an existing one.

E. A new statute, which became effective in September 2023, makes it even less likely that Petitioners' claims will ever ripen.

The reality is that Petitioners have attempted to conjure up a controversy by speculating about how the City might respond to certain actions that Petitioners say they are contemplating taking on their properties at some unknown time in the future. They complain that cities should not have the authority to regulate in areas where the residents “receive no services” and do not have the right to vote in city elections.

On September 1, 2023, after Petitioners filed their lawsuit, the Legislature apparently granted Petitioners the opportunity to remove their properties from the ETJ through the removal process in Subchapter D of Chapter 42 of the Texas Local Government Code, without City input. Under the new statute, it is entirely within the Petitioners' control as to whether the City can apply any of the challenged regulations against them.

Petitioners could opt-out now, or they could opt out in the future. If the City does apply the regulations to them in the future, all Petitioners need do to avoid the unwanted regulation is file a petition

for removal from the City's ETJ. Tellingly, they have not chosen to submit a petition, and instead have chosen to continue with this imaginary controversy.

II. Petitioners' challenge under the "republican form of government" pledge in the Texas Constitution is barred by the political question doctrine and foreclosed by this Court's decision in *Brown v. Galveston*.

"The Texas Constitution enshrines the separation of powers as a fundamental principle of limited government," and "state courts decline to exercise jurisdiction over questions committed to the executive and legislative branches." *Preston v. M1 Support Servs., L.P.*, 642 S.W.3d 452, 457-58 (Tex. 2022). "The political question doctrine insulates decisions constitutionally committed to the other branches from judicial second-guessing." *Id.* at 458.

In *Baker v. Carr*, the United States Supreme Court created the following six tests for determining whether a question is committed to another branch:

a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the

respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. 186, 217 (1962). While this Court has never explicitly adopted the *Baker* test in analyzing whether a claim is barred by the political question doctrine, it has “assumed” that the factors “serve equally well to define the separation of powers in the state government under the Texas Constitution.” *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 253 (quoting *Neeley v. W. Orange-Cove Consol. Ind. Sch. Dist.*, 176 S.W.3d 746, 778 (Tex. 2005)).

In *American K-9 Detection Services, LLC v. Freeman*, the Court held that the political question doctrine barred state-court review of certain military decisions “as required for the separation of powers mandated by the Texas Constitution.” *Id.* at 254. “We think that separation is implicitly required by our state constitutional provision, as well as by principles of federalism, and mirrors the same separation of powers among the branches of government in Texas.” *Id.*

The Court was guided in *American K-9* by the two principal *Baker* tests: (1) whether there is “a textually demonstrable constitutional

commitment of the issue to a coordinate political department;” or (2) “a lack of judicially discoverable and manageable standards for resolving it.” *Preston*, 642 S.W.3d at 458; *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 252-53 (quoting *Baker*, 369 U.S. at 217). The Court recognized that the two tests are related: “The lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch.” *Id.* at 253 (citing *Nixon v. United States*, 506 U.S. 224, 228-29 (1993)).

Here, Petitioners attack the authority of Texas cities to regulate in the ETJ and frame it as a facial challenge to at least two City ordinances. Petitioners contend that the regulations run afoul of the “republican form of government” pledge contained in Article I, Section 2 of the Texas Constitution. That section states:

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Tex. Const. art. I, § 2 (emphasis added).

According to Petitioners, Article I, Section 2 requires that

individuals have “some form of democratic representation” to be subject to a city’s regulatory authority. See Petitioners’ Brief at 1. They contend that because they cannot vote in the City’s elections, any City regulations that may apply to them are void as incompatible with a “republican form of government.” *Id.* at 2-3. This contention is directly contrary to this Court’s decision in *Brown v. Galveston*, 75 S.W. 488, 495-96 (Tex. 1903).

A. The Texas Constitution commits issues concerning the structure and operation of local governments to the elected state legislature.

The first *Baker* test “depends not at all on whether an issue is political—few statutory and constitutional issues are not at least in some sense political—but rather on whether an issue is committed to another branch of government and therefore outside the judiciary’s authority to address.” *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 253. The Texas Constitution grants broad legislative authority to the legislature to determine the structure and operation of local government.⁶

⁶ In 1912, the Texas Constitution was amended to add provisions for municipal home rule for cities with populations above 5,000. However, the Legislature retains its ultimate authority over issues of the structure and

[I]t follows that the creation of [municipal] corporations and every provision with regard to their organization is the exercise of legislative power which inheres in the whole people, but by the Constitution is delegated to the Legislature; therefore, it is within the power of the Legislature to determine what form of government will be most beneficial to the public and to the people of a particular community.

Brown, 75 S.W. at 495-96. In exercising that authority, the legislature exercises the political power of the people of the state as whole, not some subset of the people.

Again, in section 2, it is said that “all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit.” This is a true declaration of the principles of republican State governments; however, it does not mean that political power is inherent in a part of the people of a State, but in the body, who have the right to control by proper legislation the entire State and all of its parts.

Id. at 495.

In *Brown*, the issue before the Court was whether a statute that established the makeup of Galveston’s city commission to include three commissioners appointed by the governor was unconstitutional because the commissioners were not elected by the people of Galveston. *Id.* at

operation of local governments under a clause stating that no city charter provision or ordinance can be inconsistent with state law. Tex. Const. art. XI, § 5.

488. The Court upheld the validity of the statute holding that the appointment of three unelected commissioners was consistent with the “principles of republican State governments.” *Id.*

In *Bonner v. Belsterling*, the Court acknowledged that a claim under the U.S. Constitution’s guarantee of a republican form of government was not for the courts to decide. 138 S.W. 571, 574–75 (Tex. 1911). There, the Court was faced with a challenge to a provision in Dallas’s charter that provided for recall elections. *Id.* The claimant, who had been recalled from his position on the city’s board of education, argued that the recall provision violated the federal Guarantee Clause. *Id.* at 574.

In rejecting his claims, the Court concluded that “[t]he policy of reserving to the people such power as the recall, the initiative, and the referendum is a question for the people themselves in framing the government, or for the Legislature in the creation of municipal governments. It is not for the courts to decide that question.” *Id.*

Petitioners misunderstand the importance of *Brown* and *Bonner*. While both cases were decided decades before *Baker* and *American K-9*, the Court’s holdings in *Brown* and *Bonner* utilize the same framework

as the two principal *Baker* tests. Additionally, in both cases the Court explained that it is for the Texas Legislature, not the courts, to determine the type and extent of government afforded at the city level because cities are subdivisions of the state, subject to the people acting through the Legislature. *Brown*, 75 S.W. at 495-96 (discussing “the principles of republican State governments”); *Bonner*, 138 S.W. at 574-75 (addressing the federal Guarantee Clause). As the court of appeals explained:

[O]ne could debate whether *Brown* and *Bonner* found the issue of "republican form of government" at the city level to be a political question beyond the judiciary's reach, or on the other hand, those cases found the issue to have been within the judiciary's reach, but then made judicial pronouncements that Legislative authority over the form of city government, as exercised in those cases, was consistent with a constitutional "republican form of government."

Either way, the Texas Supreme Court has spoken clearly that the matter is committed to the Legislature. The Legislature has relied on that word for more than a century, via numerous statutory grants, modifications, and withdrawals of ETJ authority to the cities. For us, on this case, that is the end of the matter.

Op. at 657.

B. Petitioners fail to provide any judicially discoverable and manageable standards to establish the justiciability of their claims.

“In the instance of nonjusticiability ... the Court’s inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded.” *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 252 n.18 (quoting *Baker*, 369 U.S. at 198). In *Brown*, the Court warned against the dangers of unmanageable standards “by which to determine the validity of any law framed by the Legislature” that leave “each judge to try it according to his own judgment... .” *Brown*, 75 S.W. at 496.

The appellate court alerted Petitioners to their failure to “put into words a standard of ‘republican form of government’ by which to judge the Legislature’s representation of citizens in the [ETJ].” *Op.* at 673. While Petitioners’ articulation of a standard has changed in its briefing before this Court, it has not improved.

The best effort Petitioners put forward in their Brief to address the issue is to vaguely suggest that a “republican form of government,” requires “some ability to vote for the individuals who regulate the

property where one lives.” See Petitioners’ Brief at 26. They say it requires “some form of democratic representation for individuals who are regulated.”⁷ *Id.* at 1. Petitioners do not identify what “form of democratic representation” is required, explain what “some ability” entails, nor do they explain how the protection for the right asserted by Article I, Section 2 can be “judicially molded.” See *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 246 n.18.

As explained in more detail below, see *infra* Section II.D, the right guaranteed to Texans by Article I, Section 2 is “to alter, reform or abolish their government.” This right to change the government is not unlimited. It is subject to the limitation that the form of government remain “republican.”

Petitioners have pointed to no authority supporting their position that this limitation specifically requires that they have “some ability” to vote in city elections. This is hardly a workable standard for a court to apply and does not comport with the declaratory relief Petitioners seek, which is devoid of any request to grant Petitioners “some ability to

⁷ Apparently, the Petitioners are unaware of the consequences of such an assertion. If it is true that there can be no regulation without representation, then a city or state could not enforce its regulations against non-citizens even within the city or state because the non-citizens were not allowed to vote in those jurisdictions.

vote.”

The relevant text is one word—*republican*—and that word has been recognized to mean different things to different people. For instance, in *The Federalist No. 39*, James Madison addressed “whether the general form and aspect of the government be strictly republican.” THE FEDERALIST NO. 39 (James Madison). He theorized that “we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or *indirectly* from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.” *Id.* (emphasis added).

In *Bonner*, the Court quoted Thomas Jefferson to highlight the elusive nature of the phrase “republican form of government” as it is used in the federal Guarantee Clause. *Bonner*, 138 S.W. at 574. “Indeed, it must be acknowledged that the term republic is of very vague application in every language.” *Id.*

According to George D. Braden in *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, Article I, Section 2 states three principles of American government:

(1) popular sovereignty, *i.e.*, the people are the source of all legitimate governmental power and hence government exists for their benefit; (2) the derivative right to change or replace existing government (even by revolution according to some statements, including that in the Declaration of Independence); and (3) *republicanism*, which strictly speaking is representative, nonmonarchical government.

1 George D. Braden, et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 11 (1977).

While these principles are important, “they have not been explained or applied in many cases,” and in those cases that do cite Section 2, they frequently refer to it by referencing other sections of the Texas Constitution. *Id.* “Extrajudicially, Section 2 has been cited to prove that Texas may call a constitutional convention to revise the constitution although the constitution says nothing on the subject of revision.” *Id.* Braden concludes, “Section 2 is essentially a statement of political theory” that “would operate best as a guide to the interpretation of other constitutional provisions rather than the basis for decision making itself.” *Id.* at 13.

C. Petitioners have no answer for the appellate court’s determination that their requested relief is entirely unworkable under *Baker’s* “discriminating analysis.”

The appellate court modeled its justiciability analysis after this

Court's analysis in *American K-9*. Accordingly, in addition to the two principle *Baker* tests, the court applied the *Baker* "discriminating analysis," which analyzes "the possible consequences of judicial action" in a given case. *Am. K-9 Detection Servs., LLC*, 556 S.W.3d at 255 (citing *Baker*, 369 U.S. at 211-12). In so doing, the court of appeals fully mapped out why it would be entirely unworkable to grant Petitioners' requested relief. Op. at 674.

Petitioners fail to respond to this portion of the court's opinion, having no answer for the appellate court's observations that while Petitioners' complaint is that the City regulates them and they are unable to vote in the City's elections, they do not have a request for voting or an explanation regarding what manner of voting would suffice. They also fail to address the appellate court's concerns regarding the consequences that would inevitably stem from the requested declaratory and injunctive relief, bearing in mind that the Texas Legislature has authorized Texas municipalities to regulate activities in nearby areas outside their city limits for a more than a century.

D. Petitioners’ reliance on the placement of Article I, Section 2 in the Texas Bill of Rights is misguided.

Petitioners argue at length that the placement of the “republican form of government” provision in the Texas Bill of Rights is dispositive as to the justiciability of their claims. They reason that “the entire purpose of a Bill of Rights is to remove certain rights from the political process and place those rights under the protection of the judiciary.” See Petitioners’ Brief at 18. This argument is misguided.

The right granted to citizens by Section 2 is the “right to alter, reform or abolish their government.” Tex. Const. art. I, § 2. The accompanying declaration regarding “a republican form of government” is expressed not as an independent right but as a limitation on that right.

The actual text in Article I, Section 2 reads: “The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, *subject to this limitation* only, they have at all times the inalienable right to alter, reform or abolish their government... .” *Id.* (emphasis added). As discussed *supra*, one commentator has concluded that: “[s]ection 2 is essentially a statement of political theory. As such it would operate best as a guide to the

interpretation of other political provisions rather than the basis for decision making itself.” 1 George D. Braden, et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 13 (1977).

In a “republican form of government” the will of the people is expressed through legislative acts. *Parham v. Hughes*, 441 U.S. 347, 351 (1979) (“a court is not free ... to substitute its judgment for the will of the people of a State as expressed in the laws passed by their popularly elected legislatures.”).⁸ The Texas Legislature has “declare[d] it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities.” *Tex. Loc. Gov’t Code*

⁸ *See also Ferguson v. Wilcox*, 28 S.W.2d 526, 531 (1930) (“[T]he legislative power of this State as used in that Article meant all of the power of the people which may properly be exercised in the formation of laws.”) (interpreting *Brown*, 75 S.W. at 492); *State v. Southern Pacific R.R. Co.*, 24 Tex. 80, at **38 (1859) (“Every law is enacted for some purpose, and when it is passed by the legislature, the will of the people is manifested that it shall be enforced.”); *Bianchi v. State*, 444 S.W.3d 231, 250 (Tex. App.—Corpus Christi 2014, no pet.) (“We will not disturb the orderly balance of powers as expressed by the will of the people in the Texas Constitution and the statutes enacted by the Texas Legislature); *Huntress v. McGrath*, 946 S.W.2d 480, 486 (Tex. App.—Fort Worth 1997, no writ) (“Were courts to intervene in a procedure specifically set out by the Texas legislature, courts would be usurping the will of the people as enacted by legislators who are the duly elected representatives of the people.”); *Queen v. State*, 842 S.W.2d 708, 711 (Tex. App.—Houston [1st Dist.] 1992, no writ) (“The courts of this State are bound to follow the will of the people of this State, as that will is expressed by the people in the constitution and in the laws enacted by their duly elected representatives.”).

§ 42.001. As part of that policy, the Legislature made the determination that authorizing Texas municipalities to regulate certain activities outside their corporate boundaries was necessary to “promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.” *Id.*; Tex. Loc. Gov’t Code chs. 212, 216, 217; Tex. Health & Safety Code ch. 713.

Because Petitioners challenge the authority of the City to regulate in the ETJ, the true subject of their challenge is not the ordinances the City promulgated pursuant to that authority but is instead the state statutes authorizing municipalities to regulate certain matters in the ETJ. But the Texas Legislature’s grant of authority to regulate in the ETJ represents Article I, Section 2 in action: Through the Legislature, the people exercised their “inalienable right to alter, reform or abolish their government.” Tex. Const. art. I, § 2. Petitioners are not asserting the *right* recognized in the Bill of Rights to change their government but instead attempting to invoke a *limitation* on that right—the requirement to adhere to a “republican form of government.”

Thus, *it is the Petitioners* who aim to diminish a right guaranteed to the people in the Texas Bill of Rights, and their reliance on Article I,

Section 2's inclusion in the Bill of Rights has it exactly backward.⁹ If a right's location in the Bill of Rights implies heightened judicial protection of the right, then the Court should be skeptical of Petitioners' novel attempt to leverage the "republican form of government" pledge to limit the rights of the people to choose for themselves their own form of government.¹⁰

In addition to misunderstanding the structure of Article I, Section 2, Petitioners also puzzlingly rely on federal decisions and commentary relating to the United States Constitution's Bill of Rights. Given their extensive efforts to disassociate the federal Guarantee Clause from Texas's "republican form of government" provision, this shift in argument is jarring. It is also wrong.

⁹ Not only are the two individual Petitioners in this case attempting to countermand the will of the people as expressed by legislation, they are attempting to do so through a non-democratic process asking the Court to alter or amend a form of government chosen by Texans through their elected representatives (*i.e.*, through a republican democracy).

¹⁰ Tellingly, the City ordinances purportedly at issue do not aim to set forth a "form of government" and can thus hardly be said to violate the "republican form of government" limitation, whereas the enabling statutes that Petitioners ignore directly perform that function—altering the form of government by providing municipalities with authority to regulate in the ETJ. Tex. Loc. Gov't Code chs. 212, 216, 217.

In short, Petitioners argue that rights enunciated in the United States Constitution’s Bill of Rights have been “placed under the protection of the judiciary.” However, the United States Supreme Court has pointedly refused to find the Tenth Amendment enforceable. *See New York v. United States*, 505 U.S. 144, 156 (1992) (describing “the Court’s consistent understanding” that “the Tenth Amendment ‘states but a truism that all is retained which has not been surrendered’” (quoting *United States v. Darby*, 312 U.S. 100, 124 (1941)), and has relegated the Ninth Amendment to practical irrelevance); *United Pub. Workers of Am. (C.I.O.) v. Mitchell*, 330 U.S. 75, 96 (1947); *see also Roth v. United States*, 354 U.S. 476, 492-93 (1957) (quoting and relying on *Mitchell* to hold that conduct could not violate the Ninth or Tenth Amendments because it did not violate a separate provision of the Bill of Rights (the First Amendment)).¹¹

¹¹ At his confirmation hearing, then-federal judge and Supreme-Court nominee Robert Bork famously labeled the Ninth Amendment an “inkblot” incapable of interpretation and enforcement. *See* Nomination of Robert H. Bork to be Associate Justice of the Supreme Court of the United States: Hearing before the S. Comm. on the Judiciary, 101st Cong. 117 (1989) (testimony of Robert Bork), reprinted in 2 *The Rights Retained by the People: The History and Meaning of the Ninth Amendment* 441 (Randy E. Barnett ed., 1993); *see also* Michael W. McConnell, *The Ninth Amendment in Light of Text and History*, CATO SUP. CT. REV. 13, 13 (2010) (observing that “the [Supreme] Court has never squarely based a holding on the Ninth

E. The bulk of federal authorities indicate that claims under the federal Guarantee Clause present a nonjusticiable political question.

The federal Guarantee Clause directs the United States to “guarantee to every State in this Union a Republican Form of Government.” U.S. Const. art. IV, § 4. The U.S. Supreme Court has repeatedly held that claims under the federal Guarantee Clause are non-justiciable political questions. *New York*, 505 U.S. at 184 (“Guarantee Clause has been an infrequent basis for litigation throughout our history.”); *State of Tex. v. United States*, 106 F.3d 661, 666–67 (5th Cir. 1997) (holding claim under federal Guarantee Clause non-justiciable political question because of lack of judicially manageable standards).

“In most of the cases in which the Court has been asked to apply the Clause, the Court has found the claims presented to be nonjusticiable under the political question doctrine.” *New York*, 505 U.S. at 184 (citing *Baker*, 369 U.S. at 223-24 (recognizing claims resting

Amendment and has scarcely even discussed its meaning” and that “[i]t plays virtually no role in modern constitutional litigation”); Randy E. Barnett, *The Ninth Amendment: It Means What It Says*, 85 TEX. L. REV. 1 (2006) (“Although the Ninth Amendment appears on its face to protect unenumerated individual rights of the same sort as those that were enumerated in the Bill of Rights, courts and scholars have long deprived it of any relevance to constitutional adjudication.”).

on federal Guaranty Clause have been held non-justiciable)); *Pacific States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 140-51 (1912); *see also Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916) (“The question of whether that guarantee of the Constitution has been disregarded presents no justiciable controversy.”).

Petitioners attempt to distance the federal Guarantee Clause from Article I, Section 2 of the Texas Constitution by arguing that the text, history, and traditions of the provisions are too different. Their attempts are unconvincing.¹²

First, the applicable language in each clause is identical. “Republican form of government” appears in both provisions.

Second, “the view that the Guarantee Clause implicates only nonjusticiable political questions has its origin in *Luther v. Borden*, 48 U.S. (7 How.) 1, 12 L. Ed. 581 (1849).” *New York*, 505 U.S. at 184; *see*

¹² Regarding the relevant history of the federal guarantee clause, it is notable that one of the first actions taken by the United State Congress after the adoption of the Constitution was to ratify the Northwest Ordinance which provided that the governing authorities for the Northwest Territory were to be appointed by the federal government (not elected by the citizens of the territories). *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1668 (2020). A reasonable conclusion is that the members of Congress, many of whom served as delegates to the Constitutional Convention, did not believe that its actions were inconsistent with a republican form of government.

also Baker, 369 U.S. at 292 (“The starting point of the doctrine applied in these cases is, of course, *Luther v. Borden*, 7 How. 1.”). While Petitioners cite a period dictionary in their effort to establish the meaning of the “republican form of government” provision at the time of its adoption in Texas, that dictionary’s definition of *republican* sheds no light on the question before the Court. *See* Petitioners’ Brief at 3. In fact, the cited dictionary defined the word as “a form of government, in which the commonality exercise the legislative and executive power, either immediately or by officers by them chosen *and appointed*.” Charles Richardson, *A New Dictionary of the English Language* (1836). If the officers may be “appointed,” then such a definition is unsupportive of Petitioners’ contention that Article I, Section 2 requires that they may only be governed by those they choose to elect.

Moreover, Petitioners overlook far more compelling evidence directly relating to the justiciability of the “republican form of government” pledge: by the time Texas borrowed the language from the United States Constitution and added it to the Texas Constitution, the United States Supreme Court had already described it as embodying a nonjusticiable political question. *Luther*, 48 U.S. 1 (1849). Thus, the

only real evidence regarding the contemporaneous understanding of the “republican form of government” is that it was understood to be nonjusticiable at the time of its adoption in Texas.

Petitioners cite *Story v. Runkle* in an apparent attempt to avoid the timing of *Luther*, arguing: “In the years leading up to the Texas Constitutional convention [of 1875], various courts ... held that federal and state republican form of government guarantees provided meaningful, judicially enforceable, limitations on government power.” See Petitioners’ Brief at 22. However, *Luther* was decided in 1849, twenty years before *Story*, where the Court held that a provision of the Texas Constitution retroactively staying the running of limitations during the civil war violated the U.S. Constitution. *Story v. Runkle*, 32 Tex. 398, 403 (1869). Further, the holding in *Story* was found to be incorrect in subsequent decisions of this Court, which explained that the relevant portions of *Story* were merely dicta. *Bender v. Crawford*, 33 Tex. 745, 755 (1871); *Hart v. Mills*, 38 Tex. 513, 515 (1873).

CONCLUSION AND PRAYER

While the appellate court did not focus on them, ripeness and standing are two independent jurisdictional grounds supporting the trial court's dismissal. Petitioners have not taken any action on their properties that would subject them to an enforcement action by the City under the challenged regulations, nor do they allege that the City has enforced the regulations against them or anyone else in the ETJ. Moreover, the appellate court correctly applied the political question doctrine to affirm the trial court's dismissal, as Petitioners failed to meet their burden of establishing the justiciability of their claims.

For all of these reasons, and, to the extent not discussed in this Brief, for the additional reasons described in Respondents' Response to Petition for Review, Respondents respectfully request that the Court deny review. In the alternative, Respondents respectfully request that the Court affirm the opinion of the appellate court, or further in the alternative, determine that Petitioners have failed to establish jurisdiction over their claims because they lack standing and their claims are not ripe. Respondents respectfully request any other relief to which they may show themselves entitled.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Response Brief on the Merits has a word count of 10,131.

/s/ Allison S. Killian
Allison S. Killian

CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b), (d), (e), I certify that I have served this document on all other parties to this appeal, through their respective counsel of record, on May 20, 2024, as follows:

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NO. 23-0767

IN THE SUPREME COURT OF TEXAS

SHANA ELLIOTT AND LAWRENCE KALKE,
Petitioners,

v.

**CITY OF COLLEGE STATION, TEXAS; KARL MOONEY, IN HIS OFFICIAL
CAPACITY AS MAYOR OF THE CITY OF COLLEGE STATION; AND BRYAN
WOODS, IN HIS OFFICIAL CAPACITY AS THE CITY MANAGER OF THE CITY
OF COLLEGE STATION,**
Respondents.

On Petition for Review from the Sixth Court of Appeals
Texarkana, Texas
Case No. 06-22-00078-CV

APPENDIX TO RESPONSE BRIEF ON THE MERITS

Unified Development Ordinance, art. 7, § 7.5 Tab A
Unified Development Ordinance, art. 11, § 11.2 Tab B

APPENDIX TAB A

Sec. 7.5. Signs.

A. Purpose.

The purpose of this Section is to establish clear and unambiguous regulations pertaining to signs in the City of College Station and to promote an attractive community, foster traffic safety, and enhance the effective communication and exchange of ideas and commercial information.

B. Applicability.

The City Council recognizes that signs are necessary for visual communication for public convenience and that businesses and other activities have the right to identify themselves by using signs that are incidental to the use on the premises where the signs are located. The Council herein seeks to provide a reasonable balance between the right of a person to identify their business or activity, and the rights of the public to be protected against visual discord and safety hazards that result from the unrestricted proliferation, location, and construction of signs. This Section will ensure that signs are compatible with adjacent land uses and with the total visual environment of the community, in accordance with the Comprehensive Plan.

1. The City Council finds that the rights of residents of this City to fully exercise their rights of free speech by the use of signs containing non-commercial messages are subject to minimum regulation regarding structural safety and setbacks for purposes of traffic protection. The City Council seeks herein to provide for the reasonably prompt removal and disposal of such signs after they have served their purpose, and yet to avoid any interference with First Amendment freedoms, especially as to persons who are of limited financial means.
2. The City Council finds that instances may occur in the application of this Section where strict enforcement would deprive a person of the reasonable use of a sign, or the reasonable utilization of a sign in connection with other related property rights, and herein provides for such persons to have the right to seek variances from the requirements of this UDO for good cause. The City Council finds that it is imperative that enforcement officials apply this Section as it is written, in the interest of equality and fair and impartial application to all persons, and that the procedures to appeal a denial of a sign permit to the ZBA shall remain the sole administrative means to obtain any exception to the terms hereof.
3. The regulations of this Section shall apply to developments within the zoning districts listed in the Summary of Permitted Signs Subsection below. These regulations only apply to special districts within the City of College Station in accordance with the following Sections:
 - a. The WPC Wolf Pen Creek Subsection of the Design Districts Section of Article 5, District Purpose Statements and Supplemental Standards of this UDO;
 - b. The NG Northgate Districts Subsection of the Design Districts Section of Article 5, District Purpose Statements and Supplemental Standards of this UDO; and
 - c. The OV Corridor Overlay Subsection of the Overlay Districts Section of Article 5, District Purpose Statements and Supplemental Standards of this UDO.

C. Summary of Permitted Signs.

The following signs are permitted in the relevant zoning districts of the City:

Summary of Permitted Signs

	R	WE	E	WRS	R-1B	GS	D	T	MH	MF	MU	R-4	R-6	MHP	O	SC	WC	GC	CI	C-3	BP	BPI	R&D	M-1	M-2	
Apartment/Condominium/Manufactured Home Park Identification Signs										X	(a)	X	X	X												
Area Identification/ Subdivision Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Attached Signs (b)										X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Campus Wayfinding Signs										X	X				X	X	X	X	X		X	X	X			
Commercial Banners (b)										X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X
Development Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Directional Traffic Control Signs											X				X	X	X	X	X	X	X	X	X	X	X	X
Freestanding Signs (b)															(c)	(d)		X	X					X	X	
Hanging Signs											X															
Home Occupation Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X												
Low Profile Signs (b)										X					X	X	X	X	X	X	X	X	X	X	X	X
Non-Commercial Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Projection Signs										X	X															
Real Estate, Finance, and Construction Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Roof Signs																		X	X					X	X	

Notes:

- (a) Apartment signage is permitted in the MU Mixed-Use district as attached signs only.
- (b) Except as provided for in the Signs for Permitted Non-Residential Uses in Residential or Rural Districts Subsection below.
- (c) One (1) freestanding sign shall be allowed in the O Office zoning district only when the building plot has a minimum of two (2) acres.

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- (d) Freestanding signs are permitted for building plots with freeway/expressway frontage only. See the Freestanding Commercial Signs Subsection below for additional standards.

D. Prohibited Signs.

The following signs shall be prohibited in the City of College Station:

1. Portable and trailer signs, and temporary freestanding signs;
2. Signs painted on rooftops;
3. Inflated signs, pennants, wind-driven devices (excluding flags), tethered balloons, and/or any gas-filled objects for advertisement, decoration, or otherwise, except as permitted in the Grand Opening Signs and Special Event Signs Subsections below;
4. Vehicle signs except as permitted in the Vehicle Signs Subsection below;
5. Flags containing copy or logo, excluding the flags of any country, state, city, or school, are prohibited in residential zones and on any residentially developed property (except when flags are used as subdivision signs);
6. Signs and displays with flashing, blinking, or traveling lights, or erratic or other moving parts, including electronic message boards that change more than once per fifteen (15) minutes, either internal or external to the premise, and oriented and visible to vehicular traffic. Time and temperature signs are permissible if the maximum area and setback requirements of this Section are met and if the commercial information or content of such signs are restricted to no more than eight (8) square feet;
7. Signs containing manual change copy which are greater than thirty (30) percent of the allowable sign area;
8. Any signs that are intended to or designed to resemble traffic signs or signals and bear such words as "stop", "slow", "caution", "danger", "warning", or other words that are erected for purposes other than actual traffic control or warning to the public;
9. Any sign located within the site triangle in any district as stated in the Visibility at Intersections in all Districts Subsection of the General Provisions Section above. This does not include traffic control or directional signs;
10. Any sign that emits sound, odor, or visible matter; and
11. Off-premises signs, including commercial and non-commercial billboards.

E. Exempt Signs.

The following signs are exempt from the requirements of this UDO:

1. Signs that are not easily identified from beyond the boundaries of the lot or parcel on which they are located or from any public thoroughfare or traveled right-of-way, as determined by the Administrator. Such signs are not exempt from the safety regulations contained herein and in the International Building and Electrical Codes, as adopted;
2. Official notices posted by government officials in the performance of their duties, including but not limited to signs controlling traffic, regulating public conduct, identifying streets, or warning of danger. Bulletin boards or identification signs accessory to government buildings or other buildings are subject to the provisions of this UDO;
3. Signs related to a primary or secondary educational facility, except that such signs shall adhere to the limitations of the Prohibited Signs Subsection above;
4. Temporary signs erected by private property owners for the purpose of warning of a dangerous defect, condition, or another hazard to the public;

-
5. Non-commercial signs on private property or works of art that in no way identify or advertise a product or business, or by their location and placement impede traffic safety, except as stated in the Non-Commercial and Political Signs Subsection below;
 6. Temporary decorations or displays if they are clearly incidental to and are customarily and commonly associated with any national, local, or religious celebration;
 7. Temporary or permanent signs erected by public utilities or construction companies to warn of the location of pipelines, electrical conduits, or other dangers or conditions in public rights-of-way;
 8. Non-commercial signs carried by a person and not set or affixed to the ground that in no way identify or advertise a product or business, or by their location and placement impede traffic safety;
 9. Commercial signs carried by a person and not set on or affixed to the ground, provided that the sign is temporary, on-premises, and not used by the person on the premises for more than three (3) consecutive days, more than four (4) times per calendar year;
 10. Outdoor advertising display signs for sponsors of charitable events held on public properties. These signs may be displayed for the duration of the event or not more than three (3) days with the approval of the Administrator;
 11. Flags used as political symbols;
 12. Special district identification signs as defined by the Defined Terms Section of Article 11, Definitions that in no way advertise a product or a business, or by their location and placement impede traffic safety. Special district identification signs must be approved by the appropriate development review body in accordance with Article 2, Development Review Bodies of this UDO;
 13. On-premises and/or off-premises signs where there has been a resolution adopted by the City of College Station or an executed contract with the City of College Station and the display of the signs is for designated locations, a specified period of time, and:
 - a. Promotes a positive image of the City of College Station for the attraction of business or tourism;
 - b. Depict an accomplishment of an individual or group; or
 - c. Creates a positive community spirit.
 14. Temporary signs erected for a neighborhood event sponsored by a neighborhood group that is registered with the City of College Station provided that the signage is:
 - a. Located within the perimeter of the neighborhood;
 - b. Provides the name of the association sponsoring the event on the sign;
 - c. In good repair;
 - d. Allowed up to fourteen (14) days prior to the event; and
 - e. Removed within twenty-four (24) hours of the event.
 15. Home tour event signs as defined by the Defined Terms Section of Article 11, Definitions with a limit of two (2) events per calendar year. Such signage shall:
 - a. Be in good repair;
 - b. Display the name of the group sponsoring the event (if applicable);
 - c. Be allowed up to ten (10) consecutive days per event;
 - d. Be removed within twenty-four (24) hours of the end of the event;

- e. Comply with the following if located within a right-of-way:
 1. Located outside the visibility triangle of intersections as set forth in the Visibility at Intersections in all Districts Subsection of the General Provisions Section above.
 2. Permitted by the State Department of Highways and Public Transportation if located on any state highway or roadway.
 3. Be constructed of durable material and no sign shall be greater in size than three (3) feet by three (3) feet.

F. Sign Standards.

The following table summarizes the sign standards for the City of College Station:

Sign Standards				
KEY: SF = square feet DU = Dwelling Unit				
Sign Type	Maximum Area (a)	Maximum Height	Setback From ROW	Number Allowed
Apartment/Condominium/Manufactured Home Park Identification Signs	100 SF	10'	10'	1/frontage
Area Identification Signs	16 SF	4'	10'	1/subdivision or phase that is between ten (10) and fifty (50) acres
Attached Signs	2.5 SF per linear foot of all public entry façades, not to exceed 500 SF	Not to exceed one (1) foot from the top of the wall, marquee, or parapet to which it is attached	N/A	Any number allowed if within the total allowed area of attached signs
Campus Wayfinding Signs	30 SF	6'	N/A	See the Campus Wayfinding Signs Subsection below
Commercial Banners	36 SF	Not to exceed the top of the structure to which it is attached	10'	1/building plot

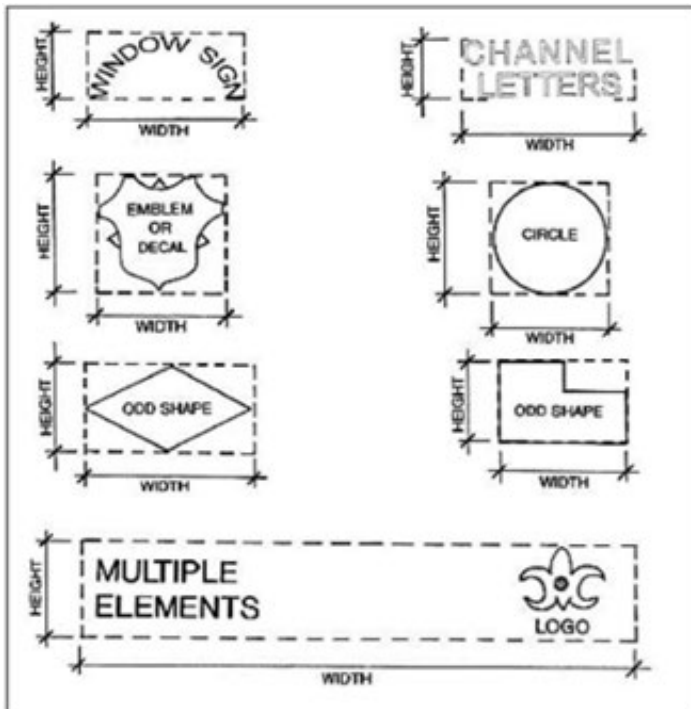
Development Signs Facing Collector (d) or Residential Street	35 SF	15'	10'	1/building plot
Development Signs Facing Arterial (d)	65 SF	15'	10'	1/building plot
Development Signs Facing Freeway/Expressway (d)	200 SF	15'	10'	1/building plot
Directional Traffic Control Signs	3 SF	4'	4'	1/curb cut
Freestanding Signs	See the Freestanding Commercial Signs Subsection below			1/building plot where lot exceeds 75 feet of frontage
Hanging Signs	4 SF	N/A	N/A	1/building entrance
Home Occupation Signs	2 SF	Not to exceed the top of the wall to which it is attached	N/A	1/dwelling unit
Low Profile Signs	60 SF	4'	10'	See the Low Profile Signs Subsection below (b) (c)
Projection Signs	See the Projection Signs Subsection below	Not to exceed one (1) foot from the top of the wall, marquee, or parapet to which it is attached	N/A	1/frontage
Real Estate, Finance, and Construction Signs on lots up to one hundred fifty (150) foot frontage	16 SF	8'	10'	Real Estate Signs: 1/frontage Finance Signs: 1/property Construction Signs: 3/property
Real Estate, Finance, and Construction Signs on lots greater than one hundred fifty (150) foot frontage	32 SF	8'	10'	
Roof Signs	See the Freestanding	10' above the structural roof	N/A	1/building plot in place of a

	Commercial Signs Subsection below, not to exceed 100 SF			freestanding sign
Subdivision Signs	150 SF	15'	10'	1/primary subdivision entrance. Not to exceed 2 signs

Notes:

- (a) The area of a sign is the area enclosed by the minimum imaginary rectangle or vertical and horizontal lines that fully contains all extremities (as shown in the illustration below), exclusive of supports.
- (b) Except as provided for in the Freestanding Commercial Signs Subsection below.
- (c) In SC Suburban Commercial, WC Wellborn Commercial, BP Business Park, and BPI Business Park Industrial, one (1) low profile sign per structure is permitted.
- (d) As designated on the Comprehensive Plan Functional Classification & Context Class Map.

How To Calculate the Area of Different Types of Signs



G. Apartment/Condominium/Manufactured Home Park Identification Signs.

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1. One (1) apartment/condominium/manufactured home park identification sign may be located at a primary entrance on each frontage to a public road.
 2. The maximum area allowed for each frontage may be divided among two (2) signs if those signs are single-sided and mounted at a single entrance.
 3. An apartment/condominium/manufactured home park identification sign may be either an attached sign or a freestanding monument sign. It shall be placed upon the private property of a particular multi-family project in the appropriate zone as set forth in the Summary of Permitted Signs Subsection above and subject to the requirements set forth in the Sign Standards Subsection above.
 4. The apartment/condominium/manufactured home park identification sign shall list the name and may list the facilities available and have leasing or sales information incorporated as a part of the sign.
 5. An apartment or condominium project must have a minimum of twenty-four (24) dwelling units to qualify for an identification sign.
 6. Indirect lighting is permissible, but no optical effects, moving parts, or alternating, erratic, or flashing lights or devices shall be permitted.
 7. Any manufactured home parks existing at the time of this UDO that are nonconforming may still utilize an identification sign meeting the provisions of this Section and the Sign Standards Subsection above.

H. Area Identification and Subdivision Signs.

1. Area identification signs shall be permitted upon private property in any zone to identify subdivisions of ten (10) to fifty (50) acres in size subject to the requirements set forth in the Sign Standards Subsection above. Area identification signs may also be used within a large subdivision to identify distinct areas within that subdivision subject to the requirements in the Sign Standards Subsection above.
2. Subdivision signs shall be permitted upon private property in any zone to identify subdivisions of greater than fifty (50) acres subject to the requirements set forth in the Sign Standards Subsection above.
3. Both area identification and subdivision signs must be located on the building plot as identified by a preliminary plan of the subdivision. Subdivision signs will be permitted only at the intersection of two (2) collector or larger streets on the perimeter of the subdivision. At each intersection, either one (1) or two (2) subdivision signs may be permitted so long as the total area of the signs does not exceed one hundred fifty (150) square feet. Flags may be utilized in place of a subdivision sign, but the overall height shall not exceed twenty (20) feet and twenty-five (25) square feet in area in a residential zone and thirty-five (35) feet in height and one hundred (100) square feet in area in industrial or commercial districts.
4. Subdivision markers of no more than one (1) square foot in area, used in conjunction with a subdivision or area identification sign, are permitted attached to architectural elements within the subdivision.
5. Indirect lighting is permissible but no optical effects, moving parts, or alternating, erratic, or flashing lights shall be permitted. Landscaping valued at two hundred fifty (250) points shall be installed around each subdivision sign. Adequate arrangements for permanent maintenance of all signs and any landscaping in conjunction with such signs shall be made, which may be through an owners association if one (1) exists or is created for this purpose.
6. All signs shall be set back as shown in the Sign Standards Subsection above except in areas where a private improvement in public right-of-way permit has been issued.

I. Attached Signs.

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1. Attached signs are commercial signs under this Section.
 2. Attached signs on any commercial building or tenant lease space shall not exceed a total of two and one-half (2.5) square feet per linear foot of all public entry façades, with a maximum of five hundred (500) square feet of attached signage allowed for any one (1) tenant. Multi-story businesses will be allowed one hundred (100) square feet of additional attached signage.
 3. The division of allowable building signage amongst building tenants shall be the sole responsibility of the owner or property manager and not the City of College Station.
 4. Signs attached to features such as gasoline pumps, automatic teller machines, mail/package drop boxes, or similar on-site features shall count as part of the allowable sign area of the attached signs for the site if identifiable from the right-of-way as determined by the Administrator. See the Sign Standards Section of the City of College Station Site Design Standards for more information. Information contained on such features pertaining to federal and state requirements and operation/safety instructions are not counted. All other signage on such features shall count towards the allowable attached sign area.
 5. Architectural elements which are not part of the sign or logo and in no way identify the specific business tenant shall not be considered attached signage.
 6. An attached sign:
 - a. Shall advertise only the name of, uses of, or goods or services available within the building or tenant lease space to which the sign is attached;
 - b. Shall be parallel to the face of the building;
 - c. Shall not be cantilevered away from the structure;
 - d. Shall not extend more than one (1) foot from any exterior building face, mansard, awning, or canopy;
 - e. Shall not obstruct any window, door, stairway, or other opening intended for ingress or for needed ventilation or light; and
 - f. Shall not be attached to any tree or public utility pole.
 7. Attached signs may be mounted to site lighting poles located on private property and may be constructed of cloth, canvas, or other flexible material provided such signage is maintained in good condition and complies with the following restrictions:
 - a. No part of any sign attached to a light pole will be allowed to overhang or encroach into any portion of the public right-of-way;
 - b. Light pole signs shall not exceed twelve (12) square feet in area and shall have a minimum of eight (8) feet of clearance from the grade below;
 - c. Light pole signs shall only be attached to one (1) side of a light pole;
 - d. Light pole signs shall not project more than three (3) feet from the edge of the light pole; and
 - e. Light pole signs constructed of cloth, canvas, or other flexible material shall be secured on a minimum of two (2) opposing sides to prevent wind-driven movement.

J. Campus Wayfinding Signs.

1. A campus wayfinding sign:

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- a. May be utilized as a part of a PDD Planned Development District or unified development that is at least twenty (20) acres in size, contains multiple buildings, and may include multiple building plots;
 - b. A maximum of one (1) campus wayfinding sign shall be allowed per intersection of two (2) primary circulation drive aisles when parking is not provided along the drive aisle, or intersection of a primary circulation drive aisle and public way when parking is not provided along the drive aisle and public way;
 - c. All signs shall be internal to the development and shall not be located along a public right-of-way or at the intersection of a primary circulation aisle or public way and right-of-way.
 - d. Shall be limited in height to no greater than six (6) feet, measured from the elevation of the curb or pavement edge, with a maximum total sign area of thirty (30) square feet;
 - e. Shall not be located within a site visibility triangle;
 - f. All campus wayfinding signs shall be submitted as part of a sign package for the development; and
 - g. Shall utilize a common design or theme throughout the development and contain no commercial logo or graphics.

K. Commercial Banners.

- 1. A commercial banner:
 - a. Shall be in good repair;
 - b. Shall have the permit number conspicuously posted in the lower right-hand corner of the banner;
 - c. Shall be allowed in addition to the signage provided for in the Attached Signage Subsection above;
 - d. Shall advertise only the name of, uses of, or goods or services available within the building or tenant lease space to which the sign is attached;
 - e. Shall be mounted parallel to the face of a building or permanent structure;
 - f. Shall not be located within the public road right-of-way;
 - g. Shall not obstruct any window, door, stairway, or other opening intended for ingress or for needed ventilation or light; and
 - h. Except as identified below, shall be allowed for a maximum fourteen (14) day period per permit.
- 2. An annual banner permit may be allowed for places of worship meeting in public spaces on a temporary basis. Banners allowed by this Section shall only be displayed on the day of the worship service.
- 3. The applicant shall pay an application fee as established by resolution of the City Council upon submission of a banner permit application to the City. The application fee is waived for a non-profit association or organization. This fee shall not apply to banners associated with special events as provided for in the Special Event Signs Subsection below.

L. Development Sign.

- 1. A development sign may be placed only on private property subject to the requirements in the Sign Standards Subsection above.

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2. A development sign for a building project shall be removed if the project has not received a building permit at the end of twelve (12) months. The Administrator may renew the sign permit for one (1) additional twelve (12) month period upon request. Once a building permit for the project is received, the sign may stay in place until seventy-five (75) percent of the project is leased or a permanent sign is installed, whichever comes first.
 3. A development sign for a proposed subdivision shall be removed if a preliminary plan or final plat has not been approved by the end of twelve (12) months. The Administrator may renew the sign permit for one (1) additional twelve (12) month period upon request. Once a plat has been approved, the sign permit is valid as long as a preliminary plan is in effect, or in the absence of a valid preliminary plan, for twenty-four (24) months from the date of approval of a final plat.

M. Directional Traffic Control Sign.

1. Directional traffic control signs may be utilized as traffic control devices in off-street parking areas subject to the requirements set forth in the Sign Standards Subsection above.
2. For multiple lots sharing an access easement to the public right-of-way, there shall be only one (1) directional sign located at the curb cut.
3. Logo or copy shall be less than fifty (50) percent of the sign area.
4. No directional traffic control sign shall be permitted within or upon the right-of-way of any public street unless its construction, design, and location have been approved by the City Traffic Engineer.

N. Electronic Reader Boards.

In addition to meeting the other requirements of this Section, electronic reader boards are subject to the following requirements:

1. The sign display (message) change shall be instantaneous; scrolling, fading, or animation between messages is prohibited;
2. No electronic reader board shall exceed a brightness level of three-tenths (0.3) foot candles above ambient light as measured using a light meter capable of measuring in foot candles at a distance based upon sign area, measured as follows:
Measurement distance = $\sqrt{\text{sign display area} \times 100}$
3. The sign shall be equipped with automatic brightness control keyed to ambient light levels;
4. In the event of a malfunction, the sign display must go dark; and
5. Electronic reader board size is limited to thirty (30) percent of the allowable sign area.

O. Flags.

1. One (1) freestanding corporate flag per premise, not to exceed thirty-five (35) feet in height or one hundred (100) square feet in area, is allowed in multi-family, commercial, and industrial districts.
2. Flags used solely for decoration, not containing any copy or logo, and located only in multi-family, commercial, and industrial districts or developments are allowed without a permit. In multi-family developments, such flags will be restricted to sixteen (16) square feet in area. In all permitted zoning districts, such flags will be restricted to thirty (30) feet in height, and the number shall be restricted to no more than six (6) flags per building plot.
3. Flags containing commercial copy or logo, excluding the flags of any country, state, city, school, or church are prohibited in residential zones and on any residentially developed property (except when flags are used as subdivision signs).

P. Freestanding Signs.

1. Any development with over seventy-five (75) linear feet of frontage will be allowed one (1) freestanding commercial sign. All freestanding commercial signs shall meet the following standards:

a. Allowable Area.

Allowable Area For Freestanding Signs	
Frontage (Linear Feet)	Maximum Area (Square Feet)
0—75	Low Profile only
76—100	50
101—150	75
151—200	100
201—250	125
251—300	150
301—350	175
351—400	200
401—450	225
451—500	250
501—550	275
551—600+	300

b. Area.

For the purposes of this Section, the area shall be considered the area in square feet of a single-face sign, one (1) side of a double-face sign, or half the sides of a multi-face sign.

c. Frontage.

1. For the purposes of this Section, frontage shall be considered the number of feet fronting on a public street to which a sign is oriented; and
2. On corner lots, the frontage street shall be the higher classification street on the Comprehensive Plan Functional Classification & Context Class Map. Where the two (2) streets are classified the same, the applicant may choose the frontage street.

d. Allowable Height.

1. The allowable height of a freestanding commercial sign is determined by measuring the distance from the closest point of the sign to the curb or pavement edge and dividing this distance by two (2). No freestanding commercial sign shall exceed thirty-five (35) feet in height;
2. For the purposes of this Section, the height of a sign shall be measured from the elevation of the curb or pavement edge;
3. For the purposes of this Section, the distance from the curb shall be measured in feet from the back of the curb or pavement edge to the nearest part of the sign; and
4. For properties with freeway/expressway frontage in SC Suburban Commercial districts, the maximum height of the sign may not exceed the eave height of the structure to which it most closely relates. Freestanding commercial signs must be adjacent to and oriented to the freeway/expressway frontage.

2. Freestanding commercial signs are allowed only on developed commercial property established in the appropriate zones as set forth in the Summary of Permitted Signs Subsection above. One (1) freestanding sign shall be allowed in the O Office zone only when the building plot has a minimum of two (2) acres, subject to the requirements set forth in the Sign Standards Subsection above. One (1) low profile sign shall be allowed in the O Office zone when the building plot has less than two (2) acres subject to the requirements set forth in the Sign Standards Subsection above.

3. A building plot with more than one hundred fifty (150) feet of frontage shall be allowed to use one (1) freestanding commercial sign or any number of low profile signs as long as there is a minimum separation between signs of one hundred fifty (150) feet.

In lieu of one (1) low profile sign every one hundred fifty (150) feet, hospital uses may have one (1) low profile sign located at each driveway.

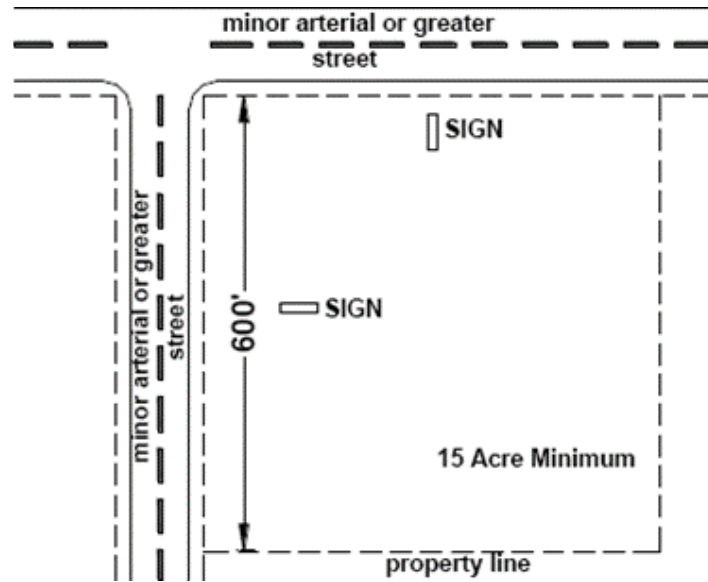
4. Building plots with less than seventy-five (75) feet of frontage may be combined to utilize signage corresponding to the resulting frontage as described in the preceding two (2) paragraphs.

5. No more than one (1) freestanding commercial sign shall be allowed on any premises except when the site meets one (1) of the following sets of criteria:

a. The building plot, as recognized on an approved plat or site plan, must be twenty-five (25) acres or more in area with at least one thousand (1,000) feet of continuous unsubdivided frontage on a street classified as a major arterial or higher on the Comprehensive Plan Functional Classification & Context Class Map toward which one (1) additional freestanding commercial sign may be displayed (see diagram below); or



b. The building plot, as recognized on an approved plat or site plan, must be fifteen (15) acres or more in area with at least six hundred (600) feet of continuous unsubdivided frontage on a street classified as a major arterial or higher on the Comprehensive Plan Functional Classification & Context Class Map and the site must have additional frontage on a street classified as a minor arterial or higher on the Comprehensive Plan Functional Classification & Context Class Map, toward which the additional freestanding commercial sign may be displayed.



6. Any sign where two (2) or more panels have separate supports extending to them shall be considered to be more than one (1) freestanding commercial sign, even where only one (1) main support extends to the ground.
7. Sites with limited or no street frontage due to a proliferation of pad sites that are not contained within the building plot, as defined by the Administrator, and are fronting along a street classified as a collector or higher on the Comprehensive Plan Functional Classification & Context Class Map, will be allowed the area of the sign to be less than or equal to the square of one-sixth (.17) of the distance from the closest portion of the sign to the curb or pavement edge, with the maximum area not to exceed two hundred (200) square feet.
8. Any site defined as a single building plot and containing one (1) or more pad sites, shall be permitted to erect a freestanding commercial sign in accordance with this Subsection, and to the standards of the Allowable Area Subsection above, with the maximum area not to exceed two hundred (200) square feet. In addition, each pad site will be permitted one (1) low profile sign per pad site according to the restrictions of the Sign Standards Subsection above.

Q. Fuel Price Signs.

Facilities with fuel sales will be allowed one (1) additional sign per building plot, either freestanding or attached, for the purposes of fuel pricing.

1. The area of the fuel price sign shall not exceed twenty-four (24) square feet.
2. Fuel pricing may be incorporated into the allowable square footage of a freestanding commercial sign or attached sign.
3. This sign shall follow the setback requirements for a freestanding commercial sign and shall not be located within the right-of-way.

R. Grand Opening Signs.

1. Flags, commercial banners, and balloons that advertise a business's grand opening may be displayed for one (1) consecutive fourteen (14) day period, selected by the business owner, within sixty (60) days of the granting of the initial certificate of occupancy, a change in the use, or of a change in the name of the business. A permit is required.

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2. A commercial banner:
 - a. Shall advertise only the name of, uses of, or goods or services available within the building or tenant lease space to which the sign is attached;
 - b. Shall be parallel to the face of the building;
 - c. Shall not be cantilevered away from the structure;
 - d. Shall not extend more than one (1) foot from any exterior building face, mansard, awning, or canopy;
 - e. Shall not obstruct any window, door, stairway, or other opening intended for ingress or for needed ventilation or light; and
 - f. Shall not be attached to any tree, fence, or public utility pole.

S. Hanging Signs.

1. Hanging signs shall be suspended from canopies or awnings and located in front of building entrances and perpendicular to the façade.
2. A maximum of one (1) hanging sign per building entrance is allowed.
3. The hanging sign shall not exceed four (4) square feet in size and shall have a minimum of eight (8) feet of clearance from the walkway grade, four (4) inches of clearance from the building face, and eight (8) inches of clearance from the edge of the canopy/awning.
4. Hanging signs located in or over the public right-of-way shall require a private improvement in public right-of-way permit in addition to the necessary building permit.

T. Home Occupation Sign.

1. A person having a legal home occupation may have one (1) sign on the building or porch of a residence.
2. The sign may contain only the name and occupation of the resident.
3. It shall be attached directly to the face of the building or porch.
4. It shall not exceed two (2) square feet in area, shall not be illuminated in any way, and shall not project more than twelve (12) inches beyond the building.
5. No display of merchandise or other forms of commercial communication shall be allowed within a residential area unless the same were in existence prior to the adoption of the UDO in connection with a use that is presently a lawful nonconforming use within the district.
6. Such a nonconforming sign may be maintained until the nonconforming use of the building ceases, subject to the requirements for maintenance herein. Discontinuance of the use of such a sign for more than three (3) months shall prevent future use, even if the nonconforming use is continuous.

U. Low Profile Signs.

In addition to meeting the other requirements of this Section, low profile signs are subject to the following:

1. A building plot with less than seventy-five (75) feet of street frontage shall be allowed to use one (1) low profile sign in lieu of a freestanding commercial sign;
2. Each building plot containing one (1) or more pad sites, shall be permitted one (1) low profile sign per pad site according to the restrictions of the Sign Standards Subsection above; and
3. In SC Suburban Commercial, WC Wellborn Commercial, BP Business Park, and BPI Business Park Industrial, one (1) low profile sign per structure is permitted.

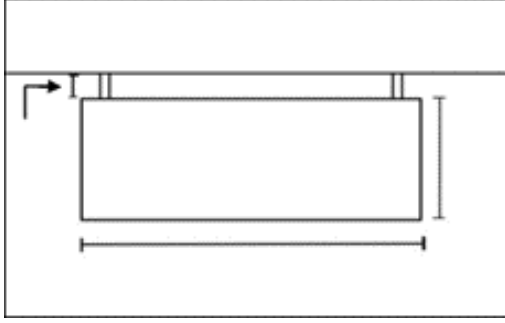
V. **Non-Commercial and Political Signs.**

This Section does not regulate the size, content, or location of non-commercial signs except as follows:

1. No commercial message shall be shown on any non-commercial sign.
2. No non-commercial sign:
 - a. May be greater than fifty (50) square feet in size;
 - b. May be located within the public road right-of-way;
 - c. May be located off the premises of the property owner who is displaying the sign; and
 - d. May not be located within any sight distance triangle as defined in the Visibility at Intersections in All Districts Subsection of the General Provisions Section above, or a location that would hinder intersection visibility as determined by the Administrator. This provision is necessary to avoid clutter, proliferation, and dangerous distraction to drivers caused by the close proximity of such signs to automobile traffic, to avoid damage to automobiles which may leave the paved surface intentionally or by accident, and to avoid the necessity for pedestrians to step into the roadway to bypass such signs. No regulatory alternative exists to accomplish this police power obligation.
3. In the event any non-commercial sign is located in a public right-of-way, the City shall remove it.
4. All non-commercial signs addressing a particular event are allowed up to ninety (90) days prior to the event and shall be removed within ten (10) days after.

W. **Projection Signs.**

Example Projection Sign



Projection signs will be allowed in the MU Mixed-Use district with the following restrictions:

1. One (1) projection sign per frontage along a public right-of-way will be allowed except where otherwise stated in this Section.
2. The total square footage of all projection signs used will be applied toward the total allowable area for the attached signage.

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3. The division and placement of allowable building signage amongst building tenants shall be the sole responsibility of the owner or property manager and not the City of College Station.
 4. Projection signs shall be mounted perpendicular to buildings.
 5. Internally lit plastic signs will not be permitted.
 6. Projection signs may utilize fabric or other flexible material provided that they remain in good condition at all times.
 7. Projection signs shall have a minimum of eight (8) feet of clearance from the walkway grade and four (4) inches of clearance from the building face. Excluding the four (4) inch minimum clearance requirement, no part of a projection sign shall project more than three (3) feet from the building face.
 8. Projection signs shall not extend above the façade of the building to which it is attached.
 9. Buildings with one (1) story may have a sign that shall not exceed eighteen (18) square feet in size. For each additional building story, an additional eight (8) square feet of signage is allowed, up to a maximum of fifty (50) square feet per sign.
 10. Projection signs located in or over the public right-of-way shall require a private improvement in public right-of-way permit in addition to the necessary building permit.

X. Real Estate/Finance/Construction Signs.

1. One (1) real estate sign not exceeding sixteen (16) square feet in total area (exclusive of stakes and posts) may be erected at any time while a property is offered for sale or lease to the public. Properties with a minimum of one hundred fifty (150) feet of frontage shall be allowed one (1) real estate sign not exceeding thirty-two (32) square feet in total area. Properties with a minimum of two (2) acres and frontage on two (2) streets shall be allowed one (1) real estate sign on each frontage street with the area of the sign to be determined by the amount of frontage as stated above.
2. One (1) finance sign and three (3) construction signs (for a total of four (4) signs), not exceeding sixteen (16) square feet in total area each (exclusive of stakes and posts) may be erected once a building permit has been issued on a property. Properties with a minimum of ten (10) acres and one thousand (1,000) feet of frontage shall be allowed one (1) finance sign and three (3) construction signs not exceeding thirty-two (32) square feet in total area each.
3. Real estate, finance, and construction signs may be either attached or freestanding and only those visible from the street are limited in number.
4. All such signs shall be maintained by the persons in control of the premises to remain erect and in good repair. Such signs shall be removed by the property owner or other person in control of the premises if they are damaged, broken, or incapable of remaining erect.
5. Such signs must be removed by the owner or person in control of the premises when either the property has sold or been leased and/or when performance under the construction contract or subcontract (in the case of construction signs) has been completed. In all cases, finance and construction signs shall be removed prior to the issuance of a certificate of occupancy.

Y. Roof Signs.

1. Signs mounted to the structural roof shall be regulated as freestanding commercial signs.
2. Painted or applied roof signs are prohibited.

Z. Signs for Conditional Uses.

1. Signs for conditional uses shall comply with the regulations for the zoning district in which the conditional use is permitted.

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2. Signs for conditional uses in residential or rural zoning districts shall comply with the Low Profile Signs Subsection above.

AA. Signs for Permitted Non-Residential Uses in Residential or Rural Districts.

1. Signs for permitted non-residential uses in residential or rural zoning districts shall comply with the Low Profile Signs Subsection above.
2. Signs for places of worship with frontage on a street classified as freeway/expressway on the Comprehensive Plan Functional Classification & Context Class Map are allowed one (1) freestanding sign in accordance with the Freestanding Commercial Signs Subsection above or one (1) low profile sign in accordance with the Low Profile Signs Subsection above. The freestanding sign must be adjacent to and oriented to the freeway/expressway.
3. Signs for places of worship and government facilities in residential or rural zoning districts may utilize signage in accordance with the Attached Signs and Commercial Banners Subsections above.

BB. Signs in the Extraterritorial Jurisdiction.

All off-premise and portable signs shall be prohibited within the extraterritorial jurisdiction.

CC. Special Event Signs.

1. Signs, including commercial banners and balloons, advertising or announcing a special event, as defined in Chapter 8, Businesses of the City of College Station Code of Ordinances, are permitted as a part of the special event permit and shall be limited to the property holding the event.
2. The special event signage is allowed up to fourteen (14) days prior to the event and must be removed within twenty-four (24) hours of the end of the event.

DD. Vehicle Signs.

1. Signs that are displayed on motor vehicles that are being operated or stored in the normal course of a business, such as signs indicating the name or the type of business, excluding all banners, that are located on moving vans, delivery trucks, trailers or other commercial vehicles are permitted; but only if the primary purpose of such vehicles is not for the display of the signs thereon, and only if such vehicles are parked or stored in areas appropriate to their use as commercial or delivery vehicles, such as service areas or locations close to the business building away from public traffic areas.
2. Signs or advertisements permanently attached to non-commercial vehicles, excluding all banners, are permitted.

EE. Abandoned, Damaged, or Unsafe Signs.

1. The provisions of this Section shall apply when in conflict with the provisions of the International Building Code, as adopted, but where the provisions of both ordinances are consistent, the enforcement of either shall be permissible and remedies or penalties cumulative.
2. Nonconforming signs that have become deteriorated or damaged to an extent that the cost of the reconstruction or restoration of such signs is over fifty (50) percent of its replacement value exclusive of foundations will be required to be removed or brought into full compliance with the current sign regulations.
3. All abandoned signs and their supports shall be removed within sixty (60) days from the date of abandonment. All damaged signs shall be repaired or removed within sixty (60) days. The Administrator shall have the authority to grant a thirty (30) day extension where they determine there is a reasonable necessity for same.

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4. Discontinuance of use or removal of any nonconforming sign or any sign in connection with a nonconforming use shall create a presumption of intent to abandon said sign. A nonconforming sign that is damaged and not repaired within sixty (60) days shall be presumed to be abandoned.
 5. When a building is demolished, the associated signs and sign structures shall also be removed.

(Ord. No. 2023-4453, Pt. 1(Exh. A), 8-10-2023)

APPENDIX TAB B

Sec. 11.2. Defined Terms.

Accessory Use, Structure, or Building: A residential or non-residential use, structure, or building which:

- (1) is subordinate to and serves a primary use or principal structure;
- (2) is subordinate in area, extent, or purpose to the primary use served;
- (3) contributes to the comfort, convenience, or necessity of occupants of the primary use served;
- (4) is located within the same zoning district as the primary use; and
- (5) is not used for commercial purposes other than legitimate home occupations in residential districts.

Examples of accessory buildings, structures, or uses include but are not limited to private garages, greenhouses, living quarters, tool sheds, radio or television antennae, or bathhouses.

Access Way: An access way consists of a minimum fifteen (15) foot wide public access easement or public right-of-way. A minimum five (5) foot sidewalk shall be constructed in the center of the access way, except where the access way provides a connection to a multi-use path, a minimum eight (8) foot sidewalk shall be provided.

Administrator: The Director of Planning and Development Services of the City of College Station, or their designee.

Adult Arcade: Any business enterprise that offers or maintains one (1) or more adult video viewing booths.

Adult Cabaret: Any business enterprise which regularly features or offers to the public, customers, or members, performances by persons who appear nude or semi-nude, or live performances that are characterized by their emphasis on the exposure, depiction, or description of specified anatomical areas, or the conduct or simulation of specified sexual activities.

Adult Motel: A hotel, motel, or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration. Adult motels provide patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas;" or
- (2) Offers a sleeping room for rent for a time period that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent room for a time period that is less than ten (10) hours.

Adult Movie Theater: Any business enterprise which regularly features or offers to the public the presentation of motion picture films, movies, or sound recordings which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities and which are presented to a common audience of more than five (5) persons in an enclosed common area or are presented in a common area of more than one hundred fifty (150) square feet.

Adult Retail Store: A business enterprise that meets any of the following tests:

- (1) Offers for sale or rental items from any two (2) of the following categories:
 - (a) Sexually oriented materials;
 - (b) Lingerie; or
 - (c) Leather goods that are marketed or presented in a context to suggest their use in connection with specified sexual activities;
- (2) Offers for sale sexually oriented toys and novelties, except a business enterprise which devotes less than ten (10) percent of its stock in trade and sales and display area to sexually oriented materials, with

all sexually oriented toys and novelties separated from other sales and display areas by an opaque wall at least eight (8) feet in height with a management-controlled system of access to ensure that only persons over the age of eighteen (18) years are allowed to enter the area;

- (3) Devotes more than ten (10) percent of its stock in trade or sales and display area to sexually oriented materials without having all sexually oriented materials separated from other sales and display areas by an opaque wall at least eight (8) feet in height with a management-controlled system of access to ensure that only persons over the age of eighteen (18) years are allowed to enter the area;
- (4) Devotes more than forty (40) percent of its stock in trade or sales and display area to sexually oriented materials; or
- (5) Advertises or holds itself out in signage visible from the public right-of-way as "X...", "adult," "sex," or otherwise as a sexually oriented business.

Adult Retail Store, Limited: Any business enterprise which offers for sale or rental sexually oriented materials, and which devotes at least ten (10) percent and not more than forty (40) percent of its stock in trade or sales and display area to sexually oriented materials, provided that:

- (1) The following items are not also offered for sale:
 - (a) Lingerie; or
 - (b) Leather goods that are marketed or presented in a context to suggest their use in connection with specified sexual activities;
- (2) All sexually oriented materials are separated from other sales and display areas by an opaque wall at least eight (8) feet in height with a management-controlled system of access to ensure that only persons over the age of eighteen (18) years are allowed to enter the area; and
- (3) The business enterprise does not advertise or hold itself out in signage visible from the public right-of-way as "X..." "adult," "sex" or otherwise as a sexually oriented business.

Adult Theater: A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Adult Video Viewing Booth: Coin or slug-operated, or electronically or mechanically controlled, still or motion-picture machines, projectors, or other image-producing devices which present to five (5) or fewer persons per machine at any time visual or audio material of any kind which is characterized by its emphasis on the description or depiction of specified anatomical areas or specified sexual activities. No part of this definition shall be construed to permit more than one (1) person to occupy an adult video viewing booth at any time.

Alley: A minor public way that provides a secondary means of vehicular access to the abutting property otherwise served from a public street.

Alternative Mounting Structure: Any building or structure, other than a tower, which can be used for the location of telecommunication antennas and facilities. Antennas located on these structures may include attached wireless transmission facilities or stealth antennae.

Animal Care Facilities: A place where animals are boarded and/or bred including but not limited to stables and kennels.

Antenna: Any system of poles, panels, rods, reflecting discs, or similar devices used for the transmission or reception of radio frequency signals.

Antenna, Directional ("Panel" Antenna): An antenna that transmits and receives radio frequency signals in a specific directional pattern of less than three hundred sixty (360) degrees.

Antenna, Omni-Directional ("Whip" Antenna): An antenna that transmits and receives radio frequency signals in a three hundred sixty (360) degree radial pattern.

Antenna, Parabolic ("Dish" Antenna): A bowl-shaped device for the reception and/or transmission of radio frequency signals in a specific directional pattern.

Appeal: A request for a review of the Administrator, or other administrative official's interpretation, of any provisions of this UDO or a request for a variance.

Architectural Element: An element, design, or motif, that is installed, attached, painted, or applied to the exterior of a building or structure for the purpose of ornamentation or artistic expression, and not relating to a specific sign, logo, or identity of any specific business tenant.

Area of Special Flood Hazard: The land adjacent to a clearly defined channel 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 Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Map. After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE, or V.

Art Studio or Gallery: A structure where objects of art are created or displayed for public enrichment or where said objects of art are displayed for sale including but not limited to the teaching of photography, painting, sculpturing, and other similar skills as the primary use of the structure.

Assisted Living/Residential Care Facility: A building used or designed for the housing of the aged, and/or mentally or physically handicapped persons who need assistance with activities of daily living and/or health care and/or personal care in a homelike setting and duly licensed by the State for such purpose.

Attached Wireless Telecommunication Facility: A wireless telecommunication facility that is affixed on an existing structure that is not primarily used for the support or attachment of a wireless telecommunication facility and is not a normal component of such a facility.

Banner/Flag: A piece of fabric used for decoration (contains no copy or logo) or for identification (contains copy and/or logo).

Banner, Commercial: A sign made of cloth, canvas, or other flexible material which directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing.

Base Flood: The flood having a one (1) percent chance of being equaled or exceeded in any given year, often referred to as the one hundred (100) year flood.

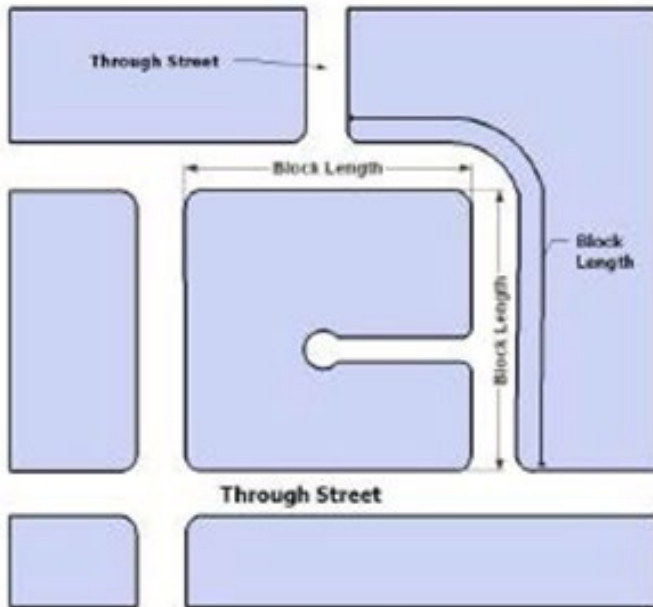
Bed and Breakfast: A residential structure where two (2) or fewer rooms are rented to transient paying guests on an overnight basis with no more than one (1) meal served daily, where no cooking facilities are provided in the rooms and the total number of permanent and transient occupants does not exceed four (4) at any time.

Best Management Practices (BMP): Schedules of activities, practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the municipal stormwater drainage system and waters of the United States. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Block: A tract or parcel designated as such on a duly recorded plat. Blocks are surrounded by streets or a combination of streets and other physical obstructions such as a railroad or one hundred (100) year floodplain.

Block Length: A measurement of the linear distance of land along a blockface that is bounded on both ends by public through streets or by a combination of a public through street, public way, railroad, or one hundred (100) year floodplain. As such, gated streets, private streets, culs-de-sac, alleys, private driveways, or access ways do not divide land into separate blocks.

Example of Different Block Lengths



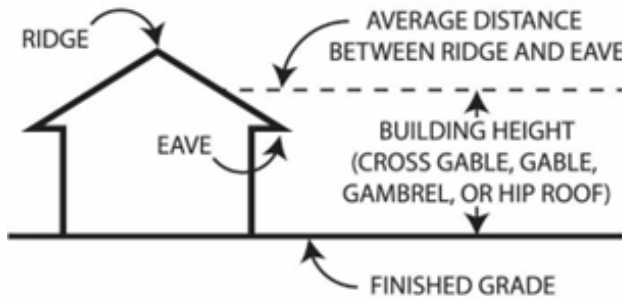
Blockface: That portion of a block or tract of land facing the same side of a single street and lying between the closest intersection streets.

Body Rub Parlor: Any business enterprise where body rub services are provided to induce relaxation or for other purposes.

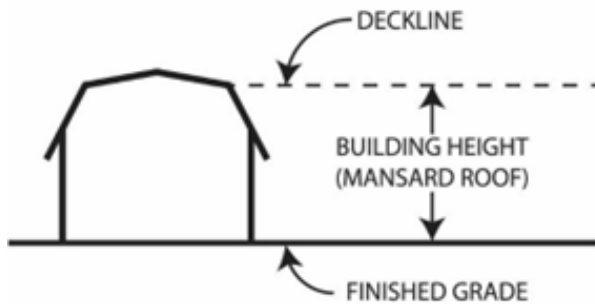
Building: Any structure having a roof supported by columns or walls and built for the support, shelter, or enclosure of persons, chattel, or movable property of any kind and which is affixed to the land.

Building Height: The vertical distance measured from the finished grade and the height of the roof as described below. For buildings with multiple roof levels, the highest of the various roof levels must be used to determine the building height. The average height of multiple roof levels is not to be used to determine building height. Unless indicated in the figures below, the building height shall be the highest point of equipment located on top of a structure such as satellite dishes, heating, and air conditioning units. See below for a list of figures showing how to calculate the building height for different roofs.

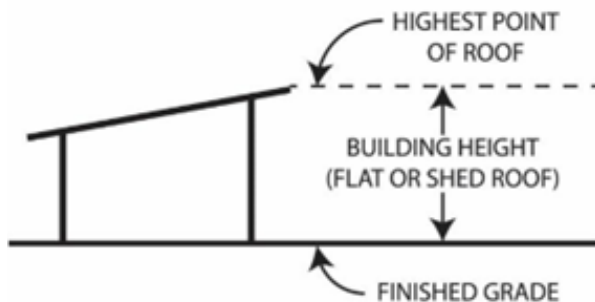
Building Height for a Cross Gable, Gable, Gambrel, or Hip Roof



Building Height for a Mansard Roof



Building Height for a Flat or Shed Roof



Building Official: The person designated by the Administrator as Building Official of the City of College Station, or their designee.

Building Plot: All of the land within a project, whether one (1) or more lots, developed according to a common plan or design for similar or compatible uses that may have shared access or parking and that singularly or in phases is treated as such for site plan purposes. The determination of the boundaries of a building plot shall be made as the first step in the site plan or project review unless such determination has previously been made at the time of plat approval. For development not subject to site plan review, the building plot or premises shall be the

exterior boundary of any included lots in the event the structure sits astride two (2) or more lots. In the event two (2) or more lots are under single ownership and the structure does not meet the required side yard setback, both lots shall be considered the building plot or premises. Demolished sites located in larger parking lots that may not have previously been considered part of a larger building plot will be considered part of the plot if access is shared with the site.

Bulb-Out: Extension of the curb line to physically narrow a street. Allows for delineation of on-street parking and reduces the distance of pedestrian crossing.

Caliper: The width of the trunk of a tree measured at twelve (12) inches above grade.

Carpport: A structure that has enclosing walls for less than fifty (50) percent of its perimeter covered with a roof and constructed specifically for the storage of one (1) or more motor vehicles.

Car Wash: A place containing facilities for washing automobiles which may include the automatic or semiautomatic application of cleaner, brushes, rinse water, and heat for drying.

Certificate of Compliance: A letter signed by the Development Engineer indicating compliance with all plans and specifications applicable to the subject project and completion of all stormwater management and soil erosion protection measures.

City: The City of College Station, Texas, which is enabled the Texas Constitution and the Texas Local Government Code, as amended, to adopt land development regulations and processes.

City Attorney: The person employed as City Attorney of the City of College Station, or their designee.

City Council: The duly and constitutionally elected governing body of the City of College Station.

City Engineer: The person employed as City Engineer of the City of College Station, or their designee.

City Manager: The person employed as City Manager of the City of College Station, or their designee.

Classification Amendment: An amending zoning ordinance that pertains to the rezoning of a particular parcel or parcels of land, as distinguished from a change in the provisions of the ordinance relevant and pertaining to the entire city.

Clinic: A facility operated by one (1) or more physicians, dentists, chiropractors, or other licensed practitioners of the healing arts for the examination and treatment of persons solely on an outpatient basis.

Cluster Development: A residential subdivision in which the lots are allowed to be smaller (in area and width) than otherwise required for the underlying, base zoning district, but in which the overall density of all the lots collectively does not exceed the maximum density limit for the underlying zoning district.

Cold Storage Plant: A commercial establishment where foods or other commodities are stored either in lockers, rented or leased, or in vaults in bulk for distribution to the home or other commercial businesses. No slaughtering of animals or fowl is allowed on the premises.

Collocation: When more than one (1) wireless telecommunications provider shares a wireless telecommunications support structure.

Commercial Garden: The retail or wholesale handling of any article, substance, or commodity related to the planting, maintenance, or harvesting of garden plants, shrubs, trees, packaged fertilizers, soils, chemicals, or other nursery goods and related products.

Commercial Greenhouse: A structure or location where plants, vegetables, flowers, and similar materials are grown for sale.

Commercial Amusements: Any enterprise whose main purpose is to provide the general public with an amusing or entertaining activity where tickets are sold, or fees are collected, at the gates of the activity. Commercial amusements include zoos, carnivals, expositions, miniature golf courses, arcades, fairs, exhibitions, athletic

contests, rodeos, tent shows, Ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, traveling shows, bowling alleys, indoor shooting ranges, and similar enterprises. Sexually oriented businesses and nightclubs, bars, and taverns are excluded from this definition.

Common Open Space: A parcel or parcels of land, area of water, or a combination of land and water within a development site provided and made legally available for the use and enjoyment of residents of a proposed project.

Comprehensive Plan: The City of College Station's Comprehensive Plan, including any associated plans or studies adopted by the City Council.

Concept Plan: A written and graphic plan submitted for consideration of a P-MUD Planned Mixed-Use District or a PDD Planned Development District that indicates the proposed land uses and their overall impact on the subject land and surrounding lands in a conceptual form.

Conditional Use: A use which may be permitted or denied in a district, on a case-by-case basis, subject to meeting certain conditions or procedures set forth in, or imposed under, this UDO.

Condominium: A dwelling unit available for sale contained within a multi-family development subject to covenants, conditions, or restrictions placing control over the common facilities owned by the condominium. This definition includes condominiums, cooperatives, trusts, partnerships, or other similar associations.

Construction Plans: The construction documents required to accompany the final plat or the building and site plans required for the issuance of a development permit and/or building permit.

Construction Site Notice: A written submission to the Municipal Separate Storm Sewer System (MS4) operator from an applicant stating that a small construction activity will be commencing and will operate under the provisions of the Texas Commission on Environmental Quality (TCEQ) General Permit TXR150000.

Country Club: Land area and buildings containing golf courses or other recreational facilities, a clubhouse, and customary accessory uses open to members and their guests.

Courtyard House: One of a group of small detached single-family dwelling units arranged around a shared open courtyard accessible to the units. Each courtyard house shall be individually platted and oriented so that the front entrances are accessed from the shared courtyard. The courtyard shall be jointly owned and managed by an owners association and preserved as a common open space. Vehicular access and garages shall be accessed via an alley or private drive.

Cul-de-Sac: A street having one (1) outlet to another street and terminating on the other end in a vehicular turnaround.

Cupola: A small dome and the shaft that supports it on top of a building.

Day Care - Commercial: Any facility or premises where a total of seven (7) or more children under sixteen (16) years of age, and/or elderly adults, regularly attend for purposes of custody, care, or instruction. Said children or elderly adults are not members of the family of any person operating the facility or premises.

Day Care - In-Home: Any private residence where a total of six (6) or fewer persons regularly attend for purposes of custody, care, or instruction. Said persons are not members of the family living in the residence. Nothing in this definition shall conflict with the provisions of Chapter 123 of the Texas Human Resources Code, as amended.

Density: The number of dwelling units per gross acre.

Detention: The temporary storage and controlled release of stormwater flows.

Development: Any manmade change to improved or unimproved real estate that requires a permit or approval from any agency of the City or county including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, clearing, drilling operations, storage of materials, or the subdivision of property. Routine repair and maintenance activities are exempted.

Development Engineer: The person designated by the City Engineer as Development Engineer of the City of College Station.

Dormer: Projecting framed structure set vertically on the rafters of a pitched roof, with its own roof (pitched or flat), sides, and a window set vertically in the front.

Dormitory: A residential structure designed for the exclusive purpose of housing students of a university, college, school, church, or non-profit organization, excepting resident staff, but which does not include complete, independent living facilities, including cooking, in each dwelling unit. Common kitchen facilities and/or gathering rooms for social purposes may also be provided.

Drainage Area: The area, measured in a horizontal plane, which contributes stormwater flows by gravity flow along natural or man-made pathways to a single designated point along a pathway.

Drainage Facility: Any element necessary to convey stormwater flows from its initial contact with the earth to its disposition in an existing watercourse. Drainage facilities include but are not limited to both public and private storm sewers (closed conduits), streets, improved channels constructed in accordance with the adopted Bryan/College Station Unified Design Guidelines, Technical Specifications and Standard Details, unimproved drainage ways left in their natural condition, areas covered by drainage easements for the purpose of providing concentrated or overland sheet flow, and all appurtenances to the foregoing, including inlets, manholes, junction boxes, headwalls, energy dissipaters, and culverts.

Drainage System, Primary: The system of natural, improved, or channelized watercourses including all closed conduits, culverts, bridges, detention facilities, and retention facilities associated with the watercourses. All components of the primary drainage system are shown or indicated in the Bryan/College Station Unified Design Guidelines, Technical Specifications, and Standard Details.

Drainage System, Secondary: The system of conveyance of rainfall from the point that it becomes concentrated flow to the point where it reaches the primary drainage system. This system includes all swales, ditches, minor channels, streets, gutters, inlets, culverts, detention or retention facilities, or other means of conveyance of stormwater flows.

Drip Molding: A horizontal molding placed over an exterior door or window frame to divert rainwater.

Drive-In/Thru: A building opening, including windows, doors, or mechanical devices, designed and intended to be used to provide for sales to and/or service to patrons who remain in their vehicles.

Duplex: A structure providing two (2) dwelling units on a single lot or building plot.

Dwelling Unit: A residential unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, cooking, eating, and sanitation.

Earth Change: A man-made change in the natural cover or topography of land, including cutting or filling activities, which may result in or contribute to soil erosion or sedimentation.

Easement: A grant of reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

Easement, Drainage: An interest in land granted to others for maintenance of a drainage facility on which certain uses are prohibited. Drainage easements provide for the entry and operation of machinery and vehicles for maintenance.

Easement, Historic Preservation: An easement that protects a significant historic, archaeological, or cultural resource. It provides assurance that a property's intrinsic values will be preserved through future ownership. A building, a portion of a building (such as the façade), or a bridge, dam, or any other kind of structure may qualify. A historic preservation easement may also protect a historic landscape, battlefield, traditional cultural place, or archaeological site.

Easement, Maintenance: A private easement that is dedicated by plat specifically for zero lot line construction in a single-family residential development. Maintenance easements shall be a minimum of seven and one-half (7.5) feet in width.

Easement, Utility: An interest in land granted to the City, the public generally, and/or a private utility company for the installation or maintenance of utilities across, over, or under private land, together with the right to enter thereon with machines and vehicles as necessary for the maintenance of such utilities.

Educational Facility, Instruction Indoor: Any facility or premises regularly attended by one (1) or more persons for the purpose of instruction. All instruction and activity must be fully contained within the building. Such types of instruction include classes in acting, art, dance, music, photography, and martial arts.

Educational Facility, Instruction Outdoor: Any facility or premises regularly attended by one (1) or more persons for the purpose of instruction. Activities are allowed outside of a building.

Educational Facility, Primary and Secondary: Any public or private school licensed by the State which is designed, constructed, or used for the education or instruction of students below the age of twenty (20). Auxiliary uses to these schools are included herein.

Educational Facility, Tutoring: Any facility or premises regularly attended by one (1) or more persons for the purpose of instruction. All instruction and activity must be fully contained within a building.

Educational Facility, Vocational/Trade: Any public or private secondary or higher education facility primarily teaching usable skills that prepare students for jobs in a vocation or trade and meeting the state requirements as a vocational facility. All instruction and activity must be fully contained within the building.

Educational Facility, College/University: A college or university authorized by the State to award degrees.

Elevation: The vertical distance from a datum, usually the National Geodetic Vertical Datum (NGVD), to a point or object. If the elevation of point A is eight hundred two and forty-six hundredths (802.46) feet, the point is eight hundred two and forty-six hundredths (802.46) feet, above some datum.

Encroachment: An intrusion, obstruction, or other infringement on an area reserved for a specific purpose such as an easement or floodway.

Engineer: A person duly authorized and licensed under the provisions of the Texas Engineering Registration Act to practice the profession of engineering.

Enhanced Paving: Earth-toned (not gray) decorative pavers, stamped concrete, or dyed concrete.

Entry Portico: Covered porch consisting of a series of columns placed at regular intervals supporting a roof, normally attached as a colonnade.

Erosion: The process whereby the surface of the earth is broken up and carried away by the action of wind, water, gravity, ice, or a combination thereof.

Escort: A person who, for consideration as part of a business enterprise, agrees, offers to, or models lingerie, performs a striptease, or performs nude or semi-nude for another person at a location other than a sexually oriented business.

Escort Agency: A person or business enterprise that furnishes, offers to furnish, or advertises to furnish, for consideration, escorts who perform any escort services in the city. An escort agency that advertises or holds itself out in signage visible from the public right-of-way as "X...", "adult", or "sex" shall be considered an adult retail store.

Excavation: Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced, or relocated purposely by man and shall be taken to include the conditions resulting therefrom.

Existing Construction: Structures for which the start of construction commenced prior to the effective date of the Flood Insurance Rate Map (FIRM). Existing construction may also be referred to as existing structures.

Existing Development: Any development which existed or was permitted prior to the date on which this UDO became effective.

Existing Tree: Any self-supporting woody plant, with one (1) or more well-defined trunks, two (2) inch caliper or greater.

Extended Care Facility, Convalescent Home, or Nursing Home: A building, or portion thereof, used or designed for the housing of the aged, and/or mentally or physically handicapped persons who are under daily medical, psychological, or therapeutic care. This definition shall not include rooms in any residential dwelling, hotel, or apartment hotel not ordinarily intended to be occupied by said persons.

Extraterritorial Jurisdiction: Within the terms of the Texas Municipal Annexation Act, the unincorporated area, not a part of any other city, which is contiguous to the city limits, the outer boundaries of which are measured from the extremities of the city limits, outward for such distances as may be stipulated in the Texas Municipal Annexation Act, in which area, within the terms of the act, the City may enjoy the violation of its subdivision control provisions.

Façade: The exterior face of a building.

Façade, Primary: The primary entrance façade of a principal building (not accessory buildings) or any façade of a principal building that faces a public right-of-way, private right-of-way, or public way.

Façade Work: The removal, replacement, substitution, or change of any material or architectural element on the exterior face of a building, which includes, but is not limited to, painting, material change, awning or canopy replacement, signage, or other permanent visible façade treatment.

Family: A family is any number of persons occupying a single dwelling unit, provided that no such family shall contain more than four (4) persons unless all members are related by blood, adoption, guardianship, or marriage, are an authorized caretaker, or are part of a group home for disabled persons. When counting the number of unrelated persons in a single dwelling unit, a maximum of one (1) group of persons related by blood, adoption, guardianship, marriage, an authorized caretaker, or members of a group home for disabled persons shall be permitted, provided that all other persons shall each count as one (1) unrelated person. Guardianship shall include foster children, exchange students, or those in the process of securing legal custody of a person under the age of eighteen (18). Any asserted common law marriage must be subject to an affidavit of record under the Texas Family Code, as amended, or a judicial determination. The term family shall not be construed to mean a club, a lodge, or a fraternity/sorority house.

Federal Emergency Management Agency (FEMA): An agency of the Department of Homeland Security which administers the National Flood Insurance Program (NFIP).

Feeder Line: Any line, wire, or cable and appurtenances which distributes, transmits, or delivers a utility service from a source to a general area or multiple developments, and not to a specific end user.

Field Size: That portion of a driving range property measured from the tee boxes to the end of the driving range area of the site.

Filed: The point at which an application has been determined to be complete and all required fees have been paid.

Flood or Flooding: A temporary rise in the level of water that results in inundation of areas not ordinarily covered by water from:

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

Flood Hazard Boundary Map: An official map of a community, issued by the Federal Emergency Management Agency (FEMA), where the areas within the boundaries of special flood hazards have been designated.

Flood Insurance Rate Map (FIRM): An official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): The official report provided by the Federal Emergency Management Agency (FEMA). The report contains flood profiles, the water surface elevation of the base flood, as well as the Flood Hazard Boundary Map.

Floodplain or Flood-Prone Area: Any land susceptible to being inundated by water from any source.

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

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation by more than one (1) foot.

Floodway, Zero-Rise: The channel of a stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without any measurable increase in flood height. A measurable increase in base flood height means a calculated upward rise in the base flood elevation, equal to or greater than one-hundredths (.01) feet, resulting from a comparison of existing conditions and changed conditions directly attributable to development in the floodplain. This definition is broader than that of the Federal Emergency Management Agency (FEMA) floodway but always includes the Federal Emergency Management Agency (FEMA) floodway. The boundaries of the one hundred (100) year floodplain are considered the boundaries of the zero-rise floodway unless otherwise delineated by a sensitive area special study.

Floodway Fringe: That part of the base floodplain outside the floodway.

Floor Area Ratio: A non-residential land use intensity measure analogous to density. It is the sum of the areas of several floors of a building compared to the total area of the site.

Fraternity or Sorority: An organization of university students formed chiefly to promote friendship and welfare among the members.

Fraternal Lodge: A structure where a group of people meets who are organized for a common interest, usually cultural, religious, or entertainment with regular meetings, rituals, and formal written membership.

Garage, Commercial: Any premises or structure with an enclosed work area for servicing and repair of four (4) or more standard-size automobiles or light (standard size) trucks, or for one (1) or more vehicles of larger size, or where any number of vehicles are kept for remuneration, hire or sale, and where motor vehicle fuels and supplies may be sold as a secondary use.

Gated Community: A residential area requiring mandatory membership in an owners association and having its primary means of access controlled by an electric or manual gate administered by the owners association.

Government Facilities: A building or structure owned, operated, or occupied by a governmental agency to provide a governmental service to the public.

Grading: Any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled, or any combination thereof.

Greenway: A linear open space that follows natural features like the floodplains of creeks and rivers or human-made features such as utility, road, or rail corridors.

Greenway - Rural: The least developed greenway, typically located on the periphery of the developed community. This greenway exists mostly in a natural state with the primary functions being flood control, wildlife protection, and aesthetic value. This greenway is defined by the entire width of the floodplain.

Greenway - Suburban: These are the greenways located in the developing portions of the community. The primary functions served by this greenway are flood control, recreation, transportation, and economic and aesthetic purposes.

Greenway - Urban: The most highly developed greenway located in fully developed areas of the community. The primary functions served by this greenway are flood control, recreation, transportation, and economic and aesthetic purposes.

Greenways Program Manager: The Greenways Program Manager of the City of College Station as designated by the Administrator.

Groundcover: A spreading plant including sods and grasses less than eighteen (18) inches in height.

Group Home: A home serving six (6) or fewer mentally or physically handicapped persons provided the home provides care on a twenty-four (24) hour basis and is approved or licensed by the State for that purpose. A group home shall be considered a single-family home and is defined pursuant to Chapter 123 of the Texas Human Resources Code, as amended.

Health Care Facility: A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of disease, pain, injury, or deformity of physical conditions. This definition does not include a medical clinic or hospital as defined herein.

Health Club/Sports Facility: A building designed and equipped for the conduct of sports, exercise, or other customary and usual recreational activities, operated for profit or not-for-profit which is open only to members and guests of the club or facility.

Historic Association: Link of a property that contributes to an HP Historic Preservation Overlay with a historic event, activity, or person. Also, the quality of integrity through which a property is linked to a particular past time and place.

Historic Contributing Resource: A building, site, structure, or object in an HP Historic Preservation Overlay that supports the Overlay's historical significance through historic location, design, setting, materials, workmanship, feeling, or association.

Historic Design: Quality of integrity applying to the elements that create the physical form, plan, space, structure, and style of a property in an HP Historic Preservation Overlay.

Historic Feeling: Quality of integrity through which a property that contributes to an HP Historic Preservation Overlay evokes the aesthetic or historic sense of past time and place.

Historic Integrity: Authenticity of the historic identity of a property that contributes to an HP Historic Preservation Overlay, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Historic Location: Quality of integrity retained by a property that contributes to an HP Historic Preservation Overlay historic property existing in the same place as it did during the period of significance.

Historic Materials: Quality of integrity applying to the physical elements that were combined or deposited in a particular pattern or configuration to form a property that contributes to an HP Historic Preservation Overlay.

Historic Non-Contributing Resource: A building, site, structure, or object in an HP Historic Preservation Overlay that does not support the Overlay's historical significance through historic, location, design, setting, materials, workmanship, feeling, or association.

Historic Setting: Quality of integrity applying to the physical environment of a property that contributes to an HP Historic Preservation Overlay.

Historic Workmanship: Quality of integrity applying to the physical evidence of the crafts of a particular culture, people, or artisan on a property that contributes to an HP Historic Preservation Overlay.

Home Occupation: An occupation, profession, activity, or use that is clearly a customary, incidental, and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

Home Tour Event: Real estate events such as open houses, as well as the touring of occupied residences for the entertainment of a targeted audience.

Hospital: A building, or portion thereof, used or designed for the medical or surgical treatment of the sick, mentally ill, or injured persons, primarily on an inpatient basis, and including as an integral part, related facilities such as laboratories, outpatient facilities, or training facilities. This definition shall not include rooms in any residential dwelling, hotel, or apartment hotel not ordinarily intended to be occupied by said persons.

Hotel/Motel/Extended Stay Facility: A building, or group of buildings, used or intended to be used as living quarters for transient guests, but not excluding permanent guests, and may include a café, drugstore, clothes pressing shop, barber shop, or other service facilities for the guests for compensation. A transient guest is any visitor or person who owns, rents, or uses a lodging or dwelling unit, or a portion thereof, for less than thirty (30) days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by the visitor.

Impervious Cover: The percentage of a lot's area that is covered, or proposed to be covered, by impervious surfaces.

Impervious Surface: Any portion of a site occupied by materials or construction that limits the absorption of water by covering the natural land surface including, but not limited to, buildings, sidewalks, drives, all-weather surfaces, parking, rooftops, patios, decking, masonry, stone, and other alternative pavements. Alternative materials used for landscaping purposes in non-load bearing areas and the water surface area within the walls of pools are not considered impervious surfaces. An area of gapped decking shall be calculated as fifty (50) percent of the proposed decked area for the purpose of impervious cover.

Industrial, Light: A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

Industrial, Heavy: A use engaged in the basic processing and manufacturing of materials or products or parts, predominantly from extracted raw materials, or a use engaged in the storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

Industrial, Municipal: A municipal use or structure that serves a public need and is primarily engaged in the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, electricity, information, and telecommunication, including structures associated with private utilities, research and laboratory activities, warehousing and distribution, bulk storage facilities operation, storage and maintenance of service vehicles, cleaning of equipment, solid waste management, municipal recycling, public works yards, container storage, or similar activity. Ordinarily, these areas have low parking turnover and few pedestrians, but a large amount of truck traffic.

Irrigation System: A permanent, artificial watering system designed to transport and distribute water to plants.

Land Use: A use of land that may result in an earth change, including, but not limited to, subdivision, residential, commercial, industrial, recreational, or other development, private and public highway, road and street construction, drainage construction, logging operations, agricultural practices, oil and gas exploration, exploitation, extraction, and mining.

Lateral Line: Any line, wire, or cable and appurtenances used to distribute, transmit, or deliver service from a feeder line to two (2) or more sites or end users of the utility service within a specific development.

Levee: A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to protect from temporary flooding.

Levee System: A flood protection system that 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 practice.

Live-Work Unit: A mixed-use structure with a ground-level workspace or commercial space and one upper-level dwelling unit occupied by the proprietor.

Lot: The physical and undivided tract or parcel of land as shown on a duly recorded plat.

Lot, Corner: A lot located at the intersection of and abutting upon two (2) or more streets.

Lot, Double Frontage or Through: A lot, other than a corner lot, which has frontage on more than one (1) street.

Lot, Flag: A lot that does not meet the minimum lot width requirements where access is derived from a narrow, private driveway.

Lot, Interior: A lot other than a corner lot.

Lot Area: The horizontal land area within lot lines, excluding any wetlands and/or drainage easements.

Lot Coverage: A measure of the intensity of land use that represents the portion of a site that is impervious. This portion includes but is not limited to all areas covered by buildings, parked structures, gravel or paved driveways, roads, and sidewalks.

Lot Line Construction: A development where houses on a common street frontage are shifted to one (1) side of their lot to maximize the side yard area on the opposite side of the lot. Planning for all house locations is done at the same time to ensure proper building separations.

Lot of Record: A part of a recorded subdivision or a parcel of land that exists as shown or described on a plat or deed in the records of the local registry of deeds.

Lot Width: The width of the lot measured between side lot lines along a line that is parallel to the front lot line or its chord located at the front setback line.

Lowest Floor: The lowest floor of the lowest enclosed area (including a basement). An unfinished or flood-resistant enclosure, usable 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 to render the structure in violation of the applicable non-elevation design requirements of this UDO.

Major Recreational Equipment: For the purpose of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No such equipment shall be used for living, sleeping, home occupation, or household purposes when parked or stored on a residential lot or in any location not approved for such use.

Manufactured Home: A structure constructed after June 15, 1976, in accordance with the rules of the United States Department of Housing and Urban Development, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 Code of Federal Regulations, Section 3282.8(g).

Manufactured Home Lot: A parcel of land in a manufactured home park for the placement of a single HUD-code manufactured home and the exclusive use of its occupants.

Manufactured Home Park: A parcel of land under single ownership that has been planned and improved for the placement of HUD-code manufactured homes for non-transient use.

Massage Establishment: A business enterprise offering massage conducted by persons engaged in the practice of medicine, nursing, osteopathy, physiotherapy, chiropractic, podiatry, or massage therapy for which they are licensed by the State, or persons under the direct supervision and control of such licensed persons.

Mean Sea Level: The National Geodetic Vertical Datum (NGVD) of 1929 or another datum to which the base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Micro-Industrial: A use engaged in basic processing and/or manufacturing of materials or products or parts on a limited scale, predominantly from extracted raw materials, entirely contained within a building and not deemed to be a public nuisance, as determined by the Administrator.

Mixed-Use Structure: A structure containing both residential and non-residential uses.

Mobile Food Vendor: Any business operating more than twenty-one (21) days per calendar year that sells edible goods from a non-stationary location within the City of College Station. The term shall include, but shall not be limited to, mobile food trucks, carts, or trailers.

Mobile Home: A structure that was constructed prior to June 15, 1976, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems.

Motor Vehicle: A self-propelled device that can be used to transport or draw persons or property not exclusively on stationary rails or tracks.

Multiplex, Medium: A residential structure that consists of five (5) to twelve (12) dwelling units, either side by side or stacked. Primary entry to the structure is allowed only through a shared primary entrance. The land underneath is a single platted lot or building plot. Condominiums are included in this definition.

Multiplex, Small: A residential structure that consists of three (3) to four (4) dwelling units, either side by side or stacked. Primary entry to the structure is allowed only through a shared primary entrance. The land underneath is a single platted lot or building plot. Condominiums are included in this definition.

Multi-Family: A structure providing three (3) or more dwelling units on a single lot or building plot. Condominiums are included in this definition.

National Flood Insurance Program (NFIP): A federal program enabling property owners to purchase flood insurance. This program is based on an agreement between local communities and the federal government that if a community will implement programs to reduce future flood damages, the federal government will make flood insurance available within the community as a financial protection against flood losses. The United States Congress established the NFIP with the National Flood Insurance Act of 1968 and later modified and broadened the program. The NFIP is administered by the Federal Emergency Management Agency (FEMA).

National Geodetic Vertical Datum (NGVD): The nationwide reference surface for elevations throughout the United States made available to local surveyors by the National Geodetic Survey with the establishment of thousands of benchmarks throughout the continent. It was obtained through a least-squares adjustment in 1929 of all first order leveling in the United States and Canada. The adjustment included the twenty-six (26) tide stations and thus referenced the NGVD to mean sea level.

Natural: The cover and topography of land prior to any manmade changes, or in areas where there have already been manmade modifications, the state of the area and topography of land at the date of the adoption of this UDO.

Neighborhood: A subarea of the city in which the residents share a common identity focused around a school, park, community business center, or other feature. For the purposes of a single-family overlay district, a neighborhood must contain at least thirty (30) single-family structures in a compact, contiguous area, or be an original subdivision or phase of a subdivision if the subdivision contains fewer than thirty (30) single-family structures. Boundary lines must be drawn to include blockfaces on both sides of a street, and to the logical edges of the area or subdivision, as indicated by a creek, street, subdivision line, utility easement, zoning boundary line, or another boundary.

Neighborhood Character: The atmosphere or physical environment which is created by the combination of land use and buildings within an area. Neighborhood character is established and influenced by use types and intensity, traffic generation, and also by the location, size, and design of structures as well as the interrelationship of all these features.

New Construction: For floodplain management purposes, structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community.

Night Club: A commercial establishment including, but not limited to, bars, coffee houses, or similar establishments where a dance floor, music, games, or other entertainment is provided and where the serving of food is not the principal business. Specifically included in this classification are establishments that derive seventy-five (75) percent or more of their gross revenue from the on-site sale of alcoholic beverages. Sexually oriented businesses/enterprises are not included in this definition.

Notice of Change: The notification of changes to the stormwater pollution prevention plan (SWP3) that is required by the Texas Pollutant Discharge Elimination System (TDPES) Stormwater Permits.

Notice of Intent: The advance notification that is required by the Texas Pollutant Discharge Elimination System (TDPES) Stormwater Permits prior to commencement of work.

Notice of Termination: The notification that is required by the Texas Pollutant Discharge Elimination System (TDPES) Stormwater Permits upon completion of work.

Nude: The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering, or the showing of the covered male genitals in a discernibly turgid state.

Nude Modeling Studio: Any place where a person who appears in a state of nudity or displays specific anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

Office: A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communication equipment.

One (1) Ownership: Property which although belonging to one (1) or more owners, has not been partitioned or subdivided to be owned separately by more than one (1) person, whether or not related or participating in a joint enterprise.

Outdoor Display: The placement of goods for active sale outside a building.

Overlay: A zoning district that encompasses one (1) or more underlying zones and that imposes additional requirements above those required by the underlying zone.

Owners Association: An association or organization, whether or not incorporated, which operates under and pursuant to recorded covenants or deed restrictions, through which each owner of a portion of a subdivision—whether a lot, parcel site, unit plot, condominium, or any other interest—is automatically a member as a condition of ownership, and each such member is subject to a charge or assessment for a prorated share of expense of the

association, which may become a lien against the lot, parcel, unit, condominium, or other interest of the member. Homeowners associations and property owners associations are included in this definition.

Pad Site: The portion of a building plot that is located on the periphery of the site and has at least seventy-five (75) feet of frontage on a public street classified as a collector or higher on the Comprehensive Plan Functional Classification & Context Class Map. A pad site contains a standalone single or multiple tenant structure and meets all site plan requirements within the pad site area. The total area of all pad sites within a defined building plot may not be more than thirty-three (33) percent of the total area of the building plot.

Parking, Interior: Parking rows which are not located on the periphery of the proposed project site and further, where none of the parking spaces abut any property line associated with the proposed project site.

Parking, Overflow: Parking in excess of the minimum required by this ordinance and in excess of what is utilized regularly by the development.

Parking, Peripheral: Parking rows that abut the periphery or property lines associated with the proposed project site.

Parking, Side or Rear Yard: Required parking that is provided, in its entirety, behind a setback line of fifty (50) percent of the applicable zoning district's minimum lot depth.

Parking Row, Single: One (1) row of spaces for the parking of motor vehicles.

Parking Row, Double: Two (2) parallel rows of spaces for the parking of motor vehicles arranged so that when parked, the front end of each motor vehicle faces the front end of another motor vehicle.

Parking Space: A space used for the parking of a motor vehicle not on the paved or regularly traveled portion of a public street or within private access easements and which meets the requirements of this UDO as to size, location, and configuration.

Pasturage: Land used primarily for the grazing of animal stock.

Pavement Width: The portion of the surface of the street available for vehicular traffic. Where curbs are used, it is the portion between the back of the curbs.

Person: Every natural person, firm, partnership, joint venture, association, corporation, or other groups which conducts activities regulated hereunder as a single entity, whether same be a legal entity or not, venture, or trust.

Personal Service Shop: An establishment that provides services related to grooming, appearance, care, or repair of personal apparel which may sell products used or recommended for those same purposes incidental to the services provided.

Place of Worship: A building or structure, or group of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

Planning and Zoning Commission: The duly appointed Planning and Zoning Commission of the City of College Station.

Plat: A map of a subdivision intended to be filed for record with the applicable County Clerk's Office showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys, easements, etc., drawn to scale. This definition includes final plats, replats, amending plats, minor plats, development plats, and vacating plats meeting the requirements of this UDO.

Plat, Minor: As defined by Chapter 212 of the Texas Local Government Code, as amended. A subdivision involving four (4) or fewer lots fronting an existing street that does not require the creation of any new street or the extension of municipal facilities.

Portable Storage: Any unit, including but not limited to a trailer, box, or another enclosed shipping container which is used primarily as storage space whether the unit is located at a facility-owned establishment or operated by the owner at another location designated by the tenant.

Porch: A roofed open area that projects from the main wall of a building that may be unenclosed or screened and may or may not use columns or other ground supports for structural purposes.

Public, Civic, and Institutional Use, Structure, or Building: A use, structure, or building belonging to or used by the public for the transaction of public or quasi-public business including but not limited to parks, places of worship, hospitals, public or private schools, libraries, museums, post offices, police and fire stations, public utilities, governmental services, and other public services.

Public Way: A public way provides circulation and through movement similar to a public street but is a privately maintained drive, constructed to certain street standards, and granted unrestricted access via a public access easement. The drive shall be designed to the geometric design, construction standards, and driveway spacing of a commercial street in accordance with the Bryan/College Station Unified Design Guidelines with the following modifications:

- (1) The public access easement shall be a minimum of forty (40) feet in width or wider to incorporate the entire width of the pavement section and sidewalks on each side.
- (2) A public way shall have a minimum pavement structure constructed to the City's fire lane standards, a minimum drive width of twenty-four (24) feet back-to-back when no parking is provided, and a minimum horizontal curve radius of two hundred (200) feet.
- (3) No head-in parking is permitted but parallel parking is allowed if the drive is widened an additional ten (10) feet for each row of parallel parking provided. Parking on the drive may count toward the minimum off-street parking requirements of this UDO.
- (4) Five (5) foot sidewalks shall be provided on each side of the drive and placed a minimum of three (3) feet from the back of the curb.

Quoin: Units of stone or brick used to accentuate the corners of a building.

Recyclable Materials: Those materials specifically listed at a particular site as acceptable. Such materials may include but are not limited to aluminum products, clean glass containers, bimetal containers, newspapers, magazines, periodicals, plastic containers, yard waste, paper and cardboard, phone books, and scrap metal.

Recycling: The separation, collection, processing, recovery, and sale of metals, glass, paper, plastics, and other materials which would otherwise be disposed of as solid waste, which are intended for reuse, re-manufacture, or re-constitution for the purpose of using the altered form.

Recycling Bin: A container used to collect recyclable materials, at which no fee is collected from the person depositing the materials.

Recycling Facility, Large: A recycling facility located on an independent site, or larger than five hundred (500) square feet, where limited mechanical processing may or may not occur, depending on the zoning district in which the facility is located.

Recycling Facility, Small: A facility that occupies no more than five hundred (500) square feet and provides containers for collection only of source-separated recyclables, with no power-driven processing equipment on site. Small collection facilities are normally located in parking lots of the host use. These may include but are not limited to bulk reverse vending machines, a grouping of reverse vending machines that exceed fifty (50) square feet, kiosk-type structures that may include permanent structures, and unattended recycling bins placed for the donation of recyclable materials.

Redevelopment: The revision or replacement of an existing land use or existing site through acquisition or consolidation, or the clearance and rebuilding of an area consistent with the Comprehensive Plan, including any associated plans or studies adopted by the City Council.

Regulated Activity: An activity occurring at an industrial facility or construction site which qualifies the facility or site to acquire a permit to discharge stormwater under the Clean Water Act.

Rehabilitation: The process of returning a structure to a state of utility, through repair or alteration, which make possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural value.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal stormwater drainage system, the water of the State, the waters of the United States.

Remote Emergency Access: A semi-permanent all-weather surface in accordance with the City of College Station Site Design Standards. An access is remote when the two (2) access points are placed a distance apart equal to not less than fifty (50) percent of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between the points.

Repair Shop: A shop exclusively for the repair of household goods and home equipment, within a building with no outdoor storage of items or equipment, and where no noise, dust, or vibration is discernible beyond the property line.

Research Laboratory: An establishment or facility used for carrying on investigations in the natural, physical, or social sciences which may include engineering and product development.

Residential Sales Office/Model Home: A dwelling unit built by a builder or developer to allow potential purchasers to see what the finished product will look like.

Restaurant: An establishment that serves food and beverages primarily to persons seated within the building. This includes but is not limited to café's, tea rooms, and outdoor café's.

Restaurant, Casual Dining: A restaurant with a market segment between Fast Food and Fine Dining restaurants usually characterized by table service, a relatively fully stocked and full-service bar, and a bill per dinner averaging ten dollars (\$10.00) to thirty dollars (\$30.00) for an evening meal and slightly less for lunch and does not provide drive-thru service.

Restaurant, Fast Food: An establishment that offers quick food which is accomplished through a limited menu of items already prepared and held for service or prepared quickly. Orders are not generally taken at a customer's table and food is generally served in disposable wrapping or containers.

Restaurant, Fine Dining: A restaurant serving formal-style dinners, and services where food and drink are prepared and served. Customer turnover rates are typically one (1) hour or longer. Such establishments serve dinner but generally do not serve breakfast and may or may not serve lunch or brunch. These restaurants usually have a dress code and do not provide drive-thru service.

Retail Sales: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Retail Sales, Alcohol: Establishments, except nightclubs and restaurants as defined, engaged in selling beer, wine, or other alcoholic beverages for where more than seventy-five (75) percent of sales are derived from the sale of such beverages for off-site consumption. Exempt from this definition are temporary retail sales of alcohol associated with special events, or events held on City-owned property.

Retention: The storage of stormwater flows in a facility that has a permanent pool of water.

Retention Facility: A facility that provides for the storage of stormwater flows in a permanent pool of water or permanent pool in conjunction with a temporary storage component.

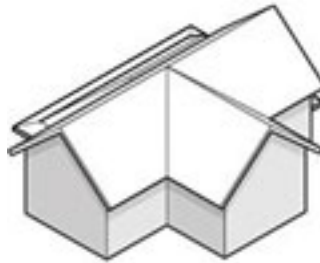
Reverse Vending Machine: An automated mechanical device that accepts at least one (1) or more types of beverage containers including but not limited to aluminum cans or glass and plastic bottles that issue cash refunds or redeemable credit slips. Sorting and processing occur entirely within the machine.

Reverse Vending Machine, Bulk: A reverse vending machine that is larger than fifty (50) square feet and is designed to accept more than one (1) container at a time and to pay by weight. For the purpose of these restrictions, bulk reverse vending machines will be considered small collection facilities.

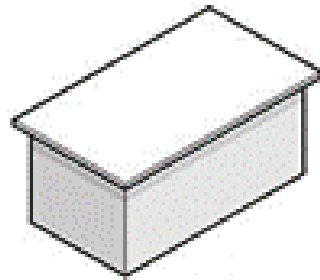
Reverse Vending Machine, Single Feed: A reverse vending machine that accepts materials one (1) item at a time.

Rooming/Boarding House: A group of rooms provided for persons other than members of the occupant family for compensation either in a converted single-family home or in a structure specifically designed for such purpose where there are no cooking facilities provided in individual living units and where meals may be provided daily.

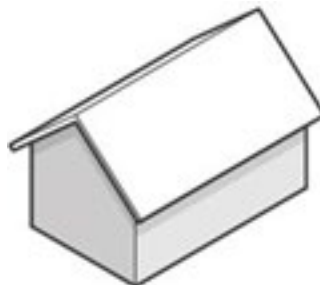
Roof, Cross Gable: Two (2) perpendicular gable roofs.



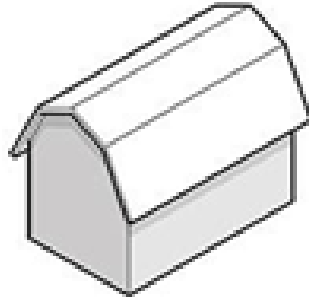
Roof, Flat: A roof with only enough pitch to allow drainage.



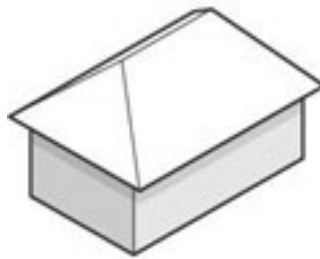
Roof, Gable: A ridged roof having one (1) or two (2) gabled ends (gable: the portion of the end of a building that extends from the eaves to the peak or ridge of the roof).



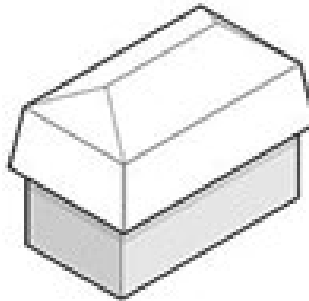
Roof, Gambrel: A roof whose slope on each side is interrupted by an obtuse angle that forms two (2) pitches on each side, the lower slope being steeper than the upper.



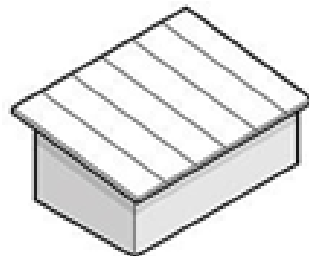
Roof, Hip: A roof formed by several adjacent inclining planes, each rising from a different wall of a building and forming hips at their adjacent sloping sides.



Roof, Mansard: A roof with a double pitch on all four (4) sides, the lower level having the steeper pitch.



Roof, Shed: A roof having a single-sloping plane.



Salvage Yard: A facility or area for storing, keeping, selling, dismantling, shredding, compressing, or salvaging material or equipment. Materials include but are not limited to lumber, pipes, metal, paper, rags, tires, bottles, motor vehicle parts, machinery, structural steel, equipment/vehicles, and appliances.

Satellite Dish: A broadcast receiver that receives signals directly from a satellite rather than another broadcast system and amplifies the signal at a focal point in front of the receiving component.

Sediment: Soils or other surficial materials transported or deposited by the action of wind, ice, or gravity as a product of erosion.

Service Line: Any line, wire, or cable and appurtenances used to distribute, transmit, or deliver a utility service from a source of supply, feeder line, or lateral line directly to an end user.

Service Provider: Any company, corporation, alliance, individual, or other legal entity that provides a wireless telecommunication service directly to the public for a fee or to such classes of users as to be effectively available directly to the public regardless of the facilities used; services include, but are not limited to, portable phones, car phones, pagers, digital data transmission, or radio or television communications.

Setback Line: A line that marks the minimum distance a structure must be located from the property line, and establishes the minimum required front, side, or rear yard space of a lot or building plot.

Sexually Oriented Books and Videos: Books, magazines, pamphlets, pictures, drawings, photographs, video tapes, digital video disks, motion picture films, or sound recordings, or printed, visual or audio material of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities.

Sexually Oriented Business: Any business whether in public, semi-public, or private premises which offers the opportunity to feel, handle, touch, paint, be in the presence of, or be entertained by the unclothed body or the unclothed portion of the body of another person, or to observe, view, or photograph any such activity. Except as provided herein, this definition is not intended to regulate:

- (1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the licenses held.
- (2) Any business operated by or employing licensed physicians, licensed practical nurses, or licensed chiropractors engaged in practicing the healing arts.
- (3) Any bookstore, movie theater, or video store, unless that business includes sexually oriented materials.

Sexually oriented businesses include, but are not limited to, adult retail stores, limited adult retail stores, adult arcades, adult cabarets, adult movie theaters, adult theaters, adult motels, body rub parlors, nude modeling studios, sexual encounter centers, and escort agencies.

Sexually Oriented Materials: All sexually oriented toys and novelties and sexually oriented books and videos.

Sexually Oriented Toys and Novelties: Instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs, except medical devices approved by the Food and Drug Administration (FDA).

Shared Housing: A residential dwelling unit providing complete, independent living facilities designed to exceed occupancy levels of more than one (1) family. Such use may be identified and differentiated from other residential uses by considering a combination of structure or property characteristics that may be used to increase occupancy to more than one (1) family, such as:

- (1) A residential dwelling unit containing more than four (4) bedrooms or able to house more than four (4) people using other rooms such as dens, offices, game rooms, or similar spaces that have the potential to be used for sleeping purposes in accordance with the International Residential Code (IRC) definition of habitable space, as adopted;
- (2) A residential dwelling unit containing a similar bedroom-to-bathroom parity in excess of four (4);
- (3) A residential dwelling unit containing a high quantity of bathrooms, usually in excess of four (4), of which most can only be accessed through a bedroom or other room such as a den, office, game room, or similar space;

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- (4) A residential dwelling unit that is in excess of one (1) story for the purpose of limiting the building footprint on the lot to meet impervious cover requirements;
 - (5) The property where the residential dwelling unit is located does not contain a garage, or if it contains a garage, can support additional living space; and/or
 - (6) The property where the residential dwelling unit is located contains a parking area that will allow parking in excess of four (4) vehicles.

Shared Primary Entrance: A common front/primary entry to the interior of a structure through which all occupants enter. Separate dwelling units in the structure take access off a shared internal corridor.

Shopping Center: A building plot developed or ultimately to be developed with two (2) or more stores, shops, or commercial enterprises which has shared parking facilities or access.

Shooting Range: A facility to be utilized for discharging firearms for purpose of testing the firearm or ammunition, developing or enhancing shooter skills for recreation or other need, which is organized and equipped for the safety of persons utilizing the facility and the general public.

Shrub: A woody perennial plant differing from a perennial herb by its woodier stem and from a tree by its low stature and habit of branching from the base.

Sign: Any written or graphic representation, decoration, form, emblem, trademark, flag, banner, or other feature or device of a similar character that is used for the communication of commercial information, or communication of ideas or subjects of political significance.

Sign, Apartment/Condominium/Manufactured Home Park Identification: An attached sign or a freestanding monument sign with permanent foundation or moorings, designed for identification of a multi-family residential project or a manufactured home park project, and where adequate provision is made for permanent maintenance.

Sign, Area Identification: A freestanding monument or wall sign with permanent foundation or moorings, designed for identification of subdivisions of ten (10) to fifty (50) acres, or identification of a distinct area within a subdivision, and where adequate provision is made for maintenance.

Sign, Attached: A sign attached to, or applied on, and totally supported by a part of a building or mounted to site lighting poles located on private property.

Sign, Campus/Wayfinding: A sign utilized as a traffic control device in off-street or access areas whose primary purpose is to direct traffic within a PDD Planned Development District or unified development that may include the names of tenants or businesses but does not contain any commercial logo or graphics.

Sign, Commercial: A sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing.

Sign, Development: A sign announcing a proposed subdivision or a proposed building project.

Sign, Directional Traffic Control: A sign utilized as a traffic control device in off-street parking or access areas whose primary purpose is not for advertisement.

Sign, Freestanding Commercial: A sign supported by one (1) or more columns, poles, or bars extended from the ground or an object on the ground, or that is erected on the ground. This term includes all signs which are not substantially supported by a building or part thereof, or which are substantially supported by a building or part thereof, when the sole significant purpose of the building or part thereof, is to support or constitute the sign.

Sign, Fuel Price: A sign used to advertise the current price of fuel at locations where fuel is sold.

Sign, Hanging: A sign suspended from the underside of a canopy or awning and located in front of building entrances, perpendicular to the façade.

Sign, Home Occupation: A sign used to identify the name and occupation of a person with a legal home occupation.

Sign, Low Profile: A sign with a permanent foundation that is not attached to a building but is a stand-alone sign which does not exceed sixty (60) square feet in area and four (4) feet in height.

Sign, Non-Commercial: A work of art or message which is political, religious, or pertaining to a point of view, expression, opinion, or idea that contains no reference to the endorsement, advertising of, or promotion of patronage, of a business, commodity, service, entertainment, or attraction that is sold, offered, or existing.

Sign, Off-Premise Commercial: A sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing elsewhere than upon the premises where such sign is displayed.

Sign, On-Premise Commercial: A sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing upon the premises where such sign is displayed.

Sign, Political: Any sign which promotes a candidate for any public office, or which advocates a position on any social issue as its primary purpose. Political signs shall be considered in the category of non-commercial signs except where there are regulations pertaining to their removal after an election.

Sign, Portable: A sign which is not affixed or attached to real property by poles, stakes, or other members which are placed into the ground, or upon some other type of permanent foundation; trailer signs, any sign with wheels or skids, and any sign which is constructed to sit upon the surface of the ground, without subsurface attachment or extension.

Sign, Projection: An attached sign end-mounted or otherwise attached to an exterior wall of a building and extends in whole or part more than twelve (12) inches beyond the face of the building.

Sign, Real Estate, Finance, and Construction: An attached or freestanding sign erected upon a lot or parcel of land for the purpose of advertising the same for sale or lease, or for advertising the furnishing of interim or permanent financing for a project, or for the furnishing of labor, materials or the practice of crafts on the job site.

Sign, Roof: An outdoor advertising display sign erected, constructed, or maintained on the roof of a building or which is wholly dependent upon a building for support, and which projects above the point of a building with a flat roof, six (6) feet above the eave line of a building with a shed, gambrel, gable or hip roof, or the deck line of a building with a mansard roof.

Sign, Special District Identification: An official, permanent, on-premise sign authorized by the City of College Station, which is used to identify a pedestrian or vehicular entrance to a design district or Overlay, as set forth in the Design Districts and Overlay Districts Sections of Article 5, District Purpose Statements and Supplemental Standards of this UDO. The sign shall be used to display only the name, logo, or identifying information about the district, and no other commercial information.

Sign, Subdivision Identification: A freestanding monument or wall sign with permanent concrete foundation or moorings, designed for permanent identification of a subdivision of greater than fifty (50) acres, and where adequate provision is made for permanent maintenance.

Single-Family: A structure providing one (1) dwelling unit on a single lot or building plot.

Single-Unit Dwelling: A detached structure, located within a larger development on a common lot, providing one (1) dwelling unit.

Site Development: Any excavation, landfill, or land disturbance, including new construction, reconstruction, relocation, or change of use. For the purposes of the Northgate districts only, site development includes the installation of walls, accessory structures, and other similar additions.

Site Plan: A site development plan showing the use of the land including locations of buildings, drives, sidewalks, parking areas, drainage facilities, and other structures to be constructed, and any other details required by the City in the Site Plans Section of Article 3, Development Review Procedures of this UDO.

Sitwall: A combination of seating with perimeter protection and/or screening in a subtle, attractive, and functional way.

Specified Anatomical Area: Any showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areola, or the depiction of covered male genitals in a discernibly turgid state.

Specified Sexual Activities: Actual or simulated acts of masturbation, sexual intercourse, oral or anal copulation or sadomasochism; fondling or other erotic touching of or physical contact with one's own or another's genitals, pubic area, buttocks, or female breasts, whether clothed or unclothed; human male or female genitals when in a state of sexual stimulation or arousal; or excretory functions or acts with animals as part of or in conjunction with any of the activities set forth herein. Activities that are commonly referred to by the slang terms lap dance, straddle dance, face dance, or table dance shall be included in this definition. For purposes of this definition, sadomasochism means the infliction of pain, flagellation, or torture, or the condition of being bound, fettered, or otherwise physically restrained.

Split-Lot Duplex: Two (2) attached dwelling units where each dwelling unit is located on a separately platted lot.

Start of Construction: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a HUD-code manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for 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 a dwelling unit and not part of the main structure.

State: The State of Texas.

Stealth Antenna: A telecommunication antenna located on an alternative mounting structure that is effectively camouflaged or concealed from view and blends into the surrounding environment. Examples include architecturally screened roof-mounted antennas, building-mounted antennas painted and/or textured to match the existing structure, and antennas integrated into architectural elements.

Stealth Technology or Facility: Design technology that blends the wireless telecommunications facility into the surrounding environment; examples of stealth facilities include, but are not limited to, architecturally screened roof-mounted antennas, building-mounted antennas painted and/or textured to match the existing structure, antennas integrated into architectural elements such as church spires or window wall, and antenna structures designed to resemble light poles or flag poles.

Stealth Tower: A manmade tree, clock tower, church steeple, bell tower, utility pole, light standard, identification pylon, flagpole, or similar structure, that is camouflaged to be unrecognizable as a telecommunications facility, designed to support or conceal the presence of telecommunication antennas and blends into the surrounding environment.

Storage Garage: Any premises and structure used exclusively for the storage of more than five (5) automobiles.

Storage, Outdoor: The keeping of any goods, junk, material, or merchandise in the same place for more than twenty-four (24) hours in an unenclosed area.

Storage, Self-Service: A structure containing separate, individual, and private storage spaces of varying sizes.

Storage Tank: A container for the storing of chemicals, petroleum products, grains, and other materials for subsequent resale to distributors or retail dealers or outlets.

Stormwater Management: All ordinances, standards, plans, and studies to ensure the timely and effective construction of:

- (1) A system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; and
- (2) A system of vegetative, structural, and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

Stormwater Pollution Prevention Plan (SWP3): A plan required by a Texas Pollutant Discharge Elimination System (TDPEs) permit to discharge stormwater associated with industrial activity or construction activity and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges from industrial facilities and construction sites.

Street: A way for vehicular traffic to move, whether designated as a highway, arterial street, collector street, or local street.

Street, Minor Arterial: A street that collects traffic from the collector system and connects with the major arterial system.

Street, Major Arterial: A street that collects traffic from the collector and minor arterial system and connects with the freeway system.

Street, Collector: A street that collects traffic from local streets and connects with minor and major arterials. This includes minor and major collectors.

Street, Local: A street that provides vehicular access to abutting property.

Stringcourse: A narrow, continuous ornamental band set in the face of a building as a design element; also known as a cordon.

Stripping: Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

Structure: Anything constructed, built, or erected.

Structure, Principal: The principal structure which fulfills the purpose for which the building plot is intended.

Subdivider: Any person(s), firm, or corporation subdividing a tract or parcel of land to be sold or otherwise handled for their gain or use.

Subdivision: The division of a lot, tract, or parcel of land into two (2) or more parts, lots, or sites, for the purpose, whether immediate or future, of sale, division of ownership, or building development. This also includes the resubdivision of land or lots that are part of a previously recorded subdivision. Divisions of land for agricultural purposes, where no building construction is involved, in parcels of five (5) acres or more, shall not be included within this definition unless such subdivision of five (5) acres or more includes the planning or development of a new street or access easement. An addition is a subdivision as defined herein.

Subdivision Marker: A subdivision logo of no more than one (1) square foot in area, that is attached to an architectural element such as a column, fence post, wall, mail kiosk, bus stop, or similar community structure, and whose purpose is to provide continuity and identity throughout the subdivision.

Subdivision, Rural Residential: A subdivision that is predominately single-family lots and where one (1) acre is the minimum lot size of the base zoning district. Included are developments where lots are clustered to smaller than one (1) acre as permitted by the Lots Subsection of the General Requirements and Minimum Standards of Design for Subdivisions within the City Limits Section of Article 8, Subdivision Design and Improvements of this UDO.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

- (1) Before the improvement or repair is started, or
- (2) If the structure has been damaged and is being restored before the damage occurred.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or another structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any projects for the improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions, or
- (2) Any alterations of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Surveyor: A person duly authorized and licensed under the Texas Professional Land Surveying Practices Act to practice the profession of land surveying, either as a Registered Professional Land Surveyor or a Licensed State Land Surveyor.

Taxicab Service: Any business associated with the storage or dispatch of vehicles for the transportation of passengers for hire.

Taxicab, Commercial Vehicle: Any motorized passenger vehicle permitted or should be permitted pursuant to the provisions of Chapter 8, Businesses of the City of College Station Code of Ordinances.

Texas Pollutant Discharge Elimination System (TDPEs): The regulatory program delegated to the State of Texas by the Environmental Protection Agency (EPA) pursuant to 33 USC § 1342(b).

Texas Pollutant Discharge Elimination System (TDPEs) Permit: A permit issued by the Texas Commission on Environmental Quality (TCEQ) under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the state, whether the permit is applicable on an individual, group, or general area-wide basis.

Theater: A building or part of a building devoted to showing motion pictures or for dramatic, dance, musical, or other live performances.

Townhouse: One (1) of a group of no less than three (3), no more than twelve (12), attached dwelling units, with each dwelling unit located on a separate lot and thereby distinguished from condominium units.

Transom: Horizontal opening or window element framed across a window or door forming part of the frame.

Tree, Canopy: An overstory tree that exhibits a layer or multiple layers of branches and foliage at its top or crown and extends a distance outward from its trunk or trunks. This tree's overall appearance is dominated by its tall stature (often over eighty (80) feet), its broad canopy, and the shade that it produces.

Tree, Non-Canopy: A tree that may reach canopy tree height but does not have the same dominance of canopy as the canopy tree or an understory tree that does not reach canopy tree height but does exhibit a similar dominance of canopy size and structure.

Transmission Tower: A wireless telecommunications support structure designed primarily for the support and attachment of a wireless telecommunications facility.

Transmission Tower, Monopole: A self-supporting structure composed of a single spire used to support telecommunications antenna and/or related equipment.

Transmission Tower, Lattice: A self-supporting three (3) or four (4) sided, open, steel frame structure used to support telecommunications antenna and/or related equipment.

Transmission Tower, Guyed: An open, steel frame structure that requires wires and anchor bolts for support.

Truck Stop: Any building, premises, or land in which or upon which a business, service, or industry involving the maintenance, servicing, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into motor vehicles and the sale of accessories or equipment for trucks and similar commercial vehicles. A truck stop also may include overnight accommodations and restaurant facilities primarily for the use of truck crews. For the purposes of this definition, a use is classified as a truck stop when more than ten (10) fuel pumps are used.

Two-Unit Dwelling: A detached structure, located within a larger development on a common lot, providing two (2) dwelling units.

Use: The actual use(s) of a parcel of ground, whether conducted within or without structures, buildings, or improvements. An unoccupied and unused structure is not a use, irrespective of its design, purpose, or utility.

Utility Facility: Infrastructure services and structures necessary to deliver basic utilities essential to public health, safety, and welfare. This includes all lines and facilities provided by a public or private agency and related to the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, power, information, telephone cable, electricity, and other services provided by the utility. This does not include wireless telecommunication facilities.

Vehicle Repair and Service Shop: Any premises or structures when used for the servicing and/or repair of motor vehicles, including paint and body work, engine rebuilding, and minor maintenance activities, irrespective of commercial gain derived therefrom. Excepted from this definition are residential premises where not more than two (2) motor vehicles belonging to the lawful residents thereof are involved in such activities at any one (1) time, and not in operating condition, or where not more than one (1) motor vehicle, whether or not in operating condition, and not belonging to the lawful residents thereof are involved in such activities for more than one (1) week, and only one (1) motor vehicle may be serviced and/or repaired each month.

Vehicle Sales and Rental: Any premises or structures used for the sale and or rental of motor vehicles.

Violation: The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this UDO is presumed to be in violation until that documentation is provided.

Water Surface Elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or another datum if specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine, or wash, in and including any area adjacent thereto, which is subject to inundation because of the overflow of flood water.

Wireless Telecommunication Facility: An unstaffed facility operating for the transmission and reception of low-power radio signals consisting of an equipment shelter or cabinet, a support structure, antennas, and related equipment.

Wholesale Sales: Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Yard: Open spaces on the lot or building plot on which a building is situated that are open and unobstructed to the sky by any structure except as herein provided.

Yard, Exterior Side: A yard that faces and is parallel to a side street.

Yard, Front: A yard facing and abutting a street and extending across the front of a lot or building plot between the side property lines and having a minimum horizontal depth measured from the front property line to a depth of the setback specified for the district in which the lot is located.

Yard, Rear: A yard extending across the rear of the lot or building plot between the side property lines and having a minimum depth measured from the rear property line as specified for the district in which the building plot is located.

Yard, Side: A yard located on a lot or building plot extending from the required rear yard to the required front yard having a minimum width measured from the side property line as specified for the district in which the building plot is located.

Zoning: A method of land use control requiring the categorization of land use of every tract of land within the city in accordance with this UDO and consistent with the Comprehensive Plan Future Land Use & Character Map which is intended to preserve the quality of life and orderly development of the city.

(Ord. No. 2023-4453, Pt. 1(Exh. A), 8-10-2023)

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