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CODE OF ORDINANCES

Chapter 1

ADMINISTRATION¹⁰ ARTICLE I. IN GENERAL GENERAL PROVISIONS

- Sec. 1-1. Designation and citation of Code.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Catchlines of sections; notes; references to Code.
- Sec. 1-4. Effect of Code and other ordinances on outlying real property of City.
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GENERAL PROVISIONS

Sec. 1-1. Designation and citation of Code.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Marietta, Oklahoma" and may be so cited.

Sec. 1-2. Definitions and rules of construction.

(a) In the construction of this Code and of all ordinances, the rules and definitions set out in this section shall be observed, unless such construction would be inconsistent with the manifest intent of the City Council. The rules of construction and definitions set out in this section shall not be applied to any section of this Code which shall contain any express provisions excluding such construction or where the subject matter or context of such section may be repugnant thereto.

(b) In the interpretation and application of any section of this Code, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any section of this Code imposes greater restrictions upon the subject matter than the general section imposed by the Code, the section imposing the greater restriction shall be deemed to be controlling.

(c) All sections, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true purposes, intent and meaning of the City Council may be fully carried out.

(d) The following words, terms and phrases, when used in this Code, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City. The term "City" shall mean the City of Marietta, Love County, Oklahoma.

Code. References to "this Code" or "the Code" shall mean the Code of Ordinances, City of Marietta,

Oklahoma, as designated in section 1-1 of this chapter.

Computation of time. The time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday or legal holiday, that day shall not be counted in the computation.

Council; City Council. The term "Council" or "City Council" shall mean the Council of the City. *County.* The term "county" shall mean Love County, Oklahoma.

Delegation of authority. Whenever a section appears requiring the head of a department or some other City officer or City employee to do some act or perform some duty, it is to be construed to authorize such department head, officer or employee to designate, delegate and authorize subordinates to perform the required act or perform the duty.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations, as well as to males.

Health department. The term "health department" shall mean the county health department.

Health officer. The term "health officer" shall mean the director of the county health department and such director's designees.

Heretofore and hereafter. Whenever the term "heretofore" appears in any ordinance, it shall be construed to mean any time previous to the day when that ordinance shall take effect; whenever the term "hereafter" appears, it shall be construed to mean the time after which the ordinance shall take effect.

Highway. The term "highway" shall include any street, alley, highway, avenue or public place or square, bridge, viaduct, tunnel, underpass, overpass or causeway in the City that is dedicated or devoted to public use.

Joint authority. Words purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.

May. The term "may" is to be construed as being permissive. *Mayor.* The term "mayor" shall mean the mayor of the City. *Month.* The term "month" shall mean a calendar month. *Must.* The term "must" is to be construed as being mandatory.

Nontechnical and technical words. All words and phrases shall be construed and understood according to the common and approved usage of the language. Technical words and phrases and such others as may have acquired a peculiar or appropriate meaning in law shall be construed and understood according to such peculiar or appropriate meaning.

Number. Any term importing the singular number shall include the plural, and any term importing the plural number shall include the singular.

Oath. The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

Officers, departments, boards, commissions or other agencies. Except as otherwise specifically provided, whenever any officer, department, board, commission or other agency is referred to by title alone, such reference shall be construed as if followed by the term "of the City."

Or; and. The term "or" may be read "and," and the term "and" may be read "or," if the sense requires it.

Owner. The term "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land.

Person. The term "person" shall extend and be applied to associations, corporations, limited liability companies, firms, partnerships and bodies politic and corporate, as well as to individuals. Whenever used with respect to any penalty, the term "person," as applied to partnerships or associations, shall mean the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the members thereof.

Personal property. The term "personal property" shall include every species of property except real property.

Preceding; following. The terms "preceding" and "following" shall mean next before and next after, respectively.

Property. The term "property" shall include personal, real and mixed property.

Public grounds; public places. The term "public grounds" or "public places" shall be construed to mean any park or open place adjacent thereto; any lake or stream; and any and every public ground, public square, public park, street or sidewalk or other public place within the City.

Real property. The term "real property" shall include land together with all things attached to the land so as to become a part thereof and all rights thereto and interest therein.

Shall. The term "shall" is to be construed as being mandatory.

Sidewalk. The term "sidewalk" shall mean any portion of the street between the curb or the lateral line of the roadway and the adjacent property line that is intended for the use of pedestrians.

Signature; subscription. The term "signature" or "subscription" shall include a mark when a person cannot write.

State. The term "state" shall mean the State of Oklahoma.

Statutory references. Reference to the statutes of the State of Oklahoma means the 2011 statutes, as amended.

Street. The term "street" shall include any highway, alley, street, avenue or public place, square, bridge, viaduct, underpass, overpass, tunnel or causeway in the City dedicated or devoted to public use.

Tenant; occupant. The terms "tenant" and "occupant," applied to a building or land, shall include any person holding a written or oral lease of or who occupies the whole or a part of such building or land, either alone or with others.

Tense. Terms used in the past or present tense shall include the future, as well as the past and present, unless the context clearly indicates otherwise.

Written; in writing. The term "written" or "in writing" shall be construed to include any representations of words, letters or figures, whether by printing or otherwise.

Year. The term "year" shall mean a calendar year.

Sec. 1-3. Catchlines of sections; notes; references to Code.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections nor as any part of the section nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section. Cross references and state law references that appear after sections or subsections of this Code or that otherwise appear in footnote form are provided for the convenience of the user of this Code and have no legal effect.

(c) All references to chapters, articles, divisions or sections are to the chapters, articles, divisions and sections of this Code, unless otherwise specified.

Sec. 1-4. Effect of Code and other ordinances on outlying real property of City.

This Code and all ordinances of the City in effect presently and in the future within the City are extended to all real property belonging to or under the control of the City outside the corporate limits of the City and shall be in full effect therein, insofar as they are applicable. Any words in this Code or any ordinance indicating that the effect of this Code or any ordinance is limited to the corporate limits of the City shall be deemed to mean and include also the outlying real property belonging to or under the control of the City, unless the context clearly indicates otherwise.

(Code 1984, § 10-5)

Sec. 1-5. Effect of repeal of ordinance.

(a) The repeal of an ordinance does not revive any ordinance in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance does not affect any punishment or penalty incurred before the repeal took

effect or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed under the repealed ordinance.

Sec. 1-6. Penalty for violation.

(a) In this section the term "violation of this Code" means:

(1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by this Code or an ordinance or by rule or regulations authorized by this Code or an ordinance;

(2) Failure to perform an act that is required to be performed by this Code or an ordinance or by rule or regulation authorized by this Code or an ordinance; or

(3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by this Code or an ordinance or by rule or regulation authorized by this Code or an ordinance.

(b) In this section the term "violation of this Code" does not include the failure of a City officer or City employee to perform an official duty, unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this Code shall be punished by a fine not exceeding \$500.00 plus costs or imprisonment not exceeding 30 days or both such fine and imprisonment. With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.

(Ord. 2006-6-9, 11-01-06)

(d) No penalty, including fines and costs, shall be greater than that imposed by statute for the same offense.

(e) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.

(f) Violations of this Code that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.

Sec. 1-7. Severability of Code.

(a) It is the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the phrases, clauses, sentences, paragraphs and sections would have been enacted by the City Council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

(b) If any phrase, clause, sentence, paragraph or section of this Code or the application thereof to any person, fact, situation or circumstances is held invalid, the remainder of this Code and the application of such phrase, clause, sentence, paragraph or section to other persons, facts, situations or circumstances shall not be affected thereby.

(Code 1984, § 10-6)

Sec. 1-8. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

- (a) Any appropriation or budget ordinance.
- (b) Any ordinance authorizing or relating to the issuance or redemption of bonds.
- (c) Any ordinance approving or authorizing specific contracts.
- (d) Any ordinance authorizing a specific sale, lease or purchase of property.
- (e) Any ordinance levying or assessing taxes not inconsistent with this Code.
- (f) Any ordinance granting rights-of-way, franchises or easements.
- (g) Any ordinance annexing territory to or excluding territory from the City.
- (h) Any ordinance calling specific elections or providing for special elections.
- (i) Any ordinance making special assessments for local improvements.
- (j) Any ordinance creating or relating to specific sewer and paving districts or other specific improvement districts.
- (k) Any ordinance establishing the grades of specific streets and other public ways.
- (l) Any ordinance naming or changing the names of specific streets and other public ways.
- (m) Any ordinance creating, dedicating, vacating or closing specific streets, alleys or other public ways.
- (n) Any ordinance amending the zoning map or approving or disapproving a subdivision plat.
- (o) Any ordinance rezoning property.
- (p) Any ordinance dealing with the compensation, retirement, pensions or other benefits of City officers and employees.

- (q) Any ordinance creating a public trust or public authority.
- (r) Any ordinance which is temporary although general in effect.
- (s) Any ordinance which is special although permanent in effect.
- (t) Any ordinance, the purpose of which has been accomplished.
- (u) Any ordinance regarding begging.

Sec. 1-9. Prior offenses, rights, penalties not affected by adoption of Code.

- (a) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.
- (b) The adoption of this Code shall not be interpreted as authorizing or suffering any use or the continuance of any use of a structure or premises in violation of any ordinance of the City in effect on the date of adoption of this Code.

Sec. 1-10. Continuation of existing ordinances.

The sections of this Code, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Sec. 1-11. Amendments to Code.

(a) Amendments to any of the sections of this Code shall be made by amending such sections by specific reference to the section number of this Code in the following language:

"Section _____ of the Code of Ordinances, City of Marietta, Oklahoma, is hereby amended to read as follows:...." The new section shall then be set out in full as desired.

(b) If a new section not heretofore existing in the Code is to be added, the following language shall be used:

"The code of Ordinances, City of Marietta, Oklahoma, is hereby amended by adding a section, to be numbered _____, which section reads as follows:...." The new section shall then be set out in full as desired.

Sec. 1-12. Supplementation of Code.

(a) By contract or by City personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the Council. A supplement to the Code shall include all substantive permanent and

general parts of ordinances passed by the Council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier, meaning the person authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
Provide appropriate catchlines, headings and titles for sections and other subdivisions of the
- (2) Code printed in the supplement and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Chapter 2

ADMINISTRATION

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Article III. Mayor

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Sec. 2-71. Appointment, removal, suspension, layoff.
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ARTICLE I. IN GENERAL

Sec. 2-1. Reimbursement for expenses.

Elected officials may be reimbursed for expenses actually incurred by them in performance of their official duties. However, no such reimbursement shall be made unless the incurrence thereof shall have been approved or authorized in advance by the City Council.
(Code 1984, § 1-62)

Secs. 2-2—2-25. Reserved.

ARTICLE II. CITY COUNCIL

Sec. 2-26. Time of regular meetings.

The City Council shall hold a regular meeting every month. The City Council may approve by motion the times and dates for regular meetings of the City Council.
(Ord. 2007-3-6, 6-12-07)

Sec. 2-27. Place of meetings.

Every meeting of the City Council shall be held in the city hall, in the conference room of the Marietta Public Works Authority, or in any other appropriate meeting place within the City of Marietta. Any adjourned meeting may be held at any other place within the City of Marietta designated by the City Council.
(Ord. 2007-3-6, 6-12-07)

Secs. 2-28—2-50. Reserved.

ARTICLE III. MAYOR

Secs. 2-51—2-70. Reserved.

ARTICLE IV. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Sec. 2-71. Appointment, removal, suspension, layoff.

Except as may be otherwise provided by law, officers and employees of the City who are appointed by the Mayor with approval of the Council may be removed for cause, suspended or laid off by the Mayor with approval of the Council. The Mayor and Council may also remove any elective officer for cause, except the Mayor as provided in 11 O.S. §§ 9-105, 9-117 and 9-118. (Code 1984, § 1-58)

Sec. 2-72. Appointment of certain other personnel.

The Mayor, with approval of the Council, shall appoint such other personnel as may be necessary to

exercise the powers and perform the duties relative to the functions lawfully imposed upon or assumed by the City.

(Code 1984, § 1-57)

Sec. 2-73. Bond of certain officers.

(a) Before entering upon their official duties, the following personnel of the City government shall provide bonds for the faithful performance of their official duties, payable to the City, with a surety company authorized to operate within the state, in the amounts respectively indicated after their titles:

- (1) City Clerk, \$1,000.00.
- (2) City Treasurer, \$10,000.00.
- (3) Police and Police Chief, \$1,000.00.

(b) The City Council, by motion or resolution, may require other officers and employees in such positions as it may designate to be bonded and, also, by motion or resolution may increase the amount of the bonds for the personnel listed in subsection (a) of this section. The City may also provide for a blanket bond to cover any or all of its officers and employees.

(Code 1984, § 1-60)

Sec. 2-74. Salaries of elected officials.

(a) The following salaries and rates of compensation are established for the elected officials:

- (1) Mayor, \$275.00 per month.
- (2) Councilmember, \$20.00 per month, plus \$10.00 per special meeting with a maximum of 12 meetings per year.
- (3) Treasurer, \$275.00 per month.
- (4) City Clerk, \$275.00 per month.
- (5) Street commissioner, \$25.00 per year.
- (6) Marshal, \$25.00 per year.

(b) The salary becomes effective at the beginning of the new term of each elected official.
(Code 1984, § 1-61; Ord. No. 1985-1, § 1, 2-5-85; Ord. No. 2009-1-1, January 13, 2009).

Sec. 2-75. Salaries of appointive officers.

All appointed officers shall receive such compensation as may from time to time be determined by the Council. However, if the compensation of any appointed officer is lowered after he has entered upon the performance of his duties, 30 days' notice shall be given to such officer before such reduction shall take effect.

(Code 1984, § 1-63)

Sec. 2-76. Disciplinary actions.

(a) All City employees of the City of Marietta, Oklahoma shall hold their respective offices and positions during good behavior and regardless of change of City officials or City administration unless removed for good and sufficient cause or for the good of the service. City employees whose discipline results in suspension without pay or dismissal shall be afforded the right of a pre-termination hearing. City employees will be advised of the offense, date and time of the proposed suspension or dismissal. The pre-termination hearing shall be held within five working days of the imposition of the discipline, unless the employee waives said hearing. The pre-termination hearing shall be conducted before the Mayor/hearing officer and the burden of showing the discipline is warranted shall be upon the supervisor. At the hearing, the City employee will have the right to present evidence and witnesses on his behalf, the right to question the employer's evidence and to ask questions and the right to be represented by counsel at the expense of the employee.

(b) In the event that the Mayor/hearing officer determines that the suspension, demotion or termination or any other disciplinary action is deemed appropriate, he has three working days in which to provide written notice of the Mayor/hearing officer's decision, said notice to be provided both to the City Clerk and to the affected City employee.

(c) If the affected employee desires to appeal the discipline imposed by the Mayor/hearing officer, he/she shall make written request to the City Clerk for a review before the City Council within five days of notice of discipline by the Mayor/hearing officer. The City Council shall, within ten days, excluding holidays and weekends, of said notice of appeal, bear the appeal at either a regular meeting or at a special meeting of the City Council. This appeal at a regular meeting or at a special meeting of the City Council shall not be public. At said appeal the City Council shall review the record of the pre-termination hearing. The appeal before the City Council shall not be a hearing de novo as was the pre-termination hearing.
(Ord. 2008-5-5, May 13, 2008)

(d) If after the hearing the City Council shall find that good and sufficient cause has not been shown for the discipline imposed by the Mayor/hearing officer, it shall order the City employee be restored to his former position without loss of pay.

(e) If the City Council by majority vote, excluding the vote of the Mayor, shall find that good and sufficient cause has been shown for the discipline imposed it may order the removal, suspension or discharge of such persons or may impose such discipline as the City Council feels appropriate.

(f) No City employee shall be suspended or removed from office because of his race, creed or color except when such persons advocate or belong to any organization which advocates the overthrow of the City government by force or violence.

(g) No action by the Mayor or City Council of the City of Marietta shall be construed to deny any City employee of his right to file a proper case for appeal before any court of general jurisdiction.
(Ord. No. 2003-2-1, § 2, 2-4-03)

Secs. 2-77—2-85. Reserved.

DIVISION 2. CITY CLERK

Sec. 2-86 Powers and duties.

(a) The City Clerk shall attend meetings of the Council and shall keep a journal of its proceedings, as

provided by 11 O.S. § 9-112. He shall enter at length all ordinances passed by the Council in the ordinance book, as required by 11 O.S. § 9-112. He shall keep the seal of the City and affix it to documents as required by law or this Code or other ordinance.

(b) The City Clerk shall collect or receive revenues and other moneys for the City as provided by law or this Code or other ordinance and shall deposit all such moneys promptly with the City Treasurer. He shall keep proper books of accounts and other financial records, properly recording all financial transactions.

(c) He shall have all other powers and duties prescribed by law or this Code or other ordinance.
(Code 1984, § 1-5)

Sec. 2-87. Additional compensation.

In addition to the salary stated in section 2-74 of this article, the City Clerk shall receive \$6.75 per hour for additional work and duties performed outside the scope of the clerk's statutorily mandated duties. The hours spent on such additional duties shall be paid for a maximum of 25 hours per week.
(Ord. No. 1993-3, § 1, 5-4-93)

Sec. 2-88. Designation of Deputy City Clerk.

The City Clerk has the authority to designate one or more Deputy City Clerks. A person designated as a Deputy City Clerk must be an employee of the City of Marietta. A Deputy City Clerk, having been so designated, shall have the powers and duties of the City Clerk in the absence of the City Clerk.
(Ord. No. 2009-6-7, July 14, 2009)

Secs. 2-89—2-100. Reserved.

DIVISION 3. TREASURER

Sec. 2-101. Powers and duties.

(a) The City Treasurer shall receive all moneys of the City paid to him in accordance with law or this Code or other ordinance and shall deposit such moneys in depositories designated by the City Council. Such moneys shall be disbursed only in accordance with law. He shall keep proper books of account and other financial records, properly recording all financial transactions.

(b) The City Treasurer shall have such other powers and duties as may be described by law or this Code or other ordinance.

(c) The person who serves as City Treasurer may perform additional administrative duties not specified by state law as an employee of the City of Marietta. Such additional administrative duties may be prescribed by the City Council.
(Code 1984, § 1-6; Ord. No. 2005-3-9, §§ 1, 2, 9-6-05)

Secs. 2-102—2-110. Reserved.

DIVISION 4. CITY ATTORNEY

Sec. 2-111. Duties.

It shall be the duty of the City attorney to advise the Mayor and City Council upon all legal questions relating to the duties of their offices and to the interests of this City, as may from time to time be referred to him. He shall prepare all papers for or on behalf of the City and appear and prosecute all persons charged with violation of this Code or other ordinance of this City and shall appear and represent this City before any and all courts, commissions or tribunals in any cause in which this City may be a party to or interested in such cause and shall perform such other services as may be required of him by the Mayor and Council.
(Code 1984, § 1-42)

Secs. 2-112—2-120. Reserved.

DIVISION 5. MARSHAL

Sec. 2-121. Appointment; duties.

(a) There shall be a City marshal as provided by 11 O.S. § 9-114.

(b) The City marshal shall not be known as the Chief of Police nor shall the marshal have any duties involving the operation of the police department.

(Code 1984, § 1-8; Ord. No. 1987-2, § 4, 2-3-87; Ord. No. 1987-11, 12-8-87; Ord. No. 1990-4, § 2, 12-4-90)

Secs. 2-122—2-130. Reserved.

DIVISION 6. STREET COMMISSIONER

Sec. 2-131. Duties.

(a) Under 11 O.S. § 9-114, the City has the authority to set forth the powers, duties and functions of the Street Commissioner.

(b) The Street Commissioner will not be the head of the street department or have any responsibility for the public works, including the streets, water and sewer functions of the City.

(Ord. No. 1991-1, §§ 2, 3, 2-5-91)

DIVISION 7. DEPARTMENTS OF CITY

Sec. 2-132 Departments.

The City of Marietta shall have certain departments including but not limited to the following: Emergency Management Department, Police Department, Office Management Department, and Operations Department.

Sec. 2-133. Emergency Management Department.

The Emergency Management Department shall be headed by the Emergency Management Director who shall be the supervisor over his or her assistants, and emergency personnel in his or her department.

Sec. 2-134. Police Department.

The Police Department shall be headed by the Chief of Police who Shall be the supervisor over the Assistant Chief of Police, who shall in turn be the supervisor over the Police Officers. The Chief of Police Shall also be the supervisor over the Code Enforcement Officer who shall in turn be the supervisor over the Animal Control Officer.

Sec. 2-135. Office Management Department.

The Office Management Department shall be headed by the City Clerk who shall be the supervisor over the bookkeeping and court employees.

Sec. 2-136. Operations Department.

The Operations Department shall be headed by the Director of Operations who shall be the chief supervisor over the Street Supervisor, who shall in turn be the supervisor over the employees involved in the streets and cemeteries. The Director of Operations shall also be the supervisor over the employees involved in sanitation, the transfer site and parks.

Sec. 2-137. Reasonable Action.

For proper chain of command, any reasonable action, supervision, or control proposed to be implemented by the Mayor and directed against any employee under a department head, shall be directed to each department head who shall in turn be responsible for implementing the reasonable action, supervision, or control within his or her department according to the chain of command with his or her department.

Sec. 2-138. Other Departments May Be Established.

This provisions of Sections 2-131 to 2-137, inclusive, do not preclude the City of Marietta from establishing other departments within the City of Marietta.
(Ord. 2008-10-9; October 14, 2008).

ARTICLE V. FINANCE

DIVISION 1. GENERALLY

Sec. 2-141. Penalty.

Any officer, agent or employee who wilfully and knowingly violates this article shall be guilty of misconduct and shall be subject to removal from his office or position therefor.
(Code 1984, § 7-33)

Sec. 2-142. Deposit of funds; designation of City depositories.

The City Treasurer shall deposit daily all the funds and moneys of whatever kind that shall come into his possession by virtue of his office as such City Treasurer, in his name as City Treasurer, in one or more responsible banks located in the City and designated by the City Council as such depositories. However, there shall not be deposited in any one bank at any one time a greater amount of such funds than the capital stock of such bank. Such bank shall receive all moneys, drafts or checks, at par, and pay interest on the average daily balance at such rate as may be agreed upon between such bank and the City Council and shall credit the interest monthly to the account of the City Treasurer.

(Code 1984, § 7-26)

Sec. 2-143. Bonds of depository.

The City depository shall secure the City for all deposits by giving a good and sufficient bond with some surety company to be approved by the City Council. The bond shall be for double the sum of the probable maximum deposits of the City at any one time with the depository, and anew bond may be exacted by the City Council at any time when the existing bond shall be deemed insufficient, but until such bond is given the City Treasurer shall be liable on his bond for the loss of any money so deposited.

(Code 1984, § 7-29)

Sec. 2-144. Deposit records.

The City Treasurer shall, when making up his deposit for the bank, make duplicate tickets for such deposit and file the deposit tickets with the City Clerk. It shall be the duty of the City Clerk to charge the bank designated as the depository of public moneys with all moneys deposited by the City Treasurer and credit the City Treasurer with such amount deposited.

(Code 1984, § 7-27)

Secs. 2-145—2-155. Reserved.

DIVISION 2. CLAIMS AGAINST CITY

Sec. 2-156. Procedures.

Claims against the City shall be made and processed as provided by law.

(Code 1984, § 7-31)

Sec. 2-157. Affidavit required on certain invoices.

(a) On every invoice submitted to the state, any county or local subdivision of the state for payment to an architect, contractor, engineer or supplier of material of \$300.00 or more shall be the following signed and notarized statement:

STATE OF OKLAHOMA)
COUNTY OF)

The undersigned (architect, contractor, supplier or engineer) of lawful age, being first duly sworn, on oath says that this invoice or claim is true and correct. Affiant further states that the (work, services or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the State of Oklahoma, any county or local subdivision of the state, of money or any other thing of value to obtain payment.

(Architect, contractor, supplier, or engineer)

Subscribed and sworn to before me by _____ this day of _____, 20 ____.

Notary Public (or Clerk or Judge)

(b) Subsection (a) of this section shall not apply to monthly billings submitted to the state for public utility companies or telephone companies, whose services are regulated by the state corporation commission, but will apply to such utility companies or telephone companies for billings pertaining to installations or changes in services.

(Code 1984, § 7-32)

Secs. 2-158—2-170. Reserved.

DIVISION 3. PURCHASES FOR CITY

Sec. 2-171. Purchases Up to \$1000.00.

A department supervisor is authorized to contract for and to purchase or issue purchase authorization for all supplies, materials and equipment for the offices, departments and agencies of the City government where such supplies, materials and equipment do not exceed the amount of \$500.00 per month. Authorization from the Mayor shall be obtained by the department supervisor to contract for and to purchase or issue purchase authorization for all supplies, materials and equipment for the offices, departments and agencies of the City government which exceed \$500.00, and do not exceed \$1,000.00. The Mayor is authorized to make a purchase of supplies, materials and equipment for the offices, departments and agencies of the City government for a sum in excess of \$1,000.00 and less than \$5000.00 if there exists an immediate need for said purchase and if the Mayor obtains the approval of the Council president for said purchase.

Sec. 2-172. Purchases and sales over \$1000.00.

(a) No contract or authorization for purchase in excess of \$1,000.00 shall be made to obligate the City or any agency of the City until there have been obtained competitive quotations of prices or bids, which

quotations of prices or bids shall be submitted to the next regular meeting of the City Council for consideration by the Council. At this Council meeting or the next regular Council meeting, the Council shall act to either authorize the purchase, decline to approve the purchase or request that new quotations of prices or bids be obtained by the department desiring to make such purchase.

(b) Before the purchase of or the contract for any supplies, materials or equipment or the sale of any surplus or obsolete supplies, materials or equipment, the value of which exceeds the sum of \$1,000.00, ample opportunity for competitive bidding shall be given. The contract shall be awarded to the lowest and best responsible bidder for purchases and for sales to the highest and best responsible bidder. The City Council may reject all bids and for purchases may buy in the open market at a price less than the lowest bid received from a responsible bidder. If no bids are received, the Mayor, with approval of the Council, may buy in the open market.

(c) Notwithstanding Sections (a) and (b) of Section 2-172 above, Section 2-173, or Section 2-174 of the Code of Ordinances of the City of Marietta, the Mayor with the approval of the Council president, is authorized to make a purchase of supplies, materials or equipment for a sum in excess of \$1,000.00 and less than \$5000.00 without obtaining competitive quotations of prices or bids if there exists an immediate need for said purchase.

(Ord. 2015-2-1; 2-10-2015)

Sec. 2-173. Competitive bidding not required for certain purchases.

The following may be purchased without giving an opportunity for competitive bidding:

- (1) Supplies, materials, equipment or contractual services that can be furnished only by a single dealer or that have a uniform price wherever bought.
- (2) Supplies, materials, equipment or contractual services purchased from another unit of government at a price deemed below that obtainable from private dealers, including war surplus
- (3) Supplies, materials, equipment or contractual services acquired from the state bid list.

(Ord. No. 1991-5, § 1, 8-6-91)

Sec. 2-174. Emergencies.

The sections of this division with reference to competitive bidding shall not apply when the majority of the City Council declares that an emergency exists. An emergency, as used in this section, shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition and situation wherein the public health or safety is endangered. The reasons for declaring an emergency and not complying with the sections of this division relating to competitive bidding shall be entered into the official minutes of the City Council.

(Ord. No. 1991-5, § 1, 8-6-91)

Secs. 2-175—2-195. Reserved.

ARTICLE VI. EMPLOYEE RETIREMENT SYSTEM

Sec. 2-196. Adopted.

Pursuant to the authority conferred by the laws of the state and for the purpose of encouraging continuity and meritorious service on the part of City employees and thereby promoting public efficiency, there is authorized, created and adopted, effective as of July 1, 1981, the pension plan designated as the Employee Retirement System of Marietta, Oklahoma, and is also known as the Oklahoma Municipal Retirement Fund which includes all Master Defined Benefit Plans, Defined Benefit Plans, and Joinder Agreements, all as amended and adopted by the City. An executed counterpart of the City retirement system instrument is on file in the clerk's office and is incorporated by reference in this article.

(Code 1984, § 1-66)

Sec. 2-197. Administration; board of trustees.

For the purpose of administration of the employee retirement system there is established a board of trustees, which shall be the members of the City Council. The powers and duties of the board of trustees shall be set forth in the system instrument which is on file in the clerk's office.

(Code 1984, § 1-67)

Sec. 2-198. Fund.

A fund is provided for the exclusive use and benefit of the persons entitled to benefits under the employee retirement system. All contributions to the fund shall be paid over to and received in trust for the purpose by the City Treasurer, who shall be the treasurer of the system. The fund shall be pooled for purposes of management and investment with similar funds of other incorporated cities, towns and municipal trusts in the state as a part of the state employees retirement system, in accordance with a duly executed contract for such purpose, which contract shall be executed by the Mayor and City Council. The City Treasurer shall hold such contributions in the form received and from time to time pay over and transfer the contributions to the state employees retirement system, as duly authorized and directed by the board of trustees. The fund shall be nonfiscal and shall not be considered in computing any levy for the purpose of any annual estimate made to the county excise board. The fund and system shall be valued every other year for actuarial soundness by a qualified actuarial firm. (Code 1984, § 1-68)

Sec. 2-199. Appropriations.

The City is authorized to incur the necessary expenses for the establishment, operation and administration of the employee retirement system and to appropriate and pay the expenses. In addition, the City is authorized to appropriate annually such amounts as are required in addition to employee contributions to maintain the system and fund on a sound actuarial basis in accordance with the respective annual actuarial valuation. Any appropriation so made to maintain the system and fund shall be for deferred wages or salaries and for payment of necessary expenses of operation and administration, including separate annual appropriations to be transferred to the trustees of the state employees retirement system for such purposes and shall be paid into the fund when available, through the City Treasurer, to be duly transferred by him to the state employees retirement system.

(Code 1984, § 1-69)

Chapter 6

ALCOHOLIC BEVERAGES

Article I. In General

- Sec. 6-1. State law adopted by reference.
- Sec. 6-2. Maintaining place contrary to law.
- Sec. 6-3. Transportation.
- Sec. 6-4. Furnishing to minors.
- Sec. 6-5. Possession by minors.
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- Sec. 6-7. Consumption or intoxication in public.
- Sec. 6-8. Gatherings and consumption of alcohol by minors.
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Article II. Occupational License Tax and Operation of Business

- Sec. 6-31. Definitions.
- Sec. 6-32. Reserved.
- Sec. 6-33. Sale in retail store only.
- Sec. 6-34. Zoning compliance.
- Sec. 6-35. Restrictions on sales; permitting consumption on premises.
- Sec. 6-36. Consumption on premises.
- Sec. 6-37. Delivery by wholesaler on certain days prohibited.
- Sec. 6-38. Sale on certain days or at certain times prohibited.
- Sec. 6-39. Offering prizes, premiums or gifts as part of sale.
- Sec. 6-40. Employment of person under 21.
- Sec. 6-41. Persons under 21 entering premises.
- Sec. 6-42. Signs.
- Sec. 6-43. Advertising.
- Secs. 6-44—6-65. Reserved.

Article III. Nonintoxicating Beverages

- Sec. 6-66. Definitions.
- Sec. 6-67. License.
- Sec. 6-68. Forfeiture of license; violation of state law.
- Sec. 6-69. Transportation.
- Sec. 6-70. Hours during which sale prohibited.
- Sec. 6-71. Sale, barter or gift to person under 21.

ARTICLE I. IN GENERAL

Sec. 6-1. State law adopted by reference.

Those portions of the Oklahoma Alcoholic Beverage Control Act, 37 O.S. § 502 et seq., applicable to cities are adopted in this chapter by reference as if fully set out.

Sec. 6-2. Maintaining place contrary to law.

It is unlawful for any person or any agent or employee thereof to keep, maintain or aid or abet in keeping or maintaining a place where intoxicating liquor is manufactured, sold, bartered, given away or otherwise furnished in violation of law or this Code or other ordinances of the City.

(Code 1984, § 14-25)

Sec. 6-3. Transportation.

It shall be unlawful for any person to knowingly transport in any vehicle upon a public highway, street or alley any alcoholic beverage, except in the original container which shall not have been opened and the seal upon which shall not have been broken and from which the original cap or cork shall not have been removed, unless the opened container is in the rear trunk or rear compartment, which shall include the spare tire compartment in a vehicle commonly known as a station wagon and panel truck, or any outside compartment not accessible to the driver or any other person in the vehicle while it is in motion.

(Code 1984, § 2-16)

Sec. 6-4. Furnishing to minors.

It shall be unlawful within the City limits for any person to sell, barter, furnish or give to any minor any beer or other alcoholic beverage, whether or not the beer or alcoholic beverage contains more than one-half of one percent of alcohol measured by volume and not more than 3.2 percent of alcohol measured by weight. However, a parent as regards his own child is excepted from this section.

(Code 1984, § 2-33)

Sec. 6-5. Possession by minors.

It shall be unlawful for any minor in any public place within the City to have in his possession or within any vehicle operated by him or under his control any beer or other alcoholic beverage, whether or not the beer or alcoholic beverage contains more than one-half of one percent of alcohol measured by volume and not more than 3.2 percent of alcohol measured by weight.

(Code 1984, § 2-37)

Sec. 6-6. Misrepresentation of age by person under 21.

No person under 21 years of age shall misrepresent his age in writing or present false documentation of age or otherwise for the purpose of inducing any person to sell him alcoholic beverages.

(Code 1984, § 2-14)

Sec. 6-7. Consumption or intoxication in public.

No person in the City shall drink an alcoholic beverage in any public place, except on the premises of a licensee of the alcoholic beverage laws enforcement commission who is authorized to sell or serve alcoholic beverages by the individual drink, or be intoxicated in a public place. No owner, operator, manager or employee of any business or public place to which the public is invited shall allow an intoxicated person to be or to remain in or upon such premises.

(Code 1984, §§ 2-17, 2-26, 14-6)

Sec. 6-8. Gatherings and consumption of alcohol by minors.

(a) Definitions. For purposes of Section 6-8, the following definitions shall apply:

"Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

"Alcoholic Beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one (1) percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. This term includes intoxicating beverages and low point beer as defined herein.

"Gathering" is a party, gathering, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

"Intoxicating Beverage" includes beverages containing more than three and two-tenths percent (3.2%) alcohol by weight.

"Legal Guardian" means (1) person who, by court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.

"Low Point Beer" means and includes beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products.

"Minor" means any person under twenty-one years of age.

"Parent" means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

"Premises" means any residence or other private property, place, or premises, including any commercial or business premises.

"Response costs" are the costs associated with responses by law enforcement, fire, and other emergency response providers to a gathering, including but not limited to: (1) salaries and benefits of law enforcement, code enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a gathering, and the administrative costs attributable to such response(s); (2) the cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a gathering; (3) the cost of repairing any City equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of a gathering; and (4) any other allowable costs related to the enforcement of this Section.

(b) Consumption of Alcohol by Minor in Public Place, Place Open to Public, or Place Not Open to Public.

Except as permitted by state law, it is unlawful for any minor to:

- (1) consume at any public place or any place open to the public alcoholic beverage; or

(2) consume at any place not open to the public any alcoholic beverage, unless in connection with the consumption of the alcoholic beverage that minor is being supervised by his or her parent or legal guardian.

(c) Hosting, Permitting, or Allowing a Party, Gathering, or Event Where Minors Consuming Alcoholic Beverages Prohibited

(1) It is the duty of any person having control of any premises, who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps are controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages present at the gathering; verifying the age of persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure that minors do not consume alcoholic beverages while at the gathering; and supervising the activities of minors at the gathering.

(2) It is unlawful for any person having control of any premises to knowingly host, permit, or allow a gathering to take place at said premises where at least one minor consumes an alcoholic beverage, whenever the person having control of the premises either knows a minor has consumed an alcoholic beverage or reasonably should have known that a minor consumed an alcoholic beverage had the person taken all reasonable steps to prevent the consumption of an alcoholic beverage by a minor as set forth in subsection (1) of this Section.

(3) This Section shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between a minor and his or her parent or legal guardian.

(4) Nothing in this Section should be interpreted to prohibit any family activity held in the confines of the family home from providing the use of alcohol to immediate family members within the supervision of parents and guardians. However, if a minor leaves such a family gathering intoxicated and is found in public then said providers of alcohol will be held responsible in the same manner as a non-family gathering.

(5) Nothing in this section should be interpreted to prohibit any religious practice which includes the use of alcohol. However, if a minor leaves such a religious gathering intoxicated and is found to be in public then said providers of alcohol will be held responsible in the same manner as a non-religious gathering.

(6) This Section shall not apply to any premises licensed by the State of Oklahoma to dispense alcoholic beverages.

(7) Any person who shall violate the provisions of this Section shall be deemed guilty of an offense against the City and upon conviction thereof shall be punished by a fine of up to Five Hundred Dollars (\$500.00) plus costs or imprisonment not exceeding 30 days or both such and imprisonment.

(8) Violations of this Section may be prosecuted by the City of Marietta criminally, civilly, and/or administratively as provided by the Code of Ordinances. The City of Marietta may seek administrative fees and response costs associated with enforcement of this Section through all remedies or procedures provided by statute, ordinance, or law. This Section shall not limit the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Section, nor shall they limit the City of Marietta's ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of this Section.

(9) This Section shall not apply where prohibited or preempted by state or federal law.

(Ord. 2008-4-4, April 8, 2008)

Secs. 6-9—6-30. Reserved.

ARTICLE II. OCCUPATIONAL LICENSE TAX AND OPERATION OF BUSINESS

Sec. 6-31. Definitions.

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Package store means a retail alcoholic beverage store.

State licensee means any person who holds a license issued under the authority of the Oklahoma Alcoholic Beverage Control Act.

(b) The following terms shall be given the same meanings and definitions set forth for them by 37 O.S. § 506 of the Oklahoma Alcoholic Beverage Control Act:

- (1) Brewer.
 - (2) Class B wholesaler.
 - (3) Distiller.
 - (4) Manufacturer.
 - (5) Person.
 - (6) Premises.
 - (7) Winemaker.
 - (8) Rectifier.
 - (9) Wholesaler.
 - (10) Oklahoma winemaker.
- (Code 1984, § 2-1(a))

Sec. 6-32. Reserved.

Sec. 6-33. Sale in retail store only.

No person shall sell at retail and no person shall deliver, in consequence or in completion of such a sale, any alcoholic beverages at any place in the City, except at a retail alcoholic beverage store in strict conformity with this article and the laws of the state.

(Code 1984, § 2-10)

Sec. 6-34. Zoning compliance.

No retail alcoholic beverage store and no wholesale alcoholic beverage store, warehouse, brewery, distillery, winery or any other place, however described, for the manufacture or production or bottling of any alcoholic beverages of any kind shall be located, maintained or operated by any person, at any place, within the boundaries of the City, except at a location at which such an establishment is permitted by appendix A to this Code pertaining to zoning.

(Code 1984, § 2-11)

Sec. 6-35. Restrictions on sales; permitting consumption on premises.

(a) No person shall sell or deliver alcoholic beverages at a retail alcoholic beverages store other than:

- (1) In retail containers.
- (2) At ordinary room temperatures.
- (3) In the original package.
- (4) For consumption off the premises.

(b) No person owning, employed in or in any manner assisting in the maintenance and operation of such a store shall suffer or permit any alcoholic beverage to be consumed or any retail container of such beverage to be opened on the premises of such a store.

(Code 1984, § 2-8)

Sec. 6-36. Consumption on premises.

No person shall drink or consume in any manner alcoholic beverage on the premises of a retail alcoholic beverage store nor shall any person open or break the seal of any original package or retail container containing alcoholic beverages on the premises of any such retail alcoholic beverage store.

(Code 1984, § 2-9)

Sec. 6-37. Delivery by wholesaler on certain days prohibited.

No wholesale dealer in alcoholic beverages and no officer, agent or employee of such a dealer shall sell or deliver to any retail alcoholic beverage store in this City any amount of spirits or wines on the following days:

- (1) Saturday of any week;
- (2) Sunday of any week;
- (3) New Year's Day;
- (4) Memorial Day;
- (5) The Fourth of July;
- (6) Labor Day;
- (7) Veterans Day;
- (8) Thanksgiving Day;
- (9) Christmas Day; or
- (10) While the polls are open on the day of any general, primary, runoff primary or special election, whether national, state, county or City.

(Code 1984, § 2-25)

Sec. 6-38. Sale on certain days or at certain times prohibited.

No person shall open for business or keep open for business or sell or deliver alcoholic beverages to any person at a retail alcoholic beverage store in this City on the following days or times:

- (1) Any Sunday;
- (2) New Year's Day;
- (3) Memorial Day;
- (4) The Fourth of July;
- (5) Labor Day;
- (6) Veterans Day;
- (7) Thanksgiving Day;
- (8) Christmas Day;

(9) On the day of any general, primary, runoff primary or special election, while the polls are open, whether the election is national, state, county or City; or

(10) Any other day, except between the hours of 10:00 a.m. and 9:00 p.m.

(Code 1984, § 2-20)

Sec. 6-39. Offering prizes, premiums or gifts as part of sale.

No alcoholic beverage package store licensee shall offer or furnish any prize, premium, gift or similar inducement to a consumer in connection with the sale of alcoholic beverage, except that goods or merchandise included by the manufacturer in packaging with alcoholic beverages shall not be included in this prohibition, but no wholesaler or package store shall sell any alcoholic beverage prepackaged with other goods or merchandise at a price which is greater than the price at which the alcoholic beverage alone is sold.

(Code 1984, § 2-22)

Sec. 6-40. Employment of person under 21.

No alcoholic beverage licensee shall employ any person under the age of 21 in the selling or handling of alcoholic beverages. However, a mixed beverage, caterer, special event or bottle club licensee may employ servers who are 18 years of age or older, except in designated bar or lounge areas.

(Code 1984, § 2-18)

Sec. 6-41. Persons under 21 entering premises.

(a) No owner or proprietor of a retail alcoholic beverage store in this City and no person employed therein shall permit any person under 21 years of age to enter into, to remain within or to loiter about the premises of such retail alcoholic beverage store.

(b) No person under the age of 21 years shall enter into, remain within or loiter about the premises of any retail alcoholic beverage store within this City.

(Code 1984, §§ 2-23, 2-24)

Sec. 6-42. Signs.

No person owning, operating or maintaining a retail alcoholic beverage store shall cause or permit it to be designated by more than one sign, which shall contain only the words "retail alcoholic liquor store" or any combination of such words or any of them and which shall contain no letter or figure more than four inches in height or more than three inches in width and in which the lines of words, if more than one, shall not be more than one inch apart.

(Code 1984, § 2-4)

Sec. 6-43. Advertising.

No person shall advertise or cause to be advertised, in any manner other than as authorized by section 6-42 of this article, the sale of alcoholic beverages within the limits of the City.

(Code 1984, § 2-5)

Secs. 6-44—6-65. Reserved.

ARTICLE III. NONINTOXICATING BEVERAGES

Sec. 6-66. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Nonintoxicating beverages" means and includes beverages containing more than one-half of one percent alcohol by volume and not more than 3.2 percent alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products.

"Retail dealer" means and includes any person who sells any nonintoxicating beverage, as defined in this section, at retail for consumption or use, and such definitions include state and county fair associations, and special licenses may be issued for the sale of nonintoxicating beverages by such associations and to other persons for the sale of such nonintoxicating beverages at rodeos, picnics or other organized temporary assemblages of people. The term "retail dealer" also includes railways for the sale of such beverages, and licenses may be issued for each dining car or railway train, which railways and dining cars shall pay the same license fees as regular retail dealers.

"Wholesaler" means and includes any person who sells any nonintoxicating beverage to a licensed retail dealer for resale.

(Code 1984, §§ 2-29, 2-30)

Sec. 6-67. License.

It shall be unlawful and an offense for any person to sell, disburse or dispense, within the City, any nonintoxicating beverage at retail to the public for consumption or use without first having received a license from the City clerk. The license shall be issued by the clerk upon the application of the owner, manager or operator of any place where nonintoxicating beverages are sold. If any one person shall operate more than one place of business within the City, a separate license shall be obtained for each place of business. The license fee for on- or off-premises consumption shall be \$50.00. The license fee for off-premises consumption shall be \$25.00. No license shall be issued to any person where the persons consuming nonintoxicating beverages within the place of business cannot be seen from the street.

(Code 1984, § 2-31)

Sec. 6-68. Forfeiture of license; violation of state law.

Any person who violates section 6-4 or 6-67 shall forfeit the license issued pursuant to this article. When such dealer is found to be violating the state law, the police department must provide the county attorney with such facts and information as shall have been obtained.

(Code 1984, § 2-32)

Sec. 6-69. Transportation.

It shall be unlawful for any person to knowingly transport in any moving vehicle upon a public highway, street or alley any nonintoxicating beverage, except in the original container which shall not have been opened and from which the original can or seal shall not have been removed, unless the opened container is in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion.

(Code 1984, § 2-34)

Sec. 6-70. Hours during which sale prohibited.

It shall be unlawful for any place licensed to sell nonintoxicating beverages to sell, dispense or serve such beverages for consumption on the premises between the hours of 2:00 a.m. and 7:00 a.m. or allow such beverages to be consumed on the premises between the hours of 2:00 a.m. and 7:00 a.m. The sale, dispensing, serving and consumption of such beverages between the hours of 2:00 a.m. on Sunday and 7:00 a.m. of the following Monday is prohibited. (Code 1984, § 2-35)

Sec. 6-71. Sale, barter or gift to person under 21.

(a) It shall be unlawful for any person to sell, barter or give to any person under 21 years of age any nonintoxicating beverage, as defined in 37 O.S. § 163.2.

(b) It shall be unlawful for any person who holds a license to sell and dispense nonintoxicating beverages for consumption on the premises, or any agent, servant or employee of such license holder to permit any person under 21 years of age to be admitted to or remain in a separate or enclosed bar area of the licensed premises unless such person's parent or legal guardian is present, which has as its main purpose the selling or serving of nonintoxicating beverages for consumption on the premises. The provisions of this section shall not prohibit persons under 21 years of age from being admitted to an area which has as its main purpose some objective other than the sale or serving of nonintoxicating beverages, in which sales or serving of such beverages are incidental to the main purpose, as long as persons under 21 years of age are not sold or served such beverages; however, the incidental service of food in the bar area shall not exempt a licensee, agent, servant or employee from the provisions of this section.

(c) It shall be unlawful for any person who holds a license to sell and dispense nonintoxicating beverages for consumption on the premises, or any agent, servant or employee of such license holder, to permit any person under 21 years of age to consume any nonintoxicating beverage on the licensed premises.

(d) Any person violating the provisions of this section shall upon conviction be guilty of a misdemeanor.

Sec. 6-72. Employees of Licensed Establishments Not to Solicit Patrons to Purchase Beverages for Employees.

It shall be unlawful for any licensee, owner, manager, or employee of any business or establishment licensed pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act contained in Title 37 O.S. Section 501 et seq., as amended, to permit an employee to solicit a patron to purchase an alcoholic or nonalcoholic beverage for the employee or any other employee, or knowingly serving any employee with a beverage purchased by a patron, or permitting any employee to remain on the licensed premises who solicits a patron to purchase a beverage for any employee, or who solicits a patron to purchase a beverage for himself or herself or for any person not a patron, or permitting an employee to mingle or fraternize with patrons of such licensed business or establishment, except in the furtherance of service of food and/or drinks. Any licensee, owner, manager, or employee of a licensed business or establishment who violates any provision of this section is guilty of an offense, and upon conviction thereof shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00), excluding costs.

Sec. 6-73. Nudity Prohibited in Licensed Business or Establishment.

It shall be unlawful for any person to appear in a state of nudity in any business or establishment licensed

pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act. Any person who violates this section is guilty of an offense, and upon conviction thereof shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00), excluding costs.

Sec. 6-74. Application for Certificate of Compliance; Investigations.

(a) Every applicant for a certificate of compliance with the zoning, fire, health and safety codes of the City required by Title 37 of the Oklahoma Statutes shall apply at the office of the City Clerk by filing a written application on forms prescribed by that office.

(b) Upon receipt of an application for a certificate of compliance, the City Clerk shall cause an investigation to be made to determine whether the premises proposed for licensed operations comply with the provisions of the zoning ordinance and any health, fire, building and other safety codes applicable to it.

(c) The City Clerk shall act on all such applications within twenty (20) days of receipt thereof.

Sec. 6-75. Issuance of Certificate of Zoning and Certificate of Compliance.

(a) Upon finding that the premises of an applicant for a certificate is in compliance with all applicable zoning ordinances, a certificate of zoning shall be issued to the ABLE Commission.

(b) Upon finding that the premises of an applicant for a certificate is in compliance with all applicable fire, safety, and health codes, a certificate of compliance shall be issued to the ABLE Commission.

(c) The above certificates of zoning and of compliance shall be signed by the Mayor, City Clerk, or deputy City Clerk.

Sec. 6-76. Occupation Tax.

(a) Hereby levied and assessed is an annual occupation tax on every business or occupation relating to alcoholic beverages as specifically enumerated herein and in the amount herein stated:

- | | |
|-------------------|----------|
| 1. Mixed Beverage | \$ 24.00 |
| 2. Caterer | \$ 24.00 |

(b) The aforelisted occupational tax rate for initial applications shall be proportional to the number of calendar months remaining in the licensing year during which application is made.

(c) Failure to timely pay to the City any initial or renewal occupational tax as required hereunder shall constitute a municipal offense, the penalty for which upon conviction shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00), excluding costs. Each day in which such tax remains due and unpaid shall constitute a distinct and separate offense.

Sec. 6-77. Zoning Requirements.

(a) The sale of alcoholic beverages by individual drink for on-premises consumption shall be permitted within the boundaries of the City only within the following zoning districts: Convenience Commercial District (C-1) and permitted only in said C-1 District upon review and consent of the Marietta Planning and Zoning Commission; General Commercial District (C-2); and Highway Commercial and Commercial Recreation District (C-3).

(b) Any establishment providing for the sale of alcoholic beverages by individual drink for on-premises consumption also shall be required to have at least one (1) parking space per each 100 square feet.

Chapter 10

ANIMALS

Article I. In General

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Article III. Dogs and Cats

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ARTICLE I. IN GENERAL

Sec. 10-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal means any horse, mule, donkey, pony, cow, sheep, goat, swine, dog, cat, rabbit, chicken, goose, duck, turkey or any other animal or fowl.

At large means not securely confined by a fence or other means on premises under the control of or occupied by the owner of the animal and not under the control, by leash or otherwise of the owner, a member of his immediate family 12 years of age or older or an agent of the owner.

Owner means any person owning, harboring or keeping an animal. The occupant of any premises on which a domesticated or tamed animal remains or to which it customarily returns for a period of ten days or more is deemed to be harboring or keeping the animal.

Vicious dog means a dog which has bitten or attempted to bite any person without undue provocation or which attacks or barks or growls at and acts as if it intended to attack or bite a person when not unduly provoked.

(Code 1984, § 3-1)

Sec. 10-2. Inspections.

The health officer or Police Chief, upon complaint of any person, shall inspect any structure or place where an animal is kept and may do so on his own initiative. He may issue any such reasonable order as he deems necessary to the owner or keeper of the animal to cause the animal to be kept as provided in this chapter or in a manner so as not to constitute a nuisance. He may make a complaint before the municipal judge against any person for violation of any section of this chapter or of any such reasonable order, but this shall not abridge the right of others to make such complaint. If consent is not obtained, City personnel will obtain

permission from a court of competent jurisdiction.
(Code 1984, § 3-12)

Sec. 10-3. Running at large.

No owner shall permit any animal owned, harbored or kept by him to be at large within the City, and it is unlawful for any animal to be at large at any time within the City.
(Code 1984, § 3-2)

Sec. 10-4. Turning animals at large.

It is unlawful for any person to open any enclosure in which any animal is confined as required by this chapter so as to turn such animal at large or to in any manner turn such animal at large.
(Code 1984, § 3-3)

Sec. 10-5. Cruelty.

Any person who shall wilfully or maliciously overdrive, overload, torture, destroy or kill or cruelly beat or injure, maim or mutilate any animal in subjugation or captivity, whether wild or tame and whether belonging to himself or to another, or deprive any such animal of necessary food, drink or shelter; who shall cause, procure or permit any such animal to be so overdriven, overloaded, tortured, destroyed or killed or cruelly beaten or injured, maimed or mutilated or deprived of necessary food, drink or shelter; or who shall wilfully set on foot, instigate, engage in or in any way further any act of cruelty to any animal or any act tending to produce such cruelty shall be punished by imprisonment in the penitentiary not exceeding five years or by imprisonment in the county jail not exceeding one year or by fine not exceeding \$500.00. Any officer finding an animal so maltreated or abused shall cause the animal to be taken care of, and the charges therefor shall be a lien upon such animal, to be collected thereon as upon a pledge or a lien.
(Code 1984, § 3-28)

Sec. 10-6. Poisoning.

It is unlawful for a person wilfully to poison any dog or other animal except a noxious, nondomesticated animal, or to knowingly expose poison so that the poison may be taken by such an animal.
(Code 1984, § 3-29)

Sec. 10-7. Encouraging to fight.

It is unlawful for any person to instigate or encourage a fight between animals; or to encourage one animal to attack, pursue, or annoy another animal, or to keep a house, pit or other place used for fights between animals.
(Code 1984, § 3-30)

Sec. 10-8. Pasturing in public areas.

It is unlawful for any person to stake, confine or pasture any animal on any public school ground or federal, state, City or other public property, or on any railroad right-of-way or any other property, without the consent of the person owning or controlling such property.
(Code 1984, § 3-4)

Sec. 10-9. Swine prohibited.

- (a) It is unlawful to keep or maintain or permit to be kept or maintained any swine within the City.
- (b) The keeping or maintaining or permitting to be kept or maintained any swine within the City is declared to be a public nuisance.
(Code 1984, § 3-5)

Sec. 10-10. Indecent exhibition.

It is unlawful for any person to permit animals to have sexual intercourse in any place except an enclosed place entirely out of the public view.
(Code 1984, § 3-6)

Sec. 10-11. Disturbances.

It is unlawful for any person to keep or harbor within the City any dog or other animal which, by barking, howling or otherwise, disturbs the peace and quiet of any person.
(Code 1984, § 3-7)

Sec. 10-12. Buildings; manure disposal.

(a) Every building wherein any animal is kept within the City shall be constructed of such material and in such manner that it can be kept clean and sanitary at all times.

(b) Every such building, if located within 200 feet of any tenement or apartment house, hotel, restaurant, boardinghouse, retail food store, building used for educational, religious or hospital purposes or residence other than that occupied by the owner or occupant of the premises upon which such animal is kept, shall be provided with a watertight and flytight receptacle for manure. The receptacle shall be of such size as to hold all accumulations of manure. Such receptacle shall be emptied sufficiently often and in such manner as to prevent it from being or becoming a nuisance and shall be kept covered at all times except when open during the deposit or removal of manure or refuse. No manure shall be allowed to accumulate on such premises except in such receptacle.
(Code 1984, § 3-8)

Sec. 10-13. Cleanliness of enclosures.

Every structure, pen, lot or place wherein an animal is kept or permitted to be shall be maintained in a clean and sanitary condition, devoid of rodents and vermin, and free from objectionable odors.
(Code 1984, § 3-10)

Sec. 10-14. Manure.

Manure shall be hauled outside the City in a manner which does not jeopardize the public health or else shall be spread evenly upon the ground and turned under at once or as soon as the weather permits.
(Code 1984, § 3-11)

Sec. 10-15. Bird sanctuary designated.

The entire area embraced within the corporate limits of the City shall be designated as a bird sanctuary.
(Code 1984, § 3-32)

Sec. 10-16. Trapping, shooting or molesting birds or wild fowl.

It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests. However, this section shall not apply to starlings or similar types of birds found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to the health or property of the people of the City.
(Code 1984, § 3-33)

Sec. 10-17. Destruction of certain birds.

If starlings or similar birds increase in such numbers or are found congregating, the City Council may direct and order their destruction, and upon such order the Chief of Police shall supervise the elimination of such birds.
(Code 1984, § 3-34)

Sec. 10-18. Keeping of wild animals.

The keeping or harboring of wild animals within the City shall be subject to the following provisions:

(1) The property on which wild animals are kept or harbored must be located within an A-1, rural agricultural zoning district and it must be a minimum of five acres.

(2) All wild animals must be confined at all times within an enclosure of chainlink fencing with galvanized wire of no smaller than nine-gauge. Said enclosure shall be totally enclosed with fencing, as described herein, secured to the top and bottom with the exception that the bottom may be excluded provided the sides are embedded into the ground a minimum of one foot. Said enclosure shall also be located a minimum of 50 feet from all property lines.

(3) The owner, keeper or breeder of any wild animals must abide by all applicable Oklahoma State Statutes and licensing requirements for the keeping or breeding of wildlife.
(Ord. No. 1995-3, § 2, 8-1-95)

Secs. 10-19—10-40. Reserved.

ARTICLE II. POUND

Sec. 10-41. Established.

A City pound may be established under the jurisdiction of the police department. It shall be under the immediate control of an animal control officer or of such other person as may be officially designated. The person in charge of the pound shall provide proper sustenance for all animals impounded and shall treat them in a humane manner. The City may contract with another agency for the use of a pound maintained by the agency.
(Code 1984, § 3-21)

Sec. 10-42. Impoundment procedures.

(a) A police officer, animal control officer, or other designated agent of the City are hereby authorized and shall take into custody and impound any animal running at large or any vicious animal in violation of this chapter or any ordinance; may enter upon the premises of the owner or other private premises to take such animal into custody; and, with reasonable effort a dog or cat illegally at large cannot be caught, may kill it, either on or off private premises. (Ord. 2015-6-2; 6-9-2015).

(b) Any other person may take such animal into custody and present it to the authority in charge of the pound for impounding. The City Council, by motion or resolution, may provide for the payment of rewards to private persons who present such animals at the pound, when funds are available.

(c) Animals which are of no apparent value, taken into custody as provided in this section, shall be destroyed in a humane manner by the officer or employee of the City in charge of such animal or by the animal control officer and shall not be kept in the pound.
(Code 1984, § 3-22)

Sec. 10-43. Breaking pound.

No unauthorized person shall break or attempt to break open the pound or take or let out any animal therefrom or take or attempt to take from any officer or employee any animal taken into custody as provided by this chapter or other ordinance or in any manner interfere with or hinder such officer or employee in the discharge of his duties relating to the taking into custody and impounding of animals as provided in this chapter.
(Code 1984, § 3-23)

Sec. 10-44. Duty of pound man upon receiving dogs.

(a) The pound man or his designated deputies, upon receiving any dog, shall make a complete registry, entering the breed, color and sex of such dog and whether licensed and the place and time of taking into custody.

(b) If licensed, he shall enter the name and address of the owner and the number of the license tag.

(c) Licensed dogs shall be kept separate from unlicensed dogs.
(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-45. Licensed dogs; sale, destruction if not redeemed within six days.

After the impounding of any licensed dog, if not redeemed within six days from the date of impounding, said dog shall be disposed of by sale or destruction.
(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-46. Unlicensed dogs; sale, destruction if not redeemed within 72 hours.

If there is no license tag for the current year attached to any dog impounded and such dog has not been redeemed by its owner within 72 hours from the time of impounding such dog, such dog shall be destroyed or sold as hereinafter provided.
(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-47. Redemption of impounded licensed dogs; fee.

The owner of any licensed dog impounded may redeem such dog at any time prior to sale or destruction by the payment of the current impounding fee implemented by the City Council, and the current boarding fee implemented by the City Council for each day such dog shall have been impounded.

(Ord. No. 2006-3, 3-13-06)

Sec. 10-48. Redemption of impounded unlicensed dogs; fee.

The owner of any unlicensed dog impounded may redeem such dog at any time prior to sale or destruction by having such dog duly licensed and vaccinated against rabies, and by the payment of the current impounding fee implemented by the City Council, and by payment of the current boarding fee implemented by the City Council for each day such dog shall have been impounded.

(Ord. No. 2006-3-3, 3-13-06)

Sec. 10-49. Duty of pound man to keep dogs prescribed time.

(a) Licensed dogs. It shall be the duty of the pound man to keep all licensed dogs for a period of six days from the date of the impounding. If, at the expiration of six days, such dog has not been redeemed, by the owner, it shall be sold or destroyed.

(b) Unlicensed dogs. It shall be the duty of the pound man to keep all unlicensed dogs for a period of three days. If, at the expiration of three days from the date of impounding, such dog has not been redeemed, it may be destroyed or sold as herein provided.

(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-50. Sale, destruction after expiration of redemption period.

(a) At any time after the expiration of the period of time for redemption for impounded dogs shall have expired, the pound man may, without further notice and without advertising in any manner, sell at private sale or public auction, for cats, any dog not redeemed or reclaimed.

(b) All dogs impounded and not redeemed, reclaimed or sold after the period of time for redemption has expired, shall forthwith be destroyed by the pound man.

(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-51. Redemption by owner from purchaser at sale.

The owner of any dog at the time it is impounded may, within 30 days after such dog is sold, redeem the same from such purchaser by paying to him the amount of the purchase price paid by him to the animal pound facility, and in addition thereto the licensing fee and vaccination charges, if any were incurred, and in addition thereto, a fee as established by the City Council for each day for the number of days from the date of sale of such dog to the date of redemption. At the end of 30 days from the date the dog is sold, the right to redeem shall expire.

(Ord. No. 2006-3-3, 3-13-06)

Sec. 10-52. Quarantine and observation of dogs believed to be rabid.

If a dog is believed to have rabies or has been bitten by an animal suspected of having rabies or has been bitten by an animal suspected of having rabies or has bitten someone, such dog shall be confined by an appropriate pen on the owner's premises and shall not be allowed to run at large and shall be kept from

contact with any other animal for a period of two weeks. Poundmaster shall have the right to having the dog removed from the owner's premises to a veterinary hospital and there placed under observation for a period of two weeks at the expense of the owner. If the owner does not want the dog quarantined, the owner may take the dog to a licensed veterinarian, have the animal put to sleep and its head sent to the State Health Department for testing, all at the owner's expense.

(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-53. Pound to file reports under oath.

The pound man shall file such reports under oath as are required by the City clerk or City commission.

(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-54. Court to determine disposition of dogs biting, attacking, etc. any person.

If any dog within the City shall bite, scratch or otherwise attack any person, and if the person so attacked was not at the time trespassing under the property of the owner or person having control of such dog, or if it cannot be proved beyond a reasonable doubt that the person so attacked was provoking or teasing such dog, the City court shall have the authority to order and hold a hearing, and if such court shall determine at such hearing that such dog is vicious or dangerous to persons or other animals, the court may order that such dog be kept muzzled, or that such dog be kept within a sufficient enclosure, or that such dog be delivered to the pound man and by him destroyed.

(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-55. Keeping unlicensed, unvaccinated dog; penalty.

Any owner who shall maintain or keep a dog more than six months of age on any premises within the corporate limits of the City which has not been licensed and vaccinated, as required by this article, shall be guilty of a misdemeanor.

(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-56. Refusing to deliver unlicensed, unvaccinated dog to pound man; penalty.

Any person who shall refuse to deliver any unlicensed or unvaccinated dog to the pound man or any of his deputies or any City policeman upon demand for impounding, shall be guilty of a misdemeanor.

(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-57. Right of entry by pound man; penalty for refusal.

The pound man or his authorized deputies shall have the right at any reasonable time to inspect any dog to determine if such dog is licensed and vaccinated as required by this article and shall have the authority to enter any premises for such purpose, and it shall be unlawful for any person to refuse entrance to such pound man or his deputies or to impede, obstruct or exclude such pound man or his deputies when attempting to enter such premises for the purpose of inspecting such dog, and any person who shall refuse entrance or impede or obstruct such pound man shall be guilty of a misdemeanor.

(Ord. No. 1995-3, § 2, 8-1-95)

Secs. 10-58—10-70. Reserved.

ARTICLE III. DOGS AND CATS

Sec. 10-71. Dog tax, registration, tag.

(a) A tax of \$2.50 per year for every male dog and every spayed female dog and \$5.00 per year for every other female dog over six months of age that is kept or harbored within the City is levied upon the owner.

(b) The tax shall not apply to a dog only temporarily brought and kept within the City or to a dog brought within the City to participate in a dog show or to a Seeing Eye dog when such dog is actually being used by a blind person to aid him in going from place to place.

(c) The owner shall pay such tax to the City clerk for every calendar year before May 1 or upon acquiring after such date any dog within the City upon which the tax has not been paid for the year in which acquired or upon bringing a dog into the City after such date.

(d) Before the City clerk accepts any money offered in payment of the tax for a dog or issues a license for it, the person offering the tax shall present to the City clerk the certificate of a veterinarian or other person legally authorized to immunize dogs, showing that the dog has been immunized against rabies during the calendar year.

(e) The owner of the dog shall, at the time of paying the tax, register the dog by giving the City clerk the name and address of the owner; the name, breed, color and sex of the dog; and such other reasonable information as the City clerk may request.

(f) The City clerk thereupon shall deliver an original receipt to the taxpayer and also an appropriate tag for the dog. Such tag shall constitute a license for the dog.
(Code 1984, § 3-15)

Sec. 10-72. Tag worn by dog; lost tags.

(a) The owner shall cause the tag received from the City clerk pursuant to section 10-71 of this article to be affixed to the collar or harness of the dog upon which the tax has been paid so that the tag can easily be seen by officers of the City. The owner shall see that the tag is so worn by the dog at all times.

(b) If the tag is lost before the end of the year for which it was issued, the owner may secure another for the dog by applying to the City clerk, presenting to him the original receipt, and paying to him a fee of \$0.50.
(Code 1984, § 3-16)

Sec. 10-73. Counterfeiting tags; placing tags on other dogs.

No person shall counterfeit or attempt to counterfeit any tag issued for a dog as provided in this article or take from any dog a tag legally placed upon it or place such tag upon a dog for which the tag was not specifically issued.

(Code 1984, § 3-17)

Sec. 10-74. Vicious dogs.

(a) Confinement required. No person owning or harboring or having the care of a vicious dog shall allow or permit such animal to go unconfined on the premises of such person.

(b) Leash and muzzle or restraint required. No person owning or harboring or having the care of a vicious dog shall allow or permit such dog to go beyond the premises of such person, unless such dog is securely leashed and muzzled or otherwise securely restrained and muzzled.

(c) Definitions; confinement requirements.

(1) A vicious dog is "unconfined," as the term is used in this section, if such dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure located upon the premises of the person described in subsection (a) hereof. Such pen or structure must be of chainlink fencing no less than six feet in height with the chain link no smaller than nine-gauge wire. If the pen or structure has no bottom secured to the sides, the sides must be imbedded into the ground no less than one foot. The dog(s) must have on a leather collar no less than three-eighths of an inch thick and three inches wide to which a chain, with links no less than three-eighths of an inch thick, is attached. The other end of the chain must be fastened securely to a metal stake embedded in the ground with concrete, securely enough to ensure the dog is restrained. The chain must be of a length that will not allow the dog(s) to reach any portion of the fence making up the pen. As an alternative to the dog(s) being chained inside the pen or structure, the pen or structure may have a secure top attached to the sides.

(2) A "vicious" dog, as the term is used in this section, means:

a. Any dog with a propensity, tendency, history or disposition to attack, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals; or

b. Any dog that approaches humans or other domestic animals in a vicious or terrorizing manner; or

c. Any dog which attacks a human being or other domestic animal one or more times without provocation; or

d. Any dog which is urged by its owner or harborer to attack, or whose owner or harborer threatens to provoke such dog to attack a law enforcement officer while such officer is engaged in the performance of official duties; or

e. Any dog owned or harbored for the purpose of dogfighting, or any dog trained for dogfighting.

f. Subsections (a) and (b) above are necessary controls on the unrestrained activities of vicious animals which threaten the safety and pleasantness of streets, parks, sidewalks, yards and all areas of the City; and the lack of knowledge of intent is not a defense in violation thereof.

(d) Posting notice; insurance; certificate; photographs; report, ID number. It shall be the duty of the owner or harborers of a vicious dog or dogs to post a notice on the premises where the dog is kept, conspicuously visible to the public in letters of not less than two inches high, and stating either "VICIOUS DOG HERE" or "BEWARE OF VICIOUS DOG." Owners or harborers of any vicious dog or dogs, as defined by this section, must purchase and provide \$50,000.00 worth of liability insurance for a single incident, should the dog attack anyone. A certificate of insurance must be provided to the City clerk upon licensing the dog. The owner is also required, at the time of licensing the dog, to provide an identifying photograph of the vicious dog or dogs located within the City limits; and the owner must report all births, deaths or transfers of vicious dogs, as defined herein, within the City limits. All vicious dogs shall be tattooed with an identifying number by a licensed veterinarian.

(e) Violation generally; impoundment. All vicious dogs, as defined in this section, which are kept in violation of any of the provisions of this section are subject to being impounded by the pound man, any of his deputies or any City policeman.

(f) Subject to other provisions. The owners or harborers of vicious dogs will be subject to the provisions of sections 10-1 through 10-18 and sections 10-96 through 10-99 of the Code of Ordinances, City of Marietta, Oklahoma.

(g) Killed or injured person. If a vicious dog has been impounded for killing or injuring a person, it shall be killed in a humane manner.
(Code 1984, § 3-19; Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-75. Cats—Definitions.

Cat shall, for the purpose of this article, mean both the male and the female.
(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-76. Rabies vaccination required.

It shall be unlawful for any person to maintain or keep a cat more than three months of age on any premises within the corporate limits of the City unless such cat has been vaccinated for rabies by a licensed veterinarian of the state within the current calendar year.
(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-77. Quarantine and observation of cats believed to be rabid.

If the cat is believed to have rabies or has been bitten by an animal suspected of having rabies, such cat shall be confined by a leash or chain or appropriate pen on the owner's premises and shall not be allowed to run at large and shall be kept from contact with any other animal for a period of two weeks. During this time, the cat will be placed under the observation of a veterinarian at the expense of the owner. Poundmaster shall have the right to have the cat removed from the owner's premises to a veterinary hospital and there placed under observation for a period of two weeks at the expense of the owner.
(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-78. Disposition of rabid cats; notification of poundmaster.

It shall be unlawful for any person knowing or suspecting a cat has rabies to allow such cat to be taken off his premises or beyond the limits of the City without the written permission of the poundmaster. Every owner, or other person upon ascertaining a cat as rabid shall immediately notify the poundmaster or a policeman who shall either remove the cat to the pound or summarily destroy it.
(Ord. No. 1995-3, § 2, 8-1-95)

Sec. 10-79. Penalties for violation of article provisions.

Any owner found violating any provision of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of up to \$100.00.
(Ord. No. 1995-3, § 2, 8-1-95)

Secs. 10-80—10-95. Reserved.

ARTICLE IV. RABIES CONTROL

Sec. 10-96. Vaccination of dogs.

The owner of a dog shall have the dog vaccinated by a veterinarian against rabies every calendar year before May 1 or for a pup before he is six months old. The veterinarian shall furnish the owner a certificate of vaccination.

(Code 1984, § 3-14)

Sec. 10-97. Confinement of dogs and cats during rabies epidemic.

(a) When the health officer or Chief of Police determines and certifies that a dog, a cat or other animal in the City is or was infected with rabies and that an epidemic of rabies threatens the City, the City Council, by resolution, may order all dogs to be confined and, if deemed desirable, all cats to be confined during a period of time to be determined by the City Council. Such resolution or an adequate notice of its passage shall be published in a newspaper of general circulation within the City and shall go into effect on the day following such publication unless the resolution prescribes a later time.

(b) While such resolution is in effect, it is unlawful for any owner to permit a dog or cat to be at large in violation of such resolution or for any dog or cat to be at large in violation thereof.

(Code 1984, § 3-18)

Sec. 10-98. Animals suspected of rabies.

(a) Any dog or other animal suspected of being rabid or of having been bitten by a rabid animal may be confined by order of the health officer or Police Chief and in the manner and for the time ordered by him to determine whether the animal is rabid.

(b) If a person has been bitten or if there is good reason to believe that a person has been otherwise infected by such animal, the health officer or Police Chief may have the animal put to death in a humane manner and have it examined by medical authority to determine whether it has rabies.

(Code 1984, § 3-13)

Sec. 10-99. Killing rabid dog.

Any person may kill a dog, the appearance or conduct of which is such as would cause an ordinarily prudent person to believe the dog to be infected with rabies.

(Code 1984, § 3-20)

Chapter 14

BUILDINGS AND BUILDING REGULATIONS

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ARTICLE I. IN GENERAL

Sec. 14-1. Penalty.

Any person who shall engage in any business, trade or vocation for which a license, permit, certificate or registration is required by this chapter, without having a valid license, permit, certificate or certificate of registration as required, or who shall fail to do anything required by this chapter or by any code adopted by this chapter or who shall otherwise violate any section of this chapter or of any code adopted by this chapter or who shall violate any lawful rule or order made by any of the officers provided for in this chapter shall be guilty of an offense and upon conviction thereof shall be fined in any sum not to exceed \$500.00, plus costs. Each day upon which a violation continues shall be deemed a separate offense.

(Ord. No. 2006-6-9, 11-01-06)

Sec. 14-2. Relief in addition to penalty.

No penalty imposed by and pursuant to section 14-1 of this article shall interfere with the right of the City also to apply to the proper courts of the state for a mandamus, an injunction or other appropriate action against such person.

(Code 1984, § 4-33)

Sec. 14-3. Violation by corporate officers and agents.

Violation of this chapter by any corporation or association shall subject the officers and agents actively in charge of the business of such corporation or association to the penalty provided in section 14-1 of this article.

(Code 1984, § 4-34)

Secs. 14-4—14-25. Reserved.

ARTICLE II. BUILDING CODES

Sec. 14-26. Adoption of Codes.

A. Adoption of International Building Code.

There is adopted for the purpose of establishing rules for the construction, alteration, removal, demolition, equipment, buildings and structures, including permits and penalties, that certain building code known as the International Building Code, the including all appendixes. Such codes, except such portions as may be deleted, modified or amended in this article, are adopted and incorporated as fully as if set out at length in this article. Such code shall be controlled in the construction, alternation, removal, demolition, equipment, and location of all buildings and other structures within the corporate limits of the City.

(Code 1984, § 4-1; Ord. No. 2001-3, 11-6-01)

B. Adoption of International Property Maintenance Code.

That a certain document, three (3) copies of which are on file in the office of the City Clerk of the City of Marietta, being marked and designated as the International Property Maintenance Code, 2009 edition, as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the City of Marietta, in the State of Oklahoma for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the City Clerk of the City of Marietta are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance.

1. Revised Sections of International Property Maintenance Code.

The following sections of the International Property Maintenance Code are hereby revised:

Section 10 1 .l. Insert: City of Marietta

Section 103.5. Insert: An administrative fee of \$100; a fine of \$100 for first offense; a fine of \$300 for second offense; a fine of \$500 for third offense and each offense thereafter

Section 112.4. Insert: \$100/\$500

Section 302.4. Insert: 10 Inches

Section 304.14. Insert: March 1 to September 30

Section 602.3. Insert: October 1 to April 30

Section 602.4. Insert: October 1 to April 30

2. Remaining portions of International Property Maintenance Code valid.

That if any section, subsection, sentence, clause or phrase of this International Property Maintenance Code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the International Property Maintenance Code. The City Council of the City of Marietta hereby declares that it would have passed the International Property Maintenance Code ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.
(Ord. 12-06-08, 8-14-2012).

Sec. 14-27. Interceptors and separators.

Interceptors and separators for oil, grease and other substances harmful or hazardous to the public sewer or sewage treatment plant shall be provided as required in this chapter.
(Ord. No. 2004-6-7-A, § 1, 8-3-04)

Sec. 14-28. Interceptors not required.

A grease interceptor shall not be required for individual dwelling units or any private living quarters.
(Ord. No. 2004-6-7-A, § 2, 8-3-04)

Sec. 14-29. Separators required.

Every repair garage, gasoline station with grease racks, grease pits or work racks at factories where oily and flammable liquid wastes are produced, separators shall be installed into which all oil-bearing, grease-bearing or flammable wastes shall be discharged before emptying in the building drainage system or into the public sewer.
(Ord. No. 2004-6-7-A, § 3, 8-3-04)

Sec. 14-30. Sizes, type, and location to be approved.

The size, type, and location for each interceptor and each separator shall be approved, and the wastes that do not require treatment or separation shall not be discharged into any interceptor or separator.
(Ord. No. 2004-6-7-A, § 4, 8-3-04)

Sec. 14-31. Grease interceptors.

Grease interceptors shall conform to those requirements within the International Building Code as adopted by the City.
(Ord. No. 2004-6-7-A, § 5, 8-3-04)

Sec. 14-32. Grease interceptors required.

A grease interceptor shall be required to receive the drainage from fixtures and equipment with grease-laden waste located in food preparation areas, such as in restaurants, hotel kitchens, bars, factory cafeterias or restaurants and clubs. Food waste grinders shall not discharge to the building drainage system through a grease interceptor.
(Ord. No. 2004-6-7-A, § 6, 8-3-04)

Sec. 14-33. Interceptor capacity.

Grease interceptors shall have the grease retention capacity as required in the International Building Code as adopted by the City.

(Ord. No. 2004-6-7-A, § 7, 8-3-04)

Sec. 14-34. Time for enforcement.

The sections added to the code concerning interceptors and separators shall go into effect six months from the date of the passage of this section.

(Ord. No. 2004-6-7-A, § 8, 8-3-04)

Sec. 14-35. Fines and penalties.

Any person or entity who shall violate the requirements of the interceptors and separators shall be guilty of an offense and upon conviction thereof, shall be fined in any sum not to exceed \$500.00, plus costs. Each day upon which a violation continues shall be deemed a separate offense.

(Ord. No. 2006-6-9, 11-01-06)

Secs. 14-36—14-45. Reserved.

ARTICLE III. PLUMBING

Sec. 14-46. Code adopted; administrative authority.

Except as may be otherwise specifically provided by law or this Code or other ordinance, the

(a)

plumbing and drainage system of a building or structure shall be installed in conformity with the International Plumbing Code/2001. Such code is hereby adopted and shall govern plumbing within the City.

The term "building inspector" shall be used in place of the term "code official" in such code.

(b)

(Code 1984, § 4-11; Ord. No. 2001-3, 11-6-01)

Sec. 14-47. Inspection, permit fees.

Fees for plumbing permits or for inspection shall be set by the City Council by motion or resolution.

(Code 1984, § 4-12; Ord. No. 2001-3, 11-6-01)

Sec. 14-48. Registration of contractor's license.

Every person engaged in a plumbing contractor's business shall hold a valid state plumbing contractor's license and shall have such license registered with the City.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-49. Registration of journeyman's license.

No person shall work as a journeyman plumber in the City unless he shall have a valid state journeyman license and shall have such license registered with the City.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-50. Fees for registration of contractor's and journeyman's license.

The fees for registration as required in this article shall be set by the City Council by motion or resolution.
(Ord. No. 2001-3, 11-6-01)

Sec. 14-51. Expiration, renewal of registration.

All registrations provided for in this article shall expire June 30 each year. The renewal of the certificate of registration is required within 30 days after the date of expiration. Any person renewing a registration more than 30 days after expiration shall be charged the first year fee.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-52. Transferability of license.

It shall be unlawful for any person holding a license to transfer the license or allow the use of the license, directly or indirectly, by any other person for the purpose of obtaining a permit to do any of the plumbing work specified in this article.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-53. Mechanical contractors—Code adopting administrative authority.

Except as may be otherwise specifically provided by law, this Code or other ordinance, the mechanical systems of the building or structure shall be installed in conformity with the International Mechanical Code 2000. Such code is hereby adopted and shall govern all heating, air conditioning and mechanical contracting within the City.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-54. Fees for mechanical contracting permits.

Fees for mechanical contracting permits shall be set by the City Council by motion or resolution.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-55. Registration of contractor's license.

Every person engaged in a mechanical contractor's business shall hold a valid state mechanical contractor's license and shall have such license registered with the City.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-56. Registration of journeyman's license.

No person shall work as a journeyman mechanical contractor in the City unless he shall have a valid state journeyman license and shall have such license registered with the City.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-57. Fees for registration of contractor's and journeyman's license.

The fees for registration as required in this article shall be set by the City Council by motion or resolution.
(Ord. No. 2001-3, 11-6-01)

Sec. 14-58. Expiration, renewal of registration.

All registrations provided for in this article shall expire June 30 each year. The renewal of the certificate of registration is required within 30 days after the date of expiration. Any person renewing a registration more than 30 days after expiration shall be charged the first year fee.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-59. Transferability of license.

It shall be unlawful for any person holding a license to transfer the license or allow the use of the license, directly or indirectly, by any other person for the purpose of obtaining a permit to do any of the mechanical work specified in this article.

(Ord. No. 2001-3, 11-6-01)

Secs. 14-60—14-70. Reserved.

ARTICLE IV. ELECTRICITY

Sec. 14-71. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Electrical equipment refers to electrical conductors, metallic raceways, fittings, devices, fixtures, appliances, apparatus and any electrical material of any nature, kind or description to be installed within or on any building or structure.

(Code 1984, § 4-15)

Sec. 14-72. Code adopted.

The 2001 edition of the National Electric Code, including all appendixes thereto, as published by the National Fire Protection Association, is adopted by reference in this article except as may be amended in this section.

(Ord. No. 2001-3, 11-6-01)

Sec. 14-73. Conformity of equipment.

All electrical equipment installed or used shall be in conformity with this article, the state statutes and any orders and rules issued by authority thereof and with approved electrical standards for safety to persons or to property. Unless by this article, by a state statute or any orders or rules issued by authority thereof a specific type or class of electrical equipment is disapproved for installations and use, conformity with the standards of Underwriters' Laboratories, Inc., shall be prima facie evidence of conformity with approved standards for safety to persons or to property.

(Code 1984, § 4-17)

Sec. 14-74. Special rulings.

Under this article, the City Council, by motion or resolution, shall have the authority to make special rulings, when circumstances warrant, for the safeguarding of life and property and the improvement of electrical installations, but in every case a person engaged in the installing of electrical equipment and holding an electrical license must be notified by letter of these decisions.

(Code 1984, § 4-18)

Sec. 14-75. Registration of contractor's license.

Every person engaged in an electrical contractor's business shall hold a valid state electrical contractor's license and shall have such license registered with the City.

(Ord. No. 1985-6, § 2, 8-6-85)

Sec. 14-76. Registration of journeyman's license.

No person shall work as a journeyman wireman in the City unless he shall have a valid state journeyman license and shall have such license registered with the City.

(Ord. No. 1985-6, § 1, 8-6-85)

Sec. 14-77. Fees for registration of contractor's and journeyman's license.

The fees for registration as required in this article shall be set by the City Council by motion or resolution.

(Ord. No. 1985-6, § 3, 8-6-85)

Sec. 14-78. Expiration, renewal of registration.

All registrations provided for in this article shall expire June 30 each year. The renewal of the certificate of registration is required within 30 days after the date of expiration. Any person renewing a registration more than 30 days after expiration shall be charged the first year fee.

(Ord. No. 1985-6, § 4, 8-6-85)

Sec. 14-79. Transferability of license.

It shall be unlawful for any person holding a license to transfer the license or allow the use of the license, directly or indirectly, by any other person for the purpose of obtaining a permit to do any of the electrical work specified in this article.

(Ord. No. 1985-6, § 5, 8-6-85)

Secs. 14-80—14-105. Reserved.

ARTICLE V. LIQUEFIED PETROLEUM GAS

Sec. 14-106. Compliance required; standards adopted.

(a) It is unlawful for any person to manufacture, fabricate, assemble, install or repair any system, container, apparatus or appliance to be used for the transportation, storage, dispensing or utilization of liquefied petroleum gas or to transport, handle or store such gas, unless such person is in compliance with the law, this Code and ordinances relating thereto and has any license or permit which may be required by state law.

(b) The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association in 1969 and published in its pamphlet no. 58 and the standards for the installation of gas appliances and gas piping adopted by the National Fire Protection Association in 1969 and published in its pamphlet no. 54 shall be the accepted standards for this state. Any supplementary or additional rules and regulations adopted by the National Fire Protection Association and included in pamphlet no. 58 or pamphlet no. 54 shall be the accepted standards for this state and are adopted.

(Code 1984, § 4-14)

Sec. 14-107. Parking or storage of transport vehicle.

No vehicle transporting liquid propane gas shall be parked inside any building except while undergoing repairs or within a building used for the storage of such vehicle. Such vehicle shall not be parked within any building for any purpose unless the tank is empty. No transport vehicle shall be parked or stored:

- (1) In any place other than a district designated by the fire chief, except while making deliveries or receiving service or repairs.
- (2) Within any residence district.
- (3) Upon any street or alley, except while making deliveries.
- (4) Within the City limits more than two consecutive hours.

(Code 1984, § 8-8.1)

Secs. 14-108—14-130. Reserved.

ARTICLE VI. MOVING BUILDINGS

Sec. 14-131. Permit required.

No person shall move, haul or transport any house, building or other structure upon, across or over any street or alley within the City limits without first obtaining a permit.

(Code 1984, § 4-5)

Sec. 14-132. Application for permit.

(a) Any application for a permit to move a house, building or other structure upon, across or over any street or alley within the City limits shall be made to the City Clerk and shall state the following:

- (1) The location of the house, building or other structure to be moved;
- (2) Its greatest length, width, and height;
- (3) The route over which it is to be moved;
- (4) Whether or not it will be necessary to cut, remove, raise or in any way interfere with any telephone, telegraph or electric light wires or to move any pole bearing any such wires;
- (5) Whether it will be necessary to cross the tracks of any railroad;
- (6) If it shall be necessary to cut, remove, raise or in any way interfere with any such wires, the name of the owner of such wires;
- (7) The time and place of the removal of the poles or the cutting or raising of wires or the crossing of railway tracks; and
- (8) The proposed new location thereof.

(b) The Mayor shall have authority to require any changes in such route that he shall deem proper under the circumstances.

(c) This article shall not apply to any person desiring to move any building or structure when the moving of such building or structure will not touch or interfere with any such wires or cross any such railway or necessitate the moving of any pole bearing any such wire. (Code 1984, § 4-6)

Sec. 14-133. Permit fee.

Before a permit to move any house, building or other structure is granted under this article, the applicant for such permit shall pay to the City Clerk a fee in an amount established by motion or resolution of the City Council.

(Code 1984, § 4-10)

Sec. 14-134. Notice of moving wires, poles or crossing railroad tracks.

If it appears from the application for the permit required under this article that it will be necessary to cut, remove, raise or in any way interfere with any telephone, telegraph or electric light wire or move any pole bearing any such wire or that it will be necessary to cross the tracks of any railway, it shall be the duty of the City Clerk to give the person owning or operating such wires or railway at least 24 hours' notice of the time and place when and where the removal of such poles or the cutting or raising or otherwise interfering with such wires or the crossing of any railway tracks will be necessary.

(Code 1984, § 4-7)

Sec. 14-135. Employment of competent workmen or linemen to move poles and wires.

It shall be the duty of any person owning or operating any telephone, telegraph or electric light wires or any railway, after service of notice as required in section 14-134, to furnish competent workmen or linemen to raise or cut such wires as will be necessary to facilitate the moving of the house, building or other structure. The actual expense which is incurred by any person for cutting, removing or otherwise facilitating the moving of any such house, building or other structure shall be paid by the person moving such house, building or other structure. No person engaged in moving any house, building or other structure shall raise or in any way interfere with any such poles or wires unless the person or authority owning or having control of the poles or wires shall refuse to do so after having been notified as required by section 14-134, and then only competent and experienced workmen or linemen shall be employed in such work and the poles and wires shall be promptly replaced and damages thereto promptly repaired at the expense of the person moving such house, building or other structure.

(Code 1984, § 4-8)

Sec. 14-136. Compliance prior to interfering with wires or poles.

It shall be unlawful for any person engaged as principal or employee in moving any house, building or other structure upon, across or over any street or alley within the City limits to touch, move, cut, molest or in any way interfere with any telephone, telegraph or electric light wire or any pole bearing any such wire or any other structure on any street or alley except under and in compliance with this article.

(Code 1984, § 4-9)

Chapter 18

BUSINESSES

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- Sec. 18-91.** **Levy of inspection fee and service charge.**
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ARTICLE I. IN GENERAL

Sec. 18-1. Penalty for violation.

Any person who shall violate any section of this chapter, by doing any act prohibited or declared to be unlawful thereby or declared to be an offense or misdemeanor thereby, or who shall fail to do any action required by any such section, or who shall fail to do any act when such section declares such failure to be unlawful or to be an offense or misdemeanor shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$165.00, including costs. Each day upon which any such violation continues shall constitute a separate misdemeanor.

(Code 1984, § 5-6; Ord. No. 1990-1, § 8, 3-6-90; Ord. No. 2002-1, 1-2-02)

Secs. 18-2—18-25. Reserved.

ARTICLE II. LICENSES

Sec. 18-26. Required; tax.

(a) It shall be unlawful for any person to carry on, engage in, exercise or pursue any occupation, trade or business in the City without first having paid an occupation tax and a license therefore and obtained a license from the City as provided in this article. The occupation, trade or business shall include any business wherein goods are manufactured or fabricated and any business where services are offered for profit or with intent to profit.

(b) The amount of such occupation tax and license for each and every separate and distinct business, except for itinerant vendors which are licensed under article III of this chapter, shall be \$24.00 per year.

(Ord. No. 2002-1, 1-2-02)

Sec. 18-27. Exemptions.

All scientific and literary lectures and entertainments shall be exempt from the tax levied in this article and, also, all concerts and musical or other entertainments given, exclusively, by citizens of the City shall be exempt from such tax. Further, all avocations, occupations, trades or businesses which by state or federal law, are exempt from municipal occupation taxes and license provided in this article.

(Ord. No. 2002-1, 1-2-02)

Sec. 18-28. Issuance, contents and expiration of licenses.

All occupation taxes and licenses provided for in this article shall be paid to the City Office in the amount enumerated in this article, and no license shall be issued until the amount has been paid. The license shall not be assigned or transferred. All licenses shall be signed by the City clerk or deputy and shall expire on June 30 next, after the licenses are issued, and shall not be issued for less than one year in any case.

(Ord. No. 2002-1, 1-2-02)

Sec. 18-29. Application for license; posting tax receipt.

Every person desiring to conduct any occupation shall pay an occupation tax and license under this article, shall apply in person to the City office, and pay to the City the amount of tax required and levied upon such business, trade or occupation. A receipt therefore shall be issued to such person and the tax receipt shall be posted in the place of business open to public view and shall be exhibited to any person asking or demanding to see the receipt. No occupation, business or trade shall commence operations within the City without paying said tax and receiving said license within five days of commencing said occupation, business or trade. (Ord. No. 2002-1, 1-2-02)

Secs. 18-30—18-50. Reserved.

ARTICLE III. ITINERANT VENDORS

DIVISION 1. GENERALLY

Sec. 18-51. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Itinerant vendor means and includes all persons, as well as their agents and employees, who engage in the temporary or transient business in the City of selling or offering for sale any goods or merchandise or exhibiting goods or merchandise for the purpose of taking orders for the sale thereof and who, for the purpose of carrying on such business or conducting such exhibits thereof, either hire, rent, lease or occupy any room or space in any building, structure, other enclosure, vacant lot or any other property whatever in the City in, through or from which any goods or merchandise may be sold, offered for sale, exhibited for sale or exhibited for the purpose of taking orders for the sale thereof.

Temporary means any such business transacted or conducted in the City for which definite arrangements have not been made for hire, rental or lease of premises for at least 100 days, in or upon which such business is to be operated or conducted.

Transient means any such business of any such itinerant vendor as may be operated or conducted by persons or by their agents or employees who reside away from the City or who have fixed places of business in places other than the City or who move stocks or goods or merchandise or samples thereof into the City with the purpose or intention of removing them or the unsold portion thereof away from the City before the expiration of 100 days.

(Ord. No. 1990-1, § 2, 3-6-90)

Sec. 18-52. Applicability of article.

This article shall not apply to salespersons, solicitors, peddlers or order takers representing sales for local nonprofit or charitable organizations.

(Ord. No. 1990-1, § 7(B), 3-6-90)

Secs. 18-53—18-65. Reserved.

DIVISION 2. LICENSE

Sec. 18-66. License required.

It is unlawful for any itinerant vendor to sell, offer for sale, exhibit for sale or exhibit for the purpose of taking orders for the sale of any goods or merchandise in the City without first obtaining a license. The City clerk shall issue to any itinerant vendor a license authorizing such itinerant vendor to sell, exhibit for sale, offer for sale or exhibit for the purpose of taking orders for the sale in the City of his goods or merchandise only after such itinerant vendor shall have fully complied with all sections of this article and shall have paid the license fees provided in section 18-68 of this article, which sum shall be compensation to the City for the services required of it in this article and to enable the City to partially defray the expenses of enforcing this article.

(Ord. No. 1990-1, § 3, 3-6-90)

Sec. 18-67. Application.

(a) The itinerant vendor shall make application to the City Clerk at least 4 days, excluding Saturdays, Sundays, and holidays, prior to the date of contemplated sale or exhibit to be held in the City. The application shall be in the form of an affidavit, stating the following:

- (1) The full name and address of the itinerant vendor;
- (2) The location of his principal office and place of business;
- (3) The names and addresses of the business' officers if it is a corporation; and
- (4) The partnership name and the names and addresses of all partners if such itinerant vendor is a partnership.

(b) The application must be accompanied by a statement showing the kind and character of goods to be sold or merchandise to be sold, offered for sale or exhibited.

(c) A fraternal, religious, veterans or other nonprofit organization located outside of the County of Love of the State of Oklahoma and now covered by Title 18, Oklahoma Statutes, Section 552.4 may apply for registration as a contribution solicitor by filing 4 days, excluding Saturdays, Sundays, and holidays, prior to the contemplated date of solicitation, with the City Clerk a written application signed by an authorized representation of such group showing:

(1) The name of the organization, its purpose, its officers and directors, period of solicitation and solicitor's form or remuneration.

(2) The applicant's certification that the group is one of the persons or organizations exempt from the licensing requirements of the Oklahoma Solicitation of Charitable Contributions Act, Title 18, Oklahoma State Statutes, Section 552.1 et seq.

(d) All applicants for licensing shall be immediately referred to the City Clerk and to the Chief of Police of the Marietta Police Department, or other persons acting in their stead, shall be investigated as to the qualifications of the applicant and as to the truthfulness of his application.

(e) If the City Clerk and the Chief of Police find no past history of the applicant indicating violations of this article, and that the application is properly made and truthful, the City Clerk shall forthwith advise the applicant. The City Clerk shall issue a license to the approved applicant, upon payment of the fee therefor.

(f) In matters of denial of the license by the City Clerk, the applicant shall be forthwith advised thereof, in writing, setting out the reason or reasons for the denial. If requested in writing by the applicant, the application shall be referred to the City Council of the City of Marietta and considered by it at its next regular meeting. The applicant shall be given an opportunity to be heard at such meeting.

(Ord. 2014-2-8; 8-12-2014)

Sec. 18-68. Fee.

The license fee for an itinerant vendor shall be \$100.00 for a monthly fee.

(Ord. 2014-2-8; 8-12-2014)

Sec. 18-69. Transferability.

The license provided for in this division shall not be transferable or give authority to more than one person to conduct a business as an itinerant vendor, but any person having obtained such license may have the assistance of one or more persons in conducting the business.

(Ord. No. 1990-1, § 6, 3-6-90)

Sec. 18-70. Further definition of itinerant vender.

In addition to the other meanings of the term Itinerant Vendor as contained in Sections 18-51 through Sections 18-70, inclusive, of the Marietta City Code, Itinerant Vendor shall also have the following meaning:

Itinerant Vendor shall also mean and include all salespersons, solicitors, peddlers or order takers representing sales for, or requesting donations for, nonprofit or charitable organizations located outside of the County of Love, State of Oklahoma.

Sec. 18-71. Licence.

Every Itinerant Vendor as defined in Section 1 above, also shall be required to obtain a licence as provided for in Sections 18-66 through 18-69, inclusive, of the Marietta City Code. All provisions of the Sections 18-66 through 18-69 of the Marietta City Code shall mean and be interpreted to also include the definition of Itinerant Vendor as defined in Section 1 above.

Sec. 18-72. Penalty.

Any person who violates any provision of this ordinance is guilty of an offense and upon conviction thereof shall be punished by a fine of up to \$500 including costs. Each separate day or any portion thereof during which any violation of this ordinance occurs or continues shall constitute a new and separate offence.

(Ord. No. 2011-5-10, October 13, 2011)

DIVISION 3. ROADWAY SOLICITATION.

Sec. 18-80. Roadway solicitation prohibited.

No person shall step, or stand in the roadway, shoulder, or median used to channel traffic for the purpose of soliciting rides, employment, business, solicitations, contributions or for the purpose of distributing printed material to the occupant of any vehicle or conveyance.

Sec. 18-81. Penalty.

It shall be unlawful and constitute an offense for any person to violate this ordinance, and any person found guilty of violating this ordinance shall be deemed guilty of an offense and is subject, upon conviction, to a fine of up to \$500 plus costs. Each day that an act or omission is continued shall constitute a violation of this ordinance and shall be construed as a separate offense.

(Ord. No. 2011-4-9, September 13, 2011)

Secs. 18-82—18-90. Reserved.

ARTICLE IV. TELEPHONE EXCHANGES

Sec. 18-91. Levy of inspection fee and service charge.

There is levied an annual inspection fee and service charge upon each and every person operating a telephone exchange in the City in an amount equal to two percent of the gross revenue for each current year for exchange telephone transmission service rendered wholly within the limits of the City. Such fee and charge is levied to compensate the City for the expenses incurred and services rendered incident to the exercise of its police power, supervision, police regulation and police control of the construction of lines

and equipment of such telephone company in the City. The inspection fee and charge shall be paid in quarterly installments due on May 1, August 1, November 1 and February 1. All such payments shall be made into and appropriated and expended from the general revenue fund of the City.

(Code 1984, § 7-24)

Sec. 18-92. Charge in lieu of all other charges.

During continued substantial compliance with the terms of this article by the owner of any telephone exchange, the charge levied in section 18-91 of this article shall be and continue to be in lieu of all concessions; charges; excise, franchise, license, privilege and permit fees; or taxes or assessments except ad valorem taxes. However, it is not intended to extinguish or abrogate any existing arrangement whereby the City is permitted to use underground conduit, duct space or pole contacts of such company for the fire alarm and/or police call systems of the City.

(Code 1984, § 7-25)

Chapter 19

CABLE

ARTICLE I. CABLE FRANCHISE

Sec. 19-1.	Definitions.
Sec. 19-2.	Grant of Authority.
Sec. 19-3.	Permit Payment and Duration of Permit.
Sec. 19-4.	Renewal of Franchise.
Sec. 19-5.	Maps, Reports and Records.
Sec. 19-6.	Subscriber Privacy.
Sec. 19-7.	Compliance with FCC Regulations and Standards.
Sec. 19-8.	Compliance with Applicable Laws and Ordinances.
Sec. 19-9.	Disclaimer of Liability.
Sec. 19-10.	Liability Insurance and Indemnification.
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Sec. 19-21.	Reservation of Rights.
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Sec. 19-24.	Revocation or Termination of Franchise.
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Sec. 19-28.	Descriptive Headings.
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Sec. 19-30.	Arbitration.
Sec. 19-31.	Rates.
Sec. 19-32.	Service to Public Institutions.

ARTICLE I. CABLE FRANCHISE

Sec. 19-1. Definitions

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings given herein unless otherwise defined by federal or state law. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and as may hereinafter be further amended, and if not defined therein, such words shall have their common and ordinary meaning.

Access channel means any channel on a cable system which, by the terms of this article or otherwise, is required to be kept available without charge by franchise for partial or total dedication to public, educational and/or local government use and over which Franchisee exercises no editorial control and therefore is not liable for the content on any access channel.

Affiliate means an entity which owns or controls, is owned or controlled by, or is under common ownership or control with Franchisee.

Application means any proposal, submission or request to:

- (1) Construct and operate a cable system within the City;
- (2) Transfer a franchise or control of a franchise;
- (3) Renew a franchise;
- (4) Modify a franchise; or
- (5) Seek any other relief from the City pursuant to this article, a franchise agreement, the Cable Act as amended, or the FCC rules and regulations.

Cable Act means the Cable Communications Policy Act of 1984, as amended, the Cable Television Consumer Protection and Competition Act of 1992, as amended and all applicable provisions of the Telecommunications Act of 1996.

Cable service means the one-way transmission to subscribers of

- (1) Video programming; or
- (2) Other programming services, such as digital audio, together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system shall mean, a facility, consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and other communications services which are provided to multiple subscribers within the City. It shall include, without limitation, all of the components, physical operation and programming elements of a network of cable, electrical and electronic equipment, designed, constructed, wired or used for purpose of producing, receiving, amplifying and transmitting by coaxial cable, fiber optics, microwave or other means audio and/or audio/visual electrical impulses of television, radio and other intelligences, either analog or digital, including, but not limited to, cable television for sale to the inhabitants and businesses of the City. The term does not include:

(1) A facility that serves only to re-transmit the television signals of one (1) or more television broadcast stations;

(2) A facility that serves subscribers without using any public right of way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a cable system (other than for purposes of Section 621 of such Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended; or

(5) Any facilities of any electric utility used solely for operating its electric utility system.

City means the City of Marietta, Oklahoma.

City Attorney is the City Attorney for the City of Marietta, Oklahoma.

City Clerk is the City Clerk of the City of Marietta, Oklahoma.

Mayor means the Mayor of Marietta, Oklahoma or his duly authorized representative.

Converter means a device used for changing the frequency of a television signal. It may also include descrambling or decoding capabilities.

City Council or *Council* is the governing body of the City of Marietta, Oklahoma.

Drop means the cable or wire that connects the distribution portion of a cable system to a subscriber's premises.

FCC means the Federal Communications Commission.

Franchise or permit means the right granted by the City to the Franchisee to construct, maintain and operate a cable system under, on and over streets, roads and all other public ways and easements within the City.

Franchise agreement or permit agreement means the contract entered into in accordance with this article, and sets forth the terms and conditions under which the franchise will be exercised.

Franchisee or permittee means any person granted a franchise or permit pursuant to this article and shall include any successor thereto.

Gross revenues means any and all revenues, including but not limited to, all cash, credits, amounts earned or accrued, property or other consideration of any kind or nature, received directly or indirectly by the Franchisee, its subsidiaries, affiliates or other person or entity in which Franchisee has a financial interest or which has a financial interest in Franchisee, or is in any way affiliated with Franchisee, arising from, attributable to, or in any way derived from the sale or exchange of cable services by Franchisee within the City. Gross revenues shall include, but not be limited to: monthly fees charged subscribers for basic service; additional tiers, any optional, pay-per-view, premium, per-channel or per-program service or charges for any other type of service; installation, disconnection, and change in service fees; fees, payments or other consideration received from programmers for carriage of programming; program guides, converter and equipment fees, rentals or sales; remote controls, additional outlets. Gross revenues shall not include any revenue from advertising sales or home shopping or sales, excise or other taxes or fees which are imposed directly on any cable service subscriber by any governmental unit or agency and which are collected by the Franchisee on behalf of such governmental unit or agency.

Normal business hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one (1) night per week and/or some weekend hours.

Normal operating conditions means those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, vandalism and severe or unusual weather conditions. Conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Ordinance means the Marietta Cable Television Ordinance, unless the context shall indicate otherwise.

Permanent pavement is any pavement which, when installed, met the then existing pavement standards of the City. In cases of conflict as to what constitutes permanent pavement, the City engineer's opinion shall prevail.

Person means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof.

Public way means the surface, the air space above the surface and the area below the surface of any public street, road, thoroughfare, alley or other public right of way or including, without limitation, public utility easements dedicated for compatible use within the City.

Service area means the present municipal boundaries of the City and any additions thereto by annexation or other legal means.

Service interruption means any loss of picture or sound on one (1) or more cable channels.

Subscriber means any person who legally receives cable service delivered over the cable system.

Transfer of franchise means any transaction in which:

(1) Any ownership or other interest in a franchise or its cable system is transferred from one person or group of persons to another person or group of persons; or

(2) The rights and/or obligations held by the Franchisee under a franchise agreement are transferred or assigned to another person or group of persons.

Sec. 19-2. Grant of Authority

The City hereby grants to Cable One, Inc., a nonexclusive right, privilege, franchise and Permit to construct, operate, and maintain a cable television system in, upon, across, above over and under, streets, alleys, easements, open areas, public ways, and public places now laid out or dedicated in the City and upon annexation of any territory to the City, this Permit shall extend to the territory so annexed.

Sec. 19-3. Permit Payment and Duration of Permit

(a) For the use of the streets and other facilities of the City in the operation of the cable television system, the Company shall pay the City on or before April 1st of each year a Permit fee in an amount equal to five percent (5%) of the annual gross revenues received by the Company during the previous calendar year.

(b) The Permit shall take effect on the effective date of this Ordinance and shall continue in force for a period of ten years subject to the conditions and restrictions herein provided.

Sec. 19-4. Renewal of Franchise.

Renewal of a franchise shall be conducted in a manner consistent with franchise renewal provisions of the Cable Act. The following additional requirements shall apply.

- (1) Should the renewal process set forth in the Cable Act be invoked, the City shall notify the Franchisee that it may file a renewal application. The notice shall specify the information to be included in the renewal application and the deadline for filing the application.
 - a. The application shall comply with the requirements of this section 4 of this article and provide the specific information requested in the notice within a reasonable time from receipt of the notice.
 - b. Upon receipt of the renewal application, the City shall publish notice of its receipt and make copies available to the public. The City may hold one (1) or more public hearings on the renewal application.
- (2) At the conclusion of the public hearings on the renewal application, the Council will either:
 - a. Pass a resolution agreeing to renew the franchise, subject to the negotiation of a franchise agreement satisfactory to the City and the Franchisee; or
 - b. Pass a resolution that makes a preliminary assessment that the franchise should not be renewed.
- (3) If a preliminary assessment is made that a franchise should not be renewed, at the request of the Franchisee or on its own initiative, the City will commence a proceeding, in accordance with the appropriate sections of the Cable Act, to address the issues set forth in the Cable Act.
- (4) Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in the Cable Act, shall be deemed an informal proposal for renewal. The City may hold one (1) or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the Council shall determine whether the franchise should be renewed and the terms and conditions of any renewal.
- (5) If the Council grants a renewal application, the City and the Franchisee shall agree on the terms of a franchise agreement, and comply with the procedures specified in this article, before such renewal becomes effective.
- (6) If renewal of a franchise is denied and the City does not approve or effect a transfer of the cable system to another person, the City may require the former franchisee to remove its

facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a six (6) month period of time, the City may have the removal done at the former franchisee's and/or surety's expense.

- (7) Nothing here will be deemed to deny the Franchisee the right to a judicial appeal of the City's denial of renewal.

Sec. 19-5. Maps, Reports and Records.

The City reserves the right to review complete detailed maps of the Franchisee's network on an as needed basis at the local office of the Franchisee. The City and its designees agree that some information listed on the detailed maps may be considered proprietary, and subject to non-disclosure to outside parties pursuant to confidentiality provisions of this article. At the time of disclosure, Franchisee shall identify the confidential information and the City shall accord it confidential treatment.

Sec. 19-6. Subscriber Privacy.

(a) The Franchisee shall protect the privacy of all subscribers pursuant to the provisions of the Cable Act. The Franchisee shall not condition subscriber service on the subscriber's grant of permission to disclose information which, pursuant to local, federal or state law, cannot be disclosed without the subscriber's explicit consent.

(b) Except as permitted by Federal law the Franchisee, its agents and employees shall not, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes personal identifiable information including the names, addresses or telephone number of any subscriber or subscribers, or any information which identifies the individual viewing habits of any subscriber or subscribers.

Sec. 19-7. Compliance with FCC Regulations and Standards.

(a) The Franchisee shall comply with all FCC rules, regulations and technical standards which pertain to the operation of the cable system.

(b) The Franchisee shall maintain at its City or district office, and make available for the public inspection, copies of all reporting forms required to be filed by the FCC. The Franchisee shall provide the City a copy of all such reports upon request within thirty (30) days of the City's request.

(c) The Franchisee shall file with the City, upon request, copies of all complaints, petitions, communications, and orders filed with or received from the FCC, EEOC, FAA or other federal or state regulatory commissions or agencies having jurisdiction over the Franchisee and its operation of a cable system. In addition, the Franchisee shall provide the same information on all law suits or proceedings in which the Franchisee is a named party and the proceedings, litigation or filing involves the Franchisee's operations within the City.

Sec. 19-8. Compliance with Applicable Laws and Ordinances.

- (a) A franchise granted hereunder shall be subject to all applicable provisions of the laws of the United States, the State of Oklahoma and City ordinances, and any amendments thereto.
- (b) The Franchisee shall, at all times during the life of a franchise, be subject to all lawful powers of the State of Oklahoma and the City and to such reasonable regulations of general applicability as the state and City shall hereafter provide.
- (c) The Franchisee shall conform to all zoning and platting requirements of the City prior to the commencement of any and all construction work.
- (d) The Franchisee shall obtain building permits for all buildings constructed, pay all building permit fees, tap charge fees, and all other fees as required by the ordinances of the City and at the rates that are in full force and effect at the time of application for building permits.

Sec. 19-9. Disclaimer of Liability.

The City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the Franchisee's construction, maintenance, repair, use, operation, condition or dismantling of the Franchisee's cable system or Franchisee's provision of cable service.

Sec. 19-10. Liability Insurance and Indemnification

(a) Liability Insurance

- (1) The Franchisee shall maintain throughout the term of the franchise, and during anytime for removal of Franchisee's facilities or restoration thereof, at its own cost and expense, automobile insurance on all its vehicles and general comprehensive liability insurance, insuring the Franchisee and the City, the Council, its officers, private subcontractors, agents and employees, whether elected or appointed, from and against all claims by any person whatsoever for loss, injury or damage to person or property, both real and personal, occasioned or caused by the construction, erection, operation or maintenance of the cable system. The insurance shall provide for "occurrence coverage" in amounts not less than the following:

General Liability Insurance

Bodily injury per person \$1,000,000.00
Bodily injury per occurrence 2,000,000.00
Property damage per occurrence 500,000.00

Automobile Insurance

Bodily injury per person \$1,000,000.00
Bodily injury per occurrence 2,000,000.00
Property damage per occurrence 500,000.00

In no event shall the coverage or amounts be less than those established as the City's liability limits under Oklahoma Governmental Tort Claims Act, as may be amended from time to time. The providing of insurance in amounts greater than the liability limits of the Oklahoma Governmental Tort Claims Act shall not be deemed a waiver of the limits of the liability of the City.

- (2) The Franchisee shall also provide workers' compensation coverage as required by the laws of the State of Oklahoma.
- (3) All insurance policies shall be with companies licensed to conduct business in the State of Oklahoma and holding a rating by AM Best of A-plus or greater. The policies shall be approved by the City Attorney as to form.
- (4) All insurance policies must name the City as an additional named insured and must provide that no changes shall be made in the insurance policies, nor shall cancellation be effective, except upon 30-days' written notice to the City.
- (5) The insurance coverage, as evidenced by the certificates of insurance along with written evidence of payment of required premiums, shall be filed and maintained with the City.
- (6) Franchisee shall provide proof to the City of compliance with this section no later than the effective date of the franchise.
- (7) All deductibles and self insurance provisions shall be approved by the City. The insurer shall waive all rights of subrogation against the City, its officers, employees and volunteers for losses from work performed by the Franchisee.
- (8) In the event the Franchisee fails to maintain the insurance required herein, the City may, at its option, declare a material breach and terminate the franchise in accordance with the procedures outlined herein, or obtain and keep such insurance in full force and effect. The Franchisee shall promptly reimburse the City for such insurance costs.

(b) Indemnification.

- (1) The City shall not at any time be liable for injury or damage occurring to any person or property arising out of Franchisee's construction, operation, maintenance, use, repair of the cable system. The Franchisee assumes for its officers, agents, contractors,

subcontractors all risks of dangerous conditions, if any, on or about City owned or controlled property, including rights of way and shall hold the City harmless and defend the City thereon.

- (2) The Franchisee shall, at its cost and expense, indemnify, save, hold harmless and defend the City, its officials, boards, commissions, agents, consultants, employees, and all associated, affiliated, allied and subsidiary entities, existing or hereafter created, against any and all claims, suits, causes of action, demands, penalties, liens, costs, losses and obligations, liabilities, proceedings or judgments for damages or equitable relief, including without limitation attorneys fees and expenses, filed by third parties resulting from or arising out of, through or in any way connected with:
- (A) Franchisees' construction, installation, maintenance or operation of its cable system;
 - (B) Any processes, or procedures, acts or omissions by franchisee in connection with the consideration of an award to franchisee of a franchise and/or any amendments thereto;
 - (C) The conduct of franchisee's business, including without limitation, any acts or omissions of Franchisee, its servants, employees, or agents, whether or not such act or omission is authorized, required, allowed or prohibited by this article or the franchise agreement;
 - (D) The transmission of any programming or cable service (other than access channel programming) over the cable system or the failure of the Franchisee to comply with any federal, state or local statute, ordinance or regulation.
 - (E) This indemnification shall include all reasonable expenses incurred by the City in defending itself from such claims and demands. Such expenses shall include, but not be limited to out of pocket expenses, attorneys fees and litigation expenses.
 - (F) This indemnification shall also include, but not be limited to, claims based on invasion of right of privacy, libel, slander, copyright infringements, defamation, violation of trade name, service mark or patent rights arising from Franchisee produced programming.
 - (G) In the event of any action or proceeding brought against the City or other persons or entities to be indemnified, the Franchisee shall defend the same with legal counsel approved by the City; provided, that the Franchisee or the City shall not admit liability in any matter subject to indemnification without the consent of the other.
 - (H) In addition to the provisions of subsection (e) of this section, nothing in this

section shall prohibit the City from participating in the defense of any litigation by its own separate counsel at its own costs. Compliance by Franchisee with these indemnity provisions shall not limit any other remedies available to the City, at law or equity.

Sec. 19-11. Minimum Facilities and Services.

(a) The Cable System must have a minimum capacity of 110 analog and/or digital video channels for immediate use.

(b) The Cable System must have two-way capability.

(c) A cable system shall provide leased access channels as required by federal law.

(d) The franchisee shall comply with the applicable rules regulations of the FCC regarding Emergency Alert Systems (AEAS@) (47 C.F.R Part 11). Franchisee shall transmit Federal, state and local EAS announcements, tests and messages. The City shall be permitted to use franchisee's EAS for emergency use only when franchisee is not otherwise carrying emergency messages as required by the applicable FCC rules. The City shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the franchisee's cable system in any manner that results in inappropriate use thereof, or any loss or damage to the cable system. Except to the extent expressly prohibited by law, the City shall hold the Franchisee, its employees, officers and assigns harmless from any claims arising out of the City's use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

(e) The cable system will provide standby power to be installed at locations as determined by Franchisee, but shall include back up power at the head end. The power system shall be capable of self activation at any time there is a loss of commercial power and shall be capable of continuous generation for an undetermined amount of time and perform self diagnostics.

(f) When constructing or reconstructing the cable system, the Franchisee shall place all cable, appurtenances, and transmission facilities in accordance with the following requirements:

1. Franchisee shall place its cable, appurtenances, and transmission facilities underground in those areas where transmission and distribution facilities of the telephone company and electric company are located underground.
2. Franchisee shall promptly move, at its own expense, its cable, appurtenances, and transmission facilities underground in any area where, during the term of a franchise, the transmission and distribution facilities of the telephone company and electric company are moved underground. Franchisee shall be the beneficiary of any arrangements that result in compensation to the utilities for such facility rearrangement.
3. Where aerial cable is allowed, franchisee shall not erect any new poles along any public

way except as may be reasonably necessary to fill small gaps in the existing aerial utility systems and only then with approval of the City, which shall not be unreasonably withheld.

(g) Franchisee shall make no pavement cuts in the installation, maintenance, or removal of its cable system, except upon compliance with the City Code.

(h) All signals shall include any closed caption information for the hearing impaired, as required by applicable law.

Sec. 19-12. Programming Categories.

Franchisee shall provide or enable the provision of at least the following broad categories of programming:

- (a) Educational programming;
- (b) Sports;
- (c) General entertainment, including movies;
- (d) Arts, culture and performing arts;
- (e) Children and family oriented programming;
- (f) Science and documentary;
- (g) National news, weather and information;
- (h) Programming addressed to ethnic and minority interests of City residents;
- (i) National, State and local government affairs;

The Franchisee shall not delete any broad category of programming within its control without the prior consent of the City.

Sec. 19-13. Lockout Devices.

Franchisee shall, upon request from any subscriber, make available a parental control or lockout device, trap or filter to enable a subscriber to control access to both the audio and video portions of any or all channels. Such device shall be offered at a rate that is in compliance with applicable law. The availability of this service shall be part of the notice requirements if required by state or federal law.

Sec. 19-14. Signal Quality Requirements.

(a) The Franchisee shall:

- (1) Produce a picture, whether in black and white or in color, that is undistorted, and

accompanied with proper sound on a typical television set in good repair.

(2) Transmit signals of adequate strength to produce undistorted picture with proper sound to all outlets without causing cross-modulation, hum or distortion in the cables or otherwise interfering with other electrical or electronic systems.

(3) Demonstrate, upon request and at no expense to the subscriber, by instrument or otherwise, a signal of adequate strength and quality is being delivered.

Sec. 19-15. Service Availability.

(a) Franchisee will provide cable service to all residents and businesses where such property is located within two hundred (200) feet from the Franchisee's feeder/distribution cable and shall extend cable service to the residents and businesses of any area which has a density thirty-five (35) or more residents or businesses per five thousand two hundred eighty (5,280) cable strand feet of trunk or distribution cable. Such service shall be a standard non-discretionary rate.

Sec. 19-16. Technical Standards.

(a) A cable system shall meet or exceed the technical standards set forth in this article, the franchise agreement, FCC or other applicable local, federal or state technical standards as may now exist or as hereinafter amended or adopted. The City shall have full authority to enforce compliance with its technical standards.

(b) Antennas, supporting structures and outside plants of the system shall be designed to comply with recommendations of the electronics industry on tower structures and outside plant, and with all federal, state or City laws, ordinances, or rules or regulations.

(c) All construction, installation and maintenance shall comply with building, electrical codes or other applicable laws adopted by the City as now existing or as hereinafter amended or adopted.

(d) The Franchisee shall, upon the request of the City, perform at its expense, proof of performance tests designed to demonstrate compliance with the technical requirements of this article, the franchise agreement and the then existing FCC requirements, provided, if the City requests such tests more than semi-annually it shall pay all costs associated with such test. The Franchisee shall notify the City ten (10) days in advance of any tests so the City may, if it so desires, have an observer present. Test results shall promptly be made available to the City.

(e) The cable system shall not be designed or operated in any manner which will significantly interfere with any broadcast station, any electrical system or antennas for reception of television or other broadcast signals as detailed in the FCC rules regarding signal quality.

Sec. 19-17. Erection, Removal and Common Use of Poles.

(a) No poles or other wire-holding structures shall be erected by the franchisee without prior approval of the City. The franchisee shall have no vested interest in the location of any pole or wire-holding structure. Such poles or structures shall be removed or modified by franchisee at its own expense whenever the City determines that public convenience would be enhanced thereby.

(b) In the event poles or other wire-holding structures are already existing for use in serving the City and are available for use by the franchisee, and the franchisee does not make arrangements for such use, the City may require the franchisee to use such poles or structures, upon reasonable terms and conditions, if the City determines that the public convenience would be enhanced thereby, and the terms of the use available to the franchisee are just and reasonable.

(c) Where a public utility serving the City desires to make use of the poles or other wire-holding structures of the Franchisee, but an agreement therefore with the Franchisee cannot be reached, the City may require the Franchisee to permit such use for such consideration and on such pole rates as charged Franchisee by the public utility, if the City determines that the use would enhance the public convenience and would not interfere with operations of the Franchisee.

Sec. 19-18. Removal of Facilities upon Request.

(a) Upon termination of service by any subscriber, the Franchisee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request but may nevertheless require the subscriber to return the equipment if no request is made.

(b) The question of ownership of wiring installed inside the residence or business of a subscriber shall be determined by the rules promulgated by the FCC.

Sec. 19-19. Customer Service Requirements.

(a) All employees of the Franchisee who are involved in fieldwork, which require the employee to enter onto private property shall wear, on the outside of clothing, a photograph identification badge. The identification badge shall be approved by the City.

(b) The Franchisee shall provide a listed local, toll free or collect call telephone access telephone number, which will be available to subscribers and members of the public twenty-four (24) hours a day, seven (7) days a week. Such telephone access shall be maintained for the term of the Franchise unless Franchisee terminates such access in communities of similar size across the state.

- (1) During normal business hours, trained representatives shall be available for subscriber inquiries.
- (2) After normal business hours, and if no representatives are available, telephone access lines shall be answered by a service or an automated response system including an answering

machine. Inquiries received after normal business hours must be responded to by a representative on the next business day.

- (3) Standard installations will be performed within fourteen (14) days after an order has been placed. Standard installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- (4) Excluding conditions beyond the control of the Franchisee, the Franchisee will begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.
- (5) The appointment window alternatives for installations and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the subscriber.

(c) The Franchisee shall maintain a record or log of all service or subscriber complaints received and the action it takes as may be required by the FCC or in accordance with the business practices of Franchisee. These records shall list the date and time of the complaint, identify the subscriber and describing the nature of the complaint, together with the response or actions taken by the Franchisee to resolve the complaint. These records shall be maintained in Carter County, Oklahoma, and shall be available for inspection by the City during normal business hours.

(d) The Franchisee may intentionally interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations to be determined in the reasonable discretion of the Franchisee, only after a minimum of forty-eight (48) hours prior notice to the subscribers and the City of the anticipated service interruption. Planned maintenance, which does not require more than four (4) hours interruption of service and which occurs between the hours of 12:00 a.m. and 6:00 a.m. shall not require such notice. Notice to the City shall be given to the Mayor.

Sec. 19-20. Pole Agreements; Regulations.

(a) All transmission and distribution structures, and equipment erected by the Franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to the extent feasible, to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places, while allowing the Franchisee to adequately perform its requirements under the franchise. The Franchisee shall keep and maintain all of its property in good condition, order, and repair, so that the same shall not menace or endanger the life or property of any person.

(b) It shall be the responsibility of the Franchisee to obtain the necessary pole attachment agreements from the City and/or private utility companies using poles within the City. All pole attachment agreements with the City shall be negotiated and approved by the Council.

(c) If, at any time during the period of a franchise, the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, or, in the event of an emergency or when reasonable public convenience requires a change, the Franchisee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(d) Any poles or other fixtures placed in any public way by the Franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(e) The Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its facilities to permit the moving of buildings. The expense of such temporary removal or raising or lowering of facilities to permit the moving of buildings shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment in advance. The Franchisee shall be given not less than forty-eight (48) hours advance notice Monday through Friday to arrange for such temporary facility changes.

(f) The Franchisee shall not place its facilities, equipment or fixtures where they will interfere with public utility facilities or equipment, nor obstruct or hinder the service of such utilities to the residents.

(g) The Franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good condition as formerly, and in a manner and quality approved by the City. Said work shall be performed with due diligence, and if the Franchisee shall fail to perform and complete the work within a reasonable time, the City shall have the right to put the street or public place in good condition at the expense of the Franchisee; and the Franchisee shall upon demand, pay to the City the cost of such work done for or performed by the City.

(h) Nothing contained in this section shall relieve any person, or corporations, from liability to the Franchisee arising out of the failure to exercise reasonable care to avoid injuring the Franchisee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

Sec. 19-21. Reservation of Rights.

(a) The City reserves the right generally to regulate the Franchisee, the cable system and the provision of cable service unless expressly prohibited or restricted by federal, state or local law.

(b) The right is hereby reserved to the Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations, as it shall find necessary in the exercise of its lawful police powers or powers granted to the City by federal or state law. However, such regulation, by ordinance or otherwise, shall be reasonable and not in conflict with the material rights herein granted.

(c) The City shall have the right to inspect the books, records, maps, plans, and other like materials of the Franchisee reasonably necessary to enforce the franchise granted hereunder, at any time upon reasonable notice and during normal business hours.

(d) The City shall have the right, during the life of a franchise, to install and maintain free of charge upon the poles of the Franchisee any wire and pole fixtures that do not interfere with the cable system of the Franchisee.

(e) The City shall have the right to approve all construction or installation work performed, within public ways subject to the provisions of this nonexclusive franchise and other pertinent provisions of the state and local law. In the event City inspection(s) reveal(s) that the Franchisee has failed, in the City's reasonable judgment, to fulfill its obligation under the terms of this nonexclusive franchise, the City shall notify the Franchisee, in writing, of its specific deficiencies. Absent commencement of corrective action or filing of a request for review before the City Council by the Franchisee within forty-eight (48) hours of receipt of said notification, the City may undertake the necessary repairs or restoration at the Franchisee's sole expense.

(f) At the expiration of the term, for which a franchise is granted, or upon its termination or cancellation, as provided herein, and absent a franchise renewal, the Council may require the Franchisee to continue operations for a period not to exceed twelve (12) months from the date of the Council's decision. In the event of non-renewal of the franchise, the Franchisee shall have one hundred eighty (180) days from the date it ceases operations to remove, at its own expense, all portions of its system from all public ways within the City and to restore said public ways to a condition reasonably satisfactory to the City taking into account normal wear and tear.

(g) In the event of emergencies, the City may remove or damage the facilities of the Franchisee in the case of fire, disaster, or other emergencies threatening life or property, as determined by the City. In such event, neither the City nor its agents, contractors or employees shall be liable to the Franchisee or its subscribers or third parties for any damages caused by them or the cable system, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down or relocating any part of the cable system. The City will make a reasonable attempt to notify Franchisee before it proceeds to remove or damage its facilities and if prior notice is not reasonable, then prompt notice after the fact.

Sec. 19-22. Discrimination Prohibited.

(a) The Franchisee shall have a rate structure which is uniform throughout its cable service area as provided by the rules of the FCC.

(b) No franchise may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor subject any such persons or group of persons to any undue prejudice or any disadvantage; provided, however, the Franchisee may offer discounts or promotions in order to attract or maintain subscribers provided that such discounts or promotions are offered on a non-discriminatory basis. The Franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for the senior citizens, handicapped, or economical disadvantaged group which are applied in a uniform and consistent manner.

(c) The Franchisee shall not deny cable service to any potential subscriber because of the income of

the residents of the area in which the subscriber resides but may act upon a subscriber's history with the Franchisee or an objective consumer report.

(d) The Franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation.

Sec. 19-23. Franchisee Default and Enforcement Remedies.

(a) In the event Franchisee violates or is in default of the provisions of this article, the franchise agreement or other applicable law, the City shall notify the Franchisee in writing of the exact nature of the alleged violation or default.

(b) Unless the City shall otherwise demonstrate the existence of an immediate threat to the public safety, health and welfare, the Franchisee shall have thirty (30) days from the receipt of a written notice of default to:

- (1) Respond contesting the alleged assertion of default; or
- (2) Cure such default or, in the event that, by the nature of the default, such default cannot be cured within the 30-day period, institute reasonable steps to remedy such default and notify the City or Council of the steps being taken and the projected date of compliance.
- (c) In the event the Franchisee contests the assertion of a default or fails to respond to a notice of default or the alleged default is not remedied within the time required, the Council shall schedule a hearing to investigate the default. The Council shall notify the Franchisee of the time and place of such hearing and provide Franchisee with an opportunity to be heard.
- (d) In the event the Council, after such hearing, finds or determines that the Franchisee has violated or is otherwise in default, which for purposes of subsection (d)(2) of this section shall be a finding of a default of any material provision of this article or the franchise agreement, the City shall have the right to seek one (1) or a combination of the following remedies:
 - (1) Impose liquidated damages or penalties as provided in this article or the franchise agreement. Payment of liquidated damages shall not relieve Franchisee of its obligation to comply with franchise requirements.
 - (2) Revoke or terminate the franchise following the procedures specified in this article.
- (e) In addition to such remedies, the City reserves to itself all other remedies which may be

available at law or equity and may seek such relief from any court of competent jurisdiction.

- (f) Failure of the City to exercise its rights of enforcement for any violation by Franchisee shall not be deemed a waiver of the City to enforce any franchise requirement or to seek appropriate enforcement remedies for subsequent violations of any nature.

Sec. 19-24. Revocation or Termination of Franchise.

(a) In addition to all other rights and powers pertaining to the City by virtue of a franchise or otherwise, the City reserves the right to revoke, terminate and cancel the franchise and all rights and privileges of the Franchisee hereunder in the event that the Franchisee:

- (1) Violates any material provision of this article or the franchise agreement, or any material rule, order, or determination of the Council made pursuant to this article or the franchise agreement, except where such violation is insignificant, without fault or through excusable neglect.
- (2) Executes an assignment for the benefit of creditors or is a party to an appointment of a receiver or trustee to control the business of the Franchisee, whether in a receivership, reorganization bankruptcy, or other action or proceeding which indicate the Franchisee is insolvent or unable to pay its debts as they accrue; provided, if such assignee, receiver or trustee executes an agreement, approved by the court having jurisdiction, assuming and agreeing to be bound by the terms and condition of this article and the franchise agreement, the Council may approve the continuation of the franchise during such appointment.
- (3) Violates any of the material provisions of this article or the franchise agreement or practices any fraud or deceit upon the City or its citizens.
- (4) Fails to commence construction and proceed with the same in a reasonable, diligent, and workmanlike manner under its franchise within thirty (30) days after receipt of all necessary documents, including but not limited to pole attachment agreements, FCC waivers and FAA approvals.
- (5) Fails to complete the system in accordance with the franchise agreement.
- (6) Materially fails to provide service in compliance with this article or the franchise agreement.
- (7) Is a party to foreclosure or other judicial sale of facilities, equipment or property of Franchisee unless the City approves the transfer of the franchise to the successful bidder in accordance with the provisions of this article and the successful bidder agrees with the City to be bound by this article and the franchise agreement.

(b) Upon the occurrence of any event in this section or any other section providing for termination, the Mayor shall make written demand by registered mail that the Franchisee correct or cure such default. If the Franchisee fails, refuses or neglects to comply with the demand, which is within the control of the Franchisee for a period of thirty (30) days following receipt of such written demand, the Mayor shall place a request for revocation of the franchise on a regular or special Council meeting agenda. The Mayor shall cause to be served upon the Franchisee, at least ten (10) days prior to the date of such Council meeting, a written notice of his intent to request such revocation, and the time and place of the meeting.

(c) The Council shall consider the request of the Mayor and shall, after notice, hear any persons interested therein, including the Franchisee, and shall determine, in its discretion, after due consideration of any and all evidence presented, whether or not any failure, refusal or neglect by the Franchisee constitutes cause for revocation of the franchise. Subject to applicable federal and state law, in the event the City, after such hearing, determines that Franchisee is in default of any provision of this article or the franchise agreement, the City may:

- (1) Commence an action at law for monetary damages or seek other equitable relief;
- (2) Declare the franchise to be terminated; or
- (3) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages or termination of the franchise.

The Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of the franchise because of any failure of the City to enforce prompt compliance.

Sec. 19-25. Force Majeure.

(a) In the event Franchisee is prevented or delayed in the performance of any of its obligations under this franchise by reason claimed to be beyond the control of Franchisee, Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation or to procure a substitute for such obligation which is satisfactory to the City. Conditions which may not be within the control of the Franchisee including, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions, which have a direct and substantial impact on Franchisee's ability to comply with its franchise obligations and the provision of cable services, and which was not caused by and could not have been avoided by the Franchisee which used reasonable efforts in its operation to avoid such results.

(b) If the Franchisee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this franchise agreement or article, the Franchisee may provide documentation as reasonably required by the City to substantiate the claim. If the Franchisee has not yet cured the deficiency, Franchisee shall also provide a proposed plan for remediation, including the timing necessary for curing the deficiency to the satisfaction of the City.

(c) This section shall not be used to extend the term nor eliminate any penalties for failure to construct.

Sec. 19-26. Periodic Reviews.

(a) During the years which commence on the alternating annual anniversaries of the effective date of a franchise, the City may commence a review of the system to determine the technological and economic feasibility of incorporating new technology into the design and/or upgrading channel capability for the system; to review subscriber service standards; to review the performance of the Franchisee as to compliance with the terms and conditions of its obligations under this article and the franchise agreement and to correct any defaults; to conduct inquiries into any issue deemed pertinent to the review by the Council; to review PEG use channel capacity; the franchise system design; and, if the FCC rules and regulations are eliminated and not replaced, to review and require standards as may be necessary.

(b) The Franchisee shall provide the City with such records and information which may be reasonably necessary to conduct the review, including detailed information about cable services offered by the Franchisee in other similar situated cable systems in similar communities within the state.

(c) The City shall conduct public hearings to provide Franchisee and the public the opportunity to comment on the issues which are to be considered in the alternating annual reviews, and shall consider whether a change in the franchise requirements would be helpful in meeting the reasonable cable related needs and interests of the community, as well as the financial and business interests of the Franchisee.

(d) At the conclusion of each performance evaluation, the City shall advise the Franchisee of any defaults or breach of any obligations of the Franchisee and the necessary requirements to cure such defaults or breaches. Further, the City may submit recommendations to the Franchisee for action to improve cable service. While acknowledging that the City may not require the Franchisee to make changes that would impose additional financial burdens on it, the City and the Franchisee may mutually agree on changes in the franchisee agreement necessary to correct problems existing at the time of the review.

Sec. 19-27. Continuity of Service Mandatory.

It shall be the right of all subscribers to continue to receive cable services from the Franchisee unless their financial and other contractual obligations are not satisfied. The Franchisee shall act so as to ensure that all subscribers receive continuous, uninterrupted cable service regardless of the circumstances. For purposes of this section, "uninterrupted" does not include short term outages of the cable system for maintenance or testing or vandalism.

Sec. 19-28. Descriptive Headings.

The headings of the sections of this article are descriptive only.

Sec. 19-29. Choice of Law, Venue, and Attorneys Fees.

(a) Except as otherwise provided herein, this article and any franchise agreement shall be governed

by the laws of the State of Oklahoma. The District Court of Love County and the United States Court for the Western District of Oklahoma shall have venue and jurisdiction exclusively for any action in law or equity which may be instituted to enforce the terms of this article, the franchise agreement or other applicable laws, rules and regulation.

(b) If any legal action is instituted by either party against the other, the prevailing party shall be entitled to attorney fees, costs of the action including, but not limited to, court costs, expert witness fees and all other actual expenses incurred.

Sec. 19-30. Arbitration.

No dispute between the City and the Franchisee under this Ordinance shall be arbitrable. However, nothing shall prevent the City and the Franchisee from agreeing to engage in non-binding mediation.

Sec. 19-31. Rates.

Nothing in the Ordinance shall prohibit the City from regulating rates for cable service, installation, disconnection, and equipment rental to the extent permitted by state and federal law.

Sec. 19-32. Service to Public Institutions.

(a) Franchisee shall provide one (1) drop, consisting of all analog cable channels and excluding digital channels and pay-per-view, pay per-program or premium (such as, for example, HBO, Showtime and Cinemax) channels, without installation or monthly charge, to each of the following locations: the City Hall of Marietta, the Marietta Fire Station, the Marietta Police Department, and the Marietta Public Works Authority.

(b) When the Franchisee converts to an all-digital system, the Franchisee will provide one digital ADD box for each location.

Chapter 22

CEMETERIES

Article I. In General

- Sec. 22-1. City cemeteries.**
- Sec. 22-2. Applicability of article.**
- Sec. 22-3. Duties for control of cemeteries.**
- Sec. 22-4. Enforcement.**
- Sec. 22-5. Furnishing copies of article.**
- Sec. 22-6. Cemetery care fund.**
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Article II. Operating Rules

- Sec. 22-31. Care of lots.**
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- Sec. 22-33. Monuments.**
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- Sec. 22-35. Rules of conduct.**
- Sec. 22-36. Burial of children.**
- Sec. 22-37. Interment of cremated remains.**

ARTICLE I. IN GENERAL

Sec. 22-1. City cemeteries.

The cemeteries owned by the City and governed by this chapter are Lakeview Cemetery and Prairieview Cemetery.

(Ord. No. 1985-2, § 2, 3-5-85)

Sec. 22-2. Applicability of article.

This article shall apply to all lots or parts of lots sold in City cemeteries. However, this article shall not apply in relation to monuments or markers if owners of the lots purchased prior to the effective date of the ordinance from which this article derives desire to match presently existing markers, nor does it apply to curbs which have been installed prior to the effective date of the ordinance from which this article derives. (Code 1984, § 6-16; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, § 11, 12-6-88)

Sec. 22-3. Duties for control of cemeteries.

(a) The City Council shall have charge and control of the cemeteries belonging to the City and shall have power to make rules governing the management, improvement and establishment of City cemeteries and to fix and establish the price for which cemetery lots shall be sold and for interment.

(b) It shall be the duty of the City clerk to receive all moneys received from the sale of lots and from interments or from any other sources and to deposit such funds with the City Treasurer as a cemetery fund, and pay out of the cemetery fund, on proper vouchers, for repairs, material and services necessary for the proper management, care, preservation and beautifying of the cemeteries as all other funds of the City are dispensed.

(Code 1984, § 6-3; Ord. No. 1988-1, §§ 2, 11, 12-6-88)

Sec. 22-4. Enforcement.

The City police officers are given full authority to enforce each and every section of this article. The City Council is given full control over City cemeteries and it is made its duty to see that each and every section of this article is enforced.

(Code 1984, § 6-15; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, §§ 9, 11, 12-6-88)

Sec. 22-5. Furnishing copies of article.

The City clerk shall furnish each person proposing to purchase a lot in one of the City cemeteries with a copy of this article. It is likewise made the duty of each funeral director having charge of burials in a City cemetery and of persons selling monuments, markers, mausoleums or other improvements for graves or lots in a City cemetery to advise the interested parties of this article and to see that they receive a copy of this article.

(Code 1984, § 6-13; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, §§ 8, 11, 12-6-88)

Sec. 22-6. Cemetery care fund.

Not less than 25 percent of all monies received from the sale of lots in City cemeteries and from interments in City cemeteries shall be segregated and set aside as a permanent fund to be known as the cemetery care fund. The cemetery care fund shall be expended for purchasing lands for cemeteries and for making capital improvements if necessary. The balance of the fund may be invested by the City Council in the manner

provided by law for investment of municipal funds. Only the interest from the investments shall be used in improving, caring for and embellishing the lots, walks, drives, parks and other necessary improvements on such cemeteries.

(Code 1984, § 6-5; Ord. No. 1988-1, §§ 3, 11, 12-6-88)

Sec. 22-7. Sale of lots.

(a) Lots in the City cemeteries may be sold and conveyed by certificate signed by the Mayor and countersigned by the City clerk, under the seal of the City, showing the price for which the lot is sold and specifying that the person to whom it is issued is the owner of the lot described therein, by number as laid down on the plat for the purpose of interment of human remains. Such certificate shall invest in the purchaser and his heirs a right in fee simple to such lot for the sole purpose of interment of human remains under the rules of the City Council.

(b) The City Council may limit the number of lots which may be owned by one person at the same time and may prescribe rules for enclosing, adorning and erecting monuments and tombstones on the cemetery lots and shall prohibit any division of the use of the lots and any improper adornment thereof. Lots sold to a corporation or association shall be used only for the burial of its members or the members of their families, and all abandoned lots shall revert to the City.

(Code 1984, § 6-7; Ord. No. 1988-1, §§ 4, 11, 12-6-88)

Sec. 22-8. Deeds subject to article.

Each deed to one purchasing a lot in one of the City cemeteries shall be subject to the rules set forth in this article, and each purchaser shall be deemed to know the sections of this article and any amendment to this article which may be made. The rules shall be written or printed in each deed to a lot in a City cemetery or may be made a part thereof by reference to this article.

(Code 1984, § 6-14; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, § 11, 12-6-88)

Secs. 22-9—22-30. Reserved.

ARTICLE II. OPERATING RULES

Sec. 22-31. Care of lots.

(a) Any planting of trees after effective date of the adoption of these rules will be prohibited except in designated planting areas. If any trees or shrubs situated in one of the City cemeteries shall, by means of their roots, branches, height or in any other way, become detrimental or dangerous or inconvenient to pedestrians or automobiles traversing the cemetery streets, the City employees, under the direction of the City Council or Mayor, shall have the right to remove the trees or shrubs or such parts thereof as are detrimental, dangerous or inconvenient.

(b) Vases or urns, unless permanently attached to a monument or marker, will not be allowed to remain

on lots but will be removed from the lots on the first day of each month and held for a period of ten days from the date of the removal, after which any responsibility of the cemeteries shall cease and disposal will be made of the vases or urns as the Council deems advisable.

- (c) Trellises of any kind are prohibited on the grounds of City cemeteries.
- (d) Lot owners are prohibited from placing on lots or graves all toys, cases, boxes, globes, shells, cans, jugs, bottles and bric-a-brac of every description, and any such articles found on the grounds will be removed by the City.
- (e) No benches, chairs, settees or headboards or any article of this kind will be allowed on the grounds.
- (f) Private fences, curbing or stone enclosures around lots and graves are expressly prohibited.
- (g) The burning off of any lots or portion thereof shall be prohibited at all times.
- (h) The proprietor of each lot shall have the right to erect one monument for the entire family using the lot and one marker for each grave, subject to this article.
- (i) Mausoleums may be constructed if such structures meet with the laws of the state health department and other requirements pertaining to mausoleums.
- (j) Anyone cleaning or trimming grass, trees or shrubbery on his lot shall be required to dispose of any refuse, in a place designed by the City on the property, or such refuse shall be hauled away from the cemeteries by the person responsible for the refuse.
(Code 1984, § 6-8; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, §§ 5, 11, 12-6-88; Ord. No. 1995-1, § 1, 7-5-95)

Sec. 22-32. Foundations for stone work.

Foundations for all stone work in City cemeteries shall be approved by the City Council. (Code 1984, § 6-9; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, §§ 6, 11, 12-6-88; Ord. No. 1995-1, § 2, 7-5-95)

Sec. 22-33. Monuments.

- (a) Only one monument per family on each lot in City cemeteries will be permitted to extend above the surface of the lot.
- (b) Foundations for all monuments shall not be less than four inches in depth.
(Code 1984, § 6-10; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, § 11, 12-6-88; Ord. No. 1995-1, § 3,

7-5-95)

Sec. 22-34. Markers.

(a) In the City cemeteries, no marker shall be permitted to extend above the lot unless it is set on an extended ground level base, such base to be at least six inches wider than the marker.

(b) Only one stone may be placed at a grave. On single interment sections, the marker must be placed at the head of the grave. The only footstone allowed will be a veterans marker.

(c) The City shall have the right to inspect all markers before the markers are placed on the foundations. The City may refuse the placement of any marker on the foundation if it finds the marker is not in compliance with this section or that the workmanship thereon is not done in a skillful workmanlike manner. The City shall have the right to determine that the marker is in the proper location.

(d) The monument dealer must contact the City office before doing any work in cemeteries.

(e) In the erection of monuments, a place will be designed by the City for the deposit of the stones, bricks, soil or other materials, which shall not remain longer on the ground than is actually necessary for the completion of the work.

(f) All workmen employed in the erection of monuments must be subject to the control and direction of the City and any workman failing to conform with this subsection will not be permitted afterwards to work on the grounds.

(g) Before ordering a monument or marker, the lot owner is required to consult the City to ascertain if the monument or marker complies with this article.

(Code 1984, § 6-11; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, §§ 7, 11, 12-6-88; Ord. No. 1995-1, § 4, 7-5-95)

Sec. 22-35. Rules of conduct.

(a) No person shall be allowed in City cemeteries after sunset at any time, except when a late afternoon funeral would make it necessary for burial after that time. Any person who shall be apprehended in the limits of a City cemetery after such time shall be subject to such punishment as set out in section 1-6 of this Code. Cemeteries will open at sunrise and close at sunset, except for a later afternoon funeral.

(b) Under no conditions shall anyone be allowed in a City cemetery carrying any type of firearm, except in approved ceremonies. Hunting or training of dogs, or any horses, mules or livestock of any type, is expressly prohibited, and anyone in violation of this subsection shall be taken into custody, his weapons and/or animals confiscated, and prosecuted to the fullest extent of the law.

(Code 1984, § 6-12; Ord. No. 1985-2, § 1, 3-5-85; Ord. No. 1988-1, § 11, 12-6-88; Ord. No. 1995-1, § 5, 7-5-95)

Sec. 22-36. Burial of children.

No containers for caskets are necessary for the burial of stillborn infants and of children under three years of age.

(Ord. No. 2005-1-3, § 1, 3-1-05)

Sec. 22-37. Interment of cremated remains.

(a) Prior to any interment of cremated remains in the City cemeteries, a recording fee of \$25.00 shall be paid.

(b) Any interment of cremated remains requires a 24-hour notice to the City of Marietta before interment, and no containers are required for said interment.

(c) All cremated remains shall be interred in an empty space only, and under no circumstances will cremated remains be placed in a space already occupied by another body or other cremated remains.

(Ord. No. 2005-1-3, § 2, 3-1-05)

Chapter 26

CIVIL EMERGENCIES

ARTICLE I. IN GENERAL

Secs. 26-1—26-25. Reserved.

ARTICLE II. EMERGENCY MANAGEMENT

- Sec. 26-26. Short title.**
- Sec. 26-27. Definitions.**
- Sec. 26-28. Expenditures and appropriations.**
- Sec. 26-29. Responsibilities of emergency management director.**
- Sec. 26-30. Powers of emergency management director prior to emergency.**
- Sec. 26-31. Powers and duties of emergency management director during emergency.**
- Sec. 26-32. Liability of City.**
- Sec. 26-33. Acceptance of certain gifts, grants or loans.**

ARTICLE I. IN GENERAL

Secs. 26-1—26-25. Reserved.

ARTICLE II. EMERGENCY MANAGEMENT

Sec. 26-26. Short title.

This article is to be known as the Emergency Management Provisions of the City of Marietta, Oklahoma.
(Code 1984, § 1-47)

Sec. 26-27. Definitions.

The definitions of 63 O.S. § 683.3 are adopted by reference in this article as if fully set out, except for the following: *Emergency* means any state of emergency caused by any actual or impending flood, drought, fire, hurricane, earthquake, storm or other catastrophe in or near the City and involving imminent peril to lives and property in the City.

(Code 1984, § 1-48)

Sec. 26-28. Expenditures and appropriations.

Appropriate office space, furniture, equipment and supplies as required shall be provided for the office of emergency management. Expenditures for these purposes, within the appropriations therefor, shall be made only on the authority of the Mayor and City Council. The emergency management director shall also, within the appropriations therefor, establish a primary and one more secondary control center as he deems necessary to serve during an emergency.

(Code 1984, § 1-50)

Sec. 26-29. Responsibilities of emergency management director.

The emergency management director shall have general direction and control of the office of emergency management and shall be responsible for carrying out the requirements of this article. In so carrying out the requirements of this article, the director is expressly authorized to cooperate, insofar as permitted by other appropriate legislation, with the federal government, the government of the state and its subdivisions, with other states and their subdivisions and with private agencies in all matters pertaining to emergency management in the City.

(Code 1984, § 1-51)

Sec. 26-30. Powers of emergency management director prior to emergency.

Prior to an emergency, the emergency management director shall have the power to:

- (1) Make, amend and rescind the necessary orders, rules and regulations to carry out this article within the limits of the authority conferred upon him in this article, with due consideration to be given to the plans and powers of the federal government, the state government and other public and private agencies and organizations empowered to act in emergencies.
- (2) Prepare comprehensive plans for the emergency management of the City in emergencies, such plans and programs to be integrated and coordinated with the plans and program of the federal government, of the state government and of other public and private agencies and organizations empowered to act in emergencies.
- (3) Establish, within the limits of funds available, a public warning system, composed of sirens, horns or other acceptable warning devices.
- (4) Establish and carry out recruitment and training programs as may be necessary to develop an adequate, qualified emergency management volunteer corps.
- (5) Conduct drills, exercises and similar programs as may be necessary to develop a well-trained, alert, fully prepared emergency management organization.
- (6) Make such studies and surveys of the industries, resources and facilities of this City as he deems

necessary to ascertain its capabilities for emergency management and plan for the most efficient emergency use therefor.

(7) On behalf of the City, enter into mutual aid arrangements with surrounding communities, both in this state and in Texas, subject to the approval of the City Council.

(8) Make any other action proper and lawful under his authority to prepare for an emergency.
(Code 1984, § 1-52(1)—(7), (9))

Sec. 26-31. Powers and duties of emergency management director during emergency.

In any emergency, as proclaimed by the Mayor, the emergency management director, with the approval of the Mayor and acting under his instructions, shall coordinate in every way proper the activities of the emergency management organization. He is specifically charged in such emergency with the collection, evaluation and dissemination of information to all agencies, both public and private, participating in the city's emergency management organization or cooperating in such emergency. He shall, as director, have the power to recommend appropriate action, but he shall not otherwise have control over the participating agencies. He shall also recommend to the Mayor the allocation of any funds received from the federal or state government or from any other source to alleviate distress and aid in restoring normal conditions.

(Code 1984, § 1-54)

Sec. 26-32. Liability of City.

Neither the City nor any officer or member of the emergency management organization provided for in this article shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management worker or member of any agency engaged in emergency management activity prior to or during an emergency.

(Code 1984, § 1-55)

Sec. 26-33. Acceptance of certain gifts, grants or loans.

Whenever the federal government or the state or any person shall offer to the City any service, equipment, supplies, materials or funds by way of gifts, grants or loans for purposes of emergency management, the Mayor may accept such offer and may authorize the emergency management director to receive such, subject to the terms of the offer and rules, if any, of the agency making the offer.

(Code 1984, § 1-56)

Chapter 30

COURT

Article I. In General

- Sec. 30-1. Bail; cash bond.**
Sec. 30-2. Court assessment for support of police improvement fund.
Secs. 30-3—30-25. Reserved.

Article II. Municipal Court Not of Record

- Sec. 30-26. Definitions.**
Sec. 30-27. Jurisdiction.
Sec. 30-28. Qualifications of judge.
Sec. 30-29. Appointment of judge; term.
Sec. 30-30. Salary of judge.
Sec. 30-31. Removal of judges.
Sec. 30-32. Clerk.
Sec. 30-33. Prosecuting officer.

ARTICLE I. IN GENERAL

Sec. 30-1. Bail; cash bond.

Upon arrest or upon appearance without arrest in response to citation or summons or at any other time before trial, before or after arraignment, the defendant shall be eligible to be released upon giving bail for his appearance in an amount and upon conditions fixed by the judge, who shall prescribe appropriate rules of court for the receipt of bail. For arrests made at night or under other conditions of emergency or when the judge is not available, the rules shall authorize the Chief of Police or his designated representative to accept a temporary cash bond of not less than \$10.00 nor more than the maximum monetary penalty provided by the ordinance for such offense charged.

(Code 1984, § 12-24)

Sec. 30-2. Court assessment for support of police improvement fund.

In all court convictions or upon pleas of no contest or guilty to any violation or complaint, the court, either municipal judge or court clerk, shall assess, in addition to any and all other fines and costs, the sum of

\$10.00.

Said \$10.00 assessment, when collected by the court clerk, shall be deposited in a special account, segregated from all other funds of the City, specifically designated as the "police improvement fund."

(Ord. No. 2004-9-12, 12-7-04)

Secs. 30-3—30-25. Reserved.

ARTICLE II. MUNICIPAL COURT NOT OF RECORD

Sec. 30-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Court means the municipal court of this City.

Clerk means the City clerk, including any deputy or member of the office staff of the clerk while performing duties of the clerk's office.

Judge means the judge of the municipal court, including any acting judge or alternate judge thereof as provided for by the statutes of this state and this article.

(Code 1984, § 12-2)

Sec. 30-27. Jurisdiction.

The court shall exercise original jurisdiction to hear and determine all prosecutions wherein a violation of any ordinance of this City is charged, including any such prosecutions transferred to the court in accordance with applicable law.

(Code 1984, § 12-3)

Sec. 30-28. Qualifications of Judge.

The Mayor, with the consent of the City Council, may appoint as judge:

- (1) An attorney licensed to practice law in the state who resides in the county in which the City is located or in an adjacent county;
- (2) An attorney licensed to practice law in the state who maintains a permanent office in the City; or

- (3) Any suitable person residing in the City or within 20 miles of the boundaries of the City.
(Code 1984, § 12-4)

Sec. 30-29. Appointment of Judge; term.

A proposed appointment of the judge shall be submitted in writing to the City Council at the next to the last regularly scheduled meeting prior to the day upon which the appointment is to take effect and shall be acted upon at the next regularly scheduled meeting. The City Council may decide upon the proposed appointment by a majority vote of a quorum present and acting. Failure of decision upon a proposed appointment shall not prevent action thereon at a later regularly scheduled meeting of the City Council, unless the Mayor, in writing, withdraws the proposed appointment. All municipal judges shall serve a term of two years from the date of their appointment.

(Code 1984, § 12-8)

Sec. 30-30. Salary of Judge.

A judge, other than an alternate judge or an acting judge, shall receive a salary of \$250.00 monthly, paid in the same manner as the salaries of other officials of this City.

(Code 1984, § 12-9; Ord. No. 1985-5, § 1, 7-2-85)

Sec. 30-31. Removal of Judges.

(a) A judge shall be subject to removal from office by the City Council, for the causes prescribed by the constitution and laws of this state for the removal of public officers.

(b) Proceedings for removal shall be instituted by the filing of a verified written petition, setting forth facts sufficient to constitute one or more legal grounds for removal. Petitions may be signed and filed by the Mayor or by 25 or more qualified electors of this City; in the latter event, verification may be executed by one or more of the petitioners.

(c) The City Council shall set a date for hearing the matter and shall cause notice thereof, together with a copy of the petition, to be served personally upon the judge at least ten days before the hearing. At the hearing, the judge shall be entitled to:

- (1) Representation by counsel;
- (2) Present testimony and to cross examine the witnesses against him; and
- (3) Have all evidence against him presented in open hearing.

(d) So far as they can be made applicable, the provisions of the Oklahoma Administrative Procedure Act governing individual proceedings, 75 O.S. §§ 309—317, and any amendments or additions thereto in effect at the time of the hearing, shall govern removal proceedings under this section. Judgment of removal shall be entered only upon individual votes, by a majority of all members of the City Council, in favor of such removal.

(Code 1984, § 12-10)

Sec. 30-32. Clerk.

(a) The clerk or a deputy designated by him shall be the clerk of the court.

(b) The clerk shall assist the judge in recording the proceedings of the court and in preparing writs, processes and other papers. He shall administer oaths required in proceedings before the court. He shall enter all pleadings, processes and proceedings in the dockets of the court. He shall perform such other clerical duties relating to the proceedings of the court as the judge shall direct.

(c) The clerk or the judge shall receive and receipt for forfeitures, fees, deposits and sums of money payable to the court. He shall pay to the City Treasurer, on the first and the 15th day of each month, all money so received by him, except such special deposits or fees as shall be received to be disbursed by him for special purposes. All money paid to the treasurer shall be placed in the general fund of the City or in such other fund as the City Council may direct, and it shall be used in the operation of the City government in accordance with budgetary arrangements governing the fund in which it is placed.

(Code 1984, § 12-14)

Sec. 30-33. Prosecuting officer.

The City attorney or his duly designated assistant shall be the prosecuting officer of the court. He may prosecute all alleged violations of the ordinances of the City. He shall be authorized, in his discretion, to prosecute and resist appeals, proceedings in error and review from the court to any other courts of the state and to represent this City in all proceedings arising out of matters in this court.

(Code 1984, § 12-15)

Chapter 34

ELECTIONS

ARTICLE I. IN GENERAL

- Sec. 34-1. Election and terms of officers.
Secs. 34-2—34-25. Reserved.

ARTICLE II. WARDS AND BOUNDARIES

- Sec. 34-26. Established.

ARTICLE I. IN GENERAL

Sec. 34-1. Election and terms of officers.

(a) The following City officials shall be elected for the City at large:

- (1) Mayor.
- (2) City marshal.
- (3) Street Commissioner.
- (4) City clerk.
- (5) City Treasurer.

(b) One councilman from each ward of the City shall be elected on the first Tuesday in April, 1975, and each four years thereafter, one councilman shall be elected from each ward. On the first Tuesday in April, 1976, one councilman shall also be elected from each ward for a five-year term. On the first Tuesday in April, 1981, and each four years thereafter, one councilman shall be elected from each ward.

(c) On the first Tuesday in March of the year in which a general election is to be held (just prior to the general election), a primary election shall be held to nominate candidates for respective offices to be filled that year.

(d) The terms of officials elected pursuant to this section shall begin on the second Monday following the general election, and they shall serve until their successors are elected and qualified.

(Code 1984, § 1-1; Ord. No. 1987-2, 2-3-87; Ord. No. 1987-11, 12-8-87; Ord. No. 1990-4, 12-4-90; Ord. No. 1991-1, 2-5-91)

Secs. 34-2—34-25. Reserved.

ARTICLE II. WARDS AND BOUNDARIES

Sec. 34-26. Established.

The wards and boundaries of the City shall be as follows:

(1) Northwest ward. All that part of the City bounded on the south by West Cherokee Street and on the east by Southwest 4th Avenue and Northwest 4th Avenue.

(2) Southwest ward. All that part of the City bounded on the north by West Cherokee Street and on the east by Southwest 4th Avenue.

(3) Northeast ward. All that part of the City bounded on the west by Southwest 4th Avenue and Northwest 4th Avenue and on the south by West and East Cherokee Street.

(4) Southeastward. All that part of the City bounded on the west by Southwest 4th Avenue and on the north by West and East Cherokee Street.

(Code 1984, § 22-1; Ord. No. 1997-2, § 1, 1-15-97)

Chapter 38

ENVIRONMENT

ARTICLE I. IN GENERAL

Secs. 38-1—38-25. Reserved.

ARTICLE II. NUISANCES DIVISION 1. GENERALLY

- Sec. 38-26. Nuisance defined.**
- Sec. 38-27. Nuisance unlawful.**
- Sec. 38-28. Enumeration.**
- Sec. 38-29. Procedures cumulative.**
- Sec. 38-30. Liability.**
- Sec. 38-31. Legalization.**
- Sec. 38-32. Remedies.**
- Sec. 38-33. City has power to define and summarily abate nuisances.**
- Sec. 38-34. Abatement procedures.**
- Secs. 38-35—38-45. Reserved.**

DIVISION 2. WEEDS AND TRASH

- Sec. 38-46. State law adopted.**
- Secs. 38-47—38-55. Reserved.**

DIVISION 3. LITTERING

- Sec. 38-56. Unlawful acts.**
- Secs. 38-57—38-65. Reserved.**

DIVISION 4. DRAINAGE DITCHES

- Sec. 38-66. Obstacle impeding drainage.**
- Sec. 38-67. Notice.**
- Sec. 38-68. Abatement.**

ARTICLE I. IN GENERAL

Secs. 38-1—38-25. Reserved.

ARTICLE II. NUISANCES

DIVISION 1. GENERALLY

Sec. 38-26. Nuisance defined.

(a) A nuisance is unlawfully doing an act or omitting to perform a duty or is any thing or condition which either:

- (1) Annoys, injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any lake or navigable river, stream, canal or basin or any public park, square, street or other public property; or
- (4) In any way renders other persons insecure in life or in the use of property.

(b) A public nuisance is one which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

(c) Every nuisance not included in subsection (b) of this section is a private nuisance. (Code 1984, § 13-1)

Sec. 38-27. Nuisance unlawful.

It is unlawful for any person (owner, lessee or other) to create or maintain a nuisance within the City or to permit a nuisance to remain on premises under his control within the City. (Code 1984, § 13-10)

Sec. 38-28. Enumeration.

(a) In addition to other public nuisances declared by other sections of this Code or law, the following are declared to be public nuisances:

- (1) The sale or offering for sale of unwholesome food or drink or the keeping of a place where such

sales or offerings are made.

(2) The sale, offering for sale or furnishing of intoxicating liquor in violation of the state law or this Code or other ordinances of the City or the keeping of a place where intoxicating liquor is sold, offered for sale or furnished in violation of the state law or this Code or other ordinances of the City.

(3) The keeping of a place where prostitution, illicit sexual intercourse or other immoral acts are practiced.

(4) The keeping of a place where activities in violation of state law or ordinance are practiced or carried on.

(5) The public exposure of a person having a contagious disease.

(6) The continued making of loud or unusual noises which annoy persons of ordinary sensibilities or the keeping of an animal which makes such noises.

(7) The operation or use of any electrical apparatus or machine which materially or unduly interferes with radio or television reception by others.

(8) Any use of a street or sidewalk or a place adjacent thereto which causes crowds of people to gather so as to obstruct traffic on such street or sidewalk or which otherwise obstructs traffic thereon, except as may be authorized by law or this Code or other ordinances.

(9) Permitting water or other liquid to flow or fall or ice or snow to fall from any building or structure upon any street or sidewalk.

(10) All wells, pools, cisterns, bodies or containers of water in which mosquitoes breed or are likely to breed or which are so constructed, formed, conditioned or situated as to endanger the public safety.

(11) Rank weeds or grass, carcasses, accumulations of manure, refuse or other things which are or are likely to be breeding places for flies, mosquitoes, vermin or disease germs and the premises on which such exist.

(12) Any building or structure which is dangerous to the public health or safety because of damage, decay or other condition.

(13) Any pit, hole or other thing which is so constructed, formed, conditioned or situated as to endanger the public safety.

(14) Any occupation or activity which endangers the public peace, health, morals, safety or

welfare.

(15) Any motor vehicle, whether in operating condition or not, or any trailer without a current vehicle plate as required by law for vehicles used on the public highways when stored or kept in a residential district.

(16) Any stable or other place where animals are kept that may become obnoxious or annoying to any resident of this City, by reason of any noise made by the animal therein or by reason of lack of sanitation.

(17) The keeping of any dog kennels within this City for the breeding and raising of dogs that shall become offensive or annoying to the public by reason of the barking and noise made by the animals therein contained.

(18) Anything other than a septic tank used to receive human excrement, slops, garbage, refuse or other filthy substances.

(19) Any pond, slop, trash, refuse, cobs, manure, decayed or decaying vegetable matter left, kept or maintained in such condition as to endanger the public health.

(20) The keeping of any hog pen within the limits of this City.

(21) The keeping and/or maintaining of any hoofed animal or poultry within the City limits unless on at least one acre of land, or the killing and/or butchering of any animals, including cows, swine, or poultry, within the City limits.

(b) The enumeration of certain public nuisances in subsection (a) of this section shall be cumulative and not limit other sections of law or this Code or other ordinance defining public or private nuisances either in more general or more specific terms.

(Code 1984, § 13-7(a)(1), (2), (5), (6), (8)—(16), (18)—(24), (b); Ord. No. 2004-3-7, § 1, 8-3-04)

Sec. 38-29. Procedures cumulative.

The various procedures for abating nuisances prescribed by this article and by other sections of law and this Code or other ordinance shall be cumulative one to the other, and the City may elect to follow any such procedure which is applicable in abating any particular nuisance.

(Code 1984, § 13-36)

Sec. 38-30. Liability.

(a) Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first

created it.

(b) Any person owning or occupying any lot or piece of ground in the City who suffers or permits contaminated water, putrid substances or raw sewage, animal or vegetable matter or both to accumulate thereon so as to cause an offensive odor to be emitted therefrom or to become in a condition injurious or dangerous to the public health shall be deemed to have created a public nuisance within the meaning of this article.

(Code 1984, § 13-2)

Sec. 38-31. Legalization.

No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

(Code 1984, § 13-3)

Sec. 38-32. Remedies.

(a) Public nuisances. The remedies against a public nuisance are as follows:

- (1) Prosecution on complaint before the municipal court.
- (2) Prosecution on information or indictment before another appropriate court.
- (3) Civil action.
- (4) Abatement by the following:
 - a. The person injured as provided in 50 O.S. § 12.
 - b. The City in accordance with law or ordinance.

(b) Private nuisances. The remedies against a private nuisance are as follows:

- (1) Civil action.
- (2) Abatement by the following:
 - a. The person injured as provided in 50 O.S. §§ 14 and 15.
 - b. The City in accordance with law or ordinance. (Code 1984, §§ 13-4, 13-5)

Sec. 38-33. City has power to define and summarily abate nuisances.

(a) As provided in 50 O.S. § 16, the City has power to determine what is and what shall constitute a nuisance within its corporate limits and for the protection of the public health, the public parks and the public water supply outside of its corporate limits. Whenever it is practical to do so, the City has power

summarily to abate any such nuisance after notice to the owner and an opportunity for him to be heard if this can be done.

(b) In all cases wherein any public nuisance is maintained, operated or permitted to exist in this City, or within such distance of this City as to endanger the public health or the public water supply thereof, the same may be summarily abated by the Chief of Police or the City health officer, after notice to the owner of the property and an opportunity for him to be heard, if such notice and hearing can be given. If notice cannot be served upon the owner, the same shall be had by publication.

(Code 1984, § 13-6)

Sec. 38-34. Abatement procedures.

(a) Some nuisances are of such nature as to constitute a grave and immediate danger to the peace, health, safety, morals or welfare of one or more persons or of the public generally. It is recognized that circumstances may be such as to justify and even to require the Mayor or other appropriate officer or agency of the City government to take immediate and proper action summarily to abate such nuisances or to reduce or suspend the danger until more deliberate action can be taken toward such abatement with notice if practicable.

(b) Any officer or employee may submit, through or with the consent of the Mayor to the City Council, a statement as to the existence of a nuisance and a request or recommendation that it be abated. The Mayor himself, the health officer, any councilman or any resident of the City may submit such a statement and request or recommendation to the City Council.

(c) The Council shall determine whether or not the alleged nuisance is a nuisance in fact. For the purpose of gathering evidence on the subject, the Council shall have power to obtain a subpoena and examine witnesses, books, papers and other effects. Before proceeding to abate the nuisance or have it abated, the Council shall give notice of a hearing on the proposed abatement to the owner of any property concerned and to any other person alleged or deemed responsible for or to be causing the nuisance and an adequate opportunity to be heard, if such notice and opportunity for a hearing can be given. Such notice to the owner and other persons concerned shall be given in writing by mail or by service by a police officer, if their names and addresses are known; but, if the names or addresses are not known and the peace, health, safety, morals or welfare of the person or public adversely affected would not be unduly jeopardized by the necessary delay, a notice of the hearing shall be published in a paper of general circulation within the City.

(d) If the Council finds that a nuisance does in fact exist, it shall direct the owner and other persons responsible for or causing the nuisance to abate it within a specified time if the peace, health, safety, morals or welfare of the person or public adversely affected would not be unduly jeopardized by the consequent delay. If such peace, health, safety, morals or welfare would be unduly jeopardized by the consequent delay or the owner or other person responsible for or causing the nuisance does not abate it within the specified time, the Council shall direct the Mayor to abate the nuisance or to have it abated, if summary abatement is practical, as authorized by 50 O.S. § 16. Further, the owner of such property may give his written consent to the City to abate the nuisance and, by giving such written consent, the owner waives his right to a hearing by the City Council. The abatement ordered to be performed under this section may be done by the City employees or may be let by contract to the lowest and best bidder, after appropriate notice, in the matter for letting other contracts by public bid. The agents of the City or the contractor are granted the

right of entry on such property for the performance of the necessary duties as a governmental function of the City.

(e) The City clerk shall send a statement of the costs of such summary abatement, whether performed by the City or by the contractor, to the owner and other persons responsible for or causing the nuisance as may be just under the circumstances if their names and addresses are known. Until paid, such costs shall constitute a debt to the City collectible as other debts of the City may be collected.

(f) If the cost of the abatement of the nuisance is not paid within the time specified by the Council, the Council shall direct the City clerk to forward the statement to the owner of the property at the address shown by the current tax rolls in the office of the treasurer of the county in which the property lies. If the abatement of the nuisance is done by the City or by the contractor, the cost to the property owner is not to exceed the actual costs of the labor or the contract required for abatement of the nuisance.

(g) In the event the City Council determines that real property is a nuisance requiring abatement, the City shall give the owner of the real property notice 14 days after the property is determined to be a nuisance before any abatement of the nuisance by the City commences.

(h) If the owner or tenant abandons or leaves household goods, furnishings or other personal property in or on the real property determined to be a nuisance, while abating those conditions, City officers, agents and/or employees may take possession of the personal property. If the Chief of Police or the director of operations determines that the personal property is of no apparent or ascertainable value, the Chief of Police or the director of operations may dispose of said personal property without any duty or liability to any party and without any duty to account for the method of disposal.

(i) If the owner or tenant's personal property in or on the real property determined to be a nuisance has ascertainable or apparent value, the City officers, agents and/or employees shall take possession of the same. In such cases, the personal property shall be treated as "unclaimed property" as defined in section 58-81 et seq. of the Code of Ordinances of the City of Marietta, and disposed of pursuant to said ordinances.

(j) personal property coming into the possession of any officer, agent and/or employee of the City of Marietta shall be placed in the possession of either the director of operations or the Chief of Police who shall take charge of the same. The director of operations or Chief of Police shall, in a permanent record book kept for that purpose, make a record sufficient to identify the property with a date and circumstances of the receipt thereof, the name and address of the person and/or property from which it was taken; the place where it was located; the subsequent disposal thereof giving the date of sale, name and address of purchaser and the amount for which it was sold.

(k) The director of operations or Chief of Police is authorized to dispose of personal property which has come into his possession from the abatement of a nuisance by the City if (1) the owner of the personal property is unknown or has not claimed the property or (2) the property has been in the custody of the director of operations or Chief of Police for at least six months.

(g) The director of operations or Chief of Police shall file an application in the district court requesting the authority of the court to conduct a sale of such personal property which has a fair market value of more

than its face value. The director of operations or Chief of Police shall attach to his application a list describing such personal property, including any identifying numbers or marks, the date the property came into his possession, the name of the owner and/or the person in last possession, if different, and his address, if known. The court shall set the application for hearing of not less than ten days or more than 20 days after the filing of the application and the notice of the filing of the application and the hearing shall be mailed to the owner's last known address.

(l) If the personal property has an actual or apparent value of more than \$25.00, at least ten days prior to the date of the hearing, notice of the hearing shall be sent by certified mail to each owner's last known address as listed in the application, if known. If the owner of any property with an actual or apparent value of more than \$500.00 is unable to be served notice by certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is in custody. The notice shall contain a brief description of the property of the owner and the date, time and place of the hearing.

(m) If no person appears at the hearing and establishes ownership to the property listed in the application, the court shall enter an order authorized the director of operations or Chief of Police to sell the personal property for cash, to the highest bidder, after at least five days' notice of the sale has been published. The director of operations or Chief of Police shall make a return of the sale and the order of the court confirming the sale shall vest title to the property in the purchaser. After payment of court costs and other expenses of sale, including attorney's fees, the remainder of the money received from the sale of the personal property shall be deposited in the municipal general fund.

(n) All money which has come into the possession of the director of operations or Chief of Police, pursuant to the circumstances provided for in these subsections, shall be transferred by the director of operations or Chief of Police to the City clerk for deposit in the municipal general fund. Prior to any such transfer, the director of operations or Chief of Police shall file an application in the district court requesting the court to enter an order authorizing him to transfer the money from deposit into the municipal general fund. The application shall describe the money, any serial numbers, the date the money came into his possession, the name and address of the owner, if known. Upon filing the application which may be joined with an application as described for in the subsections above, a hearing shall be set not less than ten or more than 20 days from the filing of the application. Notice of the hearing shall be given as provided for in the subsections above. The notice shall state that upon failure of anyone to appear to prove ownership to the money, the court shall order the money to be deposited in the municipal general fund. The notice may be combined with a notice to sell personal property as provided for in the subsections above. If no one appears to claim and prove ownership to the money at the hearing, the court shall order the money to be transferred to the municipal general fund as provided in this subsection.

(o) This section shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives or any property of any kind or character, the possession of which is prohibited by law. By order of the district court, any such property held by the City shall be destroyed or sold or disposed of, pursuant to the conditions prescribed in such order.

(Code 1984, § 13-8; Ord. No. 1992-2, § 1, 6-2-92; Ord. No. 1999-3-4, § 1, 5-4-99)

Secs. 38-35—38-45. Reserved.

DIVISION 2. WEEDS AND TRASH

Sec. 38-46. State law adopted.

The requirements of 11 O.S. § 22-111, as amended, are adopted in this division by reference as if fully set out.

Secs. 38-47—38-55. Reserved.

DIVISION 3. LITTERING

Sec. 38-56. Unlawful acts.

It is unlawful for any person to litter any public or private street, alley, driveway, parking lot or other property not his own by throwing, dropping, laying or leaving bottles, cans, wastepaper, trash or other refuse in or upon such public or private property.

(Code 1984, § 13-28)

Secs. 38-57—38-65. Reserve

DIVISION 4. DRAINAGE DITCHES

Sec. 38-66. Obstacle impeding drainage.

Any culvert, driveway, pipe or other obstacle upon or in the dedicated streets, alleys or ways of the City which impedes the flow of water through drainage ditches constructed by the City for the purpose of proper drainage of water falling from any rainfall, which might reasonably be anticipated, shall be declared to be a public nuisance endangering and interfering with travel upon and the repair and maintenance of City streets and annoying, injuring and endangering the comfort, repose, health and safety of the citizens of the City.

(Code 1984, § 13-22)

Sec. 38-67. Notice.

The notice provided in this division shall be in writing directing the owner or occupant of premises adjoining such nuisance to abate the nuisance by removing such obstacle impeding drainage and shall be given by mailing to the owner or occupant of such adjoining premises at his last known post office address or to both, if their names and post office addresses can be ascertained with reasonable diligence, by registered or certified mail or by delivery of such notice to such owner or occupant personally by any City officer, employee or agent or by posting such notice at some conspicuous place upon such premises if the name or mailing address of the owner or occupant of the premises cannot be ascertained with reasonable diligence.

(Code 1984, § 13-24)

Sec. 38-68. Abatement.

All public nuisances existing contrary to this division not abated by the owner or occupant of adjoining premises or his agent within ten days after he shall be given notice shall be abated by the City by digging up, breaking, if necessary or not reasonably avoidable, and removing such culvert, driveway, pipe or other obstacle and opening up such drainage ditch and leaving the ditch open.

(Code 1984, § 13-23)

DIVISION 5. DUMPSTERS

Sec. 38-69. Unlawful deposit of trash in dumpster.

It shall be unlawful for any person or firm to deposit trash, litter, garbage or other refuse into any dumpster, polycart or other receptacle without the written permission of the customer/owner of the dumpster, polycart or receptacle.

Sec. 38-70. Penalty.

Any person found guilty of violating Section 38-69 of this ordinance shall be guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00), plus costs.

(Ord. 2012-03-03, 3-13-2012)

DIVISION 6. NOISES

Sec. 38-71. No prohibited noises.

No person shall make, continue or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the City of Marietta. For purposes of this Ordinance, the noises prohibited herein shall be referred to as "Prohibited Noises."

Sec. 38-72. Acts constituting prohibited noises.

The following acts, among others, are declared to be Prohibited Noises, but shall not be deemed to be exclusive:

A. The sounds of horns, whistles, sirens, firearms or other such alarm or announcement device, whether manual or power-operated, or the detonation of fireworks or explosives except as required as warning of fire, natural disaster or other impending or incidental danger, or which may be required as a part of law enforcement, by emergency or as excepted by the exemptions to this section.

B. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners therein. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of twenty-five (25) feet from the building, structure or vehicle in which it is located;

C. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loud-speaker, sound amplifier or other machine or device for the producing or reproducing of sound from any building, structure or vehicle which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building, structure, performance or sale.

D. Yelling, shouting, hooting, whistling or singing on the public streets at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity;

E. The keeping of any animal or bird which, by causing frequent or long-continued noise, shall disturb the comfort or repose of any persons in the vicinity;

F. The discharge into the open air of the exhaust of any steam engine, internal-combustion engine, motorboat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

G. The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise;

H. The erection (including excavation), demolition, alteration or repair of any building other than between the hours of 7:00 A.M. and 6:00 P.M. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the City which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the City should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or excavation of streets and highways within the hours of 6:00 P.M. and 7:00 A.M., and if the City shall further determine that loss or inconvenience would result to any party in interest, a party may be granted permission for such work to be done within the hours of 6:00 P.M. and 7:00 A.M., upon application being made at the time the permit for the work is awarded or during the progress of the work;

I. The creation of any excessive noise within 100 feet of any school, institution of learning, church, hospital or court while the same is in use, which reasonably interferes with the workings of such institution, or which disturbs or unduly annoys the occupants, provided conspicuous signs are displayed indicating that the same is a school, hospital or court area; and

J. It shall be unlawful for any person to operate a motor vehicle within the City which produces, creates, generates, amplifies, continues or causes to be produced, created, generated or amplified any

excessive noise or sound, when such vehicle is being driven or is parked on public property, public ways, public right-of-way, or private property. For this section, "excessive noise" shall mean noise or sound which injures or endangers the comfort, repose, peace, safety or health of a human being, or annoys or disturbs a reasonable person and which is produced, created, generated, or amplified by radios, stereos, television equipment, electronic audio equipment, musical instruments and similar devices which is plainly audible to any person twenty-five 25 feet or more from the motor vehicle which produces, creates, generates, amplifies continues or causes to be produced, created, generated or amplified the excessive noise or sound and the term "plainly audible" means any person can hear the content of the sound produced by the noise source including but not limited to, musical rhythms, spoken words, and vocal sounds.

Sec. 38-73. Acts which are not prohibited noises.

The following acts are declared to not be Prohibited Noises:

- A. Safety signals and alarm devices, storm warning sirens or horns and the authorized testing of such equipment, emergency vehicle sirens or horns used when responding to an emergency, and emergency pressure relief valves;
- B. Noise created or to be created as the result of Item eight above, such that a permit shall be issued beforehand by the City of Marietta and such event shall be conducted in accord with provisions of such permit;
- C. Disaster or other emergency, or, as result of such disaster, demanding the immediate undertaking by operators or mechanical devices for relief of stress thus created;
- D. Organized sporting events;
- E. Non-commercial public speaking and public assembly activities conducted on any public space or public right-of-way; and
- F. Interstate railway locomotives and trains enroute.

Sec. 38-74. Prohibited noises declared public nuisances.

Prohibited Noises as stated herein are also declared to be public nuisances, and are in addition to other public nuisances declared by other sections of this Code or law. The remedies against Prohibited Noises as nuisances shall be as provided in Chapter 38 of this Code.

Sec. 38-75. Penalty.

Upon prosecution on complaint before the municipal court, any person found guilty of making, continuing or causing to be made or continuing a Prohibited Noise in violation of the provisions stated herein, this

shall be subject to a fine of not more than five hundred dollars (\$500.00), plus costs. Each separate violation shall constitute a separate offense.

(Ord. 2009-2-2, February 10, 2009)

Chapter 42

FIRE PREVENTION AND PROTECTION

Article I. In General

Secs. 42-1—42-25. Reserved.

Article II. Fire Prevention Code

Sec. 42-26. Adopted.

Sec. 42-27. Enforcement.

Sec. 42-28. Modifications.

Sec. 42-29. Appeals.

Sec. 42-30. New materials, processes or occupancies requiring permits.

Secs. 42-31—42-50. Reserved.

Article III. Fire Department

Sec. 42-51. State law adopted by reference.

Sec. 42-52. Liability.

Sec. 42-53. Composition.

Sec. 42-54. Probation of new members.

Sec. 42-55. Rules.

Sec. 42-56. Suspension of firefighters.

Sec. 42-57. Work performed outside City limits.

Sec. 42-58. Refusing to obey orders at fires.

Sec. 42-59. Right-of-way on streets.

Sec. 42-60. Repair of apparatus.

Sec. 42-61. Inventory and record of tools and apparatus.

Secs. 42-62—42-80. Reserved.

Article IV. Fireworks and Explosives

Sec. 42-81. Unlawful discharge of fireworks.

Sec. 42-82. Explosives.

Sec. 42-83. Dynamite and nitroglycerine.

ARTICLE I. IN GENERAL

Secs. 42-1—42-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE

Sec. 42-26. Adopted.

There is adopted by the City Council, for the purpose of prescribing requirements governing conditions hazardous to life and property from fire or explosion, that certain code known as the BOCA National Fire Prevention Code/1993, recommended by the Building Officials and Code Administrators International, Inc., and the whole thereof, save and except such portions as are deleted, modified or amended by this article. Not less than three copies of such code are filed in the office of the City clerk. The code is adopted and incorporated as fully as if set out at length in this article, and the code shall be controlling within the limits of the City.

(Code 1984, § 8-1)

Sec. 42-27. Enforcement.

(a) The fire prevention code adopted in this article shall be enforced by the fire department, under supervision of the chief of the fire department.

(b) The chief of the fire department may detail such members of the fire department as inspectors as shall from time to time be necessary, and the Mayor, with approval and confirmation of the Council, may appoint such inspectors as may be deemed necessary.

(Code 1984, § 8-2)

Sec. 42-28. Modifications.

The chief of the fire department, with approval of the City Council, shall have power to modify the fire prevention code adopted in this article, upon application in writing by the owner or lessee or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the chief of the fire department thereon shall be entered upon the records of the department, and a signed copy shall be furnished to the applicant.

(Code 1984, § 8-6)

Sec. 42-29. Appeals.

Whenever the chief of the fire department shall disapprove an application or refuse to grant a license or permit applied for or when it is claimed that the requirements of the fire prevention code adopted in this article do not apply or that the true intent and meaning of the chief of the fire department to the City

Council within 30 days from the date of the decision of the chief.
(Code 1984, § 8-7)

Sec. 42-30. New materials, processes or occupancies requiring permits.

The chief of the fire department and two persons appointed by the City Council shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those enumerated in the fire prevention code adopted in this article. The chief of the fire department shall post such list in a conspicuous place in his office and distribute copies thereof to interested persons.

(Code 1984, § 8-8)

Secs. 42-31—42-50. Reserved.

ARTICLE III. FIRE DEPARTMENT

Sec. 42-51. State law adopted by reference.

The provisions of 11 O.S. § 29-204 pertaining to minimum rules and regulations of a volunteer fire department are adopted by reference in this article as if fully set out.

Sec. 42-52. Liability.

The fire department, answering any fire alarm or performing any fire prevention services outside of the corporate limits of the City, shall be considered an agent of the state and acting solely and only in a governmental capacity, and the City shall not be liable in damages for any act of commission, omission or negligence while answering or returning from any fire or reported fire or doing or performing any fire prevention work under and by virtue of this article.

(Code 1984, § 1-40)

Sec. 42-53. Composition.

(a) The fire department is a volunteer fire department which has in its employ not more than two full-time salaried firefighters, and it shall be comprised of not less than 12 or more than 20 volunteer firefighters.

(b) For the purpose of this article, a volunteer firefighter shall be considered as one who is enrolled as a member of the fire department and who serves in such capacity without receiving a regular salary.

(Code 1984, § 1-19)

Sec. 42-54. Probation of new members.

(a) All new members of the fire department shall be on probation for one year after their appointment.

(b) New volunteer members, upon completion of their probation period, must be approved by the majority of the fire department.

(Code 1984, § 1-24)

Sec. 42-55. Rules.

The fire department shall be subject to the following rules, which shall be incorporated in the bylaws of the department:

(1) All volunteer firefighters are required, when notified, to respond to alarms of fire and other emergencies.

(2) Firefighters are required to be present at all regular meetings, called meetings and schools presented for the benefit of the firefighters.

(3) There shall be at least one regular business meeting each month.

(4) Any volunteer firefighter having two unexcused absences in succession or three unexcused absences in a period of three months will be dropped from the fire department rolls.

(5) Volunteer firefighters leaving the City for an extended period of time will be required to notify the chief.

(6) Any volunteer firefighter refusing to attend training classes provided for him will be dropped.

(7) Any volunteer member of the fire department shall be dropped from the rolls for the following offenses:

a. Conduct unbecoming a firefighter.

b. Any act of insubordination.

Neglect of duty.

c. Any violation of rules governing the fire department.

d. Conviction of a felony.
(Code 1984, § 1-25)

Sec. 42-56. Suspension of firefighters.

The fire chief shall have the power and authority to suspend any firefighter of the fire department for drunkenness, neglect of duty, disobedience of orders or for other good cause, and he shall immediately after such suspension report the suspension to the Mayor in writing, stating the reasons for such suspension for the action of the Mayor and Council.

(Code 1984, § 1-26)

Sec. 42-57. Work performed outside City limits.

All firefighters attending and serving at fires or doing fire prevention work outside the corporate limits of the City shall be considered as serving in their regular line of duty as fully as if they were serving within the corporate limits of the City. The firefighters shall receive no additional compensation but shall be entitled to all the benefits of any firefighter's pension and relief fund in the same manner as if the firefighting or fire prevention work was being done within the corporate limits of the City.

(Code 1984, § 1-39)

Sec. 42-58. Refusing to obey orders at fires.

It shall be the duty of every person at a fire to observe and obey the lawful orders of any public officer or firefighter and to offer no resistance to or in any way interfere with such officer and firefighter or any company of firefighters in the performance of their duties at any fire within the limits of this City.

(Code 1984, § 1-27)

Sec. 42-59. Right-of-way on streets.

At every fire alarm it shall be the duty of all persons driving or in charge of any animal, wagon, carriage, automobile or other vehicle in any street, alley or other way in this City upon which the fire truck, hose carriage, hook and ladder truck or other apparatus belonging to the fire department may go to yield immediately the right-of-way so as not to obstruct or delay the fire department or any person in attendance at any fire. The gong or siren attached to the fire apparatus shall be sounded from the time of leaving the fire station until the arrival at the fire.

(Code 1984, § 1-28)

Sec. 42-60. Repair of apparatus.

The fire chief shall report to the City Council any necessary repairs, alterations or improvements needed by the fire department, with an estimate of their probable cost, and shall superintend the making of such

repairs, alterations and improvements. If any apparatus shall become disabled for immediate use, he shall repair the apparatus and report his action to the council.

(Code 1984, § 1-30)

Sec. 42-61. Inventory and record of tools and apparatus.

The fire chief shall prepare and keep a complete inventory of all property belonging to the fire department and shall at the expiration of his term turn over such inventory and all such property to his successor, together with all books, records, reports and data of such department.

(Code 1984, § 1-34)

Secs. 42-62—42-80. Reserved.

ARTICLE IV. FIREWORKS AND EXPLOSIVES

Sec. 42-81. Fireworks; restrictions.

It shall be unlawful for any person to discharge or fire any fireworks or substances designated as firecrackers, rockets, torpedoes, Roman candles or other fireworks designated or intended for pyrotechnic display within the city of limits of the city, provided that with city permit, supervised public displays of fireworks within the city limits of the city are hereby authorized.

(Ord. No. 2007-6-10, 10-12-07)

Sec. 42-82. Explosives.

It shall be unlawful and an offense for any person to keep or permit to be kept in the City any gunpowder, blasting powder or giant powder, provided the merchant for the purpose of sale may keep in stock a quantity not greater than 25 pounds of each kind. All the powder mentioned in this section shall be stored and kept in cans, casks or canisters provided with tightly fitting lids. Such cans, casks or canisters shall be placed in a box or chest securely covered on the entire outside with iron or other metal, shall be provided with substantial handles at each end, shall have the term "powder" printed thereon and shall be kept at least 20 feet from a place where there is a fire or open flame.

(Code 1984, § 8-12)

Sec. 42-83. Dynamite and nitroglycerine.

It shall be unlawful and an offense for any person to keep or bring into or permit to be kept or brought within the City limits any dynamite or nitroglycerine without the consent or permission of the City Council.

(Code 1984, § 8-13)

Chapter 46

FLOODS

Article I. In General

Secs. 46-1—46-25. Reserved.

Article II. Flood Damage Prevention

Division 1. Generally

Sec. 46-26. Definitions.
Sec. 46-27. Findings of fact.
Sec. 46-28. Statement of purpose.
Sec. 46-29. Methods of reducing flood losses.
Sec. 46-30. Lands to which article applies.
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Sec. 46-32. Compliance.
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Division 2. Administration and Enforcement

Sec. 46-46. Designation of floodplain administrator.
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Division 3. Flood Hazard Reduction Standards

Sec. 46-61. General standards.
Sec. 46-62. Specific standards.
Sec. 46-63. Standards for subdivision proposals.

ARTICLE I. IN GENERAL

Secs. 46-1—46-25. Reserved.

ARTICLE II. FLOOD DAMAGE PREVENTION

DIVISION 1. GENERALLY

Sec. 46-26. Definitions.

(a) Unless specifically defined in subsection (b) of this section, words or phrases used in this article shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application.

(b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appeal means a request for a review of the floodplain administrator's interpretation of any section of this article or a request for a variance.

Area of special flood hazard means the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area may be designated as zone A on the flood hazard boundary map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, zone A usually is refined into zone A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Elevated building means a nonbasement building (i) built, for a building in zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor, or, for a building in zone V1-30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. For zones A1-30, AE, A, A99, AO, AH, B, C, X, D, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. For zone V1-30, VE or V, elevated building also

includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of section 60.3(e)(5) of the National Flood Insurance Program.

Existing construction means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as existing structures.

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

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

Flood hazard boundary map (FHBM) means an official map of a community on which the Federal Emergency Management Agency has delineated the boundaries of the flood. Mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as zone A, MorE.

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

Floodplain or floodprone area means any land area susceptible to being inundated by water from any source (see definition of Flood).

Levee means 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 so as to provide protection from temporary flooding.

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

Lowest floor means the lowest floor of the lowest enclosed area, including 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 so as to render the structure in violation of the applicable nonelevation design requirement of section 60.3 of the National Flood Insurance Program.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means, 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.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act, PL 97-348, 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 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a 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 or walkways nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

Substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (i) before the improvement or repair is started, or (ii) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (i) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions, or (ii) any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

Variance means a grant of relief to a person from the requirements of this article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this article. For full requirements see section 60.6 of the National Flood Insurance Program.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management requirements. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) of the National Flood Insurance Program is presumed to be in violation until such time as that documentation is provided.

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

(Ord. No. 1987-3, art. 2, 3-3-87)

Sec. 46-27. Findings of fact.

(a) The flood hazard areas of the City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(Ord. No. 1987-3, art. 1, § B, 3-3-87)

Sec. 46-28. Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by requirements designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and

(7) Ensure that potential buyers are notified that property is in a flood area.

(Ord. No. 1987-3, art. 1, § C, 3-3-8)

Sec. 46-29. Methods of reducing flood losses.

In order to accomplish its purposes, this article uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood or that cause excessive increases in flood heights or velocities.

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(3) Control the alteration of natural floodplains, stream channels and natural protective barriers, which are involved in the accommodation of floodwaters.

(4) Control filling, grading, dredging and other development which may increase flood damage.

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. No. 1987-3, art. 1, § D, 3-3-87)

Sec. 46-30. Lands to which article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of the City.

(Ord. No. 1987-3, art. 3, § A, 3-3-87)

Sec. 46-31. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency on its flood hazard boundary map (FHBM), community no. 400, dated October 29, 1976, and any revisions thereto are adopted by reference and declared to be a part of this article.

(Ord. No. 1987-3, art. 3, § B, 3-3-87)

Sec. 46-32. Compliance.

No structure or land shall be located, altered or have its use changed without full compliance with the terms

of this article and other applicable requirements.

(Ord. No. 1987-3, art. 3, § D, 3-3-87)

Sec. 46-33. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 1987-3, art. 3, § E, 3-3-87)

Sec. 46-34. Interpretation.

In the interpretation and application of this article, all sections shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the City Council; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 1987-3, art. 3, § F, 3-3-87)

Sec. 46-35. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made under this article.

(Ord. No. 1987-3, art. 3, § G, 3-3-87)

Secs. 46-36—46-45. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 46-46. Designation of floodplain administrator.

The City floodplain administrator is appointed the floodplain administrator to administer and implement

this article and other appropriate sections of 44 CFR (National Flood Insurance Program) pertaining to floodplain management.

(Ord. No. 1987-3, art. 4, § A, 3-3-87)

Sec. 46-47. Duties and responsibilities of floodplain administrator.

Duties and responsibilities of the floodplain administrator shall include but not be limited to the following:

- (1) Maintain and hold open for public inspection all records pertaining to this article.
- (2) Review permit applications to determine whether proposed building sites will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this article.
- (4) Review permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies, including section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 USC 1334, from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards, for example, where there appears to be a conflict between a mapped boundary and actual field conditions, make the necessary interpretation.
- (6) Ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (7) When base flood elevation data has not been provided in accordance with section 46-31 of this article, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer division 3 of this article.

(Ord. No. 1987-3, art. 4, § B(1)—(5), (7), (8), 3-3-87)

Sec. 46-48. Establishment of development permit.

A development permit shall be required to ensure conformance with this article.

(Ord. No. 1987-3, art. 3, § C, 3-3-87)

Sec. 46-49. Permit procedures.

- (a) Application for a development permit under this article shall be presented to the floodplain administrator on forms furnished by him and may include but not be limited to plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and

proposed structures and the location of such in relation to areas of special flood hazard. Additionally, the following information is required:

(1) Elevation, in relation to mean sea level, of the lowest floor, including basement, of all new and substantially improved structures.

(2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed.

(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of subsection 46-62(2) of this article.

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

(5) A record of all such information maintained in accordance with section 46-47(1) of this article.

(b) Approval or denial of a development permit by the floodplain administrator shall be based on all of the sections of this article and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage.

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(3) The danger that materials may be swept onto other lands to the injury of others.

(4) The compatibility of the proposed use with existing and anticipated development.

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles.

The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges and public utilities and facilities such as sewer, gas, electrical and water systems.

(6) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(7) The necessity to the facility of a waterfront location, where applicable.

(8) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(9) The relationship of the proposed use to the comprehensive plan for that area.
(Ord. No. 1987-3, art. 4, § C, 3-3-87)

Sec. 46-50. Variance procedures.

(a) The appeal board as established by the community shall hear and render judgment on requests for variances from the requirements of this article.

(b) The appeal board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement or administration of this article.

(c) Any person aggrieved by the decision of the appeal board may appeal such decision in the courts of competent jurisdiction.

(d) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this article.

(f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection 46-49(b) of this article have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(g) Upon consideration of the factors noted in subsections (a) through (f) of this section and the intent of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article found in section 46-28 of this article.

(h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(i) Prerequisites for granting variances shall be as follows:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

- a. Showing a good and sufficient cause;
- b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(j) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

- (1) The criteria outlined in subsections (a) through (i) of this section are met; and
- (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. No. 1987-3, art. 4, § D, 3-3-87)

Secs. 46-51—46-60. Reserved.

DIVISION 3. FLOOD HAZARD REDUCTION STANDARDS

Sec. 46-61. General standards.

In all areas of special flood hazards the following are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

All new construction or substantial improvements shall be constructed with electrical, heating, ventilating, plumbing and air conditioning equipment and other service facilities that are designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(4) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(5) New and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters; and

(6) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. No. 1987-3, art. 5, § A, 3-3-87)

Sec. 46-62. Specific standards.

(a) In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 46-31 or subsection 46-47(7), the following are required:

(1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection as proposed in subsection 46-49(a)(1) of this article is satisfied.

(2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation, in relation to mean sea level, to which such structures are floodproofed shall be maintained by the floodplain administrator.

(3) **Manufactured homes.**

a. All manufactured homes to be placed within zone A shall be installed using methods and practices which minimize flood damage. For the purpose of this subsection, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of

anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

b. All manufactured homes shall be in compliance with subsection (1) of this section.
(Ord. No. 1987-3, art. 5, § B, 3-3-87)

Sec. 46-63. Standards for subdivision proposals.

(a) All subdivision proposals, including manufactured home parks and subdivisions, shall be consistent with sections 46-27, 46-28 and 46-29 of this article.

(b) All proposals for the development of subdivisions, including manufactured home parks and subdivisions, shall meet development permit requirements of sections 46-48 and 46-49 of this article and this division.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to section 46-31 or subsection 46-47(7) of this article.

(d) All subdivision proposals, including manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

(e) All subdivision proposals, including manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(Ord. No. 1987-3, art. 5, § C, 3-3-87)

Chapter 50

HEALTH AND SANITATION

- Sec. 50-1. County health department; director.**
Sec. 50-2. Powers of health officer.
Sec. 50-3. Obstructing health officer.
Sec. 50-4. Expectorating.

Sec. 50-1. County health department; director.

The county health department and its director shall have the powers of a City health department and City health officer, respectively, for the City. References to health department and health officer or director of the health department in this Code and in other ordinances of the City shall be deemed to mean the county health department and its director, unless the context clearly indicates another meaning.

(Code 1984, § 1-43)

Sec. 50-2. Powers of health officer.

The health officer shall have the powers and authority granted by 63 O.S. § 1-1011. Sec. 50-3. Obstructing health officer.

It shall be unlawful for any person to wilfully obstruct or interfere with any health officer or physician charged with the enforcement of the health laws of this City.

(Code 1984, § 11-10)

Sec. 50-4. Expectorating.

It shall be unlawful for any person to expectorate upon any street, sidewalk or upon the platform of any railroad depot in the City or upon the floors or walls of any railroad depot waiting room, railway restaurant, post office, public library, City hall or any other building used for public purposes in the City.

(Code 1984, § 11-9)

Chapter 54

HUMAN RELATIONS

Article I. In General

Secs. 54-1—54-25. Reserved.

Article II. Fair Housing

Sec. 54-26.	Penalty.
Sec. 54-27.	Purposes.
Sec. 54-28.	Acts prohibited.
Sec. 54-29.	Exemptions.
Sec. 54-30.	Fair housing board created.
Sec. 54-31.	Duties of fair housing board.
Sec. 54-32.	Complaints.
Sec. 54-33.	Notices.

ARTICLE I. IN GENERAL

Secs. 54-1—54-25. Reserved.

ARTICLE II. FAIR HOUSING

Sec. 54-26. Penalty.

It shall be unlawful and constitute an offense for any person to violate this article, and any person found guilty of violating this article shall be deemed guilty of an offense and is subject, upon conviction, to a fine of not more than \$500.00 plus costs. Each day that an act or omission is continued shall constitute a violation of this article and shall be construed as a separate offense.

(Ord. No. 2006-6-9, 11-01-06)

Sec. 54-27. Purposes.

The general purposes of this article are to:

- (1) Secure for all people equal access to housing in all neighborhoods.

(2) Preserve the public safety, health and welfare.
(Code 1984, § 4-22; Ord. No. 1993-4, § 1, 11-2-93)

Sec. 54-28. Acts prohibited.

It shall be unlawful for any person, real estate broker, real estate salesman or agent to:

(1) Refuse to sell, lease, rent, assign or otherwise transfer the title or other interest in any housing or real property upon which residential housing is to be constructed to any person or to discriminate in the terms or conditions of the sale, rental or leasing of any residential housing unit because of race, color, sex, religion or national origin.

(2) Refuse to negotiate with any person for the sale, rental or leasing of any residential property or to represent that such property is not available for inspection, sale, rental or lease, when in fact it is so available, because of such person's race, color, sex, religion or national origin.

(3) Solicit or induce or attempt to solicit or induce any person owning any interest in any residential housing to sell, rent or lease or not to sell, rent or lease such housing to any person on the grounds of loss of value due to the present or prospective entry into the neighborhood of a person of another race, color, sex, religion or national origin, either by direct solicitation or inducement or by the purchase of other property in the neighborhood for the purpose of such inducement, or to distribute or cause to be distributed material or to make statements designed to induce a residential property owner to sell or lease his property due to such change in neighborhood.

File a complaint alleging a violation of this article, with knowledge that such complaint is false in any material respect, or to file such complaint for the sole purpose of harassment.

(Code 1984, § 4-22.1; Ord. No. 1993-4, § 2, 11-2-93)

Sec. 54-29. Exemptions.

Nothing in this article shall apply to the following:

(1) Any religious organization, association, society or private club; a religious nonprofit organization, operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting the sale or rental of dwelling units owned and operated for other than a commercial purpose.

(2) Any single-family house sold or rented by an owner, provided that:

a. Such private individual owner does not own more than three such single-family houses and was not the most recent resident of such house prior to such sale with the exception granted to one such sale within a 24-month period.

b. Such owner does not own or retain in his behalf title to a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time.

c. Such house is sold or rented without the use in any manner of a sale or rental facilities or employee thereof.

(3) Any dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other and the owner actually occupies one such living quarters as his residence.

(Code 1984, § 4-22.2; Ord. No. 1993-4, § 3, 11-2-93)

Sec. 54-30. Fair housing board created.

There is created a fair housing board of the City, composed of the members of the City Council.

(Code 1984, § 4-22.3; Ord. No. 1993-4, § 4, 11-2-93)

Sec. 54-31. Duties of fair housing board.

It shall be the duty of the fair housing board to:

(1) Initiate, receive and investigate complaints, charging unlawful housing practices;

(2) Seek conciliation of such complaints, hold hearings, make findings of fact and publish its findings of fact; and

(3) Adopt such rules as may be necessary within the limits of this article, and carry out the purposes of this article.

(Code 1984, § 4-22.4; Ord. No. 1993-4, § 5, 11-2-93)

Sec. 54-32. Complaints.

(a) Any person aggrieved by a discriminatory practice prohibited by this article may file with the fair housing board a complaint in writing under oath. The complaint shall be signed by the person claiming to be aggrieved and shall state the name and address of the person alleged to have violated this article and shall further set forth the particulars of the violation and may include such other information as may be required by the board. Complaints filed under this section must be filed within 30 days after the alleged violation, and failure to file within such time shall be considered a waiver of the application of this article. The board may issue a complaint on its own initiative, at any time it is within the knowledge of the board that a person has violated any of the sections of this article.

(b) The board shall investigate each complaint filed with the board and shall attempt an adjustment of the complaint by means of conference and conciliation. Sixty days shall be allowed for the purpose of

investigation, conference and conciliation. Upon determination that a complaint is not well founded, the board shall dismiss the complaint and notify the complainant and respondent in writing of the dismissal. If the board takes no action within 90 days of the filing of the complaint, it shall be considered as dismissed.

(c) If conference or conciliation does not result in compliance with this article, the board shall cause to be issued and served in the name of the City a written notice, together with a copy of the complaint, requiring the person named in the complaint, referred to as respondent, to answer charges of the complaint at a hearing before the board at a time and place to be specified in the notice.

(d) At the hearing provided for in subsection (c) of this section, the complaint shall be heard by the board. At the hearing, the complainant or person aggrieved may appear in person or by counsel, and the respondent may file a written answer to the complaint and may appear in person or by legal counsel. The board, when conducting any hearing pursuant to this section, may permit amendments to any complaint or answer, and the testimony taken at the hearing shall be under oath and shall be transcribed at the request of either party or at the direction of the board. If the board finds at the hearing that the respondent has not engaged in any discriminatory practice prohibited by this article, it shall state its findings of fact and shall issue and file an order dismissing the complaint.

(e) The board shall establish rules and regulations to govern and expedite and effectuate the procedure of this section and shall maintain the files provided for in this section.

(Code 1984, § 4-22.5; Ord. No. 1993-4, § 6, 11-2-93)

Sec. 54-33. Notices.

Any and all notices required under this article to be served upon any person may be served personally on such person or by mailing a copy thereof by certified or registered mail, with return receipt requested, to the most current business or residence address of such person.

(Code 1984, § 4-22.6; Ord. No. 1993-4, § 7, 11-2-93)

Chapter 58

LAW ENFORCEMENT

Article I. In General

- Sec. 58-1.** Police personnel board.
Secs. 58-2—58-25. Reserved.

Article II. Police Department

- Sec. 58-26.** State law adopted.
Sec. 58-27. Composition; powers and duties.
Sec. 58-28. Qualifications of police officers.
Sec. 58-29. Application and appointment of police officers.
Sec. 58-30. Reserved.
Sec. 58-31. Political activities.
Secs. 58-32—58-50. Reserved.

Article III. Reserve Police Force

- Sec. 58-51.** Composition.
Sec. 58-52. Commanding officer.
Sec. 58-53. Authority to increase, diminish size of force.
Sec. 58-54. Membership.
Sec. 58-55. Duties.
Sec. 58-56. Power, authority.
Sec. 58-57. Removal of members; resignations.
Secs. 58-58—58-80. Reserved.

Article IV. Unclaimed Property

- Sec. 58-81.** Complete record required.
Sec. 58-82. Disposition of personal property or money or legal tender.
Sec. 58-83. Property found by private person.
Sec. 58-84. Recovery by owner.

ARTICLE I. IN GENERAL

Sec. 58-1. Police personnel board.

The police personnel board shall mean a committee composed of the Chief of Police and two Council members appointed by the Mayor to investigate the references and qualifications of a prospective police officer of the City. The Chief of Police may appoint two councilmembers for either a fixed term or on a case-by-case basis.

(Code 1984, § 1-11; Ord. No. 1992-5, § 1, 8-4-92)

Secs. 58-2—58-25. Reserved.

ARTICLE II. POLICE DEPARTMENT

Sec. 58-26. State law adopted.

The requirements of 70 O.S. § 3311, as amended, are adopted in this article by reference as if fully set out. (Code 1984, § 1-9.1)

Sec. 58-27. Composition; powers and duties.

The Chief of Police and other police officers shall constitute the police department and shall have the powers and duties prescribed by state statutes and by other sections as defined by this Code.

(Code 1984, § 1-9; Ord. No. 1987-2, § 5, 2-3-87; Ord. No. 1987-11, 12-8-87; Ord. No. 1990-4, §§ 1, 3, 12-4-90)

Sec. 58-28. Qualifications of police officers.

A candidate for appointment to the position of police officer shall be qualified as follows, and the candidate shall:

- (1) Not have been guilty of any offense, the punishment of which may be confinement in any penitentiary or penal institution.
- (2) Be a graduate of an accredited high school or have the equivalent thereof as determined by the police personnel board.
- (3) Be of good moral character.

(4) Be physically examined and qualified for such as provided by the City.

(5) Be at least 21 years of age.

(Code 1984, § 1-13)

Sec. 58-29. Application and appointment of police officers.

(a) An applicant for police officer shall make application to the Chief of Police who shall forward the application, with his recommendation, to the Mayor. The Mayor shall then refer the application to the police personnel board for investigation of the applicant's references and qualifications.

(b) Upon the recommendation of the police personnel board, the Mayor shall appoint the applicant as a police officer, provided that the applicant is confirmed by the City Council by a majority vote thereof, including the vote of the Mayor. Members so appointed to the police department shall serve on probation for a period of one year from the time of such appointment, during which time the Chief of Police may terminate the appointment of such probationary member if, upon observation, investigation or consideration of his performance on duty, he shall be deemed unsatisfactory.

(Code 1984, § 1-12; Ord. No. 1992-5, § 1, 8-4-92)

Sec. 58-30. Reserved.

Sec. 58-31. Political activities.

Political activities by police officers are restricted pursuant to 11 O.S. § 22-101.1.

(Code 1984, § 1-15)

Secs. 58-32—58-50. Reserved.

ARTICLE III. RESERVE POLICE FORCE

Sec. 58-51. Composition.

There shall be a police reserve force, which will consist of personnel who have volunteered to join the organization and whose application for membership has been accepted in accordance with the provisions contained herein. Maximum number of reserves shall be ten.

(Ord. No. 2004-6-7, § 2, 8-3-04)

Sec. 58-52. Commanding officer.

The police reserve force shall be separate and distinct from the police department. The commanding officer of which shall be appointed by the chief.

(Ord. No. 2004-6-7, § 2, 8-3-04)

Sec. 58-53. Authority to increase, diminish size of force.

The Chief of Police may by order diminish or expand the membership of the police reserve force as emergencies may require, within the limit established by section 58-51 of this article.

(Ord. No. 2004-6-7, § 2, 8-3-04)

Sec. 58-54. Membership.

All proposed members of the police reserve force shall meet the following requirements:

(1) Before any appointment to the police reserve force, all the active members will have the opportunity to vote on the proposed member and said proposed member shall not be accepted on less than a 90 percent majority vote.

(2) All police reserve force proposed members shall be required to undergo the same review process as is required for police officers employed by the City.

(3) Upon passing the requirements as set forth in Paragraphs (1) and (2) of this section, the name of the proposed member shall be recommended by the Chief of Police to the Mayor who shall then propose the recommendation to the City Council as a whole which must approve by majority vote said appointment.

(Ord. No. 2004-6-7, § 2, 8-3-04)

Sec. 58-55. Duties.

(a) The duties of the police reserve force, subject at all times to the direction, supervision, and control of the Chief of Police, shall be to assist the regular members of the police department in the enforcement of law and maintenance of peace and order. The chief may by order establish rules to govern the police reserve force, to fix the specific duties of its members and to provide for the maintenance of discipline. The chief may change such orders from time to time, and he may command members of the police reserve force to obey instructions of regular police officers in carrying out their duties.

(b) The chief may prescribe other duties than those mentioned in this section to be performed by the police reserve force, not inconsistent with this article.

(Ord. 2012-3-4, March 13, 2012)

Sec. 58-56. Power, authority.

Reserve officers have the same power, duties and authority of a full-time police officer when on duty, when the reserve officers are off duty, they shall have no power, duty or authority as a police officer.

(Ord. No. 2004-6-7, § 2, 8-3-04)

Sec. 58-57. Removal of members; resignations.

Membership of any person in the reserve police force may be terminated by the Chief of Police or Mayor at any time for any cause deemed sufficient by the Chief of Police. Any member may resign from the police reserve force at any time, but it shall be his duty to notify the chief of his resignation.

(Ord. No. 2004-6-7, § 2, 8-3-4)

ARTICLE IV. UNCLAIMED PROPERTY

Sec. 58-81 Unclaimed Property Delivered to Chief of Police.

All personal property which comes into the possession of any police officer, which has been found or stolen, or taken off the person or out of the possession of any prisoner or person suspected of or charged with being a criminal, and which property is not known to belong to some person laying claim thereto, shall be delivered into the charge of the Chief of Police.

Sec. 58-82. Record Kept of Property.

The Chief of Police shall keep a record of all property delivered to him under the provisions of this article in a permanent book for that purpose. The record so kept shall identify the property and shall also include:

- (1) Date and circumstances of receipt of property;
- (2) Name of person from whom the property was taken, if known;
- (3) Place where found; and
- (4) Subsequent disposal, including the date of sale, name and address of purchaser and the amount for which it was sold.

Sec. 58-83. Disposal of Unclaimed Property.

Any unclaimed personal property that comes into the possession of the Chief of Police of the City of Marietta shall be disposed of in compliance with the requirements set out in Title 11, Section 34-104, of the Oklahoma Statutes, in lieu of the sale required and after all other requirements are met, the Chief of Police of the City of Marietta, after approval of the City Council, may make application to the District Court requesting authority to convert certain items of the property to the use of the City of Marietta and upon order of the Court said title shall vest in the City of Marietta.

(Ord. 2013-2-6; 6-11-2013).

Sec. 58-84. Recovery by owner.

If any property is sold as provided in this article and the owner thereof takes and recovers possession of the property from the purchaser, the amount paid therefor must be approved by the City Council.

(Code 1984, § 17-4)

Chapter 62

LIBRARY

Sec. 62-1. Participation in multicounty library.

Sec. 62-2. Agreement with library district; appointment of representative to library governing board.

Sec. 62-1. Participation in multicounty library.

It is the desire of the City Council to provide good library service to the City residents by participating in a multicounty library organized under the Oklahoma City-County Library Act.

(Code 1984, § 1-44)

Sec. 62-2. Agreement with library district; appointment of representative to library governing board.

The City, jointly with other cities and counties concerned, joins the library district served by the Chickasaw Multicounty Library and agrees to appoint one person to represent the City on the multicounty library governing board and, further, agrees not to decrease appropriations to public libraries during the continuation of the multicounty library system of this district.

(Code 1984, § 1-46)

Chapter 66

MANUFACTURED HOMES

- Sec. 66-1. Penalty.**
- Sec. 66-2. Relief in addition to penalty.**
- Sec. 66-3. Violation by corporate officers and agents.**
- Sec. 66-4. Scope.**
- Sec. 66-5. Placement in parks.**
- Sec. 66-6. Requirements for parks.**
- Sec. 66-7. Permit for use as temporary residence.**
- Sec. 66-8. Emergency or temporary parking.**
- Sec. 66-9. Parking on sales lots.**
- Sec. 66-10. Temporary use by contractors.**

Sec. 66-1. Penalty.

Any person who shall fail to do anything required by this chapter or by any code adopted by this chapter or who shall violate any lawful rule or order made by any of the officers provided for in this chapter shall be guilty of an offense, and upon conviction thereof shall be fined in any sum not to exceed \$500.00, plus costs.

(Ord. 2006-6-9, 11-01-06)Code 1984, § 4-32)

Sec. 66-2. Relief in addition to penalty.

No penalty imposed by and pursuant to this chapter shall interfere with the right of the City also to apply to the proper courts of the state for a mandamus, an injunction or other appropriate action against such person.

(Code 1984, § 4-33)

Sec. 66-3. Violation by corporate officers and agents.

Violation of this chapter by any corporation or association shall subject the officers and agents actively in charge of the business of such corporation or association to the penalty provided in section 66-1.

(Code 1984, § 4-34)

Sec. 66-4. Scope.

It shall be unlawful for any person to keep, possess or allow within the City any mobile home, house trailer or travel trailer, except as provided in this chapter.

(Code 1984, § 4-23)

Sec. 66-5. Placement in parks.

A mobile home, house trailer or travel trailer may be parked in a mobile home park or trailer park as provided by this chapter.

(Code 1984, § 4-24)

Sec. 66-6. Requirements for parks.

The zoning and planning board may prescribe such conditions, requirements or limitations concerning the design, development, location and operation of mobile home and trailer parks as shall be found compatible with the health, safety and proper development of the City, with final approval by the City Council.

(Code 1984, § 4-26)

Sec. 66-7. Permit for use as temporary residence.

An owner of any tract of land 2 1/2 acres or more may park a mobile home, house trailer or travel trailer on such tract of land and use the mobile home, house trailer or travel trailer for the owner's temporary residence, provided the person shall first obtain a special permit from the zoning and adjustment board. The permit shall be good for one year from the date of its issuance and may be renewed upon application to the zoning and adjustment board upon a showing of proof that the trailer is being used as the temporary residence of the owner of the land. The zoning and adjustment board may impose such conditions upon the permittee as a prerequisite to the issuance of the permit as the zoning and adjustment board deems necessary for sanitation and health purposes. If it is determined by the zoning and adjustment board that the mobile home, house trailer or travel trailer is being used for any purpose other than the temporary residence of the owner of the tract of land, the permit shall be revoked. No special permit shall be granted until a license fee of \$5.00 is paid to the City Treasurer.

(Code 1984, § 4-29)

Sec. 66-8. Emergency or temporary parking.

Emergency or temporary stopping of a mobile home, travel trailer or house trailer is permitted in any street, alley or highway for a period of time not to exceed two hours, subject to any other or further prohibitions or limitations imposed on the traffic and parking for that street, alley or highway.

(Code 1984, § 4-27)

Sec. 66-9. Parking on sales lots.

Mobile homes, travel trailers and house trailers may be parked on established, bona fide sales lots for the purpose of inspection and sale.

(Code 1984, § 4-30)

Sec. 66-10. Temporary use by contractors.

Operation of trailers by contractors on construction projects for which building permits have been issued or which are otherwise approved by governmental units is permitted during the term of such construction project without issuance of a permit.

(Code 1984, § 4-31)

Chapter 70

OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

- Sec. 70-1.** Attempt to commit an offense.
Sec. 70-2. Aiding in an offense.
Sec. 70-3. Consuming or inhaling intoxicants in public places.
Sec. 70-4. State Misdemeanor Offenses Adopted.
Secs. 70-5 – 70-25 Reserved.

ARTICLE II. OFFENSES AGAINST PUBLIC AUTHORITY

- Sec. 70-26.** False representation to officer.
Secs. 70-27 – 70-86 Reserved.

ARTICLE III. OFFENSES AGAINST PUBLIC POLICY

- Sec. 70-87.** Trespassing on school premises and other public buildings.
Secs. 70-88–70-151 Reserved.

ARTICLE IV. OFFENSES AGAINST PUBLIC PEACE

- Sec. 70-152** Definitions.
Sec. 70-153 Penalty.
Secs. 70-154–170 Reserved.

ARTICLE V. OFFENSES AGAINST PROPERTY

- Sec. 70-171.** Malicious injury or destruction of property.
Sec. 70-176. Unlawful entrance or intrusion upon land.
Sec. 70-177. Placing signs, posters, announcements or advertisements on property of another.
Secs. 70-178–70-200. Reserved.

ARTICLE VI. MINORS IN PUBLIC

Sec. 70-201.	Short title.
Sec. 70-202.	Definitions.
Sec. 70-203.	Time of curfew.
Sec. 70-204.	Exceptions.
Sec. 70-205.	Parental responsibility.
Sec. 70-206.	Police procedures.
Sec. 70-207.	Responsibility of owners of public places.
Sec. 70-208.	Penalty.
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ARTICLE VII. ADULT BUSINESSES, SEXUALLY ORIENTED BUSINESSES AND MASSAGE ESTABLISHMENTS CODE

70-301.	Purpose and intent.
70-302.	Definitions.
70-303.	Prohibition.
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70-305.	Measurement of distance.
70-306.	Development and performance standards.
70-307.	Business license.
70-308.	License classification and fees.
70-309.	Ineligibility and disqualification.
70-310.	Adult business license—Application procedure.
70-311.	Application processing.
70-312.	Issuance of license—Disapproval—Appeal.
70-313.	Standards of conduct.
70-314.	Age limitation.
70-315.	Prohibited acts and conduct.
70-316.	Additional regulations for adult motels.
70-317.	Additional regulations for massage parlors.
70-318.	Nudity—Prohibited.
70-319.	Operating requirements.
70-320.	Suspension or revocation of licenses.
70-321.	License renewal.
70-322.	Violations.

- 70-323. Applicability to other regulations.**
- 70-324. Conduct constituting a public nuisance.**
- 70-325. Civil remedies.**
- 70-326. Right of entry.**
- 70-327. Exemptions generally.**
- 70-328. Penalties.**

ARTICLE I. IN GENERAL

Sec. 70-1. Attempt to commit an offense.

Every person who attempts to commit an offense against this Code or an ordinance of the City and in such attempt does any act toward the commission of such offense, but fails or is prevented or intercepted in the perpetration thereof, is guilty of an offense and shall be punished in the manner prescribed for the offense itself.

(Code 1984, §§ 1-6, 14-2)

Sec. 70-2. Aiding in an offense.

When no punishment for counseling, aiding or abetting in the commission of a particular offense is expressly prescribed by this Code or other ordinance, every person who counsels, aids or abets another in the commission of such is guilty of an offense and punishable in the same manner as the principal offender.

(Code 1984, §§ 1-7, 14-3)

Sec. 70-3. Consuming or inhaling intoxicants in public places.

Any person who shall, in any public place or in or upon any passenger coach, streetcar or in or upon any other vehicle commonly used for the transportation of passengers or in or about any depot, platform, waiting station or room, drink or otherwise consume any intoxicating liquor, unless authorized by the Oklahoma Alcoholic Beverage Control Act, intoxicating substance or intoxicating compound of any kind or inhale glue, paint or other intoxicating substance or if any person shall be drunk or intoxicated in any public or private road or in any passenger coach, streetcar or any public place or building or at any public gathering, from drinking or consuming such intoxicating liquor, intoxicating substance or intoxicating compound or from inhalation of glue, paint or other intoxicating substance, or if any person shall be drunk or intoxicated from any cause and shall disturb the peace of any person, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10.00 or more than \$100.00 or by imprisonment for not less than five days or more than 30 days or by both such fine and imprisonment.

(Code 1984, § 14-26)

Sec. 70-4. State Misdemeanor Offenses Adopted.

All misdemeanor offenses established by state law in Title 21, as amended, and Title 63, as amended, of the Oklahoma Statutes are hereby declared to be offenses in the City of Marietta and are adopted and incorporated herein by reference as if fully set out herein.

Secs. 70-5 – 70-25 Reserved.

ARTICLE II. OFFENSES AGAINST PUBLIC AUTHORITY

Sec. 70-26. False representation to officer.

It is unlawful for any person or any agent or employee thereof knowingly to make any material misrepresentation to any officer, employee or agency of the City government in any official application to or official dealing or negotiation with such officer or agency or to commit perjury before any tribunal or officer of the City.

(Code 1984, § 14-53)

ARTICLE III. OFFENSES AGAINST PUBLIC POLICY

Sec. 70-87. Trespassing on school premises and other public buildings.

It is unlawful for a person to go on or about the premises of a public or private school or in or about any other public building or in or about a depot of a public carrier without lawful business thereon.

(Code 1984, § 14-13)

ARTICLE IV. OFFENSES AGAINST PUBLIC PEACE

Sec. 70-152 Definitions.

(A) The following terms used in this section shall have the following definitions:

(1) *Disturbance* shall mean any act committed in a public place intended or reasonably calculated to cause annoyance, disquiet, agitation or derangement to another, or interrupting the peaceful assembly in a public place of a group of persons, or interfering with a person in the pursuit of a lawful and appropriate occupation or contrary to the intended usages of a sort of meeting in a public place, or an act by a person committed against a group assembled in a a public place for the purpose of interfering with its due progress and lawfull right to assemble which is apparently intended to disrupt or irritate the assembly in whole or in part.

(2) *Public place* shall mean any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, public areas, parks or community recreational facilities.

(3) *Riot* shall mean a public disturbance involving:

(a) An act of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to property of any other person or to the person of any other individual; or

(b) A threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

(4) *Incite a riot* shall mean to encourage, urge, instigate, promote or take part in the speaking or writing of words or conduct encouraging another to commit acts of force or violence against persons or property or to resist the lawful authority of law enforcement officers under circumstance which produce a clear and present danger of injury to persons or property or a breach of the public peace. It shall not be construed to prohibit the presentation of oral or written expressions advocating ideas or beliefs which do not involve the advocacy of any act or acts of violence, nor promote the rightness of an act of violence by a person or persons to whom the presentation is directed at the time of such expression.

(5) *Lewd and lascivious* shall mean any act characterized by or intended to excite crude sexual desire or is offensive to the good morals of the City.

(B) A person shall be guilty of disorderly conduct if, with the purpose of causing a public danger, alarm, disorder or nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, he willfully does any of the following acts in a public place:

(1) Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger of his or her life, limb or health;

(2) Commits an act in a violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;

(3) Causes or provokes any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another;

(4) Interferes with another's pursuit of a lawful occupation by acts of violence or threat of violence;

(5) Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by the City police or other lawful authority known to be such;

(6) Incites, attempts to incite or is involved in attempting to incite a riot;

(7) Damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy, unsanitary or physically offensive condition;

(8) Makes or causes to be made any boisterous and unreasonable noise or disturbance to the annoyance of other persons nearby, or near to any public highway, road, street, lane, alley, park, square or common, whereby public peace is broken or disturbed or the traveling public is annoyed or distracted;

(9) Fails to obey a lawful order to disperse by n police officer or City official when known to be such an official where one (1) or more persons are committing acts of disturbance or disorderly conduct in the immediate vicinity and the public health and safety is imminently threatened;

(10) Uses abusive or obscene language, makes an obscene gesture or wears an article of clothing bearing visible obscene language in a public place where children are known to gather; or

(11) Refuses to obey a lawful order or command by a City official having authority to issue such lawful order or command on City or public property to such person while upon City or public property.

(12) Acts in any lewd or lascivious manner in any public or private place.

(C) This section shall not be construed to suppress the right to lawful assembly, picketing, public speaking, permitted protest or assembly or other lawful means of expressing public opinion not in contravention of other laws.

Sec. 70-153 Penalty.

Any person found guilty of violating Section 70-152 of this ordinance shall be guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00). plus costs.

(Ord. 2013-01-06, 6-11-2013)

ARTICLE V. OFFENSES AGAINST PROPERTY

Sec. 70-171. Malicious injury or destruction of property.

(a) Every person who maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in 21 O.S. § 1761 and following sections of that title, is guilty of

a misdemeanor, if the damage, defacement or destruction causes a loss which is valued at less than \$2,500.00.

(b) In addition to the punishment prescribed in subsection (a) of this section, such person is liable in treble damages up to the maximum by law for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

(Code 1984, § 14-41)

Sec. 70-176. Unlawful entrance or intrusion upon land.

Every person who intrudes or squats upon any lot or piece of land within the City without license or authority from the owner thereof or who erects or occupies thereon any hut, hovel, shanty or other structure without such license or authority and every person who places, erects or occupies within the bounds of any street, alley or avenue of the City any hut, hovel, shanty or other structure whatever is guilty of an offense.

(Code 1984, § 14-45)

Sec. 70-177. Placing signs, posters, announcements or advertisements on property of another.

It is unlawful for any person to place, stick, tack, paste, post, paint, mark, write or print any sign, poster, picture, announcement, advertisement, bill, placard, device or inscription upon any public or private building, fence, sidewalk, bridge, viaduct, post, automobile, other vehicle or other property of another, without the consent of the owner or person in charge thereof.

(Code 1984, § 14-42)

Secs. 70-178—70-200. Reserved.

ARTICLE VI. MINORS IN PUBLIC

Sec. 70-201. Short title.

This article shall be known and may be cited as the Ordinance Regulating the Presence and Conduct of Minors on Streets and Public Places.

(Ord. No. 1992-7, § 2, 8-4-92)

Sec. 70-202. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Minor means any unemancipated person under the age of 18.

Parent means any person having legal custody of a minor as a natural or adoptive parent, as a legal

guardian, as a person who stands in loco parentis or as a person to whom legal custody has been given by order of the court.

Public place means any street, alley, highway, sidewalk, park, playground or place to which the general public has access and a right to resort for business, entertainment or other lawful purpose. A public place shall include but not be limited to any store, shop, restaurant, tavern, bowling alley, cafe, theater, drugstore, pool room, shopping center and any other place devoted to amusement or entertainment of the general public. It shall also include the front or immediate area of such places.

Remain means to stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups or of interacting minors totaling four or more persons in which any minor involved would not be using the streets for ordinary or serious purposes such as mere passage or going home.

Street means a way or place, of whatsoever nature, open to the use of the public as a matter of right for purposes of vehicular travel or, for a sidewalk thereof, for pedestrian travel. The term "street" includes the legal right-of-way, including but not limited to the cartway or traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street.

Time of night is based upon the prevailing standard of time, whether Central Standard Time or Central Daylight Saving Time, generally observed at that hour by the public.

Year of age continues from one birthday, such as the 17th to but not including the day of the next, such as the 18th birthday, making it clear that 17 or less years of age is treated in this article as equivalent to the term "under 18 years of age."

(Ord. No. 1992-7, § 2, 8-4-92)

Sec. 70-203. Time of curfew.

It shall be unlawful for any person 17 or less years of age, under 18, to be or remain in or upon the streets within the City at night during the period ending 6:00 a.m. and beginning at:

- (1) 11:00 p.m. for minors 15 years of age or younger.
- (2) 12:00 midnight for minors more than 15 years of age on Sunday through Thursday.
- (3) 1:00 a.m. on Saturday morning and Sunday morning for minors more than 15 years of age.

(Code 1984, § 14-11; Ord. No. 1992-7, § 2, 8-4-92)

Sec. 70-204. Exceptions.

In the following exceptional cases, a minor on a City street during the nocturnal hours for which section 70-203 of this article is intended to provide the maximum limits of restriction shall not, however, be considered in violation of this article when:

- (1) Accompanied by a parent of such minor.
- (2) Accompanied by an adult authorized by a parent to such minor to take the parent's place in accompanying the minor for a designated period of time and purpose within a specified area.
- (3) Exercising first amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly. Such minor shall evidence the bona fides of such exercise by possession of a written communication, signed by such minor and countersigned by a parent of such minor and with their home address and telephone number, specifying when, where and in what manner the minor will be on the streets at night, during hours when this article is otherwise applicable to the minor, in the exercise of a first amendment right specified in such communication.
- (4) A reasonable necessity occurs, but only if the minor has in such minor's possession a written communication signed by the minor, countersigned by a parent of such minor, evidencing their home address and telephone number and establishing such reasonable necessity relating to specified streets at a designated time for a described purpose including points of origin and destination.
- (5) The minor is on the sidewalk of the place where such minor resides or on the sidewalk of either next-door neighbor not communicating an objection to the police officer.
- (6) Returning home, by a direct route from and within 30 minutes of the termination of a school activity or an activity of a religious or voluntary association, provided the minor has a written communication in the minor's possession, countersigned by the parent, indicating the home address and telephone number; the purpose for the event; when, where and in what manner the minor will be on the streets at night.
- (7) Authorized, by rule issued by the City Council, in other similar cases of reasonable necessity, similarly handled but adapted to necessary nighttime activities of more minors than can readily be dealt with on an individual special permit basis. Normally such rule by the City Council permitting use of the streets should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies, such as the schools, and shall define the activity, the scope of the use of the streets permitted, the period of time involved, not to extend more than 30 minutes beyond the time for termination of such activity, and the reason for finding that such rule is reasonably necessary and is consistent with the public interest and the purposes of this article.
- (8) The minor carries a certified copy of employment, briefly identifying the minor, the addresses of his home and his place of employment and his hours of employment, or carries a valid proof of employment which may include the latest payroll receipt not over 30 days old.

(9) The minor is, with parental consent, in a motor vehicle. This contemplates normal travel. This clearly exempts bona fide interstate movement through the City, particularly on normal routes. (Code 1984, § 14-11; Ord. No. 1992-7, § 2, 8-4-92)

Sec. 70-205. Parental responsibility.

It shall be unlawful for a parent having legal custody of a minor knowingly to permit or, by inefficient control, to allow such minor to be or remain upon any City street under circumstances not constituting an exception to or otherwise beyond the scope of this article. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

(Code 1984, § 14-12; Ord. No. 1992-7, § 2, 8-4-92)

Sec. 70-206. Police procedures.

(a) A police officer, upon finding or having attention called to any minor on the streets in prima facie violation of this article, normally shall take the minor to the City police station, where a parent shall immediately be notified to come for such minor, whereupon they shall be interrogated. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts and to centralize responsibility in the personnel then on duty for accurate, effective, fair, impartial and uniform enforcement and recording, thus making available experienced supervisory personnel, the best of facilities and access to information and records. In the absence of convincing evidence such as a birth certificate, a police officer on the street shall in the first instance use his best judgment in determining age.

(b) Police procedure shall constantly be refined in the light of experience and may provide, inter alia, that the police officer may deliver to a parent thereof a minor under appropriate circumstances; for example, a minor of tender age near home whose identity may readily be ascertained or is known.

(c) Such police officer shall within 24 hours file a written report with the Chief of Police or shall participate to the extent of the information for which he is responsible; the report shall be treated for purposes of juvenile records in accordance with state statutes.

(d) When a parent, immediately called, has come to take charge of the minor and the appropriate information has been recorded, the minor shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the minor, the minor shall be released to the juvenile authorities, except to the extent that, in accordance with police rules, approved in advance by juvenile authorities, the minor may temporarily be entrusted to a relative, neighbor or other person who will on behalf of a parent assume the responsibility of caring for the minor pending the availability or arrival of a parent.

(e) For a first violation by a minor, the Chief of Police shall cause to be delivered personally or by certified mail written notice of the violation to a parent, with a warning that any subsequent violation will result in full enforcement of this article, including enforcement of parental responsibility and of applicable penalties.

(Ord. No. 1992-7, § 2, 8-4-92)

Sec. 70-207. Responsibility of owners of public places.

It shall be unlawful for any person operating or having charge of any public place to knowingly allow, permit or suffer the presence of minors in violation of the curfew established by this article.

(Ord. No. 1992-7, § 2, 8-4-92)

Sec. 70-208. Penalty.

(a) If, after the warning notice pursuant to section 70-206 of this article of a first violation by a minor, a parent violates section 70-206 of this article in connection with a second violation by the minor, this shall be treated as an offense by the parent. The penalty, upon a plea of guilty, nolo contendere or finding of guilt, shall be a fine of up to \$100.00.

(b) Any minor who shall violate this article more than one time shall be reported to the juvenile court for the treatment, supervision or rehabilitation of such minor.

(c) A like procedure, before the juvenile authorities, shall be followed when the imposing of a fine upon a parent shall not be effective or when for any other reason this article cannot be made effective by the imposing of penalties under this section.

(Ord. No. 1992-7, § 2, 8-4-92)

**ARTICLE VII. ADULT BUSINESSES, SEXUALLY ORIENTED
BUSINESSES AND MASSAGE ESTABLISHMENTS CODE**

70-301. Purpose and intent.

A. It is the purpose of this Article to regulate Adult Businesses, sexually oriented businesses, and massage parlors to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the continued concentration of Adult Businesses and sexually oriented businesses within the City. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

B. It is the intent of the City Council that the provisions of this Article be and are promulgated pursuant to Title 11 of the Statutes of the State of Oklahoma.

70-302. Definitions.

The following words and phrases shall, for the purposes of this Article, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions in this Article be in conflict with the current provisions of the zoning code, the definitions in this Article shall prevail:

A. "Adult business" shall mean those businesses meeting one or more of the following definitions:

1. "Adult arcade" means an establishment or portion thereof where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons per machine, are used to show films, motion pictures, video cassettes, computer displays, slides, or other photographic or electronic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."

2. "Adult bookstore," "Adult novelty store," or "Adult video store" means a commercial establishment which has as a substantial portion of its stock-in-trade or a substantial portion of its revenues or devotes a substantial portion of its interior commercial space or advertising to the sale, rental or viewing for any form of consideration, of any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, computer software or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas"; or instruments, devices or paraphernalia which are designed for use in connection with "Specified Sexual Activities." As used in this Article, "substantial portion" means more than ten percent (10%) and "interior space" means that portion of the premises open to the public excluding restrooms and common areas:

a. A commercial establishment may have other principal business purposes or operations that do not involve the offering for sale, rental, or viewing of materials depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas," and still be categorized as Adult Bookstore, Adult Novelty Store, or Adult Video Store. Such other business purposes or operations will not serve to exempt such establishments from being categorized as an Adult Bookstore, Adult Novelty Store or Adult Video Store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the materials specified above.

b. Exclusion. A commercial establishment shall not be considered to be an Adult Bookstore, Adult Novelty Store or Adult Video Store, and shall not be required to obtain an "Adult Business License" under this article where (a) the commercial establishment rents or sells the material set forth above exclusively for off-premises use by the customer, and (b) more than ninety percent (90%) of its business is not in selling or renting the material set forth above.

3. "Adult cabaret" means a nightclub, bar, tavern, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic or non-intoxicating beverages are sold, dispensed or served with or without charge, which features: 1) servers or entertainers who appear semi-nude; 2) live performances which are characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities," or 3) films, motion pictures, video cassettes, computer software, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual

Activities" or "Specified Anatomical Areas."

4. "Adult dance studio" means any establishment or business which provides for members of the public a partner for dance where the partner is "nude" or "semi-nude" or where the partner, or the dance, is distinguished or characterized by the emphasis on matter depicting, or describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."

5. "Adult entertainment enterprise" means a commercial establishment, other than one defined in this subsection as an adult business, which has one of its principal business purposes the offering of forms of entertainment on its premises involving the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."

6. "Adult hotel or Adult motel" means a hotel or motel or similar commercial establishment which: 1) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit televisions, transmissions, films, motion pictures, video cassettes, computer software, slides or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television, or, 2) offers a sleeping room for rent for a period of time less than ten (10) hours; or 3) allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

7. "Adult motion picture" or "Mini-motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, computer software, slides or similar photographic reproductions characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" are shown for any form of consideration.

8. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear semi-nude or live performances which are characterized by exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities."

9. "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish "Escorts" as one of its primary purposes for a fee, tip, or other consideration.

10. "Figure modeling studio" means any establishment or business which provides for members of the public, the services of a live human model for the purpose of reproducing the human body, is in a state of nudity or semi-nude, by means of photograph, painting, computer software, sketching, drawing, or other pictorial form.

11. "Massage parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body is performed. Unless the massage parlor meets one of the following exceptions the massage parlor shall be considered an "Adult Business" and shall meet all the

requirements of this Article. The definition of massage parlor shall not include the practice of massage in any licensed hospital, nor by a physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program performed in conjunction with such program, nor by an Oklahoma State licensed physical therapist, nor any massage therapist who is a member of a national or international massage therapist association and where such therapist at all times maintains a membership level which requires liability insurance at said membership level for that association, nor barbers and cosmetologists duly licensed under the laws of this state in the course of practice of their usual and ordinary licensed vocation and profession. Certification and/or licensure as a massage therapist, cosmetologist or barber shall be conspicuously posted in the public area of the establishment or place of business.

12. "Sexual encounter establishment or center" means a business or commercial establishment that has as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "Specified Sexual Activities" or the exposure of "Specified Anatomical Areas" or activities when one or more of the persons is semi-nude or in a state of nudity. The definition of adult business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of Oklahoma engages in medically approved and recognized sexual therapy.

13. "Semi-nude model studio" means any place where a person, who appears semi-nude or displays "Specified Anatomical Areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.

B. "Adult business license" means that license issued by the City of Marietta pursuant to this Article regulating adult businesses.

C. "Adult entertainment" means any exhibition, display, or dance which involves the exposure to view of any portion of the female breast below the top of the areola, male genitals, female genitals, or the pubic hair, anus, or cleft of the buttocks of any person or male genitals in a discernibly turgid state even if completely and opaquely covered or in a state of nudity or semi-nudity.

D. "Alcoholic beverage" shall be as defined by Oklahoma Statutes, and Marietta City Code.

E. "Applicant" means the person, individual, association, partnership, corporation, or other entity applying for an adult business License including the individual authorized to execute the application on behalf of the above and all persons required to be listed by Section 70-310 of Article 9 of the Marietta City Code.

F. "Employee" means a person who works or performs in and/or for an adult business, regardless of whether or not said person is paid a salary, wage or other compensation by the Operator of said business.

G. "Entertainer" means any person who provides Adult Entertainment within an adult business

or establishment as defined in this Article, whether or not a fee is charged or accepted for entertainment.

H. "Escort" means a person who, for any form of consideration or gratuity, agrees or offers to acts as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

I. "Establish" means and includes any of the following:

1. To open or commence any such business as a new business; or
2. To convert an existing business, whether or not an adult business, to any of the adult businesses defined in this Article; or
3. To add any of the adult businesses defined in this Article to any other existing adult business; or
4. To relocate any such adult business.
5. To expand by ten percent (10%) or more that portion of the floor area of the premises open to the public to any of the adult businesses defined in the Article. If an adult business has obtained a license under the requirements set forth in this Article, the maximum ten percent (10%) expansion requirement is measured over the term of the license or any renewal thereof.

J. "Harmful to minors" means:

1. That quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

a. The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

b. The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a matter that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

c. The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; or

2. Any description, exhibition, presentation or representation, in whatever form, of

inappropriate violence.

K. "Inappropriate violence" means any description or representation, in an interactive video game or computer software, of violence which, taken as a whole, has the following characteristics:

1. The average person eighteen (18) years of age or older applying contemporary community standards would find that the interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

2. The interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:

- a. Is glamorized or gratuitous; or
- b. Is graphic violence used to shock or stimulate; or
- c. Is graphic violence that is not contextually relevant to the material; or
- d. Is so pervasive that it serves as the thread holding the plot of the material together; or
- e. Trivializes the serious nature of realistic violence; or
- f. Does not demonstrate the consequences or effects of realistic violence; or
- g. Uses brutal weapons designed to inflict the maximum amount of pain and damage; or
- h. Endorses or glorifies torture or excessive weaponry; or
- i. Depicts lead characters who resort to violence freely.

L. "Licensee" means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

M. "Licensing authority" means the City Clerk of the City or his designee.

N. "Manager" means any person who manages, directs, administers or is in charge of the affairs and/or conduct of any portion of any activity occurring at any adult business or establishment.

O. "Massage" means the administration by any person of any method of exerting or applying

pressure, friction, moisture, heat or cold to the human body, or the rubbing, stroking, kneading, tapping, pounding, vibrating or stimulating with the hands or any instrument, electrical stimulation or by the application of air, liquid or vapor baths of any kind whatever.

P. "Masseur" means any person who, for consideration, administers a massage. The term "masseur" shall also include masseuse, or the use of the masculine gender shall include in all cases the feminine gender.

Q. "Material relative to adult business" means and includes, but not be limited to, accessories, books, correspondence, photographs, prints, drawings, paintings, motion pictures, computer software, and pamphlets, or any combination thereof depicting or describing "Specified Anatomical Areas" or instruments, devices or paraphernalia which are designed for use in connection with "Specified Sexual Activities."

R. "Minor" means any person under the age of Eighteen (18) years of age.

S. "Non-intoxicating beverage" shall be as defined by Oklahoma Statute and Marietta City Code.

T. "Nude model studio" means any place where a person who appears in a state of nudity or displays "Specified 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.

U. "Nudity" or a "State of nudity" means:

1. The appearance of a human bare buttock, anus, female genitals, male genitals, or female breast below the top of the areola; or

2. A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or of the female breast below the top of the areola.

3. Nudity or State of Nudity shall not mean nor include a person who appears in a State of Nudity in a modeling class operated:

a. By a proprietary school, licensed by the State of Oklahoma; a college, junior college, or university supported entirely or partly by taxation; or

b. By a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation;

or

c. In a structure which: (1) has no sign visible from the exterior of the

structure and no other advertising that indicates a nude person is available for viewing; and (2) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and (3) where no more than one nude model is modeling on the premises at any one time.

V. "Obscene" means a performance that:

1. The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex; or

2. Depicts or describes:

a. Patently offensive representations of ultimate sex acts, normal or perverted, actual or simulated including sexual intercourse, sodomy, and sexual bestiality; or

b. Patently offensive representations of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value. "Patently offensive" means so offensive on its face as to affront current community standards of tolerance.

X. "Operates" or "Causes to be operated" means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated an adult business whether or not that person is an owner, part owner, or licensee of the business.

Y. "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

Z. "Person" means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

AA. "Primary" means principal.

BB. "Public building with programs for minors" means any publicly owned building wherein training, education, or any other program designed primarily for minors is conducted.

CC. "Public park" or "Recreation area" means public land which has been designated for park, recreational, or arts activities including, but not limited to, a park, playground, swimming pool, reservoir, athletic field, basketball or tennis courts, or similar public land.

DD. "Religious institution" means any church, synagogue, mosque, temple or building which

is used primarily for religious worship and related religious activities.

EE. "Residential zone" means property which is zoned for a single family house, duplex, townhouse, multiple family dwelling(s), or mobile home park or mobile home subdivision, and campground, recreational trailer park. or travel trailer park.

FF. "School" means any publicly or privately owned or operated educational center or day care facility.

GG. "Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

HH. "Server" means any person who serves food or drink at an adult business.

II. "Sexually oriented business" means an adult business as defined herein.

JJ. "Specified anatomical areas" means and include any of the following:

1. Human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

KK. Specified criminal act(s)" means acts involving: sexual crimes against children, sexual abuse, sexual assault, rape, prostitution, promotion of prostitution, solicitation of prostitutes, public lewdness, performance of lewd acts, obscenity, pandering, pimping, unlawful acts of sexual intercourse, sexual performance by a child, sodomy, oral copulation, or possession of child pornography, pornography, indecent exposure, indecent acts with a minor, or masturbation occurring on the premises of an adult business, crimes including but not limited to distribution of obscenity or material harmful to minors or aiding and abetting, conspiracy or attempting any of the foregoing offenses.

LL. "Specified sexual activities" means and include any of the following:

1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or

2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or

3. Masturbation, actual or simulated; or

4. Human genitals in a state of sexual stimulation, arousal or tumescence; or
5. Bestiality; or
6. Flagellation; or
7. Excretory functions as part of or in connection with any of the activities set forth in subdivisions 1 through 6 of this subsection.

MM. "Substantial enlargement of an adult business" means the increase in floor area occupied by the business by ten percent (10%) or more, as the floor area open to the public exists as of the date of adoption of this Ordinance.

NN. "Transfer of ownership" or "Control of an adult business" means and include any of the following:

1. The sale, lease or sublease of the business; or
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
3. The establishment of a trust, gift or other similar legal devise which transfers ownership or control of the business.

OO. "Viewing booth" means any portion of an adult business which portion is:

1. Partially enclosed; and
2. Has a floor area of less than 150 square feet; and
3. Is designed for viewing films, motion pictures, video cassettes, computer displays, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

70-303. Prohibition.

A. No person shall use, establish or operate any premises for an adult business except within the permitted zoning districts, unless otherwise permitted in this Article, and subject to all other applicable regulations enumerated in the Marietta City Code.

B. The Transfer of Ownership or Control of an adult business in existence on the effective

date of this Article which is located outside the permitted zoning districts shall cause said adult business to cease its operations or otherwise be deemed in violation of this Article and the zoning code.

70-304. Location regulations.

A. An adult business may only be established in an I-2 medium industrial district or an I-3 heavy industrial district within the City of Marietta.

B. It shall be unlawful for any person to establish or cause or permit to be established an adult business within one thousand (1000) feet of another adult business, or within five hundred (500) feet of any school, public park or recreation area, public building with programs for minors, residential zone or religious institution.

C. Any adult business lawfully established and lawfully operating under the zoning code and the provisions of this article and any other applicable provisions of the Marietta City Code is not in violation of these regulations by the subsequent establishment of school, public park or recreation area, public building with programs for minors, residential zone, or religious institution within the respective distances specified in subsection A of this section for each type of use. This provision applies only to the renewal of a valid adult business license and does not apply when an application for an adult business license is submitted after an adult business license has expired or has been revoked or upon transfer of ownership or control of said business.

70-305. Measurement of distance.

Distance between any two adult business premises shall be measured in a straight-line, without regard to intervening structures or objects, from the nearest entrance of an adult business premises to the nearest entrance of the second adult business premises. The distance between any adult business premises and any religious institution, school, public park or recreation area, public building with programs for minors or residential zone shall be measured from the nearest property line of the adult business premises to the nearest property line of a religious institution, school, public park or recreation area, public building with programs for minors or residential zone. The distance measured as set out above shall exclude any and all street right-of-way in determining the distance between the adult business and any other enumerated establishment or premises.

70-306. Development and performance standards.

A. Adult businesses shall comply with all of the following development and performance standards:

1. Advertisements, displays or other promotional materials depicting or describing, "Specified Anatomical Areas", or "Specified Sexual Activities", or displaying instruments, devices, or paraphernalia which are designed for use in connection with "Specified Sexual Activities" shall not be shown or exhibited so as to be visible from other areas open to the general public unless the entire establishment is dedicated and used as an adult business.

2. The premises of all adult businesses will be so constructed as to include an anteroom, foyer, partition or other physical barrier on all customer entrances, that will ensure that the interior of the premises is not observable from the exterior of the building. In addition, all windows shall be covered to prevent viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer shall be covered so as to prevent observation of the interior of the premises from the exterior of the building.

3. All entrances to an adult business shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.

4. No loudspeakers or sound equipment shall be used by an adult business for the amplification of sound to a level discernable by the public beyond the walls of the building in which the adult business is conducted. This requirement is in addition to all the noise requirements found in the Marietta City Code.

5. Any residential structure or any other non-conforming structure may be converted for use as an adult business premises after enactment of the provisions of this Article only upon compliance with all development regulations of this Article and the Marietta City Code. No variances from the terms and conditions of this Article or other provision of the Marietta City Code regulating adult business shall be permitted.

6. An adult business shall not remain open for business, or permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 12:01 A.M. and 8:00 A.M. of any succeeding day. If an adult business is also licensed as a tavern or the hours of operation are regulated by state law, the provisions of the Marietta City Code regulating taverns or state statute shall govern.

7. All adult business shall comply with the location and zoning requirements of the zoning code.

B. Non-conforming uses.

1. Any adult business in existence as of May 31, 2015, which is in violation of this article shall be deemed a non-conforming use. Such non-conforming uses shall not in any manner be enlarged, extended, altered or rebuilt except that such uses may be changed so as to comply with the provisions of this Article.

2. Such uses as are deemed non-conforming uses pursuant to the terms of this article shall be permitted to continue until January 1, 2016, unless such use is terminated for any reason whatsoever prior thereto for a period of thirty (30) days or more; thereafter such non-conforming use shall terminate or come into compliance with the provisions of this article.

3. First use deemed complying. In the event that any two or more adult businesses are located within one thousand (1,000) feet of each other as of the effective date of this article that adult business which shall have first been continually operated shall be deemed to be the complying use. The

person, firm, corporation, or other entity responsible for the operation or management of the adult business in such case shall provide to the licensing authority by documented evidence the date on which such adult business first began continuous operation.

70-307. Business license.

A. It shall be unlawful for any person to operate or maintain an adult business in the City unless the owner, operator or lessee thereof has obtained an adult business license from the City, and it shall be unlawful for any person to operate or maintain such adult business after such license has been revoked or suspended by the City.

B. It shall be unlawful for any entertainer, server, masseur, escort or other employee or manager of an adult business to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult business within the City.

C. It shall be prima facie evidence that any adult business that fails to have posted, in the manner required by this article, an adult business license, has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer, server, masseur, escort or other employee or manager who performs any service or entertainment in an adult business in which an adult business license has not been posted, in the manner required by this article, had knowledge that such business was not licensed.

D. Any violations of the provisions of this article, shall, in addition to being a violation by the person committing the offense, be chargeable to the licensee and may be grounds for revocation, suspension or denial of any license issued pursuant to the provisions of this article.

70-308. License classification and fees.

A. The license issued under this article shall be for a period of one year commencing on the date of issuance of the license and terminating on the anniversary date thereafter. The application for a license shall be accompanied by payment in full of the fees stated in the fee schedule, and no application shall be considered complete until all such fees are paid.

B. All licenses shall be issued for a specific location and type and the fees therefore shall be nonrefundable and the license is nontransferable.

C. In addition to the adult business license fee, each individual applicant shall be responsible to pay in full the specified fee for individual background investigation.

D. All fees may be set by resolution of the City Council.

70-309. Ineligibility and disqualification.

No person shall be eligible to receive or hold nor shall a license be issued to an adult business applicant

if one or more of the following conditions exist:

A. The premises are located in an area prohibited by the zoning code for the placement of an adult business, except during the amortization period set out in Section 70-306B of this article.

B. The applicant failed to supply all of the information requested on the application.

C. The applicant gave materially false, fraudulent or untruthful information on the application.

D. The proposed adult business premises do not comply with or meet the requirements of the applicable Health, Zoning, Building, Fire and Property Maintenance Codes of the City; (Exception: see subsection A of this Section).

E. The applicant has pled guilty, no contest, has been convicted or released from incarceration for conviction for any of the crimes set forth in Section 70-302 of this Article during the time period specified in Section 70-310 of this article.

F. The applicant has had an adult business type license revoked or suspended in this or any other City or State during the past five years.

G. The applicant is under 21 years of age.

70-310. Adult business license—Application procedure.

A. All persons desiring to secure a license to operate an adult business under the provisions of this Article shall make a notarized and verified application with the licensing authority. All applications shall be submitted in the name of the person proposing to conduct or operate the adult business. All applications shall be submitted in a form supplied by the licensing authority and shall require the following information:

1. The applicant's full name and any aliases or other names by which the applicant is known or which the applicant has used at any time, and the current residence address, the home telephone number, occupation, date and place of birth and social security number of the applicant.

2. The name of the adult business, a description of the adult business to be conducted on the licensed premises, the name of the owner of the premises where the adult business will be located, and a legal description or business address of the adult business.

3. The names, residence addresses, social security numbers and dates of births of: in the case of a sole proprietorship, the owner, if different from subsection 1 of this section; a trust, all trustees and beneficiaries; an estate, the personal representative; of all partners, if the applicant is a partnership; and if the applicant is a corporation, the same information for all corporate officers and directors and stockholders who own more than ten percent (10%) or greater interest in the corporation.

4. The addresses of the applicant, or of all partners, or official corporate officers and directors for the five years immediately prior to the date of application.

5. A statement from the applicant or owner, or from all partners, or from all trustees, or from all corporate officers and directors whether any such person or entity, in previously operating in this or another City, county, or state, has had an adult business type license, permit or other type of document giving the applicant the authority to conduct an adult type of business in the other jurisdiction revoked or suspended, and if so, the reason for the suspension or revocation and the business activity subjected to the suspension or revocation.

6. A statement of the business, occupation or employment of the applicant or owner, or of all partners or of all trustees, or of all corporate officers and directors for the three years immediately preceding the date of the application.

7. A statement from the applicant, or from each partner, or from each trustee, or from each corporate officer and director, that each such person has not pled guilty to, no contest to, been convicted of, or released from confinement for conviction for:

a. A felony criminal act within five years immediately preceding the application; or

b. A misdemeanor criminal act within three years immediately preceding the application, where such felony or misdemeanor criminal act involved "Specified Criminal Acts" as defined in this Article or related offenses as defined by the Oklahoma Criminal Code or any other comparable violation of the laws of this state or the laws of any other state or the United States.

8. If the applicant is a corporation or a limited liability company, a current certificate of registration issued by the Oklahoma Secretary of State.

9. A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained herein is true and correct and that the applicant has read the provisions of this article regulating adult businesses.

10. The notarized signature of the applicant.

B. In addition to the application, the following documents shall be submitted:

1. A floor plan of the premises to be licensed. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The diagram shall designate the place at which the license will be conspicuously posted and the location of any stage.

2. A current certificate and straight-line drawing prepared, within thirty days prior to the application, by a registered land surveyor depicting the property lines and the structures containing

any adult business within one thousand (1,000) feet of the nearest entrance of the structure in which the applicant adult business will be located and depicting the property line of any school, public park or recreation area, public building with programs for minors, residential zone or religious institution, and within five hundred (500) feet from the nearest property line of the premises in which the applicant adult business will be located. Said distance shall be measured as set out in Section 70-305 of Article 9 of the Marietta City Code.

C. The licensing authority shall not accept any application that is not complete in every detail. If an omission or error is discovered by the licensing authority, the application will be returned to the applicant for completion or correction without further action by the licensing authority. Any application rejected due to an omission or error shall be refiled only when the omission or error has been remedied. For the purposes of this article, the date the licensing authority accepts an application which is complete in every detail shall be the date the application is filed with the licensing authority.

D. In the event that the licensing authority determines that the applicant has improperly completed the application, he shall, within seven City business days of receipt, notify the applicant of such fact and allow the applicant ten (10) calendar days to properly complete the application. The time period of granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

E. Applicants for a license under this Article shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) calendar days from the date of such change, by supplementing the application on file with the licensing authority, shall be grounds for suspension of an adult business license.

70-311. Application processing.

Upon receipt of a complete application for an adult business license, the licensing authority shall immediately transmit a copy of the application for an adult business license to the code enforcement officer and the Chief of Police. The code of enforcement officer shall coordinate and cause to be conducted an inspection of the premises by all affected issues to include zoning, health, fire, and all building codes, for investigation and recommendation. It shall be the duty of the licensing authority to investigate such application to determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued the license. The licensing authority shall record the results of the investigation, excluding appropriately restricted criminal history record information data, and make a determination whether the applicant does or does not meet the eligibility criteria within sixty (60) City business days from the date the application is received by the licensing authority. It shall be the duty of the licensing authority to determine whether the structure where the adult business will be conducted complies with the requirements and meets the standards of the applicable Health, Zoning, Building Code, Fire and Property Maintenance Codes of the City. The code enforcement officer and the Chief of Police shall report the results of investigation to the licensing authority not later than thirty (30) City business days from the date the application is received from the licensing authority, unless a reinspection is required in which event the applicant may be given an additional ten (10) calendar days to make all required corrections and cause a reinspection to be conducted. Said report of reinspection shall immediately be submitted to the licensing authority. Only one reinspection shall be allowed. Any license application for an adult business shall be approved or disapproved within sixty (60) City business days from the date of filing of a completed application with the licensing authority.

70-312. Issuance of license—Disapproval—Appeal.

A. If the application for an adult business license is in proper form and accompanied by the appropriate license fee, the licensing authority shall, if the application is approved, approve a license as provided in this article; provided that, a license shall not be approved to any person or business who is found to be ineligible to hold such license pursuant to this Article.

B. The license, if issued, shall state that: the license is not transferable to any other person; the license is valid only for the location identified on the license; the license is restricted to the type and purpose designated on the license; and the license is valid for a period of one year from the date of issuance, as specified on the face of the license. The license shall be kept posted in a conspicuous place in the place of business that is licensed.

C. If an application for a license is disapproved, the applicant shall be immediately notified by registered or certified mail sent to the applicant's address, as shown on the application, and the notification shall state the basis for disapproval.

D. The applicant may appeal the non-issuance or disapproval of the license to the City Board of Adjustment pursuant to Section 74-30 of the Marietta City Code and Section 8-1 of Chapter 8 of the Zoning Ordinance of the City of Marietta.

70-313. Standards of conduct.

The following standards of conduct shall be adhered to by all adult business licensees, their employees, and patrons of adult businesses, while on or about the premises of the business or performing their licensed employment:

A. It is the duty of the licensee to insure that no adult business will be conducted in any manner that permits the observation of live performers engaged in an obscene depiction or dance or any material or persons depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" as defined in this Article, from any exterior source by display, decoration, sign, show window or other opening.

B. It shall be the duty of the licensee to insure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed.

C. It is the duty of the licensee and operator of the premises to ensure that any doors to public areas on the premises remain unlocked during business hours.

D. The licensee having duty under subsections A through C of this section commits an offense if he fails to fulfill that duty.

70-314. Age limitation.

- A. No person under the age of eighteen (18) years may enter an adult business.
- B. A person commits an offense if he falsely represents himself to be a person eighteen (18) years of age or older for the purpose of gaining admittance into an adult business.
- C. A licensee or employee of an adult business commits an offense if he knowingly allows a person under the age of eighteen (18) years to enter or remain on the premises of the adult business.
- D. A licensee of an adult business commits an offense if he maintains the premises without posting a sign at each entrance to the adult business that reads: "It is unlawful for any person under eighteen (18) years old to enter this location".

70-315. Prohibited acts and conduct.

- A. No employee, escort, server, nude or semi-nude model, masseur or entertainer, nor any customer or patron shall perform any "Specified Sexual Activities" as defined in this Article, wear or use any device or covering, exposed to view, which simulates any "Specified Anatomical Area", use artificial devices or inanimate objects to perform or depict any of the "Specified Sexual Activities" as defined in this Article.
- B. No employee, escort, server, nude or semi-nude model, masseur, entertainer or patron of an adult business shall touch, fondle or caress any "Specified Anatomical Area" of another person, or knowingly permit another person to touch, fondle, or caress any "Specified Anatomical Area" of such employee, server, escort, nude or semi-nude model, masseur, entertainer, or patron, whether such specified anatomical areas are clothed, unclothed, covered or exposed.
- C. No employee, escort, server, nude or semi-nude model, masseur or entertainer of an adult business shall be visible from the exterior of the adult business while such person is unclothed or in such attire, costume or clothing as to expose to view any "Specified Anatomical Area."
- D. No owner, operator, manager or other person in charge of the premises of an adult business premises shall:
 - 1. Permit any alcoholic or non-intoxicating beverages to be brought upon, possessed or consumed on the premises, unless licensed by the Marietta City Code or as may hereinafter be amended or State statute to allow on premise consumption; or
 - 2. Allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises; or

or 3. Allow or permit a violation of this article or any other City ordinance or state law;

4. Allow or permit any customer or patron to be on any stage or performance platform at any time.

E. No server, escort, nude or semi-nude model, masseur, entertainer, or other employee mingling with the patrons or serving food or drinks shall be unclothed or in such attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals or display male genitals in a discernible turgid state even if completely and opaquely covered.

F. No customer or patron is permitted to touch, caress, fondle the breast, pubic region, buttocks or genitals of any employee, server, entertainer, or engage in the solicitation for prostitution.

G. No Adult Entertainment occurring on the premises shall be visible at any time from outside of the premises.

H. No customer or patron shall attempt to enter or be on or enter or be on any stage or performance platform at any time.

I. No owner, manager or employee of an adult business shall give or offer to give any person any type of reward or gratuity of any type in return for the delivery of customers or patrons to said business, this includes any person who is in or around said business but is not a manager, employee or owner of said adult business.

70-316. Additional regulations for adult motels.

A. Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

B. A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an adult business license, he rents or sub-rents a sleeping room to a person and within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again to another person.

C. For purposes of subsection (B) above, the terms "rent" or "sub-rent" means the act of permitting a room to be occupied for any form of consideration.

70-317. Additional regulations for massage parlors.

In addition to the other regulations prescribed in this article, massage parlors shall comply with the

following requirements:

A. No such establishment shall be operated or conducted in connection with, either directly or indirectly, any place used for living or sleeping quarters.

B. Sanitation Requirements. It shall be the duty of every person conducting or operating a massage establishment to keep the same at all times in a clean and sanitary condition.

C. Administering Massage. No patron shall receive a massage unless said patron is covered by opaque material such as a towel or shorts covering the hips, genitals, anal areas, and if the patron is a female, this shall include the breasts.

D. Unlawful Acts. It shall be unlawful:

1. For any employee of the massage establishment to touch the genitals or anal area of a patron of the establishment, and if the patron is a female, this shall include the breasts.

2. For alcoholic or non-intoxicating beverages to be sold, distributed, stored, dispensed or consumed on the premises.

3. For any person to be in or upon the premises of a massage establishment or to obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under eighteen (18) years of age, unless such person is accompanied by his parent or legal guardian, or has a physician's prescription for such massage services;

4. For any person to permit any controlled narcotics or dangerous drugs on the licensed premises.

5. For any person to intentionally touch or permit any other person to touch the genitals, anus, or female breasts of any other person while on the licensed premises.

6. For any person to engage in, encourage, or request, or to permit any person to engage in, encourage, or request acts of masturbation while on the licensed premises.

70-318. Nudity—Prohibited.

A. No employee, server, customer, patron, or other person, other than an entertainer as provided in subsection B of this section, shall appear, in an adult business or establishment while nude, semi-nude, unclothed, in less than opaque attire, or otherwise in any fashion that exposes to view to any other person any "Specified Anatomical Area", as defined in this article.

B. An entertainer in an adult cabaret may appear semi-nude, unclothed, in less than opaque

attire or costume or otherwise in any fashion that exposes to the view of any other person any of the "Specified Anatomical Areas", but only under the following conditions and restrictions:

1. Alcoholic or non-intoxicating beverages as defined are not sold, dispensed, consumed, served or allowed on the premises; and

2. During the actual performance of an act, routine, dance, or similar entertainment display and the entertainer performs solely upon a stage, platform, or other area which is raised at least two feet above the primary level of the customer floor; and

3. The entertainer is separated from the customers by a physical barrier which effectively prevents the customers from touching the entertainer and which establishes a minimum distance of three feet between any customer and the entertainer; and

4. The entertainer does not perform at a spatial distance of less than three feet from any and all customers and patrons.

5. Whenever the entertainer ceases to perform or leaves or is not upon the stage or entertainment area, then he or she shall be subject to and fully comply with the prohibitions of Subsection A of this section.

6. Customers are not permitted on the stage or performance platform at any time.

70-319. Operating requirements.

A. All adult businesses shall have conspicuously displayed in the common area at the principal entrance to the premises a sign, on which uppercase letters shall be at least one inch high, which shall read as follows:

THIS ADULT BUSINESS IS REGULATED AND LICENSED BY THE CITY OF MARIETTA—MARIETTA CITY CODE, CHAPTER 70, ARTICLE 9.

1. No billboard or other exterior advertising sign for an adult cabaret or sexually oriented business shall be located within one (1) mile of any state highway. If such a business is located within one (1) mile of a state highway, the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that minors are not permitted on the premises. The identification sign shall be no more than forty (40) square feet in size and shall include no more than the following information: name, street address, telephone number, and operating hours of the business.

2. Signs existing at the time of adoption of this section, which do not conform to the requirements of this section, may be allowed to continue as a non-conforming use, but shall be made to conform not later than January 1, 2016.

B. The premises of all adult businesses shall be kept in a sanitary condition. Separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition.

70-320. Suspension or revocation of licenses.

Whenever the licensing authority has information that:

A. The licensee of an adult business has violated, or allowed or permitted the violation of any of the provisions of this article; or

B. There has been a violation of any provision of this article on the premises of the adult business and there is a rebuttable presumption that the licensee knew or should have known that such violations were committed; or

C. The adult business license was obtained through false statements in the application for such license, or renewal thereof; or

D. The adult business license has been materially altered or defaced or is being or was used by a person other than the license holder or at a location other than that identified on the license; or

E. The adult business licensee failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or

F. The owner or operator, or any partner, or any corporate officer or director holding an adult business license has become disqualified from having a license as provided in Section 70-310 of this article.

The licensing authority shall, upon five days written notice to the person holding the license, conduct a hearing to determine whether the license should be suspended or revoked. The violation of any provision of this article by any employee, agent or patron occurring on the licensed premises is presumed to be within the knowledge of the license holder. No license which has been mistakenly issued by the licensing authority arising from the unilateral mistake of the licensing authority or its clerical personnel may be suspended or revoked by the licensing authority unless and except when the licensee would not have been qualified for the original or renewal license based on the information shown on the face of the original or renewal application. The licensing authority, based on the evidence produced at the hearing, may take any of the following actions:

1. Suspend the license for up to ninety days; or

2. Revoke the license; or

3. Place the license holder on administrative probation for a period of up to one year, on the condition that no further violations of this article occur during the period of probation.

G. The licensee whose license is suspended or revoked under the provisions of this section may appeal the suspension or revocation under the provisions of Section 70-312 of this Article.

70-321. License renewal.

A. A license may be renewed by making application to the licensing authority on application forms provided for that purpose. Renewal applications for such licenses shall be submitted no sooner than ninety (90) days, but not later than forty-five (45) days prior to expiration of the license.

B. Upon timely, proper submission of a complete application for renewal and the payment in full of all license fees, the licensing authority shall issue to the applicant a receipt showing the date of the renewal application. Any license issued under the provisions of this article may be renewed by issuance of a renewal license for an additional one year license period. All applications for renewal of the license shall be processed in the manner provided for the issuance of the initial license, and must comply with and satisfy the qualifications for a license specified in this article. The licensing authority may waive the required floor configuration diagram if the applicant adopts a diagram that was previously submitted and certifies that the configuration has not been altered. No survey is required if the applicant certifies he has not altered the subject property.

C. If the application for renewal of a license is not made during the time provided in subsection A, then the license shall expire upon the effective expiration date. A new license application shall then be required to re-issue any expired license. There shall be no appeal to the non-issuance of a license because of the failure of a licensee to submit a renewal application within the specified time. Any adult business operating under the exception provided by Section 70-306(B) of this article, who fails to file for a renewal application within the time limits specified, shall cease, upon such failure to apply, to be covered by the provisions of said exception upon the expiration of the adult business license.

D. If the renewal of an adult business license is denied by the licensing authority for any reason other than failure to apply within the time limits specified, the appeal procedures set out in Section 70-312 of this article shall apply.

70-322. Violations.

It shall be unlawful for any person to fail to comply with any provision of this article or to commit any act prohibited by this article, and the commission of any prohibited act or the failure or refusal to comply with any requirement of this article shall be and hereby is declared to be a violation, and each separate act or event shall be and does constitute a separate violation. Each day that a violation shall exist shall constitute a new and separate offense.

70-323. Applicability to other regulations.

The provisions of this article are not intended to provide exclusive regulation of the regulated adult businesses. Such businesses must comply with any and all applicable regulations imposed in other articles of the zoning ordinance, the Marietta City Code and State and Federal law.

70-324. Conduct constituting a public nuisance.

In addition to other remedies for violation of the Marietta City Code, the conduct of any adult business within the City in violation of any of the terms of this article is hereby found and declared to be a public nuisance.

70-325. Civil remedies.

A person who operates or causes to be operated an adult business without a valid license or in violation of Section 70-307 of this article is subject to a suit for injunction as well as prosecution for criminal violations.

70-326. Right of entry.

The application for an adult business license shall constitute consent of the licensee and his agents or employees to permit the Marietta police department or any other agent of the City to conduct routine inspections of any licensed adult business during the hours the establishment is conducting business.

70-327. Exemptions generally.

It is an affirmative defense to prosecution under this article if a person appearing in a state of nudity or semi-nude did so in a modeling class operated:

A. By a proprietary school, licensed by the State of Oklahoma; a college, junior college, or university supported entirely or partly by taxation; or

B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

C. In a structure:

1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

2. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and

3. Where no more than one nude model is on the premises at any one time.

70-328. Penalties.

It shall be unlawful and constitute an offense for any person to violate this Article, and any person found guilty of violating this Article shall be deemed guilty of an offense and is subject, upon conviction, to a fine of up to \$500 plus costs. Each day that an act or omission is continued shall constitute a violation of this Article and shall be construed as a separate offense.

(Ord. 2015-6-3, 6-9-2015)

Chapter 71

PARKS

- Sec. 71-1. Hours.**
Sec. 71-2. Authority to take action.
Sec. 71-3. Exceptional cases.
Sec. 71-4. Penalty.

Sec. 71-1. Hours.

All City parks will be closed to the public between the hours of 11:00 p.m. and 5:00 a.m. the next day, Monday through Sunday.

Sec. 71-2. Authority to take action.

The Mayor and his or her designee are granted the authority to take action which is appropriate to the enforcement of this ordinance including, but not limited to, the placement of road barricades, gates and signs.

Sec. 71-3. Exceptional cases.

The following exceptional cases will not be considered a violation of this section:

- A. City organized or City sponsored events that may run past the closing hour; and
- B. Events that have received permission from the Mayor or his or her designee in writing to run past the 11:00 p.m. closing hour.

Sec. 71-4. Penalty.

Any person, firm or corporation violating this section shall be fined a fine of not more than five hundred dollars (\$500.00), plus costs. Each separate violation of this section shall constitute a separate offense. (Ord. 2008-8-8, September 9, 2008)

Chapter 74

PLANNING

Article I. In General

Secs. 74-1—74-25. Reserved.

Article II. Zoning and Adjustment Board

Sec. 74-26. Created; appointment; terms; vacancies.
Sec. 74-27. Organization and rules.
Sec. 74-28. Quorum.
Sec. 74-29. Employment of staff; expenses.
Sec. 74-30. Powers and duties.
Sec. 74-31. Zoning commission.
Sec. 74-32. Zoning recommendations.
Secs. 74-33—74-45. Reserved.

Article III. Comprehensive Plan

Sec. 74-46. Adoption.
Sec. 74-47. Copy kept on file.
Sec. 74-48. Purposes of plan.
Sec. 74-49. Zoning.

ARTICLE I. IN GENERAL

Secs. 74-1—74-25. Reserved.

ARTICLE II. ZONING AND ADJUSTMENT BOARD

Sec. 74-26. Created; appointment; terms; vacancies.

(a) There is created a zoning and adjustment board.

(b) All of the members of such board shall be residents of the City, nominated by the Mayor and confirmed by the City Council. The Mayor and City engineer shall be ex officio members of the board.

(c) Each appointed member shall hold office for a period of three years or until his successor takes office.

(d) The appointed members of the board shall be nominated and appointed solely with reference to their fitness and without reference to party affiliation and shall serve without compensation.

(e) Members may be removed by the Mayor or the City Council only for inefficiency, neglect of duty or malefaction in office.

(f) Vacancies occurring otherwise than through the expiration of term shall be filled only for the unexpired term by the Mayor with confirmation by the City Council.

(g) Ex officio members shall receive no compensation for their work on the board other than the fixed salary of their office.

(Code 1984, § 16-1; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Sec. 74-27. Organization and rules.

(a) The zoning and adjustment board shall elect a chairman, vice-chairman and a secretary and may create and fill such other offices as it may deem necessary. The term of the chairman, vice-chairman and secretary shall be one year with eligibility for reelection.

(b) The zoning and adjustment board shall hold at least one regular meeting each month.

(c) The zoning and adjustment board shall adopt rules for the transaction of business and shall keep a record of its requirements, transactions, findings and determinations, which record shall be a public record.

(Code 1984, § 16-3; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Sec. 74-28. Quorum.

Three members of the zoning and adjustment board shall constitute a quorum for the transaction of business. However, no action shall be taken which is binding upon the zoning and adjustment board unless concurred in by not less than a majority of all members comprising the zoning and adjustment board.

(Code 1984, § 16-2; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Sec. 74-29. Employment of staff; expenses.

(a) The zoning and adjustment board shall have the power and authority to employ planners, engineers, attorneys, clerks and other help deemed necessary within the limits of the appropriation fixed by the City Council. The salary and compensation of such employees shall be fixed by the City Council and shall be paid out of the City treasury as are other officers and employees.

(b) The zoning and adjustment board may incur necessary expenses within the limits of its appropriation to carry out its purposes and responsibility.

(Code 1984, § 16-4; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Sec. 74-30. Powers and duties.

(a) The zoning and adjustment board shall have the power and the duty to prepare and recommend to the City Council for adoption a comprehensive plan for the physical development of the City. In conducting its work, the zoning and adjustment board may consider and investigate any subject matter tending to the development and betterment of such City and may make recommendations as it may deem advisable concerning the adoption thereof to the City Council. The zoning and adjustment board may make or cause to be made surveys, studies, maps and plans in the conduct of its activities. Before final action is taken by the City Council on the location or design of any public building, statue, memorial, park, boulevard, street and alley, playground, public grounds, bridge or change in any location or grade of any street or alley, such question shall be submitted to the zoning and adjustment board for investigation and report. In the preparation of the comprehensive plan, the zoning and adjustment board may, from time to time, prepare and recommend to the City Council for adoption a part thereof, which part shall cover one or more major geographical divisions of the City or one or more major elements of the comprehensive plan. The zoning and adjustment board may, from time to time, recommend extending, amending or changing any portion of the comprehensive plan.

(b) The zoning and adjustment board shall also have all of the following powers and duties as prescribed by law and by this article which are more particularly specified as follows:

(1) *Interpretation.* Upon appeal from a decision by the building inspector or other administrative official, to decide any question involving the interpretation of any applicable section of this Code, including determination of the exact location of any district boundary, if there is uncertainty with respect thereto.

(2) *Exceptions.* To hear and decide special exceptions to the terms of applicable sections of this Code upon which such board is required to pass by granting special zoning permits and evidence thereof. No such special zoning permits shall be granted by the zoning and adjustment board unless it meets both of the following findings:

a. The use as described by the applicant will comply with all conditions established therefor by this Code; and

b. The use will not, in the circumstances of the particular case, be injurious to the neighborhood or otherwise detrimental to the public welfare.

(3) *Variances.* To vary or adapt the strict application of any of the requirements, including but not limited to setback lines or other requirements imposed by the comprehensive zoning plan of the City or, for exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions, where such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. No variance shall be

granted to permit in any district a use which is not a permitted use in such district. In granting any variance, the zoning and adjustment board shall prescribe any conditions that it deems necessary or desirable.

(4) *Appeals.* To hear and decide appeals where it is alleged that there is an error of law in any order, requirement, decision or determination made by an administrative official, such as the building inspector, in the enforcement of applicable sections of this Code.

(c) The procedure in exercising the powers and duties enumerated in this section shall be the same as in any application to amend, extend or change any zoning of the land contained within the comprehensive zoning plan of the City.

(Code 1984, § 16-5; Ord. No. 1993-1, § 3, 1-5-93)

Sec. 74-31. Zoning commission.

The zoning and adjustment board shall also act as the zoning commission which shall have the power to prepare and to recommend to the City Council for adoption a zoning plan to regulate and restrict the height, number of stories and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts and other open spaces; the density of population; the location and use of buildings, structures and land for trade, industry, residences and other purposes.

(Code 1984, § 16-8; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Sec. 74-32. Zoning recommendations.

The zoning and adjustment board may recommend the division of the City into districts of such number, size and area as may be deemed best suited to carry out the zoning plan. All such requirements shall be uniform for each class or kind of buildings throughout each district, but the requirements in one district may differ from those in other districts.

(Code 1984, § 16-9; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Secs. 74-33—74-45. Reserved.

ARTICLE III. COMPREHENSIVE PLAN

Sec. 74-46. Adoption.

The City Council does adopt the comprehensive plan on file in the clerk's office by reference.

(Code 1984, § 16-13)

Sec. 74-47. Copy kept on file.

A true copy of the comprehensive plan shall be kept on file in the office of the City Clerk.

(Code 1984, § 16-14)

Sec. 74-48. Purposes of plan.

In the preparation of the comprehensive plan, the zoning and adjustment board shall make careful and comprehensive surveys and studies of present conditions and future growth of the City and with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the City and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement and wise and efficient expenditure of public funds.

(Code 1984, § 16-6; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Sec. 74-49. Zoning.

(a) Zoning requirements shall be made in accordance with a comprehensive plan and designed to:

- (1) Lessen congestion in the streets.
- (2) Secure safety from fire, panic and other dangers.
- (3) Promote health and the general welfare.
- (4) Provide adequate light and air.
- (5) Prevent the overcrowding of land.
- (6) Avoid undue concentration of population.
- (7) Facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements.

(b) Such requirements shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.

(Code 1984, § 16-10)

Chapter 78

SOLID WASTE

Article I. In General

- Sec. 78-1. **Definitions.**
Sec. 78-2. **Accumulations of garbage and refuse.**
Sec. 78-3. **Pilfering or disturbing refuse containers.**
Sec. 78-4. **Placing in street or alley.**
Sec. 78-5. **Disposable plastic bags—Garbage pickup.**
Sec. 78-6. **Same—Animal intrusion.**
Sec. 78-7. **Same—Violation.**
Sec. 78-8. **Same—Fine.**
Secs. 78-9—78-25. **Reserved.**

Article II. Collection and Disposal

- Sec. 78-26. **Duty to request garbage service.**
Sec. 78-27. **Charges for service.**
Sec. 78-28. **Collection by City.**
Sec. 78-29. **Method of disposal.**

ARTICLE I. IN GENERAL

Sec. 78-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

County health officer means the county health officer or his authorized representative.

Garbage means all putrescible wastes, except sewage and body wastes, including all meat, vegetable and fruit refuse and carcasses of small animals and fowls from any premises within the City limits.

Premises means land, buildings or other structures, containers, vehicles, watercraft or parts thereof upon or in which refuse is stored.

Refuse means all solid wastes, including garbage and rubbish.

Rubbish means tin cans, bottles, papers, tree limbs, which shall be cut into lengths not exceeding 3 1/2 feet, leaves, etc., from any premises within the City limits.

Rubble means brushwood, cardboard boxes and other bulky earthen, wooden or metal refuse-like materials longer, larger or heavier than refuse.

(Code 1984, § 9-1)

Sec. 78-2. Accumulations of garbage and refuse.

(a) Wherever feasible, bulk storage containers for garbage and refuse will be utilized in alleys, streets, the business districts of communities and in other areas. A curbside pickup system using disposable containers will be used. The type, style and size of the container shall be specified by the City.

(b) All ordinary accumulations of rubbish such as tree limbs, paper boxes and scrap lumber which cannot be conveniently placed in the approved containers required under this section shall be gathered together and baled, tied or sacked in compact bundles, weighing no more than 50 pounds, and placed adjacent to such container.

(Code 1984, § 9-2)

Sec. 78-3. Pilfering or disturbing refuse containers.

It shall be unlawful for any person to meddle with refuse containers or disposable containers or in any way pilfer, scatter contents or junk or set fire to contents of a container in any alley or street within the City limits.

(Code 1984, § 9-10)

Sec. 78-4. Placing in street or alley.

The placing of garbage or rubbish or any refuse material in any street or alley within the City limits is prohibited.

(Code 1984, § 9-9)

Sec. 78-5. Disposable plastic bags—Garbage pickup.

No garbage or refuse placed in disposable plastic bags shall be placed for curbside pickup sooner than 12 hours prior to garbage pickup.

(Ord. No. 2004-2-7, 8-3-04)

Sec. 78-6. Same—Animal intrusion.

Any person, firm or entity which places garbage or refuse in disposable plastic bags for curbside pickup must take those reasonable precautions to avoid animals tearing open said plastic bags.

(Ord. No. 2004-2-7, 8-3-04)

Sec. 78-7. Same—Violation.

Any person, firm or entity failing to secure garbage from animal intrusion and dispersal shall be guilty of a violation of sections 78-5 through 78-7.

(Ord. No. 2004-2-7, 8-3-04)

Sec. 78-8. Same—Fine.

Each violation of sections 78-5, 78-6, or 78-7 shall be punished by a fine of up to \$500.00 plus costs.

(Ord. No. 2006-6-9, 11-01-06)

Secs. 78-9—78-25. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

Sec. 78-26. Duty to request garbage service.

To assist in maintaining the general sanitation of the City, it shall be the duty of every person occupying or having control of the occupancy of any premises located on a regularly established garbage route to notify the City Clerk at the beginning of such occupancy and request, accept and use the garbage pickup and collection service. However, failure of any owner, rental agent or occupant of such premises to make such request shall not prevent or in any way impair or impede the City from adding the address of such premises to the proper garbage collection route records and providing such service and otherwise enforcing by appropriate action the measures prescribed in this chapter and causing the fees or charges therefore to be paid.

(Code 1984, § 9-13)

Sec. 78-27. Charges for service.

All bills for sanitary (refuse) service charges shall be included on water bills, and no payments shall be accepted by the public works authority, except for the full amount billed for a specific period. Delinquent refuse bills shall carry the due dates, grace periods and penalties as water bills.

(Code 1984, § 9-14)

Sec. 78-28. Collection by City.

The City or its authorized representative shall collect refuse from the areas of the City.

(Code 1984, § 9-4(a))

Sec. 78-29. Method of disposal.

The disposal of garbage and rubbish shall be by the method ordered by the City Council.
(Code 1984, § 9-11)

Sec. 78-30. Unpaid Trash Disposal Fee.

If any person or entity incurs a fee for trash disposal at the transfer site, also called the trash disposal center or the trash transfer site, located at 698 Northeast Second Street, Marietta, Oklahoma, and said person or entity does not pay said fee within 30 days of the date of incurring said fee, and if said person or entity receives water or sewer service from the Marietta Public Works Authority, or receives garbage service from the City of Marietta, the unpaid fees for said trash disposal service may be added to said monthly water, sewer or garbage bill, and when added to said bill shall become a part of said bill and may be collected through said monthly bill by the Marietta Public Works Authority.

Sec. 78-31. Other Remedies.

The remedy to the City of Marietta to collect unpaid transfer site fees as stated in Section 1 above, shall not prohibit the City of Marietta from utilizing other remedies such as legal action to collect said unpaid transfer site fees.

Code 2015 (Ord. 2007-7-12; December 11, 2007)

Chapter 82

STREETS, SIDEWALKS AND OTHER PUBLIC AREAS

Article I. In General

- Sec. 82-1. Deposits of trash or refuse.
- Sec. 82-2. Playing on sidewalks and in streets.
- Sec. 82-3. Hazardous sidewalks or sidewalk areas.
- Sec. 82-4. Job tracking data for construction of access road project.
- Secs. 82-5—82-25. Reserved.

Article II. Excavations

- Sec. 82-26. Injuring streets and alleys.
- Sec. 82-27. Digging and repairing streets.
- Secs. 82-28—82-50. Reserved.

Article III. Obstructions

- Sec. 82-51. Goods, wares and merchandise.
- Sec. 82-52. Interference with traffic and parking.
- Sec. 82-53. Interference with drainage.

Article IV. Street Names

- Sec. 82-54. Street Names.

ARTICLE I. IN GENERAL

Sec. 82-1. Deposits of trash or refuse.

It is unlawful for any person to deposit, throw or sweep into or upon streets, alleys, parkings or sidewalks any paper, rubbish, grass, weeds, tree trimmings, dirt, trash, crates, boxes or other refuse of any kind.

(Code 1984, § 19-7)

Sec. 82-2. Playing on sidewalks and in streets.

It is unlawful for any person to play on sidewalks or upon the main-traveled portion of streets and alleys, except as may be authorized by this Code or other ordinance.

(Code 1984, § 19-9)

Sec. 82-3. Hazardous sidewalks or sidewalk areas.

It is unlawful for the owner or occupant of property abutting upon a sidewalk or sidewalk area to permit the sidewalk or sidewalk area adjacent to the property to become a hazard to persons using the sidewalk or sidewalk area.

(Code 1984, § 19-13)

Sec. 82-4. Job tracking data for construction of access road project.

(a) As a condition of using funding from the community development block grant-economic development program through the Oklahoma Department of Commerce, any entity using access road improvements funded by the CDBG-EDIF must agree to and shall provide job tracking data to the City of Marietta.

(b) Job tracking data, including employment and beneficiary information, shall be provided on a quarterly basis during a period of time starting with the date the Oklahoma Department of Commerce/Office of Community Block Grant-Economic Development Program awards the funds to the City of Marietta, Oklahoma; and ending one year after the physical completion of the public improvement.

(Ord. No. 2002-5-10, §§ 1, 2, 10-28-02)

Secs. 82-5—82-25. Reserved.

ARTICLE II. EXCAVATIONS

Sec. 82-26. Injuring streets and alleys.

It shall be unlawful for any person to willfully or maliciously dig up, remove, displace or otherwise injure or destroy any street, avenue, alley, bridge, culvert, passageway over any ditch, drain or watercourse or any private way, bridge or culvert of this City.

(Code 1984, § 19-14)

Sec. 82-27. Digging and repairing streets.

Within the City all persons and their agents, employees or servants or any other parties are prohibited from using any of the streets and alleys in the City for their service lines or to dig any ditches and make any excavations of any kind in the streets and alleys within the City without first obtaining from the City a written permit for the use of the streets and alleys and depositing with the City Treasurer an amount of

money necessary to repair the streets and alleys for the damage done for the use thereof by such persons making the use of the streets and alleys for such purpose.

In emergency situations requiring immediate digging or excavations of City streets and alleys, telephone notification of the City of Marietta is required. In the event that an emergency occurs or said excavations must occur after business hours, the written permit for said digging and excavation shall be obtained the next business day following an emergency excavation or digging in City streets.

(Code 1984, § 19-6; Ord. No. 1999-2-3, § 1, 3-2-99)

Secs. 82-28—82-50. Reserved.

ARTICLE III. OBSTRUCTIONS

Sec. 82-51. Goods, wares and merchandise.

It is unlawful for any person to place upon or permit to be placed upon sidewalks, parkways, streets and alleys any goods, wares, articles of merchandise or any other obstruction and leave such thereon or to use the sidewalks, parkways, streets and alleys as a place to carry on a business or trade.

(Code 1984, § 19-4)

Sec. 82-52. Interference with traffic and parking.

It is unlawful for any person to use or obstruct sidewalks in any manner so as to interfere unduly with pedestrian traffic thereof or to use or obstruct streets and alleys in any manner so as to interfere unduly with lawful traffic and parking thereon.

(Code 1984, § 19-5)

Sec. 82-53. Interference with drainage.

It is unlawful for any person to obstruct any street, sidewalk or alley by placing any approach driveway or other obstruction or substance whatever that will obstruct or prevent the natural flow of water into the storm sewers or drains or dam the street, sidewalk or alley so as to back any water upon the streets, alleys, sidewalks or gutters.

(Code 1984, § 19-8)

ARTICLE IV. STREET NAMES

Sec. 82-54 Street Names.

The names of the streets and roads in the City of Marietta are renamed as follows:

- A. Except as otherwise may be specifically stated herein, all streets and roads traveling North and South are renamed as: Avenues.
- B. Except as otherwise may be specifically stated herein, all Northwest ("NW") streets and roads are renamed: North Avenues. As an example, Northwest 2nd is renamed as North 2nd Avenue.
- C. Except as otherwise may be specifically stated herein, all Southwest ("SW") streets and roads are renamed: South Avenues. As an example, Southwest 2nd is renamed as South 2nd Avenue.
- D. Except as otherwise may be specifically stated herein, all streets and roads traveling East and West are renamed as: Streets.
- E. Northeast Front Street is renamed: North Ashwood Avenue.
- F. Southeast Front Street is renamed: South Ashwood Avenue.
- G. Northeast 2nd Street is renamed: North Brentwood Avenue.
- H. Southeast 2nd Street is renamed: South Brentwood Avenue.
- I. Northeast 3rd Street is renamed: North Candlewood Avenue.
- J. Southeast 3rd Street is renamed: South Candlewood Avenue.
- K. Northeast 4th Street is renamed: North Driftwood Avenue.
- L. Southeast 4th Street is renamed: South Driftwood Avenue.
- M. Northeast 5th Street is renamed: North Elmwood Avenue.
- N. Southeast 5th Street is renamed: South Elmwood Avenue.
- O. Northeast 6th Street is renamed: North Fernwood Avenue.
- P. Southeast 6th Street is renamed: South Fernwood Avenue.
- Q. Northeast 6th Street from Bill Halstied to the Limits of the City of Marietta on the North ~~is renamed~~ Ward Ranch Road.

- R. Southeast 6th Street that travels East and West is renamed: Choctaw Street.
- S. That part of West Cherokee Street, which travels North and South, is renamed: Glenwood Avenue.
- T. Cemetery Road from Oak to City Limits shall remain as Cemetery Road.
- U. East Wood is renamed: Wood Street.
- V. East Pine is renamed: Pine Street.
- W. East Oak is renamed: Oak Street.
- X. East Arch is renamed: Arch Street.
- Y. Love Street extending from Highway 77 is renamed: Sobe Street.
- Z. Summit Street between North 6th and North 8th is renamed: Peak Street.
- AA. Northwest 6th Avenue from Love Street to North City limits is renamed: Silo Avenue.
- BB. Southwest 5th Avenue from Ball to Mayall is renamed: Veterans Avenue.
- CC. Banks Drive is renamed: Football Way.
- DD. Ridgeview Street traveling North and South is renamed: Crestview Avenue.
- EE. All of Circle Drive will remain the same.

(Ord. 2011-02-06; 06-14-2011)

Chapter 86

SUBDIVISIONS

- Sec. 86-1. Adoption by reference.**
Sec. 86-2. Utility construction.
Sec. 86-3. Subdivisions.

Sec. 86-1. Adoption by reference.

The subdivision of lands in the City shall be done in accordance with the requirements contained in pages 1 through 37 of the Marietta Subdivision Regulations plus appendixes A through D, which are adopted in this section by reference as if fully set out.

(Ord. No. 1983-6, § 1, 11-1-83)

Sec. 86-2. Utility construction.

Installation of facilities which are to become a part of the municipal water and sanitary sewer systems shall be in accordance with the standards shown on three separate sheets which are titled "Standard Details" and which illustrate construction methods being two sheets dealing with sanitary sewers and one sheet dealing with water systems. These three sheets of Standard Details are adopted as part of the Marietta Subdivision Regulations, and they shall be kept on file in the office of the City clerk.

(Ord. No. 1983-6, § 2, 11-1-83)

Sec. 86-3. Subdivisions.

All plans, plats or replats of land laid out in lots or blocks and the streets, alleys or other portions of such intended to be dedicated to public or private use within the corporate limits of the City shall first be submitted to the zoning and adjustment board for its approval or rejection. Before the plans, plats or replats shall be entitled to be recorded in the office of the county clerk, they shall be approved by the City Council. It shall be unlawful to offer and cause to be recorded any such plan, plat or replat in any public office unless such shall bear thereon, by endorsement or otherwise, the approval of the City Council. Any plat filed without the endorsed approval of the City Council shall not import notice or impose any obligation or duties on the City. The disapproval of any such plan, plat or replat by the City Council shall be deemed a refusal of the proposed dedication shown thereon.

(Code 1984, § 16-7; Ord. No. 1993-1, §§ 1, 2, 1-5-93)

Chapter 90

TAXATION

Article I. In General

Secs. 90-1—90-25. Reserved.

Article II. Sales Tax

Sec. 90-26. Short title.
Sec. 90-27. Effective date.
Sec. 90-28. Definitions.
Sec. 90-29. Amendments.
Sec. 90-30. Article cumulative.
Sec. 90-31. Classification of taxpayers.
Sec. 90-32. Subsisting state permits.
Sec. 90-33. Levy.
Sec. 90-34. Exemptions.
Sec. 90-35. Purpose of revenues.
Sec. 90-36. Due date; manner of payment.
Sec. 90-37. Collection by vendor.
Sec. 90-38. Bracket system for collection.
Sec. 90-39. Tax constitutes debt.
Sec. 90-40. Returns and remittances; discounts.
Sec. 90-41. Interest and penalties; delinquency.
Sec. 90-42. Waiver of interest and penalties.
Sec. 90-43. Erroneous payments; claim for refund.
Sec. 90-44. Fraudulent returns.
Sec. 90-45. Records confidential.
Secs. 90-46—90-55. Reserved.

Article III. Excise Tax of Tangible Personal Property

Sec. 90-56. Excise tax on storage, use or other consumption of tangible, personal property levied.
Sec. 90-57. Exemptions.
Sec. 90-58. Time when due; returns; payment.

Sec. 90-59.	Tax constitutes debt.
Sec. 90-60.	Collection of tax by retailer or vendor.
Sec. 90-61.	Collection of tax by retailer or vendor not maintaining a place of business within state or both within and without state—Permits.
Sec. 90-62.	Revoking permits.
Sec. 90-63.	Remunerative deductions allowed vendors or retailers of other states.
Sec. 90-64.	Interest and penalties—Delinquency.
Sec. 90-65.	Waiver of interest and penalties.
Sec. 90-66.	Erroneous payments—Claim for refund.
Sec. 90-67.	Fraudulent returns.
Sec. 90-68.	Records confidential.
Sec. 90-69.	Provisions cumulative.
Sec. 90-70.	Provisions severable.
Sec. 90-71.	Definitions.
Sec. 90-72.	Tax collector defined.
Sec. 90-73.	Classification of taxpayers.
Sec. 90-74.	Subsisting state permits.
Sec. 90-75.	Purposes of revenues.

ARTICLE I. IN GENERAL

Secs. 90-1—90-25. Reserved.

ARTICLE II. SALES TAX

Sec. 90-26. Short title.

This article shall be known and may be cited as the City sales tax ordinance.
(Code 1984, § 7-1)

Sec. 90-27. Effective date.

This article shall be effective on and after July 1, 1980.
(Code 1984, § 7-3)

Sec. 90-28. Definitions.

(a) The definitions of words, terms and phrases contained in the state sales tax code, 68 O.S. § 1352, are adopted by reference and made a part of this article.

(b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Tax collector means the department of the City government or the official agency of the state duly designated according to law or contract authorized by law to administer the collection of the tax levied.

(Code 1984, §§ 7-14, 7-15)

Sec. 90-29. Amendments.

The people of the City, by their approval of this article, authorize the City Council, by ordinance duly enacted, to make such administrative and technical changes or additions in the method and manner of administration and enforcing this article as may be necessary or proper for efficiency and fairness, except that the rate of the tax provided in this article shall not be changed without approval of the qualified electors of the City as provided by law.

(Code 1984, § 7-22)

Sec. 90-30. Article cumulative.

This article shall be cumulative and in addition to any and all other sections of this Code or other City ordinances pertaining to taxes.

(Code 1984, § 7-23)

Sec. 90-31. Classification of taxpayers.

For the purpose of this article, the classification of taxpayers under this article shall be as prescribed by state law for purposes of the state sales tax code, 68 O.S. § 1350 et seq.

(Code 1984, § 7-11)

Sec. 90-32. Subsisting state permits.

All valid and subsisting permits to do business issued by the state tax commission pursuant to the state sales tax code, 68 O.S. § 1350 et seq., are, for the purpose of this article, ratified, confirmed and adopted in lieu of any requirement for an additional City permit for the same purpose.

(Code 1984, § 7-2)

Sec. 90-33. Levy.

(a) There is levied an excise tax of three percent (3%) upon the gross receipts derived from all sales

taxable under the state sales tax code, 68 O.S. § 1350 et seq., including but not exclusive of the following:

- (1) Tangible personal property.
- (2) Natural or artificial gas, electricity, ice, steam or any other utility or public service except water.
- (3) Transportation for hire of persons by common carriers, including railroads, both steam and electric, motor transportation companies, taxicab companies, pullman car companies, airlines and all other means of transportation for hire.

(b) All other sections of this article to the contrary notwithstanding, such tax is also levied on all sales of natural or artificial gas and electricity.

(c) The levy of excise tax of three percent (3%), which is an increase of one percent (1%) from the previous amount of two percent (2%), will expire five (5) years from the effective date of passage of this ordinance, and upon such expiration, the excise tax will revert to the previous amount of two percent (2%). (Ord. 2014-6-12, effective for collection Oct. 1, 2015)

Sec. 90-34. Exemptions.

There is specifically exempted from the tax levied by this article the gross receipts or gross proceeds and the transfers of tangible personal property exempted from the state sales tax code, 68 O.S. § 1350 et seq. (Code 1984, §§ 7-6, 7-7)

Sec. 90-35. Purpose of revenues.

It is declared to be the purpose of this article to provide revenues for the support of the functions of the municipal government of the City. (Code 1984, § 7-4)

Sec. 90-36. Due date; manner of payment.

The tax levied under this article shall be due and payable at the time and in the manner and form prescribed for payment of the state sales tax under the state sales tax code. (Code 1984, § 7-8)

Sec. 90-37. Collection by vendor.

(a) The tax levied under this article shall be paid by the consumer or user to the vendor, and it shall be the duty of each and every vendor in this City to collect from the consumer or user the full amount of the

tax levied by this article or an amount equal as nearly as possible or practicable to the average equivalent thereof.

(b) Vendors shall add the tax imposed under this article or the average equivalent thereof to the sales price or charge, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid and shall be recoverable at law in the same manner as other debts.

(c) A vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied or who willfully or intentionally fails, neglects or refuses to comply with this article or who remits or rebates to a consumer or user, either directly or indirectly and by whatsoever means, all or any part of the tax levied in this article or who makes, in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax or paying the tax for the consumer or user by any adjustment of prices or at a price including the tax or in any manner whatsoever shall be deemed guilty of an offense and upon conviction thereof shall be fined as provided in section 1-6.

(Code 1984, § 7-12)

Sec. 90-38. Bracket system for collection.

(a) The tax levied in this article shall be paid to the tax collector at the time in form and manner provided for payment of state sales tax under the state sales tax code.

(b) The bracket system for the collection of the two-percent City sales tax by the tax collector shall be as the system is adopted by the agreement of the City and the tax collector, in the collection of both the City sales tax and the state sales tax.

(Code 1984, § 7-9)

Sec. 90-39. Tax constitutes debt.

Such tax, penalty and interest due under this article shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors and may be collected by suit as any other debt.

(Code 1984, § 7-10)

Sec. 90-40. Returns and remittances; discounts.

Returns and remittances of the tax levied and collected in this article shall be made to the tax collector at the time and in the manner, form and amount as prescribed for returns and remittances required by the state sales tax code, and remittances of the tax collected under this article shall be subject to the same discount as may be allowed by such code for collection of state sales taxes.

(Code 1984, § 7-13)

Sec. 90-41. Interest and penalties; delinquency.

68 O.S. § 217 is adopted and made a part of this article, and interest and penalties at the rates and in amounts as therein specified are levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this article. The failure or refusal of any taxpayer to make and transmit the reports and remittances of the tax in the time and manner required by this article shall cause such tax to be delinquent. In addition, if such delinquency continues for a period of five days, the taxpayer shall forfeit his claim to any discount allowed under this article.

(Code 1984, § 7-16)

Sec. 90-42. Waiver of interest and penalties.

The interest or penalty or any portion thereof accruing because of a taxpayer's failure to pay the tax levied in this article may be waived or remitted in the manner as provided for in 68 O.S. § 220, and to accomplish the purposes of this section the applicable portions of 68 O.S. § 220 are adopted by reference and made a part of this article.

(Code 1984, § 7-17)

Sec. 90-43. Erroneous payments; claim for refund.

Refund of erroneous payment of the City sales tax levied in this article may be made to any taxpayer making such erroneous payment in the same manner and procedure and under the same limitations of time as provided for administration of the state sales tax as set forth in 68 O.S. § 227, and to accomplish the purposes of this section, the applicable portions of 68 O.S. § 227 are adopted by reference and made a part of this article.

(Code 1984, § 7-18)

Sec. 90-44. Fraudulent returns.

In addition to all civil penalties provided by this article, the wilful failure or refusal of any taxpayer to make reports and remittances required or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be an offense.

(Code 1984, § 7-19)

Sec. 90-45. Records confidential.

The confidential and privileged nature of the records and files concerning the administration of the City sales tax is legislatively recognized and declared, and to protect such 68 O.S. § 205 of the state sales tax code and each subsection thereof is adopted by reference and made fully effective and applicable to administration of the City sales tax as if set forth in full in this article.

(Code 1984, § 7-20)

Secs. 90-46—90-55. Reserved.

ARTICLE III. EXCISE TAX OF TANGIBLE PERSONAL PROPERTY

Sec. 90-56. Excise tax on storage, use or other consumption of tangible, personal property levied.

(a) There is hereby levied and there shall be paid by every person storing, using or otherwise consuming within the municipality tangible, personal property purchased or brought into this municipality, an excise tax on the storage, use or other consuming within the municipality of such property at the rate of three percent (3%) of the purchase price of such property. Such tax shall be paid by every person storing, using or otherwise consuming, within the municipality, tangible, personal property purchased or brought into the municipality. The additional tax levied hereunder shall be paid at the time of importation or storage of the property within the municipality and shall be assessed to only property purchased outside Oklahoma; provided, that the tax levied herein shall not be levied against tangible, personal property intended solely for use outside the municipality, but which is stored in the municipality pending shipment outside the municipality or which is temporarily retained in the municipality for the purpose of fabrication, repair, testing, alteration, maintenance or other service. Any person liable for payment of the tax authorized herein, may deduct from such tax any local or municipal sales tax previously paid on such goods or services; provided, that the amount deducted shall not exceed the amount that would have been due if the taxes imposed by the municipality had been levied on the sale of such goods or services.

(Ord. No. 1999-4-8, § 1, 8-8-99)

(b) The levy of excise tax of three percent (3%), which is an increase of one percent (1%) from the previous amount of two percent (2%), will expire five (5) years from the effective date of passage of this ordinance, and upon such expiration, the excise tax will revert to the previous amount of two percent (2%).

Sec. 90-57. Exemptions.

The provisions of this article shall not apply:

(1) In respect to the use of an article of tangible, personal property brought into the municipality by a nonresident individual visiting in this municipality for his or her personal use or enjoyment while within the municipality.

(2) In respect to the use of tangible, personal property purchased for resale before being used.

(3) In respect to the use of any article of tangible, personal property on which a tax, equal to or in excess of that levied by both the Oklahoma Use Tax Code and the City of Marietta Use Tax Ordinance, has been paid by the person using such tangible, personal property in the municipality, whether such tax was levied under the laws of Oklahoma or some other state or municipality of the United States. If any article of tangible, personal property has already been subjected to a tax by Oklahoma or any other state or municipality in respect to its sale or use, in an amount less than the tax imposed by both the Oklahoma Use Tax Code and the City of Marietta Use Tax Ordinance, the provisions of this article shall also apply to it by a rate measured by the difference only between the rate provided by both the Oklahoma Use Tax Code and the City of Marietta Use Tax Ordinance, and the rate by which the previous tax upon the sale or use was computed. Provided, that no credit shall be given for taxes paid in another state or municipality, if that state or municipality does not grant like credit for taxes paid in Oklahoma and the municipality.

(4) In respect to the use of machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in the municipality, and machinnized as such.ery and equipment purchased and used by persons to the operation of manufacturing plants already established in the municipality. Provided, this exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property subject to taxation under the Sales Tax Code of the municipality. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such.

(5) In respect to the use of tangible, personal property no specifically exempted from taxation under the Sales Tax Code of the municipality.

(6) In respect to the use of any article of tangible, personal property brought into the municipality by an individual with intent to become a resident of this municipality where such personal property is for such individual's personal use or enjoyment.

(7) In respect to the use of any article of tangible personal property used or to be used by commercial airlines or railroads.

(8) In respect to livestock purchased outside Oklahoma and brought into this municipality for feeding or breeding purposes, and which is later resold.

(Ord. No. 1999-4-8, § 2, 8-8-99)

Sec. 90-58. Time when due-returns-payment.

The tax levied by this article is due and payable at the time and in the manner and form prescribed for payment of the state use tax under the Use Tax Code of the State of Oklahoma.

(Ord. No. 1999-4-8, § 3, 8-8-99)

Sec. 90-59. Tax constitutes debt.

Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors, and may be collected by suit as any other debt.

(Ord. No. 1999-4-8, § 4, 8-8-99)

Sec. 90-60. Collection of tax by retailer or vendor.

Every retailer or vendor maintaining places of business both within and without the State of Oklahoma, and making sales of tangible, personal property from a place of business outside this state for us in this municipality shall at the time of making such sales collect the use tax levied by this article from the purchaser and give to the purchaser a receipt therefore in the manner and form prescribed by the tax commission, if the tax commission shall, by regulation, require such receipt. Each retailer or vendor shall list with the tax commission the name and address of all his agents operating in this municipality and location of any and all distribution or sales houses or offices or other places of business in this City.

(Ord. No. 1999-4-8, § 5, 8-8-99)

Sec. 90-61. Collection of tax by retailer or vendor not maintaining a place of business within state or both within and without state—Permits.

The tax commission may, in its discretion, upon application, authorize the collection of the tax herein levied by any retailer or vendor not maintaining a place of business within this state but who makes sales of tangible personal property for use in this municipality and by the out-of-state place of business of any retailer or vendor maintaining places of business both within and without Oklahoma and making sales of tangible, personal property at such out-of-state place of business for use in this municipality. Such retailer or vendor may be issued, without charge, a permit to collect such taxes, by the tax commission in such manner and subject to such regulations and agreements as it shall prescribe. When so authorized, it shall be the duty of such retailer or vendor to collect the tax upon all tangible, personal property sold to his knowledge for use within this municipality. Such authority and permit may be cancelled when at any time the tax commission considers that such tax can more effectively be collected from the person using such property in this municipality. Provided, however, that in all instances where such sales are made or completed by delivery to the purchaser within this municipality by the retailer or vendor in such retailer's or vendor's vehicle, whether owned or leased (not by common carrier), such sales or transactions shall continue to be subject to applicable municipality sales tax at the point of delivery and the tax shall be collected and reported under taxpayer's sales tax permit number accordingly.

(Ord. No. 1999-4-8, § 6, 8-8-99)

Sec. 90-62. Revoking permits.

Whenever any retailer or vendor not maintaining a place of business in this state, or both within and without this state, and authorized to collect the tax herein levied, fails to comply with any of the provisions of this article or the Oklahoma Use Tax Code or any order, rules or regulations of the tax commission, the tax commission may, upon notice and hearing as provided for in 68 O.S. 1981, Section 1408, by order revoke the use tax permit, if any, issued to such retailer or vendor, and if any such retailer or vendor is a corporation authorized to do business in this state may, after notice and hearing above provided, cancel said corporation's license to do business in this state and shall issue a new license only when such corporation has complied with the obligations under this article, the Oklahoma Use Tax Code, or any order, rules or regulations of the tax commission.

(Ord. No. 1999-4-8, § 7, 8-8-99)

Sec. 90-63. Remunerative deductions allowed vendors or retailers of other states.

Returns and remittances of the tax herein levied and collected shall be made to the tax commission at the time and in the manner, form and amount as prescribed for returns and remittances required by the Oklahoma Use Tax Code; and remittances of tax collected hereunder shall be subject to the same discount as may be allowed by said Code for the collection of state use taxes.

(Ord. No. 1999-4-8, § 8, 8-8-99)

Sec. 90-64. Interest and penalties—Delinquency.

Section 217 of Title 68 O.S. 1981 is hereby adopted and made a part of this article, and interest and penalties at the rates and in the amounts as therein specified are hereby levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this article. Provided, that the failure or refusal of any retailer or vendor to make and transmit the reports and remittances of tax in the time and manner required by this article shall cause such tax to be delinquent. In addition, if such delinquency continues for a period of five days, the retailer or vendor shall forfeit his claim to any discount allowed under this article.

(Ord. No. 1999-4-8, § 9, 8-8-99)

Sec. 90-65. Waiver of interest and penalties.

The interest or penalty or any portion thereof accruing by reason of a retailer's or vendor's failure to pay the municipality tax herein levied may be waived or remitted in the same manner as provided for said waiver or remittance as applied in administration of the state use tax provided in 68 O.S. 1981, Section 227, and to accomplish the purposes of this section the applicable provisions of said Section 220 are hereby adopted by reference and made a part of this article.

(Ord. No. 1999-4-8, § 10, 8-8-99)

Sec. 90-66. Erroneous payments—Claim for refund.

Refund of erroneous payment of the municipality use tax herein levied may be made to any taxpayer making such erroneous payment in the same manner and procedure, and under the same limitations of time, as provided for administration of the state use tax as set forth in 68 O.S. 1981, Section 227, and to accomplish the purpose of this section, the applicable provisions of said Section 227 are hereby adopted by reference and made a part of this article.

(Ord. No. 1999-4-8, § 11, 8-8-99)

Sec. 90-67. Fraudulent returns.

In addition to all civil penalties provided by this article, the willful failure or refusal of any taxpayer to make reports and remittances herein required, or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be an offense, and upon conviction thereof the offending taxpayer shall be punished by a fine of not more than \$100.00 and costs. Each day of noncompliance with this article shall constitute a separate offense.

(Ord. No. 1999-4-8, § 12, 8-8-99)

Sec. 90-68. Records confidential.

The confidential and privileged nature of the records and files concerning the administration of the municipality use tax is legislatively recognized and declared, and to protect the same the provisions of 68 O.S. 1981, Section 205, of the State Use Tax Code, and each subsection thereof, is hereby adopted by reference and made fully effective and applicable to administration of the municipality use tax as is herein set forth in full.

(Ord. No. 1999-4-8, § 13, 8-8-99)

Sec. 90-69. Provisions cumulative.

The provisions hereof shall be cumulative, and in addition to any and all other taxing provisions of the municipality ordinances.

(Ord. No. 1999-4-8, § 14, 8-8-99)

Sec. 90-70. Provisions severable.

The provisions hereof are hereby declared to be severable, and if any section, paragraph, sentence or clause of this article is for any reason held invalid or inoperative by any court of competent jurisdiction, such decision shall not affect any other section, paragraph, sentence or clause hereof.

(Ord. No. 1999-4-8, § 15, 8-8-99)

Sec. 90-71. Definitions.

The definitions of words, terms and phrases contained in the Oklahoma Use Tax Code, Section 1401, 68 O.S. 1981 are hereby adopted by reference and made a part of this article. In addition thereto, the following words and terms shall be defined as follows:

City/town shall mean the City of Marietta, Oklahoma.

Transaction shall mean sale.

(Ord. No. 1999-4-8, § 16, 8-8-99)

Sec. 90-72. Tax collector defined.

The term "tax collector" as used herein means the department to the municipality government or the official agency of the state, duly designated according to law or contract authorized by law, to administer the collection of the tax herein levied.

(Ord. No. 1999-4-8, § 17, 8-8-99)

Sec. 90-73. Classification of taxpayers.

For the purpose of this article, the classification of taxpayers hereunder shall be as prescribed by state law for purposes of the Oklahoma Use Tax Code.

(Ord. No. 1999-4-8, § 18, 8-8-99)

Sec. 90-74. Subsisting state permits.

All valid and subsisting permits to do business issued by the tax commission pursuant to the Oklahoma Use Tax Code are for the purpose of this article hereby ratified, confirmed and adopted in lieu of any requirement for an additional municipality permit for the same purpose.

(Ord. No. 1999-4-8, § 19, 8-8-99)

Sec. 90-75. Purposes of revenues.

It is hereby declared to be the purpose of this article to provide revenues for the support of the functions of the municipal government of the municipality, and any and all revenues derived hereunder may be expended by the governing body of the municipality for any purpose for which funds may be lawfully expended as authorized.

(Ord. No. 1999-4-8, § 20, 8-8-99)

Chapter 94

TRAFFIC AND VEHICLES

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ARTICLE I. IN GENERAL

- Sec. 94-1. Adoption by reference.

All nonfelony provisions of tit. 47 Oklahoma Statutes (47 O.S. § 1-101 et seq.) are adopted by reference as if fully set out in this section pursuant to 11 O.S. §§ 22-117 and 22-117.1. It shall be unlawful to violate the provisions adopted by reference in this section.

(Ord. No. 1987-7, § 1, 9-1-87)

Sec. 94-2. Authorized emergency vehicles.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or this Code or other ordinance or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated in this section.

(b) The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the requirements of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the maximum speed limits, so long as he does not endanger life or property; and

(4) Disregard restrictions governing direction of movement or turning in specific directions.

(c) The exemptions granted in subsection (b) of this section to an authorized emergency vehicle shall apply only when the driver of any such vehicle is making use of audible and visual signals as required by law, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(d) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons nor shall this section protect the driver from the consequences of his reckless disregard for the safety of others.

(Code 1984, § 20-11)

Sec. 94-3. Certain exemptions for mail vehicles.

Nothing in this Code shall be construed to prevent the vehicles of the United States Postal Service, while engaged in the business of such service, or the duly authorized and licensed operators of such vehicles in pursuance of their duties under such service from:

(1) Double parking such vehicles while engaged in collecting and delivering U.S. mail.

(2) Leaving the vehicle while the motor is running in a double-parked condition without a licensed operator therein.

(3) Using areas designated as loading zones and taxi zones for the collection and delivery of the U.S. mail.

(4) Leaving the vehicle parked in an alley where less than ten feet of alley width remains for the use of through traffic.

(5) Using designated passenger loading zones; however, such exemption shall apply only for the purpose of momentary stops for mail pickup and delivery and shall not permit the use of such areas for the general mail delivery.

(Code 1984, § 20-96)

Sec. 94-4. Certain exemptions for persons working on streets.

Unless specifically made applicable, the sections of this chapter, except those relating to reckless driving and driving while intoxicated, shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a street or to persons, motor vehicles and other equipment while actually engaged in construction, maintenance or repair of public utilities, provided that all highway and public utility operations shall be protected by adequate warning signs, signals, devices or flagmen, but the sections of this chapter shall apply to such persons and vehicles when traveling to or from such work.

(Code 1984, § 20-9)

Sec. 94-5. Closing streets for maintenance and construction.

(a) City personnel or contractors, while repairing or improving the streets of the City, and City personnel and utility companies, when installing, improving or repairing lines or other utility facilities in the streets, are authorized as necessary, subject to control by the City Council, to close any street or section thereof to traffic during such repair, maintenance or construction and, in exercising such authority, shall erect or cause to be erected proper control devices and barricades to warn and notify the public that the street has been closed to traffic.

(b) When any street has been closed to traffic under subsection (a) of this section and traffic control devices or barricades have been erected, it is unlawful for any person to drive any vehicle through, under, over or around such traffic control devices or barricades or otherwise to enter the closed area, except that the provisions of this subsection shall not apply to persons while engaged in such construction, maintenance and repair or to persons entering therein for the protection of lives or property. Persons having their places of residence or places of business within the closed area may travel, when possible to do so, through the area at their own risk.

(Code 1984, § 20-10)

Sec. 94-6. Driver's license required.

(a) It is unlawful for any person who does not have a driver's license, as required by state law for operation of a motor vehicle upon the state highways, to operate a motor vehicle within the City.

(b) It is unlawful for any person to authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street in the City by any person who is not authorized or licensed to drive a motor vehicle under the laws of the state or under the laws of the state of the driver's residence.

(Code 1984, §§ 20-47, 20-49)

Sec. 94-7. Boarding or alighting from vehicles.

No person shall board or alight from any vehicle while such vehicle is in motion.

(Code 1984, § 20-89)

Secs. 94-8—94-35. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 94-36. Traffic violations fine schedule.

(a) The City Council, by resolution or motion, shall establish from time to time a fee schedule for traffic violations within the City.

(b) The court may adopt rules to carry into effect this section. Payment of a fine under this section shall constitute a final determination of the cause against the defendant. If a defendant who has elected to pay a fine under this section fails so to do, such failure shall constitute a violation of this Code.

(Code 1984, § 12-21(8))

(c) The schedule of fines and costs which may be paid in lieu of appearance is as follows:

FINES

Speeding Minimum Bond	109.00
SCHOOL ZONE	169.00
(10) to (20) Over the limit	169.00
SCHOOL ZONE	269.00
(21) to (30) Over the limit	269.00
SCHOOL ZONE	369.00
(31) or More Over the limit	369.00
SCHOOL ZONE	469.00
Failure to Stop for Stop Sign or Signal	99.00

Improper Equipment or Load	114.00
Fail to Yield	114.00
No Drivers License	139.00
Fail to Comply W/ Mandatory Ins. Law	139.00
Improper or No Tag	139.00
Fail to Yield to Emergency Vehicle	269.00
Driving in a Manner not Reasonable or Proper . . .	169.00
Leaving Scene of Accident	269.00
Fail to stop for School Bus Loading or Unloading	269.00
All other traffic not listed	169.00
Driving Under Suspension	369.00
Accident Involved in any above + other charges	169.00
Parking Fire Zone or Handicap	69.00
Seat Belt or Child Restraint	25.00
Designated Truck Route Violation	221.00

ALCOHOL RELATED OFFENSES

.....	
Contributing to a Minor	269.00
Permitting a Minor to Sell	269.00
Selling to an Intoxicated Person or Mentally Ill . . .	369.00
Open Container in Package Store	369.00
Public Intoxication	269.00
Transporting an Open Container	269.00
Person Under 21 in Possession of	169.00
Driving Under Influence/Actual Physical Control . . .	569.00

VIOLATIONS IN GENERAL

.....	
Soliciting Without a Permit	139.00
Possession of Marijuana	569.00
Placing sign on Property of Others	109.00
Discharging Fireworks	109.00

Animal Violations	139.00
Health and Sanitation	139.00
Unlawful intrusion or Trespass	139.00
Improper Dumping on Ground	169.00
Aiding in Offense	169.00
Shoplifting or Petty Larceny	269.00
Injury to Auto or other Property	269.00
Throwing or Shooting at persons or property	469.00
Disturbing the Peace	169.00
Assault and Battery	269.00
Domestic Abuse	469.00
Refusing or Failure to Assist an Officer	369.00
Resisting Arrest	569.00
Impersonating an Officer.	369.00
Falsely Reporting a Crime.	169.00
Attempting to Elude.	369.00
All other violations not specifically listed	269.00

As of 11/1/06

(Ord. No. 2006-6-9, 11-01-06)

Sec. 94-37. Obedience to police and fire department officials.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or fire department official.

(Code 1984, § 20-5)

Secs. 94-38–94–50. Reserved.

DIVISION 2. TRAFFIC CONTROL DEVICES

Sec. 94-51. Ratification of existing devices.

All traffic control signs, signals and devices existing on the date of adoption of this Code are expressly ratified and confirmed.

Sec. 94-52. Authority to install.

The City Council, by motion or resolution, shall have placed and maintained traffic control signs, signals and devices when and as required under this chapter or other traffic ordinances of this City to make effective this chapter or other ordinances and may have placed and maintained such additional traffic control signs, signals and devices as it may deem necessary to regulate traffic under this chapter or other traffic ordinances of this City or under state law or to guide or warn traffic.

(Code 1984, § 20-20)

Secs. 94-53—94-87. Reserved.

ARTICLE III. VEHICLE OPERATION

DIVISION 1. GENERALLY

Sec. 94-88. Driving vehicle on sidewalk.

The driver of a vehicle shall not drive upon a sidewalk or within any sidewalk area, except at a permanent or temporary driveway.

(Code 1984, § 20-81)

Sec. 94-89. Vehicles injurious to streets.

No vehicle or object which injures or is likely to injure the surface of a street shall be driven or moved on any street.

(Code 1984, § 20-14)

Sec. 94-90. Designation of through truck routes and hazardous cargo routes.

(a) It is unlawful for any semi-tractor/trailer, multiple axle vehicle, or vehicle carrying hazardous cargo to be on any public thoroughfare, alley or street within the City of Marietta, except as designated herein or as designated by motion or resolution of the City Council.

(b) Highways 32 and 77, and City street Northeast 2nd are hereby designated as through truck routes and hazardous cargo routes for all semi-tractor/trailers, multiple axle vehicles or vehicles carrying hazardous cargo.

(c) Semi-tractor/trailers and multiple axle vehicles may be operated on such streets not designated herein or not designated by motion or resolution of the City Council for the purpose of delivering or picking up materials or merchandise and then only by entering such street at the intersection nearest the destination of the vehicle and proceeding no farther than the nearest intersection thereafter.

(d) Any person driving a vehicle as described above on any public thoroughfare, alley or street not designated as a through truck route may be fined up to the maximum allowed by law for the violation of this section.

(Ord. No. 2009-3-2, February 10, 2009)

Secs. 94-91—94-100. Reserved.

DIVISION 2. SPEED AND RELATED OFFENSES

Sec. 94-101. Basic rule and maximum limits.

(a) Any person driving a vehicle on a street shall drive the vehicle at a careful and prudent speed not greater than or less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and any other condition then existing. No person shall drive any vehicle upon a highway at a speed greater than will permit him to bring it to a stop within the assured clear distance ahead.

(b) The operating or driving or causing to be operated and driven, within the City, of an automobile, truck, tractor or a motor-driven vehicle of any kind at a speed, unless otherwise posted, of more than 25 miles an hour is prohibited and unlawful.

(Code 1984, § 20-43)

Sec. 94-103. Posted speed limit in school zones.

Where any portion of a road, street, or highway is a properly marked school zone, as indicated with appropriate warning signs placed in accordance with the latest edition of the Manual on Uniform Traffic Control Device, and a reduced speed limit as properly posted, shall be in effect during certain times due to the presence or potential presence of school children, no person shall drive any vehicle upon that portion of the road, street, or highway which is the school zone in excess of the reduced speed limit so posted when the reduced speed limit is in effect. Violation of the posted reduced speed limit in the school zone shall result in the doubling of the appropriate fine, under the condition that the doubled fine amount shall not exceed \$500.00.

(Ord. No. 2006-6-9, 11-01-06)

Secs. 94-104—94-130. Reserved.

DIVISION 3. TURNING MOVEMENTS

Sec. 94-131. Authority to place restricted turn signs.

The City Council, by motion or resolution, is authorized to determine those intersections at which drivers of vehicles shall not make a right turn, left turn or U-turn and shall have placed proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours; when permitted the hours shall be plainly indicated on the signs or they may be removed when such turns are permitted.

Code 1984, § 20-52)

Sec. 94-132. Obedience to no turn signs.

Whenever authorized signs are erected indicating that no right turn or left turn or U-turn is permitted, no driver of a vehicle shall disobey the directions of any such sign. (Code 1984, § 20-53)

Sec. 94-133. Required position and method of turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection. After entering the intersection, the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme lefthand lane lawfully available to traffic moving in the direction of travel of such vehicle. After entering the intersection, the left turn shall be made so as to leave the intersection, as nearly as practicable, in the lefthand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(Code 1984, § 20-50)

Sec. 94-134. Limitations on turning around.

(a) The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction upon any street in the City except at an intersection. Furthermore, it is unlawful for the driver of a vehicle to make such a turn at any intersection where:

- (1) Traffic control signals are installed;
- (2) A police officer is directing traffic, except at the latter's direction; or
- (3) An official no U-turn sign has been placed and is maintained.

(b) When otherwise permitted, a U-turn may be made only when it can be made in safety and without interfering with other traffic.

(Code 1984, § 20-54)

Secs. 94-135—94-158. Reserved.

ARTICLE IV. STOPPING, STANDING OR PARKING

DIVISION 1. GENERALLY

Sec. 94-159. Prohibited in specified places.

(a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

- (1) On a sidewalk.
- (2) In front of a public or private driveway.
- (3) Within 15 feet of a fire hydrant.
- (4) Within an intersection.
- (5) On a crosswalk.
- (6) Within 20 feet of a crosswalk at an intersection.
- (7) Within 30 feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway.

(8) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the City Council indicates a different length by signs or markings.

(9) Within 50 feet of the nearest rail of a railroad crossing.

(10) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of such entrance, when properly signposted.

(11) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic.

(12) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

(13) Upon any bridge or other elevated structure upon a highway or within a highway underpass.

(14) At any place where official signs prohibit stopping.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

(Code 1984, § 20-124)

Sec. 94-160. Parking as to obstruct traffic.

No person shall park a vehicle within a street or alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within a street or alley in such position as to block the driveway entrance to any abutting property. Double parking is prohibited under this section.

(Code 1984, § 20-125)

Sec. 94-161. Authority to establish parking time limits.

(a) The Council, by motion or resolution, is authorized to establish parking time limits or to prohibit parking on designated streets and parts of streets by having appropriate signs placed thereon.

(b) When such signs are in place, it is unlawful for any person to park a vehicle in violation thereof.

(Code 1984, § 20-127)

Sec. 94-162. Curb loading zones.

(a) The Council, by motion or resolution, is authorized to determine the location of passenger and freight curb loading zones and shall have placed and maintained appropriate signs indicating such zones and stating the hours during which this section is applicable. By the same authority, such loading zones may be changed or discontinued.

(b) When such a loading zone is established on request of any person, the City shall not have signs placed until the applicant has paid to the City an amount of money estimated by the Council to be adequate to reimburse the City for all costs of establishing and signing the zone. (Code 1984, § 20-131)

Sec. 94-163 No Parking on Private Property Without Consent

No person shall park a vehicle on the private property of another without the consent of the owner of the private property, his agent or tenant.

Sec. 94-164. No Parking on Unpaved Portion without Consent.

No person shall park a vehicle on the unpaved portion of a road or street, which unpaved portion of the road or street is maintained by the abutting landowner, without the consent of the abutting landowner, his agent or tenant, or without the consent of the City of Marietta, which consent by the City of Marietta is provided through the Chief of Police, the Mayor, or the Code Enforcement Officer, or the designated agent of said Chief of Police, Mayor, or Code Enforcement Officer.

Sec. 94-165. Removal of Vehicle.

Any unoccupied vehicle parked in violation of this Ordinance may, upon complaint of the property owner, his agent or tenant, may be removed and impounded by the Marietta Police Department; and the vehicle owner must pay removal, storage and impounding fees. The decision to remove and impound a vehicle as stated in this section shall be at the sole discretion of the Marietta Police Department. The removal and impoundment of a vehicle under this section of this Ordinance shall be in addition to the fine and costs for violation of this Ordinance and such removal and impoundment of a vehicle under this section shall not prohibit or preclude the adjudication that this Ordinance has been violated and shall not prohibit or preclude the assessment of fine and costs by the municipal court.

Sec. 94-166. No Authorization by Owner.

No person shall authorize or knowingly permit any vehicle registered in his name to be parked in violation of any provisions of this Ordinance.

Sec. 94-167. Citations.

In cases where vehicles without drivers are parked or stopped in violation of this Ordinance, police officers and other persons appointed by the Chief of Police may affix citation tags to the vehicles. If a violator of any provision of this Ordinance who has been given a citation tag fails to appear in accordance with the instructions of such tag, such violation shall be guilty of the offense of failure to appear under this Ordinance and shall be subject to a fine and costs as stated in this Ordinance.

Sec. 94-168 Presumption.

In any prosecution charging a violation of the provisions of this Ordinance, proof that the particular vehicle described in the complaint was parked in violation of this Ordinance, together with proof that the defendant named in the complaint was at the time of such parking the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

Sec. 94-169 Penalty.

Any person who violates any provision of this Ordinance, or performs any unlawful act as defined in this Ordinance, or fails to perform any act required in this Ordinance, is guilty of an offense and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500.00), plus costs. Each separate violation shall constitute a separate offense.

(Ord. 2009-8-8; 08-11-2009)

Sec. 94-170. Parking across designated lines.

Sections 94-170-A through 94-170-D pertain to parking across designated lines.

(Ord. 2007-4-8, 8-14-2007)

Sec. 94-170-A. Violation to park across designated lines or markings.

No person shall park or stand a vehicle across any designated parking lines or markings, painted or posted on streets or roadways. All vehicles are to be parked within the designated parking lines, markings or other specified locations as marked, and not on or over a line delineating a space, and this includes angled, parallel and tandem parking. Each separate violation of this section shall constitute a separate offense and shall result in a separate fine.

Sec. 94-170-B. Authorization for citations.

Police Officers, or others designated by the City Council, are hereby authorized to give notice to persons violating the parking regulations of this ordinance by delivering citations to violators or, if no person is present with the offending vehicle, to affix such citation to the subject vehicle.

Sec. 94-170-C. Prima facie proof.

The fact that an automobile or other vehicle which is illegally parked or stopped is registered in the name of a person shall be considered prima facie proof that such person was in control of the automobile at the time of such parking.

Sec. 94-170-D. Penalties.

Any person violating any of the provisions of this ordinance, except those pertaining to off street parking, designated tow-away zones, handicapped parking zones, fire lanes, shall be subject to a fine as follows:

1. A fine in an amount of Ten Dollars (\$10.00), subject to the following provisions of this Section.
2. If any citation remains unpaid after the fifth (5th) working day after issuance, the penalty fine shall be Twenty Dollars (\$20.00) thereafter, and the vehicle owner shall be so notified by mail by the Municipal Court Clerk.
3. Any person who has accumulated three (3) or more unpaid parking citations within any thirty (30) day period, or longer, for which notification has been issued by the Municipal Court Clerk shall be deemed guilty of an offense and subject to a fine not to exceed One Hundred Dollars (\$100.00). The Municipal Court is hereby authorized to issue, in its discretion, warrants for the arrest and appearance of such violators as in the case of other offenses or misdemeanors; provided, the provisions of this paragraph shall not prohibit the impoundment or immobilization of any vehicle.

Secs. 94-171—94-225. Reserved.

ARTICLE V. PEDESTRIANS

Sec. 94-226. Obedience to traffic control signals.

Pedestrians shall be subject to traffic control signals, but at all other places pedestrians shall be granted those rights and shall be subject to the restrictions stated in this article or by law.

(Code 1984, § 20-97)

Secs. 94-127—94-250. Reserved.

ARTICLE VII. BICYCLES AND PLAY VEHICLES

Sec. 94-251. Effect of article.

(a) It is an offense for any person to do any act forbidden or to fail to perform any act required in this article.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate this article.

(c) The sections of this article applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles, subject to the exceptions stated in this article.

(Code 1984, § 20-107)

Sec. 94-254. Riding bicycle on sidewalk.

(a) No person shall ride a bicycle upon a sidewalk within the City.

(b) The City Council, by motion or resolution, is authorized to have erected signs on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person. When such signs are in place, no person shall disobey the signs.

(c) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

(Code 1984, § 20-116)

Sec. 94-257. Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach such or himself to any vehicle upon a roadway.

(Code 1984, § 20-87)

Sec. 94-258. Bicycle parking.

No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb in such manner as to afford the least obstruction to pedestrian traffic.

(Code 1984, § 20-115)

Sec. 94-259. Use of coasters, roller skates and similar devices.

No person upon roller skates or riding in or by means of any coaster, toy vehicle or similar device shall go upon any roadway, except while crossing a street on a crosswalk. When so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street as authorized by this Code or other ordinance of this City.

(Code 1984, § 20-7)

Secs. 94-260—94-283. Reserved.

ARTICLE VIII. MOTORCYCLES AND MOTOR SCOOTERS

Sec. 94-284. Passengers; riding on sidewalks; handlebars; holding to moving vehicles; passing.

(a) No driver of a two- or three-wheel motor vehicle or bicycle shall carry any other person on, upon or within such vehicle on any street or highway, except as provided in this subsection. However, if any two- or three-wheel motor vehicle with a wheel diameter of 12 inches or greater or any bicycle shall have either a double seating device with double foot rests or a sidecar attachment providing a separate seat space within such sidecar attachment for each person riding therein so that such person shall be seated entirely within the body of the sidecar, it shall be permissible for an operator who has attained the age of 16 or older to carry a passenger. A demonstration ride by a licensed dealer or his employee is excepted from this subsection.

(b) No motorcycle or motor scooter shall be ridden upon any sidewalk.

(c) Handlebars on motorcycles and motor scooters shall not exceed 12 inches in height, measured from the crown or point of attachment. No rider of a motorcycle or motor scooter shall hold to any moving vehicle for the purpose of being propelled.

(d) No driver of a motorcycle, motor scooter or bicycle shall pass other vehicles in between lanes of traffic traveling in the same direction, authorized emergency vehicles excepted.

(Code 1984, § 20-140)

Sec. 94-285. Operation when prohibited by state law.

It is unlawful for any person to operate a motor-driven cycle, including a motor scooter or motor-driven bicycle, on a street in this City during a time when state law prohibits the operation of such vehicle.

(Code 1984, § 20-94)

Secs. 94-286—94-305. Reserved.

ARTICLE IX. ABANDONED, WRECKED VEHICLES

Sec. 94-306. Applies to junked, abandoned and wrecked motor vehicles.

Sections 94-306.1 through 94-306.13 pertain to junked, abandoned, and wrecked motor vehicles.

Sec. 94-306.1. Definitions.

For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ABANDON. To leave without claimed ownership for 30 days or more.

ABUTTING PROPERTY OWNER. Any person or persons, corporation or other entity that owns, leases, or in any other way uses or controls the real property abutting any portion of the property of another.

CITY. The City of Marietta, a municipal corporation.

HIGHWAY. Any highway, road, street, or other public way, regardless of classification.

JUNK MOTOR VEHICLE. A discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof and may include but not be limited to, any vehicle which has had removed from it light, fender, window, door, hood, trunk, wheel, or major parts, including body, engine, transmission, frame or rear end, which would cause such vehicle to be inoperable, dismantled, or partially dismantled; an unregistered motor home not connected to water and/or sewer, or a vehicle other than on-premise utility vehicle which is allowed to remain unregistered for a period of 30 days from the date of discovery.

MOTOR VEHICLE. Any vehicle propelled or drawn by power other than muscular power, including travel trailers or other trailers for hauling. Functional vehicles and equipment used for agricultural and construction operations are excluded from this definition.

PERSON. Shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

PRIVATE PROPERTY. Any real property in the City which is not public property.

PUBLIC PROPERTY. Any property owned or controlled in the City limits by the City, Love County, the State of Oklahoma or United States government, and shall include all alleys, streets and highways.

TRAVELED WAY. That portion of a public highway designed for the movement of a motor vehicle, shoulders, and roadside parking, rest, observation areas, and other areas immediately adjacent and contiguous to the traveled portion of the roadway.

VEHICLE. Any motor vehicle, automobile, truck, travel trailer, hauling trailer, mobile home, motorcycle, tractor, buggy, wagon, or self-propelled farm or construction equipment.

Sec. 94-306.2 Prohibited acts.

No person shall deposit, store, keep or permit to be deposited, stored or kept in the open upon public or private property a dismantled, unserviceable, inoperable, junked or abandoned vehicle or any vehicle legally or physically incapable of being operated as defined in Sec. 1, for a period exceeding 48 hours, unless such vehicle, or the parts thereof are completely enclosed within a building or stored in connection with a business lawfully established pursuant to the zoning code of the City, or is stored on property lawfully designated under the zoning code of the City as a place where such vehicles may be stored and properly screened as required by Section 6 and any other provisions relating to such screening requirements.

Sec. 94-306.3 nuisance determined.

The accumulation or storage of one or more vehicles, or parts thereof as described in Section 1 or Section 2 shall constitute a nuisance detrimental to the health, safety and welfare of the inhabitants of the City. It shall be the duty of the owner of such vehicle, or the parts thereof, or the owner of the private property or the lessee or other person in possession or control of the property upon which such vehicle is located, to remove the vehicle from such property or have the vehicle housed in a building where it will not be visible from the street or from other private property. The removal or enclosure shall be made within ten days after written notice has been given to the owner of the vehicle or the owner, lessee or person in control of the property upon which such vehicle is located. The time may be extended by the enforcement official in the case of an obvious hardship.

Sec. 94-306.4 Notice given.

The enforcement officer or his designee shall give notice of removal to the owner/possessor or occupant of the junk motor vehicle at least ten days before the time of compliance. It shall constitute sufficient notice when a copy of the notice is posted in a conspicuous place upon the private property upon which

the junk motor vehicle is located, and duplicate copies are sent by certificate of mailing to the owner or occupant of the private property at his or her last known address, and to the owner of the junk vehicle and any other party who may have an interest in the junk vehicle as shown on the records of the Oklahoma Tax Commission.

Sec. 94-306.5 Contents of notice.

The notice shall contain the request for removal within the time specified in this chapter and the notice shall advise that upon failure to comply with the notice to remove, the City shall prosecute a complaint for failure to abate the nuisance or it shall undertake such removal with the abatement cost to be levied against the occupant or owner of the real property.

Sec. 94-306.6 Exemptions.

(A) The provisions of this section shall not apply with regard to:

(1) Any vehicle which is completely enclosed within a building on private property;

(2) Any vehicle which is stored on private property in the rear yard and which is behind a eight-foot high screening fence of 100% opacity so as to be screened from view from the street and surrounding properties;

(3) Any vehicle which is stored on private property in the rear yard and which is securely covered with a car cover of 100% opacity so that no more than the wheels of the vehicle are visible. The car cover shall be made of water repellant material and may be either fitted or anchored with tires and/or ropes. The car cover shall be maintained in such a manner as to be free of holes and tears and be otherwise in good repair;

(4) A vehicle which will be completely repaired within ten days as affirmed in writing by the owner of the vehicle;

(5) Any vehicle held, stored or parked in connection with a business enterprise, lawfully licensed by the City and properly operated in the appropriate business zone, pursuant to zoning laws of the City and screened as stated in division (2) of this section.

(B) No more than a total of one junk motor vehicle may be exempted from the provisions of this chapter unless it meets the definition of division (A)(5) of this section.

Sec. 94-306.7 Presumptions and additional provisions.

(A) A rebuttable presumption of the presence of junk motor vehicles shall exist under one or more of the following conditions:

(1) Weeds or grass underneath the vehicle which indicates to a reasonable person that the vehicle has not been moved;

(2) One or more tires are flat or missing;

(3) One or more wheels are missing;

(4) Portions of the vehicle which are needed for its operation or control are missing;

(5) The vehicle is in a state of disassembly or so dismantled that it cannot be operated;

(6) Upon receipt of a complaint by the City that a vehicle has been parked or stored or by a written complaint received by the City that parts are taken from or added to a vehicle which would indicate a salvage or garage operation;

(7) The vehicle owner cannot document proper and current registration, if required; or

(8) The improper display of current registration as required by state law.

(B) Additional provisions for junk motor vehicles .

(1) If the owner of the land on which a junk motor vehicle is discovered in violation of this chapter does not hold title or disclaims title to the vehicle, and the true owner of the vehicle is known or can be ascertained, the true owner shall move, screen or dispose of the vehicle upon receiving written notice.

(2) If the last known registered owner fails or refuses to reclaim the vehicle upon receiving written notice, or if after an investigation the owner of the vehicle cannot be ascertained, the City shall notify the Oklahoma Department of Safety or other governmental agency to determine ownership.

Sec. 94-306.8 Order of abatement.

In the case a junk motor vehicle and the owner of the junk motor vehicle does not remove or screen the vehicle from view within ten days from the date of mailing of the written notice by the City, the Chief of Police or his or her designee may cause the vehicle or its parts to be

Sec. 94-306.9 Costs collected.

If the City incurs costs for the abatement, the City clerk shall send a statement of the costs of such summary abatement, to the owner and other persons responsible for or causing the nuisance as may be

just under the circumstances if their names and addresses are known. Until paid, such costs shall constitute a debt to the City collectible as other debts of the City may be collected.

Sec. 94-306.10 Costs collected—assessment.

If the owner of a junk motor vehicle is not served by City utilities or if collection efforts are not successful, the costs may be certified by the City Clerk to the County Treasurer who shall add the same to the ad valorem taxes assessed against the real property on which the junk motor vehicle were removed, and shall be collected in the same manner as ad valorem taxes assessed against the real property. When the ad valorem taxes are collected the abatement costs shall be paid to the City.

Sec. 94-306.11 Appeal.

An appeal to the City Council may be taken by any person aggrieved by the enforcement officer's order, requirement, decision or determination.

Sec. 94-306.12 Penalty.

Any person failing to comply to the provisions of this chapter shall be deemed guilty of an offense and, upon conviction thereof, shall be punished by fine of up to \$500.00 including costs. Each separate day or any portion thereof during which any violation of this chapter occurs or continues shall constitute a new and separate offense.

(Ord. 2007-2-1) and (Ord. 2015-5-0, 90802015)

Secs. 94-307—94-325. Reserved.

ARTICLE X. RAILROADS

Sec. 94-326. Trains blocking streets.

It is unlawful for the directing officer or the operator of any railroad train to direct the operation of or to operate the train in such a manner as to prevent the use of any street for purposes of travel for a period of time longer than five minutes, except that this section shall not apply to trains or cars in motion other than those engaged in switching.

(Code 1984, § 20-91)

Sec. 94-327. Improvement of streets and alleys by company.

When a railway occupies any portion of a street with its tracks running in a general direction of such street, either on or adjacent thereto, the railway company shall improve the space between its tracks and

two feet on either side thereof in the same manner that the remainder of the street is to be or has been improved or with such other satisfactory material as the Council, by motion or resolution, may approve. If any railway company shall occupy an alley with its tracks, such company shall improve, gutter, drain and grade such alley and shall surface or pave it with the same material which is to be or has been used on the alley or with such other satisfactory material as the Council by motion or resolution may approve. When the tracks of any railroad company cross any street that is being or has been paved, the company shall pave as much of the street as is occupied by its tracks and two feet on each side, using the same material as is to be or has been used on the street or such other satisfactory material as the Council, by motion or resolution, may approve. When more than one track crosses a street within a distance of 100 feet, measuring from inside rail to inside rail, the railroad company shall grade, gutter, drain and curb the street area between its tracks and surface or pave it with the same material which the City is to use or has used on the street. Railroad companies shall keep all such improvements made by them in a good state of repair at all times.

(Code 1984, § 21-1)

Sec. 94-328. Sidewalk construction.

Railway companies shall construct sidewalks crossing their rights-of-way using the same material as is used in adjacent sidewalks insofar as this is practicable under the circumstances. They shall construct sidewalks on both sides of the streets when both sides are used by pedestrians. The company shall keep such sidewalks in a good state of repair at all times.

(Code 1984, § 21-2)

Sec. 94-329. Climbing on trains; boarding train.

It is unlawful for any person to climb upon, hold to or in any manner, attach himself to any railway train, locomotive or railway car while such is in motion within the City, unless such person is acting in line of duty, or to board any passenger, freight or other train or railroad car, except with proper ticket or the permission of the person in charge of the train or car or in line of duty.

(Code 1984, § 21-3)

Chapter 98

UTILITIES

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- Sec. 98-151. No Water Wells Without Approval.**

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ARTICLE I. IN GENERAL

Secs. 98-1—98-25. Reserved.

ARTICLE II. SEWERS

DIVISION 1. GENERALLY

Sec. 98-26. Sanitary method for disposal.

Every residence and building equipped with toilet facilities in which humans reside or congregate shall be required to have a sanitary method for disposal of human excreta.

(Code 1984, § 11-2)

Sec. 98-27. Cost of disposal in septic tank borne by property owner.

The cost of providing for a sanitary method of disposal of human excreta shall be borne by the owner of the property upon which the septic tank is located in the City.

(Code 1984, § 11-3)

Sec. 98-28. Unlawful disposal.

It shall be unlawful for any person owning property within the City to permit the disposal of human excreta on any property within the City owned by such person, except in an approved septic tank.

(Code 1984, § 11-4)

Secs. 98-29—98-40. Reserved.

DIVISION 2. USE OF SEWERS

Subdivision I. In General

Sec. 98-41. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approving authority means the officer of the City or his duly authorized representative.

BOD, biochemical oxygen demand, means the quantity of oxygen by weight, expressed in milligrams per liter (mg/l), utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at a temperature of 20 degrees Celsius. The laboratory determination of BOD shall be made in accordance with procedures set forth in standard analysis methods.

Building drain means the part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste and other drainage pipes inside the walls of the building and that conveys it to the building sewer beginning five feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the sewer or other place of disposal (also called house lateral and house connection).

City means the City of Marietta or any authorized person acting in its behalf.

COD, chemical oxygen demand, means a measure of the oxygen consuming capacity, expressed in milligrams per liter (mg/l), of inorganic and organic matter present in water or wastewater. It is expressed as the amount of oxidant in a specific test. It does not differentiate between stable and unstable matter, and thus does not necessarily correlate with biochemical oxygen demand. The laboratory determination of COD shall be made in accordance with procedures set forth in standard analysis methods.

Domestic wastewater means wastewater normally discharging into the sanitary conveniences of dwellings, including apartment houses and hotels, office buildings, factories and institutions, free from stormwater, surface water and industrial wastes.

Garbage means solid wastes and residue from the preparation, cooking and dispensing of food and from the handling, processing, storage and sale of food products and produce.

Industrial user or industry means any user of publicly owned treatment works, identified in the Standard Industrial Classification Manual, 1972, U.S. Office of Management and Budget, as amended and supplemented under the following divisions:

- (1) Division A, agriculture, forestry and fishing.
- (2) Division B, mining.
- (3) Division D, manufacturing.

- (4) Division E, transportation, communications, electric, gas and sanitary service.
- (5) Division I, services.

A user in the divisions listed may be excluded from such category if it is determined that the user will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

Industrial waste means waterborne solids, liquids or gaseous wastes resulting from and discharged, permitted to flow or escaping from the industrial, manufacturing or food processing operation or process or from the development of any natural resource or any mixture of these with water or domestic wastewater or distinct from normal domestic wastewater.

Industrial waste charge means the charge made on those persons who discharge industrial wastes into the city's sewer system.

Major contributing industry means any wastewater contributor identified in the Standard Industrial Classification (SIC) Manual of any of divisions A, B, D, E and I that:

- (1) Has a discharge flow of 50,000 gallons or more per average workday; if seasonal, the average shall be computed on the period of use;
- (2) Has a flow or pollutant loading greater than five percent of the design capacity of the city's treatment works;
- (3) Has in its wastes toxic pollutants in toxic amounts as defined in the standards issued under section 307(a) of the Federal Water Pollution Control Act amendments of 1972, as amended and/or supplemented; or
- (4) Is found by the city's authorized representative to have significant impact, either singly or in combination with other contributing industries, on the treatment works or upon the quality of effluent from the treatment works.

Milligrams per liter (mg/l) means a weight-to-volume ratio; the milligram per liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

Minor contributing industry means any wastewater contributor identified in the Standard Industrial Classification (SIC) Manual in any of divisions A, B, D, E and I that does not qualify as a major contributing industry.

Person means any and all persons, natural or artificial, including any individual, firm, company, industry, municipal or private corporation, association, governmental agency or other entity, and agents, servants or employees.

pH means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration expressed in moles per liter.

Public sewer means a sewer in which all owners of abutting properties shall have equal rights and the use of which is controlled by public authority.

Sanitary sewer means a sewer that conveys domestic or industrial wastes or a combination of both and into which stormwaters, surface waters and groundwaters or unpolluted wastes are not intentionally passed.

Sanitary sewer system includes all sanitary sewer trunk lines, mainlines, submainlines, lateral lines and sewage treatment plants and all sewer lines connected to the city's sewer lines or treatment plants, whether owned by the City or not.

Sewer means a pipe or conduit that carries wastewater or drainage water.

Sewer service charge means the charge made on all users of the sanitary sewer system whose wastes do not exceed in strength the concentration values defined as normal domestic wastewater.

Slug means any discharge of water, wastewater or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration of flows during normal operation.

Standard analysis methods means the examination and analytical procedures set forth in the latest edition at the time of analysis of Methods for Chemical Analysis of Water and Wastes, as prepared by the Environmental Protection Agency's Water Quality Control Laboratory, Cincinnati, Ohio, or other procedures set forth in 40 CFR 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

Superintendent means the superintendent of the water and sanitary sewer department, City public works authority, or any duly authorized representative thereof.

Surcharge means the charge, in addition to the sewer service charge, which is made on those users whose wastes are greater in strength than the concentration values established as normal domestic wastewater.

Suspended solids means solids that either float on the surface of or in suspension in water, wastewater or other liquids and that are largely removable by a laboratory filtration device. The laboratory determination of suspended solids shall be made in accordance with procedures set forth in standard analysis methods.

Unpolluted water or waste means water or waste containing none of the following: free or emulsified grease or oil; acids or alkalis, phenols or other substances imparting taste or odor to receiving water, toxic or poisonous substances in suspension, colloidal state or solution; and noxious or odorous gases. It shall contain not more than ten milligrams per liter (mg/l) each of suspended solids and BOD. The color shall not exceed 20 color units as measured by the platinum-cobalt method of determination as specified in standard analysis methods.

User of sanitary sewer system means the person having a contract for water service at a particular location, if the location has a sanitary sewer connection with the city's system, or, if there is no water contract on file, the person who is charged with water bills for the location or who pays water bills or, if a private water supply is used, the proprietor or owner of the location having the sewer connection.

Wastewater means a combination of the water-carried waste from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water and stormwater as may be present.

Wastewater facilities means all facilities for collection, pumping, treating and disposing of wastewater and industrial wastes.

Wastewater treatment plant means all facilities for collection, pumping, treatment and all city-owned facilities, devices and structures used for receiving wastewater, industrial waste and sludges from the City wastewater facility.

Watercourse means a natural or manmade channel in which a flow of water occurs, either continuously or intermittently.

(Code 1984, § 18-1)

Sec. 98-42. Enforcement.

The superintendent or his designated representatives have full authority to enforce this division.

(Code 1984, § 18-22)

Sec. 98-43. Rights of City to inspect water and wastes.

The superintendent and other duly authorized employees of the City shall be permitted to enter all properties at reasonable times for the purpose of inspection, observation, measurement, sampling and testing in accordance with this division.

(Code 1984, § 18-18)

Sec. 98-44. Tampering with sewer works.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment that is part of the sewer works.

(Code 1984, § 18-17)

Sec. 98-45. Notice to cease violations.

Any person found to be violating this division shall be served, by the superintendent, with written notice stating the nature of the violation. The violation must cease immediately upon receipt of the written notice. The offender shall be given a hearing, if requested, by the superintendent within ten days of the date of the notice.

(Code 1984, § 18-19)

Sec. 98-46. Damage caused by prohibited wastewater discharge.

Any industrial wastewater discharger who discharges or causes the discharge of prohibited wastewaters that cause damage to the authority's facilities, detrimental effects on treatment processes or any other damages resulting in costs to the City shall be liable for all damages occasioned thereby.

(Code 1984, § 18-21)

Sec. 98-47. Reimbursement of assessment paid by City.

(a) Permit to tap sewers. Whenever the construction cost of sanitary sewers has been or may be levied and assessed against the property abutting thereon, as provided by the laws of the state, and the City has paid or may be liable to pay such assessment in whole or in part from City funds, any owner or occupant of any property abutting such sewers who makes application for permission to tap such sewers shall not be issued a permit unless he shall:

(1) Have paid to the City the amount of the assessments that have been paid by the City prior to the issuance of the permit;

(2) Agree in writing with the City that:

a. Any unpaid or unmatured assessments levied against the property shall be or remain a lien against the property so long as the assessments remain unpaid; and

b. From the date of the issuance of the permit, the unpaid assessments shall become and remain a lien in the same manner and form as is provided for in levying assessments against property abutting upon lateral sewers under the laws of the state, as if such has been originally levied under the laws of the state. Such lien shall remain in force and effect until the assessment shall be fully paid and satisfied as provided by the statutes relating to the construction of lateral sewers.

(b) Payment of actual cost plus interest. The property owner or occupant shall be required to:

(1) Pay the actual cost of the construction of the sewer properly chargeable to the abutting property, as provided under the laws of the state, and any interest that the City has been required to pay; and

(2) Assume the payment of interest on outstanding and unpaid assessments.

(c) Issuance of permit. Upon payment to the City of the assessment, a permit shall be issued to the owner or occupant to tap and use the sanitary sewer in the manner provided by this Code or other ordinances of the City relating to such connections.

(Code 1984, § 18-2)

Sec. 98-48. Permit and inspection for sewer connection.

(a) Required. No person shall make or attempt to make any sewer connection without first obtaining a sewer permit as provided in section 98-47. All plans for public sewers shall be in accordance with state health department standards and shall be prepared by an engineer registered in the state. The sewer connection shall be constructed in accordance with the Standard Plumbing Code by the Southern Building Code Congress International, Inc., adopted in section 14-46.

(b) Connection closed and disconnected without permit. If a sewer connection is made without a sewer permit and without inspection, the connection shall be closed and disconnected from such sewer by order of the superintendent.

(Code 1984, § 18-3)

Sec. 98-49. Connection with storm sewer or natural outlet.

No person shall deposit or discharge any wastewater, industrial waste, other polluted waters or liquids on public or private property in or adjacent to any natural outlet or any natural watercourse or in any storm sewer within the City or in any area under the jurisdiction of the City, without the approval of the EPA and the state health department.

(Code 1984, § 18-4)

Sec. 98-50. Connections to laterals only.

No private sewer connection, whether or not within the City limits, shall be made to any sewer line directly or indirectly connected with the City sewer system other than to a lateral constructed to serve the private premises in question, except by special contract approved by the superintendent.

(Code 1984, § 18-5)

Secs. 98-51—98-60. Reserved.

Subdivision II. Restrictions

Sec. 98-61. Certain wastes prohibited in sanitary sewers.

(a) Connection of conduits with laterals or main sewers prohibited. No person shall connect or cause to be connected the downspout or conduits draining stormwater or rainwater from the roofs, premises or other places or buildings or uncontaminated cooling water or unpolluted industrial process water, stormwater, surface or subsurface water, rainwater or any water whatsoever into sanitary sewers. Water from swimming pools, boiler drains, blowoff pipes or cooling water from various equipment may be discharged into the sanitary sewer by an indirect connection whereby such discharge is cooled, if required, and flows into the sanitary sewer at a rate not to exceed the capacity of the sanitary sewer, provided the waste does not contain materials or substances in suspension or solution in violation of the limits prescribed by this division; and provided, further, that the water from an air conditioning or cooling unit shall not exceed 0.10 gallon per minute per ton capacity of the unit. Any water added for the purpose of diluting wastes that would otherwise exceed application maximum concentration limitations is prohibited.

(b) Discharge of certain waters or wastes prohibited. No person shall discharge or cause to be discharged any of the following waters or wastes to any public sewer:

(1) Gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(2) Waters or wastes containing toxic or poisonous solids, liquids or gases, in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of the sewage treatment plant.

(3) Waters or wastes having pH lower than 6.0 or greater than 10.5 or having any other chemical or corrosive property that is hazardous or capable of causing damage to structures, equipment and personnel of the sewer works.

(4) Solids of viscous substances in quantities or of a size, which will not pass through a one-fourth-inch screen, capable of causing obstruction to flow in sewers or other interference with the proper operation of the sewer works, storm sewers or natural

outlets, such as but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, rubber, unground garbage, animal grease or oil, whole blood, paunch, manure, hair, meat fleshings, entrails, bones, hooves, toenails, bristles, horns, chicken feet or heads, yeast, spent grain, hops, whey, whole or separated milk, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(Code 1984, § 18-7)

Sec. 98-62. Industrial and harmful wastes limited in sanitary sewers.

(a) No person shall discharge or cause to be discharged the following substances, materials, waters or wastes if it appears likely in the opinion of the superintendent that such substances or wastes can harm either the sewers, sewage treatment process or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant and other pertinent factors. The substances that require written approval from the superintendent before they may be discharged are as follows:

(1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit or 65 degrees Celsius.

(2) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter, petroleum based oil, 200 milligrams per liter for animal or vegetable oil, or containing substances that may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit, zero and 65 degrees Celsius.

(3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower or greater shall be subject to the review and approval of the superintendent.

(4) Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions, whether neutralized or not.

(5) Any waters or wastes containing obnoxious, toxic or poisonous solids, liquids or gases, in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create any hazard in the receiving waters of the wastewater treatment plant or interfere with the beneficial use of sludge, including but not limited to:

- a. Any cyanide greater than one-half milligram per liter.
- b. Any phenol or phenolic material greater than two milligrams per liter.
- c. Concentrations of the following greater than the milligram per liter (mg/l) amounts indicated as follows:

<u>Element</u>	<u>mg/l</u>
Arsenic	0.5
Cadmium	0.5
Chromium (hexavalent)	0.09

Chromium (total)		1.6
Copper	2.0	
Mercury		0.05
Nickel		1.8
Lead		0.4
Silver		0.5
Zinc		1.5

d. All other heavy metals and toxic substances, including but not limited to the following, shall be excluded from the wastewater system unless a permit specifying the conditions of pretreatment, concentrations, volumes, etc., is obtained from the City: pesticides, rhenium, strontium, tellurium, herbicides, fungicides or any fluoride other than that in the public water supply.

e. Any substance causing a chemical oxygen demand in excess of 1,000 milligrams per liter.

(6) Any waters or wastes containing phenols or other waste or odor-producing substances, in such concentrations exceeding limits that may be established by the superintendent as necessary, after treatment of composite sewage, to meet the requirements of state, federal or other public agencies for such discharge to the receiving waters.

(7) Any radioactive wastes or isotopes of such half-life or concentrations as may exceed limits established by the superintendent in compliance with applicable state or federal requirements.

(8) Materials that cause:

a. Excessive discoloration, such as but not limited to dye wastes and vegetable tanning solutions.

b. Unusual volume or flow or concentration of wastes constituting slugs, which shall be regulated to equalize the flow or concentration levels acceptable to the City if such waste can damage the collection facilities, impair the treatment process, incur treatment costs exceeding those for normal wastewater or render the waste unfit for stream disposal and industrial use.

(9) Waters or wastes containing substances that are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(10) Except in quantities or concentrations or as stipulated in this division, water or wastes that:

a. Can deposit grease or oil in the sewer lines in such a manner as to clog the sewers;

b. Can overload the skimming and grease handling equipment;

- c. Are not amenable to bacterial action and will, therefore, pass to the receiving waters without being affected by normal wastewater treatment processes; or
- d. Can have a deleterious effect on the treatment process due to excessive quantities.

(11) Any water or wastes having concentrations as follows:

- a. Five-day BOD concentrations in excess of 500 milligrams per liter.
- b. Suspended solids concentration in excess of 500 milligrams per liter.
- c. Oil and grease of petroleum origin concentration in excess of 100 milligrams per liter.
- d. Oil and grease of animal or vegetable origin concentration in excess of 200 milligrams per liter.
- e. Chemical oxygen demand of organic origin in excess of 1,000 milligrams per liter.

(b) Where necessary, in the opinion of the superintendent, the owner shall provide and operate, at his own expense, such pretreatment as may be required to reduce the BOD, suspended solids, or oil and grease to meet the requirements of subsection (a) of this section.

(c) The public sewer system will be used whenever such system is available by all persons discharging any wastewater, individual waste or other polluted liquids, unless an exception is granted by the superintendent.

(Code 1984, § 18-8)

Sec. 98-63. Industrial wastes, special handling of harmful wastes.

(a) If any waters or wastes are discharged or are proposed to be discharged to the public sewers that contain the substances or possess the characteristics enumerated in section 98-61 of this division, and that, in the judgment of the superintendent, may have a deleterious effect upon the wastewater works, processes, equipment or receiving waters or that otherwise create a hazard to life or constitute a health hazard or public nuisance, the superintendent may:

- (1) Reject the wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the public sewers; dilution in lieu of pretreatment will not be acceptable;
- (3) Require control over the quantities and rates of discharge; or
- (4) Require a variance agreement to treat such wastes; such agreement shall remain in effect for a period of one year and shall be renewable at the discretion of the superintendent. Payment to cover the cost of handling and treating the wastes shall be under subdivision III of this division.

(b) If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plant and equipment shall be subject to the review and approval of the superintendent and subject to the requirements of all applicable codes, sections of this Code or other ordinances and laws.

(Code 1984, § 18-9)

Sec. 98-64. Permit required for industrial connections.

Any person applying to the superintendent for a permit to make any connection for industrial wastes shall furnish the following information:

- (1) A plot of the property showing accurately all existing sewers and storm drains.
- (2) Plans and specifications, approved by a professional engineer licensed to practice in the State of Oklahoma, covering any work proposed to be performed under the permit.
- (3) A complete schedule of all process waters and industrial wastes produced or expected to be produced at the property, including a description of the character of each waste, the daily volume and maximum rates of discharge and representative analyses.
- (4) The name and address of the firm which will perform the work covered by the permit.
- (5) A completed application for a permit to discharge industrial waste submitted to the water and sewer department.

(Code 1984, § 18-10)

Sec. 98-65. Information and cooperation of industrial users.

Grantees of industrial waste connections shall cooperate at all times with the superintendent in the inspecting, sampling and study of the industrial wastes and any facilities provided for pretreatment. The user shall also furnish any additional information relating to the installation or use of the industrial sewer as may be requested by the superintendent and shall operate and maintain any waste pretreatment facilities as may be required as a condition of the acceptance into the public sewer of the industrial wastes involved, in an efficient manner at all times and at no expense to the City. The user shall notify the superintendent immediately of an accident or other occurrence that occasions discharge to the public sewers of any wastes or process waters not covered by agreement and permit.

(Code 1984, § 18-11)

Sec. 98-66. Grease, oil and sand interceptors.

(a) Interceptors provided as required. Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients.

Private dwellings excepted. Interceptors shall not be required for private living quarters or dwelling units.

(b) Approval of interceptors by superintendent. All interceptors shall be of a type and capacity approved by the superintendent and shall be located so as to be readily and easily accessible for cleaning and inspection. Such interceptors shall be constructed under the supervision of the building inspector and shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

(Code 1984, § 18-12)

Sec. 98-67. Control manhole; meters.

Where required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the superintendent. The manhole shall be installed by the owner, at his expense, and shall be maintained by him at all times so as to be safe and accessible. Each user discharging in excess of 25,000 gallons per day shall provide a suitable manhole as described in this section.

(Code 1984, § 18-13)

Sec. 98-68. Permits for discharge of industrial wastes.

(a) No industry shall deposit or discharge any industrial waste into any sanitary sewer that leads to any of the city's treatment plants or deposit or discharge any waste stipulated in sections 98-61 and 98-62 of this division without first completing an application for a permit.

(b) New industries shall be issued permits after all of the following conditions are met:

- (1) Formal application has been submitted on a form issued by the superintendent;
- (2) Where applicable pretreatment facilities or flow regulating devices approved by the superintendent have been installed;
- (3) Estimated amount and strength of any wastes have been established by the superintendent. When a discharger discharges 25,000 or more gallons per 24-hour day, strength shall be based on actual samples from the point of discharge;

(4) Agreement forms have been completed by the discharger agreeing to payment of industrial cost recovery charges as required or agreeing to the installation of pretreatment facilities and operation and maintenance of any pretreatment facilities where applicable; and

(5) All new dischargers shall have provided a sampling point subject to approval of the superintendent.

(c) For establishments discharging less than 25,000 gallons per day, the BOD and suspended solids values may be determined from standard values for various industries established by the superintendent. If the discharger desires to determine accurate values of BOD and suspended solids, the discharger shall install, at his expense, a control manhole or inspection chamber at a location near the outlet of each building drain or connection with any sanitary sewer of the City as approved by the superintendent. BOD and suspended solids values determined from samples collected from any establishment shall be determined by the discharger's approved laboratory or an independent laboratory employed by the discharger and approved by the superintendent. Such report shall contain a statement that the samples were collected according to procedures set forth by the superintendent and that the values determined are based on a 24-hour composite sample representative of the establishment's flow.

(d) Upon receipt of an initial user's permit granted under this section, each user discharging 25,000 gallons or more per 24-hour day and any other industries requested to do so by the superintendent shall submit to the superintendent, and each three months thereafter for one year, a report on the contents of the wastewater being discharged into the public sewer system. Thereafter, each user shall report annually or more often, if directed to do so by the superintendent. The reports shall be in such form and contain such information as the superintendent may require. The user shall grant the superintendent access to the facilities for purposes of verifying the user's reports.

(e) Industrial user permits granted under this section shall be issued for a period of 12 months and shall be renewable, provided the user complies with all requirements for this division, including the payment of all user charges and industrial cost recovery charges.

(Code 1984, § 18-14(a), (b), (d)—(f))

Sec. 98-69. Permit issuance and renewal.

(a) The City shall issue and renew permits for any person discharging any industrial waste into any sanitary sewer which leads to any of the city's wastewater treatment plants.

(b) A certified annual report prepared by a discharger's approved laboratory or an independent testing laboratory employed by the discharger and approved by the superintendent shall be submitted to the superintendent certifying that there have been no changes in operational procedures, flow rates, BOD and suspended solids values or, if there have been such changes, furnishing the information thereof in such detail as may be required by the City. Failure to submit such report shall constitute cause for the suspension or revocation of the industrial waste discharge permit. Any significant changes in the flow rate, BOD and suspended solids values or other characteristics of the industrial waste being discharged shall be reported to the City within 30 days of such changes.

(Code 1984, § 18-15)

Sec. 98-70. Measurements, tests and analyses of wastes.

(a) All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this division shall be determined in accordance with the procedures set forth in standard analysis methods and shall be determined at the control manhole provided or upon suitable samples taken at the control manhole.

(b) For purposes of reporting wastewater characteristics required under this section, the determination of flow, BOD and suspended solids shall be made by an independent firm or laboratory approved by the City. The time of selection of the sample shall be at the sole discretion of the City, but at least on an annual basis for the purpose of determining the industrial wastewater contribution to the City sewer system.

(Code 1984, § 18-16)

Secs. 98-71—98-80. Reserved.

Subdivision III. Charges and Fees

Sec. 98-81. Minimum charge.

All users of the municipally owned wastewater treatment system shall be charged a minimum of \$2.00 per month, plus a charge of \$0.75 per 1,000 gallons of metered water consumption.

(Code 1984, § 18-23)

Sec. 98-82. User charge schedule.

As the BOD, suspended solids and other pollutant concentrations discharged shall be approximately equal for all domestic users, users shall be charged on a volume basis in accordance with the following formula:

$$C_u = C_b + C_t/V_t (V_u)$$

(Based on model no. 1, 40 CFR 35, appendix B)

Symbols and definitions:

C_u = A user's charge per unit of time.

C_b = A user's base minimum charge (for debt retirement, billing, administration, etc.) per unit of time.

C_t = Total operation and maintenance (O&M) costs per unit of time.

V_t = Total volume contribution from all users per unit of time (may include extraneous flows).

V_u = Volume contribution from a user per unit of time.

(Code 1984, § 18-24)

Sec. 98-83. Excessive strength charges.

For any user, when the BOD exceeds 350 mg/l, the suspended solids exceeds 200 mg/l or when other pollutant concentrations exceed the range of concentrations of these pollutants in normal domestic sewage, a surcharge shall be added to the basic charge. This surcharge shall be calculated by the following formula:

$$C_s = (B_c (B) + S_c (S) + P_c (P)) V_u$$

(Based on model no. 2, 40 CFR 35, appendix B)

Symbols and definitions:

C_s = A surcharge for wastewaters of excessive strength.

B_c = O&M cost for treatment of a unit of biochemical oxygen demand (BOD).

B = Concentration of BOD from a user above a base level.

S_c = O&M cost for treatment of a unit of suspended solids (SS).

S = Concentration of SS from a user above a base level.

P_c = O&M cost for treatment of a unit of any pollutant.

P = Concentration of any pollutant from a user above a base level.

V_u = Volume contribution from a user per unit of time.

(Code 1984, § 18-25)

Sec. 98-84. Review and revision.

This subdivision shall be reviewed not less often than every two years regarding the wastewater contribution of users and user classes, the total costs of the operation and maintenance of the treatment works and its approved user charge system. The charges for users or user classes shall be revised to accomplish the following:

(1) Maintain the proportionate distribution of operation and maintenance costs among users and user classes;

(2) Generate sufficient revenue to pay the total operation and maintenance costs necessary to the proper operation and maintenance, including replacement, of the treatment works; and

(3) Apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year, and the rates shall be adjusted accordingly.

(Code 1984, § 18-26)

Sec. 98-85. Toxic pollutants charges.

Each user who discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the treatment works shall pay for such increased costs.

(Code 1984, § 18-27)

Sec. 98-86. Notification.

Each user shall be notified at least annually, in conjunction with the regular bill, of the sewer use rate and the portion of the user charges which are attributable to wastewater treatment services. Costs shall be broken down to show the operation and maintenance costs attributable to that user.

(Code 1984, § 18-28)

Sec. 98-87. Charges for extraneous flows.

The costs of operation and maintenance for all flows not directly attributable to users, such as infiltration/inflow, shall be distributed among users on the same basis as operation and maintenance charges.

(Code 1984, § 18-29)

Sec. 98-88. Records.

A recordkeeping system shall be established and maintained by the public works authority to document compliance with federal requirements pertaining to this subdivision.

(Code 1984, § 18-30)

Sec. 98-89. Billing.

Users of the sewer system will be billed on a monthly basis with payment due 15 days after the date of billing. Users on metered water service will be billed on the same notice as water charges, and the charge will be designated as a separate entry. Users of the wastewater system not on metered water service will be billed monthly on an individual notice for wastewater service at the rate established by the utility superintendent. Users with delinquent accounts of 30 days will be notified in writing by the utility superintendent that water or wastewater services will be terminated unless the account is paid in full. The utility superintendent will utilize the law enforcement agency to assist as required in the control and management of the user charge system.

(Code 1984, § 18-32)

Secs. 98-90—98-125. Reserved.

DIVISION 3. PROPERTY OWNERS UTILIZING CITY SANITARY SEWER SYSTEM

Sec. 98-126. Responsibility of property owners.

To minimize groundwater infiltration and inflow to the public sewer system that may overload and inhibit wastewater treatment, the City hereby requires that all property owners utilizing the sewage system of the City of Marietta be responsible for the maintenance of all connections, lines and fixtures in a manner sufficiently watertight so as not to allow and cause such to be, leakage out of or seepage into said connection, lines and fixtures from the place of discharge to the place of connection to the public sewage system main. At the discretion of the City of Marietta, such connections, lines and fixtures shall be subject to inspection and testing by the City of Marietta or its designated agent, the Marietta Public Works Authority.

(Ord. No. 2002-8-12, § 1, 1-7-03) Editor's note—Ordinance No. 2002-8-12, § 1, adopted January 7, 2003, did not specifically amend the Code. Therefore, such provisions were treated as adding a new division 3, §§ 98-126—98-134 at the editor's discretion.

Sec. 98-127. Prohibited connections.

No person shall henceforth make connection of roof downspouts or leaders, interior or exterior foundation drains, cleanouts, sump pumps, cellar, yard and area drains, cooling water discharges, drains from springs or swamps areas, or other sources of surface, storm or groundwater to a structure sewer or structure drain which is connected, either directly or indirectly, to the sanitary sewer system.

(Ord. No. 2002-8-12, § 1, 1-7-03)

Sec. 98-128. Disconnection order.

The Marietta Public Works Authority, or its designated agents, may issue a disconnect order directing the owner of the real estate or structure to disconnect private infiltration or inflow waters from the sanitary sewer system. The order shall be effective not less than 30 days from its date of issuance. The order may state a deadline for compliance but such deadline shall, in no event, be more than three months after issuance of the order.

(Ord. No. 2002-8-12, § 1, 1-7-03)

Sec. 98-129. Termination of service.

The Marietta Public Works Authority, or its designated agents, may order the termination of sanitary sewer service and/or water service to any real estate or structure if the owner has refused to allow access and entry or has failed or refused to comply with the disconnect order requiring that the private infiltration or inflow waters be prevented from entering the sanitary sewer system. The termination shall

be effective 30 days after the service upon the owner. Service of the order shall be in person or by restricted delivery mail.

(Ord. No. 2002-8-12, § 1, 1-7-03)

Sec. 98-130. Reconnection of service.

Sanitary sewer service disconnected under the provisions of this division shall not be reconnected until sources of infiltration or inflow have been disconnected. The cost of disconnection and reconnection shall be the burden and responsibility of the owner or lessee.

(Ord. No. 2002-8-12, § 1, 1-7-03)

Sec. 98-131. Abatement of nuisance.

In addition to or in lieu of termination of service and/or prosecution in municipal court, the Marietta Public Works Authority may maintain a civil action by injunction, in the name of the City of Marietta, Oklahoma, to abate and temporarily or permanently enjoin the continuation of the private infiltration/inflow and/or as a nuisance, in any court of competent jurisdiction.

(Ord. No. 2002-8-12, § 1, 1-7-03)

Sec. 98-132. Access and entry.

(a) Access. Representatives of the Marietta Public Works Authority shall have the right to make an inspection of any parcel of real estate and/or structure for the purpose of determining compliance with this division. Inspection shall be done at a reasonable hour of the day.

(b) Notice. If the structure or real estate to be inspected is occupied, the representative shall first present proper credentials and request entry. If the structure or real estate is unoccupied, the representative shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the structure or real estate and request entry.

(c) Search warrants. If, after proper request, entry or access is refused, the Marietta Public Works Authority may compel such access by application to a court of competent jurisdiction for a search warrant in compliance with the provisions of Section 151 of the Oklahoma Bill of Rights and the Fourth and Fourteenth Amendments of the United States Constitution relating to unreasonable searches and seizures.

(Ord. No. 2002-8-12, § 1, 1-7-03)

Sec. 98-133. Optional penalty.

Any person, firm or corporation violating any provision of this division may be fined not less than \$50.00 nor more than \$500.00, for each offense and a separate offense may be deemed committed on each day during or on which a violation occurs or continues.

(Ord. No. 2006-6-9, 11-01-06)

Sec. 98-134. Option abatement procedure.

If the property owner is unable or refuses to comply with Section 3 (repair or disconnection of infiltration and inflow source) [section 98-128], the Marietta Public Works Authority may, at its discretion, contract with a plumbing contractor of the Marietta Public Works Authority to make the required repair/replacement/disconnection to remove the infiltration and inflow source. The cost of the abatement may include but not be limited to: repair of the defect; repair of streets, alleys, curbs and parking. The cost of such action will be filed as a lien on the property. A charge of not less than \$25.00 per month will be added to the utility bill of the property owner or utility user of that address until paid in full. Lien release will be issued on receipt of total cost.

(Ord. No. 2002-8-12, § 1, 1-7-03)

Sec. 98-135—150 Reserved.

**ARTICLE III.
WATER WELLS.**

Sec. 98-151. No Water Wells Without Approval.

No person owning or controlling or in possession of any real property located within the City limits of the City shall drill, dig or otherwise develop a water well for private use within the City limits without first securing the approval of the Marietta City Council, the Planning and Zoning Commission of the City of Marietta, and the Marietta Public Works Authority.

Sec. 98-152. Penalty.

It shall be unlawful and constitute an offense for any person to violate this ordinance, and any person found guilty of violating this ordinance shall be deemed guilty of an offense and is subject, upon conviction, to a fine of up to \$500 plus costs. Each day that an act or omission is continued shall constitute a violation of this ordinance and shall be construed as a separate offense.

Sec. 98-153. Inspection.

At all reasonable times, and without notice, and as often as such officer may deem necessary, the Mayor or his duly authorized representative, or the Superintendent of the Marietta Public Works Authority or his duly authorized representative, shall have the right to inspect the premises on which a water well is being drilled or developed. If, upon said inspection, the operator of said well or the operator of the well being

developed or drilled, is found to be violating any of the provisions of this ordinance, or the statements made in his application for permit to drill said well, or any of the ordinances of the City, or the statutes of the state, said inspector shall immediately order the shutting off of the water from such well, or order the stopping of the drilling or development of the well, or both, and order the shutting off of all water from the City mains until such violation is corrected. The remedies of this Section 153 shall be in addition to any criminal penalties provided for in Section 152.

(Ord. 2011-03-09; 09-13-2011)

Chapter 102

VEGETATION

ARTICLE I. ACCUMULATION OF TRASH OR WEEDS

- Sec. 102-1. Definitions.**
Sec. 102-2. Responsibility of property owner.
Sec. 102-3. Notice to property owner.
Sec. 102-4. Abatement of offensive conditions.
Sec. 102-5. Hearing on violations; order of abatement.
Sec. 102-6. When work to be done by City or by lowest responsible bidder.
Sec. 102-7. Collection of unpaid costs.
Secs. 102-8—102-25. Reserved.

ARTICLE II. TREES AND SHRUBS

- Sec. 102-26. Trimming.**
Sec. 102-27. Failure to trim.
Sec. 102-28. Injuring.

ARTICLE I. ACCUMULATION OF TRASH OR WEEDS

Sec. 102-1. Definitions. As used in this article:

Owner means the owner or owners of record as shown by the most current tax rolls of the county treasurer.

Trash means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, waste, or matter of any kind or form which is uncared for, discarded or abandoned.

Weeds includes, but is not limited to, poison ivy, poison oak, poison sumac and all vegetation, including grasses, at any state or maturity which:

- (1) Exceeds eight inches in height, except healthy trees, shrubs or produce for human consumption grown in a tended and cultivated garden, unless such trees and shrubbery by their density or location constitute a detriment to the health, benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the removing of said weeds;

- (2) Regardless of height, harbors, conceals or invites deposits or accumulation of refuse or trash
- (3) Harbors rodents or vermin;
- (3) Gives off unpleasant or noxious odors;
- (4) Constitutes a fire or traffic hazard; or
- (5) Is dead or diseased.

Provided that the term "weed" shall not include tended crops on land zoned for agricultural use which are planted more than 150 feet from a parcel zoned for other than agricultural use.

Weeds shall not include any garden or flower type of plants regularly cultivated or tended to by the owner.

(Ord. No. 2002-6-11, 11-25-02)

Sec. 102-2. Responsibility of property owner.

It shall be unlawful for any owner or any lot, tract or parcel of land situated wholly or in part within the corporate limits of the City to allow trash or weeds to grow, stand or accumulate upon such premises and it shall be the duty of such owner to remove or destroy any such trash, weeds or grasses. Any owner convicted of violating this section shall be punished by a fine not to exceed \$100.00 and costs. Each day shall constitute a separate offense. The property owner is responsible for the control of trash, weeds or grasses on that portion of the abutting right-of-way between his property line and the paved portion of any and all abutting streets, alleys or public ways or easements of every sort.

(Ord. No. 2002-6-11, 11-25-02)

Sec. 102-3. Notice to property owner.

(a) At least ten days notice shall be given to the owner of the property by certified mail with return receipt requested at the address shown by the current year's tax rolls in the county treasurer's office before the governing body holds a hearing or takes action. However, if the property owner cannot be located as shown by the return receipt, or if the return receipt is not returned within ten days from the date of mailing by the municipal governing body or City Clerk, notice may be given by posting a copy of the notice on the property or notice may be given by publication, one time not less than ten days prior to any hearing or action by the municipality. If a municipal governing body anticipates summary abatement of a nuisance in accordance with the provisions of other sections of the city's ordinances, the notice, whether by certified mail, posting, or publication, shall state that any accumulations of trash or excessive weed or grass growth on the owner's property occurring within six months after the removal of trash or cutting or mowing of weeds or grass on the property pursuant to such notice may be summarily abated by the municipal governing body; that the costs of such abatement shall be assessed against the owner; and that a

lien may be imposed on the property to secure such payment, all without prior notice to the property owner.

(b) If a municipal governing body causes property within the municipal limits to be cleaned of trash and weeds or grass to be cut or mowed in accordance with the procedures provided for in subsection (a) of this section, any subsequent accumulations of trash or excessive weed or grass growth on the property occurring within a six-month period may be declared to be a nuisance and may be summarily abated without further prior notice to the property owner. At the time of each such summary abatement, the municipality shall notify the property owner of the abatement and the costs thereof. The notice shall state that the property owner may request a hearing within ten days after the date of mailing the notice. The notice and hearing shall be as provided for in subsection (a) of this section. Unless otherwise determined at the hearing, the cost of such abatement shall be determined and collected as provided for in other sections of the city's ordinances. Provided, however, that this section shall not apply if the records of the county clerk show that the property was transferred after notice was given pursuant to subsection (a) of this section.

(Ord. No. 2002-6-11, 11-25-02)

Sec. 102-4. Abatement of offensive conditions.

Any owner may avoid the penalty provided in section 102-2 hereof if, within ten days from the date of receipt of the notice provided for in the preceding section, the owner shall either:

- (1) Cut, remove or destroy the trash, weeds or grasses in accordance with said notice;
- (2) Give written consent authorizing the City to abate the trash, weeds or grasses thereby waiving his right to a hearing; or
- (3) Request in writing to the municipal governing body a hearing as hereafter provided and, if within three days after an order of abatement is rendered at the hearing, the owner abates the trash, weeds or grasses.

(Ord. No. 2009-5-4, April 14, 2009)

Sec. 102-5. Hearing on violations; order of abatement.

At the request of the property owner, a hearing may be held by the municipal governing body to determine whether the accumulation of trash or the growth of weeds or grass has caused the property to become detrimental to the health, benefit, and welfare of the public and the community or a hazard to traffic, or creates a fire hazard to the danger of property. Upon a finding that the condition of the property constitutes a detriment or hazard, and that the property would be benefited by the removal of such conditions, the agents of the municipality are granted the right of entry on the property for the removal of trash, mowing of weeds or grass and performance of the necessary duties as a governmental function of the municipality.

(Ord. No. 2002-6-11, 11-25-02)

Sec. 102-6. When work to be done by City or by lowest responsible bidder.

The governing body shall determine the actual cost of such clearing and mowing and any other expenses as may be necessary in connection therewith, including the cost of notice and mailing. The municipal clerk shall forward by mail to the property owner at the address specified in section 102-3, a statement of such actual cost and demanding payment. If the cleaning and mowing are done by municipality, the cost to the property owner for said cleaning and mowing shall not exceed the actual cost of the labor, maintenance and equipment require. If the cleaning and mowing are done on a private contract basis, the contract shall be awarded to the lowest and best bidder.

(Ord. No. 2002-6-11, 11-25-02)

Sec. 102-7. Collection of unpaid costs.

If payment is not made within 30 days from the date of mailing the statement, the City Clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and such cost shall be levied on the property and collected by the county treasurer as other taxes authorized by law. The cost and interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, coequal with the lien of ad valorem taxes and all other taxes and special assessments and prior and superior to all other titles and liens against the property, and the lien shall continue until the cost shall be fully paid. At any time prior to collection as provided in this section, the City may pursue any civil remedy for collection of the amount owing and interest thereon. Upon receiving payment, if any, the City Clerk shall forward to the county treasurer a notice of such payment and directing discharge of the lien.

(Ord. No. 2002-6-11, 11-25-02)

Sec. 102-8. Administrative Officer.

The City Council authorizes the Mayor to be the administrative officer and further authorizes the Mayor to appoint any other administrative officer or an administrative body necessary to carry out the duties of the governing body as stated in Title 11, Oklahoma Statutes, Section 22-111 (A) and of Sections 102-3, 102-4, 102-5 and 102-6 of the Marietta City Code.

(Ord. 2009-7-7; July 14, 2009).

Secs. 102-8—102-25. Reserved.

ARTICLE II. TREES AND SHRUBS

Sec. 102-26. Trimming.

The owner of any premises abutting on any street shall trim all trees and shrubbery growing on the parking, between the sidewalks and the roadway, of any such street and all trees and shrubbery growing on any part of the premises adjacent to the sidewalks or any street or alley in such a manner that the

boughs or limbs thereof shall not obstruct free and convenient passage and travel along the streets, sidewalks and alleys. When such premises are occupied by some person other than the owner, such occupant shall trim the trees and shrubbery in the same manner as required in this section of the owner. Such trees and shrubbery shall be trimmed so that the lowest branches or foliage shall not be lower than twelve (12) feet above the roadway of a street or alley or lower than eight (8) feet above the sidewalk.

(Ord. 2015-7-4; 7-16-2015)

Sec. 102-27. Failure to trim.

Any owner or occupant who fails, refuses or neglects to trim trees and shrubbery as provided in section 102-26 of this article, after receiving five days' notice from the City police, shall be guilty of an offense. Every day that the owner or occupant fails, refuses or neglects to trim such trees or shrubbery, after the expiration of the five-day notice, shall be a separate offense.

(Code 1984, § 19-2)

Sec. 102-28. Injuring.

It is unlawful for any person to injure any tree or shrubbery in a street or alley, provided that this shall not prohibit the lawful and proper care and removal of such trees and shrubbery.

(Code 1984, § 19-3)

APPENDIX A

ZONING

Chapter 1. Citation, Purpose, Nature and Application of Zoning Ordinance

- Section 1. Citation.
- Section 2. Purpose.
- Section 3. Nature and application.
- Section 4. Zoning districts.
- Section 5. Interpretation of district boundaries.
- Section 6. Interpretation of words and terms.

Chapter 2. General Description of the Districts

- Section 2-1. A-1 general agricultural district.
- Section 2-2. R-1 single-family residential district.
- Section 2-3. R-2 medium residential district.
- Section 2-4. C-1 convenience commercial district.
- Section 2-5. C-2 general commercial district.
- Section 2-6. C-3 highway commercial and commercial recreation district.
- Section 2-7. C-7 conditional commercial district.
- Section 2-8. I-1 light industrial district.
- Section 2-9. I-2 medium industrial district.
- Section 2-10. I-3 heavy industrial district.
- Section 2-11. Prohibition on propane tanks.

Chapter 3. Uses Permitted in Districts

- Section 3-1. Uses permitted in districts.
- Section 3-2. Illustrated definitions.

Chapter 4. District Regulations

- Section 4-1. District lot or yard regulations.

Chapter 5. Special Conditions

- Section 5-1. Special conditions.
- Section 5-2. Home occupations.
- Section 5-3. Off-street parking requirements.
- Section 5-4. Modification or waiver of requirements.
- Section 5-5. Storage and parking of trailers and commercial vehicles.
- Section 5-6. Mobile home park or court.
- Section 5-7. Sewer service.
- Section 5-8. Signs and billboards.
- Section 5-9. Industrial district standards.
- Section 5-10. Planned unit development.

- Section 5-11. Flood district.
- Section 5-12. Miscellaneous uses.
- Section 5-13. Procedure for authorizing conditional use.

Chapter 6. General Provisions

- Section 6-1. Nonconforming uses. Section 6-2. Height and density.
- Section 6-3. Buildings.
- Section 6-4. Street access.
- Section 6-5. Annexation clause.

Chapter 7. Exceptions and Modifications

- Section 7-1. Existing lots of record.
- Section 7-2. Fences, walls, and hedges.
- Section 7-3. Planting in parkways.
- Section 7-4. Obstructions around fire hydrants.

Chapter 8. Administrative Procedures and Required Permits and Fees

- Section 8-1. Board of adjustment.
- Section 8-2. Building permit.
- Section 8-3. Certificate of occupancy.

Chapter 9. Violation and Penalty

- Section 9-1. Violation and penalty.

Chapter 10. Amendments, Validity, Enactment

- Section 10-1. Amendments.
- Section 10-2. Validity.
- Section 10-3. Enactment.
- Section 10-4. Repeal of conflicting ordinances.
- Section 10-5. Emergency.

PLAN/ZONE MATRIX

See the Plan/Zone Matrix attached hereto as "Matrix 1."

CHAPTER 1. CITATION, PURPOSE, NATURE AND APPLICATION OF ZONING ORDINANCE

Section 1. Citation.

This ordinance, in pursuance of the authority granted by 11 O.S. §§ 43-101—43-109, 44-101, 44-102 and 44-104—44-110 shall be known as the "Zoning Ordinance of the City of Marietta," and may be cited as such.

Section 2. Purpose.

The regulations contained herein are necessary to encourage the most appropriate uses of land; to maintain and stabilize the value of property; to reduce fire hazards and improve public safety and safeguard the public health; to prevent undue concentration of population; and to create a comprehensive and stable pattern of land uses upon which to plan for transportation, water supply, sewerage, schools, parks, public utilities, and other facilities. In interpreting and applying the provisions of this ordinance, they shall be held to be necessary for the promotion of the public health, safety, comfort, convenience and general welfare.

Section 3. Nature and application.

1. This ordinance classifies and regulates the use of land, buildings, and structures within the corporate limits of the City of Marietta, state of Oklahoma, as hereinafter set forth, by dividing the city into zones and regulating therein the use of the land and the use and size of buildings as to height and number of stories, the coverage of the land by buildings, the size of yards and open spaces, the location of buildings, and the density of population.

2. Except as hereinafter otherwise provided, no land shall be used and no building, structure, or improvement shall be made, erected, constructed, moved, altered, enlarged, or rebuilt which is designed, arranged, or intended to be used or maintained for any purpose or in any manner except in conformity with the regulations contained herein.

Section 4. Zoning districts.

The City of Marietta is hereby divided into zones as shown on the zoning map dated April 1, 1997, filed with the city clerk. The map is amended and all explanatory materials thereon is hereby made part of this Ordinance. Zoning districts shall be designated as follows:

Agricultural district

A-1 agricultural district

Residential districts

R-1 single-family residential district

R-2 medium residential district

Commercial district

- C-1 convenience commercial district
- C-2 general commercial district
- C-3 highway commercial and commercial recreation district
- C-7 conditional use permit

Industrial district

- I-1 light industrial district
- I-2 medium industrial district
- I-3 heavy industrial district

Specific district regulations are set forth in Chapters 3 and 4 (of this appendix).
(Ord. No. 1997-3, § 1, 5-6-97; Ord. No. 2004-4-7, § 1, 8-3-04)

Section 5. Interpretation of district boundaries.

1. The boundaries of the zoning districts are hereby established as shown on the maps entitled Zoning District Maps of the City of Marietta, Love County, Oklahoma, dated December, 1982, which are a part of these regulations and which are on file in the office of the county clerk. Said maps and all notations, references, data, and other information shown thereon shall be and are hereby adopted and made a part of these regulations.
2. Unless otherwise indicated on the zoning maps, the district boundaries are lot lines, the centerlines of streets or alleys or specified distance therefrom, railroad right-of-way lines, or property lines, as they existed at the time of the enactment of these regulations.
3. Where uncertainty exists as to the boundaries of the zoning districts or when the street or property existing on the ground is at variance with that shown on the zoning district maps, the board of adjustment upon written application or upon its own motion, shall determine the location of such boundaries.

Section 6. Interpretation of words and terms.

Unless otherwise stipulated or required, the following definitions shall be used in the interpretation and construction of the ordinance, and words used in the present tense include the future; [a singular word] shall include the plural, and the plural the singular; the word "building" shall mean as well the word "structure;" the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased," or "intended to be used," and the word "shall" is mandatory and not directory.

- (1) *Accessory or auxiliary use or structure.* A use or structure customarily incidental, appropriate, and subordinate to the principal use of a building or to the principal use of land and which is located upon the same lot therewith.
- (2) *Advertising sign or structure.* Any material or structure or any character whatsoever, placed for outdoor advertising purposes. The term "placed" shall include making visible in any manner

whatsoever. The area of the advertising structure shall be determined as the area of the largest cross section of the structure. Neither directional, warning or other signs posted by public officials in the course of their public duties shall be construed as advertising signs for the purpose of this ordinance.

(3) *Agriculture.* The use of land for agricultural purposes including farming, dairying, pasturage, horticulture, animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory shall be secondary to that of normal agricultural activities and provided further that the above uses shall not include the commercial feeding of garbage to swine or other animals, stockyards or commercial feed lots for cattle.

(4) *Alley.* A minor right-of-way, dedicated to public use, not more than 30 feet wide affording a secondary means of access to abutting property and not intended for general traffic circulation.

(5) *Automobile or trailer sales area.* An open area, other than a street, used for the display, sales or rental of new or used motor vehicles or trailers in operable condition where no repair work is done.

(6) *Automobile repair, major.* General repair, rebuilding or reconditioning of engines, motor vehicles or trailers; collision services including body, frame, or fender straightening or repair; overall painting or paint shop; vehicle steam cleaning.

(7) *Automobile repair, minor.* Incidental replacement of parts and motor service to passenger cars and trucks not exceeding 1 1/2 tons capacity. Automobile service station or filling station. Any area used for retail sale of gasoline or oil fuels, or automobile accessories, and incidental services including facilities for lubricating, and washing and cleaning, but not including painting, major repair or the sale of butane or propane fuels.

(8) *Automobile wash or automotive carwash.* A building or structure or chain conveyors, blowers, steam cleaners and other mechanical devices used primarily for the purpose of washing motor vehicles.

(9) *Basement.* A story wholly or partly underground. For purposes of height measurement a basement shall be counted as a story when more than one-half of its height is above the average level of the adjoining ground or when subdivided and used for commercial or dwelling purposes by other than a janitor employed on the premises.

(10) *Block.* In describing the boundaries of a district the word "block" refers to the legal description. In all other cases the word "block" refers to the property abutting on one side of the street between two intersection streets or a street and a railroad right-of-way or watercourse.

(11) *Boardinghouse and roominghouse.* Where meals or lodging are provided for persons other than the family or their relations excluding facilities for transient persons such as hotels, motels, inns and other such facilities.

(12) *Board of adjustment.* The board of adjustment for the City of Marietta, Oklahoma, also referred to as board.

(13) *Building*. Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate building, except as regards minimum side yard requirements as herein provided.

(14) *Building, accessory*. The subordinate building, the use of which is customarily incidental to that of a principal building on the same lot.

(15) *Building line*. A line established beyond which no part of a building shall project, except as otherwise provided by this ordinance.

(16) *Building, principal*. A building or buildings in which the principal use of the building site is conducted. In any residential district any dwelling shall be deemed to be the principal building on the building site.

(17) *Bulk limitations (floor area ratio)*. The number of square feet of floor area as defined herein which is permitted for each square feet of lot area.

(18) *Bulletin board*. Any board or sign erected for announcement purposes.

(19) *Cellar*. That portion of a building between floor and ceiling partly underground, but having half or more than half of its clear height below the adjoining finished grade.

(20) *Cemetery*. Land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes.

(21) *Child care center*. Any place, home or institution which receives five or more children under the age of 16 years, for care apart from their natural parents, legal guardians or custodians, and received for regular periods of time for compensation; provided, however, this definition shall not include public and private schools, organized, operated or approved under the laws of this state, custody of children fixed by a court, children related by blood or marriage within the third degree to the custodial person, or to churches or other religious or public institutions caring for children within their institutional buildings while their parents or legal guardians are attending services or meetings or classes and other church activities.

(22) *City*. The incorporated City of Marietta, Oklahoma.

(23) *City building inspector*. The building inspector of the City of Marietta, Oklahoma.

(24) *City engineer*. The city engineer or engineering firm designated by the City of Marietta, Oklahoma.

(25) *Club*. A nonprofit association of persons who are bona fide members, paying regular dues, and organized for some common purpose, but not including a group organized solely or primarily to render a service customarily carried on as a commercial enterprise.

(26) *Comprehensive plan*. The comprehensive plan of the City of Marietta, County of Love, State of Oklahoma.

(27) *Conditional use.* A use permitted in one or more districts as defined by this ordinance, but which use, because of its characteristics peculiar to it, or because of size, technological processes or type of equipment, or because of the exact location with reference to surroundings, streets and existing improvements or demands upon public facilities, requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same district or districts and to insure that such uses shall not be damaging to the public interest.

(28) *Conditional use permit.* The documented evidence or authority granted by the planning commission to locate a conditional use at a particular location.

(29) *Council.* The city council of Marietta, Oklahoma; and includes the use of the words council, city commission, and board of commissioners.

(30) *Coverage.* The lot area covered by all buildings located thereon, including the area covered by all the hanging roofs.

(31) *Dwelling.* Any building or portion thereof designed or used exclusively as a residence or sleeping place of one or more persons, but not including a tent, cabin, trailer or trailer coach, boarding or rooming house, hotel or motel.

(32) *Dwelling, single-family.* A building designed for or used exclusively for residence purposes by one family or housekeeping unit.

(33) *Dwelling, two-family.* A building designed for or used exclusively by two families or housekeeping units.

(34) *Dwelling, multifamily.* A building or portion thereof designed for or used by three or more families or housekeeping units.

(35) *Dwelling unit.* One or more rooms, designed for or used by one family.

(36) *Essential services.* The erection, construction, alteration or maintenance by public utility or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, transformation and regulation stations, mains, drains, sewer, pipes, conduits, cables, fire alarm boxes, police callboxes, traffic signals, street and area lighting facilities, hydrants and other similar equipment and accessories thereof; reasonably necessary for the furnishing adequate services by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

(37) *Exception.* A variance from the requirements of this ordinance properly authorized by the board of adjustment.

(38) *Family.* A person living alone or two or more persons living together, related by blood or marriage, as a single housekeeping unit using a single facility for culinary purposes in a dwelling unit, as distinguished from a group occupying a boardinghouse, lodginghouse, motel, hotel, fraternity house, or sorority house.

(39) *Floor area.* The sum of the gross horizontal areas of the several floors of a building or buildings measured from the exterior faces of the exterior walls or from the centerlines of walls separating two buildings.

(40) *Frontage.* The width of a lot measured at right angles to the depth on the front or street side of the lot.

(41) *Garage apartment.* A dwelling for one family erected as a part of a private garage.

(42) *Garage, parking.* Any building or portion thereof used for the storage of four or more automobiles in which any servicing may be provided is incidental to the primary use for storage purposes, and where repair facilities are not provided.

(43) *Garage, public.* The structure or portion thereof, other than a private garage, used for the storage, sale, hire, care, repairing or refinishing of any vehicles.

(44) *Garage, private.* A detached accessory building or a portion of the principal building used or intended for use by the occupants of the premises for storage of passenger vehicles or trailers.

(45) *Garage, repair.* A building in which are provided facilities for the care, servicing, repair, or equipping of automobiles.

(46) *Height.* The vertical measurement of any building or structure on any parcel of land measured from the average elevation of the lot or parcel to the uppermost point of the structure or building.

(47) *Height limit.* The limit of height as imposed in this ordinance for any structure or building or permitted use within the zoning district.

(48) *Home occupation.* Any occupation carried on solely by the inhabitants of a dwelling which is clearly incidental and secondary to the use of the dwelling for dwelling purposes, which does not change the character thereof, and which is conducted entirely within the main or accessory building; provided that no trading and merchandising is carried on and in connection with which there is no display of merchandise or advertising sign other than one nonilluminated nameplate, not more than two square feet in area attached to the main or accessory building, and no mechanical equipment is used except such as is customary for purely domestic or household purposes.

(49) *Hotel.* A building or group of buildings under one ownership containing six or more sleeping rooms occupied or intended or designed to be occupied as the more or less temporary abiding place of persons who are lodged with or without meals for compensation but not including trailer court or camp, hospital, asylum, orphanage, or building where persons are housed under a restraint.

(50) *Industry.* Storage, repair, manufacture, preparation or treatment of any article, substance or any commodity for commercial sale.

(51) *Institutional uses.* Those uses organized, established, used or intended to be used for the promotion of a public, religious, educational, charitable, cultural, social, philanthropic activities normally operated on a nonprofit basis.

(52) *Junk or salvage yard.* A place where waste, discarded or salvage materials are bought, sold, exchanged, bailed, packed, disassembled or handled, including all wrecking yards, house wrecking and structural steel materials and equipment; but not including such places where such uses are conducted entirely within a completely enclosed building, and not including pawnshops and establishments for the sale, purchase, or storage of used furniture and household equipment, used cars in operable condition, or salvage material incidental to manufacturing operations.

(53) *Kennel.* Any structure or premises on which five or more dogs over four months of age are kept.

(54) *Loading space.* An off-street space or berth on the same lot with the building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials.

(55) *Lot.* A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory thereto, together with such open spaces as required by this ordinance, and having access on a public street.

(56) *Lot, corner.* A lot which has at least two adjacent sides abutting on a street, provided that the interior angle at the intersection of such two sides is less than 135 degrees.

(57) *Lot depth.* The mean horizontal distance between the front and rear lot lines.

(58) *Lot, double frontage.* A lot having a frontage of two nonintersecting streets, as distinguished from a corner lot.

(59) *Lot, interior.* A lot other than a corner lot.

(60) *Lot, wedge shaped.* A lot situated so that the front is either wider or narrower than the rear of the lot.

(61) *Lots of record.* Herein designed as a separate and distinct parcel on a legally recorded subdivision plat or a legally recorded deed filed in the records of Love County, State of Oklahoma.

(62) *Maximum coverage.* The maximum amount of land that may be covered by buildings on any lot.

(63) *Mean lot elevation.* The average elevation of a lot.

(64) *Medical facilities:*

(a) *Convalescent, rest, or nursing home.* A health facility where persons are housed and furnished with meals and continuing nursing care for compensation.

(b) *Dental clinic or medical clinic.* A facility for the examination and treatment of ill and afflicted human outpatients, provided that patients are not kept overnight except under emergency conditions.

- (c) *Dental office or doctor's office.* Same as dental or medical clinic.
- (d) *Hospital.* An institution providing health services primarily for human inpatient medical or surgical care for the sick or injured and including related facilities such as laboratories, outpatient departments, training facilities, central services facilities, and staff offices which are an integral part of the facilities.
- (e) *Public health center.* A facility primarily utilized by a health unit for providing public health services including related facilities such as laboratories, clinics and administrative offices operated in connection therewith.
- (f) *Sanatorium.* An institution providing health facilities for inpatient medical treatment or treatment and recuperation making use of natural therapeutic agents.
- (65) *Mobile home court.* A parcel of land under single ownership which has been planned and improved for a placement of mobile homes for nontransient use.
- (66) *Mobile home lot.* A parcel of land for the exclusive use of the occupants of a single mobile home.
- (67) *Mobile home stand.* The part of an individual lot which has been reserved for the placement of a mobile home.
- (68) *Nonconforming use.* A parcel of land lawfully occupied by a use that does not conform to the regulations of the district in which it is located.
- (69) *Off-street parking.* The provision of space reserved exclusively for the parking of motor vehicles entirely off the public street and lying wholly within the property boundaries of the parcel of land affected.
- (70) *Open space.* Area included in any side, rear, or front yard, or any other unoccupied space on a lot that is open and unobstructed to the sky except for the ordinary projection of cornices and eaves or porches.
- (71) *Parcel.* A lot as defined herein.
- (72) *Parking area, private.* An open area for the same uses as private garage.
- (73) *Parking area, public.* An open area, other than a street or other public way, used for the parking of automobiles and available to the public whether for fee, free or as an accommodation for clients or customers.
- (74) *Parking space.* A permanently surfaced area either within a structure or in the open, exclusive of driveways or access drives for the parking of motor vehicles.
- (75) *Permitted uses.* The use of a structure or of a tract of land allowed by the use regulations of this ordinance.

(76) *Roominghouse*. See boardinghouse.

(77) *Sign, illuminated*. A sign designed to give forth any artificial light, or designed to reflect light from one or more sources, natural or artificial.

(78) *Sign, projecting*. A sign erected on the face or outside wall of a building which projects out at any angle therefrom.

(79) *Sign, temporary*. Signs of a temporary nature used to advertise the premises for sale, rent, or lease.

(80) *Sign*. Any structure or part thereof, or any device attached to, painted on, or represented on a building or other structure, upon which is displayed or included any lettering, model, banner, flag, pennant, insignia, decoration, device, or representation used as, or which is in the nature of, an announcement, direction, advertisement, or other attention-directing device. A sign shall not include the similar structure or device located within a building except for illuminated signs within show windows. The sign includes any billboard, but does not include the flag, pennant, or insignia of any nation or association of nations, or any state, city, or other political, charitable, educational, philanthropic, civic, professional, religious, or like campaign, drive movement, or event.

(81) *Story*. That portion of a building, included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

(82) *Story, first*. The lowest story or the ground story of any building, the floor of which is not more than 12 inches below the average contact ground level at the exterior walls of the building; except that any basement or cellar used for residence purposes shall be deemed the first story; provided that a basement or cellar used purely for recreational purposes shall not be deemed the first story.

(83) *Story, mezzanine*. A story which covers one-third or less of the story directly underneath it.

(84) *Street*. A public right-of-way more than 20 feet in width which provides a public means of access to abutting property and used primarily for vehicular circulation. The term street shall include avenue, drive, circle, road, parkway, boulevard, lane, place, highway, thoroughfare, and any other similar term.

(85) *Street, arterial*. As described and shown on the comprehensive plan.

(86) *Street, collector*. As described and shown on the comprehensive plan.

(87) *Street, intersecting*. Any street which adjoins another street at an angle whether or not it crosses the other.

(88) *Street, minor*. Any street not designated as an arterial or collector street and intended to serve or provide access exclusively to the properties abutting thereon.

- (89) *Structural alteration.* Any change in the structural members of a building such as walls, columns, beams, or girders.
- (90) *Structure.* Anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground (not including sidewalks, driveway and similar improved areas).
- (91) *Thoroughfare—expressway.* A primary thoroughfare with divided roadways, partial or full control of access in general with grade separations at intersections. A freeway shall mean an expressway with full control of access and meeting the standards of the bureau of public roads, U.S. Department of Transportation.
- (92) *Thoroughfare—primary or secondary.* An officially designated federal or state numbered highway or county or other road or street designated as a primary thoroughfare on the official thoroughfare or comprehensive plan for the City of Marietta, Oklahoma, or county or other road or street designated as a secondary thoroughfare on said plan, respectively.
- (93) *Thoroughfare plan.* The part of the comprehensive plan referring to transportation development goals, principles and standards and also includes use of the words "major street plan" and "trafficways plan."
- (94) *Tourist court.* An area containing one or more buildings designed or intended to be used as temporary sleeping facilities of one or more transient persons.
- (95) *Traffic signaling device.* A sign, device of mechanical contrivance, used for the control of motor vehicular and pedestrian movement.
- (96) *Trailer or mobile home.* A portable or mobile living unit used or designed for human occupancy on a permanent basis.
- (97) *Use.* The purpose for which land or a building or structure is arranged, designed or intended, or for which either land, building or structure is, or may be occupied or maintained.
- (98) *Utility service installation.* Any structure or installation by utility company deemed to be necessary for the safe or efficient operation of that utility.
- (99) *Variance.* Any modification of the terms of this ordinance.
- (100) *Yard, front.* A yard extending across the full width of a lot from side lot line to side lot line abutting on a street.
- (101) *Yard, rear.* A yard extending across the rear of a lot measured from side lot line to side lot line and at opposite end to the front lot line.
- (102) *Yard, side.* A yard extending from front building line to the rear building line abutting the side lot line.

(103) *Zoning map.* The adopted zoning map or maps of the City of Marietta together with all amendments.

(104) *Zoning commission.* In this ordinance whenever the term zoning commission, or commission, is used, reference is made to the zoning commission as established pursuant to state statutes.

(Ord. No. 1992-3, § 1, 7-7-92; Ord. No. 1993-1, § 1, 1-5-93)

CHAPTER 2. GENERAL DESCRIPTION OF THE DISTRICTS

Section 2-1. A-1 general agricultural district.

The A-1, agricultural district, is established for several purposes:

1. To provide for the continued use of land for predominantly agricultural purposes;
2. To preserve underdeveloped areas until they can feasibly be developed at urban standards and with adequate public safeguards of health, safety, etc.; and
3. To restrict development in areas subject to severe flooding until such time as it can be shown that these areas are no longer subject to flooding.

Section 2-2. R-1 single-family residential district.

The R-1 single-family district is established as a district in which the use of the land is for single-family dwellings, except as noted. It is the purpose and intent of this district to promote the development of and the continued use of the land for single-family dwellings and to prohibit commercial and industrial use of any other use which would substantially interfere with the development or continuation of single-family dwellings in this district. The intent is to further discourage any use in this district which would generate traffic or create congestion on neighborhood streets other than the normal traffic which serves the residents in the area. This district further encourages only those uses which because of character or size, would not create additional requirements and costs for public services which are in excess of such requirements and costs if the district was not developed solely for single-family dwellings.

Section 2-3. R-2 medium residential district.

This residential district is intended to provide for both low and moderate population density. The density and yard space requirements are so arranged as to provide general compatibility with the uses found in the R-1 single-family district. Therefore, this classification may reasonably be placed in positions which are adjacent to single-family areas or may be used as a transitional zone. This district shall have the same restrictions concerning nonresidential uses as apply in the R-1 single-family district.

Section 2-4. C-1 convenience commercial district.

This commercial district is intended for a unified grouping, in one or more buildings, of retail shops and stores and personal services that provide for the regular needs and are for the convenience of the people residing in the adjacent residential neighborhoods. It is intended that the convenience center be developed

as a unit with adequate off-street parking space for customers and employees, and with appropriate landscaping and screening.

Section 2-5. C-2 general commercial district.

This commercial district is designed for the conduct of personal and business services and the general retail trade of the community. It is designed to accommodate a wide variety of commercial uses in the central business district or areas of mixed business enterprises. It will not normally be applied in the case of new commercial areas.

Section 2-6. C-3 highway commercial and commercial recreation district.

This commercial district is established as a district in which the principal use of land is for establishments offering accommodations, supplies or services to motorists, and for certain specialized uses such as retail outlets, extensive commercial amusements and service establishments which may serve the entire community but do not and should not locate in the central business district or the convenience district.

Section 2-7. C-7 conditional commercial district.

This commercial district is established to enable city officials to require reasonable restrictions to protect surrounding property from possible deleterious effects of the commercial useage of the property. It is intended that a conditional use permit will be granted at the time the zone change is approved. Required restrictions shall be recorded on the deed to said property at the time the zone change is approved. No conditional use permit will be granted for any property on which the use of propane gas is contemplated. (Ord. No. 1992-3, § 1, 7-7-92; Ord. No. 2001-2, 5-3-01)

Section 2-8. I-1 light industrial district.

The purpose of the I-1 industrial district is to provide a location for industries. The intent is to preserve this land especially for industry in locations with access to major streets, as well as locations generally accessible to railroad transportation. Because of possible objectionable influences that may be created in this district, it is necessary to locate I-1 carefully in relation to other districts and provide such features as buffers or setback strips between this district and other zoning districts.

Section 2-9. I-2 medium industrial district.

The purpose of this district is to accommodate a wide range of manufacturing, warehousing, wholesale, and other industrial activities of medium intensity. The I-2 district regulations are intended to permit such activities, subject to limitations that will protect nearby residential and commercial districts and will ensure that permitted uses are compatible with one another.

Section 2-10. I-3 heavy industrial district.

The purpose of the I-3 heavy industrial district is to provide a location for industries which may by their nature create nuisances. The intent is to preserve this land especially for industry in locations with access to major streets as designated on the major street plan, as well as locations generally accessible to railroad transportation. Because of the nuisances or other objectionable influences that may be created in this district,

it is necessary to provide a buffer or setback strip between this district and other zoning districts, except I-1 and I-2.

Section 2-11. Prohibition on propane tanks.

1. No residential property zoned as R-1 or R-2 or any commercial zoning of C-1, C-2 or C-7 conditional commercial district shall be permitted to have thereon or placed thereon an aboveground or in-ground propane tank, other than for tanks, not filled at that location, for use in outdoor cookers, grills, barbecues or smokers.

2. Propane tanks shall be allowed to be used and placed, both aboveground or in-ground, in those areas designated as C-3, I-1, I-2 and I-3 for both use and sales as defined by the zoning ordinances of the City of Marietta.

(Ord. No. 1995-4, § 1, 11-7-95; Ord. No. 2001-2, 5-3-01)

CHAPTER 3. USES PERMITTED IN DISTRICTS

Section 3-1. Uses permitted in districts.

1. The uses permitted in the various districts are shown in the following list. The uses permitted in a more restricted district may be permitted in a less restricted district; provided, however, that the yard space and other requirements of the more restricted district shall apply. For purposes of applying this rule, each district shown in the following list shall be considered to be more restricted than the one(s) listed to the right.

2. It is intended that these regulations be interpreted as permitting a dwelling unit to be located on the same lot with or within a structure used or intended to be used primarily for nonresidential purposes only upon individual review and approval by the Marietta planning and zoning commission.

3. Any property owned by the City of Marietta on which a fire station, fire substation, police station or police substation is to be erected shall be permitted in any and all districts, agricultural, residential, commercial or industrial.

See Zoning Matrix attached hereto as "Matrix 2."

4. All zoning regulations pertaining to commercial radio television antenna towers and equipment shall also apply to the following: commercial telecommunication antenna towers, which include commercial cellular telephone antenna towers and equipment, and which involve the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefits or any closed transmission medium.

(Ord. 2008-7-8; August 12, 2008)

CHAPTER 5. SPECIAL CONDITIONS

Section 5-1. Special conditions.

Sections 2 through 12 below describe the special conditions under which certain uses are permitted in a zoning district when reference is made to one or more of said subsections in the "special conditions" column in the tables of permitted uses. Where special conditions are widely applicable reference should be made to subsequent subsections.

Section 5-2. Home occupations.

Home occupations (defined in chapter 1), in those districts where permitted, are subject to all of the following conditions:

1. In any dwelling unit, all home occupations, collectively, shall not occupy more than 25 percent of the gross floor area of one floor of said dwelling unit, nor more than 300 square feet of gross floor area, but these limitations shall not apply to foster family care.
2. A home occupation shall not require internal or external alterations or involve construction features or the use of mechanical equipment not customary in dwellings.
3. The entrance to the space devoted to a home occupation shall be from within the dwelling.
4. There shall not be displayed or created outside the building or displayed by means of windows or openings in the structure any external evidence of the operation of the occupation, except, for each street front of the zoning lot on which the building is located, one unanimated, nonilluminated, accessory identification sign to be placed flat against a wall or door or displayed in a window.
5. Power shall be limited to electric motors, with a total limitation of three horsepower per dwelling unit.
6. The home occupation shall be conducted solely by resident occupants of the dwelling unit in which the occupation is conducted and shall not have any employees who do not reside in said dwelling unit.
7. To permit a beauty shop, one operator chair, a petition shall be presented to the planning commission representing the approval of 75 percent of the property owners within 200 feet with mandatory approval of those abutting the property.

(Ord. No. 1993-1, § 1, 1-5-93)

Section 5-3. Off-street parking requirements.

1. *Requirements.* In all zoning districts, in connection with every industrial, commercial, institutional, recreational, residential or any other use, there shall be provided, at the time any building or structure is erected or enlarged or increased in capacity, or any other use is established, off-street parking spaces for automobiles in accordance with the requirements in the "parking spaces required" column in the table of

permitted uses. Parking spaces used in connection with an existing and continuing use of building on the effective date of these regulations up to the number required by these regulations, shall be continued and may not be counted as serving a new structure or addition; nor may a parking space be substituted for a loading space or a loading space substituted for a parking space. Storage of vehicles on the street rights-of-way shall be a violation of the parking requirements of this ordinance. In residential districts the continuous parking of a vehicle, other than one registered to the owner of the abutting lot, shall be considered storage.

2. *Required open space.* Off-street parking space may be a part of the required open space associated with the permitted use and shall not be reduced or encroached upon in any manner.

3. *Location.* The off-street parking lot shall be located within 200 feet, exclusive of street and alley widths, of the principal use and shall have direct access to a street or alley.

4. *Joint parking facilities.* Whenever two or more uses are located together in a common building, shopping center or other integrated building complex, the parking requirements may be complied with by providing a permanent common parking facility, cooperatively established and operated, which contains the requisite number of spaces for each use. The total number of spaces provided shall not be less than the sum of the individual requirements.

5. *Size of off-street parking space.* The size of a parking space for one vehicle shall consist of a rectangular area having dimensions of not less than nine feet by 20 feet plus adequate area for ingress and egress.

6. *Amount of off-street parking and loading required.* Off-street parking and loading facilities shall be provided in all districts in accordance with figures shown in chapter 3, and as shown below:

A. Commercial establishments not otherwise classified. One parking space for each 150 square feet of floor space used for retail trade in the building and including all areas used by the public.

B. Industrial establishments. One off-street parking space for each 1,000 square feet of gross floor area or one off-street parking space for each three employees, whichever is greater, and one loading or unloading berth for each 25,000 square feet or fraction thereof of gross floor area.

7. *Paved surface required.* All parking spaces shall be paved with a sealed surface pavement and maintained in a manner such that no dust will result from the continued use.

8. *Off-street parking lots in residential districts.* Whenever off-street parking lots for more than six vehicles are to be located within or adjacent to a residential district, the following provisions shall apply:

A. No parking shall be permitted within a front yard setback line whenever the parking lot is located in a residential district or immediately abuts the front yard of a residential unit. In all other cases, a minimum five-foot setback shall be required.

B. Driveways used for ingress and egress shall be confined to and shall not exceed 25 feet in width, exclusive of curb returns.

C. All of the lot used for parking and driveway purposes shall be paved with a sealed surface pavement or maintained in such a manner that no dust will be produced by continued use.

D. Whenever lighting is provided, it shall be arranged so that all light is deflected from adjoining residential uses.

E. No sign of any kind shall be erected except information signs used to guide traffic and to state the condition and terms of the use of the lots. Only nonintermittent white lighting of signs shall be permitted.

Section 5-4. Modification or waiver of requirements.

The board of adjustment may authorize on appeal, a modification, reduction, or waiver of the foregoing requirements only if it should find that in the particular case appealed, the peculiar nature of the residential, business, trade, industrial or other use, or the exceptional shape or size of the property or other exception [exceptional] situation or condition not generally applicable to other lots in the same district, must justify such action.

Section 5-5. Storage and parking of trailers and commercial vehicles.

Commercial vehicles and trailers of all types, including travel, camping and hauling and mobile homes shall not be parked or stored on any lot occupied by a dwelling or on any lot in any residential district except in accordance with the following provisions:

1. No more than one commercial vehicle, which does not exceed 1 1/2 tons rated capacity per family living on the premises, shall be permitted, and in no case shall a commercial vehicle used for hauling explosives, gasoline, or liquefied petroleum products be permitted.

2. No more than one camping or travel trailer or hauling trailer or motor home plus one licensed boat and trailer per family living on the premises shall be permitted and said trailer shall not exceed 36 feet in length, or eight feet in width; and further provided that such vehicles shall not be parked or stored for more than 48 hours unless they are parked or stored totally on the property of the owner of said property and also unless they are parked perpendicular with the street. A camping or travel trailer or motor home shall not be occupied either temporarily or permanently while it is parked or stored in any area within the incorporated limits except in a trailer court authorized under the ordinances of the City of Marietta.

3. Mobile homes and travel trailers.

A. Parking of a mobile home in any district for residential purposes shall be prohibited, except as follows:

(1) A mobile home may be placed in a mobile homes park as provided by these regulations.

(2) Where a residential structure has been built on a lot in an A-1, R-1, or R-2 district, the zoning and adjustment board may, on application of the owner of such lot, permit the parking of one mobile home in the rear yard of such lot, provided the zoning and adjustment board makes a finding to the effect that the occupant or proposed occupant of the mobile home would suffer a material

hardship, other than a financial hardship, if the mobile home were to be located in a mobile home park rather than on said lot. Such use shall be permitted only subject to the following conditions:

(a) that the mobile home be located not less than ten feet of any lot line or residential structure, and

(b) that no rent or other compensation be paid for the privilege of parking said mobile home on said lot.

A permit granted under this provision shall be for a period of no more than one year, after which it may be renewed by the planning commission.

(3) One freestanding mobile home shall be permissible on an individual parcel of land in the rural area in the general agricultural zoning districts. Permits for such freestanding mobile homes shall be issued by the planning commission, but only when the applicant agrees in writing to remove such mobile home within 120 days after either the mobile home site is rezoned to a district other than general agricultural, or if required by the planning commission at such time as the site comes to be abutted within 660 feet by districts other than general agricultural.

(4) Storage and parking of trailers. Individual mobile homes may be permitted to occupy a zoning lot in R-1 or R-2 residential districts upon approval of the planning commission. The permit granted by the planning commission, with the approval of the city commission, may be withdrawn at any time if the individual or entity which is permitted to move the individual mobile home upon a lot zoned R-1 or R-2, is not in compliance with the requirements placed on said permit by the planning commission or the city commission. Any and all requirements shall be prescribed at the discretion of the city commission but shall include, at a minimum, the following:

a. The mobile home is compatible with the other residential improvements in the neighborhood as to both value and exterior appearance.

b. The roof shall be pitched, at a minimum, of 11/2 feet in 12 feet.

c. Reserved.

d. Written agreement is secured from 75 percent of the owners of property within 200 feet and from all owners of abutting property.

e. The wheels or other transporting devices of all mobile homes permitted in R-1 or R-2 zoned residential districts shall be removed.

f. Any and all mobile homes located in R-1 or R-2 zoned residential districts shall be securely anchored to the ground so as to attain the same resistance to wind as a fixed residence of comparable size.

g. As a condition of any permit allowing a mobile home in a R-1 or R-2 zoned residential district, the owner or entity shall be required to skirt the mobile home so as to enclose the underneath area.

h. Reserved.

I. The individual or entity which is permitted to move the individual mobile home upon a lot zoned R-1 or R-2 shall have 90 days from the date the mobile home is moved onto the lot to comply with requirements contained in this section. In the event that all requirements are not met within the 90 day period, said permit granted by the planning commission or city commission shall be withdrawn and the mobile home shall be moved within 30 days of notice to the individual or entity placing said mobile home on the lot. Failure to remove said mobile home within the 30-day period shall result in the City of Marietta enforcing this regulation and ordinance by an injunction and court order for said removal, all at the expense of the individual or entity as referred to herein.

(5) Individual mobile homes may be permitted in nonresidential zones upon approval of the planning commission with requirements as prescribed at the discretion of the commission, provided:

(A) If for residential purposes, only if related to another use which is the major activity on the parcel.

(B) If for nonresidential purposes, only for use directly related to the major activity on the parcel.

(C) Reserved.

(Ord. No. 1984-3, 7-3-84; Ord. No. 1987-9, 12-1-87; Ord. No. 1989-2, 6-6-89; Ord. No. 1993-1, § 1, 1-5-93; Ord. No. 1995-5, § 1, 12-5-95; Ord. No. 2004-7-7, § 1, 8-3-04)

Section 5-6. Mobile home park or court.

Upon compliance with the provisions as set forth herein, a mobile home trailer park will be allowed within the R-2 medium residential district.

1. The applicant, upon making application for a zoning clearance permit, must submit a detailed site plan locating all mobile home stands, screening or fencing, and plans and specification for the proposed park in a form suitable for making the determination required herein.

2. The proposed site shall be a minimum of two acres in size and shall contain no more than 15 mobile home stands per acre. The proposed site shall have a minimum frontage of 200 feet on a street designated as a major street or collector street in the comprehensive plan. All access or egress by automobile will be on such streets. The proposed site shall be a minimum of 200 feet in depth.

3. It shall be the intention of the proposed plan for the mobile home park to accommodate primarily permanent occupants with no more than ten percent of the mobile home stands devoted to purely transient purposes. These purely transient stands are to be located in one area of the park so they will in no way interfere with the permanent residents.

4. The proposed site shall have a front yard of not less than 40 feet from the corner or line of any mobile home stand to the street boundary of the park. The site shall have side and rear yards of ten feet from any solid fencing, screen planting or wall of six feet in height.
5. The proposed site shall be screened or buffered on all sides with a solid wall fence six feet in height or a screen planting which will attain at least six feet in height.
6. The proposed site shall provide one off-street parking space for each mobile home stand, plus one additional off-street parking space for each four mobile home stands.
7. The proposed site shall provide a connection for each mobile home stand to all public utilities considered necessary for the health, safety, and general welfare of the public.
8. Individual mobile homes may be permitted in nonresidential zones upon approval of the board of adjustment with requirements as prescribed at the discretion of the board, provided:
 - A. If for residential purposes, only if related to another use which is the major activity on the parcel.
 - B. If for nonresidential purposes, only for use directly related to the major activity on the parcel.
 - C. Such mobile home shall be enclosed with an approved fence or planted hedge, not less than six feet in height with no openings to adjoining property other than the required entrances and exits to streets or public places.
9. Utilities required. Municipal or other state health department approved water system capable of supplying fire hydrants installed in accordance with specifications of Oklahoma inspection bureau, and the American Insurance Association. Public sewer system or other disposal system which has been approved for requested number of units by the state health department. All mobile homes must be connected to sanitary sewer system within 72 hours of arrival in park. An individual electric service outlet shall be provided for each unit.
10. Wheels and foundation. The wheels or other transporting devices of any mobile home located in a mobile home park may be removed. Any mobile home located in a mobile home park for more than 72 hours shall be securely anchored to the ground so as to attain the same resistance to wind as a fixed residence of comparable size, and park operators shall require tenants to skirt units so as to enclose the underneath area.
11. Concrete slab. Each space shall be provided with a concrete slab of sufficient size to support wheels and front parking jack of the mobile home unit parked on the space.
12. Interior streets. The following shall be minimum dimensions for:
 - A. One-way without parking..... 12'
 - B. One-way with parking on one side 21'
 - C. Two-way without parking..... 22'
 - D. Two-way with parking on one side..... 30'

13. Mobile home parks shall be enclosed with an approved fence or planted hedge not less than six feet in height with no openings to adjoining property other than the required entrances and exits to streets or public places, unless a finding is made by the planning commission that this is unnecessary due to the nature of the site.

(Ord. No. 1993-1, § 1, 1-5-93)

Section 5-7. Sewer service.

No structure or use in any district shall be erected or commenced which does not have a connection to the public sewer system, unless and until the county health officer certifies that a septic tank or any substitute disposal system can be installed and operated effectively. As a basis for making this decision, the health officer may require such precaution tests as he deems to be necessary. Such tests are to be made at the expense of the land owner.

Section 5-8. Signs and billboards.

1. No signs, billboards, posters, bulletin boards, or other similar matter shall be permitted in the residential districts, except as follows:

A. Temporary signs not to exceed the duration of six months to advertise the premises for sale, rent or lease, except original sale.

B. One bulletin board not exceeding 50 square feet may be erected by each church.

C. Official public notices may be erected on affected property.

D. One unilluminated nameplate not exceeding two square feet in area, and not containing lettering other than the name of the owner or occupants or name and address of the premises.

2. The following provisions shall govern on-premises signs which advertise services or merchandise offered on the zoning lot on which the sign is located. All signs in the C-1 district shall be erected upon private property and shall not encroach upon any public street or walk except as approved by the board of adjustment, and they shall not overhang at a height of less than nine feet and shall not have a maximum projection greater than 72 inches.

A. Any projecting sign in the C-1 district shall not exceed 50 square feet in size, nor shall it exceed the height of the building by more than five feet.

B. Any free-standing sign in the C-2 and C-3 districts within a 1,500 foot radius of any point on Interstate 35 shall not exceed 300 square feet in size. Within a 1,500-foot radius of any point on Interstate 35, within the city limits, free-standing signs may extend to a maximum height of 50 feet above the elevation of Interstate 35 perpendicular to the sign.

C. Permits for premises signs allowed on review in A-1 districts shall be for a period of one year. Such permits may be reviewed by the planning commission, upon annual application by the owner of such sign. Such signs shall not acquire status as nonconforming uses, and removal may be required at the anniversary date of the issuance of the initial permit.

3. The following provisions shall govern off-premises signs which advertise services or merchandise not offered on the zoning lot on which the sign is located.

A. No sign or sign structure shall be permitted which faces the front, side or rear of any lot in any R-1 or R-2 district within 100 feet of such lot line or which faces the entrance to any public park, public school, public library, or similar public institution within 100 feet thereof.

B. All off-premises signs within 150 feet of either side of the I-35 right-of-way shall conform with the rules and regulations established by the State of Oklahoma for outdoor advertising signs except that the distance between off-premises signs along either side of I-35 shall not be less than 1,500 feet.

C. All off-premises signs located within 300 feet of the centerline of a state or federal highway, other than I-35, shall conform with the following provisions:

1) The property on which an off-premises sign is located must be in a Zoning District which is either a Commercial District or an Industrial District. In keeping with the expressed intent of the Commercial District, no such sign shall exceed 72 square feet in area per sign structure which shall be located a minimum of 25 feet from an adjacent residentially zoned lot.

2) The area of any given sign face shall not exceed 300 square feet, and no more than two parallel signs per sign structure.

3) An off-premises sign shall not be located within 1,500 feet radius of another off-premises sign.

4) All portions of the sign shall be located a minimum of 10 feet from all property lines, except when adjoining a residential district, where the setback from the property line shall be 25 feet.

5) No sign shall be located within the clear sight triangle or required landscape island in a parking lot.

6) Off-premises signs shall be prohibited east of the centerline of State Highway 77.

D. Off-premises signs located within 300 feet of the centerline of a street other than a state or federal highway shall conform to the following provisions:

1) The message on the sign provides only directions to a location within the City for government, civic, religious, educational, philanthropic, public utilities and other similar

service organizations.

2) The property on which the sign is located must be a Zoning District which is either a Commercial District or an Industrial District.

3) The total area of such signage shall not exceed 12 square feet per lot.

4) All portions of the sign shall be located a minimum of 5 feet from all property lines, except when adjoining a residential district, where the setback from the property line shall be 25 feet.

5) The maximum height of the sign shall be 10 feet.

6) The sign shall not be located within a clear vision triangle.

7) A sign shall not be located within 1,500 feet of another off-premises sign which advertises or provides directions for the same business or organization.

8) Off-premises portable signs shall not be permitted.

E. No person shall paint, install, construct or build any off-premises sign in any manner without first obtaining a permit therefor from the City of Marietta.

F. "Off-premises sign" shall also mean the term "off-premises billboard."
(Ord. 2007-5-8, 8-14-2007)

4. No source of incandescent lighting used for illuminating signs shall be directly visible from any street or highway or from any residence, hotel or from any room used for sleeping purposes.

5. The use of red, green or amber illumination in connection with any sign shall not be permitted within 100 feet of any intersection. Any use of red, green or amber illumination is [in] connection with any sign must be so located that it in no way creates a confusion with any traffic signal or may be interpreted by any motorist as a traffic signaling device.

(Ord. No. 1993-1, § 1, 1-5-93; Ord. No. 1994-3, § 1, 5-3-94; Ord. No. 1994-7, § 1, 8-2-94)

6. Billboards and signs shall not advertise sexually oriented businesses nor shall they contain sexually explicit ads or media.

(Ord. 2007-5-8, 8-14-2007)

Section 5-9. Industrial district standards.

1. Any use constructed, established, altered, or enlarged in the I-1 light industrial district after the

effective date of this ordinance shall be so operated as to comply with the following standards:

- A. Any building used for residential purposes shall comply with restrictions set down in R-2.
- B. No noise from any operation conducted on the premises, other than that emanating from vehicular traffic, either continuous or intermittent, shall be detectable at any boundary line of the I-1 district.
- C. No toxic matter, noxious matter, smoke, gas, or odorous or particulate matter shall be emitted that is detectable beyond the lot lines of the zoning lot on which the use is located.
- D. No vibrations shall be detectable beyond the lot lines of the zoning lot on which the use is located.
- E. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light upon property located in any residence district.
- F. The manufacture of flammable materials which produce explosive vapors or gases is prohibited.
- G. Any operation that produces intense glare or heat shall be performed within a completely enclosed building, and exposed sources of light shall be screened so as not to be detectable beyond the lot lines.
- H. No bulk fuel storage or sales.

2. Any use constructed, established, altered or enlarged in the I-2 medium industrial district after the effective date of this ordinance shall be so operated as to comply with the standards set down for light industrial districts above, with the exceptions and additional provisions set out below:

- A. Bulk fuel storage and sales are permissible.
- B. Other uses permitted are manufacturing, fabricating, assembling, repairing, storing, and cleaning, servicing, or testing any of the following materials, goods, or merchandise:

- Apparel
- Clothing
- Dairy products
- Drugs and pharmaceutical products
- Electrical and acoustic products and components
- Ice, dry and natural
- Medical laboratory supplies, equipment and specialties
- Optical goods
- Radio, phonograph recorder and television sets and parts
- Textiles

3. Any use constructed, established, altered, or enlarged in the I-3 heavy industrial district after the effective date of this ordinance shall be so operated as to comply with the following standards. No use already established on the effective date of this ordinance shall be so altered or modified as to conflict with, or further conflict with, the applicable standards established hereinafter for the I-3 heavy industrial district.

A. Any building used for residential purposes shall comply with the restrictions set forth in R-2.

B. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light upon property located in any residence district.

C. All manufacturing, fabricating, assembly, disassembly, repairing, storing, cleaning, servicing, and testing of goods, water, and merchandise, shall be carried on in such a manner as not to be injurious or offensive by reason of the emission or creation of noise, vibration, smoke, dust or other particulate matter, toxic or noxious matter, odorous, glare, or heat, fire or explosive hazards.

D. No activities involving storage, utilization, or manufacture of materials or products which decompose by detonation shall be permitted.

E. Permitted uses in the I-3 heavy industrial district shall include manufacturing, fabricating, assembling, repairing, storing and cleaning, servicing, or testing, any of the following materials, goods, or merchandise:

- Apparel
- Beverages (nonalcoholic), processing and bottling
- Building materials specialties
- Clothing
- Compounding and packaging of chemicals
- Cosmetics and toiletries
- Dairy products
- Drugs and pharmaceutical products
- Electrical and acoustic products and components
- Food products (except fish, sauerkraut, vinegar and yeast)
- Furniture
- Glass products
- Ice, dry and natural
- Jewelry
- Medical laboratory supplies, equipment and specialties
- Metal products and utensils
- Musical instruments
- Optical goods
- Paper products, including boxes and containers
- Radio, phonograph recorder and television sets and parts
- Textiles

Toys and children's vehicles
Trailers and carts
Wood products, including wooden boxes and containers

Section 5-10. Planned unit development.

The purposes of planned unit development are:

To permit flexibility that will encourage a more creative approach in the development of land and will result in a more efficient use of open area, or will facilitate orderly land use transition, while maintaining density and area coverage permitted in the general zoning district or districts in which the project is located.

To permit flexibility in design, placement of buildings, and use of open spaces, circulation facilities, and off-street parking areas and to best utilize the potential of sites characterized by special features of geography, topography, parcel size or shape, or proximity to sensitive land use areas.

1. *General provisions.* Planned unit development is permitted:

A. On tracts of not less than five acres in size;

B. On tracts of not less than one acre in size located within a district or districts having the supplemental designation PUD.

In every instance, the PUD is to be reviewed as to the proposed location and character of the uses and the treatment of the development of the tract. The regulations of the general zoning district or districts remain applicable except as specifically modified pursuant to the provisions of this section.

No modification of use or bulk and area requirements of the applicable general use district or districts shall be permitted unless a subdivision plat or replat incorporating the provisions and requirements of this section is submitted to and approved by the planning commission and the city council and filed of record in the office of the county clerk of Love County.

2. *Uses permitted in planned unit developments.*

A. *Principal uses.* The primary uses in a planned unit development shall be those permitted in the zoning district(s) involved or those uses permitted in more restrictive zoning districts (i.e., in a commercial district a planned unit development could be dominated by shopping facilities or apartments, but in a multifamily residential district the predominate land use would have to be housing). In predominantly residential PUD's certain other principal uses, other than dwellings, which are permitted by right or exception in the residential districts may be included within a PUD, if such uses do not occupy more than ten percent of the gross area of the PUD, and are designed and located to be compatible with the residential uses of the PUD and with the residential use of adjacent properties. It is intended that the PUD provisions may be used as an alternative approach in the processing of all types of developments.

B. *Accessory uses.* Accessory uses customarily incident to the principal uses included within the

PUD are permitted. Accessory signs shall comply with the provisions of the zoning districts except as hereafter provided for accessory commercial uses. Within a PUD in a residential district, accessory commercial facilities may be included in accordance with the following provisions:

(1) In considering commercial uses as a part of a planned unit development in a residential district, the planning commission shall consider:

(a) The relationship of the proposed commercial use to:

(1) The land parcel (both as to boundary shape and topographic, and other physical features).

(2) The land and land uses outside the proposed development.

(3) The arrangement of the other portions of the proposed development.

(b) The nature of the commercial use included in the proposal.

(2) In developments proposing more than one business the aggregate floor area of the commercial facilities shall not exceed 50 square feet per dwelling unit nor a total of 30,000 square feet.

(3) Each commercial establishment shall be limited to a maximum of 3,500 square feet of floor area.

(4) Commercial signs shall be limited to one nameplate or [of] not more than 16 square feet for each establishment. Nameplates shall be attached flat against a building wall and shall not be animated, flashing, have other than indirect illumination. Window signs shall not be permitted.

(5) The commercial area shall be designed primarily for the service, convenience, and benefit of the residents of the PUD. The planning commission may permit a commercial establishment designed to serve patrons both inside and outside the development if it is determined that a land use problem is not likely upon consideration of the items listed in [subsection] (2)(a) above.

3. *Bulk and area requirements.*

A. *Area requirements.* The space required in a planned unit development project, including lot area, area per unit, and percent of lot coverage, exclusive of the area of public or private streets, shall meet the requirements of the district(s) wherein the project is located (as set out in chapter 4). Provided, however, that upon a finding that the PUD proposal is so designed as to provide the best use of the land with, at the same time, a good and full protection of the public welfare and the general intent and spirit of the comprehensive plan and the zoning ordinance the planning commission may award an increase in the density of development not to exceed ten percent of that otherwise allowable in the district(s) in which the PUD is located. If the project area falls in two or more zoning districts, the space requirements of the project shall be established by calculating the requirements of the

various districts as applied to the amount of area in each district. In a planned unit development all area used for development purposes, including recreation areas, open space areas, parking lots, and similar space, may be counted as part of the aggregate development area for computation of space requirements. The area of planned unit development shall be considered as one parcel regardless of the extent to which the area may be divided by interior streets or other features.

B. *Height requirements.* The height of buildings shall not be more than 1 1/2 times the distance between the building line and the edge of pavement of the nearest street. The building measurement shall be from the ground floor level to the eave or top of the vertical wall should there be no eave. The planning commission upon review of plans for a planned unit development may approve buildings of greater height than otherwise permitted in the zoning district.

C. *Perimeter requirements.* The building setback from the exterior boundaries of the PUD shall not be less than the minimum yards customarily required for the district or districts in which located. Provided that within 200 feet of any abutting property in a residential district, structures exceeding ten feet in height measured from the ground floor to the eave or top of vertical wall if there is no eave shall conform to the setback requirements of the zoning district plus two feet of setback for each one foot of building height exceeding ten feet measured from the ground floor level to the eave or top of vertical wall if there is no eave. Unenclosed off-street parking area, containing five or more spaces, shall be screened from adjoining areas in a residential district by the erection of a screening wall, fence, or hedge of acceptable design along the lot line or lines in common with the residential district, provided that if the parking area is located more than 50 feet from the residential district, the planning commission may waive screening requirements.

D. *Off-street parking and loading.* Off-street parking and loading spaces shall be provided as specified for the applicable use. The planning commission may consider designs providing for reasonable sharing of parking spaces by land uses which have inherently compatible time demands for parking. Required spaces may be provided on the lot containing the units for which it is intended to serve or in common areas. Common parking area shall be designed and located so as to be accessible to the units it is intended to serve. Provisions for the ownership and maintenance of common parking space as will insure its continuity and conservation shall be incorporated in the subdivision plat.

E. *Administration of planned unit development.* Procedural steps:

- Outline development plan
- Supplemental designation PUD
- Subdivision plat

(1) General.

(a) Any person, corporation, partnership, association, or combination thereof, owning or possessing a property right or interest in or to a tract of not less than five acres in size may make application for the approval of an outline development plan as provided in sections 2 and 3.

(b) Any person, corporation, partnership, association, or combination thereof,

owning or possessing a property right or interest in or to a tract of not less than one acre in size may make application for the supplemental district designation PUD. Such application shall be accompanied by an outline development plan processed in the manner set forth in sections 2, 3, and 4.

(c) In areas of existing development, any person, corporation, partnership, association, or combination thereof may propose the redevelopment or reuse of land through the processing of a PUD application. Due to the previous division of land areas in already developed area, the planning commission shall determine if a proposed site is suitable for development as a PUD. The planning commission and city council may place the supplemental designation PUD upon locations through the established zoning amendment process.

(2) *Application and outline development plan.* An application for a planned unit development shall be filed with the planning commission. The application shall be accompanied by the payment of a fee equal to that for rezoning applications which shall include advertising and sign costs. The application shall be in such form and content as the planning commission may by resolution establish, provided that three copies of an outline development plan shall accompany the filing of the application. The outline development plan shall consist of maps and/or text which contain:

(a) Existing topographic character of the land, and any topographic changes which are proposed.

(b) Proposed land uses, including public uses and open space and the approximate location of buildings and other structures.

(c) The character and approximate density of development. Density shall be expressed in numbers of dwelling units and quantitative areas of each identifiable segment of the development.

(d) The approximate location of thoroughfares.

(e) Sufficient surrounding area to demonstrate the relationship of the development to adjoining uses, both existing and proposed.

(f) An explanation of the character of the planned development.

(g) The expected schedule of development.

(3) *Public hearing and planning commission action.* The planning commission, upon the filing of an application for the supplemental district designation PUD or the filing of an application for the approval of an outline development plan, shall set the matter for public hearing and give 15 days notice thereof by publication in a newspaper of general circulation. Where deemed necessary by the planning commission, additional notice shall be given by the posting of a sign or signs on the property. Within 60 days after the filing of an application, the planning commission shall conduct the public hearing and shall determine:

- (a) Whether the proposal is consistent with the comprehensive plan.
- (b) Whether the proposal harmonizes with the existing and expected development of surrounding areas.
- (c) Whether the proposal is a unified treatment of the development possibilities of the project site.
- (d) Whether the proposal would benefit orderly and proper development of the city.
- (e) Whether the sidewalks and streets provide a traffic flow compatible with the development and surrounding street pattern.

Where a supplemental district designation PUD is required for the processing of a planned unit development, the planning commission shall forward its recommendation, the application and the outline development plan to the city council for further hearing as provided in sections 4, 5, and 6. Where planned unit development may be processed without the supplemental designation PUD (five acres or larger), the planning commission shall approve, approve with modification, or disapprove the outline development plan. Approval by the planning commission shall be authorization for the processing of a subdivision plat incorporating the provisions of the outline development plan. The planning commission, upon approval of the outline development plan, may direct that a notation indicating the boundaries of the PUD be made on the zoning map.

(4) *City council action.* Upon receipt of the application, outline development plan, and planning commission recommendation, the city council shall hold a hearing, review the outline development plan, approve, disapprove, modify, or return the outline development plan to the planning commission for further consideration. Upon approval the zoning map shall be amended to reflect the supplemental designation PUD, and the applicant shall be authorized to process a subdivision plat incorporating the provisions of the outline development plan.

(5) *Planned unit development subdivision plat.* A planned unit development subdivision plat shall be filed with the planning commission and shall be processed in accordance with the subdivision regulations, shall include:

- (a) Details as to the location of uses and street arrangement.
- (b) Provisions for the ownership and maintenance of any common open space as will reasonably insure its continuity and conservation. Open space may be dedicated to a private association or to the public, provided that a dedication to the public shall not be accepted without the approval of the city council.
- (c) Such covenants as will reasonably ensure the continued compliance with the approved outline development plan. In order that the public interest may be

protected, the city of Marietta shall be made beneficiary of the covenants pertaining to such matters as location of uses, height of structures, setbacks, screening, and access. Such covenants shall provide that the City of Marietta may enforce compliance therewith.

(6) *Issuance of building permits.* After the filing of an approved PUD subdivision plat, and notice thereof to the building inspector, no building permits shall be issued on lands within the PUD except in accordance with the approved plat. A building permit in a residential PUD for a freestanding or separate commercial structure shall not be issued until significant progress has been made on other aspects of the proposed development, as follows:

(a) Completion of one-third of the noncommercial features in a project of less than five acres.

(b) Completion of one-half of the noncommercial features in a project of more than five acres.

(c) And, the commission has received a satisfactory progress report.

(7) *Amendments.* Minor changes in the platted PUD may be authorized by the planning commission upon a review of a proposed amended subdivision plat, incorporating such changes, so long as substantial compliance is maintained with the outline development plan and the purposes and standards of the PUD provisions hereof. Changes which would represent a significant departure from the outline development plan shall require formal abandonment and the subsequent filing of a new application for planned unit development.

(8) *Abandonment.* Where a planned unit development has been processed pursuant to the supplemental designation of PUD, its abandonment shall require the city council's approval, after recommendation by the planning commission, of an application for amendment to the zoning map repealing the supplemental designation of PUD. Where a planned unit development has been processed by reason of being more than ten acres, its abandonment shall require the approval of the planning commission, and vacation of the plat.

(9) Appeals to the district court from actions of the planning commission. Any person aggrieved may appeal the final action of the planning commission on a proposed outline development plan or on a proposed subdivision plat to the district court by filing with the secretary of the planning commission within ten days after the action appealed from, a notice of appeal stating the grounds thereof. There shall be no right of appeal from any act of the planning commission taken in its advisory capacity to the city council.

(Ord. No. 1993-1, § 1, 1-5-93)

Section 5-11. Flood district.

The flood district is shown on the zoning map as a dashed line. The line indicates the limits of the regulatory flood. The exact configuration of this area is based on the best available information. It is recognized that the area may change as new information becomes available.

The flood district is a supplemental zoning district (sometimes called an "overlay district") in that it is an additional zoning district applied to floodprone properties. All properties within the flood district will have a nonsupplemental zoning classification applied to them.

The authorization of land uses must be reviewed by the planning commission on the basis of individual applications. Applications for use permits within the flood district must include documentation that:

1. The proposed use will not be subject to flood damage caused by the regulatory flood; and
2. The proposed use will not measurably increase flood heights or flood flows upstream or downstream of the proposed development.

The above documentation shall be submitted to the Marietta planning commission, and certified by an engineer registered for practice in the State of Oklahoma with concurrence of the engineer serving the city. (Ord. No. 1993-1, § 1, 1-5-93)

Section 5-12. Miscellaneous uses.

The subsections 1 through 11 set forth special provisions that apply to certain miscellaneous uses in certain zoning districts.

1. *Animal hospital, pound, or shelter; commercial kennel for cats or dogs; livestock sales or feeding facilities; riding academy; public stable; veterinarian's office with animals on the premises;* shall be located no nearer than 200 feet to an R-1 or R-2 district, and no nearer to a zoning lot line than 100 feet. Proponents of such uses shall show that adequate measures will be taken to prevent odor, dust, noise, or drainage from becoming a nuisance to uses on other properties. No incineration of animal refuse shall be permitted.
2. *Animal hospital, small animal treatment.* The planning commission may approve the location of restricted small animal hospitals in the C-1 or C-2 districts provided the following conditions are met:
 - A. These facilities shall not be permitted within 200 feet of residential districts.
 - B. Plans and specifications for proposed facilities shall detail provisions for soundproofing, avoidance of odors, and satisfactory sanitary services. Plans shall be submitted to planning commission for review.
 - C. Such facilities shall be restricted to treatment of common household pets.
 - D. Animals shall be kept on the premises only for purposes of medical treatment to the exclusion of boarding.
3. *Cemetery, columbarium, crematory, or mausoleum* shall have its principal entrance or entrances on a major thoroughfare, with ingress and egress so designed as to minimize traffic congestion and shall provide a wall at least six feet high or an evergreen hedge at least six feet high and three feet thick, along all property lines except those adjacent to a street.
4. *Earthmoving and excavation; depositing of construction materials on the ground* shall be subject

to regulations set forth in subparagraph 7.

5. *Flammable liquids and gasses, storage of.* The storage of flammable liquids and gasses shall comply with the following code and standards of the National Fire Protection Association as such code and standard may from time to time be revised:

- A. Code no. 30, with respect to flammable liquids,
- B. Standard no. 58, with respect to liquified petroleum gas.

6. *Junkyard, including salvage and auto wrecking* shall be permitted, provided that all exterior storage and processing areas are screened by solid walls or fences of such height and location as to prevent visibility of stored materials or of materials in process from any point eight feet above the ground on any thoroughfare or in any residential, commercial, I-1 or I-2 district, provided such point is not more than 300 feet distance from the nearest part of the fence. The storage of vehicles not in operating condition on any zoning lot shall be considered a violation of this ordinance unless it is in an I-2 or I-3 district and in compliance with section 5-12-6.

6.5. *Automobile repairs.* The planning commission in permitting automobile repairs on review may require installation of screening as set down in section 5-12-6 above, and any such other features as are considered necessary for protection of adjacent residential or commercial properties.

7. *Mining, including extraction of clay, gravel, or sand; quarrying of rock or stone; earth moving and excavation; depositing of construction material, clay, earth gravel, minerals, rock, sand, or stone, on the ground* shall not be construed to be a permitted use in any district, except the I-1, I-2, and I-3 districts, except for the following defined extractions and deposits:

- A. Excavations for the foundation or basement of any building or for a swimming pool for which a building permit has been issued, or deposits on the earth of any building or construction materials to be used in a structure for which building permit has been issued.
- B. Grading of any parcel of land for a permitted use where no bank is left standing and exposed of more than five feet in vertical height, or when less than 1,000 cubic yards of earth is removed from the premises.
- C. Grading in a subdivision which has been approved by the city in accordance with the Marietta subdivision regulations and any amendments thereto.
- D. Any extractive operation existing and operating as such on the effective date of this section; such operation shall conform with the provisions of these regulations within one year of the adoption of these regulations.

8. *Nursery school, day care center for more than five children, or private kindergarten* shall be on a site of at least 10,000 square feet and shall maintain a solid wall or fence at least six feet high between any play area and any other property in a residential district.

9. *Place of public assembly, major, including arena, auditorium, coliseum, stadium, or theater* with

seating capacity of 1,000 or over and drive-in theater, shall meet the following requirements:

- A. Have ingress and egress from a major thoroughfare or from a collector street not more than 300 feet distant (by shortest street route) from a major thoroughfare.
- B. Have ingress and egress so designated as to minimize traffic congestion and hazards.

A drive-in theatre shall be located not less than 200 feet from any residential district, and no projection screen thereof shall be so located as to be visible from any major thoroughfare within 1,000 feet thereof.

10. *Swimming pools.*

A. Any swimming pool in any district shall:

- (1) Be located at least ten feet from the nearest property line, unless a greater separation is required elsewhere in these regulations.
- (2) If said swimming pool is 42 inches or greater in depth, be so walled or fenced, with a fence or wall at least 4 feet high, as to prevent uncontrolled access by children from the street or any adjacent property.
- (3) If said swimming pool is a permanent swimming pool which is 42 inches or greater in depth, be screened by a masonry wall or solid fence at least 6 feet high facing the property line of any property in a residential district.

- (4) Require the issuance of a building permit, with the exception that a swimming pool less than 42 inches in depth does not require the issuance of a building permit.

(Ord. No. 2006-5-6, 06-12-06)

B. No swimming pool shall be permitted in any residential district unless such pool:

- (1) Is owned and operated by a public agency or a residential group from within the area in which the pool is located,
- (2) Is accessory to a residential use, or
- (3) Is accessory to a nonresidential use which is permitted in such district.

Except for a pool owned and operated by a public agency or a residential group from within the area in which the pool is to be operated, no pool shall be permitted in any residential district unless the pool is intended for the use of, and is used by, only the occupants of the principal use of the property on which it is located.

11. *Public utility and service uses*, including electrical substations, gas regulator stations, gas, telegraph, telephone and water transmission metering and distribution equipment and structures, water reservoirs, or

pumping stations, and other similar facilities provided that such facilities shall be set back, landscaped and/or screened from the side, rear, or front property line in such a manner as to be attractive and not offensive to abutting properties. This regulation shall not apply to electric, telegraph, or telephone transmission and distribution lines and poles which shall not be limited with respect to height or location and for which no permit shall be required under this ordinance.

12. *Fire zone.* The boundaries of the fire zone shall be coterminous with the C-2 and C-3 zoning districts. The fire zone provisions of the adopted building code shall apply to all construction in districts classified as C-2 and C-3.

13. *Church or other place of worship* shall be permitted in the zoning districts as shown in chapter 4 subject to the following site requirements:

District	Minimum Site Area	Front	Side	Rear
RA	3 acre	50 feet	50 feet	50 feet
R-1, R-2	1 acre	25 feet	25 feet	15 feet
C-1, C-2, C-3	½ acre	35 feet	10 feet	15 feet

14. No establishment where 3.2 beer or alcoholic beverages are sold for consumption on the premises and/or which offers games of chance or skill, such as pool, shuffle board, foose ball, etc., shall be permitted in any zoning classification of R-1, R-2, C-1 and C-2.

(Ord. No. 1985-4, § 2, 5-7-85; Ord. No. 1993-1, 1-5-93; Ord. No. 2001-4, 12-4-01)

Section 5-3 [5-13]. Procedure for authorizing conditional use.

For all uses in the tables of permitted uses contained herein, any and all use of said property is permitted subject to acquiring a conditional use permit. The following procedure is established to integrate properly the conditional uses with the other land uses located in the district. These uses shall be reviewed and authorized or rejected under the following procedure:

(a) Application for amendment. An owner or his duly authorized agent or representative may make application for a conditional use permit by filing with the office of the planning commission a written application in such form and content as the planning commission may establish. The application shall be accompanied by the payment of a \$100.00 fee. The cost of the legal publication and mailing as required by the planning commission shall be the responsibility of the city.

(b) Notice and public hearing. Upon receipt of an application, the planning commission shall set a date for a public hearing not less than 20 days nor more than 60 days from the date of filing. Notice of the public hearing shall be given by the planning commission by publication in a newspaper of general circulation in the City of Marietta at least 15 days prior to the public hearing. Said notice shall include a map of the area to be affected, which indicates street names or numbers, streams or other significant landmarks in said area. In addition to the notice provided above, notice of a public hearing of any conditional use permit shall be given by a sign or signs, as may be required, placed

on the property affected by such proposal. Such sign (or signs) and the lettering thereon shall be of sufficient size so as to be clearly visible and legible from the public street or streets toward which it faces. It shall contain information giving the date, time and place of the public hearing and by whom it shall be conducted, and the proposed use of the property and such other information as deemed necessary to provide adequate and timely public notice. The above signs shall be placed on the affected property at least 20 days before the date of the hearing. In addition, notice of a public hearing of any proposed conditional use permit shall be given by the secretary of the planning commission, mailing written notice 20 days prior to such public hearing to all owners of property within a 300-foot radius of the exterior boundary of the subject property. The applicant seeking the conditional use permit is responsible for and required to obtain the names and address of all owners of property within 300 feet as set out above. Said notice shall contain:

- (1) The legal description of the property and the street address or approximate location in the city;
- (2) The present zoning and the proposed use of the property; and
- (3) The date, time and place of the public hearing.

Said public notice for a conditional use permit shall also include a map of the area to be affected, which indicates street names or numbers, streams or other significant landmarks in said area.

(c) Protest to amendment. In case a protest against a conditional use permit application, or any part thereof, is filed three days before the time of said public hearing by the owners of 20 percent or more of the areas of the lots included in said proposal, 50 percent or more of the areas lots immediately abutting the territory or by the owners of 50 percent or more of the area of the lots within a 300-foot radius of the exterior boundary of the territory included in a proposal or separated therefrom only by an alley or street less than 300 feet wide, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city council of the City of Marietta.

(d) Planning commission action.

- (1) After notice and public hearing, the planning commission shall vote to:
 - (a) Recommend to the city council that the application be approved as submitted, or as amended, or be approved subject to modification; or
 - (b) Recommend to the city council that the application be denied.

(2) An application recommended for approval, or approval subject to modification, shall be transmitted to the city council with the report and recommendation of the planning commission within 15 days from the date of planning commission action.

(3) An application recommended for denial shall not be considered further, unless the applicant, within 15 days from the date [of] the planning commission action, files a written request with the city commission for a hearing. A fee of \$25.00 shall accompany the request; the planning commission shall forthwith transmit the application with its report and

recommendation to the city council.

(e) City action. The city council shall hold a hearing on each application regularly transmitted, pursuant to the receipt of a fee of \$25.00, and on each application which has been transmitted pursuant to an appeal as provided in subsection (d)(3). The city council shall approve the application as submitted and recommended by the planning commission, or approve the application subject to modification, or deny the application or return the application to the planning commission for further study. The city council may make its approval of any conditional use permit subject to conditions when, in its judgment, compliance of the application to said conditions would diminish adverse impact of the desired use on surrounding uses. The conditions to be met shall be made an integral part of the city council action authorizing the conditional use permit. (Ord. No. 1992-3, § 1, 7-7-92; Ord. No. 1993-1, § 1, 1-5-93)

CHAPTER 6. GENERAL PROVISIONS

Section 6-1. Nonconforming uses.

1. *Continuing existing nonconforming uses.* Except as hereinafter specified, any use, building, or structure, existing at the time of the enactment of these regulations may be continued, even though such use, building or structure may not conform with provisions hereof for the district in which it is located; provided, however, that this section does not apply to any use, building or structure established in violation of any zoning regulation previously in effect in Marietta unless said use, building, or structure now conforms with these regulations.

2. *Limitations on nonconforming uses.*

A. No nonconforming use of a building or land shall be enlarged, extended, reconstructed, substituted, or structurally altered, unless:

(1) Such change is required by law or order, or

(2) The use thereof is changed to a use permitted in the district in which such building or land is located, or

(3) Authority is granted by the board of adjustment to extend a nonconforming use or substitute another nonconforming use for a nonconforming use, or

(4) Authority is granted by the board of adjustment to enlarge or complete a building devoted a nonconforming use upon a lot occupied by such building where such extension is necessary and incidental to the existing use of such building, or

(5) Authority has been granted by the board of adjustment to extend a nonconforming use throughout those parts of a building which were manifestly designed or arranged for such use prior to the date when such use or building became nonconforming, if no structural alterations, except those required by law, are made therein.

B. Whenever a nonconforming use has been changed to a conforming use, such use shall not

thereafter be changed to a nonconforming use.

3. *Cessation of use of building or land.*

A. A lawful nonconforming use of a building or structure that has been voluntarily discontinued for a period of six calendar months shall not thereafter be resumed.

B. A lawful nonconforming use of land that does not involve improvements with an assessed value in excess of \$1,000.00 that has been voluntarily discontinued for a period of 30 days shall not thereafter be resumed.

C. A nonconforming commercial or industrial use of land shall be discontinued within one year, unless on the effective date of these regulations the assessed value of buildings located on the property was in excess of \$1,000.00. Any such nonconforming use of land which becomes nonconforming by reason of subsequent amendments to these regulations shall also be discontinued within one year from the date of such amendment.

4. *Discontinuance of nonconforming signs.* All nonconforming signs, billboards, or commercial advertising structures shall be discontinued within three years from the effective date hereof, except that nonconforming signs specifically describing the business or nature of a lawful nonconforming building, structure or use on the premises may be maintained during the lawful lifetime of the building, structure, or use.

5. *Construction approved prior to these regulations.* Nothing herein contained shall require any change in the overall layout, plans, construction, size, or designated use of any development, building, structure or part thereof, where official approvals and required building permits have been granted before the enactment of these regulations, or any amendment thereof, the construction of which, conforming with such plans, shall have been started prior to the effective date hereof and completion thereof carried on in a normal manner within the subsequent six-month period, and not discontinued until completion, except for reasons beyond the builder's control.

6. *Replacement of damaged or destroyed nonconforming uses.* Any nonconforming building or structure damaged more than 50 percent of its then appraised value for tax purposes, exclusive of foundations, by fire, flood, explosion, wind, earthquake, war, riot, or other calamity or act of God, shall not be restored or reconstructed and used as before such happening; but if less than 50 percent damaged above the foundation, it may be restored, reconstructed, or used as before, provided that restoration or reconstruction be completed within 12 months of such happening.

7. *Repairs to nonconforming uses, limitation.* Such repairs and maintenance work as are required to keep it in sound condition may be made to a nonconforming building or structure, provided that no structural alterations shall be made except such as are required by law or ordinance. Except as otherwise provided elsewhere herein, the total structural repairs and alterations that may be made in a nonconforming building or structure shall not, during its life subsequent to the date of its becoming a nonconforming use, exceed 50 percent of its then appraised value for tax purposes at such time, unless such building or structure is changed to a conforming use.

Section 6-2. Height and density.

No building shall hereafter be erected or altered which will exceed the height limit nor shall any building or land be used or occupied hereafter in excess of the density regulations for that district; no building shall hereafter be erected or altered to accommodate a greater number of families than those specified for that district; no building shall be erected or altered to exceed the specifications or required lot size, maximum coverage, yard requirements, height limitations, or bulk limitations for that district as defined.

Section 6-3. Buildings.

Any building hereafter erected or structurally altered shall be located on one lot and except as provided herein; there shall be no more than one principal building and the customary accessory buildings on one lot; provided further that accessory buildings may not be erected or placed in the front- and side-yard areas as required in the separate districts.

Section 6-4. Street access.

No principal building shall hereafter be constructed on a lot which does not abut a public dedicated street.

Section 6-5. Annexation clause.

Any territory annexed to the corporate limits of Marietta, Oklahoma, subsequent to the effective date of this ordinance will be within the jurisdiction of this ordinance and will upon annexation be zoned as R-1, single-family residential, unless otherwise classified by the city council. Within six months after the effective date of such annexation, the city council of the City of Marietta shall, in accordance with 11 O.S. §§ 43-101—43-109, and this ordinance, rezone said annexed territory in keeping with the comprehensive plan.

CHAPTER 7. EXCEPTIONS AND MODIFICATIONS

The requirements and regulations specified hereinbefore shall be subject to the following exceptions, modifications, and interpretations:

Section 7-1. Existing lots of record.

1. Any lot or parcel of land in any district that was under separate ownership and of record on the date of adoption of these regulations, or amendment thereof, where no adjoining undeveloped land fronting on the same street was under the same ownership on said date, may be used as a building site even though such lot or parcel fails to meet the minimum requirements for lot area, lot width, or both, that are generally applicable to lots in the district. With respect to such lots, yard dimensions and other requirements not involving lot area or width shall be complied with, subject to paragraphs 2 and 3.

2. On any such lot or parcel the side yard requirements of these regulations shall not operate to reduce the net buildable width of such lot below 38 feet; provided, however, that the application of this exception shall not be permitted to reduce:

- A. Any interior side yard below ten percent of the width of the lot, or

- B. Any exterior side yard below 20 percent of the width of the lot or eight feet, whichever is greater.
3. On any such lot or parcel no combination of the following requirements shall operate to reduce the net buildable depth of such lot below 70 feet:
- A. Front and rear yard,
 - B. Front and/or rear building setback, provided, however, that the application of this exception shall not be permitted to reduce:
 - C. Any front yard below ten percent of the depth of the lot, or
 - D. Any rear yard below 15 percent of the depth of the lot, or ten feet, whichever is greater.

Section 7-2. Fences, walls, and hedges.

Fences, walls and hedges may be located in required yards as follows:

- 1.
 - A. In areas of required rear yards, not exceeding eight feet,
 - B. In areas of required side yards, not exceeding six feet,
 - C. In areas of required front yards, not exceeding four feet, except in areas of vision triangles.
- 2. On any corner lot, no fence, wall, hedge or other structure or planting more than three feet in height above curb level shall be erected, placed, or maintained within the triangular area formed by the intersecting streetlines and a straight line joining said streetlines at points whose distance from the point of intersection is 25 feet.

Section 7-3. Planting in parkways.

No hedge, tree, shrub, or other growth shall be planted in the area between the street curb and the front property line, said area being known as the "parkway," when such planting would create a traffic hazard by obstructing the view or when such planting would obstruct or hinder future development or use of said parkway.

Section 7-4. Obstructions around fire hydrants.

No person shall place or cause to be placed upon or about any fire hydrant any rubbish, plants, building material, fence, or other obstruction of any character whatsoever, nor shall any person fasten to a fire hydrant any guy rope, cable, or brace, nor park any vehicle nearer than 15 feet to a fire hydrant.

CHAPTER 8. ADMINISTRATIVE PROCEDURES AND REQUIRED PERMITS AND FEES

Section 8-1. Board of adjustment.

- 1. *Appointment.* There is hereby created a city board of adjustment consisting of five members, each

to be appointed by the city council for a term of three years. It is specifically provided, however, that on the effective date of these regulations such board of adjustment as was legally in existence immediately prior to such date shall be constituted as the board of adjustment hereby created, and the terms of the then members of the board shall expire on the same dates as were established at the times of the most recent appointment of each of such members, or until their successors are duly appointed and qualified. Therefore, all appointments shall be made for a term of three years. Vacancies shall be filled by appointment by the city council to serve out the unexpired term. Appointments of members of the board of adjustment may include two members of the planning commission, each of which shall serve as voting members.

2. *Removal.* A member of such city board of adjustment, once qualified, can thereafter be removed during his term of office only for cause and after public hearing. In the event of the death, resignation or removal of any such member before the expiration of this term, a successor shall be appointed by the city council to serve his unexpired term.

3. *Organization.*

A. *Officers.* A chairman and vice-chairman shall be elected annually by the board from among its membership.

B. *Duties of officers.* The chairman, or in his absence the vice-chairman, shall preside at all meetings, shall decide all points of order or procedure, and, as necessary, shall administer oath and compel the attendance of witnesses.

C. *Rules and meetings.* The board may adopt rules to govern its proceedings; provided, however, that such rules are not inconsistent with these regulations. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. All meetings of the board shall be open to the public. The board shall keep minutes of its own proceedings, showing the vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

4. *Powers and duties.* The board of adjustment shall have all the powers and duties prescribed by law and by these regulations, which are more particularly specified as follows:

A. *Interpretation.* Upon appeal from a decision by the building inspector or other administrative official, to decide any question involving the interpretation of any provision of these regulations, including determination of the exact location of any district boundary, if there is uncertainty with respect thereto.

B. *Exception.* To hear and decide special exceptions to the terms of these regulations upon which such board is required to pass under these regulations by granting special zoning permits at evidence thereof. No such special zoning permit shall be granted by the board of adjustment unless it meets both of the following findings:

(1) That the use as described by the applicant will comply with all conditions established therefore by these regulations, and

(2) That the use will not, in the circumstances of the particular case, be injurious to the

neighborhood or otherwise detrimental to the public welfare.

C. *Variance.* To vary or adapt the strict application of any of the requirements hereunder in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, where such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. No variance shall be granted to permit in any district a use that is not a permitted use in such district. In granting any variance, the board of adjustment shall prescribe any conditions that it deems necessary or desirable.

D. *Appeals.* To hear and decide appeals where it is alleged that there is an error of law in any order, requirements, decision, or determination made by an administrative official in the enforcement of these regulations.

5. *Procedure.*

A. *General.* The board shall act in strict accordance with the procedure specified by law and by these regulations.

B. *Appeals.* Appeals to the board can be taken by any person aggrieved or by any officer, department, or board of the city affected by any decision of the building inspector or other administrative officer. All appeals and applications made to the board shall be made in writing, on forms prescribed by the board, within ten days after the decision has been rendered by the building inspector or other administrative officer. The appeal or application shall be accompanied by an abstractor certified mailing list containing the names and addresses of owner of all properties within 300 feet of the subject property. Every appeal or application shall refer to the specific provision of these regulations involved and shall exactly set forth:

- (1) The interpretation that is claimed,
- (2) The use for which the permit is sought, or
- (3) The details of the variance that is applied for and the grounds on which it is claimed the variance should be granted, as the case may be.

The appeal or applications shall be filed with the officer from whom appeal is taken and with the board. The officer from whom appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

C. *Hearing and notice.* The board shall fix a reasonable time for the hearing of an appeal, give public notice thereof 15 days before the date of the hearing, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person, by agent or by attorney.

D. *Decisions and records.*

- (1) In exercising its powers the board may, in conformity with the provisions set forth in

the statutes of the State of Oklahoma governing said board, revise or reform, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and shall have all the powers of the officer from whom appeal is taken.

(2) Three members of the city board of adjustment shall constitute a quorum. The concurring vote of three members shall be necessary to revise any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under these regulations or to effect any variance in said regulations.

(3) Every decision of the board on an appeal or application shall be by resolution, each of which shall contain a full record of the findings of the board in the particular case. Each such resolution shall be filed in the board's office, by case number, under one or another of the following headings:

- (a) Interpretations,
- (b) Exceptions, or
- (c) Variances,

together with all documents pertaining thereto.

E. *Fee.* The fee of any appeal or application to the board shall be \$15.00, no part of which shall be refundable.

6. *Effect of appeal.* An appeal shall stay all proceedings of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

7. *Appeals to court.* Any person or persons, jointly or severally, aggrieved by any decision of the board, or any taxpayer or any officer, department, or board of the city of Marietta may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board and not thereafter.

(Ord. No. 1993-1, § 1, 1-5-93)

Section 8-2. Building permit.

1. *Generally.* It shall be unlawful to commence the construction or the excavation for the construction of any building or structure, including accessory buildings, or to commence the moving or alteration of any building, including accessory buildings, until the building inspector has issued a building permit for such work. Except upon written authorization of the board of adjustment as provided in section 8-1, no such

building permit shall be issued for any building where said construction, moving, alteration or use thereof would be in violation of any provisions of these regulations.

2. *Application.* There shall be submitted with each application for a building permit two copies of a layout or plot plan drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location on the lot of any existing buildings or structures, if any, and the size and location of the building or structure to be constructed, altered or moved. The applicant shall also state the existing or intended use of each such building or part of building and supply such other information with regard to the lot and neighboring lots that may be necessary to determine compliance with and provide for the enforcement of these regulations. One copy of the plans shall be returned to the applicant by the building inspector, after he shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. The second copy of the plans similarly marked, shall be retained by the building inspector. The application for a building permit shall be made by the owner of the property concerned or a certified agent thereof.

3. *Fees.* The application fee for a building permit in the City of Marietta shall be as prescribed in the building code for the City of Marietta.

4. *Expiration of building permit.* If the work described in a building permit has not began within six months from the date of issuance thereof, said permit shall expire and be canceled by the building inspector, and written notice thereof shall be given to the persons affected.

Section 8-3. Certificate of occupancy.

1. Except for any property of any railway company or terminal company, no land shall be occupied or used, and no building hereafter erected, altered, or extended shall be used, and no use of land or building shall be changed until a certificate of occupancy shall have been issued by the building inspector, stating that the building or proposed use complies with the provisions of these regulations.

2. The application fee for a certificate of occupancy shall be \$5.00.

CHAPTER 9. VIOLATION AND PENALTY

Section 9-1. Violation and penalty.

A violation of these regulations shall be deemed a misdemeanor and shall be punishable by fine as now provided by law for misdemeanors. Each day that a violation is permitted to exist shall constitute a separate offense.

CHAPTER 10. AMENDMENTS, VALIDITY, ENACTMENT

Section 10-1. Amendments.

1. *General.* These regulations may be amended by changing the boundaries of districts or by changing any other provision thereof whenever the public necessity and convenience and general welfare require such amendment.
2. *Application for amendment.*
 - A. *Who may initiate action.* Amendment may be initiated by the city council or the planning commission or by an application of one or more owners of property affected by the proposed amendment.
 - B. *Application fee.* All applications of zoning or annexation of property shall be accompanied by a fee of \$400.00, no part of which shall be refundable to the applicant regardless of whether or not the ultimate goal of the amendment or annexation is successful.
 - C. *Accompanying data.* An application for amendment shall be accompanied by drawings and any data necessary to demonstrate that the proposed amendment is in general conformance with the comprehensive plan and that public necessity, convenience, and general welfare require the adoption of the proposed amendment. An accurate legal description and map of the land and existing buildings shall be submitted with the application. A certified abstractor's list of all owners of property located within 300 feet of the subject property shall be submitted with the application.
 - D. *Timing.* The application shall be delivered to the planning commission at least 21 days prior to the date of the meeting at which action is to be sought.
3. *Public hearings before the planning commission.* Upon filing of the application, the planning commission shall hold a public hearing on said application as provided for herein.
 - A. *Notice of public hearing.* The planning commission shall publish a notice of the public hearing in an official paper or a newspaper of general circulation in the City of Marietta, at least 15 days prior to the date of said public hearing giving the time and place of the public hearing and the proposed zoning change. Notice shall be mailed to all owners of property located within 300 feet of the subject property.
4. *Action by planning commission at conclusion of hearing.* If at the conclusion of the public hearing the planning commission decides to recommend amendment of these regulations, said recommendation shall be by resolution of the planning commission carried by the affirmative votes of not less than a majority of its total membership. A copy of any recommended amendment shall be submitted to the city council and shall be accompanied by a report of findings, summary of hearing, and recommendations of the planning commission.
5. *Action by the city council.*
 - A. *Action on planning commission recommendation.* After receipt of a copy of any recommendation from the planning commission and before any action may be taken, the city council shall set the matter for public hearing and shall give notice of the time and place of the hearing by one publication in an official newspaper or a newspaper of general circulation in Marietta at least

15 days prior to such hearing.

B. *Change by the city council in recommendation of planning commission.* If the city council proposes to adopt an amendment to the regulations in a form altered from said amendment as recommended by the planning commission, or an amendment where denial has been recommended by the planning commission, the city council shall refer said matter back to the planning commission for report and recommendation before adoption. If the planning commission has not held a public hearing on said proposed amendment, it shall do so under the procedure set forth in paragraph 3. The failure of the planning commission to report within 30 days after reference shall be deemed to be approval of the proposed amendment.

C. *Vote under protest.* In case of a protest against a change, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or by owners of 50 percent or more of the area of the lots immediately abutting either side of the territory included in such proposed change or separated therefrom by an alley or street, such amendment shall not become effective except by a favorable vote of four-fifths of all members of the city council.

6. *Effect of denial of application.* In case an application for amendment to the regulations is denied, said application shall not be eligible for reconsideration for one year subsequent to such denial. A new application affecting or including all or part of the same property must be substantially different from the application denied, in the opinion of the council, to be eligible for consideration within less than one year of the denial of the original application.

(Ord. No. 1993-1, § 1, 1-5-93; Ord. No. 2002-4, 6-4-02; Ord. No. 2004-1-7, 8-3-04)

Section 10-2. Validity.

Should any section, subsection, paragraph, clause, or provision of these regulations be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the regulations as a whole or any part thereof, other than the part so declared to be invalid. The city council of the City of Marietta does hereby declare that they would have passed these regulations and each section, subsection, paragraph, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases be declared invalid.

Section 10-3. Enactment.

These regulations shall be in full force and effect from and after final passage by the city council of the City of Marietta.

Section 10-4. Repeal of conflicting ordinances.

Any ordinance now in effect that conflicts with any provisions of this ordinance is hereby repealed.

Section 10-5. Emergency.

Whereas an immediate necessity exists in order to provide proper regulation of the use of property within the City of Marietta, and for the preservation of the peace, health and safety of the citizens of said city, an emergency is hereby declared to exist whereby this ordinance shall be in full force and effect from and after

its passage, approval and publication.

The following is a list of the names of the persons who have been appointed to the various committees and subcommittees of the Zoning Commission, and the names of the persons who have been appointed to the various advisory committees of the Zoning Commission.

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MATRIX 1

PLAN/ZONE MATRIX

<i>Plan Categories</i>	<i>Zoning Districts</i>								
	<i>A-1</i>	<i>R-1</i>	<i>R-2</i>	<i>C-1</i>	<i>C-2</i>	<i>C-3</i>	<i>I-1</i>	<i>I-2</i>	<i>I-3</i>
<i>Low Intensity</i>	+	+	0	0	-	-	-	-	-
Residential	+	+	-	-	-	-	-	-	-
Commercial	+	-	0	+	-	-	-	-	-
<i>Medium Intensity</i>	+	+	+	+	0	0	0	-	-
Residential	+	+	+	0	-	-	-	-	-
Commercial	+	-	0	+	+	+	0	-	-
Industrial	+	-	-	-	0	+	+	+	+

The "+" indicates that the zoning district is in accordance with the comprehensive plan.

The "-" indicates that the zoning district is not in accordance with the comprehensive plan.

The "0" indicates that the zoning district may in some cases be in accordance with the comprehensive plan. The determination has to be made by the zoning and adjustment board as to whether the zoning district conforms to the community-wide goals and needs.

(Ord. No. 1993-1, § 1, 1-5-93)

MATRIX 2

Notes: None of the listed uses shall be permitted in the FD zone as shown on the zoning map except as provided in section 5-11 of these regulations.

X = Uses permitted

R = Uses permitted only upon review of the Marietta planning and zoning commission.

Permitted Uses	Special Provisions		Residential Districts			Commercial Districts			Industrial Districts		
	Special Conditions, see sec.:	Parking Spaces Required	A1	R1	R2	C1	C2	C3	I1	I2	I3
Accessory uses, incidental to those listed	None	None	X	X	X	X	X	X	X	X	X
Advertising signs or structures (on premises)	5-8	None				X	X	X			
Advertising signs or structures (off premises)	5-8	None	R				X	X		X	X
Agriculture: farming, dairying, horticulture, animal and poultry husbandry, excluding the feeding of offal or garbage	None	None	X								
Agriculture: gardening, not commercial	None	None	X	X	X	X	X	X	X	X	X
Ambulance service, office or garage	None	1 per 150 sq. ft. gross floor area					X	X			
Amusement enterprises	None	1 per 50 sq. ft. GFA					X	X			
Artist supplies and hobby shop		1 per 100 sq. ft.				X	X	X			
Automobile repair, major	5-12-3.6	1 per 400 sq. ft.					R	R	X	X	X
Automobile repair, minor	5-12-3.6	1 per 400 sq. ft.					R	R	R	X	X
Automobile sales and service, new and used	None	1 per 150 sq. ft. GFA					X	X			
Automobile service station	5-12-5	1 per 300 sq. ft.				R	X	X			
Automobile wrecking and junkyards	5-12-6	1 per 300 sq. ft.								X	X
Bakery shop	None	1 per 200 sq. ft.				X	X	X			
Banks, saving institutions	None	1 per 200 sq. ft.				X	X	X			
Barber, beauty shops	5-9	1 per 200 sq. ft.				X	X	X			
Blacksmiths and welding shops	None	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.						X	X	X	X
Boat sales	None	1 per 150 sq. ft.					X	X			
Bookstore	None	1 per 150 sq. ft.				X	X	X			
Bottling works	None	1 per 3 employees + 1 dock per 25,000 sq. ft.								X	
Bowling alley	None	1 per 150 sq. ft.					X	X			

MATRIX 2

Permitted Uses	Special Provisions		Residential Districts			Commercial Districts			Industrial Districts		
	Special Conditions, see sec.:	Parking Spaces Required	A1	R1	R2	C1	C2	C3	I1	I2	I3
Building materials sales	None	1 per 1,000 sq. ft. + 1 berth per 25,000 sq. ft.					X	X	X	X	
Bulk fuel sales	5-9 5-12-5	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.								X	X
Bus terminal	None	1 per 150 sq. ft.					X	X			
Canning, preserving factory	5-9	1 per 3 employees + 1 dock per 25,000 sq. ft.								X	X
Cemetery	5-12-3	None	X								
Child care center/day nursery ¹	5-12-3	1 per 150 sq. ft.				R	X	X			
Child care center/day nursery as part of religious facility	5-12-3	1 per 150 sq. ft.			R	R	X	X			
Church or other worship place	5-12-13	1 per 4 seats	X	R	R	X	X	X			
Clothing, wearing apparel store	None	1 per 200 sq. ft.				X	X	X			
Cold storage plants	5-9	1 per 500 sq. ft.							X	X	X
Commercial radio/television antenna towers and equipment	5-9	1 per 1,000 sq. ft. + loading berth per 25,000 sq. ft.	R						X	X	X
Compounding, processing, blending and storage of chemical products, not including explosives	5-9	1 per 3 employees + 1 loading berth per 25,000 sq. ft.								X	X
Convalescent, rest, or nursing home	None	1 per 6 beds + 1 each per 2 employees + 1 reserved for doctor			X	X	X	X			
Convenience store without sale of gasoline	None	1 per 150 sq. ft.				X	X	X			
Convenience store with sale of gasoline		1 per 150 sq. ft.				R	X	X			
Dairy products store	None	1 per 150 sq. ft.				X	X	X			
Dancehall	None	1 per 150 sq. ft.					X	X			
Deli/caterer	None	1 per 150 sq. ft.				X	X	X			
Dental lab, supply house	None	1 per 150 sq. ft.				X	X				
Department store	None	1 per 150 sq. ft.				R	X	X			
Drive-in theater/restaurant	5-12-9	1 per 150 sq. ft.					X	X	R		
Drugstore	None	1 per 150 sq. ft.				X	X	X			
Dwelling, duplex (two-family) ²	None	1 per dwelling unit			X						
Dwelling, mobile home	4-6	See 4-6		R	R						
Dwelling, multifamily ²	None	1.5 per unit			R						
Dwelling, rooming, boarding houses and dormitories	None	1 per 2 guests, 0.75 per occupant			R						
Dwelling, single-family	None	1	X	X	X						
Feed store	None	1 per 150 sq. ft.					X	X	X	X	
Florist shop	None	1 per 150 sq. ft.				X	X	X			
Food store	None	1 per 150 sq. ft.				X	X	X			
Furniture store	None	1 per 300 sq. ft.					X	X			
Furniture repair and upholstery	None	1 per 150 sq. ft.					X	X	X		
Funeral parlor	None	1 per 150 sq. ft.					X	X			

MATRIX 2

Permitted Uses	Special Provisions		Residential Districts			Commercial Districts			Industrial Districts		
	Special Conditions, see sec.:	Parking Spaces Required	A1	R1	R2	C1	C2	C3	I1	I2	I3
Garden stores	None	1 per 150 sq. ft.					X	X			
Gift shop	None	1 per 150 sq. ft.				X	X	X			
Golf course or country club for recreation, commercial activity accessory. Excludes driving range, pitch and putt and miniature	None	1 per 150 sq. ft.	X	R	R						
Golf course, miniature or practice range	None	1 per 150 sq. ft.					X	X			
Hardware store	None	1 per 250 sq. ft.					X	X			
Heating and plumbing sales and service	None	1 per 150 sq. ft.					X	X			
Home occupations	5-2	None		R	R						
Hospital	None	1 per 4 beds; 1 per Dr. on staff; 1 per 3 employees + emergency vehicle space					X	X			
Hospital, small animals	5-12-2	1 per 150 sq. ft.						X	X	X	X
Hotel, motel	None	1 per 150 sq. ft.					X	X			
Ice cream production and distribution	5-9	1 per 3 employees + 1 dock per 25,000 sq. ft.							X	X	
Ice plant, frozen food locker	None	1 per 150 sq. ft.					X	X	X		
Interior decorating store	None	1 per 150 sq. ft.					X	X			
Kennel	5-12-1	1 per 150 sq. ft.					X	X			
Key shop	None	1 per 150 sq. ft.					X	X			
Laundry and dry cleaning pickup stations	None	1 per 200 sq. ft.				X	X	X			
Laundry, self-service	None	1 per 200 sq. ft.				X	X	X			
Library	None	1 per 50 sq. ft.					X				
Liquor store	None	1 per 150 sq. ft.					X	X			
Lodges, service institutions ¹	None	1 per 50 sq. ft.				R	X	X			
Machinery rental, sales and service, new and used	5-9	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.					X	X	X	X	
Machine shops, tool and dye shops, metal products manufacture, excluding use of automatic screw machines, drop forges or riveting machines	5-9	1 per 2 employees + 1 dock per 25,000 sq. ft.							X	X	
Mail order house	5-9	1 per employee + 1 dock per 25,000 sq. ft.					X		X	X	
Manufacturing and assembling textile and other products excluding raw material processing	5-9	1 per employee + 1 dock per 25,000 sq. ft.							R	X	X
Manufacturing and assembling electrical and electronic products and equipment	5-9	1 per employee + 1 dock per 25,000 sq. ft.							X	X	X
Manufacturing, fabricating, assembling, repairing, storing, cleaning, servicing or testing excluding use of automatic screw machines, drop forges or rivet machines	5-9	1 per employee + 1 dock per 25,000 sq. ft.								X	X

MATRIX 2

Permitted Uses	Special Provisions		Residential Districts			Commercial Districts			Industrial Districts		
	Special Conditions, see sec.:	Parking Spaces Required	A1	R1	R2	C1	C2	C3	I1	I2	I3
Medical facility, clinic or office	None	6 per doctor + 1 per 2 employees					X	X			
Milk bottling and distributing	5-9	1 per 400 sq. ft.								X	X
Mobile home park/court	4-5	1 per stand + 1 per 4 additional stands			R						
Monument stone cutting	5-9	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.								X	X
Motor freight terminal	5-9	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.						R		X	X
Music, radio, television shop and repair	None	1 per 150 sq. ft.					X	X			
Nightclub	None	1 per 150 sq. ft.					X	X			
Novalty shop	None	1 per 150 sq. ft.					X	X			
Office, general and administrative	5-8	1 per 300 sq. ft.					X	X	X	X	X
Parking lot	5-3	as required for uses		R	R	R	R	R	R	R	R
Parks, playgrounds, forest preserves operated not for profit	None	None	X	X	X	R	R	R			
Pattern shop	5-9	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.								X	X
Pawnshop	None	1 per 150 sq. ft.					X	X			
Pet store	None	1 per 150 sq. ft.					X	X			
Pharmacy	None	1 per 250 sq. ft.				X	X	X			
Plant nursery, retail excluded	None	None	X	R	R			X			
Police and fire stations	None	None	X			X	X	X			
Printing shop	None	1 per 150 sq. ft.					X	X	X		
Printing and binding plant	5-9	1 per 1,000 sq. ft. + 1 berth per 25,000 sq. ft.					X		X	X	X
Processing, meat and vegetable products	5-9	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.								X	X
Public garage or parking	5-3	1 per 250 sq. ft.					X	X	X		
Public health center	None	6 per doctor + 1 per 2 employees					X	X			
Public buildings, or those used in the public interest, including art galleries, post office, libraries, museums, stadiums, auditoriums, arenas, armories	5-12-9	1 per 200 sq. ft.	X			X	X	X			
Public utility and service uses ⁴	5-12-11	1 per 400 sq. ft.	X	R	R	X	X	X	X	X	X
Railroad yards and switching areas, including lodging facilities	5-9	1 per 3 employees								X	X
Recreation center, community	5-12-10	1 per 50 sq. ft.	X				X				
Recreation center, private	None	1 per 50 sq. ft.					X	X			
Research laboratories	5-9	1 per 2 employees + 1 dock per 25,000 sq. ft.					X	X	X	X	
Restaurants, service in autos	None	1 per 50 sq. ft.					X	X	R		
Restaurants, no service in autos	None	1 per 100 sq. ft.				R	X	X			

MATRIX 2

Permitted Uses	Special Provisions		Residential Districts			Commercial Districts			Industrial Districts		
	Special Conditions, see sec.:	Parking Spaces Required	A1	R1	R2	C1	C2	C3	I1	I2	I3
Roller skating rink	None	1 per 50 sq. ft.					X	X			
Sanatorium	None	1 per 6 beds + 1 per staff + 1 per 2 employees					X	X			
School, public and private	None										
Elementary		1 per employee	X	X	X						
Mid-high, junior high		+ 1 per classroom	X	4	4						
Senior high		+ 1 per 50 sq. ft. assembly area	X	4	4						
Shoe repair	None	1 per 200 sq. ft.				X	X	X			
Sign painting	5-9	1 per 150 sq. ft.					X	X		X	X
Soldering and welding	5-9	1 per 2 employees + 1 dock per 25,000 sq. ft.								X	X
Spray painting and mixing	5-9	1 per 1,000 sq. ft. + 1 dock per 25,000 sq. ft.								X	X
Sporting goods store	None	1 per 150 sq. ft.					X	X			
Stockbroker	None	1 per 150 sq. ft.					X	X			
Tailor shop	None	1 per 200 sq. ft.					X	X			
Tavern	None	1 per 100 sq. ft.				R	X	X			
Temporary building, construction phase only	None	None	X	R	R	X	X	X	X	X	X
Temporary bulletin board, sign	5-8	None		R	R	X	X	X	X	X	X
Theater	5-12-9	1 per 4 seats					X	X			
Toy store	None	1 per 150 sq. ft.					X	X			
Travel trailer park and sales	5-5 and 5-6	1 per 150 sq. ft.						X			
Utility service installation	5-12-11	1 per 400 sq. ft.					X	X	X	X	X
Variety store	None	1 per 150 sq. ft.				R	X	X			
Veterinarian clinic	5-12-1	1 per 200 sq. ft.						X		X	X
Warehouse and storage	5-9	1 per 1,000 sq. ft. + 1 berth per 25,000 sq. ft.						R	X	X	X
Water filtration plant	5-9	1 per 3 employees + 1 berth per 25,000 sq. ft.							X	X	X
Wholesale distributing center	None	1 per 150 sq. ft.					X	X	X	X	X

¹Minimum lot size 10,000 sq. ft. plus principal access on major street.

²No garage apts. on same lot as two-family dwellings.

³Minimum lot size one acre, frontage on major street.

⁴Provided major street frontage available.

(Ord. No. 1985-4, § 1, 5-7-85; Ord. No. 1992-4, § 1, 7-7-92; Ord. No. 1995-4, § 1, 11-7-95)

MATRIX 3

Zoning Districts	Lot Area Minimum	Lot Width at Front Building Line (A)	Lot Coverage Maximum (percent)	Yards Minimum Setback					Height Maximum
				Front (B) (D)	Side		Exterior	Rear	
					Interior				
					Adjoining Resident District	Adjoining Non-Res. District			
A-1 agriculture	5 acres	160'	80 incl. acc. bldg.	50'	25'	25'	25'	60'	35'
R-1 single-family	8,000 sq. ft.	60'	30	20'	5 ^C	5 ^{C1}	15' street side	30' (acc. bldg., 10')	35'
R-2 medium Single-family Duplex	8,000 sq. ft. 8,000 sq. ft.	60' 80'	35	25'	5 ^C	5 ^{C2}	15' street side	30' (acc. bldg., 10')	35'
R-2 on review	8,000 sq. ft. + 1,200 sq. ft. per unit over 2	70'	50	25' Incl. dbl. frontage	5 ^C	5 ^{C2}	15' street side	20'	35'
Mobile homes	See regulations in chapter 6, section 6								
C-1 convenience comm.	10,000 sq. ft.	100'	30	38'	The greater of 10' or 1' per 1' ht. ^E		20'	10'	35'
C-2 general commercial	8,000 sq. ft.	60'	None	None	20'	None	20'	None	None
C-3 highway commercial and comm. recreation	10,000 sq. ft.	100'	70	28'	20'	None	30'	20'	45'
I-1 light industrial	10,000 sq. ft.	100'	40	38'	30'	1' per 1' ht. ^E	30'	30'	45'
I-2 medium industrial	15,000 sq. ft.	100'	60	38'	30'	1' per 1' ht. ^E	30'	30'	45'
I-3 heavy industrial	25,000 sq. ft.	125'	60	38'	40'	1' per 1' ht. ^E	30'	30'	45'

- A For any wedge-shaped lot the required frontage shall be measured at the building line.
- B Front yard setback measured from street right-of-way.
- C For buildings of more than one story, the minimum width of the side yard on all lots shall be not less than 10 feet. On a lot where the principal use is a nonresidential building there shall be a side yard of not less than one-half the height of the building but in no case less than 15 feet.
- D If in any given block one side of a street is occupied by structures 50 percent of which do not comply with the front yard setback requirement, then new construction may conform to the average setback of the existing structures.
- E The setback requirement of "1' per 1' ht." shall mean the height of the wall nearest the pertinent lot line, measured from floor elevation to top plate of the wall.