

ZONING ORDINANCE

14A Attachment 1

APPENDIX A ADMINISTRATION

A.1 ZONING PROCEDURES

A. Petition for Zoning Map Amendments

1. Purpose, Applicability and Effect

- a. Purpose. The purpose of a petition for a zoning map amendment is to establish the initial zoning district classification of land, or to authorize a use of land, or in the case of overlay zoning districts, to authorize uses or a set of zoning standards for the land that are not presently authorized under the regulations for the zoning district in which the property is located.
- b. Applicability. Where a property owner seeks to establish an initial zoning district classification for land, or to establish a use of land or through an overlay district to apply standards to a proposed use that are not currently authorized by the zoning district regulations currently in effect, the property owner must submit a petition for a zoning map amendment before seeking approval of any quasi-judicial or administrative development application for such land. The requirements of this Appendix A do not apply to land outside of the Town limits. The requirements of this Appendix do apply to land annexed to the Town upon the effective date of the annexation.
- c. Effect. Enactment of an ordinance approving a petition for a zoning map amendment results in a change in zoning district classification for the property, and the use of the land thereafter is subject to all requirements of the new zoning district. Approval of a petition for a zoning map amendment authorizes the property owner to establish any use authorized in the new zoning district, subject to the standards applicable within the zoning district, upon obtaining approval of all development applications required by this Zoning Ordinance.

2. Sequence of Approvals

- a. Prior Applications. A petition for a zoning map amendment shall not be approved unless the following petitions, where applicable, have been approved and remain in effect:
 1. Any petition for amendment of the Town's Master Plan upon which the petition for zoning map amendment is dependent; and
 2. Any petition for amendment of the regulations in this Zoning Ordinance required to authorize the use in the zoning district requested in the petition.

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- b. Subsequent Approvals. No application for a quasi-judicial or Board of Adjustments application shall be approved until a petition for a zoning map amendment has been approved authorizing the use or standards proposed in the development application.
3. Application Requirements
 - a. Responsible Official. The Town Secretary shall be the responsible official for a petition for a zoning map amendment.
 - b. Initiation of Zoning Map Amendment. Only the property owner or the owner's authorized agent (proof of such notarized authorization must be submitted with the zoning application), the Town Secretary, the Planning and Zoning Commission, or the Town Council on its own motion, may initiate a petition for a zoning map amendment.
 1. In the event the ownership stated on a petition is different from that shown in Town records, the petitioner shall submit written proof of ownership or notarized verification that the petitioner is acting as an authorized agent for the property owner.
 2. A landowner or agent seeking approval of a petition for a zoning map amendment shall pay or otherwise satisfy all delinquent taxes, paving assessments, impact fees, or any other delinquent debts or obligations for the property to be rezoned at the time the petition is submitted. It shall be the petitioner's responsibility to provide evidence or proof that all taxes and obligations have been paid.
 - c. Contents. The petition for a zoning map amendment shall be accompanied by an application on an official form with the required maps of the Town of Bartonville.
 4. Processing of Application and Decision
 - a. Notice. The Town Secretary shall cause published notice, posted notice and personal notice of the public hearings before the Planning and Zoning Commission and the Town Council to be given in accordance with Appendix Section A.5 of this Zoning Ordinance.
 - b. Special Notice. Whenever the Town Council intends to convene a joint public hearing with the Planning and Zoning Commission, the Town Secretary shall cause notice of the joint public hearing to be given as prescribed by separate ordinance of the Town Council.
 - c. Action by Commission. The Planning and Zoning Commission, following the public hearing, shall formulate a report and recommendation on the petition for a zoning map amendment, and shall forward the report and recommendation to the Town Council.

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- d. Decision. The Town Council shall consider the report of the Planning and Zoning Commission and the petition at a public hearing. The Town Council may vote only on a specific proposed amendment that has been recommended for approval or denial by the Planning and Zoning Commission. If the Town Council wants to consider a zoning designation other than that recommended by the Planning and Zoning Commission, the Council shall return the petition to the Planning and Zoning Commission with direction to make a recommendation on the alternate designation suggested by the Town Council. A decision of the Council reclassifying land to a different zoning district shall be in the form of an ordinance that amends the Town's official Zoning Map.
 - e. Super-Majority Vote. In each of the following circumstances, a zoning amendment shall not become effective except by the favorable vote of three-fourths of all members of the Town Council:
 - 1. When a written protest against the amendment is signed by the owners of twenty percent (20%) or more of either the area of the lots or land included in the proposed change, or of the lots or land immediately adjoining the same and extending two hundred (200) feet therefrom. In computing the percentage of land area, the area of streets and alleys shall be included in the computation. For purposes of applying this subsection, the written protest of any one owner of land owned by two or more persons shall be presumed to be the protest of all such owners.
 - 2. When the Planning and Zoning Commission recommends denial of the zoning amendment.
 - f. Deferral of Decision. The Planning and Zoning Commission or the Council may, on its own motion, or at the applicant's request, defer its recommendation or decision and continue the request to a date certain for not more than ninety (90) calendar days from the date of the initial public hearing, to consider other information or proposed modifications to the request which may have a direct bearing on the recommendation or decision. If the Planning and Zoning Commission or Council elects to table the request, the tabling shall specifically state the meeting date at which the request will reappear on the Commission's agenda, and further notice in the newspaper and to surrounding property owners shall not be required.
5. Criteria for Approval
- a. In making a determination regarding a requested zoning change, the Planning and Zoning Commission and the Town Council may consider the following factors:
 - 1. Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification

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of the property on the Future Land Use Map and any other incorporated plan maps;

2. Whether the proposed zoning map amendment is consistent with an annexation or development agreement in effect;
3. Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified;
4. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area; and
5. Any other factors which will substantially affect the public health, safety, morals, or general welfare.

B. Text Amendments

1. Legislative Changes to Zoning Ordinance

- a. Amendments. The Town Council may from time to time amend, supplement, or change the text of this Zoning Ordinance by a majority vote of its members, unless a different vote is otherwise required by this Zoning Ordinance or other law.
- b. Hearing and Notice. The Town Council shall conduct a public hearing on a proposed text amendment in accordance with Section A.6 of this Appendix and cause notice of the amendment to be published in accordance with Section A.5 of this Appendix for amendments to any provisions of this Zoning Ordinance.

The hearing and notice requirements of this Subsection do not apply to an action of the Town Council imposing a moratorium on the acceptance, processing or issuance of development permits or petitions for legislative decisions.
- c. Recommendation of advisory body. Where required by this Zoning Ordinance or other law, the Town Council shall first consider the recommendation of the Planning and Zoning Commission, together with the recommendations of any other advisory body prescribed by this Ordinance, concerning the proposed text amendment. Where action is required of the Planning and Zoning Commission or other advisory body on a proposed text amendment, the advisory body also shall conduct a public hearing and publish notice of its consideration of the amendment in the manner required by Sections A.5 and A.6, respectively.
- d. Initiation of Amendments. Unless otherwise limited by this Zoning Ordinance, a petition for amending the text of the Zoning Ordinance may be initiated by

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the Town Council, the Planning and Zoning Commission, a board, commission or advisory body, an ad hoc advisory body appointed by the Council, a responsible official designated in this Code, or any citizen or owner of land within the Town limits.

1. Except for amendments initiated by the Town Council, the petition to amend the text of this Zoning Ordinance shall state with particularity the nature of the amendment and the reason for the amendment.
2. A petition for a text amendment may be submitted in conjunction with a development application, approval of which depends on approval of the amendment, but shall in every such instance be decided prior to any action by the Town on the development application.
3. The Town Council may establish rules governing times for submission and consideration of text amendments.

(Ordinance 361-05 adopted 3/22/05)

A.2 RELIEF PROCEDURES

A. Appeals of incomplete development applications

1. Purpose, Applicability and Effect

- a. Purpose. The purpose of an appeal is to contest an initial decision on a development application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this Zoning Ordinance that apply to the development application.
- b. Applicability. Any final administrative decision on an incomplete development application authorized by this Zoning Ordinance, including a determination by the responsible official that a proposed development is exempt from one or more development applications, may be appealed to the Town Council. A final quasi-judicial decision on a variance application may be appealed to the Town Council only if expressly provided for in the regulations establishing the procedure by which the decision was made. No appeal shall be taken from a legislative decision authorized under this Zoning Ordinance.
- c. Effect. The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the development application for which approval was sought.

2. Appeal Requirements

- a. Who May Appeal. Any interested person aggrieved by a final decision on a development application may appeal from that determination to the Town

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Council. A person is interested within the meaning of this section if the final decision results in impacts on that person that exceed the impacts on or otherwise affect the person to a greater degree than a member of the general public. An interested person includes any officer or agency of the Town.

- b. Form of Appeal. The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by the fee established by the Town Council. An appeal by an applicant shall be accompanied by a copy of the development application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant.
 - c. Time for Filing Appeal. A written appeal must be filed with the Town Secretary within ten (10) working days from the date of notification of the final decision on the development application.
3. Processing of Appeal and Decision
- a. Responsible Official. The Town Secretary is the responsible official designated by this Zoning Ordinance for processing of the development application at issue in the appeal. Upon receipt of a written appeal, the responsible official shall compile all documents constituting the record of the decision on appeal and transmit the record to the appellate body.
 - b. Stay of Proceedings. Receipt of a written appeal of a decision on a development application stays all proceedings of the Town in furtherance of the decision from which appeal is taken, including without limitation acceptance, processing or issuance of any subordinate development applications, and any development activities authorized by initial approval of the development application.
 1. The stay shall be lifted only if the responsible official certifies in writing to the appellate body that a stay would cause imminent peril to life or property.
 2. Thereafter, the stay may be reinstated only by order of the appellate body or a court of record, on application, after notice to the responsible official, for due cause shown.
 - c. Hearing and Notice. Notification of the appeal and conduct of the public hearing thereon shall be published in the Town Agenda in the same manner as other agenda items. The initial appeal shall be held within thirty (30) working days after the filing of the appeal with the responsible official, unless a different time is prescribed by the provisions of this Appendix.
 - d. Decision on Appeal. The Town Secretary shall decide the appeal within 30 working days of the close of the hearing.

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- e. Notification of Decision on Appeal. The appellant and the applicant for the development permit shall be notified of the decision on appeal.
4. Criteria
 - a. In deciding the appeal, the appellate body shall apply the same criteria as govern the initial decision on the development application pursuant to the provisions of this Ordinance.
 5. Expiration and Extension
 - a. For purposes of determining expiration or extension periods under this Zoning Ordinance, the date of the appellate body's granting of relief on an appeal is the date on which the development application is deemed approved.

(Ordinance 361-05 adopted 3/22/05)

A.3 VARIANCE PETITIONS

A. Purpose, Applicability and Effect

1. Purpose. The purpose of a variance petition is to vary one (1) or more standards applicable to a development application, subject to the limitations set forth in this section or elsewhere in this Zoning Ordinance. A variance petition shall not be used as a means of amending the text of this Zoning Ordinance or of changing a zoning district or other legislative classification of the property for which the variance is sought. A variance petition cannot be used as a means to contest the applicability of a standard to a development application, an exemption determination, or a decision on a development application.
2. Applicability. A variance petition may be filed to modify any standard applicable to an administrative or quasi-judicial development application, unless otherwise prohibited by this Zoning Ordinance. The variance petition shall be decided by the Board of Adjustments. A variance petition may not be used to vary standards applicable to a petition for a legislative decision.
3. Effect. The granting of a variance petition in whole or in part authorizes the petitioner to submit a development application that complies with the standard as varied or modified, and the decision-maker to evaluate the application using the varied standard, for the duration of the variance.

B. Petition Requirements

1. Who May Petition. A variance petition may be filed by a property owner or the applicant for any administrative or quasi-judicial development application.
2. Form of Petition. A variance petition shall be prepared and submitted on an official form of the Town of Bartonville. The variance petition shall contain a detailed

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written statement of the reasons why the standards to be varied should not be applied to the development application identified in the petition, and shall be accompanied by the fee established by the Town Council.

- a. A variance petition shall be accompanied by a development application prepared consistent with the requested variance, if the decision-maker for the variance petition and the decision-maker for the development application are the same.
- b. If the body deciding the variance petition is different from the official or body deciding the development application, the petition shall be accompanied by illustrations or other documents showing the effect of the requested variance on development to be proposed in the application.

3. Time for Filing Petition.

C. Processing of Petitions and Decision

1. Responsible Official. The responsible official for a variance petition is the Town Secretary. Upon receipt of a variance petition, the Town Secretary shall transmit the petition to the Board of Adjustments for processing and determination in accordance with this section.

2. Hearing and Notice.

- a. Where the decision-makers for the variance petition and the development application are the same, notification of the requested variances shall be provided in conjunction with any required notification for the development application. A public hearing on the variances requested shall be required only if a public hearing is required on the development application and shall be conducted in conjunction with such hearing.
- b. The public hearing shall be conducted in accordance with Sections A.5 and A.6 of this Ordinance, and shall be held within thirty (30) working days after the variance petition is filed with the Town Secretary.
- c. Burden of Proof. The petitioner bears the burden of proof to demonstrate that a variance to the standards applicable to a development application should be granted.
- d. Decision on Petition. The Board of Adjustments shall grant, grant subject to conditions or deny the request for one or more variances.
- e. Notification of Decision on Petition. The petitioner shall be notified of the decision on the variance petition in the manner provided in Sections A.5 and A.6 of this Zoning Ordinance.

D. Criteria for Approval

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1. In deciding the variance petition, the Board of Adjustments shall apply the following criteria:
 - a. There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Zoning Ordinance to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
 - b. The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
 - c. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
 - d. Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
 - e. Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Ordinance, or adversely affect the rights of owners or residents of surrounding property;
 - f. Granting the variance petition is consistent with any special criteria applicable to varying particular standards;
 - g. The hardship or inequity suffered by petitioner is not self-induced;
 - h. The request for a variance is not based exclusively upon a desire from the petitioner for increased financial gain from the property, or to reduce an existing financial hardship; and
 - i. The degree of variance requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.

E. Expiration and Extension

1. Expiration on Failure to File Application. A variance to a standard applicable to the development application shall expire within ninety (90) days of the date the variance petition is granted, unless the property owner or applicant files the development application with the Town in accordance with this Zoning Ordinance within such period. The Board of Adjustments may extend the time for filing the development application for good cause shown, but in any event, the expiration date for the variance shall not be extended beyond one (1) year from the date the variance petition was granted.

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2. Effect of Permit Expiration or Extension. Variances granted in conjunction with a development application remain in effect for the period the development permit is in effect, and expire upon expiration of the development permit. Extension of the development permit also shall result in extension of the variance.
3. Effect of Application Denial. Denial of the development application in conjunction with which a variance petition was granted or processed shall result in expiration of the variance.

(Ordinance 361-05 adopted 3/22/05)

A.4 VESTED RIGHTS PETITION

A. Purpose, Applicability and Effect

1. Purpose. The purpose of a vested rights petition is to determine whether one or more standards of this Zoning Ordinance should not be applied to a development application by operation of state statutory law.
2. Applicability. A vested rights petition shall be filed with the Town Council. A vested rights petition may not be filed with a petition for a legislative decision.
3. Effect. Upon granting of a vested rights petition in whole or in part, the Town Secretary shall process the development application and the decision-maker shall decide the application in accordance with the standards specified in the relief order based on prior ordinance requirements or development standards.

B. Petition Requirements

1. Who May Petition. A vested rights petition may be filed by a property owner or the owner's authorized agents, including the applicant, for a quasi-judicial or administrative development application in conjunction with the filing of the application.
2. Form of Petition. The vested rights petition shall allege that the petitioner has a vested right for some or all of the land subject to the development application pursuant to Tex. Loc. Gov't Code Ch. 245 or successor statute that requires the Town to review and decide the application under standards in effect prior to the effective date of the currently applicable standards. The petition shall include the following information and documents:
 - a. A narrative description of the grounds for the petition;
 - b. A copy of each approved or pending development application that is the basis for the contention that the Town may not apply current standards to the development application which is the subject of the petition;

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- c. Identification of all standards otherwise applicable to the development application from which relief is sought;
 - d. Identification of any current standards which petitioner agrees can be applied to the development application at issue;
 - e. A narrative description of how the application of current standards affect proposed lot size, lot dimensions, lot coverage or building size shown on the development application for which the petition is filed; and
 - f. A copy of any prior vested rights determination involving the same land.
3. Time for Filing Petition. A vested rights petition shall be filed with a development application for which a vested right is claimed unless waived by the Town Council. Where more than one application is authorized to be filed by this Zoning Ordinance, the petition may be filed simultaneously for each application.

C. Processing of Petitions and Decision

1. Responsible Official. The Town Secretary is the responsible official for processing the development application with which the petition is associated. The responsible official shall promptly forward a copy of the vested rights petition to the Town Attorney following acceptance.
2. Initial Decision. The Town Attorney shall determine whether the relief requested in the vested rights petition should be granted in whole or in part, and shall formulate a written report summarizing the Town Attorney's reasoning and setting forth the decision on the petition, which shall be delivered to the Town Council and applicant within ten (10) days of the date the vested rights petition is accepted for filing.
3. Decision by Town Council. Where the Town Council is the final decision-maker on the development application, the petitioner may submit a written request that the vested rights petition be immediately forwarded to the Council for a determination. The request must be accompanied by a waiver of the time for decision on the application imposed under this Zoning Ordinance pending decision by the Council on the petition, which shall stay further proceedings on the application. Upon receipt of the request, the responsible official shall prepare a recommendation and forward the matter to the Council for decision, which shall decide the petition within thirty (30) days of the petitioner's request. If no written request for Council referral is filed, the Council shall decide the vested rights petition with its decision on the development application.
4. Action on the Petition. The Town Council on the vested rights petition may take any of the following actions:
 - a. Deny the relief requested in the petition, and direct that the development application shall be reviewed and decided under currently applicable standards;

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- b. Grant the relief requested in the petition, and direct that the development application shall be reviewed and decided in accordance with the standards contained in identified prior regulations;
 - c. Grant the relief requested in part, and direct that certain identified current standards shall be applied to the development application, while standards contained in identified prior regulations also shall be applied.
5. Order on Petition. The Town Attorney's report and each decision on the vested rights petition shall be memorialized in an order identifying the following:
- a. The nature of the relief granted, if any;
 - b. The approved or filed development application(s) upon which relief is premised under the petition;
 - c. Current standards which shall apply to the development application for which relief is sought;
 - d. Prior standards which shall apply to the development application for which relief is sought, including any procedural standards;
 - e. The statutory exception or other grounds upon which relief is denied in whole or in part on the petition; and
 - f. To the extent feasible, subordinate development applications that are subject to the same relief granted on the petition.
6. Application Following Final Decision on Petition. Following the Town's final decision on the vested rights petition, the property owner shall conform to the development application for which relief is sought to such decision. The decision-maker on the development application shall consider any application revised under this subsection in accordance with the procedures for deciding the initial application under this Zoning Ordinance and in conformity with the relief granted on the petition. If the relief granted on the vested rights petition is consistent with the development application on file, no revisions are necessary. If proceedings have been stayed on the development application pending referral of the vested rights petition to the Town Council pursuant to this Section, proceedings on the application shall resume after the Council's decision on the vested rights petition.

D. Criteria for Approval

1. Factors. The Town Council, shall decide the vested rights petition based upon the following factors:
 - a. The nature and extent of prior development applications filed or approved for the land subject to the petition;

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- b. Whether any prior vested rights determinations have been made with respect to the property subject to the petition;
- c. Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
- d. Whether specific standards otherwise applicable affect lot size, lot dimensions, lot coverage or building size based upon the proposed development application; and
- e. Whether any statutory exception applies to the standards in the current Ordinance from which the applicant seeks relief.
- f. Whether any prior approved applications relied upon by the petitioner has expired pursuant to Subsection F.

E. Conditions. If the claim of vested rights under a petition is based upon a pending application subject to standards that have been superseded by current standards under this Ordinance, the Town Council may condition any relief granted on the petition on the approval of the application under such prior standards.

F. Expiration and Extension

- 1. Expiration. Relief granted on a vested rights petition shall expire on occurrence of one of the following events:
 - a. The petitioner or property owner fails to submit a required revised development application consistent with the relief granted within 30 days of the final decision on the petition;
 - b. The development application for which relief was granted on the vested rights petition is denied pursuant to the criteria made applicable through the relief granted on the petition;
 - c. The development application for which relief was granted on the vested rights petition expires.
- 2. Extension. Extension of the date of expiration for the development application for which relief was granted on a vested rights petition shall result in extension of the relief granted on petition for a like period.

G. Dormant Projects

- 1. For purposes of this section only:
 - a. Initial permit means any of the following types of approvals granted pursuant to the predecessor zoning ordinance, whether or not such approvals were

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issued in conjunction with or as a condition of approval of any other permits: site plan, landscape plan, development plan, concept plan, zoning site plan, conditional use permit, or any other application that was approved subject to a schematic drawing illustrating the location, arrangement, orientation or design of land uses, lots or improvements on a site intended for development.

- b. Final permit means a building permit, certificate of occupancy, or final plat approved pursuant to the Town of Bartonville Zoning Ordinance or Development Ordinance, as amended, or any predecessor zoning, subdivision or development ordinance.
2. Any application for an initial permit that was approved or filed before, but that was not subject to an expiration date on, March 22, 2005, pursuant to any predecessor zoning, subdivision or development ordinance, shall expire on the effective date of this Zoning Ordinance.
 3. The owner of the land subject to an initial permit that expires under subsection 2. may petition the Town Council to reinstate such zoning permit by filing a written petition within sixty (60) calendar days of the effective date of this Zoning Ordinance. The petition shall clearly state the grounds for reinstatement, and shall be accompanied by documentation of one of the following:
 - a. As of March 22, 2005, one of the following events had occurred:
 1. A final permit for all or part of the land subject to the approved initial permit was approved, or was filed and was subsequently approved;
 2. An application for a final permit was submitted for all or part of the land subject to the expired initial permit, but such application was rejected on grounds of incompleteness;
 3. Costs for development of the land subject to the initial permit, including but not limited to costs associated with roadway, utility and other infrastructure facilities designed to serve the land in whole or in part, but exclusive of land acquisition costs, were incurred in the aggregate amount of five percent (5%) of the most recent appraised market value of the land;
 4. Fiscal security was posted to ensure performance of an obligation required for all or a part of the land subject to the approved initial permit; or
 5. Utility connection fees or impact fees for all or part of the land subject to the approved initial permit were paid.
 - b. After March 22, 2005 but before the expiration date specified in subsection 2., one of the following events had occurred:

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1. A final building permit was approved for all or part of the land subject to the approved zoning, and remained in effect for such land on such expiration date; or
 2. A complete application for approval of a final building permit for all or part of the land subject to the approved initial permit was pending for decision on such expiration date.
- c. The Town Council may take one of the following actions:
1. Reinstate the expired initial permit without an expiration date, if it finds that the petitioner has met any one of the criteria listed in subsection 3.a.
 2. Reinstate the initial permit for all or part of the land subject thereto, if it finds that the petitioner has met any one of the criteria listed in subsection 3.b., subject to such expiration dates or other conditions that assure that the remaining land that is not subject to an approved or pending final permit application will be developed in a timely fashion. In granting relief under this provision, the Council may require that development of such remaining land is subject to standards enacted after approval of the initial permit.
 3. Deny the petition, if it finds that the petitioner has failed to meet any of the criteria in Subsection 3.
 4. Reinstate the permit for only that part of the land subject to a pending final permit application, if it finds that the petitioner has met the criteria in subsection 3.b.2. and the pending application subsequently was approved, and deny the petition for the remaining land subject to the expired initial permit.

(Ordinance 361-05 adopted 3/22/05)

A.5 GENERAL NOTICE REQUIREMENTS

A. Published Notice. Whenever published notice of a public hearing before a board or commission or the Town Council regarding a legislative or quasi-judicial decision is required under state law or this Zoning Ordinance, the Town Secretary shall cause notice to be published in a newspaper of general circulation in the Town before the fifteenth (15th) day before the date set for the required hearing. The notice shall set forth the date, time, place and purpose of the hearing, and identification of the subject property, where the decision concerns an individual tract or parcel of land.

B. Personal Notice. Whenever personal notice of a public hearing is required by state law or this Zoning Ordinance before a board or commission or the Town Council, the responsible official shall cause notice to be sent by regular mail before the tenth (10th) day before the hearing date to 1) each owner of real property located within two hundred (200) feet of the exterior boundary of the property in question, 2) to any registered neighborhood organization representing

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the area in which the subject property is located, 3) the applicant and/or property owner, and 4) if the matter to be considered is an appeal, to the appellant. The notice shall set forth the name of the applicant, the time, place and purpose of the hearing, identification of the subject property, and if the matter to be considered is an appeal, the name of the appellant.

1. Notice shall be sent to each owner indicated on the most recently approved municipal tax roll for land inside the Town limits, and, when required by state law, on the most recently approved county tax roll for land in the extraterritorial jurisdiction. For recently annexed land that is not included on the most recently approved municipal or county tax roll, notice may be given by publication.
2. Notice may be served by depositing the notice, properly addressed and first class postage prepaid, in the United States mail.

C. Posted Notice.

1. Whenever this Zoning Ordinance requires that notice of a public hearing be posted on land the owner/developer/applicant shall erect a notification sign, provided by the Town, stating the purpose of the public hearing, on the subject property before the tenth (10th) day prior to the first public hearing.
 - a. A minimum of one sign shall be placed adjacent on each street frontage. Property with multiple street frontages shall have the requisite sign on each street. Signs shall be placed in a visible, unobstructed location near the front property line.
 - b. The notification signs shall be left in place until final action is taken. The owner/developer/applicant shall remove and return such sign(s) to the Town within five calendar days after action by the Town Council or immediately upon the withdrawal of the petition, whichever comes first.
2. It shall be the responsibility of the applicant to periodically check sign locations to verify that signs remain in place and have not been vandalized or removed. The applicant shall immediately notify the Town Secretary of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.

D. Notification Following Decision. Within ten (10) working days of the date of a responsible official, board, commission or Town Council determination on a development application or permit, written notification of the action shall be mailed to the applicant, stating the action taken and including all conditions imposed and times established for satisfaction of the conditions, if any. If the final decision-maker denies the application, a written statement setting forth the basis for the decision to deny the application also shall be included. Record of this notification shall be filed with the Town Secretary on the date of notification.

E. Notification of Appeal or Revocation. Whenever appeal is taken from a final decision on a development application following a public hearing, or whenever the Town is to consider

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revocation of a development permit which was obtained following a public hearing, personal notice of the appeal or revocation proceeding shall be provided in the manner prescribed by subsection B. If no public hearing was held prior to approval of the development application, personal notice of revocation shall be given only to the holder of the permit.

F. Special Notice. Whenever this Code requires or the Town Council prescribes that notice of a public hearing be given that differs from the requirements of this section, the responsible official shall cause such notice to be given in the manner otherwise required or prescribed.

(Ordinance 361-05 adopted 3/22/05; Ordinance 722-22 adopted 4/19/22)

A.6 PUBLIC HEARINGS

A. Setting of the Hearing. When the Town Secretary determines that a development application is complete and that a public hearing is required by this Ordinance, the official shall select a place and a time certain for the hearing, and shall cause notice of such hearing to be prepared and made pursuant to Section A.5. The time set for the hearing shall conform to the time periods required by this Code.

B. Conduct of Hearing. Any person may appear at the public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing shall state his or her name, address, and if appearing on behalf of an organization, state the name and mailing address of the organization for the record.

1. The responsible official shall first present a description of the proposed development and a written or oral recommendation, if required. The official's written recommendation, if any, shall be available to the applicant at the time that the agenda packet for the body conducting the hearing is compiled.
2. The applicant shall present any information it deems appropriate.
3. Public testimony shall be heard first in favor of the proposal, then in opposition to it.
4. At the discretion of the chairperson, the Town Secretary and the applicant may respond to any statement by any witness.
5. The body conducting the hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious. At the sole discretion of the chairperson of the body conducting the hearing, a witness may be permitted to pose relevant questions to staff, the applicant or another witness, as directed by the chairperson.

C. Record of Proceedings. The body conducting the hearing shall record the proceedings by any appropriate means.

D. Continuance of Proceedings. The body conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time and place. No

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notice shall be required if a hearing is continued. If a public hearing is closed, no further public testimony shall be taken.

E. Additional Rules. The body conducting the hearing may adopt rules of procedure to limit the number of applications for development approval which may be considered per meeting and the time for each presentation, and may apply such additional rules to govern the public hearing which are not inconsistent with this section.

F. Joint Public Hearing. Unless otherwise prescribed in this Zoning Ordinance, whenever a petition for a legislative decision or a development application must be preceded by a public hearing both before an advisory body and before the Town Council, the advisory body and the Council may conduct a joint public hearing and take action on the petition or application in the following manner:

1. The Council shall establish the date of the joint public hearing by motion at a regular or special meeting;
2. The Council shall cause notice of the joint public hearing to be provided as required by this Zoning Ordinance, or, by a vote of two-thirds of its members, may prescribe a different type of notice for the joint public hearing;
3. The advisory body and the Council shall be convened for the hearing and for any action to be taken on the petition or application;
4. The advisory body and the Council may take action on the petition or application at the same meeting, provided that the Council shall not take action until the report and recommendation of the advisory body has been received.

(Ordinance 361-05 adopted 3/22/05)

A.6.1 POST-DECISION PROCEDURES

A. Post-Decision Procedures

1. Reapplication Following Denial. Whenever any development application, with the exception of any plat application, is denied for failure to meet the substantive requirements of this Zoning Ordinance, a development application for all or a part of the same property shall not be accepted for filing for a period of six (6) months from the date of denial unless the subsequent application involves a proposal that is materially different from the previously denied proposal. The decision-maker on the first application shall resolve any questions concerning the similarity of the second application. Noncompliance with this subsection shall be grounds for denial of the application. The decision-maker may, at its option, waive the six (6) month waiting period if, after due consideration of the matter at a scheduled and posted meeting, it is determined that denial of the request was based upon erroneous or omitted information, or if substantial new information pertaining to the request is discovered.

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2. Amendments and Revisions to Approval. Unless another method is expressly provided by this Zoning Ordinance, any request to amend or revise an approved development application shall be considered a new application, which must be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the Town.
3. Amendments Required. Whenever a subordinate development application differs materially from a priority application to which the subordinate application must conform, the applicant shall submit an amended application for the priority application, which shall be decided prior to the subordinate application. The applicant's failure to comply with the section shall result in denial of the subordinate application.

(Ordinance 361-05 adopted 3/22/05)

Editor's note—Ord. 361-05 contained two sections numbered as A.6. Designation of this section as section A.6.1 was at the discretion of the editor.

A.7 EXPIRATION, EXTENSION AND REINSTATEMENT

A. Expiration, Extension & Reinstatement of Approvals

1. Time of Expiration. Unless otherwise expressly provided by this Zoning Ordinance, a quasi-judicial or administrative development permit shall automatically expire and become null and void, and all activities pursuant to the permit thereafter shall be deemed in violation of this Ordinance, if:
 - a. the applicant fails to satisfy any condition that was imposed as part of the approval of the development application or that was made pursuant to the terms of any development agreement, within the time limits established for satisfaction of such condition or term, or
 - b. the applicant fails to submit a subsequent development application required by this Zoning Ordinance within the time so required. If no time limit for satisfaction of conditions is specified in the decision on the development application, the time shall be presumed to be one year from the date the decision was made.
2. Effect of Expiration. Upon the expiration of a quasi-judicial or administrative permit, all previously approved quasi-judicial or administrative permits for the same land also shall expire on the expiration date if:
 - a. the expired permit is subordinate to such previously approved permits; and
 - b. the filing of an application for or approval of the expired permit was required to avoid expiration for the previously approved permit or permits. Thereafter, a new application for each permit deemed expired under this section must be

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approved subject to regulations in effect at the time the new application is accepted for filing.

3. Extension Procedures - Initial Request. Unless a different time is expressly provided for a specific procedure by this Zoning Ordinance, the responsible official or the board, commission or the Town Council that finally approves a quasi-judicial or administrative development application may grant an initial extension of the time for expiration of the application for a period not to exceed one (1) year from the date of initial approval of the application, provided that a request for extension is made in writing at least thirty (30) days before the approved application expires. Unless expressly stated otherwise, the extension period provided under a specific procedure shall be for the initial extension request. Every request for extension shall include a statement of the reasons why the expiration date should be extended. The decision-maker may grant a request for extension of the expiration date for a period of up to one (1) year upon demonstration that circumstances beyond the control of the permit holder have resulted in the permit holder's inability to perform the tasks necessary to prevent the permit from expiring before the expiration date.
4. Extension Procedures - Subsequent Extension. A permit holder may apply for an extension of the expiration date for a permit for a period not to exceed two (2) years, or for a second extension of the expiration date of the permit for a period not to exceed one (1) additional year. The application must be in writing. Such an extension may be granted only by a designated board or commission, for administrative applications, and only by the Town Council, for quasi-judicial applications, following a public hearing. In determining whether to grant a request, the board, commission or Council shall take into account the reasons for the requested extension, the ability of the applicant to comply with any conditions attached to the original approval, whether extension is likely to result in timely completion of the project, and the extent to which any newly adopted regulations should be applied to the proposed development.
5. Conditions. In granting an extension, the official or body deciding the request may impose such conditions as are needed to assure that the land will be developed in a timely fashion and that the public interest is served. In granting a subsequent extension request, the decision-maker may require that one or more newly adopted development standards be applied to the proposed development.
6. Reinstatement. Unless otherwise provided by this Zoning Ordinance, an applicant may request reinstatement of an expired quasi-judicial or administrative development application by filing a written request with the responsible official within thirty (30) days of the date of expiration. The request for reinstatement shall include a statement of the reasons why the application should be reinstated and extended. A request for reinstatement shall be processed and decided in the manner provided for an extension of an expiration period for more than one (1) year. The expiration date shall not be extended for more than two (2) years from the date of initial approval of the application.

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7. Effect of Decision on Extension or Reinstatement. The granting of an extension or reinstatement request for a permit also extends or reinstates any other permits otherwise deemed expired pursuant to subsection 2. The denial of an extension or reinstatement results in the immediate lapse of the permit and any other permits deemed expired pursuant to subsection 2. Thereafter, the permit holder shall file a new application for a permit or permits before undertaking any activity authorized by the lapsed permit.

(Ordinance 361-05 adopted 3/22/05)

A.8 FEES

A. Payment of Fee. Every application for a development permit under this title shall be accompanied by a nonrefundable fee set by ordinance of the Town Council. Any fee required by this title shall be collected and deposited with the Town Secretary, and such fees shall be payable to the Town of Bartonville.

B. Exception to Payment of Fee. No fee for processing or reviewing an application required by this ordinance shall be required by the Town, if the application is submitted by a governmental agency, public school or church.

C. Fee Schedule. Payment of fees required by this section shall be in accordance with the fee schedule adopted by ordinance of the Town Council, as may be amended from time to time.

(Ordinance 361-05 adopted 3/22/05)

A.9 ENFORCEMENT AND REVOCATION OF PERMITS

A. Enforcement Activities. Enforcement activities include informal contacts with individuals to advise them of requirements, the issuance of verbal warnings, written warnings, and municipal court citations, formal court action, and billing and collection. Employees of the Town of Bartonville are authorized to issue municipal court citations for violations of this Ordinance.

B. Right to Enter. The appropriate Town official shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this Zoning Ordinance. Submittal of any application for a permit required by this Ordinance that authorizes construction of structures or improvements shall be construed as a grant of authority to the responsible official to enter on land subject to the application for purposes of enforcing the approved permit.

C. General Remedies. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used or developed in violation of this Ordinance or any permit approved thereunder, in addition to other remedies, the Town may institute any appropriate action or proceedings to prevent or abate such activity. Appropriate action or proceedings include revocation of permits or licenses, and institution of legal action in a court of competent jurisdiction.

D. Stop Work Orders.

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1. Whenever any construction or development activity is being conducted in a manner that is contrary to any term, condition or requirement(s) of an approved permit or this Zoning Ordinance, the responsible official or the official's authorized representative may order the work stopped by notice in writing, served on the property owner or authorized agent. Notice shall be given before the order shall be effective, except when the order should be effective immediately to protect and preserve the public health, safety, or general welfare. Any person thereafter shall cease and desist from further development or construction material to the alleged noncompliance, until corrected by compliance and authorized by the responsible official to proceed with the work. This prohibition shall extend throughout any appeal period.
2. The owner or authorized agent may appeal the stop work order to the responsible official by giving written notice. The Town Secretary shall hear the appeal within five (5) working days of receiving the notice. The appellant may appeal a negative ruling by the Town Secretary in writing to the Town Council, which shall hear the appeal at the next regular meeting that occurs at least ten (10) days after receipt of the notice of appeal.
3. The decision-maker on the appeal may require the placement of temporary erosion control, water quality protection or other measures by the owner or appellant in order to protect the site and the community resources during the appeal period.
4. The Town Secretary or the Town Council, as the case may be, shall decide the appeal and make such order as is necessary to assure compliance with the terms of this Zoning Ordinance and all approved development applications or permits.

E. Municipal Court Actions. The Town Attorney is authorized to prosecute violations of this Zoning Ordinance in the municipal court where jurisdiction lies for the action.

F. Civil Court Actions. The Town Attorney is authorized to file and prosecute an action at law or in equity, where permitted under the laws of Texas, in a court of competent jurisdiction to enforce the provisions of this Zoning Ordinance. The initiation of one form of enforcement action by the Town Attorney will not preclude the Town Attorney from initiating any other form of enforcement action.

G. Fines and Penalties. A person who violates any provision of this Zoning Ordinance shall be punished, upon conviction, by a fine not to exceed \$2,000.00. The owner or owners of any building or premises or part thereof, where anything in violation of this ordinance shall be placed or shall exist, any architect, builder, contractor, agent, persons or corporation employed in connection therewith, and who may have assisted in the commission of any such violation, shall be guilty of a separate offense and upon conviction shall be fined as herein provided. This section does not apply to enforcement of an ordinance in the Town's extraterritorial jurisdiction.

H. Separate Offenses. Each day that a violation continues shall be deemed a separate offense under this section.

I. Revocation Proceedings.

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1. If a Town Secretary determines, based on inspection or investigation by the Town, that there are reasonable grounds for revocation of an approved development application, the official shall set a hearing before the original decision-maker, or if the decision was made by the official or another responsible official, before the board or commission to which appeal may be taken from such decision under this Zoning Ordinance. If the Town Council was the original decision-maker, the Council may refer the proposed revocation to the Planning and Zoning Commission for its report and recommendation prior to such hearing. Circumstances that warrant revocation of an approved development application shall include but not be limited to the following:
 - a. A material mistake was made in approving the development application or permit;
 - b. Approval of the development application or permit was procured on the basis of material misrepresentations or fraud on the part of the applicant;
 - c. Development activities being undertaken on the land subject to the development application or permit are not in conformity with terms of the approved development application or permit;
 - d. The use authorized by the permit is in violation of a condition of approval of the approved development application or permit;
2. The applicant and any interested parties shall be given notice of the hearing in the manner provided in Section A.5. The public hearing shall be conducted in accordance with the procedures described in Section A.6.
3. In rendering its decision whether to revoke the approved application or permit, the decision-maker shall determine whether the activity authorized under the original approved application or permit complies with the terms, conditions and requirements of such approval. The decision-maker may revoke the application or permit, affirm it, or affirm it with attached conditions that assure that the terms, conditions and requirements of the application or permit shall be met.
4. A decision to revoke an approved development application or permit shall become final ten (10) days after the date notice of the decision was given, unless appealed. After the effective date, it shall be unlawful to undertake or perform any activity that was previously authorized by the approved application or permit without applying for and obtaining approval of a new development application or permit for the activity. Appeal from the decision to revoke the approved development application or permit shall be to the Town Council, unless the decision to revoke was made by the Council.

(Ordinance 361-05 adopted 3/22/05)

A.10 PERMITS AND CERTIFICATES

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A. Construction Permits

1. General Provisions

- a. Scope of Term. For purposes of this Appendix A, the term “construction permit” refers to any authorization to construct, alter or place a structure on a lot, tract or parcel. The term excludes an authorization to construct a capital improvement to be dedicated to the public in support of a proposed land use, the grading of land, the removal of vegetation, and other activities authorized to prepare a development site for construction of a structure. The term also excludes an authorization to demolish, repair or remodel an existing structure.
- b. Effect. Approval of a construction permit authorizes the property owner to place or construct the structure on the lot, tract or parcel in accordance with the terms of the permit. Approval of a construction permit confirms that the application conforms to all requirements of this Zoning Ordinance pertaining to the construction of the proposed structure.

2. Sequence of Approvals

- a. Prior Approvals. An application for a construction permit shall not be approved until the following petitions or development applications, where applicable, have been approved and remain in effect for land for which the application is made:
 1. All legislative applications needed to authorize the proposed uses for the land;
 2. All quasi-judicial applications;
 3. A Final Subdivision Plat application;
 4. A Site Plan; and
 5. Any variance petition required for placement or construction of the structure on the lot, tract or parcel.
3. Accompanying Applications. An application for a construction permit may be accompanied by an application for a Site Plan, provided that the Site Plan is decided first.
4. Rules of Priority Among Construction Permits. The following rules of priority apply among construction permits.
 - a. A Floodplain Permit shall be approved prior to a building permit.
 - b. A building permit shall be approved prior to a certificate of occupancy.

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- c. Where a building permit is required, an application for a sign permit may accompany the application for a building permit, provided that the building permit application is decided first.

B. Building Permits

1. Applicability and Effect

- a. Applicability. An application for a building permit is required within the Town limits, or where authorized by a development agreement, in the Town's extraterritorial jurisdiction, prior to placement, construction or alteration of a building or structure.
- b. Effect. Approval of an application for a building permit authorizes the property owner to construct, alter or place a structure on the lot, tract or parcel. Approval of an application for a building permit also authorizes the property owner, upon completion of a structure intended for human occupancy, to make application for a certificate of occupancy.

2. Application Requirements

- a. Responsible Official. The building official shall be the responsible official for a building permit.
- b. Contents. An application for approval of a building permit shall be prepared in accordance with all applicable rules and regulations of the Town of Bartonville.

3. Decision

- a. Decision. The building official shall approve, conditionally approve or deny the application for a building permit.
- b. Time for Decision. The building official shall decide the application for a building permit within 30 days of the official filing date.

4. Appeals

- a. Any interested person may appeal the building official's decision on the building permit application to the Zoning Board of Adjustments (ZBOA). The ZBOA shall decide the appeal in accordance with Article 3.1 [Article 3.02] of the Town of Bartonville's Code of Ordinances.

5. Criteria for Approval

- a. The building official shall apply the following criteria in deciding the application for a building permit:

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1. The application generally conforms to all prior approved development applications for the property and any variance petition authorizing variation from the standards otherwise applicable to the permit.
2. The location of the structure on the property is in accordance with all prior approved development applications.
3. The proposed plan for construction or alteration conforms to the Building Code and other applicable construction codes adopted by the Town.
4. All applicable fees, including impact fees, have been paid.

6. Expiration and Extension

- a. Expiration. A building permit expires if construction, alteration or placement of the structure authorized by the permit has not commenced on the property within ninety (90) days after final approval of the permit. The building permit shall expire within one (1) year of the date of approval if a certificate of occupancy for the structure has not been approved, or if the structure is not intended for human occupation, the construction, alteration or placement of the structure on the property has not been completed, within such period.
- b. Extension and Reinstatement. The building official may extend the time for commencing construction, alteration or placement of a structure for a period not to exceed ninety (90) days, and the time for obtaining approval of a certificate of occupancy or completing construction, alteration or placement of the structure for a period of one (1) year, in accordance with Subsection C. of this Section A.10. The building official also may reinstate the permit for a one-year period pursuant Subsection C. of this Section A.10.

C. Certificates of Occupancy

1. Applicability and Effect

- a. Applicability. An application for a certificate of occupancy is required within the Town limits, or where authorized by a development agreement, in the Town's extraterritorial jurisdiction, after the construction, alteration or placement of a nonresidential structure on a lot, tract or parcel and prior to the any nonresidential use of the structure, or any occupation of a manufactured home. A certificate of occupancy is also required prior to a change in the nonresidential use of any structure if the use is a different use based upon the land uses listed in Appendix C.
- b. Effect. Approval of a certificate of occupancy authorizes the occupancy of the structure in accordance with the terms of the certificate of occupancy.

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2. Application Requirements

- a. Responsible Official. The building official shall be the responsible official for a certificate of occupancy.
- b. Contents. An application for approval of a certificate of occupancy shall be prepared in accordance with all applicable rules and regulations of the Town of Bartonville.

3. Decision

- a. Decision. The building official shall approve or deny the application for a certificate of occupancy.
- b. Time for Decision. The building official shall decide the application for a certificate of occupancy within thirty (30) days of the official filing date.
- c. Record. A record of all certificates of occupancy shall be kept on file in the offices of the Town Secretary, and copies shall be furnished upon request to any person in accordance with state laws governing public information.
- d. Posting of Certificate: Except for single-family structures, the approved certificate of occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the building official.

4. Appeal

- a. Any interested person may appeal the building official's decision on the certificate of occupancy to the Zoning Board of Adjustments (ZBOA). The ZBOA shall decide the appeal in accordance with this ordinance.

5. Criteria for Approval

- a. The building official or the ZBOA on appeal shall apply the following criteria in deciding the application for a certificate of occupancy:
 1. The location of the structure on the property is in accordance with the approved application for the building permit;
 2. Where a change of use in an existing structure is proposed, the use conforms to the use regulations governing the property;
 3. Where occupancy of a manufactured home is proposed, the manufactured home has been installed in conformity with all applicable rules, regulations and requirements of the Town of Bartonville.

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4. The structure, following inspection by the building official, was built in conformity with the Building Code, as may be modified from time to time.
 4. [5] There are no outstanding permit requirements.
6. Revocation of Certificate
- a. The building official may institute proceedings to revoke a certificate of occupancy pursuant to this Appendix A, whenever the official determines that the certificate has been issued in error, or on the basis of incorrect information supplied, or that the use, dimensions, or other feature of the structure authorized for occupancy, or any portion thereof, is in violation of any provision of this Zoning Ordinance or the Building Code or other applicable codes adopted by the Town of Bartonville.

(Ordinance 361-05 adopted 3/22/05)