

Required off-street parking and loading spaces shall be used only for these respective purposes and shall not be used for storage or display of boats, trailers, campers, motor vehicles or other goods, materials, products for sale.

25.11. Special Off-Street Parking Regulations

- 25.11.1. In computing the parking requirements for any development, the total parking requirements shall be the sum of the specific parking space requirements for each use included in the development. Where multiple uses are proposed for a building, the parking requirements shall be calculated on the basis of the most restrictive requirements unless specific areas of different uses are delineated by floor or building segment.
- 25.11.2. Wherever a parking lot is located across the street from or adjacent to residentially zoned property, and is designed so that headlight beams will shine into residences (whether or not such residences have been built at the time the parking lot is constructed), an irrigated earthen berm or a solid masonry wall or reinforced concrete fence of not less than three (3) nor more than four (4) feet in height above the finished grade of the off-street parking area shall be erected and maintained so as to provide a headlight screen for the residential district.
- 25.11.3. The off-street parking spaces designated for each apartment (multifamily) dwelling unit shall be located within one hundred (100) feet of the dwelling unit served by such spaces.
- 25.11.4. In all residential districts, no heavy load vehicle, truck trailer, truck tractor, home, motor home, camper, trailer, boat, machinery, farm equipment or machinery or any other similar equipment or machinery (called collectively "equipment") shall be parked or left standing for more than two (2) days out of any consecutive seven (7) day period within the required front yard or within the side yard of a corner lot between the side building line and the side property line on the side of the lot abutting a street or public right-of-way.

In no event, other than temporary parking for special events, shall equipment, including motor vehicles, trucks, and vans be parked or left standing at any time on a surface other than a paved or gravel driveway or paved parking lot in the required front yard or side yard.

The driveway shall be located either:

- 1) between the street or alley and a garage or carport;
- 2) in the side yard adjacent to the main building; or
- 3) as a circular driveway serving the main entrance of the premises.

The driveway shall be no wider than the width of the garage, carport (or 20 feet whichever is greater) or parking space which it serves. No more than fifty percent (50%) of the front yard shall be a driveway. In no event shall vehicles or equipment be parked or left standing closer than five (5) feet from the front property line.

- 25.11.5. Parking spaces in non-residential districts shall be provided with sufficient space for entering and exiting without backing onto a public street. Parking spaces on the perimeter of the parking lot and abutting a property line shall have a wheel stop barrier two (2) feet from the end of the parking space.

25.11.6 Parking lot construction must comply with drainage/flood prevention ordinances and laws.

25.12. Design Standards For Parking Structures

- 25.12.1. In all districts, above grade parking structures shall conform to height restrictions for zoning districts in which they are located.
- 25.12.2. The distance from parking structure entry and exit points to a corner of a street intersection shall conform to standards contained in the Subdivision Ordinance.
- 25.12.3. Ramps shall not be constructed with slopes exceeding fifteen percent (15%) and single lane entrances shall not be less than twelve (12) feet wide at the street.
- 25.12.4. A minimum of one (1) car length shall be provided between an exit control gate and the inside edge of a sidewalk to minimize conflicts between exiting cars and pedestrians.
- 25.12.5. Parking structure facades shall be left fifty percent (50%) open and interior light levels shall be maintained at ten (10) foot candles to enhance security and safety. All parking structure lighting shall be designed so as not to reflect or shine on adjacent properties.
- 25.12.6. Full enclosure of any level of a parking structure may be permitted only if such structure is fully sprinklered and mechanically ventilated.

25.13. Off-Street Loading

25.13.1. All retail, commercial, and industrial structures shall provide and maintain off-street facilities for the loading and unloading of merchandise and goods within the building or on the lot adjacent to a private service drive.

At least one-half of such loading spaces shall have a minimum dimension of ten (10) feet by forty (40) feet, and the remaining spaces shall have a minimum dimension of ten (10) feet by twenty (20) feet.

Where such loading space is located adjacent to a residential district, the space shall be enclosed on three (3) sides.

Loading spaces shall be provided in accordance with the following schedule:

FOR ALL RETAIL, COMMERCIAL AND INDUSTRIAL USES

<i>Square Feet of Gross Floor Area in Structure</i>	<i>Minimum Required Spaces or Berths</i>
0 to 10,000	None
10,000 to 50,000	1
50,000 to 100,000	2
100,000 to 200,000	3
Each additional 100,000	1 additional

FOR ALL HOTELS, OFFICE BUILDINGS, RESTAURANTS, SIMILAR ESTABLISHMENTS

<i>Square Feet of Gross Floor Area in Structure</i>	<i>Minimum Required Spaces or Berths</i>
0 to 50,000	None
50,000 to 150,000	1
150,000 to 300,000	2
300,000 to 500,000	3
500,000 to 1,000,000	4
Each additional 500,000	1 additional

25.13.2. Kindergartens, day schools, and similar child training and care establishments shall provide loading and unloading space on a private drive, off-street, to accommodate one (1) motor vehicle for each ten (10) students or children cared for by the establishment.

25.13.3. Loading docks for any establishment which customarily receives goods between the hours of 9:00 p.m. and 8:00 a.m., and is adjacent to a residential use or district, shall be designed and constructed so as to fully enclose the loading operation in order to reduce the effects of the noise of the operation on adjacent residences.

25.13.4. Where adjacent to residential uses or districts, off-street loading areas shall be screened from view of the residential use or district.

25.14. Stacking Requirements for Drive-Through Facilities

25.14.1. A stacking space shall be an area on a site measuring eight (8) feet by twenty (20) feet with direct forward access to a service window or station of a drive-through facility which does not constitute space for any other circulation driveway, parking space, or maneuvering area.

25.14.2. For financial institutions with drive-through facilities, each teller window or station, human or mechanical, shall be provided with a minimum of five (5) stacking spaces (from the right-of-way line).

25.14.3. For each service window of a drive-through restaurant, a minimum of seven (7) stacking spaces (from the right-of-way line) shall be provided.

25.14.4. For kiosks, a minimum of two (2) stacking spaces (from the right-of-way line) for each service window shall be provided.

SECTION 26 **ACCESSORY BUILDING REGULATIONS**

26.1. Height

No accessory building shall exceed twenty-five (25) feet in height, nor shall it be greater in height than the main structure.

26.2. Area Regulations for Accessory Buildings or Structures in Residential and Apartment Districts

- 26.2.1. Front Yard: Accessory buildings, including garages and carports, shall have a front yard not less than the main building, or as specified in the particular district.
- 26.2.2. Side Yard: There shall be a side yard not less than three (3) feet from any side lot line, alley line, or easement line, except that adjacent to a side street, the side yard shall never be less than ten (10) feet.
- 26.2.3. Rear Yard: There shall be a rear yard not less than three (3) feet from any lot line, alley line, or easement line. Where a garage or carport is designed to be entered from an alley or side street, such garage or carport shall be set back from the street or alley a minimum distance of fifteen (15) feet to facilitate access without interference with the use of the street by other persons or vehicles.

SECTION 27 **PLATTING PROPERTY NOT PERMANENTLY ZONED**

27.1. Zoning Required Prior to Approval of Plat

The City Council shall not approve any plat of any subdivision within the city limits until the area covered by the proposed plat shall have been permanently zoned by the City Council.

27.2. Annexation Prior to Approval of Plat

The City Council shall not approve any plat or any subdivision within any area where a petition or ordinance for annexation or a recommendation for annexation to the city is pending before the City Council unless and until such annexation shall have been approved by resolution by the City Council.

27.3. Contemporaneous Action on Zoning and Annexation

In the event the City Council holds a hearing on proposed annexation, it may, at its discretion, hold a contemporaneous hearing upon the permanent zoning that is to be applied to the area or tract to be annexed. The City Council may, at its discretion, act contemporaneously on the matters of permanent zoning and annexation.

SECTION 28 **CLASSIFICATION OF NEW AND UNLISTED USES**

28.1. Procedure For Classifying New/Unlisted Uses

It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in the city. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

- 28.1.1. The Zoning Administrator shall refer the question concerning any new or unlisted use to the Planning and Zoning Commission requesting a recommendation to the City Council as to the zoning classification(s) into which such use should be placed. The referral of the use interpretation question shall be accompanied by a statement of facts listing the nature of the

use and whether it involves dwelling activity, sales, processing, type of product, storage and amount and nature thereof, enclosed or open storage, anticipated employment, transportation requirements, the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated and the general requirements for public utilities such as water and sanitary sewer. The Planning and Zoning Commission shall make a recommendation to the City Council regarding the zoning district or districts within which such use should be permitted.

- 28.1.2. The Planning and Zoning Commission and the City Council shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts, in determining the zoning district or districts within which such use should be permitted.
- 28.1.3. The City Council shall by resolution approve or make such determination concerning the classification of such use as is determined appropriate, based upon its findings.

SECTION 29 CREATION OF BUILDING SITE

29.1. Procedure for Creating Building Site/Lot

No permit for the construction of a building or buildings upon any tract or plot shall be issued until a building site, building tract, or building lot has been created by compliance with one of the following conditions:

- 29.1.1. The lot or tract is part of a plat of record, properly approved by the Mayor, and filed in the plat records of the county or counties in which the lot or tract is located.
- 29.1.2. The plot, tract or lot faces upon a dedicated street and was separately owned prior to the effective date of this ordinance or prior to annexation to the city, whichever is applicable, in which event a building permit for only one main building conforming to all the requirements of this ordinance may be issued on each such original separately owned parcel.
- 29.1.3. The plot or tract is all or part of a site plan officially approved by the City Council and compliance has been made with provisions and improvements approved on such site plan for all utility and drainage easements, dedication of streets, alleys and other public improvements required to meet the standards established for the platting of land. Any and all plots, tracts, or lots must be provided access via a public street or drive.

SECTION 30 NON-CONFORMING USES AND STRUCTURES

30.1. Uses in Existence at Time of Adoption of Ordinance

A non-conforming status shall exist when a use or structure which does not conform to the regulations prescribed in the district in which such use or structure is located was in existence and lawfully operating prior to the adoption of the Zoning Ordinance.

30.2. Expansion of Non-Conforming Use Prohibited

No non-conforming use or structure may be expanded or increased except to provide off-street loading or off-street parking space upon approval of the City Council.

30.3. Repairs/Normal Maintenance on Non-Conforming Uses Permitted

Repairs and normal maintenance may be made to a non-conforming building provided that no structural alterations or extensions shall be made except those required by law or ordinance, unless the building is changed to a conforming use.

30.4. Change of Non-Conforming to Conforming Use

Any non-conforming use may be changed to a conforming use and once such change is made, the use shall not thereafter be changed back to a non-conforming use.

30.5. Abandonment/Discontinuation of Non-Conforming Use

Whenever a non-conforming use is abandoned, all non-conforming rights shall cease and the use of the premises shall thenceforth be in conformity with this ordinance. Abandonment shall involve the intent of the user or owner to discontinue a non-conforming operation and the actual act of discontinuance. Discontinuance of a business or the vacancy of a building or premises occupied by a non-conforming use for a period of six (6) months shall be construed as conclusive proof of intent to abandon the non-conforming use. Any non-conforming use not involving a permanent type of structure which is moved from the premises shall be considered to have been abandoned.

30.6. Accidental Destruction of Non-Conforming Use

If a non-conforming structure or a structure occupied by a non-conforming use is destroyed by fire, act of God or other cause, it may not be rebuilt except to the provisions of this ordinance. In the case of partial destruction of a non-conforming use not exceeding sixty percent (60%) of its reasonable value, reconstruction may be permitted after a hearing and favorable action by the City Council, but the size and function of the non-conforming use shall not be expanded.

30.7. Replacement of Non-Conforming HUD-Code Manufactured Home

Notwithstanding any of the provisions of this section, a non-conforming HUD-Code manufactured home may be exchanged or replaced by another HUD-Code manufactured home, provided the newly located residential unit is owner-occupied.

SECTION 31 **PLANNING AND ZONING COMMISSION**

31.1. Organization and Appointment

There is hereby created a Planning and Zoning Commission which shall be organized, appointed, and function as follows:

- 31.1.1. Membership: The Planning and Zoning Commission shall consist of five (5) members who are residents of the City of Tioga, each to be appointed by the City Council for a term of two (2) years and removable for cause by the appointing authority upon written charges and after public hearing. Appointees shall fill positions which shall be designated by place numbers (e.g., place 1, place 2, etc.). Vacancies shall be filled for the unexpired term of any member

whose place becomes vacant for any cause in the same manner as the original appointment was made. The City Council may appoint two (2) alternate members of the Planning and Zoning Commission who shall serve in the absence of one or more of the regular members when requested to do so by the chairman of the Planning and Zoning Commission.

- 31.1.2. Terms: The terms of members filling places 1, 3, and 5 shall expire on June 30 of each odd-numbered year and the terms of members filling places 2 and 4 shall expire on June 30 of each even-numbered year. Commission members may be appointed to succeed themselves. Vacancies shall be filled for unexpired terms, but no member shall be appointed for a term in excess of two (2) years. Newly-appointed members shall be installed at the first regular commission meeting after their appointment.
- 31.1.3. Organization: The commission shall hold an organizational meeting in July of each year. The commission shall meet regularly and shall designate the time and place of its meetings. The commission shall adopt its own rules of procedure and keep a record of its proceedings consistent with the provisions of this ordinance and the requirements of law. The Planning and Zoning Commission shall elect a chairman from its own membership at its annual organizational meeting.
- 31.1.4. Quorum and Compensation: A quorum for the conduct of business shall consist of three members and/or alternate members of the commission. The members shall serve without compensation, except for reimbursement of authorized expenses attendant to the performance of their duties.

31.2. Duties and Authority

The Planning and Zoning Commission is hereby charged with the duty and invested with the authority to:

- 31.2.1. Formulate and recommend to the City Council for its adoption a city plan for the orderly growth and development of the city and its environs and from time to time recommend such changes in the plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety, and general welfare of the citizens of the city.
- 31.2.2. Formulate a zoning plan as may be deemed best to carry out the goals of the city plan; hold public hearings and make recommendations to the City Council relating to the creation, amendment, and implementation of zoning regulations and districts as authorized under state law.
- 31.2.3. Exercise all powers of a commission as to approval or disapproval of plans, plats, or re-plats as authorized under state law.
- 31.2.4. Study and recommend the location, extension, and planning of public rights-of-way, parks, or other public places, and on the vacating or closing of same.
 - 31.2.4.1. Permit the erection and use of a building or the use of premises for railroads if such uses are in general conformity with the Comprehensive Master Plan and present no conflict or nuisance to adjacent properties.
 - 31.2.4.2. Permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in

the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.

- 31.2.4.3. Grant a permit for the extension of a use, height, or area regulation into an adjoining district where the boundary line of the district divides a lot in a single ownership on the effective date of this ordinance.
- 31.2.4.4. Permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy to the extent of more than fifty percent (50%) of its fair market value, where the Commission finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
- 31.2.4.5. Waive or reduce the parking and loading requirements in any of the districts, whenever the character or use of the buildings such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
- 31.2.4.6. Determine whether an industry should be permitted within the I-1 - Light Industrial District and I-2 - Heavy Industrial District because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.
- 31.2.4.7. Rule on all applications on siting of manufactured homes in districts not so zoned. Approval shall be allowed in cases of extreme hardship under guidelines established by the Commission.
- 31.2.4.8. When the Commission has denied a proposal, no new applications of similar nature shall be accepted by the Commission or scheduled for twelve (12) months after the date of Commission denial. Applications which have been withdrawn at or before the Commission meeting may be resubmitted at any time for hearing before the Commission.
- 31.2.4.9. The concurring vote of four members of the Commission is necessary to authorize a variation from the terms of a zoning ordinance.
- 31.2.5. Study and recommend the location, extension, and planning of public rights-of-way, parks, or other public places, and on the vacating or closing of same.
- 31.2.6. Study and make recommendations regarding the general design and location of public buildings, bridges, viaducts, street fixtures, and other structures and appurtenances.
- 31.2.7. Initiate, in the name of the city, proposals for the opening, vacating, or closing of public rights-of-way, parks, or other public places and for the change of zoning district boundaries on an area-wide basis.
- 31.2.8. Formulate and recommend to the City Council for its adoption policies and regulations consistent with the adopted city plan governing the location and/or operation of utilities, public facilities, and services owned or under the control of the city.
- 31.2.9. Submit each May a progress report to the City Council summarizing its activities for the past year and a proposed work program for the coming year.

SECTION 32 **ZONING BOARD OF ADJUSTMENT**

32.1. Organization

There is hereby created a Zoning Board of Adjustment for the City of Tioga. The City Council of the City of Tioga shall act as the Board of Adjustment of the City of Tioga, with the Mayor as the Chairman, to vote only in the case of a tie vote.

- 32.1.1. Rules and Regulations: The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Secretary and shall be public record. The Board shall act by resolution in which four (4) members must concur. The Board shall adopt from time to time such additional rules and regulations as it may deem necessary to carry into effect the provisions of the ordinance, and shall furnish a copy of the same to the Zoning Administrator and the Building Inspector, all of which rules and regulations shall operate uniformly in all cases. All of its resolutions and orders shall be in accordance therewith.

32.2. Powers and Duties of Board

- 32.2.1. Appeals Based on Error: The Board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official of the city in the enforcement of this ordinance.
- 32.2.2. Special Exceptions: The Board shall have the power to hear and decide special exceptions to the terms of this ordinance upon which the Board is required to pass as follows:
- 32.2.2.1. Permit the erection and use of a building or the use of premises for railroads if such uses are in general conformity with the Master Plan and present no conflict or nuisance to adjacent properties.
- 32.2.2.2. Permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
- 32.2.2.3. Grant a permit for the extension of a use, height, or area regulation into an adjoining district where the boundary line of the district divides a lot in a single ownership on the effective date of this ordinance.
- 32.2.2.4. Permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than fifty percent (50%) of its fair market value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use and primary purpose of continuing the nonconforming use is not to continue a monopoly.
- 32.2.2.5. Waive or reduce the parking and loading requirements in any of the districts, whenever the character or use of the building is such as to make unnecessary the full provision of

parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

- 32.2.2.6. Determine whether an industry should be permitted within the I-1 — Light Industrial District and I-2 — Heavy Industrial District because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.
- 32.2.2.7. Rule on all applications on siting of manufactured homes in districts not so zoned. Approval shall only be allowed in cases of extreme hardship under guidelines established by the Board.
- 32.2.3. Limitation on Reapplications: When the Board has denied a proposal, no new applications of similar nature shall be accepted by the Board or scheduled for twelve (12) months after the date of Board denial. Applications which have been withdrawn at or before the Board meeting may be resubmitted at any time for hearing before the Board.
- 32.2.4. Vote of Four Members Required: The concurring vote of four members of the Board is necessary to:
- (a) reverse an order, requirement, decision or determination of an administrative official;
 - (b) decide in favor of an applicant on a matter on which the Board is required to pass; or
 - (c) authorize a variation from the terms of a zoning ordinance.

32.3. Appeals

32.3.1. Procedure: Appeals may be taken to and before the Zoning Board of Adjustment by any person aggrieved, or by any officer, department, board or bureau in the city. Such appeal shall be made by filing in the office of the City Secretary a notice of appeal and specifying the grounds thereof. The office or department from which the appeal is taken shall forthwith transmit to the Board all of the papers constituting the record from which the action appealed was taken.

32.3.2. Stay of Proceedings: An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector shall certify to the Zoning Board of Adjustment that, by reason of facts in the certificate, a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted or by a court of equity, after notice to the office from whom the appeal is taken.

32.3.3. Notice of Hearing on Appeal: The Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and shall mail notices of such hearing to the petitioner and to the owners of property lying within two hundred (200) feet of any point of the lot or portion thereof on which a variation is desired, and to all other persons deemed by the Board to be affected thereby, such owners and persons being determined according to the current tax rolls of the City. Depositing of such written notice in the mail shall be deemed sufficient compliance therewith.

32.3.4. Decision by Board: The Board shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney. The Board may reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination as in its opinion ought to be made in the premises, and to that end, shall have all powers of the officer or department from whom the appeal is taken.

32.4. Variances

The Board shall have the power to authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship and so that the spirit of this ordinance shall be observed and substantial justice done, including the following:

- 32.4.1. Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the provisions due to an irregular shape of the lot or topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.
- 32.4.2. Authorize, upon appeal, whenever a property owner can show that a strict application of the terms of this ordinance relating to the construction or alterations of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this ordinance as are in harmony with its own general purpose and intent, but only when the Board is satisfied that granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the Comprehensive Plan as established by this ordinance and at the same time, the surrounding property will be properly protected.
- 32.4.3. The Board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirements, decision or determination made by the Building Inspector in the enforcement of this ordinance. Except as otherwise provided herein, the Board shall have, in addition, the following specific powers:
 - 32.4.3.1. To permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the Master Plan and present no conflict or nuisance to adjacent properties.
 - 32.4.3.2. To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
 - 32.4.3.3. To grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of this ordinance.
 - 32.4.3.4. To permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than ninety percent (90%) of its fair market value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use.
 - 32.4.3.5. To waive or reduce the parking and loading requirements in any of the districts, when (i) the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities; or (ii) when such regulations would impose an unreasonable

hardship upon the use of the lot. The Board shall not waive or reduce such requirements merely for the purpose of granting an advantage or a convenience.

32.4.4. A written application for variance shall be submitted together with the required fee, accompanied by an accurate legal description, maps, site plans, drawings and any necessary data, demonstrating:

- a) that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;
- b) that literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
- c) that the special conditions and circumstances do not result from the actions of the applicant;
- d) that granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district; and
- e) no non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

32.5. Changes

The Board shall have no authority to change any provisions of this ordinance and its jurisdiction is limited to hardship and borderline cases which may arise from time to time. The Board may not change the district designation of any land either to a more or less restrictive zone.

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrative official, that such questions shall be presented to the Board only on appeal from the decision of the Building Official and that recourse from the decisions of the Zoning Board of Adjustment shall be to the courts as provided by the laws of the State of Texas.

SECTION 33 RULES OF CONSTRUCTION AND SPECIAL DEFINITIONS

33.1. General Rules of Construction:

The following rules of construction shall apply to the interpretation of words used in this ordinance:

- 33.1.1. words used in the present tense include the future tense;
- 33.1.2. words used in the singular number include the plural number;
- 33.1.3. words in the plural number include the singular number;
- 33.1.4. the words "building" and "structure" are synonymous;

33.1.5. the words "lot", "plot" and "tract" are synonymous; and

33.1.6 the word "shall" is mandatory and not discretionary.

33.2. Special Definitions

Except to the extent a particular provision specifies otherwise, the following definitions shall apply throughout this ordinance:

33.2.1. Abutting Property - Property abutting upon a street shall also be understood as abutting property on the other side of the street.

33.2.2. Accessory Use or Building - A use or building subordinate to and detached from the main building and used for purposes customarily incidental to the primary use of the premises.

33.2.3. Adjacent - Shall mean "next to" or "closest to" but shall not necessarily mean "touching".

33.2.4. Alley - A public space or thoroughfare which affords only secondary means of access to property abutting thereon.

33.2.5. Antenna/Microwave Reflector - An apparatus constructed of solid, mesh, or perforated materials of any configuration that is used to receive and/or transmit microwave signals from a terrestrial or orbitally located transmitter or transmitter relay. This definition is meant to include but is not limited to what are commonly referred to as satellite receive only earth stations.

33.2.6. Antenna, Radio or Television - The arrangement of wires or metal rods used in sending and/or receiving of electromagnetic waves.

33.2.7. Apartment - A room or suite of rooms in a multifamily dwelling or apartment house designed or occupied as a place of residence by a single family, individual or group of individuals.

33.2.8. Apartment House - Any building or portion thereof, which is designed, built, rented, leased or let to be occupied as a home or place of residence by three (3) or more families living in independent dwelling units.

33.2.9. Area of the Lot or Building Site - The area shall be the net area of the lot or site and shall not include portions of streets and alleys.

33.2.10. Reserved for future use.

33.2.11. Basement - A building story which is partly underground, but having at least one-half of its height above the average level of the adjoining ground. A basement shall not be counted as a story in computing building height.

33.2.12. Block - An area enclosed by streets and occupied by or intended for buildings; where this word is used as a term of measurement, it shall mean the distance along a side of a street between the nearest two (2) streets which intersect said street on said side.

33.2.13. Board of Adjustment - The Zoning Board of Adjustment of the City of Tioga.

- 33.2.14. Buildable Width - The width of the building site left to be built upon after the required side yards are provided.
- 33.2.15. Building - Any structure built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire, each portion so subdivided may be deemed a separate building.
- 33.2.16. Building, Detached - A building surrounded by yard or open space on the same building lot.
- 33.2.17. Building Ends - Those sides of a building having the least dimension as compared to the front or rear of a building. As used in the building spacing regulations for multiple-family dwelling, the term "building end" shall mean the narrowest side of a building regardless of whether it fronts upon a street, faces the rear of the lot or adjoins the side lot line or another building.
- 33.2.18. Building, Front Of - The side of a building most nearly parallel with and adjacent to the front of the lot on which it is situated.
- 33.2.19. Building Inspector - The Building Official or person charged with the enforcement of the zoning and building codes of the city.
- 33.2.20. Reserved.
- 33.2.21. Building Line - A line parallel or approximately parallel to the street line at a specified distance there from constituting the minimum distance from the street line that a building may be erected.
- 33.2.22. Building Lot - A single tract of land located within a single block which (at time of filing for a building permit) is designed by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control. It shall front upon a street or approved place. Therefore, a "building lot" may not coincide with a lot of record. A "building lot" may be subsequently subdivided into two (2) or more "building lots", and a number of "building lots" may be cumulated into one "building lot", subject to the provisions of this ordinance.
- 33.2.23. Building, Main or Primary - A building in which is conducted the principal use of the lot on which it is situated.
- 33.2.24. Building Official - The Building Inspector.
- 33.2.25. Canopy - Any structure of a permanent fixed nature attached to or independent of the main structure, built and designed for the purpose of shielding from the elements, persons or chattels or a roof-like structure of a permanent nature which is supported by or projects from the wall of a structure.
- 33.2.26. Cellar - A building story with more than one-half (1/2) its height below the average level of the adjoining ground. A cellar shall not be counted as a story in computing building height.
- 33.2.27. Certificate of Occupancy and Compliance - An official certificate issued by the city through the enforcing official indicating conformance with or approved conditional waiver from the

zoning regulations and authorizing legal use of the premises for which it is issued.

- 33.2.28. Contiguous - Shall mean "touching" or "in contact".
- 33.2.29. Court - An open, unoccupied space, bounded on more than two (2) sides by the walls of a building. An inner court is a court entirely surrounded by the exterior walls of a building. An outer court is a court having one (1) side open to a street, alley, yard or other permanent space.
- 33.2.30. Coverage - The percent of a lot or tract covered by the roof or first floor of a building.
- 33.2.31. Depth of Lot - The mean horizontal distance between the front and rear lot lines.
- 33.2.32. Depth of Rear Yard - The mean horizontal distance between the rear line of a building other than an accessory building and the rear lot line except as modified in the text of any section in this ordinance.
- 33.2.33. District - A section of the city for which the regulations governing the area, height or use of the land and buildings are uniform.
- 33.2.34. Duplex - A building designed for occupancy by two families living independently of each other within separate units which have a common wall and are under one roof.
- 33.2.35. Dwelling Unit - A building or portion thereof designed exclusively for residential occupancy, including one (1) family, two (2) family, and multiple family dwellings, except for buildings designed and used as hotels, boarding houses, rooming houses, and motels.
- 33.2.36. Family - An individual or group of two or more persons related by blood, marriage, adoption or guardianship including foster children, exchange students, and servants together with not more than two (2) additional persons not related by blood, marriage or adoption to the previously identified individual or group, living together as a single housekeeping unit in a dwelling unit or a Family Home for the Disabled as defined by the Community Homes for Disabled Persons Location Act, Article 1011n of V.A.C.S., as it presently exists or may be amended in the future, but not including household care or rehabilitation care facilities.
- 33.2.37. Flood Plain - An area of land subject to inundation by a 100-year frequency flood, as shown on the flood plain map of the City of Tioga. The term "flood plain" is interchangeable with the term "flood hazard area".
- 33.2.38. Floor Area - The total square feet of floor space within the outside dimensions of a building including each floor level, but excluding cellars, carports, garages or porches.
- 33.2.39. Floor Area Ratio - The ratio of total building floor area to lot area.
- 33.2.40. Reserved.
- 33.2.41. Front Yard - See Yard, front (Section 33.2.104a).
- 33.2.42. Garage Sale - The sale of items normally accumulated by a household subject to compliance with each of the following conditions:
a) No more than three (3) garage sales shall be allowed for the same location in any twelve

(12) month period. The duration of the garage sale shall not exceed three (3) consecutive days.

b) No items shall be purchased for a garage sale for the purpose of resale.

c) One (1) unlighted sign not exceeding twelve (12) square feet in area shall be permitted. Said sign shall pertain to the garage sale only and shall be located on the property. Said sign shall be permitted for the three (3) day period.

33.2.43. Gross Floor Area - The gross floor area of a building shall be measured by taking outside dimensions of the building at each floor level.

33.2.44. Heavy Load Vehicle (HLV) - A self-propelled vehicle having a Manufacturer's Recommended Gross Vehicle Weight (GVW) of greater than 11,000 pounds, such as large recreational vehicles, tractor-trailers, buses, vans, and other similar vehicles. The term "truck" shall be construed to mean "heavy load vehicle" unless specifically stated otherwise.

33.2.45. Height - The vertical distance of a building measured from the average established grade at the street line or from the average natural front yard ground level, whichever is higher, to (1) the highest point of the roof's surface if a flat surface, (2) to the deck line of mansard roofs, or (3) to the mean height level between eaves and edge for hip and gable roofs and, in any event, excluding chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio towers, ornamental cupolas, domes or spires, and parapet walls not exceeding ten (10) feet. If the street grade has not been officially established, the average front yard grade shall be used for a base level.

33.2.46. Industrialized Housing - A residential structure designed for use and occupancy by one (1) or more families, constructed in one (1) or more modular components built at a location other than the permanent residential site, designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation system. The term shall not mean or apply to (a) housing constructed of sectional or panelized systems not utilizing modular components; or (b) any ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location.

33.2.47. Landscape Screen - Plant material of the evergreen variety, a minimum of six (6) feet in height at the time of installation and planted on four (4) foot centers. All such landscape screens shall be permanently maintained. Adequate facilities shall be provided for permanent watering at the time of installation.

33.2.48. Light Load Vehicles (LLV) - A self-propelled vehicle having a Manufacturer's Recommended Gross Vehicle Weight (GVW) not greater than 11,000 pounds, and having no more than two (2) axles, such as pick-up trucks, vans, recreational vehicles, campers, motorcycles, and other similar vehicles. The term "automobile" shall be construed to mean light load vehicle unless specifically stated otherwise.

33.2.49. Living Unit - The room or rooms occupied by a family and which includes cooking facilities.

33.2.50. Reserved.

- 33.2.51. Lot - An undivided tract or parcel of land under one (1) ownership having frontage upon a public street or officially approved place, either occupied or to be occupied by a building or building group, together with accessory buildings, and used together with such yards and other open spaces as are required by this ordinance, which parcel of land is designated as a separate and distinct tract and is identified by a tract or lot number or symbol in a duly approved subdivision plat of record.
- 33.2.52. Lot, Corner - A lot abutting upon two (2) or more streets at their intersection or upon two (2) parts of the same street forming an interior angle of less than 135 degrees. A corner lot shall be deemed to front on that street on which it has its least dimension, unless otherwise specified by the Building Inspector.
- 33.2.53. Lot Coverage - The percentage of the total area of a lot occupied by the base (first story or floor) of a building located on the lot or the area determined as the maximum cross-sectional area of the building.
- 33.2.54. Reserved for future use.
- 33.2.55. Lot Line, Front - That boundary of a building lot which is the line of an existing or dedicated street. Upon corner lots either street line may be selected as the front lot line providing a front and rear yard are provided adjacent and opposite, respectively, to the front lot line.
- 33.2.56. Lot Line, Rear - That boundary of a building lot which is most distant from or is most nearly parallel to the front lot line.
- 33.2.57. Lot Line, Side - That boundary of a building lot which is not a front lot line or a rear lot line.
- 33.2.58. Lot Lines - The lines bounding a lot as defined herein.
- 33.2.59. Lot of Record - A lot which is part of a subdivision, a plat of which has been recorded in the office of the county clerk of Grayson County; or a parcel of land the deed for which is recorded in the office of the county clerk of Grayson County prior to the adoption of this ordinance.
- 33.2.60. Reserved.
- 33.2.61. Lot or Building Site - Land occupied or to be occupied by a building and its accessory building, and including such open spaces as are required under this ordinance, and having its principal frontage upon a public street or officially approved place.
- 33.2.62. Lot Width - The width of a lot at the front building lines.
- 33.2.63. Main Building - The building or buildings on a lot which are occupied by the primary use.
- 33.2.64. Manufactured Home (HUD Code) Park - Any tract of land, under single ownership, of not less than two (2) acres and not more than ten (10) acres, approved for occupancy by manufactured housing and accessory structures related thereto and designed and operated in accordance with standards herein set forth or as set forth in any other ordinance of the City of Tioga relating to the location, use, construction, operation or maintenance of

manufactured housing.

- 33.2.65. Manufactured Home (HUD Code) Subdivision - A tract of land of not less than ten (10) acres to be used as a location primarily for owner-occupied HUD Code manufactured homes and which has been final platted of record in its entirety in accordance with the City of Tioga Subdivision Regulations and in accordance with this ordinance.
- 33.2.66. Manufactured Modular Home - "Modular Home" means a structure or building module as defined by statute and under the jurisdiction and control of the Texas Department of Labor and Standards, installed and used as a residence by a consumer, transportable in one (1) or more sections on a temporary chassis or other conveyance device, and designed to be used on a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The term does not include a mobile home as defined by statute; nor does it include building modules incorporating concrete or masonry as the primary structural component.
- 33.2.67. Manufacturing Processes - Uses restricted from other zoning districts but permitted in the I-1 and I-2 districts under this definition are manufacturing and industrial uses which do not emit dust, smoke, odor, gas, fumes, or present a possible hazard beyond the bounding property lines of the lot or tract upon which the use or uses are located, and which do not generate noise or vibration at the boundary of the lot or tract which is generally perceptible in frequency or pressure above the ambient level of noise or vibration in the adjacent areas.
- 33.2.68. Mobile Home Park - See Manufactured Home (HUD Code) Park.
- 33.2.69. Mobile Home Subdivision - See Manufactured Home (HUD Code) Subdivision.
- 33.2.70. Reserved.
- 33.2.71. Non-Conforming Building or Use - A building, structure or use of land lawfully occupied at the time of the effective date of this ordinance or amendments thereto, and which does not conform to the use regulations of the district in which it is located.
- 33.2.72. Occupancy - The use or intended use of the land or buildings by proprietors or tenants.
- 33.2.73. Off-Street Parking Incidental to Main Use - Off-street parking spaces provided in accordance with the requirements specified by this ordinance and located on the lot or tract occupied by the main use or within two hundred (200) feet of such lot or tract and located within the same zoning district as the main use or in an adjacent parking district.
- 33.2.74. Off-Street Parking Space - An area for the temporary storage of an automobile which shall be permanently reserved for such purpose and which shall not be within or on any public street, alley or other right-of-way.
- 33.2.75. Open Space - Area included in any side, rear or front yard or any unoccupied space on the lot that is open and unobstructed to the sky except for the ordinary projections of cornices, eaves, porches and plant material.
- 33.2.76. Open Storage - The storage of any equipment, machinery, commodities, raw, semi-finished materials, and building materials, not accessory to a residential use, which is visible from any point on the building lot line when viewed from ground level to six (6) feet above

ground level, for more than twenty-four (24) hours.

- 33.2.77. Parking Space - An all-weather surfaced area used for parking a vehicle, not on a public street or alley, together with an all-weather surfaced driveway connecting the area with a street, permitting free ingress and egress without encroachment on the street.
- 33.2.78. Planning and Zoning Commission - The duly appointed Planning and Zoning Commission of the City of Tioga.
- 33.2.79. Plat - A plan of a subdivision of land creating building lots or tracts and showing all essential dimensions and other information essential to comply with the subdivision standards of the City of Tioga and subject to approval by the Planning and Zoning Commission.
- 33.2.80. Reserved.
- 33.2.81. Radio, Television or Microwave Towers - Structures supporting antenna for transmitting or receiving any portion of the radio spectrum but excluding non-commercial antenna installations for home use of radio or television.
- 33.2.82. Residence - Same as dwelling; when used with district, an area of residential regulations.
- 33.2.83. Residential District - Any zoning district included in this ordinance in which residential use constitutes the primary permitted use classification, including the R-1, R-2, MH-1 and MH-2 district classifications.
- 33.2.84. Room - A building or portion of a building which is arranged, occupied, or intended to be occupied as living or sleeping quarters, but not including toilet or cooking facilities.
- 33.2.85. Screening Device - See "Landscape Screen".
- 33.2.86. Setback - The minimum horizontal distance between the front wall of any projection of the building, excluding steps and unenclosed porch and the side street.
- 33.2.87. Sign - An outdoor advertising device that is a structure, or that is attached to or painted on a building, or that is leaned against a structure for display on premises.
- 33.2.88. Site Plan - A detailed line drawing, to scale, showing scale used, north arrow, date and title of project, clearly describing the project and showing the following information:
- a) Property lines, location and widths of all streets, alleys and easements.
 - b) Proper dimensions on all fundamental features such as lots, buildings, parking spaces and landscaped areas.
 - c) The location of setback lines, driveway openings and sidewalks.
 - d) All proposed buildings, free-standing sign locations, parking areas and open spaces.
 - e) All required landscaping, together with a description of type of material to be used.
 - f) A cross section of any required or proposed screening.
 - g) Total square footage of the development lot; total square footage of proposed structures; total footage of landscaped areas; total percentage of coverage; density of floor area ratio where applicable; height of all structures; number of parking spaces; square footage and design features of all signs; and solid waste collection facilities.
 - h) Name, address and telephone number of the proponent.

- 33.2.89. Story - The height between the successive floors of a building from the top floor to the roof. The standard height for a story is eleven (11) feet, six (6) inches.
- 33.2.90. Street - Any thoroughfare or public driveway, other than an alley, more than thirty (30) feet in width, which has been dedicated or deeded to the public for public use.
- 33.2.91. Street Line - A dividing line between a lot, tract or parcel of land and a contiguous street; the right-of-way.
- 33.2.92. Street, Local or Residential - A street designed to serve properties abutting and in the immediate vicinity of the street, having a minimum right-of-way width of fifty (50) feet in single family residential districts and seventy-five (75) feet in all other districts.
- 33.2.93. Street, Major - A street designed to serve the entire community or substantial portions of the community, as well as traffic of non-local origin and destination, having a minimum right-of-way width of one hundred (100) feet.
- 33.2.94. Street, Secondary or Collector - A street designed to serve an area roughly one quarter (1/4) mile distant from each side of the street, having minimum right-of-way width of seventy-five (75) feet.
- 33.2.95. Structural Alterations - Any change in the supporting member of a building, such as a bearing wall, column, beams or girders.
- 33.2.96. Structure - (Same as Building.)
- 33.2.97. Swimming Pool (Private) - A swimming pool constructed for the exclusive use of the residents of a single family, two-family or apartment dwelling and located within the required side or rear yards; however, a pool shall not be located closer than eight (8) feet to any property line.
- 33.2.98. Tennis Court (Private) - A surface designed and constructed for playing the game of tennis along with all fencing, nets and related appurtenances but excluding lighting for night play in residential areas except as may be otherwise provided or restricted by the Specific Use Permit.
- 33.2.99. Thoroughfare - (Same as Street.)
- 33.2.100. Two Family Dwelling - A building designed for occupancy by two families living independently of each other within separate units which have a common wall and are under one roof.
- 33.2.101. Usable Open Space - An open area which is designed and intended to be used for outdoor living and/or recreation. An area of common usable open space shall have a slope not exceeding ten percent (10%), shall have no dimension of less than ten (10) feet, and may include landscaping, walks, water features and decorative objects. Usable open space shall not include rooftops, accessory buildings, parking areas, driveways, turn-around areas, or right-of-way or easement for streets or alleys.

- 33.2.102. Variance - An adjustment in the application of the specific regulations of the Zoning Ordinance to a particular parcel of property which, because of special conditions or circumstances peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and zoning district.
- 33.2.103. Wholesale - The sale of goods, merchandise, services and/or commodities for resale by the purchaser and does not offer retail sales to the general public.
- 33.2.104. Yard - An open space, other than a court, on the lot in which a building is situated and which is not obstructed from a point forty (40) inches above the general ground level of the graded lot to the sky, except as provided for roof overhang and similar special architectural features and plant material.
 - 33.2.104a. Yard, Front - An open, unoccupied space on a lot facing a street extending across the front of a lot between the side lot lines and from the main building to the front lot or street line with the minimum horizontal distance between the street line and the main building line as specified for the district in which it is located.
 - 33.2.104b. Yard, Rear - an open, unoccupied space, except for accessory buildings as herein permitted extending across the rear of a lot from one (1) side lot line to the other side lot line.
 - 33.2.104c. Yard, Side - An open, unoccupied space or spaces on one (1) side or two (2) sides of a main building and on the same lot with the building, situated between the building and a side line of the lot and extending through from the front yard to the rear yard. Any lot line not the rear line or front line shall be deemed a side line.
- 33.2.105. Zoning District Map - The official certified map upon which the boundaries of the various zoning districts are drawn.
- 33.2.106. Zoning Ordinance - This ordinance containing land use regulations for the City of Tioga.

SECTION 34 **BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY**

34.1. General Requirements

No permanent structure may be constructed or otherwise located within the city limits prior to issuance of a Building Permit by the City of Tioga. No permanent structure constructed or otherwise located within the city limits may be occupied prior to issuance of a Certificate of Occupancy by the City of Tioga. No change in the existing conforming use of a permanent structure, or of land to a use of a different classification under this ordinance, and no change in the legally conforming use of a permanent structure or of land may take place prior to issuance of a Certificate of Occupancy by the City of Tioga.

34.2. Procedure for New or Altered Buildings

Plans for any permanent structure to be constructed or otherwise located within the city limits must be approved by the City of Tioga and upon approval a Building Permit will be issued. A complete application for a Building Permit shall contain details of foundation and structure sufficient to determine compliance with applicable provisions of the Building Code. Upon submission of a complete application, the City of Tioga shall issue a Building Permit. After issuance of a Building Permit and prior to issuance of a Certificate of Occupancy, the City of Tioga shall conduct a foundation, plumbing, electrical and framing inspection and any other inspections as required by the current building codes or law of the State of Texas.

After such inspections, the City of Tioga shall issue a Certificate of Occupancy if the plans and the results of the inspections comply with the provisions of all applicable ordinances and regulations.

34.3. Procedure for Vacant Land or a Change in Use

Written application for a Certificate of Occupancy for the use of vacant land, or for a change in the use of land or a building, or for a change in a non-conforming use, as herein provided, shall be made to said Building Inspector. If the proposed use is in conformity with the provisions of this ordinance, the Certificate of Occupancy therefore shall be issued within ten (10) days after the application for same has been made.

34.4. Contents of Certificate of Occupancy

Every Certificate of Occupancy shall state that the building or the proposed use of a building or land complies with all applicable provisions of the building and fire laws, including drainage/flood prevention and ordinances. A record of all Certificates of Occupancy shall be kept on file in the Office of the Building Inspector or his agent and copies shall be furnished on request to any person having proprietary or tenancy interest in the building or land affected.

34.5. Temporary Certificate

Pending the issuance of a regular certificate, a temporary Certificate of Occupancy may be issued by the Building Inspector for a period not exceeding six (6) months during the completion of alterations or during partial occupancy of a building pending its completion. Issuance of a temporary certificate shall not be construed to alter the respective rights, duties, or obligations of the owner or of the City relating to the use occupancy of the premises or any other matter covered by this ordinance.

34.6. Certificates for Non-Conforming Uses

A Certificate of Occupancy shall be required for all lawful non-conforming uses of land or buildings created by adoption of this ordinance. Application for such Certificate of Occupancy for a non-conforming use shall be filed with the Building Inspector by the owner or lessee of the building or land occupied by such non-conforming use within one (1) year of the effective date of this ordinance. It shall be the duty of the Building Inspector to issue a Certificate of Occupancy for a lawful non-conforming use, but failure to apply for such Certificate of Occupancy for a non-conforming use shall be evidence that said non-conforming use was either illegal or did not lawfully exist at the effective date of this ordinance.

SECTION 35 CHANGES AND AMENDMENTS TO ALL ZONING ORDINANCES AND DISTRICTS AND ADMINISTRATIVE PROCEDURES

35.1. Declaration of Policy

The City declares the enactment of these regulations governing the use and development of land, buildings, and structures to be a measure necessary to the orderly development of the community. Therefore, no change shall be made in these regulations or in the boundaries of the zoning districts except:

- 35.1.1. To correct any error in the regulations or map.
- 35.1.2. To recognize changed or changing conditions or circumstances in a particular locality.
- 35.1.3. To recognize changes in technology, style of living, or manner of doing business.

35.2. Authority to Amend Ordinance

The City Council may from time to time, after public hearings required by law, amend, supplement, or change the regulations herein provided or the classification or boundaries of the zoning districts. Any amendment, supplement, or change to the text of the Zoning Ordinance and any change in the classification or boundaries of the zoning districts may be ordered for consideration by the City Council, may be initiated by the Planning and Zoning Commission, the City Council, or may be requested by the owner of affected real property or the authorized representative of an owner of affected real property.

35.3. Public Hearing and Notice

- 35.3.1. Upon filing of an application for an amendment to the zoning ordinance and/or map, the Planning and Zoning Commission shall call a public hearing on said application.
- 35.3.2. Written notice of such hearing shall be sent to the owner of the property or his agent and to all owners of real property lying within two hundred (200) feet of the property on which the change in classification is proposed, such notice to be given not less than ten (10) days before the date of such hearing, to all such owners who have rendered their said property for City taxes as the ownership appears on the last approved City tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the City Post Office. Where property lying within two hundred (200) feet of the property proposed to be changed is located in territory which was annexed to the City after the final date for making the renditions which are included on the last approved City tax roll, notice to such owners shall be given by one publication in the official newspaper at least fifteen (15) days before the time of hearing. Failure of owners to receive notice of hearing shall in no way affect the validity of action taken.
- 35.3.3. If, at the conclusion of the hearing, the Planning and Zoning Commission recommends amendment of this ordinance to the City Council, said recommendation shall be by resolution of the Planning and Zoning Commission carried by the affirmative votes of not less than a majority of its total membership present and voting. 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 any other pertinent data.

35.3.4. If, after public hearing, the Planning and Zoning Commission recommends denial of an application, the applicant may appeal said determination to the City Council by filing a written notice of appeal with the City Clerk within ten (10) days after the determination of the Planning and Zoning Commission.

35.3.5. The Planning and Zoning Commission may recommend denial of an application with or without prejudice against the applicant to re-file the application. If the Commission recommends denial of the application and fails to clearly state the same is being denied with prejudice, then it shall be deemed that said application is being recommended for denial without prejudice against re-filing. If it is later determined by the Commission that there has been a sufficient change in circumstances regarding the property or in the zoning application itself, it may waive the waiting period and grant a new hearing. Newly annexed land which has been given Agricultural zoning is exempt from the one (1) year waiting period.

35.4. Action of the City Council

35.4.1. If the Planning and Zoning Commission has recommended approval of an application or if the Planning and Zoning Commission has recommended denial of an application and a notice of appeal has been filed pursuant to Section 35.3.4, the City Council shall set said application for public hearing and shall give notice of the time and place of the hearing by one (1) publication in the official newspaper at least fifteen (15) days prior to such hearing, and in addition shall send written notices to the owner of the property or his agent, and to all owners of real property lying within two hundred (200) feet of the subject property pursuant to Section 35.3.2.

35.4.2. If the Planning and Zoning Commission has recommended to the City Council that a proposed amendment be disapproved, the City Council may refuse to adopt the amendment by a simple majority vote of the Councilmen present and voting. However, in order to adopt the amendment which has been recommended for disapproval by the Planning and Zoning Commission, the amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council of the City of Tioga present and voting.

35.4.3. When the Planning and Zoning Commission has recommended to the City Council that a proposed amendment be approved, the City Council may disapprove the petition or application for amendment by a simple majority vote of the City Councilmen present and voting. In the event of a tie vote of the City Councilmen present and voting, the Mayor may cast the deciding vote.

35.4.4. In the case of a protest against an amendment to the ordinance signed by the owners of twenty percent (20%) or more either of the area of the lots or land included in such proposed change, or of the area of the lots or land immediately adjoining the area included in the proposed change and extending two hundred (200) feet from that area, such amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council of the City of Tioga.

35.4.5. In making its determination, the City Council shall consider the following factors:

- 35.4.5.1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned and their relationship to the general area and the city as a whole.
 - 35.4.5.2. 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 shall note the findings.
 - 35.4.5.3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the city, and any special circumstances which may make a substantial part of such vacant land unsuitable for development.
 - 35.4.5.4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.
 - 35.4.5.5. The manner in which other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved, and whether such designation for other areas should also be modified.
 - 35.4.5.6. Any other factors which will substantially affect the public health, safety, morals or general welfare.
- 35.4.6. In considering a motion to deny a zoning application, or upon voting to deny a zoning application, the City Council shall further consider whether said application shall be denied with or without prejudice against re-filing. If the City Council shall deny the application and fail to clearly state the same is being denied with prejudice, then it shall be deemed that said application is being denied without prejudice against re-filing. If an application is denied with prejudice, no application may be filed for all or a part of the subject tract of land for a period of one (1) year from the date of denial by the City Council. If it is determined by the Planning and Zoning Commission that there has been a sufficient change in circumstances regarding the property or in the zoning application itself, it may waive the waiting period and grant a new hearing. Newly annexed land which has been given Agricultural zoning is exempt from the two (1) year waiting period.

35.5. Effect of Denial of Petition

In case an application for an amendment to the Zoning Ordinance is denied by the Planning and Zoning Commission, and no appeal there from is taken to the City Council, or in case an application for an amendment to the Zoning Ordinance is denied by the City Council, (in either of said events), said application shall not be eligible for reconsideration for one (1) 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 Planning and Zoning Commission, to be eligible for consideration within one (1) year of the denial of the original application.

In the event a reapplication affecting the same land is for a zone that will permit the same use of the property as that which would have been permitted under the denied application, the same shall not be considered as being substantially different from the application denied.

35.6. Final Approval and Ordinance Adoption

If the amending ordinance is not approved within six (6) months from the time of its original consideration, the zoning request, at the option of the City Council, may be recalled for a new public hearing.

35.7. Changes in Zoning Regulations

Amendments to the Zoning Ordinance not involving a particular property but involving a change in the zoning regulations generally do not require notice to individual property owners. In such cases, notice of the required public hearing shall be given by publication in the official newspaper of the city, stating the time and location of the public hearing, which time shall not be earlier than fifteen (15) days from the date of such publication.

SECTION 36 **SCHEDULE OF FEES, CHARGES, AND EXPENSES**

The City Council shall establish a schedule of fees, charges, and expenses, and a collection procedure for building permits, sign permits, certificates of zoning compliance, appeals, and other matters pertaining to this ordinance. The schedule shall be posted in the office of the administration official and may be altered or amended only by the City Council.

No permit, certificate, special exception, or variance shall be issued unless and until such costs, charges, fees, or expenses have been paid in full, nor shall any action be taken on proceedings before the Board of Adjustment unless or until preliminary charges and fees have been paid in full.

The exact charge for the following services will be established by separate ordinance:

- a. For docketing a zoning petition with the Planning and Zoning Commission of the City of Tioga.
- b. For docketing an application for relief with the Board of Adjustment of the City of Tioga.

SECTION 37 **PENALTY FOR VIOLATIONS**

Any person or corporation violating any of the provisions of this ordinance shall upon conviction be fined a sum not to exceed two thousand dollars (\$2,000.00) per day and each and every day that the provisions of this ordinance are violated shall constitute a separate and distinct offense. In addition to the said penalty provided for, the right is hereby conferred and extended upon any property owner owning property in any district where such property owner may be affected or invaded by a violation of the terms of the ordinance to bring suit in such court or courts having jurisdiction thereof and obtain such remedies as may be available at law and equity in the protection of the rights of such property owners.

SECTION 38 **VALIDITY, SEVERANCE AND CONFLICT**

If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall be severed from and shall not affect the validity of this

ordinance as a whole or any part or provision thereof other than the part so dedicated to be invalid or unconstitutional. To the extent any provision of this ordinance conflicts with other ordinances of the City of Tioga the terms of this ordinance shall control.

SECTION 39 EFFECTIVE DATE

This ordinance shall be effective upon the posting and/or publication of its caption as required by law and the City Secretary is hereby directed to implement such posting and/or publication.

RECOMMENDED FOR ACCEPTANCE by the Planning and Zoning Commission of the City of Tioga, Texas, on the 21st day of December, 2006.

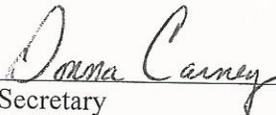
SIGNED:

Arlene Joice

Chairman, Planning & Zoning Commission

PASSED AND APPROVED by unanimous vote of the City Council of the City of Tioga, Texas, on this the 8th day of January, 2007.

ATTEST:



City Secretary

SIGNED:



Mayor

(seal)

Appendix 1

MINIMUM LOT AREA/FAMILY

TYPE OF USE	A	R-1	R-2	MH-1	MH-2	C-1	C-2	C-3	I-2	I-2
	AGRICULTURAL	SINGLE FAMILY RESIDENTIAL	MULTI FAMILY RESEIDENTIAL	MANUFACTURED HOME	MANUFACTURED HOME PARK	LOCAL BUSINESS	COMMERCIAL	CENTRAL AREA COMMERCIAL	LIGHT INDUSTRIAL	HEAVY INDUSTRIAL
SINGLE FAMILY DWELLING Attached (Square Ft)	-	-	3600	-	-	3600	3600	3600	-	-
SINGLE FAMILY DWELLING Detached (Square Ft)	1 acre	7700	5000	-	-	5000	5000	5000	-	-
TWO FAMILY DWELLING (Square Ft)	-	-	3600	-	-	3600	3600	3600	-	-
MULTIPLE FAMILY DWELLING (Square Ft)	-	-	1500	-	-	1500	1500	1500	-	-
MANUFACTURED HOME (Square Ft)	1 acre	-	7700	7700	3200	-	-	-	-	-
MODULAR OR FACTORY FABRICATED (Square Ft)	1 acre	-	7700	7700	3200	-	-	-	-	-

SETBACK, DWELLING, HEIGHT, AND COVERAGE REGULATIONS

	A	R-1	R-2	MH-1	MH-2	C-1	C-2	C-3	I-2	I-2
	AGRICULTURAL	SINGLE FAMILY RESIDENTIAL	MULTI FAMILY RESEIDENTIAL	MANUFACTURED HOME	MANUFACTURED HOME PARK	LOCAL BUSINESS	COMMERCIAL	CENTRAL AREA COMMERCIAL	LIGHT INDUSTRIAL	HEAVY INDUSTRIAL
MINIMUM FRONT YARD All Permitted Uses	50'	25'	25'	25'	10'	25'	25'	0(1)	30'	30'
MINIMUM SIDE YARD (2) (3) All Permitted Uses	(10% of lot width)	(10% of lot width)	(10% of lot width)	(10% of lot width)	(10% of lot width)	0	0	0	10'	10'
MINIMUM REAR YARD All Permitted Uses	30'	30'	30'	30'	10'	0	0	0	15'	15'
MINIMUM DWELLING SIZE (sq. ft.) All Permitted Uses	900	900	300	900	900	-	-	-	-	-
MAXIMUM HEIGHT (4) All Permitted Uses	3 stories or 45'	2 1/2 stories or 35'	3 stories or 45'	2 1/2 stories or 35'	1 story	2 stories or 35'	2 stories or 35'	3 stories or 45'	3 stories or 45'	3 stories or 45'
MAXIMUM LOT COVERAGE All Permitted Uses (Main Building)	35%	35%	40%	35%	35%	35%	40%	100%	40%	40%
MAXIMUM LOT COVERAGE All Permitted Uses (Main Building & accessory buildings)	45%	45%	50%	45%	45%	35%	50%	100%	50%	50%

- (1) No Front yard is required except that no structure may be erected nearer than 30' to the center line of any street on which the structure fronts.
- (2) In Single Family Dwelling-Attached, a minimum side yard of 7' is required.
- (3) Corner lots-minimum of 15' required on street side.
- (4) Cooling towers, roof gables, chimneys and vent stacks may extend for an additional height not to exceed forty (40) feet above the average grade line of the building. Water stand pipes and tanks, church steeples, domes and spires, school buildings and institutional buildings may be erected to exceed three (3) stories height in residential areas restricted to two (2) or three (3) stories in height, provided that one (1) additional foot shall be added to the depth and width on the side and rear yards for each foot that such structure exceeds three (3) stories in height.

Appendix 2

MINIMUM LOT WIDTHS (1)

TYPE OF USE	A AGRICULTURAL	R-1 SINGLE FAMILY RESIDENTIAL	R-2 MULTI FAMILY RESEIDENTIAL	MH-1 MANUFACTURED HOME	MH-2 MANUFACTURED HOME PARK	C-1 LOCAL BUSINESS	C-2 COMMERCIAL	C-3 CENTRAL AREA COMMERCIAL	I-2 LIGHT INDUSTRIAL	I-2 HEAVY INDUSTRIAL
SINGLE FAMILY DWELLING Attached	-	-	35'	-	-	35'	35'	35'	-	-
SINGLE FAMILY DWELLING Detached	150'	70'	60'	-	-	70'	70'	70'	-	-
TWO FAMILY DWELLING	-	-	70'	-	-	70'	70'	70'	-	-
MULTIPLE FAMILY DWELLING	-	-	70'	-	-	70'	70'	70'	-	-
MANUFACTURED HOME	150'	-	70'	70'	40'	-	-	-	-	-
MODULAR OR FACTORY FABRICATED	150'	-	70'	70'	40'	-	-	-	-	-

(1) All corner lots must be 15' wider than other lots on the block.

MINIMUM LOT DEPTHS

TYPE OF USE	A AGRICULTURAL	R-1 SINGLE FAMILY RESIDENTIAL	R-2 MULTI FAMILY RESEIDENTIAL	MH-1 MANUFACTURED HOME	MH-2 MANUFACTURED HOME PARK	C-1 LOCAL BUSINESS	C-2 COMMERCIAL	C-3 CENTRAL AREA COMMERCIAL	I-2 LIGHT INDUSTRIAL	I-2 HEAVY INDUSTRIAL
SINGLE FAMILY DWELLING Attached	-	-	110'	110'	-	110'	110'	110'	-	-
SINGLE FAMILY DWELLING Detached	110'	110'	110'	110'	-	110'	110'	110'	-	-
TWO FAMILY DWELLING	-	-	110'	110'	-	110'	110'	110'	-	-
MULTIPLE FAMILY DWELLING	-	-	110'	110'	-	110'	110'	110'	-	-
MANUFACTURED HOME	110'	-	110'	110'	80'	-	-	-	-	-
MODULAR OR FACTORY FABRICATED	110'	-	110'	110'	80'	-	-	-	-	-